



**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: Red Dog Holdings Inc.
dba Red Dog Roadhouse
1114 Denny Road
Williams Lake, BC V2G 4A7

Case: EH05-117

For the Licensee: Cameron MacKay

For the Branch: Sonja Okada

Enforcement Hearing Adjudicator: M. G. Taylor

Date of Hearing: January 26 & 27, 2006

Place of Hearing: Williams Lake

Date of Decision: April 27, 2006

INTRODUCTION

The licensee, Red Dog Holdings Inc., operates the Red Dog Roadhouse under Liquor Primary Licence No. 036079. In November 2004, the business was purchased by E. & M. Estates Ltd. As of the date of the hearing, the liquor licence had not yet been transferred. The licensee provided a letter of authorization for E. and M. Estates Ltd. to represent the licensee at this enforcement hearing.

The Red Dog Roadhouse ("the pub") is located in a rural area of Williams Lake and operates as a neighbourhood pub. The licensed hours for the sale of liquor are 10:00 a.m. to midnight Monday through Thursday, 11:00 a.m. to 1:00 a.m. Friday and Saturday, and 11:00 a.m. to midnight on Sunday. The total licensed capacity, including the designated smoking area and a patio, is 120 patrons.

ALLEGED CONTRAVENTIONS

By Notice of Enforcement Action (NOEA) dated November 1, 2005, the Liquor Control and Licensing Branch ("the Branch") alleged that on June 10, 2005, the licensee contravened Section 43(2)(b) of the *Liquor Control and Licensing Act* ("the Act"), by permitting an intoxicated person to remain in the pub.

The branch's recommended enforcement action is a four (4) day suspension of the liquor licence.

RELEVANT STATUTORY PROVISIONS

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

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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.

ISSUE(S)

1. Does the evidence demonstrate that the licensee permitted an intoxicated person to remain in the licensed establishment?
2. If yes, what is an appropriate penalty, if any?

EXHIBITS

Exhibit No. 1	Licensee's Letter of Agency
Exhibit No. 2	Branch's Book of Documents
Exhibit No. 3	Letter from R.C.M.Police Williams Lake Detachment, July 19, 2005
Exhibit No. 4	Statement of Brenda McConachie
Exhibit No. 5	Statement of Christine McConachie

EVIDENCE

The witnesses for the Liquor Control and Licensing Branch were two Compliance and Enforcement Officers (C & E officers), referred to here as C & E officer #1 and #2. The witnesses for the licensee were two patrons, a server, the bar manager, and the operating partner of the corporate licensee.

The Branch

C & E officer #1 testified that he and his colleague arrived at the Red Dog Roadhouse at approximately 11:20 p.m. on June 10, 2005. They stood outside the smoking area and observed seven patrons in the smoking room, a few on the patio and a few inside. He testified that he observed the patrons for a period of

time and believed that several in the smoking area were intoxicated. He described a table with two couples, a table with two individuals, and a table with one man. At the table with the two couples, one of the men was asleep. The two patrons at the other table began playing pool. The man who was by himself was asleep.

The C & E officer went to the bar and spoke with the manager about the people he considered to be showing signs of intoxication. The manager told him that the two couples were a family group. As the C & E officer continued to watch the patrons, the two couples prepared to leave. One woman woke up the sleeping man who stood up, leaning against the table, and took a drink of what appeared to be beer and tomato juice. He then sat down again. The C & E officer testified that the other couple had trouble standing up, and he observed that they were staggering as they went to the exit.

The C & E officer testified that he remained inside the pub and watched the two men playing pool. He saw one of them shoot the ball off the billiard table and across the room, and he observed him leaning on the pool cue. In his view, this man was particularly intoxicated.

The C & E officer testified that the single man was slumped over his table. One of the servers gave him a nudge and he woke up but fell asleep again. The server went over to take his drink, but he woke up and protested. The patron then got up and left.

