



**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:	Fraser Lake Shopping Centre Inc. dba Fraser Lake Inn 111 Chowsunket Road Fraser Lake, BC
Case:	EH05-068
For the Licensee	Vickie Hiatt
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	M. G. Taylor
Date of Hearing	August 23, 2005
Place of Hearing	Prince George, BC
Date of Decision	September 12, 2005

INTRODUCTION

The licensee, Fraser Lake Shopping Centre Inc., operates the Fraser Lake Inn, including the Stick & Stone Pub (“the pub”) which holds a Primary Liquor Licence, No. 025753, which is the subject of this hearing. Under the licence the permitted hours of operation are 11:30 a.m. to 1:30 a.m., Monday to Thursday, 12:00 noon to 2:00 a.m. Friday and Saturday, and 11:00 a.m. to Midnight on Sunday. The licensed capacity is 193 persons.

The current licensee was granted a transfer of the liquor licenses by the branch in July 2003. In January 2005, the branch approved a name change from Savory Ridge Inn to Fraser Lake Inn.

ALLEGED CONTRAVENTIONS

By Notice of Enforcement Action (NOEA) dated June 6, 2005, the Liquor Control and Licensing Branch (“the Branch”) alleged that on February 26, 2005, the licensee contravened Section 43(2)(b) *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 branch’s recommended enforcement action is a seven (7) day suspension of the liquor licence, to commence on a Friday.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267 (the “Act”)

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

ISSUE(S)

1. Does the evidence substantiate that there was an intoxicated person in the Stick & Stone Pub?
2. If yes, does the evidence substantiate that the licensee permitted an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied?
3. If yes, is the branch's recommended enforcement action appropriate?

EXHIBITS

Exhibit No. 1	Branch's Book of Documents
Exhibit No. 2	Photocopy of Police Continuation Report prepared on February 26, 2005

EVIDENCE

The branch's witnesses were an R.C.M. Police constable and the liquor inspector. The licensee's witnesses were the Hotel manager and a server.

The constable testified that he was the only regular officer on duty on February 26, 2005, (business day of February 25, 2005). He and an auxiliary officer attended the Stick & Stone Pub at approximately 1:00 a.m. on February 26, for a routine inspection. He found that the pub was busier than usual. Patrons were lined up at the bar, the servers were busy, and the music was loud. He did not see any staff working at the door.

When he entered he stopped by the glass wall of the designated smoking room, which is about 15 feet from the bar. A patron ("patron #1"), who he knows well, approached the glass wall and downed a beer in front of him. The patron then came out of the room and asked him if wanted to fight. The constable described the patron's condition as slurring his words, bloodshot eyes, egging on the constable by being rude and obnoxious. The constable testified that he was not surprised by his conduct, because he is frequently confrontational when intoxicated. He told the patron that he was not there to deal with him and that it was time for him to leave.

The constable's attention was drawn to another patron seated at a table ("patron #2"). His head had dropped to chest and he appeared to be passed out. The constable watched one of the staff walk behind this person and give him a shake on the shoulder. The patron looked up at him, the staff walked away and the patron slumped again. The constable testified that he was approximately 25 feet away when the server approached patron #2 and that patron #2 was seated about 20 feet from the bar.

Both officers went to the patron and woke him up. The constable testified that he noticed a strong smell of alcohol. He helped patron #2 stand up and told him he had to leave. The patron looked at him as though he didn't understand what was happening. Both officers held him up and helped him walk toward the door.

While he was walking patron #2 out, patron #1 came up to him again and thrust his chest in his path. The constable told him he didn't have time to deal with him and that if he was looking to go to jail, he was well on his way. Patron #1 challenged him to "come outside and deal with this." The officers walked around him with patron #2 who could barely maintain consciousness. The constable stated that he did not see patron #1 again that night.

As he was walking patron #2 out, he was called by a female patron who he knows well ("patron #3). She was standing in line at the bar. He described her as trying to keep a stable stance, with her legs about shoulder width apart, which he observed as being a standard stance for people who had too much to drink. Her speech was slurred and she was swaying. He did not observe the staff have any dealings with her. He noted that she was already on her way to intoxication.

The constable described his unsuccessful attempts to take patron #2 to a safe residence and his continuing state of intoxication. The officers contacted the Vanderhoof station and made arrangements for that detachment to take patron #2 overnight. However, later it was discovered that patron #2 had a medical problem and the officers had to retrieve him from the Vanderhoof detachment. Finally, they were successful in awakening some relatives and convincing them to take him overnight.

It was approximately 3:30 to 4:00 a.m. before they were clear of patron #2. They drove around the Fraser Lake Inn and found the patrons had left and the staff were doing cleanup. The constable returned to the detachment to do his paper work.

