



**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:	C.P White Holdings Inc. dba Plan B Nightclub 1318 Broad Street Victoria, BC V8W 2A9
Case:	EH09-143
For the Licensee:	Malcolm McMicken
For the Branch:	Olubode Fagbamiye
Enforcement Hearing Adjudicator:	Sheldon Seigel
Date of Hearing:	June 8 & 9, 2010
Place of Hearing:	Victoria, BC
Date of Decision	July 13, 2010

**Ministry of Housing
& Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

The corporate licensee operates Plan B Nightclub located in Victoria, BC. The licensee holds Liquor Primary Licence No. 113949. The hours of sale are 7:00 p.m. to 2:00 a.m., seven days per week. The person capacity is 292. 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*' (the *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 January 27, 2010. The branch alleges that in the early hours of October 31, 2009 (the business day of October 30, 2009), the licensee contravened section 6(4) of the *Liquor Control & Licensing Regulation* (the "*Regulation*") by permitting more persons in the licensed establishment than the person capacity set by the General Manager, and the number of persons in the licensed establishment exceeded the occupant load.

The proposed penalty is a four day suspension in accordance with Schedule 4, of the *Regulation*. Item 15 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type; a licence suspension of four to seven days and/or a monetary penalty of \$5,000.00 - \$7,000.00.

RELEVANT STATUTORY PROVISIONS

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

Capacity

- 6** (1) Before the general manager
- (a) approves the issuance of a licence,
 - (b) approves a structural alteration of or a change to the size of any area of a licensed establishment,
 - (c) approves a transfer of a licence under section 21 (3) of the Act, or

(d) approves an application for an increase in the person capacity of a licensed establishment,

the general manager must set the person capacity of the establishment, having regard to the public interest and the views of a local government or first nation if provided under section 10 or 53 of this regulation.

(2) Once the general manager has set the person capacity of an establishment in accordance with subsection (1), the general manager must refuse to issue, amend or transfer a licence for that establishment if the occupant load of the establishment is not equal to the person capacity.

(3) Despite subsection (2), if the occupant load of an establishment is less than the person capacity of the establishment set under subsection (1), the general manager may issue, amend or transfer the licence for that establishment after reducing the person capacity to equal the occupant load.

(4) It is a term and condition of a licence that there must not be, in the licensed establishment at any one time, more persons than the person capacity set under subsection (1) or (3).

(5) This section does not apply to a U-Brew, U-Vin, licensee retail store, distillery, brewery or a winery without a winery lounge endorsement.

ISSUES

1. Did the contravention occur?
2. In the event that the contravention is found to have occurred, can the licensee establish a defence of due diligence?
3. If the contravention is proven, is a penalty appropriate and what is a reasonable penalty?

EXHIBITS

The following exhibits were presented:

- Exhibit 1** Branch Book of Documents #1, tabs 1 – 15.
Exhibit 2 Electronic data consisting of selected video surveillance.

PRELIMINARY MATTERS

1. At the commencement of the hearing the parties agreed that the person capacity for the establishment is 292 persons and the occupant load for all persons including patrons and staff is 292 persons.
2. The licensee produced selected video surveillance data and sought it to be marked as an Exhibit. He said he discovered the data only the day before the hearing and that there might be some relevance to the data. It shows the exterior of the club and the entrance to the club (stairs). The licensee claims there may be probative relevance to the data, depending on what the liquor inspector says on examination-in-chief. The branch objected to the late disclosure.

Ruling:

I am not prepared to allow the licensee to keep the evidence in his “back pocket” pending the evidence of a branch witness, to be brought out on cross examination of that witness without the branch having had the opportunity to prepare the witness in that regard.

The strict rules of evidence do not apply in an administrative tribunal setting. The ultimate goal must be the fair and expeditious evaluation of available evidence. This goal may be achieved by allowing the short video to be disclosed and viewed by the branch before the hearing continues. That will allow the branch to make an informed objection to the introduction of the evidence, or to agree to its inclusion and prepare its witnesses for any questioning that may

arise as a result of the viewing. I made arrangements for a viewing and excused myself from the hearing room.

