



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 51 of
The Liquor Control and Licensing Act, S.B.C. 2015, c. 19

Licensee:	Sanoor Investments Ltd. dba Executive Plaza Coquitlam 1080 Howe Street Vancouver, BC V6Z 2T1
Case:	EH16-160
For the Licensee:	Roger Gibson & John Teti
For the Branch:	Hugh Trenchard
General Manager's Delegate:	Nerys Poole
Date of Hearing:	May 9, 2017
Date of Decision:	May 31, 2017

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The corporate licensee, Sanoor Investments Ltd. (the "licensee") owns the Executive Plaza Coquitlam at 405 North Road in Coquitlam. The licensee holds Liquor Primary Licence Number 010354 (the "licence"). A third party operator, Foggy Dew Irish Pub Coquitlam Inc. (the "third party operator"), operated the pub. At the time of the alleged contravention, the establishment was known as the Foggy Dew Pub (the "pub"). The Foggy Dew Pub closed its doors to the public on December 31, 2016 and terminated its role as third party operator of the pub on January 5, 2017.

According to the terms of a settlement agreement between the corporate licensee and the third party operator, the third party operator agreed to pay any penalty arising from a finding of a contravention on this matter (Exhibit 2, tab 6). The authorized representatives of the third party operator and of the corporate licensee, Roger Gibson and John Teti, appeared at the hearing and gave their testimony. As the authorized representatives of both the corporate licensee and the third party operator, I use the term "licensee" and "third party operator" interchangeably throughout this decision. I use Mr. Gibson's and Mr. Teti's names when referring to their testimony.

According to the terms of its licence, the licensee may sell liquor from 11:30 a.m. to 1:30 a.m., Monday to Thursday and from noon to 2:00 a.m. from Friday to Sunday. (Exhibit 1, tab 3). The person capacity on the licence is 388 in the interior of the pub and 56 on the patio, for a total person capacity of 444. The occupant load for the interior and the patio is a total of 444 persons. (Exhibit 1, tab 4)

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").

On January 23, 2017, the *Liquor Control and Licensing Act*. R.S.B.C. 1996, c. 267 (the "Former Act") was replaced with the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Current Act") which came into force on that date. Therefore, although this hearing was held under the provisions of the Current Act, as the contravention

occurred prior to January 23, 2017, this decision is in accordance with the provisions of the Former Act and the Former Regulation.

For the purposes of this hearing, and in accordance with section 5 of the Current Act, the general manager has delegated to me the powers, duties and functions provided to the general manager by section 51 of the Current Act and Part 6 of the current *Liquor Control and Licensing Regulation*.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "branch") allegations and proposed penalty are set out in the Notice of Enforcement Action dated January 16, 2017 (the "NOEA").

The branch alleges that on Friday, December 16, 2016, the licensee contravened section 6(4) of the *Liquor Control and Licensing Regulation* (the "Former Regulation") by overcrowding beyond the licensed person capacity and more than the occupant load. The NOEA recommends a \$7000 monetary penalty. The penalty range for a first contravention of this type is set out in item 15, Schedule 4, of the Regulation: a \$5000 to \$7000 monetary penalty or a four to seven day suspension.

The licensee does not dispute that the overcrowding occurred on December 16, 2016. The licensee says it has exercised due diligence in the management of its operations and thus has a full defence to the contravention.

RELEVANT STATUTORY PROVISIONS

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

Capacity

6(4) It is a term and condition of the licence that there must not be, in the licensed establishment at any one time, more persons than the person capacity under subsection (1) or (3).

ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

- Exhibit 1: Branch Book of Documents, tabs 1 to 18
Exhibit 2: Licensee's Documents, tabs 1 to 8
Exhibit 3: Curriculum vitae of expert witness

WITNESSES

A liquor inspector testified for the branch.

The licensee called four witnesses:

- an expert witness on the standard of care on security issues (the "expert")
- the general manager of the pub and employee of the third party operator (the "general manager")
- Roger Gibson, the third party operator's and licensee's representative at the hearing ("Mr. Gibson")
- John Teti, the third party operator's and licensee's representative at the hearing ("Mr. Teti")

BRANCH EVIDENCE

The liquor inspector who attended on the night of December 16, 2016 and who authored the NOEA, was the only branch witness at the hearing.

Evening of December 16, 2016

On the night of December 16, 2016, the liquor inspector and three members of the Coquitlam RCMP were conducting routine inspections of several establishments in Coquitlam and Port Coquitlam. They arrived at the pub at approximately 11:20 p.m. The liquor inspector and RCMP Constable 1 noted approximately 100 patrons in the line-up outside the pub. The liquor inspector spoke to the head doorman who was at the entrance and requested a count of the patrons. The head doorman stated they were at capacity. When the liquor inspector asked for the number, he uncertainly replied 400 but was not sure as the other doorman had the counter. The liquor inspector saw no other doorman in the immediate area. When the liquor inspector asked the head doorman why the person with the counter was not at the entrance, he replied that at this point he was just trying to keep the peace.

The liquor inspector entered the pub and noted it to be extremely crowded around the entrance. The liquor inspector decided a count was necessary and advised the head doorman to hold entry and exit of patrons until she could complete a count. The liquor inspector also asked RCMP Constable 1 to monitor patrons leaving the pub.

The liquor inspector initiated a mechanical count near the front entrance and moved towards the end of the pub. She stated that patrons were shoulder to shoulder and that she had to push her way through the crowd toward the other side of the bar while attempting to count. She said it was difficult to see beyond one foot of space due to the density of the crowd. She managed to count to the end of the bar and then a short distance towards the dance floor when she abandoned the count at about 200. She said she did not feel confident about the accuracy of the count due to the extreme density and movement of the crowd. When she reached the end of the bar, she looked towards the back of the pub and noted the same density. She felt it was dangerously overcrowded and that she could not complete a count in an accurate and safe manner. She noted that, despite her request to the security staff, patrons continued to enter and exit the pub.

She gave up counting and returned to the entrance and went outside where she spoke with two of the RCMP Constables and explained she was unable to do an accurate

count because of the density of the crowd. The liquor inspector spoke to the head doorman and told him it was extremely overcrowded inside. He nodded his head and admitted that he had stopped counting at 620. He said he lost control after 620 and did not know how many were inside after that point. He did not remember or did not know what time he stopped counting. The liquor inspector asked to speak to the manager on duty.

