

ENFORCEMENT ISSUES



COMPLIANCE MEETING

Inspector's Name: S. Johnston Date: May 28/13
Office Location: _____

ESTABLISHMENT INFORMATION:

Establishment Name: Upper Deck / Coachman Inn
Establishment Address: _____
Licence No.: 120212 Licence Class: LP Expiry date: _____
Licensee Name: _____

MEETING DETAILS:

Attendees at compliance meeting:

Name: <u>S. Johnston</u>	Association/Position: <u>LCLB Inspector</u>	Contact No: <u>250-574</u>
Name: <u>MA</u>	Association/Position: <u>Upper Deck / mng</u>	Contact No: <u>250-589-7212</u>
Name: <u>MA</u>	Association/Position: <u>UPPER DECK / B.M.</u>	Contact No: <u>s.22</u>
Name: <u>R. Boume</u>	Association/Position: <u>Vic PP</u>	Contact No: <u>250-995-7654</u>
Name: _____	Association/Position: _____	Contact No: _____
Name: _____	Association/Position: _____	Contact No: _____

Reason compliance meeting was convened (cite CN # if relevant): Noise complaint
Discussed Police reports related to fights and police involved incidents.

Information reviewed at the meeting:

- ☐ Relevant section(s) of the Liquor Control and Licensing Act online
☐ Relevant section(s) of the Liquor Control and Licensing Regulations
☐ Relevant section(s) of the Compliance and Enforcement Program, Policy and Procedures Manual
☐ Relevant section(s) of the Guide to Liquor Licensees
☐ Other _____

Discussed the incidents with fights and police.
Security is licensed and will be ensuring no pot
Commitments made by licensee: Smoking patio door to be closed by 10pm.
The incidents are unrelated. No new changes or
advertising. Security does walking round to monitor
parking lot.

Other: Licensee encouraged to continue to call police.
MAP - advised of program for future compliance checks.

Inspector Name: S. Johnston Inspector Signature: [Signature]
Licensee Name: MA Licensee Signature: M. Les Stanley

COMPLIANCE MEETINGInspector's Name: S JohnstonDate: May 78/13

Office Location: _____

ESTABLISHMENT INFORMATION:Establishment Name: Upper Deck / Coachman Inn

Establishment Address: _____

Licence No.: 120212 Licence Class: LP Expiry date: _____

Licensee Name: _____

MEETING DETAILS:

Attendees at compliance meeting:

Name: S Johnston Association/Position: LCLB Inspector Contact No: 957-5740Name: [Signature] Association/Position: Upper Deck / Inn Contact No: 250-881-7212Name: [Signature] Association/Position: UPPER DECK / B.M. Contact No: s.22Name: [Signature] Association/Position: Vic PD Contact No: 5 115 1151

Name: _____ Association/Position: _____ Contact No: _____

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Reason compliance meeting was convened (cite CN # if relevant): Noise complaintDiscussed Police reports related to fights and police involved

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Policy and Procedures Manual☐ Relevant section(s) of the Guide to Liquor Licensees☐ Other _____Discussed the incidents with fight and noise.Security is licensed and will be ensuring no 20Commitments made by licensee: Security the door will be closed by 10pm.The incidents are unrelated. No new charges oradvising. Security does walking rounds to monitorpremise lot.Other Licensee encouraged to continue to call police.NAP - advised of program for future compliance checks.

Inspector Name: S Johnston Inspector Signature: [Signature]Licensee Name: [Signature] Licensee Signature: M. S. Stanley

VICTORIA POLICE DEPARTMENT

NARRATIVE TEXT HARDCOPY

GO# VI 2013-18748

Narrative: SYNOPSIS - 1

synopsis

Author: 5339 HYNES, IAN

Related date: Sunday, 2013-May-19 at: 00:38

2013-05-18

2056 hours

Upper Deck Pub

229 Gorge Rd east

COM s.22 contacted the VPD, reporting a fight between staff and patrons at the Upper Deck Pub. Prior to police arrival, the combatants had settled and were waiting on scene.

Cst. HYNES, BARKER and Sgt. VERMETTE attended and were met by s.22 and s.22 as well as staff s.22 and s.22. Cst. BARKER and VERMETTE spoke with s.22 and s.22 as Cst. HYNES spoke with s.22 all separately. The following was learned; s.22

- That s.22 had arrived at the bar a short time before the incident
- That s.22 was sitting at the bar speaking to a friend who also worked in the kitchen
- That the friend left to go to work
- That s.22 became belligerent, hammering on the bar and being rude to staff
- That s.22 opened a tab on her credit card
- That s.22 demanded s.22 only pen to write her contact information down for her friend
- That s.22 became increasingly belligerent at which time s.22 told her to calm down or leave
- That s.22 became involved and immediately started challenging s.22 to a fight
- That s.22 began to tap s.22 in the nose with a pen
- That s.22 took back s.22 drink and told s.22 he would have to leave
- That s.22 made it known he would not leave without a fight
- That s.22 repeatedly heckled s.22 while taking a fighting stance
- That fearing s.22 was going to assault him, s.22 with the assistance of s.22 escorted s.22 to the exit
- That once at the exit, s.22 pulled s.22 shirt over his head and began punching him in the back of the head
- That s.22 became involved and began throwing punches at s.22 and a waitress s.22
- That throughout, s.22 threatened s.22 and s.22 to the effect "I'm going to kick your ass, you're dead"
- That once outside, s.22 calmed and waited for police.

Cst. HYNES spoke with Cst. BARKER and Sgt. VERMETTE, it was discovered that s.22 and s.22 had given a similar story, however with s.22 as the aggressor.

Cst. HYNES then spoke with s.22, an independent witness who was just entering the bar as s.22 was taking the drink from s.22 gave an audio recorded statement completely supporting s.22 statement.

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**VICTORIA POLICE DEPARTMENT
NARRATIVE TEXT HARDCOPY**

GO# VI 2013-18748

s.22 initially advised he was not interested in s.22 being arrested, however after attempting to get the parties to leave and stop threatening the victims, it was decided that for the safety of the victims, s.22 would be arrested and released on PTA/UTA's. s.22 was mildly intoxicated while s.22 advised his level of intoxication was his defence for the assault.

Cst. HYNES arrested s.22 as Cst. BARKER arrested s.22 Both parties were chartered and warned and allowed to access counsel in private at VPD cells. Both were photographed and fingerprinted before being released on PTA/UTA's dated 2013-06-27.

SUI for statements from s.22 and surveillance video from the Upper Deck Pub.

*** END OF HARDCOPY ***

*** CONFIDENTIAL ***

	VICTORIA POLICE DEPARTMENT NARRATIVE TEXT HARDCOPY SC# VI 2013-1325
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Narrative: SYNOPSIS - 1

Summary / Concluded

Author: 5064 BABAKAIF, SERGEI

Related date: **Saturday, 2013-May-11 at: 03:26**

On May 10th 2013 Cst. Babakaiff and Sgt Sorenson were working a Late Night Liquor Task Force.

When checking the Upper Deck 229 Gorge Rd E. three males were ejected from the pub for smoking joint on the patio.

s.22 were all asked to leave the trio left without incident. None of the parties carried ID however all where known to Cst. Babakaiff.

*** END OF HARDCOPY ***

*** CONFIDENTIAL ***

**VICTORIA POLICE DEPARTMENT
NARRATIVE TEXT HARDCOPY**

GO# VI 2013-17658

Narrative: **SYNOPSIS - 1****SYNOPSIS**Author: **5410 FOSTER, BRADEN**Related date: **Saturday, 2013-May-11 at: 01:43**

2013-05-11

Approx 0010hrs

229 Gorge Rd. E. Victoria B.C.

Victoria Police received a call from staff at the Upper Deck Sports Lounge at 229 Gorge Rd E in relation to a male who had pulled a knife on someone in the bar, and was being held down outside by bar security.

Multiple officers arrived on scene, and witnesses told them that the suspects first name was s.22 and that he had pulled a knife on one of the bar staff members. Officers located s.22 and identified him as s.22 s.22 had been at the bar drinking with his girlfriend, s.22 had been in a previous relationship with s.22, who works at the bar.

s.22 were involved in an argument which started when s.22 called s.22 a s.22 and s.22 continued to yell at one another, and then went outside on to the pub patio. Once outside, s.22 pulled out an orange handled knife and held it out toward s.22 struck s.22 a number of times, and the fight continued out to the parking lot. Once outside, s.22 told s.22 to stay on the ground, but s.22 continued to try and get up. EVERY time s.22 tried to get up, s.22 struck him and knocked him back to the ground until police arrived. Nobody was cut with a knife during the incident.

Officers located s.22 a short distance away from the bar, and arrested him for assault with a weapon. CST FOSTER located the knife in s.22 pocket.

s.22 attended the Victoria Police Department and provided an audio/video statement to officers, but was unsure if he wished to pursue charges against s.22

s.22 had been transported to Victoria Police cells, where paramedics assessed him, and deemed that he should be transported to hospital due to the swelling on his face. s.22 was released from custody on a Promise to Appear in court on June 20, 2013, and an undertaking with conditions not to contact s.22, not to attend 229 Gorge Rd E, and not to possess or consume liquor.

File SUI for follow up with Victim and RCC completion.

Foster 410

Fet - Bikes

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**VICTORIA POLICE DEPARTMENT
NARRATIVE TEXT HARDCOPY**

GO# VI 2013-16640

Narrative: **SYNOPSIS - 1****SUMMARY AND CONC REMS**Author: **5305 LANE, PETER**Related date: **Saturday, 2013-May-04 at: 00:59**

On May 4 2013 at around 0035 hrs three males were refused service at the Upper Deck Lounge at 229 Gorge Rd E. The intoxicated males became agitated and abusive with staff and one of them threw two glasses at staff. SOC s.22 remained at the bar arguing with staff and was spoken to by police on arrival. The other males left prior to police arrival.

SOC s.22 had been drinking and admitted things had gotten out of hand.
s.22 would or could not provide names of the two people he was with.
s.22 banned from the lounge and released without charge.

COM s.22 will attempt to get video of the incident and email info to Cst. LANE.

***** END OF HARDCOPY ********** CONFIDENTIAL *****

**VICTORIA POLICE DEPARTMENT
NARRATIVE TEXT HARDCOPY**

GO# VI 2013-13680

Narrative: SYNOPSIS - 1

SUMMARY/CONCLUSION

Author: 5219 BERBENUIK, GREG

Related date: Saturday, 2013-Apr-13 at: 01:12

On April 13 2013 COM s.22 called police that she had been assaulted by a s.22 inside the Travel Lodge pub at 229 Gorge Road East.

Writers attended and spoke to COM outside the pub. She was extremely intoxicated and was very difficult to understand due to slurring her words and the lack of continuity in her story. She could only state that the s.22 had grabbed her at some point and thrown her down the stairs. She claimed to have bruises from this incident. She was with a young male OTH s.22 who is her s.22 She said he saw the whole thing and was sober.

Writers then interviewed s.22 who was also extremely intoxicated and had difficulties explaining what happened. He said he did not see anything that happened between the s.22 and s.22 All he could explain was that he had been kicked out because he had drunk too much. He felt that this was unreasonable but left all the same. After leaving he saw s.22 exit the hotel.

Writer then asked s.22 to show him the bruises she had suffered. She showed an area on her right arm where there was some slight redness.

Writer then interviewed OTH s.22 who is door staff at the Travel Lodge. He explained that s.22 was ejected due to being too intoxicated. s.22 left of his own volition. After s.22 left s.22 approached s.22 and asked why s.22 was being ejected. s.22 explained at which time s.22 threatened to punch him in the face. s.22 became aggressive and beligerent at this time and was then told to leave by s.22 then came at s.22 and pushed him twice. s.22 then grabbed s.22 by the arms and escorted her out of the bar. s.22 resisted the entire way. s.22 was about to report the incident to police but s.22 beat him to it.

While writers were speaking to s.22 in the lobby of the hotel s.22 was present and became aggressive towards him by glaring at him and yelling at him. She was told by writers to go outside to wait for her taxi which she did.

s.22 was extremely intoxicated and s.22 contradicted her story. s.22 was sober and calm and explained the incident very clearly. He was well within his rights to physically escort s.22 from the bar. Also, based upon his testimony it was s.22 who assaulted and threatened him. s.22

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**VICTORIA POLICE DEPARTMENT
NARRATIVE TEXT HARDCOPY**

GO# VI 2013-13680

is not interested in pursuing charges at this time.

No further police action required.

File Concluded.

*** END OF HARDCOPY ***

*** CONFIDENTIAL ***

**VICTORIA POLICE DEPARTMENT
NARRATIVE TEXT HARDCOPY**

GO# VI 2013-7171

Narrative: SYNOPSIS - 1

SYNOPSIS / CONCLUSION

Author: 5390 BRUCE, DYLAN

Related date: Sunday, 2013-Feb-24 at: 19:25

On February 24, 2013 at approximately 18:03 hrs complainant s.22 contacted police to report a disturbance at the Upper Deck located 229 Gorge Road East. s.22 reported very loud music coming from the bar and stated that the back door was open.

Cst. BRUCE and Cst. HOURSTON responded just after 19:00 hrs. There was no loud music and police observed a band packing up their equipment. Police learned that they have live music every Sunday night between 15:00 hrs - 19:00 hrs. They always keep the windows and doors closed to minimize the noise and never open the back door because it's a fire door.

File concluded.

BRUCE #390 - HOURSTON #433

*** END OF HARDCOPY ***

*** CONFIDENTIAL ***

Johnston, Shannan MEM:EX

From: Fisher, Mandy MEM:EX
Sent: Friday, September 21, 2012 2:23 PM
To: LCLB-INSPECTORS; LCLB-C&E Implementation Project
Cc: Van Schaik, Katherine MEM:EX
Subject: Decision Released - Coachman Inn

Attached is the latest decision for **Fort Chelsea Holdings Ltd. dba Coachman Inn, LP 120212, Victoria, Case No. EH11-163.**

<u>Contravention(s)</u>	<u>Date</u>	<u>Rec Penalty</u>	<u>Findings</u>	<u>Date Penalty Imposed</u>
Overcrowding beyond patron capacity less than or equal to occupant load	Nov 5/11	1 day	1 day	November 2/12



Coachman Inn
EH11-163.doc

This decision has not yet been cleared by the Ministry's Privacy, Information & Records Management Division and should not be disclosed to the public. A version approved for public disclosure will be appearing on our Web site shortly at http://www.pssg.gov.bc.ca/lclb/comp_enforce/index.htm

Mandy Fisher

Case Administrator
Liquor Control and Licensing Branch
Phone: 250 952-7032
Fax: 250 952-7066
www.pssg.gov.bc.ca/lclb



File: EH11-163
Job: 000699122-031

September 27, 2012

Fort Chelsea Holdings Ltd.
c/o Miles Stanley
229 Gorge Road East
Victoria, BC V9A 1L1

Dear Licensee:

Re: Licence Number: 120212

COACHMAN INN (Victoria)
229 Gorge Road East
VICTORIA, BC V9A 1L1

The purpose of this letter is to inform you of the procedures of the Liquor Control and Licensing Branch for imposing enforcement action on the above noted licence. The enforcement action was ordered in the enforcement decision dated September 21, 2012.

It is important to note that you are responsible for the actions of your employees. You should ensure that managers and staff are familiar with the terms of the enforcement action and their responsibilities.

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

<http://www.pssg.gov.bc.ca/lclb>

Enforcement Action

Suspension:

Arising from the licensee's non-compliance with section s. 12 Act, s. 71(2)(b) Reg., the licence will be suspended for one (1) business day starting at the close of business on Friday, November 02, 2012 until the opening of business on Sunday, November 04, 2012. "Business day" means a day on which the establishment would normally be opened for business.

Signs satisfactory to the general manager showing that the licence is suspended 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 suspension.

Suspension procedures:

A Liquor Control and Licensing Branch inspector or police officer will attend your establishment prior to opening time on the first day of the suspension to:

- remove the licence,
- post the signs referenced above.

You should make arrangements with the Liquor Control and Licensing Branch inspector or police officer to obtain your licence at the end of the suspension period.

Responsibility of licensee:

1. You must allow the Liquor Control and Licensing Branch inspector or police officer to post the suspension signs. You must not remove, obscure, or alter the prominence and visibility of those signs during the suspension.
2. You must hand over the licence to the Liquor Control and Licensing Branch inspector or police officer when asked.
3. The establishment must remain closed to the public during the period of suspension.
4. You must not permit the sale, service or consumption of liquor in the establishment while the licence is suspended. The licensee is responsible for ensuring there is no sale, service or consumption of liquor in the establishment during the suspension period.
5. You may not de-licence in order to have another event in your establishment. Any previously approved de-licensing event that occurs during the suspension period is automatically rescinded.
6. The establishment is not eligible to hold any Special Occasion Licences (SOL) events during the suspension period. Any previously approved SOL that occurs during the suspension period is rescinded.
7. You may purchase liquor from an approved outlet to stock your establishment during the period of the suspension.

There are serious consequences for the service of liquor in the establishment by any party while a licence is under suspension. If liquor is served, consumed, or sold within the establishment while a licence is suspended, the general manager will do one of the following:

- cancel the licence,
- require that the licence be transferred within a specified time period and cancel the licence if it is not transferred within that time period,
- impose a suspension of at least 15 days.

Contact Number

If you have any questions about the matters covered in this letter, please contact the inspector responsible for your area at 250 952-5744.

Yours truly,

A handwritten signature in black ink, appearing to read 'Bruce Edmundson', written in a cursive style.

Bruce Edmundson
Deputy General Manager
Compliance and Enforcement

cc: Victoria Police Department
Clerk/Secretary City of Victoria
Manager of Licensing Rebecca Villa-Arce
Regional Manager Gary Barker
Inspector Shannan Johnston



**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:	Fort Chelsea Holdings Ltd. dba Coachman Inn 229 Gorge Road East Victoria, BC V9A 1L1
Case:	EH11-163
For the Licensee:	Miles Stanley and Jessica Brillinger
For the Branch:	Bode Fagbamiye
Enforcement Hearing Adjudicator:	Dianne Flood
Date of Hearing:	July 18, 2012
Place of Hearing:	Victoria, BC
Date of Decision:	September 21, 2012

**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 is Fort Chelsea Holdings Ltd. and the licensed premises, The Coachman Inn, are also known as the Upper Deck Sports Lounge. The third party operator is 0847964 BC Ltd. and the resident agent, Joseph Miles Stanley, appeared at the hearing as the Licensee's representative.

