



**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:	The Publik Restaurant P.G. Ltd., doing business as The Publik 2005 Hwy 97 South Prince George BC V2N 7A3
Case:	EH07-011
For the Licensee:	Dennis Coates, QC
For the Branch:	Shahid Noorani, branch advocate
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	August 13 & 14 and December 17,2007
Place of Hearing:	Prince George BC
Date of Decision:	February 22, 2008

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

Mailing Address:  
PO Box 9292 Stn Prov Govt  
Victoria BC V8W 9J8  
Telephone: 250 387-1254  
Facsimile: 250 387-9184

Location:  
Second Floor, 1019 Wharf Street  
Victoria BC

<http://www.pssg.gov.bc.ca/lclb/>

## INTRODUCTION

The Publik Restaurant P.G. Ltd. (dba The Publik) holds food primary licence 301319. Food primary liquor licences are issued to establishments with a primary focus on food, i.e., restaurants. The hours for the sale of liquor are 11:00 a.m. to 1:00 a.m. Sunday to Thursday, and 11:00 a.m. to 2:00 a.m. on Friday and Saturday. The person capacity is 118 in the main area and 36 on the patio. The establishment is located in Prince George in a complex that includes a hotel and casino. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication *A Guide for Liquor Licensees in British Columbia* (the "Guide").

## THE ALLEGATIONS

By Notice of Enforcement Action ("NOEA"), dated February 19, 2007, the Liquor Control and Licensing Branch ("branch") alleged that on December 7, 2006:

1. the licensee contravened section 20(1)(d) of the *Liquor Control and Licensing Act* ("Act"), R.S.B.C. 1996, c. 267, and section 11(1) of the *Liquor Control and Licensing Regulation* ("Regulation") by operating in a manner that is contrary to the primary purpose of the business as stated on the licence. The proposed penalty is a ten day licence suspension and a \$7,500.00 monetary penalty.

Item 1 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 10 - 15 days and/or a monetary penalty of \$7,500 to \$10,000.

2. the licensee contravened section 43(2)(b) of the *Act* by permitting an intoxicated person to remain in that part of the licensed establishment where liquor is sold or served. The proposed penalty is a five day licence suspension.

Item 11 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 4 - 7 days and/or a monetary penalty of \$5000 to \$7000.

3. the licensee contravened section 43(1) of the *Act* by selling liquor to an intoxicated person. The proposed penalty is a five day licence suspension.

Item 9 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 4 - 7 days and/or a monetary penalty of \$5000 to \$7000.

The licensee disputes the alleged contraventions.

## RELEVANT STATUTORY PROVISIONS

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

**20** (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

- (a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence;
- (b) the conviction of the licensee of an offence under the laws of Canada or British Columbia or under the bylaws of a municipality or regional district, if the offence relates to the licensed establishment or the conduct of it;
- (c) the persistent failure to keep the licensed establishment in a clean and orderly fashion;
  - (c.1) a failure by the licensee to take reasonable measures to ensure that the operation of the establishment is not contrary to the public interest and does not disturb persons in the vicinity of the establishment;
- (d) the existence of a circumstance that, under section 16, would prevent the issue of a licence;
- (e) the suspension or cancellation of a municipally, regionally, provincially or federally granted licence, permit or certificate that the licensee is required to hold in order to operate the licensed establishment.

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

(a) [Repealed 1999-36-13.]

(b) impose terms and conditions on the licensee's licence or rescind or amend existing terms and conditions on the licence;

(c) impose a monetary penalty on the licensee in accordance with the prescribed schedule of penalties;

(d) suspend all or any part of the licensee's licence in accordance with the prescribed schedule of licence suspensions;

(e) cancel all or any part of the licensee's licence;

(f) order the licensee to transfer the licence, within the prescribed period, to a person who is at arm's length from the licensee.

**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.

### ***Liquor Control and Licensing Regulation, B.C. Reg. 244/2002***

**11** (1) A food primary licence in respect of an establishment may be issued, renewed or transferred if the primary purpose of the business carried on in the establishment is the service of food during all hours of its operation.

## **ISSUES**

1. Did the contraventions occur?
2. If so, is a penalty for each contravention found appropriate and what is a reasonable penalty for each contravention found?

**EXHIBITS**

The following exhibits were presented:

- Exhibit 1** Branch Book of Documents #1, tabs 1 – 22
- Exhibit 2** Notice of Enforcement Action dated December 5, 2006
- Exhibit 3** Licensee Book of Documents #1, tabs 1 – 15
- Exhibit 4** Inspection Interview Sheet for The Publik
- Exhibit 5** Canada Post “Track a Package” documents
- Exhibit 6** The Publik Room Service Menu
- Exhibit 7** General Manager Letters of Delegation to Adjudicator dated March 22, 2006 and July 26, 2006

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

**Liquor Inspector A** testified that he has been employed as a liquor inspector for approximately four years and had previously been employed as a police officer for approximately 25 years. He has considerable experience and training in identifying and dealing with intoxicated persons. He and liquor inspector B are responsible for licensed establishments located in the Prince George Area.

He is familiar with The Publik. The establishment was licensed in January 2005. During the licensing process he dealt with the manager (licensee witness G) and reviewed the requirements with him for operating a food primary licensed establishment, including those provisions concerning operating outside of class and intoxication. An interview report was completed at the time (exhibit 4). The establishment met the branch’s requirements for kitchen equipment, furnishing, lighting, menu and entertainment. The food primary licence for the establishment (exhibit 1, tab 9) states, “For the sale and consumption of all types of liquor in establishments with a primary focus on the service of food.” The licence is subject to the terms and conditions contained in the Guide. Excerpts from the Guide in effect at the time of the alleged

contraventions are found at exhibit 1, tab 10. He referred to the excerpts dealing with: "Differences between a Food-Primary and a Liquor-Primary licence" (p. 5); "Over-service and Intoxicated Patrons" (p.14). The initial application did not include a request for a licensed lounge area in the establishment. A subsequent application was made sometime in late summer or early fall 2006 for a licensed lounge. That application is being held in abeyance pending the conclusion of enforcement action. He agreed that a licensed lounge area would solve the problem of operating contrary to the primary purpose of the licence.

He began receiving complaints about the manner in which the establishment was being operated approximately six months after the establishment received its liquor licence. Complaints were received from members of the public, the local police detachment, other licensees and visiting branch staff. Covert inspections undertaken by liquor inspectors in September 2006 provided evidence that the establishment was operating contrary to the primary purpose. On October 19, 2006 he and liquor inspector B met with two of the establishment's representatives, a senior representative from out of town (licensee witness E) and the restaurant manager (licensee witness G). The inspectors advised the representatives of the complaints received and discussed issues surrounding staff consuming liquor and operating contrary to the primary purpose. He recalled the senior representative advising them that, "You have got it right. We've been chasing the pub crowd. We'll change focus and comply."

To assist in determining the manner in which the establishment was being operated copies of the till tapes (sales receipts) for the period from July to September 2006 were obtained from the establishment. Examination of the sales receipts indicated that there was a shift in sales after 8:00 p.m. with food sales greatly decreasing and liquor becoming the primary sale item with 70 – 80% of the total sales. This indicated that the establishment was not operating within the terms and conditions of its licence. Enforcement proceedings were commenced with a Notice of Enforcement Action (NOEA #EH06-167) dated December 5, 2006 sent to the licensee (exhibit 2). This was later withdrawn and the enforcement action terminated.

An undercover project was undertaken to conduct covert inspections of this and several other establishments in the area. On December 7, 2006 three liquor inspectors from out of town made covert inspections at several establishments within the Prince George area. Inspectors A & B directed the three inspectors to the establishments involved in the project. Inspectors A & B observed the three undercover (u/c) inspectors enter the establishment at approximately 9:15 p.m. Communication was maintained via wireless BlackBerry devices. At approximately 10:55 p.m. communication was received from the u/c inspectors concerning intoxicated patrons and young appearing patrons consuming liquor in the establishment and requested that inspectors A & B proceed inside to conduct an inspection. He and inspector B entered the establishment at that time. He observed that it was approximately ½ full, the music was loud making conversation difficult and the lighting relatively low. Liquor service was evident and there was no evidence of food being eaten or having been served.

He was speaking with a server when he observed a male patron (similarly described by the inspectors and now referred to as male patron #1) sitting with a group of several females. The patron stood up from the table and appeared to be intoxicated. He was unsteady on his feet, weaving back and forth and from side to side. His face was flushed. He was boisterous and loud. The patron approached the area where the inspectors were speaking with the server. Inspector A told the patron that he was a liquor inspector and asked him how long he had been in the establishment and how much he had had to drink. The patron said that he had been there for an hour and "I probably had too much to drink." The inspector observed that the patron's eyes were bloodshot, his speech slurred, he spat when speaking, and had a strong odour of beer on his breath. The patron returned to his table. A server brought him another glass of beer. He had difficulty putting the beer glass to his mouth.

Inspectors A and B asked to see the manager and then spoke with a group of females, identifying themselves as liquor inspectors and requesting to see their identification, as they were young in appearance. They were found to be of legal age. One appeared to

be intoxicated (referred to as female patron). She had a martini type drink with an olive. She had a strong odour of liquor on her breath, had bloodshot watery eyes, her face was flushed, her eyes glassy and her speech slurred. She said that she and her friends been at the establishment for approximately one hour. She had been at another restaurant previously where she had consumed 3 – 4 drinks. She told the inspector, “Maybe I had too much to drink.” The duty manager (witness F) arrived at the table during the interaction between the inspectors and the group of females. The duty manager was somewhat abrasive with the inspectors and apologized to the group of females telling them that she would make it up to them on their next visit. She departed and walked into the kitchen.

Inspectors A and B walked to the bar, identified themselves and told the bartender that they wished to speak again with the duty manager. The bartender at first resisted their attempt to enter the kitchen area. They brushed by him. They observed the manager on the telephone.

Inside the kitchen, two employees were washing kitchen utensils. The kitchen was clean. There was no food waiting to be served nor in the preparation area. There were no dirty dishes or pots and pans. The deep fryer and the stove were not in use. When the duty manager completed her phone call he asked for her “Serving It Right: Responsible Beverage Service (SIR) certificate, the liquor licence, floor plans and liquor register. She was unable to produce any of the requested documents. She said that she had only been on staff for three weeks and that she had a “Server” designate SIR certificate and not a “Licensee” designate certificate. She said that the restaurant manager would be attending in about 15 minutes to address their concerns. He told her that they were unable to wait and they would call the manager the following day. Upon leaving the establishment he observed that the intoxicated male (male patron #1) and the female patron were still inside. He made notes of his observations that night (exhibit 1, tab 5).

Inspector A testified that he and inspector B spoke with the restaurant manager the following day and advised him of their observations. They met with him on December 11, 2006 and issued Contravention Notices (CN) for the alleged contraventions occurring on December 7 (exhibit 1, tab 2). They requested and received sales receipts for December 7 for the period from noon to 11:59 p.m. (exhibit 1, tab 7). These were reviewed and analysed by inspector B. She found that on December 7 the sales receipts for the period from 8:00 p.m. to 11:59 p.m. were for \$583.75 in liquor sales and \$188 in food sales.

Inspector A completed the NOEA dated February 19, 2007 (exhibit 1, tab 1). He testified that for the alleged contravention of operating contrary to primary purpose he recommended both a ten day suspension and a monetary penalty of \$7500. Based on the number of complaints and evidence obtained on several occasions it appeared that this licensee had no intention of complying with the requirements of a food primary licence. He recommended five day suspensions, the mid-range of the penalty schedule, for each of the two contraventions involving intoxication. He did so because the intoxicated persons were obvious to the staff, yet they took no action and continued liquor service to male patron #1.

**Liquor Inspector B** testified that she has been an inspector since August 2006, and along with inspector A, is responsible for licensed establishments in the Prince George area. During her time of employment as a liquor inspector and elsewhere she has received training in identifying and dealing with intoxicated persons and she has dealt with intoxicated persons on many occasions.

