



**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:	Tabor Arms Pub Ltd. dba Tabor Arms Pub 100 Tabor Blvd. S Prince George, BC V2M 5T4
Case:	EH07-170
For the Licensee:	Sam Manhas, Cap Manhas, Tom Brkich
For the Branch:	Tania Cogan
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	April 18, 2008
Place of Hearing:	Prince George, BC
Date of Decision:	May 5, 2008

INTRODUCTION

The licensee operates an establishment with a Liquor Primary Licence (LP). The hours of operation indicated on LP No. 037622 are 9:00 a.m. to midnight Sunday through Thursday, and 9:00 a.m. to 1:00 a.m. Friday and Saturday.

On the business day of November 29, 2007, two liquor inspectors and a police constable attended at the establishment to complete a Licensed Premise Check. As a result of the inspection, the establishment was served with a contravention notice. That notice included an allegation that the licensee permitted intoxicated persons to remain in the premise contrary to the *Liquor Control and Licensing Act* (Act).

ALLEGED CONTRAVENTIONS

The Liquor Control and Licensing Branch (Branch) made allegations and recommended enforcement action as set out in the Notice of Enforcement Action dated January 2, 2008. The branch alleges that on November 29, 2007, the licensee contravened s. 43(2)(b) of the *Act* by permitting an intoxicated person to remain in the part of a licensed establishment where liquor is sold, served or otherwise supplied.

RELEVANT STATUTORY PROVISIONS

See Appendix "A"

ISSUES

1. Did the licensee permit an intoxicated patron to remain in contravention of s. 43(2)(b) of the *Act*?
2. If so, is a penalty warranted, and what is the appropriate penalty?

EXHIBITS

Exhibit No. 1: Single leaf of paper submitted by a witness for the licensee purporting to be a printout of the witness's debit charges for November 28, 2007.

Exhibit No. 2: Branch's Book of Documents.

EVIDENCE

The branch called evidence from two liquor inspectors and a police constable from the local detachment of the RCMP.

A liquor inspector testified that she attended the establishment on November 29, 2007, at approximately 10:10 p.m. with another inspector to conduct a licensed premise check. She noted a server and a bartender on duty and one employee preparing food in the kitchen. She counted approximately 39 patrons in the establishment.

The inspector made observations specifically relating to four of the patrons:

Patron #1 approached the inspector and questioned her about football pools, and why such pools were not allowed in bars. He was aware that the inspector was an employee of the branch. He pursued his questioning loudly and pursued answers to an unreasonable level. His eyes were bloodshot. His speech was slurred. After observing him for 10 minutes, she concluded that he was intoxicated.

Patron #2 was at the end of the bar, talking with Patron #3. Patron #2 was male, tall, and blonde. He was leaning against a pillar and falling into it as he spoke. He was swaying and having an argument with Patron #3.

Patron #3 was female. Throughout the questioning by Patron #1, the inspector watched Patrons #2, and #3. Then, when she successfully separated herself from Patron #1, the inspector asked the bartender if she had noticed that Patrons #2, and #3 were intoxicated. The bartender said that Patron #2, and #3 were indeed intoxicated, but that they were regular guests and were not being provided with any more liquor. The inspector noted that Patron #2 had bloodshot eyes that he held partially closed, and he was spitting and slurring his words. She concluded from her observations that Patron #2, and #3 were intoxicated.

Patron #4 overheard the inspector talking to the bartender. He approached the inspector aggressively and began to yell. He said, "I am fucking intoxicated. What are you going to do about it?" The Inspector felt intimidated and began to back out of the establishment. Patron #4 pursued her toward the door. The second female inspector accompanied the first and they fled the establishment. Patron #4 pursued them into the parking lot. The inspectors locked themselves in their car. Patron #4 stopped to talk to a taxi driver, and then returned to the establishment. The inspectors watched Patron #4 enter the bar and then called the police for assistance.

At 11:10 p.m. an RCMP police constable attended. The inspector asked the constable if he would accompany her and her partner into the bar so they could complete their licensed premise check. The inspector asked the constable to ensure the safety of her and her partner.

The two inspectors and the RCMP constable entered the bar. The inspector asked the bartender if she recognized that Patron #4 was intoxicated and should be removed from the red lined area. The bartender said she knew he was intoxicated, but she was serving him water at that point.

The inspector watched Patron #4 from afar, but did not make contact with him. She concluded from his actions that he was intoxicated.