The premises are located at 229 Gorge Road East in Victoria, in an area that is primarily a mix of apartments, motels and restaurants. The licence is a Liquor Primary licence (#120212) with a total patron capacity of 118: 110 patrons are permitted in the area referred as Patron 01 and 8 patrons in the area referred to as Patio 1. The occupant load, as confirmed from floor plans on file with the Branch, is 162 persons. The licence hours are from 11:00 am to 1:00 am Monday to Saturday and from 11:00 am 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 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 penalties are set out in the notice of enforcement action (the "NOEA") dated March 19, 2012. The Branch alleges that on November 5, 2011, the Licensee contravened section 12 of the *Liquor Control and Licensing Act* (the "Act") and section 71(2)(b) of the *Liquor Control and Licensing Regulation* (the "Regulation") by overcrowding beyond patron capacity less than or equal to occupant load. The proposed penalty is a one day suspension of the licence under Item 14, Schedule 4, of the Regulation.

The Licensee disputes both the contravention and the penalty proposed.

RELEVANT STATUTORY PROVISIONS

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

12 (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.

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

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

(3) Without limiting subsection (2), the terms and conditions referred to in that subsection may

(a) limit the type of liquor to be offered for sale,

(b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served,

(c) limit the days and hours that an establishment is permitted to be open for the sale of liquor,

(d) designate the areas within an establishment where minors are permitted,

(e) approve, prohibit or restrict games and entertainment in an establishment,

(f) exempt a class or category of licensee from requirements with respect to serving food and non-alcoholic beverages in an establishment,

(g) vary seating requirements in the dining area of an establishment,

(h) vary requirements with respect to the location of an establishment,

(i) exempt a class of licensee from requirements with respect to marine facilities where liquor is sold,

(j) specify the manner in which sponsorship by a liquor manufacturer or an agent under section 52 may be conducted and place restrictions on the types of events, activities or organizations that may be sponsored,

(k) specify requirements for reporting and record keeping, and

(l) control signs used in or for an establishment.

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

71 (2) The following apply to a licence converted under subsection (1) unless and until rescinded or amended by the general manager:

- (a) the terms and conditions imposed on the licence by the general manager under section 12 and 12.1 of the Act in effect immediately before December 2, 2002;
- (b) the hours of liquor service and the patron or person capacity of the licensed establishment in effect immediately before December 2, 2002;
- (c) endorsements on the licence in effect immediately before December 2, 2002, except an endorsement on a winery licence for a consumption area.

The Guide provides:

“overcrowding” Your liquor licence tells you the maximum number of patrons or the maximum number of persons (patrons and staff) that you may allow in your premises at one time (see the definitions of “patron capacity” and “person capacity” at the beginning of this guide).

“occupant load” means the number of persons, including staff, who may be in a licensed premises at one time. The number is calculated by local fire and building officials or other designated professionals such as architects and engineers. The occupant load calculation must be the least number of people allowed under the relevant provincial regulations or municipal by-laws.

“patron capacity” means the maximum number of persons, not counting staff, who may be in a licensed premises at any one time.

“person capacity” means the maximum number of persons, including staff, who may be in a licensed premises at one time.

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:

Exhibit 1: The Branch's Book of Documents

Exhibit 2: The Licensee's Book of Documents

EVIDENCE:***The Branch's Evidence:***

Inspector 1 gave evidence on behalf of the Branch. Inspector 2 did not give evidence as, subsequent to November 5, 2011, Inspector 2 left the Branch.

Inspector 1's evidence:

Inspector 1's evidence was that he has been a liquor inspector for five years. He is a former RCMP officer with 16 years of service, which included responsibility for the RCMP liquor licence enforcement team. He has been trained by both the Branch and the RCMP how to conduct inspections and specifically in how to take counts of occupants. In the over 20 years he has worked for the Branch and the RCMP he has conducted thousands of liquor inspections, of which over 100 were counts for overcapacity.

On November 5, 2011, Inspector 1 met Inspector 2 outside the premises for a routine inspection. The parking lot was full and the Inspectors had to park on the street. The Inspectors knew that the Victoria Blues Society was holding an event at the premises. In accordance with normal protocols, the Inspectors both checked their mechanical hand counters to ensure they worked properly, set them at zero, and checked the time on their watches.

The Inspectors entered the hotel together, to gain access to the premises which are located on the second floor of the building. Inspector 1 had inspected the premises previously in the course of his duties and knew the general layout. There are two entrances to the premises: normally the premises could be entered by a stairway at the main desk but on this occasion that stairway was not open so the Inspectors used the second entry, down the hall and up the stairs. Inspector 1 observed a line up of about 6 persons at the door, which was being manned by two Victoria Blues Society volunteers. The volunteers told the Inspectors that the premises were at capacity, there was a line up, and no one was allowed in until someone left. The Inspectors identified themselves as liquor inspectors and were allowed entry. Inspector 1 did not observe the volunteers to be using mechanical counters to determine the number of persons entering.

Inspector 1 said his line of vision was good, lighting was good and he could see across the premises. He immediately noted the premises appeared to be more crowded than on his prior inspections. People were dancing, the bar was full with people both seated and standing, the pool/games room had silent auction prizes on display and was crowded. He thought there was potential overcrowding and began a count, using his mechanical counter that he checked for functioning and "zeroed".

In conducting the count, he divided the room into sectors, counting first one then another sector. He conducted the count in a methodical way to ensure no double counting. He counted all persons within the redlined area where liquor could be sold, including staff, but did not include any persons who may have been in the bathrooms or on the patio. He arrived at a count of 151 persons.

He then "zeroed" the counter and conducted a second count and arrived at a count of 159. The difference, in his opinion, was not large and he had not counted persons who might have been in the washroom or on the patio. The second count was conducted in the same way as the first count. Nothing had changed and there was little movement of people. The count took 2-3 minutes to conduct.

Inspector 1 gave evidence that Inspector 2 also conducted a count, with Inspector 2's count being 142 but that he had not included 8 persons as he thought they were staff. Inspector 2 only conducted one count.

Inspector 1 then went to the bartender, identified himself as a liquor inspector and the bartender confirmed he was in care and control of the premises and there were two servers also on duty. Inspector 1 went behind the bar and determined that the premises were licensed for 118 patrons – 110 on Patron 01 and 8 in the Patio, for a total of 118 patrons.

Inspector 1 advised the bartender that the premises were overcapacity and that persons had to be asked to leave to bring it down to the permitted capacity. The bartender did not dispute Inspector 1's assertions of overcapacity and did not offer an alternative count. According to Inspector 1's notes (Tab 1 of Exhibit 1) the Inspectors then proceeded to the patio area and counted five persons on it. The Inspectors, the bartender and Mr. Stanley then attended at the door and the Inspectors explained to them and the door staff that they had to reduce numbers to the maximum allowable. The Inspectors then left the premises.

Inspector 1 reviewed the "red lined" area of the premises (Tab 4 of the Branch's book of documents) and confirmed the area in which he did his count.

Inspector 1 also gave evidence that, according to the Guide, it is the role of the licensee to know and comply with the Act and it is the role of the inspector to identify any contraventions.

Inspector 1 also gave evidence about sample policies and incident reports suggested by the Serving it Right Program manual and said that the Licensee had not submitted any such policies or minutes of staff meetings to him.

The Inspector stated that under the Regulation the penalty for this type of contravention is a 1 to 3 day suspension or a \$1,000 to \$3,000 fine. Here, the proposed penalty was a one-day suspension. The Inspector said the reason for that is overcrowding is one of the most serious offences given the safety issues, especially for egress if a fire or other mishap should happen, as injury or death could result. Having a large number of persons in an area not designated for it makes it difficult for staff to observe if patrons are being over-served or intoxicated, raises hazards for fighting, both of which can require policing resources to be diverted from other policing demands. Also, from the community perspective, the number of patrons is set with the impact on the community in mind. Overcrowding raises issues of parking, increased potential for late night disturbances, and the demand on policing. In his opinion, a one-day suspension would be sufficient to adhere to the Act and for the Licensee to make the changes to its policies necessary to avoid overcrowding in the future. A monetary penalty would not satisfy the need to convince the Licensee and others that this issue needs to be addressed.

When questioned by Mr. Stanley, the Inspector agreed that there were two hallway exits plus the patio and a fire exit in the pool room, and that the volunteers at the door were limiting entry because they believed the premises to be at capacity.

The Inspector did not know or speak to a "Dave" at the premises on November 5, nor was "Dave" identified to the Inspector by Mr. Stanley or the bartender. The Inspector did not ask the Licensee for the number or a list of volunteers, nor was one provided to him by the Licensee.

The Licensee's evidence:

The Licensee's representative, Miles Stanley, and the bartender who was in care and control of the premises on November 5, 2011, gave evidence for the Licensee.

The bartender's evidence:

The bartender said that it was an unusually busy night and only he and two servers were on duty. Mr. Stanley was there, but was not working and the bartender was in charge of the premises.

The event was a fundraiser for the Victoria Blues Society, and the door was being managed by Victoria Blues Society volunteers. The volunteers had been told to sell only 100-105 tickets, "to be compliant". The Victoria Blues Society was charging for the event and the bartender thought the Victoria Blues Society wanted to make sure people were paying for tickets. When ticket sales got to 100- 105, sales were stopped and a line up was started and only if someone left was someone admitted. The bartender thought there was a mechanical counter being used to count sales, but he never saw it.

The bartender also said "Dave" was "going around, keeping track of the numbers". Dave may have been using a mechanical counter - he had one in his hand - but did not show it to the bartender who assumed Dave was using it.

The bartender believed the patron count was being properly made at the door but the problem was with band members coming in to play and then not leaving after their sets were finished. The event involved a number of bands (8 – 10), who would each play a set and then a different band would come on, so there was lots of coming and going of band members and their sound technicians and their friends. After each set, some

band members stayed, talking and listening to the music. The band members were "mostly not drinking" and so in the bartender's opinion they were not patrons, but "probably" some of the band members who stayed on had been served. At the time of the inspection, one band was just finishing their set and another band was getting ready to go on.

According to the bartender, the Victoria Blues Society also had a number of organizers and volunteers present.

When Inspector 1 approached the bartender and told him that the premise were overcapacity, the bartender confirmed he was in charge. He immediately cut off liquor sales and as the set was just finishing, he then cut off the music. When the music stopped, the lights were turned up and the bartender conducted a count using a mechanical counter and he got 124, including everyone. Of these, there were 4 or 5 staff, some owners, 7- 10 volunteers and 10-15 band members, so in his opinion that accounted for the number they were over. By that time, the inspectors had left.

Later in his testimony, the bartender said that with the bands switching over and earlier bands staying after their sets, there could have been as many as 30 or more musicians present, but that "Dave" would have probably counted them as they would have been seated at tables.

When it became apparent to the bartender that the band members were the reason for being overcapacity, the bartender told them that if they had done with playing and had no ticket they had to leave, and some left. It took about ½ hour and he got about 20 people to leave so the premises were then at capacity.

The bartender did not mention "Dave" to the Inspectors, or the count "Dave" was to be keeping. He did not dispute the Inspectors' counts when he was advised they were overcapacity as he did not want to argue with them, as it would be like disputing the police. He treated the issue seriously and wanted to do what was necessary to ensure compliance.

The bartender has completed the "Serving It Right" course. When questioned by the Branch advocate, the bartender agreed that the Licensee did not have written policies specifically on overcrowding and had not done any tests of staff about the issue of overcrowding.

The bartender believes he made a written recording of the evening's incident. No official logbook was maintained, but since then one has been ordered.

Staff meetings are held and the bartender prepares the agendas or plans that he submits to Mr. Stanley who also attends the meetings. With only five staff, the bartender does not make or keep minutes of the meetings.

Mr. Stanley's evidence:

Mr. Stanley was on the premises on November 5, 2011, but was not working or in charge because he had consumed liquor on the premises that night.

He said it was the first time they had had an event like this and it was an unexpectedly and unusually busy night.

To manage the door, he had given the Victoria Blues Society volunteers only 100 tickets to start with, but no counter. The number of tickets was to be used to monitor the sales. The volunteers were required to get more tickets from him when that 100 were sold.

Also, he had an occasional part-time staff member, "Dave" the relief bartender, "watch over the door". He said Dave used a mechanical counter to keep track of the numbers and Dave told him when they reached 103, so the volunteers were told to stop selling tickets.

According to Mr. Stanley, the band members did not have to have tickets, but their entourages did.

The Victoria Blues Society volunteers played a big part in the event, but he did not know how many there were, and had not thought to bring a list of them to the hearing.

On November 5, 2011 when he talked to the Inspectors at the door about the overcapacity, Mr. Stanley did not dispute the allegation or call Dave over to dispute it or to show the Inspectors his counter, because he did not want to have a dispute with the Inspectors at that time.

Since November 5, 2011, the premises have held another Victoria Blues Society event and a number of controls have been put in place. Because the volunteers did not work out well managing the door on the November 5 event, security was hired. All persons entering, including staff and volunteers, were given a wristband. Only 110 wristbands were made available. The band members were given lanyards that they had to transfer to the next band. Band members were given direction that when not playing they must leave the premises and a hotel room had been set aside for their use. If the band members wanted to stay, they had to get a wristband. If all the wristbands were sold, then they had to wait for someone to leave and turn in their wristband in order for a new person to get in.

Mr. Stanley said he was unaware that the patron capacity did not include staff and volunteers and the band members, so it was only after reading the Guide that he realized the count of 124 on November 5 did not, in his estimation, exceed the licence. He had thought that the legal capacity included staff, so the premises were actually under capacity on that second Victoria Blues Society event.

Mr. Stanley said the Licensee had no policy on overcrowding because it was very seldom that many people would be in the premises. The turnout on November 5, 2011, took them by surprise. The actual number of tickets sold that night was not available because as ticket buyers left, more tickets were sold. No one was tracking band members staying after their sets as that had not been anticipated.

Since the incident on November 5, 2011, a logbook has been ordered. Staff meetings are held but because overcrowding is not an issue for them as the "are not that busy a bar", it is not an agenda issue for those meetings.

While there was video surveillance on November 5, 2011, that captures the whole of the premises, the videotapes were not made available because in Mr. Stanley's opinion the tapes would not have been helpful in counting the number of patrons in the premises.

The Licensee's letter to the Branch about the incident, Tab 10 of Exhibit 1, identified only three staff working on that night – the bartender and two servers. While ^{s.22} was mentioned in that letter, it was not as a staff person. The volunteers were also mentioned in that letter but no numbers were provided.

SUBMISSIONS:

The Licensee says that the premises were not overcapacity, that ticket sales were being monitored and restricted at 100. The bartender's count at 124 included staff, Victoria Blues Society volunteers and musicians who should not be counted as patrons. While the exact number of volunteers was not available, they played a big part of the event. And with the bands changing, that explained the excess numbers. Further, the premises were well under the occupant load and safety was not an issue with four exit doors.

The event was bigger than expected for the small neighbourhood bar that the Upper Lounge is, and perhaps there were things that could have been done better. They relied on the volunteers because the Victoria Blues Society had conducted other events that also served liquor but were much bigger. The Licensee does take the issue of overcrowding seriously and had put in place a number of controls for the second event they have held. Staff have been told about expectations and what to do.

The Licensee thinks a warning would have been sufficient to achieve the Branch's goals of safety and compliance. The Licensee also submitted that a monetary penalty would be more appropriate than a suspension as the business was still suffering from an earlier 14 day suspension for a different contravention.

REASONS AND DECISION:

I find the premises were over the legal patron capacity of 110 in Patron 01, less than or equal to occupant load, on November 5, 2011, contrary to the Act and the Regulation. The following are my reasons.

The Guide provides:

“overcrowding” Your liquor licence tells you the maximum number of patrons or the maximum number of persons (patrons and staff) that you may allow in your premises at one time (see the definitions of “patron capacity” and “person capacity” at the beginning of this guide).

“occupant load” means the number of persons, including staff, who may be in a licensed premises at one time. The number is calculated by local fire and building officials or other designated professionals such as architects and engineers. The occupant load calculation must be the least number of people allowed under the relevant provincial regulations or municipal by-laws.

“patron capacity” means the maximum number of persons, not counting staff, who may be in a licensed premises at any one time.

“person capacity” means the maximum number of persons, including staff, who may be in a licensed premises at one time.

The evidence was that four counts were done. Inspector 1 conducted two counts, using a mechanical counter each time and counted everyone present, except those on the patio and in the bathrooms, arriving at counts of 151 and 159 respectively. Inspector 2 did one count, using a mechanical counter and arrived at a count of 142, excluding eight persons whom he thought were staff. The bartender did one count, using a mechanical counter after liquor service and the music had stopped, and counted everyone and arrived at a count of 124. There was also evidence of a count of 103 done by ^{s.22} at some point in the evening, using a mechanical counter.

I prefer the evidence of the Inspectors' counts. They are trained and experienced in how to do inspections and count for capacity in a logical, methodical way, dividing the premises into sectors. They did the counts while the premises were under full operation, but under conditions of good lighting and clear sight lines. Their three counts are closely consistent in numbers – 150 (142 plus 8), 151 and 159.

The bartender's count was conducted after the band finished their set and after liquor service had been stopped and the lights turned up. So while the bartender's count may have been accurate when conducted, the stopping of service and the music and the potential for knowledge that the Inspectors had been in the premises may have meant some persons had already left the premises.

I do not give any weight to the count done by ^{s.22} He was not called as a witness and the means and manner of how his count was done was not provided, other than he was thought to have used a mechanical counter. Who he included in his count and when he conducted that count was not in evidence.

