



**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 Bird of Paradise Pub Inc. dba Bird of Paradise 4291 Glanford Avenue Saanich, BC V8Z 4B9
Case:	EH08-006
For the Licensee:	Donald Taylor, QC
For the Branch:	Bode Fagbamiye
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	May 28 & 29, 2008
Place of Hearing:	Victoria, BC
Date of Decision:	June 23, 2008

**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 Bird of Paradise Pub Inc. (dba Bird of Paradise) holds Liquor Primary Licence No. 139491. The hours for the sale of liquor are 11:00 a.m. to 12:00 a.m. Monday to Saturday and 11:00 a.m. to Midnight on Sunday. The patron capacity is 98 in the main area and 20 on the patio. It is a neighbourhood pub located in the Victoria suburb of Saanich, BC. 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'.

Alleged Contravention and Proposed Penalty

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated January 24, 2008. The branch alleges that on January 10, 2008, the licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is a \$5000 penalty (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*).

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 - \$7000.

The licensee disputes the contravention.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act (the Act)*****Drunkenness**

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

ISSUES

1. 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 – 13

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

A branch liquor inspector testified that he has been employed as a liquor inspector for the province of British Columbia since October 15, 2007. He was previously employed as an RCM Police officer for 16 years. During his years of employment he has received training on identifying and dealing with intoxicated persons and has dealt with intoxicated persons on numerous occasions. In assessing the condition of a person suspected of being intoxicated he looks for physical signs, such as: a lack of balance, flushed face, watery eyes, irrationality, sleepiness, boisterous behaviour and lack of inhibitions.

He is familiar with the Bird of Paradise pub. The liquor primary licence (exhibit 1, tab 3) allows the sale of liquor between 11 a.m. and 12 a.m. Monday thru Saturday and 11 a.m. to midnight on Sunday. It is subject to the terms and conditions contained in the branch publication "Guide for Liquor Licensees". A copy of the Guide is provided to all licensees. Excerpts from the Guide in effect at the time of the alleged contraventions are found at exhibit 1, tab 9. He referred to the excerpts dealing with: "Your Role as a Licensee" (p 3); "Over-service and Intoxicated Patrons" (p 13); "Physical Signs of Intoxication" (p 13); "Drink Sizes (p 12 – 13). The floor plan for the establishment defines the red-lined area where liquor consumption is permitted (ex exhibit 1, tab 5).

He testified that he was working as a liquor inspector during the evening/night of January 10, 2008, conducting inspections in the Victoria area. Upon entering at approximately 4:40 p.m. there were approximately 25 patrons present. He immediately observed an older male patron seated at a table by himself, upon which there was an empty mini-jug and a half glass of beer. This patron was exhibiting obvious signs of intoxication; slow body and head movements, speaking loudly, flushed face, sleepiness, dishevelled clothing. The inspector got a glass of water from the bar and took a seat from where he could see and overhear the patron. He made brief hand-written notes of his observations on a "Keno" lottery card (exhibit 1, tab 6, p 1 & 2). He later transcribed these on about February 1, 2008 (exhibit 1, tab 6, p 3).

He observed the patron get up from his table. He rose in an unsteady manner using both hands on the table to support him. His movements putting on his jacket appeared uncoordinated. A server approached him and he put his arm on her shoulder to support himself. He proceeded to the washroom on his own, somewhat stumbling, walking awkwardly and swaying from side to side. Coming out of the washroom a short time later, he proceeded to an outdoor patio smoking area. Later he returned inside and was mildly stumbling and swaying from side to side as he made his way back to his table. He again used both hands on the table to support himself as he sat down. His movements were uncoordinated as he removed his jacket. Seated at the table he exhibited boisterous behaviour, yelling, swearing and reaching out and touching other

patrons passing near the table including “groping” two female patrons who appeared to be uncomfortable with his approach. Pub staff did not take any action, but other patrons told him to settle down and relax.

