



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENCING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 20 of

**The Liquor Control and Licensing Act RSBC c. 267**

Licensee: Click Management Ltd.  
dba Taylor Inn  
10440 100<sup>th</sup> Street  
Taylor, BC V0C 2K0

Case: EH10-152

For the Licensee: Richard Kolter

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Sheldon M. Seigel

Date of Hearing: June 15 & 16, 2011

Place of Hearing: Fort St. John, BC

Date of Decision: July 14, 2011

## INTRODUCTION

Click Management Ltd. operates the Taylor Inn (Coyote's Pub) under Liquor Primary Licence No. 017763 in Fort St. John, B.C. The licence stipulates that the hours of liquor sales are from 11:00 a.m. to 1:00 a.m. Sunday through Thursday and 11:00 a.m. to 2:30 a.m. Friday and Saturday. The licensed capacity is 168 persons in area 1, and 30 persons on the patio. The licence is subject to the terms and conditions on the face of the licence, as well as those contained in the *Guide for Liquor Licensees in British Columbia (Guide)*.

## ALLEGED CONTRAVENTIONS AND PROPOSED PENALTIES

By Notice of Enforcement Action (NOEA), dated December 15, 2010, the Liquor Control and Licensing Branch ("Branch") alleged that on October 23, 2010 at 12:50 a.m. (business day of Friday, October 22, 2010) the Licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act (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 five-day suspension of the liquor licence in accordance with item 11 of Schedule 4, of the *Liquor Control and Licensing Regulation (Regulation)*.

The NOEA also alleges a contravention of s. 12 of the *Act*, but that allegation was withdrawn prior to the hearing.

## RELEVANT STATUTORY PROVISIONS

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

#### **Drunkness**

**43(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 of s. 43(2)(b) of the *Act* occur?
2. If so, is a penalty warranted under the circumstances?
3. If a penalty is warranted, what is the appropriate penalty?

## EXHIBITS

**Exhibit 1:** Branch's Book of Documents

**Exhibit 2:** Licensee's Gun Reports sections #7, #8, and #9

## EVIDENCE

### Inspector #1

A liquor inspector testified that she has seven years experience doing inspections for the Branch and has done hundreds of inspections. She described her training in identifying symptoms of intoxication which she received from a toxicologist. She identified all of the relevant documents in the Branch's book of documents and said she attended at the establishment with another inspector in the early hours of October 23, 2010, to conduct a covert liquor inspection. The inspector testified that she entered the establishment and she immediately observed a dishevelled looking male in his 20's who was exhibiting slurred speech and was unable to stand on his own. He was holding on to a table to brace himself as he moved. At one point he fell into the bench seat at the booth and lay there prone for some time. When he pulled himself up, he walked comically, with his head down and leaning forward and he staggered back and forth. She said it was very obvious that he was intoxicated.

Then she and her fellow inspector moved to the deck area where smoking is permitted and they engaged two patrons in conversation. She described the patrons as approximately 50 year old males with creamy coloured drinks in their hands in "rock-type" glasses. She said they were swaying to keep their balance, had bloodshot eyes and flushed faces and one of them smelled of alcohol. She concluded that both of the men were intoxicated. She also noted a First Nations Person in the room who was also intoxicated. That individual could not stand up. He was wobbly on his feet and fell into a chair. One of the two males with whom she was conversing told her that they were drinking "paralyzers." He also told her jugs were available with 3 or 5 oz. paralyzers in them. The male who told her of the paralyzers asked her to dance.

The inspector testified that when she and her partner left the establishment, she called the RCMP and advised that there were intoxicated patrons in the establishment. She had no further contact with the RCMP or knowledge of any follow-up conducted by the RCMP as a result of her call. She testified that she and her partner were in the establishment for approximately 30 minutes.

### Inspector #2

Another liquor inspector testified that she has conducted 1500-2000 inspections and was also trained by a toxicologist in two separate courses in identifying the symptoms of intoxication. She also took an RCMP field sobriety course of four days duration.

The inspector testified that she attended at the establishment with the first inspector at the noted time. She said immediately on entering she noticed a loud boisterous patron with bloodshot eyes at a booth drinking a cream drink from a "rocks" glass. She watched him bang into people as he could barely walk because he was having trouble moving, he lay down on a booth bench. He spilled his drink and an employee cleaned it up and gave him a new one. The inspector said she had an unobstructed view of this patron and watched him for a considerable period of time. She concluded that he was intoxicated. She did not see any staff attempt to remove him.

The inspector said she and her partner moved to the patio where they spoke with two middle-aged Caucasian men who were also drinking creamy drinks. She said those two patrons were also clearly intoxicated. She said one of them was spitting as he spoke, they both had bloodshot eyes and flushed faces, and they both smelled of alcohol. She said one of them was leaning toward her and she found him intimidating. The other male said something about “paralyzers” and jugs. She didn’t hear the statement clearly, but she was confident that her partner would have. The inspector also noted a First Nations Person in the patio who was unsteady on his feet and was slurring his (loud) speech. He also had bloodshot eyes and appeared intoxicated.