The liquor inspector and RCMP Corporal spoke to the manager on duty (the "pub manager"). He had no idea how many patrons were inside the pub and told the liquor inspector it was not his responsibility but rather the security staff's responsibility. The liquor inspector and the RCMP Corporal advised the pub manager that the pub appeared dangerously overcrowded. The liquor inspector and the RCMP corporal informed the pub manager and the head doorman that they must shut down the pub in order for a count to be conducted and in order for the capacity to be brought down to the approved number.

The liquor inspector conducted a mechanical count of patrons exiting the pub until the pub was about half cleared. The liquor inspector requested the pub manager, the security staff and the police to hold exit/entry as there was now ability to move inside the pub and there was a massive crowd of patrons to deal with outside the pub. The liquor inspector completed the remainder of the count inside. Her total count was 664. An RCMP Constable who was assisting in the inspection conducted a count of the patio at the same time and counted 37, for a total approximate count of 701.

At the same time RCMP Constable 1 conducted a count of patrons exiting the pub. He had initiated this count approximately on arrival. When the pub was cleared by approximately half, his count was 402. At this time, one of the security staff conducted a count of the interior. His count was 379, for a total approximate count of 781.

At approximately 12:23 a.m., when the pub was mostly cleared, the RCMP Corporal and the liquor inspector advised security staff and the pub manager of the results of their counts. The head doorman reiterated that he had stopped counting at 620 and that they had lost control of patrons entering the pub. The pub manager was not aware of this and, according to the liquor inspector, again stated it was not his responsibility.

The liquor inspector believed both the pub manager and the head doorman were in charge on the evening of the contravention. She was not aware of any other managers present.

The liquor inspector asked the head doorman to conduct a count of the patrons remaining inside the pub. He did so and reported a count of 135. At this time, RCMP Constable 1's exit count was 601, for a total approximate count of 736.

When the liquor inspector was asked at the hearing if she was aware of any complaints from patrons or staff, she stated that the general manager told her at a meeting on December 21, 2016 that a staff member, possibly a server, had complained to security and had asked them to stop letting people into the pub. The security staff however did nothing.

The liquor inspector consulted with her regional manager via telephone to discuss the circumstances of the evening. After that discussion, she allowed the pub to re-open with the patron count starting at 135. She advised the pub manager that she would be issuing a contravention notice for overcrowding and that there would be follow up in the next week.

The liquor inspector described the overcrowding as beyond anything she had experienced in her ten years working in the area. She said the overcrowding was so obvious that she could not understand why no one in the pub was dealing with it and trying to reduce the numbers.

The liquor inspector referred to the notes of RCMP Constable 1 and the RCMP Corporal at Exhibit 1, tabs 11 and 12 and noted that she agreed with their description of the evening as set out in their statements. The statement of the RCMP Corporal referred to the pub manager telling him that he had too much to do and was not aware the pub was over capacity. RCMP Constable 1, in his statement, noted that he approached the bar to find out where the manager was. He stated that "bar staff were clearly too busy," as they did not acknowledge his presence, despite flashing his flashlight at them to gain attention. "They were focused on their service of alcohol, and nothing else." He added: "It was clear, there was no communication between the door staff, and the licenced

premise manager, as they did not know what the other was doing to control the establishment, and the people inside.”

As a result of the large crowd that formed outside as people were asked to leave the pub, some people were creating a disturbance, some because they wanted to re-enter to get their coats and/or credit cards. As a result, the RCMP eventually called out another 15 RCMP members, some from the Coquitlam detachment and others from Burnaby, in order to control the crowd outside. The RCMP arrested two males for causing a disturbance outside the pub. The RCMP Constable noted in his statement: “From [my] experience, should anything have occurred with this amount of people inside of this business, it would have clearly been a major incident and uncontrollable.”

The liquor inspector stated she had found out in early December of 2016 that the third party operator was leaving the pub and that her understanding was that the last day of operation was going to be December 31, 2016.

Meeting on December 21, 2016

On December 21, 2016, members of the Coquitlam RCMP, the Coquitlam Fire Inspector and the liquor inspector met with two representatives of the corporate licensee, Sanoor Investments Ltd. and the general manager. The officers from each agency expressed their concerns with the major public safety risk that was created by the overcrowding incident. The liquor inspector delivered the contravention notice (Exhibit 1, tab 2) at this meeting. The general manager was apologetic for the situation and advised that he had investigated the incident. He stated that two security staff members had decided to accept \$20 per patron and “open the gates” to allow entry and that those two staff members had been suspended or terminated immediately afterwards. He referred to a request from a server to security to stop further patrons from entering and that the security staff had ignored this.

The group at this meeting discussed the plans for New Year’s Eve. The general manager stated that the security staff was terminated. The liquor inspector believed he said he would bring them back for the New Year’s Eve party if no one else was available. The general manager also mentioned to her a previous incident several years

earlier where the security staff employed by a contracted company (not the same security staff on duty on December 16, 2016) had been accepting money at the door. The third party operator cut the contract with them immediately.

Branch's Previous Experience with Third Party Operator and its Staff

The liquor inspector testified about her past dealings with the head doorman. She stated she has conducted over 30 inspections at the pub. She had been attending at the pub for over 10 years and was usually met by this head doorman who was always very cooperative and would walk with her through the pub. She had only met the pub manager once before. Most of her communications over the years when she was conducting inspections was with the head doorman. If she needed to speak with a manager to address any concerns, the head doorman would call him and ask him to deal with the issue.

When asked in cross-examination if she had ever experienced anything like the evening of December 16, 2016 over her ten years of inspection of the pub, she agreed she had never seen anything like this evening at the pub. There had never been any penalties imposed on the pub and no closures. She said the head doorman was cooperative on the evening and had always been cooperative in her experience.

Compliance History

The NOEA states "no compliance history found." There are a number of compliance meetings noted for this licence, dated March 7, 2003, April 8, 2003, November 27, 2003, March 3, 2008, March 25, 2009, October 25, 2010, February 25, 2014, and April 2, 2014. None of these meetings resulted in enforcement action being taken. (Exhibit 1, tab 6)

The liquor inspector testified that often no enforcement action is taken or recommended because the facts are weak and/or the licensee is given an opportunity to correct any problems.

She agreed in cross-examination, that neither the head doorman nor the pub manager ever attended the compliance meetings that she held with the pub management. Mr. Teti or Mr. Gibson and usually the general manager attended these.

