



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENSING BRANCH  
IN THE MATTER OF**

A hearing pursuant to Section 20 of  
***The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267***

Licensee:	Esquimalt Holdings Corp. dba Esquimalt Inn 856 Esquimalt Road Victoria, BC V9A 3M4
Case:	EH05-128
For the Licensee:	Andrew Draper
For the Branch:	Shahid Noorani
Enforcement Hearing Adjudicator:	M. G. Taylor
Date of Hearing:	May 17 and June 29, 2006
Place of Hearing:	Victoria and Vancouver
Date of Decision:	July 27, 2006

## INTRODUCTION

The licensee, Esquimalt Holdings Corp., is a member of Cambie Malone's Corp. group of companies. The licensee operates the Esquimalt Inn (the 'pub') under Liquor Primary Licence No. 021261. Cambie Malone's Corp. is in the process of amalgamating five operations under one corporation, which involves the transfer of liquor licenses. Because of this enforcement process, the transfer of the liquor licence held by Esquimalt Holdings Corp. is in abeyance. <sup>[1]</sup>

The licensed hours of sale for Esquimalt Inn are 9:00 a.m. to 11:00 p.m. Monday and Tuesday, 11:30 a.m. to 1:30 a.m Wednesday to Saturday and 11:00 a.m. to midnight on Sunday. The licensed capacity is 280 patrons plus 65 patrons on the patio. The licence is subject to terms and conditions, including those contained in the Guide for Liquor Licensees in British Columbia (the "Guide").

## ALLEGED CONTRAVENTIONS

By Notice of Enforcement Action (NOEA) dated October 31, 2005, the Liquor Control and Licensing Branch ("the Branch") alleged that on April 2, 2005, the licensee contravened Section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

The branch's recommended enforcement action is a four (4) day suspension of the liquor licence (item 11 of Schedule 4 of *Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (the "*Regulation*").

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<sup>[1]</sup> Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

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**RELEVANT STATUTORY PROVISIONS**

*Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*

**Drunkennes**

**43** (1) A person must not sell or give liquor to an intoxicated person or a person apparently under the influence of liquor.

(2) A licensee or the licensee's employee must not permit

(a) a person to become intoxicated, or

(b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

**ISSUES**

1. Were there intoxicated patrons in the pub as alleged?
2. If yes, did the licensee permit the intoxicated patrons to remain in the pub?
3. If the licensee contravened as alleged, what, if any, is the appropriate penalty?

**EXHIBITS**

Exhibit No. 1	Branch's Book of Documents
Exhibit No. 2	E-mail report from VPD Sergeant to the Branch
Exhibit No. 3	Compliance & Enforcement Report
Exhibit No. 4	Two Enforcement Action Recommended Reports
Exhibit No. 5	Licensee's Package of Documents
Exhibit No. 6	Cambie Hostels Newsletter System

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## **EVIDENCE**

The branch's witnesses were a police sergeant and the compliance and enforcement officer (the "C & E officer") who is responsible for this geographic area. The licensee's witnesses were the assistant manager, the general manager and the licensee.

The incident that led to this alleged contravention was a pub crawl that involved university students. The organizer had contacted the licensee in advance and the licensee agreed to the pub crawl, providing this pub was the first or second stop of the evening.

### *The Branch's Evidence*

#### *Police Officer*

The sergeant testified that the police have concerns with intoxication in liquor establishments because it frequently creates unsafe conditions inside the establishments and it contributes hugely to the trouble the police have controlling the Victoria City downtown core after closing hours. He testified that, in his many years of experience, he has seen a range of levels of intoxication from alcohol poisoning to someone who has just had a beer and been overcome by the drug that is alcohol. In his experience, pub crawls are typically organized by university students who hire a school bus to travel around the City from pub to pub. He stated that there is usually drinking and carousing on the bus as well as in the establishments. Some students invariably become intoxicated and ill.

