



DECISION OF THE

GENERAL MANAGER

LIQUOR CONTROL AND LICENSING BRANCH

IN THE MATTER OF

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licensee: Bremer Canada Enterprises Ltd.
dba Bella Coola Valley Inn
443 MacKenzie Street
Bella Coola, BC V0T 1C0

Case: EH07-066

For the Licensee: Terry Dong

For the Branch: Shahid Noorani

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: September 6, 2007

Place of Hearing: Bella Coola, BC

Date of Decision: October 3, 2007

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

Bremer Canada Enterprises Ltd. (dba Bella Coola Valley Inn) holds Liquor Primary Licence No. 001361. The hours for the sale of liquor are Noon to 2:00 a.m. Monday to Saturday and 11:00 a.m. to Midnight on Sunday. The patron capacity is 125. The establishment is located in the downtown area of Bella Coola, BC. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication 'Guide for Liquor Licensees in British Columbia'.

Alleged Contravention and Proposed Penalty

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated May 9, 2007. The branch alleges that on April 27, 2007, the licensee contravened section 43(2)(b) of the *Liquor Control & Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is a four (4) day suspension of the liquor licence (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 11 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a license suspension for 4 - 7 days and/or a monetary penalty of \$5000 - \$7000.

The licensee disputes the contravention.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act (the Act)

Drunkenness

43 (2) A licensee or the licensee's employee must not permit

(b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

ISSUES

1. Did the contravention occur?
2. If so, is a penalty appropriate and what is a reasonable penalty?

EXHIBITS

The following exhibits were presented:

- Exhibit No. 1** Branch book of documents #1, tabs 1 – 7
- Exhibit No. 2** Licensee book of documents #1, tabs 1 – 9

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

A branch liquor inspector testified that she has been employed as a liquor inspector for the province of British Columbia since August of 2006. She previously worked for the Ministry of Human Resources dealing with persons of disabilities, and previous to that as a bartender while attending university. During her years of employment she received training on identifying and dealing with intoxicated persons and dealt with intoxicated persons on numerous occasions. She is the liquor inspector responsible for the geographical area in which the Bella Coola Valley Inn (BCVI) is located and is responsible for maintaining the branch files for the establishment. She is familiar with the BCVI. The liquor primary licence (exhibit 1, tab 4) allows the sale of liquor between Noon and 2 a.m. Monday thru Saturday, and 11 a.m. to midnight on Sunday. It is subject to the terms and conditions contained in the branch publication "Guide for Liquor Licensees". A copy of the guide is provided to all licensees. Excerpts from the guide in effect at the time of the alleged contraventions are found at exhibit 1, tab 5. She referred to the excerpt dealing with: "Over-service and Intoxicated Patrons" (p.13).

She made her first visit to Bella Coola as a liquor inspector on October 2 and 3, 2006, during which time she made a routine inspection of the BCVI and met with the licensee. She also met with the corporal in charge of the RCMP Police detachment and was advised of his concern that over-service of liquor at the establishment was leading to fights on the street by intoxicated patrons coming from the establishment. She passed these concerns on to the licensee and explained the branch's enforcement process should reports be received from the police.

She made a subsequent visit to the area in April 2007. She made an inspection of the BCVI on April 25, 2007, at approximately 11 p.m. The establishment was quiet with only four patrons. She spoke with the police corporal the following day, who advised her that the problems normally occurred after midnight when intoxicated persons arrived at the BCVI. She made a subsequent visit to the establishment at 12:50 a.m. during the early morning of April 27, 2007. She noted approximately four patrons seated in front of the bar area and eight in the designated smoking room. She took a seat at the end of the bar from which she could view the patrons in both areas. The persons in the bar area were quiet, whereas the eight in the smoking room were loud and animated. The majority appeared to be mildly intoxicated. One female stood out from the group. She was staggering back and forth between the tables consuming a beer. Her hair was dishevelled, her eyes bloodshot, she was loud and was slurring her words. The inspector believed her to be intoxicated.

At this point the inspector identified herself to the bartender and asked him about the female patron. The bartender said that the patron had arrived just five minutes prior to the inspector and that he had not served her any liquor. He said that she was like that all of the time and asked the inspector whether he should have the patron leave. The inspector thought that given the bartender's comments, it was possible that the patron had a physical disability. Wishing to make further observations of the patron, she told the bartender not to take any action at this time. She then observed the female patron get up from her table. The patron appeared to be having difficulty staying upright and was banging into tables as she made her way thru the smoking area.

She then proceeded to leave the establishment as the bartender watched from the bar area. It was approximately 1:17 a.m. The inspector assessed the patron's condition as being "grossly intoxicated".

The inspector discussed the issues surrounding intoxication with the bartender. He repeated that the patron had arrived just five minutes prior to the inspector and that he had not served her any liquor. She asked the bartender for the liquor licence and floor plan for the establishment and for his "Serving It Right: Responsible Beverage Service" (S.I.R.) certificate. The bartender was unable to produce the items requested and advised the inspector that he had the "Server" S.I.R. certificate and not the "Licensee" certificate. She left the establishment at approximately 1:30 a.m. and made notes of her observations (exhibit 12, tab 3).