She testified that upon assuming her duties as a liquor inspector she was apprised of the problems occurring at The Publik. She received a Licensed Premises Check form from the police indicating that on August 3, 2006 police officers observed two female minors that had been served liquor at the establishment (exhibit 1, tab 17). She completed a CN (exhibit 1, tab 17) and conducted a compliance meeting with the manager of the establishment (licensee witness F) on August 9 (exhibit 1, tab 18). The

manager was co-operative, took the matter seriously and sent a memo to all staff concerning underage drinking and the requirement of checking identification (exhibit 1, tab 18).

Complaints about the manner in which the establishment was being operated resulted in covert inspections being made at the establishment in September 2006 and evidence of contraventions obtained. She met with the manager (licensee witness #2) of the establishment on October 17, 2006 and discussed issues related to employees consuming liquor on duty and operating contrary to primary purpose. In order to determine the ratio of liquor and food sales at the establishment she requested copies of sales receipts.

She and inspector A met with the manager and a senior representative of the licensee on October 19<sup>th</sup> and again discussed operating contrary to primary purpose. The senior representative agreed that their observations were correct and they had been chasing the pub crowd and would make menu changes. She believed that they would change the operating environment of the establishment. She attended at the establishment the following day to pick up the sales receipts. At that time she noticed and took into her possession numerous photos displayed at the establishment depicting entertainment she believed was not suitable or permitted in food primary establishments. One represented a future broadcast of a "Fight Night". She contacted the promoter and determined that it was classified as "Restricted". As such it was not suitable for all ages and not permitted in food primary establishments.

She received copies of sales receipts for the establishment for four days in September and October 2006 (exhibit 1, tabs 12 – 15). Using the sales receipts she calculated liquor/food ratios for one whole business day, opening to closing, [date not provided]. The ratio for that day was calculated at 49% liquor / 51% food.

She calculated liquor / food ratios for the period of time from 8:00 p.m. to closing for each of the four days. She chose that period of time as that was the time period when

complaints were received about the operation of the establishment. The sales receipts did not include sales for room service. The calculations showed that liquor formed the majority of the sales after 8:00 p.m. Her working notes at exhibit 1, tab 8 note the following sales ratios occurring after 8:00 p.m.:

- September 9<sup>th</sup> – 82.5% liquor / 17.5% food
- October 13<sup>th</sup> – 70% liquor / 30% food
- September 21<sup>st</sup> – 81 % liquor / 19% food
- October 14<sup>th</sup> – 70% liquor / 30% food

She testified that as a result of the liquor / food ratio calculations and the evidence obtained during the covert inspections conducted during September she was satisfied that the establishment was operating contrary to primary purpose and she commenced enforcement action. She issued a CN to the manager on November 1, 2006 (exhibit 1, tab 19) and advised him that the branch was proceeding with enforcement action and that a NOEA would be forthcoming. The manager told her that he thought that the establishment had a lounge endorsement to its licence. He said that he would prefer having a liquor primary licence but that it was not possible as they were located within the hotel and casino complex. She advised him that the establishment was currently licensed as a food primary licence and they must comply with the requirements. She made notes of her conversation with the manager (exhibit 1, tab 20). She subsequently prepared a NOEA dated December 5, 2006 (exhibit 2) that was sent to the manager at the establishment on that date via registered post. Postal documents indicate that the NOEA was delivered on December 6, 2006 (exhibit 5). This NOEA was later rescinded on direction of the branch's regional manager responsible for the area. She agreed that had the establishment obtained a licensed lounge there would not have been a contravention.

She testified that she was working with inspector A and three u/c inspectors on the night of December 7, 2006. Upon receiving a BlackBerry message from the u/c inspectors she and inspector A entered the establishment at approximately 10:50 p.m. She identified herself to a server on duty and walked around the establishment. She

observed that the music was being played too loudly to allow for a normal conversation, and the lights were dim. There was little evidence of food service. One table occupied by two people had two orders of fries and four drinks. Another table with a group of young women held several drinks and one dirty dish. She did not see evidence of food having been served at any of the other tables.

She spoke with the group of young female patrons and checked their identification. One (the female patron) said that she was celebrating her birthday. She was exhibiting signs of intoxication, her eyes were red, her face flushed and she was very emotional, laughing and crying. She said that she had had dinner at another restaurant earlier and had had three martinis since arriving at The Publik.

She and inspector A were approached by a male patron (similarly described by the inspectors and now referred to as male patron #1) carrying a beer. He appeared to be very intoxicated, he emitted a strong odour of liquor, his eyes were red, he used the back of a chair to steady himself and his speech was slurred. The duty manager was present but not helpful. She was asked to provide her SIR certificate but appeared more interested in apologizing to the female patrons for the inconvenience, and then she left the front area.

Inspectors A and B approached the bartender and asked to see the duty manager again. The bartender had to be told twice that they were liquor inspectors and they wished to go into the rear of the establishment. They made their way into the kitchen area where there were two staff, one washing dishes and one standing nearby. The kitchen was clean, there was no food being cooked, prepared or waiting to be served. They left the establishment. She made notes of her observations that night (exhibit 1, tab 6).

The sales receipts were obtained for December 7 (exhibit 1, tab 7) for the period from noon to closing. Her analysis of the receipts for the period from 8:00 p.m. to closing indicated that the ratio of sales were, liquor 76% / food 24%.

**Liquor Inspectors C & D** testified that on December 7, 2006 they were part of a three person inspection team assigned to perform covert inspections of licensed establishments in the Prince George area. Prior to commencing the inspections they met with local inspectors A & B and received background information concerning each of the establishments targeted for inspection. The project plan called for the three u/c inspectors to enter each of the establishments as patrons and make observations of the manner in which it was being operated. Local inspectors A & B would wait outside and enter the establishment if necessary. Communication was maintained through the use of BlackBerrys.

Inspector C and the third u/c inspector (who was not presented as a witness) entered the establishment together at approximately 9:15 p.m. followed shortly by inspector D. Inside the music was loud making conversation difficult. The lights were dim. They were greeted and seated by a hostess. A server approached the table and inspector D asked her about the daily specials. The server told them the liquor specials but did not offer any information about food specials. The u/c inspectors ordered two martinis and a glass of wine. The server returned with the drinks and asked them if they would be eating. They replied in the negative and she removed the cutlery and table napkins. The server did not present any menus nor were there menus on the table.

They testified that there was little evidence of food service. With the exception of a table with two female patrons sharing a desert and not consuming any liquor the patrons at all other tables appeared to be consuming liquor. There were approximately 20 patrons in the establishment when they arrived. This increased to 35 – 40 during their stay. Inspector C observed three or four couples arrive, order and consume drinks and depart, they were not served any food. She observed a total of seven food dishes served to patrons during the course of her stay. Inspector D observed a group celebrating a Christmas party seated in the upper level of the establishment with the remainders of three large plates of appetizers on their table. The group departed before

the u/c inspectors. Inspector D also observed soup and salad served to a couple seated in the upper level.

Shortly after the u/c inspectors' arrival three males arrived and were seated at a table adjacent to theirs. One male, [similarly described by the inspectors and now referred to as male patron #1] began pounding on the table shouting, "I need beer, beer, beer". The server brought a pitcher of beer and glasses. Another male and several young appearing females later joined them. One female patron was celebrating her birthday and was asked for identification by the server. More pitchers of beer and liquor were served to the table. The only food observed at the table was an appetizer. Male patron #1 appeared to be intoxicated. He was playing with the saltshaker, throwing salt and unscrewing the top of the shaker with his mouth. He was drinking beer and also drank a shooter. He attempted to get up from the table but couldn't stand on his own and had to hold the table for support. He was unsteady on his feet and weaving when he walked. He went outside, followed by Inspector D. He was smoking a cigarette, inspector D asked him for a light. She observed that his eyes were half-closed and glassy. He had trouble opening the door to go back inside. He stumbled to the first table then used chairs and tables for support.

Inspectors C & D observed another group of patrons seated at the table directly in front of theirs. There was no food or dirty dishes on the table. The patrons were intermingling with the group at the adjacent table. A male (male patron #2) from the table in front of them stood up and started spewing liquor into the air and it fell into the hair of the third u/c inspector seated behind him. A male staff member observing this behaviour told the male that that was unacceptable and summoned the manager. The duty manager arrived, apologized to the inspector and said that he had been over-served and was cut-off. The patron turned and made a rude gesture at the inspectors. Inspector C testified that he appeared to be intoxicated, his eyes unfocused. The staff took no action and the patron remained with liquor still on the table. Inspector D sent a text message to Inspector A on her Blackberry advising of their observations, inspectors A & B shortly entered the establishment. The u/c inspectors settled their bill and left the

establishment at approximately 10:55 p.m. They made notes of their observations (exhibit 1, tabs 3 & 4).

## **EVIDENCE - THE LICENSEE**

**Licensee Witness E** testified that he holds a Masters degree in Business Administration and has been involved in the restaurant business since 1969. He has been associated with a major chain of restaurants since 1972, first as an employee and then as an owner of several franchised restaurants. He is currently a minor shareholder of The Publik and a major shareholder in a franchised restaurant in Prince George as well as other locations in the province. The Publik, the franchised restaurant and other similar style restaurants provide a vibrant, fun and exciting atmosphere with casual dining, mid-range between fine dining and fast food. He has maintained a good working relationship with the branch and liquor inspectors, is duly diligent and works hard to comply and provide a safe environment. He has never previously been involved in an enforcement hearing.

He receives a weekly sales statement for each of his restaurants on Monday mornings. They generally operate at a weekly ratio of 70% food / 30% liquor. He notices if any are out of sync and asks why. The Publik is different than his other restaurants and generally operates at a ratio of 55-60% food and 35-40% liquor. There have been instances where the ratio has been 51% food / 49% liquor. The difference may be that it is located in a hotel and patrons are not driving. Requests for room service to the hotel from the restaurant are few and are restricted to food service only. When planning the restaurant they at first considered applying for a liquor primary pub licence but decided that it would be better to offer full casual dining. They considered including a lounge licence with the food primary licence but the restaurant manager (licensee witness G) advised that a lounge endorsement would take longer to obtain, consequently they applied for the food primary licence only. They have subsequently made application for the lounge endorsement but it is being held in abeyance pending the completion of the enforcement process.

The Publik meets all of the branch's requirements for a food primary licence as outlined in the licensing policy manual (exhibit 3, tab 14, p.7). It has a fully equipped kitchen sufficient in size to provide for all patrons. The kitchen is fully functional and staffed during all hours of business and was fully staffed the night of December 7, 2006 (exhibit 3, tab 7). Normally there are four kitchen staff on duty during the dinner period. The number of staff is decreased during the night as sales volumes decrease. Kitchen staff are responsible for cleaning and the earlier that is completed the less the cost to the establishment. The chef, sous chef, saucier and baker start between 6 and 7 A.M. and prepare fresh home-made food for the day. Line cooks operate the kitchen during business hours. He introduced photographs (exhibit 3, tab 11, 1-4) depicting the menus on a small table at the front entrance, food preparation, and prepared food in the cooler. He introduced the menu for the establishment (exhibit 3, tab 10) which has three pages of food and liquor. It is similar to his franchised restaurants, neither offer children's nor senior's meals as there are sufficient items on the menu to appeal to all age groups. They use the sound system to create energy as patrons like that. The hotel insists that the music not be played too loudly as it disturbs hotel guests. In his experience patrons usually eat less later in the evenings, sharing meals or ordering appetizers. There are not many entrees sold late at night.

All managers in The Publik and his franchised restaurants develop through their system in a seven-year training process, beginning at the bottom and working their way up. Witness G has completed the process and occupies the top position as restaurant leader (exhibit 3, tab 9). Employees may move between the two restaurant organizations. New employees receive training in safety and food and liquor appreciation. All employees working with patrons must have a SIR certificate. They are accountable for their business and are told that over-service of liquor is not permitted. Management meetings are held every Wednesday. Issues are brought up and delegated to managers to deal with any staff problems. A logbook is maintained to record incidents. Communication is maintained through bulletin board messages and team meetings. There is pre-shift meeting with every employee every day.

The establishment has a staff training manual (exhibit 1, tab 22) which is provided to all staff. The original version was copied from their Alberta operation where the liquor rules are different. Staff were advised of the BC requirements and the manual has since been revised for BC.