While he was working at the detachment, he got a call from the Chevron station, saying that patron #3 was slumped on floor. He attended, helped her up because she could not stand on her own and put her into the vehicle. He described a pungent smell of liquor and stated that she couldn't fully open her eyes, and that she was ill and falling down. He took her to a relative's house and returned to the detachment about 5:00 a.m. He prepared a Continuation Report of this incident before ending his shift.

During his next shift, he attended the bar and sat down with the bartender/manager to discuss what had occurred. He was told that patron #1 had broken a bottle that night and the staff barred him from the pub. He was also

told that there was new server working that night and they had been understaffed. He talked with the manager about how to handle intoxicated patrons and gave her some tips and strategies.

In March 2005, he served a Licensed Premises Check (LPC) on the Hotel manager and explained to her what had occurred. The manager seemed thankful that he took time to tell her what had happened. The constable testified that he has not had any complaints about the pub since this incident and his discussions with the staff.

The liquor inspector has worked in this area since October 2004. He testified that he authored the NOEA and recommended the penalty of 7 day licence suspension. Under the *Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (the "*Regulation*"), Schedule 4, item 11, the range of penalty for this contravention is 4 to 7 day licence suspension and \$5,000 to \$7,000 monetary penalty. Initially, he recommended a 4 day suspension. However, having consideration to the limited police resources which were consumed by these patrons, community standards, the fact of three intoxicated patrons and a past contravention history which included a LPC in July 2004 for disorderly and riotous behaviour and permitting intoxication, he recommended a higher penalty.

The server testified that she worked for the licensee from January to the end of May as a bar server. She had previous experience working in a lounge in another town. She worked on February 25/26, 2005, and testified that it was a very busy night and they had new server working. She stated that she was working in the smoking room and it was such a busy night she didn't notice much of what was happening. She recalled the police coming in. She was aware that patron #1, who she has known since school days, was too loud. She did not see anything happen between him and the constable. She knows who patron #2 is but did not recall him being there that night.

The server particularly recalled patron #3. This patron had been barred for a year and this was one of her first nights back in the pub. The server testified that she thought she was not overly intoxicated. After the pub closed, patron #2 came back to pick up a sweater she had left which the server handed to her. She testified that she was very nice, was not loud or obnoxious.

When the server got home about 3:15, 3:30 a.m., her roommate was having the after-bar party. A bottle of tequila was being passed around. Patron #3 was there and she became loud and obnoxious and very angry. The server talked with her for a while and said she was far more intoxicated than she had been at the bar. At about 4:30 a.m., patron #3 stormed out of the residence.

The Hotel manager took over as manager in December 2003, with the new licensees, although she had worked at the hotel previously. She once operated a small beer garden but had never managed a licensed establishment of this nature. She testified that there is a training manual which is kept at the bar and in her office at all times. She holds staff meetings usually once per month or more often if there has been a problem

Concerning February 25/26, she testified that the bar manager was relatively new to bartending, having started working in the bar in early 2004. Usually, one of the more experienced bartenders would have worked on a Friday night. However, she allowed the most experience bartender to take care of the staffing schedule and for some reason she scheduled the relatively new bartender for this night. Since this occurrence, the manager reviews all of the staff schedules in advance.

February is typically a slow time and that night the staff roster was 2 bouncers, 2 servers, and the bartender/manager. However, for some reason one of the bouncers was not working. Since this occurrence, the manager employs 3 bouncers every Friday and Saturday night. She explained that it is very difficult

to find experienced staff and to find staff who will evict their friends. Nonetheless, she testified that things have improved since this incident. She also stated that she will do more work with the staff around the training manual.

SUBMISSIONS

Although not stated in so many words, the manager indicated that her instructions were to put the branch to the proof of the contraventions.

The manager submitted that she is proactive in holding meetings with the staff when incidents happen so they can discuss steps to correct the problem. She has increased staff to eliminate these problems and they have identified the problem people and watch them.

She submitted that she intended to do more work with the staff on training manuals.

ANALYSIS AND DECISION

I find as fact that patron #1 confronted the police constable when he entered the pub, and when he was dealing with patron #2, and that he challenged the constable to a fight. I accept the officer's description of the signs of intoxication and degree of intoxication of patron #1. Based on his outward signs of intoxication and his conduct, I find that patron #1 was sufficiently intoxicated that the licensee should have required him to leave the premises.

I find as fact that patron #2 was slumped over a table and I accept the constable's description of the patron and the means of physically assisting the patron to leave the premises. I find that patron #2 was exceedingly intoxicated and that the licensee should not have allowed him to enter or remain. There was a suggestion that the patron had come in while staff were focused on the officer's

confrontation with patron #1. I do not accept that theory. The server testified that she was not aware of the confrontation. She also did not observe the police physically removing patron #2. I find that patron #2 entered the pub and sat down, either without being detected by staff, or with the permission of the staff. There is no way to know whether Patron #2 had been there for minutes or hours, or whether he had been served. In either event, the evidence leads me to find that the licensee permitted the person to enter and remain.