Later on that day she spoke with the police corporal about the condition of the female patron. The corporal knew the person and advised the inspector that she did not have any disability that would make her appear to be intoxicated. The inspector subsequently met with the licensee, advised him of her observations and issued him a contravention notice (CN) (exhibit 1, tab 2)

The inspector testified that in making the recommendations for the penalty for the contravention she reviewed the branch file for the establishment. She considered that on July 12, 2006, when the licence was transferred to the current principal of the corporate licensee, the principal spoke with the then area liquor inspector and signed the branch Inspection Interview Sheet. He acknowledged understanding the provisions of the *Act and Regulations* and the terms and conditions of the licence and agreed to abide by them (exhibit 1, tab 7).

EVIDENCE - THE LICENSEE

Licensee witness A testified that he has been employed as a bartender at the BCVI since November 2006 and is responsible for operating the licensed area four to five nights a week. He received on the job training from the owner of the establishment and from another bartender working at the establishment. He obtained his "Server" S.I.R. certificate prior to commencing employment. It was his understanding that only the owner of the establishment was required to hold a "Licensee" S.I.R. certificate. Upon being told by the liquor Inspector that he required a "Licensee" certificate, he obtained it the very next day. In his view there was little difference between the information provided in obtaining the "Licensee" certificate that differed from that in obtaining the "Server" certificate. Both were based mainly on common sense.

He was working the late night/early morning hours of April 26/27, 2007. He opened the establishment at 8 p.m. It was a quiet night; the only liquor sold during the early evening was for restaurant patrons and off-sales. At approximately 10:30 p.m. several of the kitchen staff came in. At 12:30 a.m. he made "last call", thus allowing only ½ hour to make last liquor purchases followed by closing at 1:30 a.m. At approximately 12:45 a.m. the female patron in issue came in. She was in a jolly mood and it was obvious that she had been drinking elsewhere earlier. She is a regular patron and comes in once or twice a week. She is normally quite loud, but not argumentative. He informed her that she would not be served any liquor. She replied that was okay, she just wanted to sit with her friends. The liquor inspector arrived approximately five minutes later. Although the bartender did not know the inspector, he had been told that she was in town and when she walked in and started looking around her identity was obvious to him. The inspector took a seat on the left of the bar where she could view the smoking room. She refused any service. After being there for approximately ten minutes she identified herself to him. The female patron had been arguing loudly with her uncle and he, the bartender, had asked her to quiet down. She had done so, however, had become loud again. He told the inspector that he would request the patron to leave. The inspector said not to do so, as she wanted to make further observations. Knowing the authority of the liquor inspector, he did as requested. A little later the female patron

became loud and upset again and bumped into a chair so he requested her to leave, which she did without incident.

In cross examination, he agreed that the female patron on her arrival had reached the point where she shouldn't be served more liquor. He agreed that she was intoxicated. He allowed her to remain because she had friends there, and it is his belief that the licensed establishment is a social environment where people attend whether they are consuming liquor or not. He had already made "last call" at 12:30 a.m., thus the establishment would only remain open for a limited time.

The witness testified that prior to working at the BCVI he used to avoid going to the establishment because of the fights occurring. Persons used to go to the BCVI from another establishment in the area in time for last call. With the current ownership the establishment is well managed, has a good mix of patrons from the whole area and is well accepted in the community.

He referred to a signed (undated) statement he had made (exhibit 2, tab 7).

Licensee witness B testified that he was a patron at the BCVI on April 26/27, 2007. He arrived at approximately midnight; it was a quiet night with only about 12 patrons during the whole night. He overheard a conversation between the bartender and a woman seated at the bar. The bartender said, "Should I just remove her off the premises?" The woman responded, "No, just wait and see what she does". He surmised that they were referring to the female patron in issue, whom he has known for 12 years. The witness described the female patron's condition as, "Not totally intoxicated, still pretty coherent." She was not staggering, but was loud speaking.

The witness testified that he was familiar with the operation of the BCVI under two previous owners. Previously, patrons were often intoxicated and the police were there all the time to remove persons from the establishment. Under the current owner there is zero tolerance.

Licensee witness C testified that she is the female patron in issue. On April 26, 2007, she arrived at the establishment with her cousin, a girlfriend and her uncle-in-law. She had worked a full day and afterwards had consumed about four beers, which is a lot for her. The bartender told her that she wouldn't be served. She agreed. While she was in the establishment her uncle began insulting her, making her agitated and angry. She is not a loud person but her voice carries. The bartender asked her to calm down. She apologized. Her friend gave her a glass of beer, from which she had a few sips. Her uncle started up again, which again made her angry. She got up from the table to go to the washroom, at which time her tiredness kicked in and she had to grab a chair. She leaned onto the chair from tiredness, but was not drunk. Upon coming out of the washroom the bartender told her that she must leave. She agreed and knew that she should do so.

