



**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:	Hotel Victoria 667 Main Street Lillooet, BC V0K 1V0
Case:	EH11-056
For the Licensee:	David Jeong
For the Branch:	Peter Mior
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	July 20, 2011
Place of Hearing:	Whistler, BC
Date of Decision:	August 24, 2011

## **INTRODUCTION**

Hotel Victoria Ltd. operates a liquor primary establishment called Hotel Victoria at 667 Main Street in Lillooet B.C. under Liquor Primary Licence No. 016466. The licence stipulates that the hours of liquor sales are from 12:00 p.m. to 2:00 a.m. Monday through Saturday and 11:00 a.m. to 12:00 a.m. Sunday. The person capacity is 132. 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 April 20, 2011, the Liquor Control and Licensing Branch ("Branch") alleged that on April 8, 2011, 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 fourteen-day suspension of the liquor licence in accordance with item 11 of Schedule 4, of the *Liquor Control and Licensing Regulation (Regulation)*.

## **RELEVANT STATUTORY PROVISIONS**

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

#### **Drunkenness**

**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 No. 1:** Branch's Book of Documents

**Exhibit No. 2:** Hand-written statement provided by the Licensee

## EVIDENCE

### RCMP Constable

An RCMP constable testified that he has been in the Lillooet detachment for approximately four and a half years and has done a hundred or so licensed premise checks (LPC) of liquor establishments. He indicated that when he does a LPC he is looking for licence contraventions and dangerous behaviour such as overcrowding, fighting, minors in the bar, and intoxicated patrons. He has professional experience with intoxicated members of the public including conducting more than 50 impaired driving investigations and as many as 500 roadsides screening processes.

The constable said he attended the Hotel Victoria on April 8, 2011 at 11:46 p.m. He attended for the purpose of conducting a routine inspection. Upon approaching the establishment's parking lot door with his partner, he noted a male standing just outside the door. The male was approximately 60 years old, and was smoking a cigarette. The constable chatted with the male briefly and concluded: "he was highly intoxicated." The constable observed the male staggering, fighting to maintain his balance, and concluded that the man was only marginally able to care for himself. The constable indicated that had he felt the male was intent on driving a car, he would have taken him directly to the police station without doing a roadside screening, as there was no doubt that the male was highly intoxicated.

The constable testified that he and his partner entered the establishment and proceeded to the bar where he saw an unfinished beer with a lottery ticket on the bar. The drink was unattended. He spoke with the bartender who indicated that the beer belonged to the male who was smoking outside the parking lot door. The constable advised the bartender at that time that the patron was intoxicated. The constable counted six persons in the bar including the bartender. The constable and his partner departed at 11:51 p.m. and on doing so saw the male, who had been at the parking lot door, re-enter the bar.

The constable said that he briefly attended to another matter and returned to the bar at 12:07 a.m. and noted the same 60 year-old male seated with a group of people near where the beer had been on the bar with the lottery ticket. As the constable stood inside the bar, he observed the bartender serve six one-ounce shots of what looked like liquor shooters to the table of patrons where the intoxicated patron was seated. The constable also noted that the intoxicated male had a Miller Lite beer in his hand- not the same brand as the one that was on the bar with the lottery ticket.

The constable testified that he identified the male patron to the bartender and the bartender indicated that the man had six drinks that night. The constable advised the bartender that the patron was slurring his speech, had an overpowering smell of liquor on his breath (which he noted at both the door and again as he approached the man at the table), and had difficulty balancing. The bartender said he had called a taxi for the patron. The Constable said the man was “not permitted to remain in the bar while waiting for the taxi, should not have a beer in his hand, and should certainly not be served a shooter.” The constable said the bartender replied that the other patrons at the table had given the man the beer, and that he had poured out the man’s beer that was left on the bar with the lottery ticket.

The constable said he advised the intoxicated male to leave and after the man refused a ride home, the constable saw him staggering down Main Street.

The constable testified that it was blatantly obvious that the male was intoxicated and if the patron had been driving he would have been taken directly to the police station without a roadsides screening. He said he asked the patron for identification in the bar and was met with a confused response. The constable observed the patron for one minute during his first visit and for about five minutes during his second visit that night. The constable also said that he called the taxi company and confirmed that the bartender requested a taxi at 11:51 p.m.

The constable testified that when departing from the bar the first time, he felt the intoxicated male would settle up his account and leave without further issue. When the officer returned approximately 16 minutes later, he was surprised to find the intoxicated patron still in the bar.

