



**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: Paul Bunyan Hotels Ltd.
dba Quesnel Hotel
228 Front Street
Quesnel, BC V2J 2K2

Case: EH08-078

For the Licensee: Denise Mufford

For the Branch: Olubode (Bode) Fagbamiye

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: November 18, 2008

Place of Hearing: Quesnel, BC

Date of Decision: December 18, 2008

**Ministry of Housing
and Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

Paul Bunyan Hotels Inc. dba Quesnel Hotel is located in Quesnel, BC. The licensee holds Liquor Primary Licence No. 004157 for the operation of a pub in the hotel. The hours of sale are 10 a.m. to 2 a.m. Monday to Thursday, 9 a.m. to 2 a.m. Friday and Saturday, and 9 a.m. to midnight on Sunday. The patron capacity is 312. 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 July 28, 2008. The branch alleges that on July 18, 2008, the licensee contravened section 43 (1) of *the Liquor Control & Licensing Act* (the *Act*) by selling or giving liquor to an intoxicated person or a person apparently under the influence of liquor. The proposed penalty is a four (4) day suspension of the liquor licence (item 9 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 9 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 4 - 7 days and/or a monetary penalty of \$5000-\$7000.

In the alternative, the branch alleges that on July 18, 2008, the licensee contravened section 43(2)(b) of the *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 for the alternative contravention is also a four (4) day suspension of the liquor licence (item 11) of Schedule 4 of the *Regulation*).

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

The licensee disputes the alleged contraventions.

Relevant Statutory Provisions

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

Drunkenness

43 (1) A person must not sell or give liquor to an intoxicated person or a person apparently under the influence of liquor.

(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.

ISSUES

1. Did the contravention or the alternative 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 – 18.

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

Two Liquor Inspectors, A and B testified that on July 18, 2008, they were conducting inspections of licensed establishments in the Quesnel area. They arrived at the Quesnel Hotel at approximately 8 p.m. and parked in the lot at the rear of the hotel. They observed a male exit the pub patio and walk towards a parked vehicle. He was described as wearing a white baseball cap with initials 'DS', a grey shirt and camo

coloured shorts. The male staggered as he walked, weaved from side to side and front to rear, his movements were short and jerky and he had difficulty making his way to the vehicle. He got into the vehicle started the engine, revving it to maximum rpm's then reversed into the alley in front of the pub squealing the tires. He then accelerated ahead, again squealing the tires. He then revved the engine while engaging the brake causing smoke to emit from the rear tires. This "smoke show" lasted approximately four minutes causing clouds of smoke to fill the alley. During the course of the "smoke show" several persons exited the pub patio to watch the exhibition. The male then backed the vehicle into the parking lot, again squealing the tires. Smoke/steam emitted from under the hood of the vehicle. The male left the vehicle and returned to the hotel through the patio door. He staggered as he made his way to the door. His gross motor skills appeared impaired.

Inspector A left the vehicle and entered the pub through the patio door. He observed the male inside, seated at a table, shouting and bragging about his "smoke show". He was holding a bottle believed to be of Heineken beer. Inspector A then left the pub to get inspector B and they both returned through the patio door. The male was observed still seated at the table with other male patrons. He was holding the bottle of Heineken beer, which fell from his hand, smashing on the floor. Inspector B took a seat at a table in the patio area while inspector A went to the liquor service bar where he ordered a "Canadian" beer for himself and glass of water for inspector B. He joined inspector B at the table. A female server came to the table and placed several beers onto the table occupied by the subject male. He took a bottle of Heineken beer from the table. Inspector B overheard one of the males seated at the table tell the subject male, "You're too drunk, and that's the last drink you'll be served." The male making the statement was later identified as being an off-duty employee of the pub (witness E).

The subject male got up from the table and walked towards the main area of the pub stopping by the table occupied by the inspectors. His balance was unsteady, weaving when he walked, his eyes were bloodshot, his face flushed, speech slurred, odour of liquor on his breath, his motor skills were delayed. He made his way to the liquor

service bar, leaning onto it for support. Inspector A walked over to the bar to speak with the bartender. Once again he observed the subject male, his eyes bloodshot, his speech slurred.

The subject male made his way to a payphone where he was observed by inspector B. He appeared to have difficulty in using the phone, his fingers slipping from the numbers. He fell onto a stool, hitting the wall then using the wall to brace himself. The inspectors left the pub at approximately 8:30 p.m. The inspectors testified that as a result of their observations they believed the subject male to be grossly intoxicated.

