

Decision of the Yukon Liquor Board
In the Rehearing of Paddy's World Famous
(Paddy's Place) Liquor License Cancellation
March 25, 2022

Introduction

- (1) In August 2021, the Yukon Liquor Corporation (YLC) recommended to the Yukon Liquor Board (YLB) that Licence #4522, Liquor Primary, All Liquor for Paddy's World Famous/Paddy's Place, held by Mr. Patrick Singh, be cancelled. The YLB cancelled the licence at that time.
- (2) The rehearing was held pursuant to s.118 of the *Liquor Act*. (the "Act")
- (3) The rehearing was held at Yukon Liquor Corporation, 9031 Quartz Road on February 28, 2022 at 9:00am
- (4) The YLC was represented by Kelly McGill.
- (5) The licensee, Paddy's World Famous was represented by Patrick Singh.

Background

- (6) Yukon Liquor Corporation is created under section 3 of the *Liquor Act*. Section 10 of the *Liquor Act* obliges the Commissioner in Executive Council to appoint a President of the YLC.
- (7) Paddy's World Famous is a business name registered to Patrick Singh. In the Spring of 2021, Paddy's World Famous o/a Paddy's Place applied for a liquor licence from the YLC. As a result, licence #4522 was issued on March 31, 2021. The licence authorized the licensee to serve alcoholic beverages in the premises known as "Paddy's Place", located at 102 Wood Street, Whitehorse, Yukon. In addition, the licence lists "Patrick Singh" as the sole manager.
- (8) Original decision:
 - a. July 27, 2021: The YLC requested that the YLB cancel the licence and provided the YLB with documentation (police reports, witness statements and employee statements) to back up their request.
 - b. Mr. Singh provided his written submission to the YLB on August 6, 2021.
 - c. August 8, 2022: The YLB issued its decision to cancel Paddy's World Famous' liquor license. (the First Decision").

- d. September 8, 2021: Mr. Singh filed a notice of appeal of the decision, with the Yukon Supreme Court. On October 8, 2021 this appeal was converted to a petition for judicial review.
- (9) On November 22, 2021, at a case management conference, Chief Justice Duncan, noting the agreement of Mr. Singh and the YLC ordered:
- a. The first decision was set aside;
 - b. That the matter be sent back to the YLB for a rehearing;
 - c. That the rehearing shall occur no sooner than February 1, 2022, and no later than February 28, 2022; and
 - d. Set out a timeline for the YLC and Mr. Singh to submit evidence and written arguments.
(the “CMC Order”)
- (10) On December 18, 2021 to comply with the CMC Order, the YLB caused an email to be sent, notifying the parties that the rehearing would be scheduled for February 16, 2022 at 10:00am in the YLC Boardroom located at 9031 Quartz Rd.
- (11) This email also notified the parties that based on a rehearing date of February 16, 2022 and the timeline set out in paragraph 5 of CMC Order.
- a. The YLC was required to submit any affidavit evidence it intends to rely on and the sections of the *Liquor Act* that Mr. Singh is alleged to have breached to the YLB and Mr. Singh no later than 2:00p.m. on January 22, 2022;
 - b. Mr. Singh was required to submit any affidavit evidence he will rely upon to the YLB and the Yukon Liquor Corporation no later than 2:00p.m. on January 27, 2022;
 - c. Any party wishing to conduct cross examination on affidavit evidence was required to notify the other party and the YLB, three days after Mr. Singh was required to file his affidavit evidence (January 30, 2022) or the time for him to do so expired;
 - d. The YLC was required to submit any written arguments to Mr. Singh and the YLB no later than 2:00p.m. on February 6, 2022; and
 - e. Mr. Singh was required to submit any written arguments to the YLC and the YLB no later than 2:00p.m. on February 11, 2022.

Issues before the Hearing

Extension of time and rescheduling the rehearing

- (12) Mr. Singh failed to submit any affidavit evidence on January 27, 2022 as required by the agreed timeline in the CMC order.

