



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

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C.1996, c. 267

Licensee:	Pacific Pinnacle Investments Ltd. dba Pacific Western Brewing Company 641 North Nechako Road Prince George, BC V2K 4M4
Case:	EH05-052 - EH05-053 EH05-054 - EH05-074
For the Licensee:	H. Roderick Anderson
For the Branch:	Laurie Solway
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	September 8, 2005
Place of Hearing:	Vancouver
Date of Decision:	November 24, 2005

INTRODUCTION

The licensee, Pacific Pinnacle Investments Ltd. is licensed as a brewery pursuant to the provisions of the *Liquor Control and Licensing Act* and holds Brewery Licence No. 300202. It carries on business as Pacific Western Brewing Company (PWB).

In December 2003, the Liquor Control and Licensing Branch (the “branch”) issued a Policy Directive concerning trade practices between liquor suppliers and licensed establishments. The directive reminded all liquor manufactures and brewers that they must not provide any free product to licensees.

In the fall of 2004, the branch established investigative units to assess and monitor inducement activities between licensees and breweries.

The investigative teams focussed their covert surveillance on approximately a dozen licensed establishments, which included the Flamingo Motor Hotel in Surrey and the Blue Peter Pub and Restaurant in Victoria.

The investigative practice was to conduct covert surveillance at the licensed establishment to visually observe the quantity of liquor delivered to that premises and to later conduct an audit at the licensed premises with respect to documentation related to specific deliveries on specific dates.

Preliminary Matter

At the commencement of the hearing of this matter, counsel for the branch identified an inadvertent error in Notice of Enforcement Action (“NOEA”) EH05-074, dated June 20, 2005. The error was that the two contraventions set out in the NOEA failure to produce a document, record or thing, in breach of Section 74 of the *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267 (the “Act”) and contravening a term and condition of licensing, in breach of Section 12

of the *Act* and should have been alleged in the alternative. Therefore, the penalties (a \$10,000 monetary penalty in the event of either finding) should have been proposed in the alternative as well.

Counsel for the branch requested that the NOEA be amended, and counsel for the licensee agreed to the proposed amendment to the NOEA.

The hearing proceeded as though the NOEA EH05-074 had been amended as described.

ALLEGED CONTRAVENTIONS

There are four NOEAs. Each alleges that the licensee was deficient in the keeping and the production of adequate records, as required under the *Act* and the *Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (*Regulation*), or that the licensee supplied free liquor contrary to the *Liquor Control and Licensing Act*.

The particulars are as follows:

NOEA EH05-052

On November 10, 2004, the licensee either failed to provide an accurate receipt for the delivery of liquor to the Flamingo Motor Hotel, and breached Section 61 of the *Regulation*, or, in the alternative, breached Section 12 of the *Act* by contravening a term and condition of its licence, by giving free or undocumented liquor to the Flamingo Motor Hotel.

NOEA EH05-053

On December 15, 2004, the licensee either failed to provide an accurate receipt for the delivery of liquor to the Flamingo Motor Hotel, and breached Section 61 of the *Regulation*, or, in the alternative, breached Section 12 of the *Act* by contravening a term and condition of its licence, by giving free or undocumented liquor to the Flamingo Motor Hotel.

NOEA EH05-054

On December 21, 2005, the licensee either failed to provide an accurate receipt for the delivery of liquor to the Blue Peter Pub & Restaurant, and breached Section 61 of the *Regulation* or, in the alternative, breached Section 12 of the *Act* by contravening a term and condition of its licence by giving free or undocumented liquor to the Blue Peter Pub & Restaurant.

NOEA EH05-074

On May 4, 2005, the licensee either failed to produce a document, record or thing, and therefore breached Section 73 of the *Act*, or, in the alternative, breached Section 12 of the *Act* by contravening a term and condition of its licence, by giving free or undocumented liquor to the Flamingo Motor Hotel and the Blue Peter Pub & Restaurant.