Recommended Penalty

The liquor inspector recommended the penalty of \$7000 in the NOEA, which is the maximum under the *Regulation* for a first contravention of overcrowding. She testified she recommended the higher penalty because of the severity of the overcrowding and the blatant disregard of the numbers by the security staff on December 16, 2016. She did not put much weight on compliance history when making her penalty recommendation.

LICENSEE'S EVIDENCE

None of the licensee's witnesses were in the pub on the night in question. The licensee stated that it had hoped to call the head doorman and the pub manager who were present on December 16, 2016 but they refused to respond to their requests to attend.

The licensee in its opening statement and in the March 27, 2017 pre-hearing conference call with the branch registrar and the branch advocate, stated that they would not be disputing the alleged contravention but would be making a defence of due diligence. The licensee accepts the facts of the overcrowding on December 16, 2016 as described in the NOEA.

The general manager, Mr. Gibson and Mr. Teti all gave evidence about the history of the pub, the relationship between the licensee and the third party operator, its management structure, the policies, procedures and practices in the pub, and the reasons for the pub's closure. The expert testified about the standard of care in licensed premises and about his own involvement in a training session with the pub's security staff.

History of Foggy Dew Pub

Relationship between Licensee and Third Party Operator

The third party operator has operated the pub for 17 years. Mr. Teti and Mr. Gibson are principals of Foggy Dew Irish Pub Coquitlam Inc., the corporate entity listed on the licence as the third party operator. According to the testimony of the liquor inspector, the licensee did not register the third party operator until 2011 when the liquor inspector noticed this error. At that time she issued a contravention notice to the licensee. The branch did not take enforcement action as the licensee immediately applied to include the third party operator on the licence.

At the time of this application, Mr. Gibson and the general manager attended at the branch on February 15, 2011 to view the branch presentation and sign the interview sheet, respectively as director and general manager. (Exhibit 1, tab 8)

The third party operator ceased its relationship with the corporate licensee on January 5, 2017. The branch received a letter from the corporate licensee dated January 5, 2017 (Exhibit 1, tab 9), notifying the branch that the third party operator was no longer operating under their licence and that the corporate licensee, Sanoor Investments Ltd. would continue to operate the licence.

As noted by the liquor inspector, even with a third party operator, the licensee is ultimately the one responsible. However, the licensee and the third party operator entered into a settlement agreement, effective January 5, 2017, to address outstanding rental arrears of the premises. Mr. Gibson is an indemnifier of this agreement. (Exhibit 2, tab 6).

Clause 5 of this agreement states:

In addition to the amounts payable pursuant to Paragraph 4 [rental arrears], the Payors agree to pay on or before the Effective Date, all accrued penalties and charges for any regulatory or other violations up to the Effective Date, which includes the penalty for overcrowding the Premises pursuant to Contravention Notice B006865

issued by the Liquor Control and Licensing Branch dated December 19, 2016, if required after hearing by adjudicator.

Mr. Gibson signed both as signatory in his own name and as signatory for the Foggy Dew Irish Pub Coquitlam Inc.

Closure of Foggy Dew Pub

Mr. Teti testified about the reasons for closing the pub. He stated that many people do not want to frequent such large venues anymore. The first 14 of the 17 years that the third party operator was operating the pub were good years. In the last three years, sales were slipping and the pub was starting to lose money. Because of the financial losses, he and Mr. Gibson made the decision to close down the pub.

On November 30, 2016, the general manager notified all its employees that the pub would be closing on January 5, 2017, and that its last day of being open to the public would be December 31, 2016. They informed their employees that, if they stayed with them for the remaining month, they would receive an extra week's pay.

In early January, the general manager proceeded to destroy many of the files in the pub and retained only those files as required by law. He testified that most of the employees' files were destroyed. This included some of the documents showing employees had signed the employee manuals as well as the BST certificates for security staff. He also destroyed the logbooks at this time.

Expert Evidence

Qualification of the Expert Witness

I reviewed the curriculum vitae of the expert (Exhibit 3). The expert testified about his experience as a police officer and as a consultant on security issues in the entertainment industry. As a police sergeant for over 24 years with the Vancouver Police Department, he was responsible for overseeing and monitoring many events involving both drug detection and liquor law enforcement. He worked with leaders in the entertainment industry to develop and launch the current Barwatch safety initiative. He is retired

from the police force and since 2012 has operated his own consulting business, acting as an expert consultant with respect to a licensee's duty of care and security responsibilities relevant to licensed premises. He has also conducted security training for public venues. He is currently chair of the Vancouver Barwatch program and has been since January 2012. As such, he represents "the owners and operators of bars and nightclubs in Vancouver who are members in good standing of Barwatch: a safety initiative and partnership with the Vancouver Police Department that is committed to providing a safe and responsible entertainment experience." (quote from Exhibit 3)

The branch advocate did not object to the expert being qualified as an expert in the standard of care on security issues in licensed premises. I qualified him as such.

Expert's Testimony

During his time as a police sergeant, he had the opportunity to work closely with both Mr. Teti and Mr. Gibson in the implementation of the early Barwatch program in Vancouver. At that time, Mr. Teti was chair of the program.

Mr. Teti and Mr. Gibson asked him to conduct a security training program at the pub. He did so in July of 2015, spending two and a half hours with the security staff and two managers. During the training, they discussed issues relating to the Act and Regulations, including overservice and overcrowding, as well as use of force continuum and how to best deal with disorder. They discussed crowd control, communication and how to deal with problems without using force. The evening included an hour of scenarios, where the participants were involved in roleplaying a number of different issues that might arise for security staff. Prior to giving this training, the expert had never before attended the pub.

The expert's recollection was that the head doorman attended the training session.

The expert commented on the national standard for security staff as having one security staff for every 60 patrons. The pub met this standard (for the licensed capacity of 444) on the night in question as there were eight security staff on duty on December 16, 2016.

After the training evening, the expert complimented Mr. Teti on the quality of their security staff, as being probably one of the most professional groups of people he had dealt with. They had all attended the Basic Security Training (“BST”) at the Justice Institute, had their certificates from this program and were very attentive during the evening.

