



**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: Hotel Victoria Ltd.,
dba Victoria's Private Liquor Store
667 Main Street
Lillooet, BC V0K 1V0

Case: EH11-041

For the Licensee: Rick Erdman

For the Branch: Peter Mior

General Manager's Delegate: Sheldon M. Seigel

Place of Hearing: By Written Submissions

Date of Decision: September 23, 2011

**Ministry of Public
Safety & Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

Hotel Victoria Ltd. operates a licensed retail store called Victoria's Private Liquor Store in Lillooet B.C. under LRS Licence No. 195331. The licence stipulates that the hours of liquor sales are from 9:00 a.m. to 11:00 p.m. seven days per week. 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

By Notice of Enforcement Action (NOEA) dated March 31, 2011, the Branch alleged that on March 1, 2011 at approximately 3:20 p.m., the Licensee contravened s. 43(1) of the *Liquor Control and Licensing Act*, RSBC 1996 Chapter 267 (Act): by selling liquor to an intoxicated person.

Schedule 4 of the *Liquor Control and Licensing Regulation*, BC regulation 244/2002 (Regulation) establishes prescribed penalties. For a first contravention of this type, the range of penalty is four (4) to seven (7) days license suspension and /or \$5,000-\$7,000 monetary penalty.

The Branch has recommended a five (5) day suspension to be served starting on a Tuesday and continuing on successive business days until completed.

RELEVANT STATUTORY PROVISIONS

***Liquor Control and Licensing Act*, R.S.B.C. 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.

ISSUES

1. Did the contravention occur?
2. If so, is a penalty warranted under the circumstances?
3. If a penalty is warranted, what is the appropriate penalty?

EXHIBITS

Exhibit No. 1: The Branch's package of documents.

Exhibit No. 2: The Licensee's submission dated July 15, 2011.

Exhibit No. 3: Surveillance video of establishment provided to the Branch by the Licensee.

EVIDENCE

The Branch provided a copy of the RCMP officer's report in exhibit #1. That report indicates that a person later identified as the Licensee's employee and clerk of the liquor store called the police to request assistance for an intoxicated male outside of the establishment. An officer attended and found "a male... heavily intoxicated being held up by another male."

The constable noted the male:

...had urinated himself, could not stand on his own, could not complete full sentences, and often could not even complete full words. [He] had an overpower[ing] odor of liquor coming from his breath. He had a full unopened case of 24x355ml cans of Budweiser beer on the ground beside him. The male and female with [the male] stated that he had purchased the beer from the Victoria Hotel Liquor store only moments earlier, but had appeared normal when he bought the beer.

The police constable transported the male to the hospital and seized the case of beer.

The police report indicates that the constable viewed with the Licensee a surveillance video (marked 14:30-15:30 hrs.) relating to March 1, 2011. The constable identified the clerk and the male that he picked up outside the establishment. He noted that the male patron:

Enters the liquor store and appears to be staggering, once at the beer fridge he clearly has trouble standing often leaning, and the fridge door hits him several times. [The clerk] looks at [him] while he is trying to pick up the beer. On one occasion almost falls backwards into a display behind him. [He] has extreme difficulty finding the handle on the case of beer. Once [he] picks up the beer he again appears to stagger to the till. [He] appears to fumble with his wallet, attempting to find the money required to pay for the 24-pack of Budweiser 35 ml cans. [The clerk] sells [him] the beer and provides change, [the male] then exits out the side door into the lobby of the Victoria Hotel. [The clerk] follows [him] into the lobby of the hotel where [the male] proceeds to appear to believe the lobby is a bathroom, undoes his pants, and urinates on himself. [The clerk] then appears to tell [him] to leave and points at the front door. [The clerk] then re-enters the liquor store.

My observations from the video confirm several males paying for liquor at the counter including a male purchasing what appeared to be a case of beer. That male appeared to take considerable time to pay for the beer, and have some difficulty paying. He also seems to be standing for a long period of time waiting for something, as the clerk seems to avoid him. The same male is seen having some difficulty at the beer fridge and then in the lobby apparently undoing his pants before the clerk comes into the lobby and assists him out the door.