I also do not find that a direction to the volunteers to sell only 100 tickets, and then to give them 100-105 tickets to sell, to be a reliable means or way to control the number of persons in the premises, or an accurate count of how many persons were in the premises.

The bartender suggested that the overcapacity might have been due to the presence of persons on the premises who had not bought tickets. As the bartender stated, in addition to the ticket holders, there were a number of other persons in the premises: "ownership", an unknown number of organizers and volunteers, and also possibly up to 30 band members who had stayed on after their sets, and at least some of whom were served liquor.

Therefore, I find the counts of the inspectors to be most accurate and accept that there were at least 150 persons in the premises.

I must now consider how many of those 150 persons were patrons.

I find based on the evidence of the bartender's conversation with Inspector 1 and the letter from the licensee (Tab 10, Exhibit 1) that there were only three staff persons on duty that night and only these three persons are to be counted as staff who are excluded from the count of patrons. To be clear, Mr. Stanley did not claim to be present as an employee that evening, and in fact the bartender made it clear Mr. Stanley was not on duty that evening. And while 's.22' may be an occasional employee, he was not listed as being on duty as such in the Licensee's own letter (Tab 10, Exhibit 1) and there is no clear evidence that he was acting in the capacity as an employee that night. He, like Mr. Stanley, must be considered a patron for the purposes of determining if the premises were at or over capacity. I do not accept the bartender's recollection of 4-5 staff being present as that number is directly contrary to the letter from the Licensee and may have included Dave and Mr. Stanley or other persons who were there that night who worked there, but were not on duty. Only if staff are on duty are they to be deducted from the patron count.

I find the organizers of the event, who were not staff of the Licensee and who may have been served liquor, to be patrons for the purposes of determining legal capacity. The same applies to the volunteers. If organizers or volunteers are to be considered as excluded from the patron count, there must be names provided and clear, distinguishable responsibilities and shift times, similar to paid staff.

I find that the musicians, if to be excluded from the patron count, must have the same attributes as staff – to be on duty - that is, actually playing or preparing to play imminently, and their names and set times provided. Here, at best, based on the evidence of the bartender, there were 10 musicians who were either playing or preparing to play. I find that the other musicians who had played earlier and who had stayed on after their sets, and some of whom may have been consuming liquor, were patrons when the Inspectors' counts were conducted.

Both Mr. Stanley, who was present but not on duty, and the bartender, who was in charge, knew the premises were much busier than usual and both considered that they were at capacity, but neither undertook or directed that a proper count be made of the persons in the premises until after the Inspectors identified the issue. Relying on volunteers and a sometime relief bartender, without evidence of any instructions given to any of them on how to ensure a proper count and its importance, was an inadequate manner to address a serious issue and an important term of the Licence.

In addition, while my decision does not turn on this, I would have drawn an adverse inference from the Licensee's failure to provide the video surveillance tapes of the premises for the night in question, as he was requested to do by the Branch. It is not up to the Licensee to decide if the tapes were capable of providing acceptable evidence – that submission should have been made when the tapes were produced, and potentially viewed at the hearing. The Licensee may well have been correct in that, but without the tapes being produced, it is unknown if that is, in fact, the case.

As such, given I accept the Inspectors' counts as more accurate and reliable and that the excluded persons numbered a maximum of 13, I find that the premises were, on November 5, 2011, over the legal capacity of 110 patrons in Patron 01, but less than the occupant load of 162 persons.

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.

While the high turnout for the event on November 5, 2011 was unexpected, few controls were in place to monitor the number of patrons admitted to the premises, and those that were in place were inadequate. The Licensee simply left a limited number of tickets with volunteers who were not given any training or direction on what the occupancy limits were and what they meant in terms of the Licence, and why it was important not to exceed capacity. A person^{s.22} was allegedly responsible for counting patrons, but he was not presented at the hearing to give evidence of the instructions given to him, or the method to be followed, or when and how he did the counts. Mr. Stanley's own evidence was that it was not until after reading the Guide more carefully after the second Victoria Blues Society event that he had a clear understanding of what the patron limit was and who was to be included in that. No written policies or explanations about patron capacity were provided to staff, before or after the event.

Based in this, I find the defence of due diligence is not available to the Licensee.

PENALTY:

Pursuant to section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulations and/or the terms and conditions of the Licence, I may do one of 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 achieving voluntary compliance. The factors that are considered in determining the appropriate penalty 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 public safety and the well being of the community.

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. Therefore I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty. Item #14 in Schedule 4 provides a range of penalties for a first contravention of this type: a 1 to 3 day suspension or a \$1,000 to \$3,000 fine.

The Licensee has the responsibility to know the legal capacity of the premises, to know who is to be included in determining legal capacity and to take steps to ensure that the capacity is not exceeded, not just for the reason of compliance, but for public safety and patron well-being, and also to respect and limit impacts on the neighbourhood and the community. The Licensee here did none of these. The Licensee's representative and staff knew the premises were unusually crowded, the turnout was higher than expected and musicians were not leaving after completing their sets. Ticket sales had reached close to capacity and the suspending of ticket sales was only one of the steps that ought to have been taken. The Licensee should have conducted a proper count of the number of patrons and ensured patron capacity was not exceeded. The terms of the Licence were breached, patron well-being was jeopardized, and the neighborhood and community were compromised. In the circumstances, I find the appropriate penalty to be a one day suspension.

ORDER:

Pursuant to section 20(2) of the Act, I order a suspension of Liquor Primary Licence No. 120212 for a period of one (1) day to commence at the close of business on Friday, November 2, 2012.

To ensure this order is effective, I direct that the Liquor Licence be held by the Branch or the City of Victoria Police Department from the close of business on Friday, November 2, 2012, 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.



Dianne Flood
Enforcement Hearing Adjudicator

Date: September 21, 2012

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

Liquor Control and Licensing Branch, Victoria Office
Attention: Bode Fagbamiye, Branch Advocate



April 30, 2012

Ms. Elizabeth M. Barker
Registrar
Liquor Control & Licensing Branch
Ministry of Public Safety & Solicitor General
P.O. Box 9292 Stn. Prov. Govt.
Victoria, B.C. V8W 9J8

Dear Miss Elizabeth:

This is to authorize you to communicate with Mr. Miles Stanley in regards to a contravention which occurred on November 5, 2011.

Please advise of any and all communications.

Thanking you,

Sincerely,

Akber Kassam
President
Fort Chelsea Holdings dba Travelodge Victoria

TRAVELODGE VICTORIA

229 Gorge Road East, Victoria, B.C. V9A 1L1 (250) 388-6611 Fax (250) 388-4153 Reservations 1-800-578-7878

E-mail: welcome@travelodge-vic.com Web site www.travelodgevictoria.com

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NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

File: EH11-163
Job: 000699122-031

March 19, 2012

FORT CHELSEA HOLDINGS LTD.
c/o FORT CHELSEA HOLDINGS LTD.
1-709 BELTON AVE
VICTORIA, BC V9A 2Z7

Re: Licence Number: 120212
Licence Type: Liquor Primary
Licence Expiry Date: January 31, 2012
Establishment: Coachman Inn (Victoria)
CN #: B009020

The purpose of this notice is to inform you that pursuant to section 20 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

This Notice of Enforcement Action (NOEA) will:

1. Set out the branch's allegation(s) of non-compliance with the Act, and or the *Liquor Control and Licensing Regulation* (the Regulation) and or the terms and conditions of the licence,
2. Provide a narrative of events,
3. Describe the evidentiary basis for the elements of each alleged contravention,
4. Provide reasons why the branch is pursuing enforcement,
5. Provide reasons why the branch believes the particular enforcement action (i.e. penalty) proposed is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Public Safety
and Solicitor General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

<http://www.pssg.gov.bc.ca/lclb>

1. THE ALLEGED CONTRAVENTION(S):

No.	Name of Contravention(s)	Section of the Act/Regulation	Date and time of Contravention(s)	Proposed Enforcement Action
1.	Overcrowding beyond patron capacity less than or equal to occupant load, s. 12 Act, Reg. s. 71(2)(b)	s. 12 Act, s. 71(2)(b) Reg.	2011-NOV-05 8:50 PM	1 day suspension

2. NARRATIVE

The Coachman Inn (Victoria) also known as The Upper Deck is located at 229 Gorge Road East in Victoria BC. This area is a mix of residential apartments, motels and restaurants primarily. They hold a valid Liquor Primary Licence (#120212) which states their patron capacity in Patron 01 as 110 and a Patio 1 capacity of 8 patrons. The occupant load is confirmed on the floor plans held on file with LCLB as 162 persons. The Licensee is Fort Chelsea Holdings Ltd and Joseph Stanley Miles as the resident agent. According to the licence, the third party operator is a numbered company, 0847964 Ltd.

The main entrance way is off of Gorge Road East, through the main entrance to the hotel lobby then up two flights of stairs which opens up onto what is called The Upper Deck. At the top of the stairs is the stage, dance floor and entrance way to the patio. There are a number of exit ways including the main staircase and another entrance with a staircase from the lobby at the other end of the bar. Smokers exit onto the patio and to an adjacent connecting hallway which leads to the 2nd floor of hotel rooms.

Hours permitted for liquor service are 11AM to 1AM Monday to Saturday and 11AM to midnight on Sundays.

Saturday, November 5th, 2011 at 2045 hrs.

Inspector Terrance TRYTTEN and Rob SABYAN were conducting routine liquor inspection in the Langford area on this evening. At 2045 hrs. both Inspectors drove their own vehicles and parked just across the street from The Coachman Inn as there was no parking available in the vicinity of the hotel and nightclub. I had noted that The Upper Deck (Coachman Inn, Victoria) was holding a "Bluestravaganza" on this evening which was billed as 8 hours of music by 8 local blues bands, as part of the Victoria Blues Society's annual fundraiser. In addition there was a silent auction where the pool tables are located on the far side near the washrooms.

SABYAN and I exited our respective vehicles and noted the time and that our watches were set correctly. We then checked and calibrated each of our mechanical counters, ensuring that they added one number for each press of the counter. We zeroed our counters again and immediately walked approx. 300 metres around the corner to the ground floor lobby entrance way to The Upper Deck. The normally used main entrance to the stairwell leading to the 2nd floor and which is adjacent to the hotel front desk was closed and a 2nd stairwell entrance was being used on this night, just down the hall from the main desk.

2050 hrs.

I walked in first followed by SABYAN up the staircase to a set of doors where 2 volunteers (from the Victoria Blues Society) were stationed. They were providing a form of door control. There was a line up of approx. 6 persons waiting in the staircase to enter The Upper Deck. They were not permitting any further patrons inside and advised the patrons waiting that they were at capacity and that they would have to wait until an equal number of patrons inside left. We identified ourselves as Liquor Inspectors to the 2 volunteers, now identified as ^{s.22} and ^{s.22}. They allowed us to enter the premises where I immediately observed a larger than normal crowd of people inside. I decided then to conduct a count using my counter and advised SABYAN to do the same.

2051 hrs.

Visibility was good; the lighting was adequate, a band was playing in the far corner and the music was not particularly loud. I turned to my right and along the wall facing Gorge Road East towards the band. I then turned left towards the washrooms and along the bar then back towards the entrance way where I started my count. SABYAN followed behind me conducting his count in the same manner.

2054 hrs.

Upon completion of the count and back at the entrance way where there was more lighting than inside the pub, I noted the counter number. I then zeroed the counter and conducted my second count using the identical route of the first count. Upon completing this count, I again checked the counter at the entrance way and noted the number. The differences in numbers that I obtained from these two counts I believe reflect people coming out of the washrooms and/or the patio where some patrons were smoking.

My first count was 151 persons and my second count was 159 persons. On both my counts I included all persons in the premises, including employees, volunteers and patrons.

SABYAN performed only one count and arrived at a number of 142 patrons. He stated he did not count 8 persons within Patron area 01 as he believed these 8 were employees.

2056 hrs.

Upon completing our counts we met at the bar where I checked the posted liquor licence and confirmed that The Upper Deck is permitted 110 patrons in patron 01 and 8 patrons on the patio 01. I advised the bartender, who identified himself as s.22 that they were overcrowded by approx. 40 patrons and that he must reduce their number of patrons to the maximum allowable 110 patrons or less.

2100 hrs.

SABYAN and I then proceeded onto the patio and counted 5 patrons on it. Following behind us onto the patio was the resident manager, Miles STANLEY. He advised SABYAN that he had been consuming liquor this evening and stated therefore that he was not working tonight. It was noted by SABYAN that STANLEY was holding a mechanical counter and advised SABYAN that they were not over-crowded as he had "been keeping track".

2104 hrs.

Having completed two counts and satisfied that the establishment was overcrowded; I went directly back to the bar and advised s.22 of my counts. I stated clearly that he must reduce the number of persons in patron area 01 to 110 patrons or less immediately and no more than 8 patrons on the patio.

2108 hrs.

SABYAN and I then proceeded to the doors where we had originally entered followed by s.22 and STANLEY. At the entranceway I again advised s.22 along with STANLEY, s.22 that they must reduce the number of patrons immediately in patron area 01 to 110 or less immediately. We then left the premises and returned our vehicles.

2116 hrs.

Once back at my vehicle, SABYAN and I completed our notes and departed the area.

Tuesday, November 29th, 2011

Per my written request to STANLEY dated November 7th, 2011 I received a letter reporting the number of persons employed at The Upper Deck at the time of the

contravention. STANLEY states there were three employees working that night, 1 bartender, s.22 and 2 servers. STANLEY did not report in the letter that he was working, though he stated to SABYAN at the time that he had been conducting patron counts.

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

3.1 Overcrowding beyond patron capacity less than or equal to occupant load, s. 12 Act, Reg. s. 71(2)(b)

The elements of the contravention are as follows:

- 1) The licensed capacity for patron area 01 is 110 patrons.
- 2) The occupant load is 162 patrons.
- 3) The number of patrons inside the establishment as determined by 3 separate counts was 151, 159 and 147.

4. REASONS FOR PURSUING ENFORCEMENT

4.1 Overcrowding beyond patron capacity less than or equal to occupant load, s. 12 Act, Reg. s. 71(2)(b)

Licensees that exceed their capacity by overcrowding are operating contrary to the public interest. Specifically, they are operating contrary to the principles of public safety and community standards.

The issue of public safety is most apparent when the overcrowding exceeds the occupant load. Getting out of a building safely during a fire or other threat is difficult in a place where liquor is served, loud music is playing and lighting is dim. The risk of death or serious injury is greater when the building is overcrowded.

The public interest in community standards is also relevant to the contravention of overcrowding. The maximum capacity established for a liquor-primary licence is the result of community input during the licensing process. The maximums are set so as to reduce the risk of negative impacts on neighbourhoods and communities. These negative impacts include late night disturbances, parking problems and traffic flow problems. Allowing licensees to exceed their approved capacity effectively negates this community input.

On this night there was a special event, an 8 hour long Bluestravaganza hosted by the Victoria Blues Society. Thus the licensee should have expected greater than normal attendance and been better prepared to control the number of patrons permitted inside. Even though the licensee and directing mind knew the maximum licensed capacity and

building occupant load for the establishment, he states he was unaware that the premises was overcrowded.

5. REASONS FOR THE PROPOSED ENFORCEMENT ACTION (i.e. penalty)

5.1 Overcrowding beyond patron capacity less than or equal to occupant load, s. 12 Act, Reg. s. 71(2)(b) : one (1) day suspension proposed

For the alleged contravention of overcrowding beyond patron capacity less than or equal to occupant load, s. 12 act, reg. s. 71(2)(b) (Contravention Notice Number B009020), a suspension penalty of one (1) day is proposed. This recommended suspension penalty falls within the penalty range set out in Schedule 4, Item 14 of the Terms and Conditions. The suspension will be served starting on a Saturday and will continue on successive business days until completed.

Upon entry to the premises and being familiar with this pub when it is at its' capacity, I knew immediately that they were overcrowded. The licensee (Miles Stanley) should have taken steps to reduce the number of patrons inside the premises long before Liquor Inspectors directed him and his bar manager ^{s.22} to do so. Volunteers at the main entrance way had been directed by Stanley to only permit patrons in as patron from inside left.

The minimum licence suspension penalty is recommended to emphasize the necessity to remain at or below the allowable patron capacity.

6. THE PROCEDURES

The licensee may agree with or dispute the above allegation(s) and proposed enforcement action.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine what enforcement action will be imposed on the licensee. The general manager may

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

Imposing enforcement action is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted the general manager must follow the minimums set out in Schedule 4 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is in the public interest to do so. The general manager is not bound to order the enforcement action proposed in this NOEA.

Schedule 4 of the Regulation sets out the range of enforcement actions when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If the licensee agrees that the contravention(s) took place and accepts the enforcement action proposed, there is no need for a hearing. In that case, the licensee must sign a document called a waiver. By signing a waiver, the licensee irrevocably

- Agrees that the contravention(s) occurred,
- Accepts the proposed enforcement action,
- Agrees that the contravention(s) and enforcement action will form part of the compliance history of the licensee, and
- Waives the opportunity for an enforcement hearing.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact me at 250 952-5747 as soon as possible. If you do not sign a waiver, the branch will schedule a pre-hearing conference for you to discuss the hearing process with the branch registrar and the branch advocate.

For further information about the hearing and waiver process please visit our website at http://www.pssg.gov.bc.ca/lclb/comp_enforce/index.htm

Yours truly,

Terrance Trytten
Liquor Inspector

Enclosures

Copy of *Liquor Control and Licensing Branch Enforcement Process* –

Information for Liquor Licensees (located at <http://www.pssg.gov.bc.ca/lclb/docs-forms/LCLB168.pdf>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 20(2) of the Act:

Past Enforcement Action Taken

No compliance history found

Allegations Which the Branch Did Not Pursue

No compliance history found

Compliance Meetings

Date		Topic
July	06, 2011	Permit Intoxicated Person to Remain

Other Factors



File: EH11-138
Job: 000699122-030

May 30, 2012

Fort Chelsea Holdings Ltd.
c/o Miles Stanley
229 Gorge Road East
Victoria, BC V9A 1L1

Dear Licensee:

Re: Licence Number: 120212

COACHMAN INN (VICTORIA)
229 Gorge Road East
Victoria, BC V9A 1L1

The purpose of this letter is to inform you of the procedures of the Liquor Control and Licensing Branch for imposing enforcement action on the above noted licence. The enforcement action was ordered in the enforcement decision dated May 28, 2012.