The sergeant was called in this evening as a shift supervisor and started his shift about 6:00 p.m. Around 8:40 p.m. he responded to a call from another officer to attend the Esquimalt Inn because the pub crawl had just arrived and the officer believed that some of the students were already intoxicated. When he arrived he found that there were two buses and some students were still in the parking lot

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but the majority had gone into the pub. He followed the last of the students into the pub.

As he was entering, a young woman in front of him was weaving and unstable. He saw her flash a <sup>[2]</sup> student card at the door security who let her enter. He watched where the young woman went and then stopped for conversation with the door security. He questioned him about how quickly he had processed all of these students and, in his words, the man “seemed a little sheepish.” The sergeant continued into the pub and found the young woman who was slumped on a chair or bench. He asked her for identification and she produced a foreign driver’s licence. He could not verify her age because he could not conclude whether the driver’s licence was legitimate and he did not see any B.C. identification. He described her as reeking of booze which from his experience suggested she had already consumed many drinks. Further, he testified that she was slouched and was slurring her words. He determined that she had to leave the pub and he started to move her out. She became quite gregarious, friendly and clinging. He noticed that she had a flaccid look in her eyes and face.

After he dispatched her, he had a short conversation with the door security and then went to speak with the assistant manager. He told her that he was concerned that there were intoxicated patrons and that people had not been properly identified. As they were talking, he saw a patron who was having difficulty staying upright on his stool. He had a pitcher of beer in front of him and the sergeant described him as “plastered.” He pointed him out to the assistant manager and she agreed that he was intoxicated and had him ejected. On his way out, the patron was unsteady on his feet and came over to the sergeant and, in a slurred voice, complained vehemently to him about being kicked out.

The sergeant was at the pub for 10 to 15 minutes. He testified that one of the buses reeked of alcohol and of the stench of spilled alcohol. He spoke with one

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<sup>[2]</sup> Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

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bus driver who told him where the next stop was. The sergeant alerted that bar and gave them a strong caution.

*Compliance and Enforcement Officer*

The C & E officer's testified that his regional manager gave him a copy of the police report around April 4, 2005. He wrote up a Contravention Notice, which he hand delivered on April 20. On April 21, 2005 he met with the bar manager and the assistant, although the meeting was not prearranged. As a result of this meeting, the licensee requested another meeting which was held on April 27, with the licensee present. At that meeting, the C & E officer wrote out some notes with points that the licensee agreed to concerning developing a staff training plan. He testified that he wrote these notes because he was concerned that the licensee had only minimal oral staff training in place and no policy manual and he wanted to ensure that a similar incident did not occur again.

Due to changes in staff at the branch, the issuance of the NOEA for the April incident was delayed until October 31, 2005. When the NOEA was delivered, the C & E officer received a request to meet with the licensee. He met with the licensee and a liquor consultant. The licensee was upset because he thought the branch was not taking any action on this alleged contravention. The C & E officer testified that he did not tell the licensee there would be no enforcement action. He testified that there had been a subsequent incident for which the branch issued another CN. He had met with the assistant manager in September 2005 about that later incident and, after discussions he assured the licensee that there would be no further action taken on that CN.

From a review of the report at Exhibit No. 3, the C & E officer noted that between January 2001 and February 2006, there were approximately 47 inspections of this pub and six contraventions found, not counting the one of April 2, 2005. Prior to this alleged contravention, the last one was in February 2002. However,

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the C & E officer also indicated that some CNs may not show up on the report, such as the one at Exhibit No. 1, tab 20, from 2003.

The C & E officer testified that he is aware that some licensees no longer allow pub crawls to attend because of the number of problems caused and the number of precautions that need to put in place. For example, he indicated that licensees find they have to hire extra staff and ensure stringent door controls with a high level of screening to prevent access by minors, to ensure that everyone shows two pieces of identification, to ensure that no one is intoxicated and, generally, to ensure that the students will not be a safety risk to themselves or anyone else. Some licensees go to the bus when it arrives to check on the condition of the students.