Following receipt of the NOEA dated December 5, 2006 he wrote to the branch outlining the establishment's perception of events leading up to that point (exhibit 3, tab 4A). They had been working with the inspectors to solve the problems identified. They were very firm with staff on the requirements. Witness F was moved from the franchised restaurant to The Publik as night leader because she was well trained and diligent in her duties. He felt that they were in compliance, the inspectors felt otherwise. They, as licensees were not trying to work outside the requirements of their liquor licence. In hindsight they should have applied for a lounge endorsement. Had they done so they could have avoided these enforcement proceedings.

They were shocked that inspector B confiscated the photographs from the restaurant and shocked when they were served with a contravention notice. The principals in The Publik are trained chefs experienced in the restaurant business. They do not come from a pub background. He did not tell the inspectors that they were chasing the pub crowd. The Publik sells more liquor than their other restaurants as a result of its location in a hotel. While they do compete with pubs for customers they do not operate like a pub and do not wish to be in the pub business. Lunch and dinner food specials are written daily on a feature board inside the restaurant. There are fewer food sales late at night. Patrons are asked if they want to eat and should be presented with a menu. If patrons are observed with liquor on their tables and no food, it is because servers are trained to remove plates when a patron is finished eating and because patrons will often order drinks following their meal.

The witness referred to financial statements prepared for The Publik:

- For the fiscal year ending July 1, 2007 (exhibit 3, tab 5). Total sales were \$2.26 million. Liquor, beer and wine sales were 41.2% of the total, catering sales 6.1 % and food sales 52.7%.
- For the 28 day period ending December 17, 2006 (exhibit 3, tab 6). Total sales were \$189,736. Liquor, beer and wine sales were 41.6% of the total, catering sales 13.5% and food sales 44.9%.

They do not monitor liquor / food ratios on an hourly basis. They are monitored on a table to table basis by staff on duty.

In summary he does not believe that the establishment was operated contrary to the primary purpose. It is not their intention to do so. The corporate mission is to operate a restaurant. Selling liquor to an intoxicated person and permitting an intoxicated person to remain in the establishment are not allowed at the establishment and staff are aware of this. He expressed concern that enforcement has been undertaken as a result of complaints from pub owners who would like to see his franchised restaurant and The Publik gone. He has been told that the person spewing the beer did so intentionally as he knew that liquor inspectors occupied the neighbouring table. He was kicked out immediately after. He has also been told that the owner of a local pub was present at the restaurant that night.

**Licensee Witness F** testified that she has been employed as a Night Leader at The Publik since October 31, 2006 and as such is in charge of the restaurant and responsible for the supervision of the hostess, servers and bar staff. The kitchen staff have their own supervisor. Prior to becoming the night leader at The Publik she worked for the franchised restaurant the preceding three years as a server and lounge server, proceeding through their training plan for employees. She holds a SIR "Servers" certificate but has not as yet upgraded to a "Licensee" certificate. She works evenings Tuesday to Saturday from 4:00 p.m. to closing and attends Wednesday meetings with all other leaders. They discuss issues and people. Liquor is a main topic to ensure that everyone understands the requirements. Customer service is the number one priority followed by ensuring a safe environment which includes watching for minors and

intoxication. Pre-shift meetings are held with all staff at which time they deal with food specials and any issues that have arisen including any liquor related issues.

The restaurant has food and drink specials every night. The hostess is trained to tell patrons what the specials are and to leave a menu with each patron. If a patron says they are not going to eat they are told that it is a restaurant. Cutlery may be removed from the table if not needed to prevent patrons from playing with it. After two drinks each patron must order food or they are no longer served. She does not keep track of the food / liquor ratio but does check each server's order screen to see if patrons are ordering food after more than two drinks.

She testified that she was working as night leader the night of December 7, 2006 and wrote up a statement after the inspectors had departed (exhibit 3, tab 4c). It was a Thursday night. It is normal practice that the server would tell all patrons what the food and drink specials were for the night and to leave a menu on the table. There were four kitchen staff on duty at the time (exhibit 3, tab 7). She tells the kitchen staff when they have made the last call for food and they turn off the cooking appliances and begin to clean up. All staff leave together at the end of the night.

She knows the patron (male patron #2) who spewed beer onto the patron (u/c liquor inspector) and was shocked by his behaviour, as he has never acted this way previously. He is an employee from a local neighbourhood pub. She did not see the incident occur however she saw that the patron (u/c liquor inspector) was upset and assumed that the person spewing the beer had been over served given his behaviour. She told him that he was cut-off from further service. She was embarrassed and forgave the patron's bill as a result. As part of her job she is prepared to cut patrons off from further liquor service if warranted. It is necessary from time to time. She will tell them that they can't be served, will take their drink and tell them she will call them a taxi. They will be asked to leave the establishment.

The group of male and females consisted of two males and five females. The server checked their identification when they ordered liquor. The group got louder during their stay. She knows the male identified as male patron #1. She didn't notice him or get a chance to deal with him, otherwise she would have asked him to leave and would have called a taxi. [I pause to note that the witness later testified on cross-examination that as she walked through the establishment prior to the arrival of inspectors A and B, she did see the patron.]

She recalls inspectors A and B arriving. They identified themselves to her and asked whether staff had requested identification from the female patrons. She told them that they had. The liquor inspectors wished to see the identification themselves. Inspector A questioned one of the females, upsetting her and causing her to cry. The witness apologized to the girls. They were not intoxicated but were celebrating a birthday. Their bill showed two drinks each and one of the males had a clubhouse sandwich.

Inspector A asked to see her SIR certificate, the liquor licence and the floor plans. She asked him to give her a minute and went to the back to phone the franchised restaurant for the certificate number. The inspectors tried to follow her but were blocked by the bartender who didn't know who they were. She told the inspectors that she had called her boss and that he would arrive within ten minutes. The inspector said that he did not have time and he left.

The incidents of December 7 have been a topic for discussion at all of the Wednesday leaders meetings since that date. Prior to that it was thought that everyone was trained and knew their responsibilities. There was no knowledge of any problems. After the incident they considered that staff might need more information. She raised the issues with staff at the pre-shift meeting on December 8 and reminded them of the importance of the SIR requirements.

**Licensee Witness G** testified that he has been employed within the hospitality industry for 19 years. He was at the franchised restaurant in Prince George for 10 – 12 years

before moving to Vancouver and working for a major restaurant. He returned to the franchised restaurant in Prince George in July 2004 for two months before commencing the operation of The Publik as the manager. He left for other business pursuits in May 2007.

The Publik and the franchised restaurant operate under identical systems. Both provide training for employees concerning food and liquor service. He was responsible for hiring the staff at The Publik and he and licensee witness E were involved in their training. Witness E provided an orientation on the establishment while he covered the details of its operation, dealing with patron service and the potential for the over service of liquor. Management meetings are held every Wednesday. Team leaders do pre-lunch and dinner meetings with their staff every day. Any issues or concerns are dealt with. The kitchen is staffed during all business hours, the number of staff present depends upon the level of business, normally four to five but could be as few as two on slow nights and up to seven during busy weekend nights. The employee records for December 7 show four kitchen staff working that night (exhibit 3, tab 7). If there were only two kitchen staff at the time of the inspectors' visit it may have been that the other two were busy elsewhere.

He testified that it is possible for patrons to have drinks without any food present or unoccupied tables not to have been set with cutlery. Patrons may be having a drink prior to ordering food or following a meal when the dirty dishes and cutlery have been removed. Tables unoccupied near the end of the night are not reset until the morning. He is a trained chef and his focus is food. The Publik allows patrons to order two drinks prior to ordering food, they cannot order a third unless food is ordered. Staff are instructed that the person greeting the customer presents a menu and provides information about the food specials.

He acknowledged receiving the NOEA of December 5, 2006 however could not recall on what date it was received or whether it was delivered directly to him or was first delivered to the hotel and then passed on to him. He prepared a statement sometime

in January 2007 to provide input into what had occurred during previous meetings with the liquor inspectors (exhibit 3, tab 4b).

He first met with inspector B regarding her concerns that a patron at the hotel could not produce identification. This issue was taken seriously and a memo issued to all staff concerning the importance of the matter (exhibit 1, tab 18). He next met with inspector B concerning the issue of a bartender drinking on duty. He explained that this was not permitted and he spoke with the bartender. At that meeting B advised him that he was required to produce sales records for certain days. He repeatedly asked B what was wrong and what changes were necessary. She refused to comment on what the contravention was and how to correct it. The records were made available and B picked up the records during the late evening of October 27, 2006 when he was not present.

Inspector B came back to the restaurant on November 1 and issued a CN for "operating contrary to primary purpose". He again asked her what he was doing wrong and if she could offer any suggestions and how to correct any problems. She refused comment. She took exception to the name of one the drinks on the menu, commenting that it was inappropriate for children. On noting a poster advertising the telecast of an upcoming prize fight she advised that this was inappropriate for a restaurant. She phoned later and said that it was rated as adult entertainment and not permitted in a restaurant. He subsequently cancelled the telecast although he knows that it was shown in other licensed restaurants.

On December 7 the night leader (licensee witness F) phoned him at his home. She was upset and crying and told him that inspectors A & B were at the restaurant, acting aggressively and rudely. He told F that he would leave immediately for the restaurant but she told him that the inspectors could not wait for him. He met with the inspectors the following day and was issued with two CNs. The first for operating contrary to primary purpose. He believes that it is unfounded, the sales for December 7 were 55% food. The second contravention was for permitting an intoxicated person to remain in

the establishment and for selling liquor to an intoxicated person. It is also unfounded. When the persons in question starting showing signs of intoxication they were cut off by the manager, witness F, and allowed to remain inside while waiting for a cab.

He testified that in all of his experience in the restaurant business he has never checked food / liquor ratios on an hourly basis. As the restaurant manager he did not operate The Publik as a liquor primary licensed establishment. He testified that he does not recall if he checked the food / liquor ratio at the Publik for the period from 8:00 p.m. to closing on December 7, 2006. High liquor / food ratios could occur when people have drinks and an appetizer, particularly if expensive wine was involved.

## **SUBMISSIONS – LICENSEE**

### 1. Contravention of operating contrary to primary purpose

Counsel for the licensee submitted that the Regulations at section 11(3) outlines the requirements for determining whether the primary purpose of a food primary licensed establishment is the service of food. Here the evidence shows that The Publik meets all of the requirements. The Liquor Licensing Policy Manual at section 6.7 provides information related to operating details and furnishings that distinguish between food primary and liquor primary establishments. The Publik fits well within the food primary category. The manual at 6.7.2 outlines construction and furnishings that are typically found in night clubs and other liquor primary establishments. None of these apply to the construction and furnishings of The Publik. In summary The Publik meets all of the operating requirements for food service including the kitchen facilities, lighting, furnishings menu, games or entertainment, advertising and hours of operation. Financial records supplied by the licensee show that in 2006 food sales were 59% of total sales and 54% of total to date in 2007. The total for the business year 2006 to December 17, 2006 showed food sales at 58.4% of total.

He submitted that the branch's *Compliance and Enforcement (C & E) Policy and Procedure Manual* at section 10.1.2 outlines terms and conditions applying specifically

to food primary establishments. The Publik meets all of them. The kitchen was open, fully staffed and operational. Sufficient food had been prepared to meet the full day's requirements. Financial records showed that the primary purpose was the service of food.

He submitted that the purpose of the C & E manual was to act as a guide to liquor inspectors and to provide a format for their investigations. Section 10.1.5 provides procedures for inspectors that include interviewing staff, patrons, neighbouring residents or businesses, requesting video surveillance tapes and obtaining documents. The inspectors failed to follow those requirements which could have provided a different result.

In his December 19, 2006 letter to the branch, Licensee witness E outlined his concerns and perception of the events leading up to that point (exhibit 3, tab 4A). He wrote that The Publik had operated since January 2005 without a major incident. It is a busy high energy restaurant serving approximately 90,000 persons per year. He has had liquor licenses in the province since 1984 and has never before been served with a CN or had an issue that was not solved with the liquor inspector involved. In October 2006 a liquor inspector visited the Publik and for the first time suggested there may be a problem with the operation. He and the restaurant manager took the matter seriously and arranged a meeting for October 19. Documents were requested and provided but the inspectors did not outline the problem or explain what action they wanted taken. The principals in The Publik are trained chefs, they do not come from a pub background. He did not tell the inspectors that they were chasing the pub crowd. They have not been intentionally operating contrary to the primary purpose as alleged. They would have worked hard to understand the concerns of the inspectors had they been informed of them.

