



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: Keremeos Hotel (2004) Ltd.,
dba Keremeos Mountain Inn, Red Bridge Pub
715 7th Street
Keremeos, BC V0X 1N0

Case: EH13-140

For the Licensee: William (Bill) Irvine

For the Branch: Peter Mior

General Manager's Delegate: Dianne Flood

Date of Hearing: April 23, 2014

Date of Decision: May 15, 2014

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Keremeos Hotel (2004) Ltd. (the "Licensee") operates a licensed establishment called the Keremeos Mountain Inn, Red Bridge Pub at 715 7th Street, Keremeos, BC (the "Establishment"), under liquor primary licence 018945 (the "Licence").

Under the Licence, liquor sales are permitted from 11:00 a.m. to 1:00 a.m. Monday to Saturday, and from 11:00 a.m. to midnight on Sunday. The Licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the *Guide for Liquor Licensees in British Columbia* (the "Guide").

The Establishment's licensed capacity is 31 persons on the Patio and 125 persons in Person01 area.

The Branch approved a resident manager for the Establishment (the "RM"), in November 2012.

Mr. Irvine, one of the shareholders of the Licensee, appeared as the Licensee's representative at the hearing. Both Mr. Irvine and the RM gave evidence on behalf of the Licensee.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The alleged contraventions are:

- Permit drunkenness or violent, quarrelsome, riotous or disorderly conduct, contrary to section 36(2)(a) of the *Liquor Control and Licensing Act* (the "Act"); and
- Allow liquor to be removed from the establishment, contrary to section 42(4) of the *Liquor Control and Licensing Regulation* (the "Regulation").

Schedule 4 of the Regulation sets the penalties for contraventions of the Act.

The penalty for a first contravention of section 36(2)(a) of the Act is a licence suspension of 10 to 15 days or a monetary penalty of \$7,500 to \$10,000. The penalty for a first contravention of section 42(4) of the Regulation is a licence suspension of 1 to 3 days or a monetary penalty of \$1,000 to \$3,000.

The Branch proposes a 10 day licence suspension for the contravention of the Act and a one day licence suspension for the contravention of the Regulation.

The Licensee disputes the contraventions occurred.

RELEVANT STATUTORY PROVISIONS

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

Section 36(2) of the Act provides:

A person holding a licence or the person's employee must not authorize or permit in the licensed establishment

(a) drunkenness or violent, quarrelsome, riotous or disorderly conduct.

Section 42(4) of the Regulation provides:

All liquor sold or served in a licensed establishment, other than liquor sold by charitable auction, must be consumed in the licensed establishment, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment: [Note: the listed items are not applicable here].

ISSUES

1. Did the contraventions occur?
2. If so, has the Licensee established a defence to the contraventions?
3. If the contraventions are proven, what penalty, if any, is appropriate?

EXHIBITS

- Exhibit 1: Branch's Book of Documents
- Exhibit 2: Licensee's Incident Report
- Exhibit 3: Three photographs of the entrances to the Establishment

EVIDENCE – BRANCH

The Branch advocate called as witnesses three members of the RCMP and a Branch inspector.

Police Officer 1

Police Officer 1 has been a member of the RCMP for three years. He testified that he was the only RCMP officer on general duty patrol in Keremeos on the evening of Wednesday, June 12, 2013. At about 6:30 p.m., he responded to a call from the dispatcher that a female was threatening to "kick ass" at the Establishment.

On arriving at the Establishment, he looked for the female outside, thinking she may have left when told the RCMP had been called, but he did not see her. He heard loud noise coming from the patio area. He said he knew it was Wednesday "Wing Night", which was popular because chicken wings sold for 25 cents each.

Police Officer 1 testified that he entered the Establishment and was advised by the RM that the female who had been complained about was outside on the patio. The RM told Police Officer 1 that the female had been asked to leave two or three times, and that she had been violent in the past.

He walked out onto the patio with the RM. A loud, boisterous group was on the patio. The group appeared to be transient seasonal farm labourers. They were speaking in French, so he did not know what they were saying. The group became quiet when he entered the patio.

The RM pointed out the female (the "Female Patron") who was between 60 and 70 years of age. A male (the "Male Patron") was sitting on her lap. Police Officer 1 did not know the Female Patron.

Police Officer 1 said he asked the Female Patron to get up and come outside with him for a talk. He said the Female Patron responded by shrieking "You think I am drunk". She looked intoxicated to Police Officer 1. She had glassy eyes, slurred speech, and was angry. By then, the Male Patron was standing up, directly beside her.

Police Officer 1 told the Female Patron that she was under arrest for causing a disturbance and that she needed to go with him. He wanted to get her up and out as soon as possible because he did not like the situation.

Police Officer 1 again noted that the boisterous group had become quiet. He had dealt with various seasonal farm workers before, ejecting them for drinking and smoking marijuana in the park. In his opinion, the seasonal farm workers were fine when dealing with them as individuals, but when dealing with them in a group they were unmanageable. He knew they had a general lack of respect for the police.

He said that the Female Patron grabbed the arms of the chair she was sitting in and refused to go with him. He reached down and grabbed her arm to pull her up. She started screaming in his face and the rest of the crowd jumped up and started yelling "police brutality", "she's an old lady", and "she's done nothing wrong". Tables and chairs were knocked over and glasses were falling on the floor. He testified that he was surrounded by the patrons on the patio and had no exit from the patio except through the door to the pub that he had just come through.

By this time, the Male Patron was only about six inches away from Police Officer 1. He appeared intoxicated to Police Officer 1, who said the Male Patron had glassy eyes, a red face, and was sweating.

Police Officer 1 tried to get the Female Patron moving through the crowd. He took a step forward and tried to get her hand behind her back. She reached around and grabbed his crotch. About 10 to 15 patrons, standing in three rows, were between him and the exit. All of them were screaming at him.

Because the Female Patron grabbed his crotch and all of the people in the way of the exit, he decided to take the Female Patron to the ground so she would release her hold on his crotch. To do that, Police Officer 1 "clipped" her with his foot. Both he and the Female Patron went to the ground, and the crowd was still screaming at him. The crowd was all around him.

On reaching the ground, Police Officer 1 put out a call for backup. He knew Police Officer 2 was in the vicinity and it would not take him long to get there. By this time, the crowd on the patio was about 30 persons.

