



**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:	Fort Chelsea Holdings Ltd. dba Coachman Inn (Victoria) aka The Upper Deck Sports Lounge 229 Gorge Road East Victoria, BC V9A 1L1
Case:	EH11-108
For the Licensee:	Miles Stanley
For the Branch:	Bode Fagbamiye
Enforcement Hearing Adjudicator:	George C.E. Fuller
Date of Hearing:	Written Submission
Date of Decision:	November 18, 2011

INTRODUCTION

The Corporate Licensee, Fort Chelsea Holdings Ltd., dba Coachman Inn (Victoria) (the "the Licensee") owns and operates a hotel property in Victoria, BC. Within that facility, is an establishment known as The Upper Deck Sports Lounge (the "Sports Lounge"), operated under a third party agreement with 0847964 BC Ltd. The principal of the Sports Lounge is Miles Stanley, who is the authorized representative of the Licensee in these proceedings.

According to the terms of the Liquor Primary Licence, the Licensee may sell liquor from 11am to 1am, Monday through Saturday, and 11am to midnight on Sunday. The licence is, as are all liquor licences, issued in the Province, subject to the terms and conditions contained in the publication "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 Notice of Enforcement Action (the "NOEA") dated August 11, 2011.

The Branch alleges that on June 25, 2011, the Licensee contravened Section 43(2)(b) of the *Liquor Control and 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 four day licence suspension (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*) (the "Regulation"). The range of penalties for a first contravention of this type is a four to seven day licence suspension and/or a \$5,000 to \$7,000 dollar monetary penalty.

The Licensee does not dispute that the contravention occurred. However, it disputes the proposed penalty. The Branch and Licensee agreed that the hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

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 Licenced establishment where liquor is sold, served or otherwise supplied.

ISSUES

1. Did the contravention occur?
2. Was the Licensee duly diligent?
3. If the Licensee was not duly diligent, are penalties warranted under the circumstances?
4. If a penalty is warranted, what is the appropriate penalty?

EXHIBITS

The following documents were submitted and were considered:

Exhibit 1: The Branch's book of documents, Tabs 1 to 13 inclusive.

Exhibit 2: Letter dated October 19, 2011 to the Branch from Miles Stanley, the operator of the Licensee's establishment.

EVIDENCE OF THE BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged, and, therefore, it is deemed to accept the facts as put forward by the Branch with respect to the issue of whether the contravention occurred. The Licensee has, however, made submissions in respect to the appropriateness and fairness of the penalty which the Branch has recommended.

Accordingly, the evidence may be summarized as follows:

On Sunday, June 26, 2011, at approximately 12:00 am (midnight) (business day of Saturday, June 25, 2011) liquor inspector 1 and liquor inspector 2 entered the Licensees establishment and observed a male patron seated in the middle of the main service bar. The Patron was showing signs of intoxication. He had droopy eyes, his eyes closed for extended periods and he had exaggerated movements. The patron was sitting with half of a consumed clear liquid martini in front of him. He would pick the martini up and make a face of displeasure when taking a drink. Inspector 1 stated to Inspector 2 that this patron was about to throw up. In fact, about 10 seconds later, the patron got up from his seat and walked in a stiff, sudden manner to the washroom. Inspector 2 followed the patron into the washroom where he witnessed him throw up.

Upon exiting the washroom, the patron approached the Inspectors and was attempting to speak with them. He took his tooth out in front of the Inspectors and then repositioned it. His speech was so slurred that the Inspectors could not understand what he was trying to convey, but his gestures indicated that he was trying to explain why he had wet spots all over the groin area of his dress slacks.

While talking to the female server, the Inspectors observed the bartender pour and serve another shooter to the intoxicated patron. The Inspectors then instructed the bartender that the patron needed to be removed from the establishment immediately.

The bartender said he would call the patron a taxi but the Inspectors insisted that the patron be removed from the red line area, where he could await the arrival of a taxi. The Inspectors left the premises at 12:15 am. At 12:30 am on Sunday, June 26 being the business day of Saturday, June 25 the bartender called Inspector 1 and advised that he took full responsibility for serving the intoxicated patron the additional shooter.

SUBMISSIONS OF THE BRANCH

The Branch submits that, in order to avoid the possibility of further consumption and avoid any harm to other patrons, or staff, the Licensee must not permit a person who is intoxicated to remain in that part of an establishment where liquor is served. In order to ensure their own safety, an intoxicated person may remain in an unlicensed area of the establishment, while waiting for assistance, or a ride home.

