



**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:	500166 BC Ltd, dba Mirage Cabaret
Case:	EH06-081
Appearances:	
For the Licensee	Barry Carter
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	February 9, 2007
Place of Hearing	Surrey
Date of Decision	March 5, 2007

## **INTRODUCTION**

The Licensee operates a cabaret in Surrey. The cabaret holds liquor primary license #176354.

On the business day of May 27, 2006, a team of RCMP officers and a liquor inspector attended at the establishment as part of an anti-violence bar initiative to do a licensed premise check

As a result of the inspection, a contravention notice was issued to the Licensee relating to an individual who was alleged to be intoxicated and allowed to remain in the establishment.

## **ALLEGED CONTRAVENTIONS**

The Branch alleged that on May 28, 2006 (business day of May 27, 2006), the Licensee contravened s. 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in the licensed premises.

## **RELEVANT STATUTORY PROVISION**

### ***Liquor Control and Licensing Act, [RSBC 1996] Chapter 267***

- 43(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.

**ISSUES(S)**

1. Did the contravention occur as alleged?
2. If so, is a penalty warranted and what is the appropriate penalty?

**EXHIBITS**

Exhibit #1: Branch's book of documents

**EVIDENCE**

The parties agreed to the inclusion of the content of exhibit #1 into evidence.

The Branch called a police sergeant. He testified as follows:

- He has been a police officer for 29 years, a sergeant for eight years, and staff sergeant for two years.
- On May 27 and 28, he was operating as part of the anti-violence bar initiative.
- He has conducted approximately 100 bar checks in the past.
- He has seen all levels of intoxication and been qualified as a data-master and breathalyser operator since 1980.
- The team that attended at the Mirage Cabaret consisted of 20 or 30 members, mostly uniformed officers, and the liquor inspector.
- The establishment was not chosen because of any past history of problems.

- They entered through the main doors and got a general impression of the atmosphere in the club. It appeared to be "business as usual". Liquor was being served, and there was music and dancing.
- He made his way to the bar, had a casual conversation with a patron, and then stood where he could see the bar.
- Soon thereafter another officer pointed out a male near the bar, whom she indicated appeared intoxicated.
- He saw the patron standing with a couple of bottles of beer in his hands. He watched as the patron made his way to the bar. The patron used the bar for support and tried to engage the bartender in conversation- but the bartender did not talk to the patron.
- He observed the patron to be unsteady on his feet- swaying.
- "His head was drooping down like he was extremely tired or his eyes were closing. To me it was a sign that he had a full load of alcohol on him."
- When the patron finally got the bartender's attention, the bartender took the beers from the patron and poured them out. "The patron then grabbed a tumbler glass from the bar and consumed [the contents]. It was not his drink. It was just on the bar."
- He motioned for the liquor inspector to see the patron. She watched the patron for a minute and then engaged the bartender in conversation.
- "The beer was removed from the patron when the liquor inspector went over to the bar. I think she was talking to the bartender at the same time the beer was taken away."
- The bartender told the patron "You're out."
- "I got the patron's ID and walked him toward the door. He asked me if he could go to the washroom and I took him inside. He went to the first urinal and engaged in a long urinal break. He had trouble standing up and crashed against the wall behind the urinal- the men here know what I mean.... He washed his hands and went to the front door. His movement was slow. I had to guide him. I talked to him briefly and wrote down his

- name...He was slurring his speech. He had trouble pronouncing words. He was happy-go-lucky and was overly friendly and talkative".
- He left in a taxi.
  - In total the sergeant watched the patron for about three minutes before the bartender took the beers away.
  - All of the signs he saw the patron exhibit at the bar were consistent with being tired at 2:00 in the morning.
  - He did not ask how long the patron had been awake that day.
  - Based on his observations, he thought the patron "had a full load on and was suffering because of his alcohol consumption.
  - He identified his notes in exhibit #1.

The Branch called a liquor inspector. She testified as follows:

- She has been a liquor inspector for six years and has done approximately 3000 inspections.
- She has been formally trained in the identification of all levels of intoxication.
- She sees people with some level of intoxication on most evening shifts.
- On the night in question, she was part of the anti-violence bar initiative. They were looking for high profile establishments that were busy in the later hours, and checking for violence.
- There were doormen on duty when she arrived. She spoke with them and satisfied herself that capacity was not an issue.
- She walked through the cabaret and ended up at "B" bar.
- She saw a patron in front of the bar. He was staggering and spit on the floor. She observed him for thirty seconds to a minute.
- She went around to the far side of the bar- about eight feet from the patron- in order to observe the patron's face.