Counsel referred to the statement provided by witness G (exhibit 3, tab 4b). Witness G met with inspector B who advised him that he was required to produce sales records for certain days. He repeatedly asked the inspector what was wrong and what changes were necessary. She refused to comment on what the contravention was and how to

correct it. Inspector B came back to the restaurant on November 1<sup>st</sup> and issued a CN for "Operating contrary to primary purpose". He again asked her what he was doing wrong and if she could offer any suggestions and how to correct any problems. She refused comment. On December 7 the night leader (licensee witness F) phoned G at his home. She was upset and crying and told him that inspectors A & B were at the restaurant, acting aggressively and rudely. Witness G met with the liquor inspectors the following day and was issued with two CNs. The first for operating contrary to primary purpose. He believes that it is unfounded, the sales ratio for December 7 was 55% food. The second contravention was for permitting an intoxicated person to remain in the establishment and for selling liquor to an intoxicated person. It is also unfounded. When the people in question started showing signs of intoxication they were cut off by the manager, witness F, and allowed to remain inside while waiting for a cab. Witness G, as the restaurant manager, did not operate The Publik as a liquor primary licensed establishment.

Counsel submitted that witness F stated that inspector A was told that the female patrons had been checked for identification, but he demanded to see the identification himself and he questioned the patrons, upsetting two of them causing them to cry.

Counsel submitted that the statement made by one of the female patrons (exhibit 3, tab f) who had her identification checked by inspectors A & B supported the evidence of witness F. All had been checked for identification by staff. Inspector A insisted on seeing the identification again and was rude to the patrons and the server.

He submitted that it was an odd coincidence that two of the patrons seated at the table where male patron #2 was spewing beer were employees at other licensed establishments.

He submitted that the actions and comments of inspectors A & B demonstrated a bias on their part.

He submitted that the evidence of liquor inspector D differed from that of inspector C in where they and others were seated in the establishment. Inspector D observed the two female patrons with the cake and also observed an order of soup and salad served to other patrons. Inspector D also observed the patrons seated upstairs having been served trays of appetizers. He submitted that these would have been billed as catering and would not have been shown on the food sales for the night. Inspector D did not observe the male patron #1 being served another drink.

He submitted that the Regulations previously required that liquor not be served to a patron unless the patron had ordered one or more menu items. To determine whether a dining establishment was primarily engaged in the service of food the general manager could consider whether the food / liquor ratio was equal to 60 / 40 for a table of patrons and/or the entire establishment. These provisions have since been changed and the test to be met is whether the primary purpose is the service of food, i.e., food sales must equal 51%.

The Guide (exhibit 1, tab 10) for food primary licensees reads, at page 6: "As long as you are running your business properly you may *occasionally* serve liquor to a customer, without food, at any table within the dining area."

Here there are weekly management meetings and pre-shift meetings held every day. There is a training manual for staff. There are processes and procedures in place to prevent problems. He submitted that it is not proper to consider the food/liquor ratio on only that portion of the day from 8:00 p.m. to closing. A licensee cannot monitor sales ratios on a minute to minute basis. The restaurant industry would be up in arms if this were the case. It is common in restaurants that after the supper hour, full meal service ends and patrons primarily want tapas and appetizers.

He distinguished two previous decisions of the general manager *El Furniture Warehouse Mexican Restaurant* (May 10, 2006, EH06-004) where the operation was clearly that of a bar, and *The Nelson* (September 29, 2005, EH05-066) where the

establishment was being operated like a pub. Neither fact patterns refer to the operation of The Publik. He referred to several decisions of the general manager concerning a food primary establishment known as the Urban Well. In those decisions the establishment was described as being similar to a cabaret. That is not the case for The Publik. It does not have a dance floor or stage and has a fully operative kitchen.

Counsel submitted that the operators of the Publik have been diligent in their operations. Concerns expressed by the inspectors were dealt with. It caters to patrons looking for an entertaining restaurant experience that centres on food, drink and service. While the emphasis on food may weaken during the late evening this is similar to most restaurants. It never moves into having a pub emphasis. The licensee made application for a lounge endorsement to its food primary licence however it was held up as a result of the branch's investigation in September 2006. If a lounge had been permitted on December 7, 2006 there would not have been a problem.

2. Contraventions of selling liquor to an intoxicated person and permitting an intoxicated person to remain in the establishment.

He submitted that for the licensee to be found in contravention it must have "permitted" the activity leading to the contravention. The decision of the Liquor Appeal Board in *Ed Bulley Ventures Ltd.* [Appeal L-9905, June 28, 2001] provided a definition for permit: "...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." Here the licensee was duly diligent and the evidence of witness F rebuts the evidence of inspectors A and B. The inspectors were prejudiced against the licensee prior to entering into the establishment.

Counsel submitted that the circumstances here are similar to those in the general manager's decision in the *Mirage Cabaret*, March 5, 2007 (EH06-081) where it was found that there was insufficient evidence to find a contravention. Here there is also

insufficient evidence and the inspectors did not follow the requirement of the *C & E Manual*. The manual at section 14.3 at page 8 requires the inspectors to:

- Interview staff having contact with the person who is suspected of being intoxicated
- Interview the licensee
- Interview the person and obtain name and contact person
- Interview other patrons and obtain names and contact information
- Obtain any surveillance videos from the establishment

The inspectors did not follow these requirements and did not do anything that would allow the licensee to interview persons involved and rebut the allegation. The licensee was unable to locate the patron identified as male patron #1 and interview him.

## REASONS AND DECISION

### 1. Operating contrary to primary purpose

The regulatory requirements for the licensing of food primary establishments are found at section 11 of the Regulations. Section 11(1) provides that: "A food primary licence ... may be issued ...if the primary purpose of the business carried on in the establishment is the service of food *during all hours* of its operation." [my emphasis]

Section 11(3) provides that: "The general manager may consider, in determining whether the primary purpose of the business carried on in the establishment is ... the service of food *during all hours* [my emphasis] of its operation, any or all of the following:

- (a) kitchen equipment;
- (b) furnishings and lighting;
- (c) menu;
- (d) type and hours of entertainment and games offered by the licensee;
- (e) advertising;
- (f) hours of operation;
- (g) financial records;
- (h) the ratio of receipts from food sales to receipts from liquor sales in the establishment;
- (i) any other relevant consideration that may assist in the determination."

Giving consideration to all of the evidence I find that The Publik clearly meets the provisions outlined in section 11(3)(a) – (g). I find that there was a staffed kitchen in a state of readiness to meet the requirements of a menu suitable for a food primary establishment. Furnishings, advertising, hours of operation and financial records insofar as the evidence was presented, were likewise suitable. While the inspectors expressed some concern over the dim lighting and the relatively loud music I do not have sufficient evidence to determine that they were not within the limits for food primary establishments. The only specific concern raised about the entertainment was related to a proposed televised fight night classified as “restricted”. This was cancelled when the concerns were made known.

The ratio of receipts from food sales to receipts from liquor sales in the establishment while not wholly determinative to the issue is nonetheless an important consideration. Here the evidence of both the branch and the licensee is that the establishment operates on a day to day basis with a food / liquor ratio of at least 51% food. That is, if the ratio is measured for the whole of the business day. Focusing on the evening hours of 8:00 p.m. to closing a different picture is presented with liquor sales prevailing by as much as 82.5% liquor / 17.5% food.

For the date of the alleged contravention, December 7, 2006, the evidence presented by witness G for the licensee was that for the whole of the business day food sales represented 55% of total sales. He testified that he did not calculate the ratio for the evening hours separately. The evidence for the branch by inspector A was that the sales receipts for December 7<sup>th</sup>, for the period from 8:00 p.m. to 11:59 p.m. were reviewed and analysed by inspector B. She calculated \$583.75 in liquor sales and \$188 food sales. The evidence of inspector B was that during the hours of 8:00 p.m. to closing the sales ratio was liquor 76% / food 24%. Counsel for the licensee submitted that inspector B’s calculations did not include the plates of appetizers served to the group celebrating a Christmas party as that would have been shown in the financial

records as “catering”. Counsel did not present any evidence on the point nor did he question inspector B as to whether she included it in her calculations.

In order to satisfy myself on the point I examined the financial records for the day at exhibit 1, tab 7. I note that there is an entry at 9:10 p.m. for “check #73823 45 appy buffet \$472.50”. It bears the notation, “do not make!!!!!!”. Further in the record there is an entry at 11:59 p.m. for “check #73823 credit card \$500.85 Add on Tax: GST \$28.35”. It appears that the \$188 food total calculated by inspector B did not include the above noted appetizers. Given the timing of the entry and the evidence of inspector D it is reasonable to assume that these were the appetizers served to the Christmas party group. They may have been pre-ordered and pre-prepared and thus the instructions by the server to the kitchen, “do not make”. This would greatly affect the food / liquor ratio as calculated by inspector B. There may be a satisfactory explanation why it was not included and it is unfortunate that one was not sought. In the absence of any satisfactory explanation I cannot consider the branch’s evidence regarding the food and liquor sales for December 7, 2006.

Section 11(3)(i) allows the general manager to consider, “any other relevant consideration that may assist in the determination.” In my view it is appropriate to consider evidence of how the establishment was being operated at the time of the alleged contravention. There are several points in the evidence that I am satisfied are relevant and probative to the issue. The first, how patrons are being greeted. This is important as it may set the tone for the expectations between the licensee and its patrons. Here the only evidence is that of inspectors C & D. They were greeted and seated by a hostess. A server approached the table and inspector D asked her about the daily specials. The server told them the liquor specials but did not offer any information about food specials. They ordered two martinis and a glass of wine. The server returned with the drinks and asked them if they would be eating. They replied in the negative and she removed the cutlery and table napkins. The server did not present any menus nor were there menus on the table. This was not contradicted by the licensee. Witness E and F testified that it is normal practice that the hostess or server

would tell all patrons what the food and drink specials were for the night and would leave a menu on the table. Witness F who was present the night of December 7th did not testify that she was monitoring to ensure that this practice was being observed on the night of December 7, 2006.

It is also relevant and probative I believe to consider whether food is being served to all or a majority of patrons. The Guide (exhibit 1, tab 10 at p. 6) provides "As long as you are running your business properly you may *occasionally* serve liquor to a customer, without food, at any table within the dining area." The evidence here provided by u/c inspectors C and D is that there was little evidence of food service. With the exception of a table with two female patrons sharing a desert and not consuming any liquor the patrons at all other tables appeared to be consuming liquor. There were approximately 20 patrons in the establishment when they arrived. This increased to 35 – 40 during their stay. Inspector C observed three or four couples arrive, order and consume drinks and depart, they were not served any food. She observed a total of seven food dishes served to patrons during the course of her stay. Inspector D observed the remnants of three large plates of appetizers having been served to a group celebrating a Christmas party seated in the upper level of the establishment. She also observed soup and salad served to a couple seated in the upper level. Further, the inspectors observed that the adjacent table occupied by male patron #1 and several others was served significant amounts of liquor with only one food item. Likewise the table occupied by the male patron spewing liquor into the air also received liquor and no food items were observed. This evidence was not contradicted by the licensee. I find that this is significantly different than *occasionally* serving liquor to a customer, without food, at any table within the dining area.

On the evidence, with the exception of that concerning food and liquor sales as aforementioned, I find that during the evening hours of December 7, 2006, particularly the time during which the inspectors were in attendance the licensee was not operating with a primary focus on food service. While it may be that the establishment operated

properly as a restaurant during the earlier part of the day, the focus shifted during the evening hours.

2. Permit an intoxicated person to remain in that part of the licensed establishment where liquor is sold or served.

The branch alleged that this contravention occurred as a result of the condition of the patrons described as male patron #2 and the female patron.

