



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENCING BRANCH**

**IN THE MATTER OF  
A hearing pursuant to Section 20 of  
The Liquor Control and Licensing Act RSBC c. 267**

<b>Licensee:</b>	Zodiac Pub Ltd dba Zodiac Neighborhood Pub 155 Rutland Rd. South Kelowna BC
Case:	EH03-040/041
<b>Appearances:</b>	
For the Licensee	Dennis Coates, QC
For the Branch	Marc Matoul
Enforcement Hearing Adjudicator	Edward W. Owsianski
Date of Hearing	July 22 & 23, 2003
Place of Hearing	Kelowna, B.C.
Date of Decision	September 4, 2003

## INTRODUCTION

The licensee, Zodiac Pub Ltd. operates the Zodiac Neighbourhood Pub under Liquor Primary Licence No. 034328, located at 155 Rutland Rd. South in the City of Kelowna. The licence permits the sale and consumption of all types of liquor and for off-premises sales. The licensed hours for the sale of liquor are 10:00 AM – Midnight on Sunday through Thursday and 11:00 AM – 1:00 AM on Friday and Saturday. The licence permits 150 patrons in the licensed area.

## ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION

The Liquor Control and Licensing Branch has alleged that:

1. on or about January 10, 2003, the licensee or its employee permitted an intoxicated person to remain in the licensed establishment contrary to Sec. 43(2)(b) of the Liquor Control and Licensing Act, (the Act) for which a monetary penalty of Five Thousand Dollars (\$5,000) is recommended.
2. on or about February 21, 2003, the licensee or its employee permitted an intoxicated person to remain in the licensed establishment contrary to Sec. 43(2)(b) of the Act for which a suspension penalty of five (5) days starting on a Friday and continuing for successive business days is recommended.

### Section 43(2)(b) of the Act states as follows:

#### Drunkenness

- 43 (2)** A licensee or the licensee's employee must not permit
- (b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

## ISSUES

1. Whether the standard of proof required by the branch is higher than a balance of probabilities?
  2. Whether the licensee contravened Section 43(2)(b) of the Act as alleged by the Branch.
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3. If so, are the recommended penalties appropriate in the circumstances?

## **EXHIBITS**

The following exhibits were presented:

<b>Exhibit A</b>	Book of Documents
<b>Exhibit B</b>	The Zodiac Pub "Staff Training Manual"
<b>Exhibit C</b>	The Zodiac Pub "Team Handbook"
<b>Exhibit D</b>	Zodiac Pub Incident Log for Friday January 10, 2003
<b>Exhibit E</b>	Zodiac Pub Incident Log for Friday February 21, 2003
<b>Exhibit F</b>	Handwritten notes of [ ] dated Jan 10, 2003
<b>Exhibit G</b>	Handwritten notes of [ ] dated Feb 22, 2003
<b>Exhibit H</b>	Handwritten notes of [ ] dated Feb 21, 2003
<b>Exhibit I</b>	Handwritten notes of [ ] dated Feb 21, 2003
<b>Exhibit J</b>	Affidavit of [ ]

## **EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH**

### **Alleged Contravention (1)**

A corporal from the RCMP Kelowna Detachment testified that he has been a police officer for over 27 years and has had much experience dealing with intoxicated persons and conducting walk thru inspections of licensed establishments. He conducts routine walk thrus of licensed establishments in the Kelowna area as part of a national directive to reduce traffic deaths and injuries. On January 10, 2003 he attended at the Zodiac Neighbourhood Pub on 2 occasions. The first occasion at approximately 8:25 PM, no problems were identified. The second occasion was at approximately 11:15 PM at which time the establishment was full, busier than normal. On entering the establishment he observed a male patron (first male patron) standing near the middle of the establishment. He noted signs of impairment in this individual, namely a strong odour of liquor on his breath, bloodshot eyes, eyes unfocused, and slurred speech. The corporal

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advised the bartender that the person was intoxicated and he should be removed. The bartender responded that the individual had not been drinking there. The corporal also observed another male patron (second male patron) leaving the smoking area with a female patron and heading towards the dance floor. He was staggering and secured his balance by leaning on the pool table, his walk was unsteady. The corporal made a note to check this person for intoxication.