While on the ground and with the crowd all around him screaming at him, Police Officer 1 noticed another male patron (the "Good Samaritan") who had towed trucks for the RCMP. The Good Samaritan offered Police Officer 1 assistance if he needed it and placed himself directly at the Constable's back, to stop the crowd from coming further toward the Constable. Police Officer 1 did not know at the time that the Good Samaritan was a former employee of the Licensee. Police Officer 1 said he could then hear the sirens so he knew backup would not be long in coming.

While on the ground, he was trying to get the Female Patron subdued, but she kept squirming. The Male Patron was kneeling at her head, speaking to her in French. Police Officer 1 did not know French and so did not know what was being said. He later learned from the Good Samaritan, who does speak French that the Male Patron was asking the Female Patron what she wanted him to do to the Constable. The Good Samaritan told Police Officer 1 that the Female Patron said for the Male Patron to leave him as she was okay. Police Officer 1 said the whole time, the crowd was screaming at him "police brutality" and other things.

Police Officer 1 testified that the RM had gone back inside. He did not know what she was doing. He never saw any other staff members, nor did any staff members offer him any assistance at any time. He estimated the struggle on the patio took about five minutes.

He said he saw Police Officer 2, who was pushing his way into the crowd at the entry/exit point. When Police Officer 2 got to Police Officer 1, he asked Police Officer 1 if he was alright, and then said they had to get out now. Police Officer 1 pointed at the Female Patron and said she is under arrest. Police Officer 2 said "get her up and let's get out of here".

Police Officer 1 said he stood up and pulled the Female Patron to her feet and then very quickly walked her out and went through the pub to the rear exit. Police Officer 2 followed behind Police Officer 1. The crowd was still screaming at them.

When they exited the Establishment at the rear, they were met by another Constable. They could still hear the crowd on the patio "ranting and raving", so Police Officer 2 decided they had to relocate to the fire hall parking lot. When heading to his car to go to the fire hall, two females from the patio came out, still ranting and raving, and gave him the Female Patron's sweater and driver's licence.

An ambulance was called because the Female Patron complained of a sore arm and it was directed to meet them at the fire hall parking lot. Police Officer 1 called Police Officer 3, the detachment commander, to advise him on the situation.

A fourth officer, who was on traffic duty, joined them. They discussed the situation and decided that it was safer to allow the crowd in the Establishment to disperse on its own instead of returning to the Establishment.

Police Officer 1 drove to the hospital and arrested the Female Patron for causing a disturbance and assaulting a police officer. He thought she had also been charged with intoxication. Her blood alcohol reading was not tested.

He made notes at the time, which were included as tab 6, Exhibit 1.

Police Officer 1 had been involved with forcibly ejecting persons on other prior occasions. He had attended at the Establishment previously to eject a woman with mental health problems but that was not a forcible ejection.

It was normal for one officer to attend a call like this, because of the staffing levels in Keremeos. How many officers would attend in other places would depend on the situation.

In dealing with seasonal workers in the past, Police Officer 1 said they have been charged with various offences, but follow-through is up to the Crown. He said he knew they had been issued roadside prohibitions for drunk driving.

Police Officer 1 agreed it was possible that the Female Patron was on medication that evening.

Police Officer 2

Police Officer 2 has been a member of the RCMP for 11 years. He is with the South East District and is with the Canine Unit. He has an administrative office for paperwork in Keremeos, but travels extensively throughout the District, which is a very large area. Previously he had worked as a general duty officer and has conducted numerous inspections of licensed premises, including large seasonal events. He was familiar with the Establishment and has attended in the past to assist other officers.

He described Keremeos as a small place, with a large population of transient seasonal workers. The Establishment's Wing Nights were popular. Local officers have occasionally asked for coverage/backup if needed. He could recall that since 2006 he had been called for that once or twice a year, but he noted that he was not usually in Keremeos, except during the day to do paperwork.

On June 12, 2013, at about 6:30 p.m. he was in uniform, doing paperwork in the office. He heard the call come in from dispatch to Police Officer 1, and knew that Police Officer 1 was the only officer on general duty at the time. From the call, he knew Police Officer 1 was attending at the Establishment.

Police Officer 2 testified that he then heard a "10-33" call come in from Police Officer 1. A "10-33" call is an emergency call that an officer is being assaulted and needs assistance. He could hear people yelling in the background of the call. He responded as a Code 3, with both lights and sirens on because a 10-33 call is the highest priority call – an officer in trouble. He was at the Establishment in about one minute.

Police Officer 2 said that the Establishment is on a corner, so he pulled up directly in front of the patio, with the lights and siren still on, intending to give all involved the message that another officer was there. He could see the large crowd on the patio, which was enclosed but he could not enter it directly. He could see heads of people and Police Officer 1 by his shirt only. He said Police Officer 1 was surrounded on all sides, and described it as a "swarming". He said all he could hear was screaming and profanities. Police Officer 2 described the situation as one of the most precarious positions for a police officer.

Police Officer 2 said that the siren and his arrival did not seem to change the mood. No one on the patio even seemed to note his arrival.

Police Officer 2 entered through the bar, and was not greeted by anyone. He said he could tell violence was on-going or imminent. Police Officer 2 wears glasses and because they are very expensive to replace, he handed his glasses to a female behind the bar. She said nothing to him. Another female, later identified as the RM, was standing between the bar and the patio. She yelled to him "he's out there" and pointed to the patio.

Police Officer 2 testified that patrons were standing in the entryway, with their backs to him. To enter the patio, Police Officer 2 had to push his way through the crowd. He described it as having to "peel" his way through the crowd. No one moved for him as an officer in uniform. He recognized that Police Officer 1 was in danger and he was intent on removing him from the patio.

Police Officer 2 described the Female Patron as between 60 and 70 years of age. She was swearing, in English and French. In his opinion, she was intoxicated. He based that opinion on the thousands of intoxicated persons he has seen and assessed in his career. Her words were grossly slurred and she had urinated herself. He could tell it was urination and not a spilled drink from the location of the stain from the front to the back of the crotch of her pants, and from the smell. In addition, her eyes were sluggish and sleepy in appearance, which was at odds with her behaviour, which is typical of intoxication.

Police Officer 2 testified that he was concerned for the safety of the Female Patron and Police Officer 1. He estimated that there were about 40 people on the patio. Everyone on the patio seemed to be screaming. Police Officer 2 testified that the Male Patron is a large man. The Male Patron was being held back by two others. He had his fists clenched and was trying to break free. He was swearing. Police Officer 2 knew the Male Patron from a past arrest. In Police Officer 2's opinion, the Male Patron was fuelled with alcohol and showed a marked departure from the past arrest, which Police Officer 2 attributed to alcohol. It was obvious to Police Officer 2 that an assault was imminent.

