

## Northwest Territories Liquor Licensing Board

**IN THE MATTER** of Hot Shots Pub and Grub, Licensed Premises, and Licence # 2011-A-23

**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:

**4758 NWT Ltd.**

Licence Holder

and

**Hot Shots Pub and Grub**

Licensed Premises

The Liquor Licensing Board, having conducted a hearing on the 27<sup>th</sup> day of October 2011 in the City of Yellowknife, has found:

The Licence Holder has failed to comply with:

Count #1: Section 92 of the *Act*; "Except as may be permitted in the regulations, a licence holder shall not allow an intoxicated person to enter or remain in a licensed premises."

Count #2: Section 93 of the *Act*; "No person shall sell or serve liquor at a licensed premises to or for an intoxicated person."

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### ORDER

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

1. Regard  
ing Count #1, The Licence Holder shall pay a compliance penalty in the amount of five hundred dollars (\$500) on or before November 25, 2011.
2. Regard  
ing Count #2, Liquor Licence # 2011-B-34 shall be suspended for two (2) days for the period of November 11, 2011 at 10:00am until November 13, 2011 at 2:00am. The Licence Holder shall post on all entrances to the Licensed Premises, for the duration of the suspension, a notice provided by the Board; and
3. Regard  
ing Count #2, The Licence Holder shall pay a compliance penalty in the amount of one thousand dollars (\$1000) on or before November 25, 2011.

Dated at the City of Yellowknife, this 8<sup>th</sup> day of November 2011.

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

## **Northwest Territories Liquor Licensing Board**

**IN THE MATTER** of Hot Shots Pub and Grub, Licensed Premises, and Licence # 2011-A-23

**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:**

**4758 NWT Ltd.**

Licence Holder

and

**Hot Shots Pub and Grub**

Licensed Premises

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### **Reasons for Decision**

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**Liquor Licensing Board Case #:** 11-002

**Date of Inspection:** June 24, 2011

**Heard at** Yellowknife, NT on the 27<sup>th</sup> day of October, 2011

### **Panel Board Members:**

Colin Baile  
Wayne Smith  
Stanley Jones  
Lorna Skinner  
Albert Monchuk

### **Appearances:**

Trisha Paradis – Counsel for the Government of the Northwest Territories (Enforcement)  
Penny McHugh – Representing the Licence Holder  
Roger Ladauceur – Representing the Licence Holder

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## Preliminary Matters

At the commencement of the hearing, witnesses were excluded until they had given their evidence.

## Enforcement Evidence

Counsel for the Government of the Northwest Territories ("Enforcement") submitted the following exhibits:

- |   |          |
|---|----------|
| 1.  | Copy of  |
| the Notice of Hearing and proof of service;             |          |
| 2.  | Copy of  |
| Liquor Licence # 2011-A023;                             |          |
| 3.  | Seven    |
| photographs of the Licensed Premises taken May 8, 2009; |          |
| 4.  | Discipli |
| nary Hearing Record;                                    |          |
| 5.  | Copy of  |
| Inspection Report # 39058.                              |          |

Counsel for Enforcement called two witnesses; they being:

- |                                |        |
|--------------------------------|--------|
| ▪                              | Liquor |
| Inspector Kerry Nicholson; and |        |
| ▪                              | Liquor |
| Inspector Leonard Brotherston  |        |

Inspector Nicholson testified he and Inspector Brotherston attended at the Licensed Premises on June 24, 2011 at 2343 hours. He approached a male patron seated at the back of the Licensed Premises near the bar. Inspector Nicholson observed the patron drinking from a half empty brown beer bottle. He observed the patron exhibit several indications of intoxication including:

- |         |        |
|---------|--------|
| ▪       | Bobbin |
| g head; |        |

- Gazing into the distance;
- A strong odor of liquor;
- Glossy eyes and flushed skin
- Frothing at the mouth when talking.

Inspector Nicholson, in discussion with the patron, was informed the patron had consumed seven beers in the previous couple of hours before arriving at the Licensed Premises. The patron had consumed the one beer since his arrival. The supervisor for the Licensed Premises was observed grabbing the patron's beer and informing him, "Sir, it is time to go." The supervisor then informed Inspector Nicholson the server who gave the patron a beer normally worked in the kitchen. Inspector Nicholson observed the patron leave the Licensed Premises. The patron was staggering while he walked. The patron was observed outside the Licensed Premises for a brief time.

