



**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: Fort St. James Hotel Inc.
dba Fort St. James Hotel
283 Stuart Drive
Fort St. James, BC V0J 1P0

Case: EH08-107

For the Licensee: Wes Whitely & Cynthia Slorstad

For the Branch: Olubode (Bode) Fagbamiye

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: December 3, 2008

Place of Hearing: Fort St. James, BC

Date of Decision: December 23, 2008

**Ministry of Housing
and Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

The corporate licensee, Fort St. James Hotel Inc. operates the Fort St. James Hotel in Fort St. James, BC. The licensee holds Liquor Primary Licence No. 008764 for the operation of a pub in the hotel. The hours of sale are 11 a.m. to 1 a.m. Monday to Thursday, Noon to 2 a.m. Friday and Saturday, and 11 a.m. to midnight on Sunday. The capacity is 190 persons in area 1 and 30 on the patio. 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'.

Alleged Contravention and Proposed Penalty

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated September 25, 2008. The branch alleges that on August 2, 2008 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 six (6) 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 alleged contravention.

Relevant Statutory Provisions

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.

ISSUES

1. Did the contravention 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 – 12.

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

Four Liquor Inspectors, A, B, C & D testified that on August 2, 2008, they were conducting covert inspections of licensed establishments in the Fort St. James area. They arrived at the Fort St. James Hotel at approximately 4:15 p.m. There was one employee on duty, a male bartender. They ordered drinks from the bar then took seats first in the smoking room area and moving later into the pool room area. Their attention was drawn to a female patron who appeared to be exhibiting symptoms of intoxication. She was seated with three male patrons in the pool room area and spent some time

playing pool with a young male who, from overheard conversations, appeared to be her son. She was drinking from a hi-ball glass believed to contain a mixed alcohol drink and later from a bottle of beer. She was loud and boisterous, using foul and profane language. Her speech was slurred, her eyes bloodshot and watery, her face flushed. When standing at the pool table she swayed from side to side and from front to rear, she braced herself by leaning into the table. Returning to her seat she had difficulty walking, weaving as she went. Sitting down, she fell into her seat. She had trouble putting the beer bottle to her lips. Her condition deteriorated during the approximately 40 minutes that the inspectors observed her, the physical symptoms becoming more noticeable, her demeanour louder and more boisterous. At one point the bartender on duty came and sat with the group, talking to the male patrons. He did not speak to the female patron and took no action regarding her state of intoxication. The inspectors left the hotel at approximately 5:20 p.m. and made notes of their observations in the hotel pub (Exhibit 1, tab 5). As this was a covert inspection they did not identify themselves to the employee on duty so as not to compromise this or other inspections at licensed establishments in the area.

The inspectors testified that they have experience in identifying and dealing with intoxicated persons. Inspector A has approximately four years experience as a liquor inspector and approximately 28 years experience as a police officer. He has been qualified as a breathalyser operator and technician and qualified as a roadside screening device operator and instructor. He has instructed police officers in dealing with intoxicated persons and impaired drivers. He has conducted over 1000 breathalyser tests. Inspector B has 10 years experience as a liquor inspector and 25 years experience as a police officer during which time he has received training in identifying and dealing with intoxicated persons. Inspectors C & D both have experience as a liquor inspector and provincial government investigator and training and experience in identifying and dealing with intoxicated persons. The inspectors testified that as a result of their observations they believed the female patron to be intoxicated.

Inspector A testified that he is responsible for the geographical area in which the Fort St. James Hotel is located. He was responsible for planning the covert inspection. The team of inspectors visited several licensed establishments in the area. The hotel was chosen for inspection as a result of information received from the RCMP detachment that there were problems with the operation of the hotel regarding intoxicated patrons.

He referred to copies of documents from the branch file:

- Exhibit 1, tab 3; the liquor primary licence in effect at the time of the alleged contravention.
- Exhibit 1, tab 4; floor plan for the establishment.
- Exhibit 1, tab 7; a copy of the "Guide" in effect at the time of the alleged contravention. He referred to excerpts from the Guide dealing with: "Your role as a licensee", "Over-service and intoxicated patrons" and "Physical and mental signs of intoxication" (p 13).
- Exhibit 1, tab 6; compliance meeting form completed on July 21, 2004, after a liquor inspector met with licensee Wes Whitely and discussed issues related to the proper operation of the hotel. The licensee made commitments to operate in compliance with the requirements.
- Exhibit 1, tab 8; a copy of the "Serving it Right" ("S.I.R") program manual. The inspector testified that the manual provides an overview of the *Act* and *Regulations* and rudimentary training for a licensee and employees.
- Exhibit 1, tab 11; documentation regarding contraventions occurring on January 19, 2007, of an employee consuming liquor while on duty and intoxicated persons remaining in the licensed establishment. This resulted in one and six day liquor licence suspensions respectively.

In determining whether to proceed to enforcement on the August 2nd incident, the inspector considered that intoxication was a public safety issue. This was the second such contravention occurring within an 18 month period. He believed that enforcement action was necessary to achieve voluntary compliance. He completed a NOEA on

September 28, 2008, outlining the alleged contravention and recommended a six day suspension penalty be imposed (Exhibit 1, tab 1).