### Inspector

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 (Exhibit 1). In particular, she pointed out the section at page 10 and page 26 of the Guide, which deals with over-service and intoxicated patrons. The Guide sets out some of the indicia of intoxication. The inspector indicated that she authored the NOEA in response to her review of the LPC and report from the Lillooet detachment of the RCMP. She said she is familiar with the establishment, and the bartender would have had a direct line of sight to the patron at all times. In the inspector's view, the bartender could not have missed the signs of intoxication that the patron was displaying. Despite that, he allowed the patron to remain in the bar when intoxicated and for a reasonable period of time afterward, allowed the patron to receive a beer after he was obviously intoxicated, and served the intoxicated patron or allowed him to be present and participate in a round of shooters to the table of patrons.

The inspector identified documents in Exhibit 1 including the Inspection Interview Sheet (tab 8), and evidence of a history of contraventions of the same type (tabs 13, 14, and 15). She also testified that in a compliance meeting held in January of 2010 (documents at tab 12); she met with the Licensee to discuss issues of intoxicated patrons in the establishment as well as other activities of concern to the Branch relating to the establishment. The Licensee in that meeting undertook to be more diligent when serving drinks and to refuse to serve drinks to intoxicated patrons.

### The Licensee

The Licensee indicated that he was the owner of the corporation that holds the licence.

The Licensee testified that after each past incident of allowing intoxicated patrons to remain, he reported to the Branch what he did in terms of improving training and education. He said the Branch should have checked at that time if they thought he had not enough training and education in place for his staff. He said the past contraventions occurred, but if the Branch provided any education it is not reflected in the results.

The Licensee testified that following Branch meetings, he decided not to serve intoxicated people, and to report anything that happened in the bar to the police. In February of 2010 after first taking over the establishment, the contraventions began. He said that once he was in control, the Branch was suddenly concerned with contraventions that they did not care about under the previous ownership.

He testified that as he was not at the establishment on the date of the contravention, he doesn't know firsthand what happened. But when another staff member interviewed the bartender, she got a statement (Exhibit#2, first paragraph). That staff member also advised the Licensee that the man who was allegedly intoxicated is a regular patron. The patron also provided a statement that says he did not have a shot of liquor, but purchased them for his friends and that he doesn't drink Miller beer.

### Bartender

The bartender testified that the patron had five or six Budweiser beers in about five or six hours but did not drink any of the bottles empty. He said the patron drank about  $\frac{3}{4}$  of each of them and dumped the remainder because the beer was warm. The bartender only served another beer when the patron was finished with the previous one. He said the patron dumped the remainder of each beer in the sink at the bar. He confirmed that, on one occasion, the patron left his beer and a lottery ticket on the bar and went outside to smoke.

The bartender said that the patron was not a regular, but comes to the bar every couple of months. The patron arrived by taxi and left by taxi. He said it was easy to see the whole bar that night because it was not busy, and the patron was sitting with five or six people at a table when the RCMP interviewed him and asked him for identification. The bartender said the patron asked him to call a taxi at the end of the night, and he did so. However, he neither poured out the patron's beer nor called the taxi because he thought the patron was drunk. The bartender said that he did not feel the patron was "that drunk."

The bartender testified that after the patron asked him to call a taxi, the patron went outside to wait and apparently came back in to the table where his friends were. He did not see the patron return. Then the patron ordered a round of shooters for all at the table except himself. The bartender did not see the patron drink a shooter or a Miller beer from the table.

The bartender said that patrons' becoming intoxicated is an issue at the establishment and although he used to try to get patrons to leave before they got intoxicated, he would often have a difficult time getting them out of the bar.

The bartender also testified that the establishment is far less busy than it was before the Licensee took over. He said police patrols have increased significantly during the last year and often there are police vehicles parked in front of the hotel, which keeps the customers away.

## **SUBMISSIONS**

The Branch submits the recommended penalty is within the range specified by the *Regulation* for a second contravention of s. 43(2)(b) of the *Act*, and is appropriate in light of the clear indication of patron intoxication that was not acted upon by the establishment's staff and by the history of contraventions of this kind.

The Licensee submits that the patron was present in the bar, but was not drunk and was not served liquor when he was drunk. Rather, the Licensee submits, the patron was provided with liquor by his friends who had purchased it from the bar. The Licensee says there is no evidence that the patron was staggering or mumbling.

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

The Licensee submits that before he took possession of the establishment, there were no contraventions; but one year later, there were seven contraventions. The previous licensee was also not present on a daily basis and had the same manager, so the Licensee wonders why there were no contraventions before he bought the bar? The Licensee says this shows that the Branch or the RCMP is targeting him or his establishment.

The Licensee says that after he had introduced himself to the RCMP, he attempted to build up a rapport with them. He says the RCMP did not know that the Branch had the ability to monitor licensees and the officers also did not know what is involved in ticketing a bar for licence contraventions. Now that they do, there are lots of allegations against him.