It is important to note that you are responsible for the actions of your employees. You should ensure that managers and staff are familiar with the terms of the enforcement action and their responsibilities.

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

<http://www.pssg.gov.bc.ca/lclb>

Enforcement Action

Suspension:

Arising from the licensee's non-compliance with section s. 43(2)(b) Act, the licence will be suspended for fourteen (14) business days starting at the close of business on Friday, June 29, 2012 until the opening of business on Saturday, July 14, 2012. "Business day" means a day on which the establishment would normally be opened for business.

Signs satisfactory to the general manager showing that the licence is suspended 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 suspension.

Suspension procedures:

A Liquor Control and Licensing Branch inspector or police officer will attend your establishment prior to opening time on the first day of the suspension to:

- remove the licence,
- post the signs referenced above.

You should make arrangements with the Liquor Control and Licensing Branch inspector or police officer to obtain your licence at the end of the suspension period.

Responsibility of licensee:

1. You must allow the Liquor Control and Licensing Branch inspector or police officer to post the suspension signs. You must not remove, obscure, or alter the prominence and visibility of those signs during the suspension.
2. You must hand over the licence to the Liquor Control and Licensing Branch inspector or police officer when asked.
3. The establishment must remain closed to the public during the period of suspension.
4. You must not permit the sale, service or consumption of liquor in the establishment while the licence is suspended. The licensee is responsible for ensuring there is no sale, service or consumption of liquor in the establishment during the suspension period.
5. You may not de-licence in order to have another event in your establishment. Any previously approved de-licensing event that occurs during the suspension period is automatically rescinded.
6. The establishment is not eligible to hold any Special Occasion Licences (SOL) events during the suspension period. Any previously approved SOL that occurs during the suspension period is rescinded.
7. You may purchase liquor from an approved outlet to stock your establishment during the period of the suspension.

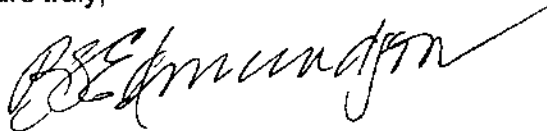
There are serious consequences for the service of liquor in the establishment by any party while a licence is under suspension. If liquor is served, consumed, or sold within the establishment while a licence is suspended, the general manager will do one of the following:

- cancel the licence,
- require that the licence be transferred within a specified time period and cancel the licence if it is not transferred within that time period,
- impose a suspension of at least 15 days.

Contact Number

If you have any questions about the matters covered in this letter, please contact the inspector responsible for your area at 250 741-3625.

Yours truly,



Bruce Edmundson
Deputy General Manager
Compliance and Enforcement

cc: Victoria Police Department
Clerk/Secretary City of Victoria
Manager of Licensing Rebecca Villa-Arce
Regional Manager Gary Barker
Inspectors Wayne Brown
Inspector Shannan Johnston



**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:	Fort Chelsea Holdings Ltd. dba Coachman Inn (Victoria) 229 Gorge Road East Victoria, BC V9A 1L1
Case:	EH11-138
For the Licensee:	Miles Stanley
For the Branch:	Olubode Fagbamiye
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	May 3 & 4, 2012
Place of Hearing:	Victoria, BC
Date of Decision:	May 28, 2012

**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, Fort Chelsea Holdings Ltd, operates the Coachman Inn (Victoria) located in Victoria, BC. The hotel has a licensed lounge known as the Upper Deck Sports Lounge (the Lounge), Liquor Primary Licence 120212, with liquor sales from 11:00 a.m. to 1:00 a.m. Monday to Saturday and to Midnight on Sunday. The lounge has a licensed capacity of 110 patrons in the main area and eight patrons on the patio. It is operated by a third party operator, 0847964 BC Ltd. which has been approved by the branch. Miles Stanley is the principal of 0847964 BC Ltd. and appeared as the licensee's representative during the course of the hearing. 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 branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated February 6, 2012. The branch alleges that on September 17, 2011, the licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

The contravention is being treated as a second under the penalty schedule and the proposed penalty is a 14 day licence suspension (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*).

For a second contravention of this type, Item 11 provides a range of licence suspension penalties from 10 to 15 days.

The licensee disputes the contravention.

RELEVANT STATUTORY PROVISIONS

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

Drunkenness

43 (1) A person must not sell or give liquor to an intoxicated person or a person apparently under the influence of liquor.

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

(a) a person to become intoxicated, or

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

ISSUES

1. Did the contravention occur?
2. If so, what penalty, if any, is warranted?

EXHIBITS

Exhibit No. 1: Branch's book of documents, tabs 1 – 12.

Exhibit No. 2: Two page pamphlet, "Serving it Right".

Exhibit No. 3: Licensee's book of exhibits.

EVIDENCE – The Branch

The branch presented two liquor inspectors as witnesses, **A** and **B**. The inspectors testified that on September 17, 2011, they were acting in a covert capacity while inspecting licensed establishments in the Victoria area. In other words, they did not identify themselves as being liquor inspectors during the course of their inspections. They entered the Upper Deck Lounge of the Coachman Inn at approximately 9:20 p.m. and proceeded to separately walk through the lounge.

Inspector A testified that he has been a liquor inspector since February 2011 during which time he has conducted approximately 1200 inspections of licensed establishments. He has been an auxiliary police officer for approximately 10 years. He has considerable experience in identifying and dealing with intoxicated persons and is familiar with the branch policy and procedures related to intoxication.

Upon entering the lounge he walked past the front of the liquor service bar where he observed two male patrons standing, leaning on the bar, between the bar stools. One was wearing a white shirt (patron 1), the other, a blue ball cap (patron 2). Patron 1 fell backwards into the inspector. Patron 2 caught the patron, stopping him from falling over, and apologizing to the inspector. Patron 1 also apologized.

The inspector testified that both patrons were excessively loud and boisterous in their conversation. Patron 1's eyes were observed to be bloodshot, reddened and glassy, his eyelids heavy and droopy. His speech was slurred when apologizing to the inspector. Both smelled heavily of liquor. Questioned on this point by the licensee representative he responded that it was more than just the smell of liquor on the breath it was emanating from their pores.

The inspector took a seat at a table to the side of the bar with inspector B and continued his observations of the two patrons. Patron 1 was consuming beer from a glass; patron 2 was drinking beer from a bottle. Both appeared to be using the bar to steady themselves. They engaged in brief conversations with the bartender. Patron 1, in consuming his beer, was observed to bring his mouth part way to the glass rather than lifting the glass the full way to his mouth. Later the two patrons walked from the bar to the rear exit with a third patron, returning in 10 to 15 minutes. Both patrons 1 and 2 were staggering as they walked. Patron 1 fumbled for a cigarette from a package. They shortly returned to the bar and resumed drinking their beer. Patron 1 was observed to try and sit on a bar stool, but he fell back and was caught by patron 2. At one point patron 1 was observed to walk from the bar to the patio area, and he stumbled and tripped a little as he approached the patio.

He observed patron 1 leave the lounge and he followed him down the stairs to the street level. Two people assisted Patron 1 in going down the stairs by putting his arms over their shoulders. Outside the patron and a female companion waited for a taxi. He showed the inspector that he had one joint left for later at home. At one point the patron stepped back and stumbled into a flower garden. The inspector observed that the patron had red, bloodshot eyes, heavy eyelids, and his speech was slurred. He believed that the patron to be intoxicated.

The inspector testified that he also observed patron 2 in the lounge for approximately 1½ hours during which time he had bloodshot, reddened eyes, heavy eyelids, was loud and boisterous with slurred speech. He staggered when he walked but not as badly as patron 1. He believed patron 2 to be intoxicated.

Neither patron was asked to leave by the establishment's staff. They continued to be served beer which they consumed.

The inspector issued a contravention notice (exhibit 1, tab 2) and made a written request to the licensee for documents and a copy of the security video. The security video was not available but had been viewed by another inspector and was determined to be of too poor a quality to be useful (exhibit 1, tab 8b1). He subsequently prepared a NOEA with a recommendation for a 14 day liquor licence suspension. This was the second contravention for permitting an intoxicated person to remain in a licensed establishment. This licensee had served a previous four day suspension for the same contravention occurring on June 26, 2011, and had attended a compliance meeting on July 6, 2011. The inspector considered that a 14 day licence suspension penalty was necessary in these circumstances to ensure future voluntary compliance. The inspector was concerned that permitting an intoxicated person to remain in a licensed establishment is a serious public safety issue and can lead to harm to the intoxicated person or others.

Inspector B testified that she has been a liquor inspector for approximately two years during which time she has conducted more than 500 inspections of licensed establishments. She has attended a training course on intoxication given by a toxicology consultant for the branch and has had experience with intoxication as a liquor inspector. She is familiar with the physical and mental signs of intoxication as outlined in the branch publication, "A Guide for Liquor Licensees" (exhibit 1, tab 6, p 26).

Upon entering the lounge she made a walkthrough of the licensed area and met up with inspector A who advised her that a patron had fallen into him as he walked by. He wished to stay and observe the situation. She and inspector A took seats at a table along side of the bar. She observed patrons 1 and 2 at the bar drinking from a glass and bottle of beer respectively. After a short while she approached the bar to obtain some water from the bartender and engaged in a conversation with the two patrons. Patron 2 introduced himself and patron 1 to her. He said that they had been golfing and drinking all day and that patron 1 had had his best game ever and that he, patron 2 had played one-handed. He also introduced her to a third patron who he identified as a person who had helped him build his deck.

The inspector testified that she spoke with patrons 1 and 2 for about five minutes. Their speech was slurred, they smelled heavily of liquor. Patron 2 struggled to articulate his words to the point of over-exaggeration. He had red, glassy eyes. Patron 1's speech was mumbled when he spoke to patron 2. He had red eyes and droopy eyelids which he could barely keep open. He was very unsteady and at one point reached over to patron 2 pulling on him with the result that both of them almost fell backward.

The inspector returned to her table. A short time later she observed patrons 1 and 2 and a third patron walk past the table to a rear exit. They were very unsteady on their feet. Patron 1 tried to focus on getting a cigarette out of a package. They later returned to the bar area. Questioned by the licensee representative whether she felt that patron 1 would have been able to negotiate the outside stairs on his own, she replied that she didn't believe that he would be able to. Approximately five minutes later patron 1 walked to the patio, appearing to trip as he entered.

She later observed patron 1 being assisted by two persons at the top of the stairs. He was unable to make it down on his own.

She testified that from her observations of the two patrons she believed both to be intoxicated. She made notes of her and inspector A's observations during the course of the night on her iphone, later sending them to her office computer as an email (exhibit 1 tab 8a1).

EVIDENCE – THE LICENSEE

Witness C is the person identified as patron 2. He testified that he was not intoxicated at the lounge the night of September 17, 2011. He had participated in a Par 3 golf tournament earlier in the day following which he had a couple of beer and then went home for dinner. He went to the lounge at about 6:30 pm, drank approximately six beer and left around 11:00 p.m. He disagreed that he was slurring his words or staggering. He suffers from hay fever when golfing which would account for the red eyes. He tends

to speak loudly particularly when in a crowded room. Shortly after 10:00 p.m. he, accompanied by patron 1 and another friend left the lounge via the rear exit, went down the three flights of stairs and across the street where they smoked a joint of marijuana and returned to the lounge. None of them had any problem with the stairs. Patron 1 was assisted in leaving later in the night as his knee was bothering him. He had hurt it while golfing. He did not see patron 1 bump into anyone that night. He recalls speaking to inspector B at the bar. The conversation lasted less than a couple of minutes.

Witness D is the person identified as patron 1. He testified that he had played in a golf tournament on September 17, 2011. Whereas he normally plays only 9 holes of golf he played 18 holes that day and was subsequently tired. Following the tournament he went home, ate and then went to the lounge with his girlfriend at approximately 7:00 p.m. He drank four pints of beer while there, with an additional glass of beer at the end of the night. He does not recall falling into anyone at the bar, if it appeared that he had it may have been his leg giving out. He was not staggering around. He has a bad leg and after playing 18 holes of golf it may have looked like he was staggering.

Shortly after 10:00 p.m. he and two other patrons left the lounge, went down three or four flights of stairs, then down the hill and across the street to the park where they smoked a marijuana joint. He was tired at the end of the night and felt the effects of the marijuana. He knew that he was over the limit for driving and took a taxi home. His girlfriend and a friend assisted him down the stairs because his leg was hurting.

Witness E testified that she was with patron 1 the night of September 17, 2011. They arrived at the lounge between 7:00 pm and 7:30 p.m. that night. He was not drinking heavily for him, having four or five beer during the evening. She was not aware of him being intoxicated. Patron 2 consumed a few beers and was happy and talkative. Both have loud voices but no louder than others at the bar. Around 10:00 p.m. both patron 1 and 2 left the lounge to go across the street into the park to smoke a joint. This increased the effect of the alcohol consumption, and patron 1 became unsteady on his feet so they decided to go home. It took 45 minutes before they obtained a ride. They

had a couple of glasses of beer while waiting. He was unsteady and sometimes his knee gives way so they assisted him downstairs. She agreed that he was swaying and wobbling around while waiting outside.

Witness F testified that she was working the night of September 17, 2011. It was a busy night with a party in a downstairs licensed area and an unusually busy night in the lounge. She worked as a server in the lounge and assisted in running food orders. She does not recall seeing the two patrons in the establishment that night. They are regular patrons and it would be out of character for them to be staggering, and she would have noticed it. If it were to occur she would immediately notify the bartender/bar manager.

She has six years experience working in licensed establishments and holds a "Serving It Right" (SIR) certificate and a similar certificate from Ontario and is familiar with the signs of intoxication. She will cut patrons off from liquor service if the occasion requires it. The licensee has a "Serving it Right" pamphlet (exhibit 2) posted at the back of the premises. Staff meetings are held monthly whenever all staff can get together. She is not familiar with the branch publication, "A Guide for Licensees".

Witness G testified that he had been golfing with patrons 1 & 2 on September 17, 2011. He went home afterwards and received a call from patron 2 about 8:30 p.m. asking if he was going to the lounge. He arrived at the lounge shortly after 9:00 p.m. Both patrons 1 and 2 were standing at the bar drinking beer and talking about the golf game. Neither were staggering or slurring their words. Shortly after 10:00 p.m. the three of them left the lounge and went to the park to smoke a joint and returned to the lounge. He was unaware whether patron 1 was staggering. Patron 1 was getting tired and showing the effects of smoking marijuana. At about 10:53 p.m. patron 1 was tired and wanted to go home. He and witness E assisted him downstairs. When the taxi arrived he had a brief conversation with the male inspector who was standing outside, asking him if the taxi was his. The female inspector remained upstairs. He then returned upstairs to the lounge. Patron 2 shortly finished his beer and they left.

Witness H testified that he has been a bartender for 12 years, holds a SIR certificate and a similar certificate from Alberta. He was working as bartender/bar manager at the lounge the night of September 17, 2011. At that time he had been working at the lounge full time for approximately three weeks. He had been hired to replace a bartender on maternity leave and to improve the operation of the lounge which was having problems with regular patrons.

September 17th was a busier than normal Saturday night with a band performing in the lounge and two other functions in licensed areas downstairs. In addition to bartending/bar managing in the lounge he was checking on the downstairs functions and assisting with food orders. There was one server working in the lounge. The lounge manager (witness I) was away on vacation. Following the incident he was contacted by inspector A and requested to write up a report. He watched a video surveillance tape for the night and wrote up an incident report (exhibit 1, tab 10e).

He knows patrons 1 and 2 as regulars. They were in the lounge that evening, standing at the bar discussing their golf game earlier in the day. They seemed to be in good shape. He did not observe them to be staggering or he would have cut them off from further liquor service. He served patron 1 four to five pints of beer during the night, plus two glasses of beer at the end of the night while he was waiting for a ride. He was not concerned that either patrons 1 and 2 would be driving home. Their safety was not an issue. Patron 1 had wanted pints of beer at the end of the night but was restricted to glasses as his condition had deteriorated since returning from the patio. In hindsight he should have taken the last glass from him and dumped it out. He did his best at the time. He is not aware of what activities patrons engage in when they go outside of the premises unless it affects the safety inside. His job is to be concerned about what occurs inside.

He testified that he held a staff meeting after the liquor licence was suspended for the first contravention. He explained to staff what had occurred and what needed to be done in the future. If a judgment call was made to cut-off liquor service to a patron it was to be made sooner. Pre-shift meetings are held with staff and communications between staff on different shifts are undertaken to make staff aware what patrons have been drinking. The expectations of regular patrons have changed. They will depart for another bar if they are getting to the point where they may be cut-off at the lounge.

He testified that there have not been any further incidents since September 17th. Staff are well aware of the requirements and realize that the branch is serious; allowing intoxicated patrons in the lounge is not acceptable. They have used this enforcement hearing as a position for change.

Witness I testified that he is the principal of the third party operator of the lounge and holds a SIR certificate. The lounge had an earlier contravention for an intoxicated patron. Following notification by the branch, he viewed the security video of the earlier incident and accepted the penalty. An intoxicated patron had been served by the bartender. The bartender was fired and he hired the current bartender (witness H) who has 12 years experience and in whom he has confidence.

When notified of the September 17th allegation he viewed the security video. It depicts patrons 1 and 2 at the bar and patron 1 on the patio smoking a cigarette. Neither are staggering. He was unaware how to save the video at the time. A liquor inspector viewed the video. He did not know how to save it either but said that if the branch had need of it he would return with a technician. He did not hear further from the branch and so allowed the video to erase. The quality of the videos from the security system is good and they have been used by the police in the past.

He testified that he does not agree with inspector A's testimony that patron 1 fell into him. The space between the bar and a post and tables is only about four feet. With patrons 1 and 2 standing at the bar that would allow only two feet for anyone to pass behind and it is likely that they would be bumped because of the small space.