#### *The Licensee's Evidence*

##### *Assistant Manager*

The assistant manager has been in the hospitality industry for many years and has been in her current position for several years. She testified that on April 2, 2005, she was in charge of the bar and she knew the pub crawl would be arriving. At that time of the year, it is not usual to have three to four pub crawls because the school year is ending. On April 2, 2005, they had two staff on the door, a bartender and herself behind the bar, plus one server. Usually on a Saturday night they would have had only one door staff, one bartender and one server. In retrospect, she testified that it would have been preferable to have one more staff person on this night.

When the organizer called in advance to arrange a stop at the Esquimalt Inn, the assistant manager told him it would okay providing this was the first or second stop. She was told there would be about 100 students. One to two weeks prior, the assistant manager spoke with the organizer again and confirmed there would be approximately 100 students. The assistant manager testified that the licensee

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has very high standards and that she assumed she would have told the organizer that intoxicated individuals would not be permitted entry.

The pub crawl arrived between 8:15 and 8:30 p.m. and when they came through the door, they came directly to the bar. She estimated that 80 to 100 students came in. The usual process with pub crawls is that the patrons order directly from the bar, usually jugs of beer. About ten minutes after the students arrived, she was told the police were present and she went to the door to talk with them. There were four officers, not the sergeant who testified at this hearing, and they told her there were intoxicated students in the bar. She testified that she was surprised by that. The sergeant arrived shortly after and he also told her there were intoxicated patrons present. When she heard that from the sergeant, she immediately stood up on the bar and announced to the students that no more liquor would be served.

After she stopped service, she joined the sergeant who pointed out a couple of students he said were intoxicated. She testified that she went to talk with them and in her view she did not think they were intoxicated. She testified that she did not smell alcohol on them. Another patron had just put a jug of beer and two glasses on the table but these patrons had not consumed any yet. They were happy, jovial, leaning back on their chairs or stools. She told them the police said they were intoxicated and they would have to leave. They did not resist and she walked with them toward the exit.

The assistant manager testified that her impression was that the sergeant thought all of the students were intoxicated. She did a walk through and ejected a few others, just because she was not sure if they were intoxicated. They had an odour of alcohol and were probably at the point that if they had another couple of drinks they would have become intoxicated. Then she rejoined the sergeant who indicated that everything seemed to be fine. She went back to the bar, and the students were ready to leave.

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The day after this incident, one of the door staff was fired for having failed to perform his duties by allowing intoxicated patrons to enter and not requiring proper identification.

The assistant manager recalled the meeting with the C & E officer and that he had suggested that management give a directive to the staff regarding looking for intoxication, asking for identification and, generally, the basics of the requirements of the liquor licence. She referred to the "test" in Exhibit No. 5 and testified that she was one of the first to take the test and that now all staff have to take the test. She also testified that there are staff meetings every couple of months where they discuss policies, liquor laws and go through some training.

The assistant manager testified that the next she heard about this incident was approximately two weeks before the hearing when she was told about the hearing. Only one of the staff who worked that night is still employed at the pub.

#### *General Manager*

The general manager testified that he has worked at the Esquimalt Inn for more than five years and has been in his current position for most of that time. He was not working on April 2, 2005. He first heard of the pub crawl and the police intervention on April 3, 2005, by a report posted by the assistant manager on the licensee's online newsletter. He received a copy of the CN on April 20 and he forwarded that and the report to the licensee on April 21, 2005. He testified that the licensee also had the report through the newsletter on April 3, 2005.

He was present at an informal meeting with the C & E officer and the assistant manager. When the licensee received the documents, he requested a meeting with the C & E officer. The meeting occurred on April 27, 2005, and the purpose was to come to some mutual agreement on repairing the damage. He testified that the C & E officer talked about ensuring this type of incident did not occur again, and he talked about staff training. The C & E officer wrote out some notes

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and they all signed it. He testified that he thought this was the final agreement and that the issue of enforcement was resolved.

