



DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENSING BRANCH

IN THE MATTER OF

A hearing pursuant to Section 51 of  
*The Liquor Control and Licensing Act, S.B.C. 2015, c. 19*

Licensee:	Sanoor Investments Ltd. dba Executive Plaza Coquitlam 1080 Howe Street Vancouver, BC V6Z 2T1
Case:	EH16-160
For the Licensee:	Roger Gibson & John Teti
For the Branch:	Hugh Trenchard
General Manager's Delegate:	Nerys Poole
Date of Hearing:	May 9, 2017
Date of Decision:	May 31, 2017

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Liquor Control and  
Licensing Branch

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## INTRODUCTION

The corporate licensee, Sanoor Investments Ltd. (the "licensee") owns the Executive Plaza Coquitlam at 405 North Road in Coquitlam. The licensee holds Liquor Primary Licence Number 010354 (the "licence"). A third party operator, Foggy Dew Irish Pub Coquitlam Inc. (the "third party operator"), operated the pub. At the time of the alleged contravention, the establishment was known as the Foggy Dew Pub (the "pub"). The Foggy Dew Pub closed its doors to the public on December 31, 2016 and terminated its role as third party operator of the pub on January 5, 2017.

According to the terms of a settlement agreement between the corporate licensee and the third party operator, the third party operator agreed to pay any penalty arising from a finding of a contravention on this matter (Exhibit 2, tab 6). The authorized representatives of the third party operator and of the corporate licensee, Roger Gibson and John Teti, appeared at the hearing and gave their testimony. As the authorized representatives of both the corporate licensee and the third party operator, I use the term "licensee" and "third party operator" interchangeably throughout this decision. I use Mr. Gibson's and Mr. Teti's names when referring to their testimony.

According to the terms of its licence, the licensee may sell liquor from 11:30 a.m. to 1:30 a.m., Monday to Thursday and from noon to 2:00 a.m. from Friday to Sunday. (Exhibit 1, tab 3). The person capacity on the licence is 388 in the interior of the pub and 56 on the patio, for a total person capacity of 444. The occupant load for the interior and the patio is a total of 444 persons. (Exhibit 1, tab 4)

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

On January 23, 2017, the *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267 (the "Former Act") was replaced with the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Current Act") which came into force on that date. Therefore, although this hearing was held under the provisions of the Current Act, as the contravention

occurred prior to January 23, 2017, this decision is in accordance with the provisions of the Former Act and the Former Regulation.

For the purposes of this hearing, and in accordance with section 5 of the Current Act, the general manager has delegated to me the powers, duties and functions provided to the general manager by section 51 of the Current Act and Part 6 of the current *Liquor Control and Licensing Regulation*.

## **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 dated January 16, 2017 (the "NOEA").

The branch alleges that on Friday, December 16, 2016, the licensee contravened section 6(4) of the *Liquor Control and Licensing Regulation* (the "Former Regulation") by overcrowding beyond the licensed person capacity and more than the occupant load. The NOEA recommends a \$7000 monetary penalty. The penalty range for a first contravention of this type is set out in item 15, Schedule 4, of the Regulation: a \$5000 to \$7000 monetary penalty or a four to seven day suspension.

The licensee does not dispute that the overcrowding occurred on December 16, 2016. The licensee says it has exercised due diligence in the management of its operations and thus has a full defence to the contravention.

## **RELEVANT STATUTORY PROVISIONS**

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

### **Capacity**

6(4) It is a term and condition of the licence that there must not be, in the licensed establishment at any one time, more persons than the person capacity under subsection (1) or (3).

## ISSUES

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

## EXHIBITS

- Exhibit 1: Branch Book of Documents, tabs 1 to 18  
Exhibit 2: Licensee's Documents, tabs 1 to 8  
Exhibit 3: Curriculum vitae of expert witness

## WITNESSES

A liquor inspector testified for the branch.

The licensee called four witnesses:

- an expert witness on the standard of care on security issues (the "expert")
- the general manager of the pub and employee of the third party operator (the "general manager")
- Roger Gibson, the third party operator's and licensee's representative at the hearing ("Mr. Gibson")
- John Teti, the third party operator's and licensee's representative at the hearing ("Mr. Teti")

## BRANCH EVIDENCE

The liquor inspector who attended on the night of December 16, 2016 and who authored the NOEA, was the only branch witness at the hearing.



Evening of December 16, 2016

On the night of December 16, 2016, the liquor inspector and three members of the Coquitlam RCMP were conducting routine inspections of several establishments in Coquitlam and Port Coquitlam. They arrived at the pub at approximately 11:20 p.m. The liquor inspector and RCMP Constable 1 noted approximately 100 patrons in the line-up outside the pub. The liquor inspector spoke to the head doorman who was at the entrance and requested a count of the patrons. The head doorman stated they were at capacity. When the liquor inspector asked for the number, he uncertainly replied 400 but was not sure as the other doorman had the counter. The liquor inspector saw no other doorman in the immediate area. When the liquor inspector asked the head doorman why the person with the counter was not at the entrance, he replied that at this point he was just trying to keep the peace.

The liquor inspector entered the pub and noted it to be extremely crowded around the entrance. The liquor inspector decided a count was necessary and advised the head doorman to hold entry and exit of patrons until she could complete a count. The liquor inspector also asked RCMP Constable 1 to monitor patrons leaving the pub.

The liquor inspector initiated a mechanical count near the front entrance and moved towards the end of the pub. She stated that patrons were shoulder to shoulder and that she had to push her way through the crowd toward the other side of the bar while attempting to count. She said it was difficult to see beyond one foot of space due to the density of the crowd. She managed to count to the end of the bar and then a short distance towards the dance floor when she abandoned the count at about 200. She said she did not feel confident about the accuracy of the count due to the extreme density and movement of the crowd. When she reached the end of the bar, she looked towards the back of the pub and noted the same density. She felt it was dangerously overcrowded and that she could not complete a count in an accurate and safe manner. She noted that, despite her request to the security staff, patrons continued to enter and exit the pub.

She gave up counting and returned to the entrance and went outside where she spoke with two of the RCMP constables and explained she was unable to do an accurate count

because of the density of the crowd. The liquor inspector spoke to the head doorman and told him it was extremely overcrowded inside. He nodded his head and admitted that he had stopped counting at 620. He said he lost control after 620 and did not know how many were inside after that point. He did not remember or did not know what time he stopped counting. The liquor inspector asked to speak to the manager on duty.

The liquor inspector and RCMP Corporal spoke to the manager on duty (the "pub manager"). He had no idea how many patrons were inside the pub and told the liquor inspector it was not his responsibility but rather the security staff's responsibility. The liquor inspector and the RCMP Corporal advised the pub manager that the pub appeared dangerously overcrowded. The liquor inspector and the RCMP corporal informed the pub manager and the head doorman that they must shut down the pub in order for a count to be conducted and in order for the capacity to be brought down to the approved number.

The liquor inspector conducted a mechanical count of patrons exiting the pub until the pub was about half cleared. The liquor inspector requested the pub manager, the security staff and the police to hold exit/entry as there was now ability to move inside the pub and there was a massive crowd of patrons to deal with outside the pub. The liquor inspector completed the remainder of the count inside. Her total count was 664. An RCMP constable who was assisting in the inspection conducted a count of the patio at the same time and counted 37, for a total approximate count of 701.

At the same time RCMP Constable 1 conducted a count of patrons exiting the pub. He had initiated this count approximately on arrival. When the pub was cleared by approximately half, his count was 402. At this time, one of the security staff conducted a count of the interior. His count was 379, for a total approximate count of 781.

At approximately 12:23 a.m., when the pub was mostly cleared, the RCMP Corporal and the liquor inspector advised security staff and the pub manager of the results of their counts. The head doorman reiterated that he had stopped counting at 620 and that they had lost control of patrons entering the pub. The pub manager was not aware of this and, according to the liquor inspector, again stated it was not his responsibility.

The liquor inspector believed both the pub manager and the head doorman were in charge on the evening of the contravention. She was not aware of any other managers present.

The liquor inspector asked the head doorman to conduct a count of the patrons remaining inside the pub. He did so and reported a count of 135. At this time, RCMP Constable 1's exit count was 601, for a total approximate count of 736.

When the liquor inspector was asked at the hearing if she was aware of any complaints from patrons or staff, she stated that the general manager told her at a meeting on December 21, 2016 that a staff member, possibly a server, had complained to security and had asked them to stop letting people into the pub. The security staff however did nothing.

The liquor inspector consulted with her regional manager via telephone to discuss the circumstances of the evening. After that discussion, she allowed the pub to re-open with the patron count starting at 135. She advised the pub manager that she would be issuing a contravention notice for overcrowding and that there would be follow up in the next week.

The liquor inspector described the overcrowding as beyond anything she had experienced in her ten years working in the area. She said the overcrowding was so obvious that she could not understand why no one in the pub was dealing with it and trying to reduce the numbers.

The liquor inspector referred to the notes of RCMP Constable 1 and the RCMP Corporal at Exhibit 1, tabs 11 and 12 and noted that she agreed with their description of the evening as set out in their statements. The statement of the RCMP Corporal referred to the pub manager telling him that he had too much to do and was not aware the pub was over capacity. RCMP Constable 1, in his statement, noted that he approached the bar to find out where the manager was. He stated that "bar staff were clearly too busy," as they did not acknowledge his presence, despite flashing his flashlight at them to gain attention. "They were focused on their service of alcohol, and nothing else." He added: "It was clear, there was no communication between the door staff, and the licenced

premise manager, as they did not know what the other was doing to control the establishment, and the people inside.”

As a result of the large crowd that formed outside as people were asked to leave the pub, some people were creating a disturbance, some because they wanted to re-enter to get their coats and/or credit cards. As a result, the RCMP eventually called out another 15 RCMP members, some from the Coquitlam detachment and others from Burnaby, in order to control the crowd outside. The RCMP arrested two males for causing a disturbance outside the pub. The RCMP constable noted in his statement: “From [my] experience, should anything have occurred with this amount of people inside of this business, it would have clearly been a major incident and uncontrollable.”

The liquor inspector stated she had found out in early December of 2016 that the third party operator was leaving the pub and that her understanding was that the last day of operation was going to be December 31, 2016.

#### Meeting on December 21, 2016

On December 21, 2016, members of the Coquitlam RCMP, the Coquitlam Fire Inspector and the liquor inspector met with two representatives of the corporate licensee, Sanoor Investments Ltd. and the general manager. The officers from each agency expressed their concerns with the major public safety risk that was created by the overcrowding incident. The liquor inspector delivered the contravention notice (Exhibit 1, tab 2) at this meeting. The general manager was apologetic for the situation and advised that he had investigated the incident. He stated that two security staff members had decided to accept \$20 per patron and “open the gates” to allow entry and that those two staff members had been suspended or terminated immediately afterwards. He referred to a request from a server to security to stop further patrons from entering and that the security staff had ignored this.

The group at this meeting discussed the plans for New Year’s Eve. The general manager stated that the security staff was terminated. The liquor inspector believed he said he would bring them back for the New Year’s Eve party if no one else was available. The general manager also mentioned to her a previous incident several years

earlier where the security staff employed by a contracted company (not the same security staff on duty on December 16, 2016) had been accepting money at the door. The third party operator cut the contract with them immediately.

#### Branch's Previous Experience with Third Party Operator and its Staff

The liquor inspector testified about her past dealings with the head doorman. She stated she has conducted over 30 inspections at the pub. She had been attending at the pub for over 10 years and was usually met by this head doorman who was always very cooperative and would walk with her through the pub. She had only met the pub manager once before. Most of her communications over the years when she was conducting inspections was with the head doorman. If she needed to speak with a manager to address any concerns, the head doorman would call him and ask him to deal with the issue.

When asked in cross-examination if she had ever experienced anything like the evening of December 16, 2016 over her ten years of inspection of the pub, she agreed she had never seen anything like this evening at the pub. There had never been any penalties imposed on the pub and no closures. She said the head doorman was cooperative on the evening and had always been cooperative in her experience.

#### Compliance History

The NOEA states "no compliance history found." There are a number of compliance meetings noted for this licence, dated March 7, 2003, April 8, 2003, November 27, 2003, March 3, 2008, March 25, 2009, October 25, 2010, February 25, 2014, and April 2, 2014. None of these meetings resulted in enforcement action being taken. (Exhibit 1, tab 6)

The liquor inspector testified that often no enforcement action is taken or recommended because the facts are weak and/or the licensee is given an opportunity to correct any problems.

She agreed in cross-examination, that neither the head doorman nor the pub manager ever attended the compliance meetings that she held with the pub management. Mr. Teti or Mr. Gibson and usually the general manager attended these.

### Recommended Penalty

The liquor inspector recommended the penalty of \$7000 in the NOEA, which is the maximum under the *Regulation* for a first contravention of overcrowding. She testified she recommended the higher penalty because of the severity of the overcrowding and the blatant disregard of the numbers by the security staff on December 16, 2016. She did not put much weight on compliance history when making her penalty recommendation.

### **LICENSEE'S EVIDENCE**

None of the licensee's witnesses were in the pub on the night in question. The licensee stated that it had hoped to call the head doorman and the pub manager who were present on December 16, 2016 but they refused to respond to their requests to attend.

The licensee in its opening statement and in the March 27, 2017 pre-hearing conference call with the branch registrar and the branch advocate, stated that they would not be disputing the alleged contravention but would be making a defence of due diligence. The licensee accepts the facts of the overcrowding on December 16, 2016 as described in the NOEA.

The general manager, Mr. Gibson and Mr. Teti all gave evidence about the history of the pub, the relationship between the licensee and the third party operator, its management structure, the policies, procedures and practices in the pub, and the reasons for the pub's closure. The expert testified about the standard of care in licensed premises and about his own involvement in a training session with the pub's security staff.

## History of Foggy Dew Pub

### Relationship between Licensee and Third Party Operator

The third party operator has operated the pub for 17 years. Mr. Teti and Mr. Gibson are principals of Foggy Dew Irish Pub Coquitlam Inc., the corporate entity listed on the licence as the third party operator. According to the testimony of the liquor inspector, the licensee did not register the third party operator until 2011 when the liquor inspector noticed this error. At that time she issued a contravention notice to the licensee. The branch did not take enforcement action as the licensee immediately applied to include the third party operator on the licence.

At the time of this application, Mr. Gibson and the general manager attended at the branch on February 15, 2011 to view the branch presentation and sign the interview sheet, respectively as director and general manager. (Exhibit 1, tab 8)

The third party operator ceased its relationship with the corporate licensee on January 5, 2017. The branch received a letter from the corporate licensee dated January 5, 2017 (Exhibit 1, tab 9), notifying the branch that the third party operator was no longer operating under their licence and that the corporate licensee, Sanoor Investments Ltd. would continue to operate the licence.

As noted by the liquor inspector, even with a third party operator, the licensee is ultimately the one responsible. However, the licensee and the third party operator entered into a settlement agreement, effective January 5, 2017, to address outstanding rental arrears of the premises. Mr. Gibson is an indemnifier of this agreement. (Exhibit 2, tab 6).