He testified that they do provide information to staff necessary to do their jobs and they hold staff meetings. Bulletins and notices, as depicted in the photographs at exhibit 3, are posted for staff to read as is the SIR pamphlet (exhibit 2). The Guide for Licensees is not reviewed with staff as there is much information in there that is not necessary for them. It is available in the office for staff to read. He does not have a training manual for staff but relies on the SIR training program and hires only experienced staff. They maintain an incident log and record any problems or information necessary for other staff (excerpts in exhibit 3). The number of staff is small, five to six employees. He works there as the day bartender and is often there seven days a week. He was not present the night of September 17, 2011.

Staff does cut-off liquor service to patrons when it is necessary to do so. Most patrons are regulars and have been coming to the lounge for years. The drinking habits of some are no longer allowed. They are making changes with those that are necessary. It is not always well accepted.

SUBMISSIONS – the Branch

The branch advocate's submission is summarized as follows:

Section 43(2)(b) of the Act prohibits a licensee from permitting an intoxicated person from remaining in a licensed establishment where liquor is sold or served. The elements constituting the contravention have been proven. The liquor inspectors observed two intoxicated patrons in the licensed area of the establishment for approximately 1 ½ hours. The licensee knew or ought to have known the intoxicated

condition of the two patrons as they were clearly visible to staff and had interacted with the bartender who continued to serve them liquor (beer).

For the licensee to be duly diligent, the licensee must do all that is reasonable to prevent the occurrence of the contravention. The licensee must provide adequate training for staff and have a system in place to prevent the contravention. The licensee must take reasonable steps to ensure that the system is effective. Here the licensee failed to implement adequate training and an adequate system to ensure that its policies were acted upon. Having signs is not sufficient if they are not acted upon. No written tests were administered to staff.

The licensee failed to provide adequate supervision for its employees. The licensee failed to provide the employees with adequate training for the mental and physical signs of intoxication. The licensee's defense of due diligence must fail.

The recommended 14 day licence suspension penalty is necessary to reinforce the need for voluntary compliance.

SUBMISSIONS – the Licensee

The licensee's submission is summarized as follows:

The integrity and experience of the liquor inspectors is in question. Inspector A is prone to exaggeration. He testified that in one year as a liquor inspector he has conducted in excess of 1200 inspections. This would require four inspections a day, seven days a week. He testified that patrons 1 and 2 were louder than other patrons at the bar whereas other testimony was that they were no louder than others at the bar. He testified that patron 1 fell into the flower bed outside. This is an exaggeration. He testified that liquor was coming out of the pores of patrons 1 and 2. This is an exaggeration.

Inspector B testified that she observed patron 1 outside downstairs waiting for a taxi, whereas inspector A testified that he went downstairs while B remained inside upstairs. Inspector B testified that patron 1 could not have negotiated the flights of stairs to go outside earlier in the evening whereas the evidence of patrons 1 and 2 and witness G was that they all negotiated the stairs.

The inspectors did not make separate notes of their observations. Inspector B made notes of both inspector A's as well as her own observations. The summary of evidence provided was made jointly by the inspectors, they collaborated on the events. Neither was as observant as he or she should have been as neither testified about the strong English accent of patron 1.

The symptoms displayed by patrons 1 and 2 were not signs of intoxication. Patron 1 is overweight and has a bad knee. Patron 2 has hay fever. Persons standing at a bar will lean upon the bar.

The bartender, witness H, served patron 1 at 10:30 p.m., about the time that the marijuana was having an effect. He noticed the patron's condition at 10:38 p.m. The patron was outside at 10:52 pm, thus the patron was cut-off and removed from the premises within 14 minutes. Patron 2 was not in as poor condition and there were no concerns about letting him remain inside.

They are aware of their responsibility for a patron's safety and do not serve a patron to the point of gross intoxication. There is no scientific measure for intoxication. The symptoms may be misconstrued. It is a judgment call on the part of each person. If staff observes a person to be intoxicated, they will not be served. If the inspectors were concerned about the condition of the patrons they should have advised staff on duty at the time.

The licensee was duly diligent. Experienced staff were hired and provided with information about their responsibilities and what was expected of them. The bartender had 12 years experience without a contravention. There is good communication among staff.

REASONS AND DECISION

I have considered all of the evidence and the submissions of the branch advocate and the representative for the licensee.

Intoxication

The branch has presented evidence that during the evening hours of September 17, 2011, two liquor inspectors conducted a covert inspection of the licensed lounge area of the Coachman Inn in Victoria. The attention of inspector A was drawn to patrons 1 and 2 standing at the bar when patron 1 fell into the inspector as he passed by the bar area. The inspector observed signs of intoxication in the two patrons. Subsequently he and inspector B took seats in the lounge where they observed the patrons for approximately 1 ½ hours. During this time they observed signs of intoxication in the two patrons, namely slurred speech, reddened and glassy eyes, a strong odour of liquor, loud boisterous behaviour.

Patron 1 was noted to be staggering when walking, appearing to stumble at one point, was unsteady on his feet at the bar and was assisted in maintaining his balance by patron 2. He had heavy, droopy eyelids. He fumbled while getting a cigarette from its package. He was assisted in going down the stairs on leaving the premises. Outside he was swaying, was unsteady on his feet, and stumbled into a flower garden.

Both inspectors have experience in identifying intoxication. Both concluded that patrons 1 and 2 were intoxicated. The bartender at the lounge observed the patrons condition yet continued to serve them liquor (beer), making no effort to cut-off liquor service and have the patrons leave the premises as required by the Act.

The licensee has presented evidence that the two patrons were not overserved and had consumed only a moderate amount of liquor over several hours at the lounge that night. The symptoms exhibited by the two patrons were not due to intoxication but rather medical conditions, tiredness and the use of marijuana. These conditions increased during the course of the evening resulting in patron 1 having to be assisted in leaving the premises. The bartender, observing the deteriorating condition of patron 1, had essentially cut-off further liquor service. The patron left the premises within a short period of time.

I prefer the evidence of the liquor inspectors. Inspector B made notes of their observations during the course their inspection. I have no reason to doubt the integrity or veracity of the inspectors' evidence. They presented their evidence *viva voce* with every opportunity for challenge by the licensee representative.

The physical and mental signs of intoxication as described in the Guide provide a description of the symptoms, which without evidence to the contrary, provide evidence from which a state of intoxication in an individual may be concluded. These signs of intoxication have been provided to licensees by the branch. Here the patrons exhibited symptoms of intoxication. Some of those symptoms may have been exacerbated by medical conditions and by the tiredness of the patrons but I am satisfied are nonetheless symptomatic of the patrons' state of intoxication.

On the whole of the evidence, I find on a balance of probabilities that the two patrons observed by the inspectors during the evening hours of September 17, 2011, were intoxicated.

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 respondent superior has no application. The due diligence which 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.

In the context of liquor enforcement in British Columbia, the BC Supreme Court in the case of *Plaza Cabaret v. General Manager, Liquor Control and Licensing Branch* (2004) BCSC 248, sets out the criteria a licensee must meet in order for it to be found not responsible for contravention under the Act:

[25] If a licensee is not to be responsible for unlawful conduct occurring in its establishment within the meaning of Section 36(2)(b), it must prove, on a balance of probabilities each of two facts: that the employee was not

the directing mind of the licensee in relation to that part of the licensee's operations in connection with which the unlawful conduct arose, and, if that proof is provided, that those who are, in fact, responsible for that part of the licensee's operation were duly diligent in attempting to prevent the occurrence of unlawful conduct or activities.

The court in *Plaza Cabaret* clarified that the directing mind need not be an officer or director of the licensee:

[27] In this instance, the General Manager concluded that the bartender did not adhere to the licensee's policy of zero tolerance of drugs in the establishment so that the licensee was liable. The General Manager did not address the question whether the employee was the licensee's directing mind and will in the area of operations relevant to the unlawful conduct, namely the supervision of patrons wherever seated in the establishment. If the bartender were found to be the directing mind of the licensee for that purpose, his actions would be those of the licensee so that his lack of due diligence would necessarily be that of the employer. *If he was not the directing mind and will for that purpose, one would be required to decide who was. Such person need not be an officer or director of the licensee. It would be the individual or individuals, perhaps the general manager or the shift manager or supervisor, who had sufficient authority in respect of the sphere of relevant operations to be worthy of the appellation 'directing mind and will' of the licensee.*

[28] Having failed to consider the role of the bartender in the licensee's operations, the General Manager overlooked the remaining question, *namely whether those who were the directing mind and will of the licensee in relation to the supervision of patrons' activities on the night in question, if not the bartender, had been duly diligent in their attempts to prevent unlawful conduct by taking reasonable steps to supervise staff and patrons.* That inquiry requires, of course, consideration of *who, on the*

premises on November 9, 2001, was the licensee's directing mind and will in the establishment in so far as supervision was concerned and an answer to the question whether, on the balance of probabilities, that individual or those individuals, be it the general manager or others in authority on site at the time, took the steps reasonably to be expected of them that night to prevent drug-trafficking.

(My emphasis in italics)

The licensee does not have a training program for its employees. It relies on hiring employees with previous experience who have completed SIR training. There is no training or procedures manual which an employee could refer to. There are some bulletins posted for staff perusal.

Section 43 of the Act requires that a licensee must not sell or give liquor to an intoxicated person, must not permit a person to become intoxicated or permit an intoxicated person to remain in a licensed establishment. To meet these requirements a licensee must monitor the condition of patrons on a continuing basis.

Here, we had an inspection by two liquor inspectors during the course of which their attention was drawn to the behaviour of two patrons. The behaviour raised concerns that the patrons may be intoxicated. Observations by the inspectors for a period of 1 ½ hours confirmed their concerns. At the time of the inspection, the licensee representative was not present and establishment was being operated by two employees, a server and a bartender who also acted as the bar manager when the licensee representative was not present. It was a busy night. Both, in addition to their duties in the lounge, were engaged in other duties as well. Neither of the employees took any action to deal with the patrons. The bartender/bar manager was also overseeing activities in two other licensed areas. He was, in the strict legal sense, the directing mind of the licensee.

On the whole of the evidence, I find that the employees either failed to monitor the patrons to a sufficient degree to meet the requirements of the legislation or failed to recognize the intoxicated condition of the patrons.

Through the previous contravention process and compliance meeting held with the liquor inspector, the licensee was well aware of the branch's concern regarding the intoxication of patrons found within the establishment. It is apparent from the evidence that some portion of the regular clientele of this establishment, left to their own decision processes, will consume to the point of intoxication. The licensee and its staff, knowing of this situation, must be particularly vigilant. Here, two intoxicated patrons were not identified as such by the staff on duty and were permitted to remain in the establishment.

Giving consideration to the evidence as a whole, I find that the licensee's system was not sufficient to reasonably ensure compliance with the law relating to the prohibition of permitting intoxicated patrons to remain in the licensed area of the lounge.

In conclusion, I find that the licensee is not entitled to the benefit of the defence of due diligence.

In conclusion, I find on a balance of probabilities that on September 17, 2011, the licensee contravened section 43(1)(b) of the *Liquor Control & 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.

PENALTY

Pursuant to section 20(2) of the Act, having found that the licensee has contravened the Act, the Regulations and/or the terms and conditions of the licence, I 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 Notice of Enforcement Action. 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 achieving voluntary compliance. The factors that are considered in determining the appropriate penalty 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.

This is the second contravention of the same type for this licensee for this licence within the 12 months preceding this contravention. I therefore find this to be a second contravention for the purposes of Schedule 4 and calculating a penalty.

Permitting intoxicated persons to remain in a licensed establishment can have a deleterious effect within the licensed establishment and within the community at large. All reasonable measures to ensure both general and specific deterrence within society at large should be undertaken. Giving consideration to all of the evidence and submissions, and the seriousness of the contravention, I find that a penalty is necessary to ensure future voluntary compliance.

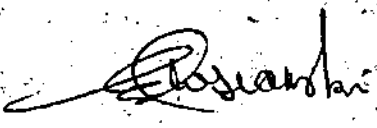
Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4 of the Regulations provides a range of penalties for a first contravention of this type. The branch has proposed a 14 day suspension as the contravention occurred shortly following the first contravention and a subsequent compliance meeting. In the circumstances here I find that the recommended fourteen day license suspension is necessary, appropriate and reasonable.

ORDER

Pursuant to Section 20(2) of the Act, I order a suspension of Liquor Primary Licence No. 120212 for a period of fourteen (14) days, to commence as of the close of business on Friday, June 29, 2012, 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 Victoria Police Department from the close of business on Friday, June 29, 2012, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Signs satisfactory to the general manager showing that a license suspension 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.



Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: May 28, 2012

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

Liquor Control and Licensing Branch, Victoria Office
Attention: Olubode Fagbamiye, Branch Advocate



March 12, 2012

Dear Miss Elizabeth:

I have talked to Mr. Stanley about this contravention and he would like to dispute these allegations. I hereby authorize you to communicate with Mr. Stanley in regards to this matter. Please advise if this is satisfactory. Also please advise the outcome of the hearing.

Thanking you,

Sincerely,

A handwritten signature in black ink, appearing to read "Akber", is written over a diagonal line that extends from the bottom left towards the middle right of the page.

Akber Kassam

President

Fort Chelsea Holdings

DBA Travelodge Victoria

VICTORIA

229 Gorge Road East, Victoria, B.C. V9A 1L1 (250) 388-6611 Fax (250) 388-4153 Reservations 1-800-578-7878

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Fisher, Mandy MEM:EX

From: Fisher, Mandy MEM:EX
Sent: Monday, May 28, 2012 3:27 PM
To: 'info@theupperdeck.ca'
Subject: Decision Released - Coachman Inn

Dear Miles Stanley,

Please see attached the recent decision issued for Case No. EH11-138.
The signed original will be sent out to you in today's mail.

Kind regards,



Coachman Inn
EH11-138.pdf

Mandy Fisher

Case Administrator
Liquor Control and Licensing Branch
Phone: 250 952-7032
Fax: 250 952-7066
www.pssg.gov.bc.ca/lclb



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

File: EH11-138
Job: 000699122-030

6 February 2012

FORT CHELSEA HOLDINGS LTD.
c/o FORT CHELSEA HOLDINGS LTD.
1-709 BELTON AVE
VICTORIA, BC V9A 2Z7

Re: Licence Number: 120212
Licence Type: Liquor Primary
Licence Expiry Date: January 31, 2012
Establishment: Coachman Inn (Victoria)
CN #: B007170

The purpose of this notice is to inform you that pursuant to section 20 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

This Notice of Enforcement Action (NOEA) will:

1. Set out the branch's allegation(s) of non-compliance with the Act, and or the *Liquor Control and Licensing Regulation* (the Regulation) and or the terms and conditions of the licence,
2. Provide a narrative of events,
3. Describe the evidentiary basis for the elements of each alleged contravention,
4. Provide reasons why the branch is pursuing enforcement,
5. Provide reasons why the branch believes the particular enforcement action (i.e. penalty) proposed is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Public Safety
and Solicitor General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

<http://www.pssg.gov.bc.ca/lclb>

1. THE ALLEGED CONTRAVENTION(S):

No.	Name of Contravention(s)	Section of the Act/Regulation	Date and time of Contravention(s)	Proposed Enforcement Action
1.	Permit intoxicated person to remain, s. 43(2)(b) Act	s. 43(2)(b) Act	2011-SEP-17 9:30 PM	14 day suspension

2. NARRATIVE

Coachman Inn (Victoria), also known as the Upper Deck Sports Lounge, is an establishment that holds a liquor primary class of licence. The hours of operation as it appears on the liquor licence are Monday – Saturday from 11:00am until 1:00am and Sunday from 11:00am until 12:00am (Midnight).

An inspection was conducted at the Coachman Inn (Victoria) on the evening of September 17th, 2011. This inspection was done in cooperation by Liquor Control and Licensing Branch Inspectors Castle and Brown.

The Inspectors entered the above noted premise at approximately 9:20pm and did not identify themselves to the staff. As the Inspectors walked by the front of the bar area a male in a white collared shirt with a blue hat (later identified as ^{s.22} fell back into Inspector Brown. Another male, in a blue collared shirt with a blue hat (later identified as ^{s.22} had to catch ^{s.22} fall. A strong odour of liquor was detected coming from both ^{s.22} and their behaviour was excessively boisterous. ^{s.22} speech was also slurred as he apologized to Inspector Brown for his stumbling action.

The Inspectors then proceeded to sit at a table to the front and right of the bar where they had a clear and unobstructed view of the bartender, ^{s.22} and the patrons sitting at the bar, including ^{s.22}

At approximately 9:26pm, the Inspectors watched as ^{s.22} consumed a pint of beer that was about half full. The liquid in the glass was amber and had a minimal amount of foam on the top. They further watched ^{s.22} consume a bottle of beer. The bottle was dark brown glass with a beer label. ^{s.22} were both leaning on the front of the bar as if to steady themselves. It was noted that ^{s.22} was only taking small sips from his glass of beer and really focused on getting the beer into his mouth ^{s.22} was also tipping his head towards the glass instead of bringing the glass to his mouth.

At approximately 9:27pm, the bartender was interacting with ^{s.22} The conversation was not heard and was noted to have lasted several seconds. Then at approximately 9:35pm, the bartender was interacting with ^{s.22} again about an incident that just happened at the bar with another patron yelling at the bartender. This interaction with ^{s.22} is for approximately one minute. The communication between the bartender and ^{s.22} would have afforded the bartender an opportunity to determine the level of the patron's intoxication and this staff member ought to have known to remove him from the establishment at this time.

