



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 20 of
*The Liquor Control and Licensing Act RSBC c. 267***

Licensee:	Horse Power Hospitality Inc. dba Extreme Peaks Food & Drink 1549 Kicking Horse Trail Golden, BC V0A 1H0
Case:	EH11-037
For the Licensee:	Locklynn Craig
For the Branch:	Bode Fagbamiye
Enforcement Hearing Adjudicator:	George C.E. Fuller
Date of Hearing:	September 14, 2011
Place of Hearing:	Golden, BC
Date of Decision:	November 14, 2011

INTRODUCTION

The Corporate licensee, Horsepower Hospitality Inc., ("the Licensee"), owns and operates an establishment known as Extreme Peaks Food & Drink in Golden, BC. The establishment operates under Food Primary Licence number 301828, and its hours of liquor sale are from 9:00 a.m. to midnight, daily.

The License is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" (the "Guide").

ALLEGED CONTRAVENTIONS AND PROPOSED PENALTIES

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated June 6, 2011.

The Branch alleges that on February 5, 2011, the Licensee contravened Section 42(3) of the *Liquor Control and Licensing Regulation* (the "Regulation"), when an employee consumed liquor while working in the licensed establishment. The proposed penalty is \$1,000 (item 27, Schedule 4, of the Regulation).

The Licensee disputes that the employee in question was working at the time she was observed to be consuming liquor. Furthermore, the Licensee raises a defence of due diligence regarding the employee's consumption while working.

The Branch also alleges that on February 5, 2011, the Licensee contravened Section 43(2)(b) of the *Liquor Control and Licensing Act* (the "Act"), by permitting an intoxicated person to remain in that part of the licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is \$5,000 (item 11 of Schedule 4, Liquor Control and Licensing Regulation).

The Licensee disputes that the Patron was intoxicated. The Licensee also raises a defence of due diligent regarding this allegation.

RELEVANT STATUTORY PROVISIONS

***Liquor Control and Licensing Act* [RSBC 1996] Chapter 267**

Drunkenness

43(2) Licensee or the Licensee's employee must not permit

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

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

Consumption of liquor in licensed establishments

42(3) A Licensee, and the employees of the licensee, must not consume liquor while working in the licensed establishment.

ISSUES

1. Did the contraventions occur?
2. Was the Licensee duly diligent?
3. If the Licensee was not duly diligent, are penalties warranted under the circumstances?
4. If penalties are warranted, what are the appropriate penalties?

EXHIBITS

The following documents were submitted for consideration:

Exhibit 1: The Branch's book of documents, Tabs 1 to 13.

Exhibit 2: Document entitled, "Serving It Right™ - BC's Responsible Beverage Service Program – Program Manual, dated May, 2010".

Exhibit 3: Waymarker Hospitality Document entitled, "Front of House Training Manual".

EVIDENCE OF THE BRANCH

Inspectors 1 and 2

The Branch called two liquor inspectors in support of its case. Both inspector 1 and inspector 2 have received formal training with respect to identifying the signs of intoxication over the previous five year period, and they have recently taken a course developed and presented by Wayne Jeffery, a toxicology consultant and forensic alcohol and drug expert routinely utilized by the RCMP as an expert witness. The course mainly dealt with the effects of alcohol and drugs on the body.

Inspector 1 has conducted approximately 300 inspections during the two years that he had been with the Branch, together with approximately 700 inspections in his Alberta experience, for a total of approximately 1000 inspections over the previous five year period. Inspector 2, in one year with the Branch, has conducted several hundred inspections.

On the late evening of February 5, 2011, the inspectors were conducting covert inspections of liquor establishments in the Golden, B.C. area. At approximately 10:30 p.m., they entered the Licensee's establishment and noted that, although the light was dim, the entire establishment could be easily observed. They selected two seats at the north end of the service bar and from this vantage point they had unobstructed lines

of sight of the entire establishment. There were approximately 55 patrons in the establishment, including 15 to 20 patrons on the dance floor. There were six staff members on duty.