Clause 5 of this agreement states:

In addition to the amounts payable pursuant to Paragraph 4 [rental arrears], the Payors agree to pay on or before the Effective Date, all accrued penalties and charges for any regulatory or other violations up to the Effective Date, which includes the penalty for overcrowding the Premises pursuant to Contravention Notice B006865

issued by the Liquor Control and Licensing Branch dated December 19, 2016, if required after hearing by adjudicator.

Mr. Gibson signed both as signatory in his own name and as signatory for the Foggy Dew Irish Pub Coquitlam Inc.

### Closure of Foggy Dew Pub

Mr. Teti testified about the reasons for closing the pub. He stated that many people do not want to frequent such large venues anymore. The first 14 of the 17 years that the third party operator was operating the pub were good years. In the last three years, sales were slipping and the pub was starting to lose money. Because of the financial losses, he and Mr. Gibson made the decision to close down the pub.

On November 30, 2016, the general manager notified all its employees that the pub would be closing on January 5, 2017, and that its last day of being open to the public would be December 31, 2016. They informed their employees that, if they stayed with them for the remaining month, they would receive an extra week's pay.

In early January, the general manager proceeded to destroy many of the files in the pub and retained only those files as required by law. He testified that most of the employees' files were destroyed. This included some of the documents showing employees had signed the employee manuals as well as the BST certificates for security staff. He also destroyed the logbooks at this time.

### **Expert Evidence**

#### Qualification of the Expert Witness

I reviewed the curriculum vitae of the expert (Exhibit 3). The expert testified about his experience as a police officer and as a consultant on security issues in the entertainment industry. As a police sergeant for over 24 years with the Vancouver Police Department, he was responsible for overseeing and monitoring many events involving both drug detection and liquor law enforcement. He worked with leaders in the entertainment industry to develop and launch the current Barwatch safety initiative. He is retired



from the police force and since 2012 has operated his own consulting business, acting as an expert consultant with respect to a licensee's duty of care and security responsibilities relevant to licensed premises. He has also conducted security training for public venues. He is currently chair of the Vancouver Barwatch program and has been since January 2012. As such, he represents "the owners and operators of bars and nightclubs in Vancouver who are members in good standing of Barwatch: a safety initiative and partnership with the Vancouver Police Department that is committed to providing a safe and responsible entertainment experience." (quote from Exhibit 3)

The branch advocate did not object to the expert being qualified as an expert in the standard of care on security issues in licensed premises. I qualified him as such.

### Expert's Testimony

During his time as a police sergeant, he had the opportunity to work closely with both Mr. Teti and Mr. Gibson in the implementation of the early Barwatch program in Vancouver. At that time, Mr. Teti was chair of the program.

Mr. Teti and Mr. Gibson asked him to conduct a security training program at the pub. He did so in July of 2015, spending two and a half hours with the security staff and two managers. During the training, they discussed issues relating to the Act and Regulations, including overservice and overcrowding, as well as use of force continuum and how to best deal with disorder. They discussed crowd control, communication and how to deal with problems without using force. The evening included an hour of scenarios, where the participants were involved in roleplaying a number of different issues that might arise for security staff. Prior to giving this training, the expert had never before attended the pub.

The expert's recollection was that the head doorman attended the training session.

The expert commented on the national standard for security staff as having one security staff for every 60 patrons. The pub met this standard (for the licensed capacity of 444) on the night in question as there were eight security staff on duty on December 16, 2016.

After the training evening, the expert complimented Mr. Teti on the quality of their security staff, as being probably one of the most professional groups of people he had dealt with. They had all attended the Basic Security Training ("BST") at the Justice Institute, had their certificates from this program and were very attentive during the evening.

When asked his opinion on how the overcrowding could have occurred on December 16, 2016, he was quite clear in his assessment of the situation. He said the doormen knew the pub was closing in a few weeks. In his opinion, they obviously decided to take advantage of the fact that the general manager was absent and there was only the pub manager overseeing the operation. He concluded that the doormen decided there was a monetary opportunity to be had and that termination was not an issue for them, given the fact the pub was closing. He then opined that they lost control of the situation, rather similar to a teenager allowing in friends to a party when the parents are away and then finding the house has been overwhelmed by too many guests.

When asked about the BST certificate, he said that the security staff are responsible for ensuring these are up to date, by taking the online retesting as required by the Justice Institute.

### **Management Structure & History of Security Staff**

The general manager stated that he had been working at the pub since 1999 until its closing date in early January of this year. His duties were oversight of the business and supervision of facilities and staff, following the directions of Mr. Teti and Mr. Gibson. Mr. Gibson explained that the general manager was responsible for the day to day supervision and training of the staff. Mr. Gibson was aware that the pub manager would take over from the general manager when he was not able to attend.

The general manager stated that the security staff were responsible for security of the premises, employees and guests. They were required to enforce the pub policies which reflect the policies of the branch and the requirements of the licence. The security staff had no authority to change any of the policies or procedures of the pub.

The general manager stated that he normally worked at the pub on weekend nights when the pub was busier. The pub manager often worked on his own on the week nights, or under the general manager's supervision. The pub manager had no authority to change any of the policies or procedures of the pub. Mr. Gibson testified about the pub manager's role in the pub, stating that he is not much more than a bar supervisor. He said that when their last assistant manager left in July of 2016, they had trouble finding a replacement so they decided not to replace him and to rely on the pub manager to act as supervisor during the quieter week nights.

The general manager stated they have never had a door charge at the pub. When asked if he had ever disciplined anyone for taking money at the door, he replied that several years ago he had, as a result of the then security staff charging people at the door. He terminated all the security staff and broke the contract with that security company.

This incident inspired the following entry into the Security Manual:

The Foggy Dew currently does not charge an entry fee or cover. This also means that security staff may not accept payment or cash at the door in lieu of permitting guest's entry into the pub. This issue has been severely dealt with in the past, and will not be tolerated!

(Exhibit 2, tab 2)

The security staff at the pub on December 16, 2016 were all direct employees of the third party operator. The third party operator previously had a contract with a large security company who decided to remove themselves from the business of pub security. At that time, the third party operator hired the security personnel who had been working for them under that contract.

#### **Licensee's Explanation of Incident on December 16, 2016**

The general manager was not present on December 16, 2016. He was scheduled to be there but, because of illness, he was unable to attend work that night. He informed the pub manager during the day of December 16, that he was not able to attend. The general manager was not concerned about the pub manager's ability to handle the pub

on his own as the general manager had worked with him for many years and was confident that he was able to manage on his own. He also testified that he was confident that the head doorman and the other doorman were reliable and trusted employees as they had worked at the pub for many years, one for 11 years and the other for 14 years. He estimated that the minimum years of any of the doormen working at the pub that night was four years.

The general manager investigated the incident after hearing about it the next day. He heard that, prior to the entry of the liquor inspector and RCMP officers, a server had requested the head doorman to stop allowing people to enter, as it was impossible to move and to serve the patrons.

When asked to explain the behaviour of the security staff on December 16, 2016, the general manager stated that the doormen did this out of greed and that they admitted this to him after the incident. Initially, the head doorman admitted to charging at the door and then the other doormen stated they were all involved in doing so. Mr. Gibson and Mr. Teti also met with the head doorman who admitted they were charging and that the situation got out of control. Mr. Gibson and the general manager mutually agreed to terminate the head doorman on December 17, 2016, the day after the incident, for cause. The head doorman told the other doormen that he had been terminated. The remaining security staff requested an immediate meeting with Mr. Gibson and Mr. Teti. They all agreed they were complicit to the same degree as the head doorman.

This all took place on Saturday evening of December 17, 2016. The remaining security staff were all threatening to leave at that moment, if the head doorman was not reinstated. The managers knew there were only a few scheduled busy evenings left until the pub closed, including a private sold-out New Year's Eve event. The general manager decided to allow the head doorman back for these events, in order to ensure they had the necessary security staff.

The general manager testified about his conversation with the pub manager. The general manager stated that the pub manager told him that he did not say it was not his responsibility to manage the capacity, he just said he was too busy trying to bartend to monitor what was happening. According to the general manager, the pub manager

explained to him that the overcrowding occurred fairly quickly and that, by the time he realized what was happening and was about to deal with it, the room was out of control and the liquor inspector and RCMP had arrived. The general manager explained that when the pub is busy and "you are at the bar preparing drinks, your head is down and it is just go, go, go." The general manager said he could understand how the crowd could escalate quickly with no controls at the door.

When the general manager was asked if it was possible that the pub manager was involved in the scheme to charge at the door, he said "absolutely not." He had worked with the pub manager for over 20 years and had complete confidence in him. The general manager replied to a question in cross-examination, stating the management had no idea their longtime security staff might do something like this, even with the imminent closure of the pub. With two of the doormen having 11 years plus with the pub, the general manager believed they would continue to do their job as they had done in the past.

### **Policies, Practices and Procedures**

The general manager worked with the security staff every shift. If they were expecting VIP guests, he would ensure the staff were aware of the numbers expected and to allow them in, while maintaining the capacity. He held staff meetings every shift. He was constantly communicating with the staff about the status of the room, status of business, etc.

### Policy Manuals

The general manager reviewed the manuals submitted by the licensee at the hearing. He said he was involved in drafting the Security Manual.

The Security Manual (Exhibit 2, tab 2) sets out on the title page the license capacity as 388, stating "Maximum number of persons **including staff.**" (bold in original) Next, there is a dress code set out for the staff.

As well as the clause quoted above with respect to no cover charge, the Policies and Procedures section includes the following statements, in bold:

**\*At any time there is an incident inside, outside or around the Pub, Security staff must make an entry into their Incident report log. There will be no exceptions to this rule. This in essence is to ensure that the facts as they are freshly at hand are recorded and available should they be required at another date & time.**

Under this bold statement are listed a number of directions to security staff:

On weekends and event nights, there will be no less than six security members available. You will each be allocated to an assigned area until you are signalled to rotate.

Rotations from station to station should occur every ½ to 1 hour. When you are changing stations, you will do a thorough walk through of the station you are about to enter. This is to ensure those who may feel the need to find you or any potential troublemakers in the Pub are aware of your presence. This will also give you a good idea of what's going on in that area. Before you relieve the security member who is currently at that station, you will brief each other on any happenings or goings on.

Security members should be in constant communication with each other throughout their shift. Simply giving a "Thumbs Up" will ensure all is O.K. in your area or "Pointing" to a specific area if you are watching someone.

Ongoing communication with the Pub Management will ensure everyone is on the same page.

Other clauses in this Policies and Procedures section deal with ID requirements, removal of a patron, checking the washrooms, rules re. fraternizing or socializing, keeping high traffic areas clear, meal breaks, etc.

Next are the following statements in bold:

**\*In the occurrence of an incident, management must be notified and briefed immediately.**

**\*In the event of an incident in the Pub, the effecting parties will be escorted through different exits of the Pub, at staggered intervals. This is to eliminate the possibilities of any further incidents with the parties involved. It is also a liability deterrent.**

The next section in the manual is the "House Rules." These deal with guests suspected of being under the influence of drugs and refusal of entry to them, searching male and female patrons, beverage consumption in red-lined area only, restrictions on where to dance, any outside consumption of alcohol, refusing entry once pub is closed, final walk through of pub on closure.

Following this is the statement: "Each security member is responsible to ensure that their security certificate is current and up to date." When asked about this, the general manager stated that this places the responsibility on the staff person to pay for and complete the online retesting. The management then keeps the record of this in its files.

The licensee did not submit a copy of the incident log book at the hearing. The general manager stated that, because of the imminent closure and the complicity of the staff in the overcrowding, staff did not record the incident of December 16, 2016 in the logbook. As he destroyed most of the records in the pub upon closing, they did not have copies of the logbook to bring to the hearing.

The Employee Manual (Exhibit 2, tab 3) is for all employees, including the security staff. The final page of this manual is a signing page for all employees to acknowledge they have read the contents of the Coquitlam Foggy Dew Employee and Human Rights Manual and the House Rules manual and that they "agree to abide by the policies within each document."

Under General Policies, there are 33 numbered clauses dealing with punctuality, drugs, theft, alcohol consumption, code of conduct, staff interrelations, parking, friends and

visitors, professional space, staff notice board, the staff table, cash handling procedures, methods of payment, illness, shift changes, breaks, grooming & uniform standards, chewing gum and eating, the audio system, the video system, washroom checks, cleanliness next to godliness, telephone calls, telephone procedures, schedules, pay cheques, confidentiality of business information, teamwork, dealing with problems, handling customer complaints, constructive discipline, termination and sexual harassment and human rights.

A few clauses are worthy of more detailed mention here as being relevant to the issue of overcrowding and evidence of due diligence.

The pub has a staff notice board and reminds employees to review it for memos, etc.

#### 10. Staff Notice Board

It is your responsibility to be aware of any staff memos or notices. This is also an excellent way to communicate your requests. (Pick-up a shift? Sell a shift?)

Under Constructive Discipline (no.30), after listing the steps from verbal warning, written warning to termination, is the following statement:

Occasionally, an employee's conduct or behaviour may warrant immediate dismissal from the workplace. It is strongly recommended that employees familiarize themselves with the Foggy Dew House Rules document. Usually, a common sense approach to your behaviour and conduct in your workplace will exclude this from happening to you.

Clause 31 "Conduct that will lead to termination of employment says: "See also the House Rules document" and includes "insubordination, lack of respect for customers or fellow staff, theft in any form" and "threats of violence or dishonesty towards fellow staff or customers" as reasons for termination.

The final page of the Employee Manual, before the signing page, refers to semi-annual performance reviews and the use of "silent shoppers":



One of the best sources of feedback available to an employee is the Performance Review. Conducted approximately every six months, your manager will work with you on a one-to-one basis to review your performance as a Foggy Dew employee. You should feel free to air any concerns you have in this forum. Other forms of performance appraisals are the Silent Shoppers Reports. Each month a group of customers will come to the store unannounced and evaluate the performance of the staff working that shift as well as the drinks and menu items they had.

The Employee Manual refers to the House Rules document, titled "Foggy Dew Irish Pub – Coquitlam (House Rules)". (Exhibit 2, tab 4) The first paragraph of this document states:

The purpose of these house rules is to define the policies and procedures as designated by the industry, Gibson Hospitality and the governing bodies or management of your Pub. We encourage all employees to enjoy themselves and have fun in their respective workplace, yet we must create an environment with specific boundaries to ensure everyone is governed by the same policies.

There are several headings, listing the rules in this document including General, Rest Periods & Meals, Schedules, Paydays & Checks, Sick & Lateness, Cash & Cash handling – Servers & Bar, Conduct on or around premises or property. Under the heading in bold "Attitude and Willingness to Work" is the following bullet statement:

If at any given time an employee displays an attitude of indifference towards guests, staff or management, they will be promptly sent home with an immediate suspension, and may result in termination of employment.

The final page is the House Rules and Policies Acknowledgement, which requires the employee to sign that they "received, read and clearly understand the house rules and policies" and a statement that:

I further understand that my responsibility is not limited only to the contents of the document, and I may be disciplined up to and including termination of my employment should my actions warrant such cause.