After viewing the video, the branch says the data does not demonstrate a comprehensive picture; the data is limited to what happened at the front of the establishment. The branch says the data does not capture what transpired in the dance floor or adjacent room from the dance floor, rather it captures only a small part of the establishment. The licensee asks that the data be allowed as evidence. It claims doing so presents no prejudice to the branch.

Having now seen the data, the branch will experience no prejudice as it can now make submissions and brief its witnesses as to content. The licensee and the branch agree that the value of the video evidence is limited to components of the issues. The licensee says there may be some probative value to some of those components. I rule that the video will be accepted as evidence for the purposes of this hearing. It may be available to any witness for examination in chief or cross-examination and it will remain with me for review until returned to the branch with my draft decision.

3. The licensee sought to introduce photographs with measurements ostensibly to establish the dimensions of the dance floor in the establishment. The branch objected to the introduction on the basis that this evidence requires expert evidence in order to make sense of the measurements and establish its significance to the matter at hand.

Ruling:

The only foundation for the introduction of this evidence is a discussion between the liquor inspector and a member of the licensee's staff that allegedly occurred outside the establishment on the morning in question, wherein differences of opinion were voiced as to how many people could be accommodated on the dance floor. In my view, this discussion is a misdirection of the issue.

The inspector counted a number of patrons within the redlined area of the establishment. The licensee says there was a different number of patrons within the redlined area of the establishment. The only issue before us today is whether the number of patrons in the establishment is above or below the capacities listed on the licence and the occupant load. The potential capacity of the dance floor and its dimensions, an area consisting of only a part of the redlined area, is irrelevant to the issue of the total person capacity of the redlined area of the establishment, the central issue in this matter. The photographic documents are not accepted into evidence.

EVIDENCE

The Liquor Inspector

The inspector said that the Guide (excerpts at Exhibit #1 tab 7) gives an outline of the *Regulation* for the licensee's benefit. The Guide spells out the licensee's obligations in language easier to understand than the *Act* and *Regulation*. It makes the law easily available for the licensee. He also said that the Guide is given to the licensee on the initial inspection and at compliance meetings. He said that the licensee was also made aware that the Guide is available on the internet. He said he provided the Guide to the licensee on the initial inspection when the licensee became the owner of the establishment.

The inspector testified that he has been a full-time liquor inspector for six years and has counted approximately two hundred liquor primary establishments. He said that counting the number of people in an establishment is a significant aspect of his job. He described his training on joining the branch, as field experience counting with senior inspectors. He then used and still uses a mechanical counter and he checks it for zero before and calibrates it after (one click for one number) counting an establishment. He confirmed that he did this on the occasion of inspecting Plan B on October 31, 2009. The inspector described his attendance at the establishment, acknowledging the door-

staff and asking accompanying officers to stand at the entrance to the club and count patrons leaving while the inspector was inside.

He then described his process of counting as follows. He went in about 12:45 am. The lighting was good. It appeared to be crowded. He conducted multiple counts. The officers did not conduct counts. Their role was to protect the inspector and ensure his safety. He used a mechanical counter. Tab 12 [Exhibit #1] is a photo of the counter he used. The inspector did three counts. He went up the stairs. He went in the coat area. He counted patrons going in from the stairs. He circled clockwise through the left room. There is a bar and a lounge area and it is less crowded than the dance floor area. He went to the elevated area from which he could see the whole dance floor and could then count the area behind the dance floor toward the back door. There were no patrons out on the landing area. He counted 428 patrons on his counter. This probably took seven minutes. The count did not include staff. The staff were behind the bars, the door persons were wearing uniforms (dark shirts). He observed that it was extremely crowded, especially at the side of the dance floor.

After returning to the coat area the inspector did a second count in a similar fashion, but counted the dance floor last. His count was 422 patrons. The second count did not include staff. He observed that it was very crowded and there was no change in the appearance of the crowd from the firsts count. He did not count patrons in the washrooms, though he went in and observed patrons there.

Then the police constable and he went downstairs and one of the door staff gave the inspector his counts of 279 and 272. They were joined by the licensee and the head of security. The licensee was upset. Their response was that the inspector's counts were out to lunch and he wanted another count.

The inspector agreed to do another count. The licensee did not say anything about how many people may have left during the first two counts. The inspector did a third count. The head of security came up and he provided the inspector with a count, but he didn't know if the head of security counted or arranged for another staff member to do it.

