



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR AND CANNABIS REGULATION 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: Chilly & Dancer Entertainment Ltd.  
dba Chilly & Dancer Pub  
874 Tsimshian Boulevard  
Kitimat, BC V8C 1T5

Case: EH19-024 & 025

For the Licensee: Elly Castilho

For the Branch: Hugh Trenchard

General Manager's Delegate: Nerys Poole

Date of Hearing: November 26 & 27, 2019

Date of Decision: January 15, 2020

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**Liquor and Cannabis  
Regulation Branch**

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

Location:  
Fourth Floor, 645 Tye Road  
Victoria, BC V9A 6X5

[www.gov.bc.ca/liquorRegulationandlicensing](http://www.gov.bc.ca/liquorRegulationandlicensing)

## INTRODUCTION

Chilly & Dancer Entertainment Ltd. operates a pub doing business as Chilly & Dancer Pub (the "Pub"), under its Liquor Primary Licence number 038914 (the "licence"). Hours of business under the terms of the licence are 10:00 a.m. to 2:00 a.m., Sunday to Thursday and 11:00 a.m. to 2:00 a.m. on Fridays and Saturdays. The Pub is located at 874 Tsimshian Boulevard in Kitimat, B.C.

Elly Castilho is the owner of the Pub and represented the corporate licensee at the hearing. Throughout this decision, I refer to her as the licensee.

The licence is, as are all liquor licences issued in the Province of British Columbia, subject to the terms and conditions contained in the Publication "Liquor Primary Terms and Conditions" (the "Handbook").

## ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor and Cannabis Regulation Branch's (the "Branch") allegations and proposed penalties for Case Number EH19-024 are set out in the Notice of Enforcement *Action* dated June 6, 2019 (the "first NOEA"), (exhibit 1, tab 1). The allegations and proposed penalties for Case Number EH19-025 are set out in the Notice of Enforcement *Action* dated July 3, 2019 (the "second NOEA"), (Exhibit 1, tab 2). The second NOEA amended a previous Notice of Enforcement *Action* dated June 6, 2019 relating to the same contravention on February 15, 2019, (exhibit 2). A cover letter dated July 3, 2019 accompanied the second NOEA, (exhibit 3).

### First NOEA

In the first NOEA, the Branch alleges three contraventions that occurred on February 16, 2019 and proposes penalties for each as follows:

1. The licensee allegedly contravened section 61(2)(b)(ii) of the *Liquor Control and Licensing Act* (the "*Act*") by allowing an intoxicated person to enter or remain in a service area. The Branch proposes a monetary penalty of \$5000 (item 9 of Schedule 2 of the *Liquor Control and Licensing Regulation*).

2. The licensee allegedly contravened a term and condition of the license, i.e. adult entertainment and the restrictions. The Branch proposes either a four (4) day suspension or a monetary penalty of \$5000 (item 31 of Schedule 2 of the *Liquor Control and Licensing Regulation*).
3. The licensee allegedly contravened a term and condition of the license, i.e. games, tournaments, contests. The Branch proposes either a one (1) day suspension or a monetary penalty of \$1000 (item 54 of Schedule 2 of the *Liquor Control and Licensing Regulation*).

During his testimony at the hearing, liquor inspector 1 noted that the Branch did not oppose giving the licensee a choice of either the minimum monetary penalty of \$5000 or the minimum suspension of four (4) days, for the alleged contravention of section 61(2)(b)(ii) of the *Act*.

### **Second NOEA**

In the second NOEA, the Branch alleges that, on February 15, 2019, the licensee contravened a term or condition of the licence by drawing attention to a liquor inspector, a minor agent or a police officer. The Branch proposes a penalty of a one (1) day suspension or a monetary penalty of \$1000 (item 54 of Schedule 2 of the *Liquor Control and Licensing Regulation*).

### **Licensee's Response**

The licensee disputes all of the above alleged contraventions. She also disputes the appropriateness of the proposed penalties. The licensee takes issue with the manner the inspections were conducted and the conduct of the liquor inspector towards her.

The licensee stated that, if I find a contravention on any of the alleged contraventions, she prefers a monetary penalty rather than a suspension.

**RELEVANT STATUTORY PROVISIONS*****Liquor Control and Licensing Act, S.B.C. 2015, c. 19*****Conduct at event site or in establishment, service area or liquor store****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,

(“alleged contravention of intoxication”)

**Terms and conditions on licence**

**15** (1)Subject to this *Act* and the regulations, the general manager may, in the public interest,

(a)impose terms and conditions on a licence or endorsement that is being or has been issued,

(b)without prior notice, impose terms and conditions on all licences in a class of licences established by the regulations and on all endorsements in a class of endorsements established by the regulations and may impose different terms and conditions for the different classes of licences or endorsements,

(c)establish classes of establishments and without prior notice, impose terms and conditions on all licences issued in respect of a class of establishment and all endorsements on licences issued in respect of a class of establishment and may impose different terms and conditions for different licences or endorsements issued in respect of different classes of establishments,

(d)without prior notice, impose terms and conditions on licences or endorsements of the same class that are issued at different times,

(e)suspend, rescind or amend the terms and conditions referred to in paragraph (a), and

(f)without prior notice, suspend, rescind or amend the terms and conditions referred to in paragraphs (b) to (d).

(2) Without limiting subsection (1), the general manager may impose terms and conditions respecting all matters related to the manufacture, purchase, sale, service and consumption of liquor under a licence or endorsement and the operation of establishments and service areas, including, without limitation, respecting one or more of the following:

...

(c) games and entertainment allowed in an establishment or a service area;

...

(3) The general manager may

(a) publish the terms and conditions referred to in subsection (1) (b) to (d), and other terms and conditions respecting a class of licences or endorsements, in whatever form the general manager believes will bring the terms and conditions to the attention of licensees, and

(b) change a record published under paragraph (a) of this subsection to reflect suspended, rescinded or amended terms and conditions.

### **Entertainment terms and conditions (pages 24 to 26 of Handbook)**

Any entertainment you offer must comply with local bylaws. It must also comply with any restrictions imposed regarding hours or type of entertainment allowed (these restrictions, if any, will be specified on your licence).

#### **Adult Entertainment**

Adult entertainment includes:

- Exotic dancers – entertainers who remove clothing during a performance and/or perform in a sexually suggestive manner
- Adult-oriented performers – entertainers who present performances not suitable for minors (nudity, sexual content, violence, obscene language)
- Adult-oriented activities – activities not suitable for viewing by minors (full or partial nudity, sexual content, violence, degradation or abuse)

Belly dancers are not considered adult-oriented performers.

If you are offering adult entertainment:

- The entertainers must be at least 19 and must wear appropriate clothing while walking through the audience before and after performances. This clothing may

be part of their stage costume; however, the clothing must provide coverage of the entertainer's breasts and genitalia.

- If you have received approval to allow minors in your establishment, but you also occasionally offer adult entertainment, you must not offer adult entertainment during the hours when minors are permitted, or you must post appropriate signage prohibiting minors during the event.
- Performances must be confined to the stage or other approved areas (these areas will be noted on your floor plan). No performing is allowed in the audience area.
- Animals cannot be part of a performance and are not permitted as entertainment, except as approved by the general manager.
- You must ensure that adult-oriented performers, exotic dancers and adult-oriented activities cannot be viewed from outside the service area – dividers or other separation must prevent a line of sight into the area.
- The exotic dancers/adult-oriented performers cannot act as servers or hold any other employment position in your establishment while working in their role as entertainers. However, when individuals are not working in their role as an entertainer, they may be employed as servers or hold positions of employment in your establishment and this may occur during the same shift.
- If an entertainer holds another employment position in the establishment, they must change out of their entertainer clothing and into clothing typical for the position they are tasked with prior to starting that position. Exotic dancing/adult entertainment must not be combined with serving or any other employment position. All licensed establishments that intend to provide adult entertainment are required to install surveillance cameras in all private show/VIP booths

Exotic dancers and adult-oriented performers cannot:

- Engage in real or simulated sex acts, or in any acts involving coercion or violence, either simulated or real
- Insert any object into, or extract any object from, the vagina or anus
- Urinate or defecate while performing
- Touch, share food and beverages, or pass objects to members of the audience or to other performers
- Dance/perform on table tops or other areas outside the approved areas
- Deliberately engage a patron in an adult-oriented performance or activity
- Perform while intoxicated

("alleged contravention of adult entertainment restrictions")

**Tournaments and Contests terms and conditions (page 24 of Handbook)**

- You must not offer or give liquor as a prize (or tokens redeemable for liquor), and your event must not involve the consumption of liquor

("alleged contravention of giving away liquor")

**Compliance and Enforcement terms and conditions (page 38 of Handbook)**

As a licensee, you are required to:

1. Comply with the *Liquor Control and Licensing Act*, its regulations and the terms and conditions in this publication.
2. Always allow Liquor and Cannabis Regulation Branch inspectors and/or police officers to enter your establishment. Never impede their entry in any way.
3. Comply with the *Liquor Control and Licensing Act*, its regulations and the terms and conditions in this publication.
4. **Never draw attention to liquor inspectors inside your establishment.** This can affect the inspectors' safety. (bold in original)

("alleged contravention of drawing attention to liquor inspector")

**ISSUES****Alleged Contravention of Intoxication (First NOEA)**

1. Did the alleged contravention of allowing an intoxicated person to enter or remain in service area 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?

**Alleged Contravention of Adult Entertainment Restrictions (First NOEA)**

4. Did the alleged contravention of allowing adult entertainment, contrary to the Terms and Conditions Handbook, occur?
5. If so, has the licensee established a defence to the contravention?
6. If the contravention is proven, what penalty, if any, is appropriate?

**Alleged Contravention of Giving Away Liquor (First NOEA)**

7. Did the alleged contravention of giving away liquor, contrary to the Terms and Conditions Handbook, occur?
8. If so, has the licensee established a defence to the contravention?
9. If the contravention is proven, what penalty, if any, is appropriate?

**Alleged Contravention of Drawing Attention to Liquor Inspector (Second NOEA)**

10. Did the alleged contravention of drawing attention to a liquor inspector, contrary to the Terms and Conditions Handbook, occur?
11. If so, has the licensee established a defence to the contravention?
12. If the contravention is proven, what penalty, if any, is appropriate?