A manager is required to sign, noting that he has "reviewed the contents of the House Rules & Policies with the above named employee." A note above signatures indicates that "this page is to be placed in the employees file."

### Implementation of Policies and Procedures

The general manager testified that when security staff are hired, they receive each of tabs 2, 3 and 4 in Exhibit 2. The general manager explained that, whenever he hired anyone, he would review the manuals with the employee, including the departmental manual related to their job role (i.e. security manual for security staff). The general manager asked each employee to sign to show he/she had read and understood all the manuals, and he would sign as manager.

The general manager testified that he followed the practices outlined in the manuals with all the employees in the pub, including the security staff. He kept the signed copies in the files.

The general manager testified that all the doormen working on December 16, 2016 had BST certificates on their file. The general manager checked BST certificates of the security staff on a quarterly basis to ensure they were up to date.

The general manager responded to a question in cross-examination stating that, to the best of his knowledge, both the head doorman and the other doorman with over 14 years experience had up to date BST certificates on their employee files. He stated the Justice Institute would send out a letter saying the certificate was about to expire. He remembered only one occasion where there was a one week period between receiving a new certificate and old one expiring. This was not the head doorman's certificate.

When they had a security company contracted to provide security several years ago, the company did the initial training along with requiring the BST certification. The general

manager stated that, with a security company, you could never be sure you would have the same people working from weekend to weekend. When management switched to employing the security staff directly, the general manager stated this ensured consistency amongst the staff. Because of the long term relationship with many of the security staff, he felt confident in relying on them to do their jobs. That confidence was severely shaken on December 16, 2016.

The general manager testified that he held meetings every shift to discuss issues with staff. He also held departmental meetings with the separate groups of employees at different times. He stated that everyone was aware of the policy not to charge at the door, and knew of the warning in the Security Manual that management would not tolerate this. The pub had four counters for use by the security staff. The general manager had two in his office and he would regularly use them to monitor the capacity.

The general manager also testified that staff were instructed to make a note of any incidents in the logbook and they did so.

According to the testimony of the liquor inspector, during her ten years of inspecting the pub, she saw the head doorman with a counter. Other doormen had counters too to ensure they did not go over capacity. On the night of December 16, 2016, the head doorman initially had a counter and was using it before things got out of control.

### **Compliance History**

The general manager reviewed the compliance meetings listed in the NOEA at tab 7 and stated that none of these resulted in any enforcement action. This is consistent with the testimony of the liquor inspector.

### **SUBMISSIONS – BRANCH**

The branch submits that the responsible person on the evening of December 16, 2016 was the pub manager and/or the head doorman and that either one or both was the directing mind. As they were both present at the time of the overcrowding, the defence of due diligence fails.

Alternatively, if I find that neither the pub manager nor the head doorman was the directing mind, the branch submits that the evidence presented does not support a defence of due diligence.

Given the extremely serious public safety risk, the recommended penalty is appropriate.

## **SUBMISSIONS – LICENSEE**

The licensee submits that neither the pub manager nor the head doorman was a directing mind. Apart from the role of the pub manager as a supervisor on the night of December 16, 2016, the pub manager did not exercise any other functions of management. Neither the pub manager nor the head doorman had the authority to change the pub policies that are set by the senior management. The two of them were expected to follow the policies as set out in the various manuals. There was no evidence to suggest that either the pub manager or the head doorman was involved in hiring or training new employees.

Further, the licensee submits that their policies and procedures demonstrate due diligence. The evidence of the hiring practices, ensuring employees sign for the manuals, the provision of adequate training to the security staff, and the compliance history of the pub illustrate that the pub was applying its policies and practices. The overcrowding occurred for reasons beyond the control of the management, i.e. the desire of a few employees to ensure they had a monetary gain in the last few days of the pub's operations. Given the length of time the key employees (pub manager, head doorman, other doorman) had been employed by the pub, management did not foresee the behaviour that occurred on the night of December 16, 2016. This behavior was totally contrary to their policies and wholly unexpected.

The history of the pub with the branch has been a very good one. The liquor inspector, with ten years of experience inspecting the pub, had never seen the pub anywhere near the state it was in on December 16, 2016.

The licensee submits that it has met the onus of establishing due diligence and therefore has a full defence to the contravention.

## REASONS AND DECISION

### Contravention

The licensee does not dispute the facts as described in the NOEA. I find that the counting by the RCMP and the liquor inspector showed counts of 701, 781 and 736. The head doorman freely admitted to stopping counting at 620.

As the maximum capacity for the pub, both inside and out, is 444, there is no doubt that the pub was massively and dangerously overcrowded.

I find a contravention of section 6(4) of the Regulation and turn to the issue of due diligence.

### 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:

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.

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

In these circumstances, the defence of due diligence is to be considered in two stages. I have modified the *Beverly Corners* questions to apply to the overcrowding contravention and facts in this case:

1. Whether the employee(s) who was responsible for ensuring the pub was at or below capacity on December 16, 2016 was a directing mind of the licensee – if so, the defence of due diligence is not available and the inquiry stops there.
2. If the employee(s) who was responsible for the overcrowding and who was present on December 16, 2016 was not a directing mind of the licensee (and there is no requirement that a “directing mind” must be on the premises when an alleged contravention occurs), then the questions to be considered and answered are whether the licensee had:
  - a. implemented adequate training and other systems to prevent the contravention (the overcrowding); and,
  - b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

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

### The Directing Mind

I find that neither the pub manager nor the head doorman was a directing mind of the licensee. Neither of these individuals had the authority to set policies or to change policies in the pub. Neither of them had the responsibility for hiring or training employees. Neither of them was part of the management team. The head doorman was responsible for supervising the other doormen when they were working their shift. I find this is not sufficient to make him a directing mind. The licensee's evidence was that the head doorman was responsible for enforcing the licensee's policies with respect to security and maintaining the licence capacity numbers. The head doorman had no authority to modify these policies.

I find that the directing minds of the licensee are Mr. Teti, Mr. Gibson and the general manager. None of these individuals was present in the pub on the night of December 16, 2016.

Having established that the directing mind of the licensee was not present in the pub on December 16, 2016, I turn to the evidence of due diligence and the second step in the analysis.

### Adequate training and other Systems to Prevent the Overcrowding

The licensee provided evidence of its policies, practices and procedures, through verbal testimony and its documents. At the time of hiring, the licensee ensured all employees had read and understood its policy manuals. All employees were required to sign, indicating that they had read and understood the manuals. A manager was required to sign that he had reviewed the contents of the house rules and policies with the employee.

The Security Manual, which forms part of the package that security staff must acknowledge reading, clearly sets out the requirements for the staff to follow. There is strong wording in the policy with respect to no cover charge at the door. The provision on this issue emphasizes that the pub will deal with any violation of this policy in a

severe manner. The front page of the Security Manual shows the licence capacity of 388 in bold.

All employees must have their Basic Security Training from the Justice Institute. Management kept these certificates on file. Although each employee was responsible for ensuring his/her certification was up to date, the general manager testified that he checked these on a quarterly basis.

The expert witness testified about the training evening he held at the pub at the request of management in 2015. He testified that he was impressed with the professionalism of the security staff.

The employee manual notes that performance reviews are conducted every six months. The general manager testified that he was responsible for these.

The directions in the policy manual emphasize the importance of good communication amongst the security staff as well as the importance of recording any incidents in the logbook. Silent shoppers were used to monitor and report on all staff.

I find that the licensee has adequate training and other systems in place to prevent a contravention of overcrowding.

#### Effective Application of its Training and Operation of its Systems

On the night of December 16, 2016, eight security staff were on duty at the pub. This accords with industry standards of one security staff to 60 people (assuming the capacity of 444 was maintained), according to the expert witness.

The security staff regularly used counters to monitor the entry and exit of patrons. The liquor inspector testified that the head doorman always met her at the entrance of the pub and always had a counter. The one exception was the night of December 16, 2016 when he told her another doorman had the counter.



The general manager testified that he regularly checked the employees' BST certificates to ensure they were up to date. He also testified that all the security staff had signed the signing pages attached to the employee manual and that a manager (usually him) witnessed this signing and made sure that each employee had read and understood what was in the manual. This included the ban on any cover charge at the door and the warning about the consequences. He held meetings every shift to review any key issues. He instructed staff to include any incidents in the logbook. He emphasized to staff that regular communication between management and staff was essential.

The licensee did not submit copies of any signed pages from the employee manual. The licensee did not submit copies of the BST certificates for the doormen, nor did the licensee submit examples of recorded incidents in the logbook. The general manager, Mr. Gibson and Mr. Teti all testified about the closing of the pub in early January and destruction of many files at that time.

Mr. Gibson testified that they kept only the financial information records, as required by law, i.e. payroll records, tax information for 7 years, etc. He stated that the general manager was responsible for shredding a lot of files in the early days of January and probably was not thinking about the contravention when he did it.

Given the seriousness of the incident, I would have expected the management to be more cautious in preserving the necessary documentary evidence. I find that, in the circumstances of the pub closure, management was not properly attending to what might be needed if this issue were to proceed to a hearing, as it did. The licensee's witnesses testified that they were focussed on winding up the business and attempting to resolve the outstanding issue of rent arrears with their landlord.

I conclude that the absence of this documentary evidence is not a fatal flaw to the defence of due diligence in the particular circumstances here. I was impressed by the sincerity of the licensee's witnesses and the record of their longtime involvement in the industry. I accept the verbal testimony that these files were destroyed at the time of closing, that the head doorman and others signed the manuals, that their BST certificates were up to date and that employees regularly recorded incidents in the logbook.

There was no reason to expect these longtime employees would violate the policies that they had applied over the years. The fact that there had never been any proven overcrowding contraventions against the licensee in its 17 years of operation demonstrates that management was ensuring staff were complying with its policies.

The licensee has a very good compliance history, with some compliance meetings as noted in Exhibit 1, but no enforcement actions taken over its 17 years of operation. I find that this can partly be attributed to the experience and professionalism of its staff, and to management's enforcement of the policies. The head doorman had 11 years with the pub. A second doorman had 14 years of experience working in the pub. None of the doormen on duty on December 16, 2016 had less than four years working with the pub. According to Mr. Gibson, the pub manager had worked for his organization for a period of 21 years. These were employees who had been well trained in the policies of the pub, followed the policies consistently (with the one serious exception on December 16, 2016) and had demonstrated this throughout the course of their employment.

The NOEA indicates "no compliance history found" and lists a number of compliance meetings with the licensee, including two instances related to overcrowding in 2008 and 2010. The liquor inspector explained why no enforcement action is taken even after a contravention notice has been issued. She said sometimes they give the licensee an opportunity to correct the problem, as was done with the licensee's failure to add the third party operator, sometimes the number of patrons above capacity in an overcrowding situation is minimal, sometimes there is simply not enough evidence. She stated that she did not rely on any of the past compliance meetings to recommend the penalty in this case. She recommended the \$7000 penalty because of the severity of the overcrowding on December 16, 2016. As no enforcement action was taken, these compliance meetings do not affect my conclusions on due diligence.

I find that the licensee was taking reasonable steps to ensure the effective application of its training and the operation of its systems, with respect to ensuring the pub remained within its capacity.

Nevertheless, the employees failed to do their job on December 16, 2016.

What happened on the night of December 16, 2016 – was there more that management could have done to prevent this contravention?

Despite having systems in place to ensure its policies are applied, despite providing training to its security staff and ensuring new staff review the policies, despite having longtime employees who had demonstrated their compliance with the policies over the years of working in the pub, despite encouraging communication between staff and management, despite its clearly expressed rule about no cover charge at the door and the potential for consequences, on the night of December 16, 2016, staff either blatantly disregarded the licensed capacity number and/or allowed a situation to spiral out of control and/or turned a blind eye when the overcrowding escalated.

In hindsight, perhaps Mr. Gibson or Mr. Teti should have attended the pub when the general manager was unable to be there on a busy Friday night. However, given the years of experience with the pub manager, the general manager was confident that he would be a responsible supervisor that evening. This turned out not to be accurate because of the unexpected actions of the doormen.

The licensee explained why the general manager was not present on the night of December 16, 2016. He normally worked on the busy weekend nights but was unable to do so because of illness. Although apparently not part of the scheme to collect money at the door, the pub manager failed in his duty to monitor what was going on in the pub. The liquor inspector said the pub manager's initial response to her was that it was not his job to handle door security. Mr. Gibson stated they made repeated requests to the pub manager and the head doorman to come and testify at the hearing. They refused to come.

I find that the pub manager was the overall manager in charge on the premises that night and should have taken immediate action to control the situation. Mr. Gibson commented on the potential difficulty of the pub manager taking on eight good-sized doormen who were intent on following the path of greed. The general manager commented on the relatively quick pace that a pub can become over capacity, when there are line-ups at the door and free entry is being permitted. He said that the pub

manager had told him he was starting to address the problem when the liquor inspector and the RCMP arrived.

Mr. Teti described what happened on the night of December 16, 2016 as a "perfect storm." The employees had all been notified of the imminent closing; the security staff expected maybe one or two more shifts on the busy nights left until New Year's Eve; they were not concerned about the consequences i.e. termination, as they were losing their jobs anyway; the general manager called in sick on what turned out to be a very busy college night at the pub.

I have considered whether or not the general manager should have informed Mr. Teti and/or Mr. Gibson that only the pub manager would be supervising on this busy night and invited one of them to step in to supervise. It is easy to think that, after what happened, this is what he should have done. However, the general manager was emphatic in his testimony in his trust in his employees, including his confidence in the pub manager to adequately supervise. He testified that it was an understatement that he was surprised at the behaviour of the head doorman. He stated he was "stunned, betrayed, angry, disgusted," and asked himself, "how could this possibly happen?" He said he had no reason to believe that an employee who had been a good employee for such a long time would do such a thing. He did not foresee this potential to happen. If he had had a sense that this could have happened, he would have intervened well before to prevent the overcrowding.

The licensee submitted three cases for my consideration: *Central City Brewing Company Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2013 BCSC 2301, *Rayman Investments and Management Inc. dba Coal Harbour Liquor Store* EH11-139 (January 23, 2013) and *Cascadia Brewing Company Ltd. dba Rogue Kitchen & Wetbar* EH15-068 (December 9, 2015). I am bound to follow the directions of the B.C. Supreme Court and higher courts. Other decisions of the branch general manager are not binding on me and will often turn on a particular set of facts. Nevertheless, the branch tries to be consistent in its application of its rules and policies in its decision-making. Each case of due diligence is different, although there are certain key indicia that the branch looks for in determining whether the licensee has met the test of due diligence.

Many of the branch decisions on due diligence, including those referred to me here, deal with contraventions of serving alcohol to minors. A licensee may demonstrate due diligence in these situations by providing evidence of its training on how and when to request ID, signage re. ID, daily reminders, reminders at staff meetings, secret shoppers and more. A licensee may not have to provide evidence of all of these in order to meet the test of due diligence. A staff member, despite all the policies, reminders and training, may still serve alcohol to an under-age person.