- (13) On January 28, 2022, the YLB, contacted Mr. Singh, to determine if Mr. Singh intended to file affidavit materials. Mr. Singh advised that he had not received the YLC's materials.
- (14) The YLC forwarded its email, from January 22, 2022. Attached to this email was the affidavit of Mr. Tewnton, a copy of the *Liquor Act* and Liquor Regulations with the sections the YLC intended to rely on highlighted. On the face of the email, it was sent to the YLB and to Mr. Singh.
- (15) Mr. Singh did not request an extension to submit his affidavit evidence.
- (16) On February 8, 2022, the YLC emails the YLB and Mr. Singh asking the YLB to confirm that Mr. Singh had not filed any affidavit evidence. Mr. Singh responded to that email stating that he intended to file "something". The YLB Chair understood Mr. Singh's email to be a request to submit his affidavit materials late.
- (17) On February 9, 2022 The YLB Chair asked the parties for submissions on whether or not the YLB had authority to alter the timeline set out in the CMC Order.
- (18) Counsel for the YLC responded that the YLB had that authority to alter the timeline provided the hearing occurred on or before February 28, 2022. Counsel for the YLC submitted a timeline that the YLC would consent to. Mr. Singh did not make any submissions.
- (19) On February 11, 2022: The YLB issued a direction adjourning the rehearing to 9:00am on February 28, 2022 to allow Mr. Singh time to submit materials with the following times:
 - a. Mr. Singh shall submit any affidavit evidence he will rely upon to the YLB and the YLC no later than 2:00p.m. on February 14, 2022;
 - b. Any party that wishes to conduct cross-examinations on affidavit evidence must notify the other party and the YLB no later than 2:00p.m. on February 15, 2022;
 - c. YLC shall provide written submissions (if any) to the YLB and to Mr. Singh no later than 2:00p.m. on February 23, 2022; and
 - d. Mr. Singh shall provide written submissions (if any) to the YLB and to YLC no later than 2:00p.m. on February 25, 2022.

(the "Revised Schedule")

- (20) Mr. Singh failed to submit his affidavit evidence on February 14, 2022 as required by the Revised Schedule.
- (21) On February 15, 2022 at 11:19p.m. Mr. Singh emailed his unsworn affidavit to counsel for the YLC, but not to the YLB.
- (22) On February 16, 2022: Counsel for the YLC emailed the YLB and Mr. Singh, attaching Mr. Singh's email from February 15, 2022 with his unsworn affidavit.
- (23) In the email, Counsel for the YLC objected to Mr. Singh's late filing of the unsworn affidavit. The basis for the YLC's objection was that Mr. Singh missed the original date to file his affidavit evidence, and he missed the extended deadline. Further to that Mr. Singh had provided no explanation for why he missed either deadline.
- (24) The YLB emailed Mr. Singh asking for his submissions on YLC's objection to the filing of his affidavit.
- (25) On February 16, 2022, Mr. Singh provided the following submission:

"You folks can do whatever you want, as that is what you do anyways. I truly expect no justice from board or YLC. This matter will be settled after this "Mickey Mouse" hearing when I file a lawsuit."
- (26) On February 21, 2022 the YLB emailed Mr. Singh and the YLC, as Mr. Singh had failed to submit his affidavit evidence as required by the CMC order, and as required by the Revised Schedule, the YLB would not accept his affidavit.

Mr. Singh's objection to the redaction of names in exhibit L of Mr. Tewnion's affidavit

- (27) On January 28, 2022, Mr. Singh objected to the redaction of a witness' name in exhibit L of Mr. Tewnion's affidavit.
- (28) Mr. Singh noted that he should have the right to cross examine this witness if the witness statement is before the YLB.
- (29) The YLC submitted that it would not rely on exhibit L, or paragraphs 27 and 28 of Mr. Tewnion's affidavit.
- (30) The YLB determined that the YLC not relying on exhibit L and paragraph 27 and 28 of Mr. Tewnion's affidavit; and the YLB giving no weight to exhibit L and paragraph 27 and 28 is sufficient.

Cross examinations

- (31) On February 8, 2022 Mr. Singh stated that he wanted to cross examine:
 - a. RCMP Cst. Marland;
 - b. RCMP Cst. Koshman;
 - c. Mr. Tewnion;
 - d. YLC Liquor Inspector Hindson; and
 - e. YLC Liquor inspector Howard.

- (32) On February 15, 2022 Mr. Singh emailed counsel for the YLC, but not to the YLB advising that he wanted to cross examine;
 - a. RCMP Cst. Marland;
 - b. RCMP Cst. Koshman;
 - c. Mr. Tewnion;
 - d. YLC Liquor Inspector Hindson; and
 - e. YLC Liquor Inspector Manolis

- (33) YLC objected to the cross-examination of YLC Inspector Manolis on the basis that the affidavit materials submitted by the YLC showed that YLC Inspector Manolis was not involved in this matter.

