



**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: Paul Bunyan Hotels Inc.
dba Quesnel Hotel
228 Front St.
Quesnel, BC V2J 2K2

Case: EH10-077

For the Licensee: Peter Klassen and Denise Mufford

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: October 13, 14 & 18, 2010

Place of Hearing: Quesnel, BC

Date of Decision: November 18, 2010

**Ministry of Housing
& Social
Development**

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 387-1254
Facsimile: 250 387-9184

Location:
Second Floor, 1019 Wharf Street
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

INTRODUCTION

Paul Bunyan Hotels Inc. operates the Quesnel Hotel located in Quesnel, British Columbia. The licensee holds liquor primary licence 004157 for the operation of a pub in the hotel. Denise Mufford (licensee representative) is a principal of the corporate licensee and is the general manager of the hotel pub. The hours of sale are 10:00 a.m. to 2:00 a.m. Monday to Thursday, 9:00 a.m. to 2:00 a.m. Friday and Saturday, and 9:00 a.m. to midnight on Sunday. The patron capacity is 312. The licence is, as are all liquor primary licences issued in the province, subject to the terms and conditions contained in the publication *Liquor Primary Terms and Conditions, A Guide for Liquor Licensees in British Columbia* (the Guide).

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the Branch) allegations and proposed penalty are set out in the amended Notice of Enforcement Action dated October 8, 2010. The branch alleges that on May 15, 2010, the licensee contravened section 43(2)(b) of the *Liquor Control & Licensing Act* (the Act) by permitting an intoxicated person to remain in that part of the licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is a seven day suspension of the liquor licence per item 11 of Schedule 4, *Liquor Control and Licensing Regulation* (the Regulation) which provides a range of penalties for a first contravention of this type of a licence suspension of four to seven days and/or a monetary penalty of \$5000-\$7000.

The licensee disputes the alleged contravention.

RELEVANT STATUTORY PROVISION

Liquor Control and Licensing Act, RSBC 1996, c. 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 1 | The Branch's Book of Documents #1, tabs 1 – 18. |
| Exhibit 2 | Excerpts from the Branch's Compliance and Enforcement Policy and Procedures Manual, Desk Reference (the Branch C & E Manual). |
| Exhibit 3 | Licensee counsel's letter of October 4, 2010 with attached materials. |
| Exhibit 4 | Quesnel Hotel Pub General Manual. |
| Exhibit 5 | Quesnel Hotel Pub sign-off sheet. |
| Exhibit 6 | Quesnel Hotel Pub notes of staff meetings. |
| Exhibit 7 | Undated hand-written statement with six signatures. |
| Exhibit 8 | Written submission of Licensee. |

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

Branch witness A, testified that she has been a police officer for approximately ten years and was working in that capacity in plainclothes in the Quesnel area with a liquor inspector (witness B) checking licensed establishments during the late night/early morning of May 14/15 2010. At approximately 1:20 a.m. they parked their vehicle in a lot overlooking the Quesnel Hotel and observed the operations of the hotel from the outside. They entered the hotel pub at approximately 1:33 a.m. and spoke briefly to two door security staff, a male and a female.

Inside the hotel pub the officer's attention was drawn to the loud voice of a male patron (patron #1) at a hightop table in the patio smoking area. Concerned that he may be intoxicated, she proceeded to the patron and requested his identification. The patron expressed some reluctance and was urged to co-operate with the officer by a hotel staff member (witness D). The patron fumbled through his wallet and provided his driver's licence. The officer testified that she observed that the patron was exhibiting signs of intoxication: he was uneasy on his feet, he had difficulty with his balance, he leaned against the table for support, his eyes were bloodshot, his speech slurred, he had liquor on his breath, and his fine motor skills appeared to be impaired. The officer made a determination that the patron was intoxicated and could not remain in the licensed establishment. She escorted the patron outside and advised him that he must take a taxi home or he would be arrested for public intoxication. The patron walked to a nearby taxi but would not get into it. At this point a police corporal observing the actions of the patron arrested him for public intoxication. The patron was lodged in police cells and released without charge upon sobering up.

