



**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:	Brew Street Craft and Kitchen Ltd. dba Brew Street Craft and Kitchen 3224 St. John's Street Port Moody, BC
Case:	EH17-028
For the Licensee:	David James
For the Branch:	Maria Caduhada
General Manager's Delegate:	Nerys Poole
Date of Hearing:	December 12 & 13, 2017
Date of Decision:	January 18, 2018

**Liquor Control and
Licensing Branch**

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7066

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC
<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

Brew Street Craft and Kitchen Ltd. dba Brew Street Craft and Kitchen (the "licensee") owns and operates a liquor primary establishment, with liquor primary licence number 144144 (the "licence") at 3224 St. John's Street in Port Moody ("the establishment").

According to the terms of its licence, the licensee may sell liquor from 9:00 a.m. to 2:00 a.m. Monday to Sunday.

The licence is subject to the terms and conditions contained in the publication "Liquor Primary Terms and Conditions" (the "Guide").

The Liquor Control and Licensing Branch (the "branch") approved the transfer of the licence from Golden Spike Inn Ltd. to the licensee on October 2, 2017. (Exhibit 1, tab 10) On the date of the contravention, March 17, 2017, the name on the license was still Golden Spike Inn Ltd. As a result of an amendment in the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Act") that came into force on January 23, 2017, Brew Street Craft and Kitchen Ltd. was a "deemed licensee" at the time of the alleged contravention. On March 20, 2017, the branch notified the representative of Golden Spike Ltd., via phone and email, that the branch had identified five contraventions as a result of a covert inspection on March 17, 2017. The branch issued Contravention Notice #B006870 to Golden Spike Ltd. on March 28, 2017. On April 10, 2017, the branch met with David James and issued an amended Contravention Notice #B006872 to the licensee Brew Street Craft and Kitchen Ltd. (Exhibit 1, tab 8) At all times, the establishment's name was Brew Street Craft and Kitchen.

David James, a shareholder in the corporate licensee, appeared as the licensee's representative at the hearing.

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

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action dated May 5, 2017, addressed to Brew Street Craft and Kitchen Ltd. at 3224 St. John's Street in Port Moody (the "NOEA"). The Branch alleges that, on March 17, 2017, two liquor inspectors and two plain clothes police officers (the "four officers") allegedly observed three patrons behaving in a manner that indicated they were intoxicated, and that staff took no action to remove the three patrons.

The four officers were conducting a covert inspection of the establishment. Two uniformed police officers and a third liquor inspector conducted an overt inspection later on the same evening.

The alleged contravention of allowing an intoxicated person to remain is contrary to section 61(2)(b)(ii) of the Act. The branch proposes a penalty of a seven (7) day suspension.

The recommended penalty falls within the penalty range set out in item 9 of Schedule 2 of the Regulation. The range of penalties for a first contravention is a four to seven day licence suspension and/or a \$5,000 to \$7,000 monetary penalty.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, S.B.C. 2015, c. 19

61(2) A licensee or permittee or an employee of either must not

...

(b) allow

(ii) an intoxicated person to enter or remain in a service area

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 book of documents, tabs 1 to 8

WITNESSES

The branch called three witnesses:

- Liquor Inspector 1
- Police Officer 1
- Liquor Inspector 2

The licensee called three witnesses:

- The bar manager
- The assistant bar manager
- The licensee's representative, David James

Although the first two of the licensee's witnesses identified themselves as the bar manager and the assistant bar manager, I have wondered from the testimony of these two whether this is accurate. The bar manager has considerably less experience than the assistant bar manager and less time working at the establishment. The assistant bar manager first said he was one of the "head managers" and then added he was "assistant bar manager." He gave considerable evidence about the policies and practices in the establishment and also appeared to oversee some of the new hires. Nevertheless, I have left the titles as is, as the witnesses identified themselves as such, and the actual title of each has no bearing on my conclusions.

BRANCH EVIDENCE OF THE ALLEGED CONTRAVENTION

The branch alleges that three patrons were intoxicated and allowed to remain in the licensed establishment on March 17, 2017.

Liquor inspector 1 explained the reasons for conducting a covert inspection at the establishment. She had been receiving reports from the Port Moody police about a number of issues that had resulted in call-outs: assaults, noise, intoxication and complaints about people spilling out into the community. The branch had conducted some routine inspections and had identified some concerns as well. She thought the best way to investigate these concerns and complaints was to conduct a covert inspection.

Liquor inspector 1 authored the NOEA and confirmed its accuracy, stating she compiled the information in the NOEA from the notes of the four officers who participated in the covert inspection.

At approximately 7:50 p.m. on March 17, 2017, two undercover police officers (police officer 1 and police officer 2) and two undercover liquor inspectors (liquor inspector 2 and liquor inspector 3) entered the establishment. The four officers remained in the establishment until approximately midnight. The two police officers reported that they mainly stayed in each other's company while the two liquor inspectors did the same. During this time, the four officers made notes about their observations and sent information to liquor inspector 1 who remained outside in her vehicle. At approximately 11:20 p.m., liquor inspector 1 and two uniformed officers of the Port Moody police entered the establishment. Shortly after entering the establishment, liquor inspector 1 had a conversation with David James but did not reveal the presence of the four officers, for safety reasons.

After the inspection, in the early morning hours of March 18, 2017, the police officers and liquor inspectors held a debriefing at the Port Moody police station. The four officers advised that they observed three patrons exhibiting obvious signs of intoxication. At no time did they observe a staff member taking action to deal with them. The officers stated that staff did not remove the allegedly intoxicated patrons and

that staff continued to serve the three patrons while they were exhibiting clear signs of intoxication.

Officers' Evidence of Patron 1

The NOEA describes the police officers' observations of a male at the bar ("Patron 1"). Police officer 1 testified about his observations of Patron 1. At about 22:01 hours, he and police officer 2 were standing in front of the bar and police officer 1 was standing directly next to a male who was exhibiting signs of intoxication. The male was wearing white pants, white shoes and a shirt with an adidas logo. He was with about five other males. Police officer 1 noticed the following signs of intoxication: odour of liquor on his breath, shouts of "I'm drunk" several times, slurring his words, bumping into police officer 1 numerous times, swaying side to side, swearing at his friends, trying to hang onto one of them to stay on his feet.