- (34) The YLC did not object to the cross examination of:
 - a. RCMP Cst. Marland;
 - b. RCMP Cst. Koshman;
 - c. Mr. Tewnion; and
 - d. YLC Liquor Inspector Hindson.

- (35) The YLB ask Mr. Singh for submission on the YLC's objection. Mr. Singh did not provide submission on the YLC's objection.

- (36) On February 21, 2022 the YLB emailed Mr. Singh and the YLC, to advise that as there is no evidence before it, that YLC Liquor Inspector Manolis had any involvement in the suspension of or YLC's request to cancel liquor licence #4522, the YLB saw no basis for Mr. Singh to cross-examine him.

- (37) Mr. Singh's request to cross-examine YLC Liquor Inspector Manolis was denied. The YLB determined that it would allow the cross examination of:
 - a. Mr. Tewnion;
 - b. Cst. Marland;
 - c. Cst. Koshman; and
 - d. YLC Liquor Inspector Hindson.

- (38) The YLB directed that the cross examinations take place during the rehearing of application to cancel liquor licence #4522 on February 28, 2022.

Yukon Liquor Board

Preliminary objection

- (39) Mr. Singhs objection to the YLB chair being on the panel:
- a. The YLB secretary received an email from Mr. Singh sent February 24, 2022, objecting to the YLB Chair being on the panel. The YLB secretary informed the YLB and brought this forward before beginning the rehearing.
 - b. The YLB Chair excused herself and left the room so Mr. Singh could explain to the YLB his reasonings for the potential bias.
 - c. Mr. Singh expressed his concerns that the YLB Chairs role at her place of employment may influence her decision at the rehearing. Mr. Singh explained that a number of years ago, he had an outstanding bill with the company the YLB Chair work for and due to unfortunate circumstances, he was not able to pay for.
 - d. Mr. Singh went on to explain that the YLB Chair contacted him several times to try to have him pay for the outstanding invoice with the company.
 - e. Counsel for the YLC, asked Mr. Singh when this occurred, Mr. Singh stated he was not sure, but it was more then 10 years ago.
 - f. The test for Bias is set out in *Town of Faro v. Carpenter*, 2008 YKSC 25 paragraphs 17 and 18 as:

[17] The test for reasonable apprehension of bias is well-established and was set out by de Grandpré J., in dissent, Martland and Judson JJ. concurring, in *Committee for Justice and Liberty v. National Energy Board* (1976), [1976 CanLII 2 \(SCC\)](#), [1978] 1 S.C.R.369 at 394:

[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically and having thought the matter through-conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[18] The party alleging bias bears the burden of proof. Further, as noted by the Supreme Court in *Bell Canada v. Canadian Telephone Employees Assn.*, [2003] 1 S.C.R. 884, [2003 SCC 36](#) at para. [24](#):

... a tribunal is presumed to have acted without bias, and the onus of establishing a reasonable apprehension of bias is on the party so alleging. Speculation is insufficient; the standard of proof is the civil standard. See David Phillip Jones & Anne S. de Villars, Principles of Administrative Law, 3d ed. (Toronto: Carswell, 1999) at 401-402.

- g. The YLB decided that because:
 - i. This incident happened over 10 years ago; and
 - ii. It is regarding a late payment from a place the YLB Chair was employed at and not a personal businessa reasonable person, with all the information surrounding the claim of bias, and after considering it, would not believe that the YLB Chair was biased.

Evidence

The Evidence of the YLC

- (40) A sworn affidavit, dated January 21, 2022 and received January 22, 2022, from Mr. Tewnton, then Director of Regulatory Services, was provided. Attached as exhibits were documentation related to each suspension:
 - a. A variance order from the court which ended the first suspension;
 - b. General police report for the incident on May 8, 2021;
 - c. General police report for the incident on July 18, 2021; and
 - d. A supplementary police report for the July 18, 2021 incident dated August 2, 2021.
- (41) The YLC, relies on three suspensions of license #4522 as the basis for its request to cancel the liquor license #4522:
 - a. Suspension 1: April 21st – April 28th, 2021 (7-day suspension)
 - i. Mr. Singh was on a court order not to possess alcohol. Mr. Singh failed to mention this to the YLC and continued to run his bar as usual.
 - ii. RCMP confirmed that the named manager – Patrick Singh – was on release conditions prohibiting him from possessing alcohol.
 - iii. YLC deemed Mr. Singh as unfit to manage the premises given that he could not possess liquor and he is the sole manager.
 - iv. The suspension was lifted after Mr. Singh was successful in having his release condition amended to only prohibit him from consuming alcohol.
 - v. The YLC relied on the following section:
 - 1. *Liquor Act*, section 17(1) that states “The president may by order for cause that the president considers sufficient suspend any licence issued under this Act.
 - b. Suspension 2: May 14th – May 16th, 2021 (3-day suspension)