The officer re-entered the hotel pub. The liquor inspector who had remained inside drew her attention to two other patrons in the patio smoking area. One, a female, (patron #2) was requested to produce her identification. The patron left to get the identification and shortly returned with it. The officer stated that she observed that the patron was exhibiting signs of intoxication: her head was wobbly, her eyes very

bloodshot, she was uneasy on her feet, to the point of staggering, her speech was slightly slurred. The patron said that she had been drinking gin and tonic. On leaving the establishment the patron was observed picking herself up from the floor as if she had fallen. She left assisted by two friends. The other patron (patron #3), a male, was requested to produce his identification. In her testimony she stated that he appeared to be uneasy on his feet, swaying while standing, his eyes were bloodshot, he had liquor on his breath and his speech was quite slurred. He said that he had been at the hotel pub since 11:00 p.m. and had consumed six drinks. The female door security person escorted him outside of the pub and a taxi was arranged for his transportation.

The officer made brief notes while in the hotel pub followed by more extensive notes immediately upon leaving the hotel and prepared a narrative report at the detachment office prior to going off duty (exhibit 1, tab 2).

The officer testified that she has received training on impairment by alcohol or drugs, is qualified to operate a roadside screening device for impairment and has dealt with numerous impaired and intoxicated persons during her employment as police officer.

Branch witness B testified that she has been a liquor inspector for approximately four years and was working in that capacity during the late night/early morning hours of May 14/15, 2010 checking licensed establishment in the Quesnel area in company with Witness A, a police officer from the RCMP detachment. They parked their vehicle in a lot overlooking the Quesnel Hotel at approximately 1:20 a.m., making observations of the hotel from the outside. They entered the hotel pub between 1:30 and 1:35 a.m. and spoke briefly to two door security staff, a male and a female.

The inspector's attention was drawn to a male patron (patron #1) at a hightop table in the patio smoking area. The patron appeared to be having difficulty maintaining balance. He was swaying and holding on to the table. She and the officer walked over to the patron and the officer requested his identification. The patron was argumentative with the officer and had difficulty getting his wallet from his pants pocket and removing

his identification from the wallet. His speech was slurred and he was shouting at the officer. His eyes were bloodshot. He had difficulty with his balance. The inspector concluded that the patron was intoxicated. The officer escorted the patron outside.

The inspector remained inside. She identified two other patrons who appeared to be intoxicated, a male and a female. She observed the female patron (patron #2) enter the patio smoking area. The inspector testified that the patron was staggering, falling into people and yelling. The officer returned inside the patio smoking area and the inspector pointed out the intoxicated female patron to her. The inspector testified that her attention was first drawn to the male patron (patron #3) as he was staggering, his eyes were bloodshot and he was drinking from a bottle of beer. This male patron later came up to the inspector and argued with her about what she and the officer were doing. She observed that his speech was slurred. She felt intimidated by his actions. The inspector located and spoke with the female door security person and advised her that this male patron was intoxicated and needed to be removed from the premises. The female door security person escorted the patron out. At this point the inspector heard a shout from the female patron (patron #2) and turned to see her lying on the floor in front of the bar and being assisted by two friends. The inspector made notes of her observations a short time later at the police detachment office (exhibit 1, tab 3).

The inspector testified that in assuming the position of liquor inspector she received on-the-job training from a senior liquor inspector with whom she worked. She also attended a one day course on intoxication given by a toxicology consultant for the branch. She testified that in making her determination that the patrons observed were intoxicated she considered the physical and mental signs of intoxication as outlined in the Guide (exhibit 1, tab 7). She did not consider the signs/symptoms as listed in the Branch's C & E Manual (exhibit 2) that had been prepared for the branch by the toxicology consultant. She agreed that the physical signs listed in the Manual did not include bloodshot eyes.

The inspector was referred to the licensee's documents found at exhibit 3. The inspector testified that she was not aware of these documents when she completed the Notice of Enforcement Action and made a recommendation for a seven day suspension penalty. She testified that although the documents indicate that intoxicated persons were being refused entry at the door and were being ejected from the establishment, the problem of intoxicated patrons being permitted in the establishment as observed on May 15 remained. While the licensee had made changes in the operation of the establishment, this was the third incident of intoxication since 2008. She didn't expect perfection on the part of the licensee but expected there to be a process in place to identify intoxicated persons and to deal with them appropriately. In the May 15 incident three intoxicated patrons had been permitted to remain in the establishment. She agreed that staff at the hotel pub were co-operative, did not obstruct her or the police officer and assisted where appropriate.