The manager told the C & E officer that she knew the patrons, that they worked hard all week and came to the pub to relax. She stated that the licensee's staff ensure the patrons get home safely. As a result of the C & E officer's discussions with the manager, a server went to the men playing pool and told one of the men that he was cut off and had to leave. C & E officer #1 testified that as he and his colleague were driving away from the pub, they saw this man

staggering down the road and that he almost staggered in front of their vehicle. His colleague commented that the man appeared to be a stroke victim. C & E officer #1 testified that he did not consider the man's actions to be a result of the stroke.

C & E officer #1 testified that he did not speak with any of the patrons. He was approximately 20 feet from the man playing pool and observed that his eyes were glazed over, and that he was staggering and swaying. He was approximately five feet from the family group. He did not have any specific recollection of their complexions or eyes and was not close enough to detect an odour of alcohol. He was approximately 20 feet from the single man, and did not make specific observations of his complexion or eyes and was not close enough to detect a smell of alcohol.

C & E officer #2 testified to observing the same people in the smoking room. The most noticeable patron was the one playing pool, who moved around the room quickly in a staggering movement. At one point that patron shot the ball off the table and he walked around and got it. He slumped in his chair when his partner was shooting pool.

He testified that of the family group, the older man and woman showed moderate states of intoxication. He testified that the younger man was awakened by his wife, and when he stood up, he had to put his hand on the table to maintain his balance. As he left, he was staggering.

He testified that the single man was nodding off and a server shook him awake. It appeared that he was drinking a cola, which the server attempted to remove, but the patron resisted and took it back. C & E officer #2 walked out behind this patron and saw him engage in a brief conversation with the taxicab driver. The patron then continued to walk along the side of the building and the C & E officer noted that he was staggering.

At approximately 11:47 p.m., the C & E officer observed the family group come out to the parking lot. The older woman tripped as she was coming out the doorway and both she and her husband appeared to be staggering and walking slowly and deliberately. As they were getting into the taxicab, the woman asked her husband, "What about our car?" and he responded, "They can steal the damn thing if they want." The C & E officer testified that the man's speech was slurred when he said this.

C & E officer #2 testified that when they left, as they were driving down the pub's access road, he saw the pool player walking down the road zig zagging, staggering and going in and out of the ditch. The C & E officer testified that he had noticed that the man's face gave him the appearance of having had a stroke. However, he did not appear to have paralysis and he moved very quickly. The manager had told the officers that this man lived in a mobile home park close to the pub.

C & E officer #2 testified that the patrons were in various states of intoxication with the pool player being in an advanced state of intoxication. He testified that he did not see the family group drink anything except for the younger man who had a drink from a reddish liquor, which could have been clamato or tomato juice with beer. He testified that in his seven years with the branch he had not seen anything like this, with five intoxicated people at one time. He stated that perhaps this stood out because there were not very many people in the pub. He further testified that from his discussion with the manager, he had the impression that she thought that this level of intoxication was okay as long as these people had safe rides home. He acknowledged that with the exception of the pool player, all of the patrons were in the process of leaving during the approximately 20 minutes he was observing them.

Licensees evidence

The operating partner ("the licensee") testified that he has been in the hospitality industry for 14 years. His family has been in the industry since 1958, with various properties in Abbotsford and Williams Lake. They have operated their other liquor establishment in Williams Lake since 1958 and have never had an infraction. They purchased this establishment in November 2004, through a foreclosure, and re-opened in February 2005.

The licensee testified that he has a strict policy of not serving patrons who appeared to be intoxicated. There are staff meetings to go over the policies of service and over service, and staff are trained on how much consumption people can handle per hour for wine, beer and hard spirits. He testified that the training is ongoing. Since this incident, the management has met with the staff to reinforce the policies on over service. He spoke highly of the manager of the pub, who had worked with him in the other establishment. He was confident that she does not tolerate intoxicated patrons, and can be tough with people.

He also testified to having a good working relationship with the local R.C.M. Police and he presented a letter from the Williams Lake Detachment, dated July 19, 2005. In the letter, the staff sergeant states that the R.C.M.P. have not had concerns about the operation of the other establishment owned by this company and are pleased with the manner in which it has been operated.

The licensee testified that he is the general manager and is usually at the pub every day or in touch with the manager every day. He testified that he met the patron described as the pool player in February 2005. When he first met him, he thought he appeared to be under the influence but then realized there is distortion in his face and he is unsteady on his feet due to a stroke. As of the date of the hearing, this man had suffered a heart attack and was hospitalized.