The Licensee submission (exhibit #2) provides the following evidence:

- At the time of the contravention, the Licensee was preparing to travel overseas for an extended business trip.
- The Licensee had management and staff trained and had strict instructions and rules regarding permitting intoxicated persons into the store. The sales person who was in the store... knew and understood the rules for the operation of the LRS.
- The clerk received a "Violation Ticket" as a result of this contravention and subsequently quit her job with the hotel.
- At the time of the contraventions the licensee had ensured that all staff have their Serving It Right and read the rules governing the operation of the LRS. All staff were to have been checked by management and that they were performing their duties properly.
- The clerk was a new employee.
- The clerk believed the customer needed help and called a taxi for him. The taxi would not pick up the customer so she called the police out of concern for the customer.

SUBMISSIONS

The Branch submits that Intoxication is a serious public safety issue and that intoxicated patrons may be a danger to themselves or the public and are associated with behaviour that has a negative impact on communities, including unsanitary behaviour. The Branch also submits that the patron displayed obvious signs of intoxication and was in clear line of sight of the clerk. The clerk did not know or recognize the symptoms of intoxication or did not act on them in a timely fashion. The intoxicated patron was allowed to purchase alcohol and walk out of the store while being watched by the clerk.

The Licensee agrees that the contravention occurred on March 1, 2011, but disputes the penalty. It says that a smaller penalty than that recommended by the Branch should be imposed. The Licensee submits that his efforts to ensure the rules are complied with, as well as the fact that a new employee was working on the date in question, should be taken into consideration when assessing a penalty for the contravention. It says the clerk acted out of concern for the patron and could not leave the LRS unattended to remove the liquor from the patron after he left the store. The Licensee says the clerk regretted her actions and should not be penalized for contacting the police after the contravention. Finally, the Licensee submits that its record since the contravention is clean and it has followed through with necessary measures to ensure compliance in the future.

REASONS AND DECISION

I find that the combination of the Licensee's recognition of the contravention and the police constable's description of the events including his observations from the surveillance disc are for the most part consistent with my observations from the surveillance video and confirm that the facts occurred as claimed by the Branch. I find the patron did display signs of intoxication (as described by the police constable) such that the clerk should have excluded him from the store and refuse to sell him liquor.

I find that the contravention occurred as alleged.

DUE DILIGENCE

The Licensee is entitled to a defence of due diligence if it can establish that it did all that it should reasonably have done to put in place systems and policies and implement those systems and policies in order to ensure compliance with the Act, Regulation, and the terms of the licence. The Licensee's submissions in part are the equivalent of a plea for this defence. There is little evidence of specifics as to the policies and procedures in place to assure compliance in the establishment and little evidence of actions intended to monitor the activities of the Licensee's employees to ensure the policies and procedures are acted upon. I cannot, on the evidence before me, conclude that the Licensee has been duly diligent.

PENALTY

Pursuant to section 20(2) of the Act, having found that the licensee has contravened the Act, the Regulation and/or the terms and conditions of the licence, I may do any one or more of the following:

- 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 or this establishment within the year preceding this incident. The range of penalties for a first contravention of section 43(1) of the Act pursuant to the Regulation, Schedule 4, item 9 is four (4) to seven (7) days suspension or a five thousand to seven thousand dollar (\$5,000- \$7,000) monetary penalty.

I find that the clerk had ample opportunity to observe indicia of intoxication presented by the patron which on the evidence were significant and blatantly visible. The clerk failed to act on what she saw or should have seen prior to the patron attending at the cash to purchase the liquor. The clerk sold the patron the beer and only thereafter exhibited concern for his wellbeing. I find this to be a significant departure from the actions I would expect of a well-trained and reliable clerk in a liquor store. I find a suspension of five (5) days to be appropriate and warranted.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of LRS Licence No. 195331 for a period of five (5) days to commence at the close of business on Monday, October 24, 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 LRS Licence No.195331 be held by the branch or the local detachment of the RCMP from the close of business on Monday, October 24, 2011, until the licensee has demonstrated to the branch's satisfaction that the suspensions have been served.

Signs satisfactory to the General Manager showing that the licence is suspended will be placed in a prominent location in the establishment by a branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: September 23, 2011

cc: Liquor Control and Licensing Branch, Vancouver Office
Attn: Donna Lister, Regional Manager
Liquor Control and Licensing Branch, Vancouver Office
Attn: Peter Mior, Branch Advocate