In her testimony the inspector referred to copies of documents from the Branch file:

- Exhibit 1, tab 5: the liquor primary licence in effect at the time of the alleged contravention.
- Exhibit 1, tab 6: floor plan for the establishment.
- Exhibit 1, tab 7: a copy of the Guide in effect at the time of the alleged contravention. Inspector B in her testimony referred to excerpts from the Guide dealing with: "Your Role as a Licensee"; "Controlling your Establishment"; "Over-service and intoxicated patrons" and "Physical and mental signs of intoxication".
- Exhibit 1, tab 8: contravention notice April 3, 2009 for permitting unlawful activity (drug trafficking); compliance meeting held by inspector B with pub management and RCMP officers to deal with the contravention notice and the large number of intoxicated patrons observed in the pub area by police officers; statement of steps taken by licensee for voluntary compliance. No enforcement action was taken by the branch on the contravention notice.
- Exhibit 1, tab 9: compliance meeting held by inspector B on February 7, 2007 after meeting with licensee and discussing issues related to identification and permitting intoxicated people to remain in the establishment. The licensee made commitments

to operate in compliance with the requirements. No enforcement action was taken by the branch.

- Exhibit 1, tab 11: compliance meeting form completed by the area inspector on May 19, 2004 after meeting with the licensee and discussing issues related to minors and intoxicated patrons. The licensee made commitments to operate in compliance with the requirements. No enforcement action was taken by the branch.
- Exhibit 1, tab 15: contravention notice and hearing decision for permitting an intoxicated person to remain in the licensed establishment on July 18, 2008. A four day liquor licence suspension was ordered and served.
- Exhibit 1, tab 16: contravention notice and waiver summary for permitting an intoxicated person to remain in the licensed establishment on January 31, 2009. A five day liquor licence suspension was agreed to and served.
- Exhibit 1, tab 17: contravention notice and waiver summary for allowing liquor to be removed from the licensed establishment on September 18, 2009. A one day liquor licence suspension was agreed to and served.

The inspector issued a contravention notice to the establishment on May 17, 2010 (exhibit 1, tab 4) and prepared a Notice of Enforcement Action that was mailed to the licensee (exhibit 1, tab 1). The Notice of Enforcement Action contained a summary of evidence at appendix C. This was compiled from her notes and observations and the notes and report of the police officer, Witness A. The inspector recommended a seven day suspension penalty.

EVIDENCE - THE LICENSEE

Licensee Witness C, the licensee representative, testified that she has been a principal of the corporate licensee and the general manager of the pub since the summer of 2004. She was not at the hotel during the early morning hours of May 15 at the time of the alleged contravention.

She testified that she requested the compliance meeting with the liquor inspector and local RCMP officers and that took place on April 3, 2009. At that meeting the liquor inspector (witness B) said that she had a zero tolerance for intoxication. Witness C discussed the difficulties in getting good staff and the difficulties monitoring patrons for intoxication. She explained that she had been at the pub the previous weekend and despite their vigilance there were five patrons who met the inspector's criteria for intoxication at the end of the night. At the meeting she presented a list of steps taken at the hotel pub since January 2009 to achieve voluntary compliance (exhibit 1, tab 8, page 10). The RCMP staff sergeant commended her on the measures taken.

In her testimony Witness C outlined those steps taken:

- The procedures manual (exhibit 4) for the operation of the pub was revised following the enforcement hearing held in November 2008. A copy of the manual is given to each employee. It instructs staff that all liquor laws must be obeyed. Minors are not permitted in the pub and identification must be checked. Intoxicated persons are not permitted in the pub and persons creating problems inside must be removed. Liquor is not to be served to intoxicated customers. Staff is advised that they may be fired for failing to follow the rules. She considered firing all staff following the December 2008 enforcement hearing but realized that it was simply not possible, so all staff members were given warning letters. The manual contains excerpts from the branch's Guide including those outlining the physical and mental signs of intoxication.
- A test was developed to ensure staff understands their responsibilities (exhibit 4, pages 16-17). Once the test has been completed she reviews the answers with each staff member correcting any wrong answers and responding to any questions that may arise.
- All staff sign-off that they have received the manual and have taken the test (exhibit 5).
- Staff meetings are held to discuss prospective events, problems encountered since the last meeting and action taken by staff. Notes of the meetings are maintained (exhibit 6).