**EXHIBITS**

- Exhibit 1: Branch book of documents, tabs 1 to 24
- Exhibit 2: Original NOEA for EH19-025, dated June 6, 2019 (later amended by NOEA dated July 3, 2019)
- Exhibit 3: cover letter dated July 3, 2019 accompanying amended NOEA of same date
- Exhibit 4: CD Video of evening of February 16, 2019
- Exhibit 5: Licensee's List of Persons Barred from the Pub
- Exhibit 6: Licensee's Incident logbook samples
- Exhibit 7: Licensee's 'Liquor Licensee Quick Facts' poster
- Exhibit 8: Licensee's sample of staff meeting notes – 3 stapled pages, dated September 20, 2012, October 5, 2011, and October 20, 2010

**WITNESSES**

The Branch called three witnesses:

- the liquor inspector who was the author of the two NOEAs and was present at the Pub on February 15, 2019 ("liquor inspector 1");
- the liquor inspector who attended the Pub on February 15 and 16, 2019, in a covert capacity, and compiled notes of the events ("liquor inspector 2"); and

- the second liquor inspector who attended the Pub on February 15 and 16, 2019, in a covert capacity, and compiled notes of the events (“liquor inspector 3”).

The licensee called six witnesses:

- the licensee;
- the manager of the Pub (the “manager”);
- a patron at the Pub on February 16, 2019 (“patron 1”);
- a patron at the Pub on February 16, 2019 (“patron 2”);
- a server at the Pub who was working on February 15, 2019 and attended as a patron on February 16, 2019 (the “server/patron”); and
- A server at the Pub on February 16, 2019 (the “February 16 server”).

## EVIDENCE

### Background

The three liquor inspectors explained in their testimonies what initiated their attendance at the Pub on the evenings of February 15 and 16, 2019. Liquor inspector 1, whose area of responsibility includes Kitimat, contacted liquor inspectors 2 and 3 from another region of the Province and arranged for them to come to Kitimat to attend the Pub on both evenings in a covert capacity. Their attendance at the Pub on February 15, 2019 was intended merely to familiarize themselves with the layout prior to attending the “Body Heat” event on February 16, 2019. Liquor inspector 1 had seen the Body Heat event advertised on facebook and bought tickets for the two liquor inspectors. Their attendance at the Pub on February 15, 2019 resulted in a contravention notice being served on the licensee for “drawing attention to a liquor inspector,” (exhibit 1, tab 4). Their attendance at the Pub on February 16, 2019 resulted in a contravention notice being served on the licensee for allowing an intoxicated person to remain, contravening terms and conditions re. adult entertainment, and contravening terms and conditions re. contests and gifts of liquor, (exhibit 1, tab 3).

Liquor inspector 1 testified about his responsibilities as a liquor inspector and his overall role in the inspections on February 15 and 16, 2019. He inspects all varieties of establishments, checking for any infractions of the rules. He has been a liquor inspector since May of 2017, operating out of the Terrace office. Prior to that, he was a member of the RCMP for 36 years. His geographical region includes Kitimat.

He signed the contravention notices for both the events of February 15, 2019 and for February 16, 2019. He authored both NOEAs, although he was only present at the Pub on the evening of February 15, 2019. He relied on the notes and comments of liquor inspectors 2 and 3 to draft the first NOEA relating to the events of February 16, 2019. He explained that he originally issued two NOEAs dated June 6, 2019. The first NOEA related to the three alleged contraventions on February 16, 2019. Liquor inspector 1 amended the NOEA dated June 6, 2019, relating to the events of February 15, 2019, and sent a cover letter, with the amended NOEA dated July 3, 2019.

Liquor inspector 1 testified that the only change in the second NOEA for the events of February 15, 2019, was to change the date in paragraphs 2 and 3 of the narrative section from February 16 to February 15. The date and time in the table on page 2 of the original NOEA for February 15, 2019 showed the correct date of the contravention as February 15, 2019. Liquor inspector 1 testified that he sent all NOEAs by registered mail.

The licensee received the Notices of Enforcement Action in June of 2019. At the hearing, the licensee stated she did not see the second NOEA, as amended, and did not believe she had received it.

### **Branch Evidence re. Alleged Contravention of Intoxication on February 16, 2019**

I have used the term “server/patron” to describe one of the allegedly intoxicated patrons on February 16 as she is a server at the Pub and was working on February 15, 2019. She was not working as a server on February 16, 2019. She was there as a patron.

Liquor inspectors 2 and 3 testified about the allegedly intoxicated patrons they witnessed in the Pub on February 16, 2019.

Liquor inspector 2 described her observations of the server/patron. She stated she was a young blonde who had served them on February 15, 2019. When she and liquor inspector 3 entered the Pub about 8:40 p.m. on February 16, 2019, the server/patron appeared sober. Liquor inspector 2 noted that the server/patron was obviously there as a patron and not working. She observed the server/patron drinking **from a pitcher of beer** and having shots at bar.

Liquor inspector 2 said she could see the server/patron becoming increasingly intoxicated. Her behaviour was markedly different from when they observed her as a server the night before. At different times, she was on the dance floor with the performers. Just after 11:00 pm, she was on her hands and knees on the dance floor after falling. She then fell in an area just off the dance floor near the pool tables and someone helped her to get up. She was hanging off a male (later identified as the DJ). The server/patron was overly exaggerated in her mannerisms. Liquor inspector 2 said the server/patron left just before midnight on February 16.

Liquor inspector 2 stated that the server/patron was sharing a pitcher of beer with an older lady. She also saw her have at least four shots at the bar. She was not sure how many others she may have had.

Liquor inspector 2 stated the server/patron was slurring her speech and not as coherent as earlier or the night before when she was working. Liquor inspector 2 stated she had a conversation with the server/patron after the show and she was having trouble getting her words out.

Liquor inspector 2 reviewed the photos at tab 19 of exhibit 1. She took the photos on her iphone. The photos do not have a time stamp. Photo 3 shows the server/patron crouched on the dance floor with one of the performers. The server/patron was crouched down watching the performance on the dance floor. The server/patron had gone on the dance floor when the performers were on. Several other photos show her in the background and talking with the licensee.

Liquor inspector 2 pointed out the server/patron on the video with the times marked, (exhibit 4). Most of the video shows the performance, which I review below. At 11:18 p.m., the video shows the server/patron talking to the manager who appears to be getting angry with the server/patron. Shortly after that, the server/patron turns and walks away. The video shows her walking steadily and without any stumbling.

Liquor inspector 2 observed another patron sitting not far from their table ("patron 3"). She first noticed patron 3 at about 8:45 p.m. when she and liquor inspector 3 entered the Pub. Patron 3 was walking fine then. As the night progressed, the two liquor inspectors went on the dance floor with patron 3. Liquor inspector 2 said, at that point, patron 3 was holding onto the railing to steady herself. At about 1:00 a.m., the two liquor inspectors joined patron 3 at her table. Liquor inspector 2 said patron 3 was struggling to get her words out, was having trouble texting and dropped her cell phone. Prior to joining her at the table, liquor inspector 2 observed a server at the table serving them. Patron 3 was drinking from a wine glass. When the 2 liquor inspectors joined her at her table, liquor inspector 2 noted her head nodding and she appeared to be having trouble keeping her eyes open.

Liquor inspector 2 testified about a third patron, described in her report as "severely intoxicated," (exhibit 1, tab 11). At about 1:20 a.m., after the performance, she saw two females near the pool table. One was having difficulty getting her coat off. Her friend had to help her, and it took a long time for the female to pull her shirt down after taking off her coat. She testified that the two women had beer. Her typewritten report of that evening stated the female was drinking Palm Bay coolers in a can. There were no staff right by the pool tables

In cross-examination, liquor inspector 2 repeated again that the behaviour of the server/patron on February 16, 2019 was markedly different from her behaviour when she was working on February 15, 2019. Liquor inspector 2 spoke to the server/patron at the beginning of the evening on February 16 and said, as the evening progressed, she was becoming more hyper and exaggerated with her speaking and body movements. Liquor inspector 2 agreed she could see the performers telling her to get off the dance floor. In her typewritten notes at exhibit 1, tab 15, liquor inspector 2 noted that the server/patron was told multiple times to get off the dance floor. During the performance, the server/patron was on the ground on her knees and at times on all fours. During the evening, she saw her being served or drinking four shots.

When asked what the server had brought to the table just before they moved to join patron 3, liquor inspector 2 was unable to say what drinks were served at that time, or who was served. She agreed that patron 3 was drinking wine.

With respect to her observations of two females by the pool tables, after 1:00 a.m., she acknowledged that she had written "Palm Bay coolers in a can" in her notes. She stated she was pretty certain they were drinking from bottles, not cans.

Liquor inspector 3 testified about her observations of allegedly intoxicated patrons in the Pub on February 16, 2019. She saw the server/patron drinking beer in the upper area of the Pub. She also saw when she was told to get off the dance floor. Her notes of that evening state: [the server/patron] was told to get off the dance floor very unsteady on feet, then she left the bar, (exhibit 1, tab 13). The server/patron was seated with another patron drinking pitchers of beer and then she saw her at the bar, consuming shooters. Liquor inspector 3 testified that the server/patron was fine at the beginning of the evening, walking back and forth between the bar and stage. She stated that she observed her for about four hours, from when they entered the Pub at about 8:40 p.m. until the server/patron left. She watched her having shooters and then showing signs of intoxication. Her voice level got louder, and she saw her fall on the dance floor. Staff kept telling her to get off the dance floor. She then saw her by the pool table and stumble there and talk to someone there.

When asked of her opinion as to what staff should have done, she said the server/patron should have been cut off alcohol and told to leave. Liquor inspector 3 stated that the server/patron left closer to midnight. In cross-examination, liquor inspector 3 stated the server/patron received her last shot at 11-ish. After looking at video times, she agreed the server/patron was probably gone around 11:20 p.m.

