



**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: 656245 B.C. Ltd.
dba The Boot Cabaret
84 Oliver Street
Williams Lake, BC V2G 1L7

Case: EH05-120

For the Licensee: Rino Gustin

For the Branch: Sonja Okada

Enforcement Hearing Adjudicator: M. G. Taylor

Date of Hearing: January 25, 2006

Place of Hearing: Williams Lake, BC

Date of Decision: March 21, 2006

INTRODUCTION

The licensee, 656245 B. C. Ltd., operates The Boot Cabaret ("the Boot") under Liquor Primary Licence No. 001088. The current licensee took over the operation in July 2003.

The Boot is located in a business district with some residential accommodation in the vicinity. The licensed capacity is 200 patrons. The licensed hours for liquor sales are 7:00 p.m. to 2:00 a.m. Monday to Saturday and until midnight on Sunday.

ALLEGED CONTRAVENTIONS

By Notice of Enforcement Action (NOEA) dated October 24, 2005, the Liquor Control and Licensing Branch ("the Branch") alleged that on July 2, 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 licensed establishment. 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

- 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.

ISSUE(S)

1. Does the evidence demonstrate that the licensee permitted an intoxicated patron to remain in the Boot as alleged?
 2. If yes, if a penalty is warranted, what is the appropriate penalty?
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EXHIBITS

Exhibit No. 1 Branch's Book of Documents

EVIDENCE

The branch's witnesses were a police officer and compliance and enforcement officer (C&E officer). The licensee's witnesses were a door security employee and the licensee.

Branch's Evidence

The police officer testified that he has been a member of the R.C.M. Police for 25 years, stationed in Williams Lake for the past 17 years. He observed the incident at issue, which occurred on the business day of July 1, 2005, during the Williams Lake Stampede weekend, which traditionally brings a lot of visitors into the community.

Shortly after midnight, two uniformed police officers attended the Boot for a routine bar walk inspection. The police officer testified that there was door security at the entrance. The police officer walked through the Boot, checked the men's washroom, watched the crowd for a few minutes and then started to leave. He recalled that the Boot was fairly busy, close to capacity, probably between 160 to 200 patrons. As he was leaving he saw a patron he knows well leaning against a support beam close to the dance floor, with a bottle of beer in each hand, and appearing to be almost asleep. The police officer brought this patron to the attention of a server who removed the patron's beer and escorted him outside. The police officer testified that the patron walked out on his own, without support.

The police officer has known this patron for many years and stated that most of his contact with him is outside licensed premises. He described him as being

very tolerant of alcohol and able to walk under the influence of alcohol 'even if he was almost dead.' The man is usually gruff and vulgar.

When they were outside the Boot, the police officer spoke with the patron who was verbally abusive in reply. The police officer testified that when he dealt with the patron outside, he observed that the patron was almost passed out, was slurring his words, had bloodshot eyes and a strong smell of alcohol. The officer arrested him and lodged him in police cells over night. The other police officer issued a Licensed Premises Check (LPC) the following day.

The police officer testified that during 2005, the police received 35 calls to the Boot. Of those, 22 calls were from the Boot staff, asking for assistance in removing patrons or for assistance when they refused to allow people entry. He stated that the patrons of the Boot are regulars and the police expect to get calls to attend this area. The police officer indicated that some of the calls were from patrons who were being vindictive to other patrons. As a general observation, the officer testified that the Boot is greatly improved under the current operator than it was when he arrived in Williams Lake.

The branch's compliance and enforcement officer testified that he took over responsibility for this region in approximately 2004. He is not stationed in Williams Lake but attends for inspections every couple of months. He reviewed the documents in Exhibit No. 1 including the interview sheet for the transfer of ownership. He testified that there is no record of compliance history since the current owner took over. There were problems under the previous owner.

Upon receipt of the police LPC, the C&E officer contacted the police, discussed the police report and the incident and issued a Contravention Notice.

