



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: Bedford Hotel Ltd.
dba Bedford Regency (Garrick's Head Pub)
1140 Government Street
Victoria, BC

Case: EH14-032

For the Licensee: Jay Nowak

For the Branch: Cristal Scheer

General Manager's Delegate: A. Paul Devine

Date of Hearing: Written Submissions

Date of Decision: November 26, 2014

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Bedford Regency Ltd. (the "Licensee") operates the Bedford Regency doing business as the Garrick's Head Pub (the "Establishment") under Liquor Primary Licence Number 115527 (the "Licence"). The Establishment is located in Victoria, BC. Under the terms of the Licence, the Licensee is authorized to sell liquor from 11 a.m. to 1 a.m. from Monday to Saturday and 11 a.m. to midnight on Sunday.

The Licence is, as are all liquor licences in the province, subject to the terms and conditions contained in the publication Guide for Liquor Licensees in British Columbia (the "Guide").

Jay Nowak is the General Manager of the Establishment, and represented the Licensee for the purposes of this review.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in a Notice of Enforcement Action dated June 5, 2014 (the "NOEA"). The Branch alleges that, on March 13, 2014, a covert inspection of the Establishment was conducted by two liquor inspectors. During their inspection, the inspectors allegedly witnessed a female patron in an extreme state of intoxication. During their observation, the female patron continued to drink beer. The observation ended when she was escorted from the licensed premises by two police officers.

The conduct observed by the inspectors was alleged to be contrary to section 43(2)(b) of the *Liquor Control and Licensing Act* (the "Act"), which provides "the licensee or the licensee's employees must not permit an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied."

The proposed penalty falls within the penalty ranges set out in item 11 of Schedule 4 of the Regulation. The range of penalties for a first contravention is a four to seven day licence suspension and/or a \$5,000 to \$7,000 monetary penalty.

On August 6, 2014 the Licensee advised the Branch that it admitted the contravention as alleged, and would proceed to review by way of written submissions. The Licensee did not present a due diligence defence but instead disputes the proposed penalty.

For the purposes of this hearing, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by section 20 of the *Liquor Control and Licensing Act* (the "Act") and under sections 65-69 of the Regulation.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, RSBC 1996 Chap. 267

Drunkness

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.

Liquor Control and Licensing Reg. 244/2002

Schedule 4

Enforcement Actions

Liquor Service

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
11	A breach of 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.	4-7	10-14	18-20	\$5000-\$7000

ISSUES

1. Did the contravention occur as alleged?
2. If so, has the Licensee established a defence to the contraventions?
3. If the contraventions are proven, what penalties, if any, are appropriate?

EXHIBITS

Exhibit 1: The Branch's Book of Documents, tabs 1 to 8 inclusive.

Exhibit 2: The Licensee representative's one-page written submission dated August 6, 2014.

FACTS

The Licensee does not dispute the contravention and therefore accepts the facts as laid out in the NOEA (Exhibit 1, tab 1). The following is a summary of the facts from the NOEA:

On March 13, 2014 [the NOEA erroneously refers to the date as March 13, 2013] at 23:21 hours, two liquor inspectors entered the premises of the Licensee in order to conduct a covert inspection. The Establishment was moderately busy. Once inside, the inspectors observed a table with six female and two male patrons. One of the female patrons was observed to be sitting with her head on the table. There were a number of glasses on the table containing what appeared to be beer.

After several minutes, the female patron lifted her head slowly and rested it on the shoulder of one of the male patrons. She did not participate in the conversation, she swayed back and forth as she sat at the table, and her eyelids drooped constantly like someone falling asleep. Four of the female patrons paid their bill and left the Establishment.

The female patron who had been observed with her head on the table remained. She swayed back and forth as she sat up and her head bobbed back and forth on her shoulders. Her eyes kept closing, and she let her head drop heavily back to the table several times, where she remained for a time without movement. When she awoke, she

would sit up slowly, take slow and deliberate drinks from a glass of what appeared to be beer, then put the glass down, following which her head returned heavily to lie on the table. Her face was flushed, and her eyelids droopy. The Inspectors concluded she was grossly intoxicated.

The other female patron that was sitting at the table got up to leave. The Inspectors observed that she almost fell as she got up, then swayed as she attempted to put on her jacket and scarf. She was observed to stagger down the street in the company of a male she met up with on the street.

A server approached the table when the remaining the female patron was asleep with her head on the table. The server brought a glass of water and placed it in front of the female patron but the female patron continued to drink beer when she awoke.

According to the NOEA, at 23:49, Victoria Police Department members entered the establishment. Two of the officers spoke to the people at the table where the intoxicated female was still located. After speaking with them, the patrons got up to leave. The intoxicated female had difficulty standing, and she swayed back and forth. She was supported as she left the establishment but still fell against the wall on the way out. She was guided outside by the police officers and left in a taxi.

A statement was subsequently obtained from one of the police officers that attended at the licensed establishment (Exhibit 1, tab 5). The police officer stated that the police were in attendance at the Establishment at the request of the liquor inspectors. Once inside, they approached a table where a female patron was observed sitting but slumped over with her head on her arms. She was asked for ID, and produced it from her wallet with difficulty. Her eyes were blurry and she had difficulty speaking. The officers concluded she was intoxicated, and she was asked to leave the premises. She was observed to be unsteady on her feet, and had to hold onto a friend for stability. She left the premises in the company her boyfriend and departed in a taxi.

Following the events set out above, one of the liquor inspectors issued a Contravention Notice for permitting an intoxicated person to remain on the premises (Exhibit 1, tab 2).