After observing the patron for approximately 20 minutes the inspector approached and began talking to him. He found him unfriendly, but talkative. He was exhibiting symptoms of intoxication: strong odour of beer on his breath, watery bloodshot eyes, slow jerky eye movements, slurred speech, incongruent sentences, and sleepiness.

Having spent approximately 45 minutes observing the patron and having formed the opinion that he was intoxicated, the inspector spoke with the bartender advising him that he believed that the patron was intoxicated and should not be permitted to remain on the premises. He told the bartender that he would return the following day to speak with the manager. The inspector left the establishment at approximately 5:35 p.m. and proceeded to his office where he made hand-written notes of his observations at approximately 6 p.m. (exhibit 1, tab 6, p 4). He later transcribed these on about February 1, 2008 (exhibit 1, tab 6, p 5) and made a correction to the date shown at the top of the notes. He agreed that none of the notes made refer to his testimony of the patron “groping” the two female patrons as they passed by his table. He testified that his memory on that point was so vivid that he didn’t need to make notes in order to recall the incident.

He completed a Contravention Notice the following day and issued it to the principal of the corporate licensee (exhibit 1, tab 2). The licensee gave him a copy of a “Bar Tab” and told him that it was the tab for the subject patron. The inspector and the liquor inspector responsible for the area in which the pub is located conducted a compliance meeting on January 16, 2008, with the principal of the corporate licensee (exhibit 1, tab 11, p 2). They discussed the observations made at the pub on January 10th and the relevant section of the *Act* and the terms and conditions of the liquor licence. The licensee did not produce any in-house policy manuals or incident logs in effect at the time of the alleged contravention.

The inspector later reviewed the branch file for the pub. In his testimony he referred to the following documents:

- Interview sheet completed at the time that the liquor licence was issued in March 1991. The principal of the corporate licensee was instructed on the requirements of operating a licensed establishment (exhibit 1, tab 12).
- Compliance meeting conducted with the principal of the corporate licensee on June 24, 2003, following a CN of June 12, 2004, for failing to meet the regulatory requirement of checking two pieces of identification for all persons appearing to be under 25 years of age. The licensee committed to ensure that all staff is aware of the requirement (exhibit 1, tab 11).
- CN issued for allowing liquor to be removed from the establishment on June 5, 2003 (Appendix A, NOEA).
- CN issued for advertising contrary to regulations and allowing a device for gambling on December 2, 2002, (Appendix A, NOEA).

The inspector made a determination to proceed to enforcement on the alleged contravention. He completed a NOEA (exhibit 1, tab 1). He felt that a penalty was necessary to gain future compliance by the licensee. He recommended the minimum monetary penalty of \$5,000.

The inspector agreed with counsel for the licensee that the establishment has been licensed for 17 years during which time it would have been subject to countless inspections without previous allegations of over-service. The bartender was co-operative and acted upon his instructions. The principal of the corporate licensee was likewise co-operative. He agreed that one could conclude from that record that it was a well-run establishment.

EVIDENCE - THE LICENSEE

Licensee witness A testified that he has been employed as a bartender at the Bird of Paradise pub since November 2007. He holds a "Serving it Right" (S.I.R.) certificate and understands that patrons are not to be over-served liquor and that intoxicated persons are not permitted to remain in the establishment. On commencing employment at the pub he received training from the bar manager and the head bartender on house policies and was presented with a policy manual that he read and returned. He was told that the pub had a "zero tolerance" policy on the service of liquor to intoxicated patrons. Staff meetings are held at the pub twice a month. His attendance at the meetings is sporadic as he has other employment. As the bartender, he is in charge of the establishment in the absence of managerial staff.