With respect to this allegation, the Licensee said that in light of the statements of the bartender and the patron in question (Exhibit 2), it is clear that the police and the liquor inspector are wrong and the contravention did not occur. He added that the police observation of the patron slurring his words and swaying can be explained by looking at the locals. He said:

When I meet the regional people, they are a little slow when they don't drink anything. I stay there for a week or so. They are a little slow and it is a behavior trait. In the early morning they are swaying and have red faces from a long night of drinking before. When I talk to them they are slurring and swaying but they are not intoxicated.

## **DECISION**

I accept the police constable's testimony that he observed multiple indicia of intoxication displayed by the male patron on two occasions, separated by the constable's brief absence from the establishment on April 8 and 9, 2011. I also accept the police constable's testimony that the taxi company told him the bartender called for a taxi at 11:51 p.m. That is precisely the time the constable indicated that he departed from the bar the first time after discussing the intoxicated patron with the bartender. I find it reasonable that this indicates that the bartender called a taxi for the intoxicated patron after the police officer left the establishment. It is reasonable to conclude that the telephone call came as a result of the constable's discussion with the bartender.

The bartender did not tell the police constable that he felt the patron was not drunk. He did not deny that he served the shooters ordered by the patron. The bartender had already been told by the police that the patron was intoxicated. The bartender did not indicate that he discussed the issue of intoxication with the patron or that he further observed the patron in that regard. He served shooters to a table although the shooters were ordered by the patron whom the bartender had been advised was intoxicated. He testified that the patron “was not that drunk.” I have no evidence as to what “not that drunk” means to the bartender, except for his written statement that the patron “was not staggering.”

There is inadequate evidence to contradict the constable’s conclusion that the patron was intoxicated following the constable’s observation of signs of intoxication. I find the patron was intoxicated.

The bartender had a clear view of the patron throughout much of the relevant time, had observed the patron’s actions (dumping beer) on a number of occasions, and I find on the balance of probabilities that the patron was exhibiting signs of intoxication. The bartender nonetheless served the patron liquor when it was ordered (shots) without discussing the patron’s condition with him. The bartender did not testify about any evaluation he may have made of the patron’s condition or level of intoxication after being advised by the constable that the patron was intoxicated. I find that the bartender knew or ought to have known that the patron was intoxicated and should not have been permitted to remain in the establishment.

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 an intoxicated person 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 April 8, 2011.

## **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 obligation to provide training and oversee control of its employees lies at the feet of the Licensee.

The Licensee and its witnesses have provided very little evidence of policies and or procedures designed and followed for the purpose of avoiding contraventions of this type. The evidence of staff training is similarly lacking. 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 a record of prior contraventions and enforcement action of the same type for this establishment within the year prior to this contravention. The licensee took over in 2009. He attended a compliance meeting on January 19, 2010, for an allegation of permitting an intoxicated person to remain. There were contraventions of s. 43(2)(b) of the *Act* on February 28, 2010, and again on July 25, 2010, as well as a contravention for failure to clear liquor on October 30, 2010.

In light of the February and July 2010 contraventions of s. 43(2)(b) of the *Act*, this April 8, 2011, contravention is a “subsequent” contravention for the purpose of assessing penalty under Schedule 4 of the *Regulation*. However, in the NOEA the branch gave notice to the Licensee that it was treating the contravention as a “second” contravention for penalty purposes. I find that it would be unfair to assess the April 2011 contravention in the “subsequent” penalty range, which carries a minimum 18 day licence suspension because the Licensee was not given notice of this possibility.

Schedule 4, Item 11, stipulates that the range of penalties for a second contravention of s. 43(2)(b) of the *Act* is a ten (10) to fourteen (14) day suspension. I find a fourteen (14) day suspension is reasonable and appropriate in the circumstances, particularly in light of the compliance history, the nature of the previous contraventions, and the fact that additional service was provided to the patron after the bartender had been advised that the patron was intoxicated.

**ORDER**

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 016466 for a period of fourteen (14) days to commence at the close of business on Thursday, September 22, 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 Primary Licence 016466 be held by the Branch or the Lillooet detachment of the RCMP from the close of business on Thursday, September 22, 2011, until the Licensee has demonstrated to the Branch's satisfaction that the suspension ordered has been served.

A suspension sign notifying the public that the licence is suspended will be placed in prominent locations in the establishment by a branch inspector or a police officer, and must remain in place during the days of suspension.

*Original signed by*

Sheldon M. Seigel  
Enforcement Hearing Adjudicator

Date: August 24, 2011

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

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