As they sat down, the bartender inquired as to their drink orders, and they were promptly served. At approximately 11:20 p.m., inspector 2 brought to the attention of inspector 1 an allegedly intoxicated patron (the "Patron"). Inspector 1 noted that the Patron was unsteady on his feet, lacked the ability to concentrate, had one eye drooping and both eyes were bloodshot. At one point the Patron was as close as one foot from inspector 1 when he passed behind inspector 1 and sat beside him. The inspectors observed this Patron for approximately 27 minutes, from the time they spotted him until they left the premises. During that time, the Patron was observed by inspector 2 with a glass of beer in his hand. The Patron was very visible to the inspectors and the staff.

The inspectors also observed a female server (the "Server") engaged in conversation with the Patron. She provided him with a glass of water and assisted him to the washroom area. She then proceeded to talk to each of the staff to warn them with regard to this Patron. At this time, the Server was observed drinking from a bottle of Dos Equis beer while talking to the Patron and while carrying out her duties. She was very visible as staff were frequently in that area of the bar in order to access the POS machine. After escorting the Patron to the washroom area, she resumed her duties behind the bar collecting glass ware and wiping down various surfaces behind the bar. She then returned to the bottle of Dos Equis beer, behind the bar, near the POS machine and drank from it. At this point she was approximately four feet away from the inspectors.

When the Patron exited the washroom, he passed behind the inspectors on his way to the other end of the service bar. At this time, he was approximately one foot away from the inspectors. He was disheveled, was having trouble walking a straight line and had a strong smell of liquor on his breath. The inspectors left the bar at 11:47 p.m. Inspector 1 had made notes on his cell phone inside the establishment and placed them on his computer the following morning.

Although the Branch requested disclosure of documents pertaining to these alleged contraventions, it did not receive minutes of staff meetings, incident logs, video surveillance, written policies and procedures with regard to alcohol management and intoxication, or written policies with respect to employees consuming alcohol at work.

Inspector 1 stated that it is the Licensee's responsibility to ensure that staff do not consume alcohol while at work. Inspector 1 recommended a monetary penalty rather than a suspension, due to the fact that the Licensee's establishment operates seasonally.

Inspector 1 felt that enforcement action was necessary in order to ensure that the licensee would take steps to prevent intoxicated patrons from remaining and accessing liquor. Intoxicated patrons can reduce a licensee's ability to control its establishment.

Inspector 1 confirmed that the Branch had not received a complaint about the Licensee; rather the Branch's Regional Manager had directed they inspect licensees serving the ski hill and surrounding area. Accordingly, a total of five licensed establishments were inspected on the night in question.

The inspectors observed the Patron mostly standing, except for when he was talking to the Server, while she was behind the bar. She was collecting glasses for cleaning and wiping down surfaces. Inspector 1 confirmed that he did not see the Server serve any liquor in the establishment, including to the Patron. Inspector 1 also confirmed that he did not see the Patron drinking at any time. He also never had a conversation with the Patron, nor did he notice that the Patron had a glass in his hand.

Inspector 1 also agreed that the red line covered every area in the establishment, except the kitchen and kitchen office.

LICENSEE EVIDENCE

The Licensee called three witnesses in support of its case.

Bar Manager

The first witness was the Licensee's Bar Manager, who was on duty at the time of the alleged contraventions. He obtained his Serving It Right certification in 2002 and has worked in various food and beverage establishments in Harrison Hot Springs and Golden since that time. He worked at the Licensee's establishment during the winter of 2009 and 2010 and received training at that time which consisted of reviewing the Licensee's manual and reading the Serving It Right materials. He again worked at the Licensee's establishment in the summer of 2011 and, approximately half way through the winter of 2010- 2011, he was promoted to the position of Bar Manager.

On the evening of February 5, 2011, there was a wine tasting event which had concluded and the bar was not busy. The Bar Manager has known the Patron since 2004. He had been a customer of another restaurant where the Bar Manager had previously worked, as well as the Licensee's establishment. He was in the establishment that night with his wife. The Bar Manager did serve drinks to the Patron, but eventually ceased service to him, as the Patron was starting to show signs of

intoxication, particularly the fact that his eyes were slightly closing. Accordingly, the Bar Manager called the taxi company and the Patron waited for the taxi to arrive. This occurred at approximately 11:00 p.m. on the night in question. The Patron sat at the bar and waited for the cab to arrive, which it did at approximately 12:30 a.m., and he left with his wife. In the Bar Manager's opinion, the Patron was nearing intoxication.

