



**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: Royal Canadian Legion, Branch No. 128
dba Royal Canadian Legion (R.C.L.)
Wells, BC

Case: EH03-140

Appearances:

For the Licen see Maureen Dorval, President
Royal Canadian Legion, Branch No. 128
Doug Merrick, Member
Royal Canadian Legion, Branch No.128

For the Branch Lyall Boswell, Liquor Inspector

Enforcement Hearing Adjudicator Edward W. Owsianski

Date of Hearing December 3, 2003

Place of Hearing Quesnel BC

Date of Decision February 26, 2004

INTRODUCTION

The Royal Canadian Legion Branch No. 128 holds Primary Liquor Licence No. 073037. The hours of sale are 11:00 to 1:00 A.M. Monday to Saturday and 11:00 A.M. to Midnight on Sunday. The patron capacity is 44 in area 1 and 25 in area 2. The establishment is located in Wells, BC.

Alleged Contravention and Recommended Enforcement Action

The Branch alleges:

1. That on April 30, 2003, the licensee contravened section 43 (1) of the *Liquor Control and Licensing Act* by selling or giving liquor to an intoxicated person or a person apparently under the influence of liquor. The recommended enforcement action is a 4 day suspension commencing on a Wednesday.
2. That on April 30, 2003, the licensee contravened section 43 (2)(b) of the *Liquor Control and Licensing Act* (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 recommended enforcement action is a 4 day suspension commencing on a Thursday.

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

Schedule 4 of the *Regulations to the Act* provides a suspension penalty range of four (4) to seven (7) days and a monetary penalty range of five thousand dollars (\$5000) to seven thousand (\$7000) for a first contravention for each of the alleged contraventions.

ISSUES

1. Whether the licensee contravened Sections 43(1) and 43(2)(b) of the *Act* on or about April 30, 2003?
 2. If so, are the recommended penalties appropriate in the circumstances?
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EXHIBITS

1. L.C.L.B. Book of Documents
2. Statement of passenger in vehicle involved in accident
3. Interact transaction receipt
4. Licensee Book of Documents

EVIDENCE - The Liquor Control and Licensing Branch

A **Constable from the R.C.M. Police** Wells Detachment testified that at approximately 1:00 A.M. on May 1, 2003, he was called out to attend a motor vehicle accident on the highway between Wells and Barkerville. He was unable to locate the vehicle so drove into Barkerville where at approximately 1:17 A.M. he spoke with an individual who advised him that he had been the passenger and that the driver was unconscious in the vehicle. The passenger had a cut on his head with blood on his nose and the inside of his mouth. He appeared to be intoxicated, his speech was slurred, he had a strong odour of liquor on his breath, his eyes were glassy and blood shot and he was unsteady on his feet. He directed the Constable to the vehicle where it had driven off the road. The driver was not at the scene, he was subsequently located later in the day. The passenger was dispatched by ambulance to Quesnel at approximately 2:00 A.M. He gave a statement to a Constable of the Quesnel R.C.M. Police Detachment at approximately 4:31 A.M. (see exhibit 2). In his statement he states that he had been at the Legion the previous day arriving at approximately 3:30 P.M. played darts and drank beer until sometime between 10:30 – 11:00 P.M. when they left. The driver offered him a ride to where he was working, between Wells and Barkerville. They left the Legion, went to his residence where he picked up some clothes and food and then left in the driver's truck. (The statement is unclear whether they drove from the Legion in the truck or picked it up after leaving the Legion.) The accident occurred enroute. The Constable estimated that the accident occurred between 12:00 – 12:15 A.M.

During the course of his investigation the Constable spoke with the roommate of the driver. The roommate advised that he had been at the Legion with the driver and passenger the previous evening, leaving before them and returning home. The vehicle

involved in the accident was at their home at the time he returned. He assumed that the driver picked it up later upon leaving the Legion.

The Constable also spoke with the girlfriend of the driver. She advised that she had been at the Legion the previous night, returned home drunk, passed out on the couch and was unaware that the driver had later arrived at her home.