At approximately 9:41pm, it was noted that the bartender interacted with ^{s.22} Shortly after this interaction, the bartender served ^{s.22} a glass of beer and ^{s.22} then gave

the bartender cash for the purchase. The bartender then took^{s.22} money and went over to the register and brought back change for^{s.22}

At approximately 9:42pm, Inspector Castle approached the bar with the intent to order water from the bartender and observe the conversation of patrons^{s.22} seated and leaning on the bar. Almost immediately,^{s.22} started talking to Inspector Castle. He introduced himself and was emanating a very strong odour of liquor (beer). Inspector Castle noted that^{s.22} had bloodshot and glassy eyes and both were having trouble focusing on their words, to the point of over exaggerating their speech. Inspector Castle also noted that both^{s.22} eye lids were droopy and squinted.^{s.22} stated that his friend^{s.22} shot the best golf game of the year,^{s.22} stated he played the par 3 course one handed and further advised that he had a lot to drink but he was going to take advantage of a taxi for his ride home. Inspector Castle noted that^{s.22} tried to grab^{s.22} to speak with him and they both stumbled back.^{s.22} then introduced Inspector Castle to another gentleman (wearing a black shirt) at the bar and^{s.22} advised that this gentleman helped him build his deck recently. Inspector Castle spoke with^{s.22} for approximately 5 minutes and then returned to table.

At approximately 9:52pm, Inspector Brown observed^{s.22} fall back again as he attempted to sit on the bar stool and the gentleman wearing the black shirt^{s.22} friend) had to catch^{s.22}

At approximately 10:01pm,^{s.22} and the gentleman wearing the black shirt^{s.22} friend) walked by the Inspector's table and both^{s.22} were staggering side to side as if they were shuffling. It was also noted that^{s.22} was struggling to get a cigarette out of the package he was holding. Then at approximately 10:07pm,^{s.22} returned and again walked past the Inspector's table. They were unsteady on their feet as they walked towards the bar and an unknown patron tried to start dancing with^{s.22} could barely keep his balance and continued staggering back to the bar area.

At approximately 10:34pm^{s.22} was seen leaving the bar area for the patio near where the band had been playing. The Inspectors saw him swaying side to side and almost fall before the patio door.

At approximately 10:53pm^{s.22} was leaving the bar with the help of a woman he was with and another patron. Inspector Brown followed him out and observed that the woman and the other patron had to hold^{s.22} up and help him get down the stairs of the establishment.

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

3.1 Permit intoxicated person to remain, s. 43(2)(b) Act

- The patrons were displaying signs of intoxication while consuming liquor in the part of the establishment where liquor is sold, served or otherwise supplied.
- Patron^{s.22} remained within the service area, in clear sight of the staff, while exhibiting signs of intoxication. Namely an unsteady gait, loss of motor skills, slurred and boisterous speech, emanating strong odour of liquor, and glazed

expression with bloodshot, droopy and glassy eyes.

- Patron s.22 remained within the service area, in clear sight of the staff, while exhibiting signs of intoxication. Namely an unsteady gait, slurred and boisterous speech, emanating strong odour of liquor, and glazed expression with bloodshot, droopy and glassy eyes.
- The bartender serving and interacting with the intoxicated patrons ought to have known that the patrons were intoxicated by the signs and symptoms being displayed.
- The patrons were permitted by staff to remain in the licenced premise while displaying signs of intoxication.

Other factors: The Terms and Conditions Guide for Liquor Primary Licensees states that it is the Licensees responsibility to make sure patrons do not become intoxicated while in their establishment. A Licensee must not let a person who is apparently under the influence of alcohol or drugs enter or remain in their establishment. The Licensee must refuse the person service, have the person removed, and see that he or she departs safely.

4. REASONS FOR PURSUING ENFORCEMENT

4.1 Permit intoxicated person to remain, s. 43(2)(b) Act

To prevent the possibility of further liquor consumption by intoxicated patrons and avoid any harm to themselves, other patrons, or staff, a licensee must not permit a person who is intoxicated to remain in the part of the establishment where liquor is served. To ensure safety, intoxicated persons may remain in unlicensed areas of an establishment while waiting for assistance or a ride home.

In this case, the Inspectors observed the intoxicated patrons in the service part of the licenced establishment for approximately one and a half hours, while staff continued to serve them liquor. Additionally, due to recent enforcement history with the Licensee and the verity that the Licensee is unable or unwilling to operate the establishment under voluntary compliance with the *Liquor Control and Licensing Act*, enforcement action is being pursued.

5. REASONS FOR THE PROPOSED ENFORCEMENT ACTION (i.e. penalty)

5.1 Permit intoxicated person to remain, s. 43(2)(b) Act :

For the contravention of permit intoxicated person to remain, contrary to section 43(2)(b) of the Act, a suspension penalty of fourteen (14) days is proposed. This recommended suspension falls within the penalty range set out in Item 11, Schedule 4 of the Regulation for a second contravention of this type.

A licence suspension of fourteen days is warranted because of the fact that the Licensee had a four (4) day suspension penalty applied for a proven contravention of the same

type that happened less than 3 months prior in June 2011. Furthermore, a follow-up compliance meeting was held in July 2011 to resolve issues and protocol for intoxicated patrons. Given the circumstances of the contravention on September 17th, 2011 and the actuality that there were multiple intoxicated patrons staff interacted with, this penalty is further justified.

The suspension will be served commencing on a Saturday and continue on successive business days until completed.

In this case, staff members failed to sufficiently monitor levels of intoxication of two patrons inside the establishment and subsequently did not take appropriate action to remove them from the premises. This penalty should suitably impress to the Licensee the seriousness of maintaining public safety through compliance with Branch Regulations, discourage similar incidents from occurring in the future, and send a visible message to the local community that LCLB will address multiple incidents of non-compliance appropriately.

6. THE PROCEDURES

The licensee may agree with or dispute the above allegation(s) and proposed enforcement action.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine what enforcement action will be imposed on the licensee. The general manager may:

- Impose a suspension of the liquor licence for a period of time,
- Impose a monetary penalty,
- Cancel the liquor licence,
- Rescind, amend or impose new terms and conditions on the licence, and/or
- Order a transfer of the licence.

Imposing enforcement action is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted, the general manager must follow the minimums set out in Schedule 4 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is in the public interest to do so. The general manager is not bound to order the enforcement action proposed in this NOEA.

Schedule 4 of the Regulation sets out the range of enforcement actions when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose

of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If the licensee agrees that the contravention(s) took place and accepts the enforcement action proposed, there is no need for a hearing. In that case, the licensee must sign a document called a waiver. By signing a waiver, the licensee irrevocably:

- Agrees that the contravention(s) occurred,
- Accepts the proposed enforcement action,
- Agrees that the contravention(s) and enforcement action will form part of the compliance history of the licensee, and
- Waives the opportunity for an enforcement hearing.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact Inspector Brown at 250-741-3625 as soon as possible. If you do not sign a waiver, the branch will schedule a pre-hearing conference for you to discuss the hearing process with the branch registrar and the branch advocate.

For further information about the hearing and waiver process please visit our website at: http://www.pssg.gov.bc.ca/lclb/comp_enforce/index.htm

Respectfully,

Wayne Brown
Special Provincial Constable
Liquor Inspector #104

Enclosures

*Copy of Liquor Control and Licensing Branch Enforcement Process –
Information for Liquor Licensees* (located at <http://www.pssg.gov.bc.ca/lclb/docs-forms/LCLB168.pdf>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 20(2) of the Act:

Past Enforcement Action Taken

Date	Licence Number	Identifying Documents	Finding of Contravention	Enforcement Action
June 26, 2011	LP#120212	CN# B009331 EH# 11-108	Permit Intoxicated Person to Remain, s.43(2)(B) Act	4 day suspension

Compliance Meetings

Date	Topic
July 06, 2011	Intoxicated patron issues



File: EH11-108
Job: 000699122-029

November 21, 2011.

Fort Chelsea Holdings Ltd.
c/o Miles Stanley
229 Gorge Rd. East
Victoria, BC V9A 1L1

Dear Licensee:

Re: Licence Number: 120212

COACHMAN INN (VICTORIA)
229 Gorge Road East
Victoria, BC V9A 1L1

The purpose of this letter is to inform you of the procedures of the Liquor Control and Licensing Branch for imposing enforcement action on the above noted licence. The enforcement action was ordered in the enforcement decision dated November 18, 2011.

It is important to note that you are responsible for the actions of your employees. You should ensure that managers and staff are familiar with the terms of the enforcement action and their responsibilities.

Ministry of Public Safety
and Solicitor General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

<http://www.pssg.gov.bc.ca/lclb>

Enforcement Action

Suspension:

Arising from the licensee's non-compliance with section s. 43(2)(b) Act, the licence will be suspended for four (4) business days starting at the close of business on Friday, December 16, 2011 until the opening of business on Wednesday, December 21, 2011. "Business day" means a day on which the establishment would normally be opened for business.

Signs satisfactory to the general manager showing that the licence is suspended 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 suspension.

Suspension procedures:

A Liquor Control and Licensing Branch inspector or police officer will attend your establishment prior to opening time on the first day of the suspension to:

- remove the licence,
- post the signs referenced above.

You should make arrangements with the Liquor Control and Licensing Branch inspector or police officer to obtain your licence at the end of the suspension period.

Responsibility of licensee:

1. You must allow the Liquor Control and Licensing Branch inspector or police officer to post the suspension signs. You must not remove, obscure, or alter the prominence and visibility of those signs during the suspension.
2. You must hand over the licence to the Liquor Control and Licensing Branch inspector or police officer when asked.
3. The establishment must remain closed to the public during the period of suspension.
4. You must not permit the sale, service or consumption of liquor in the establishment while the licence is suspended. The licensee is responsible for ensuring there is no sale, service or consumption of liquor in the establishment during the suspension period.
5. You may not de-licence in order to have another event in your establishment. Any previously approved de-licensing event that occurs during the suspension period is automatically rescinded.
6. The establishment is not eligible to hold any Special Occasion Licences (SOL) events during the suspension period. Any previously approved SOL that occurs during the suspension period is rescinded.
7. You may purchase liquor from an approved outlet to stock your establishment during the period of the suspension.

There are serious consequences for the service of liquor in the establishment by any party while a licence is under suspension. If liquor is served, consumed, or sold within the establishment while a licence is suspended, the general manager will do one of the following:

- cancel the licence,
- require that the licence be transferred within a specified time period and cancel the licence if it is not transferred within that time period,
- impose a suspension of at least 15 days.

Contact Number

If you have any questions about the matters covered in this letter, please contact the inspector responsible for your area at 250 952-5744.

Yours truly,



Bruce Edmundson
Deputy General Manager
Compliance and Enforcement

CC: Victoria Police Department
Clerk/Secretary City of Victoria
Manager of Licensing Rebecca Villa-Arce
Regional Manager Gary Barker
Inspector Shannan Johnston



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 20 of
*The Liquor Control and Licensing Act RSBC c. 267***

Licensee:	Fort Chelsea Holdings Ltd. dba Coachman Inn (Victoria) aka The Upper Deck Sports Lounge 229 Gorge Road East Victoria, BC V9A 1L1
Case:	EH11-108
For the Licensee:	Miles Stanley
For the Branch:	Bode Fagbamiye
Enforcement Hearing Adjudicator:	George C.E. Fuller
Date of Hearing:	Written Submission
Date of Decision:	November 18, 2011

INTRODUCTION

The Corporate Licensee, Fort Chelsea Holdings Ltd., dba Coachman Inn (Victoria) (the "the Licensee") owns and operates a hotel property in Victoria, BC. Within that facility, is an establishment known as The Upper Deck Sports Lounge (the "Sports Lounge"), operated under a third party agreement with 0847964 BC Ltd. The principal of the Sports Lounge is Miles Stanley, who is the authorized representative of the Licensee in these proceedings.

According to the terms of the Liquor Primary Licence, the Licensee may sell liquor from 11am to 1am, Monday through Saturday, and 11am 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 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 August 11, 2011.

The Branch alleges that on June 25, 2011, 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 the licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is a four day licence suspension (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*) (the "Regulation"). 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 dollar monetary penalty.

The Licensee does not dispute that the contravention occurred. However, it disputes the proposed penalty. The Branch and Licensee agreed that the hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS

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

Drunkennness

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

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

ISSUES

1. Did the contravention occur?
2. Was the Licensee duly diligent?
3. If the Licensee was not duly diligent, are penalties warranted under the circumstances?
4. If a penalty is warranted, what is the appropriate penalty?

EXHIBITS

The following documents were submitted and were considered:

Exhibit 1: The Branch's book of documents, Tabs 1 to 13 inclusive.

Exhibit 2: Letter dated October 19, 2011 to the Branch from Miles Stanley, the operator of the Licensee's establishment.

EVIDENCE OF THE BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged, and, therefore, it is deemed to accept the facts as put forward by the Branch with respect to the issue of whether the contravention occurred. The Licensee has, however, made submissions in respect to the appropriateness and fairness of the penalty which the Branch has recommended.

Accordingly, the evidence may be summarized as follows:

On Sunday, June 26, 2011, at approximately 12:00 am (midnight) (business day of Saturday, June 25, 2011) liquor inspector 1 and liquor inspector 2 entered the Licensees establishment and observed a male patron seated in the middle of the main service bar. The Patron was showing signs of intoxication. He had droopy eyes, his eyes closed for extended periods and he had exaggerated movements. The patron was sitting with half of a consumed clear liquid martini in front of him. He would pick the martini up and make a face of displeasure when taking a drink. Inspector 1 stated to Inspector 2 that this patron was about to throw up. In fact, about 10 seconds later, the patron got up from his seat and walked in a stiff, sudden manner to the washroom. Inspector 2 followed the patron into the washroom where he witnessed him throw up.

Upon exiting the washroom, the patron approached the Inspectors and was attempting to speak with them. He took his tooth out in front of the Inspectors and then repositioned it. His speech was so slurred that the Inspectors could not understand what he was trying to convey, but his gestures indicated that he was trying to explain why he had wet spots all over the groin area of his dress slacks.

While talking to the female server, the Inspectors observed the bartender pour and serve another shooter to the intoxicated patron. The Inspectors then instructed the bartender that the patron needed to be removed from the establishment immediately.

The bartender said he would call the patron a taxi but the Inspectors insisted that the patron be removed from the red line area, where he could await the arrival of a taxi. The Inspectors left the premises at 12:15 am. At 12:30 am on Sunday, June 26 being the business day of Saturday, June 25 the bartender called Inspector 1 and advised that he took full responsibility for serving the intoxicated patron the additional shooter.

SUBMISSIONS OF THE BRANCH

The Branch submits that, in order to avoid the possibility of further consumption and avoid any harm to other patrons, or staff, the Licensee must not permit a person who is intoxicated to remain in that part of an establishment where liquor is served. In order to ensure their own safety, an intoxicated person may remain in an unlicensed area of the establishment, while waiting for assistance, or a ride home.

In the present case, the staff had a reasonable opportunity to intervene and ensure that the patron was prohibited further access to alcohol and be made to leave. The bartender, who was the directing mind of the Licensee at the time, took no such steps to ensure the safety and well being of the patron. This was despite the fact that the establishment was not busy. The patron clearly demonstrated a significant level of intoxication and was not removed until pointed out by the liquor inspectors to the staff. This demonstrates a clear failure of compliance with the legislation and branch policy prohibiting patron intoxication in licensed establishments.

The Branch is recommending a suspension of the licence as it will impress upon the Licensee and staff and the public that allowing such behaviour is not permitted and will result in serious consequences. The suspension penalty is proportionate to the seriousness of the circumstance of permitting patron intoxication.

In view of the fact that there has been no compliance history within the previous 24 months, the Branch is recommending a four day liquor licence suspension in order to bring the Licensee into compliance.

SUBMISSIONS OF THE LICENSEE

The Licensee submits that the proposed penalty of a licence suspension for four days is not warranted. Although the Licensee admits that the contravention occurred, it was unaware of a number of crucial factors which contributed to the contravention. Specifically, at the time of the contravention,^{s.22}

s.22

s.22

This action,

therefore, should be sufficient to satisfy the concerns of the Branch and, therefore, no further sanctions should be required.

The Licensee further submits that, given the poor economic times, any further action on the part of the Branch would create an undue hardship on the business of the Licensee.

The Licensee also submits that it has worked hard educating and training staff based on the guidelines outlined by the Branch and that, therefore, no penalty should be levied at all. At the very least, the Licensee says that it should be able to choose the suspension dates, as it has significant business booked through to the new year.

ANALYSIS AND DECISION

The Licensee has admitted to the contravention. Having considered all of the evidence, and the submissions of the Branch and the Licensee, I find that on Sunday, June 26, 2011, at approximately 12:00 am (business day of Saturday, June 25, 2011), the

Licensee contravened 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, served or otherwise supplied.

DUE DILIGENCE

The Licensee is entitled to a defence to the contravention, 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 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.

Here there is virtually no evidence upon which I can find that the Licensee was duly diligent. In this regard, I note that the Licensee has asserted that it has conducted staff education and training for its employees which such sessions have been based upon the guidelines outlined by the Branch. The Licensee has not however, provided any documentary evidence supporting this assertion. I have concluded, therefore, that the Licensee, in this case, is not entitled to the benefit of the defense of due diligence.

PENALTY

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

- Impose a suspension of the Liquor Licence for a period of time;
- Cancel a Liquor Licence;
- Impose terms and conditions to a Licence or rescind or amend existing terms and conditions;
- Impose a monetary penalty;
- Order a Licensee to transfer a licence.

Imposing any penalty is discretionary. However, if I find that either a Licence suspension and/or a monetary penalty is warranted, I am bound by the minimum 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 voluntary compliance with the Act, the Regulation, and the terms and conditions of the Licence. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the Branch and/or the police, the seriousness of the contravention, the threat to public safety and the well-being of the community.

Schedule 4, Item 11, of the Regulation, sets out penalties for first contraventions of Section 43(2)(b) of the Act, a licence suspension of four to seven days and/or a monetary penalty of between \$5,000 to \$7,000. The Branch has recommended a Licence suspension of four days, which is the minimum suspension for this particular contravention.

