

**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 20 of
The Liquor Control and Licensing Act RSBC c. 267**

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| Licensee: | Coyote Enterprises Ltd. dba Silverton Heritage Country Inn |
| Case: | EH06-075 |
| For the Licensee | n/a |
| For the Branch | n/a |
| Enforcement Hearing Adjudicator | Sheldon M. Seigel |
| Date of Hearing | October 20, 2006 |
| Place of Hearing | n/a |
| Date of Decision | November 1, 2006 |

INTRODUCTION

The Licensee operates a liquor primary establishment in Silverton B.C. under license #028843.

This hearing was conducted by way of written submissions by agreement of the licensee and the General Manager.

The Licensee acknowledged that on March 11, 2006, the establishment contravened section 43(2)(b) of the Liquor Control and Licensing Act (*Act*), and 44(1)(a) of the Liquor Control and Licensing Regulation (*Regulation*). The hours of liquor service are Monday to Saturday, 11:00 a.m. to 1:00 a.m. and Sunday 11:00 a.m. to midnight. The contravention occurred on the business day of Friday March 10, 2006.

The recommended enforcement action for the contravention of section 43(2)(b) is a four day suspension. The recommended enforcement action for the contravention of section 44(1)(a) is a one thousand dollar penalty. The only issue is as to what penalty, if any, is appropriate.

ALLEGED CONTRAVENTIONS

The Branch alleged that on March 11, 2006, the Licensee contravened s. 43(2)(b) of the *Act* by permitting an intoxicated person to remain, and s. 44 (1)(a) of the *Regulation* by failing to clear patrons within a half-hour after liquor service hours terminated.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, [RSBC 1996] Chapter 267

- 43 (2) A licensee or the licensee's employee must not permit
- (a) a person to become intoxicated, or
 - (b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

Liquor Control and Licensing Regulation, BC Reg. 244/2002

- 44 (1) Unless otherwise authorized by the general manager,
- (a) liquor primary licensees and liquor primary club licensees must ensure that patrons are cleared from the licensed establishment within ½ hour after the time stated on the licence for the hours of liquor service, and...

ISSUES

1. The only issue is whether a penalty is warranted and if so, what is the appropriate penalty to be imposed?

FACTS

The Licensee and the Branch have agreed on the facts on which this determination is to be based. They are:

1. The Licensee operates the Silverton Heritage Country Inn. Under the terms of the license, the Licensee was permitted to serve alcohol until 1:00 a.m. on March 11, 2006.
 2. The establishment was being served by the Licensee's employee. The server had been a server for approximately seven years, was highly conscientious and well regarded. She was certified under the "Serve it Right" program.
 3. On March 11, 2006, a constable of the Slocan RCMP, attended at the pub at approximately 1:47 a.m. As he was entering, two patrons were leaving. The third patron was wandering about the pub, looking for his hat.
 4. The server had been asking the patrons to leave, but without success until the moment the police officer arrived. The server was not aware that the third patron was intoxicated.
 5. The patron left the pub with the Constable, who stated, that he ought not to be driving. The patron advised that he was going to simply walk down the road to a friend's house. The Constable then observed the patron get into his vehicle, start it, and put it into drive and reverse several times. He observed him for about five minutes. The patron then drove out of the parking lot, and the Constable followed him. Some time later, the Constable activated his emergency equipment, intending to stop the patron. However, the patron refused to stop, and a high-speed car chase ensued. Ultimately, the patron drove his vehicle into a ditch. Almost three hours later, the patron provided breath samples, registering .16.
 6. All staff employed by the Licensee had been instructed to ensure that patrons cleared the premises within one half hour of the time allocated. In addition, all staff had been instructed not to serve intoxicated persons, or
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- to permit them to remain on the premises. The Licensee through its principal, held regular staff meetings to ensure that all compliance matters were addressed.
7. On July 21, 2005, one of the Licensee's employees had allowed an intoxicated person to remain on the premises, and had failed to clear the pub within one half hour of the time allocated. The employee was terminated.
 8. On October 5, 2005, the liquor inspector had complained to the Licensee, that one of its employees had permitted unlawful activities to occur on the premises, by allowing a patron to smoke marijuana in an outdoor patio. An investigation by the Licensee revealed that the employee identified by the inspector, was in fact a room cleaner, and not an employee of the Licensee. The cleaner was in the pub as a patron only and not in any working capacity. The Licensee would not have permitted such an activity to take place.
 9. The Licensee sold the business on February 28, 2006, with the new owner to take possession on April 13, 2006. The sale and the possession date were known to both the inspector and the police officer.