The second witness called by Enforcement was Liquor Inspector Leonard Brotherston. Inspector Brotherston observed the patron swaying in his chair. He observed several of the signs of intoxication noted by Inspector Nicholson. Inspector Brotherston heard the patron say that he was on his eighth beer. After the patron left, Inspector Brotherston heard the supervisor say, "He should not have been served."

The Inspection Report noted there were 38 occupants and two staff in the Licensed Premises.

### **Licence Holder Evidence**

The Licence Holder called one witness. Ms. Andrews was the supervisor at the Licensed Premises on the night in question. She has had extensive experience in dealing with intoxicated people through several past jobs.

Ms. Andrews stated that a co-worker had called in sick that night, leaving herself and one other staff member at the Licensed Premises. The other staff member normally worked in the kitchen however would assist with serving patrons as required.

Ms. Andrews exited the washroom and observed one of the Inspectors seated at a table with a male patron. She was asked by an Inspector to remove the patron's beer. Ms. Andrews did not see the Liquor Inspectors or the patron enter the Licensed Premises. She removed the patron's beer and walked him to the door. The patron looked tired but not that intoxicated.

Ms. Andrews received the Inspection Report from the Inspector.

## **Analysis**

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

While Ms. Andrews described the patron as being not that intoxicated, we accept the evidence of both Liquor Inspectors who testified the patron stated himself that he was intoxicated and had consumed eight beers in the previous two hours.

The *Act* defines "intoxicated person" as:

**"intoxicated person" means an individual who appears to be under the influence of liquor, a drug, or another intoxicating substance;**

The reported signs of intoxication as reported by the Liquor Inspectors and the admission of the patron, leads us to conclude the patron was intoxicated.

Count #1: Section 92 of the *Act*; "Except as may be permitted in the regulations, a licence holder shall not allow an intoxicated person to enter or remain in a licensed premises."

We accept the patron was allowed to enter and remain in the Licensed Premises. This fact is uncontested.

Count #2: Section 93 of the *Act*; "No person shall sell or serve liquor at a licensed premises to or for an intoxicated person."

We accept the patron was served liquor. Both Liquor Inspectors observed the patron consume beer while seated at a table. Ms. Andrews stated she removed the patron's beer from him. This fact is also uncontested.

## PENALTY

### Summary of Enforcement's Submissions

- Neither of the two servers had Server Training.
- There is a previous contravention of section 93 of the *Act* in May 2009 resulting in a \$750 compliance penalty and a two-day suspension of the Liquor License.
- A similar penalty is recommended with an increase to reflect the prior contravention.

### Summary of License Holder's Submissions

- The staff involved with the contraventions presently before the Board are different from the staff that were involved with the previous matter.
- The staff member who served the patron is considered kitchen staff and not a regular server.
- All staff is scheduled to take the Server Training Program.

### Penalty Analysis

Count #1 – Section 92 of the *Act*

We acknowledge this is the Licence Holder's first offence under this section. We also considered the Licence Holder having arranged Server Training for staff.

Count #2 – Section 93 of the *Act*

This is the Licence Holder's second conviction under this section. We acknowledge the staff involved was different from the 2009 matter. The Licence Holder however is unchanged and bears the responsibility to ensure all staff members who serve liquor, however infrequently, are fully aware of their statutory obligations.

An order shall issue pursuant to section 30 of the *Act* that:

For failing to comply with section 92 of the *Act* (Count #1), the Licence Holder shall pay a compliance penalty in the amount of five hundred dollars (\$500) on or before November 25, 2011.

For failing to comply with section 93 of the *Act* (Count #2), Liquor Licence # 2011-B-34 shall be suspended for two (2) day for the period of November 11, 2011 at 10:00am until November 13, 2011 at 2:00am. The Licence Holder shall post on all entrances to the Licensed Premises, for the duration of the suspension, a notice provided by the Board.

Further, for failing to comply with section 93 of the *Act* (Count #2), the Licence Holder shall pay a compliance penalty in the amount of one thousand dollars (\$1000) on or before November 25, 2011.

Dated at the City of Yellowknife, this 8<sup>th</sup> day of November 2011.

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