When asked his opinion on how the overcrowding could have occurred on December 16, 2016, he was quite clear in his assessment of the situation. He said the doormen knew the pub was closing in a few weeks. In his opinion, they obviously decided to take advantage of the fact that the general manager was absent and there was only the pub manager overseeing the operation. He concluded that the doormen decided there was a monetary opportunity to be had and that termination was not an issue for them, given the fact the pub was closing. He then opined that they lost control of the situation, rather similar to a teenager allowing in friends to a party when the parents are away and then finding the house has been overwhelmed by too many guests.

When asked about the BST certificate, he said that the security staff are responsible for ensuring these are up to date, by taking the online retesting as required by the Justice Institute.

Management Structure & History of Security Staff

The general manager stated that he had been working at the pub since 1999 until its closing date in early January of this year. His duties were oversight of the business and supervision of facilities and staff, following the directions of Mr. Teti and Mr. Gibson. Mr. Gibson explained that the general manager was responsible for the day to day supervision and training of the staff. Mr. Gibson was aware that the pub manager would take over from the general manager when he was not able to attend.

The general manager stated that the security staff were responsible for security of the premises, employees and guests. They were required to enforce the pub policies which reflect the policies of the branch and the requirements of the licence. The security staff had no authority to change any of the policies or procedures of the pub.

The general manager stated that he normally worked at the pub on weekend nights when the pub was busier. The pub manager often worked on his own on the week nights, or under the general manager's supervision. The pub manager had no authority to change any of the policies or procedures of the pub. Mr. Gibson testified about the pub manager's role in the pub, stating that he is not much more than a bar supervisor. He said that when their last assistant manager left in July of 2016, they had trouble finding a replacement so they decided not to replace him and to rely on the pub manager to act as supervisor during the quieter week nights.

The general manager stated they have never had a door charge at the pub. When asked if he had ever disciplined anyone for taking money at the door, he replied that several years ago he had, as a result of the then security staff charging people at the door. He terminated all the security staff and broke the contract with that security company.

This incident inspired the following entry into the Security Manual:

The Foggy Dew currently does not charge an entry fee or cover. This also means that security staff may not accept payment or cash at the door in lieu of permitting guest's entry into the pub. This issue has been severely dealt with in the past, and will not be tolerated!

(Exhibit 2, tab 2)

The security staff at the pub on December 16, 2016 were all direct employees of the third party operator. The third party operator previously had a contract with a large security company who decided to remove themselves from the business of pub security. At that time, the third party operator hired the security personnel who had been working for them under that contract.

Licensee's Explanation of Incident on December 16, 2016

The general manager was not present on December 16, 2016. He was scheduled to be there but, because of illness, he was unable to attend work that night. He informed the pub manager during the day of December 16, that he was not able to attend. The general manager was not concerned about the pub manager's ability to handle the pub

on his own as the general manager had worked with him for many years and was confident that he was able to manage on his own. He also testified that he was confident that the head doorman and the other doorman were reliable and trusted employees as they had worked at the pub for many years, one for 11 years and the other for 14 years. He estimated that the minimum years of any of the doormen working at the pub that night was four years.

The general manager investigated the incident after hearing about it the next day. He heard that, prior to the entry of the liquor inspector and RCMP officers, a server had requested the head doorman to stop allowing people to enter, as it was impossible to move and to serve the patrons.

When asked to explain the behaviour of the security staff on December 16, 2016, the general manager stated that the doormen did this out of greed and that they admitted this to him after the incident. Initially, the head doorman admitted to charging at the door and then the other doormen stated they were all involved in doing so. Mr. Gibson and Mr. Teti also met with the head doorman who admitted they were charging and that the situation got out of control. Mr. Gibson and the general manager mutually agreed to terminate the head doorman on December 17, 2016, the day after the incident, for cause. The head doorman told the other doormen that he had been terminated. The remaining security staff requested an immediate meeting with Mr. Gibson and Mr. Teti. They all agreed they were complicit to the same degree as the head doorman.

This all took place on Saturday evening of December 17, 2016. The remaining security staff were all threatening to leave at that moment, if the head doorman was not reinstated. The managers knew there were only a few scheduled busy evenings left until the pub closed, including a private sold-out New Year's Eve event. The general manager decided to allow the head doorman back for these events, in order to ensure they had the necessary security staff.

The general manager testified about his conversation with the pub manager. The general manager stated that the pub manager told him that he did not say it was not his responsibility to manage the capacity, he just said he was too busy trying to bartend to monitor what was happening. According to the general manager, the pub manager

explained to him that the overcrowding occurred fairly quickly and that, by the time he realized what was happening and was about to deal with it, the room was out of control and the liquor inspector and RCMP had arrived. The general manager explained that when the pub is busy and “you are at the bar preparing drinks, your head is down and it is just go, go, go.” The general manager said he could understand how the crowd could escalate quickly with no controls at the door.

When the general manager was asked if it was possible that the pub manager was involved in the scheme to charge at the door, he said “absolutely not.” He had worked with the pub manager for over 20 years and had complete confidence in him. The general manager replied to a question in cross-examination, stating the management had no idea their longtime security staff might do something like this, even with the imminent closure of the pub. With two of the doormen having 11 years plus with the pub, the general manager believed they would continue to do their job as they had done in the past.

Policies, Practices and Procedures

The general manager worked with the security staff every shift. If they were expecting VIP guests, he would ensure the staff were aware of the numbers expected and to allow them in, while maintaining the capacity. He held staff meetings every shift. He was constantly communicating with the staff about the status of the room, status of business, etc.

Policy Manuals

The general manager reviewed the manuals submitted by the licensee at the hearing. He said he was involved in drafting the Security Manual.

The Security Manual (Exhibit 2, tab 2) sets out on the title page the license capacity as 388, stating “Maximum number of persons **including staff.**” (bold in original) Next, there is a dress code set out for the staff.

As well as the clause quoted above with respect to no cover charge, the Policies and Procedures section includes the following statements, in bold:

***At any time there is an incident inside, outside or around the Pub, Security staff must make an entry into their Incident report log. There will be no exceptions to this rule. This in essence is to ensure that the facts as they are freshly at hand are recorded and available should they be required at another date & time.**

Under this bold statement are listed a number of directions to security staff:

On weekends and event nights, there will be no less than six security members available. You will each be allocated to an assigned area until you are signalled to rotate.