- As general manager, she worked weekends from December 2008 to April 2009 to ensure that staff understood the rules and were following them.
- Security staff are provided with shirts clearly identifying them as security staff.
- A surveillance system with video cameras was installed. The purpose of the security system is to allow her to monitor staff from her home or to view the recording later. It is not set up for staff to monitor the premises. It was intended that it would allow for a recording to be maintained for several weeks. That unfortunately has not occurred and it is only available for two to three days.
- A scanning system for identification was purchased and is used to check for false identification and to identify people previously barred from the premises.
- Trays of drinks are not served directly to customers but taken to the table by staff to ensure that an excessive amount of liquor is not provided to customers.
- They no longer announce “last call” to discourage the over purchase of drinks at the end of the night.
- Security staff are stationed at the entrance to monitor for intoxicated people attempting to enter the pub.
- The location of the patio door was moved at the request of the police.

She testified that since these measures have been instituted, sales at the pub have decreased in excess of 50%.

The licensee representative testified that staff completes daily logs and incident reports (exhibit 3) which she reviews the following day. These entries reveal that staff members are refusing entry to intoxicated persons, patrons are being cut-off from further liquor service and escorted from the establishment and troublemakers barred from returning. An incident report was completed for the May 15 incident and signed by all staff on duty (exhibit 7). Police officers make regular patrols through the pub, at least once per night on weekends.

In her testimony the licensee representative outlined the circumstances surrounding the two most recent contraventions as follows:

Exhibit 1, tab 16: contravention notice and waiver summary for permitting an intoxicated person to remain in the licensed establishment on January 31, 2009. A five day liquor licence suspension was agreed to and served. The liquor inspector had observed a regular customer carrying-on on the dance floor and concluded that he was intoxicated. Witness C reviewed the video on the incident and believed that this was just the usual behaviour of this customer and was not due to intoxication. She felt, however, she would be unable to prove that, and she agreed to the contravention and accepted the penalty.

Exhibit 1, tab 17: contravention notice and waiver summary for allowing liquor to be removed from the licensed establishment on September 18, 2009. A one day liquor licence suspension was agreed to and served. This occurred when an older customer mistakenly carried a drink outside believing that she was entering the patio. The police observed this incident. Witness C did not believe that it was a fair but agreed to the contravention and accepted the penalty.

Licensee witness D testified that he has worked in licensed establishments for over 20 years as a doorman or bartender and has been employed at the Quesnel hotel pub for approximately seven and a half years, on and off on a part-time basis. He holds a Serving It Right certificate. His position is that of a customer service representative. His duties include greeting people at the door, checking for intoxication and checking identification. Intoxicated people are not permitted to enter. Those who are verbally abusive or exhibiting symptoms such as staggering or slurred speech are not permitted in the establishment. He assists in dealing with any problems occurring inside the establishment. He is familiar with the pub's general manual (exhibit 4), has taken the test found in the manual and has signed-off on it (exhibit 5).

He testified that he was working the early morning hours of May 15, 2010. He was at the front door checking identification. The police officer (witness A) and the liquor inspector (witness B) arrived in their vehicle at approximately 1:30 a.m., entering the

pub at approximately 1:45 - 1:50 a.m., just before closing. They spoke with him and the two door security employees. He followed the officer and inspector inside. They did a quick walk through of the main area and then entered the smoking area. The officer and inspector first approached a male patron (patron #3) in the smoking area holding a bottle of beer and speaking to a group of people at a table. He was not staggering, swaying on his feet or slurring his words. They requested his identification. He wanted to see their identification. The patron is known to him, is respectful and never causes problems. He was not requested to leave. He spoke with the patron later, outside after closing. The patron was unhappy with the actions of the office and inspector. They had checked him earlier at another establishment.

The officer and inspector then spoke with a female patron (patron #2) seated at the table where patron #3 had been standing. She was drinking water. She is a regular customer whom he has seen on several occasions. She tends to be hyperactive and demonstrative. She never creates problems. She was sober and was not requested to leave the premises.

The officer and inspector then spoke with a male patron (patron #1) seated at a hightop table with a bottle of beer. They asked for his identification, he asked for theirs. He became disgruntled and belligerent. Witness D removed the patron's beer. The patron was told that he needed to leave and that he could take a taxi or spend the night in the police drunk tank. He was escorted outside and was moving toward the taxi when a police corporal arrested him. The witness testified that he had seen the patron during the course of the night, seated on a stool at the hightop table. The patron had been walking around and talking to several persons. He was not falling down or staggering and there was nothing to indicate that he was highly intoxicated.