RELEVANT STATUTORY PROVISIONS**Act**

Section 12 (2) The general manager may, in respect of any licence that is being or has been issued impose, in the public interest, terms and conditions

- (a) that vary the terms and conditions to which the license is subject under the regulations, or
- (b) that are in addition to those referred to in paragraph (a).

73 (1) To obtain information respecting the administration or enforcement of this Act or the regulations, the general manager or a person designated by the general manager may

- (a) require the licensee to produce any prescribed document relating to the operation of the business licensed under this Act...

(2) A person commits an offence if the person neglects or refuses to do any of the following under this section:

- (a) produce a document required to be produced....

Regulation

Section 34 of the Regulation prescribes the following documents, *inter alia*, for the purposes of Section 73(1) of the Act:

- (a) liquor purchase records;
- (b) liquor sales records....

Section 61 (1) Liquor delivered within British Columbia...must be accompanied by a delivery receipt that is available for inspection and includes the;

- (a) name and address of the purchaser,
- (b) date of the purchase,
- (c) price of the liquor,
- (d) time of delivery, and
- (e) delivery service charge....

ISSUES

1. Did the licensee deliver free liquor to one or more contrary to the *Act* and *Regulation*?
-

2. Did the licensee fail to provide accurate delivery receipts for deliveries of liquor to one or more licensed establishments contrary to the *Act* and *Regulation*?
3. Did the licensee fail to provide documents or records relating to the three separate liquor deliveries upon request by the branch contrary to the *Act*, and by inclusion, "A Guide for Liquor Licensees in British Columbia" (the Guide)?
4. If any of the contraventions are proven are the penalties recommended by the branch proper and appropriate in the circumstances?

EXHIBITS

- | | |
|---------------|--|
| Exhibit No. 1 | The General Manager's book of documents. |
| Exhibit No. 2 | Policy Directive dated December 2, 2003. |
| Exhibit No. 3 | Containerworld receipt. |
| Exhibit No. 4 | Pacific Western Brewery memo to all Sales Managers dated December 18, 2003. |
| Exhibit No. 5 | Pacific Western Brewery memo to the President of Containerworld, dated March 18, 2005. |
| Exhibit No. 6 | Pacific Western Brewery memo dated May 15, 2005. |

EVIDENCE

The branch called two branch investigators to testify. Each was involved in the covert operation.

Investigator No. 1 testified as follows:

- He was involved in the investigation to assess activities between licensees and manufacturers regarding free liquor and incentives, and to monitor accounting and record keeping.
 - On November 10, 2004, he met with investigator No. 2 in the parking lot of the Flamingo Motor Hotel to observe liquor deliveries from an inconspicuous location.
-

- He observed a white van making a delivery of kegs. The kegs were each marked with a yellow stripe, and had "PWB" stencilled on each one. Five kegs were delivered to the Flamingo and four were taken out of the Flamingo and loaded into the van.
 - The incoming kegs were full, and the outgoing kegs were empty. It was easy to distinguish full from empty by the way they were moved about due to the difference in weight.
 - The van was unmarked and the delivery people did not have any kind of uniforms on. This is unusual, as breweries like to advertise their presence on trucks and uniforms.
 - The yellow stripe on the kegs signifies ownership of PWB. Each brewery has their own identifier to insure that the kegs get returned to the correct Brewery. The investigator is familiar with Pacific Western Brewery's yellow stripe.
 - The delivery was unusually quick. It usually takes up to 20 minutes to do a delivery and this one was done in five minutes. The driver and the passenger both went inside the Flamingo Hotel. No documents or clipboards were noticed in their possession by the investigator.
 - He usually can see a clipboard during a delivery, but not in every case.
 - He recorded the licence number of the van and later did a check. It confirmed that the van was licensed to a private individual. No further investigation was done regarding ownership of the van.
 - He did not observe any loading of PWB product into the truck before the delivery and did not know the origin of the kegs that he observed being unloaded.
 - On December 15, 2004, he again attended the Flamingo Motor Hotel parking lot for observation. On that occasion he observed two deliveries.
 - At 11:00 a.m. a white van marked "Brewer's Distributing Ltd." delivered canned product on pallets. This company is known to the investigator to deliver Labatts and Molson products. The van left.
 - At 12:00 Noon another van arrived. This one was marked "Commercial Logistics." This company is known to deliver Pacific Western Brewery product. The driver went inside. He had paperwork sticking out of his pocket.
-

