



**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:	Royal Canadian Legion, Branch No. 128 dba Royal Canadian Legion (RCL) PO Box 127 Wells, BC V0K 2R0
Case:	EH06-103
For the Licensee	Doug Merrick, President, RCL Branch 128
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	Edward Owsianski
Date of Hearing	November 2, 2006
Place of Hearing	Quesnel, BC
Date of Decision	January 4, 2007

**INTRODUCTION**

The Royal Canadian Legion Branch No. 128 holds Liquor Primary Licence - Club No. 073037. The hours of sale are 11:00 a.m. 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 licence is, as are all liquor licenses in the province, subject to the terms and conditions contained in the publication, 'Guide for Liquor Licensees in British Columbia'. The establishment is located in Wells, BC.

**Alleged Contravention and Proposed Penalty**

The branch's allegations and proposed penalty are set out in the amended Notice of Enforcement Action (the "NOEA") dated October 18, 2006.

The branch alleges that on May 4, 2006, (subsequently amended to May 5, 2006; see 'Preliminary Issue' below) 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 four (4) day suspension of the liquor licence, (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 11 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 4 - 7 days and/or a monetary penalty of \$5000 to \$7000.

The licensee disputes the contravention.

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**RELEVANT STATUTORY PROVISIONS*****Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*****Drunkenness**

**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.

**ISSUES****Preliminary Issue:**

At the outset of the hearing the branch advocate made an application to change the date of the alleged contravention from May 4, 2006, to May 5, 2006. He argued that the change was not prejudicial to the licensee as the licensee's representative was aware of the incident giving rise to the alleged contravention and the date on which it occurred.

The licensee's representative agreed that he was aware of the incident and was aware that it did not occur on May 4, 2006, however, he had hoped to use the error as part of his defence.

A decision was made that it is within the jurisdiction of the adjudicator to amend the date of the alleged contravention and in the circumstances here there was no prejudice to the licensee. The amendment was made and the hearing proceeded on the basis of the amended alleged contravention.

**Substantive Issues:**

1. Whether the licensee contravened Section 43(2)(b) of the *Act* as alleged by the Branch.
  2. If so, what penalty, if any, is appropriate in the circumstances?
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**EXHIBITS**

1. LCLB Book of Documents
2. Licensee Book of Documents

**EVIDENCE - The Liquor Control and Licensing Branch**

**Witness A**, a constable from the R.C.M. Police (RCMP) previously posted to the Wells Detachment testified by way of a teleconference call as he has since been transferred away from the area. He testified that he has been a member of the RCMP since July 2003 and was previously employed as a paramedic for eight years. He has received training in dealing with intoxicated persons as part of his RCMP recruit training, training in the use of a roadside screening device to detect impaired drivers and is a certified breathalyser operator. As a police officer and paramedic he has dealt with intoxicated persons on numerous occasions whose state of intoxication has ranged from mild intoxication to unconsciousness. As a police officer he has conducted hundreds of inspections of licensed establishments and has attended at the Wells Legion on approximately 20 previous occasions.

He testified that on May 5, 2006, he was working the evening shift from 4:00 p.m. to 2:00 a.m. in uniform performing general police duties. At approximately 6:00 p.m. he received complaints from two persons that one of the male patrons at the legion was heavily intoxicated, threatening people and generally making a nuisance of himself. Other duties prevented him from attending at the legion until approximately 9:30 p.m. Once inside he received further complaints about the behaviour of the male patron. Walking through the legion he observed the patron in question at the bar with a female acquaintance. The bartender was standing behind the bar. The male patron had a beer in his hand and two shot glasses of liquor on the bar in front of him and his female acquaintance. Both appeared to be intoxicated. The male appeared heavily intoxicated, he was leaning against the bar and appeared to need its support. He had a glazed look, his eyes watery

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and his face flushed. His speech was slurred and he often repeated himself when talking. He was uncooperative and his appearance was markedly different from that of the previous day when he had dealt with him. The female showed similar symptoms but to a lesser extent than the male. She was crying and upset with the constable over a previous incident he had dealt with. The constable told her to leave the establishment. She did so while shouting at him.

The constable testified that he spoke to the bartender and told him to cut the male patron off from further liquor service. The bartender said, "yes, absolutely", he was just about to do so. The officer told the male patron to leave. The patron began swearing at the officer and refused to leave. The constable took the liquor from the patron and told him to either leave on his own or be arrested. He offered him a ride home. The officer testified that in small communities where police officers are on duty by themselves it is often necessary to employ alternate means of resolving issues rather than just strict enforcement. After several minutes the patron refused the ride, left the establishment and walked home.

The constable testified that he later discussed the incident with the liquor inspector responsible for the area. Following this discussion and a review of the detachment files he made a decision to issue a Licensed Premises Check form (LPC) (exhibit 1, tab 3) to the legion. The LPC was completed on May 24, 2006, and issued to the legion treasurer with a copy forwarded to the liquor inspector.