The first male patron had left the establishment. The corporal went outside to check on him and located him in the entrance foyer. The individual was belligerent. He said that he had been drinking in the establishment for two hours. A taxi arrived and he left in it. The corporal testified that he had observed this patron for approximately 2 minutes inside and about 2 – 3 minutes in the foyer. He assessed his condition as being severely intoxicated.

The corporal had requested further police officers attend, three had subsequently arrived. On re-entering the establishment the corporal noted one of the constables speaking to the second male patron. This person was exhibiting signs of intoxication, staggering, a smell of liquor on his breath, slurred speech, bloodshot, watery eyes, and difficulty focusing his attention. He said that he had consumed 10 beer. They were joined by the brother of this patron who also appeared intoxicated although not to the same degree. His speech was slurred, eyes watery and bloodshot, odour of liquor. He said that he and his brother and come to the pub from a hockey game. They had been drinking prior to and during the game and that his brother had three beer at the pub, a total of 10 for the night. Both were told to leave and did so. He observed the second male patron for a total of approximately 5 - 6 minutes, 2 – 4 minutes inside, 2 minutes outside with his brother. The corporal was approached by the bartender and was shown the condition of the second male patron. The bartender became agitated and antagonistic, he said that the police officers should be checking on a nearby establishment which creates problems.

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The corporal completed a Licensed Premises Check (LPC) form (exhibit A, tab 8) and served it on the bartender. A report was subsequently made for the liquor inspector several days or a week later, exact date unknown (exhibit A, tab 9).

The corporal testified that he had completed a previous LPC (exhibit A, tab 11) as a result of observing an intoxicated male patron at the establishment on May 28, 2002.

The corporal testified that he was again at the establishment on February 21, 2003 at approximately 10:20 PM, no violations were noted. He observed a domestic dispute occurring on the parking lot, it was brought to the attention of the bartender as the husband was intoxicated, had left the establishment and was not to be permitted back in. The disputants were observed to leave the area. The corporal testified that he did not observe liquor inspectors in the establishment during his attendance.

### **Alleged Contravention (2)**

Liquor Inspectors A & B testified that as liquor inspectors for the past 4 and 4 1/2 years respectively and police officers for the previous 25 and 31 years they have considerable experience in dealing with intoxicated persons. On February 10, 2003 at approximately 10:30 PM they attended at the Zodiac Pub for the purpose of inspecting for contraventions of the Act and Regulations. Upon their arrival they noted the RCMP corporal in the parking lot. They entered the establishment and sat at a table immediately outside of the smoking room. The establishment was not crowded, approximately 50 – 60 patrons. They observed a patron sitting by himself at a table near the back of the smoking room approximately 20 feet away. The patron had an almost full jug of beer on the table in front of him and was holding a glass of beer approximately 2/3 full. The patron was nodding off as if he was falling asleep. Occasionally he would raise his head to look around. Inspector A testified that the patron would occasionally take a sip of beer from the glass. In the inspectors' opinions he appeared intoxicated, his eyes were slitted and had a glazed look. After they had observed the patron for approximately 10 minutes they saw the server go over to the table, speak with the patron who then looked directly at them leaving them to believe

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that the server told the patron they were liquor inspectors. The server left and approximately 10 minutes later another male patron come in and sat with the intoxicated patron. At this point the bartender and the server went to the table, spoke with the two patrons and removed the jug and glass of beer. The inspectors then observed the intoxicated patron stand up, he was swaying on his feet. He was given a bill by the server and was observed to hand it back. The two patrons then walked out of the smoking room to the washrooms area passing within 10 to 12 feet of the inspectors. The intoxicated patron was unsteady on his feet, staggering and had to lean on the table. His eyes were glazed. On attempting to enter the washroom he walked past the door to the men's washroom and into the wall, staggered backward and entered the washroom. The two patrons came out of the washroom and left the establishment via the rear exit.