Concerning the single patron that evening, the licensee testified that he is a big man who stoops and walks with a lumber. He sounds as though he has marbles in his mouth and he looks as though he is "half cut" most of the time. This patron comes to the pub every couple of days, and has a couple of drinks, eats and heads home. He is known to be miserable, and it would be difficult to force him to leave. However, the licensee has not had problems with him.

The licensee testified that it is not uncommon for the staff to phone for a cab when they are of the view that a patron has had too much to drink to drive safely. He also stated that for larger events they sometimes bring in a shuttle service, because they are in a rural area.

Patron #1 and #2

These patrons are the women who were in the family group.

Patron #1 is the younger woman. She testified that her husband works six or seven days per week as a heavy equipment operator. He leaves home each day between 2:00 a.m. and 4:00 a.m. and works until 7:00 p.m. to 10:00 p.m. She recalled that on June 10, 2005, he got home around 7:00 p.m. or 8:00 p.m. and they joined her husband's parents at the Red Dog Roadhouse. She did not recall what time they arrived at the pub but that they left around 11:00 p.m. She testified that her husband ordered a beer and his dinner, ate about half, and fell asleep. She also recalled that he had ordered a second beer and left half of it. Her father-in-law had an operation on his leg a few years ago and, as a result, has to support himself and he walks unevenly.

Patron #1 is familiar with the patron who was sitting by himself but did not remember him that evening. She described him as "slouchy, stumbly, hard-working, always tired and always slurs his words." She did not recall the man

playing pool, and did not recognize his description. She had no recollection of patrons being intoxicated.

Patron #2 testified that her husband drives a logging truck. He had an accident in 1990, which resulted in his foot being rebuilt with pins and screws. His pain medication results in some dizziness and unsteadiness. June 10, 2005, was his first day back at work following spring break and he had worked at least 15 hours.

She testified that in her employment, she deals with confidential information of local business people and she was offended by the C & E officers' suggestion that she was intoxicated. She recalled that she and her husband arrived at the pub at approximately 7:30 p.m. They had drinks and something to eat. They visited with people in the pub before their son and daughter-in-law arrived. She estimated that her husband may have had four pints of beer and that she probably had three pints, with clamato juice, which is her usual beverage. She testified that her son was in the pub for about an hour and was tired when he came in. She maintained that none of them was drunk. She and her husband live within a five-minute drive of the pub. She returned the next day to pick up her vehicle.

Patron #2 knew the man who was sitting on his own but did not recall anything particular about him this night. She said he usually mumbles, doesn't say much, tends to be gruff, usually has blood shot eyes and looks as though he doesn't get enough sleep. She also recalled the man who had a stroke and testified that she could not recall anything particular about him that night either, but she doubted that he was drunk.

The Manager

The manager of the pub testified that she has been employed with the licensee for seven years and has worked in the hospitality industry for 21 years. She stated that most of the clientele are regulars and that the pub has become popular for the food. She testified that the policy on intoxicated patrons is that staff are to watch patrons to ensure they do not become intoxicated but if they do get to that point, the staff are instructed to ask them to leave, treating them with respect and acting calmly.

On June 10, 2005, a couple of baseball teams had been in for dinner and drinks. She recalled the family group, who are regulars, and testified that she thought the younger couple had arrived around 10:00 p.m. because she remembered them asking if they were in time for the kitchen. She recalled that the liquor officers arrived about 10:30 p.m. They were conspicuous because they did not sit down and said they didn't want to order anything. She assumed they were either police or liquor officers. She testified that all was fine in the pub when they were there. The patrons were not stumbling around or being loud or obnoxious or rude. They were sitting with friends or family and unwinding. She described it as a pretty calm night.

The manager testified that she spoke with the liquor officers for 20 to 25 minutes. She was surprised when they said five patrons were intoxicated because she did not consider any of them to be intoxicated. The officers told her that she should have required the older couple to wait outside for their cab and she testified that she just did not understand their reasoning. She stated that the point of having designated drivers is so that people can have drinks, have a good time and get home safely. After her discussion with the officers she was still of the view that none of the patrons were intoxicated. She testified that she had a clear view of the pub and did not have any concerns about over-service that evening.