Police officer 1 testified that, at about 22:13, patron 1 purchased four drinks, two Vegas bomb shots and two rum and cokes, from the person who was bartending. Police officer 1 identified the bartender as the "assistant bar manager". Patron 1 immediately consumed one of the shots and took a sip of the rum and coke. He then paid the bartender \$40 in cash (two \$20 bills) and, at about the same time, turned his back on the bar and nearly fell over.

When questioned about his training with identifying signs of intoxication, police officer 1 stated he had worked countless calls on the Granville bar strip and was trained in how to care for and tend to intoxicated persons. He testified that people exhibit various signs of intoxication, up to vomiting and defecating. Patron 1 was not at that level, but was not able to maintain his own balance.

Police officer 2 did not testify. His notes, completed and signed at 2:15 a.m. on March 18, 2017, were included in the branch book of documents. (Exhibit 1, tab 2). At 21:55 hours, police officer 2 noted that he was in close proximity to Patron 1 as described by police officer 1. He observed that Patron 1 could barely stand on his own accord and that a friend was constantly holding him up. Police officer 2 repeated some of the evidence of police officer 1, about the patron yelling "I'm drunk", staggering around the

bar area and his order to the bartender. He observed Patron 1 passing by “numerous staff members who paid him no attention whatsoever even though he was basically falling asleep as he walked.”

Liquor inspector 3 did not testify. His handwritten notes in Exhibit 1, tab 5 include observations of Patron 1, who was wearing the blue adidas shirt. At 22:05, he observed him drinking two shots back to back and then he “chugged a beer.” He noted that two males, one of them Patron 1, were showing flushed faces and staggering, exhibiting a lack of coordination. He observed them from a distance and did several walk-bys on the way to the washroom. At 22:55, he noted Patron 1 swaying back and forth, showing a lack of coordination and lack of concentration, holding himself up with the service bar and hanging off his friends. Patron 1 continued to order drinks and staff continued to serve him.

At approximately 23:22 hours, liquor inspector 1 and two uniformed Port Moody police officers did a walk through the establishment. At that time, liquor inspector 1 approached Patron 1 and stood face to face with him near the bar and noted his face and eyes to be drooping and his inability to stand straight. Liquor inspector 1 identified Patron 1 to one of the uniformed police officers who came over to remove him from the establishment. The uniformed officer told him “you’ve had too much, let’s go.” Patron 1 appeared to agree by nodding his head up and down and submissively began walking toward the exit. Liquor inspector 1 noted his staggering gait and that he was bumping into other patrons as the police officer guided him out of the establishment.

Officers’ Evidence of Patron 2

Liquor inspector 2 testified about his observations in the establishment. His written notes from the evening are included in Exhibit 1, tab 4. At 21:25, he attended the washroom and observed a male, about 50 years of age, with short grey hair, wearing brown leather shoes and a light green golf shirt (“Patron 2”). While he was exiting the washroom stall, he fell backwards into the door and then staggered by the sink. Afterwards, Patron 2 sat next to liquor inspector 2, about two feet away from him, and continued to sit next to him throughout the majority of the evening. Liquor inspector 2 observed glassy eyes and delayed motor skills. He observed a female server having a

conversation with Patron 2, who was making faces and leaning on his elbows while holding a pint of beer. At 21:46, he observed Patron 2 knock over an empty glass at the table. Patron 2 was seated with four males and two females. At 21:53, the server had a conversation with Patron 2 while standing directly beside him. Patron 2 ordered a Red Truck lager. Patron 2 was leaning on his hands, with droopy eyes and slurring his speech. At 22:02, the server served Patron 2 with another pint of beer while tapping him on the shoulder, saying "here you go." At 22:11, Patron 2 was slowly sipping his drink. His eyes were closing as he did so and he was starting to doze off. At 22:22, Patron 2 spilled the drink all over himself. The server threw a cloth on the table and walked away. Liquor inspector 2 observed Patron 2 getting louder and his speech becoming very slurred. At 22:35, he observed Patron 2 standing, drinking someone else's beer at the table and swaying with a vacant stare. At 23:11, Patron 2 left with a female on his own accord. They were the last two people at the table.

Liquor inspector 3 also observed symptoms of intoxication in Patron 2. As noted, Liquor inspector 3 did not testify. His notes describe Patron 2, at 21:40, stumbling while walking back from the washroom, spilling his drink, exhibiting a lack of coordination, with a vacant stare. He noted that the server took the order from Patron 2 and "did not seem to be assessing signs of intoxication." At 22:20 he saw Patron 2 spill his drink again, while the same server was standing in front of him. Liquor inspector 3 stated that the server took no action to remove the intoxicated patron from the premises or to stop serving him. He further noted that, at approximately 22:35 hours, Patron 2 was stumbling while walking, showing a lack of concentration. Patron 2 appeared confused as he was drinking from someone else's beer and did not appear to be following the conversation at his table. Liquor inspector 3 saw staff walking by Patron 2 several times and speaking to him, while continuing to serve him.

Officers' Evidence of Patron 3

Police Officer 1 testified about his observations of a female at the bar ("Patron 3"). Shortly after police officers 1 and 2 sat at the bar, at 21:37 hours, two females approached them. One sat beside police officer 1 while the other sat beside police officer 2. Patron 3 introduced herself to police officer 1. She was quite close to him, was rocking back and forth on her stool, and kept bumping into him. Police officer 1

engaged her in conversation and noted signs of intoxication. She had a hard time controlling the volume of her voice as she was yelling at him, while sitting directly next to him. There was an odour of liquor on her breath. She repeatedly yelled to her friend who was seated next to her and she appeared to have difficulty controlling her emotions. She ordered two Crown Royal shots from the bar manager and drank them both with about 15 seconds in between. While paying her bill, she made several attempts to put in the PIN number of her credit card. She hit the correct button several times and finally settled her bill.

At approximately 21:54 hours, police officer 1 noted Patron 3 standing at the top of the landing. He saw her fall into a cedar pillar, nearly falling down the stairs. She then saw him observe her and asked him not to say anything about this.

Police officer 2 made some notes about his observations of Patron 3. He stated that she was "very loud, talkative, and sociable to an extreme." He wrote: "Her speech was slurred and her eyes were glazed over. She would progressively get worse as the night went on." He too observed her later fall into the pillar and noted her comment to police officer 1, something like "don't tell anyone I just did that."

