



**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: Mike Seargeant Enterprises Ltd.
dba The New Patricia
525 Haliburton Street
Nanaimo, BC

Case: EH14-091

For the Licensee: Mike Seargeant

For the Branch: Cristal Scheer

General Manager's Delegate: Daniel M. Graham

Date of Hearing: March 18, 2015

Date of Decision: May 4, 2015

**Liquor Control and
Licensing Branch**

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7066

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC
<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

The licensee, Mike Seargeant Enterprises Ltd., dba the New Patricia, holds Liquor Primary Licence number 025245 (the "licence") for the operation of a liquor primary establishment known as The New Patricia located in Nanaimo, BC. The establishment is permitted to sell liquor from 11:30 a.m. to 1:30 a.m. Monday to Saturday and 11:00 a.m. to midnight on Sunday.

Mr. Mike Seargeant is the principal of the corporate licensee and appeared as the representative of the licensee at the hearing. I refer to both the corporate licensee and Mr. Seargeant as the licensee throughout this decision.

The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication "A Guide for Liquor Licensees in British Columbia" (the "Guide").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action dated August 14, 2014 (the "NOEA") (tab 1, Exhibit 1).

The branch alleges that, on July 5, 2014, the licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act* (the "Act") by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

For a first contravention of this type, Schedule 4, item 11 of the *Liquor Control and Licensing Regulation* (the "Regulation") provides a range of licence suspension penalties from four to seven days and/or a monetary penalty of \$5,000 to \$7,000. The branch is recommending a monetary penalty of \$7,000.

The licensee does not dispute the contravention, nor is the licensee pursuing a defence of due diligence. The licensee disputes the proposed penalty and requests that a period of suspension be imposed after the establishment re-opens (it is currently closed), rather than the proposed monetary penalty.

RELEVANT STATUTORY PROVISIONS

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

Drunkenness

43 (2) A licensee or the licensee's employee must not permit...

(b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

Liquor Control and Licensing Reg. 244/2002

Schedule 4

Enforcement Actions

Liquor Service

Item		Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
11	A breach of section 43(2)(b) of the Act by permitting an intoxicated person to remain in that part of the licensed establishment where liquor is sold or served.	4-7	10-14	18-20	\$5000-\$7000

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 11 inclusive.

EVIDENCE – BRANCH

The branch called five witnesses:

- Four Royal Canadian Mounted Police officers who attended at the establishment (“Officer 1” through “Officer 4”).
- The liquor inspector who issued the NOEA as a result of the reports from the police.

Officer 1

Officer 1 testified that he has been a member of the RCMP for 29 years, and a member of the Bar Watch program since 2007. Officer 1 was working with Officer 2 engaged in exclusive Bar Watch duties on the night of July 5, 2014. The establishment had re-opened under new management three weeks previously. The officers arrived at the establishment at 11:45 p.m. and entered through the main door.

Inside the establishment Officer 1 saw about 40 patrons. A male employee (subsequently identified as the “Manager”) was behind the bar. Within about a minute of entering the establishment the officers noticed a male patron (“Citizen 1”) who appeared to be “very intoxicated.”

Officer 1 described Citizen 1 as being a big, stocky, heavy individual. He said that Citizen 1’s head was bobbing, and that he had an unfocused, vacant gaze. There were a number of drinks on the table where Citizen 1 was seated. Officer 1 didn’t want to intervene right away because he wanted to see how the new management of the establishment would react.

The officers observed Citizen 1 for five to ten minutes. No member of the establishment staff came to the table and the drinks remained on the table. At the hearing, Officer 1 referred to a floor plan of the establishment (tab 8, Exhibit 1) and pointed out the location where he and Officer 2 were standing while making their observations, and where Citizen 1 was seated within the red-lined area in the establishment.

Officer 1 went on to explain that there was a group of patrons standing outside the main entrance smoking, and that there was significant activity at the main entrance as some of the smokers came back inside and other patrons went outside to smoke. Officer 1 said that there was some noise at the main entrance so he and Officer 2 went to evaluate what was going on and to determine whether there were any establishment staff there supervising activities.

Officer 1 said that outside the establishment he observed employees of the establishment who were trying to help a 60-ish heavy set female ("Citizen 2") into a cab in the establishment's parking lot. He described the female as being "grossly intoxicated" and said she would have fallen over if unsupported. The cab driver was unwilling to take her as a fare. Officer 1 asked the cab driver what the problem was and the cab driver responded that he'd done a GPS check of the destination address given by Citizen 2 and found that the address did not exist. He was concerned about being stuck with Citizen 2 being too drunk to provide an actual address.