The Licensee later provided an email summary of information provided by one of its servers. The server stated that the female at the table was served one beer only, and did not appear to be drunk. When she was observed with her head on the table, the server was told by her boyfriend they were leaving. They did not, however, leave the premises at that time. The server brought a glass of water for the female at the table, and later the police arrived.

SUBMISSIONS – BRANCH

Through the book of documents (Exhibit 1), including the NOEA, the Branch set out its reasoning for the proposed enforcement action of a four day suspension. The suspension falls within the range of penalties set out in the *Regulation*, Schedule 4 item 11.

The Branch submitted that a person in the state of intoxication that was observed at the licensed establishment presented a very real public safety concern. The female patron could have been seriously injured as her head hit hard against the table when she attempted to sit up. While a server brought her a glass of water, liquor was not removed and the patron continued to consume it. Another female patron at the same table appeared to be intoxicated when she left the premises.

The Branch's position is that the recommended suspension penalty of four days was appropriate to impress on the Licensee the need to remove patrons to a safe place immediately upon seeing signs and symptoms of intoxication.

SUBMISSIONS – LICENSEE

In its one page written submission, dated August 6, 2014, the Licensee's representative stated that after the incident happened all staff had been spoken to and it would not happen again. From this I conclude the Licensee does not dispute the contravention as alleged by the Branch.

The Licensee's representative submitted there had not been any infractions at the Establishment since 1999 when he came to work at the facility. There had, however, been infractions from a party that had rented the facility and used the Licence.

The Licensee's representative submitted that the suspension was harsh and would result in 18 servers, 2 janitors, and 11 kitchen staff employees being laid off work. A monetary penalty or a delay in the application of the suspension was preferred.

REASONS AND DECISION

Contravention

As noted, the Licensee admits the contravention as alleged. There is no dispute that an intoxicated patron was allowed to remain within the red-lined area of the Licensee's Establishment where liquor was sold on the night in question. I find that the admissions of the Licensee, along with the evidence and submissions filed in these proceedings, all establish on the balance of probabilities that the Licensee contravened section 43(2)(b) of the *Act* by allowing an intoxicated person to remain on its premises.

While the server who provided information to the Branch stated the female patron was only served one beer, the server also saw her with her head on the table in an apparent state of intoxication. Despite this, the server did not remove beer from the table so that it could not be consumed by the intoxicated patron. Nor were any arrangements made by the server to have the intoxicated patron removed from the premises. As well, there was another female at the same table who appeared to be intoxicated according to the liquor inspectors. This patron was apparently not observed or commented upon by the server. I find that the Licensee's employee did not take appropriate action, in face of evidence that one or more patrons were extremely intoxicated at the time and place described in the NOEA.

Due Diligence

The Licensee is entitled to a defence 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 the procedures it had in place to identify and deal with problems such as the one that is the subject of this hearing, it must ensure that those procedures are consistently acted upon so that problems are dealt with appropriately as they arise.

In requesting the hearing by written submission, the Licensee agreed that the contraventions occurred as alleged, and the Licensee was not pursuing a due diligence defence. The Licensee has not presented any evidence to demonstrate it acted with due diligence. I find, therefore, that the Licensee not establish due diligence, and I turn to address the question of penalty.

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 one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the Licensee to transfer the licence

The Branch pointed out the public safety risk of allowing intoxicated patrons to remain on the premises where alcohol is sold. In this case, the facts are that the one of the patrons observed by the liquor inspectors and by Victoria police officers was in an extreme state of intoxication. The female patron was at risk of personal injury because in her state of inebriation she struck her head repeatedly on the table where she was sitting. An employee of the Licensee also observed that the patron was extremely intoxicated but did not take appropriate steps to deal with the situation.

Based on the nature of these contraventions and the potential risks to public safety, I find that a penalty is warranted. The factors that I considered in determining the appropriate penalty in this case include: consideration of whether there is a proven compliance history, a past history of warnings by the Branch and/or the police, the seriousness of the contraventions, the threat to the public safety, and the well-being of the community.

There is no record of proven contraventions of the same type for the Licensee at the Establishment within the preceding 12 months of this incident. Because of this the Branch proceeded on the basis that this is a first contravention, and I find also find this to be a first contravention for the purposes of Schedule 4 and the calculation of a penalty.

The Licensee's representative submits that this is a first contravention since he has been involved with the business in 1999. Past history of a licensee is a relevant consideration on the issue of whether there should be a waiver of penalty. There is, however, a history of non-compliance when the business was in the hands of a third party operator. The Licence for the Establishment is in the name of the Licensee, and so it must bear the consequences of actions taken by a third party who it chose to operate its business.

The Licensee's argument about the effect of a suspension on its staff is an issue to consider when determining penalty. Staff of a Licensee, however, play a vital role in compliance with the obligations imposed under the *Act*. In this case, the server was aware of the situation of the intoxicated patron but did not take adequate steps to deal with the problem. A suspension is, therefore, appropriate in order to bring home to staff the need to be vigilant in their compliance with the obligation to safeguard patrons against the dangers of intoxication, and to remove them from the premises when necessary.

In consideration of all of the foregoing, I find that a four day suspension of the Licence under Schedule 4 item 11 of the *Regulation* is an appropriate penalty for the breach of section 43(2)(b) of the *Act*. The penalty is necessary in order to achieve the objective of providing specific and general deterrence to the Licensee and to its staff.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of Liquor Primary Licence number 115527 for a period of four days to commence at the close of business on Wednesday, January 7, 2015 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the liquor Licence be held by the Branch or the Victoria police department from the close of business on Wednesday, January 7, 2015 until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

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

A. Paul Devine,
General Manager's Delegate

Date: November 26, 2014

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

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