There can be no doubt but that a contravention of Section 43(2)(b) of the Act is at the high end of the seriousness scale. Intoxicated patrons are often associated with violence, be it as a victim, or as an initiator. What is particularly disturbing in this case is the fact that, after the patron had become intoxicated to the point of vomiting, the bartender served him another alcoholic beverage. Notwithstanding the fact that the bartender may have suffered from some disability, that does not relieve the Licensee of its responsibility to manage its establishment in accordance with the provisions of the Act and Regulations and the terms and conditions of its Licence. There are no proven contraventions of the same type before this Licensee within the year proceeding this incident, nor are there any allegations which the Branch did not pursue and no compliance meetings were held.

Taking into consideration all of the above, I am satisfied that a four day suspension is necessary in order to bring the Licensee in this case into compliance.

ORDER

Pursuant to Section 20(2) of the Act, I order a suspension of Liquor Primary Licence No. 120212 for a period of four consecutive days, to commence at the close of business on Friday, December 16, 2011, and to continue each succeeding "Business Day" until the suspension is completed. "Business Day" means a day on which the Licensee's establishment would normally be open for business. In order to ensure that this Order is effective, I direct that the Liquor Licence be held by the Branch, or the Victoria City Police Department, from the close of business on Friday, December 16, 2011, until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.



George C.E. Fuller
Enforcement Hearing Adjudicator

Date: November 18, 2011

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

Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Bode Fagbamiye, Branch Advocate



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

File: EH11-108
Job: 000699122-029

August 11, 2011

FORT CHELSEA HOLDINGS LTD.
c/o FORT CHELSEA HOLDINGS LTD.
1-709 BELTON AVE
VICTORIA, BC V9A 2Z7

Re: Licence Number: 120212
Licence Type: Liquor Primary
Licence Expiry Date: January 31, 2012
Establishment: Coachman Inn (Victoria)
CN #: B009331

The purpose of this notice is to inform you that pursuant to section 20 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

This Notice of Enforcement Action (NOEA) will:

1. Set out the branch's allegation(s) of non-compliance with the Act, and or the *Liquor Control and Licensing Regulation* (the Regulation) and or the terms and conditions of the licence,
2. Provide a narrative of events,
3. Describe the evidentiary basis for the elements of each alleged contravention,
4. Provide reasons why the branch is pursuing enforcement,
5. Provide reasons why the branch believes the particular enforcement action (i.e. penalty) proposed is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Public Safety
and Solicitor General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

<http://www.pssg.gov.bc.ca/lclb>

1. THE ALLEGED CONTRAVENTION(S):

No.	Name of Contravention(s)	Section of the Act/Regulation	Date and time of Contravention(s)	Proposed Enforcement Action
1.	Permit intoxicated person to remain, s. 43(2)(b) Act	s. 43(2)(b) Act	2011-JUN-25 12:00 Midnight	4 day suspension

2. NARRATIVE

Licensee: Coachman Inn (Victoria)
License #: 120212
Category: Liquor Primary
Address: 229 Gorge Road East, Victoria BC V9A 1L1
Mailing: 1 – 709 Belton Avenue, Victoria, BC V9A 1L1
Third Party: 0847964 BC Ltd. (Miles Stanley – Manager)
Hours: 11am to 1am Mon- Sat / Sun 11am to midnight
Capacity: 110 Patrons – Patio 8

This establishment is located in the upper level of a hotel known as the Travelodge in Victoria. Historically, this establishment was licensed as the Coachman Inn and this license is in effect today as originally licensed. The Liquor primary has a third Party arrangement in effect with Miles Stanley. The advertised name of this Liquor Primary is the Upper Deck Sports Lounge.

On Sunday, June 26th, 2011 at 12 am (midnight)(business day of Saturday the 25th June 2011) both Inspectors Johnston and McRobert entered the establishment through the front lobby of the hotel and went up the main stairs to the level known as the Upper Deck Sports Lounge.

This establishment is described as a long room with a main service bar located in the middle of the room on the right hand side, and along the wall on the left hand side are windows facing Gorge Road, there is also a small pool table room and washrooms located on the right side of the room near the main entrance. The only service bar located in the premise has basically three sides (side 1) seating along here is nearest the washrooms (side 2) runs parallel down the middle of the bar and is popular for patrons to sit here (side 3) this side is used for bar servers.

Upon entering the Liquor Primary we walked through the middle of the establishment and monitored the number of patrons inside the establishment and estimated approximately 40 patrons spread throughout. As we walked past the only service bar we observed two male patrons seated in the middle of the bar. There was one other male patron seated to the farthest seat near the washrooms.

The establishment was only 1/3 full and had two staff members on duty at the time of the inspection s.22 Bartender and s.22 the server.
There is no door control in place at this establishment.

One of the male patrons seated in the middle of the service bar area drew the attention of the inspectors as he was showing signs of intoxication (droopy eyes, eyes closing for extended periods, exaggerated movements). Both inspectors walked from the server's area to the washroom side of the bar to continue to monitor this individual. The male was sitting with a half consumed clear liquid martini in front of himself. He would pick the martini up and make a face of displeasure when taking a drink. I stated to McRobert that this person is about to throw up. Based on his facial expressions and body language it was my initial assessment. About 10 seconds later the male got up from his seat and walked in a stiff sudden manner to the washroom and was followed by McRobert. While in the washroom McRobert confirmed this individual had vomited. Upon exiting the washroom the male walked over to both inspectors and was trying to speak with us. He took s.22

s.22 His speech was so slurred I could not understand what he was saying but his gesture indicated he was trying to explain why he had wet spots all over the groin area of his dress slacks. The male then left our company and returned to his seat at the bar. Both inspectors watched for a few more minutes and walked over to the server area by the bar.

Johnston started to talk to s.22 the female server on duty. While introducing Johnston and asking if she had served this patron, at the same time, Johnston and McRobert observed the bartender pour two more shooters consisting of banana liquor and other components. The bartender then served these shots to the two males that inspectors had been observing. Johnston immediately demanded the bartender's attention and advised him that he had just been observed serving an intoxicated patron. The bartender was instructed this patron needs to be removed immediately and was informed of our observations. Ian stated he would call the patron a taxi and Johnston insisted the patron be removed from the red line area and can wait for taxi in the hotel lobby.

Inspectors exited premise at 12:15midnight.

At 12:30 am on Sunday the 26th of June 2011 (business day of Saturday the 25th June 2011) s.22 the bartender called Johnston and advised that he takes full responsibility for serving the intoxicated patron the shooter.

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

4. REASONS FOR PURSUING ENFORCEMENT

4.1 Permit intoxicated person to remain, s. 43(2)(b) Act

To avoid the possibility of further liquor consumption and avoid any harm to other patrons or staff, a licensee must not permit a person who is intoxicated to remain in the part of the establishment where liquor is served. To ensure their safety, intoxicated persons may remain in unlicensed areas of an establishment while waiting for assistance or a ride home.

In this case, the staff had reasonable opportunity to intervene and ensure the patron was prohibited further access to alcohol and made to leave. The staff, who were the directing mind of the Licensee at the time, took no such steps to ensure the safety and well-being of the patron. This is despite a relatively sparse number of patrons (approx. 40) and two experienced staff present. The patron clearly demonstrated a significant level of intoxication and was not removed until pointed out by the Liquor Inspectors to staff. This demonstrates a clear failure of compliance with legislation and Branch policy prohibiting patron intoxication in licensed establishments.

5. REASONS FOR THE PROPOSED ENFORCEMENT ACTION (i.e. penalty)

5.1 Permit intoxicated person to remain, s. 43(2)(b) Act : four (4) day suspension proposed

For the alleged contravention of permit intoxicated person to remain, s. 43(2)(b) act (Contravention Notice Number B009331), a suspension penalty of four (4) days is proposed. This recommended suspension penalty falls within the penalty range set out in item 11 schedule 4 of the penalty schedule for a first contravention of this type.

The suspension will be served starting on a Saturday and will continue on successive business days until completed.

In this case, a penalty for a first contravention is recommended. A liquor license suspension will visibly impress to the Licensee, to staff and the public that allowing such behavior is not permitted and will result in penalty. A suspension penalty is proportionate to the seriousness of this circumstance of permitting patron intoxication. Furthermore, intoxication contraventions primarily centre on the concept that over service provides greater sales for licensed establishments. A liquor license suspension seeks to prevent such sales strategies by providing a direct deterrent in the form of closure for Liquor-Primary establishments.

A penalty is recommended in order to ensure sincere compliance on the part of both the Licensee and staff. In this case there is no adverse compliance history within the previous 24 months. Given these circumstances, a 4 day liquor license suspension is

warranted.

6. THE PROCEDURES

The licensee may agree with or dispute the above allegation(s) and proposed enforcement action.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine what enforcement action will be imposed on the licensee. The general manager may

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

Imposing enforcement action is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted the general manager must follow the minimums set out in Schedule 4 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is in the public interest to do so. The general manager is not bound to order the enforcement action proposed in this NOEA.

Schedule 4 of the Regulation sets out the range of enforcement actions when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If the licensee agrees that the contravention(s) took place and accepts the enforcement action proposed, there is no need for a hearing. In that case, the licensee must sign a document called a waiver. By signing a waiver, the licensee irrevocably

- Agrees that the contravention(s) occurred,
- Accepts the proposed enforcement action,
- Agrees that the contravention(s) and enforcement action will form part of the compliance history of the licensee, and
- Waives the opportunity for an enforcement hearing.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact me at 250 952-5744 as soon as possible. If you do not sign a waiver, the branch will schedule a pre-hearing conference for you to discuss the hearing process with the branch registrar and the branch advocate.

For further information about the hearing and waiver process please visit our website at http://www.pssg.gov.bc.ca/lclb/comp_enforce/index.htm

Yours truly,

Shannan Johnston
Liquor Inspector

Enclosures

*Copy of Liquor Control and Licensing Branch Enforcement Process –
Information for Liquor Licensees* (located at <http://www.pssg.gov.bc.ca/lclb/docs-forms/LCLB168.pdf>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 20(2) of the Act:

Past Enforcement Action Taken

No compliance history found

Allegations Which the Branch Did Not Pursue

No compliance history found

Compliance Meetings

No compliance meetings found

Other Factors

No. B 009020



BRITISH
COLUMBIA

Liquor Control and Licensing Act
and Regulation 244/2002

CONTRAVENTION NOTICE

Liquor Control and Licensing Branch,
Ministry of Public Safety and Solicitor General

Establishment name: Coachman Inn (Victoria)

Establishment address: 1-709 Bolton Ave.
Victoria BC V9A-2Z7

Licensee name: East Chelsea Holdings Ltd

Licence #: 120212 Date CN issued: MM/DD/YY

Date and time of alleged contravention(s): MM/DD/YY 20050

On the date noted above, the following alleged contravention(s) of the
Liquor Control and Licensing Act or regulation were identified:

	Contravention	Section
1	Overcrowding beyond patron	12(2) <input checked="" type="checkbox"/> Act
2	Capacity less than or equal to	71(2)(b) <input checked="" type="checkbox"/> Reg
3	to occupant load	<input type="checkbox"/> Act
		<input type="checkbox"/> Reg
4		<input type="checkbox"/> Act
		<input type="checkbox"/> Reg

Details: During routine inspection conducted
counts of premises & found it to be
overcrowded. Three counts conducted
in total by 2 inspectors. Results were
151, 159 & 142.

Inspector name: TRATTEN Badge #: 086

Telephone: (250) 952-5247 LPC #: —

Management acknowledgement (name and title): sent registered mail

The general manager may proceed with enforcement action on the basis of this
contravention notice. The licensee will generally be notified within 45 days if
enforcement action is proposed.

COPY 3: LCLB HEADQUARTERS COPY (forward to headquarters)

Accession: 90-7478-280
ORCs: 73500-20
Retention: SO+1y 9y SR

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
Liquor Control Licensing Branch

Licensed Premise Case Files - ACTIVE

Current Establishment Name	Previously Known As	Location	Licence Number	Type	Number of Volumes	Date Range Start	Date Range End	Previous Off- Site
s.15,s.21								

LCLB-C&E-Van.Island

Referral Slip

Tue, May 31, 2011 1:46 PM

Action: **Investigate-Liquor Inspection** Due: **2011/10/24** Log ID: **466724**

s.15,s.22

Type: E-Mail

Written: 2011/05/13

Office: LCLB-Pol Plan & Com

Received: 2011/05/16

Entered By: trwilson

Interim Resp:

Sign By:

Signed/Sent:

Batch:

Closed: 2011/05/31

File No.:

☐ Confidential☐ Frequent Writer☐ Elected Official

Phone:

Fax:

Email: s.15,s.22

Addressed To: Branch Direct

Drafter:

Issue: LCLB-Compliance and Enforcement

MLA:

X-Ref:

Elect Dist:

Other Info:

Copied to:

Subject

Over-service at Uppder Desk Sports Lounge.

Referrals

From:	LCLB-Pol Plan & Com	Sent:	2011/05/16	Rcvd:		Status:	Completed
To:	LCLB-Pol Plan & Com	Due:	2011/10/24	Active:	<1 day	State:	
Action:	Investigate-Liquor Inspection	Cmplt'd:	2011/05/31				

From:	LCLB-Pol Plan & Com	Sent:	2011/05/16	Rcvd:		Status:	Completed
To:	LCLB-C&E-Van.Island	Due:	2011/10/24	Active:	11 days	State:	
Action:	Investigate-Liquor Inspection	Cmplt'd:	2011/05/31				

From Notes: 2011/05/16T15:39 Email notification for LCLB-C&E-Van.Island to pamel.edwards@gov.bc.ca

To Notes: 2011/05/17T08:36 Paedward (LCLB-C&E-Van.Island) Forwarded to Inspector Johnson for follow-up.

2011/05/31T13:44 Paedward (LCLB-C&E-Van.Island) See Attachments. Closed.

Text Attachment: Log ID^{s.15}**E-Mail - May 31, 2011**

I have conducted two inspections in the evening at this location and there have been no contraventions observed. Both inspections were cover and we monitored activities for over 60 minutes each time. I have dismissed this complaint but will however continue to conduct inspections.

Shannan Johnston
Special Provincial Constable, Liquor Inspector,
Liquor Control and Licensing Branch

Text Attachment: Log ID^{s.15}Incoming 13 May 2011From: ^{s.15,s.22}

Sent: Friday, May 13, 2011 11:31 AM

To: LCLB LCLB:EX

Subject: 466724\The Upper Deck Sports Lounge

I attend The Upper Deck Sports Lounge^{s.15,s.22} and every week I see massive over-serving leading to extreme intoxication. I have seen countless fights, falling over, tripping over nothing and vomiting people. The bar has no security, and minors often attend, though they are quickly scared straight and leave, never to touch liquor again due to the complete Trash Can behavior at this bar.

Last night, after a table had countless shots and pitchers of beer, there was a fight. Nothing new. It escalated to a worse fight, in the parking lot. The man at the front desk refused to let anyone use his phone to call 911 so someone had to run up to the bar to get a cell phone. In the mean time, a man was beaten and left in the parking lot to bleed more that I have ever seen. There were no signs of life from him when the ambulance finally arrived and helped the man.

This could have all been prevented if there was some enforcement of liquor serving. This bar need to be retrained in liquor serving, and there needs to be security. Please do something to prevent future tragic events as last night.

CLIFF 166994

Edwards, Pamela HSD:EX

From: Edwards, Pamela HSD:EX
Sent: Monday, August 9, 2010 11:31 AM
To: Johnston, Shannan HSD:EX
Subject: Complaint - Upper Deck

Shannan:

We received a call today, Monday, August 9, 2010 at 10:45 a.m. from ^{s.15,s.22}

He stated that he witnessed a patron from the Upper Deck leave the establishment and hit a BMW in the parking lot. He said the man returned to the bar and when the police arrived the staff escorted him out the back door to evade the police. The police eventually found the fellow. ^{s.15,}
^{s.22} stated that the man was overserved and has hit cars parked in the parking lot at other times.

He would like to speak with a liquor inspector about overservice at the establishment.

Thanks,
Pam

Pamela Edwards
Administrative Assistant
Liquor Control & Licensing Branch
Compliance & Enforcement
Phone: 250 387-9164
Fax: 250 387-9139

LIQUOR CONTROL LICENSING
RECEIVED

OCT 10 2011



No. B 007170

Liquor Control and Licensing Act
and Regulation 244/2002

CONTRAVENTION NOTICE

Liquor Control and Licensing Branch,
Ministry of Public Safety and Solicitor General

Establishment name: Coachman Inn (Victoria)
Establishment address: 229 Gorge Rd. East
Victoria, B.C. V9A 1K1
Licensee name: Fort Chelsea Holdings Ltd.
Licence #: 120212 Date CN issued: 09/30/11
Date and time of alleged contravention(s): 09/28/11 2015 2300

On the date noted above, the following alleged contravention(s) of the
Liquor Control and Licensing Act or regulation were identified:

	Contravention	Section	
1	Sell liquor to intoxicated person	43(1)	<input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
2	Permit intoxicated person to remain	43(2)(b)	<input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
3	Licensee or employee consume liquor in premises	42(3)	<input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg
4	Permit unlawful activity	34(2)(b)	<input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg

Details: Inspectors observed an intoxicated person being served and permitted to remain in the establishment. Bartender was consuming a shot with the patron. Marijuana being smoked on patio.

Inspector name: Wayne Brown Badge #: 104
Telephone: 250-741-3625 LPC #: n/a

Management acknowledgement (name and title): _____

By registered mail:

The general manager may proceed with enforcement action on the basis of this
contravention notice. The licensee will generally be notified within 45 days if
enforcement action is proposed.