- i. RCMP arrested Mr. Singh on May 8, 2021 for consuming alcohol contrary to his release condition when they found him intoxicated while working in his bar (RCMP File 2021-626704 refers).
- ii. Police observed Mr. Singh tending the bar with approximately 20 people present, and observed him to have bloodshot glassy eyes, a very strong odour of beverage alcohol coming from his breath, and slurred speech. When asked by police if he had consumed liquor, Mr. Singh replied that he had “one or two”
- iii. The YLC relied on the following section:
 - 1. Liquor Regulations, section 9(1)(f) that states unless the Board otherwise directs a licensee shall not personally, or through an employee, servant or agent, in or about his licences premises
 - a. permit any employee to consume liquor on the licensed premises while on duty
- c. Suspension 3: July 27th – August 10th, 2021 (14-day suspension)
 - i. RCMP arrested Mr. Singh on July 18, 2021 for consuming alcohol contrary to his release condition when they found him intoxicated while working in his bar (RCMP File 2021-1045045 refers).
 - ii. Police received a report that Mr. Singh was intoxicated at his bar, directing customers to go behind the counter to help themselves. Upon arrival, RCMP observed Mr. Singh to be intoxicated while sitting at the bar with a tumbler in front of him. Police observed Mr. Singh to have bloodshot eyes, an odour of liquor on his breath, his balance was off, and he swayed when he walked.
 - iii. Police observed only one other person in the bar, and although that person was behind the bar briefly, he confirmed with police that he was not an employee.
 - iv. Mr. Singh sent numerous emails to the YLC, including one in which he admitted “yes I had a drink” but he claims the bar was closed as he had indicated to the arresting officer, and that he was hanging out with his friend before heading home.
 - v. This rebuttal was shared with the arresting officer who confirmed that the bar was not closed. In fact, when arrested, Mr. Singh asked the police to lock up the bar for him. Mr. Singh also asked the police to turn off the “Open” sign for the establishment and described where the switch was located so that the police could turn it off.
 - vi. The YLC relied on the following section:
 - 1. Liquor Regulations, section 9(1)(f) that states unless the Board otherwise directs a licensee shall not personally, or through an employee, servant or agent, in or about his licences premises

- a. permit any employee to consume liquor on the licensed premises while on duty

(42) The evidence of the YLC can be summarized as follows:

- a. In April 2021, Mr. Singh was legally prohibited from possessing or consuming liquor by order of the Territorial Court of Yukon. Although the order related to unrelated *Criminal Code* charges, the consequence was that it was not legally possible for him to manage his licenced premises as he is the only manager under licence #4522. As a result, the President suspended licence #4522. As soon as Mr. Singh was able to have his court order amended to permit him to possess liquor, this suspension was lifted. Mr. Singh did not appeal this suspension.
- b. On May 8, 2021, members of the Whitehorse RCMP, acting on a complaint from the public, found Mr. Singh at the licenced premises tending the bar with numerous patrons present while he was consuming liquor. The RCMP noted numerous indicia of intoxication from Mr. Singh. At the time, Mr. Singh was under court order not to consume alcohol and was on duty tending the bar. Mr. Singh was arrested for breaching that condition. Licensees are prohibited from permitting any employee to consume liquor on the licenced premises while on duty. A three-day licence suspension was issued for this infraction. Mr. Singh did not appeal this suspension.
 - i. General Report from Cst. Koshman on July 8 is below:
 1. RCMP received an anonymous call explaining that Mr. Singh is on a court order and is not to consume alcohol and is currently drunk at his bar.
 2. Upon entering the establishment, Cst. Koshman noted there were 20 patrons within the bar and Mr. Singh was standing behind the bar talking to a customer over the countertop.
 3. After waving Mr. Singh over to come talk, Cst. Koshman noticed that Mr. Singh's eyes were bloodshot and glassy, consistent with someone who has been consuming alcohol. Cst. Koshman noted that he could smell a very strong odour of alcohol coming from his breath and had a slur in his speech.
 4. When asked if Mr. Singh had anything to drink that night, Mr. Singh replies with he had one or two.
- c. On July 18, 2021, members of the Whitehorse RCMP, again acting on a complaint from the public, found Mr. Singh at the licenced premises at the bar consuming liquor. Mr. Singh was the only employee at the bar and there was one patron present. The RCMP noted numerous indicia of intoxication from Mr. Singh. At the time, Mr. Singh was under court order