The two officers outside at the door told the inspector that 87 people had left the establishment and five had re-entered for a net loss of 82 patrons between the time the inspector left the officers to do his first count, and when he came back after his second count. The third count took around seven or eight minutes.

The inspector did the third count in an identical manner as the first two counts; entranceway, coat check, side where lounge area is, dance floor area, then the dance floor and the area adjacent to the dance floor.

The licensee did a count at the same time. The inspector's third count was 346 exclusive of staff and persons in the washrooms. He observed that it was still crowded, but less so, especially around the dance floor.

The inspector identified each of the documents in Exhibit #1.

The Licensee

The primary shareholder of the corporate Licensee (Licensee) testified that he works at the establishment and was in attendance at the time of the inspection. He said he was behind the bar at all relevant times and was in charge of the club on that occasion. He said he is fully aware that the maximum capacity for the club is 292 persons. He identified the head of security. He said the head of security counted persons when the inspector came back for a third count. He said the head of security did not count how many had left. His count was restricted to those inside.

He said that the club has a process for counting patrons. There are two people at the front. One has an *in* counter and one has an *out* counter, and the head of security or one of the others does an internal audit to check capacity. They will do it visually or with a mechanical counter as shown in [Exhibit #1].

He said that he has had training: *Serving it Right for Licensees*, which he believes is mandatory and he got it five and a half years ago. He has no training for security or crowd control, but his door-people are so trained, as it is a provincial requirement.

He was at the bar at the dance floor when the inspector came. He let him and the police do their thing and let the head of security go with the group for safety. The only time he approached the inspector was when he found out the inspector's counts were so high: 428 and 422. The head of security has been with him for four and a half years. He bought the club five years ago.

The manager told the licensee what was going on and he met the head of security at the top of the stairs when he heard what the counts were. Another doorman was on security. The licensee met with the inspector at the top of the stairs. He asked what the inspector's counts were and he said there was no way he was at that number. They proceeded out into the front door area where the inspector went down the street and the licensee followed him with the head of security. The licensee asked the inspector to come back in and do another count. On the street it was rather heated on the part of the licensee as he told the inspector to shut down the club and count everyone on the way out. The numbers discussed on the street were the 428 and 422. The licensee can't recall if the police brought up the people who left. As a result of the conversation the inspector and two police officers went back into the nightclub. The licensee went up the stairs with the inspector and the inspector came back with a count of 352 or 357. The licensee thought that was grossly over what he would deem the occupancy of the room. He did not follow them around when they counted.

The licensee did not provide any door training. The door staff have basic security training. Specifically, he did not train them about door control. As far as he knows that is covered in their course. He did not conduct any specific training with respect to counting patrons. But his head of security has been counting that room for 20 years.

There is no written policy manual for Plan B. When staff members are first employed they are not provided with any written policies or manual. There is a sort of generic manual, but it is not specific to Plan B. There is an incident logbook, but the licensee did not train the staff to write in it. It is mostly for the head of security. Nobody did an incident report for this event.

They have staff meetings. The door staff has a meeting. He will meet with the bartenders, not regularly though. There are no attendance sheets. There is no agenda for the meetings. The meetings are just casual. There are no minutes of the meetings with staff. He has seen the Guide, but has not discussed it with any of his staff or provided it for them to review.

The licensee said he did not do a count at any time that night, and he did not specifically ask anyone to conduct an exit count that night. He added that any door counts would have been delivered to the head of security.

Head of Security

The Head of Security testified that he has been at the club for four and a half years. He has had the opportunity to do hundreds of counts of the club. His job entails hiring and training door staff and doing counts. He has Basic Security Training 1 from the Justice Institute.

He said that he knows the room very well and can count it in about four seconds because he has been doing it for so many years. He trained the door staff to use the mechanical clickers. He has not used an iPhone. He is sure some of the door staff use it. It is not his policy though. It is the policy of the head of security at Plan B that the staff uses the mechanical clickers for counting patrons.

He said the front door staff had a count before the liquor inspector got there. The count was "265-ish" and would have been done by the main doorman. He testified that any door counts would be delivered to the licensee, not to him. He testified that he accompanied the liquor inspector and did his own count when the inspector did his first count, and the result was 257 including those in the washrooms and the staff. He said he did a second count when the inspector was doing his third count, and when asked what the result of his second count was he said, "The door was shut down so it would have been 257."