Inspector A testified that he then spoke with the bartender regarding the intoxicated patron and issued him with a Contravention Notice (exhibit A, tab 10). He reminded the bartender that he had just met with him and other staff a few weeks ago regarding intoxicated patrons. The bartender told him that he didn't think the patron's condition was too bad. The liquor inspector told him that in his opinion the patron was not just intoxicated but drunk. The bartender asked the liquor inspector why there appeared to be such a sudden interest in over-service, he had never had to deal with the problem before. He told the inspector that it was really difficult to cut patrons off, he hasn't had to do so in 20 years and he doesn't get paid enough in this type of job. The two liquor inspectors left the establishment at approximately 11:15 PM. The inspectors made notes of their observations (exhibit A, tab 14 for Inspector A and tab 13 for Inspector B) later that evening.

Inspector A testified that there have been other incidents of intoxicated patrons at this establishment. He received a Licensed Premises Check form (LPC) in May of last year (exhibit A, Tab 11) from the RCMP indicating that on May 28<sup>th</sup>, 2002 an intoxicated patron had been located in the establishment who told the police officer that he had been drinking there for a few hours. Inspector A subsequently met with the manager of the establishment on June 12, 2002, issued her a contravention notice (exhibit A,

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tab 12) and gave her a copy of the branch publication, a "Guide for Licensees". He discussed the branch's priorities of over service, overcrowding, minors and illicit liquor with her. He received another LPC in January of this year (exhibit A, tab 8) from the RCMP indicating that on January 10, 2003 two extremely intoxicated males were located in the establishment. He advised the manager and at her request met with the staff at the pub on January 24, 2003. He issued a contravention notice to the manager (exhibit A, tab 7) on February 4, 2003. Enforcement Action Recommended reports were completed for the two contraventions on March 7 and 11, 2003 (exhibit A, tabs 2 & 4) and Notice of Enforcement Action reports were completed on March 24 and April 2, 2003 and provided to the licensed establishment. In response to a question from counsel for the licensee he testified that he also checks a nearby licensed establishment on those occasions when he checks the Zodiac Pub. He has not found contraventions at the nearby establishment on those occasions.

## **EVIDENCE - THE LICENSEE**

The general manager (GM) of the establishment testified that she has worked there for 23 years, the past 6 as GM for both the pub and licensee retail store. She is responsible for the training and hiring of staff and normally works from 8/8:30 to 5/6:00 PM except busy Friday evenings she stays longer. The establishment has developed a Staff Training Manual (exhibit B) and a Team Handbook (exhibit C). Copies are given to each employee when hired and they now provide each employee with a copy of the branch publication, "A Guide to Licensees". She has responsibility for the ongoing training of staff working in the Licensee Retail Store and the bar manager has responsibility for staff in the pub and meets weekly with them. She was not present during the incident occurring May 28, 2002, however was aware of it. The patron involved was subsequently barred from the establishment. Since the current owner purchased the establishment 6 years ago they have been trying to clean up undesirable patrons. She was not present during the incidents of January 10 or February 21, 2003. Incident logs were prepared for each date (Jan 10 – exhibit D, Feb 21 – exhibit E). Following the January 10 incident Liquor Inspector A attended at a staff meeting and discussed the over service of liquor to patrons. She believes that this has had a good

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impact on staff. Staff are told that intoxicated patrons must be cut-off and removed from the establishment as soon as possible. If a taxi is necessary patrons are to wait outside.