After the April 27, 2005, meeting, he called a staff meeting and began a training process. He developed the written test, based on the branch's Guide for Liquor Licensees. Previously, the training was in meetings when staff talked about issues. Now all staff take the written test. He gives them one week to complete it then he marks it and goes through it with them. When he interviews prospective employees, he gives them this test as a closed book. After they are hired, they are again given the test, as an open book. He provides the Guide and the test is designed so that they will have to read the whole book to finish the test.

The general manager testified that he was aware in advance of the planned pub crawl and that he understood there would be about 50 students and the pub would be the first or second stop. He testified that they don't like to be the third stop because students may be intoxicated and they will not allow the pub crawls if it is the fourth stop because everyone is so intoxicated they cannot be served.

On this occasion, he brought on one extra staffer to handle the pub crawl, and that person was an MOD – manager on duty. He stated that 50 is not a large pub crawl and that if it had been 100 students, he would have attended himself. They are accustomed to having five or six pub crawls per year. He testified that one of the door staff was terminated on April 3, 2005, for failing to request proper identification.

As another new measure since this incident, if there is a pub crawl greater than 50 patrons, he personally attends. There have been three or four pub crawls since this incident and no CNs have been issued.

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The general manager testified that he became aware of the enforcement process in November 2005 and he met with the C & E officer. He was informed of this hearing on May 15, 2006. He did not attempt to contact any of the previous staff in preparation for this hearing.

### *The Licensee*

The licensee is the sole shareholder of Esquimalt Holdings Corp. and Cambie Malone's Corp. and has held the liquor licence for the Esquimalt Inn since the Spring of 2000. He testified that he has been involved in the hospitality industry for about many years, first with his parents. He considers himself well versed in the privileges and responsibilities of holding a liquor licence.

The licensee testified that he was aware of this incident within 12 hours, through the online journal. This journal, or newsletter, is designed for management staff to communicate at the end of each shift, to share information of occurrences and how to handle situations. He testified that he is a 'nut when it comes to communication.' In addition to the newsletter, he visits each of the five locations each week to talk with the managers.

The licensee spoke about the training for the managers and the other staff. He testified that part of the door staff training requires them to shadow another employee for two or three shifts to give them an orientation of procedures and how they look after their guests.

The licensee presented a document, which he testified every employee is required to sign and which sets out the terms and conditions of employment. The branch advocate objected to it being admitted because he had not previously seen it and did not have an opportunity to question the other witnesses about it. The licensee's counsel indicated that he had not seen it during the earlier part of the hearing. I allowed the document, as Exhibit No. 6,

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noting that there were credibility issues and that I would have to weigh its value accordingly. I noted that the only date on the document is the print date of June 28, 2006. The licensee testified that the only way employees are entered in the payroll is by this form which they have to complete on-line.

The licensee was not present on April 2, 2005. Based on his understanding of the number of patrons in the pub crawl, he testified that the staffing level was adequate. Although he commended the assistant manager for her sensitivity to the police concerns, he testified that her action of cutting off liquor service was more severe than the occasion warranted.

The licensee testified about the meeting with the C & E officer on April 27, 2005, and the document that he signed at the end of the meeting. He understood that the officer was pleased with the way the licensee had handled the situation. He testified that he questioned the C & E officer about what would happen next, knowing that a Compliance Meeting could lead to enforcement processes, and he had the impression that if the licensee complied with the processes outlined, the C & E officer would be satisfied.

The licensee testified that he met with some members of the Victoria Police Department on May 3, 2005, to discuss this incident. They talked about some policies the licensee could implement.

## **SUBMISSIONS**

The branch advocate submitted, that both the sergeant and the licensee's assistant manager gave testimony that supports a finding that the licensee permitted intoxicated persons to enter and remain in the pub by not exercising due diligence or by shutting its eyes to the obvious and he referred to the definition of "permit" in *Ed Bulley Ventures Ltd. (c.o.b. Planet Sports Lounge) v. British Columbia (Liquor Control and Licensing Branch, General Manager)*,

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[2001] B.C.L.I No. 5, Appeal No. L-9905. He noted that the sergeant had two patrons removed because they were highly intoxicated. If these patrons were so obvious to the sergeant, they should have been obvious to the staff.