He further testified that the door staff has a Use of Force Manual. He said it was written by others, but tailored to the club. However, they have no Plan B manual. He also said that he has not, at any time, reviewed the Guide on his own or been provided the guide by the licensee or given it to any of his staff.

The Head of Security did not do a head count of patrons as patrons left after the incident. He did not shut the club down and count persons inside. He did not count as patrons left the club at closing time. He has no final evidence as to how many people exited the club after the inspector left.

Main Doorman

The main doorman testified that among other things, his duties include crowd control and counting patrons. He said that there were clickers "in place" for patrons going *in* and *out*. He described his method for doing a count in the club as follows. He shuts down the front door to keep people from going in and out. He goes upstairs and does a

set path route. He passes by the coat check, then toward the lounge and bar and then clockwise to the entrance to the dance floor. He counts patrons in both bathrooms. He can see everyone in front of the bar and dance floor. Then he moves to the bar and back corner and gets up on the box to count the dance floor.

He said that when he does a count, he either uses a clicker or a counting program on his iPhone. Although he has used both, on this occasion he used his iPhone to record his count. He produced his iPhone and demonstrated its use by opening the counting application and touching the glass screen within an identified location on the screen multiple times as an electronic counter added up the touches. There was no sound accompanying the input.

On examination in chief the witness said that he was advised by the licensee to follow the inspector and do a count. He said he did so and although he does not remember the count, it was under capacity; "around 270-280 persons." He said he told the licensee the results of his count. He said this was the only count he did that night. On cross-examination he said he counted exactly 272 patrons.

He testified that he completed the Serving it Right course, "a few years back when I was a bartender." He also said that at the time he began employment, he was not presented with any written policies and no specific training as to how to count patrons. There are no written policies as to how to count patrons or persons in Plan B. He said there is an incident logbook and he was shown how to use it, but he did not use it on that night. The manager did not discuss the night in question with him at any time afterward. He said there are occasionally staff meetings for sections of the employees (bartenders, servers, managers) but never for everyone, and there are no agendas, minutes of meetings, or attendance provided. Finally, he said that he has never seen or been shown the Guide.

Police Constable

The constable testified that he attended in uniform with two other constables and the liquor inspector. He said that he was asked by the inspector to stay at the door and count people. He and his partner were asked to count people coming in and out while the inspector went upstairs. It was light enough to do the job.

He maintained a count of patrons while they exited. He counted one by one. It was like counting beans. They were coming out in groups of two and three and he counted out loud up to 87. He believes his partner counted five patrons that went in. He provided his count to the liquor inspector. Shortly thereafter the inspector came over and the constable gave him his count number. The constable gave him a count of 87 patrons out and five in.

He eventually entered as there was a conflict of numbers and so he went in with the inspector. His observations were that there were a lot of people. His job was to make sure the inspector was safe, so he didn't do any count. He remembers finding it tough to navigate because he had to bump into people. He said he doesn't like when people have too much access to him. He was very aware of his surroundings and found it hard to stay with the inspector because it was hard to manoeuvre, especially near the dance floor. It was really crowded and it felt tight.

The constable identified his notes at Exhibit #1, tab 10, pages B1, B2.

The Video Surveillance

The surveillance data is of average quality and portrays activity at several discrete sites at the establishment. Notably there is coverage of the stairs from the front door to the redlined area, and the area outside the front door. There is only a small area of the redlined area covered by surveillance and this does not include the bar, at which the licensee was stationed, or the dance floor. The time identified on the video indicates

that at 12:45am the police officers and the liquor inspector arrive. The inspector and one police officer go upstairs and two police officers stay outside the front door. Some minutes later the inspector and police officer begin to descend the stairs. Someone from the club stops the inspector on the stairs and is upset about something. After a short discussion the three individuals go back upstairs. The officer stays at the door until 12:55am when the inspector and police officer inside come down the stairs and collect them and then they all leave.

SUBMISSIONS

The branch submits that each of the elements of the contravention have been established, and therefore the contravention has been established.

