



**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: 0782377 B.C. Ltd.  
dba LIDO Theatre  
10156 100<sup>th</sup> Avenue  
Fort St. John, BC V1J 1Y6

Case: EH09-018, EH09-024 & EH09-041

For the Licensee: Brian Kirschner

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: June 2, 2009

Place of Hearing: Fort St. John, BC

Date of Decision: June 16, 2009

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**Ministry of Housing  
& Social  
Development**

Liquor Control and  
Licensing Branch

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## **INTRODUCTION**

Corporate licensee 0782377 B.C. Ltd. operates the LIDO Theatre located in Fort St. John, BC. The LIDO Theatre is a former movie theatre. The majority of the theatre seating has been removed and replaced with booths and tables and chairs. The licensee holds Liquor Primary Licence No. 303200. The hours of sale are Noon to 2 A.M. Monday to Saturday and Noon to Midnight on Sunday. The capacity is 310 persons. The licence contains the following terms and conditions:

- The terms and conditions to which this licence is subject include the terms and conditions contained in the publication 'A Guide for Liquor Licensees in British Columbia' as that publication is amended from time to time.
- Liquor may only be sold, served and consumed within the areas outlined in red on the official plan, unless otherwise endorsed or approved by the LCLB.
- Subject to terms and conditions specified in the restriction or approval letter(s). A copy of restriction or approval letter(s) to be kept with current liquor licence.
- Liquor service is event driven only. Liquor service hours of sale limited to one hour prior to, during and one hour after an event unless otherwise authorized by the general manager.
- Liquor service is not permitted at youth oriented events and minors are not permitted during adult oriented events.
- The facility may not operate as a theatre as defined in the Motion Picture Act.

## **ALLEGED CONTRAVENTIONS AND PROPOSED PENALTY**

The branch alleges three contraventions and proposes penalties as set out in the Notices of Enforcement Action (the "NOEAs") dated February 17, March 12 and April 24, 2009:

1. On February 1, 2009, the licensee contravened section 12 of the *Liquor Control & Licensing Act* by failing to comply with a term and condition of the license.

The proposed penalty is \$3000 (item 46 of Schedule 4, of the *Regulations*).

2. On February 15, 2009, the licensee contravened section 12 of the *Liquor Control & Licensing Act* by failing to comply with a term and condition of the license.

The proposed penalty is a five day suspension (item 46 of Schedule 4, of the *Regulations*).

3. On March 7, 2009, the licensee contravened section 12 of the *Liquor Control & Licensing Act* by failing to comply with a term and condition of the license.

The proposed penalty is a six day suspension (item 46 of Schedule 4, of the *Regulations*).

Item 46 of Schedule 4 of the *Regulation* provides a range of penalties:

- for a first contravention of this type of a license suspension for 1 - 3 days and/or a monetary penalty of \$1,000.00 - \$3,000.00.
- for a second contravention of this type of a license suspension for 3 - 6 days.
- for a subsequent contravention of this type of a license suspension for 6 - 9 days.

The licensee disputes that the contraventions took place.

## **RELEVANT STATUTORY PROVISIONS**

### **Liquor Control and Licensing Act**

#### **[RSBC 1996] CHAPTER 267**

#### **Licences**

- 12** (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.
- (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 licence is subject under the regulations, or
  - (b) that are in addition to those referred to in paragraph (a).
- (3) Without limiting subsection (2), the terms and conditions referred to in that subsection may
- (a) limit the type of liquor to be offered for sale,
  - (b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served,
  - (c) limit the days and hours that an establishment is permitted to be open for the sale of liquor,
  - (d) designate the areas within an establishment where minors are permitted,
  - (e) approve, prohibit or restrict games and entertainment in an establishment,

- (f) exempt a class or category of licensee from requirements with respect to serving food and non-alcoholic beverages in an establishment,
- (g) vary seating requirements in the dining area of an establishment,
- (h) vary requirements with respect to the location of an establishment,
- (i) exempt a class of licensee from requirements with respect to marine facilities where liquor is sold,
- (j) specify the manner in which sponsorship by a liquor manufacturer or an agent under section 52 may be conducted and place restrictions on the types of events, activities or organizations that may be sponsored,
- (k) specify requirements for reporting and record keeping, and
- (l) control signs used in or for an establishment.