- "I observed the patron staggering a bit and jovial. He was moving about and he spit on the floor. He was unsteady. He was holding both beers in his hand at that time and going foot to foot. He was not standing at the bar, but then moved up to it.
- She did not see the bar staff dealing with the patron.
- She observed him lean on the bar and pick up a drink and drink it. She asked the bartender what the drink was and he said he did not know.
- The bartender then took the two Heinekens from the patron and poured them down the sink.
- She did not have any discussion with the bartender about the patron being intoxicated or "cut off".
- "The bartender said he did not know who served the patron, and that the two Heinekens might not have been his."
- She asked the bartender how the patron had paid for his drinks. The bartender indicated that the patron had a tab and paid with interact.
- She obtained a copy of the receipt. It was for more than a hundred dollars. Forty dollars of it was tip.
- She had no interaction with the patron after the police engaged him.
- She spoke to the bar manager and issued a contravention notice.
- She identified her notes in exhibit #1.
- "The police were dealing with the individual. If the police were not there I would have questioned the individual myself- but as the police were there, I decided to allow them to do the interrogation.
- "I made the notes because in my mind the person was intoxicated. I had determined he was intoxicated. That is why the notes don't say: intoxicated."
- She did not tell the bartender that she thought the patron was intoxicated.
- "I assumed that the bartender thought he was intoxicated when he dumped out the two beers."
- "Hanging on to the beers, is a level of intoxication indicator. He does not want to be without it. Whether they belong to someone else- if he picked

them up from the bar and they were just sitting there- is irrelevant because the bartender allowed him to take them."

The Licensee called the owner/principal shareholder. He testified as follows:

- He is a very experienced licensed establishment operator.
- He has owned the Mirage Cabaret for ten years.
- There were approximately 20 employees, including eight or nine door people and security working on May 27 and 28, 2006.
- The club has a very advanced electronic security system that identifies every patron who enters.
- He has had no complaints from his residential or commercial neighbours.
- The club has a sizeable policy manual, and management conducts meetings regularly to enforce rules and guidelines.
- He has arranged for police and the inspector to meet with him to discuss issues such as how to instruct staff on their obligations and how to deal with intoxicated patrons.
- He did not review the video surveillance of the patron in question because he believes in the police department and the liquor inspector.
- Based on the opinion of the police and the inspector, "we obviously let someone get more intoxicated than they should have."

The Licensee called the Manager. He testified as follows:

- He was the general manager on the relevant date.
- It was a busy night. He remembers the anti-violence bar initiative team showing up. They had been there before.
- There was 20 or 25 in the anti-violence bar initiative team- most in uniform.
- He did not see them talking to patrons or checking ID as they usually do.

- The assistant manager radioed him and told him that the police were talking to a patron.
- The patron was a regular. The manager knows that the patron spends lots of money and buys his friends lots of drinks. The patron had signed off of his tab so the manager thought the patron was leaving. He heard that the patron was intoxicated and left the situation to the police.
- For spitting on the floor, the patron was barred for a short time. Showing disrespect for the establishment is not tolerated.

## **SUBMISSIONS**

The Branch submitted that the patron was intoxicated and that the bartender knew this and that is why the bartender took the drinks away. The patron was in possession of two beers, and was put in a taxi and sent on his way. This implied knowledge of his intoxication. The establishment allowed the patron to remain until the police removed him. The testimony that the patron was allowed to remain was not contested.

The Licensee submitted that the sergeant did not notice the patron on his own. The patron was pointed out to him. There is no evidence that the patron drank any alcohol. The evidence is that the two beers that the patron got from the bar counter were not his. The bartender took away the beers, but the evidence does not disclose the reason. The liquor inspector left the determination of intoxication to the police. She did not reach that conclusion herself.

## **ANALYSIS AND DECISION**

In order to find that the contravention had occurred, I must be satisfied that the individual components of the contravention have been established. The burden of proof is the balance of probabilities.

The components of the contravention require that there be an intoxicated person, and that the person be permitted to remain in the establishment.