The evidence of u/c inspector C is that male patron #2 was seated directly behind the third u/c liquor inspector. He was consuming liquor and at one point spewed it from his mouth into the air and into the hair of the inspector. The manager, witness F was summoned and apologized to the inspector, commenting that he had been over-served and was cut-off. The patron turned and made a rude gesture at the inspectors. He appeared to be intoxicated, his eyes unfocused. The staff took no action and the patron remained, liquor still on the table. Witness F testified that she did not see the incident occur however she saw that the patron (u/c liquor inspector) was upset and assumed that the person spewing the beer was over served given his behaviour. She told him that he was cut-off from further service. In summary the only evidence of his condition was his bad behaviour in spewing the liquor from his mouth and making rude gestures, and that his eyes were unfocused. That in my view is not sufficient evidence on which to make a finding that the person was intoxicated. Bad behaviour is not exclusive to intoxicated persons. While having unfocused eyes may be an *indicia* of intoxication, it is hardly conclusive. I find that with regard to the condition of male patron #2, the evidentiary burden has not been met.

The female patron was part of a group of persons occupying a table adjacent to the three u/c inspectors. The u/c inspectors were concerned that the female patrons appeared to be young and requested that inspectors A & B attend to check their identification. Inspectors A and B entered the establishment and checked the identification of the young appearing females. They were found to be of legal age. Inspector A testified that one appeared to be intoxicated (female patron). She had a

martini type drink with an olive. She had a strong odour of liquor on her breath, had bloodshot watery eyes, her face was flushed, her eyes glassy and her speech slurred. She said that they been at the establishment for approximately one hour. She had been at another restaurant previously where she had consumed 3 – 4 drinks. She told the inspector, “Maybe I had too much to drink.” Inspector B testified that the female patron told her that she was celebrating her birthday. She was exhibiting signs of intoxication, her eyes were red, her face flushed and she was very emotional, laughing and crying. The female patron said that she had had dinner at another restaurant earlier and had had three martinis since arriving at the Publik.

The evidence for the licensee was presented by witness F. She testified that the liquor inspectors questioned one of the females, upsetting her and causing her to cry. They were not intoxicated but were celebrating a birthday. Unsworn statements were provided by one of the servers on duty at the time of the alleged contravention (exhibit 3, tab e) as well as one of the female patrons questioned by the liquor inspectors (exhibit 3, tab f). They stated that the female patron was not intoxicated but was upset by the questioning of inspector A. They were not presented as witnesses.

I prefer the evidence of inspectors A and B. Both have training and experience in dealing with intoxicated persons. They provided detailed observations of the condition of the female patron. Bloodshot watery eyes, a flushed face, glassy eyes, slurred speech and excessive emotionality are common *indicia* of intoxication. I find on a balance of probabilities that the female patron was intoxicated at the time and should have been requested to leave; she was not.

On the whole of the evidence I find that on December 7, 2006, at the time of the inspection the licensee allowed an intoxicated person to remain in that part of the licensed establishment where liquor is sold or served.

3. Sell liquor to an intoxicated person.

The branch alleged that this contravention occurred as a result of the condition of the patron described as male patron #1.

This patron came to the attention of u/c inspectors C and D shortly after he entered the establishment and began pounding on the table shouting, "I need beer, beer, beer". The server brought a pitcher of beer and glasses. The patron appeared to be intoxicated. He was playing with the saltshaker, throwing salt and unscrewing the top of the shaker with his mouth. He was drinking beer and also drank a shooter. He attempted to get up from the table but couldn't stand on his own and had to hold the table for support. He was unsteady on his feet and weaving when he walked. He went outside, followed by Inspector D. He was smoking a cigarette, inspector D asked him for a light. She observed that his eyes were half-closed and glassy. He had trouble opening the door to go back inside. He stumbled to the first table then used chairs and tables for support.

The patron came to the attention of liquor inspector A when the patron stood up from the table and appeared to be intoxicated. He was unsteady on his feet, weaving back and forth and from side to side. His face was flushed. He was boisterous and loud. In speaking with the patron the inspector observed that the patron's eyes were bloodshot, his speech slurred, he spat when speaking, and had a strong odour of beer on his breath. During this time the server brought him another glass of beer. He had difficulty putting the beer glass to his mouth.

Inspector B testified that she and inspector A were approached by male patron #1. He was carrying a beer, he appeared to be very intoxicated, he emitted a strong odour of liquor, his eyes were red, he used the back of a chair to steady himself and his speech was slurred.

Licensee witness F testified that she knows the male patron #1. She didn't notice him or get a chance to deal with him otherwise she would have asked him to leave and

would have called a taxi. She later testified on cross-examination that she did see him as she walked through the establishment prior to the arrival of inspectors A & B.

The uncontroverted evidence is that this patron exhibited signs of intoxication shortly after entering the establishment with his loud and boisterous behaviour. His condition deteriorated during his time there and he was exhibiting gross signs of intoxication, including bloodshot eyes, slurred speech, had difficulty standing, was unsteady on his feet and stumbling when he walked. I find on a balance of probabilities that the patron was intoxicated and should have been requested to leave. He was not. He was further served liquor (beer) and permitted to remain in the establishment.

On the whole of the evidence I find that the licensee allowed the sale of liquor to an intoxicated person.

### **Due Diligence**

The defence of due diligence is a complete defence to contraventions under the *Act*. The onus is on the licensee to demonstrate, on a balance of probabilities, that it implemented adequate systems to prevent the contravention and took all reasonable steps to ensure the effective operation of the system. The licensee must also establish that the employee connected to the contravention was not the directing mind of the licensee. The existence of policies is not sufficient to demonstrate due diligence if the directing mind on site at the relevant time ignores them, or makes no effort to see that they are enforced.

At the time of the alleged contraventions The Publik was owned and operated by persons (witnesses E and G) with many successful years in the restaurant industry in several different locations. An extensive training program with training manuals had been developed for persons commencing employment and achieving promotion within the operations and management of their various establishments. Weekly management meetings were held with all management level staff. All management level staff were

required to hold pre-shift meetings with staff on duty. The ongoing business at each of the establishments was carefully monitored on a weekly basis, particularly concerning food / liquor ratios. Few liquor related problems were ever identified by local liquor inspectors and where necessary corrective action was taken.

The principals, witnesses E and G testified that when the problems related to the alleged contravention of operating contrary to primary purpose were first raised by an inspector on October 17, 2006 they immediately arranged for a meeting with local inspectors on October 19 to determine what action was necessary on their part. A further discussion took place between witness G and the inspector on November 1 when a contravention notice was issued to him. Witnesses E and G testified that despite repeated attempts they were not told what the problem related to or what remedies they should undertake. This differs from the evidence provided by the inspectors. They advised the operators that several complaints had been received and they had concerns about the manner in which the establishment was being operated. The discussion concerning the contravention notice issued on November 1<sup>st</sup> included concerns about inspections conducted at the establishment and financial records provided.

I find that the licensee witness were being somewhat disingenuous in their assertions that they didn't know what the problem was nor would the inspectors tell them how to correct it. They were very experienced operators and licensees of food primary establishments and were aware that The Publik operated with higher liquor ratios than their other establishments. They allowed the night operation to be managed by a newly promoted and inexperienced manager. They were aware from the time of their application that a lounge endorsement to their licence would allow for the type of operation they wished to undertake. They delayed in making application for a lounge endorsement, as they feared that it would lengthen the licensing process but allowed the establishment to operate as if a lounge endorsement had been obtained.

It is not the responsibility of a liquor inspector to advise a licensee how to manage the business. The branch Compliance and Enforcement Manual provides general guidelines for inspectors in making investigations. It is not meant to prescribe mandatory investigative procedures that an inspector must follow.

The identities of the patrons alleged to have been intoxicated were available to the licensee. The night manager (witness F) knew the identities of the two male patrons alleged to have been intoxicated. The identity of the female patron alleged to have been intoxicated was known to the patron providing the statement to the licensee (exhibit 3, tab f). It is not a requirement of the branch or its inspectors to advise the licensee where they may be located.

I find that on December 7, 2006 at the time of the alleged contraventions the directing mind was witness F. Her title was that of Night Leader and she was in charge of the restaurant and responsible for the supervision of the hostess, servers and bar staff. Prior to becoming the night leader at The Publik on October 31, 2006, she worked for the franchised restaurant for three years as a server and lounge server proceeding through their training plan for employees. She is part of the management structure for the establishment, attends Wednesday management meetings and holds pre-shift meetings with all staff on duty. Liquor is a main topic to ensure that everyone understands the requirements. Customer service is the number one priority followed by ensuring a safe environment which includes watching for minors and intoxication.

#### Contravention #1

The establishment has a policy that allows patrons to order two alcoholic beverages prior to ordering food. If food is not ordered further liquor service is prohibited. Witness F was enforcing that policy on the night of December 7, 2006 by observing the servers' screens to ensure that no more than two drinks were served prior to a food order being placed.

In my view the policy is not sufficient to meet the regulatory requirements of ensuring that the primary purpose of the business is the service of food *during all hours* of its operation. The only evidence of any other practices in place to ensure that the requirements were being met was the requirement that a hostess or server should tell patrons what the food and drink specials were for the night and should leave a menu on the table. The evidence of u/c inspectors C and D is that that practice was not followed when they were seated and served. There is no evidence that witness F was monitoring to ensure that this practice was being observed on the night of December 7, 2006.

I find that the licensee has not been duly diligent and consistent with the finding in *Ed Bulley Ventures Ltd.*, the licensee has “permitted” the contravention.

In conclusion, I find on a balance of probabilities that on December 7, 2006 the licensee contravened section 20(1)(d) of the Act, and 11(1) of the Regulations by operating in a manner that is contrary to the primary purpose of the business as stated on the licence.

### Contravention #2

The licensee has a staff training manual. All staff are trained to check identification of young appearing patrons and to not sell liquor to minors or intoxicated people or to allow an intoxicated patron to remain in the establishment. On December 7, 2006 a group of young appearing females entered the establishment. Because of their youthful appearance they were checked for identification by staff and again by liquor inspectors A and B. During the inspectors’ interaction with the female patron it became apparent to them that she was exhibiting signs of intoxication. The females’ youthful appearance should have alerted staff and the duty manager, witness F, to carefully monitor their behaviour and condition. There is no evidence that that occurred and the female patron was permitted to remain in the establishment.

I find that the licensee has not been duly diligent and consistent with the finding in *Ed Bulley Ventures Ltd.*, the licensee has “permitted” the contravention.

In conclusion, I find on a balance of probabilities that on December 7, 2006, the licensee contravened section 43(2)(b) of the Act by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

### Contravention #3

The licensee has a staff training manual. All staff are trained to check identification of young appearing patrons, not to sell liquor to minors and not to sell liquor to intoxicated person or allow an intoxicated person to remain in the establishment. On December 7, 2006 male patron #1 began exhibiting signs of intoxication with loud and boisterous behaviour shortly after his arrival at the establishment. His condition deteriorated to the point that he was exhibiting gross signs of intoxication, yet they continued to serve him liquor (beer). From the outset, his behaviour should have alerted staff and the duty manager, witness F, to carefully monitor his condition, cut him off from further liquor service, and request that he leave the establishment. That action was not taken, and he was served more liquor (beer).

I find that the licensee has not been duly diligent and consistent with the finding in *Ed Bulley Ventures Ltd.*, the licensee has “permitted” the contravention.

In conclusion, I find on a balance of probabilities that on December 7, 2006, the licensee contravened section 43(1) of the Act by selling liquor to an intoxicated person.

### **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 licence 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*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the NOEA.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining whether a penalty should be imposed and if so, the appropriate penalty, are 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.

There is no record of prior proven contraventions, offences or enforcement actions of the same types as found here for this licensee or this establishment within the year preceding these contraventions.

1. Operate contrary to primary purpose.

The range of penalties for a first contravention pursuant to Schedule 4, item 1 is a ten (10) to fifteen (15) day suspension and/or a monetary penalty of \$7,500 - \$10,000. In the circumstances of this case I find that a penalty is necessary to ensure future compliance. The establishment is owned and operated by experienced food primary licensees. A branch liquor inspector met with the restaurant manager prior to the licence being issued and outlined the requirements for the operation of a food primary establishment. Following the licence being issued branch inspectors met with principals of the licensee on three separate occasions prior to

the date of this contravention and discussed complaints and problems noted. That did not have the desired effect leading to the undercover operation of December 7, 2006.