- The 12:00 Noon delivery on December 15, 2004, consisted of 30 kegs on two pallets. Each keg was marked with a yellow stripe and the "PWB" stencil.
- He counted the kegs twice and confirmed with the label stapled to the pallets that there were 30 kegs.
- On December 21, 2004, he and investigator No. 2 were in separate vehicles outside a beer storage warehouse used by Pacific Western Brewery. They both attempted to follow a delivery truck that left the premise but lost it in traffic. They attended at the Blue Peter Pub & Restaurant in Sidney and at 1:00 p.m. observed a van similar to the one they saw dispatched from the warehouse.
- The van driver delivered two kegs, each of the kegs was marked with a yellow stripe. The investigator could not see any other markings on the kegs.
- On February 14, 2005, he attended at the Blue Peter Pub & Restaurant with an inspection team to assist with an audit of the Pub's inventory. He asked for documentation regarding any delivery of kegs on December 21, 2004, and was presented with an invoice for one keg. When confronted with the allegation of inconsistency, management indicated that they were not present for the delivery and that they would make inquiries.
- On February 28, 2005, the investigator attended at the audit at the Flamingo Motor Hotel. He was told that there was no delivery of 5 kegs from Pacific Western Brewery on November 10, 2004, and that the delivery on December 15, 2004, consisted of only 29 kegs. The invoice confirmed 29 kegs.
- The investigator met on March 16, 2005, and March 31, 2005, with management of Pacific Western Brewing to attempt to reconcile the delivery discrepancies but was not satisfied with any further documentation. This was the first time that Pacific Western Brewery was made aware of any alleged discrepancies in the delivery paperwork.

Investigator No. 2 testified as follows:

- On November 10, 2004, he was present at a covert observation in the Flamingo Motor Hotel parking lot.
 - A white van attended and unloaded kegs and left in approximately seven minutes. There was nothing else in the van. The kegs were bounced out
-

- of the truck rather than lifted with a dolly. He did not see any clipboards or a bill of lading anywhere in the possession of the delivery personnel.
- He usually can see paperwork, but in this case he saw none. The delivery personnel did go out of sight in the Flamingo Hotel, and it is possible that they exchanged paperwork there, but he felt it unlikely.
 - An unmarked van is consistent with free kegs being delivered.
 - On December 21, 2004, he was present in the parking lot of the Blue Peter Pub & Restaurant and he saw five wine boxes and two full kegs being unloaded from a truck. He thought the product in the kegs was from Pacific Western Brewery because he could see the yellow stripe. He could not see any other markings on the kegs.
 - He was present on February 14, 2005, at the Blue Peter for an audit. He attended with investigator No. 1 and introduced himself. They conducted an inspection and requested documentation relating to the deliveries and the liquor registry.
 - The paperwork confirmed one keg coming in and none going out on December 21, 2004. There was no adequate explanation given to the investigator for the discrepancy between the documents and what he observed on that date except that a representative of the Blue Peter said that there "might have been a mistake, or a gift or something."
 - He attended at the Flamingo Motor Hotel on February 23, 2005, and management confirmed that there were no kegs delivered on November 10, 2004.
 - On March 16, 2005, he met with management of Pacific Western Brewery and requested receipts for deliveries to the Flamingo Motor Hotel and the Blue Peter Pub & Restaurant relating to the dates the observations were made. No such documentation was provided at that time or thereafter.
 - He contacted management of Pacific Western Brewery on two occasions since, and requested that documentation and has never received it.
 - A warehouse located on Vancouver Island stocks liquor product from manufacturers, and then arranges for delivery of the product to the licensed establishment on the manufacturer's instructions. That is likely where the kegs originated from on Vancouver Island- prior to being delivered to the Blue Peter Pub.
-

