



**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: Good Times Entertainment Inc.  
dba T.G.I. Friday's (Burnaby)  
E8 4700 Kingsway  
Burnaby BC, V5H 4M1

Case: EH06-168

For the Licensee: Gillian MacGregor

For the Branch: Bode Fagbamiye

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: May 12, 2008

Place of Hearing: Vancouver, BC

Date of Decision: June 11, 2008

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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## INTRODUCTION

Corporate licensee Good Times Entertainment Inc. dba T.G.I. Friday's (Burnaby) holds Food Primary Licence No. 185044 for the operation of a restaurant located at E8 4700 Kingsway, Burnaby, BC. The hours of sale are 11 a.m. to 1:00 a.m., Monday to Saturday and to Midnight on Sunday. The capacity is 260 persons in the main area, with a patio of 40 persons and a lounge of 40 persons. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" ("Guide").

### **Alleged Contravention and Proposed Penalty**

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated December 6, 2006. The branch alleges that on September 22, 2006, the licensee contravened section 43(2)(a) of the *Liquor Control & Licensing Act* by permitting a person to become intoxicated.

The proposed penalty is a \$7000 penalty (item 10 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 10 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 - \$7000.

The licensee disputes the contravention.

## RELEVANT STATUTORY PROVISIONS

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

#### **Drunkenness**

#### **43**

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

(a) a person to become intoxicated

#### **ISSUES**

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

#### **EXHIBITS**

The following exhibits were presented:

- Exhibit No. 1:            Branch Book of Documents #1, tabs 1 – 21
- Exhibit No. 2:            Branch submissions
- Exhibit No. 3:            Licensee submissions

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

**RCM Police officer, Constable A** testified that he was in uniform working traffic enforcement and collision investigation duties during the afternoon/evening of September 22, 2006, in the City of Burnaby. While on patrol he was advised by dispatch of a complaint received at 8:15 p.m. that a vehicle operated by a suspected impaired driver had nearly hit a pedestrian in the parking lot of a major shopping centre. A British Columbia licence plate number had been obtained from the offending vehicle.

Patrols within the area failed to locate the vehicle. A few minutes later he received a further call that a vehicle bearing the same licence plate had been involved in a hit and run motor vehicle accident at an intersection near the shopping centre. He obtained the registered owner information for the licence plate number and proceeded to that residential address. The vehicle was not there. He proceeded to the accident scene to assist in the investigation. Approximately 20 minutes following the time of the accident, he was advised by dispatch that the subject vehicle was stopped in an alley near the accident scene. The driver was described as having head injuries.

The constable attended the location of the vehicle. A driver and passenger were noted to be injured. They were uncooperative. They were removed from the vehicle and arrested. The driver vomited while lying on the ground awaiting ambulance attendance. The driver was dispatched to Royal Columbian hospital and the passenger to Burnaby General hospital. The constable attended at the Royal Columbian hospital and requested that blood samples be taken from the driver. The driver was subsequently served with a 24 hour driving suspension notice.

During the course of his investigation the constable obtained a search warrant and took possession of the blood samples and medical records related to the driver of the vehicle. The blood samples were taken to the National Police Service Forensic Laboratory for analysis. A "Forensic Laboratory Report" was received with the results that the blood contained 238 milligrams of ethyl alcohol in 100 millilitres of blood (238 mg%) and the plasma contained 262 milligrams of ethyl alcohol in 100 millilitres of plasma (262 mg%) [exhibit 1, tab 16(b)]. The constable subsequently prepared a "Report to Crown Counsel" recommending criminal charges against the driver of the vehicle [exhibit 1, tab 16(a)]. A series of email reports were forwarded to the liquor inspector as a result of the involvement of a licensed establishment (exhibit 1, tab 4).

The constable testified that he did not search the accident vehicle, the accident area, or the area where the vehicle was finally located for alcohol. He believed that this would have been done by other police officers on the scene and he, as the accident investigator, would have been advised if any alcohol was found.