The cab left and Citizen 2 said that she needed to use a washroom. Establishment staff took her back inside to use the washroom in the establishment. The officers were going back inside as well when they noticed a female – who Officer 1 thought would be about 78 years old - struggling to open the door to go into the establishment ("Citizen 3"). Officer 1 described Citizen 3 as being "extraordinarily intoxicated", to the point that she would have fallen if she wasn't supported by the door she was trying to open. While Officer 2 went back into the Establishment, Officer 1 guided Citizen 3 beside the main entrance and she leaned against the wall for support. In response to questions from Officer 1, Citizen 3 told him that she had been in the establishment earlier that evening and had consumed several bottles of beer.

Officer 1 stated that after a few minutes Officer 2 exited the establishment with Citizen 2 and members of establishment staff. Officer 1 was concerned as to whether Citizen 2 and Citizen 3 would be properly cared for since he felt neither of them could walk or navigate properly. The officers observed and listened to establishment staff trying to determine how to get the women home safely. The staff talked about locating friends of the two women to take them home. After five to ten minutes of apparently inconclusive discussion by staff, Officer 1 said that he “reluctantly” ordered a prisoner transport van to take Citizen 2 and Citizen 3 into custody for their own safety.

Officer 1 testified that at times Citizen 2 was passing out while being held in a standing position by staff. Her head would flop back, and then she would suddenly start up, struggling and screaming. At one point, Citizen 3 fell off the wall where she was leaning and was caught by the Manager.

Officer 1 stated that eventually the prisoner transport van arrived with Officer 3 and Officer 4, and Citizens 2 and 3 were taken into custody. He said it was difficult to get them into the van because of their level of intoxication. While the women were being put into the van, Citizen 1 came out of the establishment accompanied by one or two female companions. Officer 1 said that Citizen 1 was in an unfocused, uninhibited state of drunkenness, and that he approached Officer 1 to enquire about the situation with Citizens 2 and 3. His female companions – who did not appear to be intoxicated - said that they would take Citizen 1 home.

Officer 1 also testified that while Citizens 2 and 3 were being put into the van, Officer 2 was speaking to the Manager. The Manager said that Citizen 2 hadn't had a drink for hours, and that he wasn't aware that an intoxicated person couldn't stay in the red-lined area.

Officer 1 stated that he prepared a statement on the evening's events a few hours later (tab 4, Exhibit 1). He said that there had been no dedicated door security staff at the establishment. Officer 1 also said that he prepared a Police Licensed Premises Check (“LPC”) alleging a contravention of section 43(2)(b) of the Act (tab 2, Exhibit 1). In the LPC, Officer 1 wrote “Three highly intoxicated patrons. Two unable to walk unassisted

& in complete stupor – All found inside licensed area.” Officer 1 said that the LPC was served on the Manager by Officer 2.

Finally, Officer 1 said that he knew the licensee through his involvement in many other establishments. He said that the licensee is “very conscientious” and that he “tries to be very diligent.” Officer 1 said that he (Officer 1) tries to resolve many matters relatively informally, without going to adjudication right away. However, he said, he doesn’t often see people inside licensed premises intoxicated to this extent. He expressed the view that perhaps intoxication to this extent was “beyond the scope of what the new management was up for.” Officer 1 stated that he has considerable respect for the licensee but he wanted to get management’s attention.

Cross-examination of Officer 1

In response to questions from the licensee, Officer 1 responded that:

- He had never actually seen Citizen 3 inside the red-lined area – he had relied on her statement that she had been inside the establishment. He apologized for having been unclear about that in the LPC.
- Establishment staff was making some effort – particularly with Citizen 2 – to get the women home safely.
- It demonstrated a lack of judgment for staff to allow Citizen 2 back inside the establishment to use the washroom.

Officer 2

Officer 2 testified that he has been a member of the RCMP for eight years, spending the last four years in Nanaimo. He stated that on the Bar Watch program officers attend licensed premises in uniform and in a marked police van, and that police had been attending the establishment once or twice a night since its re-opening.

Officer 2 stated he attended the establishment with Officer 1 just before midnight on July 5, 2014. He said that he and Officer 1 had only been in the establishment a few moments when Citizen 1 drew their attention as appearing intoxicated. His head was bobbing up and down, his facial muscles lacked definition, he had a slumped-over “droopy” look, he was sweating, and there were a number of drinks on the table in front of him.