The senior bar manager for the establishment testified that he has been employed there for over 3 years and has many years experience in the industry at different establishments. He was working at the time of both incidents, January 10 and February 21, 2003 and wrote out incident reports (exhibits D & E) and made notes of his observations (exhibits F & G). On January 10 the RCMP corporal was in the establishment 4 times within about 2 hours, first at approximately 8:30 PM, checked the identification of patrons and left. He was back in approximately ½ hour later, checked some identification, counted the number of patrons and left. He was back approximately 1 hour later, counted the number of patrons, asked for the liquor licence and left. He returned about 20 minutes to ½ hour later with two other police officers and pointed out two patrons at the pool table, one playing air guitar with his pool cue, he said they were extremely intoxicated and should not be in the pub. The corporal said that in the name of public safety he was coming down hard and gave the bar manager a ticket to sign. The bar manager testified that he was frustrated and probably a little antagonistic toward the corporal asking him about a nearby establishment that creates problems for the pub as it closes earlier with the result that intoxicated persons come to the pub and it requires diligence to keep them out as they have already had too much to drink. The bar manager didn't agree that the two persons were intoxicated, they had been in the pub for approximately 2 hours and he was told by the server that one of the persons hadn't been drinking.

The bar manager testified that he was working on February 21. The corporal had been in the pub and had pointed out a person in the parking lot involved in a domestic dispute. Two liquor inspectors came in about 5 minutes later and sat watching a patron seated in the smoking area for 10 to 15 minutes. He spoke with one of the inspectors later who said that the patron was extremely intoxicated. He did not agree with this assessment. The patron was not staggering or slurring his words, he looked normal, he asked for his bill and knew who to pay. He was requested to leave because he was

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nodding off. He patron appeared a little groggy which in the opinion of the bar manager was because he had worked for 12 hours and then had a few beers and supper. The patron had been part of a group of 7 who had probably arrived somewhere between 7 and 8 PM, the others had left earlier. The bar manager said that in his experience it is not uncommon for a patron going to the men's washroom to first walk past the door then have to stop, backup and then go into the washroom. From a distance it may appear that they have run into the wall.

He testified that staff at the pub are concerned with intoxicated patrons. The bartenders watch persons entering, how they walk, their attitude. If loud or irate they will not be served. They regularly cut-off patrons when it is necessary. This can result in hostility and resistance from patrons, particularly if they have been drinking elsewhere. Staff take a team approach involving both the server and bartender in dealing with patrons who must be cut-off.

Server A testified that she has worked at the pub for almost 2 years and in the industry for approximately 30 years. She was working the night of February 21, 2003 and made notes at the end of her shift at the request of the bar manager. It was a busy Friday night and she was working in the lower smoking section where there were many regular patrons, all in party mode which resulted in her cutting off quite a few. There was a table of construction workers who had come in just prior to her starting at 6:00 PM. They were drinking jugs of beer and had eaten steak dinners. Several had left earlier leaving only 2 remaining, Patron A and his buddy, both regulars who come in a couple of times a week. They were the only patrons remaining when she had served the last jug of beer to that table. The RCMP corporal came in at about 10:15 PM, went directly to the men's washroom then walked down the centre of the pub and left without speaking to her or the bar manager. At this point she saw the liquor inspector sitting and watching her section and she was happy that she had earlier cut-off several patrons. The bar manager then told her to cut-off Patron A as he was nodding-off. She told Patron A and his buddy that they couldn't stay any longer. They paid the bill and left. Patron A was "not really hard drunk", was not slurring his words, not staggering, he looked tired. He had worked long hours and it had been abnormally hot that day. He

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was not like the patrons that she had cut-off earlier. She did not see him bump into the wall but has seen others, sober, who have done it due to the way in which the entrance to the washroom is set up.

