



**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:	Beruschi Enterprises Ltd., dba Regent Motor Inn 112 – 1 st Street East Revelstoke, BC V0E 2S0
Case:	EH13-202
For the Licensee:	F. Brady Beruschi
For the Branch:	Cristal Scheer
General Manager's Delegate:	George C.E. Fuller
Date of Hearing:	Written Submissions
Date of Decision:	July 10, 2014

Ministry of Justice

Liquor Control and
Licensing Branch

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INTRODUCTION

The Licensee, Beruschi Enterprises Ltd. (the "Licensee") owns and operates an establishment known as the Regent Motor Inn, in Revelstoke BC. The Licensee holds Licensee Liquor Primary Licence number 026941 (the "Licence"). The authorized representative of the Licensee is F. Brady Beruschi.

According to the terms of its Licence, the Licensee may sell liquor from noon to 2:00 a.m., seven days a week. 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 April 23, 2014.

The Branch alleges that on December 14, 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 action outlined in the NOEA is a four day licence suspension, which 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 Licensee does not dispute that the contravention occurred as alleged, nor is the Licensee pursuing a defence of due diligence. The Licensee disputes the proposed enforcement action and requests that if any penalty is to be imposed, that it be a reasonable monetary penalty, without any Licence 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

- (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, is a penalty warranted under the circumstances?
4. If a penalty is warranted, what is the appropriate penalty?

EXHIBITS

The following documents were submitted for consideration:

Exhibit 1: The Branch's book of documents, tabs 1 to 9 inclusive.

Exhibit 2: Email letter to the Branch from the Licensee dated May 5, 2014, setting out the Licensee's position with respect to an appropriate penalty.

EVIDENCE –BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged, nor does it seek 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 and fairness of the penalty which the Branch has recommended. Accordingly, the evidence may be summarized as set out below.

On Saturday, December 14, 2013, at approximately 11:15 p.m., liquor inspectors A and B entered the Licensee's establishment. At approximately 11:27 p.m. liquor inspectors A and B observed a patron ("P1") leaning against a pillar on the dance floor, immediately in front of the DJ booth. P1 appeared to have trouble standing and proceeded to fall backwards onto the floor. At no time did P1 appear to try and prevent his fall.

At approximately 11:30 p.m., P1 made his way to the dance floor, bumping into everyone around him. P1's friends attempted to get him to sit down, but he kept trying to get to the dance floor. One of P1's friends was eventually successful in getting him back to his seat.

At approximately 11:33 p.m., P1 appeared to have trouble holding his head up while sitting in a chair. While this scene was unfolding a server of the establishment walked by P1 on several occasions, but failed to take any action.

For the next several minutes, P1 made repeated attempts to gain access to the dance floor but had difficulty walking in a straight line and continued to bump into other patrons.

At approximately 11:38 p.m. a male staff member of the establishment spoke to P1 and eventually got him off of the dance floor. That staff member made no attempt to remove P1 from the establishment. At approximately 11:41 p.m., P1 was back on the dance floor again and continued to stumble into other patrons. This scene was in full view of the male staff member who had just spoken with P1. The male staff member took no action towards P1.

At approximately 11:42 p.m., P1's friend took him and guided him outside of the establishment. Both inspectors followed the group outside and observed that P1 could not carry on a conversation but could only grunt at his friend.

SUBMISSIONS—BRANCH

The Branch submits that it has demonstrated on the evidence that on the evening of December 14, 2013, P1 was observed stumbling and falling down on the dance floor, and generally behaving in a manner that should have been drawn to someone's attention. During this time, however, the inspectors did not observe a staff member attempt to remove P1 from the Licensee's establishment.

SUBMISSIONS—LICENSEE

In its brief submission to the Branch by the Licensee of May 5, 2014, the Licensee acknowledged that an intoxicated patron was in the establishment at the time alleged. Furthermore, the employee of the establishment who poorly handled the situation is no longer employed by the establishment.

The Licensee advises that the pub has been in operation since 1945 and, since the designation of Revelstoke as a tourism destination community, the establishment has evolved to be much more than a bar. The business now depends heavily on its food operation, which provides a very large dining outlet for the community.

On the other hand, success has brought with it the need to compete with food primary operations that have lounge endorsements and operate like bars. The Licensee opines that, if it was licensed as a food primary operation and received the same contravention, the establishment would be able to remain open and serve food but be restricted from serving alcohol. The Licensee feels that a closure would not only negatively affect the food operations but would be a hardship for its committed and hard working employees. For these reasons, the Licensee requests the imposition of a reasonable fine rather than the recommended four day Licence suspension.

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 December 14, 2013, the Licensee contravened section 43(2)(b) of the Act by permitting an intoxicated person to remain in that part of the establishment where liquor is sold, served or otherwise supplied.

Due Diligence

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

There are no proven contraventions of the same type for this Licensee within the year preceding this incident. 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 and \$7,000. The Branch has recommended a four day suspension of the Licence, which is the minimum suspension for this particular contravention.

While licensee's are obligated to comply with the Regulation and the terms and conditions of their licenses, enforcement actions are intended to both address the licensee's non-compliance, and to encourage future compliance by way of deterrents. Permitting intoxicated patrons to remain in an establishment is considered a serious contravention, as the range of possible monetary penalties and licence suspensions attest.

There can be no doubt but that contraventions of section 43(2)(b) of the Act are at the high end of the seriousness scale. Intoxicated patrons are often associated with violence, be it as a victim, or as an initiator. Accordingly, the Licensee must ensure that it's staff are compliant with the Act and the Regulations at all times. A licence suspension sends a clear message throughout the community that noncompliance regarding public safety issues will not be tolerated by the Branch.

In considering the Licensee's plea for leniency, by allowing for a substitution of a reasonable monetary penalty for a licence suspension, I have reviewed the totality of the Licensee's disciplinary record. That record discloses that this Licensee has had some difficulty in the past with regard to the need to fully comply with the requirements of the Act, the Regulation, and the terms and conditions of its Licence.

For example, on December 11, 2010, this same Licensee was found to have, again, contravened section 43(2)(b) of the Act and was given a four day suspension of its Licence.

Furthermore, on April 30, 2010, this Licensee was required to attend a compliance meeting with the Branch with regard to the Branch's concerns with respect to permitting a minor to enter or be on the Licensee's premises.

In light of all of the above, I find that a four day licence suspension is 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 unfair that other employees would suffer a wage loss, through no fault of their own, I would simply point out that it is the Licensee alone who is responsible for contraventions of the Act or the Regulation. This would not, however, prevent the Licensee from making those employees whole for lost wages over the period of the suspension.

ORDER

Pursuant to Section 20 of the Act, I order a suspension of Liquor Primary Licence number 026941 for the period of four days, to commence at the closing of business on Friday, August 15, 2014, and to continue each succeeding business day until the suspension is completed.

In order to ensure that this order is effective, I direct that the liquor Licence be held by the Branch or the Revelstoke RCMP detachment, from the close of business on August 15, 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

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: July 10, 2014

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Jay Blackwell, A/Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attn: Cristal Scheer, Branch Advocate