With respect to patron 3, she saw her drinking white wine. She said that she and liquor inspector 2 were sitting at a table right behind patron 3. When a few people at her table left, the two liquor inspectors went to join her. They had started noticing signs of intoxication: her eyes were half closed, she was fumbling with her cell phone, her eyes were slits, her speech was slurred, she could hardly make a conversation. Liquor inspector 3 followed patron 3 outside when she went for a cigarette. She had difficulty removing her coat when she returned. When the two liquor inspectors suggested she join them on the dance floor, she followed them and held onto the railing while dancing. She nearly fell on dance floor. She stumbled her way back up to the table.

Liquor inspector 3 stated that staff were all around while they were with patron 3. The server came by after the liquor inspectors joined patron 3 at her table. When they were dancing, liquor inspector 3 noted that there were staff everywhere around them – at the bar, at doors, and other areas. She thought staff should have noticed and should have checked to see if patron 3 was fine. She said she could see staff directly from where they were on dance floor. When patron 3 almost fell on the dance floor and stumbled, she was in direct eye view of bar and of staff who were walking around the dance floor.

She summarized the signs of intoxication she observed in patron 3: eyes half closed, speech slurred, mannerisms slow, facial expressions, unsteady walk, smell of liquor on her breath. She stated she saw staff give her beer.

Both liquor inspectors commented on the signs and symptoms they look for when judging if someone is intoxicated. They include:

- poor hand/eye coordination, e.g. fumbling with objects like their drink, cigarettes, cell phone, putting on or taking off jackets, tying shoes.
- facial expression
- smell
- glossy eyes
- red flush face
- slurred speech or not talking at all
- speech fluctuating in tone or yelling
- how they sit and walk, needing support to stand or walk, falling
- exaggerated mannerisms

### **Licensee Evidence re. Alleged Contravention of Intoxication on February 16, 2019**

On the evening of February 16, 2019, the licensee was at the Pub from about 9:00 p.m. to closing. The licensee described the server/patron as an excitable person who often appears quite hyper. She stated she is a fantastic server. Several weeks prior to the event on February 16, 2019, the server/patron had asked her for the night off as she really wanted to attend the performance of Body Heat as a patron and not as a server. When the licensee told the server/patron she had the time off for the Body Heat performance, she was very excited.

During the performance, the server/patron kept trying to crawl on the dance floor to be closer to one of the performers. The licensee saw her crawling onto the dance floor and looking up at one of the performers. The licensee and the performers told her she had to leave the dance floor. The licensee did not see her fall by the pool table.

The licensee stated that when the manager noticed the server/patron was getting intoxicated, she told her she must leave the Pub. After the manager told the server/patron she was cut off and they would no longer serve her, she stomped out of the Pub crying. The licensee figured, looking at the video times, that the server/patron left the Pub around 11:20 p.m. The February 16 server put the server/patron in a cab and told the driver to take her home. The licensee heard later that she went home and then went out again with a friend to a local hotel.

The licensee noticed patron 3 sometime around midnight, at which point she told her friends it was time to get patron 3 out of the Pub.

She had no knowledge of the females by the pool table after 1:00 a.m.

The manager testified about serving the server/patron. She remembers serving her vodka crans and may have served her shooters but does not remember. She did not have a clear view of dance floor as she was working behind the bar, interacting with people in front of the bar.

At one point, the server/patron approached the manager at the bar for another drink and the manager thought she was getting too hyper, so she refused to serve her. She did not know the server/patron had fallen on the dance floor. She told the server/patron it was time for her to go home. She stated that the server/patron pouted and stormed away from the bar. She pointed out where this scene is visible on the video, about 11:15 p.m., and that the server/patron was walking fine, without any stumbling. The performance was still going on when the manager cut her off. She does not remember who she told but would have told someone as, when she cuts someone off, she tells someone else to make sure the person leaves the premises safely.

The manager could not say anything about patron 3, as she never noticed her. She never came to the bar that evening where the manager was working. She had no knowledge of the females by the pool table after 1:00 a.m.

The February 16 server testified about arranging a cab for the server/patron. She said she did not serve her during the evening. The February 16 server stated she was outside having a smoke when the server/patron came out and was crying. She could not remember what time it was. She told the cab driver to take her home and to make sure she was in the house before leaving.

The server/patron testified. She agreed she was very excited about the Body Heat performance for February 16, 2019 and was very happy when the licensee gave her the evening off. She attended the Pub with her mother who was drinking from the pitcher of beer. She did not drink beer. She was very excited to see "the boys." She kept sneaking onto the dance floor to be closer to them. The server/patron admitted that, over the three hours or so she was in the Pub, she drank four vodka crans and four tequila shots. She cried when the manager cut her off as the performance was still going on and she really wanted a lap dance with one of the performers. She is still upset about missing that. She went home in the cab and then called a friend and they went out again to a local hotel. She admitted she was intoxicated later in the evening when they cut her off. She said she tried to pace her drinking.

When cross-examined about the photo showing her crawling on the dance floor and whether she would do that if she were sober, she responded that she is "a bit of a wild card" even when sober. She did not remember falling near the pool table as shown in the video. She said the sixth photo of her with her arms up, as stripper walks by, is her just fixing her pony tail.

Patrons 1 and 2 testified. They were both sitting at the table with patron 3. Patron 1 stated she ordered a litre of wine and patron 2 ordered one too. Patron 3 ordered a half litre of wine. There were six of them at the table and they all shared the wine. Later on, patrons 1 and 2 ordered another litre of wine, but did not finish it. She stated the performance started about 9:30 p.m. When asked by the licensee in direct, she agreed that the licensee had approached her shortly after midnight and asked her to remove patron 3. At that point, one of the group called her husband to come pick them up.

When outside, patron 3 dropped her cell phone. Patron 1 did not remember patron 3 going on the dance floor. She said patron 3 does not drink beer. After finishing her half litre, patron 3 had a glass of wine from patron 1's litre and another glass from patron 2's litre of wine.

She agreed in cross-examination that patron 3 started showing some signs of intoxication about 11 or 11:30 p.m. At that point, only she and patrons 2 and 3 were at the table. They left immediately after the licensee suggested they do so. She added that in her previous experience with patron 3, she can switch from sober to drunk almost instantly, like a light switch.

Patron 2 confirmed the evidence of patron 1 with respect to the amount of wine ordered and that patron 1 had told her that the licensee said it was time to remove patron 3 because she was showing signs of intoxication. She did not know if patron 3 was slurring her words as she did not converse with her. She said the server brought the third carafe to the table and was standing directly across from where patron 3 was sitting.

### **Branch Evidence re. Alleged Contravention of Adult Entertainment Restrictions**

Liquor inspectors 2 and 3 testified about the evening of February 16, 2019 and the adult entertainment performance. During the testimony of the two liquor inspectors, the Branch advocate showed the video of parts of the performance by the male strippers. The evidence of the performance, from both the liquor inspectors, their notes of the evening, the video and the photos taken by liquor inspector 2 on her iphone, is as follows:

- Liquor inspector 1 obtained tickets to the performance "Body Heat" that had been advertised on facebook and arranged for liquor inspectors 2 and 3 to come to Kitimat to attend the Pub in a covert capacity.
- Body Heat was a performance event with male strippers. No men other than staff were allowed in the Pub during the performance.
- At 8:40 pm, liquor inspectors 2 and 3 entered the Pub and sat down at a table just above the dance floor.

- At approximately 9:00 p.m., the adult entertainment event with three male strippers began on the dance floor of the Pub.
- At 9:40 p.m. while the performance was under way, the male performer asked for four volunteers, who were then randomly selected. The performers asked each woman for her favourite sexual position.
- At 9:45 p.m., the first woman bent over a chair. The male performer then stood behind her and, with his groin area pressed against her buttocks, engaged in a simulated sexual act.
- A second woman sat on the performer's lap, with the male performer's hands on her hips. The performer then bounced the woman up and down on his lap in a simulated sexual act.
- With a third woman, the male performer placed her hands on the back of his neck and placed his face fully in her vagina area and performed a simulated sexual act
- With a fourth woman, the male performer had the woman bend over a chair. He then stood behind her, with his hands on her hips, contacting his groin area with her buttocks and engaged in a simulated sexual act.
- After the performance, the two liquor inspectors observed the male performers performing lap dances for several women for \$20.00 a dance. The male performer placed the \$20 bill in the woman's cleavage and at the end of the dance retrieved the bill with his mouth and often kissed the woman's neck.
- Throughout the simulated sexual acts and the lap dances, the male performers were almost naked, wearing only a G string.
- Liquor inspector 3 testified that, at one point, two of the performers were fully naked.

### **Licensee Evidence re. Alleged Contravention of Adult Entertainment Restrictions**

The licensee testified about the performance on the evening of February 16, 2019. She stated that the Pub started holding these performances for a Valentine's Day special for their women customers. She stated that, a few years earlier, several female patrons had approached her and asked her to do something for the women as there were performances specifically designed for male audiences in Kitimat and they wanted something for the women.

The licensee decided to bring in male strippers and was unaware that it might be a contravention. She claimed that, in previous years, the cops and the previous liquor inspector had been in attendance and had said nothing. She said the show is the same every time.

The licensee was aware of the adult entertainment rules in the Handbook, but she thought the rules were for female strip clubs. She pointed to the bullet prohibiting exotic dancers from inserting “any object into, or extract any object from, the vagina or anus” as to why she thought this was meant for female exotic dancers only. She felt quite strongly that everyone in the Pub was having fun and that was the intention of the performance.

She thought the liquor inspector should have engaged with her prior to the event and then she would have cancelled it. She was not aware of any need for a structural change on her licence until she received an email from a Branch staff person about this in April of 2019, notifying her that if the Pub intended to have adult entertainment in the future, she must follow the restrictions in the Handbook as well as submit a structural change to show where the entertainment would be on their floor plan, (exhibit 1, tab 17). The licensee stated she is not planning on offering these performances again.

The manager testified about previous performances held in the Pub. She said they had been holding them once a year and they had police officers come in during the performances and had said nothing. She thought there was nothing wrong with what they were doing.