### **Licensee's Submissions**

The licensee took exception to the fact that one of the police officers who was present during the incident was not called as a witness.

Concerning the evidence of intoxication, the licensee submitted that the fact that police did not take action until the sergeant arrived suggests that the situation was not as severe as the branch suggests. The licensee noted that the police did not take action, but placed the responsibility on the door staff.

The licensee submitted that intoxication is a personal matter, in that one person may show signs of intoxication while another does not. Similarly, detecting intoxication is a subjective assessment. In this instance, the assistant manager had many years experience and the sergeant also had significant experience, yet their assessments differed.

The licensee suggested that this might be a case, similar to that considered in *Liquor Control and Licensing Branch v. LonsdaleHotel Inc.* [2002] B.C.C.A. 436, where the Liquor Appeal Board found that the licensee had done what was required to request appropriate identification but the patrons "outwitted the doormen" (quoted in paragraph 6 of the British Columbia Court of Appeal decision).

Concerning the imposition of a penalty, the licensee submitted that there is nothing to be gained because the licensee has already demonstrated that it is voluntarily complying with the liquor laws.

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The licensee submitted that the branch had given assurances that this matter was not going to be pursued after the meeting on April 27, 2005, and the signing of the document at the conclusion of that meeting. The licensee submitted that assurance, and the branch's lengthy delay in bringing the enforcement action, resulted in the licensee being prejudiced in gathering information and preparing for a hearing. That delay and the resulting prejudice are mitigating factors in the consideration of penalties. The licensee referred to *Greater Vancouver Professional Drivers' Association v. General Manager, LCLB*, [2001] B.C.S.C. 1545 in which a seven month delay was found to be an actual prejudice to the licensee's ability

“to interview appropriate witnesses and preserve evidence. As a result of the delay, the applicant has been denied an opportunity to present a defence. Prohibition will issue with regard to these two allegations” (para 12).

The licensee submitted that the minimum penalties – four to seven day licence suspension or \$5,000 to \$7,000 – are disproportionate to each other. A four day suspension is a much harsher financial penalty than \$5,000. Further, the four day suspension is manifestly excessive in these circumstances.

## **ANALYSIS AND DECISION**

The generally accepted definition of “permit” comes from the Liquor Appeal Board decision in *Ed Bulley Ventures Ltd.*, at paragraph 61:

The interpretation approved by the court is as follows: a licensee may be said to permit something where the licensee does not exercise as high a degree of diligence as it should have in the circumstances, or where the licensee shuts its eyes to the obvious or allows something to go on, not caring whether an offence is committed or not.

The assistant manager testified that she had agreed to the pub crawl weeks in advance, provided the Esquimalt Inn was the first or second stop, and that she had been told there might be 100 patrons. She also testified that it is typical with a pub crawl that some students become intoxicated even within the first two stops. The licensee brought on extra staff for the event. However, the assistant

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manager acknowledged that there should have been at least one more employee to handle that many patrons. The general manager testified that he understood there would be 50 patrons in the pub crawl and that a pub crawl of 100 would have required more staff. The licensee testified that the staffing was adequate. There was some dispute whether there were 50 or 100 patrons in the pub crawl. I prefer the evidence of the assistant manager, who was the person most connected with the pub crawl and who was in charge of the pub that night. Accordingly, I find that there were between 80 and 100 patrons in the pub crawl who attended the pub on April 2, 2005. Further, I accept the evidence of the general manager and the assistant manager that there was insufficient staff to handle that many patrons.

The sergeant testified that he had two patrons removed for being highly intoxicated. He described the indicia of intoxication he observed with both of them. He walked behind the female into the pub. I find as fact that she was showing obvious signs of intoxication at the time she entered the bar and that the licensee's staff should not have permitted her entry and should not have permitted her to remain.

