



**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:	Here Holding Ltd., dba Branding Iron Pub 3445 Okanagan Street Armstrong, BC V0E 1B0
Case:	EH06-169
For the Licensee	Rene Verwey
For the Branch	Kathy Anderson, Advocate
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	February 12, 2007
Place of Hearing	Victoria, BC
Date of Decision	February 16, 2007

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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## **INTRODUCTION**

This hearing was conducted by teleconference call by agreement between the licensee and the branch.

The branch alleged that on September 16, 2006, at approximately 11:50 p.m., an employee of the licensee sold liquor to an intoxicated person contrary to s. 43(1) of the *Liquor Control and Licensing Act*.

The licensee admitted the contravention and sought to speak to the issue of penalty only.

## **ISSUES**

1. Is a penalty warranted under the circumstances of the contravention?
2. If a penalty is warranted, what is the appropriate penalty?

## **SUBMISSIONS**

The branch submitted the following:

- The contravention was a significant one
- The actions of the bartender were blatantly contrary to her obligations and reasonable judgement. She served beer to an obviously intoxicated and pugilistic patron
- She served the patron while the police were in attendance
- The actions of the bartender could have led to injury and created a danger to the public
- A clear message must be sent that the branch takes this type of contravention seriously

The licensee submitted the following:

- He purchased the establishment approximately one year ago, after moving to the community of Armstrong
- The establishment had previously been a poorly run one, with a reputation for drugs, violence, and gang activity
- His intention when purchasing the establishment was to sever ties with the previous clientele and "re-invent" the establishment as a pub where "good people" could come for lunch and for a beer after work
- The result of the change was that he lost 75% of the business (from undesirable patrons)
- After purchasing the establishment, it was completely renovated and remained closed for a considerable amount of time
- It took a long time to establish a new reputation and obtain the confidence of the community that the pub was not dangerous, as had been the case in the past
- The local RCMP and the previous liquor inspector have commended him on his efforts
- As the operator of the establishment, he does not tolerate drugs or over-service
- He is only now beginning to see a small profit from the business and a degree of community acceptance
- Upon being notified of the contravention by the police, he interviewed and immediately fired the bartender who served the intoxicated patron
- The intoxicated patron never returned to the establishment, and has since passed away

- A four-day suspension would be highly detrimental to the pub's reputation in the community. The public is just now starting to accept the pub as different from what it was previously. A notice of suspension would be perceived by the small community as an indication that there is still a problem with safety in the establishment. That would keep the public from attending
- The loss of profits from a four-day suspension would be modest; perhaps \$700-\$800. He is prepared to endure a much greater financial penalty in lieu of a reputation-damaging suspension
- He would prefer the minimum financial penalty for a first offence, which he understands is \$5,000

## **ANALYSIS AND DECISION**

The contravention has not been contested. I find that it did occur as alleged.

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 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 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*.

For the contravention relating to September 16, 2006, the branch recommended a four (4) day suspension.

The range of penalty for a first contravention of section 43(1) of the *Act* in accordance with Schedule 4 of the *Regulation* is four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

I accept that the licensee has endured significant short-term hardship in order to establish the pub as a different type of facility than it had been in the past. I believe that this transformation is a positive one for the community.

I accept that the licensee generally has the support of the local RCMP and the branch in this endeavour, and that this support has been demonstrated to the licensee.

I also accept the branch's submission that the contravention was a serious one, and that it is important for the branch to deliver an unambiguous message that the public safety may not be jeopardized in the operation of a licensed establishment.

I accept the licensee's submission that the financial impact of a suspension in terms of profits would be minimal due to the current rebuilding of the clientele, and that a financial penalty of \$5,000 would be more of an immediate hardship than the loss of profits from a suspension.

I find the licensee prepared to accept financial hardship in order to re-invent the establishment as something more palatable to the upstanding community members in the hopes of creating a profitable, safe, and worthwhile community business venture.

I find that under these unique circumstances, assessing a monetary penalty of \$5,000 would be a strong indication of the branch's view of the serious nature of the contravention.

I find that a Five Thousand Dollar (\$5,000) 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 Five Thousand Dollars (\$5,000) relating to Liquor Primary Licence No. 036875 in respect of action EH06-169. The monetary penalty must be paid no later than the close of business on March 16, 2007.

[ORIGINAL SIGNED]

Sheldon M. Seigel  
Enforcement Hearing Adjudicator

Date: February 16, 2007

cc: RCMP Armstrong Detachment

Liquor Control and Licensing Branch, Vancouver Regional Office  
Attn: Ron Rodrigue, A/Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office  
Attn: Kathy Anderson Branch Advocate