### **Branch Evidence re. Alleged Contravention of Giving Away Liquor**

Liquor inspectors 2 and 3 gave evidence about this alleged contravention. Liquor inspector 2 stated that a female server approached the liquor inspectors soon after they entered the Pub and took both their tickets. She ripped the tickets in half and advised them to keep their portion of the tickets as there would be a door prize drawn later in the evening.

Prior to the performance beginning, one of the entertainers announced to the audience, that the door prize for the evening would be a gift basket containing a bottle of champagne.

Throughout the event, the MC announced the gift basket with a bottle of champagne would be given away as the door prize. As one point he referred to it as a bottle of wine. The gift basket container was placed on the ledge of the dance floor, where it was visible to the audience. The half ticket stubs were placed in the draw barrel. Liquor inspector 2 observed a bottle in the gift basket.

At 10:45 p.m., the MC for the performance conducted the draw for the door prize and announced the winner. The MC passed the gift basket, containing the bottle over to the licensee who provided the prize to the winning patron.

Liquor inspector 3 recalled a lady bringing a basket out from behind the kitchen. The MC announced the basket was the door prize. The MC first announced it was champagne and then said it was a bottle of wine. The bottle was in the middle of the basket. The MC said it came from the cold beer and wine store next door.

### **Licensee Evidence re. Alleged Contravention of Giving Away Liquor**

The licensee admitted there was a bottle of wine in the basket. She stated, when the ticket was drawn, she took the basket and walked out with the winner to her vehicle and they put it in her vehicle. She explained she could not have it in the Pub.

When the licensee was asked about the rule in the Handbook re. not offering or giving liquor as a prize, she said the liquor was not a prize – it was just one item in a gift basket for someone with the winning ticket.

### **Branch Evidence re. Alleged Contravention of Drawing Attention to Liquor Inspector**

Liquor inspector 1 testified about a number of inspections to be conducted over the weekend of February 15/16, 2019. As noted, he had arranged for liquor inspectors 2 and 3 to come to Kitimat to assist with these inspections in a covert capacity.

Liquor inspector 2 testified that, on February 15, 2019, liquor inspector 1 remained in the vehicle while she and liquor inspector 3 entered the Pub about 9:40 p.m. Their purpose in attending on February 15, 2019 was to familiarize themselves with the layout of the Pub as they were going to conduct a covert inspection the following evening. Liquor inspector 3 texted liquor inspector 1 about a possible intoxication contravention, with respect to some males. Liquor inspectors 2 and 3 were being served by a young blonde girl (the "server/patron").

Liquor inspector 1 entered the Pub in response to the text from liquor inspector 3. As he was approaching the Pub entrance, he met the manager and spoke briefly with her. He stated the manager was familiar with him from previous dealings.

Liquor inspector 1 conducted an inspection in the Pub. He made observations of an alleged contravention and followed a male patron outside where he continued to observe him. Liquor inspector 1 saw the manager outside the Pub – about 10 p.m. - and advised her he would return shortly after he had written up the contravention notice for the alleged contraventions. Liquor inspector 1 did not testify further, nor was he cross-examined about the alleged contraventions he had noticed in the Pub, nor the outcome of the contravention notices that he issued. I can only assume, based on the compliance history report at tab 8 of exhibit 1, that no enforcement action was recommended for these alleged contraventions.

Liquor inspector 2 testified that she and liquor inspector 3 heard staff telling other patrons that the liquor inspector was there and that they could not serve. Liquor inspector 2 tried to order and was told she could not as the liquor inspector was there. The doorman told liquor inspector 2 to wait a little longer as the liquor inspector was there. Liquor inspector 2 heard a younger guy behind the bar telling people that the liquor inspector was there. People were upset because they were not being served. Some left.

Liquor inspector 2 observed liquor inspector 1 enter the Pub and sit down with the manager. She observed a large aggressive male come over to the table where the manager and liquor inspector 1 were sitting and swear at liquor inspector 1, saying they were just trying to have some fun. Liquor inspectors 2 and 3 went into the parking lot

and watched the male get into a vehicle and drive off, so liquor inspector 2 called RCMP and reported him for impaired driving. Liquor inspector 2 said staff stopped serving sometime after 10 p.m. No liquor was served before they left about 11:00 p.m.

Liquor inspector 3 testified about the evening, repeating much of what liquor inspector 2 stated. She did not hear the bartender saying anything about a liquor inspector, but she did hear the doorman say they could not serve because the liquor inspector was there. She observed the male yelling aggressively and swearing at the liquor inspector 1 when he was seated with the manager.

Liquor inspectors 2 and 3 made notes that evening of the incident, (exhibit 1, tabs 13 & 15).

Liquor inspector 1 testified that, when he returned with contravention notices, he handed them to the manager, about 11:00 p.m. They then sat down to discuss. While sitting with her, a large male, visibly angry and upset, approached the table and got right into his face where he was sitting, saying – “are you the f\*\*\*\* liquor inspector?” When liquor inspector 1 didn’t answer, the male continued verbally stating “what the F\*\*\* are you doing?”, giving him the finger, and saying, “we’re just trying to have fun.”

Liquor inspector 1 did not tell him he was a liquor inspector and did not respond to him at all.

The manager immediately told the male to leave, which he did. Once he left, liquor inspector 1 asked the manager how the man would have known he was a liquor inspector. She said to him that “I told everyone that liquor inspector was here and that we had to stop serving.” Liquor inspector 1 advised her that this was a contravention – for drawing attention to a liquor inspector and that he never told her they had to stop serving. He made notes of the incident, (exhibit 1, tab 14).

## **Licensee Evidence re. Alleged Contravention of Drawing Attention to Liquor Inspector**

The licensee testified about the evening of February 15, 2016. She was not in the Pub during the incident itself. She arrived sometime after 11:00 p.m. when the manager called her to come in. She had been sick at home.

She testified that the manager and staff were afraid of something happening similar to the events in 2017 when the RCMP shut them down. She said that the closure then created a big problem for people who were upset because they had just bought a drink and were then being told they had to leave. In 2017, the RCMP entered, alleging the Pub was overcrowded and told them they had to shut down immediately.

The licensee thought that liquor inspector 1 should have told the manager that he was not going to shut them down when he said he would be back with contravention notices. She said licensees may not comprehend all the policies and procedures of the Branch completely.

The manager testified about the incident on February 15, 2019 and explained her reasons for stopping service. She stated she first saw liquor inspector 1 when she was leaving for a break about 10:00 p.m. She told him she would be back in 20 minutes. When she returned, she saw him outside and he informed her that he was going to write up a contravention relating to some observations he made of some males in the Pub. He said he would return. The manager entered the Pub and asked the bartender what had happened. The bartender did not know. She told the bartender what liquor inspector 1 had told her and that they were waiting to see what might happen to them. The manager did not know how serious the situation was or what liquor inspector 1 was going to do. She stated that it was at that point she made the decision not to serve and to let people just finish their drinks until they knew what was going to happen. She was afraid that something similar to the 2017 closure might happen – this caused an almost riot when patrons were told they had to leave immediately, and they were not allowed to finish drinks they had just bought.

When liquor inspector 1 returned, he sat down at the table with the manager and was going over what he was going to write up. At that time, people were starting to leave as they were annoyed the Pub was not serving anymore. A big guy came and started yelling at liquor inspector 1 and getting mad as the Pub had stopped liquor service. The manager yelled back at him and told him to leave right away. The male turned around and left. Liquor inspector 1 asked the manager at that point what the reason was for stopping serving and the manager told him that she did not want to serve any more drinks if liquor inspector 1 was going to shut them down. Liquor inspector 1 then told her that he was not shutting them down and they could continue to serve. The manager then told the bartender to continue serving. The manager had already phoned the licensee to come down and talk to liquor inspector 1.

The manager recounted the events of 2017. She stated the Pub was holding a boxing match fight and that they were really busy. The fight had stopped and some people had left. An incident happened and staff called the cops. When the RCMP arrived, the officer said everyone had to leave right away. Staff turned out the lights in the Pub and told people to leave. She stated people were getting mad as they had just purchased drinks. As they were leaving, they started yelling at officers who were standing outside. The cops blamed staff at the Pub for losing control. She said people were just angry as the cops had shut them down. She stated they were not overcrowded that evening, as the cops alleged. They have a limit of 227 and they were well below the limit. She said there was no enforcement action as a result of the 2017 incident. The licensee attended a compliance meeting about this incident, (report at exhibit 1, tab 9).

On cross-examination, the manager agreed she was anticipating a worst-case scenario on February 15, 2019 because of what happened in 2017. The manager felt, if patrons were not buying more liquor, when they were shut down, they would get upset. She said she did not know how serious the contravention might be. She decided it would be better to stop serving and try to prevent a worse circumstance later on.

She was also asked if she might have explained to staff to stop serving without mentioning the liquor inspector. All she said to staff was that she was not sure what was going to happen and not to serve until she found out. She agreed staff were telling patrons about the liquor inspector as reason for not serving. She was not thinking. She said it was not her intention to signal out the liquor inspector's presence. She stated she was not intentionally drawing attention to the liquor inspector.

At the end of her examination, I asked the manager if she was aware of the contravention of bringing attention to a liquor inspector. She stated emphatically that she is now, but she was not aware before. She apologized at the time and said it would never happen again. She realized after the incident that because he was sitting at the table with her, people would know who he was. She did not identify him.

### **Licensee Evidence re. Training, Policies, Practices and Procedures**

#### Training

The licensee and the manager testified about staff training. Both said that a former employee did a lot of the training of new hires. She had been working in the Pub for many years but is no longer with them. New hires receive about two weeks of training prior to starting on their own. Staff with previous server experience may get a little less training – maybe five days. The manager trains new hires now.

The licensee does all the hiring after asking for the opinion of the manager. New hires are always given three months of probation.

New hires read through the binder on rules and procedures, (exhibit 1, tab 20). The licensee and/or the manager will ask them questions about their experience and knowledge. Most staff have worked in other bars. New hires shadow experienced employees during their training period. The licensee will check in with the senior person training the new hire. The time period for training can be longer if the senior staff person decides a new hire needs longer.