Officer 2 said that in response to observing an active number of patrons standing outside the doors of the establishment, the officers went outside and saw employees of the establishment trying to get Citizen 2 into a cab. He said that she was acting erratically – smiling, swearing, angry. The cab pulled away and the officers flagged the driver down to ask him what was happening. The cab driver replied that Citizen 2 was too intoxicated – she had given him an address that did not exist. In the interim staff had taken Citizen 2 back inside the establishment.

Officer 2 said that he and Officer 1 decided to intercede. Officer 2 went back into the establishment and was advised by a female staff member (subsequently identified as “the server”) that Citizen 2 had locked herself inside the women’s washroom and was crying. Officer 2 entered the women’s washroom and could see Citizen 2 half-kneeling inside one of the washroom stalls, with her possessions on the floor of the stall. Officer 2 said that he instructed the server to remove Citizen 2.

Officer 2 said that the new management of the establishment had not been there for long, and Officer 2 said that he explained his concerns about Citizens 1, 2 and 3 to the Manager. With respect to Citizen 2, he said that she had often been seen taking drinks from others’ tables and consuming them. With respect to Citizen 3, he said that there was no establishment staff looking after her. The Manager responded that he was not aware of Citizen 3. Officer 2 stated that he was also concerned about the level of intoxication of Citizen 1. Officer 2 said that he then went outside to see what the establishment staff would do about the situation.

He said that it took staff about five minutes more to get Citizen 2 out of the washroom and get her outside. Her head was slumped forward in a standing position. Her eyes kept closing. Her mood was shifting between being happy and angry. Staff were trying to arrange a cab for Citizen 2 and were trying to get her to give them an address.

Officer 2 said that finally he and Officer 1 decided to intercede. He said that neither Citizen 2 nor Citizen 3 were in any condition to take a cab as they were too vulnerable. He stated that medical care was a concern, so the officers took Citizens 2 and 3 into custody and called for transport.

Officer 2 testified that the Manager came out of the establishment and acknowledged that:

- Citizen 3 had been inside the bar for about an hour.
- Citizen 2 had not been served for a couple of hours.
- Citizen 2 and Citizen 3 had been together in the establishment.

At that point, said Officer 2, Citizen 1 came out of the establishment with a group of companions. He was swaying and slurring as he approached the officers to ask what was going on with Citizens 2 and 3. The rest of his group tried to get him away. Officer 2 said that Citizen 1 was staggering "quite a bit," and that he was on the borderline for being taken into custody, but his friends appeared to be sufficiently responsible to take care of him and they led him away. He also said that Citizen 1 was at least able to stand, walk, and converse (though disjointedly.) Officer 2 said that he would have expected the establishment staff to have made active enquiries about the level of intoxication of Citizen 1. He said that he was told by the Manager that Citizen 1 had not been accessing the bar, and that others had been purchasing the drinks.

Officer 2 went on to say that it took three officers to get Citizen 2 into the police transport van, and two officers for Citizen 3. Both women were slumped and not standing on their own. He said that Citizen 2 was one of the worst cases of intoxication he had ever seen in a licensed establishment – only about five times in his career had he ever seen someone this intoxicated. He also said that Citizen 3 was in better shape, but still bad enough that she shouldn't be left on her own. He expressed the view that staff should have asked the police to help them or should have called an ambulance for

Citizen 2. He stated it was not punitive to take Citizens 2 and 3 into custody for the night. They could be monitored until sober or be taken to hospital if necessary.

Officer 2 identified his statement prepared about three hours after the events at the establishment (tab 4, Exhibit 1).

Cross-examination of Officer 2

In response to questions from the licensee, Officer 2 stated that:

- Citizen 1 could carry on a conversation and he knew what he was saying, though he had trouble getting it out.
- He did not ask Citizen 1 for identification.
- He didn't know how long Citizen 1 had been in the establishment.
- Citizen 1 left "under his own steam" with his friends pushing him.
- Officer 2 didn't see any staff serving Citizen 1.
- Citizen 1 had drawn the officers' attention almost immediately.
- Staff was making their rounds but no one checked or assessed Citizen 1. The bar was not busy.
- Citizen 1's condition was such that it was borderline as to whether to let him go in the care of his friends.
- Staff was making efforts with Citizen 2, but their efforts were inappropriate. She required surveillance and monitoring to ensure her safety.

