

Northwest Territories Liquor Licensing Board

IN THE MATTER of **Kilt and Castle Pub**, Licensed Premises, and Liquor Licence **#2017-A-15**

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") as amended;

AND IN THE MATTER of a hearing before the Liquor Licensing Board:

Regarding:

Kilt & Castle Pub Inc.

Licence Holder

Carrying on Business as

Kilt and Castle Pub

Licensed Premises

Reasons for Decision

Date of Incident: January 19, 2018

Date of Hearing: August 1, 2018

Place of Hearing: Yellowknife, Northwest Territories

Panel Board Members: Sandra Aitken
Adelle Guigon
Linda Martin

Appearances: Richard Raffai, Counsel for Liquor Enforcement
Robert Stewart, Licence Holder

The Board delivered preliminary reasons for its decision on the hearing date, but confirmed at the conclusion of the hearing that it would release more extensive written reasons at a later date.

Kilt & Castle Pub Inc. holds a Class A (Liquor Primary) licence for the establishment operating as the Kilt and Castle Pub, located in Yellowknife, Northwest Territories. Liquor Licence #2017-A-15 was issued March 6, 2017, with an expiry date of March 31, 2019.

On May 25, 2018 Liquor Enforcement requested that the Liquor Licensing Board hold a compliance hearing under subsection 28(1) of the *Liquor Act*, into allegations that on January 19, 2018 the Kilt and Castle Pub contravened section 75 of the *Liquor Act*, by selling liquor to an intoxicated person.

An agreed statement of facts was filed as Exhibit 2 in these proceedings, which acknowledged that the customer had a beer in front of her at the relevant time. Cst. Robar gave evidence on behalf of Liquor Enforcement and the Licence Holder called three witnesses: Matthew Seeton (bartender on the night in question), Peter Graham (a customer at the pub), and Robert Stewart (owner and Licence Holder).

Liquor Enforcement Evidence

Cst. Robar testified that he was on duty the evening of January 19th in uniform, in a marked police vehicle and on his own. He is a member of the Royal Canadian Mounted Police with 12 years experience in policing – 10 with the RCMP – and he has had considerable experience dealing with intoxicated persons. It was a busy night for calls. He received a call at 23:19 advising that a woman had fallen at the Raven (another licensed premises), hit her head, was bleeding and had left the Raven, and was now drinking at the Kilt and Castle, and the caller was concerned for her.

Cst. Robar went to the Kilt and Castle, and was already aware that an ambulance was on its way. He said he noticed the female patron at the bar. She had blood on her head, and blood had run down the back of her head and onto her collar, and he believed that she was the woman who had fallen at the Raven. It appeared the bleeding had stopped. Cst. Robar noted she had a beer in front of her, but he did not see her drink from it. He proceeded to have a conversation with the patron and told her he wanted her to get medical attention. By this point the ambulance had arrived. The patron became agitated, said she did not want medical attention, and refused to go with the ambulance attendant. The situation became heated, voices were raised, and the patron repeatedly requested Cst. Robar's badge number to the point where Cst. Robar entered his badge number into her phone.

Cst. Robar came to the conclusion the patron was intoxicated. In his report to Liquor Enforcement and his "can say" of his evidence, filed as Exhibit 4 in these proceedings, he noted her signs of intoxication as the slurring of some of her words, her refusal to seek medical attention and the forgetting of his badge number. In his testimony he listed other signs of intoxication: droopy eyes, strong odour of liquor, when standing the patron had a slight sway. He acknowledged however, that while he had refreshed his memory from his notes that he had made at the time, and that his report to Liquor Enforcement and his "can say" were based on these notes, these additional signs of intoxication were not recorded in his report to Liquor Enforcement. Unfortunately, Cst. Robar did not have his police notebook with him.

Cst. Robar testified that the owner of the pub, Robert Stewart, approached him in the pub while he was dealing with the patron, and questioned his authority to do what he was doing. It became quite heated between the two of them to the point that Cst. Robar asked the owner to go back to his seat, indicating that if he continued to keep arguing he would be arrested for obstructing an officer.

The patron continued to refuse medical treatment, and refused to sign a waiver that Cst. Robar was asking her to sign to make it clear she was refusing treatment. By this point the beer had been removed from the counter in front of the patron.

Cst. Robar and the ambulance attendant then left the pub. The patron remained in the pub, but Cst. Robar had told the bartender not to serve her any more liquor. Cst. Robar and the owner had a further discussion outside the pub, but essentially that was the end of Cst. Robar's involvement. The entire incident transpired in 5-15 minutes in his estimation.

