



**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

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| Licensee: | Tabor Arms Pub Ltd. dba Tabor Arms Pub 100 Tabor Blvd S Prince George, BC V2M 5T4 |
| Case: | EH08-070 |
| For the Licensee: | Kapaidev (Kap) Manhas |
| For the Branch: | Olubode Fagbamiye |
| Enforcement Hearing Adjudicator: | Sheldon M. Seigel |
| Date of Hearing: | Written Submissions |
| Date of Decision: | October 21, 2008 |

INTRODUCTION

This hearing was conducted by way of written submissions by agreement of the licensee and the general manager.

The licensee operates an establishment with Liquor Primary Licence No. 037622 in the City of Prince George, British Columbia.

On the evening of July 5, 2008, the liquor inspector was contacted by a resident of the neighbourhood in which the establishment is located. The resident indicated that patrons were leaving the establishment with liquor and congregating in the parking lot with open liquor bottles. The inspector attended and observed patrons leaving the establishment with beer bottles in hand and drinking from those beer bottles.

As a result of her observations and her discussions following the events of that night, the inspector issued a contravention notice (CN). In due course the branch issued a Notice of Enforcement Action (NOEA) to the licensee.

The licensee replied to the allegations by acknowledging that the contravention occurred, but disputing that the recommended suspension of the licence is an appropriate penalty. The branch and the licensee provided evidence and submissions with respect to the contravention and the appropriateness of a penalty.

CONTRAVENTION

The licensee contravened section 42(4) of the *Liquor Control and Licensing Regulation (Regulation)* by allowing liquor sold in the licensed establishment to be taken from the establishment.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Consumption of liquor in licensed establishments

42(4) All liquor sold or served in a licensed establishment must be consumed there, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment:

ISSUES (S)

Is a penalty warranted for the contravention of the *Regulation*, and if so, what is the appropriate penalty?

EXHIBITS

The materials provided for this determination include the following:

- Disclosure documents provided by the branch (Exhibit No. 1) including the NOEA dated July 14, 2008, CN No. 007868, a copy of the liquor primary licence No. 037622, a floor plan of the establishment, excerpts of *A Guide for Liquor Licensees in BC*, compliance meeting records, the liquor inspector's notes relating to the contravention, historic CNs relating to the establishment, and a reporting-out letter.

- A letter from the licensee to the general manager of the branch dated September 14, 2008 (Exhibit No. 2), from the licensee's representative.
- An undated *Response to the Licensee's Submissions* from the branch advocate (Exhibit No. 3).
- A letter from the branch registrar to the adjudicator, dated September 29, 2008.

SUBMISSIONS

The branch submits that the licensee failed to maintain door control as a result of having too few resources in place to monitor the full house that attended a scheduled pay per view event being held at the establishment. This allowed patrons to exit the establishment and congregate in the parking lot with liquor and cause a disturbance to the neighbours.

The branch also submits that it has discussed the issue of patrons removing liquor from the premises with the licensee in the past, and the licensee has failed to live up to its commitment to step up the monitoring of its patrons and the exit to the parking lot.

The licensee submits that the proposed penalty is inappropriate in light of the context in which the contravention occurred. The licensee says the contravention occurred during an Ultimate Fighting Championship (UFC) pay per view event and, as usual for such events, the establishment was very busy. The pub has a policy of at least two of its owners being present for UFC events and on July 5, 2008, there were three owners present - two of whom were on shift.

The licensee says that after two of the owners had left for the night, two patrons concealed their beers and exited the pub to have a smoke and drink outside. The licensee submits that it has since spoken to the patrons who acknowledged that they did conceal their drinks when they exited the establishment.

The licensee says that it acted diligently by posting signs on all exit doors that urge customers to leave their drinks inside, having two owners on duty during the busy revenue hours, and urging their staff to watch for drinks removed from the establishment. The licensee adds that an employee who was not on shift at the time “noticed the missing drinks and went outside to demand that the culprits return the drinks to the bar.”