### Serving It Right

All servers have their Serving It Right certificates and must show these when they are hired. The licensee keeps a list of SIR numbers of each employee in the office. The licensee provided a list of the servers working on February 16, 2019 as requested by liquor inspector 1, with their SIR numbers, (exhibit 1, tab 16).

### Rules and Procedures

All staff have to sign to say they have read the rules and procedures book.

The licensee requires staff to do this when they are first hired and thereafter on an annual basis. Tab 20 of exhibit 1 includes signatures of employees from 2018 and 2019, showing they read the rules and procedures book.

The rules and procedures book includes a lot of information related to serving, conduct with patrons and general rules about cleanliness, and others. Specific information relating to intoxication or incident reporting includes:

- All staff should read the incident book occasionally, so they know what incidents and who is not allowed in the Pub.
- If you notice a particular customer is binge drinking and is starting to be intoxicated, you can slow service down, suggest food & water or non-alcohol drinks or discontinue service.

Rules re. servers include:

- Communicates during shift change – point out customers that has been in for a while and how much has been consumed during their stay.
- Head bar tenders are to decide what time to call last call, he/she will decide who are to be barred and for how long and is responsible for writing it in the incident book.
- You should always read the incident book before you start your shift, to ensure you know about new incidents.

Rules and procedures relating to Minors/ intoxicated/unruly patrons include:

- Limit access to one door, greet and assess customers, talk to guess [sic] as they come in, observe if they are driving, drinking prior to the Pub, celebrating an event, and the mood they are in.
- Any patron that appears to be intoxicated is not allowed into the Pub. Any customers that have been refusal (sic) are not allowed to enter the bar for 24 hours.
- Guest that is intoxicated – loud, loud laughing, nodding off, unfocused vision, slurred speech, bloodshot or glassy eyes, observe how many drinks they had, talk very slow, talk a mile a minute, words or sentences incomprehensible, excessive perspiration even if room is air conditioned, can't make eye contact, verbally abusive, mood change as if someone flipped a switch, fumbling with keys, struggling getting ID out of pocket, bumping into furniture, stumbling on staircases, over friendly hugging strangers, insist everyone is best friend (make sure no one take advantage)
- Any patron that after being in the Pub for a period of time and appears to be intoxicated, you are to refuse them any alcohol, and asked [sic] them politely to leave, ensure they depart safely, any one refuse to leave, let them know you will be calling the cops to remove them, let the bar tender know to call the cops.
- Call cab, suggest leave kegs [sic] with staff, call cops if they drive, describe car and person to cop.
- Time will sober up intoxicated – blood alcohol legal operate car is .05% - liver can process alcohol one standard drink per hour – food slow the absorption of alcohol into the bloodstream. BAC (blood alcohol concentration) .08% is impairment, .30% lose consciousness, and .40% coma or death.
- Do not allow any binge drinking or drinking games, offer free pop to designated driver.
- Head bar tenders are to write any incidents into our incident sheet sample enclosed.
- The objective is to discontinue service and protect customer and other patrons, do not humiliate anyone in the process, do not corner customers, use tact and diplomacy, remember intoxicated or not they are still our guest.

- Choose works [sic] carefully, be courteous, do not say we have to kick you out, or you are drunk, do not put down guest or cause negative feelings, use words like I am afraid we cannot serve you any more, I have no choice cause [sic] it the law or our house policy, would you like us to call a cab, avoid arguments and do not bargain, ask if they need your help to go outside.
- Ask in a clear and concise manner for guest to leave, let guest take a few minutes, if still refuse call the police, use only reasonable forces, do not escalate situation by antagonizing guest, be calm and use a non-threatening tone of voice, hold guest and walk them out, if there is confrontations with two patrons, ensure that removals are staggered in time and carried out in different areas.

The licensee explained they have a very strict policy with respect to removing intoxicated patrons. On average, they kick out between 3 to 15 people every weekend night. All staff have read their policy. She stated that the staff communicate with each other and ask for a second opinion if they are in doubt about the signs they are observing.

The licensee explained that she and other staff will do walks around the bar. She stated, if someone is just sitting, she cannot always see them. If they get up to go to the bathroom, someone (door person) will watch that side and someone is roaming around. If person is stumbling to the bathroom, staff will investigate further. She said they have had between 3 to 5 door staff since 2010.

The licensee works in the Pub 7 days a week – usually from 9:30 a.m. to 7 or 8 p.m. On weekends, she always comes back about 10 and closes at 2:30 a.m. She said the manager is also in the Pub working every weekend.

Staff will make sure that any removed patrons have a ride or somebody sober to walk back to camp. The licensee also pays for rides if they do not have any money. If really cold and cab takes a long time to come, staff will make them sit and wait for the cab at the table closest to the door. They do not put them outside as they don't want them freezing to death. The licensee stated she is in the Pub every weekend. A server will let the manager or herself know if someone needs to leave. They approach the person and

ask them politely to leave. Sometimes they have needed to get the cops involved. They have refused entrance for intoxicated patrons after they have come from somewhere else. Every evening, after closing, a door personnel will stay outside to be sure no one is driving and they have a safe ride home. Once a patron shows signs of intoxication, the staff will act to remove him/her.

### Incident Book and Barred List

The licensee explained about the binder they have to ensure all staff are aware of people who are barred from the Pub. The list gives the person's name, the date barred, the date the person may return, and the reasons for barring the person. The earliest date on the exhibit 5 list is June 2014. Some people are barred forever.

The licensee keeps an incident book in which staff note any incidents that may occur during a shift. Staff are told to discuss any incidents with other staff – door persons, servers and any staff coming onto a new shift, so they are aware if someone has been barred or what kind of incident occurred. Staff coming onto a shift are told to read the incident book when they start their shift. The licensee testified that all staff sit down and talk about incidents that happen, how staff handled a situation and what they may learn from it.

They also use group chat and messenger to let all staff know if they have kicked someone out.

When asked if the licensee had become more vigilant about intoxicated patrons since the February 2019 incident, she said they have always been vigilant. If anyone shows severe signs of intoxication, they are out right away. Sometimes she asks a patron to please leave and if they leave nicely, they don't always write it down.

### Staff Meetings

The licensee holds full staff meetings every few months. The licensee compiles notes for discussion at these meetings – usually relating to incidents that may have occurred in the previous months. Exhibit 8 includes meeting notes from September 20, 2012, October 5, 2011 and October 20, 2010. These notes include reminders to doormen about checking for ID, checking to make sure people do not leave the Pub with any alcohol,

checking to make sure people do not enter the Pub with alcohol in their purses or backpacks, how to deal with intoxicated patrons and how to avoid a confrontation, consequences if any staff are caught drinking alcohol while working (immediate firing).

The manager says these staff meetings are mandatory for all staff. The licensee consults with the manager about any items/concerns they may need to go over in the meeting. The manager will hand over her notes with things they need to discuss, and the licensee will include them in her notes for the discussion with staff.

The licensee testified that they also hold regular weekend meetings with staff who are working at that time to review any incidents. They hold these meetings after closing time.

### Reminders

The bulletin board has reminders and other notes that are visible to all staff. It is located in the office where staff must enter to obtain the till for their shift. The board has a sheet titled "Liquor Licensee Quick Facts," (exhibit 7).

This sheet is issued by the Branch and notes in introductory paragraph:

This document touches on a few common themes that you need to be aware of. Please see your terms and conditions guide for more details. An up to date copy is always available on our website, which you can open and save to your own computer. Remember to check back from time to time for the latest version.

Both the licensee and the manager testified that this document has been posted in the Pub for several years.

These quick facts include a list of the mental and physical signs of intoxication, maximum drink sizes per person per serving (highlighted), guidance on employee conduct, unlawful to serve minors, entertainment, your liquor licence and floor plan, overcrowding, Serving It Right, where to purchase liquor, beverage service.

Under beverage service:

It is your responsibility to make sure patrons do not become intoxicated in your establishment. If an intoxicated person is within your establishment you must have them removed immediately and ensure that they have a safe way home.

Under entertainment there is a reference to what is allowed in restaurants and a note that:

There is a broader range of entertainment allowed at liquor primary establishments without having to apply for entertainment endorsements. Please refer to your terms and conditions guide for more details.

Phone numbers for the Branch contacts are listed at the bottom of the sheet.

At the top of sheet is a handwritten note: "Attention servers: Make sure you understand and memorize the highlighted drink size per person."

#### Follow-up from Compliance Meetings

The licensee noted that, after the meeting with the liquor inspector on July 25, 2017, the liquor inspector held a follow-up meeting on January 11, 2018 and noted that the Responsible Beverage Service (RBS) training policy is now in place and that policies on drink size are now developed, (liquor inspector meeting summaries at exhibit 1, tab 18).

With respect to the October 16, 2017 compliance meeting notes (exhibit 1, tab 9), the licensee agrees she made commitments in that meeting and followed up on those commitments as noted in the follow-up meeting of January 11, 2018. However, she does not agree with the description of the events on August 26/27, 2017 that led to this compliance meeting. She would have liked to respond to that description and submit her own view of what happened.

#### **Branch Evidence re. Compliance Meetings and History of Licensee**

Liquor inspector 1 testified about the Liquor Primary Inspection Interview Sheet dated July 6, 2010. He was not present at the interview. He pointed to the checklist and the licensee's signature to show what the liquor inspector responsible for the Pub in 2010 would have reviewed with the licensee at that time. This includes a list from the Guide

for Liquor Licensees (now the Handbook). Key points relevant to the alleged contraventions here include:

- Licensee's responsibilities
- The role of the inspector and of the police
- Serving It Right: Responsible Beverage Service
- Controlling your establishment including
  - Overservice and intoxicated persons
- Entertainment and gaming
- Inspections and enforcement

Tab 8 of exhibit 1 has "Establishment Compliance History." Only the events post-2010 are relevant to this licensee. Tab 9 has a report of a compliance meeting between liquor inspector 1 and the licensee on October 16, 2017. The reasons for the meeting are stated as: "RCMP Kitimat complaint re. Chilly and Dancer Pub received for the evening of August 26/27, 2017.