**Branch witness B** testified that on September 22, 2006, he was 23 years old. That afternoon he and a friend, witness C attended a movie which began at approximately 4:15 p.m. ending at approximately 6:45 p.m., following which they went to T.G.I. Friday's which was located downstairs from the movie theatre in the same shopping centre complex. While in the establishment they ordered and consumed a total of five alcoholic beverages, all were doubles. He does not recall any conversation with the bartender about ordering food, or whether he intended to be driving a vehicle.

Upon their arrival they took a seat at the bar and asked the bartender for drinks containing the strongest alcohol. They were both served doubles of over-proof rum containing about 75% alcohol. The drinks were quickly consumed following which they each ordered another double of the over-proof rum. These were likewise quickly consumed following which they both ordered a double "scotch on the rocks." These drinks were consumed more slowly within about 10 to 15 minutes. They ordered a fourth drink, another Scotch whiskey, which was consumed within approximately 10 minutes.

They were talking to the bartender, as well as other patrons seated at the bar, and were having a good time. His friend then suggested that they join a table of patrons seated nearby, which they did. They ordered another double over-proof rum each. They were partying with the group at the table, yelling, being rowdy and having a good time.

He recalls leaving the establishment. He did not pay for any of the drinks consumed. Once outside he realized that he was alone and returned briefly to the restaurant, but his friend was not there. He tried locating his car but could not because he was "heavily intoxicated." He recalls being involved in an altercation with a group of persons in the

shopping centre mall, at which time two security guards came and walked him to his car where his friend was waiting. He does not remember getting into the car. He recalls a red light and an impact that he believes would have been the motor vehicle accident. He recalls sitting in the car with blood dripping down his face and his friend being "totally out of it." The next thing he recalls is being on a stretcher in an ambulance following which he woke up in a hospital. Some time later he was requested to attend at the RCMP Burnaby detachment where he was served with a certificate of analysis for his blood/alcohol level and told by the constable that his level was way above the legal limit.

**Branch witness C** testified that on September 22, 2006, he was 23 years old. That afternoon he attended a movie with his friend, witness B. The movie began at approximately 4:15 p.m. and ended at approximately 6:50 p.m. He did not eat or drink at the movie. Following the movie they went to T.G.I Friday's located in the same shopping centre complex downstairs from the movie theatre. They ordered a total of five drinks each while in the restaurant.

Upon arrival they took a seat at the bar. They introduced themselves to the bartender and asked what the strongest drink was. Told it was over-proof rum, they each ordered a double. The first drink was quickly consumed following which a second double was ordered and consumed. They then ordered a scotch on the rocks. When it was consumed they ordered a double scotch. During this time they engaged in conversation with the bartender and with other patrons seated at the bar. He noticed another group seated at a table nearby, which he then joined and was shortly joined by his friend.

After consuming the four drinks he found himself getting loud and rowdy. He and his friend ordered another double over-proof rum. He began to feel the effects of the alcohol, becoming disoriented and feeling queasy. He left shortly thereafter. He could not find his friend and went to the parking area where the car had been left. His friend was not there, but arrived shortly after escorted by two shopping centre security guards who said that his friend had been involved in an altercation. The security guards departed and he and his friend drove off in the car. He recalled that at one point he got

out of the car to get his friend who was fighting with a person at a crosswalk. He next recalls the impact of the motor vehicle accident and being attended by paramedics and being handcuffed. He later woke up in the Burnaby General hospital with a police officer and a doctor present.

He testified that he did not pay for his drinks as he assumed that his friend had done so. It was the following day that he learned that the drinks had not been paid for. His sister and parents were told when they went to the establishment in search of his lost wallet. He does not recall any conversation with the bartender about ordering food, or whether he asked if they were driving. He has previously been employed as a bartender at a private club and holds a "Serving It Right: Responsible Beverage Service" ("S.I.R.") certificate."

**Witness D** testified that he is the author of numerous published articles regarding drug and alcohol levels and impairment. He has been qualified as an expert witness in court proceedings in the provinces of British Columbia, Alberta, Yukon, North West Territories, Saskatchewan and Prince Edward Island on the effects of alcohol and drugs on the human body. His qualifications are shown in his *curriculum vitae* at exhibit 1, tab 20. He was qualified for these proceedings as an expert on the effects of drugs and alcohol on the human body.