Rotations from station to station should occur every ½ to 1 hour. When you are changing stations, you will do a thorough walk through of the station you are about to enter. This is to ensure those who may feel the need to find you or any potential troublemakers in the Pub are aware of your presence. This will also give you a good idea of what's going on in that area. Before you relieve the security member who is currently at that station, you will brief each other on any happenings or goings on.

Security members should be in constant communication with each other throughout their shift. Simply giving a "Thumbs Up" will ensure all is O.K. in your area or "Pointing" to a specific area if you are watching someone.

Ongoing communication with the Pub Management will ensure everyone is on the same page.

Other clauses in this Policies and Procedures section deal with ID requirements, removal of a patron, checking the washrooms, rules re. fraternizing or socializing, keeping high traffic areas clear, meal breaks, etc.

Next are the following statements in bold:

***In the occurrence of an incident, management must be notified and briefed immediately.**

***In the event of an incident in the Pub, the effecting parties will be escorted through different exits of the Pub, at staggered intervals. This is to eliminate the possibilities of any further incidents with the parties involved. It is also a liability deterrent.**

The next section in the manual is the "House Rules." These deal with guests suspected of being under the influence of drugs and refusal of entry to them, searching male and female patrons, beverage consumption in red-lined area only, restrictions on where to dance, any outside consumption of alcohol, refusing entry once pub is closed, final walk through of pub on closure.

Following this is the statement: "Each security member is responsible to ensure that their security certificate is current and up to date." When asked about this, the general manager stated that this places the responsibility on the staff person to pay for and complete the online retesting. The management then keeps the record of this in its files.

The licensee did not submit a copy of the incident log book at the hearing. The general manager stated that, because of the imminent closure and the complicity of the staff in the overcrowding, staff did not record the incident of December 16, 2016 in the logbook. As he destroyed most of the records in the pub upon closing, they did not have copies of the logbook to bring to the hearing.

The Employee Manual (Exhibit 2, tab 3) is for all employees, including the security staff. The final page of this manual is a signing page for all employees to acknowledge they have read the contents of the Coquitlam Foggy Dew Employee and Human Rights Manual and the House Rules manual and that they "agree to abide by the policies within each document."

Under General Policies, there are 33 numbered clauses dealing with punctuality, drugs, theft, alcohol consumption, code of conduct, staff interrelations, parking, friends and

visitors, professional space, staff notice board, the staff table, cash handling procedures, methods of payment, illness, shift changes, breaks, grooming & uniform standards, chewing gum and eating, the audio system, the video system, washroom checks, cleanliness next to godliness, telephone calls, telephone procedures, schedules, pay cheques, confidentiality of business information, teamwork, dealing with problems, handling customer complaints, constructive discipline, termination and sexual harassment and human rights.

A few clauses are worthy of more detailed mention here as being relevant to the issue of overcrowding and evidence of due diligence.

The pub has a staff notice board and reminds employees to review it for memos, etc.

10. Staff Notice Board

It is your responsibility to be aware of any staff memos or notices. This is also an excellent way to communicate your requests. (Pick-up a shift? Sell a shift?)

Under Constructive Discipline (no.30), after listing the steps from verbal warning, written warning to termination, is the following statement:

Occasionally, an employee's conduct or behaviour may warrant immediate dismissal from the workplace. It is strongly recommended that employees familiarize themselves with the Foggy Dew House Rules document. Usually, a common sense approach to your behaviour and conduct in your workplace will exclude this from happening to you.

Clause 31 "Conduct that will lead to termination of employment says: "See also the House Rules document" and includes "insubordination, lack of respect for customers or fellow staff, theft in any form" and "threats of violence or dishonesty towards fellow staff or customers" as reasons for termination.

The final page of the Employee Manual, before the signing page, refers to semi-annual performance reviews and the use of "silent shoppers":

One of the best sources of feedback available to an employee is the Performance Review. Conducted approximately every six months, your manager will work with you on a one-to-one basis to review your performance as a Foggy Dew employee. You should feel free to air any concerns you have in this forum. Other forms of performance appraisals are the Silent Shoppers Reports. Each month a group of customers will come to the store unannounced and evaluate the performance of the staff working that shift as well as the drinks and menu items they had.

The Employee Manual refers to the House Rules document, titled "Foggy Dew Irish Pub – Coquitlam (House Rules)". (Exhibit 2, tab 4) The first paragraph of this document states:

The purpose of these house rules is to define the policies and procedures as designated by the industry, Gibson Hospitality and the governing bodies or management of your Pub. We encourage all employees to enjoy themselves and have fun in their respective workplace, yet we must create an environment with specific boundaries to ensure everyone is governed by the same policies.

There are several headings, listing the rules in this document including General, Rest Periods & Meals, Schedules, Paydays & Checks, Sick & Lateness, Cash & Cash handling – Servers & Bar, Conduct on or around premises or property. Under the heading in bold "Attitude and Willingness to Work" is the following bullet statement:

If at any given time an employee displays an attitude of indifference towards guests, staff or management, they will be promptly sent home with an immediate suspension, and may result in termination of employment.

The final page is the House Rules and Policies Acknowledgement, which requires the employee to sign that they "received, read and clearly understand the house rules and policies" and a statement that:

I further understand that my responsibility is not limited only to the contents of the document, and I may be disciplined up to and including termination of my employment should my actions warrant such cause.

A manager is required to sign, noting that he has “reviewed the contents of the House Rules & Policies with the above named employee.” A note above signatures indicates that “this page is to be placed in the employees file.”

Implementation of Policies and Procedures

The general manager testified that when security staff are hired, they receive each of tabs 2, 3 and 4 in Exhibit 2. The general manager explained that, whenever he hired anyone, he would review the manuals with the employee, including the departmental manual related to their job role (i.e. security manual for security staff). The general manager asked each employee to sign to show he/she had read and understood all the manuals, and he would sign as manager.

The general manager testified that he followed the practices outlined in the manuals with all the employees in the pub, including the security staff. He kept the signed copies in the files.

The general manager testified that all the doormen working on December 16, 2016 had BST certificates on their file. The general manager checked BST certificates of the security staff on a quarterly basis to ensure they were up to date.

The general manager responded to a question in cross-examination stating that, to the best of his knowledge, both the head doorman and the other doorman with over 14 years experience had up to date BST certificates on their employee files. He stated the Justice Institute would send out a letter saying the certificate was about to expire. He remembered only one occasion where there was a one week period between receiving a new certificate and old one expiring. This was not the head doorman's certificate.

