



**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:                        | Pacific Holdings Ltd.<br>dba Silverton Lakeshore Inn<br>Box 113<br>Silverton BC, V0G 2B0 |
| Case:                            | EH08-003   |
| For the Licensee:                | William J. Heflin  |
| For the Branch:                  | Tania Cogan  |
| Enforcement Hearing Adjudicator: | Edward Owsianski   |
| Date of Hearing:                 | June 3, 2008   |
| Place of Hearing:                | Nelson, BC   |
| Date of Decision:                | June 12, 2008  |

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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## INTRODUCTION

Corporate licensee Pacific Holdings Ltd. dba Silverton Lakeshore Inn holds Liquor Primary Licence No. 028843 for the operation of a hotel pub located at 12 Lake Avenue, Silverton BC. The hours of sale are 11 a.m. to 1:00 a.m. Monday to Saturday, and to Midnight on Sunday. The capacity is 70 patrons in the main area, with patios of 34 and 18 patrons. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" ("Guide").

### **Alleged Contravention and Proposed Penalty**

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated February 20, 2008.

**The branch alleges** that on October 26, 2007, the licensee contravened section 43(1) of the *Liquor Control and Licensing Act* by selling or giving liquor to an intoxicated person or a person apparently under the influence of liquor. The proposed penalty is a four day suspension of the liquor licence (item 9 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 9 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 - \$7000.

If the above contravention is not found, the branch will ask the general manager to find the **alternative contravention** listed in the NOEA:

On October 26, 2007, the licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is a four 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 - \$7000.

The licensee disputes the contravention of selling liquor to an intoxicated person (section 43(1) of the Act). The licensee admits the contravention of permitting an intoxicated person to remain (section 43(2)(b) of the Act) but disputes the recommended penalty.

## **RELEVANT STATUTORY PROVISIONS**

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

#### **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.

## **ISSUES**

1. Did the contravention(s) occur?
2. If so, is a penalty appropriate and what is a reasonable penalty?

## **EXHIBITS**

The following exhibits were presented:

- Exhibit No. 1:               Branch Book of Documents #1, tabs 1 – 21
- Exhibit No. 2:               “Silverton Lakeshore Inn Driving Services” poster

## **EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH**

A police officer testified that he is a member of the RCMP and is a qualified Breathalyzer and Approved Screening Device operator. He has dealt with impaired driving and alcohol related offences on numerous occasions. He was in uniform working general duties during the evening of October 26, 2007, in the Slocan Lake area. At approximately 10:30 p.m. he made a routine patrol to the Silverton Lakeshore Inn to conduct a licensed premises check. There were approximately six patrons and one staff member, a female server/bartender, present. Two of the patrons were local residents and were known to him by name. They were seated by a table at the window consuming from the same glass of beer. The two approached and spoke with him. Both appeared to be “grossly intoxicated”. Their speech was slurred, they were constantly repeating themselves and their balance was poor, swaying from side to side and in a circular motion. One of the patrons was known to have physical disabilities, but the officer has observed him on occasions when he is sober and on this occasion his appearance was such that he believed the patron to be intoxicated.

The officer was there for approximately 25 minutes when the server brought another glass of beer to the patron with the known disabilities. The officer asked her, "How many more beers are you going to serve this customer?" She did not respond and may not have heard him. Both patrons drank from the glass of beer. Approximately 10 to 15 minutes later the server served another beer to the patron with the disabilities. The officer asked the server, "Listen, how many more of those are you going to serve?" She responded that she was only serving the patron with the disabilities, the other patron had been cut-off. He told her that while he may have been cut-off he was drinking half of the beer served and further, the patron with the disabilities was just as intoxicated as the other. She said, that would be the last beer served. The officer departed approximately one hour after his arrival.

The following day the officer again attended at the licensed establishment, no problems were noted. He spoke with the patron who had been identified as being cut-off the previous night. The patron told him that he had had too much drink and ended up with a large hangover making it difficult to work. The officer spoke with the owner of the establishment and advised him that he would be filing a report to the liquor inspector. The owner asked him, "Why would you do that, this is a small town."

