



**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: Ceili's Irish Pub (South Surrey) Ltd.
dba Ceili's Irish Pub
3020 152nd Street
Surrey, BC

Case: EH14-038

For the Licensee: Curtis Robinson, consultant
Mark Reid, licensee representative

For the Branch: Cristal Scheer

General Manager's Delegate: Edward Owsianski

Date of Hearing: July 15, 2014

Date of Decision: August 21, 2014

Ministry of Justice

Liquor Control and
Licensing Branch

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INTRODUCTION

The Licensee, Ceili's Irish Pub (South Surrey) Ltd. (the "Licensee") operates an establishment known as Ceili's Irish Pub in Surrey BC. The Licensee holds Liquor Primary Licence number 301373 (the "Licence"). The authorized representative of the Licensee is Mark Reid, vice president and a principal of the corporate licensee. The corporate licensee is part of the Ceili's Group which operates licensed establishments in British Columbia and Alberta.

According to the terms of its Licence, the Licensee may sell liquor from 11:00 a.m. to 1:00 a.m., Sunday to Thursday, and from 11:00 a.m. to 2:00 a.m. Friday and Saturday. The licensed establishment has a licensed capacity and a building occupancy load of 100 persons in the main area and 20 persons in the patio area. The Licence is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" (the "Guide").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated April 7, 2014:

No.	Name of Contravention(s)	Section of the Act/Regulation	Date and time of Contravention(s)	Proposed Enforcement Action
1.	Overcrowd beyond person capacity more than occupant load, s. 6(4) Reg.	s. 6(4) Reg.	2014-MAR-17 7:30 PM	4 day suspension

The proposed Licence suspension falls within the penalty range set out in item 15, Schedule 4, of the Regulation for a first contravention of this type. The range of penalties for a first contravention of this type is a four to seven day Licence suspension and/or a \$5,000 to \$7,000 monetary penalty.

The Licensee disputes the alleged contravention.

RELEVANT REGULATORY PROVISIONS

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Capacity**6 (1) Before the general manager**

- (a) approves the issuance of a licence,
- (b) approves a structural alteration of or a change to the size of any area of a licensed establishment,
- (c) approves a transfer of a licence under section 21 (3) of the Act, or
- (d) approves an application for an increase in the person capacity of a licensed establishment,

the general manager must set the person capacity of the establishment, having regard to the public interest and the views of a local government or first nation if provided under section 10 or 53 of this regulation.

- (2) Once the general manager has set the person capacity of an establishment in accordance with subsection (1), the general manager must refuse to issue, amend or transfer a licence for that establishment if the occupant load of the establishment is not equal to the person capacity.
- (3) Despite subsection (2), if the occupant load of an establishment is less than the person capacity of the establishment set under subsection (1), the general manager may issue, amend or transfer the licence for that establishment after reducing the person capacity to equal the occupant load.
- (4) It is a term and condition of a licence that there must not be, in the licensed establishment at any one time, more persons than the person capacity set under subsection (1) or (3).

ISSUES

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

EXHIBITS

The following documents were submitted and were considered:

Exhibit 1: The Branch's book of documents, tabs 1 to 10 inclusive.

Exhibit 2: The Licensee's book of documents, tabs 1 to 7 inclusive.

EVIDENCE—BRANCH

The Branch presented two liquor inspectors as witnesses.

Inspectors

The inspectors testified that on March 17, 2014 they were working in the Surrey area conducting inspections of licensed establishments to observe whether the establishments were operating in compliance with the legal requirements of their liquor licences.

Inspectors A and B testified that they conducted two inspections at Ceili's Irish Pub (South Surrey) on that date. Their first attendance was at approximately 5:30 p.m. The establishment was busy. Inspector B walked through counting 113 patrons in the main area and 2 on the patio. The count did not include staff or the 3 person band in attendance at the time. They spoke with the manager (Witness C). He disagreed with their count and made his own count of 96 patrons and 7 staff.

Inspector A told the manager that he must bring the number of persons in the establishment in compliance with the licensed capacity and that they would return later in the evening. The manager advised her that there were two door persons starting at 6 p.m. who would be using mechanical counters to control the number of persons inside.