Requesting identification is a subjective thing – one person's assessment of a patron's age may be different from someone else's. This is why most licensed premises today will err on the side of caution and require staff to ask for ID of anyone who appears under 30, or in some establishments, of anyone who appears under 25. There is often signage to indicate this to customers.

With respect to the contravention of overcrowding here and the circumstances that occurred on December 16, 2016, this was not a situation where staff had not received sufficient training or staff were not getting daily reminders. Overcrowding is not a subjective thing like requesting identification. Counting numbers as patrons enter a pub and recording those numbers on a counter is an objective exercise – i.e. the number is either above or below capacity. Maintaining the capacity of a licensed establishment does not involve discretionary decision-making, as is the case with requests for ID.

The security staff working on the evening of December 16 were well aware of what was required of them, knew the consequences but took no heed of these because the pub was closing. The decision to allow in patrons well beyond the capacity was not a failure of the systems in place, nor was it an oversight by an employee forgetting to apply the policy. It was a decision made by staff who were primarily motivated by greed and knew that the pub was closing and they would no longer have jobs.

Counts may vary, depending on whether or not the person counting is using a counter and whether they are moving properly through a room full of people to conduct the count. The evidence here is that the head doorman was counting, but had chosen not to ensure the pub did not go over capacity. There is no doubt that the head doorman was well aware that the pub was way over capacity. The other doormen were not enforcing

the capacity number. The head doorman admitted he stopped counting at 620. No amount of training, reminders or daily staff meetings would have changed that result. He and the other doormen were marching to the tune of a different drummer on that evening and had decided to ignore the very clearly written policies they had applied over the years and the capacity number of 444 (388 inside), preferring to collect money for themselves at the expense of the licensee.

The decision of the staff to allow the overcrowding in the pub on December 16, 2016 was theirs alone. The question to determine liability here is whether or not the management or directing minds took all the steps reasonably to be expected of them to prevent the overcrowding.

The comments of Mr. Justice Goeppel in *Central City* (Para.37), about hindsight, apply equally to the situation here. In *Central City*, he commented on the suggestions made by the General Manager of the branch that the sale [to the minor] would not have occurred if the licensee had required the subject employee to take time off, had moderated her duties or required she receive close supervision while she was suffering from emotional distress." In the situation here, hindsight suggests that the licensee should have anticipated that these longtime employees would take advantage of the situation if there were no senior management present. As stated by Mr. J. Goepel at para.37 "Each of the courses of action suggested is predicated on hindsight, on retrospective knowledge that the particular employee on the particular day failed to properly carry out her duties."

And at para.38:

The system did not fail. Liquor was sold to a minor not on account of a failed system, but because a long-serving, valued and trusted employee did not follow the rules which were clearly set out and known to her. The petitioner could not predict that the employee would not properly carry out her duties and do what she did.

This was not an error of judgement as was made by the server in *Rogue Kitchen*, p.26. The head doorman and the second doorman showed a blatant disregard of the well-

known rules that they had consistently followed throughout their many years working in the pub. There is no question in my mind that they knew the rules and willingly chose to ignore them.

## CONCLUSION

I am very troubled by the facts of this contravention. The extreme overcrowding in this pub could have led to a tragic ending. When regulations affecting public safety are ignored, the results can be catastrophic, for example if a fire had broken out in the pub. My immediate reaction to the facts here – as would be the reaction of many in the public – is to give the violators the largest penalty possible. The liquor inspector in the NOEA has recommended the maximum for this first offence because of the very “blatant disregard for the rules.”

However, I am required to apply the law on due diligence – which basically requires me to ask if the act took place without the employer’s direction or approval. If the employer has “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,” in the words of Mr. Justice Dickson in *Sault Ste. Marie* case cited above, then the employer has a defence.

If I were to impose a penalty here, it would be on the employees who allowed this very dangerous overcrowding to occur. I do not have the authority or the jurisdiction to do such a thing. If I were to impose a penalty on the licensee here, given my findings on due diligence, it would mean imposing absolute liability on the licensee. That I cannot do.

On all the evidence, I find that the contravention of section 6(4) of the Regulation has been proven on the balance of probabilities.

I find further that the Licensee has established on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them. The licensee has a complete defence to the contravention.

Accordingly, I do not need to consider the issue of penalty.

*Original signed by*

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Nerys Poole  
General Manager's Delegate

Date: May 31, 2017

cc: Liquor Control and Licensing Branch, Surrey Office  
Attn: Rupi Gill, Regional Manager

Liquor Control and Licensing Branch, Victoria Office  
Attn: Hugh Trenchard, Branch Advocate



## Boivin, Arielle SBRT:EX

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**From:** Safavian, Neelam SBRT:EX  
**Sent:** Tuesday, March 7, 2017 10:46 AM  
**To:** Mior, Peter SBRT:EX  
**Cc:** Boivin, Arielle SBRT:EX  
**Subject:** Executive Plaza - Foggy Dew Pub

Hello  
Please see message from licensee.

N.

-----Original Message-----

**From:** Salim Sayani [<mailto:salimsayani@executivehotels.net>]  
**Sent:** Tuesday, March 7, 2017 10:42 AM  
**To:** Roger Gibson; Safavian, Neelam SBRT:EX  
**Cc:** s.22 'Sofia Sayani'; s.22  
**Subject:** Re:

Hi Neelam  
Roger will speak to the license hearing on behalf of this license Salim

Sent from my BlackBerry 10 smartphone on the TELUS network.

Original Message  
**From:** Roger Gibson  
**Sent:** Tuesday, March 7, 2017 10:24 AM  
**To:** 'Salim Sayani ([salimsayani@executivehotels.net](mailto:salimsayani@executivehotels.net))'; Safavian, Neelam JAG:EX  
**Subject:**

Hi Salim , would you please notify inspector Neelam Safavian that we may speak to the licence at the Foggy Dew Irish ( licence # 010354 ) in respect to the notice of enforcement action , Case EH 16-160 . Thank you See above e mail address

Roger Gibson  
Gibson Hospitality  
West Coast Liquor Company  
604 351 4900  
Note new e-mail  
[roger@gibsonhospitality.com](mailto:roger@gibsonhospitality.com)<<mailto:roger@gibsonhospitality.com>>



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

File: EH16-160  
Job: 000710975-055

January 16, 2017

Sanoor Investments Ltd.  
c/o Sayani, Nurdin (Noordin)  
405 North Rd  
COQUITLAM, BC V3K 3V9

**Re: License Number:** 010354  
**License Type:** Liquor Primary  
**License Expiry Date:** April 30, 2017  
**Establishment:** Executive Plaza Coquitlam  
**CN #:** B006865

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 license,
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.

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Ministry of Small Business  
and Red Tape Reduction  
and Responsible for  
Liquor Distribution Branch

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.	Overcrowd beyond person capacity more than occupant load, s. 6(4) Reg.	s. 6(4) Reg.	2016-DEC-16 11:30 PM	\$7000 monetary penalty

## 2. NARRATIVE

### Background:

Executive Plaza Coquitlam is an establishment located in Coquitlam BC which currently holds multiple liquor licenses; one being the subject license noted above which operates under the business name of The Foggy Dew Pub. The licensed capacity for this establishment is 388 for the interior and 56 on the outdoor patio, for a total person capacity of 444.

On the night of December 16, 2016, Inspector Safavian and 3 members of the Coquitlam RCMP conducted routine inspections of several establishments in Coquitlam and Port Coquitlam.

Upon arrival at the Foggy Few Pub at approximately 11: 20 am, Reserve Constable John Laseur and Inspector Safavian noted approximately 100 patrons in the lineup outside. At the entrance, Inspector Safavian spoke to the head doorman, s.22, and requested the count of patrons. s.22 stated they are at capacity and when Safavian asked what the number was; he uncertainly stated 400 and that he was not sure as another doorman had the counter. However, there was no other doorman in the immediate area. Safavian asked why the person with the counter is not at the entrance. s.22 stated that at this point he was just trying to keep the peace.

Inspector Safavian then went inside the establishment and noted it to be extremely crowded around the entrance. Safavian decided a count was necessary and advised s.22 to hold entry and exit of patrons until a count could be completed. Safavian also asked Cst. Laseur to monitor patrons leaving the establishment.

Safavian initiated a mechanical count near the front entrance and moved towards the opposite end of the establishment. Patrons were located shoulder to shoulder, and Safavian had to push her way through toward the other side of the bar while attempting to count. It was difficult to see beyond 1 foot of space due to the density of the crowd. Safavian managed to count to the end of the bar and then a short distance towards the dance floor and then abandoned the count. Safavian did not feel confident about the accuracy of the count due to the extreme density and movement of the crowd. When she had reached the end of the bar, she made observations towards the back (opposite the dance floor) and noted the density of the crowd to be similar. She returned to the front and considered initiating another count, and made observations towards the back of the establishment from that end of the bar. It was congested in a similar fashion. Safavian

felt the establishment was dangerously overcrowded and that she could not complete a count in an accurate or safe manner and; despite Safavian's request to security staff to hold exit and entry of patrons, patrons continued to enter and exit the establishment.

Safavian discussed the situation with Cst. Laseur and Cpl. Luca and informed them that she would request the establishment temporarily shut down in order for a count to be conducted and in order for the capacity to be brought down to the approved number.

Safavian then advised <sup>s.22</sup> that the establishment appeared extremely overcrowded and that conducting a count of the establishment is nearly impossible given the circumstances. She then questioned him about the number of patrons they had permitted entry to. <sup>s.22</sup> nodded his head when he was advised of the overcrowding and stated that he stopped counting at 620 and that they had lost control of patrons entering the establishment. Safavian asked him what time he stopped counting. <sup>s.22</sup> could not recall or did not know. Safavian requested he contact the manager on duty.

Safavian and Cpl. Luca then spoke to the manager on duty, <sup>s.22</sup> had no idea how many patrons were inside the establishment and stated it was not his responsibility but rather the security's responsibility. <sup>s.22</sup> was advised that the establishment appeared dangerously overcrowded. He and <sup>s.22</sup> were informed that they were required to shut down in order for a count to be conducted and in order for the capacity to be brought down to the approved number.

Safavian conducted a mechanical count of patrons exiting the establishment until the establishment was approximately half cleared. The management, security and police were then requested to hold exit/entry, as there was now ability to move inside the establishment and there was a massive crowd of patrons to deal with outside the establishment. Safavian then completed the remainder of the count inside. Her total count was 664. A Constable who was assisting in the inspection conducted a count of the patio at the same time. His count was 37, for a total approximate count of 701.

Another count of patrons exiting the establishment was being conducted simultaneously by Cst. Laseur. He had initiated this count approximately on arrival. When the establishment was cleared by approximately half, his count was 402. At this time, one of the security staff members conducted a count of the interior. His count was 379; for a total approximate count of 781.

At approximately 12:23 am, when the establishment was mostly cleared, Cpl. Luca and Safavian advised security staff and the management of the results. <sup>s.22</sup> reiterated that he had stopped counting at 620 and that they had lost control of patrons entering the establishment. The manager, <sup>s.22</sup> was not aware of this and stated that it was not his responsibility. It was evident that the two people in charge were not in control and were not in communication with each other regarding the situation.

Safavian requested that <sup>s.22</sup> conduct a count of the patrons remaining inside. He conducted the count and reported it to be 135. At this time, Cst. Laseur's exit count was at 601. For a total approximate count of 736.

Safavian consulted with the Regional Manager of LCLB via telephone to discuss the circumstances and subsequently, the establishment was permitted to re-open with the patron count starting at 135. s.22 \_ was advised a Contravention Notice would be issued for overcrowding and that follow up would be conducted during the following work week.

On December 21, 2016, members of the Coquitlam RCMP, the Coquitlam Fire Inspector and Inspector Safavian met with the licensee representatives; Sophia Sayani and Noman Ali and third party management representative/General Manager, Paul Gaudaur. The officers from each agency expressed their concerns with the major public safety risk which was created by the overcrowding incident and Inspector Safavian issued Contravention Notice B006865. At this meeting, the General Manager, Paul Gaudaur was apologetic for the situation and advised that he had investigated the incident. He stated that two security staff members had decided to accept \$20 per patron and "open the gates" to allow entry and that those two staff members had been suspended or terminated. He also stated that serving staff had told security to stop allowing more patrons; however the security staff continued to allow patrons inside.

### **3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)**

#### **3.1 Overcrowd beyond person capacity more than occupant load, s. 6(4) Reg.**

Person capacity refers to the maximum number of persons allowed in an establishment by the General Manager. The subject license has an approved person capacity of 56 on the outdoor patio and 388 for the interior; for a total person capacity of 444.

#### **Element 1: The number of persons in the establishment exceeded the licensed person capacity; and**

- A mechanical count conducted by Inspector Safavian was 664. A Constable assisting in the inspection conducted a count of the patio at the same time. His count was 37. For a total approximate count of 701.
- A count of patrons exiting the establishment was conducted by Cst. Laseur and when the establishment was cleared by approximately half, his count was 402. At this time an inside count was conducted by a security staff member who reported the count to be 379. For a total approximate count of 781.
- When the establishment was virtually cleared, the exit count by Cst. Laseur was 601. At this time an inside count was conducted by head doorman<sup>s.22</sup>  
s.22 His count was 135; for a total approximate count of 736.

**Element 2: The licensee knew or ought to have known that the establishment was overcrowded.**

- The security staff member in charge of the entry, <sup>s.22</sup>, reported that he had stopped counting at 620. This count is 176 persons above person capacity. This statement alone indicates that the staff were cognisant of the overcrowding.
- The characteristics of the crowd were such that there was extreme difficulty attempting to move throughout most of the establishment and patrons were jammed shoulder to shoulder throughout. Despite this, the manager on duty, <sup>s.22</sup> did not seem to take any action or responsibility.
- The general manager reported that two security staff members "opened the gates" and allowed entry to patrons by accepting \$20.00 per person. He also stated that serving staff expressed concern to the security and requested that they stop allowing more patrons inside, despite which, the security staff continued to allow patrons inside.

**4. REASONS FOR PURSUING ENFORCEMENT**

**4.1 Overcrowd beyond person capacity more than occupant load, s. 6(4) Reg.**

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 and the risk of death or serious injury is greater.

The public interest in community standards is also relevant to the contravention of overcrowding. The maximum capacity established for a liquor-primary license is the result of community input during the licensing process. The maximums are set so as to reduce the risk of negative impacts on neighborhoods 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.

In this case, the establishment was blatantly and dangerously overcrowded to the point authorities could not safely complete a count. Patrons were pushing and shoving their way throughout the establishment. Clearing of the establishment was required to complete a count and bring the capacity back down to that which was permitted.

The effect of this mass overcrowding incident was a massive spillage of patrons into the vicinity of the establishment. Many patrons were upset at having to exit, the weather was extremely cold and patrons were distressed and had no chance to obtain their belongings. Patrons were pushing themselves back into and out of the establishment. Many were intoxicated and disorderly and rough behaviour was observed.