The inspector watched as Patron #5 approached the constable, and began to poke him in the chest with her finger. Patron #5 then began to yell at the constable. The patron was slurring her words and having a hard time speaking- though she was loud. The inspector concluded that Patron #5 was intoxicated.

The inspector identified all of the documents in Exhibit No. 1, including the notes of each of the branch witnesses and the other female inspector, the two compliance meeting records, and the Guide to Liquor Licensees excerpt. She indicated that the compliance meetings produced commitments from the licensee to add signage, change lighting, and meet with the local residents to reduce the negative impact of the establishment on the immediate community. The inspector testified that the licensee satisfied very few, if any, of those commitments since making them.

The constable testified that he was dispatched to protect the liquor inspectors while they completed a licensed premise check.

He arrived at the establishment at 11:10 p.m. on November 29, 2007, and met with the inspectors in the parking lot. He indicated that he was advised by dispatch that a patron of the establishment had chased the inspectors out of the pub. The inspectors asked him to accompany them into the pub to ensure their safety while they completed the licensed premise check.

Inside the pub, he stood by the door. Soon a female began trying to make conversation and then she started pointing her finger at him and poking him. She slurred her words, swayed back and forth, had glassy eyes and a reddish complexion, and she smelled of liquor. He demanded that she move along. The constable concluded that Patron #5 was intoxicated. He took no further action with respect to Patron #5, or any other patrons as his task was to ensure the safety of the inspectors, to which object he devoted his full attention.

While the constable was in the pub, he observed Patron #4 sitting quietly at a table.

A second liquor inspector testified. He said that he was not present on November 29, 2007, but he has been responsible for that region for some years.

He said that since the licensee took over the establishment in 2006, there have been many complaints. Some of the complaints have been anonymous, some of the complainants have identified themselves, and many complaints have come from an identified individual who represents a group of neighbours unhappy with the establishment. He indicated that the complaints involve noise and incidents that regularly occur in the pub's parking lot, near neighbouring residences. The incidents involve violence, minors, gross intoxication, and drinking in the parking lot. The inspector confirmed that he fully investigated all of the allegations and satisfied himself that many of them were indeed meritorious.

The inspector testified that he discussed the complaints with the licensee and the licensee made several commitments to make changes to address the issues. In a subsequent meeting, the inspector ascertained that the licensee had not taken steps to follow through on those commitments.

Patron #1 testified that he was not intoxicated when he was talking with the liquor inspector. He said he went to the pub directly from work and had three pints of beer over the three hours he was at the pub. He acknowledged the conversation with the liquor inspector but denied that he was loud or difficult.

He said that the establishment was a neighbourhood pub frequented by regular patrons. He goes there to socialize with the regulars and to play pool and have a few drinks. He indicated that he never felt unsafe in the establishment. He also acknowledged that he and other customers occasionally "have one too many," and that the waitresses "have sent me home a few times without keys."

Patron #1 also indicated that if he has more than one beer per hour he is likely over the legal driving limit of .08 blood alcohol ratio and intoxicated and that on November 29, 2007, he had three beers in two hours. He said that he had only finished a single beer when he spoke with the liquor inspector.

The bartender testified that she has never felt unsafe at the establishment in the year that she has worked there. She said that Patron #4 was intoxicated when he approached the liquor inspector, but that she did not notice he was intoxicated until then. At that point she stopped serving him. She indicated that she asked him to leave, but he did not leave, and she did not think he was a danger to anyone.

She testified that "when there is an intoxicated person in the pub, if they are not someone I see usually, I ask them to leave. If they are regulars, I don't kick them out but I don't serve them. I won't make them feel bad."

The witness also said that she treats regulars and strangers differently, and although she asks both to leave, she doesn't make the regulars "look stupid." She was not able to answer how she treats the regulars and strangers differently.

The server who was working that night, also testified. She said that she has never felt unsafe at the bar. She testified, "We treat regulars who are intoxicated differently. We stop serving them drinks and let them know that they probably should go home and arrange a ride, even though I know they are intoxicated and should leave right away."

The bartender acknowledged that Patron #4 was intoxicated, but denied that Patron #1 was intoxicated when the inspector was present. She said she remembers Patron #2 and Patron #3 standing and talking by the kitchen for about 20 minutes. She denied that Patron #3 was intoxicated but did not remember if Patron #2 was intoxicated. She said Patron #2's speech was slurred and his eyes might have been red, but she is not sure if that meant he was intoxicated.