(4) Nothing in subsection (2) or (3) authorizes the general manager to impose terms and conditions that are inconsistent with this Act or the regulations.

#### Entertainment

**50** (2) Without limiting section 12, the general manager may, at the time of the issue of a licence or at any time during the term of the licence, impose as a condition of it the restrictions and limitations that the general manager considers necessary on any type or form of entertainment performed or carried on in the establishment for which the licence is issued.

**ISSUES**

1. Did the contraventions occur?
2. If so, is a penalty appropriate for each contravention, and if so what is a reasonable penalty?

**EXHIBITS**

The following exhibits were presented:

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|------------------|---|
| <b>Exhibit 1</b> | Branch Book of Documents #1, tabs 1 – 29.   |
| <b>Exhibit 2</b> | Branch publication, “Liquor-Primary License, Terms and Conditions, A Guide for Liquor Licensees in British Columbia”. |
| <b>Exhibit 3</b> | Excerpts from Branch publication, Liquor Licensing Policy Manual”.  |

**EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH**

Two R.C.M.P. Police officers testified that during the early evening hours of February 1, 2009 they were in uniform performing general duties in Fort St. John. At the request of the local liquor inspector they attended at the LIDO Theatre to observe whether liquor was being sold at the establishment during the televised Superbowl football game. They attended at approximately 5:40 PM and observed that liquor was being served. No problems were noted during their attendance. The liquor inspector was later advised of their observations.

A branch liquor inspector testified that she is responsible for the geographical area in which the LIDO Theatre is located. She is familiar with the establishment. Prior to it receiving the current liquor licence it had obtained Special Occasion Licences (SOLs) for specific events. The police detachment expressed some concern over the number of SOLs being issued and it was suggested that the establishment apply for a

permanent liquor licence. The principal of the corporate licensee (the licensee) made an application to the branch's head-office in Victoria. He included an undated 'Letter of Intent' with the application (exhibit 1, tab 16), and included some additional information in a subsequent letter dated May 5<sup>th</sup>, 2008 (exhibit 1, tab 17). When the application process was completed, the liquor inspector, conducted an interview and information session with the licensee on September 10, 2008 (exhibit 1, tab 15). During the course of the interview she discussed the entertainment provisions outlined in the "Guide for Liquor Licensees". She explained to the licensee that the "Guide" contained general provisions for Liquor Primary licensees whereas the licence for the LIDO Theatre had specific provisions related to entertainment.

The liquor licence was subsequently issued. The licence contains the specific term and condition, "Liquor service is event driven only. Liquor service hours of sale limited to one hour prior to, during and one hour after an event unless otherwise authorized by the general manager." She testified that she interpreted this provision to mean that liquor service was authorized only when there was a performer on the stage and that liquor service was not authorized during televised events. She agreed that the branch did not have a definition for "event". She agreed that the dictionary definition, "anything that takes place; planned and organized occasion; contest in a sporting program" (Collins Essential Canadian Dictionary) described the activities occurring at the LIDO Theatre. The branch does not have a definition for "live". In her view, in the context of the LIDO Theatre, it refers to persons performing on stage at the establishment and not elsewhere.

In January 2009 she saw advertisements for televised UFC (Ultimate Fighting Championship) and the Superbowl (U.S.A. football championship) to be held at the establishment on January 31<sup>st</sup> and February 1<sup>st</sup> respectively. She advised the licensee that they did not qualify for liquor service, as they were not being performed live at the establishment. The licensee did not agree with her interpretation and contacted branch officials in Victoria. The Deputy General Manager, licensing and local government liaison for the branch (DGM) responded to the licensee in a letter dated January 27,

2009 (exhibit 1, tab 22). The DGM advised the licensee that the LIDO Theatre was designated as a concert hall for the purpose of liquor licensing. The DGM outlined the type of events for which liquor service was authorized and made it clear that televised events were not included. This letter was sent via email to the licensee and liquor inspector on January 27, 2009.

The inspector testified that she attended at the establishment on the night of January 31<sup>st</sup> and observed that the UFC (Ultimate Fighting Championship) was being televised and that liquor service was taking place. She advised the licensee that this was not permitted under the terms and conditions of the license and a Contravention Notice (CN) would be issued.