A statement on the incident was prepared at the end of the night. The female security person wrote it out. Witness D had input into it and, with the other employees, signed the bottom. He agreed that, in the statement, the patron referred to as having been

escorted out was probably the individual identified as patron #3, the female probably patron #2.

SUBMISSIONS – BRANCH

The branch's submission is summarized as follows:

Section 43 (2)(b) of the Act requires that a licensee not permit an intoxicated person to enter or remain in a licensed establishment. The licensee has a continuous duty to monitor patrons' sobriety to ensure they are not intoxicated. The Guide provides information on the symptoms of intoxication, and the liquor inspector has spent hours on the issue with the licensee representative. The evidence is clear that on May 15, 2010 three patrons were intoxicated and were permitted to remain in the licensed area of the establishment. All three patrons exhibited signs of intoxication that were observed by the officer and inspector and should have been observed by the staff on duty. Thus the intoxicated patrons were "permitted" to remain in the licensed establishment.

There have been two previous incidents of intoxication leading to licence suspensions. Staff was not properly trained and there was no adequate system to monitor the behaviour of patrons. The pub manual does not adequately cover intoxication but simply appends excerpts from the Guide. The manual states that employees will be dismissed for a contravention of the liquor laws, yet this did not occur. Permitting intoxicated patrons to remain in a licensed establishment is a significant public safety issue. A suspension is necessary to send a message to the licensee that it must comply with the terms and conditions of the liquor licence and adopt a more diligent manner to control patrons and staff. In the circumstances of three intoxicated patrons the maximum penalty of a seven day suspension is recommended.

SUBMISSIONS – LICENSEE

The licensee submitted a written submission (exhibit 8) and made an oral submission. The licensee's submission is summarized as follows:

Section 43 (2)(b) of the Act requires that a licensee not “permit” an “intoxicated” person to enter or remain in a licensed establishment. The legislation imposes a duty on licensees to maintain control of the premises. Neither “permit” nor “intoxication” is defined in the legislation. A review of authorities where intoxication has been considered indicates that not all impairment is intoxication. A person must be obviously intoxicated: physical and mental functioning must be substantially impaired: there must be a marked departure from the norm: the degree of intoxication must be considerable: the person must be stupefied or drunk. The branch recognizes this in its C & E Manual where it differentiates the signs and symptoms of alcohol influence between the differing stages of alcohol influence.

The Liquor Appeal Board in *Ed Bulley Ventures, June 28, 2001* said: “a licensee may be said to permit something where the licensee does not exercise as high degree of diligence as it should have in the circumstances, or where the licensee shuts its eyes to the obvious or allows somethings to go on, not caring whether an offence is committed or not.” In the case here the licensee’s employee, Witness D, was carrying out his duty to patrol the premises and to be vigilant for intoxicated persons. He saw nothing to indicate that any of the three patrons were intoxicated. Patron #1 became agitated only after being requested to produce his identification. The patron was not at the extreme range of intoxication. He was arrested only after the police corporal outside lost patience with him. There was no wilful blindness on the part of the staff. Patron #2 was known to staff as being quite demonstratively affectionate, and it was that behaviour which drew the attention of the officer and the inspector, not symptoms of intoxication. The patron was not requested to leave the premises. Patron #3 was known to Witness D who did not see any signs of intoxication when speaking with him. The evidence of the police officer was that he produced his identification without difficulty, he was not confused or uncoordinated. On the whole, the evidence does not support that the three patrons were intoxicated as described in the previously referred to authorities. Even if it is found that the patrons were intoxicated the licensee could not be said to have

permitted them to remain in the licensed establishment. Neither the licensee nor its employees could have known that the patrons were intoxicated.

The licensee was duly diligent. It did everything that could be reasonably expected. There was staff at the door preventing intoxicated persons from entering and an employee on duty inside patrolling the licensed area. In her testimony, the licensee's representative referred to the steps taken following the enforcement hearing in 2008. The licensee's documents show numerous instances where intoxicated persons were refused entry and intoxicated persons found inside expelled. Police officers make regular patrols through the establishment looking for intoxicated patrons. None of their patrols have resulted in enforcement proceedings.

If a contravention is found and a penalty considered the recommended length of suspension should be ameliorated by the steps taken by the licensee.