He testified that in the intervening time he had had several conversations with the bartender on duty the night of the incident. The bartender was upset over the constable's attendance at the legion on the night of the incident and was particularly upset that an LPC had been issued. He learned that the bartender did not have the required "Serving It Right: Responsible Beverage Service" certificate.

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The constable completed a police report outlining the details of the incident and his subsequent dealings with the bartender (exhibit 1, tab 4). He explained that the report shows the date of incident as being May 6, 2006. This was an error, the correct date should be May 5, 2006. The report was forwarded to the liquor inspector. [I pause to note that portions of the report containing the identity of the persons making the complaint to the officer or relating to other matters have been blacked out. This has been done to protect the privacy of persons not directly involved in this matter. This is particularly necessary in a small community.]

**Witness B**, a Liquor Inspector testified that he is responsible for the geographical area in which Wells Legion is located and is responsible for keeping the branch files for the establishment. He testified that the Liquor Primary Licence – Club (exhibit 1, tab 7) for the legion allows liquor service seven days per week for members and guests. The legion must maintain a register of guests attending. The licence is subject to the terms and conditions contained in the branch publication “Guide for Liquor Licensees”. A copy of the Guide has been provided to all licensees. The Guide in effect at the time of the alleged contraventions is found at exhibit 1, tab 8. He referred to excerpts from the Guide dealing with: “Liquor Primary – Club” (p 1); “Updates” (p 2); “Your Role as a Licensee” (p 3); “Exceptions for club licences” (p 8); “Serving It Right” (p 10); and “Over-service and Intoxicated Patrons” (p 13).

He first became aware of the problem occurring at the Legion on May 5, 2006, when he received a phone call from the constable at the Wells detachment, followed by the receipt of the LPC and the police report (exhibit 1, tabs 3 & 4). He subsequently issued a Contravention Notice (CN) to the Legion (exhibit 1, tab 2) and spoke with the legion president and the bartender on duty the night of the incident. The bartender said that he was working in the legion as an unpaid volunteer and had been doing so for the past six months. He admitted that he did not have a “Serving It Right” certificate at the time but had since obtained one. He said that he had had previous experience running a bar as he had

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owned a bar in Blaine Washington in 1989. He denied that the male involved in the incident was intoxicated. The president discussed legion policies concerning staff meetings and liquor service. He advised that the policies are not written, but discussed verbally. The inspector made notes of his conversations with the bartender (exhibit 1, tab 5) and the legion president (exhibit 1, tab 6). He subsequently completed a Notice of Enforcement Action report (exhibit 1, tab 1) which was sent to the legion.

The Inspector testified that he is responsible for maintaining the Branch records for this licensed establishment. He is aware of other problems occurring at the establishment and referred to copies of documents from Branch files:

- January 9, 2002 - CN and NOEA issued for permitting a person to become intoxicated in the legion on December 14, 2001 (Exhibit 1, tab 9)
- February 14, 2002 – Waiver Notice signed by the then president of the legion agreeing that the contravention occurred and accepting a four (4) day licence suspension penalty (exhibit 1, tab 10)
- July 22, 2003 – CN issued for permitting intoxication on April 24, 2003 (exhibit 1, tab 11)
- October 8, 2003 – CN issued for selling liquor to an intoxicated person and permitting an intoxicated person to remain in the legion on April 30, 2003. (exhibit 1, tab 12)
- February 26, 2004 – Enforcement hearing decision letter in which a finding is made that the contraventions alleged to have occurred on April 30, 2003 were not proven (exhibit 1, tab 13)

### **The Licensee**

**Witness C**, testified that she has worked at the legion for the past 10 – 12 years in various capacities and currently works as a bartender. She was not working the night of May 5, 2006. She holds a “Serving It Right” certificate and has

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received training from the bar manager on operating the cash register, serving liquor and how to take care of customers. New bartenders in training work with an experienced bartender for 3 – 4 days. The legion has rules about how not to serve persons who are impaired and how to look for signs are posted on the notice board.

**Witness D**, testified that he is currently the Secretary-Treasurer for the Wells Legion. He introduced the licensee's book of documents (exhibit 2). He was present the night of May 5, 2006 and knows the male patron alleged to be intoxicated. The patron was present for the meat draws held earlier in the evening (exhibit 2, tab 5). He observed the patron and a female acquaintance talking with the police officer at the bar but didn't hear much of the conversation. Although he didn't pay much attention to the male patron he appeared to be fine, his appearance normal. He did not appear to be stumbling too badly. He had been playing pool at one point in the evening.