The inspectors returned at approximately 7:30 p.m. The licensed establishment appeared to be more crowded than previously observed. Each inspector conducted a separate count. Inspector A counted 127 persons in the main area, not including staff.

Inspector B counted 134 persons in the main area, not including staff. They were told by the manager that the patio was closed. The manager disagreed with the counts; subsequently he and inspector A each made a separate count using mechanical counters. Inspector A counted 140 persons, not including staff but did include 11 band members. The manager counted 103 persons, including staff but not the band. Inspector B spoke with a doorman while inspector A and the manager were conducting their counts. The doorman said that there were 92 persons in the establishment.

Inspector A met with the Licensee representative and the manager on March 21st, discussed the requirements of the liquor license and the inspectors' observations of March 17th. She issued a contravention notice for the alleged contravention to the Licensee representative (Exhibit 1, tab 2) and subsequently prepared the NOEA (Exhibit 1, tab 1) which was sent to the Licensee.

The inspectors testified that the branch considers overcrowding to be a public safety issue. The building occupant load is set with public safety in mind. The ability for all persons to safely exit a licensed establishment in the event of an emergency may be compromised by exceeding the permitted capacities.

The Licensee representative and the general manager had attended an educational session in branch offices on April 5, 2013 and been made aware of the requirements of the liquor Licence (Exhibit 1, tab 8). On March 17, 2014 the manager was advised during their first visit that the number of persons in the licensed establishment must not exceed the maximum capacities. Despite this warning the number of persons permitted within the premises had increased by the time of their second visit and was well beyond the maximum capacities. The recommended four day suspension penalty is necessary and appropriate to ensure voluntary compliance.

The inspectors testified on cross-examination that the branch does not consider or permit a ten percent margin of error for counting the number of persons within a licensed establishment. They both testified that while it was theoretically possible that there were persons leaving from the patio area when they arrived for their second inspection they did not observe any persons to be doing so and were told by the manager that the patio was closed. They testified that they were unaware of any noise

complaints regarding the establishment or issues of non-compliance other than the alleged overcrowding.

EVIDENCE—LICENSEE

The Licensee presented two witnesses; both are managers within the corporate organization.

Witness C - Manager

Witness C testified that he has been a management level employee within the Ceili's Irish Pub group at locations in Alberta and British Columbia for 15 years and is currently the regional director for British Columbia. On March 17, 2014 he was the general manger for the Surrey location. He reported to the regional vice-president. They met on a weekly basis and spoke daily of the telephone. He was working as the general manager at the time of the visits by the liquor inspectors.

He is familiar with Ceili's corporate policies and training procedures. They are found within Exhibit 2:

- Management Manual (tab 2). This is used in management training and is required reading for all managers. He assisted in writing the manual. He, like all other managers, holds a Serving It Right (SIR) certificate.
- General Manager's job description (tab 3a). It sets out the positions "Essential Duties and Results". He read and signed the document when he assumed the GM position in Surrey on February 1, 2014.
- Door staff/Security job description (tab 3b). They are required to know the occupancy load for all areas of the establishment and to make capacity counts to ensure that the occupancy load is maintained. They are responsible for escorting problem or intoxicated patrons from the premises.
- Day manager job description (tab 3c). Responsible for day operations, marketing and team development which includes staff on-the-job training and staff evaluation.
- Night manager job description (tab 3d). Responsible for night operations, and team development which includes staff on-the-job training and staff evaluation.

Ceili's group maintains an on-line training program for all employees known as Ceili's University. All staff, including managers, take the on-line training program prior to proceeding to on-the-job training. Tests are undertaken with minimum requirements set.

Ceili's group maintains an on-line site for customer submissions on their experiences at their locations. Secret shoppers are employed to visit each location every three to four weeks and report their observations. Any problems identified are addressed with the general managers to be rectified.