The inspector testified that as she was not able to attend at the establishment on February 1<sup>st</sup> to observe whether the Superbowl was being televised and whether liquor service was taking place, she requested that police officers attend to make observations on her behalf. This was done and the officers advised her that the Superbowl was being televised and that liquor service was taking place. The inspector subsequently met with the licensee and issued CNs for January 31<sup>st</sup> and February 1<sup>st</sup>. The licensee advised the inspector that he would continue providing televised events and liquor service. Following discussion with her Regional Manager a decision was reached that no enforcement action would be taken regarding the January 31<sup>st</sup> incident, however the February 1<sup>st</sup> incident would proceed to enforcement. The inspector prepared a NOEA dated February 17<sup>th</sup> alleging the contravention and recommending a \$3,000.00 monetary penalty (exhibit 1, tab 1). She testified that she had attempted to obtain voluntary compliance from the licensee, however had failed to do so and a significant penalty was necessary.

The inspector testified that on February 15<sup>th</sup> she attended at the establishment to determine if the Daytona 500 (automobile race) was being televised and if liquor service was taking place. She observed that the race was televised, there was no one on the stage at the time and liquor service was occurring. She spoke with the licensee and a



CN was issued. The inspector prepared a NOEA dated March 12th alleging the contravention and recommending a five-day suspension (exhibit 1, tab 4).

The inspector testified that on March 7th she attended at the establishment to determine if the UFC (Ultimate Fighting Championship) was being televised and if liquor service was taking place. She observed that the event was televised and liquor service was occurring. She spoke with the licensee and a CN was issued. The inspector prepared a NOEA dated April 24<sup>th</sup> alleging the contravention and recommending a six-day suspension (exhibit 1, tab 8).

In response to questions from the licensee the inspector agreed that the "Guide" outlined the liquor licensing requirements, allowed the general manager of the branch to impose terms and conditions on licenses where it was in the public interest to do so and stressed the importance of public safety. The "Guide" also outlined the type of entertainment that could be offered by licensed establishments. She did not discuss the big screen television when she conducted the interview with the licensee prior to the licence being issued nor did she tell the licensee that he could not have a television in the establishment. The licensee did not tell her that he wished to show televised events nor did he ask her if having a live person on stage acting as a master of ceremonies (MC) during a televised event would qualify for the service of liquor. She did advise the licensee that the provisions of the Guide were not specific to the LIDO Theatre. The licence contained specific terms and conditions and it was "event driven", there must be entertainment on the stage for liquor service to be authorized. This did not allow for the televised showing of UFC, Superbowl or Daytona 500 to qualify for liquor service.

She agreed that the licensee played her a portion of a telephone conversation he had recorded with a licensing official of the branch in Victoria on January 27<sup>th</sup> wherein he was discussing the definition of the word "event". The licensing official said that she was unaware of a definition for the word "event" and would have to call up the file before she could respond. The inspector expressed surprise to the licensee at the time that

given the matter had been under discussion for some time that the file had to be called up for the licensing official to respond.

She is aware that the DGM's letter of January 27<sup>th</sup> (Exhibit 1, tab 22) referred to the LIDO Theatre as being designated as a concert hall. She believes that it could be described as a concert hall, a dance hall or a movie theatre. She agreed that the licence does not specify that it is issued for a "concert hall" and that the branch has no definition of "concert hall".

She is aware that the mayor of Fort St. John wrote a letter on January 26<sup>th</sup> expressing support for the LIDO Theatre holding a Superbowl party with the service of liquor. The mayor wrote that Superbowl and similar events were considered when the Fort St. John City Council supported the liquor licence application in February 2008 (exhibit 1, tab 21).

### **EVIDENCE - THE LICENSEE**

The principal of the corporate licensee introduced excerpts from the Branch's "Liquor licensing Policy Manual" (exhibit 3). He referred to several instances where the branch failed to follow the manual's procedural requirements:

- Manual 3.3 'Site and Community Assessment':

3.3.18 requires that at the conclusion of the site and community assessment process the applicant be informed in writing and provided reasons for any terms and conditions applied to the license. He testified that this was not done in this case.

- Manual 3.4 'Building Assessment and issue of a licence':

The policy rationale requires four tasks be undertaken including that the terms and conditions of the licence be discussed with the applicant, the administrative requirements for the licence be addressed and the practicalities of meeting the terms and conditions of the liquor licence be discussed. He testified that these were not done in this case.