Police Officer 2 told the crowd to calm down but no one moved back. He had the sense he was about to be hit with a bottle, which he said was not a good feeling. Police Officer 1 appeared to be shaken up. He said he grabbed Police Officer 1 and the Female Patron and retreated back, with his arms out. His first thought was to get out safely, not enforcement.

Another officer arrived at the Establishment while Police Officer 2, Police Officer 1 and the Female Patron were exiting. Based on the hostility in the patio, he told the third officer not to enter the Establishment because he did not think it was safe for her to do so. He directed her to come to the back exit to meet up with them there.

Police Officer 2 testified that in his 11 years on the force he had worked many large events, often with lots of people under the influence. He described the experience at the Establishment that evening as one of the most precarious in his career. He said it was only by happenstance that he was there to assist Police Officer 1.

Police Officer 2 said that at no time in the Establishment did any staff member offer any assistance. No one identified themselves to him as staff. No one attempted to help to try to control the crowd. He did not see the RM on the patio. The only assistance offered was by the Good Samaritan, who said "I am here if you need a hand", which Police Officer 2 interpreted as the Good Samaritan knowing the precarious position the officers were in. Police Officer 2 was not aware that the Good Samaritan had been a former employee of the Licensee.

After exiting the Establishment, an ambulance was summoned for the Female Patron who was complaining of injury to her arm. Police Officer 2 assessed that it was unsafe to wait for it at the Establishment, so they moved to the fire hall parking lot.

Police Officer 2 conducted a check on the Male Patron and determined two arrest warrants were outstanding against him. However, in consultation with the other officers, they decided not to take action on the warrants or to do a licensed premises check at the time because they thought it was unsafe for them to re-enter the Establishment at that time. They decided to keep a careful watch from the outside and only re-enter the Establishment that evening if violence was reported.

At about 7:30 p.m., Police Officer 2 returned to drive by the Establishment. He was driving an unmarked vehicle that, because it's used for a canine unit, looks quite different from most other unmarked vehicles. He testified that he saw a male exit the Establishment with a full glass of beer in his hand. The male had a black beard, was in his mid-30's, and about 175 lbs. and six feet tall. He was wearing a black top with jeans. The liquid in the glass was gold in colour, with white foam on top. Police Officer 2 said the patron was completely unimpeded by staff.

The male was headed across the parking lot to a group of people when he saw Police Officer 2's uniform and he made an abrupt turn and re-entered the Establishment. Because the officers had earlier decided not to re-enter the Establishment unless violence was reported, Police Officer 2 did not re-enter the Establishment to pursue the male patron.

Police Officer 2 made notes about the incident, which are at tab 5, Exhibit 1.

When shown the photographs of the entries to the Establishment (Exhibit 3), Police Officer 2 was positive the male exited and re-entered from the pub entry, not the restaurant entry. He said he had just used the pub entry himself about an hour earlier and he knew the male patron came out the entry he had gone in.

Police Officer 2 agreed that the Female Patron may have had red eyes from crying but said that as a police officer, they consider the totality of the circumstance. He said that in his opinion and experience, the Female Patron had gross signs of alcohol impairment. He based this on a number of observations: red, watery eyes, slurring words, resisting behaviour. Police Officer 2 said he also had the opportunity to observe the Female Patron at the fire hall parking lot and it was easy to tell she was grossly intoxicated by alcohol. She was not tested for blood alcohol at the hospital because the ability to demand a blood or breath sample only applies in cases of impaired driving. A person cannot be compelled to give a sample on an assault. He did not know if the Female Patron had had a reaction due to mixing drugs and alcohol.

Police Officer 2's canine partner is trained for detection only, not for arrests, so the canine partner was not useful nor could be used in this situation.

Police Officer 2 testified that a protocol is in place for the use of firearms and this was not a situation appropriate to use a firearm. He also testified it was unusual for him to direct the third officer not to enter the Establishment. He said he and Police Officer 1 could have used her help but he was concerned about her safety. Ordinarily when the police arrive, things calm down, but that was not the case here. Alcohol was a large concern, and because they were already exiting and retreating, it was better to deal with the Female Patron outside.

An additional officer was called in as backup and once that officer had arrived, Police Officer 2 went back to his office duties.

Police Officer 3

Police Officer 3 has more than 24 years with the RCMP. In June 2013, he was the detachment commander in Keremeos. He is familiar with the Establishment and had done licensed premises checks there three or four times.

Police Officer 3 said they often have one officer working alone due to staffing problems right across the RCMP, not just in Keremeos. It was lucky Police Officer 2 was at his office in Keremeos that night.

On the evening of June 12, 2013 Police Officer 1 was working alone. Police Officer 3 was off duty. He received a telephone call at home from Police Officer 1. Police Officer 1 was required to report the situation to him because the Female Patron had been arrested and complained she had an injury, and also because Police Officer 1 had been injured. They discussed the situation and decided to arrest the Male Patron on the warrants later.

Police Officer 3 agreed that the local businesses have made lots of complaints about the transient farm workers. He knows the situation is difficult and he has a zero tolerance policy. He tries to address problems quickly. The workers live in camps, with a different lifestyle. Many are from Quebec where there is a different attitude toward the police, but he personally has never had a problem with them.

Written Statements

Resident Manager

In the days following the incident, Police Officer 3 took the witness statements from the RM and from the Good Samaritan. Those statements are at tabs 3 and 4, Exhibit 1.

In her statement to Police Officer 3, the RM said:

“...when [the Female Patron] came in ... I could tell she was not uh herself, she is always high on something, ... and she wanted to run a tab with me and I said I don't run tabs....I said ... you've uh obviously been drinking and doing what ever else and you're gonna run a tab and you're not gonna remember tomorrow.....I'm not doing it....So way she goes, she went outside.And in the course of the-an hour I guess I was busy running around, it was very busy running wings outside and when she caught me outside again she uh verbally attacked me.....So I thought OK I'm gonna let this go because I know she is volatile and she (sic) a frightening individual. So I just walked away and I-I left it. And then the third time she came up to the bar [and asked to run a tab] I said [to the Female Patron] you need to leave. You're causing a d-d-disturbance, you're disruptive you, you know uh- I just don't wanna deal with you anymore. It's time for you to go. [she refused to go]. So that is when I approached [the Male Patron] her friend and I said she needs to go..... And he said I can't deal with either.... And that's when I called police. And then I told the 911 operator she's dangerous, she is not going to go quietly.....”