The licensee called a consultant employed by the licensee as a witness. He testified as follows:

- He is a chartered accountant in good standing with his professional institute.
- He advises Pacific Western Brewery about staffing, and accounting and computer matters, and inventory control at all relevant times.
- He ensured that all sales managers at Pacific Western Brewery knew about all trade practices rules put forth by the branch in a timely fashion.
- The investigators requested documents confirming the sale of all of the observed kegs to the Flamingo Motor Hotel and to the Blue Peter Pub & Restaurant. He promised to look into the matter and see if there were any further documents.
- There was no document relating to the single missing keg that the investigators allegedly saw (one of two) delivered to the Blue Peter Pub.
- The intermediary warehouse on Vancouver Island is called Containerworld. It was making mistakes relating to shipping instructions from Pacific Western Brewery (around the relevant times), and as a result their services were terminated. All appropriate actions were taken by Pacific Western Brewery to rectify the situation in an appropriate manner. There is, however, no indication of errors specifically with respect to the allegations in this proceeding.

SUBMISSIONS

The licensee argued the following:

The branch has failed to produce any evidence that the five kegs delivered to the Flamingo Motor Hotel on November 10, 2004, were delivered by Pacific Western Brewery or its agents. In fact, the delivery on that date was markedly different than the deliveries observed on December 15 and 21, 2004.

The white unmarked van, which made the November 10, 2004, delivery was owned by a private individual. The van did not display the corporate markings, which according to the investigators are common marketing techniques for the breweries. The investigators did not observe any corporate logos. The

investigators did not interview the driver nor did they investigate as to whether the 5 kegs could have been stolen.

The Branch cannot establish that the 5 kegs in question were obtained from either Pacific Western Brewery's warehouse or Containerworld. The 5 kegs may very well have been stolen.

There is no evidence that the allegations in the NOEA EH05-052 were committed and therefore, the NOEA should be dismissed.

With respect to the allegation that an additional (free) keg was delivered to the Flamingo Motor Hotel on December 15, 2004, the evidence establishes that one of the kegs may well have been a replacement keg. There is no evidence to establish that there was free beer delivered to the Flamingo Motor Hotel by Pacific Western Brewery or its agents. Any such delivery was also denied by the owners of the Flamingo Motor Hotel.

The branch failed to establish that the December 15, 2004, delivery was made without the requisite documentation, or alternatively that free liquor was provided. As such it is submitted NOEA EH05-053 should be dismissed.

It is conceded that the investigators may have observed the delivery of 2 kegs to the Blue Peter Pub & Restaurant on December 21, 2004. The management of the Blue Peter denied that there was free kegs delivered and there was no arrangement to receive free beer from Pacific Western Brewery. The surveillance of the delivery van terminated shortly after the delivery and it is not possible to say whether the second keg was picked up later that day.

The evidence submitted by the branch failed to establish the delivery of liquor without the requisite delivery documentation.

All three contraventions and their alternatives, pertaining to November 10, 2004, December 15, 2004, and December 21, 2004, should be dismissed.

The licensee further submitted that if a finding is made that an offence occurred, the licensee has demonstrated due diligence in its systematic management of the delivery issue and the proactive steps it has taken to resolve problems with respect to the intermediary delivery protocol.

The branch argued the following:

A brewery licence, like any other category of licence available from Liquor Control and Licensing Branch in the Province of British Columbia, is a privilege, not a right. An applicant must meet various legislative requirements in order to qualify for such a licence, and a licensee must fulfill ongoing legislative duties in order to maintain that licence.

Section 12(2) of the *Act* confers a broad power upon the general manager to impose terms and conditions upon a licence that vary or add to existing terms and conditions created under the *Regulation*.

The licensee's own licence contains, *inter alia*, the following provision: "This licence is subject to the terms and conditions contained in [the Guide]."