not to consume alcohol, and he was arrested for breaching that condition. Licensees are prohibited from permitting any employee to consume liquor on the licenced premises while on duty. A fourteen-day licence suspension was issued for this infraction.

- i. General Report from Cst. Marland is below:
 1. RCMP received a report at 1:45am that there was a drunk bartender at Paddy's Place. The person was identified as Patrick Singh. The complainant said that when they asked Mr. Singh for a drink, he replied with go behind the bar and serve yourself. They noted Mr. Singh was very rude and sexual towards customers.
 2. Cst. Marland went to the establishment and arrested Mr. Singh for failing to comply with his conditions. Cst. Marland noted that Mr. Singhs speech was slurred, and he swayed when he walked. She also noted that Mr. Singhs eyes were bloodshot and there was an odour of liquor on his breath.
 3. Cst. Marland stated that there had been a tumbler on the bar in front of Mr. Singh when she arrested him.
- d. Supplementary Occurrence Report from Cst. Marland on August 2, 2021. This report contained:
 - i. Cst. Marland received a copy of emails between Mr. Singh and Mr. Tewnton of the Yukon Liquor Corporation. Mr. Singh was claiming that his suspension was unjustified and made some comments about a phone conversation that needed to be clarified. Cst. Marland noted that the elements she described in her general report apply to failing to comply with his conditions but that other details are more relevant to what the Yukon Liquor Corporation would be looking for.
 - ii. Cst. Marland states that Mr. Singh was sitting on the customer side of the bar, with a tumbler in front of him. Mr. Singhs speech was slurred, and his eyes were blood shot and members had already received a report from the original dispatch that Mr. Singh was intoxicated. Cst. Marland went on to say that when Mr. Singh stood up it was even more apparent, he was intoxicated. His balance was off, and he swayed when he walked. Another male was behind the bar but stated he did not work there and refused to help close the bar as he continued to insist, he didn't work there and left quickly. There were no other customers in the bar.
 - iii. The original dispatch stated there was a drunk bartender at Paddy's bar named Patrick who owns the bar and had asked the complainant to go behind the bar and serve himself. Patrick was very rude and sexual towards customers as well. A formal

- statement was not taken from the complainant as members witnessed the breach when they attended.
- iv. Members gained entry by walking into the bar, the doors were open. After Mr. Singh's arrest, members were locking up the bar and Mr. Singh made a point of requesting that the OPEN sign that was lit up over the entrance door be turned off. He then went on to describe where the switch was so that members could turn it off. The only conversation when officers entered was Cst. Fox stating, we were looking for Patrick, to which Mr. Singh responded and was immediately arrested. There was no discussion about the bar being open or closed.
 - v. In the emails received from Mr. Tewnton, Mr. Singh stated that in a phone conversation with Cst. Marland she admitted the bar had been closed. This is incorrect.
 - vi. Mr. Singh had requested a call from Cst. Marland. Mr. Singh was inquiring if he could get the police report. Mr. Singh then went on to explain how the YLB was not justified in their actions. Cst. Marland explained that she had arrested him for failing to comply with his conditions and had nothing to do with Liquor Corporation decisions. Mr. Singh said he understood that but stated that his breaching conditions had nothing to do with his liquor licence or his business and continued to explain how the Yukon Liquor Corporation was incorrect.
 - vii. Among several points, throughout the cross-examination, Mr. Singh kept insisting the bar was closed. Cst. Marland stated that "The doors were open, we walked right in, whether or not you considered it closed". Mr. Singh also asked Cst. Marland to confirm that it was only himself and "his friend" in the bar, which she did.