In the statement, the RM also said that when Police Officer 1 showed up:

“...I told him who she was and I said she's dangerous, she's scary and he went outside and asked her nicely, you know, come out side and let's talk about this. She was not having none of that. So uh, that's when he, you know, come on let's go, we have to ... and that's when I kind of turned around and to get everybody out of the ways so that he had a clear path to take her through the doors – out of the Pub, because of course every body by this time is standing around watching everything that is going on. And then the second officer showed up. “

When asked to describe the Female Patron's behaviour in more detail, the RM said in her statement "Well she's very shaky... very shaky and doesn't make a whole lot of sense. Her speech is slurred, her eyes are huge and you know that she is looking for a fight. She is an aggressive woman, every time she come in here she has a verbal altercation with someone."

From her statement, the RM's suspicion was that the Female Patron was on crack, and she repeated that the Female Patron was constantly fighting with everyone. The RM described a verbal altercation the Female Patron had with another customer, who was a friend of the Female Patron's, the last time she had been in.

When describing when the Female Patron came inside and again asked the RM to run a tab, the RM said she again refused, and gave the statement ".....And she had an empty beer glass in her hand because she was drinking uh out of [the Male Patron]'s jug outside. And I was afraid she was gonna throw it at me cause she – this is the type of person she is. "

The RM then described her actions in accompanying Police Officer 1 outside onto the patio, saying she turned to clear the way back out for him, and at the threshold of the doorway turned to see Police Officer 1 had the Female Patron on the ground. She said she tried to calm the crowd, which according to her statement was going "crazy". One of the regulars restrained the Male Patron, and then the second officer showed up.

She again re-iterated that the Female Patron was always a problem and described her as a "wild animal" and said that everyone is scared of her.

She also stated she tried to get people to sit down and to disperse the crowd.

The Good Samaritan

In his statement to Police Officer 3, the Good Samaritan said he was sitting inside the restaurant beside the bar. The doors to the bar were open and he could hear a fellow yelling really loud. Being a former bartender, he knew something was up. He wanted to

help or to see what the situation was. At first, he did not know a police officer was involved, because the crowd was around Police Officer 1. The crowd was yelling.

In his statement, the Good Samaritan said he recognized Police Officer 1 from working with him. He said Police Officer 1 was on the ground with a woman and holding her down. His description was that a big crowd were starting to get very aggressive with Police Officer 1, who was by himself. They were yelling police brutality. The crowd was all around Police Officer 1. The Good Samaritan said he thought Police Officer 1 was in trouble. The Good Samaritan stepped in because he thought someone was going to jump on Police Officer 1, so he stood behind Police Officer 1 and told him that he was going to cover his back. He believed that if he was not there, Police Officer 1 would have been "jumped".

The Good Samaritan speaks French and he could hear the Male Patron asking the Female Patron, in French, what she wanted him to do. The Female Patron responded in French, its okay, leave me here. He thought if the Female Patron had said something else, the Good Samaritan would have ended up with a black eye.

The Good Samaritan said, in his statement, that he did not personally know the Male Patron. He thought the Male Patron was intoxicated. He described the whites of his eyes as being red. He said the Male Patron was very aggressive, knocking over tables and swearing and yelling very loudly. He was so loud, the Good Samaritan had heard him in the restaurant, over the ordinary noise of the bar. In his opinion, the Male Patron was not diffusing the situation, he was making it worse. The crowd mentality was getting worked up into a frenzy. The Good Samaritan thought drugs might have also been involved.

He estimated the patio area was very full. He said that as it was Wing Night, so lots of people show up. The Good Samaritan estimated the second officer showed up within about five minutes.

The Liquor Inspector

The Inspector issued the Notice of Enforcement Action (“NOEA”), included as tab 1, Exhibit 1.

He was advised of what had happened by Police Officer 3. He asked Police Officer 3 for copies of the police reports and witness statements. He notified the Licensee right away.

He reviewed the documents included as tabs 3, 4, 5 and 6, Exhibit 1. He made his own notes, which are included as tab 2, Exhibit 1. He set up a compliance meeting with the Licensee and the RM. A contravention notice was issued and a copy is included as tab 8, Exhibit 1.

At tab 9, Exhibit 1, is a copy of the Licence, which is subject to the Terms and Conditions contained in the Guide. The Guide (tab 11, Exhibit 1) sets out licensees’ legal obligations in layman’s language. The role of the licensee is set out at page 11, the restriction on removal of liquor from the redlined area at page 19, the obligation to control the establishment at page 28, and the limits on over-service and disorderly or riotous conduct at page 33.

The Inspector noted tab 13, Exhibit 1, approved the appointment of the RM, which was a requirement because the Licensee is not present at all times. The RM is in charge of operations of the Licence and must comply with the Terms and Conditions. The Branch reviewed those obligations with her when she was appointed as the resident manager, and the RM agreed to comply with the Act and the Regulations governing the Licence.

Tab 14, Exhibit 1, is the Licensee’s compliance history. It shows earlier concerns about employees drinking on duty and service after hours.

The Inspector testified that he issued the NOEA with two allegations. He decided to pursue this action because with regard to the first allegation (drunkenness, violent, quarrelsome, riotous, or disorderly conduct) he looked at the events and they were serious. It did not appear staff and management had control of the Establishment. The Wing Nights are busy for staff. He expected proper control.

The Inspector said the Female Patron was known to the RM. The Female Patron appeared intoxicated when she arrived and she should have been refused entry at that time. The RM should not have allowed the Female Patron to remain on the premises. If the Female Patron had been refused entry at the start, then the other events would not have happened. Allowing the Female Patron entry laid the groundwork for what did happen later on the patio.

From the information provided to the Inspector, the crowd was visibly agitated. No one on staff attended or assisted the police officer. It was also apparent to the Inspector that the situation could have escalated if the other officer had not come to the first officer's aid.

Also from the evidence, he said, where you have a precarious situation where people have had lots to drink, the safety of the other patrons and the community may be compromised.

With respect to the second contravention, the police officer saw the liquor being removed. No one from staff stopped the patron. Considering the earlier incident, this shows control was not being maintained.