In cross-examination she agreed that she was "A little intoxicated, but not falling over drunk." Her condition was a mixture of being over-tired and being, "high on beer." She went out that night against her better judgement. She had not been to the BCVI for the previous three months and was not a regular patron there once or twice a week. She is upset that the establishment risks being penalized as a result of her attendance there. Since the incident several friends have told her that they have been refused service at the establishment.

She referred to a signed statement dated June 15, 2007, she had made (exhibit 2, tab 7).

SUBMISSIONS – LICENSEE

The licensee representative submitted that he knew the bartender prior to the bartender being hired at the BCVI and knows that he does a good job. On the date in question, the female patron came into the establishment and was refused liquor service because the bartender did not want her to become intoxicated, not because she was already intoxicated. She had had something to drink previously and had worked hard that day.

The liquor inspector saw the patron when she became drunk. She was not drunk prior to that time. The bartender was going to remove her but had to listen to the liquor inspector. Otherwise he would have removed her right away. The liquor inspector was only in the establishment for a short period of time and didn't see the whole story.

REASONS AND DECISION

The evidence is that the liquor inspector arrived at the establishment approximately five minutes after the female patron in issue. Her attention was almost immediately drawn to the female patron because of her behaviour and she formed the opinion that the patron was intoxicated based on her observations. She observed that the patron was staggering back and forth between the tables, her eyes were bloodshot, and she was loud and was slurring her words.

The bartender testified that he told the liquor inspector that he would ask the patron to leave. That is at odds with the testimony of the liquor inspector and licensee witness B, who both testified that the bartender asked the liquor inspector whether he should ask the patron to leave. The bartender told the inspector that the patron was like that all of the time. The inspector took this to mean that the patron may have a physical disability. Some physical disabilities can affect motor skills similar to intoxication. Thus, the inspector wished to make further observations of the patron and told the bartender to leave the patron for the time being. Further observations by the liquor inspector lead her to believe that the patron was "grossly intoxicated."

Bloodshot eyes, loss of balance, slurred speech and loud and boisterous behaviour are common *indicia* of intoxication. Additionally, all witnesses in their evidence described the patron's condition as being intoxicated to some degree. I find on a balance of probabilities that the patron was intoxicated at the time that she entered the establishment, and should have been refused entry or immediately requested to leave. That she was not, leads me to find that the licensee or its employees "permitted" an intoxicated person to remain in the licensed area.

The licensee is entitled to a defence to the finding of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems dealt with.

Here there is no evidence of the licensee having any systems in place to ensure that the employees operate the establishment in compliance with the requirements. The liquor inspector had told the licensee representative on her previous visit that the police had a concern regarding intoxicated patrons at the establishment. Yet, there was no evidence that this information was passed on to the employees responsible for operating the licensed area, or that changes were made in its operation. The employee in charge of the operation of the licensed area at the time of the contravention acknowledged that the patron was intoxicated but allowed her to remain in the licensed area as she was not drinking, it was close to closing time and he viewed the licensed area as a social gathering place. Additionally, the employee as the person in charge on the night in question did not hold the proper "S.I.R." "Licensee" certification.

I find that the licensee has not been duly diligent.

In conclusion, I find on a balance of probabilities that on April 27, 2007, the licensee contravened section 43(2)(b) of the *Liquor Control & Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

PENALTY

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the licence, I have 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 licence or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a licence

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, and I am not bound to order the penalty proposed in the NOEA.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining whether a penalty should be imposed and if so, the appropriate penalty, are: whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding this incident. The range of penalties for a first contravention of 43 (2)(b) of the *Liquor Control and Licensing Act* pursuant to Schedule 4, item 11 is four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

In the circumstances of this case, I find that a penalty is necessary to ensure future compliance. Permitting intoxicated persons to enter and remain in a licensed establishment can have an adverse effect on the surrounding community. The evidence here is that in being permitted to enter and remain in the licensed area, the patron had access to and consumed more liquor. Her condition deteriorated to that of gross intoxication as witnessed by the liquor inspector. The inspector was told by the

corporal in charge of the police detachment that over-service of liquor and intoxication was a problem at this establishment during the early morning hours. That information was passed on to the licensee by the inspector.

In the circumstances, the minimum penalty of a four day suspension is warranted and appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 001361 for a period of four (4) days, to commence as of the close of business on Wednesday, November 7, 2007, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*).

To ensure this Order is effective, I direct that the liquor licence be held by the branch or the Bella Coola detachment of the RCMPolice from the close of business on Wednesday, November 7, 2007, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

[ORIGINAL SIGNED]

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: October 3, 2007

cc: RCMPolice Bella Coola Detachment

Liquor Control and Licensing Branch, Surrey Office
Attention: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Surrey Office
Attention: Shahid Noorani, Branch Advocate