The officer testified that he attended at the establishment on November 7<sup>th</sup> to serve a Licensed Premises Check form (LPC) to the owner of the hotel. The owner was uncooperative advising the officer to speak to his lawyer who was on the phone.

**A branch liquor inspector**, testified that he is responsible for the geographical area in which the establishment, the Silverton Lakeside Inn is located. He first learned about a possible contravention occurring at the establishment when he received an email from and spoke with the police officer that had attended at the establishment the night of October 26, 2007.

On December 4<sup>th</sup> he spoke with the employee who had been on duty the night of October 26<sup>th</sup>. She said that one of the patrons was intoxicated, but had been cut-off from further liquor service and was allowed to wait in the licensed area for a ride home.

On December 17<sup>th</sup> he conducted a compliance meeting with the owner of the establishment and the employee who had been working at the time of the alleged contravention. He testified that compliance meetings are held to ensure that the licensee is aware of the problems identified and that the problems do not continue. A decision is later made whether to take enforcement action. At the compliance meeting the owner said that one of the patrons had physical disabilities which gave him the appearance of being intoxicated. The other patron often acts the fool by pretending to be drunk. The employee said that she did not discontinue liquor service to the disabled patron, or ask either patron to leave the establishment because they were talking to the police officer. She assumed that he was conducting police business and as such she was reluctant to interfere.

The inspector was told that the policy on intoxication was; "Get them out of the pub and give them a ride if needed. He was not familiar with the poster titled "Silverton Inn Driving Services" (exhibit 2) but agreed that it was not inconsistent with what he was told. He agreed that the practice would prevent impaired driving. He was told that both patrons have been barred from attendance at the pub, one who because of his disabilities looks drunk all of the time. The other because he pretends to be drunk.

The owner told him that in the future he would instruct staff to ask all patrons to leave if they were at a table with a police officer. If a police officer sat at a table with patrons for more than five minutes, he would ask the officer to leave and conduct police business elsewhere. The inspector made notes of the meeting (exhibit 1, tab 11) and completed a Compliance Meeting form (exhibit 1, tab 9).

He reviewed the branch file for the establishment. In his testimony he referred to copies of documents from branch files:

- Exhibit 1, tab 6; the Liquor Primary Licence in effect at the time of the alleged contravention. It is subject to the terms and conditions contained in the branch publication "Guide for Liquor Licensees".
- Exhibit 1, tab 5; the approved floor plan for the establishment.
- Exhibit 1, tab 3; LPC received from the RCM Police officer.
- Exhibit 1, tab 15; a copy of the "Guide" in effect at the time of the alleged contravention. He referred to excerpts from the Guide dealing with: "Over-service and Intoxicated Patrons" (p13)
- Exhibit 1, tab 10; Declaration signed by the owner of the establishment on March 14, 2007, that he attended an information session on operating the establishment in compliance with the Act, Regulations and the terms and conditions of the liquor licence. Intoxication was among the subjects discussed.

The inspector prepared a Contravention Notice (exhibit 1, tab 4) and a Notice of Enforcement Action (NOEA) (exhibit 1, tab 2) wherein he alleged the contravention and recommended a penalty. He testified that he felt that enforcement action was necessary due to the evidence that two intoxicated patrons were permitted to remain in the establishment and were continued to be served liquor. Intoxication is a significant public safety issue as intoxicated persons can be a danger to themselves or others. In the circumstances he recommended a four day suspension penalty.

## **EVIDENCE - THE LICENSEE**

**The principal of the corporate licensee** testified that he took over the operation of the establishment on March 1, 2007. At that time he instituted a ride home program for any persons needing a ride (exhibit 2).

He was not at the establishment at the time of alleged contravention on October 26, 2007. He knows the two patrons who are subject of the alleged contraventions. One is "quite handicapped", he moves slowly and can barely walk. He has balance problems. He has a speech impediment making it difficult to understand him. The other patron is a known heavy drinker. He is also known as a "wannabe actor" who often pretends to be drunk. He has given both of them a ride home in the past, even if they have not been drinking at the establishment but show up drunk and are refused entry. He has since barred both patrons.