He testified that, as the general manager of the Surrey location, he was also the day manger. He held staff meetings on Wednesdays at 2:00 p.m. with agendas set and action items from previous meetings discussed. If something had gone wrong, it was discussed and determined how to prevent again. Staff bulletin boards are used for pre-shift messages and are updated daily.

He testified that March 17, 2014 being St. Patrick's Day it was considered a "special event". As such it had to be authorized by the corporate regional vice-president and an event roll-out prepared covering all aspects of the event. Corporate policies and guidelines were required to be followed. A briefing meeting for all staff was held on the Wednesday preceding the event with printed guidelines, a copy of which was provided to all staff (Exhibit 2, tab 5a).

This was the first St. Patrick's day event at the Surrey location and as such he was uncertain as to what to expect. The location had not been successful business-wise for them up to that point. He thought that they may be most busy during the evening from 8:00 to 10:00 p.m. It turned out that they were busier during the day than expected with an almost full lunch period. Door security was scheduled for 6:00 p.m. and had not yet commenced when the inspectors arrived at 5:30 p.m. He was present at the door. The inspectors did their counts. He did not agree and did his own count which differed from theirs.

The inspectors returned at 7:20 p.m. at which time there was security at the door. Members of a large local pipe band were just arriving and he was dealing with their captain. A large group of patrons had been smoking on the patio and had just come inside. The inspectors did their count and said that he was 25 persons over the maximum capacity. He disagreed and did a count which again differed from theirs. The inspectors said that he could turn the music off and all do another count. He told them that was not a good idea. He said that he would watch the numbers at the door. After the inspectors left, the pipe band carried out their performance following which many patrons left.

The manager realized that he had misjudged the timing of the event. He hadn't anticipated that they would fill up as early as they did. He was spread too thin in carrying out his duties. In retrospect he should have had security and the night manager start earlier. He had allowed the number of patrons to exceed the maximum capacity contrary to corporate policy. It resulted in him meeting with the regional vice-president and having an adverse write-up on his personnel file. It was the first time that it had occurred during his 15 years with the corporation.

A staff meeting was held following the event and he took full responsibility. He shared his experience with other general managers as what to expect when there is no historical data.

Cross-examination

Witness C testified on cross-examination that at the time of the inspectors' second visit the establishment was overcrowded with the arrival of the 16 member pipe band with a total of approximately 115/116 persons inside. Two door staff/security employees were on duty at the time. They are no longer employees of the Licensee. He is not aware of their experience as he had not hired them.

Asked whether he was familiar with the branch's Guide for Licensees at Exhibit 1, tab 6 he testified that it looked familiar, he had probably seen it two to three years ago. A copy would have been kept in the manager's office.

Witness D - Manager

Witness D testified that he has been employed by Ceili's group for 7 ½ years beginning as a part-time security employee. He is currently the general manager of their Vancouver location. He is familiar with the Management Manual (Exhibit 2, tab 2). Copies are provided to all management staff. He read and signed off the general manager's job description (Exhibit 2, tab 3a) before commencing that position.

General managers have responsibility for the entire operation of their location including the hiring, training, and disciplining of the staff. They must operate in compliance with all city, fire and liquor branch requirements. They are required to follow corporate policies and guidelines and, if they failed to do so, would be subject to discipline. Management and staff meetings are held weekly.

New staff are hired following two interviews with himself and the operations manager or head chef. New staff take the on-line training program and receive a presentation from either the general manager or operations manager. They work with an experienced employee for several shifts and are subject to a three month review program. They are required to sign-off on the documents relevant to their position.

Secret shoppers are employed by and report to corporate head office. The results are discussed with the location's general manager who takes any necessary remedial action.

Plans for special events such as Lobsterfest or St. Patrick's Day are reviewed and authorized by head office. They are discussed during prior staff meetings and reviewed following the event.

Cross-examination

In cross-examination he testified that he had worked at the Surrey location during their opening week helping with staff training and, more recently, during a management change over. Asked whether he was involved with the training of security staff he testified that it was not relevant at the time as security was not necessary. They were mostly dealing with checking patron's identification.

He testified that he was not familiar with the branch's Guide for Licensees (Exhibit 1, tab 6).