Liquor inspector 1's evidence of her walk-through

On cross-examination, liquor inspector 1 confirmed her conversation with David James on March 17, 2017 when she walked through with the uniformed police officers. She questioned him about how long their camera video evidence lasted, and he responded five days. David James, at the hearing, asked her why she asked about this and liquor inspector 1 replied that she was considering the need to seize the surveillance tape as the operation that evening was covert.

In her text messages, liquor inspector 1 noted her concerns about revealing to David James the extent of the findings of the four officers on the evening. She stated she did not notify him of the several violations at the time as the officers were still in the establishment during her overt inspection. She noted that "during the overt inspection by myself, the security identified the liquor inspector [herself] to patrons, also a violation under the terms and conditions of their licence."

General Observations of Establishment

When questioned about the level of music and whether the staff might be able to hear the patrons, police officer 1 responded that the music was not so loud as to drown out all conversation. He stated that Patron 3's voice was clearly audible and that they were able to order food across the bar without elevated voices.

Police officer 1 stated that the majority of the patrons in the establishment were well behaved. There was only a handful of people who were very exuberant and boisterous. He stated it was not at all a chaotic situation. The establishment appeared to be professionally run, with those behind the bar professionally dressed and employees walking through the establishment observing patrons. However, given the overall behavior of those in the establishment, police officer 1 thought that the intoxicated few should have stood out in this crowd and that the staff should have attended to them. He noted that security personnel walked by one of the allegedly intoxicated patrons several times.

LICENSEE'S EVIDENCE OF THE EVENING OF MARCH 17, 2017

The bar manager and the assistant bar manager testified. Unfortunately, neither of them could remember much about the evening of March 17, 2017. David James gave evidence about that evening as well.

The bar manager provided a statement, dated December 10, 2017, about the events of the evening on March 17, 2017 (Exhibit 2, tab 5). The general manager of the establishment, who did not testify, asked him to prepare the statement about three days before the hearing date. Because of the length of time since the alleged contravention, the bar manager stated in his written statement and in his verbal testimony that he could not remember any specific incidents from the night of March 17, 2017.

The bar manager could not recollect anyone who was intoxicated on the night of March 17, 2017. If he had been told that something had happened soon after that evening, he might have been able to recall the incidents, if any. He stated he would have followed the procedures of removing intoxicated patrons but could not recall the specifics from that evening. He stated his observations of the patrons may have been different from those of the officers.

The bar manager stated he had been trained to follow the procedures with respect to removing patrons who appear intoxicated and not serving them anymore. He had been trained through the Serving It Right course and through his general experience. He has been a bartender for about one and a half years. The bar manager read over the report from police officer 1 and stated he could not recall the incident with Patron 3.

The assistant bar manager who was working on the evening of March 17, 2017 testified about what he observed that evening. He provided a written statement dated December 8, 2017. (Exhibit 2, tab 4) The assistant bar manager's statement noted that he could not recall the specific incident on March 17, 2017 nor could he recall overserving a patron, nor could he remember an officer approaching him and asking him for his name. As the event occurred a while ago, he was unable to confirm or deny what was in the officer's notes. He said he has worked for Brew Street for five years, four years in management, and that he follows the standards of Serving It Right to the best of his ability and the company policies. The assistant bar manager was able to list many of the indicia of intoxication in his testimony and stated if he had seen a patron who was unable to stand straight, walk properly or have a hard time speaking, he would not have served them and would have asked one of the many security hosts to help escort the patron and find them a safe ride home.

The assistant bar manager stated in cross-examination that he found out about the incident about a month afterwards. David James told him about it. Some staff knew there was an incident but did not know any details. The assistant bar manager did not know that his name was mentioned in the branch report until David James requested he provide a written statement in December.

David James arrived at the establishment on the evening of March 17, 2017 at about 11:00 p.m. He stated he had confidence in his staff to handle the extra crowd and general excitement on a St. Patrick's evening. At about 12:20 or 12:30 a.m., he saw liquor inspector 1 and spoke to her at that time. He felt the crowd was well under control. He said that liquor inspector 1 told him she was happy with things going on. She mentioned that the Port Moody police had removed one intoxicated patron. Other than that, she gave him no further information about the inspection on that evening. Liquor inspector 1 asked him a question about the cameras in the establishment and he told her the video footage lasts about five days and is then erased. He asked her why she was interested but she gave him no reason. He felt that, at that time, the crowd was thinning out. They do not allow anyone in after 1:30 a.m.

David James stated he received the NOEA on May 5, 2017. He did not ask for statements from his employees until December, just before the hearing date.

LICENSEE'S EVIDENCE OF DUE DILIGENCE

The licensee's witnesses gave evidence about the training, policies and practices in the establishment.

Training

The assistant bar manager testified that, upon hiring, management gives the new hire about an hour of orientation. If it is a mass hiring, they provide orientation to the whole group. New hires have to go through about eight training shifts.

There are four senior managers who do the training. The assistant bar manager is not in charge of training new hires. On the first five shifts, a senior manager will shadow the new hire, showing them the proper procedures from serving to checking IDs, etc. New hires must have their Serving It Right certificates. After the five shadow shifts, senior employees will keep an eye on the new hires for about three shifts and remind them of different things.

The bar manager stated he was trained to assess intoxication and listed some of the indicia of intoxication. He was trained through his experience and through the Serving It Right course.

Policies, Practices and Procedures

The licensee submitted exhibit 2 as evidence of its policies and procedures.

Tab 1 of exhibit 2 is titled "Rules, Policies and Regulations Involving Drinking and Drugs at Brew Street." This is a one page document that sets out the rules for employees at the establishment. There is nothing about preventing service to intoxicated patrons, other than to inform employees that, if they choose to drink after their shift, they become a customer and will be asked to leave if visibly intoxicated. There is space for a name at the bottom and a date. The licensee included signed documents from many of its employees. Both the bar manager and the assistant bar manager stated that an employee could not begin a shift without signing this document.

The assistant bar manager identified his signature on one of the documents at tab 1. He signed this on August 5 with no year noted. He stated in his testimony that he probably signed this in 2015.

The licensee included copies of the Serving It Right certificates of many of its employees at tab 2 of exhibit 2, including the certificates for the bar manager and the assistant bar manager.