The inspectors returned to the pub at approximately 11:30 p.m. There was a line-up and the employee previously identified as being off duty (witness E) was at the entrance checking identification. Inspector A went to the bar while inspector B took a seat in the patio area, later joined by inspector A. A female patron sat beside them. She was drinking from a bottle of beer. She had difficulty bringing the bottle to her mouth. Her speech was slurred. Another female patron approached the table holding two bottles of beer. She was shouting at the first female patron. Her eyes were bloodshot, her speech slurred. The inspectors testified that as a result of their observations they believed both patrons to be intoxicated.

The inspectors made notes of their observations during their two visits to the pub (Exhibit 1, tab 5).

Both inspectors testified that they have experience in identifying and dealing with intoxicated persons. Inspector A has approximately four years experience as a liquor inspector and approximately 28 years experience as a police officer. He has been qualified as a breathalyser operator and technician and qualified as a roadside screening device operator and instructor. He has instructed police officers in dealing with intoxicated persons and impaired drivers. He has conducted over a thousand breathalyser tests. Inspector B has two years experience as a liquor inspector and

several years experience as a provincial government investigator. She has worked as a bartender while attending university.

Inspector B returned to the Quesnel Hotel the following day and spoke with the owner of the hotel, Denise Mufford, and the bartender and front doorman (witness E) who had been on duty the previous night. She told them of her observations and concerns of the previous night. The owner questioned why they would come during “Bill Barker Days” when the pub was extremely busy and compared it to a highway speed trap. The bartender stated that she had served the subject male seven shots of liquor before the “smoke show”, she didn’t realize that he would be drinking them himself. They stated that when the subject male came back into the establishment he was cut-off from further liquor service and his keys taken. The inspector issued a Contravention Notice to the owner of the hotel (Exhibit 1, tab 2).

In their testimony the inspectors referred to copies of documents from the branch file:

- Exhibit 1, tab 3; the liquor primary licence in effect at the time of the alleged contravention.
- Exhibit 1, tab 4; floor plan for the establishment.
- Exhibit 1, tab 8; a copy of the “Guide” in effect at the time of the alleged contravention. Inspector B referred to excerpts from the Guide dealing with: “Over-service and intoxicated patrons” and “Physical and mental signs of intoxication” (p 13).
- Exhibit 1, tab 6, p 1; compliance meeting form completed by inspector B on February 7, 2007, after meeting with licensee Denise Mufford and discussing issues related identification and permitting intoxicated persons to remain in the establishment. The licensee made commitments to operate in compliance with the requirements.

- Exhibit 1, tab 6, p 3; compliance meeting form completed by the area inspector on May 19, 2004, after meeting with the licensee Denise Mufford and discussing issues related to minors and intoxicated patrons. The licensee made commitments to operate in compliance with the requirements.
- Exhibit 1, tab 7; several CNs issued concerning the operation of the pub. [Not all CNs relate to the operation of the pub under current ownership.]
- Exhibit 1, tab 10; a copy of the “Serving it Right” (“S.I.R”) program manual. Inspector A testified that the manual provides an overview of the *Act* and *Regulations* and rudimentary training for a licensee and employees.

In determining whether to proceed to enforcement on the July 18th incident, inspector B considered that intoxication was a public safety issue. She believed that enforcement action was necessary to achieve voluntary compliance. Compliance meetings held in the past had not achieved the desired results. She completed a NOEA on July 28, 2008, outlining the alleged contravention and recommending a four day suspension penalty be imposed (Exhibit 1, tab 1).

EVIDENCE - THE LICENSEE

Licensee witness C testified that he has been a patron of the pub for the past 11 years. He was present on July 18th from about 6 p.m. to 8 p.m. or shortly thereafter during which time he consumed one beer. He recalls the subject male patron. He was acting normally and did not appear to be intoxicated. He is always obnoxious, loud, shows off and speaks with a lisp. He was wearing a white shirt and blue jeans, no hat. He had eaten a steak dinner at the pub earlier and was bragging that he could do a “burnout” with his vehicle. He was challenged by others to prove it. He went outside, performed the “smokeshow” and returned laughing. The witness was unaware of how much liquor the subject male had consumed. He may have had one shot of liquor from a round that the witness had purchased.

He testified that has never had any safety concerns with intoxicated persons while he has been a patron of the pub. His friend, a bartender at the pub, has told him that the rule of the current licensee is that if he believes that a patron is drunk, the patron is told "no more."

Licensee witness D testified that she has been employed at the pub for six years, the last five with the current licensee. She holds a "S.I.R." certificate and is knowledgeable of the liquor laws. She was working the night of July 18th as the bar manager, arriving at approximately 7:45 p.m. for her 8 p.m. shift. She knows the subject male, he was seated on the patio, and she asked him to settle his bill as the shift was changing. The server told her that he had been cut-off from further liquor service because he was acting like a jerk. He was unable to settle his bill because of a problem with his bank account and he spent some time on the phone trying to get funds into his account. He also owed money from the previous day. He left his bankcard and identification with them as collateral. His tab consisted of a steak dinner and two or three shots of liquor. He was not slurring his speech. He had liquor on his breath because he had been drinking. She was aware that the liquor inspectors were present as she had received a phone call from another hotel advising her that they had gone into the pub. She recalls inspector A purchasing two beers, a Heineken and a Coors Light. She did not see any furniture knocked over nor any broken glass on the patio.