Licence Holder Evidence

Matthew Seeton testified that he was the bartender on the night in question, had worked as a bartender at the Kilt and Castle for three years, and had taken server training in Calgary before starting work at the Kilt and Castle. From the training he is aware of signs of intoxication and the need to make an assessment before serving liquor to a person. The patron in question was a regular customer; she came into the bar very shortly before the officer arrived. He saw her walk in and approach the bar, and she asked for a "Bud". He did not notice any signs of intoxication; she spoke clearly, she was not swaying when she walked in, and in his words she seemed "fine". He put a bottle of Budweiser beer in front of her and attended to other duties as the pub was busy. Within just a "couple of minutes" Cst. Robar approached him, described a woman, and said she was injured. Mr. Seeton pointed out the patron at the bar. Mr. Seeton said that when the patron turned to speak with the officer, he noticed blood at the back of her head. Mr. Seeton walked over and took away the beer. He believed she had not even had a sip yet – although he was not totally sure of that – but if she had anything, it was not much. He said he took the beer away because he did not think she should drink if injured. Mr. Seeton did not hear much of the exchange between the officer and the patron or the officer and the owner, as he was dealing with customers, but it was clear the patron did not want medical attention. He estimated the entire incident was 3-8 minutes from start to finish.

Peter Graham described himself as a regular customer at the Kilt and Castle, and he was there on the evening in question. He also knew the female patron and he did not notice that she was intoxicated; he described her as "fine". Mr. Graham's recollections of the interactions between Cst. Robar and the patron and Cst. Robar and the owner were not consistent with any of the other witnesses. This is not surprising given the incident occurred over 6 months ago, and Mr. Graham really had no reason to recall the details of a specific incident.

Robert Stewart, the Licence Holder and owner of the Kilt and Castle Pub, testified that he arrived at the pub less than a half-hour before this incident happened. He saw the female

patron, and knows her as she is a regular customer. Although he was not paying strict attention to the patron before the officer arrived, he did note afterwards that she seemed to speak clearly (sounding like she normally does) and was walking fine. Mr. Stewart said the one inch cut to her head was buried in her hair and was visible when looking for it, but it was not obvious. He said he approached Cst. Robar, as he believed as the owner he had a duty to protect his customer. He said the woman did not want to take an ambulance, that she had a right to say no, that there was no lawful authority to make her sign a waiver, and that he went to her assistance. He and the officer argued about his intervention, and he was told to back off or he would be arrested for obstruction. He did back off, although he continued the discussion with the officer outside the pub. He testified that after the officer left that he believes the patron called her mother and that she left to get medical attention. She was not served further liquor.

The ambulance attendant's report was filed as Exhibit 5 by the Licence Holder by consent. The attendant has left the jurisdiction, so was not available to give evidence before the Board. The Board gives little weight to the report, as the statements contained therein could not be tested.

Board Findings

Given the passage of time since the incident, the various witnesses clearly could not recollect all the specific details but they agreed on some of the essential points, which the Board accepts as facts.

All witnesses testified that this entire incident took anywhere from 3-15 minutes from start to finish, and that much of it was the interaction between Cst. Robar and the patron and Cst. Robar and Mr. Stewart. It is also clear to the Board that the patron had arrived at the Kilt and Castle only moments before Cst. Robar. It was agreed, and the Board accepts, that a beer was given to the patron at her request. It is not clear whether she actually had a drink from the beer, but that fact is not relevant in the circumstances.

The Board is satisfied, from the agreed statement of facts and the testimony of the witnesses, that the patron was given a beer. "Liquor" is defined in the *Liquor Act* as including beer. The definition of "sale" in the *Liquor Act* is "includes (a) the exchange, barter or traffic of liquor, and (b) the selling, supplying or distributing of liquor by any means". A sale is complete notwithstanding payment; it is sufficient that the patron ordered a beer and it was given to her. There is no necessity for proof of consumption. As a result the Board finds as a fact that liquor was sold to the patron.