Tab 3 of Exhibit 2 is a document titled "Proper Identification and Handling/Identifying Intoxicate [sic] Guests at Brew Street Craft and Kitchen." The final page of this document has a place for an employee's signature and a manager's signature below. Tab 3 includes four of these pages with employee signatures, each with a date of December 5, 2017. None has a signature of a manager, as required below the employee's signature.

The assistant bar manager stated he did not think he had signed this document yet. He just recalled that his general manager had asked him to sign a document, but cannot remember signing this document. He was unsure when this document would have been released. He had seen it but is not the person in charge to ensure employees sign it. He did not know when the general manager would have obtained the signatures on these documents.

When questioned in cross-examination about this document, the bar manager stated he was not familiar with this document. None of the signatures on the documents at tab 3 appear to be those of the bar manager or the assistant bar manager. There is one signed by the general manager, who did not testify.

When the bar manager was asked at what age he will ask a patron for ID, he first stated if someone appears to be under 35. When referred to the statement in the document at tab 3 of exhibit 2: "We ID everyone who appears to be under the age of 30", he then stated he follows this and asks for ID of anyone under 30. The assistant bar manager stated he follows the practice of requesting ID of anyone who appears to be under 35.

At tab 6 of Exhibit 2 is a five page document titled "Server 101." This document sets out instructions to servers to ensure customers have a good experience in the establishment, reminders about providing the best service possible and how to deal with guests' requests, etc. In several places, there is a reference to drink service. These include:

- "A guest is expected to have a drink in front of them within 3 minutes of sitting down."
- "Taking orders v. selling – instead of waiting for your table to order from you, go to them and suggest a round of shots, a couple appetizers to share, a dessert etc."
- "Ask 'is there anything else I can get for you before you get started' This rule applies if it is your table or not. Someone might want another drink, . . . "

This document includes a section on ID checking and describes acceptable IDs. The document has nothing about assessing customers for intoxication before serving them or when a server first seats them. The bar manager stated he was aware of this

document, and after reading through it, agreed there was nothing in the document about monitoring intoxication or about over service.

The assistant bar manager stated that this Server 101 document was revised in the last month. He described it as referring to training shifts, server basics, how to greet, how to ID, how to romance, how to deal with customer complaints. He stated this is part of the servers' orientation package. He also stated this is part of a larger document, that there is a much larger book developed by Rising Tides Consultants.

The licensee's documents include a time in/time out sheet at tab 7 and a blank "Incident Report Sheet" at tab 8. The bar manager thought he had filled out an incident maybe one or two times, usually if someone needs to be removed. He was unsure what happened to such reports or who would read the reports of incidents. He gave his reports to the general manager. He stated that if an incident had happened, they would discuss it at the next management meeting on Thursdays. He stated the previous bar manager was quite strict about using these report sheets.

The assistant bar manager stated that he has used these sheets. He said staff write down their recollection of an event, say how they handled it and date it and sign it.

The bar manager stated in redirect that he was aware there was a large binder developed by Rising Tide Consultants. He had seen it at management meetings but had only read it briefly.

David James testified about the Rising Tide Consultants binder. He said that he met with the consultant sometime in August of 2016 as a result of the compliance meeting in April of 2016, and issues raised by the branch at that meeting. The consultant provided them with a binder in March of 2017. They are gradually implementing sections of that binder.

Pre-shift meetings

The bar manager talked about these meetings, stating they discuss a variety of things at these 5 to 10 minute meetings, including reminders about requesting ID of everyone who appears to be under 35. He stated they do not have a meeting before every shift. Usually they have one when they expect a busy night and on weekends. There are no notes for the pre-shift meetings. He could not recall if there had been a pre-shift meeting for the St. Patrick's day evening of March 17, 2017. He thought they probably discussed procedures before his shift but could not remember.

The assistant bar manager also testified about the pre-shift meetings. He stated they generally have two pre-shift meetings: one at the start of the day and a second one before the dinner shift starts.

He stated they review a lot at these meetings – restaurant specials, targets for the shift, what to be romancing, double checking IDs. On weekends especially, even with security hosts present, they emphasize to staff that they are responsible for always checking IDs. If a customer has a stamp on his/her hand, it means someone has checked ID. They review the policies about making sure people are served appropriately, making sure how many people there are if someone is ordering multiple drinks. Every meeting has something a little bit different. He said they always have the basics mapped out; one day, it might be identification of minors and refreshing the servers and reminding them what the legal amounts are. When they are expecting a large crowd because of various events, they warn their staff that people might be coming in droves.

The assistant bar manager was unable to recall any specific pre-shift discussion on St. Patrick's Day. He believes they spoke about over service and that they expected it to be busier than normal. He remembered that they had brought in the security hosts for that evening.

Staff and Management Meetings

Both the assistant bar manager and the bar manager stated they hold management meetings every Thursday. They can sometimes last over three hours. The assistant bar manager stated that these meetings address issues re: responsible liquor service, probably about 50% of the time. Discussions will vary, depending on what incidents may have occurred and changes in menus, etc.

Staff meetings are generally held every two months for discussion of bigger issues.

The licensee did not submit any evidence of notes, agendas or minutes of these meetings.

Tests re: responsible liquor service

In cross-examination, the bar manager stated the only test he took with respect to responsible liquor service was the one for the Serving It Right certificate.

The assistant bar manager testified about testing of staff. He stated that there is a test dealing with many things in the establishment, including some issues related to responsible liquor service. He said they recently redid the basic test and that all the servers are now in the process of writing this test. He stated they have reformed a lot of their systems, including the testing. He said they have not yet rolled out their most recent test. When asked specifically about the type of test employees may have been required to take before March 17, 2017, the assistant bar manager stated it was a test of a server's basic knowledge on things such as: "who we are, the operational hours, dress code, how to properly ID, how to take a reservation, access to our recipes for drink and food, drink and food menus."

When asked if there was anything about dealing with intoxicated patrons, he replied that he did not "remember too much being on there, a while since I have written." He added that most of their proper etiquette for legal serving would be done more verbally, maybe one or two questions on the written. During pre-shift meetings, they may quiz staff on this.

The licensee did not provide any documentation of the type of testing the establishment has.

Signage

The assistant bar manager stated there are signs about responsible liquor service in the establishment. He was not sure about signs re: service to minors and ID checking. He stated they post things in their staff room to remind staff about serving responsibly and not over serving.