Licensee's Evidence

The door security who was working the night of July 1/2, 2005, testified that he has worked at the Boot for approximately five years. He knows this patron well and recalled him arriving that evening. Usually, this person does not come into the bar because he does not have money for the cover charge or for buying drinks. He testified that when the patron came in he spoke with him and he was not intoxicated. He recalled that the patron sat at a table in the smoking room. When the server escorted him out, the door security was just behind them. He testified that there was no problem when the patron left although he noticed he was staggering. He estimated that the patron had been inside the Boot for about 30 minutes when the police arrived.

The door security testified that there have been times when he has had to remove this patron and many times when he has denied him entry; he has also had to call for police assistance. There are many other patrons who he has denied entry or removed. He also stated that he has removed this patron for taking other patrons' drinks, when they are on the dance floor. He surmised that might be why he had two beer bottles on this occasion, although he did not see him with two bottles or leaning against the beam.

The door security did not recall seeing a policy manual for the Boot. He stated that he takes his instruction from the bartender. There are staff meetings after the bar closes if there are incidents to discuss or if any patrons have been barred. He has read the Guide for Liquor Licensees.

The owner testified that he was working that night and saw the patron come in. The staff know this individual and will not allow him in if it appears he is intoxicated or might cause trouble. The owner testified that the patron did not appear drunk when he came in and that he saw him sitting at a table in the smoking room.

The owner took issue with the police officer's description of the patron's level of intoxication and submitted that if he was that drunk he could not have remained standing or leaning against the beam. He noted that the patron left quietly and had not caused any trouble inside. He further noted that he has no control over what happens once patrons are outside.

ANALYSIS AND DECISION

The branch's alleged contravention is that the licensee 'permitted' an intoxicated person to remain. The accepted definition of 'permit' is: "a licensee may be said to permit something to occur where the licensee does not exercise as high a degree of diligence as it should have in the circumstances, or where the licensee shuts its eyes to the obvious or allows something to go on, not caring whether an offence is committed or not." (*Ed Bulley Ventures v. Liquor Control and Licensing Branch*, [2001] B.C.L.I No. 5 (L.A.B.))

The substance of the police officer's testimony was that when he saw the patron inside the Boot, the patron was leaning against a beam next to the dance floor, with his eyes closed, holding two bottles of beer. The patron was not engaged in conversation or in contact with any other patrons. The police officer did not speak with him. The officer thought he looked as though he might be asleep and that was his reason for calling the server.

With respect, I cannot accept that as sufficient reason for finding that the licensee permitted an intoxicated person to remain. The police officers were in the Boot for approximately five minutes. They did not see this individual until they were about to leave and did not observe him for any length of time. From the police officer's description of his own movements, it is probable that he would have walked by this same area when he entered. He did not testify to seeing the individual then. The police officer did not testify to observing symptoms of intoxication, other than closed eyes, until he was outside.

The licensee's evidence is that both the doorman and the licensee recalled the individual entering that night, were alert to possible problems, and both recalled

him sitting at a table in the smoking room. They both formed the view that the patron was not intoxicated when he entered. There was no indication that the patron had caused any problem that evening, from either the police evidence or the licensee's evidence.

I find it is probable that the patron had been seated, as testified to by the licensee's witnesses, and had just moved over by the dance floor when the officer was preparing to leave. When the server approached him, she easily removed his beer bottles and he left quietly.

I find that the police officer's observations outside the Boot do not assist with the determination of whether the licensee's staff should have been aware that the patron was intoxicated when he was inside the Boot.

ORDER

I find that the branch has not substantiated the alleged contravention.

Original signed by

M. G. Taylor
Enforcement Hearing Adjudicator

Date: March 21, 2006

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

Liquor Control and Licensing Branch, Victoria Office
Attn: Russell Boucher, A/Regional Manager
Vancouver Island/Okanagan/Kootenay

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Sonja Okada, Branch Advocate