He testified that he was working the day shift of January 10, 2008, from 10:30 a.m. to 6 p.m. He has known the subject patron for over two years from his previous place of employment. He is a regular at the pub. He lives and works nearby and comes in two to three times a week, usually in the afternoon after work. On occasion, he eats there. He knows him to be a nice guy, somewhat eccentric and quirky. He sometimes speaks loudly and makes unusual comments. He has a bad knee and walks with a limp. To some he may appear to be unbalanced. He does not recall him shouting and swearing. That is not permitted in the pub. He did not see the patron lean on the shoulder of the server. Had he done so he would have intervened, as that is not allowed. He recalls that the patron came into the pub on the afternoon that day with a female co-worker. They sat at a table, each drinking draft beer; different brands. The female left after a while and the subject patron remained and continued drinking.

He testified that later in the afternoon the liquor inspector approached him and said that the patron was intoxicated and must leave the establishment. He was shocked because he didn't believe this to be the case. He did not argue with the inspector but requested the night bartender (witness B), now on duty, to ask the patron to leave as he knew the patron better and had a good relationship with him. The other bartender did so.

Licensee witness B testified that on January 10, 2008, he had been employed at the Bird of Paradise for approximately five and one-half years. He had received on the job training and a house policy manual when he first commenced working there and was quizzed on his knowledge of the job by the bar manager. He did not complete his S.I.R. training until last year.

He was working evening shift that date, commencing at 5:30 p.m. He has known the subject patron for three to four years as a patron at the pub. He comes in after work every couple of days. He is outgoing, flamboyant, and sometimes boisterous. His knees and hips bother him. He walks slowly, with a limp. He will sometimes grab the table to lift himself out of his chair. He has never created a problem as a patron at the establishment. When told by the day shift bartender of the liquor inspector's instructions, he requested the patron to leave and explained the reason why. The patron left without incident within two to three minutes. The witness did not believe that the patron was intoxicated. He testified that the patron may have been exhibiting some indications of alcohol consumption, which together with his physical impairment could lead the inspector to believe that he was intoxicated.

Licensee witness C testified that she is a co-worker of the subject patron and has known him as a close friend for approximately four years. He is very communicative person, speaks loudly and gesticulates with his hands. He is friendly, often joking with persons he knows. He is sometimes asked to quiet down. He suffers from leg and back problems and consequently walks slowly and sometimes awkwardly. He moves carefully when he sits down.

On January 10, 2008, they went to the Bird Of Paradise pub after finishing work at 2 p.m., arriving in approximately 15 – 20 minutes. The subject patron ordered a mini-jug of draft beer; she ordered a “sleeve” of a different brand. She stayed approximately one and a half hours, the subject patron remained behind and she believes that he ordered a second mini-jug about the time she was leaving.

Licensee witness D testified that she has been employed at the pub as a server for approximately four and a half years. She obtained a S.I.R. certificate prior to her employment at the pub. When she was first hired she was given a copy of the house policy manual which she spent the first week studying followed by a week working with an experienced server. She was tested on different scenarios. An incident log is maintained. Staff meetings are held twice a month. Staff is informed of past incidents and coming events. The general manager of the pub has given the servers the authority to cut-off liquor service to patrons if necessary and backs them up on their decision. They are told to cut-off patrons exhibiting signs of intoxication or improper behaviour.

She knows the subject patron as a regular who comes to the pub after work two to three times a week. He is a good patron, not the type that you have to keep an eye on. He has a bad back and a problem with one leg consequently he gets up from the table carefully and walks slowly.

She was working the evening shift on January 10, 2008, commencing at 4 or 4:30 p.m. The patron's tab (exhibit 1, tab 4) was transferred to her from another server. He was seated at the table and there was nothing in his behaviour to suggest that he should not be served. Sometime after 4:30 p.m. she told him that she had his tab and asked him if he wanted another mini jug, he replied that he would have a “sleeve” and then be on his way. He did not order any food but would probably have received complimentary chips and salsa. She denied that the patron placed his hand on her shoulder. She would remember if that had occurred. Patrons are not permitted to touch staff. She was

shocked when she learned that the liquor inspector told the bartender that the patron had had too much to drink and would have to leave the pub.