She also said, "At times when we have intoxicated patrons, it depends on the situation. If they are clearly way too intoxicated, then they would need to leave. If they are just a little intoxicated, they should slow down a little bit or should take a break and that is when I would offer them food."

The licensee was represented by three members of the management team. They each identified themselves as the licensees'. I noted that the licensee was a corporation and enquired as to whether the three individuals were officers of the corporate licensee. They each replied in the affirmative and indicated that they were the "owners."

The licensee's indicated at the outset of the hearing that they were not going to be presenting evidence. Throughout the hearing, I stopped them frequently to indicate that they were presenting evidence couched in the form of questions to the witnesses. When on several occasions, I offered to administer a form of oath, one or another of them indicated that they were not going to give evidence and undertook to modify their questioning of witnesses. Ultimately, I concluded that the licensee's were indeed presenting evidence and I consider their comments as such.

One of the corporate officers of the licensee said:

The staff knows the rules. They know about misconduct and misbehaviour. We have a different perception as to how we handle people differently. Regulars we handle differently than people we don't know. I know this goes against the *Act*, but a regular we treat differently. Our general rule of thumb is that if a person is intoxicated and he is a regular we don't ask him to leave right away. We give them a chance to sober up. We are good with the keys please thing, but we do not remove them. There is not a safety issue there.

Regarding that night, they are regulars, so you say I have to kick them out? Well I won't do that and I'm going to be adamant about that. I'm going to let them stay and sober up. It is not a safety issue.

SUBMISSIONS

The branch submitted that each of the identified patrons was intoxicated and the licensee took no steps to remove any of them, contrary to the *Act*.

The branch also submitted that the inspectors described over twenty complaints associated with the operation of the establishment and two compliance meetings to address corrective measures, and the licensee failed to follow through on any of its commitments to implement those measures.

The licensee submitted that there were mistakes made *that night*. The licensee stated that they have not taken the position that the patrons were not intoxicated, but for Patron #1. According to the licensee, Patron #1 was not intoxicated.

The licensee submitted that Patron #4 was barred from the pub after November 29, 2007, and so was dealt with appropriately. One of the management team submitted “[Patron #4] was intoxicated. If that warrants seven days [suspension] then that is what you have to decide. If I felt the public was at risk, it is my job to remove him. There was no safety issue though.”

ANALYSIS AND DECISION

Patron #1

The licensee denied that this patron was intoxicated. Two of the witnesses confirmed that position. A liquor inspector, however, testified that she was in conversation with the patron for some time. She described his observable symptoms. The inspector is a skilled and experienced observer. The patron also testified at the hearing. I found him to be loud and aggressive in terms of his speech patterns. He provided a comprehensive timeline as to his departure from work and attendance at the pub. He was forthright about sometimes having too much to drink, but was adamant that he only had one drink and was in the pub less than one hour when he spoke with the inspector.

I find this conflicting evidence difficult to rationalize. I find the evidence indicates that it was as likely that Patron #1 was intoxicated as it is that he was not intoxicated. The burden of proof is the balance of probabilities and therefore I am unable to conclude that Patron #1 was intoxicated.

Patron #2

The inspector testified that she concluded from his observable symptoms that this patron was intoxicated. The inspector also testified that the bartender acknowledged on the scene that Patron #2 and Patron #3 were intoxicated. The licensee provided no evidence to the contrary. I find that Patron #2 was intoxicated.

Patron #3

The inspector testified that she concluded this patron was intoxicated from the patron's observable symptoms. She also said that the bartender acknowledged that Patron #3 was intoxicated and a regular patron of the establishment. The server testified that Patron #3 was indeed a regular patron, but that she was not intoxicated on the night in question. The inspector is a seasoned observer and provided some detail as to the symptoms she observed. I accept her evidence that the bartender confirmed that Patron #3 was intoxicated contemporaneously with the inspector's observations. I note that in testifying, the bartender neither denied that Patron #3 was intoxicated, nor that she so stated on the night in issue. The server denied that Patron #3 was intoxicated, but only in general terms and without reference to any observable *indicia*. I find the evidence presented by the inspector to be more comprehensive than that of the server, and I accept in absence of evidence to the contrary, the inspector's evidence of the bartender's statement that this patron was intoxicated. I find that Patron #3 was intoxicated.

Patron #4

The evidence of this patron being intoxicated is uncontroverted. I accept the inspector's evidence that he was aggressive and conclude by the evidence that his aggression was fuelled by intoxication. I find that Patron #4 was intoxicated.