The Inspector recommended suspensions of 10 days and one day, respectively. This was at the lowest end of the range as it was first contraventions of this type. Usually the recommendation will be at the low end of the range for a first contravention.

The Inspector agreed that from the police reports and other information, there was no indication of a problem before the police arrived and it seemed like the problems all started when the police arrived.

EVIDENCE – LICENSEE

The Resident Manager and the Licensee's representative gave evidence on behalf of the Licensee.

The Resident Manager

The RM testified that she has 25 years experience in the licensee business. She has been in Keremeos about four years.

The RM said she has known the Female Patron for about four years. The RM sees the Female Patron about once a week. She testified that the Female Patron had never been a problem before June 12, 2013.

The RM testified that on June 12, 2013, the Female Patron came in to the Establishment at about 6:00 p.m. The RM said she could tell something was wrong, that the Female Patron "was not herself". The RM said it was possible that the Female Patron was on medication. She said it was very hard to tell with the Female Patron as she has a very thick French accent.

The RM said the Female Patron looked tired and could have been high, she didn't know. She said that the Female Patron was occasionally argumentative, but normally when she asks her to settle down, she does. She said when she would say no tab, the Female Patron would be okay and just sit down.

The RM's evidence was that when the Female Patron entered at about 6:00 p.m., she asked the RM, who was behind the bar, to run a tab that night. The RM refused that request because it was against their policy. The Female Patron went outside onto the patio and sat down and was quiet. She was not aggressive or yelling and so was not asked to leave.

At that time, there were about 20 to 25 persons in the bar and fewer on the patio, although there might possibly have been as many as 20 persons on the patio.

Prior to 6:30 p.m., the RM had been on the patio maybe twice. That evening she was doing everything: running wings to tables, cleaning tables, working behind the bar.

The RM said that ordinarily five staff persons are on duty on the floor on Wednesday. On that night, they were short one staff person who was off sick. There was no other staff person that could be called in to help. There is also three kitchen staff. Of the eight staff members, only one (a kitchen staff person) was male.

The RM testified that of the other three staff on the floor, one other was behind the bar, one was on the floor, and one was running the wings to the tables. Wing Night is very busy. She said it gets busy by 7-7:30.

The RM said both she and one other staff person were serving drinks on the patio, with the other staff person doing most of the serving. Patrons could buy a jug of beer at the bar or on the patio.

She testified that all of the patrons on the patio that evening were French Canadian farm workers. They come in for Wing Night. They like the cheap wings.

She knew that on other occasions some of the farm workers have come into the Establishment, having had drinks elsewhere beforehand. That night, the farm workers on the patio had got there at about 6:00 p.m., having come from work. She said they were not over-served.

The RM said the Female Patron was on the patio. She did not order any beer but may have had a glass of beer from the Male Patron's jug of beer. The Female Patron came back inside and again asked to run a tab. The RM said no and the Female Patron got a bit louder. The RM told the Female Patron she had to go. The Female Patron said she was not going anywhere and went back outside onto the patio.

The RM testified that she followed the Female Patron out onto the patio. The Female Patron sat with the Male Patron and his girlfriend. The RM said that the Male Patron had earlier ordered a jug of beer, which the RM had poured. In her opinion, he was not intoxicated. She did not know if the Male Patron had had anything to drink before that. She said that he had never been a problem before.

The RM said to the Male Patron if you don't take her out of here, I am going to call the police. The Male Patron said he had no control over the Female Patron. The RM said the Female Patron is close to the Male Patron and if he could not get the Female Patron to leave, then the RM could not do it, so the RM called the police. The RM did not tell the Male Patron or anyone else that he or the table would be cut off if the Female Patron stayed. She did not call on another staff person to assist her in escorting the Female Patron out.

The RM knew the transient farm workers did not have respect for the police, but she did not think the situation that occurred would happen because the police are trained and they carry a gun.

When challenged on the discrepancies between her oral evidence and what she said in her statement to the police the day after the incident, the RM agreed that in her statement she had said the Female Patron could be volatile and frightening. She agreed that she had said the Female Patron was very shaky, her speech was slurred and she was looking for a fight. She agreed that in her statement to Police Officer 3 she did not describe someone who just looked tired.

When asked why she simply did not refuse to allow the Female Patron, a known difficult customer, into the Establishment, the RM said the Female Patron can be difficult, but was not always. She said she had, in her statement, described the Female Patron as being a problem most times because she was upset after what happened the night before.

In describing the mood on the patio, the RM said it was fine, the patrons were quiet and talking and laughing. When asked why Police Officer 1 said that when he arrived the noise from the patio was loud, the RM agreed that because the patrons were French Canadians they were loud and laughing, but she said they were not screaming and yelling.

The RM said she stood in the doorway to escort Police Officer 1 out, and to keep the people back. From her recollection, it was easy for Police Officer 2 to walk through the doorway. She said there was no way there was 30 or 40 people on the patio, but she did not do a head count.

She said she was on the patio several times earlier in the evening, and there was maybe six or seven people on the patio, possibly as many as 20. She said it was early in the evening and not that busy. She said that there was a crowd once Police Officer 1 got there because people rushed out from the restaurant. She tried to stop them and the people in the pub sat back down. She then said that the people on the patio were from the patio only, with a few other people that came from the restaurant.

The RM said the Good Samaritan came from the restaurant and while she was stopping people from entering. He had worked there before and he asked if they needed help and he understands French. The RM did not understand French.

The RM said the situation would have happened either way; the RM was just trying to avoid it. The Female Patron does not deal well with authority. That was the reason why the RM spoke to the Male Patron and told him he had to take the Female Patron out, and the RM did not ask any other staff person to assist in removing her.

After the police officers left, the RM had a quick meeting with staff and discussed what had happened. It was quiet after that. The French Canadian farm workers left and they did not have a lot of customers on the patio, so they carried on business.

The RM did not see a patron leave with a beer and did not think it was possible for that to happen. She did not learn of the contravention until several days later. She questioned the door Police Officer 2 said the male used to exit the Establishment, and suggested it was the door from the restaurant, not the pub. She also suggested the glass may have had something non-alcoholic in it, like ginger ale or something like that. She said the beer they serve would not still have foam on it by the time a patron got outside.

The RM said that staff have to monitor the doors, keeping an eye on who is coming and who is going, while doing all their other responsibilities.