Licensee witness E testified that she has been employed at the pub as a server since September 2005. She corroborated the evidence of witness D on matters regarding training and house policies. She knows the subject patron as a regular customer, two three times a week. He can be loud and sometimes excited but is never a problem. On January 10, 2008, she was working evening shift, from 4 p.m. – 11 p.m. She did not serve him or notice anything out of the ordinary with him. She received his tab from the day server and turned it over to another server (witness D) about 15 minutes later.

Licensee witness F testified that he is the patron, subject of this hearing. He is a regular customer at the pub two to three times a week, after work between 2 to 3 p.m. He always drinks the same brand of draft beer and often orders a meal. His physical health is deteriorating. He has arthritis in his shoulder, knees and back and suffers from sciatic problems. This has resulted in him being unsteady on his feet, walking slowly with difficulty and foot-drag. It impairs his ability to go up and down stairs. He often uses the table for support when getting up from or sitting down in a chair. He is hard of hearing and consequently speaks loudly.

On January 10, 2008, he and a friend went to the pub after work, arriving approximately 2:15 p.m. He normally consumes three mini-jugs of draft beer. His friend had a sleeve of another brand of draft beer. She left after an hour and 45 minutes and he remained by himself. He does not recall having an additional sleeve on that date (exhibit 1, tab 4). Later in the afternoon the bartender (witness A) told him that the liquor inspector said that you have to leave. He said that he didn't believe it. The other bartender (witness B) came over and explained it to him and he left as requested.

He recalls the person later identified as the liquor inspector coming over to the table and speaking to him about his work. The inspector asked to join him at the table, he refused the request. He denied putting his hand on the shoulder of the server. He denies swearing. It is not his practice to talk like that. He was not reaching out and touching female patrons. He denied being intoxicated on that night.

Licensee witness G testified that he is the principal of the corporate licensee and as the general manager has operated the pub since it opened 17 years ago. It has operated without contraventions. He takes his obligations as a licensee seriously. Any problems identified have been dealt with through communication with the liquor inspector responsible for his area. It is a small pub catering mostly to local residents. Food service is emphasized. There is zero tolerance for bad behaviour. They do not allow intoxication. Patrons who appear to be becoming intoxicated are cut-off from further liquor service. They do not serve persons who have been drinking elsewhere.

He testified that the manager who has been at the pub for 15 years is responsible for staff training. The pub has a policy and procedures manual that is used for staff training. It was created for the pub by a national consulting firm and has been updated as necessary. It includes how staff is to deal with issues of intoxication. Servers are empowered to cut-off liquor service where necessary and they are backed up without exception. He has the licensee S.I.R. and all staff are required to have certificates. He was surprised that the bartender (witness B) had not obtained his S.I.R. until after working at the pub for several years. Staff meetings are held twice a month and all staff encouraged to attend. An incident log book is maintained.

He knows the subject patron as a regular who comes to the pub two to three times a week after work. He usually has a meal before leaving. He is a good customer and doesn't create problems. He can be loud and boisterous on occasion if in a happy or excited mood. He has physical problems and can struggle to walk. He doesn't swear and wouldn't be permitted to in the pub.

He testified that mini-jugs contain about 28 – 29 ounces of draft beer. A sleeve is a glass containing about 14.5 – 15 ounces of draft beer.

He was not at the pub on January 10th at the time of the incident. He arrived shortly after, approximately 6:30 – 6:45 p.m. If he or any of the management staff is not present, the bartenders are notified that they are in charge of the operation of the pub in their absence. The bartenders are aware of the pub's policies on intoxication and patron behaviour.