The situation necessitated assistance of more police officers than were assigned to conduct inspections that night. Cpl. Luca summoned for assistance and 9 additional members of Coquitlam RCMP were obliged to attend the scene and 4 members of Burnaby Detachment who were in the vicinity assisted to gain control of the crowd. The incident caused the need for a total of 17 police officers to deal with the aftermath.

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

5.1 Overcrowd beyond person capacity more than occupant load, s. 6(4) Reg. : \$7000 monetary penalty proposed

For the alleged contravention of overcrowd beyond person capacity more than occupant load, s. 6(4) reg. (Contravention Notice Number B006865), a monetary penalty of \$7,000.00 ( Seven Thousand Dollars ) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 4, item 15 of the Regulation for a first contravention.

A monetary penalty is felt to be more appropriate in this situation as the third party operator is no longer managing the establishment and it is the licensee's intent to close the establishment for a period of time. A penalty amount of \$7,000 is felt appropriate and warranted as the incident was an extreme public safety violation.

## **6. THE PROCEDURES**

You (the licensee) may agree with or dispute the above allegation(s) and proposed penalty.

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 the enforcement action to be imposed on the licensee and 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 any penalty 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 penalty proposed in this NOEA.

Schedule 4 of the Regulation sets out the range of enforcement actions for 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 you (the licensee) agree that the contravention(s) took place and accept the enforcement action proposed, there is no need for a hearing. In that case, you must sign a document called a waiver. By signing a waiver, you irrevocably

- Agree that the contravention(s) occurred,
- Accept the proposed penalty,
- Agree that the contravention(s) and penalty will form part of the compliance history of the licensee, and
- Waive 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 604 586-2657 as soon as possible. If you do not sign a waiver, the branch registrar will provide you with the next steps in the hearing process.

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](http://www.pssg.gov.bc.ca/lclb/comp_enforce/index.htm)

Yours truly,

Neelam Safavian  
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:

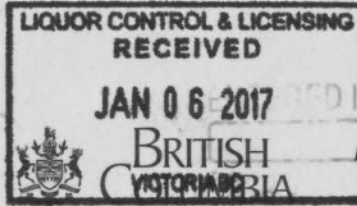
### **Past Enforcement Action Taken**

*No compliance history found*

### **Compliance Meetings**

<b>License</b>	<b>Date</b>	<b>Topic</b>
010354	April 01, 2014	Allow consumption beyond time permitted, s. 44(3) Reg., Fail to clear patrons by time required, s. 44(1)(a) Reg., Unlawful sale of liquor, s. 38 (3) (b) Act
010354	April 08, 2003	
010354	March 07, 2003	Minor - Permit minor to enter or be on premises, s. 35 Act
010354	March 03, 2008	Overcrowding beyond patron capacity more than occupant load, s. 12 Act, s.71 (2)(b) Reg.
010354	November 27, 2003	
010354	October 05, 2010	Overcrowd beyond person capacity more than occupant load, s. 6(4) Reg.
010354	February 25, 2014	Allow consumption beyond time permitted, s. 44(3) Reg., Fail to clear patrons by time required, s. 44(1)(a) Reg.
010354	March 25, 2009	Permit person to become intoxicated, s. 43(2)(a) Act
191503	March 14, 2016	
191503	September 19, 2005	
191503	November 27, 2003	

### **Other Factors**



No. B 006865

Liquor Control and Licensing Act  
and Regulation 244/2002**CONTRAVENTION NOTICE**Liquor Control and Licensing Branch,  
Ministry of Public Safety and Solicitor GeneralEstablishment name: Executive Plaza CoquitlamEstablishment address: 405 North Road  
Coquitlam BCLicensee name: Samoor Investments LtdLicence #: 610354 Date CN issued: Dec 19/16Date and time of alleged contravention(s): Dec 16/16 11:30 pmOn 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 6.4	<input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg
2	Person capacity greater	<input type="checkbox"/> Act <input type="checkbox"/> Reg
3	than occupant load	<input type="checkbox"/> Act <input type="checkbox"/> Reg
4		<input type="checkbox"/> Act <input type="checkbox"/> Reg

Details: Staff permitted over  
crowding by allowing  
in excess of 600/700  
patrons into establishmentInspector name: N. Safavian Badge #: 90Telephone: 586 2657 LPC #:Management acknowledgement (name and title): HANDVIA EMAIL + MAIL DELIVERThe 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)



**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:	Sanoor Investments Ltd. dba Executive Plaza Coquitlam 405 North Road Coquitlam, BC V3K 3V9
Case:	EH14-111
For the Licensee:	Dennis Coates, Legal Counsel Roger Gibson & John Teti, Licensee Representatives
For the Branch:	Cristal Scheer
Enforcement Hearing Adjudicator:	Dianne Flood
Date of Hearing:	May 14, 2015
Date of Decision:	June 26, 2015

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**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/iclb/>

## INTRODUCTION

Sanoor Investments Ltd. dba Executive Plaza Coquitlam (the "licensee") owns the Foggy Dew Pub at 405 North Road, Coquitlam, BC. The licensee holds Liquor Primary Licence number 010354 (the "licence"). The Foggy Dew Irish Pub Coquitlam Inc. (the "third party operator") operates the Foggy Dew Pub. Mr. Roger Gibson and Mr. John Teti are principals of the third party operator and appeared as the licensee's representatives at the hearing.

According to the terms of its licence, the licensee may sell liquor from 11:30 a.m. to 1:30 a.m., Monday through Thursday, and from noon to 2 a.m. on Friday through Sunday. The premises have a licensed capacity of 56 for Patio 1 and of 388 for Person 01.

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

The licensee is alleged to have contravened the Liquor Control and Licensing Act (the "Act") on September 5, 2014, by serving liquor in excess of the maximum drink size set by 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 dated October 23, 2014 (the "NOEA") (Tab 1, Exhibit 1).

The Branch alleges that on September 5, 2014, the licensee contravened section 12 of the Act by contravening a term and condition of the licence, that is, by serving liquor in excess of the maximum drink size set by the Guide. The range of penalties for a first contravention of this type is a 1 to 3 day licence suspension and/or a \$1,000 to \$3,000 monetary penalty (item 46, Appendix 1, the Guide). The branch proposes a monetary penalty of \$1,000.

## RELEVANT STATUTORY PROVISIONS

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

### Licences

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

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

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

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

### 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:** Branch's Book of Documents, Tabs 1 to 11

### WITNESSES

The Branch called one witness, the liquor inspector who attended at the premises on September 5, 2014 (the Inspector).

The Licensee called four witnesses: the two principles of the third party operator, Mr. Gibson and Mr. Teti, the bartender who sold the liquor ("the Bartender") and the manager on duty at the premises on the night in question (the "Manager").

## THE BRANCH'S EVIDENCE

### The Inspector

The Inspector testified that she has seven and a half years experience as a liquor inspector. She attended at the premises on September 5, 2014 as part of a routine inspection. The premises were busy, with a line-up of about 60 to 70 people. She identified herself to the head doorman, who advised her the premises were at capacity and they were only allowing people in on a "one-for-one" entry, that is, only when one person left would another person be allowed in.

The Inspector's evidence was that she then proceeded into the premises, accompanied by the head doorman, and did a head count. She was familiar with the premises as she had inspected it often. The Inspector testified the premises were busy.

By her count, the premises were over capacity for the outside patio area. The head count for the patio was 71-73, when its maximum capacity is 56.

She then started her count inside and as she was doing that count she saw a patron carrying a tray of eight shooters ("Tray 1") walking toward the area of the pool table. She watched the patron and saw him distribute the shooters to his friends and drink one himself.

The Inspector testified that the head doorman saw her looking at this happen and asked her if it was permitted, to which she responded "not by the tray load". She said she then continued her count.

The Inspector testified she then saw another patron at the bar with a tray, and seven shooters being prepared by the bartender ("Tray 2"). The head doorman spoke to the bartender but she could not hear what was said. She said she observed what looked like the bartender giving the patron his money back. She said she told the patron she was sorry for the inconvenience, and he said it was ok, he knew it was not permitted as he was a bar owner too.

The Inspector marked the location where the first patron took Tray 1 with an "X" on the floor plan (Tab 6, Exhibit 1). She marked the location where the second patron stood to order Tray 2 with a "Y" on the same floor plan.

The Inspector said she finished her head count and spoke to the Manager about the overcrowding on the patio and about the two trays of shooters. She said he seemed frustrated and was going to shut the patio down. The Inspector told him that was not necessary.

The Inspector testified that the Manager called the Bartender into the office and asked him about serving the trays of drinks. She said the Bartender apologized, said he didn't mean to do it, and that it would not happen again. The Inspector asked the Bartender for the shooter ingredients and amounts and he wrote that information down (page B, Tab 5, Exhibit 1). Those notes indicate one of the shooters as a "pornstar" and the other as "beefcakes", with each of the shooters indicated to be one ounce of liquor, with a splash of juice.

The Inspector also asked for and got the sales receipts for the two trays of shooters. One receipt showed eight "pornstars" but the other only showed four shooters, not the seven she had observed. She said this did not make sense until she later saw the Bartender's statement (page A, Tab 5, Exhibit 1) that said he had "promo'd" three of the seven drinks.

The Inspector said she later met with Mr. Gibson and Mr. Teti, the principals of the third party operator, and with the Bartender. She took the Bartender's statement (page F, Tab 4, Exhibit 1). The Bartender told the Inspector that he knew that the drink limit was 3 ounces per person and that he made sure not to over-serve or to serve to intoxication. The Bartender told her that he had experience and had worked other places and had had some training at every place he worked. He said the licensee had asked if he had his SIR and if he knew the rules and he had answered yes.

The Inspector reviewed page 17 of the Branch Compliance and Enforcement Manual, "Liquor Pricing" (page I, Tab 4, Exhibit 1). She drew specific attention to paragraph 20.8.2, "Prohibition against using a sales strategy that is likely to promote or encourage intoxication". Under that paragraph, licensees are directed that that they must not use a sales strategy that is likely to promote or encourage intoxication. Prohibited sales strategies are stated to include serving drinks larger than the maximum drink size. The maximum drink size is set out and for distilled liquor the maximum drink size is three ounces (85 ml) per person.

The Inspector then referred to the Guide that applies to all licensees (Tab 8, Exhibit 1). At page 33, under Drink Sizes, licensees are directed to encourage moderate consumption at all times and to follow strict limits on maximum size of servings. For distilled liquor, the maximum drink size is set at three fluid ounces (85 ml). This limit is stated to apply regardless of whether the drink is served in one or more glass or container. The Guide goes on to permit drinks that one or more patron intend to share to be served in larger containers but cautions that the maximum of three fluid ounces per person must be maintained.

The Inspector also drew attention to page 34 of the Guide, still under the heading of Drink Prices, where licensees are directed to encourage moderate consumption. Licensees are instructed not to use a sales strategy that is likely to promote or encourage over consumption. Licensees are specifically directed that they "may not serve any drinks greater than the maximum drink sizes – by the "tray load" for example."

The Inspector testified that she did not proceed with the overcrowding issue.

In the NOEA (Tab 1, Exhibit 1) the Inspector set out her reasons for pursuing enforcement action. Maximum drink sizes are intended to encourage moderate consumption. A bartender serving a tray of shooters has no ability to monitor or control who the drinks are served to – whether they are consumed by minors, intoxicated patrons, or the consumption of all the shooters by one person.



She re-iterated that drink sizes more than the maximum was against public safety and could lead to other problems. The Inspector testified that staff are to serve the drinks to the person who is to consume them, so they can observe and determine if someone should not be served.

The Inspector testified that on the night of the contravention the Bartender told her that the table where Tray 1 was served was near the bar and he could monitor it, but in the Inspector's opinion the table was not near enough to the bar for the Bartender to monitor it.

The Inspector testified that when writing up the contravention notice, she considered the penalties under Appendix 1 of the Guide for using a sales strategy likely to promote or encourage intoxication (Item 30) and for a exceeding the maximum drink size as a general item under Item 46 of the Appendix. The penalties for a sales strategy (on a first offence - possible suspension for 4-7 days, and/or a monetary penalty of \$5,000- \$7,000) are higher than for a breach for exceeding maximum drink size (possible suspension of 1-3 days and/or a monetary penalty of \$1,000 - \$3,000), so she decided to write up the contravention as exceeding the maximum drink size because that was less onerous to the licensee.

She noted that there were no contraventions of a similar nature and referred to prior compliance meetings (Tab 11, Exhibit 1). She agreed that no enforcement action was taken on the earlier issues for which there had been compliance meetings.

The Inspector agreed that the issue of overcrowding on the patio was not proceeded with, that the patio had been used for smoking and not for liquor service.

The Inspector had not seen the Bartender's email about the drink ingredients and the revised amount of liquor in each shooter (Tab 5, Exhibit 1) because it had been forwarded to the Branch Advocate, not the Inspector.

The Inspector did not see Tray 2 being served, but she believed the Bartender returned the patron's money for it.

The Inspector had no knowledge of the prior actions or location of the patrons who were served the drinks on Tray 1, as she had only entered the pub prior to that.

The Inspector re-iterated that one patron was served more than the maximum, he took the tray of shooters to a table where in her opinion the Bartender could not see him and while the patron did not consume all the shooters, the patron could have consumed all of them.

The Inspector is trained to observe for intoxication but she did not pay attention to whether the persons who drank the shooters from Tray 1 were intoxicated, as she was focused on counting the drinks on the tray. While intoxication would be a significant issue, when conducting an inspection she looks for the capacity, for minors and for intoxication. She went through the premises twice, once with the head doorman and once with the Manager.

The Inspector agreed that she was aware of self-service of liquor by patrons, where the patron goes to the bar and gets a drink and then sits down. She agreed that was fairly common. She testified that self-service was a question of the quantity picked up at the bar. She agreed that self-service is permitted but said the size of the drink has to be consistent with the maximum size of drink permitted per person. The Inspector had never seen anyone walk away from the bar with a jug of beer. She did not believe there was anything specific in the Guide about self-service.

## **THE LICENSEE'S EVIDENCE**

### **Mr. Roger Gibson**

Mr. Gibson testified that he had been involved in the liquor industry for over 50 years, and during that time he had been involved in many establishments, both large and smaller. The only infraction he had ever had in that time, was an overcrowding issue in the mid -1980's. He is very active in industry advisory groups.

Mr. Gibson testified that he had been involved with the operation of the Foggy Dew since it opened in 2000. He was not present the night of the alleged contravention. The Manager and the Bartender had been employees for a number of years, the Manager since the opening of the premises.

Mr. Gibson gave evidence of how, in his opinion, a typical licensed premise operates. In a food primary he said the patrons are seated at a table for one to two hours. In a liquor primary establishment he said it is more fluid, with patrons moving about a lot.

His instructions to staff are to watch for over-service, service to minors, and capacity.

The Foggy Dew does not serve liquor on the patio after 11 p.m. because they are not allowed to. After 11 p.m. they use it for smoking only in order to avoid interference with the line up to get in.

He acknowledged over-consumption was a real problem because of drinking and driving and safety. He did not want to get anyone intoxicated because of the problems that can create for themselves and for other patrons. They had a handbook that was signed by employees and the Manager held staff meetings.