The Patron had been skiing that day. The Bar manager did not take the Patron to the washroom as he was, "totally fine". He did not recall the Patron going to the washroom. At approximately 10:30 p.m., a bus load of approximately 50 people came into the establishment at the same time. The Bar Manager was busy serving customers and the Server jumped behind the bar in order to help out. She cleaned glasses and put them away for approximately ten minutes and when he was caught up he told her he did not need her anymore, and she returned to her seat. Her shift ended at 10:00 p.m., and the Bartender had served her a glass of wine before she jumped in to help.

The Bar Manager stated that the Licensee complies with the Act, by ensuring that when customers are at the point of intoxication, the Licensee makes sure that the customer gets home safely, as the establishment is liable until they get home. Furthermore, when asked to leave, a customer can go up to a room in the hotel, and if that is not possible, the Licensee will get the customer down to town somehow.

The Bar Manager said that he was the manager in charge at the time in question. He acknowledged that the Patron was displaying signs of intoxication and that was the reason that he was cut off. He also said that he did not know if the Patron had been escorted to the washroom because he was busy with other patrons. He also did not designate any of the staff to monitor the Patron while he was waiting for the cab. He also said that the Licensee had not reviewed the pertinent provisions of the Guide with him. He further said that when he wrote the Serving It Right exam it was for the purpose of establishing that he had a good understanding of the program. With regard

to the Licensee's training manual, he confirmed that the new manual was not in existence at the time of the contravention but was rolled out in August, 2011.

Finally, the Bar Manager stated that the practice of an off-duty employee assisting an on-duty employee is not permitted by this Licensee.

The Server

The Licensee's next witness was the Server. She works part time in the hospitality industry. Previous to the Licensee's establishment, she served alcohol while working at a restaurant in Vernon and another restaurant at the Silver Star Ski Resort. Since arriving in Golden, she worked for another establishment, where she received formal training with regard to intoxication. She received her initial Serving It Right training at the Vernon restaurant, and again, approximately four years ago, at a pub in Golden.

On February 5, 2011, she was working a six hour shift from 4:00 p.m. until 10:00 p.m. at the Licensee's establishment. She has known the Patron and his wife for approximately four years. She served the Patron during her shift, but she did not serve him drinks after 10:00 p.m., and she had no further interaction with the Patron after that time.

At the conclusion of her shift, she had a glass of wine with friends. All at once a large party arrived. The Bar Manager initially had everything under control, but she knew that when he ran out of glasses that he would be in some difficulty, so she cleaned up glasses. When she was finished the Bar Manager asked her to leave, and she left. She advised that she never drank Dos Equis beer.

She advised that she served the Patron approximately three drinks between 4:00 pm and 10:00 pm. She did not provide water to the Patron, nor did she walk him to any washroom. She was behind the bar for approximately 15 minutes.

As far as training was concerned, she reviewed the Guide with the Licensee at the beginning of the season, in November 2010. She did not remember the subjects which were reviewed, and staff meetings were casual, and did not include agendas. She also confirmed that Exhibit 3 in these proceedings, being the Front of House Training Manual, was not in existence prior to the time of the alleged contraventions, and that no written tests on the Manual had yet been implemented.

The Patron

The Licensee's last witness was the Patron.

On Saturday, February 5, 2011, the Patron got up at 5:00 am and drove his daughter to a function, and then returned home and got ready to ski. He skied at 10:00 am, had lunch at the Licensee's establishment, at approximately noon, and at the end of the day stopped for a drink at the Licensee's establishment. He then proceeded home for approximately four hours, had dinner and returned to the Licensee's establishment at approximately 7:30 p.m. to 8:00 p.m. He left the Licensee's establishment at approximately 12:30 a.m. with his wife and a close family friend. He picked up the tab in the amount of \$64.39. At approximately 11:00 p.m. the Bar Manager said to him, that "you probably don't want any more beer", to which he replied, "No I don't, give me water and coffee". He then asked the Bar Manager to call him a cab, as it was very cold out. He and his wife waited approximately one and one-half hours for the cab ride. He says that he was not intoxicated, but may have been tired. For him, the signs of intoxication included falling down, slurring words, the person being tough to listen to and stumbling.

The Patron also denied that he had help getting to the washroom. If he had been asked to leave the establishment, he could have sat outside, except it was very cold that night, or he could have walked, or hitch-hiked home.