The witness referred to a report dated February 5, 2008, which he submitted to the Liquor Control and Licensing Branch (exhibit 1, tab 17). The purpose of the report was to provide an opinion as to the amount of alcohol consumed by the driver of a motor vehicle on September 22, 2006 (witness B) and his state of sobriety. The witness utilized the blood alcohol concentration (BAC) level of 238 milligrams of ethyl alcohol in millilitres of blood (238 mg%) at 2137 hours/9:37 p.m. for the driver as reported in the Forensic Laboratory Report [exhibit 1, tab 16(i)]. He utilized the drinking pattern for the individual as provided in the branch document at exhibit 1, tab 1. [At 6:56 p.m. driver served a double over-proof rum, 75.4% ethyl alcohol. After 5 to 10 minutes served double scotch, 40% ethyl alcohol. After another 10 minutes served another

double over-proof rum. After 15 to 20 minutes served another double over-proof rum.] He was also provided with the body weight of the individual.

He then calculated to determine the amount of alcohol consumed by the individual and his state of sobriety at the time of the accident, which he was advised had occurred at 2015 hours (8:15 p.m.) as well as at various times during the drinking pattern of the individual. He then compared the blood alcohol level with a standardized chart (exhibit 1, tab 17, page 3) used to determine the "Stage of Alcohol Influence" and the "Clinical Signs/Symptoms" which would be exhibited. He testified that the signs/symptoms can vary between individuals dependent upon their tolerance to alcohol consumption. Novice drinkers would exhibit more signs/symptoms than would more experienced drinkers. Impairment occurs within the range of 30 – 100 mg%. It results in some loss of judgement, co-ordination and vision. Intoxication begins to occur at 100 mg% and the individual displays outward signs of intoxication. His conclusions are found at pages 4 and 5 of his report.

He testified that:

- At the time of the accident, 2015 hours/8:15 p.m., he calculated the BAC of the driver to be 251 – 263 mg%. This would place a novice drinker at the fourth stage of "Confusion" and a tolerant drinker at the third stage of "Excitement." Either stage would display gross outward signs of intoxication. He calculated the amount of alcohol to reach this BAC at 14 – 14.7 ounces. This compares with the drinking pattern figure of 13.31 ounces of alcohol consumed. Thus, the practical and theoretical amounts of alcohol consumed were not significantly different. He testified that this seldom occurs and gives him greater confidence that the drinking pattern provided matches the BAC at the time of the accident. He concluded that at the time of the motor vehicle accident the driver was more than twice the level of impairment, and as such was likely to be involved in a motor vehicle accident.



- The total amount of alcohol consumed by the driver at 1930 hours/7:30 p.m. just prior to his last drink would be 9.54 ounces giving a BAC of 159 – 164 mg%. This would place a novice drinker in the fourth stage of alcohol influence “Confusion” and he would exhibit gross signs of intoxication with slurred speech, inability to stand properly, his vision would be affected, as would his comprehension and judgement. An experienced drinker with greater tolerance to alcohol consumption would exhibit signs in the third stage, “Excitement.”
- The total amount of alcohol consumed at 1915 hours/7:15 p.m. just prior to the second last drink would be 5.77 ounces giving a BAC of 97 – 100 mg%. This would place a novice drinker in the third stage of alcohol influence “Excitement” and a tolerant drinker in that of “Euphoria.” There would be signs of impairment and some indicators of intoxication present.

Responding to a hypothetical question of the driver having consumed less alcohol than given in the drinking pattern, hypothetically one double over-proof rum and one double Scotch he calculated that this amount, 5.77 ounces of alcohol consumed by the driver, would produce a BAC of 103 mg%. If the alcohol consumption commenced at 6:56 p.m., the BAC at the time of the accident, 8:15 p.m., would have been 77 – 90 mg%. The individual would be in the second stage of alcohol influence, “Euphoria” and would show minor signs of impairment and no signs of intoxication. He noted that this differed from the information provided in the Forensic Laboratory Report and the drinking pattern provided to him.

**A branch liquor inspector, witness E testified** that he has been employed as a liquor inspector for approximately 14 years and is responsible for the geographical area in which the establishment T.G.I. Friday's is located. He first learned about a possible contravention occurring at the establishment when he received an email from Constable A concerning a motor vehicle accident (exhibit 1, tab 4). A driver involved in the accident had been injured and had been drinking at T.G.I. Friday's just prior to the

accident. A series of emails were exchanged with the constable, in which further information was obtained.