Patron #5

The evidence of the police constable is that he concluded based on his experience and the observable symptoms, that this patron was intoxicated. There is no contradictory evidence. I accept the evidence of the officer and conclude that based on the described observable symptoms and the patron's behaviour that on the balance of probabilities she was intoxicated.

Having found that four of the identified patrons were intoxicated when the inspector was in the establishment, I must now turn my attention to whether the licensee permitted one or more of these patrons to remain in the part of the establishment where liquor is sold, served, or otherwise supplied.

The area is not in dispute. Each of the intoxicated patrons was within the main service area identified by the red-lined area of the floor plan.

It is clear that both the server and the bartender observed Patrons #2 and #3. I accept as fact that the bartender advised the inspector that these two patrons were intoxicated. There is no evidence that they were removed, or that the licensee, or any of its employees, took any steps to have these patrons removed from the red-lined area. I find they were permitted to remain.

Patron #4, after chasing the inspectors from the establishment, returned and was still present 40 minutes later when the inspectors returned with the police constable. I find this patron was permitted to remain.

There is no evidence as to whether Patron #5 was observed by the licensee or its staff. The only evidence of her remaining is by the police constable who testified that after he broke off the poking incident, the patron's friends *moved her along*. In order to find that the licensee permitted her to remain, I would have to first conclude that the licensee knew, or ought to have known, that she was intoxicated and took no steps to remove her. The evidence in that regard is inconclusive and does not satisfy the burden of proof.

I find that Patrons #2, #3 and #4 were intoxicated and the licensee permitted them to remain as prohibited by s. 43(2)(b) of the *Act*.

The contravention has been proven.

PENALTY

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* 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 by the minimums set out in Schedule 4 of the *Regulations*. However, I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the Notice of Enforcement Action.

The branch's primary goal in bringing enforcement action and imposing penalties is to achieve voluntary compliance with the *Act, Regulation, and Rules*. Among the factors that are considered in determining the appropriate penalty is: whether there is a past 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.

Although this establishment has no history of like contraventions within the past 12 months, I am influenced by the reliable evidence of a history of complaints against the licensee, compliance meetings with the branch, and the lack of action on the part of the licensee to attempt to remedy those issues. I am also influenced by the licensee's comments indicating its unwillingness to comply with the legislated mandate of removing intoxicated patrons when those patrons are *regulars*.

During the hearing, the licensee and its witnesses continually repeated the claim that the pub is not an unsafe environment and that public safety was not an issue in the conduct of the intoxicated patrons, or the fact that they were permitted to remain.

The legislature has chosen to entrench certain requirements in statute, and those requirements are to be followed by the licensee. Although it is well known that public safety is the primary objective of those requirements, the licensee is not entitled to consider the objects of the legislation and interpret that legislation based on the licensee's particular view of public safety.

Further, I find that public safety was indeed in issue. I find that the aggressive actions of Patron #4 intimidated and worried the inspectors to the point that they quite properly called the RCMP for protection in the line of their duties. The inspectors acted above and beyond what would have been expected of them when they arranged to continue their licensed premise check with police support. I find that this action gave the licensee every opportunity to be fairly evaluated notwithstanding the affront to the inspectors' safety.

A liquor inspector is a representative of public interest and safety. As such, an inspector holds a special place in the community as part of a policing authority, and it is of the utmost importance that they be treated as such. As a police officer has a public duty and is afforded a measure of protection in order to preserve his function, so must a liquor inspector have that same protection. A patron's actions are not necessarily within the complete control of a licensee, however, it is foreseeable that an intoxicated patron is more likely to be a risk to the public (or a liquor inspector) than a patron who is not intoxicated.

I find that the intoxicated Patron #4 was a potential danger to the liquor inspectors. I find that permitting him to remain in the premise once intoxicated was the proximate cause of the risk and danger to the inspector.

I have taken this into consideration in assessing penalty.

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"). Accordingly, pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, section 1(1)(b), this is a first contravention. Schedule 4, Item 11, sets out the range of penalties for a first contravention of this type as four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

I feel that a penalty is appropriate in this circumstance and I feel the appropriate penalty is a seven (7) day suspension.

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 037622 for a period of seven (7) days to commence at the close of business on Wednesday, May 28, 2008, 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*)

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: May 5, 2008

cc: Prince George RCMP Detachment

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

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Tania Cogan, Branch Advocate

APPENDIX A**Liquor Control and Licensing Act [RSBC 1996] chapter 267****Drunkenness**

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.