The Constable testified that later in the day, at approximately 11:50 A.M. two people came to the Detachment, they had heard about the accident and wished to make a complaint regarding the overservice of liquor at the Legion the previous night. Statements were obtained from them (see exhibit 1, tabs 8 and 9).

Witness A testified that she and her daughter left home for the Legion at approximately 9:30 P.M. the night of April 30, 2003, arriving at approximately 9:45 P.M. She had not had anything to drink prior to going to the Legion and went directly from home. Several people were playing pool including the passenger of the accident vehicle, the driver and the driver's girl friend, all of whom were previously known to her. The girlfriend did not recognize the witness and appeared to be intoxicated, her speech was slurred, and she was unsteady on her feet and had to be supported while dancing. She didn't appear to be joining into conversations or to be observant to persons talking to her. At one point she became hostile with the bartender over the music being played. At approximately 11:00 P.M. the bartender announced that off-sales were closing. The driver's girlfriend went to the bar and purchased off-sales beer. Her daughter commented to the witness that she was surprised that the girlfriend was sold off-sales due to her intoxicated condition. The witness could not recall if the girlfriend left immediately. She does recall that when the girlfriend left, the witness's daughter told the witness that the girlfriend was driving a vehicle and almost hit another vehicle in the parking lot.

The witness testified that she is acquainted with the passenger of the accident vehicle and believes that he was intoxicated that night. He was staggering and was incoherent to the point that she couldn't understand what he was saying. He told her that he had been in the Legion all day.

The witness testified that she and her daughter left shortly after midnight. The driver and passenger left behind them and she could hear them getting into a vehicle and leaving the parking lot.

The daughter of witness A did not attend the hearing. The statement which she provided to the Constable was entered into evidence (see exhibit 1, tab 8). In the statement she says that she and her mother left home at approximately 9:30 P.M. and went to the Wells Hotel where they had a drink prior to going to the Legion. At the Legion she observed a woman who she believed should have been cut-off from drinking as she could barely keep her head up, couldn't talk and almost fell over when she walked. She observed the woman leave between 11:00 – 11:30 P.M. with off-sales liquor in a paper bag. She left in a car, almost hitting another vehicle as she drove away.

The daughter in her statement describes the driver and passenger of the accident vehicle as being intoxicated, the driver less so than the passenger who was “doing the side step, back and forth” when he tried to walk. They left at the same time as she and her mother. She did not see them drive away, but the driver had vehicle keys in his hand, said that he was going to drive and she heard vehicle doors slam, an engine start up and tires squealing.

The Licensee

Witness B testified that she had been at the Legion on April 30, 2003, between 3:00 P.M. and 6:45 P.M. played darts with several persons including the driver of the vehicle in the accident, his girlfriend and the vehicle passenger. People were not drinking much, about two beers each at the most. She left the Legion at approximately 7:00 P.M. Arriving home, she phoned over to the Legion and asked the driver's girlfriend if she would drop off a loaf of bread which she did shortly thereafter, driving over in her vehicle. She observed her park her vehicle in her yard. The girlfriend's condition at that time was fine. The witness had no knowledge of what happened later in the evening.

Witness C testified that he has been the bartender at the Legion for ten years and the bar manager for nine years. He holds the "Licensee" certificate of the "Serving It Right: The Responsible Beverage Service Program". He was working as bartender on April 30, 2003, and was part of the group playing darts during the late afternoon, ending at approximately 6:45 P.M. following which several of the players departed. He recalls that the driver of the vehicle, later involved in the accident, was at the Legion during the afternoon and evening, as were the driver's girlfriend and the vehicle passenger. He recalls that the girlfriend had arrived earlier in her vehicle, leaving around 7:00 – 7:30 P.M. and returning approximately one to one and a half hours later on foot. She was playing pool and dancing during the evening. She was upset as a result of a problem she had concerning her property and her estranged husband, and at one point he had to ask her to settle down when she became upset over a song being played. He suggested that because she was upset she should go home. She left at approximately 11:00 P.M. after purchasing off-sales beer. He let her out the back door which provides the quickest route for her to her residence. He testified that he had served her only one or two beer and she was not intoxicated.

