

Northwest Territories Liquor Licensing Board

IN THE MATTER of Coyotes Bar and Grill, Licensed Premises, and Licence # 2013-A-09

AND IN THE MATTER of the *Liquor Act* S.N.W.T. 2007, c.15 ("the Act") and the *Liquor Regulations*, R-069-2008 ("the Regulations");

AND IN THE MATTER a hearing before the Liquor Licensing Board;

REGARDING:

Coyotes Bar and Grill Ltd

Licence Holder

Carrying on business as

Coyotes Bar and Grill

Licensed Premises

The Liquor Licensing Board, having conducted a hearing on the 12th day of February, 2015 in the City of Yellowknife, has found:

The Licence Holder has failed to comply with:

Count #1: *Section 32 (1) of the Liquor Act Regulations; "The holder of a premises licence shall not, at any one time, serve a patron more than one drink in addition to a drink being consumed by the patron."*

Count #2: *Section 47(1) of the Liquor Act Regulations; "Unless otherwise provided in these regulations or in the licence, the operating hours for all licensed premises begin no earlier than 10 a.m. on one day and end no later than 2 a.m. of the next day."*

Count #3: *Section 57 of the Liquor Act Regulations; "No person shall, while working in licensed premises, consume liquor unless he or she is only providing entertainment."*

ORDER

IT IS HEREBY ORDERED pursuant to section 30 of the Act:

1. Regarding Count #1, the Licence Holder shall pay a compliance penalty of \$300.00 on or before the 12th day of March, 2015.
2. Regarding Count #2, the Licence Holder shall pay a compliance penalty of \$500.00 on or before the 12th day of March, 2015.
3. Regarding Count #3, the Licence Holder shall pay a compliance penalty of \$500.00 on or before the 12th day of March, 2015.

Dated at the City of Yellowknife, this 10th day of March, 2015.



Colin Baile, Chairperson, on behalf of and with the concurrence of the other panel members.

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REGARDING:

Coyotes Bar and Grill Ltd	Licence Holder
Carrying on business as	
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Reasons for Decision

Liquor Licensing Board Case #: 2015-001

Date of Inspection: November 29, 2014

Heard at Yellowknife, NT on the 12th day of February, 2015

Appearances:

Karen Lajoie – Counsel for the Government of the Northwest Territories

Edward But – Representing the Licence Holder

Cases Considered:

- *Regina v. Royal Canadian Legion* [1971] 3 O.R. 552-559; 1971 CanLII 372 (ON CA)

Panel Board Members:

Colin Baile, Wayne Smith, Albert Monchuk, Adelle Guigon

Agreed Statement of Facts

At Hearing Counsel for Enforcement submitted an Agreed Statement of Facts regarding Counts 1 and 2. The Board accepted the Agreed Statement of Facts. The Statement is summarized as including the following:

- Coyotes Bar and Grill Ltd is a holder of a current Class A-Liquor Primary Liquor Licence.
- Coyotes Bar and Grill is owned and operated by Edward But. It does not have a liquor enforcement history.
- Liquor Inspectors Bard and Deering attended at Coyotes Bar and Grill on Saturday, November 29, 2014 just before 2 a.m..
- At 1:58 a.m. Inspector Bard observed intoxicated patrons on the premises, staff serving four shooters to one individual, who already had another drink.
- Inspector Bard ordered a beer at 2:03 a.m. and was served a beer. The Inspector asked the bartender what time it was and was told "2 a.m..".
- Inspector Bard disposed of the beer in the lavatory. He returned to the bar and ordered another beer and was served. He again asked the bartender what time it was and was told, "It's 2:02, the night is still young". This beer was similarly disposed of.
- At 2:13 a.m. the Inspector again returned to the bar and ordered a third beer. A female server was told by the male bartender to get the beer. She retrieved a fresh case from the storage room and served a beer to the Inspector.
- Inspector Deering entered the premises, made further observations then prepared Inspection Report #3553. Mr. But signed the Inspection Report.
- Since this incident, Mr. But has enrolled his entire staff, including himself, in the server-training course offered by Enforcement.

Licence Holder's evidence regarding Counts 1 & 2

Mr. But, representing the Licence Holder acknowledged the Agreed Statement of Facts. He added that when patrons order more than one drink, the server may not be aware if the drinks are for one person or more than one person at a table.