The Patron said that the Server served him two or three drinks as did the Bar Manager. He denied that he had been told that he was cut off, as he had asked that they call a cab for him. The mutual agreement to stop drinking occurred at approximately 11:00 p.m.

SUBMISSIONS OF THE BRANCH

The Branch submits that it has demonstrated on the evidence that on the evening of February 5, 2011, between the hours of 11:20 p.m. and 11:47 p.m., the inspectors observed the Patron and noted that he was unsteady on his feet, lacked the ability to concentrate, had one eye drooping, both eyes were bloodshot and he had liquor on his breath. He was behaving in a manner that should have drawn attention to the fact that he was intoxicated. At all times, the Patron was within the redline area of the Licensee's premises. The inspectors did not observe any staff member attempt to remove the Patron from the Licensee's establishment.

The inspectors, during this same time, observed the Server drinking from a bottle of Dos Equis beer, while working behind the service bar of the Licensee. The inspectors did not observe any staff members deal with this Server, by advising her not to drink while working.

Accordingly, the elements of the contraventions have been made out.

SUBMISSIONS OF THE LICENSEE

The Licensee agrees with the Branch's assertion that for the purposes of Section 42(3) of the Regulation, "working" applies to both the situation where one has been invited or asked to perform tasks by one's employer, as well as the situation where one has chosen to do so voluntarily without being asked. The Licensee also agrees that if an employee is working, then he or she has to comply with the prohibition against drinking. In the instant case, however, the Licensee submits that based on the evidence of the Server, she had remained in the establishment after her shift ended, had a glass of wine, and returned to work to assist the Bar Manager by cleaning glasses and wiping down the bar and then returned to her seat and finished her glass of wine. In these circumstances, the Server's alcohol consumption occurred before she commenced working and then after she was done. It did not take place during the time that she was helping out, therefore, the Licensee cannot be said to have contravened Section 42(3) of the Regulation.

With respect to Section 43(2)(b) of the Act, the Licensee submits that there is no time frame attached to the duty not to permit an intoxicated person to remain in the establishment and that it depends upon the circumstances. This means that an intoxicated person must be removed from the establishment within a reasonable time.

The Licensee adds that the evidence of the inspectors is inconsistent with the evidence of its witnesses and so is not credible and should not be relied upon in deciding this case. The Licensee submits that the Patron was not intoxicated but rather he was tired. He is a regular customer and an upstanding member of the community, and although there were signs that he was intoxicated, there are alternative explanations for some of his symptoms.

With regard to the issue of due diligence, the Licensee says that there was nowhere within the establishment that the Patron could have been placed, while waiting for a cab. In regard to the suggestion that the Bar Manager was not monitoring the Patron, the Licensee says that, at all times, from 11:00 p.m. to 12:30 a.m., a period of 90 minutes, the Bar Manager was within two feet of the Patron.

The Licensee says that it trains its staff at the beginning of each winter season and, therefore, they are aware of the Licensee's policies. Those policies also reflect the requirements of the Serving It Right program regarding cutting a person off, calling a cab and waiting for the cab to come. In the instant case, the Licensee states that it does not even need the due diligence defence, because the Bar Manager did not contravene Section 43(2)(b) of the Act and he did exactly what he should have done and what he was trained to do. Furthermore, the alternative of placing the Patron outside was not a viable alternative, as he could have been negatively impacted by the weather and the Licensee could be sued as a result. Likewise, the Licensee believes that the alternative of placing the Patron in the hotel could place the Licensee in breach of provisions of Section 41(1) of the Act which says that a person who is intoxicated must not be or remain in a public place.

The Licensee says that video surveillance is unnecessary and is not part of due diligence. As to training materials, the Licensee submits that both the Bar Manager and the Server had the previous versions of the Front of the House training manual. This new manual is a state of the art training and procedure manual and is much better than the first two versions. It was released after this contravention and although formal certifications attached to the manual are contemplated, none have been issued to date.

The Licensee says that even if they are found to have permitted an intoxicated patron to remain and that they were not duly diligent, no penalty is required. The purpose of Branch enforcement should be to ensure that the Licensee understands and trains to the legislation. The Licensee says that it now knows what the law requires and that this has been part of a learning process.

