



**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:	Briarcliffe Holdings Inc. dba Sea to Sky Hotel Garibaldi Highlands, B.C.
Case:	EH02-97
Appearances:	
For the Licensee	Dale and Carmelle Cascanette Shabbir Dhalla
For the Branch	Peter K. Jones
Enforcement Hearing Adjudicator	Edward W. Owsianski
Date of Hearing	January 28, 2003
Place of Hearing	Vancouver, B.C.
Date of Decision	February 28, 2003

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8

Telephone: 250 387-1254
Facsimile: 250 387-9184

Location:
Second Floor, 1019 Wharf Street
Victoria BC

<http://www.ag.gov.bc.ca/lclb/>

INTRODUCTION

Briarcliffe Holdings Inc. (dba Sea to Sky Hotel) holds liquor license #107013 for an "A Pub operated under lease by Dale and Carmelle Cascanette. The hours of sale are Monday - Saturday, 12:00 Noon - 2:00 A.M. and Sunday, 11:00 A.M. - Midnight. The patron capacity for the pub is 100 in area 1 and 100 in area 2. This establishment is located in Garibaldi Highlands, B.C.

ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION

The Liquor Control and Licensing Branch has alleged that on October 4, 2002, the licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain. *Section 43(2)(b) states:*

*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.*

For the alleged contravention, the Liquor Control and Licensing Branch is recommending a suspension of the liquor licence for four (4) days, starting on a Thursday, and continuing on successive business days until completed.

ISSUES

The licensee admitted the contravention. The issue for the hearing is whether the recommended penalty is an appropriate penalty in the circumstances.

EXHIBITS

The following exhibits were presented:

- Exhibit A** Hearing Brief
- Tab 1** Notice of Enforcement Action dated October 17, 2002.
- Tab 2** Contravention Notice No. A012660
- Tab 3** Disclosure documents forwarded to licensee via facsimile on
 January 15, 2002
1. Emails referring to observations of the alleged contravention of
 permitting an intoxicated patron to remain on the
 establishment on October 4, 2002 from Liquor Control and
 Licensing Branch Regional Manager Lee Murphy and
 Inspector Mark Tremblay.
 2. Hand written notes referring to the same alleged contravention
 from Liquor Control and Licensing Branch Inspector Susan
 McClellan.
 3. Enforcement Action Recommended dated October 10, 2002.
- Exhibit B** Copy of Liquor License 107013
- Exhibit C** Typewritten submission of Dale and Carmelle Cascanette
- Exhibit D** Typewritten note titled "Compliance Meeting"
-

EVIDENCE

The representatives for the licensee agreed that the contravention as alleged by the branch did occur, namely that on October 4, 2002, an intoxicated person was permitted to remain in the licensed establishment. No agreed statement of facts were presented during the hearing. The evidence then is as contained in the Exhibits.

Finding of Fact

I find that the licensee contravened Section 43(2)(b) of the Liquor Control and Licensing Act (the Act).

SUBMISSIONS

The branch advocate advised the Hearing that this was the first contravention for this licensee for permitting an intoxicated person to remain in the licensed establishment; the regulated penalty is either a monetary penalty of five to seven thousand dollars (\$5000 - \$7000) or a period of suspension of four to seven (4 – 7) days. He advised that the branch views intoxication as a serious matter raising concerns of public safety. The circumstances of this case involved quite a high level of intoxication and as such the penalty must be such that it serves notice of the seriousness of the matter and is not seen as the cost of doing business. For these reasons the branch was recommending the minimum period of suspension of four (4) days to commence on a Thursday and run for consecutive business days until completed. He referred to The Liquor Appeal Board case of Dell Hotel (1965) and Flamingo Hotel (1958) Ltd. (dba Colony Motor Inn) and General Manager Liquor Control and Licensing Branch, November 23, 1992, a case which also dealt with permitting an intoxicated person to remain in a licensed establishment. It is noted therein that, "The Branch has a wide discretion in forming its opinion as to whether the facts should result in a suspension and the severity of that suspension. He advised that the enforcement history for the establishment is noted at page Tab 1, p. 6 Exhibit A.