On August 26/27, 2017, the police ordered the closure of the Pub as they alleged the Pub was overcrowded and that staff did not have control of the patrons' conduct and behaviour inside the Pub service area. As a result of the RCMP notes, liquor inspector 1 issued contravention notices relating to the events of that evening. In the end, no enforcement action was taken. Liquor inspector 1 held the compliance meeting instead. Liquor inspector 1 reviewed the licensee's responsibilities and asked for several commitments from the licensee:

All staff are to be aware of and have completely read the Liquor Primary Terms and Conditions Handbook.

A commitment from the licensee to create and establish a written Responsible Beverage Service (RBS) Program policy to provide your staff, managers and the licensee the knowledge to meet your responsibilities, including reducing over-consumption of alcohol in licensed establishments. Further:

- A commitment from the licensee to ensure the establishment staff is adequately trained on an annual basis, through the RBS program on how to identify and handle intoxicated patrons.

- A commitment from the licensee to establish and take reasonable measures to monitor every patron entering the establishment and to ensure they are not displaying any signs of intoxication before entering the establishment.
- A commitment from the licensee to ensure your staff will take reasonable measures to monitor each patron upon ordering liquor to ensure they are not displaying any signs of intoxication. Staff should monitor how long a patron has been in the establishment and how many drinks have been served to an individual. Staff will also ensure they serve only the maximum serving size per person as outlined in the Liquor Primary Terms and Conditions Handbook.
- A commitment to create and ensure an “Incident Logbook” is readily available to all staff within the establishment. All staff will have knowledge of the Incident Logbook’s location. All staff will complete and record an “Incident Log” for each and every incident that occurs within the establishment, for explanation of “Recording Incidents and Sharing Information” refer to the Responsible Beverage Service Program (“RBS”) within the Serve It Right – Program Manual, provided at this compliance meeting.

As a licensee, you are legally responsible for understanding how the *Liquor Control and Licensing Act*, its *Regulations*, and the specific terms and conditions of your licence affect the operation of your establishment, and for complying with the *Liquor Control and Licensing Act*, its *Regulations* and the terms and conditions of your licence.

...

I am available to you and your staff as a resource to provide regulatory guidance and training, to assist you with providing a safe and responsible service, and to abide and comply with the *Liquor Control and Licensing Act*, its *Regulations* and the terms and conditions of your licence.

Further non-compliance with the above will result in enforcement *Action*.

The licensee agreed to the commitments requested and signed her name, agreeing to implement the measures.

Liquor inspector 1 filled out two inspection sheets relating to the Pub, (exhibit 1, tab 18). The first inspection sheet relates to an inspection on July 25, 2017, prior to incident leading to October 16 compliance meeting noted above. The licensee and the manager were both present. In handwritten notes, liquor inspector 1 noted that he provided a Fact Sheet on the Minors as Agents Program and discussed this. With respect to a written training policy re. checking IDs, overcrowding, intoxicated persons, he noted "needs to develop." He further noted that "[the licensee] was not familiar with the LP Handbook. Provided her with Handbook and went over same." He noted that the licensee had an incident logbook.

On January 11, 2018, liquor inspector 1 conducted a "routine follow-up" with the licensee and noted that the drink size/min.pricing was now developed. The liquor register was "now in place". And that the written training policies on RBS policies were "now in place." He again provided her with a current copy of the Handbook.

### **Licensee Evidence re. Compliance Meetings and History of Licensee**

The licensee has owned the Pub since 2010. She has had no enforcement action taken against her other than the one resulting from the contraventions at issue here.

She agreed she attended the compliance meeting in October of 2017 but does not agree with the description of events that led to that compliance meeting, as set out in the compliance meeting report of liquor inspector 1. She made the commitments as noted and implemented them, as set out under the licensee's evidence of its policies and practices and as noted in liquor inspector 1's routine follow-up report of January 11, 2018.

She explained about the challenges inherent in running a pub in a town such as Kitimat where there are often new construction workers from the different projects in the area who come to the pub and people she doesn't know who can sometimes drink too much and cause a disturbance. She works hard with her staff to ensure they control any intoxication issues.

## SUBMISSIONS – BRANCH

The Branch submits that the evidence establishes that the required elements of all four alleged contraventions have been met.

With respect to intoxication, the liquor inspectors made numerous observations of the server/patron and of patron 3. Staff had several opportunities for staff to see these two individuals and to note signs of intoxication. Although they eventually asked both to leave, the Branch submits that there were earlier times when signs of intoxication were evident and staff should have asked them to leave.

Further, the defence of due diligence is not available as the licensee is the directing mind and was present on the evening of February 16, 2019.

With respect to the adult entertainment, the evidence in both the video and the testimony showed simulated sexual acts and the touching of patrons, contrary to the terms and conditions in the Handbook. The licensee as the directing mind was present and admitted to arranging the event.

With respect to the liquor as a gift, the licensee admitted there was a bottle of wine in the gift basket that was given away as a door prize. Again, the licensee arranged for this gift basket and was present when it was given away.

With respect to the alleged contravention of drawing attention to a liquor inspector, the licensee did not dispute this occurred as testified by the liquor inspectors. Staff and patrons both mentioned the presence of the liquor inspector and there was a very real potential of harm to the liquor inspector by pointing him out. The defence of due diligence is not available here as the manager admitted she was unaware at the time that this was a contravention.

With respect to the licensee's submission that they did not intend to contravene the *Act* or the *Regulations* or the terms and conditions of the Handbook, the Branch pointed out that intention is not relevant in a strict liability offence.

## SUBMISSIONS – LICENSEE

The licensee submits that the Pub under her ownership has had no enforcement action until these incidents. She stated she has always followed and tried to abide by the rules and *Regulations*. She runs a bar as efficient and as safe as it can be.

When liquor inspector 1 first started in May 2017, he identified some failings regarding the location of the licence and the liquor register. She complied with his requests.

When he suggested some policies be put in place as a result of the compliance meeting held in October of 2017, she put those policies in place.

She works hard to ensure her staff are well trained in the rules and *Regulations*. She has been very strict in ensuring staff apply their policy on intoxication and points to the barred list to demonstrate the consequences to patrons if they cause any problems in the Pub.

With respect to the intoxication contravention, she submits that she or her staff removed the two women identified by liquor inspectors 2 and 3 (the server/patron and patron 3) in a timely manner as soon as they noticed signs of intoxication. She submits the third female identified as possibly intoxicated was only in the Pub a very short time, just before last call, and staff did not notice her.

With respect to the adult entertainment rules, she testified that she was under the impression these rules related to female strippers, not male strippers. If liquor inspector 1 had spoken with her directly, prior to the performance on February 16, 2019, and told her it was contrary to the adult entertainment rules, she would have cancelled the event. She has no intention of holding such events again.

With respect to the rules regarding contests, and not offering liquor as a prize, she says it was not really a prize, but simply a draw of the entry ticket stubs. The bottle of wine in the basket was only one item amidst chocolates and other treats in the basket. She ensured the winner did not consume the bottle on site by walking her to her car with the basket and explaining that she could not have it in the Pub.

With respect to the alleged contravention of drawing attention to a liquor inspector, she refers to the evidence of an earlier incident when the police shut down the Pub, alleging overcrowding. The patrons became very upset as many had just ordered and paid for drinks. She submits that this is the reason that the manager stopped service when she saw the liquor inspector but did not yet know what contraventions he was alleging, or whether he might shut down the Pub. The licensee agrees that the doorman should not have mentioned the presence of the liquor inspector. After the incident she spoke to the doorman about this and emphasized to him that he must never bring attention to a liquor inspector in the Pub.

She submits that even if I find a contravention on any of the above, I should exercise my discretion not to impose a penalty, given their sincere efforts to operate a safe Pub and to comply with the rules. None of the contraventions were intentional.

If I find a contravention on any of the above and decide to impose a penalty, the licensee prefers a monetary fine as a penalty.

In her written submission, the licensee added four bullet points noting some concerns and comments and asked that I address them in this decision. I address the four bullet points below.

## REASONS AND DECISION

### **Alleged Contravention of Intoxication on February 16, 2019**

There are two elements to a contravention of section 61(2)(b)(ii) of the *Act*:

- that a person was intoxicated in a service area, and
- that the licensee or permittee or employee allowed an intoxicated person to remain in a service area.

Both elements need to be proven on a balance of probabilities.

### The Server/Patron

I find the following facts from the evidence:

- The server/patron was in the Pub and consumed 4 vodka/crans and 4 shooters over the period of almost three hours;
- The server/patron fell on the dance floor at some point between 10:00 and 11:00 p.m. when she was crouching to be near the performers;
- The server/patron was showing signs of intoxication shortly after 11:00 p.m., when she fell near the pool tables and hugged the DJ;
- The manager refused to serve her about 11:15 p.m. and told her she was cut off and it was time for her to go home;
- The server/patron, when told she was cut off, stormed away from the manager working behind the bar, walking quickly without any stumbling;
- The February 16 server arranged for a cab to take the server/patron home and told him to deliver her to her home;
- When sober, the server/patron can appear to be excitable and hyper, as I observed when she testified at the hearing;

I find that the server/patron was showing some signs of intoxication, probably around 11:00 to 11:10 p.m. The crouching and subsequent falling on the dance floor, as seen in one of the photos at an earlier time, could be attributed to her desire to be near the performers. The server/patron admitted she was trying to hide from staff who were telling her to get off the dance floor while the performance was on. She stated she would have likely done this whether sober or intoxicated. She admitted she was intoxicated at the end of the evening when the manager told her to leave. Very soon after the server/patron fell by the pool table, she approached the manager for another drink. The manager refused to serve her and told her it was time for her to go home.

I find that the manager noticed signs of intoxication, when the server/patron requested another drink from her. At that time, about 11:15 p.m., the manager refused to serve her and told her it was time for her to leave. I find the server/patron left the Pub about 11:20 p.m. The February 16 server ensured she had a safe ride home, as per the licensee's policies.

With respect to the server/patron, I find that staff acted to remove her promptly after noticing signs of intoxication.