The branch has proposed a penalty consisting of both the minimum ten day licence suspension and the minimum \$7500 monetary penalty. To impose both such penalties would be unusual considering past actions taken by the branch in similar circumstances. In my view, the imposition of both a suspension and a monetary penalty would be made only where the circumstances are particularly egregious. I find that it is not necessary or appropriate in these circumstances to impose both a suspension and a monetary penalty.

In the circumstances of this contravention I find that the minimum ten day licence suspension is both warranted and appropriate.

2. Permit an intoxicated person to remain in that part of the licensed establishment where liquor is sold or served.

Permitting intoxicated persons to remain in a licensed establishment can have an adverse effect on the operation of the establishment and on the surrounding community. The evidence here is that a young appearing female patron was celebrating a birthday, and when interviewed by the liquor inspectors, was noted to be displaying signs of intoxication. The patron had just earlier been spoken to by staff who either failed to recognize her condition or took no action. The night manager was relatively inexperienced in her management capacity and somewhat overwhelmed by the events of the night.

The branch has proposed a five day penalty which is mid-range on the schedule of penalties. That, I believe is greater than warranted or necessary to achieve the branch's objectives.

In the circumstances the minimum penalty of a four day suspension is warranted and appropriate.

3. Sell liquor to an intoxicated person.

Selling liquor to an intoxicated person in a licensed establishment can have an adverse effect on the operation of the establishment and on the surrounding community. The evidence here is that a patron displaying obvious symptoms of intoxication was permitted to remain in the licensed establishment and was sold more liquor (beer). Staff on duty either failed to recognize his condition or took no action. The duty manager was relatively inexperienced in her management capacity and somewhat overwhelmed by the events of the night.

The branch has proposed a five day penalty which is mid-range on the schedule of penalties. That, I believe is greater than warranted or necessary to achieve the branch's objectives.

In the circumstances the minimum penalty of a four day suspension is warranted and appropriate.

**ORDER**

Pursuant to section 20(2) of the Act and section 66(3) of the Regulations I order a suspension of food primary licence 301319 for a period of eighteen (18) days to commence as of the close of business on Wednesday, March 26, 2008, 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 be held by the branch or the Prince George detachment of the RCMP from the close of business on Wednesday,

March 26, 2008 until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

*Original signed by*

Edward W. Owsianski  
Enforcement Hearing Adjudicator

Date: February 22, 2008

cc: RCMP Prince George Detachment

Liquor Control and Licensing Branch, Surrey Office  
Attention: Michael Clark, Regional Manager

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

## APPENDICES

### ***LCLB Liquor Licensing Policy Manual*** (as of December 2007)

#### **6.7 Restaurant Operating Details and Furnishings**

##### **Policy Rationale**

Section 11(1) of the Liquor Control and Licensing Regulations, which states that a food primary licence may be issued to the owner and operator of an establishment if "... the primary business carried on in the establishment is the service of food during all hours of its operation", clearly distinguishes between the food primary and liquor primary categories of licence. In part, it is the specific operating details and furnishing requirements of a food primary establishment that maintains the distinction between the two.

Under section 11(3) of the regulations, a licensed restaurant must have kitchen equipment and an adequate supply of flatware, china and other table facilities, and offer a reasonable selection of menu items. The business aspects of the operation must also be consistent with food service: the hours of operation, financial records, and the ratio of receipts for food sales to that of liquor sales must be what one might expect of an establishment in the business of food service. Other aspects of restaurant decor are regulated by policy to ensure the operation of the restaurant and behaviour of patrons does not become so similar to that of liquor primary licensed establishments that the distinction between the two types becomes blurred. For example, bandstands, stages and overhead track lighting would be considered more conducive to the operations of liquor primary establishments such as lounges or cabarets.

The policies below outline the requirements for restaurant operating details and furnishings that are consistent with the primary operating purpose of food service. They also address the necessity of separating the licensed dining area from other unlicensed areas of the establishment so that patrons will not be confused about where liquor may be consumed.<sup>1</sup> In common with other policies governing premises, appropriate management and control of the licensed area is a fundamental concern.

##### **Policies**

###### **6.7.1. Operating details and furnishings consistent with food service**

A food primary licence may be issued for an establishment if the primary purpose of the business carried on in the establishment is the service of food during all hours of its operation. In determining whether to issue a licence, the general manager may consider whether the establishment:

- has kitchen equipment sufficient for the operation of the establishment as primarily in the business of food service
- uses a kind of lighting that is positioned, and normally considered suitable, for dining
- is furnished with tables, chairs, booths, and/or counters and stools, the height and width of which are suitable for dining
- has a menu with a varied selection of food items, including both appetizers and main courses, or their equivalent
- offers entertainment and games of a type and/or during hours that are consistent with an establishment primarily in the business of food service<sup>2</sup>
- advertises as primarily in the business of food service
- operates during the hours that would be consistent with an establishment primarily in the business of food service
- has financial records that demonstrate the primary focus of the business is the service of food

<sup>1</sup> See related discussion and policy in 6.5 Adjoining Licensed and Unlicensed Areas and 11.5 Games in a Licensed Establishment.

<sup>2</sup> See Patron Participation Entertainment in the Entertainment chapter for special conditions that apply to karaoke box-style restaurants.

- has a ratio of receipts from food sales to liquor sales that is consistent with an establishment primarily in the business of food service, and
- has any other characteristics that would be relevant and would assist in the determination of whether the establishment is primarily in the business of food service.

[Liquor Control and Licensing Regulations, section 11(3); Liquor Control and Licensing Branch Policy]

### **6.7.2. Where decor and furnishings are more consistent with another licence category**

If the general manager is of the opinion that the operating details and furnishings are more consistent with a liquor primary licensed establishment, the applicant or licensee may be asked to apply for that licence. The general manager may consider construction and furnishings typically found in night clubs and other types of liquor primary establishments, such as:

- bandstand-style stages
- dance floors out of proportion with the size of the establishment
- D.J. booths and high-volume speakers, and
- strobe and multi-track overhead lighting

to be inconsistent with, or indicate a shift in emphasis from, an establishment primarily engaged in food service.

[Liquor Control and Licensing Branch Policy]

## **Authority References**

Liquor Control and Licensing Regulations, section 11; Liquor Control and Licensing Branch Policy.

## ***LCLB Compliance and Enforcement Policy and Procedures Manual (Desk Reference)*** (as of December 2007)

## **SECTION 10: OPERATING OUTSIDE OF LICENCE PURPOSE**

### **Introduction**

The first item listed in the penalty schedule is the contravention of operating a licensed establishment in a manner that is contrary to the primary purpose of the licence. The primary purpose of a particular licence can be determined by referring to the Act, regulation and the terms and conditions of the licence.

Generally, this contravention involves food-primary establishments operating as liquor-primary establishments and that is the focus of this section of the manual. However, inspectors may also allege this contravention where other types of establishments are operating contrary to their primary purpose, for example:

- a UVin operating as a winery, or
- a winery operating a lounge or picnic area without the proper endorsement.

Policies and procedures for identifying a food-primary establishment operating as a liquor-primary establishment are included in this section under the heading:

- Food-primary Establishment Operating Contrary to Primary Purpose.

## **Food-primary Establishment Operating Contrary to Primary Purpose**

### **Policy Rationale**

Food-primary establishments must be primarily engaged in the service of food during all hours of operation. Restaurants offer liquor service as an accompaniment to food, rather than as the primary activity. This contravention occurs if the primary focus of a food-primary establishment shifts from the service of food to the service of liquor.

It is contrary to the public interest for the branch to allow restaurants to operate as bars. The current liquor licensing process requires public and local government or First Nations input for liquor-primary licences but not for food-primary licences. Obtaining a liquor licence for a restaurant and then operating as a bar circumvents this process. Restaurants operating as bars also tend to be associated with community complaints from neighbours about noise, drunkenness and unruly patrons.

### **Policy**

#### **Primary purpose of a food-primary licence**

A food-primary licence may be issued, renewed or transferred if the primary purpose of the business is the service of food during all hours of its operation. Food-primary establishments with restaurant lounges must maintain this primary purpose for the establishment as a whole.

[Liquor Control and Licensing Regulation, section 11(1)]

#### **Terms and conditions specific to food-primary licences**

In addition to the general terms and conditions applicable to all licensees, the following terms and conditions apply specifically to food-primary licences:

- liquor must not be served unless the kitchen is open and customers can order a range of different food, including appetizers and main courses or their equivalents, at all times. Serving salsa, chips, nachos and other similar types of “finger food” is not sufficient.
- the establishment must be operated as a restaurant at all times. A licensee can not shift its operation to become a bar during certain hours of the day.
- the ratio of food to liquor sales for the entire establishment must support the fact that the primary purpose is the service of food. Generally, liquor sales must not exceed food sales.
- the kitchen must be fully equipped and must be open and staffed whenever liquor is served
- the décor must be suitable for dining and table service. There must be enough tables and chairs and / or counters and stools to seat everyone. The tables must be big enough to hold the plates, cutlery and glassware associated with a full meal. There must be enough china, flatware and other table accessories for eating.
- patrons may stand or walk with drinks so long as the primary purpose is the service of food
- games and entertainment must not distract from the primary purpose of the service of food, and
- advertising must accurately reflect the service provided.

[Liquor Control and Licensing Act, section 12(2); Liquor Control and Licensing Regulation, section 11(2); Liquor Control and Licensing Branch Policy]

#### **Terms and conditions specific to restaurant lounges**

The following licence terms and conditions apply to food-primary establishments with an approved restaurant lounge:

- patrons within the lounge may order liquor without intending to order a meal
- the lounge must look distinct from the main dining area
- furnishings and lighting within the lounge area do not need to allow for meal service
- the rules for entertainment in the lounge area are the same as the main dining area

- hours of liquor service in the lounge area may not go beyond the hours of liquor service in the main dining area
- the licensee may advertise that it has a lounge, bar, cocktail lounge or cocktail bar
- the kitchen must be open and the full menu available whenever the lounge is open, and
- minors must be accompanied by adults in the lounge area.

[Liquor Control and Licensing Act, section 12(2); Liquor Control and Licensing Regulation, section 12(5); Liquor Control and Licensing Branch Policy]

### **Factors that may indicate operating contrary to primary purpose**

Unlike other contraventions outlined in the penalty schedule, the inspector does not need to prove specific elements to allege the contravention of operating contrary to primary purpose. Rather, the inspector must consider the following factors that may indicate whether the primary purpose of the business carried on in the establishment is the service of food during all hours of its operation:

- whether the kitchen is open for the service of food
- kitchen equipment
- furnishings and lighting
- menu
- staff on duty and the duties they are performing
- type and hours of games and entertainment
- advertising
- hours of operation
- financial records
- the ratio of receipts from food sales to receipts from liquor sales, and
- any other relevant consideration.

A combination of these factors or only one factor that indicates a shift in focus may be sufficient to support the conclusion that an establishment is operating contrary to its primary purpose.

[Liquor Control and Licensing Regulation, section 11(3); Liquor Control and Licensing Branch Policy]

### **Contravention may consist of single instance of operating contrary to primary purpose**

An inspector need not gather evidence of a pattern of operating contrary to the primary purpose of the licence in order to allege this contravention. The contravention of operating contrary to primary purpose may be alleged if an inspector gathers enough evidence to establish that the licensee was operating an establishment contrary to its primary purpose at one particular time.

[Liquor Control and Licensing Branch Policy]

### **Authority References**

Liquor Control and Licensing Act, section 12(2); Liquor Control and Licensing Regulation, sections 11 and 12(5); Liquor Control and Licensing Branch Policy

### **Procedures**

1. If an inspector suspects that a food-primary establishment is operating contrary to its primary purpose, the inspector will observe the operation of the establishment and document their observations before notifying the licensee of their concerns.
2. The inspector will review any specific licence terms and conditions for the establishment.

3. The inspector will gather further evidence of the contravention. The inspector may:
  - interview staff
  - interview the licensee
  - interview patrons
  - interview neighbouring residents or businesses
  - request tapes from any video surveillance cameras in the establishment, and / or
  - obtain documents from the licensee, including:
    - sales records
    - food purchase records
    - liquor register
    - sales receipts
    - drink lists
    - menus
    - advertising, and
    - payroll records.
  
4. The inspector will carry copies of the dining establishment inspection record when conducting inspections of food-primary establishments and document the details of this contravention on that form. If the inspector does not have a copy of the form when conducting the inspection, the inspector will record the details of the contravention in the inspector's notebook and transcribe the information onto a copy of the form once they have returned to the field office.