The Guide provides as follows:

...Like the requirements contained in the Act and Regulations, these additional terms and conditions – and any further terms and conditions that might be printed on the face of your licence or contained in letters issued to you by the general manager of the Liquor Control and Licensing Branch – must be followed at all times.

As a licensee, it is your responsibility to operate your business so that it complies with the law and with the terms and conditions of your licence....

...As a licensee (someone who holds a liquor licence), you are legally responsible for understanding how the Act, its Regulations, and the specific terms and conditions of your licence affect the operation of your establishment or business, and for complying with the Act, its Regulations, and the terms and conditions of your licence.

The term "licensee" covers both the licensee of record and any person acting in the place of the licensee, such as a manager or person in charge of a brewery or distillery in the licensee's absence, as well as any staff working on-site at the brewery or distillery, or off-site at a theme night, sponsorship event or other promotion. You are therefore responsible for making sure all your employees (including agents and their staff) follow B.C.'s liquor laws and the terms and conditions of your licence, both on-and off-site...

If you do not carry out your legal responsibilities, you could face serious penalties, including the suspension or loss of your licence.
(emphasis in original)

The evidence supports the allegations contained in each NOEA. The investigators observed liquor being delivered which was not accompanied by the requisite documentation and not verified by later audit. More kegs were delivered than were paid for and therefore, free product was distributed.

Finally, the licensee did not produce documentation that it was requested to produce by the branch in accordance with the *Act* and *Regulation*.

ANALYSIS AND DECISION

I find that many assumptions were made by the investigators as a result of their covert observations, which are not substantiated by the evidence. They proposed that the quick delivery made by the white van at the Flamingo Motor Hotel was indicative of an irregular or suspect activity. A quick delivery does not equal a suspect delivery. Perhaps the delivery was late, or the deliverers were due somewhere else immediately afterward. Perhaps they were behind schedule.

The unmarked van was not necessarily indicative of a suspicious intent. It may have been a replacement vehicle- a rental or a borrowed truck- utilized to meet a delivery deadline. Perhaps it was contracted by the scheduled deliverer for overflow assistance on a busy day.

The investigators testified that they checked the registration of the vehicle and confirmed it belonged to an unidentified individual. They did not interview the owner, or pursue the matter, but instead concluded that the van did not belong to a delivery service and therefore again, there was reason to be suspicious of the propriety of the delivery.

The investigators did not see any paperwork being transferred at the Flamingo Hotel deliveries, but they each testified that the driver went inside the Flamingo Hotel and could have completed the required paperwork at that time. Failing to see the paperwork is not the equivalent of a conclusion that there was none. The investigators did not question the Flamingo staff at the time regarding whether any documents were presented by the delivery crew.

At the Blue Peter Pub & Restaurant, the investigators observed two kegs being delivered. Some months later, only one was accounted for in the documentation. Was the phantom keg empty? Was it a replacement for an already documented faulty keg? Was it a replacement for a keg that had failed to arrive in an earlier shipment? Was it a mistaken or wayward delivery, later recovered?

The branch has no answer to these questions, because the investigators did not ask them until so much time had passed as to make it impossible for the licensee or the licensed establishment to account for the apparent discrepancy. Two to four months had passed before the licensed establishments- as witnesses- were asked for documentation.

Even then, the investigators requested only records for the specific dates on which their observations were made. They did not allow for the possibility of mistaken calendar dates or other errors in record keeping, or that an explanation might be had within delivery documents from the next earlier or later shipment from Pacific Western Brewery. No total product scan was conducted to ascertain the usage and delivery for a given month or alternate time frame. No questions were asked regarding the possibility of trafficking in stolen liquor or kegs.

Further, no observations were made as to the origin of the deliveries. The delivery personnel were not questioned as to their instructions or destination, or the nature of the product being delivered. They did not demand the disclosure of the required accompanying documentation. This could have been done in a timely fashion, but was not.