The sergeant's testimony about the male he found to be intoxicated was disputed by the assistant manager. She thought he and his friend were not intoxicated and she testified that they had not been served, that no beer had yet been poured into their glasses. I have considered the evidence as a whole and I find it is questionable whether the assistant manager was referring to the same person as the sergeant. However, assuming that she was referring to the same individual, I find as fact that the male patron the sergeant testified to did have a drink in front of him and was showing signs of intoxication sufficient that the licensee's staff should not have permitted him to be served or to remain.

I have considered the licensee's submission about one police officer who did not testify. The licensee did not ask for any particular remedy. I indicated during the

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hearing that I would not be considering any evidence contained in the materials pertaining to witnesses who did not testify.

I find that the door staff turned a blind eye to some signs of obvious intoxication. I find as fact that the licensee's staff permitted intoxicated patrons to enter and to remain in the Esquimalt Inn on April 2, 2005.

### ***Due Diligence***

It is well accepted that the defence of due diligence applies to contraventions under the *Act*. The B.C. Supreme Court addressed due diligence in *The Plaza Cabaret v. General Manager Liquor Control and Licensing Branch*, 2004 B.C.S.C. 248, a case involving alleged illegal conduct:

[25] If a licensee is not to be responsible for unlawful conduct occurring in its establishment within the meaning of s. 36(2)(b), it must prove, on a balance of probabilities, each of two facts: that the employee was not the directing mind of the licensee in relation to that part of the licensee's operations in connection with which the unlawful conduct arose, and, if that proof is provided, that those who were in fact responsible for that part of the licensee's operations were duly diligent in attempting to prevent the occurrence of unlawful conduct or activities.

In this case, the assistant manager was the directing mind of the licensee who was present during the incident. She was in charge of the bar and had responsibility for ensuring that the staff followed proper procedures in admitting patrons and ensuring that the licensee's responsibilities were met.

The licensee submits that it had processes in place at the time of this incident and that it has improved on the processes since then. The fact that the pub was understaffed leads me to conclude that there was insufficient due diligence. The problems associated with a pub crawl were well known to the licensee's management and there was a conscious decision of how many staff to bring on.

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There was evidence about the licensee's training of door staff. The fact that the door was understaffed for the 100 patrons expected to enter at one time, indicates that the licensee had not been diligent in putting procedures in place to handle a pub crawl.

Additionally, the licensee's procedures for handling the service of liquor was inadequate. According to the assistant manager, it was expected that patrons would go to the bar to be served, but they would purchase jugs of beer to take back to the table, to be shared with others. The assistant manager stated that ensuring patrons were not intoxicated was the responsibility of all staff, but this process would make it next to impossible to monitor all the patrons.

Regarding Exhibit No. 6, I note that licensee's counsel is an employee of the company and, although he was not giving evidence, I am influenced by his lack of knowledge of the form. I say that for a couple of reasons – first, he is an employee so presumably this form would apply to him; second, since much of the evidence during the first day of hearing was directed to staff training and the licensee's evidence of due diligence, I would have expected the licensee to bring this document to counsel's attention and for counsel to have had the staff witnesses refer to this document. I note that the licensee was present during the first day of hearing.

I find that this document is not reliable evidence and I have not placed any weight on it. Considering the evidence as a whole, I find that the licensee has not established a defence of due diligence. Accordingly, I find that the branch has established the contravention as alleged.

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**PENALTY**

Pursuant to Section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* 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 licence.

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*.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding these incidents (“compliance history”). Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegations as first contraventions. The range for first contraventions is four (4) to seven (7) day licence suspension, or \$5,000 to \$6,000 monetary penalty.

The branch’s primary goal in determining the appropriate penalty is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

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The licensee submits that its actions since this incident demonstrate a willingness to voluntarily comply so that imposition of a penalty would not serve a purpose. One of the licensee's actions immediately following was to fire one of the door staff. Although there was some dispute over the reason given for the firing, I accept that this action is notice to other employees that there will be repercussions for failure to comply with liquor *Regulations*.