### Patron 3

I find the following facts from the evidence:

- Patron 3 was drinking wine from the time she entered the Pub about 7:45 p.m.;
- In total, over the course of the evening, about four hours, she consumed the equivalent of about a litre of wine;
- She was not drinking beer nor was she served any beer;
- Patron 3 started showing signs of intoxication around 11:00 to 11:30 p.m.;
- When the liquor inspectors sat with patron 3, sometime after 11:00 p.m., they noted signs of intoxication including:
  - Noticeably slurred speech
  - Bloodshot and glassy eyes
  - Dropping her cell phone and having troubles operating it
- The liquor inspectors danced with patron 3, most likely between 11:30 p.m. and midnight, as the performance on the dance floor ended about 11:30 p.m.;
- The liquor inspectors saw the server delivering more wine to the table, with patron 3 sitting across from her, nodding her head and having difficulty keeping her eyes open;
- The server did not appear to notice patron 3 when the server was serving the table more wine;
- At about midnight, the licensee approached patron 1 who had been sitting with patron 3 and suggested it was time for patron 3 to leave as she appeared intoxicated;
- Patrons 1 and 2 called for their ride home and left with patron 3.

On the above evidence, I find that patron 3 was showing signs of intoxication by 11:30 p.m., as noted by the liquor inspectors. I find that the liquor inspectors were in very close proximity to patron 3 and therefore were able to identify the more subtle signs of intoxication – glassy, bloodshot eyes, slurred speech, difficulty with her cell phone - that may not have been noticed by the server. I also find that, when patron 3 went on the dance floor, she was stumbling and holding on to the railing to maintain her balance, most likely due to intoxication. I am not persuaded that this behaviour was visible to the staff at the time. The licensee did not observe patron 3 on the dance floor. However, I find it was soon after the dancing that the licensee suggested to her friends that it was time to take patron 3 home. I accept the testimony of patron 1 that, in her experience

with patron 3, she can switch fairly quickly from appearing sober to appearing intoxicated, especially when drinking wine.

I find that the licensee acted to remove patron 3 promptly after noticing signs of intoxication.

#### Females by the pool table

I find that:

- The female by the pool table was showing some signs of intoxication at 1:36 a.m., the time noted by liquor inspector 2 in her notes of the evening, including being unstable on her feet, slurring her speech, difficulty with fine motor skills, difficulty removing jacket.
- The Pub does last call at 1:40 a.m. and stops serving at 1:50 a.m. and as the licensee testified that they set their clock ten minutes ahead, the Pub would have stopped serving a few minutes after liquor inspector 2 noticed the females.
- Neither the licensee nor the manager noticed the two females by the pool table.

Based on the above findings, the proximity to closing time when the liquor inspectors noticed the two females, the inconsistencies between the liquor inspectors' notes and their testimony about what the females were consuming, I have insufficient evidence to conclude that the licensee allowed this possibly intoxicated female to remain.

#### Conclusion re. Alleged Contravention of Intoxication on February 16, 2019

The first NOEA, at page 8, in the reasons for pursuing enforcement action on this contravention, states that the inspectors did not observe any staff member take action to have the patrons removed, and further: "On the contrary, staff continued to ignore the behaviours being displayed and either continue to serve these patrons alcohol or allow them to continue drinking in the service area."

This is not consistent with the video evidence of the server/patron, nor with liquor inspector 3's notes of the evening which state: [the server/patron] "was told to get off the dance floor very unsteady on feet, then she left the bar."

I have found that the staff did take action and did so as soon as they noticed signs of intoxication. Staff did not ignore the behaviours of the server/patron or patron 3. This is not a situation where liquor inspectors had to inform staff that there were intoxicated patrons on the premises.

I find that the contravention of allowing a person to enter or remain has not been proven on a balance of probabilities.

### **Alleged Contravention of Adult Entertainment Restrictions on February 16, 2019**

I find that the licensee contravened the terms and conditions with respect to adult entertainment as set out in the Handbook.

I find that the male performers were touching members of the audience and were engaging in simulated sexual acts with members of the audience, contrary to the rules for adult entertainment. I do not accept the licensee's justification for ignoring these rules – believing that they were meant for female strippers only.

The licensee submitted that liquor inspector 1 should have warned them of a possible contravention when he noticed the ad on facebook for the Body Heat performance, instead of setting up a covert operation. I do not accept this.

A liquor licence is a privilege and it comes with the expectation that licensees operate in compliance with the *Act*, the *Regulations*, and the terms and conditions of its licence. The responsibility is not on a liquor inspector to remind licensees of the rules and *Regulations* that must be followed.

The licensee and the manager both stated that the Pub had held previous performances similar to the one on February 16, 2019, in past years and that both RCMP officers and the liquor inspector had attended. I have no other testimony to verify that any officers attended earlier performances and I have no evidence to show what those performances involved. If there were similar performances in earlier years and no action was taken at that time, this does not establish a defence to the contravention. Again, I note it is the responsibility of the licensee to know the rules and *Regulations*, and when in any doubt, to contact the liquor inspector.

**Alleged Contravention of Giving Away Liquor on February 16, 2019**

I find that the licensee contravened the term and condition in the Handbook with respect to providing liquor as a prize.

The gift basket, containing a bottle of wine, was a door prize. The licensee admitted this. I do not accept that, because the licensee walked the winner to her car and placed the basket inside, this provides a defence to the contravention. The rule as set out in the Handbook, at page 24, is: "You must not offer or give liquor as a prize"

The fact that the bottle of wine was only one item in the basket does not preclude a finding that the licensee offered liquor as a prize.

**Alleged Contravention of Drawing Attention to Liquor Inspector**

I find the following facts on the evening of February 15, 2019:

- Liquor inspector 1 met the manager outside as he was departing the Pub and advised that he would be returning with a contravention notice as he had noticed an alleged contravention while in the Pub;
- Liquor inspectors 2 and 3, who were in the Pub in a covert capacity, heard the manager tell staff to stop serving liquor because the liquor inspector was present;
- Liquor inspectors 2 and 3 heard other staff members tell patrons that they could not serve any liquor as the liquor inspector was there;
- At 10:30 p.m., liquor inspector 2 approached the bar to order a drink. The bartender told her they could not sell any liquor as the liquor inspector was there;
- At 10:40 p.m., the doorman came to their table and told them they could not get any alcohol because "the liquor inspector is being a f\*\*\*\*\* ass and gotta wait till he writes the ticket out";
- At 11:00 p.m., liquor inspector 1 returned to the Pub and sat down with the manager to review the contravention notice with her;
- A large male patron approached the table, got very close to liquor inspector 1's face and began yelling in a threatening and aggressive manner;
- The manager reacted quickly to verbally and loudly tell the male patron to back off. The male patron left almost immediately.

- On the evening of February 15, 2018, the manager was unaware that drawing attention to a liquor inspector was contrary to the terms and conditions of the licence.

The licensee and the manager explained that, because of the events of August 26/27, 2017, when the RCMP closed the Pub and ordered everyone removed, the manager was concerned that continuing liquor service with the possibility of a Pub closure might result in anger and possible protests from the patrons. As the manager was unaware on February 15, 2019 of what contravention liquor inspector 1 was alleging when she met him leaving the Pub, she thought it prudent to stop service in case there was a closure. I find that the manager could have stopped service if she wanted, but it was unnecessary to give the reason as the presence of the liquor inspector. I find that the licensee's explanation of these events is not a defence to the contravention.

I find the licensee contravened the terms and conditions of the Handbook with respect to drawing attention to a liquor inspector.

### **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.

### Intoxication Contravention - the Defence of Due Diligence

Although I have found that the licensee did not contravene the section of the *Act* with respect to allowing an intoxicated patron to remain, I will address the defence of due diligence, given the licensee's extensive evidence on its training, policies and practices.

Following the BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2012 BCSC 1851, which addressed the two stages of due diligence in the context of the sale of liquor to a minor, the questions to be asked here - when a contravention of allowing an intoxicated person to remain is alleged - can be framed as follows:

1. Whether the employee(s) 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(s) 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 alleged contravention occurred), then the questions to be considered and answered are whether the licensee had:
  - a. implemented adequate training and other systems to prevent the contravention; 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.

Having found that the licensee is the directing mind and that the licensee was present in the Pub on February 16, 2019, does that preclude moving to the second step in the due diligence analysis? I think not, based on the evidence here. The servers or bartender

were the ones who were best able to assess an individual's level of intoxication. The servers and bartender were the ones serving the drinks. Neither the server nor the bartender who was the manager on February 16 are directing minds. The licensee admitted she saw the server/patron fall on the dance floor. However, I have found that this incident is not conclusive of her level of intoxication. The server/patron herself admitted she was intoxicated when the manager told her to leave at 11:15 p.m. The manager did as instructed by the licensee's policies. She refused to sell her more alcohol and told her she needed to leave.

If I had found an intoxication contravention, I would have found that the licensee had adequate training, policies, practices and procedures to establish a defence of due diligence on the intoxication contravention. Although the licensee is the directing mind and was present throughout the evening, she acted as soon as she became aware of signs of intoxication in patron 3. I have found that her staff acted promptly with respect to removing the server/patron, but if I am wrong on this and the licensee's staff should have responded sooner to remove either the server/patron or patron 3, I find that the licensee has provided adequate training and has implemented policies and practices to ensure staff act to remove patrons when they see signs of intoxication. Therefore, on the question of due diligence with respect to an intoxication contravention, I find that the licensee would have established a defence of due diligence for this contravention.

#### The Contraventions re. Adult Entertainment Restrictions and Gift of Liquor - the Defence of Due Diligence

Applying the first question of the two-stage analysis to the events of February 16, 2019 and the alleged contraventions of rules re. adult entertainment and gifts of liquor, I find that the licensee is the directing mind. She creates the policies for the Pub and does the hiring of the personnel. I further find that the licensee was present at the Pub throughout the evening of February 16, 2019, having arrived about 9:00 p.m.

Therefore, I do not need to proceed to the second stage of the analysis with respect to these two contraventions. The licensee was the person who organized the Body Heat performance, advertised it on facebook, and sold the tickets. She was present in the Pub throughout the performance. Similarly, the licensee was the person who arranged for the gift basket with the bottle of wine.

The licensee has failed to establish a defence of due diligence on both these contraventions.