The RM said the signs of intoxication are glazed eyes, slurred speech and shaky. The RM has read the Guide and is familiar with the signs of intoxication listed: confusion, aggression, and exaggerated emotions.

The RM said it was their policy that if a person is “getting to the point”, they let the patron know by telling them “this is your last drink”, so the person knows that they are going to stop service and there is no confrontation. By doing this, they have never had any confrontations.

Their policy is that if something does arise, the staff person is to get assistance from another staff, so two of them go together and deal with it. The person is asked to leave and if they don't, then “that is why the police are there”.

The RM said she has stopped service to a table when they are very loud and swearing and disruptive. The few seasonal farm workers who stayed after the incident that evening were not cut off.

The Licensee

Mr. Irvine gave evidence on behalf of the Licensee. He presented an Incident Report completed by the RM on the evening of June 12, 2013. The Branch advocate did not object to it being entered into evidence, despite not having been produced in advance, as required by the Registrar in the pre-hearing conference.

The Incident Report was not verified by the RM in her oral testimony, and she had left the hearing by that time. The Incident Report states as follows:

“[The Female Patron] wanted to run a tab which we don't do, she got loud and angry. Calmed her down, she went outside and sat w/ friends. About 20 minutes later again asked to run a tab - again was turned down, she got upset again at which time I asked her to please leave because she is causing a disturbance. She

refused at which time I asked [the Male Patron] to take her home that she need to go. His reply was I can't control her. So I told both of them I was calling police."

On reviewing the Incident report, Mr. Irvine agreed that it lacked significant detail.

Mr. Irvine then asked to submit other documents as evidence. The Branch Advocate objected on the ground of lack of fairness. The Branch Advocate noted that getting the documents at that stage of the hearing meant the Branch Advocate had no time to review them. Nor could the Branch Advocate ask any questions about the documents to the other witnesses, all of whom had been excused by that time.

Mr. Irvine confirmed that at the pre-hearing he was told to provide copies of his documents to the advocate in advance of the hearing, so that the advocate could see the documents prior to the hearing. He also acknowledged receiving the pre-hearing conference reporting-out letter, sent by the Registrar, which reminded him to provide copies of any documents in advance of the hearing. He said he was inexperienced in enforcement matters. He did not remember the need to provide documents in advance and he simply forgot.

I declined to allow the other documents to be entered as evidence, on the grounds of fairness. Both a licensee and the advocate need the opportunity to review the other's documents, in advance of the hearing so they can come to the hearing properly prepared. The Registrar holds telephone pre-hearing conferences to make sure that hearings are fair and documents are produced in advance. She also sends out a letter to the licensee, reminding them of the need to provide copies of any documents in advance. Mr. Irvine was informed of this obligation and reminded of it in the letter. All of the other witnesses had been excused by this stage of the hearing. The ability to ask the other witnesses about the documents was no longer possible. To allow them to be entered as evidence at this stage of the hearing would not be fair.

Mr. Irvine said the Female Patron has a reputation in the community for past violent criminal activity but that that reputation was unsubstantiated. Regardless, he testified that it (the past reputation) "was always in the back of your mind when dealing with her".

Mr. Irvine was not at the Establishment on June 12, 2013 and said he did not know if the Female Patron was high on alcohol or drugs. He said she was in a different state that night than before. He also said that between the Female Patron arriving and Police Officer 1 arriving was only ½ hour, so there was not much time for alcohol to be consumed by the Female Patron. He suggested the Female Patron may have been in an emotional state, but he didn't know.

Mr. Irvine testified that the Female Patron had been barred from the Establishment when the Licensee bought it. The reasons for that were never substantiated to him. In about 2006, other persons in the community he knew and respected asked if the Female Patron could be allowed back. He said he allowed her back on a probationary basis and told her if any incidents happened, she would be barred for life. She has not been barred since then.

Mr. Irvine said that the Female Patron could be abrasive but when asked to be respectful she always complied. He said anytime the Female Patron got loud, he would tell her to quiet down and she would. Normally the Female Patron keeps to herself and her friends and is never an issue. He had gone to her and cut her off and told her "this (drink) is your last one". He tries to monitor her because she is not that big and she can "hit the point". He tells her to behave or be barred and that works because the Establishment is the only licensed premise in town and she likes to be with her friends.

About the noise that evening, he said that people get boisterous after a hard day's work, so it may be a normal level of noise if you are used to it. The patio is all hard surfaces and concrete walls so the noises can be amplified. Someone not used to the noise level, like Police Officer 1, might think it was loud.

Wing Night was busy. All five staff work Wednesdays, but the wings are only sold until 8:00 p.m. so some staff may only work until then.

Mr. Irvine said they have a written staff manual. The RM was supposed to bring it, but she forgot. It includes a study of by the University of Alberta about how to recognize intoxication. It also includes the Guide (tab 11, Exhibit 1). In his opinion, the Guide sets out signs of intoxication whereas the University material sets out the stages of intoxication.

He said that they cut people off, if required. He said they keep a close eye on this as there are no taxis in Keremeos. Lots of persons come as "DD's" but if the patron is driving, they are very careful regarding over-service.

Mr. Irvine heard about the incident the following day. The General Manager of the hotel associated with the Establishment called him. The RM called him right after that. He said the RM told him what happened, as set out in the Incident Report (Exhibit 2). He could tell there was a lot more information needed. He spoke to other staff. He said that the bar was not shut down that evening, because as soon as the Female Patron left, there was no issue because the Male Patron and most of their friends left.

He said they have regular staff meetings, every two months. He did not attend the staff meeting after the incident, the RM did. He said she had each staff person read a copy of the Regulations and sign that they had done that. He also said they immediately hired a door person.

Mr. Irvine testified that he spoke to staff about that evening. He acknowledged that probably the RM could have done a better assessment of the Female Patron and that sometimes they could do more. He said they recognize the need to constantly evaluate and to ask people to leave, then they say they will call the police, and they do.

Mr. Irvine acknowledged that removing liquor from the premises is against the Regulations. He spoke to the RM about it, but she was not aware of the allegation until after that night. He said they had a problem with the transient workers removing all kinds of things – condiments, cutlery, even toilet paper – so they keep a close eye on them.

He said that over the years, many of the French Canadian farm workers had become permanent residents in the community and they acted like “elders” to the transient workers. If an “elder” tells the transients to sit down and behave, they do, so he tries to have a relationship with these “elders”, so they can help out.