The Evidence of Mr. Singh

- (43) Mr. Singh did not submit any evidence.
- (44) Mr. Singh did Cross examine:
 - a. Cst. Marland;
 - b. Cst. Koshman;
 - c. Mr. Tewnton; and
 - d. YLC Liquor Inspector Hindson

Issues:

- (45) Has the YLC proven that Mr. Singh breached the Act/regulations as alleged?
1. Suspension #1 – April 20 – 28, 2021 – due to an order by the Yukon Territorial Court, Mr. Singh was not permitted to possess liquor, *Liquor Act* section 17(1);
 2. Suspension #2 – May 14 - 17, 2021 – on May 8, 2021 RCMP found Mr. Singh intoxicated while tending the bar, Liquor Regulations, section 9(1)(f); and
 3. Suspension #3 – July 27 0 August 10, 2021 – on July 18, 2021 the RCMP found Mr. Singh intoxicated while tending the bar, Liquor Regulations, section 9(1)(f)
- b. If the YLC proves the allegations, is Mr. Singh able to establish a defence of due diligence?
- c. If the YLC proves that the alleged breached occurred and Mr. Singh does not prove his defence - What is the appropriate penalty?

Findings of Fact

- (46) Mr. Singh did not dispute the basis for the April 21-28, 2021 suspension or the May 14-17, 2021 suspension.
- (47) The YLB finds that the bar was open when police arrived on July 18, 2021, at approximately 1:45am. During cross examination Mr. Singh challenged Cst. Marland, whether the bar was open. Cst. Marland was clear in her evidence that the bar was open when she entered.

Applicable Legislation and Policy

- (48) The rehearing was conducted under the authority of:
- a. i) Section 118(5) of the *Liquor Act*, which states: When a re-hearing of any matter is ordered by the Supreme Court, the re-hearing may be held by the board composed of the same persons that held the original hearing; and
 - b. ii) The following tabs from the YLB Policy Manual: 11-A Suspension and Cancellation of Licences and Permits and 11-B Liquor Board Meetings, Hearings and Decisions.
- (49) The following legislation and policy is applicable and was relied upon in making this decision:

- a. **Section 61(a) of the Liquor Regulations**, A liquor primary, food primary, or club licence shall not be granted to or held by any person unless,
 - i. They are a fit person to keep and operate the kind of premises in respect of which a licence is sought; and
 - b. Liquor Board Policy Manual, Tab 15, *Offence-Penalty Guidelines*.
 - c. **Section 9(1)(f) of the Liquor Regulations**, Unless the Board otherwise directs a licensee shall not personally, or through any employee, servant, or agent, in or about his licensed premises:
 - i. Permit any employee to consume liquor on the licensed premises while on duty.
 - d. **Section 91(1) of the Liquor Act**, No person shall be in an intoxicated condition in a liquor store or licensed premises.
- (50) The case law cited by the YLC sets out the test for regulatory offences:
- a. The Yukon Supreme Court in 202 Motor Inn v. Yukon Liquor Corporation, 2004 YKSC 46 (“202 Motor Inn”) paragraph 6, is clear that breaches of the Liquor Act are strict liability offences.
 - b. The test is set out at paragraph 8 of 202 Motor Inn:
 - i. The YLC has to prove beyond a reasonable doubt that the offence occurred,
 - ii. Once that is done the onus shifts to the responding party to show on a balance of probabilities the defence of reasonable care or due diligence.

Applying this test:

- a. For each of the suspensions the YLC has to prove beyond a reasonable doubt that the alleged acts did occur.
- b. Only if the YLC proves that the acts occurred will Mr. Singh have to show on a balance of probabilities that he took all reasonable steps to avoid having the alleged acts occur.

Findings

- (51) Did the YLC meet its burden?
- a. Suspension 1: April 21st – April 28th, 2021 (7-day suspension)
 - i. Mr. Singh was on a court order not to possess alcohol. Mr. Singh failed to mention this to the YLC and continued to run his bar as usual.
 - ii. RCMP confirmed that the named Manager – Patrick Singh – was on release conditions prohibiting him from possessing alcohol.
 - iii. YLC deemed Mr. Singh as unfit to manage the premises given that he could not possess liquor and he is the sole manager.