Server B testified that she has worked at the establishment for the past 2 ½ years. She was working the night of February 21<sup>st</sup> and made notes that night (exhibit I) after discussions with the bar manager and Server A that there may be repercussions as a result of the incident. She was working the upper smoking room and some of the non-smoking area. She saw the RCMP corporal come in the pub at approximately 10:25 PM, walk thru and leave without speaking to anyone. Approximately 10 minutes later she recognized the liquor inspector sitting at a table and told the bar manager and Server A. She did not see Patron A until he paid the bill and was leaving. When asked if he appeared intoxicated she replied that he did not appear severely intoxicated, he was not stumbling, he looked like an overworked guy who had had a couple of beers.

She testified that she is not hesitant to cut-off patrons if necessary and does it on a regular basis using her conflict resolution skills. She sees it as part of doing her job well and keeping persons safe. It makes some patrons unhappy particularly if they can go elsewhere and be served.

Counsel advised that he had obtained an affidavit from Patron A. He had attempted without success to have him attend the hearing as a witness. The affidavit was entered as exhibit J.

## **SUBMISSIONS**

### **Liquor Control and Licensing Branch**

The branch advocate in his submission referred us to the following cases:

- Ed Bulley Ventures, decision of the Liquor Appeal Board, June 28, 2001
  - Royal King Seafood Restaurant, decision of the General Manager LCLB, Sept 30, 2002
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- Sea to Sky Hotel, decision of the General Manager LCLB, February 28, 2003
- Oasis Hotel, decision of the General Manager LCLB, March 5, 2002

He submitted that the test to be met by the branch to prove the contraventions consisted of two parts, firstly that the persons were intoxicated and secondly, that the licensee failed to take reasonable steps to remove them from the premises.

He submitted that the witnesses presented by the branch were forthright, credible and had had the opportunity to observe the condition of the persons alleged to be intoxicated. On January 10, 2003 the RCMP corporal, experienced and trained in dealing with intoxicated persons dealt with the persons in question on a face to face basis and testified as to the signs of intoxication exhibited by them. He testified that there was no door control person to prevent intoxicated persons to enter the establishment nor had anyone requested the intoxicated persons to leave. On February 21, 2003, two liquor inspectors had a clear view of the person and identified the signs of intoxication exhibited by him. It was not until the presence of the liquor inspectors became known that any action was taken by the staff of the establishment. He argued that established that the licensee failed to meet the standard of care required of it on the dates in question. In accordance with the standard dictionary definition of "permit" and with the meaning given in previous decisions the licensee permitted intoxicated persons to remain in the licensed establishment.

In addressing the penalties recommended by the branch he submitted that they were necessary to ensure future voluntary compliance. A previous contravention notice had been issued by the branch regarding an incident occurring in May 2002. The liquor inspector had met with the general manager and staff of the establishment following the incident of January 10, 2003 and prior to the incident of February 21, 2003, to no avail.

### **The Licensee**

Counsel in his submission referred us to the following cases:

- Ed Bulley Ventures, decision of the Liquor Appeal Board, June 28, 2001
  - Whistler Mountain Ski Corp., decision of the BC Court of Appeal, July 12, 2002
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- Argyle Place, decision of the General Manager LCLB, February 21, 2001
- Royal Inn, decision of the General Manager LCLB, November 22, 2001
- Back Country Jack's, decision of the General Manager LCLB, July 4, 2001
- The Wakefield Inn, decision of the General Manager LCLB, October 24, 2002
- Lou's Grill, decision of the General Manager LCLB, December 19, 2002
- Bellevue Hotel, decision of the Liquor Appeal Board, September 27, 1996

Counsel submitted that the branch must prove the 'actus reas' of the regulatory offence beyond a reasonable doubt.

