



**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: 0934775 B.C. Ltd.
dba Browns Social House (Nanaimo)
6-6334 Metral Drive
Nanaimo, BC V9T 2L8

Case: EH13-179

For the Licensee: Adam Dukoff

For the Branch: Hugh Trenchard

General Manager's Delegate: Edward Owsianski

Date of Hearing: Written Submissions

Date of Decision: June 4, 2014

Ministry of Justice

Liquor Control and
Licensing Branch

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INTRODUCTION

The Licensee, 0934775 B.C. Ltd. (the "Licensee") owns and operates an establishment known as Browns Social House (Nanaimo) in Nanaimo BC. The Licensee holds Food Primary Licence number 305319 (the "Licence"). The authorized representative of the Licensee is Adam Dukoff.

According to the terms of its Licence, the Licensee may sell liquor from 9:00 a.m. to Midnight, seven days a week. The establishment must maintain the primary focus on the service of food. 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 January 22, 2014.

The Branch alleges that on October 4, 2013, 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 or served. The proposed enforcement action outlined in the NOEA is a seven day Licence suspension.

The proposed Licence suspension falls within the penalty range set out in item 11, Schedule 4, of the *Liquor Control and Licensing Regulation* (the "Regulation") for a first contravention of this type. 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 monetary penalty.

The Licensee does not dispute committing the contravention, nor is the Licensee pursuing a defence of due diligence. The Licensee disputes the proposed penalty and requests that a monetary penalty be imposed, instead of the proposed seven day suspension.

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
(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, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

The following documents were submitted and were considered:

Exhibit 1: The Branch's book of documents, tabs 1 to 12 inclusive.

Exhibit 2: Handwritten notes of police constable.

Exhibit 3: The licensee's written submission.

EVIDENCE—BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged, nor does it seek to claim the benefit of the defence of due diligence. It is deemed, therefore, 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 of the penalty which the Branch has recommended. Accordingly, the evidence may be summarized as set out below.

On October 4, 2013 at approximately 5:55 p.m. an off-duty police officer socializing at the licensed establishment observed four female patrons seated inside the licensed area who appeared to be in various stages of intoxication. When their behaviour drew the attention of other patrons and liquor service continued to their table the officer contacted the police office to have on-duty officers attend.

A plainclothes officer attended and observed the subject female patrons. Satisfied that they were intoxicated he spoke with the manager. It was determined that the four patrons had arrived at the establishment shortly before 4:00 p.m. and had accumulated a bill for alcoholic beverages consisting of 7 bottles of champagne, 5 martinis, a 9 oz. glass of wine, and a beer. The officer advised the manager that the patrons could not remain in the licensed establishment and arrangements must be made for safe rides home.

Two of the four patrons were subsequently arrested for public intoxication after becoming abusive. They were released in the morning when sober, neither recalled the behaviour resulting in their arrest. They were apologetic and contrite.

SUBMISSIONS – BRANCH

The Branch says that the contravention has been proven. The recommended seven day licence suspension is necessary to impress upon the licensee the seriousness of maintaining public safety through compliance with branch polices, to discourage similar incidents and provide assurance to the community that the branch will deal appropriately with incidents of non-compliance. The branch says that the business model for the establishment generates significant revenue from the sale of liquor and, as such, a monetary penalty would have little deterrent effect and may be seen as a cost of doing business.

SUBMISSIONS—LICENSEE

The licensee representative concedes that the contravention occurred. He proposes a monetary penalty, arguing that this was an isolated incident, the establishment is regularly inspected by the local liquor inspector and police officers and there have not been any incidents prior to or following this incident. He submitted that the licensee has a strong focus on social responsibility, specifically safe alcohol service and their staff operate in compliance with all liquor laws.

The licensee representative submits that a monetary penalty would have greater financial implications exceeding the potential loss of liquor sales during a seven day suspension. The future success of the business would be damaged as a result of the suspension and would adversely affect the income of the 45 employees. A monetary penalty would have an impact on the owners rather than affecting staff and guests. Following the incident they held a mandatory training session for all staff and managers to review safe alcohol serving procedures. The local liquor inspector aware of the steps taken supports a monetary penalty.

ANALYSIS AND DECISION

Contravention

The Licensee has admitted to the contravention. Having considered all of the evidence and the submissions filed in these proceedings, I find that on October 4, 2013 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 or served.

Due Diligence

The Licensee is entitled to a defence to the contravention, if it can be shown that it was duly diligent in taking responsible 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 accordingly.

The onus is upon the Licensee to prove this defence on the balance of probabilities. The Licensee here did not present a defence of due diligence. I find, therefore, that the Licensee has not established a defence of due diligence.

Accordingly, I find that 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 or served.

PENALTY

Pursuant to Section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation or the terms and conditions of the Licence, I have discretion to order one or more of the following enforcement actions:

- Take no enforcement action
- 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 are warranted, I am bound by 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. 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 compliance with the Act, the Regulation, and the terms and conditions of the Licence. Among the factors that I have considered in determining the appropriate penalty in this case are: 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.

Licensees are obligated to comply with the Act, Regulations and the terms and conditions of their licences. Enforcement actions are intended to both address the licensee's non-compliance, and to encourage future compliance by way of deterrence.

Intoxication is a serious public safety issue. Intoxicated patrons may be a danger to themselves or others. It can be a factor in many crimes including domestic violence, assaults, and driving violations. It can have a negative impact on communities including noise, nuisance and vandalism. Intoxicated persons may not be able to exercise sufficient judgment to stop consuming liquor. Providing liquor to a person who is already intoxicated increases their risk.

There is no record of a proven contravention of the same type for this licensee at this establishment within the 12 months prior to this incident. I find, therefore, this to be a first contravention for the purposes of reviewing the range of applicable penalties under Schedule 4 of the Regulation. Item 11 in Schedule 4 of the Regulation provides that the penalties for a first contravention of this type are a four to seven day licence suspension and/or a \$5,000 to \$7,000 monetary penalty.

In this case four patrons, exhibiting signs of intoxication, were allowed to remain within the licensed area of the establishment and were continued to be served liquor. There was no intervention by the licensee or its staff until required by an on-duty police officer. It was determined that, what could only be considered as, an excessive amount of liquor was served to the four patrons within a relatively short period of time (7 bottles of champagne, 5 martinis, a 9 oz. glass of wine and a beer in a time period of less than two and one-half hours). Two of the patrons were taken into custody by the police for public intoxication after exhibiting abusive conduct.

In light of all of the above, I find that a seven day Licence suspension is necessary and appropriate in the circumstances in order to encourage compliance with section 43(2)(b) of the Act by this licensee.

So far as the Licensee's suggestion that it would be a hardship for employees to suffer a wage loss, I would simply point out that it is the Licensee alone who is responsible for contraventions of the Act or Regulation. This would not, however, prevent the Licensee from making those employees whole for lost wages over the period of suspension.

ORDER

Pursuant to Section 20(2) of the Act, I order a suspension of Food Primary Licence Number 305319, for a period of seven consecutive business days, to commence on the close of business on Thursday, July 10, 2014 and to continue each succeeding business day until the suspension is completed.

To ensure that this order is effective, I direct that the liquor licence be held either by the Branch, or the RCMP Nanaimo Detachment, from the close of business on Thursday, July 10, 2014 until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

I further order that signs satisfactory to the General Manager notifying the public 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

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: June 4, 2014

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

Liquor Control and Licensing Branch, Victoria Office
Attention: Hugh Trenchard, Branch Advocate