I find that the procedure followed by the investigators was flawed and that those flaws are fatal to the allegations of contravention of Section 12 of the *Act* or Section 61 of the *Regulation*. The facts simply disclose insufficient evidence to show there was delivery of free product from the licensee to the licensed establishments, or that the required documentation did not accompany the product delivered.

The investigators did not access evidence that was readily available had they sought it out at the appropriate time. They crippled the licensed establishment's ability to provide meaningful answers by an unexplained delay of some months between the covert observations and the inspection and request for supporting documentation.

The evidence does not lead to a conclusive determination that the product originated from the licensee. It could have been stolen product, or something from a source other than the licensee. The markings observed on the kegs, though consistent with those from the licensee, do not without further evidentiary

support, lead to a conclusion that the product within was supplied directly by the licensee.

I am unable to find on a balance of probabilities that the contents of the kegs originated at the licensee, contained liquor from the licensee, or were directed by the licensee to the licensed establishments at which they were observed to be unloaded.

To establish a contravention of Section 12 (free liquor), the branch must confirm how much was sold and how much was delivered, and reconcile that information with the records of the licensed establishment and the manufacturer. If more was delivered than sold, the contravention will be proven. Covert observation of deliveries must be matched with evidence of the origin of the product. Then the documentation in the hands of the retail recipient must be reconciled with the licensee's authorization for the delivery. Further, the records must be sought in a timely manner, when any irregularities that must be spoken to can still be expected to be fresh in the controlling minds of the relevant parties.

I note also, that while it seemed as though the investigators were satisfied by the inability of the licensed establishments to provide documentation consistent with the covert observations, this lack of documentation is not conclusive of an offence committed by the licensee. The relevant sections of the *Act* and *Regulation* regulate the conduct of the licensee with respect to these allegations, not the licensed establishments from whom the branch had hoped to obtain telling evidence.

Ultimately, the branch requested of the licensee that documentation relating to the sale and delivery of the kegs observed during the covert operation be produced. The licensee failed to produce any of the documents as required. The licensee argued that for the kegs that they say were not delivered, there is no documentation to produce. Conceptually, I accept that if there were no kegs,

there would be no documentation. I find, however, that the branch's request for documentation was more broad than the licensee has proposed. The requests, made through correspondence and other means, were reasonable, thoroughly explained, and completely disregarded contrary to Section 73 of the *Act*. I find that the licensee has contravened the *Act* in that respect.

Due diligence on the part of the licensee, though generally argued, has not been established by any evidence, with respect to Section 73 of the *Act*.

Conclusion

NOEA EH05-052

Relating to observations made at the Flamingo Motor Hotel on November 10, 2004, 5 kegs were counted. No documents were available to support the delivery of purchased product.

There is no evidence that the licensee failed to provide a delivery receipt with the delivery contrary to Section 61 of the *Regulation*. The licensed establishment was not able to produce it, but that is not conclusive that there was not one at the relevant time. This section does not require the licensed establishment to hold on to the receipt and make it available to the branch, months after delivery.

I find that for reasons discussed above there is insufficient evidence to establish that free liquor was provided by the licensee contrary to Section 12 of the *Act*.

Contraventions not proven.

NOEA EH05-053

Relating to observations made at the Flamingo Motor Hotel on December 15, 2004, 30 kegs were counted. Documents were provided by the licensed establishment showing 29 kegs delivered.

There is only circumstantial evidence that the receipt for 29 kegs provided by the licensed establishment to the investigators, is the same receipt provided by the licensee on delivery of the product. There was no indication of whether or not there was another receipt for the additional keg provided with the delivery, as required by Section 61 of the *Regulation*.

There was insufficient evidence to establish that free liquor was provided by the licensee contrary to Section 12 of the *Regulation*.

Contraventions not proven.

NOEA EH05-054

Relating to the observations made at the Blue Peter Pub & Restaruant on December 21, 2004, 2 kegs were counted. Documents were provided by the licensed establishment showing 1 keg was delivered.