In his opinion, the problem here was the alleged inability to serve patrons with drinks for the patron and another patron. He used as an example, going into a crowded bar and getting a table, and then every patron having to go up to the bar to get served.

He disputed whether the shooters served that night each had more than one ounce of liquor. He thought they each had  $\frac{2}{3}$  of an ounce, so that the total liquor for the eight shooters was five and one third ounces.

He testified that how the staff managed self-service was up to the server and the bartender on duty. Mr. Gibson said the servers do not wander around with a tray of shooters to sell. Patrons have to order from a server or a bartender.

He said in a pub like the Foggy Dew it was quite possible for a patron to go to various different bartenders, so what the licensee does is have security keep an eye on patrons and if they notice anything out of line, then the person is asked to leave or is given coffee.

In his opinion, the Bartender would be able to see the area where Tray 1 was taken and consumed, but he did not know if, in fact, the Bartender did see the tray delivered and the shooters consumed.

Mr. Gibson testified that he had a good relationship with the liquor inspectors. He was not concerned about the amount of the fine, it was the principle of the ability to permit self-service. He said that the sports clubs are all basically self-service. He also commented on how at banquets, a person may buy several bottles of wine for the table and carry them back to the table.

#### **Mr. John Teti**

Mr. Teti testified that he had been in the hospitality industry since 1967, and has operated licensed establishments since 1969. He had been in partnership with Mr. Gibson since 1982 and together they co-managed the Foggy Dew.

He is very involved in the industry, and was the chair and spokesperson for Bar Watch, a joint safety initiative between specific owners and Vancouver Police Department, which has won a national award for its public safety initiatives. He said he was among the first bar owners to install a scanner to limit criminal activity on the premises. He has worked with Crime Stoppers on initiatives like date drugs. He said that public safety is a primary initiative of his.

Mr. Teti testified that the three pillars of operating a licensed establishment were not to overcrowd, not to over-serve and not to serve minors. He had no intent to have intoxicated customers – they inevitably will be a problem, so he instructs staff on this. On over-service, he agreed he would never serve one patron eight shooters at one time.

Mr. Teti described the Foggy Dew as more like a nightclub than a restaurant. He described it as having four bartenders on duty, so on any given night a patron could get drinks from all four bartenders. He testified that security staff was there to look for problems, to avoid over-service, overcrowding or service to minors.

In discussing self-service, Mr. Teti said that he had been at many events where he had bought a bottle or two of wine for the table and was allowed to walk away from the bar with it, without any questions asked.

Mr. Teti testified that he agreed with the Inspector's concerns that if no one was to observe self-service that it could be a problem, but he said no bartender would serve eight shooters without knowing where they were going.

He testified that the ratio of sales by servers and bartenders would depend on the operation. At the Foggy Dew, a larger proportion of sales were by the bartenders.

Mr. Teti thought that if delivery of drinks by a patron on a tray is a problem, then the Branch ought to send out a notice to licensees directing them not to do that.

### **The Bartender**

The Bartender testified that he had over 14 years experience in the industry, as a server, a bartender, and a bar manager. He has worked at the Foggy Dew since March 17, 2014. His job is to oversee the well-being of the customers. His duties include serving customers, servicing the servers and serving food orders. His work schedule varies from two to three days a week, generally on weekends.

The Bartender testified that he was familiar with the expectations of the Branch.

The Bartender had read the NOEA and recalled giving the statement at Tab 5, Exhibit 1, when requested to do so by the Inspector. He recollected the events of the night in question.

Respecting the service of the shooters on Tray 1, the Bartender testified that a group of customers had been standing around the bar. He said that this was not common but also was not unusual. He had served them some Coronas and rye and cokes and they had six "pornstar" shooters at the bar. They then ordered another eight "pornstars". By that time, the Bartender testified, they were being pressed against the bar and were irritated and asked for a tray. All of these customers were still hovering and then they walked away to a table. The Bartender said he could see the table they went to. It was about 20 to 25 feet away. It was the same group that had been at the bar. He saw them drink the shooters.

Respecting Tray 2, the Bartender testified that a "general regular" who he had seen a few times asked for shooters for him and his friends. The Bartender said he advised the customer that he, the Bartender, would serve them. He delivered the tray to the table and put one in front of each customer.

He denied that the order for the seven shooters had been cancelled as described in the NOEA. He said he did not give the patron his money back, as described. He testified that, instead, he simply gave the patron his change. The Bartender said he "promo'ed" three of the seven drinks because he liked the customer and to build clientele.

The Bartender said the Inspector had not spoken to him at that time; he only spoke to her later. It was after he delivered the drinks that he was pulled into the office and spoken to by the Manager.

The Bartender knew it was against the law to serve one person three or four drinks at a time. If a customer asked him to do that, he would refuse to do that.

With respect to self-service, he said he would permit it, if it was within the law.

The Bartender testified that if a patron orders shooters, in deciding how many to serve, the Bartender will consider if the patron is by themselves or with others. If by themselves, then it is limited. If the patron is with others, the limit "can be raised a bit". He used as an example, the patrons that ordered the "pornstars", saying they had been a group and stuck together.

The Bartender sent the April 2 email (page C, Tab 5, Exhibit 1) setting out the formulas for the drinks. It shows the shooters are each  $\frac{2}{3}$  ounces. He agreed this would mean the eight "pornstar" shooters were a total of five and one third ounces. He said more often shooter ingredients were  $\frac{2}{3}$  ounces, not a full ounce.

The Bartender said on the night in question he set out the ingredients and amounts for the shooters in his handwritten note (page B, Tab 5, Exhibit 1). He agreed that note shows each of the shooters to have one ounce of liquor, not the  $\frac{2}{3}$  ounce showed in the April 2 email. He explained the difference in amounts by saying he was very nervous when interviewed by the Inspector on the night in question.

The Bartender testified that the shooters and their contents or the amount of liquor in each are not listed on a menu. He does not have instructions on how much liquor to use in each shooter. He testified that sometimes the amount of liquor in a shooter will be  $\frac{2}{3}$  of an ounce; sometimes it is one ounce. He said each shooter is measured when ordered, not pre-poured.

The Bartender testified that the size of shooter glasses may be 1 ounce, 1 and  $\frac{1}{2}$  ounces, or 2 ounces. He said bigger glasses were necessary for some drinks because once you shake them, foam forms.

The Bartender said he admitted to the Inspector that he had served more than the maximum number of drinks because he was nervous. He maintained that the patrons were a group that he was familiar with. He said he probably should not have let the patron take the tray himself and he, the Bartender, should have delivered it himself.

When shown the floor plan of the premises at Tab 6, Exhibit 1, the Bartender indicated where he was standing when Tray 1 was served and marked that on the floor plan with a "1" in a red circle. He said he thought the patrons were located at a table that he marked with a "2" in a red circle. He marked the table where he delivered the "beefcake" shooters to with a "3" in a red circle.

In the Bartender's opinion, the bar was busy that night. Three bartenders were on the one side of the bar, and another two or three on the other side, so there were about six bartenders on duty.

He testified that as a bartender he would monitor over-consumption and if a patron was intoxicated, the patron would be offered water, asked to leave or to be escorted out. The Bartender testified that security was going around the premises, observing customers.

In the Bartender's opinion, the bartenders serve about 60% of the drinks served in the premises; the servers serve about 40% of the drinks.

### **The Manager**

The Manager testified he had overseen the entire operation of the Foggy Dew since it opened in February 1999. He worked at least 5 or 6 days a week with hours that varied but usually from noon to 1:30 or 2 a.m.

He recalled the night in question. He testified that it was busy and up to 25 staff were working – servers, bartenders, bussers, kitchen staff and security. He acknowledged that the premises were close to capacity on that night. He said that happens regularly.

The Manager testified that patio operations had ceased at 11 pm, and after that the patio was used as a smoking area. The patio can only be accessed from inside the premises. For service on the patio, he said there was a separate server who takes orders and delivers the drinks.

The Manager described the layout of the premises as shown on the floor plan, Tab 6, Exhibit 1. He said that that floor plan was reasonably current. According to the Manager, the central island bar serves the whole of the premises. The Manager said the bar is designed so that the bartenders are not often required to look down. They look up at screens for the drink orders. He said that when it's busy, there are six bartenders, six servers and generally six security personnel. Doormen work on Friday and Saturday nights and when there are events.



The Manager testified that security personnel check identification when patrons arrive and monitor the occupancy level and deal with any problems with over-service or any other behavioral issues.

The Manager thought service was about 60% by servers and 40% by bartenders on busy evenings. He testified that there was usually about a 50/50 split between patrons sitting and standing; on a busy night, the split could be 60/40 seated versus standing.

When asked about self-service, the Manager replied that it depended. If the patrons could be seen from the bar, and the sightline was good, then the bartenders could see where it was going, how many patrons there were and how many glasses were asked for.

When asked if the bartenders would have a hard time seeing who was drinking where, the Manager said he has been the general manager for 16 years and he could monitor the premises from anywhere. He did say there is one partition to the washrooms that impedes the sightlines. Generally, he said, there are about three or four locations where you cannot see all patrons. He said that if asked for more than the maximum drink per person, and the patrons could not be seen, then he would ask for the group to come to the bar or to wait for a server.

The Manager said the area by the poolroom could be seen from the bar.

The Manager agreed that on the night in question the premises were dimly lit and music was playing. He said some patrons were dancing in the area for that. He described the movement of people as "fluid". In his opinion, on that night the patrons in the area where Tray 1 was taken would generally be sitting; in the area where tray 2 was delivered people would be standing and milling about.

The Manager agreed that if a patron was not served directly it would be hard to monitor if there was "passing off" of liquor to minors and hard to monitor levels of intoxication.

On the maximum drink size per person, the Manager testified the shooters are one size and for a highball, it's a maximum two-ounce shots. He said the reason for the rule on maximum drink size is moderation. He disagreed that the maximum could be exceeded if the sightline was good. He said this was not a policy of the licensee, just common sense.

The Manager testified that the bartenders and servers have to have their SIR and that the SIR program teaches them to engage with patrons and how to avoid over-service. He agreed that patrons would not have that same training.

The Manager recalled meeting with the Inspector and said the Inspector was looking to find out what was in the drinks. He had a discussion with the Bartender about the shooters.

The Manager said staff meetings are held fairly regularly. The meetings are used to address overall operations, staffing, the state of the business, seasonal changes, other stuff that is in the employee manual, for example, service and over-service, service standards and grooming standards.

## **THE BRANCH'S SUBMISSION**

The Branch Advocate submitted the evidence supported a finding of a contravention of section 12 of the Act and the Terms and Conditions limiting the maximum drink sizes. The maximum drink size per person for distilled liquor is three ounces per person.

The Inspector saw two instances of two trays of drinks being served to one patron. Each tray was over three ounces. One patron was sold and served eight one-ounce shooters, the other patron had been sold and was in the process of being served seven one-ounce shooters. The policy for the maximum drink sizes is to promote moderation and to avoid over-service. Licensees are prohibited from using sales strategies to encourage over-consumption.

The evidence is that the premises were at capacity. The environment was "fluid". Lighting was dim and music was on. The bartender was busy. A number of patrons were jammed up against the bar. In these circumstances it would have been very difficult for staff to monitor patrons across the room.

Bartenders and servers need to be in control and know who is being served and how much. In a fluid environment, drinks could be delivered to minors or persons who were intoxicated. Staff cannot monitor intoxication from across a room. Servers need to assess each patron, especially if they have been served by other staff. Staff need to communicate with each other about who has been served what.

Unlike servers and bartenders, patrons who are allowed to deliver drinks to others have no training in how to monitor for intoxication. They do not have the SIR training or have any responsibility for their friends' consumption of alcohol. Shooters in particular can be problematic. In two prior cases, death was a result of over-service of shooters.

The doorman who accompanied the Inspector was not called as a witness. He could have provided evidence of what happened. An adverse inference may be drawn from the failure to call him.

A penalty of \$1000 is appropriate and illustrates a measured approach.

## **THE LICENSEE'S SUBMISSION**

The licensee submitted that the principle at issue is an important one for the industry and has significance beyond this case. It is for this reason the licensee has contested the issue, incurring costs greater than simply paying what is a relatively small fine of \$1,000.

Counsel for the licensee noted that section 12(2)(b) is very general, referring to the Terms and Conditions. The Terms and Conditions Penalty Schedule sets out 46 contraventions, with section 46, as a "catchall", being any breach of the Act, the Regulations or the Terms and Conditions, not specifically covered in the other 45 items. It is this catchall that the Branch has relied on.

The Terms and Conditions at page 33 sets out the drink sizes for distilled liquor. Counsel said it is confusing where it says: "Drinks that two or more patrons intend to share may be served in larger containers ...". He says this means that multiple containers may be used to serve drinks.

Counsel referred to Policy Directive #10-04 issued by the Branch on April 27, 2010, which is very similar to page 33, although the wording is slightly different. He says this was a precursor to the Terms and Conditions.

Counsel suggested that the Branch's description of the rules is exaggerated or distorted.

Counsel said that the eight shooters were not all served to one person. The eight patrons had been at and left the bar area as a group. He said one person from the group took all eight shooters for the group, on a tray. The eight shooters were consumed by eight persons, one shooter each. Counsel said this is what the Inspector observed and is what the Bartender thought would happen. The Bartender's evidence the group moved to a table was not contradicted, and it makes sense. The patrons were in sight and the one patron took the shooters to the others.

Respecting Tray 2, Counsel submitted that the Inspector said she objected to the tray going out and it was not served, but the Bartender said he did serve the tray and that he did it because they were going to different people and not to one person.

Simply because the Bartender told the Inspector he made a mistake does not mean that he did. The Bartender was nervous and wanted to appear respectful of the Inspector and the system. Counsel says in fact it was not wrong and simply saying it was wrong does not make it wrong.

Counsel said the Manager and the Bartender are consistent in their evidence – if the patrons are in an area that can't be seen, than a patron won't be allowed to have multiple drinks. He submitted it is simply a matter of common sense. Counsel said the evidence supports finding that almost every bar that operates on a common sense policy. He also referred to the taking of bottles of wine to a dinner table and a jug of

beer with friends and says this satisfies the test in the terms and conditions. So, he said, the word "served" has to be read and interpreted with common sense.

The operators have long expertise, with only one long ago contravention. They treat liquor service seriously, and as evidenced by their involvement in Bar Watch. The number of employees on duty goes to show the operators had care and concern for over-service and intoxication. Six servers, six bartenders and six security staff were all within the relatively small room. There is no evidence of over-service or intoxication of the patrons.

The Licensee says the doorman who accompanied the Inspector was not called as a witness because his duty was to check the door. He accompanied the Inspector for security reasons and his evidence was not critical. No adverse inference should be drawn by the Licensee not having called him as a witness.

It is the licensee's position that the actions do not constitute a contravention and so no due diligence defense is claimed.