He has since instructed staff that if an intoxicated person is waiting for a ride, he/she is to wait outside of the licensed area. He believes that the server on duty at the time of alleged contravention would have had the patron leave, were it not that the patron was talking to the police officer. He questioned why the officer, who was present for approximately one hour, did not take action to have the patron removed. The server was unsure what to do given the officer's attendance and interaction with the two patrons. Staff all possess a "Serving It Right: Responsible Beverage Service" certificate (S.I.R.) and have been told what their responsibilities are.

He disagreed that he was uncooperative with the officer when he came to issue the LPC. He did not know what papers the officer had and he wanted him to speak with his lawyer.

**The server on duty** the night of the alleged contravention testified that she has a S.I.R. certificate and has worked at the establishment for approximately two years. On the night of the alleged contravention she had cut-off one of the patrons from liquor service prior to the police officer's attendance. She knows the other patron well and was certain that he was not intoxicated. He has balance problems and can barely walk. He also has speech problems. He looks the same drunk or sober. She knew that the patron she cut-off was drinking from the other patron's beer and she would have required him to leave were he not talking to the officer. The establishment has a ride home program. She makes the decision whether a person needs a ride home and advises the owner



who drives them home. She agreed that she used to allow intoxicated persons waiting for a ride to wait in the licensed area. She now knows that they must wait in the lobby outside of the licensed area.

### **LICENSEE SUBMISSIONS**

Counsel submitted that there is a conflict in the evidence whether the patron with the disabilities was intoxicated at the time he was served at the establishment. Counsel agreed that it is not a valid excuse for the licensee that the server did not prevent the other patron, who was intoxicated, from consuming from the other's glass of beer. She misinterpreted the conflict of authority with the police officer present and felt that the patrons and the officer were engaged in police business and it was not up to her to take action. It is admitted that intoxicated persons were allowed to remain in the licensed area while waiting for a ride, but it was to pursue a worthy goal of waiting for a ride. Staff is now aware of the requirement and will comply. In the circumstances, a penalty is not necessary. A four day suspension will create a significant loss to the licensee.

### **REASONS AND DECISION**

The licensee has admitted the alternative contravention of permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. That being the case, it is not necessary to consider whether the contravention of selling or giving liquor to an intoxicated person or a person apparently under the influence of liquor.

On the evidence, I find that on October 26, 2007, the licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

## **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 to follow the minimums set out in Schedule 4 of the *Regulations*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the NOEA.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. 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.

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 this incident. The range of penalties for a first contravention of section 43(2)(b) of the *Act* pursuant to the *Regulation*, Schedule 4, item 11 is a four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

Intoxication is a serious public interest issue that can have grave consequences for individuals, families and communities. The public expects that a licensed establishment will operate within the law, and requires regulatory agencies responsible for overseeing their operation to act within their authority, to ensure that licensees are held to high standards of legality and responsibility. In the circumstances of this case, a patron known to the staff at the establishment as a heavy drinker, became intoxicated to the point of being cut-off from further liquor service. The patron was permitted to remain in the establishment ostensibly for the purpose of waiting for a ride. While doing so, he continued to consume liquor (beer) from his companion's glass. This was known to the staff person on duty and in charge of the establishment at the time. That person failed to take any action and continued to serve liquor (beer) to the intoxicated patron's companion.

I am concerned that there is, within the actions of the principal of the corporate licensee, an attitude that the consequences arising from the incident leading to the enforcement process are attributable to the actions of the police officer. That does not bode well for a good working relationship, or for future voluntary compliance.

I am satisfied that a penalty is necessary to ensure future voluntary compliance and to protect the public interest. In the circumstances, I am satisfied that the minimum suspension penalty for a first contravention of this type, a four day licence suspension is appropriate.

#### **ORDER**

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 028843 for a period of four (4) days, to commence as of the close of business on Thursday, July 24, 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*).

To ensure this Order is effective, I direct that the liquor licence be held by the branch or the RCMP New Denver Detachment from the close of business on Thursday, July 24, 2008, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

*Original signed by*

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Edward W. Owsianski  
Enforcement Hearing Adjudicator

Date: June 12, 2008

cc: RCMP New Denver Detachment

Liquor Control and Licensing Branch, Victoria Office  
Attention: Gary Barker, Regional Manager

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