SUBMISSIONS—BRANCH

The branch advocate submitted that the contravention has been proven. The evidence is clear that there were more persons in the licensed establishment than permitted by the Licence capacity and the building occupancy load.

There is insufficient evidence to support the Licensee's defence of due diligence. The Ceili's corporate materials are inadequate to provide guidance to its employees. The materials have only a few lines on overcrowding and a vague statement regarding fire regulations. There is no evidence on the identity and training of the door persons on duty on March 17th. The staff are not familiar with the branch publication, a Guide to Licensees. There are no records of staff meetings, no agendas or minutes provided as evidence.

The branch advocate submitted that there were inadequate measures taken by the Licensee to ensure the effectiveness of its system to prevent overcrowding. The system failed to maintain the Licence and building capacities and to prevent overcrowding. Overcrowding is a public safety issue. The risk increases with the number of persons in the establishment. The recommended penalty of a four day Licence suspension is warranted to reinforce to the Licensee the need for compliance.

SUBMISSIONS—LICENSEE

The Licensee representative submitted that there is no issue that the establishment was overcrowded on March 17, 2014. The general manager, experienced and with a clean record, admitted that he made a mistake and spread himself too thin. He didn't have sufficient staff to prevent the overcrowding. He was subsequently disciplined for not following corporate policy. The general manager is not the directing mind of the Licensee. He does not make corporate policy. He was trusted to carry out the event within the corporate policies and procedures.

The Licensee has been duly diligent. It has a structure in place with rules and guidance. There is a management manual, position profiles for all employees, a training program, weekly management and staff meetings, pre and post-shift briefings, regular employee evaluations, and a secret shopper program. All employees have SIR certificates. The corporate management manual does not cover specific issues such as overcrowding, smoking, minors, or intoxication but is clear that managers must obey the law.

ANALYSIS AND DECISION

Contravention

While there may be some dispute on the exact number of persons in the licensed establishment on the inspectors' second visit on March 17, 2014, the evidence is clear that the number of persons substantially exceeded the licensed capacity and was greater than the building occupancy load. That, on its face, is a contravention of section 6(4) of the Regulation to the *Liquor Control and Licensing Act*.

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:

One comment on the defence of reasonable care in this context should be added. Since the issue is whether the defendant is guilty of an offence, the doctrine of respondeat superior has no application. The due diligence must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by

taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

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.

The contravention in the *Beverley Corners* decision cited above was the sale of alcohol to a minor. The same questions apply to the contravention here.

Applying the reasoning of the Court to the circumstances in this case, it must first be considered whether the general manager in charge of the establishment on the date of the contravention was the directing mind and will of the corporate Licensee. On the facts of this case, I find that he was not. The general manager here has no authority to

set policy and procedures. He is required to implement those policies and procedures set by the corporate Licensee.

The questions then to be considered and answered are whether the Licensee had:

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

In giving consideration to these questions, I have considered the *viva voce* evidence of the Licensee's witnesses and examined the documentary evidence provided by the Licensee at Exhibit 2.

The corporate Licensee has developed a training manual for its management level employees (Exhibit 2, tab 2). Reading through the manual it is apparent that it is designed to train a manager on how to successfully operate a Ceili's location from a business perspective. It is a management training manual in the general sense dealing with such things as corporate values and purpose, the manager's role and developmental opportunities, skills such as team building, time management, conducting meetings, employee supervision and development, increasing sales and profits. It does not deal with liquor licensing and regulatory responsibilities such as minors, intoxication, hours of sale, or overcrowding.

The corporate Licensee has developed position descriptions for staff, including general manager and door staff/security. The general manager's position description (Exhibit 2, tab 3a) is clear that he/she is responsible for the operation of the business seven days a week from opening until closing. It includes general statements on licensing and regulatory requirements:

- Under the heading, Essential Functions/Duties and Results, it includes:
 - "Maintaining the physical environment of your business. Ensure the business is run to the standards set by the law – occupancy load, fire and safety, health, etc."