## **FINDINGS:**

### **Facts**

With respect to the circumstances surrounding Tray 1, the evidence of the Inspector and the Bartender is, for the most part, uncontroverted. I make the following findings of fact on that evidence:

- the Bartender provided one patron with eight shooters
- the shooters were placed on a tray and the patron was allowed to leave the bar area with the tray of eight shooters
- the patron took the shooters to his seven friends
- the patron and each of his friends consumed one shooter
- the patron and his friends had been served earlier by the Bartender, in the immediate area of the bar and had only recently moved to the area in which the shooters were consumed.

I also find that the Bartender was able to see the patron and his friends from the bar. I find that there is no evidence that the patron or his friends were minors or intoxicated.

With respect to the circumstances surrounding Tray 2, the evidence of the Inspector and the Bartender conflicts on several points. They both testified that the Bartender gave this patron money. The Inspector said that she could not hear the conversation between the Bartender and this patron but she is of the opinion that the money was a refund for a tray of shooters that was cancelled. The Bartender said the money was the change from the payment for the shooters and that he, the Bartender, intended to and did deliver a tray of shooters to this patron and his friends. The Bartender provided the Inspector with a receipt for these shooters.

I make no adverse findings based on the fact the doorman was not called to confirm his conversation with the Bartender. In any event, the Inspector confirmed she could not hear that conversation, the Bartender's evidence was that the NOEA was incorrect about that conversation and he was not challenged on that or asked about the particulars of the conversation.

I find that because a receipt was produced to show that shooters were in fact served, the payment of the money was more likely to be the return of change. However, nothing turns on this point because, based on both witnesses' testimony, I find there is no evidence that a tray of shooters was in fact given to this patron. Simply because that might have happened does not support a finding that it did happen.

The amount of liquor in the shooters was also put at issue in the evidence. The Bartender's statement to the Inspector on the night in question was that the shooters contained one ounce of liquor per shooter. This differed from his later statement and his oral evidence that there was only 2/3 ounce of liquor per shooter. On this point, I find that the Bartender's statement on the night in question was more likely to be accurate than his later recollections. I find the amount of liquor in the shooters was one ounce per shooter. However, I find that nothing turns on this point.

Considering all of the above, I find as a fact that one patron was allowed to take a tray of eight one-ounce shooters away from the bar.

For completeness, I also make the following findings of fact:

- the atmosphere in the premises is more similar to that of a nightclub than a restaurant, with more patrons likely to be standing than seated
- at least five bartenders and six servers were on duty
- a patron could order a drink from any server or bartender
- six security staff were on duty to check for identification and to monitor the premises for intoxication and other issues
- there is no evidence of minors being present on the premises or patrons being intoxicated
- the premises were at or near capacity
- the door was being monitored and access controlled on a one-in, one-out basis.

Having made those findings of fact, I now turn to the analysis.

## Analysis

The Act regulates the sale of liquor in order to protect the public from the harms that the consumption of liquor may cause. As part of that regulation, licensees are required to meet strict terms and conditions, to prevent such problems as under-age drinking, the over-consumption of alcohol, and overcrowding or unsafe conditions in restaurants, bars and pubs, and to minimize the potentially negative impact of liquor sales on neighbourhoods and communities.

Under section 12, the Act incorporates the Guide. The Guide is intended to provide licensees with further direction about their duties and obligations under the Act, set out in layperson's language. A contravention of the Guide is a contravention of the Act and, as such, a finding of a contravention of the Guide is a serious matter. A contravention has significant consequences for a licensee, not only in terms of a penalty and possible impact in subsequent circumstances (second contraventions) but also in terms of the licensee's reputation.

The Branch says the Guide, in the chapter "Providing a Safe and Responsible Service", directs licensees to encourage moderate consumption and to follow strict limits on the maximum size of drink servings. For distilled liquor, the limit for each drink is set at not more than three fluid ounces of distilled liquor per person. The Branch submits that here, the evidence is that one patron was served eight one-ounce shooters and that that is a contravention of the Guide.

The licensee agrees the Guide sets maximum drink sizes but says that the maximum drink size was not exceeded because the evidence is that the Bartender knew that eight patrons would be consuming the eight shooters. He could see where the drinks were going and to whom they were going. And, counsel says, the eight shooters were in fact consumed by eight patrons. The licensee says no contravention of the Act or the Guide has taken place. Nor is allowing a patron to deliver the shooters in these circumstances is a contravention of the Act or the Guide because there is no prohibition on that. For an activity to be a contravention, it must be clearly stated.

I agree and find that in order for a contravention to be found, the licensee must be able to clearly discern the responsibility to do, or not do, the activity alleged to be the basis for the contravention. Without a reasonably clear direction, an activity or a failure to do something ought not to constitute a contravention under the Act.

I have reviewed the Act, the Guide and Branch Policy Directives that speak to how the regulations are applied in different circumstances. I find while the Guide and the April 27, 2010 Policy Directive 10-04 (which is substantially the same as the Guide) clearly set maximum drink sizes, none of these clearly address who must deliver drinks to patrons.

The Guide, under drink prices, does prohibit the use of a sales strategy likely to promote or encourage over-consumption. Examples of prohibited activities include: selling drinks "two for one", allowing staff to circulate with trays of pre-mixed drinks such as shooters that are not pre-ordered, or serving drinks greater than the maximum drink size, by the "tray load", for example.



I have also reviewed the Liquor Primary Terms and Conditions, which say at page 19, under the heading "Dispensing liquor and mixing drinks" that licensees are permitted to pre-mix drinks by hand or by using devices such as a Bellini machine in anticipation of patrons ordering drinks, provided that the liquor comes from the original containers purchased from the Liquor Distribution Branch. Further direction is given against doing anything that makes the monitoring illicit liquor difficult. Licensees are told they are not permitted to circulate trays of pre-mixed or pre-poured drinks that have not been ordered. They are directed that drinks must be dispensed at a liquor service bar, in full view of customers, and that licensees must not permit the self-service of liquor by patrons.

I also reviewed the *Liquor Line, Issue 7, Summer, 2014* issued by the Branch General Manager, which speaks to "self-service" under the heading "Automatic beverage systems" stating: "The self-service of liquor by patrons is not permitted. If you are considering an automatic beverage system, please note that staff will still need to 'pour' and serve the liquor. This will enable you and your staff to prevent minors from accessing liquor and to ensure that your patrons do not become intoxicated."

I have found as a fact that the Bartender had served the patrons in this group earlier in the evening, that when the order for the drinks was placed he could see the patrons and that the number of drinks ordered corresponded to the number of patrons in the group. I have found that the patrons each consumed one shooter and the Bartender could see the group when they consumed the shooter. I have also found that each shooter was one ounce and as such I find that each of the shooters was well within the maximum drink size for one person. I am unable to find that the maximum drink size per person was exceeded.

There is no suggestion here the shooters here were sold at a reduced price or that staff was circulating with trays of pre-mixed drinks that were not pre-ordered. That leaves the prohibition against using a sales strategy of serving drinks greater than the maximum drink sizes by the tray load or the prohibition against self-service.

In making my decision, I note that in establishments like these premises, patrons do not have to be seated. Patrons may order from more than one server. The uncontroverted evidence is that the licensee had security staff inside checking the patrons for over-service or other problems, that drinks must be ordered from a bartender or a server, and that drinks are not pre-poured nor are trays of shooters offered for sale. Based on this, I do not find there was a sales strategy likely to promote or encourage over consumption by serving drinks larger than the maximum drink size by the tray load.

A sales strategy requires something more than simply responding to a request for a drink order. No offer was advertised or initiated by the licensee, no price reduction offered or made. If allowing patrons to order a drink at the bar for themselves and another patron is be found to constitute a sales strategy, then something more needs to be said to licensees, to give licensees notice of that. If the number of drinks that can be ordered at the bar is to make a difference in finding whether there was a sales strategy or not, or whether the activity is prohibited or not, then that needs to be communicated more directly.

I also find that the direction in Liquor Primary Terms and Conditions and the *Liquor Line, Issue 7* are not clear enough to support a contravention or to help assist in interpreting the Guide or the Act as they both seem to be directed to where a patron could pour his or her own drink directly from an automatic beverage machine, like a Bellini maker. So I do not find there was "self-service" here as that reference is made in either of those documents.

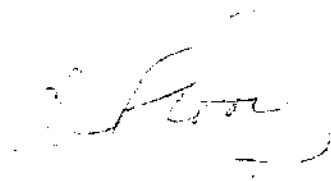
Having made these findings, I do wish to note that under the Act and Guide, licensees are clearly responsible to monitor the persons to whom drinks are being served and whether those persons are of legal age and not intoxicated. The Liquor Line News direction on self-service re-iterates that.

I appreciate that if patrons are allowed to take drinks to other patrons there may be potential over-service or service to minors, but there is no evidence that that happened here. If that should happen, where a patron delivers liquor to a person who is not of legal age or is intoxicated, or delivers a drink to a patron that is larger than the maximum size (for example, if only two of these patrons had drunk the eight shooters),

the licensee will clearly be responsible and in contravention of the Act and the Guide and subject to a penalty. A licensee, by allowing a patron to deliver drinks may run a high risk of a contravention, presumably much higher than if a server delivers the drinks. There would no doubt be a question of due diligence. However, simply because that might happen, that is not sufficient to find a contravention here.

Having found there not to be a contravention, I do not need to address the defense of due diligence.

I find that the evidence, taken as a whole, does not support the alleged contravention against the licensee.



Dianne Flood  
General Manager's Delegate

Date: June 26, 2015

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

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



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

File: EH14-111  
Job: 000710975-051

October 23, 2014

Sanoor Investments Ltd.  
c/o Sayani, Nurdin (Noordin)  
405 North Rd  
COQUITLAM, BC V3K 3V9

**Re: License Number:** 010354  
**License Type:** Liquor Primary  
**License Expiry Date:** April 30, 2015  
**Establishment:** Executive Plaza Coquitlam  
**CN #:** B011207

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 license,
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):**

<b>No.</b>	<b>Name of Contravention(s)</b>	<b>Section of the Act/Regulation</b>	<b>Date and time of Contravention(s)</b>	<b>Proposed Enforcement Action</b>
1.	Contravene term & condition - Exceed maximum drink size, s. 12 Act	s. 12 Act	2014-SEP-06 12:00 AM	\$1000 monetary penalty

## **2. NARRATIVE**

### **Background:**

Executive Plaza is an establishment located at 405 North Road in Coquitlam BC. It holds multiple liquor licenses including Liquor Primary License #010354 which operates as Foggy Dew Pub. The license has been issued to Sanoor Investments Ltd and the licensee is Mr. Salim Sayani. The licensee has hired a third party operator, Foggy Dew Irish Pub Coquitlam Inc., who operates the pub. Mr. Roger Gibson and Mr. John Teti are the lessees.

The licensed hours of operation and liquor service are 11:30 am to 1:30 am Monday to Thursday and 12:00 pm to 2:00 am Friday to Sunday. The person capacity for indoors is 388 and the person capacity for the outdoor licensed patio is 56.

The terms and conditions associated with this license are published in a book entitled Liquor Primary Terms and Conditions: A Guide for Liquor Licensees in British Columbia. Included in these terms and conditions are provisions related maximum drink size limits, which begin on page 34.

On the night of September 5, 2014, Inspector Safavian conducted an inspection at Foggy Dew Pub. Head doorman <sup>s.22</sup> accompanied Inspector Safavian during the inspection. At approximately 12:00 am (midnight), Inspector Safavian noticed a male patron carrying a tray of shooters away from "bar west". Inspector Safavian followed the patron towards the back of the establishment. He brought the tray of shooters to a table in the upper area close to the pool table. He placed the tray on the table. Inspector Safavian observed eight shooter glasses full of a dark coloured liquid. The male patron distributed the shooters amongst his friends and took one himself.

<sup>s.22</sup> also followed behind, and noted the patron carrying the tray of shooters.  
<sup>s.22</sup> subsequently asked whether "that" was permitted. Inspector Safavian informed him that a patron could not be served a tray of shooters to take away and serve to others. <sup>s.22</sup> stated this was not his area of responsibility, and that it would be the bartenders or servers responsibility. They both returned to the area of "bar west."

Inspector Safavian then observed another male patron who was being served a tray of shooters. Inspector Safavian observed 7 orange coloured shooters and pointed them out to <sup>s.22</sup> <sup>s.22</sup> leaned over the bar and spoke to the bartender. The bartender appeared to cancel the order and return the money to the patron. Inspector Safavian did not hear any conversation between the staff or patron and staff. However,

she was standing next to the patron and apologized to him for any inconvenience and informed him that he could not order or take a tray full of shooters as this was not permitted. He stated it was for his friends. She suggested that his friends come to the bar to obtain their own beverages. The patron stated it was okay and that he aware of this requirement as he also owned a bar.

Mr. Gaudaur, the General Manager, was advised of this contravention during the inspection.

Inspector Safavian spoke to the bartender who served the trays, <sup>s.22</sup>  
<sup>s.22</sup> reported the ingredients of the shooters to Safavian and provided the receipts upon request. He apologized and stated this would not occur again.

On September 9, 2014 Inspector Safavian delivered Contravention Notice B011207 to a staff member at the establishment, <sup>s.22</sup> and delivered the licensee copy to Mr. Ali Noman, Food & Beverage Manager at Executive Plaza, as per directions from the Licensee, Mr. Sayani.

At approximately 10:30 am on September 17, 2014, Inspector Safavian met with the third party lessees Mr. Gibson and Mr. Teti and discussed the contraventions. She also interviewed the bartender, <sup>s.22</sup>

<sup>s.22</sup> stated he has worked as a bartender since the year 2000 and at the Foggy Dew Pub since St. Patrick's Day this year (2014). He stated he has always known about drink size limits, and was told it is 3 ounces per person. He stated he knows to make sure not to over-serve patrons or to serve to intoxicated patrons; and that he does not want to jeopardize his employment.

Inspector Safavian asked him what specific training he has received at the Foggy Dew Pub. He stated "not too much" but that they have a bulletin that he must look over. He stated the bulletin has been up behind the bar for a while and that the latest one was put up approximately 2 weeks ago.

He stated he was trained by 3 or 4 different people and when asked what this entailed he stated, "opening and closing duties, asked if he has a Serving it Right, asked whether he knows the rules, how to do cash out and how to diffuse issues." He stated he received a hire package and that he has been trained at every place he has worked.

<sup>s.22</sup> provided a written statement regarding the circumstances surrounding the shooter trays and a list of ingredients in the shooters. His description is duplicated here:

1. Pornstars
  - .5 ounce of Blue Curacao
  - .5 ounce of Raspberry Sourpuss
  - Splash of cranberry
  - Shaken over ice
2. Beefcakes
  - 1 ounce of Peach Schnapps
  - Splash of OJ/Cranberry

The Pornstars correspond with the dark coloured shooters which Inspector Safavian observed being distributed to friends by the first patron. There were 8 shooters on this tray, and given the ingredients, the amount of liquor served to the patron equates to 8 ounces of spirits/distilled liquor. This is more than 2 times the maximum drink size limit for distilled liquor.

The Beefcakes correspond with the orange coloured shooters which Inspector Safavian observed being served to a patron. This order was apparently cancelled after Inspector Safavian had observed the tray being served. There were 7 shooters, and given the ingredients, the amount of liquor served equates to 7 ounces of spirits/distilled liquor. This is more than 2 times the maximum drink size limit.