Concerning the single male, the manager testified that the staff had cut him off and brought him a cola about five to seven minutes before the officers arrived. In the manager's view, he had fallen asleep from being tired, not from over drinking. She recalled that he had two beers. The staff know that this patron can be difficult to handle so they approach him with "caution and good business sense." He lives two blocks from the pub.

The manager did not recall the officers referring to anyone playing pool. They told her that one patron was intoxicated and, although she didn't agree, she went to that patron and told him the officers believed him to be intoxicated and that she had to ask him to leave. He was unhappy with that, but complied. She removed his beer from the table. His usual drink is a pint of beer with calamato juice. This was the man who had had a stroke. He is relatively new to the pub and he does not socialize with the regulars.

SUBMISSIONS

The licensee's main submission was that the C & E officers did not conduct an investigation but jumped to conclusions because of some symptoms, which could be related to intoxication or to other causes. He noted that the C & E officers did not speak with any of the patrons and did not get close enough to any of them to observe the usual indicia of complexion, odour, speech, or condition of the eyes.

The licensee submitted case references from Carswell's Words and Phrases to indicate that there are different degrees of intoxication and that for the purposes of the *Act* the meaning of 'intoxication' is at a higher end of the continuum, so that the intention is to catch incidents of substantial intoxication not just 'under the influence'.

The licensee referred to the Liquor Appeal Board case, *Ed Bulley Ventures Ltd. dba Planet Sports Lounge*, [2001] B.C.L.I. No. 5, Appeal No. L-9905. At

paragraphs 62 and 68, the board discusses the duties of licensees respecting conduct of the patrons. At paragraph 68, the board says the following:

The proscription against drunkenness, violent, quarrelsome, riotous and disorderly conduct in section 36 (2) of the Act creates a general duty on licensees to preserve an orderly, controlled environment. This section should be interpreted to require licensees to take steps both proactive and reactive in order to pre-empt and stop behaviour and conduct that threatens the peace and safety of the patrons and the premises.

In *Fraser Lake Shopping Center Inc. dba Fraser Lake Inn*, EH05-068, September 12, 2005, the adjudicator made the following findings at page 9:

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.

The licensee referred to some decisions of the general manager to compare to the fact situation here, to show that indicia of intoxication is usually referred to with some particularization by the police or C & E officers, and to show that when contraventions have been proven, the indicia of intoxication has been substantial.

The licensee referred to *Jordan Enterprises Ltd. dba Quality Inn Pub*, EH05-016, September 7, 2005, primarily for the following reference, at page 11:

In the usual case a police officer or liquor inspector is drawn to notice the condition of the person by obvious signs of intoxication and the evidence is such that the licensee or its employees knew or should have known the person's condition.

In the *Jordan* case, the adjudicator found that there was insufficient evidence to suggest that the licensee or its employees would have known that the person was intoxicated.

In *Palamino's Rock'n Horse Cabaret Ltd. dba Evolution*, EH05-024, December 1, 2005, the adjudicator stated, at page 5:

The constable was in the establishment for a limited period of time. His focus was properly directed elsewhere, in accordance with his professional mandate on that occasion. He observed only one of the females drinking anything, and the identity of that substance was not adequately explored.

He testified as to observations that I find to be less than conclusive of intoxication. He conducted none of the tests usually associated with identifying intoxication, and he quite properly acknowledged that the behaviours he witnessed might have been the result of a medical condition, personality irregularity, or impairment of an origin other than intoxication.

The contravention has not been proven.

The licensee submitted that the evidence here shows that the staff had asked the single man to leave because he was falling asleep. Although the evidence does not establish that he was intoxicated, even if he was intoxicated, the staff were following correct procedure. The staff asked the man to leave and he did leave, without incident. He submitted that there is nothing in the legislation that requires a licensee to eject a patron immediately. The staff were not *permitting* this patron to remain; they were not serving him alcohol and had asked him to leave.