Post-contravention Changes

The assistant bar manager discussed changes since the March 17, 2017 incident. He stated there have been improvements in the operations in the last six months. They had been dealing with being under-staffed and changes in the management team. He said that they have brought in more staff, given servers smaller sections and have generally made it easier for staff to focus on everything. He said the team has developed, especially on the management side. He has helped train half of the people on the management team. He stated that, over the last six months, incidents on Saturday evenings have gone down a lot. There was a time when there was a bit of a bad crowd coming in and that it was hard to keep staff aware of this, when there were not enough staff. He said this "bad crowd" is not around as much as they used to be and that "there has been the biggest improvement in the last six months."

The assistant bar manager's answers with respect to the types of tests indicate some improvement in the last few months, both in the content of the testing and the requirement for new hires to write the licensee's tests.

SUBMISSIONS – BRANCH

The branch advocate made a brief submission summarizing the branch evidence of the alleged contravention on March 17, 2017.

She submitted that the evidence demonstrates a contravention of section 61(2)(b)(ii). She further submits that the licensee has not established a defence of due diligence, that in fact the directing mind was on site that evening. The contravention of allowing intoxicated persons to remain in an establishment imposes a threat to public safety. The degree of non-compliance and the recent history of complaints about the establishment support a penalty in the higher range for this first contravention.

LICENSEE SUBMISSION

The licensee maintains that it has been prejudiced in its defence by the delay in providing the contravention notice to him directly and by the branch's failure to notify him to preserve any video evidence of that evening. The licensee submits that the contravention has not been proven and that the delay in providing him with details of the evening has prevented him from discussing what happened with his staff in a timely manner.

The licensee further submits that it has established a defence of due diligence and that I should therefore find either no contravention or that the licensee is duly diligent.

REASONS AND DECISION

Contravention

The branch alleges that the licensee contravened section 61(2)(b)(ii) of the Act. There are two elements to the contravention:

- that a person was intoxicated in the service area, and
- that the licensee or its employees allowed the intoxicated person to enter or remain in the service area

The first element requires evidence that a patron or patrons were clearly showing signs of intoxication. The second element requires evidence that employees were present in the vicinity of an intoxicated patron and saw or should have seen these signs of intoxication. There is no dispute that the allegedly intoxicated patrons were in the service area of the establishment.

Intoxicated Patrons

I find the evidence of liquor inspector 2 and police officer 1 about the events of the evening of March 17, 2017 to be credible and reliable. I have given less weight to the written evidence of liquor inspector 3 and police officer 2 as they did not testify at the hearing and thus were not subject to cross-examination. However, I have noted the consistency amongst the four officers in their written reports of the evening of March 17, 2017.

The officers testified or reported about three patrons, identified in the NOEA as patrons 1, 2 and 3, who were exhibiting sign of intoxication.

Patron 1 was exhibiting the following signs of intoxication:

- odour of liquor on his breath,
- shouts of "I'm drunk" several times
- slurring his words
- bumping into police officer 1 numerous times;
- swaying side to side
- swearing at his friends
- trying to hang onto one of them to stay on his feet
- nearly falling over

In their written notes, police officer 2 and liquor inspector 3 reported their observations of Patron 1, which were consistent with the testimony of police officer 1. When liquor inspector 1 entered the establishment later in the evening, she reported observing this same patron who was having trouble standing up. At that time, she requested a uniformed Port Moody police officer to remove him from the establishment. This was done without incident.

I find that Patron 1 was exhibiting obvious signs of intoxication for a period of about two hours.

Patron 2 was exhibiting the following signs of intoxication:

- Glassy and droopy eyes
- delayed motor skills.
- slurred speech
- dozing off at table
- spilling his drink on himself
- talking very loudly
- swaying with a vacant stare
- staggering

Liquor inspector 3's written notes about his observations of Patron 2 – stumbling, lack of coordination, confusion - support the oral testimony of liquor inspector 2. While talking loudly and even spilling a drink do not alone indicate intoxication, combined with the other signs, I find that Patron 2 was exhibiting obvious signs of intoxication for a period of about one and a half hours.

Patron 3 was exhibiting the following signs of intoxication:

- rocking back and forth on her stool
- bumping against police officer 1 sitting next to her
- difficulty controlling the volume of her voice as she was yelling at him
- an odour of liquor on her breath
- yelling to her friend who was seated next to her
- difficulty controlling her emotions.
- difficulty putting in the correct PIN number of her credit card, making several attempts before successful
- almost falling down the stairs at top of landing

Police officer 2 noted in his written report that Patron 3's speech was slurred and her eyes were glazed over, and that she became progressively worse as the night went on.

I find that the observations noted by police officer 1 do not conclusively demonstrate intoxication in Patron 3. The noisy crowd in the bar area may have caused her to raise her voice beyond normal levels. She may have been cozying up to police officer 1 and flirting with him. An odour of liquor on one's breath does not always indicate

intoxication. I note that, unlike Patrons 1 and 2, the officers observed Patron 3 for less than 20 minutes. On a balance of probabilities I am not persuaded that the observations of Patron 3 amount to obvious signs of intoxication.

Allowing Intoxicated Patrons to Remain in the Service Area

The evidence of the officers, both those who testified and the written notes of the others, emphasized that at no time did any staff member take action to remove either intoxicated Patrons 1 or 2. Both Patron 1 and 2 were in the establishment for at least two hours and were in the presence of several staff members during that time.

Patron 1 was sitting at the bar exhibiting the above-noted signs of intoxication. I find that the assistant bar manager ignored these very obvious signs of intoxication and took no action to remove him from the establishment.

I find that the licensee's employees allowed Patron 1 to remain in the establishment while exhibiting obvious signs of intoxication over a period of about one and a half hours.

I find that the server who was at the table when Patron 2 spilled his drink, who had to tap him on his shoulder as he was dozing to remind him she had brought his beer, should have noted the very obvious signs of intoxication as observed by liquor inspector 2, and taken some action to have the patron removed.

The officers testified about the presence of security hosts who were walking through the establishment at different times of the evening. I find that the security personnel failed to notice the obvious signs of intoxication of these two patrons or, if they did, took no action to have the two patrons removed. Because of the length of time both patrons were in the establishment, I find that the security personnel, if doing their job properly, should have observed the same signs noted by the officers.

I have concluded that Patron 3's signs of intoxication were not sufficiently obvious to justify her removal. I note that staff may not have seen Patron 3 "almost falling down the stairs" as noted by police officer 1.