- Under Employment Requirements, Technical Requirements, it includes:
 - “Knowledge of exact occupancy load for all areas of the premises, ensure all employees are aware of the requirements and are held accountable to the maximums”
 - “Knowledge of all other licenses including: liquor, health, city, noise, smoking etc. and ensure the business is run within the requirements of the law.”

The position description placed into evidence has been signed by the general manager of the Surrey location (Witness C) and is dated February 1, 2014.

The position description for door staff/security (Exhibit 2, tab 3b) refers to the requirement of maintaining occupant loads.

- Under the heading, Nature of work, it includes: “Run capacity counts regularly to ensure we are within our occupancy load.”
- Under the heading, Technical Requirements it includes, “Knowledge of exact occupancy load for all areas of the premises.” It also includes, “knowledge of all other licenses including liquor, health, city, noise, smoking etc.”

The position description placed into evidence has not been signed.

The corporate Licensee has developed a management evaluation form (Exhibit 2, tab 3f). The form allows for the evaluation of skills necessary for the position and identifies highlights and challenges. The form is generic to all management positions. The form placed into evidence has not been completed.

The corporate Licensee has developed a Staff Hiring Agreement (Exhibit 3, tab 4a). It appears to be specific to server positions and includes a section on Responsible Liquor Service which includes information on minors and intoxication. It does not refer to issues related to licensing or building occupancy capacities. The Agreement placed into evidence has not been signed.

The corporate Licensee maintains an on-line training program for staff training, Ceili's Online University. The outline of the program (Exhibit 2, tab 4b) identifies a course titled "Staff Training". Headings for course content are: "Set up and Greeting", "Taking the Order", and "Other duties and information". No information has been provided on the content of each segment.

The general manager (Witness C) testified that the St. Patrick's Day celebration on March 17, 2014 was considered a "special event" and as such it had to be authorized by the corporate regional vice-president. Corporate policies and guidelines were required to be followed. A briefing meeting for all staff was held on the Wednesday preceding the event with printed guidelines, a copy of which was provided to all staff (Exhibit 2, tab 5a). The guidelines outline management's requirements for the occasion. Specific to the issues here are comments that there will be door staff on duty at 6:00 p.m. and there could potentially be a line-up in the evening. One employee is instructed to "grab stamp and counters".

The corporate Licensee has developed a manager's daily log book. Two examples are provided (Exhibit 2, tab 5b) for dates May 30, 2014 and June 6, 2014. Curiously no log has been provided for March 17, 2014.

An example of a Communication Board (an erasable white board) is provided at Exhibit 2, tab 5c. It appears to be for the date of June 18, 2014. None of the items on the board relate to regulatory matters.

An example of a mystery shopper's report is provided at Exhibit 2, tab 6. It refers to a visit to a Ceili's location in Calgary on June 10, 2014. The report is a *pro forma* yes/no report primarily related to service, food quality, atmosphere, and cleanliness. There are no questions related to regulatory issues. There is some space for comments wherein the author has observed that the location is permanently busy after 5:00 p.m.; consequently service is slower than expected.

The Licensee representative has submitted that there is no issue that the establishment was overcrowded on March 17, 2014. The fault lies not with the corporate Licensee but with the general manager. He made a mistake. He had spread himself too thin and did not have sufficient staff to prevent the overcrowding. He was subsequently disciplined.

The Licensee representative submitted it has been duly diligent. It has a structure in place with rules and guidance. There is a management manual, position profiles for all employees, a training program, weekly management and staff meetings, pre and post-shift briefings, regular employee evaluations, and a secret shopper program. All employees have SIR certificates. The corporate management manual does not cover specific issues such as overcrowding, smoking, minors, or intoxication but is clear that managers must obey the law.

Having considered all of the evidence I cannot agree with the Licensee's submission that the corporate Licensee has been duly diligent. The failure leading to this contravention was systemic. It cannot be laid solely on the shoulders of the general manager.