Enforcement Evidence regarding Count 3

Liquor Inspector Quentin Deering appeared as a witness. A summary of Inspector Deering's testimony is as follows:

- Inspector Deering attended at the licensed premises in question on November 29, 2014 to conduct an inspection. He entered at approximately 2:19 a.m. and observed 17 persons within. Four of these individuals were working.
- He observed Mr. But standing behind the bar. Mr. But was known to the Inspector. He observed Mr. But, while behind the bar, consume a shooter with patrons who were on the public side of the bar. This occurred at 2:21 a.m..
- The Inspector asked a server what kind of shooters Mr. But and the patrons were drinking and was informed 2 tequilas and two "fire balls".

- Inspector Deering asked Inspector Bard if Mr. But had been observed working as a bartender and if he saw Mr. But consume a shooter. Inspector Bard confirmed both observations.
- While completing an Inspection Report, Inspector Deering was approached by Mr. But. Inspector Deering asked him if he was working tonight. Mr. But answered he was and was here to lock-up. Mr. But signed the Inspection Report as the Supervisor.
- Mr. But confirmed the shooter he had just consumed was tequila however he was not working “just now but was here to lock-up”.
- The Inspector left the premises shortly after. There were still patrons present at that time as was Mr. But.

Liquor Inspector Steven Bard appeared as a witness. A summary of Inspector Bard testimony is as follows:

- Inspector Bard attended at the licensed premises in question on November 29, 2014 to conduct an inspection.
- He observed Mr. But drink a shooter at 2:14 a.m.. Mr. But was standing behind the bar and there were two patrons on the public side of the bar. They were interacting.
- Inspector Bard asked a server what kind of shooters Mr. But and the patrons were drinking, however she did not know.
- After having the shot, Mr. But was observed talking to the patrons at the bar, to the wait staff, and cleaning up behind the bar.
- Inspector Bard left the premises at 2:20 a.m..

On cross examination, Inspector Bard stated:

- He did not observe Mr. But prepare or serve and drinks after Mr. But had the shooter.

Licence Holder’s Evidence regarding Count 3

- The shots (drinks) referred to were purchased by a guest. By that time Mr. But was no longer bartending.
- He does not normally work as a bartender. He has been the owner of the bar for 12 years.
- This is the first time before the Liquor Licensing Board.
- This has been “a slap in the face” and it will not happen again.

On cross examination Mr. But stated:

- He is aware of the Liquor Act and Regulations have specific expectations for Licence Holders.
- The normal bartender was not there that evening. Normal duties for the closing shift include serving drinks at the bar, washing dishes, cleaning up the bar, cash out. The shift often lasts until 3 a.m..
- Normally Mr. But locks up.
- Mr. But is not normally a bartender so he would not cash out, or clean up.
- All patrons are out of the bar by 2:30 and it is locked.
- On the night in question, Mr. But was acting as a bartender. He started at 9:00. He was supervising his staff. Mr. But was the one who locked the doors.
- He did consume a tequila shooter at about 2:15. He did not pour the shooters.
- At the time he had the shooter, there were three staff and patrons in the bar.

Analysis

Count 1 & 2

We find the charges of non-compliance are made out.

The Licence Holder has confirmed both charges occurred as described in the Agreed Statement of Facts.

Count 3

Section 57 of the Liquor Act Regulations state: "No person shall, while working in licensed premises, consume liquor unless he or she is only providing entertainment."

We find as fact that Mr. But did consume a tequila shooter while in the licensed premises. He confirmed this at hearing. Mr. But also confirmed he was not in the licensed premises for the sole purpose of providing entertainment.

The issue to be determined is wither or not Mr. But was "working" at the time he consumed the liquor. There is no dispute at Mr. But was in the premises for the purpose of carrying out the duties of bartender. He was observed by both Liquor Inspectors engaged in such duties as preparing and serving drinks, cleaning up the bar area, and directing staff. Mr. But, at hearing, confirmed having performed these tasks.

There is also no dispute that Mr. But remained on the premises for the purpose of locking up the bar after all patrons had vacated and to supervise staff until that time.