When they had a security company contracted to provide security several years ago, the company did the initial training along with requiring the BST certification. The general

manager stated that, with a security company, you could never be sure you would have the same people working from weekend to weekend. When management switched to employing the security staff directly, the general manager stated this ensured consistency amongst the staff. Because of the long term relationship with many of the security staff, he felt confident in relying on them to do their jobs. That confidence was severely shaken on December 16, 2016.

The general manager testified that he held meetings every shift to discuss issues with staff. He also held departmental meetings with the separate groups of employees at different times. He stated that everyone was aware of the policy not to charge at the door, and knew of the warning in the Security Manual that management would not tolerate this. The pub had four counters for use by the security staff. The general manager had two in his office and he would regularly use them to monitor the capacity.

The general manager also testified that staff were instructed to make a note of any incidents in the logbook and they did so.

According to the testimony of the liquor inspector, during her ten years of inspecting the pub, she saw the head doorman with a counter. Other doormen had counters too to ensure they did not go over capacity. On the night of December 16, 2016, the head doorman initially had a counter and was using it before things got out of control.

Compliance History

The general manager reviewed the compliance meetings listed in the NOEA at tab 7 and stated that none of these resulted in any enforcement action. This is consistent with the testimony of the liquor inspector.

SUBMISSIONS – BRANCH

The branch submits that the responsible person on the evening of December 16, 2016 was the pub manager and/or the head doorman and that either one or both was the directing mind. As they were both present at the time of the overcrowding, the defence of due diligence fails.

Alternatively, if I find that the neither the pub manager nor the head doorman was the directing mind, the branch submits that the evidence presented does not support a defence of due diligence.

Given the extremely serious public safety risk, the recommended penalty is appropriate.

SUBMISSIONS – LICENSEE

The licensee submits that neither the pub manager nor the head doorman was a directing mind. Apart from the role of the pub manager as a supervisor on the night of December 16, 2016, the pub manager did not exercise any other functions of management. Neither the pub manager nor the head doorman had the authority to change the pub policies that are set by the senior management. The two of them were expected to follow the policies as set out in the various manuals. There was no evidence to suggest that either the pub manager or the head doorman was involved in hiring or training new employees.

Further, the licensee submits that their policies and procedures demonstrate due diligence. The evidence of the hiring practices, ensuring employees sign for the manuals, the provision of adequate training to the security staff, and the compliance history of the pub illustrate that the pub was applying its policies and practices. The overcrowding occurred for reasons beyond the control of the management, i.e. the desire of a few employees to ensure they had a monetary gain in the last few days of the pub's operations. Given the length of time the key employees (pub manager, head doorman, other doorman) had been employed by the pub, management did not foresee the behaviour that occurred on the night of December 16, 2016. This behavior was totally contrary to their policies and wholly unexpected.

The history of the pub with the branch has been a very good one. The liquor inspector, with ten years of experience inspecting the pub, had never seen the pub anywhere near the state it was in on December 16, 2016.

The licensee submits that it has met the onus of establishing due diligence and therefore has a full defence to the contravention.

REASONS AND DECISION

Contravention

The licensee does not dispute the facts as described in the NOEA. I find that the counting by the RCMP and the liquor inspector showed counts of 701, 781 and 736. The head doorman freely admitted to stopping counting at 620.

As the maximum capacity for the pub, both inside and out, is 444, there is no doubt that the pub was massively and dangerously overcrowded.

I find a contravention of section 6(4) of the Regulation and turn to the issue of due diligence.

Due Diligence

The licensee is entitled to a defence 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 procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with.

The leading case is: *R v. Sault Ste. Marie* (1979) 2 SCR 1299, where at page 1331, Dickson, J. sets out the test of due diligence:

The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was

taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

The BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2012 BCSC 1851, considered and clarified the application of the defence of due diligence in the context of the sale of liquor to a minor contrary to the *Liquor Control and Licensing Act* (see paragraphs 41 to 44).

In these circumstances, the defence of due diligence is to be considered in two stages. I have modified the *Beverly Corners* questions to apply to the overcrowding contravention and facts in this case:

1. Whether the employee(s) who was responsible for ensuring the pub was at or below capacity on December 16, 2016 was a directing mind of the licensee – if so, the defence of due diligence is not available and the inquiry stops there.
2. If the employee(s) who was responsible for the overcrowding and who was present on December 16, 2016 was not a directing mind of the licensee (and there is no requirement that a “directing mind” must be on the premises when an alleged contravention occurs), then the questions to be considered and answered are whether the licensee had:
 - a. implemented adequate training and other systems to prevent the contravention (the overcrowding); and,
 - b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

Both of the above questions are factual, and will depend on the evidence presented. The onus is on a licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

The Directing Mind

I find that neither the pub manager nor the head doorman was a directing mind of the licensee. Neither of these individuals had the authority to set policies or to change policies in the pub. Neither of them had the responsibility for hiring or training employees. Neither of them was part of the management team. The head doorman was responsible for supervising the other doormen when they were working their shift. I find this is not sufficient to make him a directing mind. The licensee's evidence was that the head doorman was responsible for enforcing the licensee's policies with respect to security and maintaining the licence capacity numbers. The head doorman had no authority to modify these policies.

I find that the directing minds of the licensee are Mr. Teti, Mr. Gibson and the general manager. None of these individuals was present in the pub on the night of December 16, 2016.

Having established that the directing mind of the licensee was not present in the pub on December 16, 2016, I turn to the evidence of due diligence and the second step in the analysis.

Adequate training and other Systems to Prevent the Overcrowding

The licensee provided evidence of its policies, practices and procedures, through verbal testimony and its documents. At the time of hiring, the licensee ensured all employees had read and understood its policy manuals. All employees were required to sign, indicating that they had read and understood the manuals. A manager was required to sign that he had reviewed the contents of the house rules and policies with the employee.

The Security Manual, which forms part of the package that security staff must acknowledge reading, clearly sets out the requirements for the staff to follow. There is strong wording in the policy with respect to no cover charge at the door. The provision on this issue emphasizes that the pub will deal with any violation of this policy in a

severe manner. The front page of the Security Manual shows the licence capacity of 388 in bold.

All employees must have their Basic Security Training from the Justice Institute. Management kept these certificates on file. Although each employee was responsible for ensuring his/her certification was up to date, the general manager testified that he checked these on a quarterly basis.