The witness referred to copies of documents in the licensee's book of documents (exhibit 2):

- Tab 6 – Wells Legion Charter issued in January 1939
  - Tab 7 – Legion House Rules posted on bulletin board inside the legion
  - Tab 8 – Notices posted on the bar inside the legion
  - Tab 9 – Various notices for staff posted on the bulletin board
  - Tab 2 – Statement of legion patron who was present May 5, 2006. Male patron was not observed threatening or causing problems with other patrons
  - Tab 3 – Statement of bartender working May 5, 2006. Male patron was not observed causing problems prior to the arrival of the police officer
  - Tab 4 – Statement of legion patron who was present May 5, 2006. Describes the behaviour of the male patron as “the loveable clown that he has always been” and not a threat to the peace. Describes the patron's
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condition as “no more or less intoxicated than anyone else in the room, which is to say, under our present-day laws we were *all* intoxicated”

## **SUBMISSIONS**

### **The Licensee**

The licensee representative submitted that the bar manager who was also the head bartender for the legion left the community near the end of 2005 leaving them short-handed. They had difficulty getting volunteers for the position and getting a volunteer trained. The bartender working the night of the incident volunteered to help fill the vacancy and had done so for about 4 – 6 months. The rules and notices are posted prominently in the legion for the guidance of staff and patrons. The legion has operated since 1939 with only one infraction, not a bad record.

He submitted that the only evidence that the male patron was intoxicated was that of the police officer. It was a judgement call made without supporting evidence from a breathalyser reading or analysis of a blood sample. The officer admitted to having made a mistake on the date he had written in his report. His judgement that the patron was intoxicated may be a further mistake. Other witnesses did not agree with his assessment. His judgement may have been affected by an earlier interaction with the patron wherein it appears likely that they clashed.

## **REASONS AND DECISION**

Having considered all of the evidence, I find on a balance of probabilities that on May 5, 2006, the licensee or its employee permitted an intoxicated person to remain in the licensed establishment and in so doing contravened section 43(2)(b) of the *Act*.

In reaching this decision I accept the evidence provided by the RCMP constable. He has considerable experience and training in identifying intoxicated persons. I

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prefer his assessment to that of witness D for the licensee. I do not find that the police officer's assessment was made on the basis of complaints received or was coloured by any previous dealings with the male or female patrons. I am satisfied that his assessment was made on his observations at the time of the incident. He dealt with the situation in a professional, fair and even-handed manner. The statements of other patrons of the legion provided in exhibit 2 were not helpful. I note that the statement of the patron at tab 2 indicates that he left at 8:00 p.m. following the meat draws. The incident took place 1½ hours later at 9:30 p.m. The statement of the patron at tab 4 provides the interesting observation that, "we were *all* intoxicated". The bartender in his statement at tab 3 does not comment on the state of sobriety of the patron, he states only that the patron was not a problem prior to the arrival of the police officer even though he had consumed several beers.

### **Due Diligence**

The licensee is entitled to a defence to the allegations of the contraventions if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon, and problems dealt with. I am satisfied that has not occurred in this instance. The licensee had entrusted the operation of the establishment to a bartender who had not acquired the certification and training necessary for the position. While the bartender had some previous experience, that experience was gained in a jurisdiction outside of the province where there may be differences in the rules. In conclusion, I am satisfied that a defence of due diligence has not been made out.

### **Penalty**

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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; and
- 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 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 purpose of the branch in bringing about enforcement action and in determining the appropriate penalty is to encourage voluntary compliance. The record indicates that this establishment has operated with few problems. I am concerned however that those problems that have been identified have related to excessive levels of intoxication of patrons. I am concerned that a degree of complacency has developed within the membership and guests of the licensee and that does not bode well for future voluntary compliance.

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Having considered the evidence, I am satisfied that a penalty is necessary to ensure future voluntary compliance.

In the circumstances of this case, I find that the minimum penalty of a four (4) day suspension is necessary and appropriate.

### **Order**

Pursuant to section 20(2) of the *Act*, concerning Liquor Licence number 026040, I suspend the liquor licence for a total of four (4) days starting as of the close of business Thursday, February 1, 2007, and continuing on successive business days 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 *Regulations* to the *Liquor Control and Licensing Act*.)

Since I do not know whether the establishment would normally be open seven 7 days per week as of February 1, 2007, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence be held by the Branch or the Wells Detachment of the RCMP from the close of business Thursday, February 1, 2007, until the licensee has demonstrated to the Branch's satisfaction that the licensed establishment has been closed for four (4) business days. A suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer.

[ORIGINAL SIGNED]

Edward W. Owsianski  
Enforcement Hearing Adjudicator

Date: January 4, 2007

cc: R.C.M. Police Wells Detachment

Liquor Control and Licensing Branch, Surrey Office

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Attention: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Surrey Regional Office

Attention: Shahid Noorani, Branch Advocate

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