He later obtained a copy of a toxicology report advising that the driver's BAC was 262 mg%. He contacted both the driver and the passenger in the vehicle involved in the accident and spoke to them via telephone. They confirmed that they had been drinking at the establishment just prior to the accident and provided information concerning the amount of alcohol consumed. He then spoke to the general manager of the establishment and the bartender who had served both individuals. Both were aware of the incident, as the two patrons had left without paying for their drinks. The general manager provided a copy of the point of sale document for the drinks ordered by the two patrons (exhibit 1, tab 7). The documents indicated that the patrons had ordered a total of 6 drinks consisting of four double over-proof rum and two double scotch. The bar tab commenced with the first order at 6:56 p.m., and closed unpaid at 10:59 p.m.

The bartender recalled the patrons. They had become disruptive and had left without paying. He said that he had been bartender for quite a while and held a "Serving It Right: Responsible Beverage Certificate." The bartender did not realize the amount of liquor consumed by the two patrons until he and the inspector did the calculations on the amount of liquor served. The bartender told the inspector that each was served the equivalent of 9.5 ounces of 40% alcohol by volume liquor in addition to additional doubles of over-proof rum that he served to the patrons, but were not included on their tab. Thus, the total amount of alcohol served was the equivalent of 13 ounces of 40% alcohol by volume. The inspector made notes of his conversations with the general manager, the bartender, and the two patrons (driver and occupant of the vehicle) (exhibit 1, tab 14).

The inspector spoke with a principal of the corporate licensee who advised him that they did not condone over-service. He acknowledged that the incident had occurred and said that steps would be taken to prevent future occurrences. A Compliance Meeting form was completed (exhibit 1, tab 9) with commitments made to discontinue the sale of over-proof liquor, review existing policies, and create new policies concerning liquor service and to review "Serving It Right" information with staff at regular staff meetings. Copies of licensee records were to be provided to the inspector. These were subsequently provided (exhibit 1, tab 10).

The inspector provided the general manager with a copy of the "Guide" which outlined the terms and conditions for a food primary licence, and also provided information about recognizing signs of intoxication. These were to be shared with staff at the next meeting. He was told that the establishment did keep incident logs, however, there had not been one completed for September 22, 2006.

He reviewed the branch file for the establishment. In his testimony he referred to copies of documents from branch files:

- Exhibit 1, tab 3; the Food Primary Licence in effect at the time of the alleged contravention. It is subject to the terms and conditions contained in the branch publication "Guide for Liquor Licensees."
- Exhibit 1, tab 16; a copy of the "Guide" in effect at the time of the alleged contravention. He referred to excerpts from the Guide dealing with: "Serving It Right" (p2); "Terms and conditions of licence" (p2); "Your Role as a Licensee" (p3); "The Role of Police" (p4); "Maximum Drink Sizes" (p13); "Over-service and Intoxicated Patrons" (p14); and "Physical signs of intoxication" (p14).
- Exhibit 1, tab 19; Document relating to an external share transfer for the corporate licensee. On April 1, 2003, a principal of the corporate licensee met with the liquor inspector and signed the branch Interview Sheet. He committed to operating the establishment in compliance with liquor licence requirements.

The inspector prepared a Contravention Notice (exhibit 1, tab 2) and a Notice of Enforcement Action (NOEA) (exhibit 1, tab 1) wherein he alleged the contravention and recommended a penalty. He testified that he felt that enforcement action was necessary due to the gross over-service of liquor to the two patrons within a short period of time. It should have been known that this would result in the intoxication of the two patrons. A motor vehicle accident with injuries occurred as a result. In the circumstances, he recommended the maximum monetary penalty for a first contravention of \$7,000. He felt that a monetary penalty was sufficient and preferable to a licence suspension, as the licensee accepted responsibility and agreed to bring about compliance and more accountability from staff regarding over-service. He testified that he has attended at the establishment prior and subsequent to the incident on several occasions, and has not noted any problem with the operation of the establishment. He believes that the licensee has taken the incident leading to the contravention seriously. He agreed that there is no statutory obligation for a licensee to develop policy and procedural manuals, or provide them to the branch. He testified that he believes that only about 10% of the licensees in his geographically area of responsibility have developed their own manuals separate from the "S.I.R." manuals.