SUBMISSIONS – BRANCH

The Branch Advocate said the evidence clearly establishes that the Licensee allowed the Female Patron to enter the premises when she was intoxicated. He referred to the oral and written evidence of Police Officer 1 and Police Officer 2, and to the statements made by the RM and by the Good Samaritan to Police Officer 3. Where the RM’s oral evidence is different from her written statement, he said the written statement should be given more weight because it was made within days of the incident, when everything was fresh in her mind.

The Branch Advocate said the Female Patron was known to the Licensee and the RM, and was known to be volatile and aggressive. She was known to enter into verbal altercations and to be trouble, but she was still allowed entry to the patio when in an intoxicated state. Liquor was being served on the patio. It was reasonable to assume the Female Patron would have access to that liquor, and with access to liquor, the Female Patron’s behavior would escalate and could put other patrons at risk.

The Branch Advocate says the Licensee showed a complete disregard for the health and safety of other patrons. Section 36(2)(a) of the Act requires some action by the Licensee. By doing nothing, the Licensee cannot avoid responsibility. Operators need to have control over their premises.

The Branch Advocate was not saying the RM should try to take over from the police, but the RM should have taken steps to get other staff to assist her to disperse or control the crowd. There is some obligation to make sure the police can carry out their duties, given this is a liquor establishment.

He said an assault was made on the police, the crowd was pushing, tables were knocked over, and glasses were broken. The Licensee is responsible for controlling patrons' behavior and must ensure that others are not harmed. To allow the Female Patron to enter in the Establishment in the condition she was in, to have access to liquor, and then to assault the Constable is not responsible conduct by the Licensee.

The Branch Advocate recounted how Police Officer 2's evidence was that, in his 11 years of duty, including and policing some large events, he never felt as unsafe as he did that evening. Even after they left the premises, the police did not feel safe to return. Liquor establishments cannot operate in a manner that the police don't feel safe to conduct liquor checks.

The Branch Advocate submitted that the police officers were unassailable in their evidence that the situation was out of control. This is because of drunkenness and no supervision by staff. "Drunkenness" is used interchangeably in the act with intoxication (see section 41 and 43 both of which refer to intoxication under the heading of "Drunkenness").

The Guide provides the physical and mental signs of intoxication. The police evidence checks all of those boxes.

With respect to allowing a patron to remove liquor from the premises, the Branch Advocate said that Police Officer 2 made his observations and would normally have followed the patron back into the premises to confirm them. Here, Police Officer 2 made the decision not to re-enter because he did not think it was safe, given the earlier situation. This also shows the Licensee had no control over the patrons.

The fines set by the Regulation show the Legislature intended that these contraventions are to be treated seriously.

SUBMISSIONS – LICENSEE

The Licensee says he has a good record and a good relationship with the police and the liquor inspectors. He said there had never been an issue prior to June 12, 2013.

For six years, the Female Patron had always complied with the Licensee and staff. He thinks something may have triggered her behaviour that day, as she was different from in the past.

He suggested that the police had the opportunity to test her blood alcohol to see if it was liquor but they did not. Had they done so, he suggests, that would have been conclusive proof whether she was intoxicated.

The Licensee says they have staff meetings to review what they can do better. He met with the Liquor Inspector and the RCMP and has implemented their recommendations.

REASONS AND DECISION

Contraventions

Drunkenness or Violent, Quarrelsome, Riotous or Disorderly Conduct (36(2))

I have been presented with two very different versions of the Female Patron and her conduct by the RM and the Licensee.

The first version is that when the Female Patron arrived, she appeared to have been drinking and was possibly high on something. Her eyes were huge, her speech was slurred, she was shaky and not making much sense. She had a history of unruly behaviour, was argumentative and caused altercations. She was prone to violence. She was swearing at the RM, and refused to leave. She could not be removed without the assistance of the police.

The other version is the Female Patron was tired looking and something was wrong, perhaps an emotional event had happened. She was quiet and sat on the patio. She was a bit of a problem at times, but always complied when asked to behave. She would sit down and be quiet. A threat to bar her from the Establishment usually worked to quiet her down.

I find the second version unreliable for the following reasons.

The first version is what the RM told Police Officer 3 in her statement, given the day after the incident. The second version was given over 10 months later. I find the first version likely to be more accurate as it was given when the incident was fresh in RM's mind. I don't accept that the RM was still shaken by the incident when she gave the statement, which influenced the accuracy of the statement. Her conduct indicates that she was not shaken by the events—she kept the premises open that evening and did not immediately call the Licensee. In fact, it was the hotel GM who first contacted the Licensee, on the following day.

Additionally, the statement was made before the NOEA was issued when it was perhaps not yet apparent that the Licensee was potentially subject to a penalty for what happened, which may have influenced the RM's subsequent version of the events.

Further, if the second version was the truth, and the Female Patron was ordinarily compliant and non-violent, then it simply would not make sense for the RM to have called the RCMP when she did. The RM would have not felt she needed to resort to that action. The second version is clearly inconsistent with the actions taken by the RM.

Having found that the second version is unreliable, I accept as reliable the description of the Female Patron and her behaviour as told by the RM to Police Officer 3 in her statement. Based on that evidence, I find that when the Female Patron entered the premises she was intoxicated by drugs or alcohol. She should not have been allowed to enter the Establishment. I also find, based on that statement, that the Female Patron was potentially violent, which was illustrated by her behaviour when arrested.

By allowing the Female Patron to enter the patio, the Female Patron had access to alcohol. I find, based on the RM's own admission, the Female Patron probably had at least one glass of beer while on the patio. I find based on the RM's evidence, the RM asked the Female Patron to leave because she was quarrelsome and disorderly.

I find that the RM did not take any steps to deal with the issue of the Female Patron's quarrelsome or disorderly conduct herself. She did not tell the Female Patron that she would be barred if she did not leave. She did not tell the Female Patron or the others she was sitting with, including the Male Patron, that they would be cut off if the Female Patron did not leave. She did not ask any other staff member to help her to get the Female Patron to leave. The RM admitted she could not get the Female Patron to leave on her own. I find that the RM did not have control of the premises.

Further, I accept the evidence of Police Officer 1 and Police Officer 2 that the Female Patron was intoxicated. They are experienced in assessing the signs of intoxication. Both officers based their assessment on their observations of the Female Patron, both inside and outside of the Establishment while waiting for the ambulance.