REASONS AND DECISION

Intoxication

The branch has presented evidence that during the early morning hours of May 15, 2010 a police officer and liquor inspector conducted an inspection of the licensed pub area of the Quesnel Hotel. The attention of the officer and inspector was separately drawn to patron #1 seated in the patio/smoking room area. The officer's attention was drawn by the patron's loud voice, and the inspector's by the patron's difficulty in maintaining his balance. Concerned that the individual may be intoxicated, they walked over to him. In their observations of the patron, the officer and the inspector noted symptoms of intoxication. The officer in her testimony stated that she observed that the patron was exhibiting signs of intoxication: he was uneasy on his feet, he had difficulty with his balance, he leaned against the table for support, his eyes were bloodshot, his speech slurred, he had liquor on his breath, and his fine motor skills appeared to be impaired. The inspector observed that the patron had difficulty in getting his wallet from his pants pocket and in removing his identification from the wallet. His speech was

slurred and he was shouting at the officer. His eyes were bloodshot. He had difficulty with his balance. The patron was escorted from the premises and subsequently arrested outside for public intoxication.

The inspector's attention was then drawn to two other patrons inside the patio/smoking area. Patron #2 was observed to be staggering, falling into people and yelling. The inspector drew the officer's attention to the patron. The officer in her testimony stated that she observed that the patron was exhibiting signs of intoxication: her head was wobbly, her eyes very bloodshot, she was uneasy on her feet, to the point of staggering and her speech was slightly slurred.

The inspector's attention was first drawn to the patron #3 as he was staggering, his eyes were bloodshot and he was drinking from a bottle of beer. Later she observed that his speech was slurred. The inspector drew the officer's attention to the patron. The officer requested the patron to produce his identification. In her testimony she stated that he appeared to be uneasy on his feet, swaying while standing, his eyes were bloodshot, he had liquor on his breath and his speech was quite slurred. He said that he had been at the hotel pub since 11:00 p.m. and had consumed six drinks. Staff escorted the patron from the premises at the request of the inspector.

The licensee has presented evidence that at the time of the alleged contravention, Witness D was on duty and responsible for monitoring persons entering the licensed area and those patrons within the licensed area. The witness testified that he had observed patron #1 during the course of the night, seated on a stool at the hightop table. The patron had been walking around and talking to several persons. He wasn't falling down or staggering and there was nothing to indicate that he was highly intoxicated. He only became disgruntled and belligerent when being questioned by the officer.

Witness D knows patron #2 as a regular customer. She tends to be hyperactive and demonstrative. She never creates problems. She was sober and was not requested to leave the premises.

Witness D also knows patron #3. He is respectful and never causes problems. He was not staggering, swaying on his feet or slurring his words. He was not requested to leave. He, the witness spoke with the patron later, outside after closing. The patron was unhappy with the actions of the office and inspector. They had checked him earlier at another establishment.

I prefer the evidence of the police officer and the liquor inspector. They made notes of their observations immediately following their inspection. The evidence of Witness D was from memory. He did not correctly recall the sequence in which the officer and inspector dealt with each patron. His recollection of whether patron #3 was requested to leave the premises differed from the contents of a statement signed by him and other staff that night (exhibit 7).

I accept that the physical and mental signs of intoxication as described in the Guide adequately provide a description of the symptoms, which without evidence to the contrary, provide evidence from which a state of intoxication in an individual may be concluded. These signs of intoxication have been provided to licensees by the branch and have been accepted by this licensee in its manual and training of its employees.

While I agree with the licensee that the symptoms must be obvious and the degree of impairment substantial, I cannot agree with the licensee's contention that the person must be "stupefied or drunk".

On the whole of the evidence I find on a balance of probabilities that the three patrons observed by the officer and inspector during the early morning hours of May 15, 2010 were intoxicated.

Permit

Section 43 of the Act requires that a licensee must not sell or give liquor to an intoxicated person, must not permit a person to become intoxicated or permit an intoxicated person to remain in a licensed establishment. To meet these requirements a licensee must monitor the condition of patrons on a continuing basis.

Here, we had an inspection by a police officer and liquor inspector during the course of which their attention was drawn to the behaviour of three patrons. The behaviour raised concerns that the patrons may be intoxicated. The officer and inspector's interaction with the patrons confirmed their concerns. At the time of the inspection, the licensee representative was not present and establishment was being operated by six employees (exhibit 7), one of whom (witness D) was specifically tasked with the responsibility of monitoring the behaviour of patrons inside the licensed area. None of the employees took any measures to deal with the three intoxicated patrons until the officer or inspector brought them to their attention.