The C & E officers asked the manager to remove the pool player and she did, even though she would not normally have dealt with him that way. He noted that both the pool player and single man left the pub on their own and unsupervised, without causing any problems.

The licensee submitted that his family has operated licensed establishments since 1958. Currently, they operate three other licensed establishments and there have never been problems at any of them. The C & E officers were not aware of any Contravention Notices having been issued to the other establishment in Williams Lake. He submitted that the clean record should be taken into account.

ANALYSIS AND DECISION

The alleged contravention is that the licensee permitted an intoxicated person to remain in the pub. The branch witnesses and the licensee's witnesses basically agree on the facts. The disagreement is whether the facts establish intoxication that is prohibited by the *Act* and, if so, whether the licensee permitted the intoxicated person to remain.

The licensee's witnesses did not recall the pool player although there was no dispute over whom the C & E officers were referring to. The bar manager testified that when the C & E officers came into the pub she assumed they were either police or C & E officers and she was, therefore, aware of what was happening in the pub. As the C & E officers were looking around the pub, she was satisfied that there was nothing to be concerned about. On the other hand, one of the officers testified that the situation was so bad he had never seen anything like it. He also testified that he spoke with the manager and got the impression that she believed this level of intoxication was acceptable, providing the patrons had a safe ride home.

The licensee's witnesses gave evidence about each of the patrons identified as intoxicated by the C & E officers. The witnesses spoke about the physical impairment of two patrons and gave evidence and rationale for two patrons falling asleep. The evidence of the C & E officers and the licensee's witnesses demonstrates that, at the time the officers entered the pub, the family party of four was preparing to leave. Additionally, the single man had been asked to leave and the staff were in the process of removing him from the bar.

The difficulty I have with the C & E officers' evidence is that they did not perform any investigation of the individuals, other than their observations. The indicia of intoxication they testified to could have been as a result of intoxication or, as the licensee contended, by natural causes.

I have carefully reviewed the C & E officers' evidence concerning the conditions of the family group and the single male and I find that their observations are inconclusive of intoxication. Additionally, since all of these people were in the process of leaving the pub, I find that the licensee was not permitting them to remain.

That leaves the evidence concerning the pool player. Both C & E officers describe this man as extremely intoxicated. The manager, who spoke with him and told him he had to leave, was of the view that he was not. Both C & E officers testified that they observed him playing pool, shooting a pool ball off the table, leaning on his pool cue and staggering down the road as the officers were driving out. The C & E officers did not testify to watching him walk out of the pub. All of the witnesses acknowledged that the pool player was a stroke victim. The licensee testified that the man has distortion in face and is unsteady on feet because of his stroke.

I find that the C & E officer's testimony about the behaviour around the pool table is insufficient for me to make a determination that this patron was intoxicated. The fact that he had had a stroke could account for the unsteadiness on his feet, as the licensee stated. As previously noted the C & E officers did not speak with this patron and they were not in close proximity to him. The strongest evidence is what the C & E officers observed once they left the pub. The C & E officers did not document the time that the patron left the pub or the time the officers left the pub. The manager testified that she spoke with the officers for about 20 to 25 minutes. From the evidence of the C & E officers and manager, I surmise that the pool player would have left at least 10 minutes prior to the officers leaving.

Given the nature of the alleged contravention, I cannot place much, if any, weight on the C & E officers' observations of the pool player when he was walking down the road. At best, the patron's actions outside could offer some insight to his condition while inside. However, in this case, it was at least 10 minutes from the

time he left until he was observed on the road and his condition could have changed. Based on the facts here, I find that I can consider only those observations made by the various witnesses inside the pub. I find the evidence does not establish that the pool player was intoxicated.

ORDER

I find that the branch has not substantiated that the licensee permitted an intoxicated person to remain in the licensed establishment.

Original signed by

M. G. Taylor
Enforcement Hearing Adjudicator

Date: April 27, 2006

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

Liquor Control and Licensing Branch, Victoria Office
Attn: Gary Barker, Regional Manager
Vancouver Island/Okanagan/Kootenay

Liquor Control and Licensing Branch
Attn: Sonja Okada, Branch Advocate