- iv. The suspension was lifted after Mr. Singh was successful in having his release condition amended to only prohibit him from consuming alcohol.
 - v. Mr. Singh did not appeal this suspension. At the hearing Mr. Singh did not present any evidence or arguments disputing the facts set out above.
 - vi. The YLB finds that the YLC has proven beyond a reasonable doubt the basis for Suspension 1, specifically that Mr. Singh was not fit to hold a liquor licence because of the court order prohibiting him from possessing liquor.
- b. Suspension 2: May 14th – May 16th, 2021 (3-day suspension)
- i. RCMP arrested Mr. Singh on May 8, 2021 for consuming alcohol contrary to his release condition when they found him intoxicated while working in his bar (RCMP File 2021-626704 refers)
 - ii. Police observed Mr. Singh tending the bar with approximately 20 people present, and observed him to have bloodshot glassy eyes, a very strong odour of beverage alcohol coming from his breath, and slurred speech. When asked by police if he had consumed liquor, Mr. Singh replied that he had “one or two”
 - iii. The YLC relied on the following section:
 - 1. Mr. Singh did not appeal this suspension, and during the hearing, he acknowledged that he had in fact been drinking.
 - 2. The YLB finds that the YLC has proven beyond a reasonable doubt the basis for Suspension 2, specifically that Mr. Singh was not fit to hold a liquor licence because of the consumption of alcohol while on duty.
- c. Suspension 3: July 27th – August 10th, 2021 (14-day suspension)
- i. RCMP arrested Mr. Singh on July 18, 2021 for consuming alcohol contrary to his release condition when they found him intoxicated while working in his bar (RCMP File 2021-1045045 refers)
 - ii. Police received a report that Mr. Singh was intoxicated at his bar, directing customers to go behind the counter to help themselves. Upon arrival, RCMP observed Mr. Singh to be intoxicated while sitting at the bar with a tumbler in front of him. Police observed Mr. Singh to have bloodshot eyes, an odour of liquor on his breath, his balance was off, and he swayed when he walked.
 - iii. Police observed only one other person in the bar, and although that person was behind the bar briefly, he confirmed with police that he was not an employee.
 - iv. Mr. Singh sent numerous emails to the YLC, including one in which he admitted “yes I had a drink” but he claims the bar was closed as he had indicated to the arresting officer, and that he was hanging out with his friend before heading home.

- v. This rebuttal was shared with the arresting officer who confirmed that the bar was not closed. In fact, when arrested, Mr. Singh asked the police to lock up the bar for him. Mr. Singh also asked the police to turn off the “Open” sign for the establishment and described where the switch was located so that the police could turn it off.
- vi. At the hearing Mr. Singh challenged fact, that the bar was open when Cst. Marland attended. Mr. Singh acknowledged that he had a drink, but his position remains that the bar was not open on July 18, 2021 and that he was therefore, not in any violation of any regulations and should not have his licence taken away.
- vii. The YLB finds that the bar was open on July 18, 2021 when Cst. Marland attended.
- viii. The YLB finds that the YLC has proven beyond a reasonable doubt the basis for Suspension 3, specifically that Mr. Singh was not fit to hold a liquor licence because of the consumption of alcohol while on duty.

The YLB finds that the YLC has met the burden of proof. As noted above Mr. Singh did not dispute the validity of the first two suspensions. Mr. Singh appealed his third suspension. However, after reviewing the evidence provided to the YLB, the YLB accepts the credibility of the evidence for Suspension 3 that the bar was open when police arrived on July 18, 2021 and accepts that the YLC has proven this beyond a reasonable doubt.

- (52) If the YLC met the test, did Mr. Singh establish the defence of reasonable care or due diligence?
- a. Mr. Singh did not argue that he had a defence of due diligence.
- (53) What is the appropriate penalty?
- a. Tab 15, the Offence-Penalty Guidelines in the Liquor Board Policy Manual sets out a range of options for offenses, ranging from suspension for a period of time to referral to the YLB to cancellation or referral for prosecution. These penalties are intended to be progressive, rehabilitative and educative. Depending on the circumstances of an offense, the referral to the YLB for cancellation may be applied as early as the first offence.
 - i. All three suspensions meet Tab 15 because they all question Mr. Singhs character and whether or not he is fit to have his liquor licence.
 - 1. Suspension 1 - Mr. Singh did not reach out to the YLC regarding his court order to not possess alcohol and see if there was anything that could be done to ensure his bar remain open until the court order has passed. Instead, he