On the whole of the evidence, I find that the employees either failed to monitor the patrons to a sufficient degree to meet the requirements of the legislation or failed to recognize the intoxicated condition of the patrons. In consequence, the licensee may be said to have permitted the intoxicated patrons to remain the licensed establishment.

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, there is much to commend this licensee. The licensee has a manual (exhibit 4) that has been updated to address shortcomings identified in the December 18, 2008 decision of the last enforcement hearing (exhibit 1, tab 15). The manual appears to

adequately cover the liquor licensing requirements for the operation of a liquor primary establishment. Copies have been provided to all staff and a test developed to ensure their comprehension (exhibits 4 & 5). Incident reports are maintained to record noteworthy incidents occurring during the operation of the establishment (exhibit 3). The reports refer to numerous occasions where intoxicated people are either refused entry or are escorted from inside the establishment. Staff meetings are held to discuss past problems encountered and prospective events, and notes of the meetings are maintained (exhibit 6).

That said, I have concerns that the training provided to staff has not been sufficient to identify a patron as being intoxicated. As stated previously, the symptoms of intoxication must be obvious and the degree of impairment substantial; however, a person need not be grossly intoxicated. The evidence here leaves me to believe that the licensee and its staff do not undertake the necessary proactive monitoring of a patron's condition and may have developed too high a tolerance level for the signs of intoxication. The licensee representative testified that on one evening, despite their best effort, five people exhibited signs of intoxication when the lights were turned on at the end of the night. Witness D in his evidence stated that he did not believe patron #1 to be "highly" intoxicated. From a perusal of the incident reports it appears that many people patronizing this establishment consume liquor to the point of intoxication, some arriving intoxicated and some becoming intoxicated later inside the establishment. The licensee and its staff, knowing of this situation, must be particularly vigilant. Here, three intoxicated patrons were not identified as such by the staff on duty and were permitted to remain in the establishment.

During the course of this hearing there was no evidence provided as to who was in charge of the operation of the establishment at the time of inspection. The licensee representative testified that she was not present at that time. There is no evidence about who was responsible for overseeing staff to ensure that they were adequately carrying out their responsibilities. 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.

Through previous contraventions and compliance meetings held with the liquor inspector, the licensee was well aware of the branch's concern regarding the intoxication of patrons found within the establishment. I find that the licensee did not take sufficient measures to prevent the contravention and that the licensee has not been duly diligent.

In conclusion, on the whole of the evidence, I find on a balance of probabilities that on May 15, 2010, the licensee contravened section 43(2)(b) of the *Liquor Control & Licensing Act* by permitting an intoxicated person to remain in that part of the 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 license

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 Notice of Enforcement Action.

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 Schedule 4, Section 1(1)(b) of the *Regulation*, the branch has treated the allegation as a first contravention. The range for first contravention of this type is a licence suspension for four to seven days and/or a monetary penalty of \$5000-\$7000.

The branch's primary goal in bringing enforcement action is to achieve voluntary compliance. Here, despite meeting with the liquor inspector on previous occasions and the imposition of two previous licence suspension penalties resulting from intoxicated patrons being permitted to remain in the establishment, the licensee did not put sufficient measures in place to prevent this contravention. In the circumstances, I find that a penalty is necessary to achieve future voluntary compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. Previous suspensions have been for periods of four and five days. In the circumstances of this contravention I find that a six day liquor licence suspension is necessary, appropriate and reasonable.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of liquor primary licence no. 004157 for a period of six (6) days, to commence as of the close of business on

Thursday January 13, 2011 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*).

I have set the suspension dates into January. To do otherwise would bring the suspension into the pre-Christmas time and I believe create a greater penalty than intended. Likewise, I have not set it at the first of the New Year as that tends to be a slow time for many licensees and would decrease the effect of the penalty.

To ensure this order is effective, I direct that the liquor licence be held by the branch or the RCMP, Quesnel Detachment, from the close of business on Thursday, January 13, 2011 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: November 18, 2010

cc: RCMP, Quesnel Detachment

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

Liquor Control and Licensing Branch, Vancouver Office
Attention: Peter Mior, Branch Advocate