The bartender testified that the vehicle driver and passenger had left prior to the driver's girlfriend. He was not certain at what time they departed, however, he checked the record of the driver's tab which showed it being paid at 9:47 P.M. (see exhibit 3). He saw both of them walking without difficulty, they did not appear intoxicated. He recalled witness A and her daughter arriving at the Legion at approximately 9:30 P.M. and leaving shortly before Midnight. Two other male patrons left at the same time. He closed the legion shortly thereafter.

The **driver of the vehicle** involved in the accident did not attend the hearing. A written statement signed by him on November 18, 2003, was entered into evidence (see exhibit 4, tab 3). He stated that he arrived at the legion at 3:00 P.M. and played darts until 7:00 P.M. He bought several drinks for friends during the course of the evening, consuming four beer himself. He left with the vehicle passenger at approximately 10:00 P.M. He states that they were both "fine".

The **girlfriend of the driver** of the vehicle involved in the accident did not attend the hearing. A written statement, signed by her on November 18, 2003, was entered into evidence (see exhibit 2, tab 2). She stated that she drove to the Legion at 3:00 P.M. with her mother, played darts until 7:00 P.M. leaving shortly thereafter to drop a loaf of bread off to witness B and drove home. She went back to the Legion at approximately 7:30 P.M., played pool and danced. She bought off-sales beer and left at approximately 11:00 P.M. and walked home. At home she drank her off-sales beer and talked with her mother until Midnight when her mother went to bed. She later fell asleep whilst waiting for her boyfriend to arrive.

The **mother of the girlfriend** of the driver of the vehicle involved in the accident, did not attend the hearing, but provided a written statement (see exhibit 4, tab 4) which corroborated her daughter's statement.

SUBMISSIONS

The Licensee

The representative for the licensee submitted that the only credible evidence of the condition of any of the persons alleged to be intoxicated was that of the Police Officer. He observed the passenger of the vehicle after the passenger had been knocked unconscious in the accident, suffered facial cuts and a broken nose and teeth and had walked approximately five kilometres and awaited the arrival of the Constable. He submitted that the passenger's condition of was consistent with someone under stress and suffering from shock. He submitted that there were inconsistencies in the evidence of witness A and her daughter. The daughter, in her statement stated that they had gone first to the hotel where they had a drink prior to going to the Legion, whereas witness A in her evidence testified that they went directly to the Legion and had not been drinking previously. He submitted that the daughter's statement of seeing the girlfriend of the driver leave the Legion and drive away in her vehicle was at odds with that of the statements provided by the girlfriend, her mother and the testimony of the bartender. He submitted that the bartender was the only person who had not been

drinking that night and that his testimony of the condition of the persons should be preferred.

REASONS AND DECISION

Having considered all of the evidence, I do not find on a balance of probabilities that the licensee sold liquor to an intoxicated person or permitted an intoxicated person to remain in the licensed establishment. The evidence provided *viva voce* by the witnesses and in written statements is inconsistent and is most often conflicting between witnesses. While there is some evidence of intoxication provided by the Constable attending at the accident scene, and the observations of witness A and her daughter at the Legion, there is conflicting evidence provided by the bartender, the driver of the vehicle and his girlfriend. While it would be easy to dismiss their evidence as self-serving there is no compelling reason to do so.

I agree with the submission made by the representative for the Legion that the symptoms observed by the Constable and of the passenger at the accident scene could be due to injuries suffered in the accident and shock. In the result I am not satisfied that the licensee contravened the *Liquor Control and Licensing Act*.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: February 26, 2004

cc: R.C.M. Police Wells Detachment

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

Liquor Control and Licensing Branch, Prince George Office
Attention: Lyall Boswell, Liquor Inspector