- continued to run his bar like normal until the RCMP were notified, who then notified the YLC. Mr. Singh did not appeal this suspension.
2. Suspension 2 – Less than a month later RCMP were called due to Mr. Singh being intoxicated while on duty. Mr. Singh did not appeal this suspension.
 3. Suspension 3 – Less than 2 months later RCMP were called again due to Mr. Singh being intoxicated while on duty. The YLC suspended the licence and recommended to the YLB that the licence be cancelled.
- b. All suspensions were held within 4 months of each other. Tab 15 notes that these penalties are intended to be progressive, rehabilitative, and educative. It is the YLC's position that:
- i. The sale of liquor is a highly regulated activity for the protection of the public;
 - ii. Selling liquor is a privilege and those who choose to enter this activity must abide by the rules;
 - iii. The YLC is obligated to enforce the rules for the protection of the public; and
 - iv. Due to three offenses in a short period of time, Mr. Singh is no longer fit to be a licence holder.
- c. The YLB finds that based on the evidence set out above, that Mr. Singh did not take the requirements set out in the Act and the Regulations seriously.
- i. Mr. Singh chose to continue operating his bar, despite a court order not to possess alcohol.
 - ii. Mr. Singh chose to consume alcohol while on duty at the bar, despite the requirements set out in section 9(1)(f) of the Regulations.
 - iii. After the second suspension, Mr. Singh again chose to consume alcohol while on duty at the bar, despite the requirements set out in section 9(1)(f) of the Regulations.
- d. The YLB finds that the appropriate penalty is the cancellation of liquor licence #4522.

Conclusion

- (54) The YLB find the testimony of Cst. Marland, the police report and the supplementary report to be credible. Mr. Singh's recollection of the events of that time are unclear; trained police officers noted indications of intoxication, Mr. Singh was initially sure that the event took place in August rather than July, and there were inconsistencies in what he said at the time of his arrest and subsequently.

He admitted he had been drinking. Therefore, the YLB accepts the evidence of policy that the bar was open on July 18, 2021 at 1:45am and as he was the only staff member in attendance, he was in violation of the regulations.

- (55) The YLB finds that the cancellation of Mr. Singhs liquor licence is an appropriate penalty. Penalties for non-compliance are intended to be educative and rehabilitative; 3 offences by the licensee over such a short period of time (four months) indicate that in Mr. Singhs case, the penalties did not cause any change whatsoever in his behaviour. The provisions of the *Liquor Act* are in place for the protection of the public and the YLB notes that it is a privilege rather than a right to be licensed to sell alcohol.
- (56) Additionally, the *Liquor Act* requires that a person be 'fit' to be a licence holder. As stated above, three suspensions in short succession which show repeated behaviours over a short period of time, the behaviour that resulted in a court order not to possess or consume alcohol that led to the first suspension and the behaviour described in the police reports for the incidents in May and July of 2021 bring that fitness into question.
- (57) The *Liquor Act* requires that a person be 'fit' to be a licence holder. The two undisputed suspensions in short succession which show repeated behaviours over a short period of time, a breach on the release condition for the first suspension not to possess or consume alcohol and the behaviour described in the police reports for the incidents in May and July of 2021 bring that fitness into question.
- (58) Tab 15 of the Board Policy Manual, in setting out penalties for offences under the *Liquor Act*, states that penalties are dependent on the circumstances of the offense. For 'subsequent offenses', following a 3rd offense, it specifically states that: "dependant on circumstance of offence this could be applied as early as the 1st offence." Mr. Singh had three offences resulting in suspensions over a short period of time. Penalties for non-compliance are intended to be educative and rehabilitative. Three offences by Mr. Singh himself, the licence holder and only manager listed on the licence over such a short period of time (four months) indicates that in Mr. Singhs case, the penalties did not cause any change whatsoever in his behaviour. The provisions of the *Liquor Act* are in place for the protection of the public and the YLB notes that it is a privilege rather than a right to be licensed to sell alcohol.

Decision

- (59) The YLC has proven beyond any reasonable doubt that the alleged acts for each of the three suspensions did occur.
- (60) Mr. Singh did not raise a defence of reasonable care or due diligence.
- (61) Based on the above, the YLB finds that Mr. Singh does not meet the criteria under The *Liquor Act* Sections 61(a) to hold a liquor licence.
- (62) Licence #4522 is cancelled.

A handwritten signature in black ink, appearing to read 'Eva Bidrman', is written over a horizontal line.

Eva Bidrman, Chair
Yukon Liquor Board
February 28, 2022 Decision