



**DECISION OF THE
GENERAL MANAGER**

LIQUOR AND CANNABIS REGULATION BRANCH

IN THE MATTER OF AN APPLICATION FOR RECONSIDERATION

A reconsideration pursuant to section 53.1 of

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

Licensee: 0731380 B.C. Ltd.
dba Kitimat Hotel
506 Enterprise Avenue
Kitimat, BC V8C 2E2

Case: REH19-023

For the Licensee: Russell Robertson, Barrister & Solicitor
Wiebe Wittmann El-Khatib LLP
Barristers and Solicitors

For the Branch: Andeep Kang

General Manager's Delegate: R. John Rogers

Date of Decision: February 4, 2020

**Liquor and Cannabis
Regulation Branch**

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INTRODUCTION

0731380 B.C. Ltd. (the "Licensee") holds Liquor Primary Licence No. 005538 (the "Licence") pursuant to which it operates an establishment called the "Kitimat Hotel" (the "Establishment") located at 506 Enterprise Avenue, Kitimat, B.C., V8C 2E2. According to the terms of the Licence, the Licensee may sell liquor from Noon to 2:00 a.m. Monday through Wednesday, from Noon to 4:00 a.m. Thursday through Saturday, and from 11:00 a.m. to 2:00 a.m. on Sunday. The capacity for the Establishment is set at 77 persons for the patio and 321 persons for the main service area.

The Licence is, as are all liquor primary liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Liquor Primary, Terms and Conditions" (the "Liquor Primary Terms and Conditions Handbook").

The NOEA and the Contravention Notice

The Liquor and Cannabis Regulation Branch (the "Branch"), in a Notice of Enforcement Action dated June 5, 2019 (the "NOEA"), alleged that on February 17, 2019 the Licensee contravened section 61(2)(b)(ii) of the *Liquor Control and Licensing Act*, S.B.C. 2015 c. 19 (the "Act") by allowing an intoxicated person to enter or remain in the service area of the Establishment. The Branch's liquor inspector ("Inspector 1") issued contravention notice B021639 (the "Contravention Notice") for this alleged contravention to a principal of the Licensee (the "Principal") on February 19, 2019 and, at that time, advised the Principal that a decision had not been made as to whether further action would be taken on the Contravention Notice.

The Hearing and the Decision

Following the issuance of the NOEA, a hearing on the Contravention Notice was held on November 13, 2019 (the "Hearing"). Following the Hearing on December 9, 2019, the General Manager's Delegate (the "Hearing Delegate") rendered his decision (the "Decision") in which he found the Licensee liable for the contravention of the *Act* as alleged in the NOEA and for which the Contravention Notice had been issued. The Decision included an order (the "Section 51 Order") that the Licence be suspended for a period of five (5) days to commence at the close of business on Friday, January 10, 2020 and to continue on each succeeding business day until the suspension was completed.

The Application for Reconsideration and Stay Order

By letter dated January 7, 2020, the Branch advised the Licensee's counsel that the Branch had accepted the Licensee's application for reconsideration of the Decision, which application was dated December 31, 2019 (the "Application"), and by a second letter dated January 7, 2020, the Branch advised the Licensee's counsel that the implementation of the Section 51 Order was stayed until the earlier of July 3, 2020 or until a decision on the Application was rendered.

In accordance with section 5 of the *Act*, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by Section 53.1 of the *Act* for the purposes of holding a review on the record to consider the Application and, following such review, to make a reconsideration order (the "Reconsideration Order").

THE APPLICATION

In the Application, the Licensee noted that the Contravention Notice was served on the Principal on February 19, 2019, two days following the occurrence of the contravention alleged in the NOEA. The Licensee further noted that when Inspector 1 served the Contravention Notice on the Principal, the Principal claims that he advised her that no enforcement action would ensue.

It is the Licensee's position that the delay of almost four (4) months between the date of the service of the Contravention Notice on February 19, 2019 and the issuance of the NOEA on June 5, 2019 coupled with the advice of Inspector 1 to the Principal that no enforcement action would ensue severely prejudiced the Licensee and adversely affected its ability to collect evidence and defend against the alleged contravention at the Hearing.

The Licensee claims that this unreasonable delay in issuing the NOEA amounts to a failure to observe the rules of procedural fairness. As a result of this delay, the Licensee submits that it did not take steps to collect further statements from witnesses in a timely manner and that by the date of the issuance of the NOEA, peoples' memories of the night in question had faded, especially with respect to the finer points, such as how many drinks a person had or whether this particular patron was exhibiting signs of intoxication on this specific evening.