Based on my findings with respect to Patrons 1 and 2, I find that the licensee contravened section 61(2)(b)(ii) of the Act on March 17, 2017.

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 the circumstances of the alleged contravention before me, i.e. allowing an intoxicated person to remain in the establishment, the defence of due diligence is to be considered in two stages:

1. Whether the employee or employees who allowed the intoxicated person to remain 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 or employees who allowed the intoxicated person to remain was not a directing mind of the licensee (and there is no requirement that a “directing mind” must be on the premises when the 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 (allowing an intoxicated person to remain); and,
 - b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

Both of these issues 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.

Directing Mind

I find that David James is a directing mind of the corporate licensee. David James arrived in the establishment around 11:00 p.m. The officers were in the establishment from about 7:50 p.m. to midnight, and made observations of the patrons throughout that time.

Liquor inspector 2 testified that he observed David James at 11:34 p.m. outside the men’s washroom talking to a male who was exhibiting signs of intoxication. This male was not Patron 1 or 2. As this male is not identified in the NOEA as one of the patrons alleged to be intoxicated, I make no conclusions about this male or his level of intoxication.

David James was present when the Port Moody police removed Patron 1 from the establishment at about 11:30 p.m. Liquor inspector 1 reported this removal to David James.

David James was present for no more than half an hour while Patron 1 was in the establishment. As Patron 2 left at about 11:11 p.m., according to the testimony and notes of liquor inspector 2, David James was present for no more than ten minutes while Patron 2 was in the establishment.

Given the short time that David James was in the establishment and the four hours that the officers were present and making observations, I am unable to find that the directing mind allowed the intoxicated patrons to remain.

I turn now to the evidence of the licensee's policies, practices and training.

Adequate training and other systems

I find that the licensee's evidence about training, specifically on identifying intoxicated patrons, is very limited.

The licensee appears to rely on the Serving It Right course as the primary source for training its employees in responsible liquor service. The licensee submitted a document titled "Server 101" which was, at the time of the incident on March 17, 2017, the primary document used to educate servers and bartenders about responsible liquor service in the establishment (Exhibit 2, tab 6). As noted above, these instructions to servers omit any reference to assessment of intoxicated patrons or how to deal with them.

I conclude that the licensee, at the time of the contravention, had not implemented adequate training and other systems to prevent the contravention of allowing an intoxicated person to remain.

Effective Application and Operation of its Systems

Having found that the licensee's policies and training of its employees on assessment of intoxicated persons falls short of establishing a due diligence defence, the licensee's application and operations of its systems is only as effective as its policies that it is attempting to implement. Nevertheless, I will review the licensee's evidence about steps it takes to ensure its policies are applied, which include:

- Pre-shift meetings to remind staff about special menu items and occasionally discussion of incidents, if any, and reminders re. appropriate service of liquor
- An incident logbook
- Serving It Right certificates required
- Weekly management meetings
- Testing, other than Serving It Right course
- Reminders in staff room re. over service
- Signage about responsible liquor service

As I received no copies of actual reported incidents, I am unable to conclude how effective this system is. I recommend the licensee ensure that incidents are recorded and discussed at their meetings on a regular basis.

There was little evidence of any testing of employees, only that they are required to take the Serving It Right course. Again, regular testing on issues of responsible liquor service provides evidence of a licensee's due diligence. There was some evidence that the licensee may do some testing of employees, but the witnesses were vague as to the timing of this. I find, if any testing is done, either at time of hiring or at other times, the licensee initiated this after the incident on March 17, 2017.

There was some evidence from the assistant bar manager about the discussion of responsible liquor service at pre-shift meetings, particularly before weekend shifts or other special event evenings.

The licensee's witnesses testified about the weekly management meetings every Thursday. Keeping minutes of such meetings is another way of providing evidence of due diligence and showing that these meetings discuss things like assessment of intoxicated patrons. With larger staff meetings held every two months, I recommend the licensee keep minutes of these as well.

I find that the steps taken by the licensee demonstrate some attempts to ensure its policies and systems are implemented, particularly after the contravention occurred. However, given that I have found that the policies and training of its employees was

not adequate at the time of the contravention, I find that these steps do not meet the onus of establishing due diligence.

Post-contravention Improvements

The licensee provided some evidence of post-contravention improvements, including the document at tab 3 of Exhibit 2. A few employees signed this document long after the March 17, 2017 incident. This document includes a section on “Intoxicated Customers” and guidance on how to assess intoxicated customers.

The licensee’s witnesses suggested that there was a large binder developed by Rising Tide Consultants that was not submitted as evidence. David James testified that sections of this binder were being gradually implemented since the incident.

The branch held a compliance meeting with the licensee on April 20, 2017 to discuss other alleged contraventions listed in the contravention notice. The branch decided to take no enforcement action on these other alleged contraventions. Liquor inspector 1 prepared a report of this compliance meeting and a “no enforcement action taken” report, noting that there was insufficient evidence to proceed with enforcement action on these other alleged contraventions. Attached to her report is a summary from the licensee noting that they have retained Rising Tide Consultants to prepare a new Employee Policy and Procedures Manual, citing the further staff training that they intend to implement. The licensee set out the steps they are taking to promote a culture of compliance in their establishment, including improvements in the systems to ensure timely removal of any intoxicated patron.

The assistant bar manager testified about the improvements made in the establishment, particularly over the six months prior to this hearing. The establishment had been having issues with being short staffed and a big turnover in the management team. He said it had been a difficult time. He said that the late night incidents on a Saturday night have gone down a lot.

I commend the licensee for making efforts to improve its systems and policies since the contravention. The branch encourages voluntary compliance. However evidence of post-contravention changes cannot establish a due diligence defence at the time of the contravention.

Branch Delay in providing Notice of Allegations and Alleged Prejudice to Licensee

The licensee made much of the fact that he did not receive any notice of the alleged contravention on March 17, 2017 until at least two weeks later. He submitted that the failure of liquor inspector 1 to notify him on that evening to preserve video evidence has prejudiced his defence. He referred a number of times at the hearing to the absence of the video evidence. He did not receive the NOEA until May 5, 2017, which provided the details about the alleged contravention and identified the staff who were involved. The licensee submitted that this delay prevented him from preserving the video evidence and from obtaining information from his staff in a timely manner.