EVIDENCE - THE LICENSEE

Licensee witness E testified that he is a regular patron of the pub and was present on August 2, 2008, from about noon to 6 p.m. sitting at the bar playing video poker. He did not see the liquor inspectors in the pub nor did he see an intoxicated female in the pool table area. A local female resident came to the pub in an intoxicated condition but was immediately requested to leave by the bartender and did so.

Licensee witness F testified that he has been employed at the pub for approximately 30 years, first as a doorman and then as a bartender. He holds a "S.I.R." certificate. He was working day shift to 7 p.m. on August 2nd as the bartender. He does not recall seeing the liquor inspectors in the pub. A local female resident came to the pub sometime between 4:30 and 5 p.m. in an intoxicated condition. He asked her to leave and she did so. There were patrons seated in the pool table area during the afternoon. Two females were playing pool. One has a disability that makes her appear to be intoxicated when she is not. He agreed that she did not resemble the female patron described by the inspectors and could not have been the same person. He never sits and talks with patrons in the pool room area.

Wes Whitely testified that he has been a principal of the corporate licensee since 2001. The hotel was previously owned by his father and is now owned by him and his siblings. He has worked as a bartender at several licensed establishments for approximately 30 years. He holds a "S.I.R." certificate. He was not at the hotel on August 2nd at the time of the alleged contravention. He first heard of the matter when inspector A phoned him about a week later. Since becoming involved in the ownership of the hotel he has talked with all employees about their duties. Discussions are held after busy weekends to determine if something could have been done better. All employees know that intoxicated persons are not allowed in the pub and that they are

not to serve intoxicated persons. He agreed that the hotel had served a six day suspension for an earlier incident involving intoxicated patrons in January 2007. He signed a waiver agreeing to the suspension; however, did so because the inspector told him that if he did not do so he could end up with a greater penalty. He did not dispute that the January 2007 contravention occurred. After that suspension he talked with employees and told them that intoxicated persons cannot be allowed in the pub. He reminds them every weekend and has posted a letter from the branch on the subject for employees' notice.

SUBMISSIONS – LICENSEE

The licensee submitted that he communicates with his employees through talking with them rather than using written instructions as not all of the employees can read. If a complaint is brought to his attention he talks to the employee who was working at the time. He is willing to work with the liquor inspector to provide better training for staff and for himself. He spoke with the police awhile ago and was advised that they would tell him if there were any problems at the hotel. They have not advised him of any concerns.

REASONS AND DECISION

The branch has presented evidence that on August 2, 2008, liquor inspectors conducted a covert inspection of the pub area at the hotel. They observed a female patron for a period of approximately 40 minutes exhibiting obvious and increasing signs of intoxication. The bartender on duty saw, or should have seen, the female patron and her condition, yet did not deal with the situation. The inspectors are specifically trained in looking for signs of intoxication and have considerable experience in dealing with persons who are intoxicated through the consumption of beverage alcohol, i.e. liquor.

The licensee presented the evidence of two persons, a patron and the bartender who testified that they did not see the intoxicated female described by the inspectors. One female who arrived at the hotel intoxicated was immediately requested to leave.

I prefer the evidence of the liquor inspectors. They are well trained in looking for signs of intoxication and impairment and have considerable experience in dealing with persons who are intoxicated through the consumption of beverage alcohol, i.e. liquor. They made notes of their observations immediately following their inspections.

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

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.

Here, the hotel provides only rudimentary training for its employees, involving little more than a discussion with the licensee. The licensee has not provided any instruction or advice on identifying persons who may be intoxicated nor was there evidence of any training on the subject. The bartender on duty did not identify the female patron as being intoxicated. She was permitted to remain in the licensed area and to continue drinking her beer.

The licensee was well aware of the branch's concern with intoxicated patrons at the pub following a previous contravention that resulted in a licence suspension. The licensee did not put sufficient measures in place to prevent the contravention. I find that the licensee has not been duly diligent.

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 previous proven contravention of the same type for this licensee within the year preceding this incident. Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegation as a first contravention. The range for a first contravention of this type is a licence suspension for 4 - 7 days and/or a monetary penalty of \$5000 to \$7000.

The branch's primary goal in bringing enforcement action is to achieve voluntary compliance. Despite a previous licence suspension, the licensee did not put sufficient measures in place to prevent the contravention.

In the circumstances of this case, I am satisfied that the licensee has not successfully or sufficiently stressed upon its employees the need to fully and conscientiously carry out their duties, and a penalty is necessary to ensure future compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. In the circumstances here of a previous contravention and suspension occurring within an 18 month period, I find that a penalty greater than minimum penalty is necessary to encourage future voluntary compliance. A six day suspension is necessary, appropriate and reasonable.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 008764 for a period of six (6) days, to commence as of the close of business on Friday, January 23, 2009, 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 Fort St. James Detachment from the close of business on Friday, January 23, 2009, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: December 23, 2008

cc: RCMP Fort St. James Detachment

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

Liquor Control and Licensing Branch, Surrey Office
Attention: Olubode Fagbamiye, Branch Advocate