The licensee says that since a recent seven-day suspension, it has re-organized its staff, hired new employees and increased training in an attempt to comply with regulations. It says that the suspension resulted in the loss of 30% of its regular customers and a 50% reduction in revenues for a month after the suspension. The licensee says it has earned back its customer base but “another shut down at this juncture would prove suicidal for our business.”

The licensee suggests a monetary penalty in lieu of the recommended three-day suspension.

In response to the licensee’s submissions, the branch says the first complaints about liquor being removed from the premises occurred while the owners were on shift, the patrons that the inspector observed leaving the premises with beer bottles were wearing only shirts and jeans, without jackets, and should therefore not have been able to conceal the beer bottles as indicated by the licensee during both an exit and a re-entry, and that the proposed penalty is required in order to bring the licensee into voluntary compliance with the *Regulation*.

ANALYSIS AND DECISION

The licensee acknowledges that the contravention occurred. For penalty purposes, I accept that it occurred and so find.

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*. I am not bound to follow the maximums set out in that Schedule.

The licensee submits that it was duly diligent. Due diligence is a defence to the contravention. In this case the licensee has conceded that the contravention occurred, and therefore due diligence is not available as a defence. The conduct of the licensee may, however, be considered in determining if a penalty is warranted and if so, what penalty is appropriate.

The first question I must consider is whether any penalty is warranted in the circumstances. This licensee has a history of non-compliance with the *Liquor Control and Licensing Act* [RSBC 1996] chapter 267 (*Act*) and *Regulation* including two allegations of liquor being removed from the premises contrary to section 42(4) (December 8, 2006 and November 29, 2007). There have been several documented meetings between the branch and the licensee about compliance issues, and a formal compliance meeting on September 25, 2007, during which the licensee made commitments to enhance the security of the establishment. The evidence discloses that the current contravention occurred during a scheduled event that the licensee knew would fill the premises. I find that the evidence discloses insufficient systems in place to address the security needs (including monitoring ingress and egress at the entrances) of the establishment during the pay per view event, and insufficient evidence of enhanced security as promised.

The branch is interested in voluntary compliance with the *Act* and *Regulation*, and despite its efforts with respect to the licensee, the branch has not obtained voluntary compliance. I find a penalty is warranted.

The next question is what penalty is appropriate. The licensee says that it has suffered financially as a result of the previous suspension for another contravention and uses this history as reason for asking for a monetary penalty rather than another suspension. Clearly the branch is aware that any suspension of a liquor primary establishment would likely impart considerable financial repercussions. The argument that this did in fact occur is not persuasive. The extent of the repercussions is another matter. I do not know if the branch anticipates that the cumulative effect of ten-days of suspension for two contraventions would “prove suicidal for [the licensee’s] business.” I also have insufficient evidence to establish that this is indeed the case. I accept that a further suspension would impart financial hardship, but I cannot find on the

evidence that a three-day suspension would be tantamount to permanently closing the business.

The licensee has had warnings and discussions about more closely monitoring the activities at the door to the establishment. There has been a compliance meeting with the branch in that regard. The licensee has made commitments to take steps to mitigate the likelihood of such contraventions occurring. The evidence is that these commitments have not been met, or that any changes that have occurred have not been effective. The liquor inspector says that she observed patrons openly carrying liquor as they exited the premises. The recent suspension and the resulting financial consequences should have resulted in a heightened awareness of the need for compliance and considerable more care on the part of the licensee than that demonstrated by the evidence.

The branch recommends a three (3) day suspension.

The range of penalty for a this contravention of section 42(3) of the *Regulation* in accordance with Schedule 4 is one (1) to three (3) days suspension, and/or a \$1,000-\$3,000 monetary penalty.

I find a three (3) day suspension to be appropriate in these circumstances.

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 037622 for a period of three (3) days to commence at the close of business on Friday, November 14, 2008, 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 *Regulations*). I direct that the liquor licence be held by the branch or the Prince George RCMP from the close of business on Friday, November 14, 2008, until the licensee has demonstrated to the branch's satisfaction that Tabor Arms Pub has been closed for three (3) business days.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: October 21, 2008

cc: RCMP Prince George

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

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