SUBMISSIONS – LICENSEE

Counsel submitted that the Bird of Paradise pub is a small neighbourhood pub and caters to local clientele. Food sales are integral to its operation. The same licensee has operated it since licensed in 1991. There have not been any contraventions and the few problems noted were satisfactorily addressed at the time through the licensee's co-operation with the local liquor inspector. That co-operation extended to January 10, 2008. The inspector requested that the subject patron be removed from the premises and it was done without question. The pub has a policy manual that has been provided to all staff. It has a training program for new staff and holds staff meetings twice monthly. All staff is aware that there is zero tolerance for over-service.

The subject patron is a regular patron two to three times a week. He is well regarded but accepted to be somewhat eccentric. His physical disabilities are evident. He walks slowly and with difficulty. He uses the table to assist him in getting up and sitting down at a table. The evidence of the inspector is that upon entering the pub he immediately formed the opinion that the patron was intoxicated. He formed this conclusion without knowing the patron's condition. He misinterpreted the patron's actions.

The evidence of the inspector that the patron was swearing and groping at patrons, or that he placed his hand on the shoulder of the server, is in contradiction to the evidence of the other witnesses. The inspector did not record all of his observations in his notes.

That is unusual for someone trained as police officer. The inspector could have obtained scientific evidence of intoxication through the use of a portable blood/alcohol device. He did not so.

The liquor inspector was new to the job and overzealous. His testimony was that of an advocate for the branch's position, rather than just being truthful and fair. Thus his credibility must be questioned.

Counsel submitted that the branch must prove, on a balance of probabilities, that the patron was "intoxicated" at the time of the inspector's visit. "Intoxication" is more than "apparently under the influence of liquor." Intoxication by definition comprehends a person who by reason of drinking intoxicants does not have the faculties to act as a reasonable and prudent man. He submitted that the branch has failed to meet the burden of proof that the patron was intoxicated at the time of the inspector's observations.

Counsel submitted that if it is determined that the patron was intoxicated, the licensee is entitled to a defence of due diligence. The best evidence of due diligence here is that this licensee has operated for 17 years without a contravention. The pub has a policy manual that has been provided to all staff. It has a training program for new staff and holds staff meetings twice monthly. All staff is aware that there is zero tolerance for over-service. On January 10, 2008, all staff held S.I.R. certificates. It is not possible for the general manager or manager to be present at the pub at all times. Policies are in place and are carried out by staff. Due diligence is not a standard of perfection, but of reasonableness. It requires a licensee take all reasonable steps. That has been shown here.

REASONS AND DECISION

The evidence of the liquor inspector is that he observed a patron at the establishment for approximately 20 minutes during which the patron exhibited symptoms of intoxication. These included slow body and head movements, speaking loudly, flushed face, sleepiness, dishevelled clothing, boisterous behaviour, yelling, swearing and reaching out and touching other patrons passing near the table including "groping" two female patrons. Speaking with the patron he noted a strong odour of beer on his breath, watery bloodshot eyes, slow jerky eye movements, slurred speech, incongruent sentences, and sleepiness. Although the witness was somewhat partisan in presenting his evidence and has an unusual approach to note taking, I accept him as being truthful and credible.

The evidence of the witnesses for the licensee is that the patron has physical disabilities that lead to him having poor balance and walking slowly and awkwardly. He often uses the table to support himself when getting up from and sitting down into a chair. He is a bit eccentric and can be loud and boisterous. He would not be allowed to be shouting and swearing, or groping other patrons. None of the witnesses observed that behaviour during the period of time in issue. I accept the witnesses as being truthful and credible. However, just because the behaviour is not permitted and was not observed, does not mean that it did not occur. The evidence whether the patron put his hand on the shoulder of the server while speaking with her is on the whole equivocal and I find non-determinative on the issues of credibility or going to the determination of the contravention.

The evidence of the subject patron on his disabilities was straightforward and candid. The remainder of his evidence gives me some doubt. He is a regular customer at the pub, is liked by staff and is well treated and respected. He likes the staff and likes going there. It would be out of his character to act offensively and it would be difficult for him to accept that he acted in such a manner.