3.4.10 requires that the liquor inspector during the course of the final inspection advise the applicant that terms and conditions may be added to the licence and is to identify potential concerns that may warrant additional terms and conditions to be added to the licence. He testified that this was not done in this case. The evolution of the terms and conditions changed from the time of issuance when it was “event driven” to being that of a “concert hall” to requiring a “live” event which excluded having an MC on stage with an awards ceremony.

3.4.11 requires that the liquor inspector review the terms and conditions of the licence with the applicant. He testified that this was not done in this case, it was not made clear and concise what was meant by the term and condition, “Liquor service is *event driven* only (emphasis added)”.

- Manual 3.5 License Amendments:

3.5.4; 3.5.6 and 3.5.8 require that as part of the public interest test the licence may not be amended unless local government is notified and the comments of local government are to be received and considered. He testified that this was not done in this case. Changes were made to the licence without notification to the local government. When the licensee notified the mayor, a letter was written in support of the events being held at the establishment.

The licensee testified that the branch failed to do due diligence in providing him with sufficient information to operate the establishment within the guidelines. The branch should be accountable for any issues that have been overlooked in the licensing process.

In response to questions from the branch advocate, the licensee testified that prior to hosting televised events he did not review the terms and conditions of the licence but referred to the “Guide” and the provisions under “entertainment”. Those provisions indicated that he could proceed with the televised events. He considered that “pay per view” events such as UFC fell under the licence requirement of being “event driven”. It was the same as hiring a comedian to be on stage, there were costs involved and tickets were sold to entrants. The Superbowl, while not a “pay per view” event was a

sporting event as he had outlined in his letter of intent. He agreed that his letter of intent did not refer to televised events. He testified that in his view it was not sufficient that the liquor inspector advised him that televised events did not meet the “event driven” requirement. He proceeded following the provisions of entertainment in the “Guide”.

When asked why he did not heed the information provided in the DGM’s letter which made it clear what was meant by “event driven” he responded that the letter referred to a concert hall. It did not refer to the LIDO Theatre. Asked why he did not follow up on the letter he testified that at the time many conversations had taken place with several branch staff and no one had pulled up his file. The events had been advertised for weeks. No one from the branch had ever sent him a document outlining what constituted an event. He believed that the LIDO Theatre was in a “grey area” and that the branch was accountable to explain what the license requirements were. The branch’s requirements changed from being ‘event driven’ to being a ‘live’ event. To him that meant an event being held in ‘real time’, such as the UFC events and the Superbowl were “live” events. The Daytona 500 televised event was sponsored by a local auto parts dealer with an MC on stage and door prizes awarded. This was done in an attempt to make it an event. It still didn’t meet the guidelines, which were changed and never shown to him.

He agreed that the UFC, Superbowl and Daytona 500 televised event were held at the LIDO Theatre on the dates alleged and that liquor service took place during the course of each televised event.

### **LICENSEE SUBMISSIONS**

The licensee submitted that the business plan for the LIDO Theatre was developed over several years and put into place when he purchased the property. It operated by way of SOLs but a liquor licence was applied for on the advice of the liquor inspector when the police detachment raised concerns about the number of SOLs being issued. The

license was issued in October 2008 and operated until January 2009 without restrictions. The liquor inspector told him that the planned events were not allowed but couldn't show him why they were not allowed. She employed bullying tactics and told him that it was not allowed because she said so. He dug in his heels. He was told that UFC was not allowed nor was the Superbowl because he needed someone on the stage during the event. He tried to comply by having an MC with the Daytona 500 event but was told that he can't have televised events. Other licensees have tried comedy and live music but it has not worked. He has not been shown where his licence is restricted.

He believes in fair and equitable treatment. The branch does not answer to anyone and is not accountable. He offered to fly to Victoria to discuss his case but was told not to do so. The branch needs clarity with written policies. There have been no safety or other issues at the LIDO Theatre. The LIDO Theatre exists in a grey area of liquor licensing, it is a chameleon. The only issue relates to the entertainment and what constitutes an event and a live event. The licence at the theatre has evolved into something that he did not apply for.

With regard to the recommended penalties he does not believe that a penalty is warranted for the Superbowl event because of the late notice he received that it wasn't allowed. Nor does he believe that a penalty should be given for the Daytona 500 event as he had tried to operate within the rules by having an MC on stage.