I agree with the Branch advocate that the patron was allowed to remain. The evidence is uncontroverted that the patron was in the establishment when the police arrived, had been there for some time, and had not been invited to leave.

The more significant issue in this case, is the characterization of the patron as intoxicated.

The police sergeant testified that he thought the patron had "a full load of alcohol on him." I find that this language falls short of a proclamation of intoxication.

If I were to determine that the sergeant thought the patron was intoxicated, I find that it would be insufficient to rely exclusively upon the experience of this witness in making my determination. The sergeant might be quite skilled, and competent to make a determination of intoxication for the purposes of his policing obligations. However, if I were to simply rely on the opinion of the officer, without consideration of the factual evidence of intoxication, there would be no purpose to the hearing process. Such reliance would stand for the proposition that the opinion of an experienced officer is conclusive. This is not my understanding of the intent of an enforcement hearing.

I am being asked to determine whether or not the patron was intoxicated. In order to do so, I require evidence relating to the patron's intoxication or otherwise.

If the opinion evidence of an expert were to be relied upon exclusively for this purpose, then it would be proper to tender the witness as an expert and seek the adjudicator's acceptance of his qualifications.

Alternatively, the Branch may seek to use the eyewitness evidence of the police officer to establish a pattern of behaviour that speaks to the patron's intoxication.

Finally, the evidence of the officer's opinion, without qualification as an expert, might provide some value if that opinion is based upon factual observations such that the officer's conclusions flow from the observations.

I find that the inspector deferred any personal evaluation of intoxication to the sergeant. She provided little independent evidence of the patron's intoxication in her testimony. Though she concluded that the patron was intoxicated, she failed to provide any evidence of indicia of intoxication and ultimately she relied on the sergeant's determination of intoxication.

In support of that conclusion, the inspector assumed that the bartender thought the patron was intoxicated because the bartender dumped out the beers that were in front of, or in the patron's hands. I note that there is sufficient evidence to conclude that it was a reasonable probability that the beers belonged to someone else.

The inspector sought further confirmation of intoxication with the aid of the patron's bar tab. I find she was looking for this evidence because she felt it necessary to bolster her supposition that the patron was intoxicated. The bar tab available was only a total on a debit receipt. It did not disclose any detail regarding the amount of alcohol that the patron purchased.

The inspector nevertheless, seems to have made the assumption that the patron drank heavily, in part because of the large tab.

The principle shareholder's testimony seems at first blush to admit that the patron was intoxicated. On careful consideration of his evidence, however, I find

that he had no direct or indirect knowledge of the patron's behaviour such that he would be able to come to any conclusions about intoxication. The principle shareholder simply relied on the opinion of the police sergeant and adopted that view as his own. Accordingly, I find that the principle shareholder's testimony regarding the patron's intoxication is without factual underpinnings and I disregard it.

The only evidence of the manager that the patron was intoxicated was that he had "heard" it to be so, and that the patron spat on the floor. This clearly is not significant in terms of concluding that the patron was intoxicated.

I find that the evidence does disclose some characteristics consistent with intoxication, but these signs are also consistent with other conditions, including extreme tiredness. The evidence is that the patron was leaning on the bar, had his head and eyes lowered, stepped from foot to foot, moved slowly, at one point slurred his speech and had some trouble pronouncing words. I note that the sergeant had conversations with the patron and made no observations of the patron's breath or alcohol smell or other typical indicators of intoxication.

I find there is little evidence of this patron drinking any significant amount of alcohol on the premises. Although actually consuming liquor at the establishment is not a component of the alleged contravention, such evidence is often valuable in establishing intoxication. Further, the fact that his bill for the night was sizeable is not evidence of the consumption of liquor. There was no indication of how much of that bill might be attributable to non-intoxicating purchases such as food and non-alcoholic substances, or if the purchases were all consumed by the patron.

Contrary to the evidence of the principle shareholder, I do not find it obvious that the Licensee "let someone get more intoxicated than they should have".

I find insufficient evidence to establish that the patron was intoxicated as alleged. Accordingly I find the contravention has not been proven.

Name Sheldon M. Seigel  
Hearing Adjudicator

Date: March 5, 2007

cc: Surrey RCMP

Mike Clark, Regional Manager  
Liquor Control and Licensing Branch

Shahid, Noorani, Branch Advocate  
Liquor Control and Licensing Branch