

Northwest Territories Liquor Licensing Board

IN THE MATTER of The Mackenzie Lounge, Licensed Premises, and Licence # 2011-A-17

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:

Royal Host Hotels Group Inc.

Licence Holder

and

The Mackenzie Lounge

Licensed Premises

The Liquor Licensing Board, having conducted a hearing on the 28th 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."

ORDER

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

1. Regarding Count #1, The Licence Holder shall pay a compliance penalty in the amount of five hundred dollars (\$500) on or before November 24, 2011.
2. Regarding Count #2, Liquor Licence # 2011-A-17 shall be suspended for one (1) day for the period of November 24, 2011 at 10:00am until November 25, 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.

Dated at the City of Yellowknife, this 8th day of November 2011.

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

Northwest Territories Liquor Licensing Board

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REGARDING:

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Reasons for Decision

Liquor Licensing Board Case #: 11-003

Date of Inspection: June 23, 2011

Heard at Yellowknife, NT on the 28th day of October, 2011

Panel Board Members:

Colin Baile
Wayne Smith
Stanley Jones
Lorna Skinner
Albert Monchuk

Appearances:

Sarah Kay – Counsel for the Government of the Northwest Territories (Enforcement)
Scott Smicer – Representing the Licence Holder

Preliminary Matters

- At hearing, the parties submitted an Agreed Statement of Facts.
- The Notice of Hearing contained three counts. The Government of the Northwest Territories withdrew Count #3 alleging non-compliance of section 32(5) of the *Regulations*.

Enforcement Evidence

Counsel for the Government of the Northwest Territories (“Enforcement”) submitted an Agreed Statement of Facts. A summary of the Statement included:

- On June 23, 2011, a Liquor Inspector attended the Licensed Premises at 11:00pm and observed six patrons in the Licensed Premises.
- The Liquor Inspector observed a male patron enter the Licensed Premises. Showed signs of intoxication and was boisterous.
- The Liquor Inspector asked the bartender for his assessment of the patron. The bartender indicated he thought the patron was fine.
- The Liquor Inspector then approached the patron and the other man seated at a table. The patron was observed exhibiting several signs of intoxication.
- When asked by the Liquor Inspector, the patron stated he had consumed eight drinks at a different bar prior to his arrival at the Licensed Premises.
- The bartender was observed placing a rum and coke in front of the patron and one in front of the other man at the table. Some time later, the bartender returned with two more drinks for each of the patrons at the table.
- The Liquor Inspector completed an Inspection Report and provided it to the bartender.

Also submitted was a copy of the Notice of Hearing and Licence #2011-A-17.

The Bartender was an “on call” employee and has not been employed by the Licence Holder since June 23, 2011. The Licence Holder has provided for Server Training for all staff since this incident.

Licence Holder Evidence

Mr. Smicer, representing the Licence Holder agreed with the Statement of Facts.

Analysis

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

We accept the events of June 23, 2011 are as described in the submitted Statement of Facts.

We also accept Mr. Smicer's admission of guilt.

Regarding Count #1, the intoxicated patron was allowed to enter and remain in the Licensed Premises. This action is in violation of section 92 of the *Act*.

Regarding Count #2, the intoxicated patron was served liquor. This action is in violation of section 93 of the *Act*.

We shall next address the submissions and considerations regarding penalty.

PENALTY

Summary of Enforcement's Submissions

- A copy of the Licence Holder's Disciplinary Hearing Record was submitted. It contains a summary offense ticket citing a violation of section 49(3) of the *Regulations*.
- Recommend a penalty of a \$500 compliance penalty and a one-day suspension of the Liquor License.
- The License Holder submitted an early guilty plea. There has been an acknowledgement by the Licence Holder that the bartender did not do what he ought to have done.
- The bartender has not been asked to work since this incident.
- Staff took the Server Training Program.

Summary of License Holder's Submissions

- The Licence Holder does take this matter seriously.
- Staff took the Server Training Program.
- A compliance penalty as suggested by Enforcement is appropriate.

Penalty Analysis

We acknowledge the following mitigating factors:

- This is the Licence Holder's first offence under these sections of the *Act*;
- Staff has attended the Server Training Program.
- The Licence Holder has taken responsibility for the offence from the beginning.

We give little weight to the previous conviction. It is three years old and is unrelated.

We find Enforcement's recommended penalty is appropriate. The fact that this is the Licence Holder's first offence under these sections of the *Act* and that the Licence Holder accepted early responsibility, together with taking steps to remedy any knowledge deficits influenced our decision. We consider the section 93 offense to be the more serious.

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

1. Regarding Count #1, The Licence Holder shall pay a compliance penalty in the amount of five hundred dollars (\$500) on or before November 24, 2011.
2. Regarding Count #2, Liquor Licence # 2011-A-17 shall be suspended for one (1) day for the period of November 24, 2011 at 10:00am until November 25, 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.

Dated at the City of Yellowknife, this 8th day of November 2011.

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