## **EVIDENCE - THE LICENSEE**

**Licensee witness F** testified that he is well experienced in the licensed restaurant business having worked at several major restaurants for many years. He commenced work at T.G.I. Friday's in April 2006 and was promoted to general manager on September 20, 2006, when the previous general manager was dismissed as a result of problems related to "promoing" drinks, i.e. providing drinks without charge, and problems related to holding after hours parties for his friends.

He testified that on taking over as general manager he met with staff on September 21<sup>st</sup> and advised them that the practice of providing "promo" drinks had ceased. The bartender on duty the night of September 22, 2006, attended the meeting and it was made clear to him that he was not to "promo" drinks. The witness described him as

being an excellent bartender who taught at a bartending school and held a "Serving It Right: Responsible Beverage Service" ("S.I.R.") certificate. He was dismissed following the incident of September 22<sup>nd</sup> because the two patrons were overserved. As an experienced bartender, he would have known the amount of alcohol served to the patrons. The bartender provided a statement on the incident [exhibit 1, tab 10(g)].

The witness testified that although the patrons (witnesses B & C) said that they had been served five drinks each, that does not tally with the statement of the bartender or their tab (exhibit 1, tab 7), which shows a total of six drinks being served to the two patrons. At the end of the night there was one drink remaining at the table where they had been sitting. It was subsequently poured out. He believes that there was a total of five drinks consumed by the two patrons; two doubles to one, and three doubles to the other. He did not agree with the amount of time that the two patrons said that they were in the establishment. A second bartender on duty provided a statement [exhibit 1, tab 10(h)], in which she said that she recalled them coming into the establishment as she was placing a food order. Once the food order was received she went on her break, and upon returning learned that the two patrons had left without paying their bill. He felt that this would amount to a time period of approximately one half hour, and not the time stated by the two patrons.

The two patrons left without paying their tab. When family members came the following day looking for a lost wallet, they said that the patrons had been involved in a motor vehicle accident. He told them that that was irrelevant to the unpaid bill. The bill remains unpaid to date.

He testified that he co-operated fully with the liquor inspector when he attended at the restaurant and gave him copies of all documents related to the incident. The establishment did not have specific written policies regarding liquor service prior to the incident. A new staff manual has been prepared which all staff are required to read and sign off [exhibit 1, tab 10 (i)]. Following the incident he held a meeting with all staff and advised them that over-service was a major concern. He now requires that all

managers, servers, and bartenders have "S.I.R." certificates. The establishment operates a food-oriented business with sales of approximately 80% food, and 17% liquor. Over-proof rum was pulled from the shelf and is no longer available for sale in the establishment.

## **SUBMISSIONS**

The branch advocate and the licensee representative each provided a written submission.

## **REASONS AND DECISION**

The evidence is that two 23 year old male patrons attended at the establishment shortly before 7 p.m. on September 22, 2006. They consumed a quantity of alcohol within a short period of time commencing at approximately 6:56 p.m. and ending at approximately 7:40 - 7:50 p.m. They left the establishment without paying their bill and were involved in a hit and run motor vehicle accident a short time later. A blood sample was obtained from one of the two patrons who was identified as the driver of the vehicle. The sample was forwarded to a forensic laboratory and a BAC obtained. The BAC and information regarding the drinking pattern and body weight of the driver were given to an expert witness who calculated the BAC of the driver at the time of the accident, and at interim times during his consumption of liquor at the establishment. The expert witness provided an opinion on the state of sobriety of the driver at the time of the accident and at the interim times.

### **Amount of Liquor Consumed**

The evidence of the amount of alcohol consumed by the two patrons differs according to different witnesses. The two patrons in their *viva voce* testimony on the date of the hearing stated that they had each consumed five double servings of alcoholic beverages. This differs from the information they provided to the liquor inspector when he contacted each of them by telephone on October 15, 2006 [exhibit 1, tab 14(l) & (m)]. They both advised him that they had consumed four double sized drinks each, of which three were over-proof rum.