### The Contravention re. Drawing Attention to a Liquor Inspector- the Defence of Due Diligence

I have found that the licensee contravened the Terms and Conditions Handbook by drawing attention to a liquor inspector on February 15, 2019.

Applying the two-stage analysis to this contravention, I find that the licensee as the directing mind was not present when this contravention occurred.

I further find no evidence of training, policies and practices with respect to this contravention. Based on her testimony, I find that the manager, on February 15, 2019, was unaware that this was a contravention.

In the compliance meeting of October 16, 2017, the licensee agreed to implement several policies with respect to preventing intoxicated persons in the Pub and training staff on these. Liquor inspector 1 and a RCMP officer from the Kitimat detachment met with the licensee to discuss two contravention notices issued for events occurring on August 26/27, 2017. This was the evening when the RCMP closed the bar alleging overcrowding and disorderly conduct. I have not relied on any of the details of that evening to draw conclusions in this decision. No enforcement action was recommended. The Branch held a compliance meeting instead and obtained commitments from the licensee including:

“All Staff are to be aware of and have completely read the LP Terms and Conditions Handbook.” (page 7 of report)

The reports from liquor inspector 1 dated July 25, 2017 and January 11, 2018, show that liquor inspector 1 provided the licensee with copies of the Handbook at these meetings. Although the focus of these two meetings appeared to be on avoiding intoxication contraventions, the licensee had a responsibility to ensure her staff were familiar with all of the terms and conditions in the Handbook.

From the testimony of the manager, with respect to her lack of knowledge of this contravention at the time, the licensee failed to ensure all staff were aware of the terms and conditions in the Handbook. The manager testified that she is now responsible for training staff. In this role as trainer, the manager has a responsibility to know all the rules and regulations regarding liquor service and staff behaviour.

I therefore find that the licensee has not established a defence of due diligence for this contravention.

#### **Licensee's Additional Concerns and Comments**

The licensee listed four concerns in its written submission and asked that I address them in this decision:

1. Not everyone understands & comprehends the rules & regulations completely, a little reminder or going through certain regulations will go a long way with the Branch & the licensee, they will create a better working relationship between both parties to ensure the safety for everyone, prevention is a better solution for all.

I agree that guidance and/or written materials from the Branch can assist licensees to understand the rules and regulations. However, I find that liquor inspector 1 provided that guidance on a number of issues to the licensee in the two years leading up to these alleged contraventions in February of 2019.

If a licensee is unsure about the restrictions or rules, the onus is on the licensee to contact the liquor inspector to explain them. As noted above, liquor inspector 1 invited the licensee to do so in the compliance meeting report of October 16, 2017.

Liquor inspector 1 held a routine follow-up meeting with the licensee on January 11, 2018. As the licensee testified that the Pub held a similar Body Heat performance in February of 2018, this would have been a perfect opportunity for the licensee to ask about the adult entertainment rules.

I agree that prevention is a better solution for all. However, the licensee has a responsibility to inquire whether a planned event such as the Body Heat performance is allowed under the rules.

I find that the above meetings and reports demonstrate the willingness of the Branch to assist the licensee with understanding the rules and regulations.

2. Compliance meetings should have both statement from Branch & licensee available for records & for viewing, that way it is not all one side to others that will be reading the outcome and based their opinion on the statements of the licensee.

If a licensee wishes to have something recorded in a compliance meeting report, the licensee may request this at the time of the meeting. The fact that a compliance meeting occurred is what is relevant to my considerations here. The description and details of any alleged contravention that resulted in the compliance meeting are not relevant to my decision on the present alleged contraventions.

3. When there is a condition placed on a certain individual (no consumption of alcohol), licensee should be informed by authority ahead of time so as not to serve or sell alcohol to that individual.

I am unclear as to what the licensee is referring to here. There was nothing submitted in the hearing about any individual being barred by anyone other than the licensee.

4. I am not that familiar with the procedure of the Branch on their time line for actions after a contravention is served, we had a contravention written up in December 2018 and the compliance meeting took place in October 2019.

I believe the licensee is referring to a compliance meeting held on September 30, 2019. The compliance history report refers to a compliance meeting held on this date. (exhibit 1, tab 8) Liquor inspector 1 testified that the compliance meeting on September 30, 2019 was for the incidents on December 26, 2018. The compliance history report refers to contravention notices issued for that date and notes under outcomes - "no enforcement recommended." I received no report about what was discussed at this compliance meeting. I agree with the licensee that this compliance meeting should have taken place in a more timely manner.

I note that the contraventions here occurred in February of 2019 and that the NOEAs were not issued until June of 2019.

The contravention notices contain the following statement at the bottom:

The general manager Liquor Control and Licensing Branch may proceed with enforcement action on the basis of this contravention notice. The licensee will generally be notified within 45 days if enforcement action is proposed.  
(exhibit 1, tabs 3 & 4)

Other than commenting on the length of time between the issuance of the contravention notices and the NOEAs, the licensee did not claim she was prejudiced by this delay, nor did she cross-examine the liquor inspector on the delay. I acknowledge that a four-month delay between the contravention notices and the NOEAs may affect a licensee's preparations and gathering of evidence for a hearing.

With respect to the three contraventions that I have found here, I find that the licensee's defence to the three contraventions was simply lack of knowledge about the rules on all three contraventions. The facts on all three contraventions were straightforward and not in dispute. There was nothing in the testimony that suggested the licensee was prejudiced in compiling evidence to present at the hearing on these three contraventions.

With respect to the intoxication allegations, there were differing views as to the levels of intoxication of the three persons. I found the Branch did not prove this contravention. In another situation, where it is important for licensees to question witnesses in a timely

manner, a four-month delay between the issuance of the contravention notices and the NOEAs may be prejudicial to the licensee's defence.

The Branch endeavours to provide a timely notice to licensees if enforcement action is recommended after issuing a contravention notice.

## CONCLUSION

I have found that the licensee contravened:

- a term and condition of the license, i.e. adult entertainment and the restrictions in the Handbook;
- a term and condition of the license, i.e. games, tournaments, contests, by giving away liquor, contrary to the Handbook;
- a term or condition of the licence by drawing attention to a liquor inspector.

The licensee has submitted that neither she nor her staff intended to contravene the *Act*. Liquor contraventions are strict liability offences. This means that intention is not relevant. In a strict liability offence, a person has a defence if the person can show it has been duly diligent as described above to prevent the offence.

I have found that the licensee did not contravene section 61(2)(b)(ii) of the *Act* by allowing an intoxicated person to enter or remain in a service area.

I turn now to the question of penalty for the three contraventions.

## 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 Notices of Enforcement Action. 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.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. Enforcement action is intended to both redress the licensee's non-compliance, and to encourage future compliance by way of deterrence.

When determining an appropriate penalty for each contravention, I consider the following factors: 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.

### **Contravention of Terms and Conditions re Adult Entertainment Restrictions - Penalty**

I find that a penalty is warranted here. The licensee did not dispute the facts of the performance as set out in the first NOEA. The video demonstrated the simulated sexual acts and the touching of patrons. The only "defence" provided by the licensee was that she was not aware that the rules applied to male strippers. The licensee is expected to know the rules as set out in the Handbook and, if in doubt, to ask for clarification. She failed to do so, despite having several opportunities to inquire about the rules with liquor inspector 1.

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 31 in Schedule 2 of the *Liquor Control and Licensing Regulation* provides a range of penalties for a first contravention of this type: a 4 to 7-day licence suspension and/or a \$5000 to \$7000 penalty. The Branch has recommended a \$5000 monetary penalty. The licensee has indicated its preference for a monetary fine rather than a suspension.

I impose a \$5000 penalty for this contravention.

### **Contravention of Terms and Conditions re. Giving Away Liquor - Penalty**

I find that a penalty is warranted here. The licensee did not dispute the fact that a bottle of wine was included in a gift basket as a door prize. The licensee herself provided the gift basket to the winning ticket holder. Liquor inspector 1 had provided the licensee with the Handbook on two separate occasions, which sets out the terms and conditions regarding contests and prohibits giving away liquor. The licensee's only "defence" was that the bottle of wine was just one item in the gift basket.

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 54 of Schedule 2 of the *Liquor Control and Licensing Regulation* provides a range of penalties for a first contravention of this type: a 1 to 3-day licence suspension and/or a \$1000 to \$3000 penalty. The Branch proposes a monetary penalty of \$1000. The licensee has indicated its preference for a monetary fine rather than a suspension.

I impose a \$1000 penalty for this contravention.

## **Contravention of Terms and Conditions re. Drawing Attention to a Liquor Inspector – Penalty**

The evidence from both the licensee's witnesses and the Branch witnesses indicate the reasons for this prohibition in the Handbook. As noted in the Second NOEA:

“Drawing the attention of patrons to the fact that liquor inspectors are present in an establishment may put the safety of them at risk”.

The statements from various staff members about the presence of the liquor inspector put liquor inspector 1 in a potentially dangerous position, as is evident by the confrontation and angry words from a large hostile patron. The manager admitted she was unaware of this prohibition. Given the commitment provided by the licensee in previous compliance meetings, to ensure staff are familiar with the Handbook, and the seriousness of this contravention, I find that a penalty is warranted here.

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 54 of Schedule 2 of the *Liquor Control and Licensing Regulation* provides a range of penalties for a first contravention of this type: a 1 to 3-day licence suspension and/or a \$1000 to \$3000 penalty. The Branch proposes a monetary penalty of \$1000.

I impose a \$1000 penalty for this contravention.

## **ORDER**

Pursuant to section 51(2)(b) of the *Act*, I order that the Licensee pay a monetary penalty in the sum of Seven Thousand Dollars (\$7000) to the general manager of the Liquor and Cannabis Regulation Branch on or before **February 18, 2020**.

Signs satisfactory to the general manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor and Cannabis Regulation Branch inspector or a police officer.

*Original signed by*

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Nerys Poole

General Manager's Delegate

Date: January 15, 2020

cc: Liquor and Cannabis Regulation Branch, Victoria Office  
Attn: Hugh Trenchard, Branch Advocate

Liquor and Cannabis Regulation Branch, Kelowna Office  
Attn: Kurt Lozinski, Regional Manager