The licensee implemented an open book test for all employees, which requires them to study the branch's Guide. That was the new procedure the assistant manager noted in particular. Another new procedure is that the general manager attends for all pub crawls.

The licensee pointed to a couple of mitigating factors – basically, branch failures or shortcomings which affected the licensee's ability to adequately prepare for the hearing.

The licensee noted the branch's inference that no enforcement action would be pursued and the branch's seven month delay between the issuance of the CN and NOEA. Concerning the former, I accept the C & E officer's evidence that he had no reason to make that commitment and that he did not make that commitment. I have taken into consideration the licensee's testimony that no action would be taken, if the licensee complied with the points noted in the document. If this was the result of the meeting, I would have expected some evidence of a follow up to demonstrate compliance. The licensee did not provide such evidence.

I have considered these submissions and I find they lack substance as mitigating factors. The fact of the delay may have had some result in diminishing the recollections of the witnesses who testified, but I did not find that there was any substantial failure. If the licensee had been particularly concerned about this aspect of preparing for the case, I would have expected that witnesses would

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have had more notice of the hearing date (the assistant manager was told two days prior), which would have allowed more time to meet with counsel to prepare for their testimony. Further, the event occurred 25 days prior to the meeting with the C & E officer, during which the licensee could have been collecting evidence by way of written statements from various witnesses to assist them later. Although the licensee suggested that some witnesses are no longer available, I find that the licensee did not attempt to contact those people, so their absence is not necessarily as a result of the delay.

The licensee referred to the *GVPDA* decision. I find that is distinguishable because there the licensee was not notified of the alleged contravention within a reasonable time. Here, the sergeant informed management at the time of the incident and the CN was issued within 18 days of the incident. This gave the licensee ample time to investigate the allegations, to take statements from staff, and to otherwise secure whatever evidence was required. From the date of the NOEA to hearing was considerable – more than six months - during which the licensee could have attempted to contact former staff to testify or request the branch to issue summonses. If there was prejudice as a result of delay, I find that the licensee contributed to it by not taking action at the outset to secure evidence.

The facts surrounding this incident are very serious. There was potential for these patrons to become intoxicated, thus endangering their own safety and possibly the safety of others. The licensee's witnesses attested to the potential problems with pub crawls. Licensees assume a great responsibility when they agree to play host to one of these events. They know that dozens of young people will be wanting entry to the bar at one time, that they will have to check identification and that they will have to carefully monitor every patron for signs of intoxication. It is known that the patrons drink in many pubs as part of the event, and it is suspected that they will consume other liquor, and possibly other

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substances, on the buses. Licensees reap the financial benefit of being host, but also must be diligent and vigilant that over drinking does not occur.

After careful consideration, I have concluded that imposition of a penalty is warranted.

I do not agree that a monetary penalty is appropriate. Monetary penalties are frequently seen as the cost of doing business and that could be particularly the case where an event like a pub crawl brings a large number of people to one location.

In my view, the minimum licence suspension of four (4) days is the appropriate penalty.

## **ORDER**

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 021261 for a period of four (4) days, to commence as of the close of business on Friday, September 8, 2006, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*).

To ensure this Order is effective, I direct that the Liquor Licence No. 021261 be held by the branch or the Victoria Police Department from the close of business on Friday, September 8, 2006, until the licensee has demonstrated to the branch's satisfaction that the suspensions have been served.

[ ORIGINAL SIGNED ]

M. G. Taylor  
Enforcement Hearing Adjudicator

Date: July 27, 2006

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cc: Victoria Police Department

Liquor Control and Licensing Branch, Victoria Office  
Attn: Gary Barker, Regional Manager  
Vancouver Island/Okanagan/Kootenay

Liquor Control and Licensing Branch, Surrey Regional Office  
Attn: Shahid Noorani, Branch Advocate

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