She testified that the two inspectors went back into the main part of the bar and one of the middle-aged men followed them inside and asked her partner to dance. She noted that person was walking unsteadily. This confirmed her belief that he was intoxicated.

The inspector said that she saw three staff members in the main part of the establishment, no staff members in the patio section, and no staff at the entrance. She said the staff did not take any action to remove the intoxicated patrons during her stay. She identified her notes in Exhibit #1.

### Inspector #3

A third inspector testified that she did not attend the establishment on the night in question because she is known to the Licensee and the inspections were designed to be covert. She is the branch inspector responsible for the establishment and drafted the NOEA. She confirmed that the establishment has no history of contraventions, and that she has no knowledge of any RCMP files opened relevant to the allegations of October 22, 2010.

This inspector also testified that the reason that intoxicated patrons are not permitted to remain in an area in which liquor is sold or served, is to avoid harm to themselves as well as other patrons and staff. She said that the Branch takes contraventions of this type seriously as an intoxicated patron puts himself in harm's way and endangers others. She added that the reason a five-day suspension is recommended in a case like this, is that there were multiple intoxicated patrons and a five-day suspension sends a message to the Licensee and its patrons that this is a serious contravention.

### The Licensee

The Licensee testified that he has no interest in allowing intoxicated patrons or fighting in his establishment because it is too much trouble. He has a policy of suspension or termination for any employees who allow such behaviour. All of his employees have Serving It Right certificates (SIR). He said he has run 15 bars and he always gets rid of heavy drinkers when they are on the limit and before they get intoxicated. He said he has never had any allegations of any wrongdoing in any of the bars he has operated. He said he finds it impossible that he would allow four intoxicated patrons to remain in his establishment with that type of history and diligence.

The Licensee produced three gun reports. These reports (Exhibit #2) show the liquor that is drawn from the liquor dispensers. He confirmed that no liquor is poured at this establishment that is not recorded by the gun reports. He identified the report for October 22-24, 2010 (#7 & #8) and a test report for January 18/19, 2011, in which a White Russian is poured to demonstrate how it appears on the report. He said the reports confirm that no milky drinks were sold on October 22-24 at all. He also said that no 3 or 5 ounce drinks are ever poured or sold in pitchers.

The Licensee testified that the inspectors inaccurately described the layout of the establishment and from where they could see the allegedly intoxicated patrons. He also noted that he was at all relevant times in attendance at the establishment and does not remember the inspectors, who would have stood out to him as being two "girls new to town," or any intoxicated patrons. He clarified that on the night in question he was at the establishment the whole business night until closing. He spent 70% of the time in the bar, some time in the office and some time in the liquor store. The Licensee said there was no RCMP or police report filed or brought to his attention relating to October 22 or 23, 2010.

### Co-manager

A co-manager of the establishment testified that gun reports or account sheets at Exhibit #2 are correct printouts of the hard liquor poured on the night in question. She said the establishment never pours "pony jugs" of 2 ounces or more and no creamy drinks are included in the mixed drink list - the milk would be added later, as done on Exhibit #2, #9. She confirmed that 44 ounces of Kahlua were served on the 22/23 October 2010, but no vodka mix - so no paralyzers. She said there are no doormen because the patrons are almost all usual customers and known to the staff and management.

### Server

A server testified that she was present on October 22. She said it was a pretty quiet night and nobody was intoxicated and she does not remember anyone spilling a drink that needed cleaning up. She said that she is instructed that nobody is to be intoxicated in the bar and, if they are, they get thrown out. She also said she remembered no milk drinks served on October 22<sup>nd</sup>. The server testified that no liquor drinks (exclusive of beer) are poured other than from the gun system. She said that she didn't notice anyone loud or intoxicated on the patio but that she doesn't usually go out there unless for a quick smoke. She said there are never more than three shots in a drink.

### Bartender

A bartender testified that although she is often a bartender, she worked as a server in the establishment on October 22, 2010. She said that she doesn't think she remembers anyone so drunk they could not stand up that night. She said if someone was that drunk she would have cut them off and told [the Licensee] or called him if he was not there. She said that she doesn't remember selling any White Russians that night but if they did, the drinks would be in shots from the gun system. She also said the establishment doesn't do jugs of mixed drinks, just of rye and vodka.

### **SUBMISSIONS**

The Branch submits the recommended penalty is within the range specified by the *Regulation* for a first contravention of s. 43(2)(b) of the *Act*, and is appropriate in light of the multiplicity of intoxicated patrons allowed to remain.

The Licensee submits that there were no intoxicated patrons in the establishment at the alleged time. He also denies that the inspectors saw any of the activity they describe. He says that the inspectors inaccurately described the location of tables and walls, and there were no males of the description alleged by the inspectors in either location (main area or patio) during the night or early morning. He saw nobody drinking creamy drinks, the establishment sold no White Russians or Paralyzers that night, and pitchers of the type described are illegal and certainly not sold at the establishment. He said there is usually a half litre of milk behind the bar for milk drinks, but almost nobody drinks it as his business is 80% Budweiser.