I find there is no obligation on the RCMP to confirm their assessment that the Female Patron was intoxicated by obtaining a blood or breath sample, as was suggested by the Licensee. Further, I accept Police Officer 2's evidence that the RCMP is not entitled to demand a sample, except in cases of impaired driving.

I also accept the evidence of Police Officer 2 that the Male Patron was intoxicated, based on the symptoms he exhibited. That evidence was corroborated by the Good Samaritan's statement who used to be a bartender and had some experience in assessing intoxication.

I accept the evidence of Police Officer 1, Police Officer 2 and the Good Samaritan that the patio was crowded with at least 30 persons when Police Officer 2 arrived. This is also consistent with the evidence of the RM that there was as many as 20 persons on the patio and that others had come onto the patio from the restaurant. I accept that, from Police Officer 1's perspective, his access to the exit was blocked. I accept Police Officer 2's evidence that he had great difficulty entering the patio. I find that the RM and the

other staff either did not take effective steps to clear the crowd or was unable to control the crowd.

I find that even after they left the premises, the police did not feel safe to return. Liquor establishments cannot operate in a manner that the police do not feel safe to conduct inspections.

For all of the foregoing, I find that the Licensee contravened section 36(2)(a) of the Act by permitting drunkenness and disorderly conduct in the premises.

Liquor Taken from the Establishment (42(4))

I accept the evidence of Police Officer 2 that he saw a male patron leave the Establishment with a glass of beer. I accept that Police Officer 2 saw the patron leave the Establishment by the pub entry. I reject the Licensee's suggestion that Police Officer 2 was mistaken and the patron left by the restaurant entry, as Police Officer 2 clearly recollected using the pub entry earlier that evening and he identified the pub entry on the photographs (Exhibit 3).

I find, based on all of the evidence, that the staff were busy that night. They were short one person. The staff had to watch the exits while carrying out their other duties. I accept that a patron could have walked out with a glass of beer without being seen or stopped by staff.

I accept that the male patron had beer in the glass because his behaviour on seeing Police Officer 2 – immediately returning to the pub – is consistent with not wanting to encounter Police Officer 2. Had the glass contained only ginger ale, there would be no reason for the patron to immediately go back inside. I also accept Police Officer 2's evidence that ordinarily he would have followed the patron back inside the Establishment to confirm his observation but, due to the earlier incident, he believed it was unsafe to do so. The inability to confirm the contents of the glass was due to the unsafe conditions as a result of the Licensee's lack of control over the premises.

I find the Licensee allowed liquor to be removed from the establishment, contrary to section 42(4) of the Regulation.

Due Diligence

The Licensee is entitled to a defence if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with.

The leading case is: *R v. Sault Ste. Marie* (1979) 2 SCR 1299, where at page 1331, Dickson, J. sets out the test of due diligence:

Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

The BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2012 BCSC 1851, recently considered and clarified the application of the defence of due diligence in the context of the sale of liquor to a minor contrary to the *Liquor Control and Licensing Act* (see paragraphs 41 to 44).

In these circumstances, the defence of due diligence is to be considered in two stages:

1. Whether the employee who made the sale was a directing mind of the licensee – if so, the defence of due diligence is not available and the inquiry stops there.
2. If the employee who made the sale was not a directing mind of the licensee (and there is no requirement that a “directing mind” must be on the premises when the sale is made), then the questions to be considered and answered are whether the licensee had:

- a. implemented adequate training and other systems to prevent the contravention (the sale of liquor to minors); and,
- b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

Both of these issues are factual, and will depend on the evidence presented. The onus is on a licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

I find that the RM, as the resident manager, is a directing mind of the Licensee. As such, her conduct on June 12, 2013 is attributable as the conduct of the Licensee. I have found the RM permitted the Female Patron, who was intoxicated, to remain on the premises and the RM permitted drunkenness and disorderly conduct in the Establishment.

I also find that the RM, as a directing mind, permitted the glass of beer to be removed from the premises.

While not necessary to make a finding on training and systems for staff to prevent this from occurring, I find there was no evidence of any such training or other systems.

I find the defence of due diligence is not open to the Licensee.

PENALTY

Under 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 may do one or more of the following:

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

- Cancel all or any part of the licence
- Order the licensee to transfer the licence

I am not bound to order the penalty proposed. However, if I find that either a licence suspension or a monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the Regulation. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so.

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

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

There is no record of a proven contravention of the same type for this Licensee at this Establishment within the preceding 12 months of this incident. I find these to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

The penalty for a first contravention of section 36(2)(a) of the Act is a licence suspension of 10 to 15 days or a monetary penalty of \$7,500 to \$10,000. The penalty for a first contravention of section 42(4) of the Regulation is a licence suspension of 1 to 3 days or a monetary penalty of \$1,000 to \$3,000.

I find the incident that occurred on June 12, 2013 to be very serious. The Licensee had no control over the Establishment. The safety of the police officers and the other patrons was put at risk by the drunkenness of the Female Patron and the Male Patron, and their quarrelsome and disorderly conduct. Police Officer 1, Police Officer 2 and the Good Samaritan all believed something more serious might have happened, had Police Officer 2 not attended. It was only luck that Police Officer 2 was nearby. Police Officer 2 said it was the most precarious situation he had been in 11 years of service with the RCMP.

Allowing patrons to remove liquor from the premises can be a danger to the patron, to the neighbours, and to the community. A serious incident had taken place in the Establishment earlier that evening. While the RM suggested that things had slowed down and they were not busy after that, allowing a patron to remove liquor from the Establishment indicates the Licensee still had not regained effective control of the premises. Further, licensed establishments cannot operate in a manner that the police don't feel safe to enter, to conduct inspections.

I have considered the past compliance history and the generally good relationship the Licensee has in the community and with the police and the Branch. For these reasons, I order the minimum suspensions of the Licence as a penalty.

For the contravention of section 36(2)(a) of the Act, I suspend the Licence for a period of 10 days.

For the contravention of section 42(4) of the Regulation, I suspend the Licence for a period of 1 day.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of Liquor Primary Licence #018945 for a period of 11 days to commence at the close of business on Tuesday, June 17, 2014 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the liquor licence be held by the Branch or the Keremeos RCMP detachment from the close of business on Tuesday, June 17, 2014, until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

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

Original signed by

Dianne Flood
Enforcement Hearing Adjudicator

Date: May 15, 2014

cc: Liquor Control and Licensing Branch, Victoria Office
Attention: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Peter Mior, Branch Advocate