SUBMISSIONS

The Licensee submitted the following:

The Licensee has instructed its staff as to the relevant license provisions. This is supported by the fact that it had previously terminated an employee's employment for failing to comply with the licensing requirements.

The server was not aware on March 11, 2006, that the patron was intoxicated. The reasonableness of this evidence is supported by the fact that the RCMP officer watched the patron enter a motor vehicle and drive it on the roadway for a time prior to taking action. He must therefore have also been unsure that the patron was intoxicated.

The server was attempting to clear the patrons from the club when the police arrived.

"It is submitted, that to impose a penalty under these circumstances would be to place an unreasonable standard upon the Licensee. The Licensee had properly instructed all of its employees. The employees had acted in accordance with the instructions."

The Branch submitted the following:

The penalties recommended are the minimums for a first contravention of each provision of the *Regulation*.

The extent of the intoxication of the patron speaks to the significance of the contravention of the *Act*.

PENALTY

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* and/or the terms and conditions of the licence, I have the discretion to order one or more of the following enforcement actions:

- Impose a suspension of the liquor licence for a period of time
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- Cancel a liquor licence
- Impose terms and conditions to a license or rescind or amend existing terms and conditions
- Impose a monetary penalty
- Order a licensee to transfer a license

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulation*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the Notice of Enforcement Action.

Intoxication is associated with behaviour that has a negative impact on communities. The staff member should have noticed that the patron was intoxicated and asked him to leave. Intoxicated patrons may be a danger to themselves or the public. Failure to leave should have been addressed by calling for help from the Licensee and/or the RCMP. In this case there is no evidence that the staff phoned the police or Licensee for help. The intoxicated patron attempted to drive, and the result was a high-speed motor vehicle accident. The patron's breath sample registered twice the legal limit three hours after he should have left the pub. An enforcement action is required with respect to the contravention of section 43(2)(b) of the *Act* to emphasize that the contravention of permitting an intoxicated person to remain in the pub represents a serious public safety concern.

The hours of operation are determined in part by the community standards. Patrons who are permitted to remain after licensed hours may have a significant impact on surrounding residences and other local businesses. The availability of police resources is a consideration in the determination of hours of Licensed premises. Operating after service hours can encourage problems in the

community, such as noise and unlawful behavior. Failure by the establishment to comply with liquor laws sets a poor example to patrons.

A contravention notice (B005078) was issued for after hours activity on July 17, 2005 and at a compliance meeting on July 21, 2005, the Licensee made a commitment to "ensuring that all patrons leave by a half-hour past closing and all liquor is removed". Enforcement action is necessary with respect to the contravention of section 44(1)(a) of the *Regulation* to emphasize the importance of closing on time. This type of contravention is not an isolated incident and the Licensee has not honored his commitment to close on time. There is no evidence to support the claim that the patrons were asked to leave.

The range of penalty for a first contravention of section 43(2)(b) of the *Act* in accordance with item 11 of Schedule 4 of the *Regulation* is four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

The Branch has recommended a 4-day suspension. The Licensee has sold the establishment and is desirous of a monetary penalty - if any - in order to affect an efficient transfer of the License. I have found that a penalty is warranted for this contravention, and I find that the facts of this contravention require a significant penalty.

I find that in light of the sale of the License, any suspension ordered would in fact be converted in the context of the sale into a monetary penalty for the Licensee. I therefore find that a monetary penalty is appropriate. In light of the severity of the intoxication and the consequences of it, I find that the appropriate monetary penalty is the maximum recommended by schedule 4 of the *Regulation* for a first contravention of this section.

I therefore order a monetary penalty of \$7,000.

The range of penalty for a first contravention of section 44(1)(a) of the *Regulation* in accordance with Schedule 4 of the *Regulation* is one (1) to three (3) days suspension and/or a monetary penalty of \$1,000-\$3,000.

The Branch recommended a \$1,000 monetary penalty for the contravention of s.44 (1)(a) of the *Regulation*.

I find a \$1,000 monetary penalty is appropriate for this contravention.

ORDER

Pursuant to Section 20(2) of the *Act*, I order the Licensee to pay a monetary penalty of eight thousand dollars (\$8,000) relating to Liquor Primary License #028843. The monetary penalty must be paid no later than the close of business December 15, 2006.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: November 1, 2006

cc: R.C.M. Police
Slocan Detachment

Gary Barker, Regional Manager
Liquor Control and Licensing Branch

James Macdonnell, Branch Advocate
Liquor Control and Licensing Branch