Officer 3

Officer 3 stated that he has been a member of the RCMP since 2004 and in Nanaimo since 2009. He has been involved in the police liquor strategy since 2012.

Officer 3 testified that he was driving the prisoner transport van on the evening of July 5, 2014. He was called to the establishment about 11:45 p.m., where two females were in custody. He stated that the women were easily identifiable as their level of intoxication was readily observed. Officer 3 said that one woman was leaning against the wall, and

the other was being held up by two persons. Both women had slurred speech and an odour of alcohol.

Officer 3 identified the statement he'd made describing the relevant events (tab 4, Exhibit 1).

Officer 4

Officer 4 stated that he had been with Officer 3 in the prisoner transport van when they were called to the establishment by Officer 1 at about 11:45 p.m. on July 5, 2014. As they approached the establishment they observed a large group of patrons. Two patrons were grossly intoxicated. One was being held up by two persons. The second was leaning against a wall. Officer 4 stated that both these individuals required assistance to get into the van. Both also needed help to get out of the van.

Officer 4 stated that both Citizen 2 and Citizen 3 exhibited incoordination, slurred and indecipherable speech, swaying, staggering, and a strong odour of alcohol. He repeated that in his view they were both grossly intoxicated.

Liquor Inspector

The Liquor Inspector testified that he's been a liquor inspector for eight years and before that he was a member of the RCMP for 20 years. He stated that he had prepared the NOEA based on the evidence of the LPC and the statements (or "GO" reports) of the four police officers. He sent the NOEA to the licensee by registered mail.

The Liquor Inspector said that he'd proposed the maximum \$7,000 monetary penalty for a first contravention because of the serious nature of the circumstances in the case which demonstrated a significant risk to the safety of the patrons, the general public, and the staff of the establishment. He stated that patrons should not be allowed to become intoxicated in licensed premises, and if they do become intoxicated they should be removed by establishment staff. The Liquor Inspector stated that since there were three intoxicated persons in this case he sought the highest prescribed monetary penalty for a first contravention.

The Liquor Inspector referred to an interview session held with the licensee, the Manager, and the manager's wife on June 16, 2014 (tab 9, Exhibit 1), saying that intoxication had been specifically discussed. He also referred to the floor plan of the establishment and noted that the washrooms are not in the red-lined area, and that it would be acceptable to allow an intoxicated person in to use the washroom as long as they did not have to go through the red-lined area to get there.

EVIDENCE – LICENSEE

The licensee called two witnesses: the Manager and the Server. The two witnesses were working in the establishment on the evening of July 5, 2014.

The Manager

The Manager referred to his written statement (tab 6, Exhibit 1). He said that Citizen 2 appeared fine when she came into the establishment and ordered a beer. Later Citizen 3 joined her and they drank a beer together. The Manager said that he'd offered to take Citizen 2 home himself but that no one knew her address, and that he'd taken immediate steps to remove her when he heard that she was intoxicated.

With respect to Citizen 1, the Manager said that he was never served – he had just sat down after entering the establishment, and then eventually walked out on his own.

The Manager referred to documentation of the interview session (tab 9, Exhibit 1) and stated that the licensee is a stickler with respect to underage patrons, over-service, and patron count. The Manager said that on July 5 he did all that he thought correct in getting the intoxicated patrons out.

In his handwritten statement (tab 6, Exhibit 1) which had been provided to the branch on July 23, 2014 in response to a Notice to Provide Records, the Manager stated that:

- Citizen 2 had entered the establishment at 8:45 p.m. and conducted herself in a normal manner when ordering a 10 ounce glass of beer.
- Citizen 2 was served another glass of beer at about 9:15 p.m.

- Citizen 3 joined Citizen 2 at about 9:30 p.m. – they were both served a glass of beer at about 9:45 p.m.
- At about 10:30 p.m. one of the staff approached the Manager and advised him that Citizen 2 looked sleepy. He and the Server approached Citizens 2 and 3 and advised them they must leave.
- He asked another staff person to call a taxi while he and the Server escorted Citizens 2 and 3 out of the establishment.
- Citizen 1 had only entered the establishment shortly before the police officers arrived. The group with which he had arrived walked out of the bar while the Manager was talking to the police. Citizen 1 was intoxicated and walked away with his friends.
- Staff informed the Manager that Citizen 1 had simply sat down after entering the establishment, that he did not order any drinks and that he was not served a drink.