The Licensee submits that pursuing the enforcement action after the delay of four (4) months constituted a denial of procedural fairness to the Licensee and for that reason the Section 51 Order ought to be reversed or vacated.

RELEVANT STATUTORY PROVISIONS FOR THE MATTER AT HAND

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

Reconsiderations

53.1 (1) In this section:

"**reconsideration order**" means an order of the general manager under subsection (9);

"**section 51 order**" means an order of the general manager under section 51 (9) other than an order based on a signed waiver referred to in section 51 (8).

(2) The following persons who receive a section 51 order may apply to the general manager for a reconsideration of the order:

(a) a licensee referred to in section 51;

(3) A reconsideration is, subject to subsection (4), a review on the record and may be based on only one or more of the prescribed grounds.

(5) The general manager must not accept an application for a reconsideration of a section 51 order unless the following requirements are met:

(b) the application identifies one or more of the prescribed grounds on which the application is based;

(9) The general manager may, in a reconsideration order, confirm, vary or rescind the section 51 order that is the subject of the reconsideration, and a reconsideration order that confirms or varies a section 51 order replaces the section 51 order.

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
- (a) sell or serve liquor to an intoxicated person or a person showing signs of intoxication, or
 - (b) allow
 - (i) a person in a service area to become intoxicated,
 - (ii) an intoxicated person to enter or remain in a service area,

Liquor Control and Licensing Regulation, B.C. Reg. 241/2016

Prescribed grounds relating to reconsideration orders

- 152 (1)** In this section, "section 51 order" has the same meaning as in section 53.1 (1) of the Act.
- (2) For the purposes of section 53.1 (3) of the Act, an application for a reconsideration of a section 51 order may be based on the following:
- (a) a failure to observe the rules of procedural fairness;
 - (b) an error of law;
 - (c) subject to section 53.1 (4) of the Act, new evidence.

Schedule 2
Monetary Penalties and Licence Suspensions
Intoxicated Patrons

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
9	A breach of section 61(2)(b)(ii) of the Act [<i>allowing intoxicated person to enter or remain in service area</i>]	4-7	10-14	18-20	\$5,000 - \$7,000

As was referenced in the Decision, since the occurrence of the alleged contravention on February 17, 2019, the *Regulation* has been amended and as of June 5, 2019 a new penalty schedule has come into effect. Therefore, for the purpose of the matter at hand, as the alleged contravention occurred prior to June 5, 2019, the relevant basis for calculating a penalty is the provisions of Schedule 2 as above set out.

THE DECISION

In the Decision, the Hearing Delegate referenced the evidence and submissions made by the Branch and by the Licensee.

The Branch's Evidence

Liquor Inspector 2 and Liquor Inspector 3

The Branch presented the evidence of Liquor Inspector 2 ("Inspector 2") and Liquor Inspector 3 ("Inspector 3") whose evidence might be summarized as follows:

- Liquor Inspector 2 has done thousands of administrative and public safety inspections during her career as an inspector with the Branch, including over one hundred inspections pertaining to the issue of intoxicated patrons remaining inside a licensed facility;
- The signs of intoxication that Inspector 2 looks for are drowsiness, falling asleep, facial flush, hand-eye problems with coordination, difficulty walking, fumbling putting on or removing jackets, problems conversing coherently, and smelling of liquor;
- On the early morning of February 17th, Inspector 2 and Inspector 3 were conducting a covert inspection in the Establishment. Upon entry, they noted that there were about 40-50 customers inside so that the facility was not too busy and the lighting in the Establishment was good. They also noted the Principal working behind the bar and, as well, they recognized a patron (the "Patron") who had been their server at a restaurant on a previous evening;
- On the previous evening when the two inspectors observed the Patron for about two hours as their server, she had been interacting with customers of the restaurant and was pleasant with her speech and base line activities appearing quite normal;
- However, when observed by the inspectors at the Establishment on February 17th, the Patron was readily observable on the dance floor about five feet away and displayed definite signs of intoxication in that she was bumping into and holding onto people on the dance floor. Her eyes were half-closed, and she was annoying and rude to other patrons who were observed walking away from her. The inspectors observed that the Patron was carrying a Palm Bay cooler in a can that she attempted to drink when she went off the dance floor;

- The two inspectors remained at the Establishment for approximately two hours, during which time they observed the Patron swaying and caught by other patrons to prevent her from falling over. Inspector 3 noted that unlike the night in the restaurant when the Patron had been their server and spoke to them quite coherently, during the encounter at the Establishment, the Patron's speech was affected and was incoherent, and the Patron's eyes opened and closed as she spoke.