The expert witness testified about the training evening he held at the pub at the request of management in 2015. He testified that he was impressed with the professionalism of the security staff.

The employee manual notes that performance reviews are conducted every six months. The general manager testified that he was responsible for these.

The directions in the policy manual emphasize the importance of good communication amongst the security staff as well as the importance of recording any incidents in the logbook. Silent shoppers were used to monitor and report on all staff.

I find that the licensee has adequate training and other systems in place to prevent a contravention of overcrowding.

Effective Application of its Training and Operation of its Systems

On the night of December 16, 2016, eight security staff were on duty at the pub. This accords with industry standards of one security staff to 60 people (assuming the capacity of 444 was maintained), according to the expert witness.

The security staff regularly used counters to monitor the entry and exit of patrons. The liquor inspector testified that the head doorman always met her at the entrance of the pub and always had a counter. The one exception was the night of December 16, 2016 when he told her another doorman had the counter.

The general manager testified that he regularly checked the employees' BST certificates to ensure they were up to date. He also testified that all the security staff had signed the signing pages attached to the employee manual and that a manager (usually him) witnessed this signing and made sure that each employee had read and understood what was in the manual. This included the ban on any cover charge at the door and the warning about the consequences. He held meetings every shift to review any key issues. He instructed staff to include any incidents in the logbook. He emphasized to staff that regular communication between management and staff was essential.

The licensee did not submit copies of any signed pages from the employee manual. The licensee did not submit copies of the BST certificates for the doormen, nor did the licensee submit examples of recorded incidents in the logbook. The general manager, Mr. Gibson and Mr. Teti all testified about the closing of the pub in early January and destruction of many files at that time.

Mr. Gibson testified that they kept only the financial information records, as required by law, i.e. payroll records, tax information for 7 years, etc. He stated that the general manager was responsible for shredding a lot of files in the early days of January and probably was not thinking about the contravention when he did it.

Given the seriousness of the incident, I would have expected the management to be more cautious in preserving the necessary documentary evidence. I find that, in the circumstances of the pub closure, management was not properly attending to what might be needed if this issue were to proceed to a hearing, as it did. The licensee's witnesses testified that they were focussed on winding up the business and attempting to resolve the outstanding issue of rent arrears with their landlord.

I conclude that the absence of this documentary evidence is not a fatal flaw to the defence of due diligence in the particular circumstances here. I was impressed by the sincerity of the licensee's witnesses and the record of their longtime involvement in the industry. I accept the verbal testimony that these files were destroyed at the time of closing, that the head doorman and others signed the manuals, that their BST certificates were up to date and that employees regularly recorded incidents in the logbook.

There was no reason to expect these longtime employees would violate the policies that they had applied over the years. The fact that there had never been any proven overcrowding contraventions against the licensee in its 17 years of operation demonstrates that management was ensuring staff were complying with its policies.

The licensee has a very good compliance history, with some compliance meetings as noted in Exhibit 1, but no enforcement actions taken over its 17 years of operation. I find that this can partly be attributed to the experience and professionalism of its staff, and to management's enforcement of the policies. The head doorman had 11 years with the pub. A second doorman had 14 years of experience working in the pub. None of the doormen on duty on December 16, 2016 had less than four years working with the pub. According to Mr. Gibson, the pub manager had worked for his organization for a period of 21 years. These were employees who had been well trained in the policies of the pub, followed the policies consistently (with the one serious exception on December 16, 2016) and had demonstrated this throughout the course of their employment.

The NOEA indicates "no compliance history found" and lists a number of compliance meetings with the licensee, including two instances related to overcrowding in 2008 and 2010. The liquor inspector explained why no enforcement action is taken even after a contravention notice has been issued. She said sometimes they give the licensee an opportunity to correct the problem, as was done with the licensee's failure to add the third party operator, sometimes the number of patrons above capacity in an overcrowding situation is minimal, sometimes there is simply not enough evidence. She stated that she did not rely on any of the past compliance meetings to recommend the penalty in this case. She recommended the \$7000 penalty because of the severity of the overcrowding on December 16, 2016. As no enforcement action was taken, these compliance meetings do not affect my conclusions on due diligence.

I find that the licensee was taking reasonable steps to ensure the effective application of its training and the operation of its systems, with respect to ensuring the pub remained within its capacity.

Nevertheless, the employees failed to do their job on December 16, 2016.

What happened on the night of December 16, 2016 – was there more that management could have done to prevent this contravention?

Despite having systems in place to ensure its policies are applied, despite providing training to its security staff and ensuring new staff review the policies, despite having longtime employees who had demonstrated their compliance with the policies over the years of working in the pub, despite encouraging communication between staff and management, despite its clearly expressed rule about no cover charge at the door and the potential for consequences, on the night of December 16, 2016, staff either blatantly disregarded the licensed capacity number and/or allowed a situation to spiral out of control and/or turned a blind eye when the overcrowding escalated.

In hindsight, perhaps Mr. Gibson or Mr. Teti should have attended the pub when the general manager was unable to be there on a busy Friday night. However, given the years of experience with the pub manager, the general manager was confident that he would be a responsible supervisor that evening. This turned out not to be accurate because of the unexpected actions of the doormen.

The licensee explained why the general manager was not present on the night of December 16, 2016. He normally worked on the busy weekend nights but was unable to do so because of illness. Although apparently not part of the scheme to collect money at the door, the pub manager failed in his duty to monitor what was going on in the pub. The liquor inspector said the pub manager's initial response to her was that it was not his job to handle door security. Mr. Gibson stated they made repeated requests to the pub manager and the head doorman to come and testify at the hearing. They refused to come.

I find that the pub manager was the overall manager in charge on the premises that night and should have taken immediate action to control the situation. Mr. Gibson commented on the potential difficulty of the pub manager taking on eight good-sized doormen who were intent on following the path of greed. The general manager commented on the relatively quick pace that a pub can become over capacity, when there are line-ups at the door and free entry is being permitted. He said that the pub

manager had told him he was starting to address the problem when the liquor inspector and the RCMP arrived.

Mr. Teti described what happened on the night of December 16, 2016 as a “perfect storm.” The employees had all been notified of the imminent closing; the security staff expected maybe one or two more shifts on the busy nights left until New Year’s Eve; they were not concerned about the consequences i.e. termination, as they were losing their jobs anyway; the general manager called in sick on what turned out to be a very busy college night at the pub.