Again, there is only circumstantial evidence adduced indicating that the receipt for the keg delivered on December 21, 2004, is the same receipt provided by the licensee on the delivery of the product. There is no indication as to whether there was another receipt provided with the delivery as required by Section 61 of the *Regulation*.

There is insufficient evidence to establish that free liquor was provided by the licensee contrary to Section 12 of the *Act*.

Contraventions not proven.

NOEA EH05-074

I find that branch representatives made demands of the licensee to produce documents to establish what was delivered on the dates in question. The licensee did not do so. The licensee argued that documents do not exist regarding deliveries that did not happen. I accept the evidence that deliveries did in fact occur, for which the licensee should have had available documentation. Further, I find on the evidence that the licensee did not do all that it could to accommodate the requests of the branch in this regard. I find that control of the documentary system is the responsibility of the licensee and no contracting out of delivery services to an intermediary can excuse the licensee of that obligation.

I am unable to find that the actions of the licensee constitute a defence of due diligence. I cannot expect the licensee to have paperwork for kegs of beer allegedly not delivered. However, I find, on the balance of probabilities that the evidence suggests activities on the dates in question, which are not supported by the documentation provided to the branch. Therefore, I find that appropriate documentation was not delivered to the branch as required by the legislation.

This licensee has a duty to keep and produce, upon demand by a representative of the branch, documentation concerning liquor delivered to a purchaser within British Columbia. The licensee has a related but independent duty, for the purposes of the administration and enforcement of the *Act*, to maintain and produce, upon demand by a branch representative, any prescribed document concerning the sale or purchase of liquor. Through its witnesses and documentary evidence, and through the licensee's own witness, the branch demonstrated, during the hearing of this matter, that the licensee did not fulfill either of these duties on the four occasions alleged in the applicable NOEAs.

As for the alleged contraventions of Section 12 specified in this NOEA, I find the allegations to be duplicitous in relation to the other NOEAs identified above.

I find contravention of Section 73 of the *Act* proven.

PENALTY

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

- Impose a suspension of the liquor licenses for a period of time
- Cancel a liquor licence
- Impose terms and conditions to a licence or rescind or amend existing terms and conditions
- Impose a monetary penalty
- Order a licensee to transfer a licence

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulation*.

For the contravention of 'fail to produce document, record or thing', Section 73 of the *Act* (Contravention No. B007020), the branch submitted that

The nature of the contraventions – that is, being unable or unwilling to provide documentation of a business being conducted under licence, and one that must be carefully regulated in the public interest – is so serious that it demands serious penalties. Without access to adequate records, the LCLB cannot assure itself that licensees, including this Licensee, are conducting themselves, on a day-to-day basis, in accordance with the basic requirements of the *Act*, the *Regulation*, and the terms and conditions of licensing.

The branch recommended that a monetary penalty of \$10,000 (ten thousand dollars) is warranted. Item 31 of Schedule 4 to the *Regulation* sets out a penalty

range for a first incident of the alleged contravention of 10-15 day suspension or \$7,500 (seven thousand five hundred dollars) to \$10,000 (ten thousand dollars) monetary penalty.

I agree that the branch's interest in access to records is a significant and socially important one. I cannot find however, particularly in light of the absence of any negative compliance history, that a penalty in excess of the minimum monetary penalty stipulated in the *Regulation* is appropriate in this circumstance.

I therefore find, that a monetary penalty in the amount of \$7,500 is appropriate for the contravention of Section 73 of the *Act*.

ORDER

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay a monetary penalty in the amount of seven thousand, five hundred dollars (\$7,500) relating to Brewery Licence No. 300202. The monetary penalty must be paid no later than the close of business on December 24, 2005.



Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: November 24, 2005

cc: R.C.M. Police Prince George Detachment

Liquor Control and Licensing Branch, Surrey Regional Office
Attn: Mike Clark, Regional Manager

Ministry of Attorney General, Legal Services Branch
Attn: Laurie Solway, Solicitor