In the present case, the staff had a reasonable opportunity to intervene and ensure that the patron was prohibited further access to alcohol and be made to leave. The bartender, who was the directing mind of the Licensee at the time, took no such steps to ensure the safety and well being of the patron. This was despite the fact that the establishment was not busy. The patron clearly demonstrated a significant level of intoxication and was not removed until pointed out by the liquor inspectors to the staff. This demonstrates a clear failure of compliance with the legislation and branch policy prohibiting patron intoxication in licensed establishments.

The Branch is recommending a suspension of the licence as it will impress upon the Licensee and staff and the public that allowing such behaviour is not permitted and will result in serious consequences. The suspension penalty is proportionate to the seriousness of the circumstance of permitting patron intoxication.

In view of the fact that there has been no compliance history within the previous 24 months, the Branch is recommending a four day liquor licence suspension in order to bring the Licensee into compliance.

SUBMISSIONS OF THE LICENSEE

The Licensee submits that the proposed penalty of a licence suspension for four days is not warranted. Although the Licensee admits that the contravention occurred, it was unaware of a number of crucial factors which contributed to the contravention. Specifically, at the time of the contravention, the bartender had been diagnosed as bipolar but the Licensee was unaware of this medical diagnosis. Furthermore, the Licensee was unaware that the bartender had stopped taking his medication which, in turn, affected his judgement in over serving the patron. As a result, the employer had terminated the employment of the bartender due to his poor judgement. This action, therefore, should be sufficient to satisfy the concerns of the Branch and, therefore, no further sanctions should be required.

The Licensee further submits that, given the poor economic times, any further action on the part of the Branch would create an undue hardship on the business of the Licensee.

The Licensee also submits that it has worked hard educating and training staff based on the guidelines outlined by the Branch and that, therefore, no penalty should be levied at all. At the very least, the Licensee says that it should be able to choose the suspension dates, as it has significant business booked through to the new year.

ANALYSIS AND DECISION

The Licensee has admitted to the contravention. Having considered all of the evidence, and the submissions of the Branch and the Licensee, I find that on Sunday, June 26, 2011, at approximately 12:00 am (business day of Saturday, June 25, 2011), the

Licensee contravened Section 43(2)(b) of the Act by permitting an intoxicated person to remain in that part of the licensed establishment where liquor is sold, served or otherwise supplied.

DUE DILIGENCE

The Licensee is entitled to a defence to the contravention, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The Licensee must not only establish the existence of procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with.

Here there is virtually no evidence upon which I can find that the Licensee was duly diligent. In this regard, I note that the Licensee has asserted that it has conducted staff education and training for its employees which such sessions have been based upon the guidelines outlined by the Branch. The Licensee has not however, provided any documentary evidence supporting this assertion. I have concluded, therefore, that the Licensee, in this case, is not entitled to the benefit of the defense of due diligence.

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 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 and/or a monetary penalty is warranted, I am bound by the minimum 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. 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 to achieve voluntary compliance with the Act, the Regulation, and the terms and conditions of the Licence. 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 public safety and the well-being of the community.

Schedule 4, Item 11, of the Regulation, sets out penalties for first contraventions of Section 43(2)(b) of the Act, a licence suspension of four to seven days and/or a monetary penalty of between \$5,000 to \$7,000. The Branch has recommended a Licence suspension of four days, which is the minimum suspension for this particular contravention.

There can be no doubt but that a contravention of Section 43(2)(b) of the Act is at the high end of the seriousness scale. Intoxicated patrons are often associated with violence, be it as a victim, or as an initiator. What is particularly disturbing in this case is the fact that, after the patron had become intoxicated to the point of vomiting, the bartender served him another alcoholic beverage. Notwithstanding the fact that the bartender may have suffered from some disability, that does not relieve the Licensee of its responsibility to manage its establishment in accordance with the provisions of the Act and Regulations and the terms and conditions of its Licence. There are no proven contraventions of the same type before this Licensee within the year proceeding this incident, nor are there any allegations which the Branch did not pursue and no compliance meetings were held.

Taking into consideration all of the above, I am satisfied that a four day suspension is necessary in order to bring the Licensee in this case into compliance.

ORDER

Pursuant to Section 20(2) of the Act, I order a suspension of Liquor Primary Licence No. 120212 for a period of four consecutive days, to commence at the close of business on Friday, December 16, 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. In order to ensure that this Order is effective, I direct that the Liquor Licence be held by the Branch, or the Victoria City Police Department, from the close of business on Friday, December 16, 2011, until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: November 18, 2011

cc: Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Bode Fagbamiye, Branch Advocate