Liquor inspector 1 told David James on the evening of March 17, 2017 about the Port Moody police removal of one intoxicated person. I find that this information alone should have alerted him to the potential for a contravention and, at the very least, should have meant a discussion with staff about this immediately after. David James testified that he did not discuss the evening with staff until much later. The assistant bar manager stated he did not know he was named in the report on the evening of March 17, 2017 until much later. The licensee requested written statements from the bar manager and the assistant bar manager only a few days prior to the hearing. Their written statements and their verbal testimony provided very little information about the evening as they could not remember anything that occurred on a night eight months previously.

A liquor licence brings with it certain responsibilities. Some of these are found in the Act and Regulations and others are found in the terms and conditions as set out in the Guide. A licensee is responsible for ensuring its establishment operates as required by the law. Part of this responsibility is to respond promptly to any suggestion that a contravention may have occurred. The licensee in this case appears to blame the liquor inspector for not explicitly requiring him to preserve video evidence on the night of the contravention. This is not the responsibility of the liquor inspector. As liquor inspector

1 informed David James about the removal of one patron for intoxication symptoms on the night of March 17, 2017, at that point the licensee was responsible to investigate further if he wished to preserve or obtain evidence of the evening.

David James stated that the liquor inspector told him when he saw her in the establishment just after midnight that “she was happy with things going on.” David James, as the licensee’s representative at the hearing, did not put this statement to liquor inspector 1 who testified first. I question whether she used these words, given the fact that she told David James that Port Moody police had just removed an intoxicated individual, and given her knowledge of the evening as noted in her text messages. She explained that she did not speak about the covert inspection as the officers were still in the establishment and she did not wish to endanger them.

The branch has no responsibility to assist a licensee to preserve evidence for his defence in the event of a contravention. A licensee is entitled to have notice of a contravention which is done through service of the contravention notices. However, I find in the circumstances here that the licensee received some notice of the potential for a contravention on the evening of March 17, 2017. Under the Act, the branch has the right to demand the production of certain records of the licensee including things like video evidence. This right does not translate into a right by the licensee to be told to produce or preserve certain things like video evidence. On the evening in question, liquor inspector 1 gave few details about the covert inspection as the officers who were undercover were still present in the establishment and she was concerned to preserve their anonymity. However, the fact that she told David James of the removal of one patron then placed the responsibility for preserving evidence and investigating squarely on the licensee. Even without further details of the other patrons or information about the officers’ observations, the licensee was responsible for obtaining information from his staff and, if he thought necessary, preserving the video evidence.

The licensee relies on the fact that the branch delivered the initial contravention notice to the representative of Golden Spike Inn Ltd., as the licensee of record. He maintains that he did not receive the amended contravention notice until almost three weeks later when it was issued to Brew Street Craft and Kitchen Ltd. As David James had been the third party operator representative prior to the transfer of the licence and as David

James had attended compliance meetings in 2016 as a representative of the then licensee, I find it surprising that Golden Spike Inn Ltd. did not immediately forward the contravention notice to David James. I have no evidence about whether this was done or not.

The licensee emphasized several times that the failure to preserve the video evidence and the delay in communicating to his staff the details of the contravention was the fault of the branch. Admittedly, there was some delay in issuing the contravention notice to Brew Street Craft and Kitchen Ltd. as the “deemed licensee” at the time. However, the branch issued this amended contravention notice on April 10, 2017. The branch issued the NOEA with full details about the allegations on May 5, 2017. I received no explanation as to why the licensee did not at that time review the evening with its staff in order to obtain evidence about the alleged contraventions. David James and the general manager asked the bar manager and the assistant bar manager to provide written statements only a few days before the hearing. This is not the fault of the branch. There was a period of about eight months between the alleged contravention and the questioning of his staff. The licensee provided me with no explanation as to why there was this delay in his own investigation of the events.

I find that any prejudice to the licensee in gathering information about the evening of March 17, 2017 lies squarely with the licensee’s actions and is not the fault of the branch.

I find that the failure on the part of the licensee to take immediate action to interview his staff to ensure documentation of the March 17, 2017 incident is another flaw in the licensee’s due diligence defence. As noted by the Supreme Court of Canada in *R. v. Sault Ste. Marie*, in order to establish due diligence, a licensee must establish “a proper system to prevent commission of the offence” and take “reasonable steps to ensure the effective operation of the system.” The onus is on the licensee to take these steps. In my view, taking reasonable steps to ensure the effective operation of the system means an immediate response from the licensee when there is any suggestion that there may be a contravention. In the circumstances here, reasonable steps would include preserving the video evidence, interviewing the employees involved in a timely manner and ensuring all the necessary documentation is provided to the general manager’s

delegate. The licensee did not take these steps and thus fails in its due diligence defence.

Conclusion

I find that the licensee has not met the test of proving the defence of due diligence on a balance of probabilities.

I therefore find that the licensee has contravened section 61(2)(b)(ii) of the Act. I now turn to the question of penalty.

PENALTY

Pursuant to section 51(2) of the Act, having found that the licensee has contravened the Act, the Regulations and/or the terms and conditions of the licence, I may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the licensee to transfer the licence

I am not bound to order the penalty proposed in the NOEA. However, if I find that either a licence suspension or a monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 2 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.

The branch considers intoxication to be a serious public safety issue. Intoxicated patrons may be a danger to themselves and others. Intoxication can be a factor in many crimes, including domestic violence, drug offences, assaults and motor vehicle infractions. To avoid the possibility of further liquor consumption and avoid any harm

to other patrons or staff, a licensee must not allow a person who is intoxicated to enter or remain in the part of the establishment where liquor is served.

I have found here that the licensee's staff allowed two intoxicated patrons to remain in the service area. Their symptoms of intoxication were significant: inability to stand properly, swaying, glazed eyes, odour of liquor, dozing off at the table, delayed motor skills, slurred speech, yells of "I'm drunk." The assistant bar manager and a server continued to serve liquor to Patrons 1 and 2, despite the obvious signs of intoxication noted by officers who were sitting nearby and able to observe the interaction between the staff and the patrons. The uniformed Port Moody police eventually removed Patron 1 about an hour and a half after officers noted the first symptoms of intoxication. Liquor inspector 1 noted that he was staggering and bumping into other patrons on his way out. Patron 2 left on his own over an hour after liquor inspector 2 first noted signs of intoxication.