The following table illustrates the analysis inspectors must bring to the factors outlined in policy 10.1.4 above and the evidence that inspectors may gather for each factor. This is not an exhaustive list. Specific circumstances may arise that are illustrative of the shift away from a primary focus on the service of food.

<u>Factor</u>	<u>Analysis</u>	<u>Evidence</u>
Whether the kitchen is open and adequately staffed and equipped for the service of food	<p>Does the establishment serve a reasonable selection of menu items including appetizers and entrees, or their equivalents?</p> <p>Is the kitchen open and adequately staffed for the number of patrons?</p> <p>Is the equipment being used?</p> <p>Is there food in the process of being prepared or, alternatively, are all food items wrapped and stored?</p> <p>Does the food in the kitchen reflect the establishment's menu?</p> <p>If patrons are consuming food, has it been prepared at another establishment?</p> <p>Are there dirty dishes being processed through the dishwasher and are they consistent with what one would expect for the size of establishment and the number of patrons on site?</p>	<ul style="list-style-type: none"> <li>• menu</li> <li>• food receipts</li> <li>• whether the kitchen is open</li> <li>• type of food in the kitchen</li> <li>• whether food is being prepared</li> <li>• types of food being prepared</li> <li>• types of items evident on tables</li> <li>• number of staff in the kitchen and their positions</li> <li>• number of patrons in the establishment</li> <li>• types of equipment</li> <li>• whether each piece of equipment is on</li> <li>• whether each piece of equipment is in use</li> <li>• number and type of dishes being processed in dishwasher</li> <li>• whether food has been stored, types of food that have been stored and method of storage</li> <li>• any indication that food has been prepared at another establishment, e.g., pizza boxes</li> </ul>
Furnishings and lighting	<p>Is the décor suitable for dining and table service?</p> <p>Is there enough seating to accommodate the number of patrons?</p> <p>Are the table tops in the dining area big enough to lay a place setting for each of the patrons seated at the table?</p> <p>Is there enough cutlery and dishes for the number of patrons?</p> <p>Is the lighting consistent with a restaurant, e.g., strobe lighting or not enough lighting for a patron to distinguish if their food is properly cooked?</p>	<ul style="list-style-type: none"> <li>• type of furnishings</li> <li>• type of décor</li> <li>• number of tables</li> <li>• number of chairs</li> <li>• number of patrons</li> <li>• size of table top and number of chairs for each table</li> <li>• amount of cutlery and crockery available</li> <li>• type of lighting and number of light fixtures</li> <li>• light level</li> </ul>

<u>Factor</u>	<u>Analysis</u>	<u>Evidence</u>
Menu	<p>Are the majority of items listed on the menu food items or liquor or alcoholic beverages?</p> <p>Does the menu offer non-alcoholic beverages?</p> <p>Are there enough items on the menu for a person to have a meal?</p> <p>Are the items on the menu generally thought of as snacks or do they include a variety of entrees as well?</p> <p>Does the establishment have a smaller menu with limited choices available during certain times of the day, for instance, at the close of standard office hours for an establishment in a commercial area or in the later evening hours for establishments near entertainment facilities such as movie theatres?</p>	<ul style="list-style-type: none"> <li>• food menu and hours of availability</li> <li>• liquor menu</li> </ul>
Staff on duty and the duties they are performing	<p>Is there a doorman collecting cover charges or other staff performing duties that are not consistent with a restaurant whose primary purpose is the service of food?</p> <p>Are staff checking identification at the door or prohibiting entry of minors?</p>	<ul style="list-style-type: none"> <li>• number of staff</li> <li>• staff positions and duties</li> </ul>
Type and hours of games and entertainment offered by the licensee	<p>Can a patron order a meal while entertainment is offered?</p> <p>Do the games and entertainment complement the service of food, such as dine and dance entertainment, or do the games and entertainment detract from the service of food?</p> <p>Are games available that require patrons to get up from the dining area, such as billiards, foosball and standup video arcade games?</p> <p>Does the licensee hold an endorsement for the type of entertainment offered and the time during which it is being presented?</p>	<ul style="list-style-type: none"> <li>• terms and conditions of licence with respect to games and entertainment</li> <li>• advertising of games or entertainment</li> <li>• types of games or entertainment available</li> <li>• number of games tables or machines</li> <li>• number of patrons playing games</li> <li>• number of patrons observing entertainment</li> <li>• location of games or entertainment</li> <li>• noise levels due to the games or entertainment</li> <li>• dates and times when games or entertainment are offered</li> <li>• whether patrons are ordering food while games or entertainment are occurring</li> </ul>

<u>Factor</u>	<u>Analysis</u>	<u>Evidence</u>
Establishment advertising	<p>Does the establishment focus its advertising on the food or does it focus on entertainment and other attributes of the establishment?</p> <p>Does the advertising inside the establishment, such as posters, neon signs, coasters, glassware, etc. focus predominantly on liquor?</p> <p>Is the advertising for the establishment consistent with regulations and policy?</p>	<ul style="list-style-type: none"> <li>types and content of signs and advertising</li> </ul>
Hours of operation	<p>Are the hours of operation within the terms and conditions of the licence?</p> <p>Does the establishment shift its primary purpose away from the service of food during any hours of its operation?</p>	<ul style="list-style-type: none"> <li>hours of operation indicated on licence</li> <li>hours of operation advertised for establishment</li> <li>kitchen hours</li> <li>payroll records for kitchen staff</li> </ul>
Establishment's financial records	<p>Do the payroll records and food and beverage purchase and sales records for that business day support a primary focus on, and engagement in, the service of food?</p>	<ul style="list-style-type: none"> <li>payroll records</li> <li>food purchase records</li> <li>liquor register</li> <li>food and liquor sales records</li> </ul>
Ratio of food to liquor sales	<p>Do the receipts for the establishment demonstrate that its primary purpose is the service of food?</p> <p>If the ratio is inconsistent, can the high price of the liquor explain it, or are most of the sales liquor?</p>	<ul style="list-style-type: none"> <li>menu</li> <li>liquor price list</li> <li>sales receipts</li> </ul>

- The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
  - the name and duties of the person who was the directing mind of the licensee responsible for the operation of the establishment
  - whether the licensee has written policies and procedures with respect to service of food, games and entertainment or any of the other factors listed in policy 10.1.4 above
  - whether staff have been trained on these policies and procedures, and / or
  - whether the licensee has supervised or tested staff to ensure they were following these policies and procedures.
- Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 11(1) of the regulation "Operating contrary to primary purpose."

## **SECTION 14: INTOXICATED PATRONS**

### **Introduction**

Items 9 through 11 of the penalty schedule are contraventions involving intoxicated persons. Policies and procedures for identifying each of these contraventions are outlined in this section under the following headings:

- Selling Liquor to an Intoxicated Person
- Permitting a Person to Become Intoxicated, and
- Permitting an Intoxicated Person to Remain.

Of relevance to all three contraventions is policy 14.1.2, which outlines branch policy on determining a person's level of intoxication.

### **Selling Liquor to an Intoxicated Person**

#### **Policy Rationale**

The licensee is responsible for managing and controlling the establishment so that it does not negatively affect patrons or the community. Intoxication is a serious public safety issue. Intoxicated patrons may be a danger to themselves or the public. Intoxication can be a factor in many crimes, including domestic violence, drug offences, assaults and driving violations. Intoxication is also associated with behaviour that has a negative impact on communities, including late night noise, vandalism and unsanitary behaviour.

Intoxicated patrons may not be able to exercise sufficient judgment to stop consuming liquor. Providing liquor to a person who is already intoxicated increases the risk that they will harm themselves or others.

#### **Policy**

#### **Prohibition against selling liquor to an intoxicated person**

A person must not sell or give liquor to an intoxicated person or a person who is apparently under the influence of liquor.

[Liquor Control and Licensing Act, section 43(1)]

#### **Determining the state of intoxication**

Unlike the legal definition of impairment for the purpose of operating a motor vehicle or boat, there is no one scientific measure that determines whether a person is intoxicated. As a result of consuming liquor, an intoxicated individual does not have the normal use of physical or mental faculties. Determining whether a person is intoxicated requires:

- observing a person's mental and physical state, and
- comparing the person's mental and physical state and the expected behaviour from an ordinarily prudent and cautious individual in full possession of their faculties.

The following table prepared by W.K. Jeffreys, a court-recognized toxicology expert, may be used by inspectors to determine a person's stage of alcohol influence. A person who is exhibiting signs and symptoms consistent with stages 4, 5, 6 or 7 is intoxicated.

	<u>Stage of Alcohol Influence</u>	<u>Clinical Signs/Symptoms</u>
<b><u>1.</u></b>	<b><u>Sobriety</u></b>	<ul style="list-style-type: none"> <li>• No apparent influence</li> <li>• Behaviour looks normal by ordinary observations</li> <li>• Slight changes are detectable by special tests</li> </ul>
<b><u>2.</u></b>	<b><u>Euphoria</u></b>	<ul style="list-style-type: none"> <li>• Mild euphoria, sociability, talkativeness</li> <li>• Increased self-confidence</li> <li>• Decreased inhibitions</li> <li>• Diminution of attention, judgment and control</li> <li>• Loss of efficiency in finer performance tests</li> </ul>
<b><u>3.</u></b>	<b><u>Excitement</u></b>	<ul style="list-style-type: none"> <li>• Emotional instability</li> <li>• Decreased inhibitions</li> <li>• Loss of critical judgment</li> <li>• Impairment of memory and comprehension</li> <li>• Decreased sensory response</li> <li>• Increased reaction time</li> <li>• Some muscular incoordination</li> </ul>
<b><u>4.</u></b>	<b><u>Confusion</u></b>	<ul style="list-style-type: none"> <li>• Disorientation</li> <li>• Mental confusion</li> <li>• Dizziness</li> <li>• Exaggerated emotional states (fear, anger, grief, etc.)</li> <li>• Disturbances of sensation</li> <li>• Diplopia (double vision)</li> <li>• Disturbances of perception of colour, form, motion, dimensions</li> <li>• Decreased pain sense</li> <li>• Impaired balance</li> <li>• Muscular incoordination</li> <li>• Staggering gait</li> <li>• Slurred speech</li> </ul>
<b><u>5.</u></b>	<b><u>Stupor</u></b>	<ul style="list-style-type: none"> <li>• Apathy</li> <li>• General inertia</li> <li>• Approaching paralysis</li> <li>• Marked decrease in response to stimuli</li> <li>• Marked muscular incoordination</li> <li>• Inability to stand or walk</li> <li>• Vomiting</li> <li>• Incontinence of urine and feces</li> <li>• Impaired consciousness, sleep or stupor</li> </ul>
<b><u>6.</u></b>	<b><u>Coma</u></b>	<ul style="list-style-type: none"> <li>• Complete unconsciousness, coma, anaesthesia</li> <li>• Depressed or abolished reflexes</li> <li>• Subnormal temperatures</li> <li>• Urinary and fecal incontinence</li> <li>• Decreased circulation and respiration</li> <li>• Possible death</li> </ul>
<b><u>7.</u></b>	<b><u>Death</u></b>	<ul style="list-style-type: none"> <li>• Death from respiratory paralysis</li> </ul>

## Elements of the contravention of selling liquor to an intoxicated person

To allege the contravention of selling liquor to an intoxicated person, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the licensee sold or gave liquor to the person, and
- the person was intoxicated or apparently under the influence of liquor.