The evidence of alcohol consumption is reflected in the patron's bar tab (exhibit 1, tab 4). That together with the evidence of the witnesses indicates that the patron was first served at approximately 2:16 p.m., he left the establishment on the advice of the liquor inspector at approximately 5:35 p.m. A period of 3.5 hours during which he consumed draft beer amounting to three mini-jugs @ 28 ounces plus a sleeve at 14 ounces, a total of 98 ounces of draft beer. While I do not have evidence before me regarding rates of alcohol absorption and elimination, it is generally accepted within the hospitality industry that an adult male will eliminate the alcohol at a rate of one serving per hour. [See for example, the Branch publications "Guide(s) for Licensees"; and the "S.I.R. Program Manual".] A serving of beer is considered a standard 12 ounce bottle. This patron in the space of 3.5 hours consumed the equivalent of eight standard servings. With an elimination rate of one serving per hour the patron had, at the time he was requested to leave, approximately 4.5 servings of alcohol in his system. Again, although there is no evidence before me, it is generally accepted that this will lead to noticeable symptoms of intoxication. [See aforementioned publications.]

On the whole of the evidence before me and taking notice of generally known information within the hospitality industry, I find that the subject patron was intoxicated at the time that he was identified by the liquor inspector to the bartender at the establishment and requested to leave. I am satisfied that those symptoms that were due to the patron's disabilities and character were amplified by the intoxication. The remaining symptoms as observed by the inspector: flushed face, sleepiness, watery bloodshot eyes, slow jerky eye movements, slurred speech, incongruent sentences, are common *indicia* of intoxication.

I find that the symptoms of intoxication were obvious and that the patron should have been requested to leave by staff without the intervention of the liquor inspector. That he was not, leads me to find that the licensee or its employees "permitted" an intoxicated person to remain in the licensed area.

The licensee is entitled to a defence to the finding of the contraventions, 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 problems, it must ensure that those procedures are consistently acted upon and problems dealt with.

Here, the pub has a policy manual that has been provided to all staff. While it would have been useful to have a copy of the manual entered into evidence to leave no doubt that it effectively covered the issue of intoxication and staff responsibilities regarding intoxication, I accept on the evidence, that the manual was adequate for its purpose. The licensee has a training program for new staff and holds staff meetings twice monthly to discuss, among other things any issues that have arisen. All staff is aware that there is zero tolerance for over-service. At the time of the contravention all staff held S.I.R. certificates. When management was not present the bartender on duty was aware of the responsibility of being in charge of the operation of the establishment.

That said the question arises whether staff used their training and knowledge at the time to prevent the contravention from occurring. Having heard and considered all of the evidence, I am satisfied that they did not. They were dealing with a regular patron, well known to them and by all accounts a likeable person. They allowed themselves to believe that the actions of the subject patron were due to his physical disabilities and unique character. The amount of liquor being consumed by the patron was known and should have lead to a greater sense of caution by staff on duty. This includes the bartender who was in charge of the establishment at the time and who was, in a strict legal sense, the directing mind of the licensee.

I find that the licensee has not been duly diligent.

In conclusion, I find on a balance of probabilities that on January 10, 2007, the licensee contravened section 43(2)(b) of the *Liquor Control & Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

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 type for this licensee or this establishment within the year preceding this incident. The range of penalties for a first contravention of 43 (2)(b) of the *Liquor Control and Licensing Act* pursuant to Schedule 4, item 11 is four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

On the whole of the evidence of this case I find that a penalty is not necessary to ensure future compliance. This is a long-standing licensee operating by all accounts a well-run establishment. The same licensee has operated the establishment for a period of 17 years without a contravention. The compliance history of problems occurring at the establishment is minimal and does not relate to intoxication. There is a record of continuing co-operation with the branch. The circumstances of the contravention are unique and, in my view unlikely to be repeated.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: June 23, 2008

cc: Victoria Police Department - Sgt. Jim Simpson

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

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