I have considered whether or not the general manager should have informed Mr. Teti and/or Mr. Gibson that only the pub manager would be supervising on this busy night and invited one of them to step in to supervise. It is easy to think that, after what happened, this is what he should have done. However, the general manager was emphatic in his testimony in his trust in his employees, including his confidence in the pub manager to adequately supervise. He testified that it was an understatement that he was surprised at the behaviour of the head doorman. He stated he was “stunned, betrayed, angry, disgusted,” and asked himself, “how could this possibly happen?” He said he had no reason to believe that an employee who had been a good employee for such a long time would do such a thing. He did not foresee this potential to happen. If he had had a sense that this could have happened, he would have intervened well before to prevent the overcrowding.

The licensee submitted three cases for my consideration: *Central City Brewing Company Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2013 BCSC 2301, *Rayman Investments and Management Inc. dba Coal Harbour Liquor Store* EH11-139 (January 23, 2013) and *Cascadia Brewing Company Ltd. dba Rogue Kitchen & Wetbar* EH15-068 (December 9, 2015). I am bound to follow the directions of the B.C. Supreme Court and higher courts. Other decisions of the branch general manager are not binding on me and will often turn on a particular set of facts. Nevertheless, the branch tries to be consistent in its application of its rules and policies in its decision-making. Each case of due diligence is different, although there are certain key indicia that the branch looks for in determining whether the licensee has met the test of due diligence.

Many of the branch decisions on due diligence, including those referred to me here, deal with contraventions of serving alcohol to minors. A licensee may demonstrate due diligence in these situations by providing evidence of its training on how and when to request ID, signage re. ID, daily reminders, reminders at staff meetings, secret shoppers and more. A licensee may not have to provide evidence of all of these in order to meet the test of due diligence. A staff member, despite all the policies, reminders and training, may still serve alcohol to an under-age person.

Requesting identification is a subjective thing – one person's assessment of a patron's age may be different from someone else's. This is why most licensed premises today will err on the side of caution and require staff to ask for ID of anyone who appears under 30, or in some establishments, of anyone who appears under 25. There is often signage to indicate this to customers.

With respect to the contravention of overcrowding here and the circumstances that occurred on December 16, 2016, this was not a situation where staff had not received sufficient training or staff were not getting daily reminders. Overcrowding is not a subjective thing like requesting identification. Counting numbers as patrons enter a pub and recording those numbers on a counter is an objective exercise – i.e. the number is either above or below capacity. Maintaining the capacity of a licensed establishment does not involve discretionary decision-making, as is the case with requests for ID.

The security staff working on the evening of December 16 were well aware of what was required of them, knew the consequences but took no heed of these because the pub was closing. The decision to allow in patrons well beyond the capacity was not a failure of the systems in place, nor was it an oversight by an employee forgetting to apply the policy. It was a decision made by staff who were primarily motivated by greed and knew that the pub was closing and they would no longer have jobs.

Counts may vary, depending on whether or not the person counting is using a counter and whether they are moving properly through a room full of people to conduct the count. The evidence here is that the head doorman was counting, but had chosen not to ensure the pub did not go over capacity. There is no doubt that the head doorman was well aware that the pub was way over capacity. The other doormen were not enforcing

the capacity number. The head doorman admitted he stopped counting at 620. No amount of training, reminders or daily staff meetings would have changed that result. He and the other doormen were marching to the tune of a different drummer on that evening and had decided to ignore the very clearly written policies they had applied over the years and the capacity number of 444 (388 inside), preferring to collect money for themselves at the expense of the licensee.

The decision of the staff to allow the overcrowding in the pub on December 16, 2016 was theirs alone. The question to determine liability here is whether or not the management or directing minds took all the steps reasonably to be expected of them to prevent the overcrowding.

The comments of Mr. Justice Goepel in *Central City* (Para.37), about hindsight, apply equally to the situation here. In *Central City*, he commented on the suggestions made by the General Manager of the branch that the sale [to the minor] would not have occurred if the licensee had required the subject employee to take time off, had moderated her duties or required she receive close supervision while she was suffering from emotional distress." In the situation here, hindsight suggests that the licensee should have anticipated that these longtime employees would take advantage of the situation if there were no senior management present. As stated by Mr. J. Goepel at para.37 "Each of the courses of action suggested is predicated on hindsight, on retrospective knowledge that the particular employee on the particular day failed to properly carry out her duties."

And at para.38:

The system did not fail. Liquor was sold to a minor not on account of a failed system, but because a long-serving, valued and trusted employee did not follow the rules which were clearly set out and known to her. The petitioner could not predict that the employee would not properly carry out her duties and do what she did.

This was not an error of judgement as was made by the server in *Rogue Kitchen*, p.26. The head doorman and the second doorman showed a blatant disregard of the well-

known rules that they had consistently followed throughout their many years working in the pub. There is no question in my mind that they knew the rules and willingly chose to ignore them.

CONCLUSION

I am very troubled by the facts of this contravention. The extreme overcrowding in this pub could have led to a tragic ending. When regulations affecting public safety are ignored, the results can be catastrophic, for example if a fire had broken out in the pub. My immediate reaction to the facts here – as would be the reaction of many in the public – is to give the violators the largest penalty possible. The liquor inspector in the NOEA has recommended the maximum for this first offence because of the very “blatant disregard for the rules.”

However, I am required to apply the law on due diligence – which basically requires me to ask if the act took place without the employer’s direction or approval. If the employer has “exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system,” in the words of Mr. Justice Dickson in *Sault Ste. Marie* case cited above, then the employer has a defence.

If I were to impose a penalty here, it would be on the employees who allowed this very dangerous overcrowding to occur. I do not have the authority or the jurisdiction to do such a thing. If I were to impose a penalty on the licensee here, given my findings on due diligence, it would mean imposing absolute liability on the licensee. That I cannot do.

On all the evidence, I find that the contravention of section 6(4) of the Regulation has been proven on the balance of probabilities.

I find further that the Licensee has established on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them. The licensee has a complete defence to the contravention.

Accordingly, I do not need to consider the issue of penalty.

Original signed by

Nerys Poole
General Manager's Delegate

Date: May 31, 2017

cc: Liquor Control and Licensing Branch, Surrey Office
Attn: Rupi Gill, Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attn: Hugh Trenchard, Branch Advocate