[Liquor Control and Licensing Branch Policy]

### Authority References

Liquor Control and Licensing Act, section 43(1); Liquor Control and Licensing Branch Policy

### Procedures

7. If an inspector receives a police or coroner's report on a fatal or serious injury motor vehicle accident where the driver was intoxicated and had been at a licensed establishment prior to the accident, the inspector will discuss the report with their regional manager and determine whether to:
  - retain a toxicology expert to determine the person's blood alcohol level at the time the person left the establishment, and
  - proceed with an investigation into whether the licensee sold liquor to an intoxicated person.
8. If an inspector observes a patron who appears to be intoxicated, the inspector will observe and document the activities of the person and staff before notifying the licensee of their concerns. If there is a possibility of a confrontation, the inspector should observe the intoxicated person from a distance.
9. The inspector will gather further evidence of each element of the contravention identified in policy 14.1.3 above. The inspector may:
  - interview staff who had contact with the person, e.g., servers, door staff
  - interview the licensee
  - interview the person and obtain name and contact information
  - obtain sales receipts for the person's table
  - interview other patrons at the person's table and obtain their names and contact information, and / or
  - obtain any surveillance videos from the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

<u>Element</u>	<u>Evidence</u>
<b><u>The licensee sold or gave liquor to the person</u></b>	<ul style="list-style-type: none"> <li>• the type and brand of liquor sold or given</li> <li>• whether staff took a liquor order from the person</li> <li>• whether staff served the person liquor</li> <li>• whether the person had liquor in front of them</li> <li>• whether the person was holding liquor</li> <li>• whether the person consumed liquor</li> <li>• whether staff removed liquor from the person</li> <li>• whether a friend ordered liquor for the person</li> <li>• the number of empty liquor bottles and / or glasses in front of the person</li> <li>• the person's sales receipt</li> </ul>

<u>Element</u>	<u>Evidence</u>
<b><u>The person was intoxicated or apparently under the influence of liquor</u></b>	<ul style="list-style-type: none"> <li>• the person's blood alcohol content</li> <li>• the person's physical appearance, e.g., red or bloodshot eyes, dishevelled appearance, odour of liquor, glassy eyes, eyes with dilated pupils, eyes unable to focus, eyelids drooping</li> <li>• the person's motor skills, e.g., unsteadiness on feet, staggering, exaggerated care in walking, slurred speech, fumbling with small objects such as money or cigarettes, lack of coordination, head bobbing, spilling drink, missing mouth when trying to drink from glass</li> <li>• the person's level of alertness, e.g., incoherent speech, sleepy, sleeping, inability to concentrate, speaking very slowly and deliberately, lighting more than one cigarette at a time</li> <li>• whether the person exhibited exaggerated emotionalism, e.g., talkativeness, excessive boisterousness, bravado, buying drinks for strangers, annoying other customers, overly friendly, bragging, talking loudly, sudden mood changes</li> <li>• whether the person exhibited signs of aggression, e.g., arguing with employees or other customers, using profane language, physical violence</li> <li>• whether the person exhibited rational and logical thought processes, e.g., irrational statements, no linear flow to statements, loss of train of thought</li> </ul>

10. The inspector will gather evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
- the name and duties of the person who was the directing mind of the licensee responsible for liquor service
  - whether the licensee has written policies and procedures about identifying and serving intoxicated persons
  - whether staff had been trained on these policies and procedures
  - whether the licensee supervised or tested staff to ensure they were following these policies and procedures
  - door control procedures
  - lighting
  - whether the person exhibited signs of intoxication in the presence of the licensee or staff, and / or
  - how many other intoxicated persons were in the establishment at the time.
11. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 43(1) of the Act "Selling liquor to an intoxicated person."

## **Permitting a Person to Become Intoxicated**

### **Policy Rationale**

The licensee is responsible for managing and controlling the establishment so that it does not negatively affect patrons or the community. Permitting a person to become intoxicated is a serious public safety issue. Intoxicated patrons may be a danger to themselves and others. Intoxication can be a factor in many crimes, including domestic violence, drug offences, assaults and motor vehicle infractions.

Intoxication is also associated with behaviour that has a negative impact on communities, including late night noise, vandalism and unsanitary behaviour.

### **Policy**

#### **Prohibition against permitting a person to become intoxicated**

A licensee must not permit a person to become intoxicated.

[Liquor Control and Licensing Act, section 43(2)(a)]

#### **Elements of the contravention of permitting a person to become intoxicated**

To allege the contravention of permitting a person to become intoxicated, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the person was intoxicated, and
- the licensee knew or ought to have known that the person was becoming intoxicated.

[Liquor Control and Licensing Branch Policy]

### **Authority References**

Liquor Control and Licensing Act, section 43(2)(a); Liquor Control and Licensing Branch Policy

### **Procedures**

1. If an inspector receives a police or coroner's report on a fatal or serious injury motor vehicle accident where the driver was intoxicated and had been at a licensed establishment prior to the accident, the inspector will discuss the report with their regional manager and determine whether to:
  - retain a toxicology expert to determine the person's blood alcohol level at the time the person left the establishment, and
  - proceed with an investigation into whether the licensee permitted the person to become intoxicated.
2. If an inspector observes a patron who appears to be intoxicated, the inspector will observe and document the activities of the person and staff before notifying the licensee of their concerns. If there is a possibility of a confrontation, the inspector should observe the intoxicated person from a distance.

3. The inspector will gather further evidence of each element of the contravention identified in policy 14.2.2 above. The inspector may:
- interview staff who had contact with the person, e.g., servers, door staff
  - interview the licensee
  - interview the person and obtain name and contact information
  - obtain sales receipts for the person's table
  - interview other patrons at the person's table and obtain their names and contact information, and / or
  - obtain any surveillance videos from the licensee.

Examples of the evidence the inspector may gather for each element of the contravention are listed in the following table:

<u>Element</u>	<u>Evidence</u>
<b><u>The person was intoxicated</u></b>	<ul style="list-style-type: none"> <li>• the person's blood alcohol content</li> <li>• the person's physical appearance, e.g., red or bloodshot eyes, dishevelled appearance, odour of liquor, glassy eyes, eyes with dilated pupils, eyes unable to focus, eyelids drooping</li> <li>• the person's motor skills, e.g., unsteadiness on feet, staggering, exaggerated care in walking, slurred speech, fumbling with small objects such as money or cigarettes, lack of coordination, head bobbing, spilling drink, missing mouth when trying to drink from glass</li> <li>• the person's level of alertness, e.g., incoherent speech, sleepy, sleeping, inability to concentrate, speaking very slowly and deliberately, lighting more than one cigarette at a time</li> <li>• whether the person exhibited exaggerated emotionalism, e.g., talkativeness, excessive boisterousness, bravado, buying drinks for strangers, annoying other customers, overly friendly, bragging, talking loudly, sudden mood changes</li> <li>• whether the person exhibited signs of aggression, e.g., arguing with employees or other customers, using profane language, physical violence</li> <li>• whether the person exhibited rational and logical thought processes, e.g., irrational statements, no linear flow to statements, loss of train of thought</li> </ul>
<b><u>The licensee knew or ought to have known that the person was becoming intoxicated</u></b>	<ul style="list-style-type: none"> <li>• how long the person was in the establishment</li> <li>• the location of the person inside or outside the establishment</li> <li>• the number of times staff walked by the person</li> <li>• the number of times staff served the person</li> <li>• whether the person exhibited signs of intoxication in the presence of the licensee or staff</li> <li>• the type and brand of liquor being served to the person</li> <li>• the number of drinks served to the person</li> <li>• the number of empty liquor bottles and / or glasses in front of the person</li> <li>• the person's sales receipt</li> <li>• whether the licensee had door staff on duty</li> <li>• lighting in the establishment</li> </ul>

4. In addition to the evidence gathered to determine whether or not the licensee “permitted” the contravention outlined in procedure 3 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:
  - the name and duties of the person who was the directing mind of the licensee responsible for liquor service
  - whether the licensee has written policies and procedures about identifying and preventing intoxication
  - whether staff had been trained on these policies and procedures, and / or
  - whether the licensee supervised or tested staff to ensure they were following these policies and procedures.
5. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 43(2)(a) of the Act “Permitting a person to become intoxicated.”

## **Permitting an Intoxicated Person to Remain**

### **Policy Rationale**

To avoid the possibility of further liquor consumption and avoid any harm to other patrons or staff, a licensee must not permit a person who is intoxicated to remain in the part of the establishment where liquor is served. To ensure their safety, intoxicated persons may remain in unlicensed areas of an establishment while waiting for assistance or a ride home.

### **Policy**

#### **Prohibition against permitting an intoxicated person to remain**

A licensee must not permit an intoxicated person to remain in that part of the establishment where liquor is sold, served or otherwise supplied.

[Liquor Control and Licensing Act, section 43(2)(b)]

#### **Elements of the contravention of permitting an intoxicated person to remain**

To allege the contravention of permitting an intoxicated person to remain, an inspector must gather enough evidence to prove each of the following elements on a balance of probabilities:

- the person was intoxicated
- the person was in that part of the establishment where liquor is sold, served or otherwise supplied, and
- the licensee knew or ought to have known that an intoxicated person was in that part of the establishment.

[Liquor Control and Licensing Branch Policy]

### **Authority References**

Liquor Control and Licensing Act, section 43(2)(b); Liquor Control and Licensing Branch Policy

### **Procedures**

1. If an inspector observes a patron who appears to be intoxicated, the inspector will observe and document the activities of the person and staff before notifying the licensee of their concerns. If there is a possibility of a confrontation, the inspector should observe the intoxicated person from a distance.
2. The inspector will gather further evidence of each element of the contravention identified in policy 14.3.2 above. The inspector may:

- interview staff who had contact with the person, e.g., servers, door staff
- interview the licensee
- interview the person and obtain name and contact information
- interview other patrons at the person's table and obtain their names and contact information, and / or
- obtain any surveillance videos from the licensee.

Examples of the evidence that the inspector may gather for each element of the contravention are listed in the following table:

<u>Element</u>	<u>Evidence</u>
<b><u>The person was intoxicated</u></b>	<ul style="list-style-type: none"> <li>• the person's blood alcohol content</li> <li>• the person's physical appearance, e.g., red or bloodshot eyes, dishevelled appearance, odour of liquor, glassy eyes, eyes with dilated pupils, eyes unable to focus, eyelids drooping</li> <li>• the person's motor skills, e.g., unsteadiness on feet, staggering, exaggerated care in walking, slurred speech, fumbling with small objects such as money or cigarettes, lack of coordination, head bobbing, spilling drink, missing mouth when trying to drink from glass</li> <li>• the person's level of alertness, e.g., incoherent speech, sleepy, sleeping, inability to concentrate, speaking very slowly and deliberately, lighting more than one cigarette at a time</li> <li>• whether the person exhibited exaggerated emotionalism, e.g., talkativeness, excessive boisterousness, bravado, buying drinks for strangers, annoying other customers, overly friendly, bragging, talking loudly, sudden mood changes</li> <li>• whether the person exhibited signs of aggression, e.g., arguing with employees or other customers, using profane language, physical violence</li> <li>• whether the person exhibited rational and logical thought processes, e.g., irrational statements, no linear flow to statements, loss of train of thought</li> </ul>
<b><u>The person was in that part of the establishment where liquor is sold, served or otherwise supplied</u></b>	<ul style="list-style-type: none"> <li>• the location of the person in the establishment</li> <li>• whether the person was in the red-lined area of the establishment</li> </ul>
<b><u>The licensee knew or ought to have known that an intoxicated person was in that part of the establishment</u></b>	<ul style="list-style-type: none"> <li>• how long the person was in the establishment</li> <li>• how many times staff walked by the person</li> <li>• how many times staff served the person</li> <li>• whether the person exhibited signs of intoxication in the presence of the licensee or staff</li> <li>• the number and type of drinks the person was served</li> <li>• the number of empty liquor bottles and / or glasses in front of the person</li> <li>• the person's sales receipt</li> <li>• whether the licensee had door staff on duty</li> <li>• whether there were uncontrolled entrances or exits to the establishment</li> <li>• what the licensee or staff did to remove the person from the establishment</li> </ul>

3. In addition to the evidence gathered to determine whether or not the licensee "permitted" the contravention outlined in procedure 2 above, the inspector will gather further evidence that indicates whether the licensee was duly diligent in preventing the contravention, such as:

- the name and duties of the person who was the directing mind of the licensee responsible for door control
  - whether the licensee has written policies and procedures about identifying and removing intoxicated persons
  - whether staff had been trained on these policies and procedures
  - whether the licensee supervised or tested staff to ensure they were following these policies and procedures
  - how busy the establishment was, and / or
  - how many staff were on duty.
4. Based on the evidence gathered, if the inspector forms the opinion that a contravention occurred, the inspector will issue a contravention notice to the licensee alleging a contravention of section 43(2)(b) of the Act "Permitting an intoxicated person to remain."