She testified that there were between 13 and 15 employees working the night of July 18th. Five were bartenders, all of whom had "SIR" certificates. She received training at the pub when she commenced employment. The pub has a "General Manual" (Exhibit 1, tab 12) of which she was given a copy by the current licensee. They maintain an incident log. It was not completed the night of July 18th as there was no incident. The subject patron was asked to leave and did so. He was cut-off because he had had three to four drinks.

Licensee witness E testified that he has been employed at the pub on a part-time basis for the past three and a half years. He works as a doorman during special event nights. He has a "S.I.R." certificate and also holds a security certificate. On July 18th he commenced work at 8 p.m. but was sitting on the patio with four other patrons prior to commencing his duties. He was not consuming any liquor. He knows the subject male. He was wearing blue jeans, a white shirt, and no hat. The only person wearing camo shorts and a baseball cap was another patron seated at the table. The subject male is a "knucklehead". He was bragging that he could do a "burnout" in his vehicle. The witness told him that he doubted that the vehicle was capable. The subject male went outside and did a "burnout" for two to three minutes, burning his tires down to the wire core and returned inside. He was not intoxicated and he only had a couple of beers. The witness felt that the male would be a problem later and that the server wouldn't ask him to leave so he told him, "That's your last beer, its time to leave." He asked the patron for his keys because the patron had bought a round of shots and had consumed some of them himself. The tires on the vehicle had been ruined during the "burnout." The patron took a couple of minutes and then left. The witness did not see any broken bottles on the patio.

He believes that he saw a manual similar to that at Exhibit 1, tab 12, when he was hired. He has over 20 years experience in the bar business. He has training as a licensee in the state of Washington, through "S.I.R." and Level 1 and 2 security certificates. If necessary, patrons are given a ride home in a taxi or on occasion driven by himself or the owners. Safety is number one importance and intoxicated persons must leave the pub. July 18th was the busiest night of the year with a lot of drunks trying to get into the pub. Several were removed from the line-up and told to go home. Taxis were arranged. He wrote the incident log about the subject that night and he was discussed at the end of the shift. He met with the owner and the liquor inspector the following day.

Denise Mufford testified that she has been a principal of the corporate licensee since 2004. She holds a "S.I.R." certificate. She was not at the hotel the night of July 18th at the time of the alleged contravention. She first heard of the incident when liquor inspector B came to the hotel the following afternoon. She was upset that the inspectors came to the hotel on the busiest night of the year during the Billy Barker celebrations. In the meeting with the inspector, the bartender who had been on duty at the time of the incident, said that she had taken the keys from the subject patron. This is what she had been taught to do. In her written statement (Exhibit 1, tab 13) the bartender said that the subject patron had arrived at the hotel at approximately 6:45 p.m. and ordered a steak dinner, with which he consumed two bottles of beer. He then ordered seven shooters, which were served to the subject's table occupied by him and four other patrons. Witness E told the bartender that he should not be served any more liquor, so she did not serve him any more.

The witness testified that she believes that all of the staff at the hotel are capable of deciding when a patron has been overserved. That is their job. She is diligent in trying to ensure that staff are knowledgeable. There is a high turnover in security staff as they get few hours and it is a difficult job. She takes two to three hours telling them how to do their jobs. The pub has a "General Manual" (Exhibit 1, tab 12) which provides instructions for staff. The manual was initiated by the previous licensee and has been updated by her. A copy is provided to all employees upon commencing employment. An incident log is maintained and completed by any employee involved in an incident at the pub. As a long-time resident of Quesnel, residents tell her of any problems occurring at the pub. The pub has a video security system that she can access from home. They have regular staff meetings during which notes are kept (Exhibit 1, tab 17). A staff meeting was held following the meeting with the inspector.

She testified that since taking over the hotel in 2004 most of the previous staff have left as a result of her change in operation. Staff are told that if a person appears to become intoxicated that person should be asked to leave and escorted out if necessary. If the employee believes that a patron should not be driving, they will take the vehicle keys and arrange for a ride home. The hotel will pay for the taxi if necessary. She introduced a Customer Report from the local taxi company for the period 2005-2007 (Exhibit 1, tab 14). If a taxi is not available, she or her husband will drive the person home. She has attempted to have transit service extended with a request to city council (Exhibit 1, tab 17), to no avail. She introduced several letters from patrons written to the hotel expressing gratitude for a ride home (Exhibit 1, tab 13). She introduced a letter of support from the mayor of Quesnel (Exhibit 1, tab 13).