The bartender on duty the night of the incident provided an incident report to his general manager on September 29, 2006 [exhibit 1, tab 10(g)]. In the report he stated that the two patrons initially sat at the bar and ordered a double shot of rum each, followed by two single rye whiskeys, followed by another "double shot" each. The two patrons then moved to a table with other persons and ordered two doubles of over-proof rum for other persons at the table.

The bartender later changed his recollection when interviewed by the liquor inspector on October 17, 2006 [exhibit 1, tab 14(i)]. He advised the inspector that the two patrons sat at the bar and each ordered drinks each consisting of doubles of over-proof rum, doubles of scotch whiskey, and doubles of over-proof rum. They then moved to a nearby table and ordered two more double over-proof rum, which he placed in front of other persons seated at the table. He was later told that these drinks were consumed by the two patrons.

Point of sale documents provided by the licensee (exhibit 1, tab 7) show a total of six drinks billed to the two patrons, two double over-proof rum, followed by two double scotch whiskey, followed by two double over-proof rum. Five of the drinks were ordered by patron(s) whilst seated at the bar, one was ordered by a patron seated at a table. The general manager for the establishment, witness E, believes that the documents show all of the liquor ordered by the two patrons including that served to the table they occupied with other persons. He believes that one of the drinks was not consumed, as

a similar drink was found remaining on the table occupied by the patrons after they had departed. This differs from the information provided by the bartender to the liquor inspector. The bartender told the inspector that he could not recall whether the two double over-proof rum drinks, placed before other persons at the table, were added to the two patrons' bill.

Having considered all of the evidence, I find on a balance of probabilities that the amount of liquor consumed by the two patrons was four drinks each, consisting of three each containing double amounts of over-proof rum, and one each containing double scotch whiskey. That is the original information provided to the liquor inspector by the patrons when he spoke with them. I do not accept their *viva voce* evidence of having consumed five double sized drinks. I find that it is unlikely that the witnesses' memories improved with the passage of time. The information provided in the bartender's incident report varies with that provided by him to the inspector. He did not appear as a witness and consequently the information is difficult to assess. The conclusion that I have reached, that each patron consumed four drinks each closely matches the amount in the bartender's incident report of September 29<sup>th</sup>, with the exception of the double scotch drinks being described by him as single rye whiskey. In the interview with the liquor inspector sometime later, he described the drinks as being doubles of scotch whiskey.

I am assisted in reaching the conclusion regarding the amount of liquor consumed by the patrons by the findings of the expert witness. He used the same amount of liquor, which he obtained from the drinking pattern provided to him, to calculate the BAC of the driver at the time of the accident. It was his opinion that the amount of liquor provided in the drinking pattern compares with the calculated amount to reach a similar BAC. Thus in his view, the practical and theoretical amounts of alcohol consumed were not significantly different. He testified that this seldom occurs and gives him greater confidence that the drinking pattern provided matches the BAC at the time of the accident.



The representative for the licensee has submitted that the two patrons might have been consuming alcohol prior to and/or following their attendance at the establishment. I am satisfied that there is no basis in evidence to support this proposition.

The evidence of the expert witness is that at the time of the accident a novice drinker would be at the fourth stage of "Confusion" and a tolerant drinker at the third stage of "Excitement." Either stage would display gross outward signs of intoxication. Just prior to the last drink consumed by the driver, i.e. following the third drink, he would exhibit obvious signs of intoxication. Just prior to the second last drink, i.e. following the second drink, there would be signs of impairment and some indicators of intoxication.

Having considered all of the evidence, I find on a balance of probabilities that the patron described as being the driver of the vehicle, witness B, became intoxicated whilst consuming liquor as a patron of the licensed establishment T.G.I Friday's on September 22, 2006. That is a contravention of Section 43(2)(a) of the *Liquor Control and Licensing Act*.

### **Due Diligence**

The licensee is entitled to a defence to the finding of the contravention, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with prospective contraventions, it must ensure that those procedures are consistently acted upon.