Cross-examination of the Manager

In response to questions from the branch advocate, the Manager responded that:

- He had been informed of Citizen 1 being intoxicated while the Manager was outside dealing with Citizen 2. At that point Citizen 1 walked out of the establishment.
- The Manager had worked in an unrelated field prior to he and his wife taking on the management of the establishment. The establishment had been open about seven months at the time of the incident, and subsequently closed in December 2014.
- When Citizen 1 came out of the establishment he did appear to be intoxicated.
- Citizen 2 seemed to be about “half-intoxicated” when they were trying to get her into the cab – more so once the police arrived.
- The establishment did not have dedicated door staff as the Manager had been told it would have to be a “special licensed person.”
- All staff of the establishment have Serving It Right certification.

- With respect to training on dealing with intoxicated persons, staff are told that if a patron appears intoxicated they are to be taken out of the building. He now knows not to let an intoxicated person back in to use the washroom.
- He'd had no training in recognizing the stages of intoxication, but he can tell from experience.
- With respect to any training of staff other than Serving It Right, the Manager said that he and his wife went over the Guide with staff, but couldn't recall whether there was any written house training material. No tests or quizzes were given to staff.
- The responsibility of staff in dealing with an intoxicated person is to get them out of the establishment and get them home safely – either to pay for a cab or to take them home personally.

The Server

The Server stated that she was only aware of one intoxicated patron – Citizen 2. The Server said she had noticed Citizen 2 falling asleep and she was taken outside, where the cab refused to take her. The Server took her back inside to use the washroom but Citizen 2 locked herself in a stall. She thinks the police officers knew she was taking Citizen 2 back inside to use the washroom.

In her written statement (tab 6, Exhibit 1) the Server stated that:

- On July 5, 2014, she had started her shift at the establishment at 8:25 p.m. At about 8:50 p.m. she served Citizen 2 a glass of beer.
- At about 10:30 the Manager cut Citizen 2 off any more beer.

Cross-examination of the Server

In response to questions from the branch advocate the Server responded that:

- She did not know at the time of the alleged contravention that Citizen 2 had a reputation for removing and consuming drinks from other tables, but she acknowledged that she had “probably” been doing so that night.

- With respect to whether the Manager provided any additional training, he and the staff would have discussions about how they would respond to various scenarios.
- The Server had never dealt with an intoxicated patron before July 5, 2014.

SUBMISSIONS – BRANCH

The branch submitted that all the elements of a contravention of section 43(2)(b) were proved for all three patrons, who had all exhibited clear signs of intoxication. The circumstances, particularly with respect to Citizens 2 and 3 could have been tragic except for the police decision to arrest them. The branch referred to two other cases where patrons had died due to intoxication.

The branch submitted also that page 34 of the Guide sets out the role of a licensee with respect to intoxication, but that no training system was in place at the establishment. The branch contended that the establishment should have had staff on the door vetting whether any patrons entering the establishment were already exhibiting signs of intoxication. The branch noted that there was no monitoring system in place to observe whether Citizen 2 was stealing drinks, and no one was clearing the drinks from in front of Citizen 1.

The branch submitted that a penalty is required sufficient to impress the seriousness of the risk to the safety of the patrons and the public, and said that a suspension would make little sense since the establishment is already closed.

SUBMISSIONS – LICENSEE

The licensee admitted that the alleged contravention occurred with respect to the staff allowing Citizen 2 to re-enter the red-lined area to use the washroom. As mitigating factors he stated that staff had done so with the full knowledge of the police officers and that staff had let her back in out of decency. He argued that staff did take action to remove Citizen 2 and to have her taken home safely after they became aware that she was intoxicated.

The licensee submitted that there was no contravention with respect to Citizen 1. He stated that Citizen 1 was coherent and that he left under his own power, before staff had a chance to approach him.

With respect to Citizen 3, the licensee submitted that there is no evidence that she was within the red-lined area during the time the police were in attendance. He said that only three beer might have been enough to make her intoxicated since “she’s a little old lady.”

Regarding the proposed penalty, the licensee submitted that a \$7,000 monetary penalty is excessive and not warranted since the evidence demonstrates that his staff knew exactly what to do. He noted that the police had been visiting the establishment two times each night and there have been no other alleged contraventions. He argued that after being in the business for 25 years he has a great relationship with the police, and that he has never had another situation like this one.