The CCTV Camera Footage

Inspector 2 reviewed the CCTV camera footage from the Establishment on February 17th and noted that there was footage of the Patron:

- staggering to the bar to speak to the Principal;
- walking unsteadily, leaping onto another guest and climbing onto a chair;
- attempting to lift another customer at the bar off the ground, following which they both fell down;
- with her head on another customer as if she was falling asleep;
- bumping into a door frame and falling backwards; and
- upon leaving the Establishment, bumping into the exit door before opening it.

Based upon this review, Inspector 2 testified that it confirmed her observations at the Establishment on February 17th that the Patron was intoxicated.

Liquor Inspector 1

The evidence of Inspector 1 might be summarized as follows:

- While Inspector 2 and Inspector 3 were conducting the covert inspection inside the Establishment on the morning of February 17th, he remained outside;
- He issued the Contravention Notice on February 19, 2019 in order to have an opportunity to speak to the Patron about the allegation contained in the Contravention Notice; and
- During this conversation, he confirmed that he advised the Principal that he had not decided on how to proceed with the allegation contained in the Contravention Notice and that the resulting delay of approximately four (4) months in the issuance of the NOEA was due to him having to obtain supervisory approval.

The Licensee's Evidence

The Principal testified that the Patron is a regular at the Establishment and that the Principal knows her well. The Patron, she testified, is a hyper person and is quirky and although she may appear to be stupid, staggering and not walking properly, she does these on purpose. The Principal confirmed that, on the morning of February 17th when the Patron entered the Establishment at about 1:15 a.m., the Principal had spoken to her for about twenty minutes and that although the Patron had earlier been to another bar, she appeared to be fine. The Principal noted that the Patron ordered only one drink, although other customers at the Establishment might have given her shooters.

The Principal noted that the CCTV camera footage showed the Patron dancing while three RCMP officers were in the Establishment and that these officers did not appear concerned about her behaviour. The camera footage also showed the Patron to be walking well as she was leaving the Establishment and getting into a taxi. The Principal testified that the behaviour of the Patron on the CCTV camera footage was typical behaviour of the Patron.

A letter from the Patron was entered into evidence by the Principal at the Hearing in which letter the Patron appears to indicate that she drank only a can of an unidentified substance before dancing. The Hearing Delegate noted in the Decision that this letter did not clearly state the amount the Patron had had to drink.

The Principal testified that the Patron had refused to attend and to testify at the Hearing due to the time that had transpired between the events of the morning of February 17th and the holding of the Hearing as the Patron could no longer remember the events that had occurred and in which the Branch was interested.

The Branch's Submissions

The Branch submitted that the CCTV camera footage and the oral testimony taken together showed on a balance of probabilities that the Patron was intoxicated and permitted to enter and remain in the Establishment as alleged in the Contravention Notice and the NOEA. The Branch noted that Inspector 2 and Inspector 3 had observed the Patron for over two hours to form their opinions and, as they had observed the Patron at an earlier time, they had a baseline of behaviour to compare against.

The Licensee's Submissions

The Principal submitted that the Patron did not consume enough liquor at the Establishment in the morning of February 17th to become intoxicated. She noted that the RCMP had come into the Establishment and had not done anything about the Patron.

The Principal submitted that the late date of the NOEA made it difficult for the Licensee to obtain evidence.

The Finding by the Hearing Delegate

The Allegation Proven

The Hearing Delegate noted that the Patron was first observed by two experienced liquor inspectors when she was sober. This gave them a base line behaviour against which to assess the Patron's state of sobriety over a period of two hours on the morning of February 17th. As well, the Hearing Delegate noted, the CCTV evidence, taken as a whole, corroborated the conclusion of the liquor inspectors that the Patron was intoxicated.

Based upon the evidence before him, the Hearing Delegate found that, on the balance of the probabilities, the Patron was intoxicated in the Establishment on the morning of February 17th as alleged in the Contravention Notice and the NOEA and that although the Principal had every opportunity to assess the Patron's behaviour, the Principal appeared not to realize that the Patron was intoxicated.

The Hearing Delegate therefore found that the Licensee permitted an intoxicated patron to enter and remain in the Establishment as alleged in the Contravention Notice and the NOEA.

