



**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: 0831925 B.C. Ltd.
dba Riverstone Bar & Grill
3328 15th Avenue
Prince George, BC V2M 0A1

Case: EH10-179

For the Licensee: Leonard Noort

For the Branch: Olubode Fagbamiye

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: Written Submissions

Date of Decision: April 29, 2011

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, 0831925 B.C. Ltd, operates the Riverside Bar & Grill located in Prince George, BC. Leonard Anthony Noort (licensee principal) is president of the corporate licensee. The licensee holds Liquor Primary Licence No. 129881 for the operation of a liquor primary establishment with liquor sales from 11 a.m. to 2 a.m. Monday thru Saturday and to Midnight on Sunday. 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 allegation and proposed penalty is set out in the Notice of Enforcement Action (the "NOEA") dated February 7, 2011. The branch alleges that on December 11, 2010, the licensee contravened section 43(2)(b) of the *Liquor Control & Licensing Act (the Act)* by permitting an intoxicated person to remain in the part of the licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is a four day suspension of the liquor license (item 11 of Schedule 4 of the *Liquor Control and Licensing Regulation (the Regulation)*). Item 11 provides a range of penalties for a first contravention of a licence suspension for four to seven days and/or a monetary penalty of \$5000 - \$7000.

The licensee does not dispute that the contravention took place, just the penalty proposed. It was agreed that this hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS

LIQUOR CONTROL AND LICENSING ACT

Drunkenness

- 43** (2) A licensee or the licensee's employee must not permit
- (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, what penalty, if any, is warranted?

EXHIBITS

1. Branch's package of disclosure to the licensee dated March 22, 2011, tabs 1 - 12.
2. Licensee's submission dated April 12, 2011.

EVIDENCE & SUBMISSIONS

The branch's evidence and submissions are summarized as follows:

On December 11, 2010, at approximately 2:10 a.m. a liquor inspector responsible for the Prince George area observed several police officers outside of the Riverside Bar & Grill. They were dealing with the aftermath of an altercation between three patrons occurring outside of the licensed establishment. One of the combatants suffered facial injuries and was awaiting the attendance of an ambulance. He was accompanied by a female who displayed obvious signs of intoxication. She was staggering, unable to maintain her balance on her own, her eyes were bloodshot, and her appearance dishevelled. Her speech was slurred, loud and inappropriate. The police pointed her out to the on duty manager of the establishment.

The inspector later met with the manager who advised that the intoxicated female and the injured combatant had arrived at the establishment at approximately 12:30 a.m. The intoxicated female was not served any liquor as she was recognized as being intoxicated. Just prior to 2:00 a.m. closing the injured combatant was involved in an altercation with two other patrons inside the establishment. The two other patrons were ejected and offered a taxi which was refused. The third combatant and the intoxicated female were permitted to remain inside to prevent a continuance of the altercation. The two patrons earlier ejected hid nearby and attacked the third when he left at closing time.

A contravention notice (CN) was completed by the inspector and provided to the licensee. A NOEA was prepared with a recommendation for a four day licence suspension. The inspector was concerned that the intoxicated female was permitted to remain in the establishment for approximately 1 ½ hours although her state of intoxication was obvious and known to staff of the establishment. Despite not being served by staff she may have obtained liquor from other patrons in the establishment. A licensee may allow an intoxicated person to remain in an unlicensed area while waiting for assistance or a ride home, but may not permit an intoxicated person to remain in a licensed area.

The liquor inspector had conducted compliance meetings with the management and staff during May and June 2010 arising from the issuance of a CN for permitting an intoxicated person to remain in the licensed establishment on May 30, 2010. The meetings were held to ensure that management and staff clearly understood their responsibility concerning intoxicated patrons.

The minimum four day suspension penalty is necessary for voluntary compliance.

The licensee's evidence and submissions are summarized as follows:

The licensee works closely with local liquor inspectors, takes its responsibility seriously regarding public safety and has had no previous enforcement actions. The establishment participates in the Prince George Bar Watch Program and has instituted a system effective to control gang activity. They initiated a shuttle system to provide transportation for patrons which is now in use at other locations. They provide monetary support to local festivals and organizations. This case involves a young female patron who was not served any liquor. She sat quietly inside the establishment, had no conversation with staff and apparently smuggled in her own liquor which she was consuming without the knowledge of the staff. A closure of the establishment may have a damaging effect on the reputation of the establishment and diminish its standing with community groups.

REASONS AND DECISION

The licensee has admitted the contravention. Having considered all of the evidence, I find that on December 11, 2010, the licensee contravened section 43(2)(b) of the *Liquor Control & Licensing Act (the Act)* by permitting an intoxicated person to remain in the part of the 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, there is little evidence upon which I can find that the licensee was duly diligent. There is no evidence of what training the employees received. There is no evidence of what policies and procedures were in place to guide staff in performing their duties. The employees on duty did not take any action to prevent the contravention from occurring or continuing.

In conclusion, 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 *Regulation*. 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 record of prior proven contraventions, offences or enforcement actions of the same type for this licensee for this licence within the year preceding this incident. I therefore find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

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. Here an obviously intoxicated person was permitted to remain in the licensed area of the establishment for approximately one and a half hours. Permitting intoxicated people to remain in a licensed establishment can have an adverse effect on the operation of the establishment and on the surrounding community.

Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4 of the *Regulations* provides a range of penalties for a first contravention of this type. The branch has proposed the minimum four day licence suspension for a first contravention of this type. In the circumstances here of an obviously intoxicated person knowingly being permitted to remain within the establishment, I find that the minimum suspension is necessary to encourage future voluntary compliance. A four 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. 129881 for a period of four (4) days, to commence as of the close of business on Thursday, May 26, 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*).

To ensure this order is effective, I direct that the liquor licence be held by the branch or the RCMP Prince George Detachment from the close of business on Thursday, May 26, 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: April 29, 2011

cc: Liquor Control and Licensing Branch, Surrey Office
Attention: Michael Clark, Regional Manager
Liquor Control and Licensing Branch, Victoria Office
Attention: Olubode Fagbamiye, Branch Advocate