ANALYSIS AND DECISION

It is abundantly clear that there are direct conflicts in the testimony of material witnesses in this case and, therefore, credibility is an issue. Accordingly, this requires the application of the principles of in the case of *Faryna v. Chorny* [1952] 2 DLR 354 B.C.C.A., which states as follows:

The credibility of witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried the conviction of truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities in which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

When this test is applied to the testimony of the witnesses of both sides in this dispute, I am compelled to accept the testimony of the two liquor inspectors over the testimony of the Licensee's witnesses. This is not to say, in any way, that the version of events attested to by these latter witnesses was deliberately untruthful or deceptive. It is simply that it is not, in my view, in harmony with the preponderance of probabilities surrounding the circumstances of this case.

To begin with, the entire mission of the two inspectors was to observe the Licensee's operations at the time in question. This was their sole purpose and, therefore, they were not distracted by any other events. In addition, any potential for further distraction was eliminated by the fact that they carried out their duties in a covert fashion. This undistracted focus should be compared with the mind set of the staff and, in particular, the Bar Manager and the Server particularly at the critical time when approximately 50 patrons engulfed the Licensee's establishment, to the point where the Bar Manager was having difficulty keeping up with the orders and the Server jumped in to assist him. There was simply not the same degree of vigilance being exercised by the Bar Manager and the Server compared to that being exerted by the liquor inspectors.

In addition, inspector 1 made contemporary notes of his observations regarding both the Bar Manager and the Server, on his cell phone, while he was in the Licensee's premises. Those notes were formalized the following morning. Inspector 1's testimony at the hearing was completely consistent with those notes. In comparison, none of the Licensee's witnesses offered any documentary evidence with regard to the events surrounding the alleged contraventions, including incident reports or log books.

In light of the above, I find that the testimony of the inspectors is to be preferred in this case.

Having so found, and having reviewed and considered all of the evidence, both oral and documentary, the submissions of the parties, as well as the applicable law, I have, on a balance of probabilities, concluded that on February 5, 2011, at approximately 11:00 p.m., the Licensee contravened Section 43(2)(b) of the Act, by permitting an intoxicated patron to remain in that part of the Licensed establishment where liquor is sold, served, or otherwise supplied. In the course of reaching this conclusion, I am satisfied that 1) the Patron was intoxicated. 2) the Licensee knew or ought to have known that the Patron was intoxicated. 3) the Patron remained in that part of the

establishment where liquor is sold, served and supplied. 4) the Licensee did not take steps to promptly remove the Patron.

I have noted the Licensee's submission that Section 43(2)(b) does not contain a provision setting out a time limit for allowing an intoxicated patron "to remain", and, therefore, it depends on the circumstances. The proper interpretation is that an intoxicated person must reasonably be removed and not allowed to remain. In my view, had the legislature wished to insert the word "reasonably" into Section 43(2)(b) of the Act then it could have easily done so. Clearly, however, it has not. In doing so, it had obviously chosen to impose strict adherence to this provision of the Act.

Furthermore, given the fact that the Licensee's establishment did not contain an area outside of the red line for a patron to wait for a cab, particularly in inclement weather, the Licensee should have anticipated that this very situation could occur and, therefore, attempted to devise creative methods of dealing with the situation, including seeking the assistance of the Branch. In this latter regard, the Guide, at page 10, provides under the heading, "Help is Available" that, "We know how difficult it can be to operate a licensed establishment, and understand the challenges you may face in consistently following B.C.'s liquor laws. You should always feel free to discuss potential enforcement problems with a liquor inspector or another branch employee. If you have any concerns or questions, please contact your local liquor inspector or write, telephone or email the Liquor Control and Licensing Branch". Notwithstanding the availability of such assistance, however, the onus of identifying a potential contravention of the Act, or the Regulation, and resolving it lies squarely with the Licensee at all times.

In addition, I have, on a balance of probabilities, concluded that on February 5, 2011, between approximately 11:20 and 11:30 p.m., the Licensee contravened Section 42(3) of the Regulation when the Server consumed liquor while working in the licensed establishment. In the course of reaching this conclusion, I have satisfied myself that 1) the Server was an employee of the Licensee. 2) the Server was working at the time that she was consuming alcohol. 3) the Licensee ought to have known that the Server was consuming alcohol while working, and 4) the Licensee did not take steps to prevent the Server from consuming alcohol.