The licensee submits that the burden of proof required to establish the contravention is beyond a reasonable doubt. In support, it cites *Plaza Cabaret v. General Manager, Liquor Control and Licensing Branch*, 2004 BCSC 248 at paragraph 12. The licensee submits that the evidence leaves open reasonable doubt about the number of patrons in the establishment, and therefore the contravention cannot be established.

DISCUSSION AND FINDINGS

I find that the person capacity and the occupant load of the establishment are both 292 persons. This was not in dispute.

The liquor inspector counted a large number of people more than are permitted, representing about 25% over capacity. I find that to be a significant excess. And it provides for a large measure of certainty with respect to the status of the room as overcrowded. He counted three times and the counts are close enough to each other to be corroborative. The evidence is that the inspector previously had counted persons two hundred times in liquor primary establishments, so counting is a significant aspect of his job. Upon joining the branch, he was trained in how to count people in licensed

establishments and he was given field experience counting with senior inspectors. He used a mechanical counter and he checked it for zero before and calibrated it after the event. He has been using such a counter for six years. There is no evidence that the inspector had any motive other than to do his job effectively. I found his evidence to be credible. He was consistent on cross-examination, admitted to ancillary mistakes in his notes, and fairly described heated discussions with the licensee as verified by the licensee's witnesses. I find his considerable experience counting patrons in liquor primary establishments, and the consistent and reasonable methodology of his multiple counts, to be supportive of a finding that his evidence regarding the number of people in the establishment was credible.

The Head of Security confidently said he could count the room in four seconds. I find his confidence in this matter to be unsettling. I have reviewed the layout of the establishment and listened to descriptions of sight lines and routes taken by others counting this establishment consisting of two rooms, a dance floor and a bar area, and I find it inconceivable that the whole of the establishment could be reliably observed and 292 people, more or less, counted accurately in four seconds. On cross-examination, this witness was asked about the results of his second count and he replied that his number "would be" the same, as the door was closed. I find this answer to be the result of a process of deduction rather than mechanical counting.

The Head of Security said the main doorman provided a count of "265-ish" before the liquor inspector arrived, but the main doorman did not provide any evidence of that count. He also said that all counts would be normally delivered to the licensee, a statement contradicted by the licensee, who testified that all counts would be delivered to the Head of Security. Overall, I find the evidence of this witness lacks credibility.

The Main Doorman described his route for doing a count based on the layout of the club, almost exactly as was performed by the liquor inspector. I find this confirms the appropriateness of the inspector's route and the likelihood that the route produced the best possibility for an accurate person count. The Main Doorman counted with the

assistance of an iPhone. There was no indication that the device produces an audible beep or click when the glass screen is touched, and indeed during the demonstration of the counting application, there was no audible sound accompanying the visual data. Therefore, when adding a counted patron, one would have to divert one's eyes from the room to check the iPhone after each touch to confirm that the input was recorded by the device. There was no evidence provided that the main doorman did this visual check. Diverting one's eyes from the room so frequently during a count of moving patrons in a busy nightclub certainly would undermine the accuracy of that count, and failing to do so would render the sum of the data collected by the iPhone unreliable.

This witness said on cross-examination that the licensee asked him to count immediately after the inspector left the club, and he reported the results of that count directly to the licensee. The licensee, however clearly testified that he did not ask anyone to do a count and claimed not to have had any such report by the Main Doorman. Also, the Main Doorman first said he didn't remember the count he conducted and provided a range and an estimate, but later provided a confident specific answer of 272 persons. I find the inconsistency of this witness's testimony with respect to the results of his count, his instructions, and reporting back, and the unreliable nature of the iPhone for recording the number of persons counted, renders unreliable this witness's testimony with respect to the number of persons in the club.

The video surveillance data supports the uncontested descriptions of the witnesses as to the movement of the inspector and at least one member of the licensee's staff, and the activities of the police officers outside the front door. The time indicated thereon is more or less confirming of the parties' evidence. None of the witnesses referred directly to the video surveillance in their testimony, and the exhibit provided little in terms of establishing the foundation for, or the resolution of, the relevant issues.