The Defence of Due Diligence

The Hearing Delegate found that on the morning of February 17th, the Licensee did not have policies in place which included instructions on assessing patrons for intoxication. Nor did the Licensee apply a coherent policy for assessing sobriety.

However, as the Hearing Delegate found that as the Principal was the "directing mind" of the Licensee and directly involved in the alleged contravention, he determined that the defence of due diligence was not available to the Licensee.

Finding of Liability

The Hearing Delegate, although expressing concern about the delay of almost four months in the issuance of the NOEA, which delay appeared to have had a deleterious effect on the Licensee's ability to obtain evidence about the events leading to the issuance of the Contravention Notice, found the Licensee liable for contravening section 61(2)(b)(ii) of the *Act* and issued the Section 51 Order whereby he ordered a suspension of the Licence for a period of five (5) days.

REASONS AND DECISION

As noted above, section 53.1 of the *Act* permits a party against which a section 51 order has been issued to apply for a reconsideration of this order. This reconsideration is not a trial *de novo* of the allegation for which the section 51 order was issued. Rather, as provided in subsection 4 of section 53.1, such a reconsideration is a review on the record and may be based on only one or more of the prescribed grounds as set out in section 152 of the *Regulation*. As also noted above, section 152 of the *Regulation* limits these grounds to three.

In the matter at hand, the Licensee is relying on the grounds set out in subsection 152(2) (a), namely, that the process leading to the Hearing and, therefore, the Hearing itself which resulted in the issuance of the Section 51 Order by the Hearing Delegate was flawed in that the rules of procedural fairness were not observed.

The Licensee's Submissions in the Application

Specifically, the Licensee in the Application references the approximate delay of four (4) months between the issuance of the Contravention Notice and the NOEA and the Principal's position that Inspector 1 had advised her that no further action would be taken on the Contravention Notice. It is the Licensee's submission that these occurrences sufficiently adversely affected the Licensee's ability to collect the requisite evidence prior to the Hearing causing it severe prejudice and resulting in its inability to be in a position to properly defend itself at the Hearing against the allegations contained in the Contravention Notice and the NOEA.

In support of its position, the Licensee cites the decision of the Supreme Court of Canada in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLII) and the reasons of Mr. Justice Bastarache speaking for the majority of the Court. The Licensee specifically references paragraphs 101 and 102 thereof which state:

101 In my view, there are appropriate remedies available in the administrative law context to deal with state-caused delay in human rights proceedings. However, delay, without more, will not warrant a stay of proceedings as an abuse of process at common law. Staying proceedings for the mere passage of time would be tantamount to imposing a judicially created limitation period (see: *R. v. L. (W.K.)*, [1991] 1 S.C.R. 1091 (S.C.C.) at p. 1100; *Akthar v. Canada (Minister of Employment & Immigration)*, [1991] 3 F.C. 32 (Fed. C.A.). In the administrative law context, there must be proof of significant prejudice which results from an unacceptable delay.

102 There is no doubt that the principles of natural justice and the duty of fairness are part of every administrative proceeding. Where delay impairs a party's ability to answer the complaint against him or her, because, for example, memories have faded, essential witnesses have died or are unavailable, or evidence has been lost, then administrative delay may be invoked to impugn the validity of the administrative proceeding and provide a remedy. (D.J.M. Brown and J.M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at p. 9-67; W. Wade and C. Forsyth, *Administrative Law* (7th ed. 1994), at pp. 435-36). It is thus accepted that the principles of natural justice and the duty of fairness include the right to a fair hearing and that undue delay in the processing of an administrative proceeding that impairs the fairness of the hearing can be remedied (see, for example, J.M. Evans, H.N. Janish and D.J. Mullan, *Administrative Law: Cases, Text and Materials* (4th ed. 1995), at p. 256; Wade and Forsyth, *supra*, at pp. 435-36; *Nisbett, supra*, at p. 756; *Canadian Airlines; supra*; *Ford Motor Co. of Canada v. Ontario (Human Rights Commission)* 24 H.C.R.R. D/464 (Ont. Div. Ct.); *Freedman v. College of Physicians & Surgeons (New Brunswick)* (1996), 41 Admin. L.R. (2d) 196 (N.B.Q.B).

In *Blencoe*, the issue before the Court centered around the fact that Mr. Blencoe faced a delay of 32 months between the filing of an initial complaint of sexual harassment against him and the commencement of the hearing before the British Columbia Human Rights Commission. He alleged that this time period constituted an unreasonable delay and caused serious prejudice to him and his family which amounted to an abuse of process and resulted in a denial of natural justice. In his action, Mr. Blencoe sought an order that the proceedings before the Commission be stayed.