I have also noted the submissions of the Licensee to the effect that, although the Server consumed liquor following the end of her shift at 10:00 p.m. and returned to her position and consumed alcohol after assisting the Bar Manager, she was not consuming liquor while working. Although that view might have some attraction, it does not accord with the evidence that I have preferred with regard to the observations of the inspectors. In particular, inspection 1 in both his notes and his viva voce evidence was clear that from his vantage point, approximately four feet from the Server, that and after assisting the Bar Manager, she returned to a bottle of Dos Equis beer near the POS machine behind the bar and drank it. As this occurred prior to her returning to her chair, the inescapable conclusion is that she drank the alcohol while she was working.

DUE DILIGENCE

The Licensee is entitled to a defence to the contravention, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The Licensee must not only establish the existence of procedures to identify and deal with problems, but it must ensure that those procedures are consistently acted upon and problems are dealt with in a timely fashion.

With regard to the omission of the Bar Manager to remove the intoxicated Patron, I have already expressed my view that the Licensee should have anticipated this situation and sought solutions to same, however, there is no evidence that this occurred.

The Licensee says that it has established policies and that the Licensee's employees follow those policies. Unfortunately, no such policies were placed in evidence in order to allow for an assessment of the efficacy of those policies with respect to the Licensee's operations. The Licensee advises that since the alleged contraventions, a comprehensive training manual had been developed (Exhibit 3 in this proceedings), which is much better than the first two but, again, there has been no opportunity to determine whether those previous versions were satisfactory.

As to the value of testing staff on policy and procedure to ensure understanding and compliance, the Licensee says that the Bar Manager did have a test. Once again, no such tests were placed into evidence. In any event, he agreed in his testimony that the purpose of tests was to establish that staff had a good understanding of the program.

In light of all of the above omissions and deficiencies, I have concluded that the Licensee, in this case, is not entitled to the benefit of the defence of due diligence.

PENALTY

Pursuant to Section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation and or the terms and conditions of the Licence, I have discretion to order one or more of the following enforcement actions:

- Impose a suspension of the Liquor Licence for a period of time;
- Cancel a Liquor Licence;
- Impose terms and conditions to a 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 by the minimum set out in Schedule 4 of the Regulation. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalties proposed in the Notice of Enforcement Action.

The Branch's primary goal in bringing enforcement action and imposing penalties is to achieve voluntary compliance with the Act, the Regulation, and the terms and conditions of the licence. 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.

Schedule 4, Item 11 of the Regulation, sets out penalties for first contraventions of Section 43(2)(b) of the Act, a licence suspension of four to seven days and/or a monetary penalty of between \$5,000 to \$7,000. The Branch has recommended a monetary penalty of \$5,000 which is the minimum monetary penalty for this particular contravention.

Schedule 4, Item 27 of the Regulation, set out penalties for first contraventions of Section 42(3) of the Regulation, a licence suspension of one to three days and/or a monetary penalty of between \$1,000 and \$3,000. The Branch has recommended a \$1,000 monetary penalty, which is the minimum monetary penalty for this particular contravention.

There can be no doubt but that contraventions of Section 43(2)(b) of the Act and Section 42(3) of the Regulation are at the high end of the seriousness scale. Intoxicated patrons are often associated with violence, be it as a victim, or as an initiator. Furthermore, when staff drink liquor while working, their judgment and ability to manage and control the establishment may become impaired. This creates a public

safety risk for other staff, patrons and the community. Accordingly, the Licensee must ensure that its staff are compliant with the Act and the Regulations at all times.

There are no proven contraventions of the same types for this Licensee within the year preceding this incident, nor are there any allegations which the Branch did not pursue, or records of compliance meetings held.

Taking into consideration all of the above, I am satisfied that \$1,000 for the contravention of Section 42(3) of the Regulation and \$5,000 for the contravention of Section 43(2)(b) of the Act are necessary in order to bring the Licensee in this case into compliance.

ORDER

Pursuant to Section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the total of Six Thousand Dollars (\$6,000) to the General Manager of the Liquor Control and Licensing Branch on or before December 13, 2011.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: November 14, 2011

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

Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Bode Fagbamiye, Branch Advocate