



**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

Licensee:	Rooster's Country Cabaret Ltd. dba Rooster's Country Cabaret
Case:	EH06-085
For the Licensee	
For the Branch	
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	Written submissions
Place of Hearing	Victoria, B.C.
Date of Decision	October 19, 2006

INTRODUCTION

The Licensee operates a liquor primary establishment in Pitt Meadows B.C. under license #173568.

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

The Licensee acknowledged that on May 28, 2006, the establishment contravened section 44(3) of the Liquor Control and Licensing Regulation (*Regulation*). The hours of liquor service are Monday - Saturday, 4:00 p.m. - 2:00 a.m. and Sunday 4:00 p.m. - 12:00 a.m. The contravention occurred on the business day of Saturday, May 27 and 28, 2006.

The recommended enforcement action is a 4-day suspension. The only issue is as to what penalty, if any, is appropriate.

ALLEGED CONTRAVENTIONS

The Licensee contravened section 44(3) of the *Regulation* by allowing a person to consume liquor in the licensed establishment beyond a half hour after the time stated on the license for the hours of liquor service.

RELEVANT STATUTORY PROVISIONS

- 44(3) Unless otherwise authorized by the general manager, a licensee must not allow a person to consume liquor in the licensed establishment beyond ½ hour after the time stated on the license for the hours of liquor service.
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ISSUE

The Licensee has accepted that the contravention occurred as alleged. The issue therefore, is whether a penalty is required under the circumstances of this case, and if so, what penalty is appropriate.

EVIDENCE AND EXHIBITS

The Branch submitted a package of documents dated August 16, 2006, which forms exhibit #1.

The Licensee submitted correspondence, which is undated but date-stamped received August 25, 2006, which is marked exhibit #2.

The Branch submitted a reply dated August 30, 2006, which forms exhibit #3.

The Licensee submitted correspondence, which is undated but date-stamped received September 14, 2006, which is marked exhibit #4.

SUBMISSIONS

The Licensee admitted that the contravention occurred as alleged in the Branch's evidence.

The principal of the Licensee (*Licensee*) submitted that the constable arrived at the establishment at 4:00 a.m. on a busy Saturday business night and saw "a single bottle of beer empty on the corner of the bar". He admitted to the constable that some staff members had been drinking.

...I gave the three bussers a beer when they were finishing for the night. They were the hardest working bunch in the place as we had a long-time doorman leave and the close, or clean-up was mostly left to them while we had a goodbye cake and presentation in the back for him.

He further submitted:

On any Saturday night it takes an hour and a half to two hours to clean the room and re-stock for the next day. It is normal for our staff to be cleaning up continuously from 2:30 to 4:00. This point alone supports the absence of severity of the contravention.

With respect to penalty, the Licensee's principal said:

[I am concerned about] the severe effect that a four-day closure will have on our employees; many of whom are single mothers and young students returning to school. A monetary penalty seems more appropriate as it will affect the bar far more than a closure ever will.

...

The mistake is entirely mine trying to be the nice guy and I believe that the staff, especially the ones not involved should not be held accountable for the actions of the owner.

ANALYSIS AND DECISION

The Licensee has acknowledged that it had contravened the *Regulation*.

I find therefore that the contravention occurred.

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
- 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 *Regulations*. 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.

I find a penalty is warranted by the actions of the Licensee.

The range of penalty for a first contravention of section 44(3) of the Act in accordance with item 26 of Schedule 4 of the *Regulations* is four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

The Branch has recommended a penalty of 4-day suspension.

The Licensee has indicated that he would prefer a monetary penalty.

The evidence of the constable was that there were sixteen persons seated and standing at the bar and there were "open bottles of beer and alcohol on the bar."

The evidence of the Licensee was that there was one empty bottle of beer on the bar.

Neither of the evidentiary replies addressed this inconsistency. The Licensee admitted that three employees had been drinking when they were finishing for the night. There is no further detail in his admission, including as to the time at which they finished their beers. I found in light of the Licensee's admission to the contravention that these employees were indeed drinking after business hours.

I am, however, sympathetic to the fact that the Branch's case is almost entirely predicated upon the Licensee's admission to the contravention.

The Licensee argued that at the time of the contravention, the staff had just finished work and was getting ready to "lock up". He acknowledged having given a beer to each of three staff members after hours, notwithstanding that there was little if any evidence of the contravention.

The goal of the Branch in matters of enforcement is to obtain voluntary compliance. By admitting to his mistake, the Licensee put himself in a position where enforcement action was indicated. To fail to recognize this would be contrary to the stated goal of the Branch.

Compliance with the license rules is not optional. The rules are for the most part designed with the interest of public as a primary consideration. The contravention has been admitted and I found it to have occurred. The Licensee has an obligation to know the rules by which it must operate, and it is not free to contravene those rules in order to "be the nice guy."

However, the Licensee admitted his mistake, and pointed to the evidence that the contravention was small in terms of both time of service and quantity of liquor.

Under the unique circumstances of this case, I find that a monetary fine of \$5,000 is both appropriate and within the stipulations of schedule 4 of the *Regulations*.

ORDER

Pursuant to Section 20(2) of the Act, I order the Licensee to pay a monetary penalty of five thousand dollars (\$5,000) relating to liquor primary License #173568 for this contravention. The monetary penalty must be paid no later than the close of business November 20, 2006.

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: October 19, 2006

cc: R.C.M. Police, Ridge – Meadows Detachment

Regional Manager, Mike Clark
Liquor Control and Licensing Branch

James Macdonnell, Branch Advocate
Liquor Control and Licensing Branch