It is Mr. But's contention that at the time he consumed the liquor, he had stopped being a bartender and was simply the owner awaiting the closing of the bar to lock up.

Counsel for Enforcement suggests it is not reasonable to consider Mr. But to have stopped working moments before he consumed the liquor yet remained in the premises thereafter to supervise staff and lock up the bar. We concur with this assessment of the situation. Mr. But may have concluded his formal duties as bartender when he consumed the liquor, however he remained behind the bar and remained in a supervisory role until closing. We find this meets the test of "working" as used in section 57 of the *Liquor Act Regulations*.

We find this charge of non-compliance is made out.

PENALTY

Summary of Enforcement's Submissions

- Enforcement is seeking a total penalty of \$1,000 for all three offences.
- The Licence Holder has no prior discipline history before the Board.
- Mr. But is the owner of this bar. He did serve patrons after closing time and did consume liquor while working in the licensed premises. As the owner, he sets the tone and leads by example for staff; he failed on both counts that night. As such, a stiff deterrent needs to be imposed.

- Counsel drew the Board's attention to paragraphs 17 and 20 of *Regina v. Royal Canadian Legion*¹. That case dealt with permitting drunkenness on licensed premises. It addresses the need for having offences under the Liquor Act. This is well illustrated by paragraph 20 of that decision.

In our view, that group of sections in which s. 53(4) is contained casts on the licensee the statutory duty to ensure that, in the conduct of the business authorized by the licence, certain specified acts do not occur. With respect to acts which cannot occur without active participation on the part of the licensee (e.g., sale or supply of liquor) the legislation forbids these acts; however, when the act sought to be prohibited by s. 53(4) is that of someone other than the licensee (a customer or an inmate of the licensed premises) the only way in which the responsibility of the licensee can be expressed is to impose upon him, the licensee, the obligation not to permit or suffer the undesirable conduct, in this case drunkenness.

- For the case at hand, the infractions are more troubling because Mr. But, the owner, was on site and working as the bartender.
- A break down of the suggested \$1,000 penalty is \$250 for each of counts 1 and 2, and \$500 for count 3.

Summary of Licence Holder's Submissions

- Mr. But agrees with the proposed penalty.

Penalty Analysis

We are cognizant of this being the Licence Holder's first disciplinary appearance before this Board. It is accepted that Mr. But is remorseful of the events of November 29, 2014 and has taken steps to ensure it does not happen again.

Mr. But is the individual responsible for the compliance of the statutory obligations and responsibilities as the owner of a licensed premise. We find it significant that he was present and personally responsible for the breaches before us in this matter.

Count 1

The *Liquor Regulations* allows for a patron in a licensed premise to be served one drink in addition to one being consumed. In this case four drinks were served to one patron in addition to one being consumed. This amount of liquor far exceeds that allowed by the Liquor Regulations. In part, such limits are set for the obvious intention of reducing the likelihood of intoxication but may also be considered a means to reduce any reasonably foreseeable risk for which a Licence Holder could be held responsible. Considering the facts before us, we find a non-compliance penalty of \$300 shall be paid on or before March 12, 2015.

Count 2

¹ *Regina v. Royal Canadian Legion* [1971] 3 O.R. 552-559; 1971 CanLII 372 (ON CA)

The *Liquor Regulations* set the maximum hours of operation of a licensed premise to be from 10 a.m. to 2 a.m. the next day. Mr. But personally served a Liquor Inspector three drinks after 2 a.m.. The Board considers this a serious breach of the Licence Holder's responsibilities. We are mindful of the aforementioned mitigating factors, however there must be consideration given to a deterrent penalty. Considering the facts before us, we find a non-compliance penalty of \$500 shall be paid on or before March 12, 2015.

Count 3

Mr. But has been found to have consumed liquor while working at his bar. As the owner, he is the individual responsible for setting the standard of behavior in the licensed premises. He is the individual responsible to ensure compliance with the Liquor Act and Regulations. His actions demonstrate a failure of both. Considering the facts before us, we find a non-compliance penalty of \$500 shall be paid on or before March 12, 2015.

Dated at the City of Yellowknife, this 10th day of March 2015.



Colin Baile, Chairperson,
on behalf of and with the concurrence of the other panel members.