In finding against him, although expressing concern about the lack of efficiency in the process in the time taken for the Commission to commence its hearing, the Court determined that the delay had not constituted an abuse of process and ordered the Commission to proceed with the hearing.

In the Application, the Licensee references the following specific wording in paragraph 102 of Mr. Justice Bastarache's decision:

“Where delay impairs a party's ability to answer the complaint against him or her, because, for example, memories have faded, essential witnesses have died or are unavailable, or evidence has been lost, then administrative delay may be invoked to impugn the validity of the administrative proceeding and provide a remedy.”

The Licensee submits that the delay in the issuance of the NOEA compounded by the confusion caused by the comments of Inspector 1 as to whether or not further action would be taken sufficiently adversely affected the Licensee's ability to collect the requisite evidence prior to the Hearing causing it severe prejudice. It is on this basis the Licensee submits that the Section 51 Order should be reversed or vacated.

Issue for Determination

The Licensee bases its position in the Application on its inability to collect evidence prior to the Hearing to support its position that the Patron was not intoxicated on the morning of February 17th as alleged in the Contravention Notice and the NOEA and that, therefore, it had no obligation to ask her to leave the Establishment.

As noted above, section 61(2)(b)(ii) of the *Act* prohibits a licensee from permitting “an intoxicated person to enter or remain in a service area”. In order for a licensee to be found liable under this subsection of the *Act*, the Branch must prove two elements on a balance of probabilities. The first is that there were one or more patrons in a licensee’s service area who were intoxicated during the relevant time. If the first element is proven by the Branch, the second element it must prove on a balance of probabilities is that such one or more intoxicated patrons were “permitted” by the licensee or its employees to enter or remain in the service area.

In the Application, the Licensee focuses on its contention that the Patron was not intoxicated as alleged in the Contravention Notice and the NOEA. It does not make reference to the second element of section 61(2)(b)(ii). Most likely this is because on the evidence before me, if the Patron is proven on a balance of probabilities to have been intoxicated on the morning of February 17th as alleged in the Contravention Notice and the NOEA, it would be very difficult for the Licensee to refute that the Patron was permitted to enter and remain in the Establishment.

The issue before me, therefore, is firstly to determine from the evidence presented at the Hearing whether or not the Branch has established, on a balance of probabilities, that the Patron was intoxicated as alleged by the Branch in the Contravention Notice and the NOEA. If I find such to be the case, then I must next determine whether or not the Licensee should succeed on the Application in that as a result of the advice of Inspector 1 about the uncertainty of proceeding on the Contravention Notice and the approximate four-month delay between the issuance of the Contravention Notice and the NOEA, the Licensee was sufficiently prejudiced in its ability to collect evidence to present at the Hearing, which evidence would have demonstrated on a balance of probabilities that the Patron was not intoxicated.

The Evidence of Inspector 2 and Inspector 3

The Decision references the evidence of experienced liquor inspectors who had the advantage of having seen the Patron in a definite sober situation at an earlier time. Both of these liquor inspectors expressed their opinions that from a close observation of the Patron in the early morning of February 17th and being in a position to compare her behaviour to that she had exhibited in a sober state on an earlier occasion, on the morning of February 17th, the Patron was definitely intoxicated.

The inspectors' opinions of the Patron's state of intoxication made at the time of their observations were reinforced in their testimonies during the Hearing when they viewed the CCTV camera footage recorded in the Establishment on the early morning in question.

The Letter from the Patron

In its evidence put forward at the hearing, the Licensee presented a letter from the Patron (Hearing Exhibit 5) (the "Patron's Letter"). It was the Principal's evidence that the Patron had told the Principal that the Patron would not come to testify at the Hearing because of the time that had transpired since the day in question and that she could no longer remember the events of the day that was of interest to the Branch.

I have had the opportunity to review the Patron's Letter. It is to be noted that in this letter, the Patron did not expressly state that she was not intoxicated on the morning of February 17th.

In addition, one would have thought that the Patron as a regular customer of the Establishment, as she was described by the Principal in her testimony at the Hearing, would have had the best interests of the Licensee in mind and would have been willing to have attended the Hearing and to have testified as to the extent of her sobriety on the morning of February 17th. In addition, if the Patron had had difficulty recalling the events of the morning of February 17th, her memory might have been assisted by reviewing the CCTV camera footage of the events on that morning prior to attending the Hearing.