The enforcement history is as follows:

- November 1995, warning letter sent to the establishment regarding disorderly conduct in the licensed establishment,
- June 1997, warning letter sent to the establishment regarding overservice of patrons,
- May 2001, Contravention Notice issued regarding overcrowding,
- November 2001, Contravention Notice issued regarding permitting a person to become intoxicated,
- December 2001, Contravention Notice issued regarding permitting a person to become intoxicated and permitting intoxicated person to remain.

The lessees advised the Hearing that the bartender and waitress on duty during the time of the contravention both held valid 'Serving It Right' certificates and with their work experience should have known better. The employees said that they had ordered a taxi for the person which arrived during the time of the inspection. These same two employees were on duty when a previous contravention notice for permitting an intoxicated person to remain in the establishment was issued. They have both been dismissed. The lessees have subsequently met with all staff to ensure that they understand their responsibilities and at the lessees request the area liquor inspector attended and held a meeting with all staff present. The lessees advised that a four (4) day suspension or a monetary penalty would be financially devastating. They requested that if a penalty must be imposed, to consider a monetary penalty.

The general manager of the hotel advised the hearing that information relating to previous infractions was unproven. The lessees were genuinely concerned with the incident and took action by firing the staff involved and meeting with all remaining staff. He advised that a suspension would mean a closure of the pub and would be devastating to business as patrons would go elsewhere. He urged that a warning be considered.

REASONS AND DECISION

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 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 have considered the evidence and submissions. While there was some action taken by the employees on duty, calling a taxi for the intoxicated patron, it was not sufficient to meet their responsibility. An intoxicated person cannot be permitted to remain in the licensed area and as such that person should have been immediately removed to an unlicensed area. The person could have awaited the arrival of the taxi in the unlicensed area of the hotel. Subsequent to the contravention, the lessees dismissed the offending employees and provided clear direction to those employees remaining. This action, although commendable was too late in coming. While the previous enforcement history for the establishment does not indicate findings of previous contraventions it does indicate that intoxication is perceived as being a problem at this establishment and it had been brought to the attention of the licensee on previous occasions. The problem should have been addressed prior to this contravention occurring. In the result I find that there is insufficient reason to justify not imposing a penalty on this occasion, quite to the contrary. Intoxication is a serious public interest issue. Intoxicated patrons can

be a danger to themselves or others. As well, intoxication can be a factor in other criminal offences and can have a negative impact on communities.

In the circumstances, I find that a licence suspension penalty is appropriate. A warning may be seen by some as condoning the contravention and a monetary penalty may be seen as the cost of doing business. A suspension penalty will affect the licensee, its staff and its patrons and should encourage future voluntary compliance on the part of all parties.

The recommended suspension penalty is the minimum within the range set out in Schedule 4 to the *Regulations* for a first incident of the alleged contravention. I find that the minimum license suspension is appropriate for this contravention.

ORDER

Pursuant to section 20(2) of the *Act*, I order the suspension of "A" Pub liquor licence #107013 for a total of four (4) days starting as of the close of business Wednesday, April 16, 2003, and continuing on successive business days until the suspension is completed. "Business Day" means a day on which the licensee's establishment would normally be open for business (section 54(1) of the *Regulations to the Liquor Control and Licensing Act*.)

Since I do not know whether the establishment would normally be open 7 days per week as of April 17, 2003, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence, "A" Pub #107013, be held by the Branch or the Squamish Detachment of the R.C.M. Police from the close of business Wednesday, April 16, 2003, until the licensee has demonstrated to the Branch's satisfaction that the licensed establishment has been closed for four (4) business days.

The suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer. A member of the R.C.M. Police Squamish Detachment will be requested to attend the premises, take possession of the liquor license and hold it in safekeeping during the term of the suspension.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: February 28, 2003

cc: R.C.M. Police Squamish Detachment

Liquor Control and Licensing Branch, Vancouver Office
Attention: Lee Murphy, Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attention: Peter Jones, Branch Advocate