The real issue in this case is whether the patron was an "intoxicated person" at the time of the sale. "Intoxicated person" is defined in the *Liquor Act* as meaning "...an individual who appears to be under the influence of liquor, a drug, or another intoxicating substance". This phrase has been judicially considered in *953785 NWT Ltd o/a Sam's Monkey Tree Pub v. AGNWT* [2011] NWTSC 18 at paragraph 23 as follows:

"I accept, that virtually as soon as an individual starts drinking in a licensed establishment they will be proceeding down the journey to impairment. However the legislation speaks of intoxication. It defines an *intoxicated person* to mean an individual who appears to be under the influence of liquor, a drug, or in other (sic) intoxicating substance. The Argument of learned Appellate counsel points out that this section of the *Act*, and the interpretation of an intoxicated person, have to be given a reasonable and temperate approach, in light of human physiology where virtually, as soon as one starts drinking, they could appear to be under the influence of liquor. The board, is uniquely established, and specifically established, to deal with matters that would allow them to permit bars to continue to serve the merely enthusiastic, while still having an obligation to exclude intoxicated persons. These factual findings are at the epicenter of the statutory power this board is cloaked with."

The evidence is clear from all witnesses that the patron was in the Kilt and Castle for a few minutes at most before the police officer arrived, and that at most she had a sip of a beer before the officer dealt with her.

Any determination that the patron was intoxicated had to be gleaned from any signs of intoxication she exhibited – all available information had to be examined. The Board accepts that the officer's notes at the time form the basis of his opinion on her level of intoxication, and the signs noted were the slurring of some words, the refusal to accept medical treatment, and the repeated requesting of the officer's badge number. The Board accepts the bartender's observations; Mr. Seeton gave his evidence candidly, and was credible. He is an experienced bartender, he knows what he has to look for before serving liquor to a patron, he knew the patron in question, and made his assessment based on what he knew of her and what he observed at the time. He saw she had just come into the pub, she walked and spoke "fine", so he gave her a beer. Once he heard she was injured and saw the wound on the back of her head, he removed the beer. He said he did this because of her injury, and the Board accepts this explanation.

The Board also notes that most if not all of the signs of intoxication noted by the officer could be attributed to circumstances which the evidence revealed had been experienced by the patron that evening, including the cut to her head, the trauma associated with that injury, and the verbal altercation with the officer.

The Board is not satisfied on a balance of probabilities that there is sufficient evidence to establish that the patron was an "intoxicated person" as those words are defined in the *Liquor Act*. As a result, the Board finds the Kilt and Castle not guilty of this charge.

There was much mention by Mr. Stewart in his questioning of the police officer, in Mr. Stewart's evidence, and in his submissions, that the police officer was acting without authority, was targeting him and was harassing the patron. This contention was not relevant to the allegation being considered by the Board, but as much time and latitude was given to Mr. Stewart to explore it, the Board is addressing it.

Cst. Robar was acting within his authority and was performing the duties he is lawfully bound to do. Paragraph 18(a) of the *Royal Canadian Mounted Police Act*, R.S.C., c. 1985, c. R-10 states:


“It is the duty of members who are peace officers, subject to the orders of the Commissioner, (a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody;”

By virtue of the Territorial Policing Agreement with the Government of the Northwest Territories, RCMP officers provide policing services in the Northwest Territories. Section 128 of the *Liquor Regulations* provides that members of the RCMP in the Northwest Territories are deemed to be inspectors.

The job of a police officer, on a busy night in Yellowknife such as the night in question, is a challenging one. Cst. Robar is an experienced officer with 12 years' experience – 10 years with the RCMP. He was on duty – alone – on a busy night. He received a call about an injured woman and was lawfully bound to investigate; if he had not done so, he would have been derelict in his duties. He went to the Kilt and Castle lawfully and with good intentions. It became clear that the patron did not wish to have medical assistance, which was her right in the circumstances, but Cst. Robar was merely being diligent in seeking help for her. It is unfortunate that Mr. Stewart became involved at this point, as the interaction between the police officer and Mr. Stewart merely exacerbated the situation as opposed to diffusing it, which Mr. Stewart indicated had been his intention. It is clear to the Board from Mr. Stewart's evidence and submissions that he believed there was an animosity between himself and Cst. Robar, and he believed he was being targeted and that the officer was acting without lawful authority. Notwithstanding Mr. Stewart's honestly held views, the Board rejects this contention. The officer was acting reasonably and responsibly in the situation he was dealing with, and if Mr. Stewart had assisted the officer – or left him to perform his duties – the event would have come to its natural conclusion.

The Board thanks both parties for their thorough preparation and presentation of the evidence.

Dated at the City of Yellowknife, this 9th day of August 2018.



Sandra Aitken, Chairperson

On behalf of and with the concurrence of the other panel members