The branch has no formal definitions to guide new licensees. Branch staff need better training, rather than work with him they pushed him away. He is not asking for a change to the liquor licence but rather that it be put back to what it was when issued.

## **REASONS AND DECISION**

The licensee applied for a liquor licence for the LIDO Theatre in February 2008. The application process involved the exchange of correspondence and communications

between the licensee and branch officials located in Victoria. I have not been privy to all correspondence and communications. I have received what the parties have chosen to place before me.

Included with the application was an undated "Letter of Intent" (exhibit 1, tab 16). The letter is six typewritten pages in length and deals with numerous factors that the licensee (as applicant) considered relevant to the application. Of interest for purposes here is the licensee's intention in what would be offered in the establishment by way of entertainment:

- Under the heading "Target Market" the letter states: "The target market of this venue is any and all individuals who desire an alternative setting to watch entertainment such as; theatrical events, comedians, live music, sporting events, concerts, motivational speakers, talent shows, competitions, corporate events, as well as non-profit organizations who would benefit from a venue such as this."
- Under "Liquor Related Market" it includes: "The target market for events that are licensed in nature is one ranging from live comedy shows, plays, live music and karaoke, to sporting events."
- The letter further states in the final paragraph of the first page; "It is our intention to fill those voids in all areas of the entertainment options that are currently not available within our community."
- Under the heading "Hospitality/Tourism": "The main focus of the LIDO Theatre is primarily directed towards enhancing the development and accessibility of arts, culture and entertainment for the residents of Fort St. John and surrounding area. However, the availability of this venue to feature such diverse forms of entertainment will enhance not only the city and its resident's quality of life, but also offer options for those who have chosen to visit Fort St. John as well."

- Under the heading “Other Licensed Establishments” the letter includes a brief description of three hotels located in close proximity to the LIDO Theatre and includes the statement: “...it is our intention to offer a wide variety of live entertainment, which is not currently being provided by any licensed establishment in Fort St. John.”
- Under “Other Factors” the letter includes the statement: “The liquor primary application submitted by the LIDO Theatre is being applied for and is intended for the facility be (sic) operated as a concert hall, convention centre, under the B.C. Liquor Control Act – Part 3 – Sections 8,9 & 10.”

In a subsequent letter to the branch dated May 5, 2008 (exhibit 1, tab 17) under the heading “Item 3” the licensee discusses the application of a pub located in Fort St. John and its effect in the community. The letter states: “In saying this the “**LIVE**” (original emphasis) entertainment market (theatre, comedians, bands etc.) is not being done or considered by any of the current licensed establishments.”

The application process requires that the applicant obtain the views of local government regarding the issuance of the licence. A letter dated August 13, 2008 was sent to the licensee and copied to the branch by the Director of Legislative and Administrative Services for the City of Fort St. John (exhibit 1, tab 18). The Director advised that Council passed a resolution recommending the issuance of a liquor licence for reasons which included, “...the LIDO Theatre is providing an alternative setting to watch entertainment such as comedians and live music which is different from other liquor primary licence holders in the area...”

It is clear that the LIDO Theatre intended to provide a venue for entertainment that was otherwise not offered within the community. The correspondence does not mention that any of the type of entertainment proposed for the establishment was to be presented through televised media. That may have been an oversight, it may have been that it was not intended or it may have been strategic. The point being it was not included.

The liquor licence (exhibit 1, tab 11) was issued on October 14, 2008. It contains a number of terms and conditions including: "Liquor service is event driven only. Liquor service hours of sale limited to one hour prior to, during and one hour after an event unless otherwise authorized by the general manager." I am satisfied that this separates the licence from other Liquor Primary licenses issued for establishments operating as pubs, lounges or cabarets. The general entertainment provisions found in the "Guide" govern such licenses. They are not required to offer entertainment as a condition of the licence. They are permitted to offer televised events including UFC, Superbowl and the Daytona 500 race. To read into the term and condition for the LIDO Theatre the ability to offer liquor service during such televised events would nullify the term and condition of the licence. In today's media world with cable, satellite and Internet services, televised international sporting events are available on an almost round-the-clock basis. The LIDO Theatre would thus have the ability of almost continuous liquor service. I am satisfied that that is not what the licensee applied for and that is not what the branch intended in issuing the license. The licensee held out that it was offering something not being offered elsewhere in the community. Televised coverage of major sporting events is available not only in licensed establishments but in private residences as well.