He submitted that the provisions of section 43(2)(b) contain three critical words, "permit", "intoxicated" and "remain" and that there was no evidence of intoxication on either January 10<sup>th</sup> or February 21<sup>st</sup>, nor evidence of "permit" or "remain". He argued that the bar manager had more documentary recollection of the January 10<sup>th</sup> incident than that of the RCMP corporal and as such his evidence should be preferred. The corporal pointed out only one patron to the bar manager, and in the bar manager's opinion that person was not intoxicated. The corporal did not see the persons in question with liquor or drinking at the pub. There is no evidence whether the persons appeared intoxicated when they came into the pub. Persons having consumed liquor elsewhere appear sober then cross a threshold to appearing intoxicated. Observing that the threshold has been crossed is difficult for staff who only see the persons seated at a table.

Counsel argued that on February 21<sup>st</sup> the RCMP corporal had been into the establishment just prior to the liquor inspectors and did not find any problems inside, had the person been grossly intoxicated as alleged the corporal would have observed him and dealt with him. The person came to the attention of the staff as being tired, not intoxicated. They dealt with him as required, picked up the liquor and asked him to leave.

Counsel submitted that the licensee is entitled to the defence of due diligence and has demonstrated it in these instances. The pub has developed staff training manuals which are provided to all staff. Weekly meetings are held with staff. An incident log is maintained. Staff are not intimidated from cutting-off patrons, they do it all the time.

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## REASONS AND DECISION

- 1. Burden of Proof** – Counsel has argued that the branch has the obligation to prove the allegations on the criminal standard of ‘beyond a reasonable doubt’. I do not agree. This issue has been thoroughly argued in previous decisions of the general manager and it has been consistently held that the burden of proof on the branch is that of the civil standard of ‘on a balance of probabilities’ (see Hotel Rendezvous, December 18, 2001, Case No. EH00-13 and Bridge Street Billiards Café, October 31, 2001, Case No. EH01-02). I find that the burden of proof on the branch is ‘on a balance of probabilities’.
  - 2. Permit Intoxicated Person to Remain, January 10, 2002** – Having considered all of the evidence and submissions I find, for the reasons that follow, that on this date the licensee or its employee permitted an intoxicated person to remain in the licensed establishment and in so doing contravened section 43(2)(b) of the Act. In reaching this decision I accept the evidence provided by the RCMP corporal that during a routine check he identified and dealt with two male patrons in the licensed establishment who were clearly and obviously in a state of intoxication. I am satisfied that no effort had been made by the staff of the establishment to remove them from the premises despite their obvious state of intoxication and thus they were permitted to remain in the licensed establishment. Counsel for the licensee submitted that I should prefer the evidence of the bar manager to that of the corporal as the bar manager had better documented his observations and that the corporal testified to only being in the establishment on 2 occasions whereas the evidence indicated he was inside on 4 occasions. Dealing first with the number of times that the corporal was inside the establishment, I find that the testimony of the corporal was that he visited the establishment on 2 occasions on that date, the first resulted in no problems being identified, the second resulted in him dealing with the two intoxicated patrons. Examining his evidence it is clear that the second visit necessitated him leaving the establishment to deal with the first intoxicated patron then re-entering to deal with the second intoxicated patron and again to provide a copy of the Licensed Premises Check form to the bar manager. The corporal was clear in his observations and description of the condition of the two intoxicated
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patrons. He obtained and provided the identity of both persons. In the result I consider his evidence to be reliable.

**February 21, 2003** - Having considered all of the evidence and submissions I find, for the reasons that follow, that on this date the licensee or its employee permitted an intoxicated person to remain in the licensed establishment and in so doing contravened section 43(2)(b) of the Act. In reaching this decision I accept the evidence provided by the two liquor inspectors that during a routine check of the licensed establishment they observed a male patron in the licensed establishment who was clearly and obviously in a state of intoxication. Counsel submitted that staff took the action required of them, namely removing the liquor from the patron and requesting him to leave. I am satisfied that no effort had been made by the staff of the establishment to remove the liquor from the patron and to require him to leave the premises despite the obvious state of intoxication until they became aware of the presence of the liquor inspectors. Thus the intoxicated patron was permitted to remain in the licensed establishment. I do not accept that the condition of the patron was due solely to tiredness following a long and physically demanding day of work. The evidence is that the patron came into the establishment at the conclusion of his work day, consumed a quantity of liquor and a meal following which he exhibited signs of intoxication. I am satisfied that his condition was that of intoxication and was due, at least in part, to the consumption of liquor in the establishment.