Here the licensee did not have an in-house training program, nor did it have written policies or procedures related to the service of alcohol. The licensee did not conduct any tests of the employees' knowledge, nor did it offer any continuing training sessions. The general manager, while experienced in the industry was in his third day in the position, the previous general manager being recently dismissed. The general manager met with employees and instructed them on the requirement to discontinue proving free

drinks to patrons, one of the reasons for the dismissal of his predecessor. The licensee has since developed a policy manual with instructions to its employees and has instituted the requirement for all front line employees to complete "S.I.R." certification.

I find that the general manager was the directing mind of the licensee at the time of the occurrence. There is no evidence that he was checking to ensure that the bartender responsible for serving the two patrons was carrying out his responsibilities. The establishment does not appear to have a means of checking to see if its employees are knowledgeable for carrying out their responsibilities and are actually doing so until such time as a problem is brought to their attention. The two relatively young patrons should have been treated with caution when they entered and asked what the strongest liquor was and then began ordering doubles. The two bartenders on duty were both aware of this at the time. The evidence of the expert witness was that the driver would have been exhibiting signs of impairment with some indicators of intoxication after consuming the second drink, and would have shown obvious signs of intoxication after the third drink. This should have caused either of the bartenders or the general manager to take action. The third drinks were served directly to the two patrons. The fourth drinks were served to the table at which the two patrons were seated, and nothing done to prevent the two patrons from consuming them.

On the whole, I find that the licensee has not been duly diligent and thus may be said to have "permitted" the contravention.

In conclusion, on the evidence, I find on a balance of probabilities, that on September 22, 2006, the licensee contravened section 43(2)(a) of the *Liquor Control and Licensing Act* by permitting a person to become intoxicated.

## **Delay**

The representative for the licensee has submitted that the amount of time for these proceedings to be heard has disadvantaged the licensee in its ability to call some persons to testify, particularly the bartender who served the two patrons. I note that the incident occurred on September 22, 2006. That the two patrons were involved in a motor vehicle accident was made known to the general manager the following day. The bartender who served the two patrons provided a written incident report to the general manager of the establishment on September 29, 2006. The other bartender provided an undated written statement at some point in time, see exhibit 1, tab 10(h). The liquor inspector first spoke with the general manager about the incident on October 14, 2006. He issued a contravention to a principal of the licensee on October 18, 2006, and a Notice of Enforcement Action on December 6, 2006.

The delay in these proceedings as I understand it, is due largely to the requirement that the branch hold its proceedings in abeyance, until such time as the criminal proceedings arising out of the motor vehicle accident were completed. I am satisfied that any prejudice to the licensee could have been prevented by the licensee commencing its own investigation into the incident, collecting and preserving evidence until such time as required. Further, there is no evidence before me which leads me to believe that the bartender or others were sought to testify and refused to do so.

## **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 the appropriate penalty is: whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding this incident. The range of penalties for a first contravention of section 43(2)(a) of the *Act* pursuant to the *Regulation*, Schedule 4, item 10 is a four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

Intoxication is a serious public interest issue that can have grave consequences for individuals, families and communities. The public expects that a licensed establishment will operate within the law, and requires regulatory agencies responsible for overseeing their operation to act within their authority, to ensure that licensees are held to high standards of legality and responsibility. I have considered that this is an experienced licensee with a good record preceding this incident. However, in the circumstances of this case, two relatively young patrons were permitted to consume excessive amounts of alcohol within a short period of time. This led to the intoxication of at least one of

the patrons, who shortly thereafter was the driver of a vehicle involved in a hit and run motor vehicle accident. I am satisfied that a significant penalty is necessary to ensure future voluntary compliance and to protect the public interest. In the circumstances, I am satisfied that a penalty at the top of the range of monetary penalties for a first contravention of this type, a monetary penalty of \$7,000.00 is appropriate.

## **ORDER**

Pursuant to Section 20(2) of the *Act*, I order a monetary penalty of Seven Thousand Dollars (\$7,000) be paid to the General Manager of the Liquor Control and Licensing Branch on or before Monday, July 14, 2008.

*Original signed by*

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Edward W. Owsianski  
Enforcement Hearing Adjudicator

Date: June 11, 2008

cc: RCMP Burnaby Detachment

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

Liquor Control and Licensing Branch, Surrey Office  
Attention: Olubode Fagbamiye, Branch Advocate