March 17, 2014, St. Patrick's Day, was considered a special event and as such the event had to be authorized by the corporate vice-president. In authorizing the event it was the responsibility of the vice-president to satisfy himself that it could take place within the requirements of their Licence. He should have been aware that entertainment by way of the large pipe band (testimony varied between 11 – 16 members) was scheduled to arrive during the evening, and that provision had to be made to allow room for their attendance within the licensed establishment's Licence and building occupancy capacities. That the general manager was operating the location without the assistance of a day manager should have been known to the vice-president. Given the nature of the event, St. Patrick's Day in an Irish pub, it should have prompted some assistance for the general manager.

The door person on duty at the time of the inspectors' second visit advised inspector B that there were 92 persons in the establishment. That figure was not accurate and well below the probable number of persons in the establishment. There was no record that he/she had received training for the position. The best evidence on the point is that of Witness D who was involved in the training of staff for the location. He testified that there was no training for door staff as it was unnecessary at the time. This should have been known to the vice-president. He is the corporate representative for the Licensee, the direct supervisor of the general manager of the location, and should have satisfied himself that all the necessary training of staff had been completed.

On the evidence before me I find that the corporate training program falls short of ensuring that staff are aware of and adequately trained to carry out their regulatory responsibilities. The management manual is designed to enable a manager to conduct a successful business. It is not directed at regulatory requirements. The position description for general manager outlines the employment requirements and the knowledge of such matters as occupancy loads and other Licence requirements. It does not provide any description of the training to provide that knowledge nor does it provide the description of any testing of that knowledge. The same may be said for the position description of the door staff/security staff.

The general manager reports to the corporate vice-president and receives supervision from him. The vice-president did not appear as a witness and there is little evidence of how that supervision is carried out other than through management meetings and phone calls.

In conclusion, I find that the Licensee has not been duly diligent.

Accordingly, I find that on March 17, 2014, the Licensee contravened section 6(4) of the *Liquor Control and Licensing Regulation* by permitting overcrowding beyond the person capacity, more than the occupant load.

PENALTY

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

- Take no enforcement action
- 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 and/or a monetary penalty are warranted, I am bound by 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. I am not bound to order the penalty proposed in the Notice of Enforcement Action.

The Branch's primary goal in bringing enforcement action and imposing penalties is to achieve compliance with the Act, the Regulation, and the terms and conditions of the Licence. Among the factors that I have considered in determining the appropriate penalty in this case are: 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.

Licensees are obligated to comply with the Act, Regulations and the terms and conditions of their licences. Enforcement actions are intended to both address 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 12 months prior to this incident. I find, therefore, this to be a first contravention for the purposes of reviewing the range of applicable penalties under Schedule 4 of the Regulation. Item 30 in Schedule 4 of the Regulation provides that the penalties for a first contravention of this type are a four to seven day licence suspension and/or a \$5,000 to \$7,000 monetary penalty.

The consequences of overcrowding in a licensed establishment can be serious. It can lead to control and safety problems inside the establishment and to disturbances and other problems within the community at closing. Overcrowding also makes it difficult for a licensee to ensure compliance with other laws, such as preventing minors from consuming and removing intoxicated patrons. Overcrowding beyond the occupant load is a serious public safety issue, which can result in injury or in extreme cases death to its patrons.

I find that a penalty is warranted here to remind this and other licensees of their responsibilities to prevent overcrowding and to encourage future voluntary compliance.

During the course of the hearing it became known that the corporate Licensee has closed down this South Surrey location. The business is for sale and a Licence transfer is anticipated. In those circumstances a Licence suspension may complicate a future transfer of the Licence. As such I find that a monetary penalty is appropriate. The minimum \$5,000 monetary penalty is necessary, appropriate, and reasonable in these circumstances.

ORDER

Pursuant to Section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$5,000 to the General Manager of the Liquor Control and Licensing Branch on or before September 29, 2014.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor Control and Licensing Branch inspector or a police officer and must remain in place during the period of time ordered by the General Manager.

Original signed by

Edward W. Owsianski
Hearing Delegate

Date: August 21, 2014

cc: Liquor Control and Licensing Branch, Surrey Office
Attention: Rupi Gill, A/Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Cristal Scheer, Branch Advocate