The Licensee submits that his staff is trained to refuse entry to minors and drunks, and anyone over-drinking is removed. He says he trains the staff himself and does not tolerate problems.

**DECISION**

The first inspector saw four patrons she thought to be intoxicated. She did not see the Licensee. She did not see any staff do anything about the intoxicated patrons. She saw creamy drinks that were identified by the allegedly intoxicated patrons as paralyzers.

The second inspector saw four patrons she thought to be intoxicated. She did not see the Licensee. She did not see any staff do anything about the intoxicated patrons. She saw one staff exchange a drink spilled by an allegedly intoxicated patron. She saw creamy drinks.

The Licensee was present for the night but spent some of his time in the office and in the liquor store. He did not see any intoxicated patrons. He did not see the inspectors. The bar gun didn't discharge any premixed liquor for paralyzers.

The two staff-members were present, saw the Licensee, but didn't see any patrons whom they believed were intoxicated.

Although there were some inconsistencies in the evidence, I find the witnesses were for the most part credible, and the inconsistencies can be explained away with the following fact description that I find reasonable:

The inspectors attended as they described and saw the four patrons that they identified as intoxicated. The two staff-members were present as described, but did not identify the four patrons as being intoxicated and therefore took no action to remove them. One of the servers refreshed the spilled drink for a patron that she did not conclude was intoxicated.

The Licensee was present, but during the half hour that the inspectors were in the bar, was occupied in the office or in the liquor store. He testified that he spends 30% of his time at such activities and therefore I conclude that over the course of the business night he could easily have missed one half hour. That would explain why he did not see the inspectors or the alleged intoxicated patrons.

The drinks were not paralyzers; that information came to the inspectors from an allegedly intoxicated patron whose judgment may have reasonably been impaired or the comments not reliable for other reasons. The evidence that creamy drinks were not dispensed from the gun system is not accurate. The evidence is that there was no White Russian or Paralyzer premix dispensed. That does not rule out the possibility that Kahlua was dispensed and mixed with milk, or some other liquor (discharged unmixed) was then made with the milk kept behind the bar for that purpose. "Paralyzer" might be an attractive name for any number of drinks in the hands of an intoxicated person trying to impress (he asked the inspector to dance).

The inspectors may have described peripheral details of their visit inaccurately. They are trained to accurately assess indicia of intoxication. As covert operators they were unaccustomed to the establishment and may have been there for the first time on October 23, 2010. This could reasonably describe any peripheral inaccuracies of the surroundings.

I find that the patrons described by the two liquor inspectors were demonstrating indicia of intoxication. By failing to see, through its management and staff, that which was there to be seen, and failing to act to remove the intoxicated patrons, the Licensee permitted four intoxicated persons to remain in the establishment contrary to s. 43(2)(b) of the *Act*. I find that the Licensee contravened the aforesaid section of the *Act* on October 23, 2010.

## **DUE DILIGENCE**

The Licensee is entitled to a defense 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.

The Licensee works to create a safe environment for his staff and patrons. He has a good reputation and a clean history with the Branch. His employees, however, failed him on October 22/23, 2010. They simply did not observe or respond to what they had an obligation to observe and respond to. There is little evidence of details of training except that the Licensee conducts it himself and that all of the employees have SIR certificates. There is no evidence of written policies and/or procedures manuals, meetings, training sessions, or testing. I find that there is insufficient evidence of due diligence to serve as a defense to the contravention.

## **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*. 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 NOEA.

There is no record of prior contraventions, offences or enforcement action of the same type for this establishment within the year prior to this contravention. Accordingly, pursuant to the *Regulation*, the contravention is a first contravention for the purpose of assessing penalty.

Schedule 4, Item 11, stipulates the range of penalties for a first contravention of s. 43(2)(b) of the *Act* is a four (4) to seven (7) day suspension and/or a monetary penalty of \$5,000-\$7,000.

The Regulation provides a range of penalties for this type of contravention and there is a range of activities that constitute a contravention of this type. Permitting four intoxicated patrons to remain is clearly a more egregious contravention than permitting only one to remain, and continuing to serve the intoxicated patron who spilled his drink is in my view a relevant factor in determining what penalty is appropriate for the contravention of permitting (an) intoxicated patron(s) to remain. I emphasize that in determining the scope of the penalty I did not assess a penalty for serving the patrons but rather have determined that serving the patrons exacerbated the contravention of permitting the patrons to remain.

## **ORDER**

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence 017763 for a period of five (5) days to commence at the close of business on, Thursday, August 11, 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 *Regulations*). I direct that Liquor Licence 017763 be held by the branch or the Fort St. John Detachment of the RCMP from the close of business on Thursday, August 11, 2011, until the Licensee has demonstrated to the Branch's satisfaction that the licensed establishment has been closed for five (5) days.

*Original signed by*

Sheldon M. Seigel  
Enforcement Hearing Adjudicator

Date: July 14, 2011

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

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