WJB #104

COPY 3: LCLB HEADQUARTERS COPY (forward to headquarters)

COMPLIANCE MEETING

Inspector's Name: S Johnston
Office Location: Victoria BC

Date: July 6/11

ESTABLISHMENT INFORMATION:

Establishment Name: Loachman Inn (Victoria) - Upper Deck

Establishment Address: 7-709 Belton Ave

Licence No.: 170212

Licence Class: LP

Expiry date: Jan 31/11

Licensee Name: Loachman Inn (Victoria)

MEETING DETAILS:

Attendees at compliance meeting:

Name: <u>S Johnston</u>	Association/Position: <u>Inspector</u>	(210) Contact No: <u>952-5744</u>
Name: <u>Miles Stanley</u>	Association/Position: <u>Mng.</u>	Contact No: <u>(250) 989-7212</u>
Name: <u>Carrie Charlesworth</u>	Association/Position: <u>Secretary</u>	Contact No: <u>s.22</u>
Name: _____	Association/Position: _____	Contact No: _____
Name: _____	Association/Position: _____	Contact No: _____
Name: _____	Association/Position: _____	Contact No: _____

Reason compliance meeting was convened (cite CN # if relevant): B009331

intoxication issues

Information reviewed at the meeting:

- ☐ Relevant section(s) of the Liquor Control and Licensing Act
- ☐ Relevant section(s) of the Liquor Control and Licensing Regulations
- ☐ Relevant section(s) of the Compliance and Enforcement Program, Policy and Procedures Manual
- ☒ Relevant section(s) of the Guide to Liquor Licensees Page 23
- ☐ Other

discussed intox patron - remove from Red line area
Liquor register, levels of intoxications - staff cutting off

Commitments made by licensee: Agree to abide by all terms and conditions. Have a meeting with staff and show LP/FP videos.

Provide SIR for Ian.

Other: Licensee to call licensing department:

- General Manager permission to purchase liquor off one
- will disc: > hours change and possible temp changes

Inspector Name: S Johnston

Inspector Signature: [Signature]

Licensee Name: [Signature]

Licensee Signature: Miles Stanley

COMPLIANCE MEETING

Inspector's Name: S Johnston
Office Location: Victoria BC

Date: July 6/11
ESTABLISHMENT INFORMATION:

Establishment Name: Coachman Inn (Victoria) - Upper Deck

Establishment Address: 1-709 Belton Ave

Licence No.: 170212 Licence Class: LP

Expiry date: Jan 31/11

Licensee Name: Coachman Inn (Victoria)
MEETING DETAILS:

Attendees at compliance meeting:

Name: S Johnston Association/Position: Inspector

(250) 952-5744
Contact No:

Name: Miles Stanley Association/Position: Mng.

Contact No: (250) 939-7212

Name: Carrie Charlesworth Association/Position: Secretary

Contact No: ^{s.22}

Name: _____ Association/Position: _____

Contact No: _____

Name: _____ Association/Position: _____

Contact No: _____

Name: _____ Association/Position: _____

Contact No: _____

Reason compliance meeting was convened (cite CN # if relevant): B009331
intoxication issues

Information reviewed at the meeting:

- ☐ Relevant section(s) of the 'Liquor Control and Licensing Act'
- ☐ Relevant section(s) of the Liquor Control and Licensing Regulations
- ☐ Relevant section(s) of the Compliance and Enforcement Program, Policy and Procedures Manual
- ☒ Relevant section(s) of the Guide to Liquor Licensees Page 23
- ☐ Other

Discussed intox patron - remove from Red line area
Liquor register, levels of intoxications - staff cutting off

Commitments made by licensee: Agree to abide by all terms and conditions. Have a meeting with staff and show LP/FP videos.
Provide SIR for Ian.

Other Licensee to call licensing department:

-General Manager permission to purchase liquor off one
-will discuss hours change and possible temp changes

Inspector Name: S Johnston

Inspector Signature: [Signature]

Licensee Name: [Signature]

Licensee Signature: Miles Stanley



June 27, 2011

Coachman Inn (Victoria)
1 – 709 Belton Avenue
Victoria BC
V9A 1L1

Contravention Notice – Permit Intoxication Person to Remain / Sell liquor to an intoxicated Person

Please find attached a copy of Contravention Notice #B009331. On June 25, 2011 Branch Liquor Inspectors observed a male patron seated in the middle of the main service bar and he appeared intoxicated while seated there. He then proceeded to walk quickly to the washroom and vomited. When he came out of the bathroom he attempted to explain why he has wet areas in the groin area of his pants but he was not verbally able to communicate due to his level of intoxication. The male proceeded to take his tooth and show me how he can insert it into his mouth. The male walked back over to his seat at that point he was provided a shooter. The male currently had a partially consumed martini.

The bartender attempted to remove the shooter after he was aware the liquor inspector is watching this transpire. The male patron consumed the shooter quickly to avoid returning it to bartender. The bartender at this point advised patron that the liquor inspector was in the bar.

In accordance with Section 43 of the *Liquor Control and Licensing Regulation*, this constitutes a contravention of the following conditions of your liquor licence:

Drunkenness

- 43** (1) A person must not sell or give liquor to an intoxicated person or a person apparently under the influence of liquor.
- (2) A licensee or the licensee's employee must not permit
- (a) a person to become intoxicated, or

Ministry of Public Safety
and Solicitor General

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292
Stn Prov Gov't
Victoria, BC V8W 9J8

Telephone: 250 952-5745
Tollfree: 1 866 209 2111
Facsimile: 250 952-7059

Location:
4th Floor
3350 Douglas Street
Victoria, BC

www.pssg.gov.bc.ca/lclb

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

Liquor Primary Guide Page 23 : Over-service and intoxicated patrons

It is your responsibility to make sure patrons do not become intoxicated while in your establishment.

You must not let a person who is apparently under the influence of alcohol or drugs enter or remain in your establishment. You must refuse the person service, have the person removed and see that he or she departs safely.

You also must write down all incidents of intoxicated patrons and the action you took in an incident log, and have the information available for the liquor inspector or police officers.

This Contravention Notice is for your information. It will form part of your permanent compliance history and operating record. Enforcement action may be recommended for this contravention at a later date following further review of this file by the Liquor Control and Licensing Branch.

I can be contacted at (250) 952-5744 to discuss this concern in greater detail.

Shannan Johnston
Liquor Inspector #097
Special Provincial Constable
Liquor Control and Licensing Branch
Victoria

No. B 009331



BRITISH
COLUMBIA

Liquor Control and Licensing Act
and Regulation 244/2002

CONTRAVENTION NOTICE

Liquor Control and Licensing Branch,
Ministry of Public Safety and Solicitor General

Establishment name: Coachman Inn (Victoria)

Establishment address: 229 Gorge Rd East
Victoria, BC V6A 1L1

Licensee name: Fort Chelsea Holdings Ltd.

Licence #: 176212 Date CN issued: 06/27/11

Date and time of alleged contravention(s): 06/25/11 12:00 AM
(Sat.) midnight

On the date noted above, the following alleged contravention(s) of the
Liquor Control and Licensing Act or regulation were identified:

	Contravention	Section	
1	Sell liquor to an intoxicated person	543(1)	<input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
2	Perm. & intoxicated person to remain	543(2)(b)	<input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
3			<input type="checkbox"/> Act <input type="checkbox"/> Reg
4			<input type="checkbox"/> Act <input type="checkbox"/> Reg

Details: Male seated at bar was observed
demonstrating signs of intoxication: unsteady
(droopy eyes, slurred speech, taking his tooth
out, vomiting, wet stains in ardm area). The
bartender provided him another shooter.

Inspector name: S. Johnston Badge #: 97

Telephone: 250-957-5744 LPC #: _____

Management acknowledgement (name and title): _____

[Signature]

The general manager may proceed with enforcement action on the basis of this
contravention notice. The licensee will generally be notified within 45 days if
enforcement action is proposed.

Bartender: Ian

COPY 3: LCLB HEADQUARTERS COPY (forward to headquarters)

No. B 009331



BRITISH
COLUMBIA

Liquor Control and Licensing Act
and Regulation 244/2002

CONTRAVENTION NOTICE

Liquor Control and Licensing Branch,
Ministry of Public Safety and Solicitor General

Establishment name: Coachman Inn (Victoria)
Establishment address: 229 Burke Rd East
Victoria BC V8A 1L1
Licensee name: Folt Chelsea Holdings Ltd.
Licence #: 176212 Date CN issued: 06/23/14

Date and time of alleged contravention(s): 06/25/14 6:00am
(Sat) 11 midnight
On the date noted above, the following alleged contravention(s) of the
Liquor Control and Licensing Act or regulation were identified:

	Contravention	Section	<input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
1	<u>Sold liquor to an</u> <u>intoxicated person</u>	<u>543(1)</u>	<input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
2	<u>Perm. & intoxicated</u> <u>person to consume</u>	<u>543(2)(b)</u>	<input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
3		1	<input type="checkbox"/> Act <input type="checkbox"/> Reg
4			<input type="checkbox"/> Act <input type="checkbox"/> Reg

Details: Male seated at bar was observed
demonstrating signs of intoxication: unsteady
giddy, eyes slurred speech taking his teeth
out, vomiting, wet stains in area area). The
bartender provided him another shooter.

Inspector name: S. J. H. 43701 Badge #: 97
Telephone: 250-957-5744 LPC #: _____

Management acknowledgement (name and title):
[Signature]

The general manager may proceed with enforcement action on the basis of this
contravention notice. The licensee will generally be notified within 45 days if
enforcement action is proposed.

Bartender: Ian

COPY 4: LCLB FIELD OFFICE COPY (place on field establishment file)

C & E Complaint
Job 000699122-025

LPC V9A 1L1 VICTORIA 229 Gorge Road East

Status: Inspection Complete

Created By: s.15

Date Created: Aug 04, 2010

Date Completed: Aug 30, 2010

Parent Job: 000699122-001 (120212)

Specific Location: Lic #:120212 LP Establishment: Coachman Inn (Victoria)

Details

Area Code	250
Badge	
Complaint Type	Other
Complainant Type	General Public
Complainant Address	s.15,s.22
Complainant Phone	
Complainant's Email Address	
Complainant Name	s.15,s.22
Details	Written complaint from s.15,s.22 - refer to docs tab for copy of the complaint
Establishment Address	Coachman Inn (Victoria) - 229 Gorge Road East VICTORIA, BC V9A 1L1
Establishment Name	Coachman Inn (Victoria)
LPC No.	
Management Acknowledgement	
Method of Receipt	Phone
Police Detachment	
Police File Number	
Police Officer	
Project ID	
Receive Date	

Details

Establishment: Coachman Inn (Victoria) [Hotel] Active: Y
229 Gorge Road East VICTORIA Last Routine Inspection: 2010-12-18

Liquor Primary: Job#:000699122-001 LP- Lic #:120212
Status:Licence Approved Approved:1987-08-13 00:00:00 Licence Name:Coachman Inn (Victoria)

Alleged Contr.

Processes

Assigned To	Status	Outcome	Scheduled		Actual	
			Start	Completed	Start	Completed
Receive Complaint/LPC						
Shannan Johnston	Complete	Complaint Received				Aug 04, 2010 10:27:32
Review Complaint						
Shannan Johnston	Complete	Inspection Required	Aug 04, 2010			Aug 04, 2010 10:30:22
Conduct Routine Inspection						
Shannan Johnston	Complete	No Contraventions				Aug 30, 2010 15:34:23
Lic #:120212 LP Establishment:Coachman Inn (Victoria)						

Date

Open a street calendar - type in name

s.15,s.22

link.

Upper Deck Lounge → Bar & Grill →
Sports lounge.

229 Hodge Rd E. Couchman Inn

- outside deck
- bylaws
- 9:30 pm. - out on deck.
- Friday night down open. Three night
night so loud without watching
movie.
- Police File

- list of times called
- e-mailed Bylaw Cnf stating
May 21, 2010 said contact police
late night noise.
Linda Jones - bylaw clerk.

- outside deck.
- Police 10-285-46. On Report.

- noise ongoing problem against bylaws.
disrupting neighbours with noise.
- live bands. July 16.

Page

Review Complaint

Job 000699122-026

Assigned To	Status	Outcome	Scheduled		Actual	
			Start	Completed	Start	Completed
Shannan Johnston	Complete	Dismissed	Sep 22, 2010			Sep 22, 2010 13:11:4

Details

Comments

In reviewing this complaint I have conducted two inspections in the evening and also had the police conduct inspections during evening hours. This allegation is unfounded. No further actions required at this time. However ongoing monitoring of this establishment will be required.

From: Edwards, Pamela HSD:EX
Sent: Monday, August 9, 2010 11:31 AM
To: Johnston, Shannan HSD:EX
Subject: Complaint - Upper Deck

Shannan:

We received a call today, Monday, August 9, 2010 at 10:45 a.m. from

s.15,s.22

He stated that he witnessed a patron from the Upper Deck leave the establishment and hit a BMW in the parking lot. He said the man returned to the bar and when the police arrived the staff escorted him out the back door to evade the police. The police eventually found the fellow. ^{s.15,}_{s.22} stated that the man was overserved and has hit cars parked in the parking lot at other times.

He would like to speak with a liquor inspector about overservice at the establishment.

Thanks,
Pam

Pamela Edwards
Administrative Assistant
Liquor Control & Licensing Branch
Compliance & Enforcement
Phone: 250 387-9164
Fax: 250 387-9139

s.15,s.22

- Notified front desk
- front desk (1 guy / 1 female).
- 3 staff members told them that he has done this on numerous occasions.
- Police went up - staff advise he took B/Cab.
- Male leading him out a back way.
- Male arrested -

Johnston, Shannan HSD:EX

From: Jorgensen, Cathie s.22
Sent: Monday, August 16, 2010 8:52 AM
To: Fairburn, Darrell
Cc: Waterman, Matt; Johnston, Shannan HSD:EX; Pearce, Jamie
Subject: RE: FOR LNTF, August 13, Complaint - Upper Deck

Thanks Darrell, much appreciated.

Shannan....for your information.

Thanks, Cathie

From: Fairburn, Darrell
Sent: Saturday, August 14, 2010 3:48 AM
To: Yelovatz, Alex
Cc: Jorgensen, Cathie; Pearce, Jamie
Subject: RE: FOR LNTF, August 13, Complaint - Upper Deck

Hello,

We checked the Upper Deck at 23:45 hours on Friday, August 13th, 2010. They were at less than half capacity and we could detect no noise from the exterior of the building.

The s.22 mentioned below was nowhere in the neighborhood nor did we see a male matching the given description within the establishment.

The patrons were generally more mature than most of the core clubs and pubs and no over service was observed.

There was one table, just to the left of the bar, that had six patrons seated at it and they were playing a card game complete with poker chips. When we informed the waitress that they were not allowed to do this she replied "I had no idea". She immediately approached the table and had them put the cards and chips away.

From: Yelovatz, Alex
Sent: Wednesday, August 11, 2010 3:21 AM
To: Fairburn, Darrell
Cc: Jorgensen, Cathie; Pearce, Jamie
Subject: FW: FOR LNTF, August 13, Complaint - Upper Deck

Darrell,

See messages below regarding Friday night's assignment. Thanks again for taking my spot.

Alex

From: Jorgensen, Cathie
Sent: Tuesday, August 10, 2010 8:35 AM
To: Yelovatz, Alex
Cc: Pearce, Jamie

Subject: FOR LNTF, August 13, Complaint - Upper Deck
Importance: High

Hi Alex.....during your LNTF on Friday night could you please look into the complaint at the Upper Deck (Coachman Inn). See details below as forwarded from Liquor Inspectors at the LCLB. Inspector Pearce advised this would be a task for the LNTF group.

If you could let me know how it turns out, I'll forward your info to the LCLB. Unfortunately, they will not have any LCLB Inspectors out on Friday night.

Thanks very much.

Cathie

If Police do decide to follow up on this ^{s.15,} ^{s.22} the complainant stated that the male who was over consuming drives a ^{s.22} and usually parks on the side road. He is known as a regular and felt that the staff protect him from police but also over serve him. If his ^{s.22} is there on a Friday night he will be inside drinking and always leaves intoxicated as hearsay from the staff to complainant.

Description of male - ^{s.15,s.22}

Thanks for any assistance you can give with a check on Friday night.

Shannan Johnston
Liquor Inspector,
Liquor Control and Licensing Branch
PO Box 9292, Stn Prov. Govt /Physical location: 2nd floor - 1019 Wharf Street
Victoria BC, V8W 9J8
Ph: 250-387-9165/ Fax: 250-387-9139
Website: www.hsd.gov.bc.ca/lclb

From: Jorgensen, Cathie [mailto:^{s.22}]
Sent: Monday, August 9, 2010 2:28 PM
To: Johnston, Shannan HSD:EX; Waterman, Matt
Cc: Trytten, Terrance HSD:EX; Pearce, Jamie
Subject: RE: Complaint - Upper Deck

Hi Shannan....^{s.22}

I will forward your request to our Patrol Inspector for action.

Inspector Pearce....is this something Patrol or LNTF could accommodate?

Thanks, Cathie

From: Johnston, Shannan HSD:EX [mailto:Shannan.Johnston@gov.bc.ca]
Sent: August 9, 2010 1:57 PM
To: Waterman, Matt

Cc: Jorgensen, Cathie; Trytten, Terrance HSD:EX
Subject: FW: Complaint - Upper Deck

Hi Matt

Can you advise if there is a police report related to this complaint as mentioned below? This person is starting to call me weekly with one thing or another.

If you could ask Police if they have a couple extra minutes to do an Licensed Premise check on Wed or Fri at this location (229 Gorge Road East – known as Coachman Inn) . Issues to look for are over service, noise from Liquor Primary, persons on patio disturbing neighbours , also the speakers on patio are supposed to be shut down according to owner after 10pm for the patio as a way to resolve neighbour issues. If anything is observed if the officer could just make some notes or send me an email I will follow up from this end.

I will be conducting back to back night inspections on all LP's/pubs etc on Aug 24 and 25th throughout Victoria as I am working with Terrance those nights.

Thanks

Shannan Johnston

Liquor Inspector,

Liquor Control and Licensing Branch

PO Box 9292, Stn Prov. Govt /Physical location: 2nd floor - 1019 Wharf Street

Victoria BC, V8W 9J8

Ph: 250-387-9165/ Fax: 250-387-9139

Website: www.hsd.gov.bc.ca/lclb

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Subject: Complaint - Upper Deck

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He would like to speak with a liquor inspector about overservice at the establishment.

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Pam

Pamela Edwards

Administrative Assistant

Liquor Control & Licensing Branch

Compliance & Enforcement

Phone: 250 387-9164

Fax: 250 387-9139

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