I find that evidence relating to patron #3 falls short of establishing that the level of inebriation had reached the point that she should have been required to leave. I accept the testimony of the server that this patron was not overly intoxicated at the end of the night when she came back to retrieve her sweater. I accept the constable's observations also, but note that he was otherwise engaged and did not have much time to observe her.

DUE DILIGENCE

It is well accepted that the defence of due diligence applies to contraventions under the *Act*. The B.C. Supreme Court addressed due diligence in *The Plaza Cabaret v. General Manager Liquor Control and Licensing Branch*, 2004 B.C.S.C. 248, a case involving alleged illegal conduct:

[25] If a licensee is not to be responsible for unlawful conduct occurring in its establishment within the meaning of s. 36(2)(b), it must prove, on a balance of probabilities, each of two facts: that the employee was not the directing mind of the licensee in relation to that part of the licensee's operations in connection with which the unlawful conduct arose, and, if that proof is provided, that those who were in fact responsible for that part of the licensee's operations were duly diligent in attempting to prevent the occurrence of unlawful conduct or activities.

Since the *Plaza* decision, in cases assessing the evidence of due diligence in relation to various contraventions, the branch has stated that a licensee must not only establish procedures to identify and deal with problems, it must ensue that those procedures are consistently acted upon and problems dealt with. As a test

of due diligence, the branch has considered whether there were more steps the licensee could have taken to ensure that staff were aware of the legislative requirements and were properly trained to do the job, and whether there were more preventative measures the licensee could have taken to prevent the occurrence of the contravention. (For a discussion of due diligence factors, see for example, *Haney Hospitality Ltd. (dba Haney Motor Hotel)*, EH01-170, July 27, 2004.)

On the evidence, I find that neither the server nor the bouncer, who are the employees most likely to have had some contact with either or both of these patrons, was a 'directing mind' of the licensee. Therefore, I have considered whether the evidence establishes the defence of due diligence.

I find the licensee has not demonstrated a defence of due diligence through policies, procedures, training, or the actions of its staff, for the reasons that follow. In my view of the evidence, it is apparent that there were not sufficient employees that night and the ones who were on shift were inappropriately inexperienced. The staff were not able to maintain control. Additionally, the licensee did not have procedures in place for regular staff training and for reinforcing with staff the need to remove problems patrons, even though they might be friends. It is apparent that the licensee was not educating staff about the dangers of over service, both to the patron and to other members of the community.

The constable indicated that he spent some time speaking with at least the bartender about strategies to help staff cope. He also spoke with the Hotel manager. In my view, as an additional measure to add to existing or planned training, the licensee could consider inviting the police to attend a meeting with staff to work through some of the problem scenarios and give staff encouragement to be proactive in refusing service and requiring people to leave, before they become a problem.

I find that the branch has established that the licensee contravened Section 43(2)(b) of the *Act* on February 26, 2005, by allowing two intoxicated patrons to enter or remain in the pub and that the licensee has not established a defence of due diligence.

PENALTY

Pursuant to Section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* 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 *Regulation*.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding these incidents (“compliance history”). Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegations as first contraventions. The range for first contraventions is 4 to 7 day licence suspension, or \$5,000 to \$7,000 monetary penalty (Item 11).

The branch’s primary goal in determining the appropriate penalty is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a 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.

The branch issued one previous Contravention Notice specifically on this issue approximately six months prior to this occurrence. I have given weight to that history not as proof of the previous contravention, but as proof that the branch had told the licensee in the past of its concerns to assist the licensee in achieving compliance.

The licensee's evidence is that they have taken steps since this occurrence to ensure that intoxicated people are detected and dealt with. They have hired another bouncer for busy nights. The Hotel manager testified that she intends to do more work with the staff and the training manuals. I found that the Hotel manager was forthright, credible and sincere in her evidence and her attempts to address the problems. The constable was positive about her reaction to his meeting with her, and about the fact that there have not been complaints since.

I find that the branch has established that these occurrences are deserving of a licence suspension given the severity of the levels of intoxication, the danger to the patrons and the community and the drain on the police resources. Having consideration to all of the evidence, and giving particular weight to the positive comments made by the constable and the positive actions of the Hotel manager, I am of the view that the branch's recommended penalty is harsher than required. I find that the appropriate penalty is a five (5) day licence suspension.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 025753 for a period of five (5) days to commence at the close of business on Thursday, October 13, 2005, 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*). I direct that the Liquor Licence No. 025753 be held by the branch or the R.C.M. Police Fraser Lake Detachment from the close of business on Thursday, October 13, 2005, until the licensee has demonstrated to the branch's satisfaction that the Fraser Lake Inn Stick & Stone Pub has been closed for five (5) business days.

Original signed by

G.M. Tyalor
Enforcement Hearing Adjudicator

Date: September 12, 2005

cc: R.C.M. Police Fraser Lake Detachment

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

Liquor Control and Licensing Branch, Surrey Regional Office
Attn: Shahid Noorani, Branch Advocate