A Review of the CCTV Camera Footage

At the Hearing, the Branch in its submissions included CCTV camera footage which was provided to it by the Licensee (Hearing Exhibit 1 tab 14). This camera footage was provided to me as part of my review of the evidence submitted by the Branch and the Licensee to the Hearing Delegate as part of the Hearing.

In reviewing this CCTV camera footage, in my opinion, the Patron was clearly reflecting signs of intoxication.

Decision on Intoxication

Based upon the evidence provided in the Decision and a review of the CCTV camera footage, I agree with the Hearing Delegate as stated in the Decision and I find that the Branch has proven on a balance of probabilities that the Patron was intoxicated on the morning of February 17th as alleged in the Contravention Notice and the NOEA

Decision on the Application

In the Application, the Licensee referenced the *Blencoe* case as above noted and specifically to the situation where delay impairs a party's ability to answer the complaint against it because memories have faded, essential witnesses have died or are unavailable, or evidence has been lost. In the matter at hand, these factors do not appear to have been present in a manner to have impugned the validity of the Hearing.

The Licensee refers to the fact that it was unaware of the identity of the Patron when the Principal was served with the Contravention Notice. However, the Licensee became aware of the identity of the Patron in time sufficient to enable it to deliver the Patron's Letter into evidence at the Hearing.

As well, the Licensee had access to the CCTV camera footage which clearly showed other customers at the Establishment on the morning of February 17th. The CCTV camera footage I reviewed strongly suggested that these were customers with whom the Patron clearly appears to be acquainted. Surely, if the Licensee had chosen to do so, it could have contacted the Patron, had her review the CCTV camera footage, and, if the Principal was not able to identify the relevant customers, the Patron could have provided assistance as to their identity. The Licensee could then have submitted into evidence at the Hearing either a statement from these customers that the Patron was not intoxicated, or that the time lapse had affected their memory to the extent that they were not able to recall the state of sobriety of the Patron.

It is to be noted that in *Blencoe* Mr. Justice Bastarache also stated that “delay, without more, will not warrant a stay of proceedings as an abuse of process at common law”. And he went on to note that in the administrative law context, “there must be proof of significant prejudice which results from an unacceptable delay.” In other words, it is not sufficient for the Licensee to merely point to a delay and claim that that is sufficient to vitiate the Section 51 Order. The Licensee must, as well, demonstrate some evidence of significant prejudice.

I find that the Application as submitted by the Licensee does not provide any examples of evidence that it was precluded from bringing forward to satisfy the onus placed upon it. The Application merely alleges that the Licensee was prejudiced in not being able to have collected such evidence from parties in attendance at the Establishment that night.

Based upon the evidence before me, I am unable to find that the Licensee has demonstrated that it has suffered sufficient prejudice from the delay in the proceeding leading to the Hearing and the Hearing itself that this process, including the Hearing and the Decision, was unfair to the Licensee to the point that it impugns the validity of the Hearing so that the Section 51 Order should be reversed or vacated.

I therefore dismiss the Application and find that the order made by the Hearing Delegate in the Decision pursuant to section 51 of the *Act* should be confirmed.

Other Matters Raised by the Licensee

The Licensee in the Application raises other issues which it has labelled “Unreasonable Decision”. As the Licensee acknowledges in the Application, these other issues are not within the prescribed grounds for this reconsideration and, therefore, I have not addressed them.

RECONSIDERATION ORDER

As I have found that that Licensee has not demonstrated that the Branch proceeded in a manner that resulted in a failure to observe the rules of procedural fairness resulting in the Hearing being unfair to the point that the order made by the Hearing Delegate in the Decision pursuant to section 51 of the *Act* should be reversed or vacated, in accordance with the provisions of section 53.1 (9) of the Act, I hereby confirm the order made by the Hearing Delegate in the Decision pursuant to section 51 of the *Act* and order that the stay referenced in the January 7, 2020 letter of the Branch to the Licensee's counsel be lifted and that the five-day suspension of the Licence referenced in the Section 51 Order be implemented to commence at the close of business on Friday, March 20, 2020 and to continue on each succeeding business day until the suspension is completed.

Original signed by

R. John Rogers
General Manager's Delegate

Date: February 4, 2020

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

Liquor and Cannabis Regulation Branch, Vancouver Office
Attn: Andeep Kang, Branch Advocate