The licensee also argued that a monetary penalty would be devastating since the establishment is currently closed until he can find new management and staff. Finally, the licensee argued that considering all the circumstances - his good operating history, the personal circumstances of Citizen 2, his staff did try to sort things out – a period of suspension after re-opening would be an appropriate penalty.

REASONS AND DECISION

Contravention

The licensee has admitted the contravention with respect to Citizen 2. There is no dispute that she was intoxicated and that she was allowed to remain within the red-lined area of the establishment where liquor was sold on the night in question.

With respect to Citizen 1, the evidence of two very experienced police officers – Officer 1 and Officer 2 – is that he was exhibiting obvious signs of intoxication. The Manager acknowledged in both his written and oral evidence that Citizen 1 was intoxicated. It isn’t relevant to the determination of the alleged contravention whether Citizen 1

ordered or was served liquor in the establishment. I find that he was intoxicated and was permitted to stay in the establishment with no intervention by staff at least during the period of time during which he was observed by the officers, and subsequently until he left with his companions.

With respect to Citizen 3, the Manager's written statement indicates that she was in the establishment for about an hour, at which time the Manager advised her (along with Citizen 2) that she could not have any more to drink and must leave the premises. The evidence of all four police officers indicates that Citizen 3 was extremely intoxicated. There is, however, no evidence before me with respect to how long Citizen 3 had been exhibiting signs of intoxication before the Manager escorted her out of the establishment. In the circumstances I am unable to conclude on the balance of probabilities that the licensee permitted Citizen 3 to remain in the establishment while she was intoxicated.

Given my analysis with respect to Citizens 1 and 2, I find that the admissions of the licensee, along with the evidence and submissions filed in these proceedings, all establish on the balance of probabilities that on July 5, 2014 the licensee contravened section 43(2)(b) of the *Act* by allowing two intoxicated persons to remain on its premises.

Due Diligence

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

The onus is upon the licensee to prove this defence on the balance of probabilities. The licensee here did not present a defence of due diligence. I find, therefore, that the licensee has not established a defence of due diligence.

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 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 in the NOEA. 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 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, Regulation 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.

Intoxication is a serious public safety issue. Intoxicated patrons may be a danger to themselves or others. It can be a factor in many crimes including domestic violence, assaults, and driving violations. It can have a negative impact on communities including noise, nuisance and vandalism. Intoxicated persons may not be able to exercise sufficient judgment to stop consuming liquor. Providing liquor to a person who is already intoxicated increases their risk.

In this case two patrons, exhibiting signs of intoxication, were allowed to remain within the red-lined area of the establishment. In the case of Citizen 1 there was no intervention by staff during the period of time he was under observation by Officers 1 and 2 or subsequently when he left voluntarily with his companions. In the case of Citizen 2, staff intervention was so late that she was intoxicated to an extent rarely seen by veteran police officers with extensive experience in dealing with alcohol offences. Citizen 2 had to be taken into custody by the police for her own protection.

In these circumstances, where there was more than one intoxicated individual, and at least one of the individuals was intoxicated to a point where she was in serious danger of personal harm, I find that a penalty is warranted.

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 this, therefore, to be a first contravention for the purposes of reviewing the range of applicable penalties under Schedule 4 of the Regulation. Item 11 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 branch has recommended the maximum prescribed monetary penalty. The licensee has asked that a period of suspension be imposed after the establishment re-opens.

Aggravating factors with respect to the penalty include:

- Multiple intoxicated persons at the same time.
- An extreme degree of intoxication.
- The lack of any evidence of a reasonable in-house training program for staff or systems in place with respect to dealing with intoxicated persons.

Mitigating circumstances include:

- The staff did eventually recognize that Citizen 2 was intoxicated and made efforts to remove her from the premises (though their efforts were late and ineffective in the circumstances of her gross level of intoxication).
- Officer 1 provided unsolicited evidence with respect to the good reputation of the licensee.

In imposing a penalty I must consider principles of both specific and general deterrence. In circumstances where the establishment will have been closed down for a significant period of time, I don't believe that a period of suspension subsequent to its re-opening will provide an adequate degree of deterrence.

In light of all of the above, I find that a \$6,000 monetary penalty is necessary and appropriate in the circumstances in order to encourage compliance with section 43(2)(b) of the Act.

ORDER

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$6,000 to the General Manager of the Branch on or before Friday, June 5, 2015.

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 branch inspector or a police officer.

Original signed by

Daniel M. Graham
General Manager's Delegate

Date: May 4, 2015

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Jay Blackwell, A/Regional Manager

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