DECISION

Burden of Proof

The licensee argues that the burden of proof is beyond a reasonable doubt. He cites *532871 B.C. Ltd. dba The Urban Well v. General Manager Liquor Control and Licensing Branch*, 2004 BCSC 127. This was a decision of Pitfield, J. who also found that the burden of proof is beyond a reasonable doubt in his decision *The Plaza Cabaret v. General Manager, Liquor Control and Licensing Branch*, 2004 BCSC 248. I note, however, that in the ten subsequent decisions that dealt directly with this issue, the BC Supreme Court has consistently ruled that the burden of proof is on the balance of probabilities.¹ Accordingly, I find that the burden of proof required to establish a contravention in this context is on the balance of probabilities.

Having considered all of the evidence, on the balance of probabilities, I find that on October 31, 2009, the establishment had within its redlined areas more than 292 persons, and therefore the licensee contravened section 6(4) of the *Regulations* by permitting more patrons in the licensed establishment than the patron capacity set by the general manager, and the number of persons in the licensed establishment exceeded the occupant load.

Due Diligence

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. 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, there is little evidence upon which I can find that the licensee was duly diligent. At the time of the contravention the licensee was in charge of the establishment. He was the directing mind of the licensee. He knew the maximum licensed capacity and building occupant load for the establishment. The evidence describes a dearth of written or established policy or procedures, appropriate staff training, or protocol for counting and monitoring the number of persons within the licensed establishment. The evidence casts doubt on whether the directing mind was even part of the chain of command with respect to being advised as to the current number of persons in the club. I find that the licensee has not been duly diligent.

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, or 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 public safety and the well being of the community.

There is no previous proven contravention of the same type for this licensee within the year preceding this incident. Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegation as a first contravention. The range for first contraventions of this type is a licence suspension for 4 - 7 days and/or a monetary penalty of \$5,000.00 - \$7,000.00.

The establishment has faced allegations of overcrowding in the past and the licensee has been required to attend a compliance meeting with the branch in that respect. Notwithstanding these events, the licensee did not put sufficient measures in place to prevent overcrowding.

In the circumstances of this case, I am satisfied that the licensee has not successfully or sufficiently stressed upon its employees the need to fully and conscientiously carry out their duties, and a penalty is necessary to ensure future compliance. Accordingly, since any penalty imposed must be sufficient to ensure compliance in the future, I find that a suspension is necessary to encourage future voluntary compliance. A four day licence suspension is necessary, appropriate and reasonable.

ORDER

Pursuant to section 20 (2) of the *Act*, I order the suspension of Liquor Primary Licence No. 113949 for a period of four (4) days, to commence as of the close of business on Friday, August 13, 2010, 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*).

I direct that Liquor Primary Licence 113949 is to be held by the Branch or the Victoria Police Department from the first day of the suspension until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: July 13, 2010

cc: Victoria Police Department
Liquor Control and Licensing Branch, Victoria Office
Attn: Gary Barker, Regional Manager
Liquor Control and Licensing Branch, Victoria Office
Attn: Olubode Fagbamiye, Branch Advocate

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Zodiac Pub v. General Manager Liquor Control & Licensing Branch, 2004 BCSC 96.

New World Entertainment, dba Richards on Richards v. General Manager Liquor Control & Licensing Branch, 2004 BCSC 616.

Sentinel Peak Holdings Ltd., dba No. 5 Orange Street Hotel v. General Manager Liquor Control & Licensing Branch, 2004 BCSC 885.

Roxy Cabaret Ltd v. General Manager Liquor Control & Licensing Branch, December 14, 2005 oral reasons, Madame Justice B., Vancouver Registry Docket L051346.

Roxy Cabaret Ltd. v. General Manager Liquor Control & Licensing Branch, 2005 BCSC 459.

Aztec Properties Company Ltd., dba Bimini's Neighbourhood Pub v. General Manager Liquor Control & Licensing Branch, 2005 BCSC 1465.

Empress Towers Ltd., dba Royal Towers Hotel v. General Manager Liquor Control & Licensing Branch, 2006 BCSC 325.

Liquor Stores Limited Partnership, dba Cold Beer & Wine To Go Pub v. General Manager Liquor Control & Licensing Branch, 2008 BCSC 1264)

The Publik Restaurant PG Ltd. v. General Manager Liquor Control & Licensing Branch, 2009 BCSC 249.

Miller's Landing Pub Ltd., dba Cat & Fiddle Pub & Bistro v. General Manager Liquor Control & Licensing Branch, 2009 BCSC 1352.