Given the potential for serious harm that can result from intoxicated patrons and the length of time that these two patrons were exhibiting signs of intoxication while continuing to be served by staff members, I find that a penalty is warranted here.

The factors that I have considered in determining the appropriate penalty in this case include: whether there is a proven compliance history; a past history of warnings by the branch and/or the police; the seriousness of the contravention; the threat to the public safety; and the well-being of the community.

Liquor inspector 1 testified about her dealings with David James, both when he was the third party operator representative under the license issued to Golden Spike Ltd. and when Brew Street Craft and Kitchen Ltd. became the licensee. Liquor inspector 1 testified that David James was generally the person she spoke to regarding any issues or routine inspections.

When David James asked her in cross-examination about whether she thought the two of them communicated well, she responded that his responses to her were quite inconsistent – sometimes he would respond immediately, at other times there would be no response to her emails requesting information.

The branch held a compliance meeting on April 4, 2016. Liquor inspector 1 testified about this meeting and included the record of the meeting in Exhibit 1, tab 16. She stated she was invited to the meeting as she was being assigned to the Port Moody area. There was another liquor inspector responsible for the establishment at that time. At the meeting, they discussed concerns about noise levels and the lineups outside the establishment. At this meeting, the police provided some statistics to show that the establishment was generating more concerning calls than any other establishment in the area. These statistics, documented in the report at tab 16, demonstrate “a pattern where the establishment is having a negative effect on the community.” At the meeting, David James provided a plan outlining steps the third party operator and licensee were taking to eliminate future issues. David James signed as the representative of the licensee at this meeting.

Rising Tide Consultants provided a follow-up letter to the branch, dated April 13, 2016, summarizing the licensee’s commitments following the April 4, 2016 meeting. One of the commitments included “designing a comprehensive policy and procedures manual.” (Exhibit 2, tab 16)

The branch held a second compliance meeting on November 16, 2016. Liquor inspector 1 was now the liquor inspector responsible for the oversight of the establishment. A representative of the licensee of record, Golden Spike Ltd. and David James as the third party operator representative attended this meeting and signed the report at Exhibit 2, tab 16. This meeting addressed administrative requirements and reminded the licensee of the need to comply with these.

As Brew Street Craft and Kitchen Ltd. was not the licensee of record or the deemed licensee at either of these meetings, the branch records show no compliance history (Exhibit 1, tab 15). Given the wording of section 149 of the Regulation, the current licensee, Brew Street Craft and Kitchen Ltd, was not a “regulated person” at the time of these compliance meetings for the purpose of determining the compliance history. The Regulation restricts me to the compliance history of the “regulated person” which means a licensee, former licensee, deemed licensee, permittee or former permittee, as defined in section 146 of the Regulation.

However, I note section 51(3) of the Act instructs me, as the delegate of the General Manager, to take into account “other matters that the general manager considers relevant” as well as the licensee’s compliance history.

I have considered the record and concerns as noted in the above compliance meetings as relevant to my determination of the appropriate penalty. The third party operator representative, David James, who was present and participated at both meetings, and the licensee representative at this hearing, David James, are one and the same person. I have also considered the testimony of liquor inspector 1 as to why she decided it was necessary to conduct a covert operation of the establishment.

On April 10, 2017, liquor inspector 1 delivered the amended contravention notice personally to David James. On April 20, 2017, the branch held a compliance meeting to discuss other issues and concerns that the officers had identified during the covert inspection on March 17, 2017 and that were listed in the contravention notice. Liquor inspector 1 explained that the branch did not pursue enforcement action on these issues, but elected to hold the compliance meeting instead. The other issues identified included allegations of employees consuming liquor, exceeding maximum drink size, identifying liquor inspector to patrons and allowing unlawful conduct. The licensee provided a response after this meeting, outlining its commitments to ensure future compliance. (Exhibit 1, tab 9)

I note the commitments made by the licensee at this meeting which include a final paragraph:

At Brew Street we seek to cultivate a culture of compliance. We do not believe it benefits us in any way to be over-serving, to be serving minors, to be permitting disturbances of our neighbours or otherwise to be non-compliant with rules and regulations. We have attempted to impress this culture upon our staff, and we are taking increasing measure to ensure this culture is embedded in everything we do.

I have not relied on the allegations of contraventions noted in the above report to draw any conclusions about penalty. I commend the licensee for its efforts to improve its practices and policies to ensure future contraventions do not occur.

There is no record of a proven contravention of the same type for this licensee at this establishment within the preceding twelve months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 2 and calculating a penalty. Item 9 in Schedule 2 provides a range of penalties for a first contravention of this type: a four to seven day licence suspension and/or a \$5000 to \$7000 penalty.

The branch recommends the higher end of the range for a first contravention, i.e. a seven day suspension. Liquor inspector 1 explained her reasons for choosing a seven day suspension. She referred to the evidence of the officers with respect to the severity of the intoxication of the patrons identified and to the number of patrons who were identified. Staff were not taking any action despite the obvious signs of intoxication that these patrons were demonstrating. The security personnel who were walking through the establishment did not identify and remove these patrons. For these reasons, as well as the history of dealings with David James, either as the licensee's representative or as the third party operator's representative, with respect to issues and concerns raised over the year prior to the contravention, she concluded a penalty at the higher end was justified here.

I agree with the liquor inspector's reasons for choosing a suspension at the higher end of the range. Despite the post-contravention commitments and improvements, I rely on the particular facts as noted above with respect to the two intoxicated patrons, as well as the history of concerns with respect to the establishment in the months leading up to the incident on March 17, 2017, to conclude a suspension at the higher end is justified.

As I have found a contravention based on two patrons and not three, I impose a suspension of six (6) days. I find that a six day suspension is reasonable and appropriate for the circumstances of this contravention.

ORDER

Pursuant to section 51 of the Act, I order a suspension of Liquor Primary Licence No. 144144 for a period of six (6) days to commence at the close of business on Thursday, **February 22, 2018** and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the liquor license be held by the branch or the Port Moody Police Department from the close of business on Thursday, February 22, 2018 until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Signs satisfactory to the General Manager notifying the public that the licence is suspended will be placed in a prominent location in the establishment by a branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

Nerys Poole
General Manager's Delegate

Date: January 18, 2018

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

Liquor Control and Licensing Branch, Vancouver Office
Attn: Maria Caduhada, Branch Advocate