There is insufficient evidence before me to conclude that during the licensing process the branch failed to follow the mandatory requirements outlined in the Liquor Licensing Manual. From the information before me, I find that the licensee's application was received, correspondence was exchanged, the views of local government received and considered and the licence issued with terms and conditions consistent with the information provided to the branch.

I place no adverse significance on the statement by a licensing official that she needed to call up the file before commenting on what constituted an "event". Given that the licensee had been speaking with several branch staff on that issue, the review of the file before commenting would be a prudent course of action. I do not accept that the comment indicates that branch staff had not reviewed the file prior to that time.



While there may be room for improvement in providing a concise description of what is meant by the terms “event” and “event driven” I am satisfied that the licensee was provided with sufficient information to allow him to operate within the requirements of the license.

I find that on February 1, 2009, February 15, 2009 and on March 7, 2009, the licensee contravened section 12 of the *Liquor Control & Licensing Act* by failing to comply with a term and condition of the license.

### **DUE DILIGENCE**

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions 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 dealt with.

Here, there is little evidence upon which I can find that the licensee was duly diligent. Prior to each contravention the licensee was notified that the branch considered that the proposed televised events did not qualify for liquor service pursuant to the terms and conditions of the liquor licence. The licensee proceeded with the televised events and offered liquor service. The DGM’s letter of January 27, 2009 (exhibit 1, tab 22) offered alternative courses of action to the licensee. The licensee ignored the advice given.

I find that the licensee has not been duly diligent.

### **PENALTY**

Pursuant to section 20(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 have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence 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 *Regulations*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the NOEA.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is: whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to public safety and the well being of the community. Here the licensee knowingly challenged the branch's authority and proceeded against the advice provided to him. The general manager of the branch has a duty to supervise the conduct and operation of licensed establishments. In the circumstances I am satisfied that a penalty is necessary to achieve voluntary compliance. Any penalty imposed must be sufficient to ensure compliance in the future.

Here there are three contraventions of the same type occurring within a five-week period. The branch has treated these as first, second and subsequent contraventions pursuant to section 1(1) of Schedule 4 of the *Regulations*.

The range for a first contravention of this type is a license suspension for 1 – 3 days and/or a monetary penalty of \$1,000.00 - \$3,000.00. The branch has recommended a

monetary penalty of \$3000.00. In the circumstances of this case I find that that is appropriate, reasonable and necessary.

The range for a second contravention of this type is a license suspension for 3 - 6 days. The branch has recommended a five day licence suspension. In the circumstances of this case I find that that is appropriate, reasonable and necessary.

The range for a subsequent contravention of this type is a licence suspension for 6 - 9 days. The branch has recommended a six day licence suspension. In the circumstances of this case I find that that is appropriate, reasonable and necessary.

In a typical liquor primary establishment, an eleven day suspension would be deemed to be eleven business days or eleven days that the establishment would normally be open for business. This is normally described in the resulting order. As the typical liquor primary establishment sells liquor as its primary function, a suspension of the licence equates to a closure of the establishment. In the case of the LIDO Theatre, the primary function of the establishment is providing a venue for diverse types of events, for which the provision of liquor is an adjunct service.

A suspension of the liquor licence is only effective on a day on which the liquor licence is otherwise available to authorize the sale and service of liquor. Accordingly, this suspension is to be effective for eleven consecutive days on which liquor service is permitted at events occurring at the establishment.

## **ORDER**

Pursuant to Section 20 (2) of the *Act*:

- I order the payment of a three thousand dollar (\$3,000) monetary penalty by the licensee to the general manager on or before Monday July 27, 2009;
- I order a suspension of Liquor Primary Licence No. 303200 for a period of eleven (11) days, to commence as of the close of business on Sunday, July 26, 2009, and

to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (section 67 of the Regulation), and at which liquor would normally be available to patrons of an event held at the LIDO Theatre.

To ensure that this Order is effective, I direct that the liquor license be held by the branch or the RCMP Fort St. John Detachment from the close of business on Sunday, July 26, 2009 until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

*Original signed by*

Edward W. Owsianski  
Enforcement Hearing Adjudicator

Date: June 16, 2009

cc: R.C.M.P. Police, Fort St. John Detachment

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

Liquor Control and Licensing Branch, Surrey Office  
Attn: Peter Mior, Branch Advocate