SUBMISSIONS – LICENSEE

The licensee submitted that the operating philosophy of the hotel is “always changing for the better.” They go out of their way to abide by the rules. They are doing the best that they can, they trust their employees, and their employees know their expectations. If the staff on duty on the night of July 18th believed that the subject patron was intoxicated, he would have been removed. They told him that he had had enough to drink, to settle his bill and leave. They took his keys because his car was unsafe to drive. They treat meetings with the liquor inspector as educational experiences. Staff does monitor the number of drinks served to patrons. They know the signs of intoxication and intoxicated persons are not allowed into the establishment. Staff working on the floor are looking for signs of intoxication. The subject patron was obnoxious, but not intoxicated. The “smoke show” was not illegal and he was allowed back into the hotel. There is no evidence that they are not trying their best to stay within the rules. A four day suspension is not justified. They do not believe in overservice, they want the hotel known for fun and a good time and are open to new ideas.

REASONS AND DECISION

The branch has presented evidence that on July 18, 2008, liquor inspectors conducted two inspections of the licensed area at the hotel. On the first occasion, they observed a male patron exhibiting obvious signs of intoxication exit the licensed area and perform a "smoke show" with his vehicle in the alley behind the hotel. He then re-entered the licensed area where he was served a beer. He was again exhibiting obvious signs of intoxication. The inspectors spoke with the subject male and observed him leave the table and make his way to the bar and then to the telephone. He was exhibiting obvious signs of intoxication. On their return to the licensed area a few hours later the inspectors observed two female patrons exhibiting obvious signs of intoxication. The inspectors are specifically trained in looking for signs of intoxication and have considerable experience in dealing with persons who are intoxicated through the consumption of beverage alcohol, i.e. liquor.

The licensee has presented evidence that the subject patron was not intoxicated, but was cut-off from further liquor service because he was acting like a jerk. His keys were taken because his vehicle was unsafe to drive after the tires were ruined during the "smoke show."

I prefer the evidence of the liquor inspectors. They are well trained in looking for signs of intoxication and impairment and have considerable experience in dealing with persons who are intoxicated through the consumption of beverage alcohol, i.e. liquor. They made notes of their observations immediately following their inspections. The evidence of the staff on duty at the time of the incident I find to be largely self-serving.

On the whole of the evidence, I find on a balance of probabilities that the licensee contravened section 43(2)(b) of the *Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

Due Diligence

The licensee is entitled to a defence to the allegations 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, the hotel has a manual that has been provided to all staff. I have taken some time to peruse it. It offers little instruction on dealing with intoxication other than stating that intoxicated persons are not to be allowed to enter into the establishment nor to be served alcohol. Training provided for employees is rudimentary, involving little more than a discussion with the licensee. The manual does not provide any instruction or advice on identifying persons who may be intoxicated nor was there evidence of any training on the subject. The staff on duty did not identify the subject patron as being intoxicated. He was served further liquor after re-entering the establishment and only cut-off because he was acting like a jerk. He was not immediately requested to leave the establishment. The two female patrons identified by the inspectors during their later inspection as being intoxicated were not dealt with by staff.

The licensee was well aware of the branch's concern of intoxication occurring at the establishment through two previous meetings with the liquor inspector. The licensee did not put sufficient measures in place to prevent the contravention. I find that the licensee has not been duly diligent.

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 the appropriate penalty is: 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 previous proven contravention of the same type for this licensee within the year preceding this incident. Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegation as a first contravention. The range for first contravention of this type is a license suspension for 4 - 7 days and/or a monetary penalty of \$5000-\$7000.

The branch's primary goal in bringing enforcement action is to achieve voluntary compliance. Despite meeting with the liquor inspector on two previous occasions, the licensee did not put sufficient measures in place to prevent the contravention.

In the circumstances of this case, I am satisfied that the licensee has not successfully or sufficiently stressed upon its employees the need to fully and conscientiously carry out their duties and a penalty is necessary to ensure future compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. In the circumstances, I find that the minimum penalty is sufficient to encourage future voluntary compliance. A four day suspension is necessary, appropriate and reasonable.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 004157 for a period of four (4) days, to commence as of the close of business on Thursday, January 22, 2009, 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 RCMP Quesnel Detachment from the close of business on Thursday, January 22, 2009, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: December 18, 2008

cc: RCMP Quesnel Detachment

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

Liquor Control and Licensing Branch, Surrey Office
Attention: Olubode Fagbamiye, Branch Advocate