3. **Due Diligence** – There is no question that the licensee is entitled to a defence to the allegations of the contraventions if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. Counsel has submitted that the licensee in providing ongoing training to its employees, developing manuals for their guidance, maintaining an incident log together with the evidence that staff do regularly refuse entry to intoxicated patrons and cut patrons off from further service and request them to leave the premises is evidence that the licensee has taken all reasonable measures and as such has made out the defence. I do not agree. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and
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problems dealt with. I am satisfied that that has not occurred in these instances. The condition of the patrons was readily observable on the two dates in question, there was reasonable opportunity for staff to take appropriate action, yet no action was taken in a timely manner despite the fact that the problem of intoxication had been brought to the attention of the staff and management by the liquor inspector. I am satisfied that the defence of due diligence has not been made out by the licensee.

## **PENALTY**

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a license or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a license

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulations*.

**January 10, 2003** – The branch has recommend a monetary penalty of Five Thousand Dollars (\$5,000), the minimum monetary penalty for a first contravention of this type. In the circumstances I am satisfied that a penalty is necessary to achieve voluntary compliance and that the minimum monetary penalty is appropriate. While this is the first contravention of this type it is not the first occasion that the problem of an intoxicated patron has been brought to the attention of this licensee. A contravention notice was issued as a result of a report from the RCMP that an intoxicated patron was found in the establishment on May 28, 2002. While the contravention notice was not proceeded on

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by the branch it did serve to put the licensee on notice that greater diligence was required.

**February 21, 2003** – The branch has recommended a five (5) day suspension penalty commencing on a Friday. This is within the lower mid-range of penalties for a contravention of this type, schedule 4 provides for a suspension penalty of 4 to 7 days. The branch rationale for recommending this penalty is found in appendix A to the Notice of Enforcement Action dated April 2, 2003 (exhibit A, tab 3), there is a previous history of non-compliance in dealing with intoxicated patrons, May 28, 2002 and January 10, 2003 which resulted in the liquor inspector meeting with all staff on January 24, 2003. In the circumstances I am satisfied that a penalty is necessary to achieve voluntary compliance and that the 5 day penalty recommended by the branch is appropriate.

## **ORDER**

Pursuant to section 20(2) of the *Act*, concerning Liquor Licence number 21660, I impose a monetary penalty of \$5,000.00 (Five Thousand Dollars) to be paid no later than October 17, 2003, and I suspend the liquor licence for a total of five (5) days starting as of the close of business Thursday October 16, 2003, and continuing on successive business days until the suspension is completed. “Business Day” means a day on which the licensee’s establishment would normally be open for business (section 54(1) of the Regulations to the Liquor Control and Licensing Act.)

Since I do not know whether the establishment would normally be open seven 7 days per week as of October 16, 2003, I do not know what the “business days” will be. To ensure that this order is effective, I direct that the liquor licence be held by the Branch or the Kelowna Detachment of the RCMP from the close of business Thursday, October 16, 2003, until the licensee has demonstrated to the Branch’s satisfaction that the licensed establishment has been closed for five (5) business days. A suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer.

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A liquor inspector or a member of the Kelowna Detachment of the RCMP will be requested to attend the premises, take possession of the liquor license and hold it in safekeeping during the term of the suspension.

*Original signed by*

Edward W. Owsianski  
Enforcement Hearing Adjudicator

Date: September 4, 2003

cc: RCMP Kelowna Detachment

Liquor Control and Licensing Branch, Victoria Office  
Attention: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Surrey Office  
Attention: Marc Matoul, Branch Advocate

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