### **3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)**

#### **3.1 Contravene term & condition - Exceed maximum drink size, s. 12 Act**

The maximum drink size limit for distilled liquor/spirits is person 3 ounces (85 ml) per person per serving.

- The first tray of shooters contained 8 ounces of distilled liquor which was served to one patron, in eight shooter glasses.
- The second tray of shooters contained 7 ounces of distilled liquor which was served to one patron, in seven shooter glasses.

### **4. REASONS FOR PURSUING ENFORCEMENT**

#### **4.1 Contravene term & condition, s. 12 Act; exceeding drink size limits**

A licensee must not provide unlimited or unspecified quantities of liquor for a single price or use sales strategies that are likely to promote over-consumption; this includes serving drinks greater than the maximum including by the "tray load."

Licensees must encourage moderate consumption at all times and follow strict limits on the maximum size of servings. For distilled liquor; each drink containing distilled liquor (spirits) shall not contain more than three fluid ounces (85 ml) of distilled liquor. This applies regardless of whether the drink is served in one, or more than one, glass or container. For example; a single patron may not be served four one-ounce shooters or two two-ounce doubles at one time.

In this case, the bartender was observed serving a tray of shooters to two different patrons at a single serving; containing 8 and 7 shooters, with 8 and 7 ounces of liquor respectively. Inspector Safavian observed one of these patrons distribute shooters amongst his friends. The licensee had no ability to monitor or control who the beverages were served to; whether that is minors, intoxicated patrons, or consumption of all the shooters by one patron.

The licensee did not demonstrate that they are meeting their obligation to serve drinks in compliance with the maximum drink size limits (shooter trays). Therefore, enforcement action is felt warranted.

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

5.1 Contravene term & condition - Exceed maximum drink size, s. 12 Act : \$1000 monetary penalty proposed

### **5.2 Contravene term & condition, s. 12 Act : \$1000 monetary penalty proposed**

For the alleged contravention of contravene term & condition, s. 12 act (Contravention Notice Number B011207), a monetary penalty of \$1,000.00 (One Thousand Dollars) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 4, item 46 of the Regulation for a first contravention.

In this case, the two patrons who ordered shooters trays appeared to be ordering for other patrons. Inspector Safavian observed one of the trays being distributed amongst patrons and the second tray order was cancelled prior to the patron taking it away from the bar. The licensee had no control or ability to monitor who received the shooters. This strategy for sale can lead to issues of public safety concern, including intoxication and service to minors.

A review of the licensee's compliance history shows no contraventions of a similar nature.

Considering all of the circumstances, a \$1,000 monetary penalty rather than a license suspension is felt appropriate warranted.

## **6. THE PROCEDURES**

You (the licensee) may agree with or dispute the above allegation(s) and proposed penalty.

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 the enforcement action to be imposed on the licensee and 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 any penalty 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 penalty proposed in this NOEA.

Schedule 4 of the Regulation sets out the range of enforcement actions for 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 you (the licensee) agree that the contravention(s) took place and accept the enforcement action proposed, there is no need for a hearing. In that case, you must sign a document called a waiver. By signing a waiver, you irrevocably

- Agree that the contravention(s) occurred,
- Accept the proposed penalty,
- Agree that the contravention(s) and penalty will form part of the compliance history of the licensee, and
- Waive 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 604 586-2657 as soon as possible. If you do not sign a waiver, the branch registrar will provide you with the next steps in the hearing process.

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](http://www.pssg.gov.bc.ca/lclb/comp_enforce/index.htm)

Yours truly,

Neelam Safavian  
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>)

CC: Roger Gibson & John Teti, Foggy Dew Pub Irish Pub Inc.

### **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*

#### **Compliance Meetings**

<b>Licence</b>	<b>Date</b>	<b>Topic</b>
010354	April 01, 2014	Allow consumption beyond time permitted, s. 44(3) Reg., Unlawful sale of liquor, s. 38 (3) (b) Act, Fail to clear patrons by time required, s. 44(1)(a) Reg.
010354	April 08, 2003	
010354	March 07, 2003	Minor - Permit minor to enter or be on premises, s. 35 Act
010354	March 03, 2008	Overcrowding beyond patron capacity more than occupant load, s. 12 Act, s.71 (2)(b) Reg.
010354	November 27, 2003	
010354	October 05, 2010	Overcrowd beyond person capacity more than occupant load, s. 6(4) Reg.
010354	February 25, 2014	Fail to clear patrons by time required, s. 44(1)(a) Reg., Allow consumption beyond time permitted, s. 44(3) Reg.
010354	March 25, 2009	Permit person to become intoxicated, s. 43(2)(a) Act
191503	September 19, 2005	
191503	November 27, 2003	

#### **Other Factors**

No. B011207



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: Executive Plaza Coquitlam

Establishment address: Foggy Dew Pub  
405 North Road, Coquitlam

Licensee name: Sancoor Investments Ltd.

Licence #: 010354 Date CN issued: Sept 8/14

Date and time of alleged contravention(s): Sept 5/2014  
11:45 am to 12:07 am

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 person	<input type="checkbox"/> Act <input type="checkbox"/> Reg
2	Capacity less than occ. Load 64	<input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg
3	Exceed drink size limits 5.12	<input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
4		<input type="checkbox"/> Act <input type="checkbox"/> Reg

Details: Ratio overcrowded - 2 counts  
by Inspector = 71 & 73 (Max 56)  
Bartender serving shooter  
trays to patrons.

Inspector name: N. Sabaviam Badge #: 90  
Telephone: 586-2657 LPC #: \_\_\_\_\_

Management acknowledgement (name and title):  
S.22

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.

SEP 11 2014

COPY 3: LCLB HEADQUARTERS COPY (forward to Headquarters)



## COMPLIANCE MEETING

This document is the record of a meeting between a licensee and the Liquor Control and Licensing Branch [LCLB]. The purpose of the record is to document that concerns about the licensee's non-compliance with the Act, Regulations and or the Terms and Conditions on the license have been brought to the licensee's attention. This record will also show that licensee is aware of these concerns and has made specific commitments to address those concerns.

### Establishment Details:

Establishment Name: Executive Plaza Coquitlam  
Establishment Address: 405 North Rd  
COQUITLAM, BC V3K 3V9  
Licensee: Sanoor Investments Ltd.  
License #: 010354

### Meeting Date and Location:

April 01, 2014

### For the LCLB:

Neelam Safavian, Inspector

### For the Licensee:

Salim Sayani, Licensee  
Wilfred Chan, Legal Counsel  
Roger Gibson, Third Party Operator

### Reason for the Meeting:

CN # B011699 and B011700

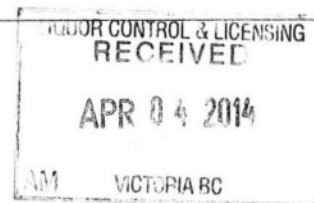
Police Occurrence reference number: 2014-2837

### Section of the Act, Regulation, or T&C Guide Reviewed at the Meeting:

Section 38.3 (b) Unlawful sale of liquor

Section 44.1 (a) Fail to clear patrons within ½ hour after liquor service ended

Section 44.3 Allow consumption beyond ½ after liquor service ended



### Penalty Provisions:

A breach of section 38 of the Act [*Unlawful sale of liquor*] for a first time contravention is 10-15 day license suspension and/or \$7,500-\$10,000.

A breach of section 44 (1) (a) of this regulation by a licensee with a liquor primary licence or liquor primary club licence failing to clear the licensed establishment of patrons within ½ hour after the time stated on the licence for the hours of liquor service, or other time authorized by the general manager for a first time contravention is a 1 to 3 day license suspension and/or a \$1,000 to \$3,000 monetary fine.

A breach of section 44 (3) of this regulation by allowing a person to consume liquor in the licensed establishment beyond ½ hour after the time stated on the licence for the hours of liquor service, or other time authorized by the general manager for the first time contravention is a 4 to 7 day license suspension and/or a \$5,000 to \$7,000 monetary fine.

### Commitment/s made by the Licensee:

1. Identify all cameras installed in the establishment on official floor plan with corresponding camera angles/view.
2. Annual check of surveillance systems to include cameras and applicable software to ensure good working order.
3. Installation of additional camera facing table/area which previously did not have surveillance – ensuring all licensed areas are included in surveillance
4. Section 38.3 (b) – ensure all liquors sales/service ends by the time required by their license
5. Section 44.1 (a) – ensure all patrons are cleared from the establishment within ½ hour of liquor service ending and to begin clearing time earlier on busy nights to ensure all patrons have time to obtain their coats/jackets within the time frame required.
6. Section 44.3 Ensure no patrons continue to consume liquor beyond ½ hour after liquor service has ended.

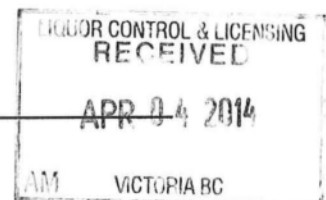
- 
- *I acknowledge the above concerns have been brought to my attention,*
  - *I agree to implement the measures cited above,*
  - *I acknowledge my responsibility to provide on-going training to my staff,*
  - *I acknowledge my responsibility to be fully compliant at all times with the Liquor Control and Licensing Act, the Regulations and the Terms and Conditions on my licence.*

Licensee/Representative:

Salim Sayani, Licensee

(print name and position)

Licensee/Rep Signature:



LCLB Representative:

Neelam Safavian, Inspector

(print name and position)

LCLB Signature:

Third Party Operator

Roger Gibson

Third Party Operator  
Signature

Third Party Operator

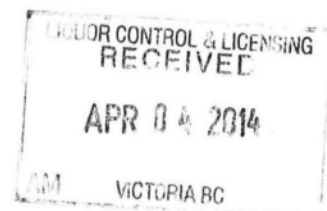
John Teti

Third Party Operator  
Signature

**Attachment/s:**

Copy to:

- field file,
- POSSE Docs Tab
- Establishment File
- Licensee





## COMPLIANCE MEETING

This document is the record of a meeting between a licensee and the Liquor Control and Licensing Branch [LCLB]. The purpose of the record is to document that concerns about the licensee's non-compliance with the Act, Regulations and or the Terms and Conditions on the license have been brought to the licensee's attention. This record will also show that licensee is aware of these concerns and has made specific commitments to address those concerns.

### Establishment Details:

Establishment Name: Executive Plaza Coquitlam  
Establishment Address: 405 North Rd  
COQUITLAM, BC V3K 3V9  
Licensee: Sanoor Investments Ltd.  
License #: 010354

### Meeting Date and Location:

April 01, 2014

### For the LCLB:

Neelam Safavian, Inspector

### For the Licensee:

Salim Sayani, Licensee  
William Chan, Legal Counsel  
Roger Gibson, Third Party Operator

### Reason for the Meeting:

CN # B011699 and B011700

Police Occurrence reference number: 2014-2837

### Section of the Act, Regulation, or T&C Guide Reviewed at the Meeting:

Section 38.3 (b) Unlawful sale of liquor

Section 44.1 (a) Fail to clear patrons within ½ hour after liquor service ended

Section 44.3 Allow consumption beyond ½ after liquor service ended



**Penalty Provisions:**

A breach of section 38 of the Act [Unlawful sale of liquor] for a first time contravention is 10-15 day license suspension and/or \$7,500-\$10,000.

A breach of section 44 (1) (a) of this regulation by a licensee with a liquor primary licence or liquor primary club licence failing to clear the licensed establishment of patrons within ½ hour after the time stated on the licence for the hours of liquor service, or other time authorized by the general manager for a first time contravention is a 1 to 3 day license suspension and/or a \$1,000 to \$3,000 monetary fine.

A breach of section 44 (3) of this regulation by allowing a person to consume liquor in the licensed establishment beyond ½ hour after the time stated on the licence for the hours of liquor service, or other time authorized by the general manager for the first time contravention is a 4 to 7 day license suspension and/or a \$5,000 to \$7,000 monetary fine.

**Commitment/s made by the Licensee:**

1. Identify all cameras installed in the establishment on official floor plan with corresponding camera angles/view.
2. Annual check of surveillance systems to include cameras and applicable software to ensure good working order.
3. Installation of additional camera facing table/area which previously did not have surveillance – ensuring all licensed areas are included in surveillance
4. Section 38.3 (b) – ensure all liquors sales/service ends by the time required by their license
5. Section 44.1 (a) – ensure all patrons are cleared from the establishment within ½ hour of liquor service ending and to begin clearing time earlier on busy nights to ensure all patrons have time to obtain their coats/jackets within the time frame required.
6. Section 44.3 Ensure no patrons continue to consume liquor beyond ½ hour after liquor service has ended.

- 
- *I acknowledge the above concerns have been brought to my attention,*
  - *I agree to implement the measures cited above,*
  - *I acknowledge my responsibility to provide on-going training to my staff,*
  - *I acknowledge my responsibility to be fully compliant at all times with the Liquor Control and Licensing Act, the Regulations and the Terms and Conditions on my licence.*

Licensee/Representative:

Salim Sayani, Licensee

(print name and position)

Licensee/Rep Signature:





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## Review and Analysis:

I have reviewed:

- |  |   |  |
|--|---|--|
| Facts and circumstances of the contravention   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| Establishment compliance history   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| <ul style="list-style-type: none"><li>• Number of contravention notices on file: 8</li><li>• Number of contravention notices in past 12 months: 0</li><li>• Name, date(s) of any proved contravention(s) and the enforcement action taken:</li></ul> |   |  |
| Licensee compliance history  | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| <ul style="list-style-type: none"><li>• If no, please explain: not applicable/available.</li></ul>   |   |  |
| Other file information   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| Compliance and Enforcement Program, Policy and Procedures Manual   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
- 

## Reasons no enforcement action recommended:

An investigation was conducted after alleged contraventions of after hours service by the media when s.22 attended the establishment on the night of January 31, 2014. Investigation identified 3 possible contraventions and as a result the following compliance meeting was held:

Attendees:

Licensee's Legal Counsel, Wilfred Chan, Corporate Counsel Executive Hotel  
Third Party Operators, John Teti and Roger Gibson  
General Manager, Paul Gaudaur

The circumstances and evidence surrounding the contraventions were discussed. They were able to provide a reasonable explanation for the discrepancies. There are two fire places in the establishment and the camera installation was, according to the third party operators, on the fireplace above the dance floor. Checking against the recordings they gave me confirmed there is a camera in the location they state and the number of cam recordings they provided is consistent with the number of cameras the company said were installed.

They have provided an explanation of the hardware and software involved and their opinion as to why the timings do not correspond. I am accepting this as a reasonable explanation given the sales records corroborate with sales ending on time. This mitigates the section 38 contravention.

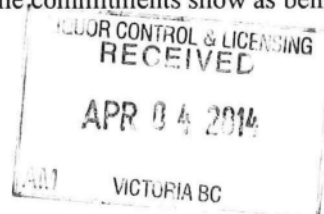
The issue of clearing patrons could also not be explained either way as interviews with a cross section of staff member with different duties suggests they do not always clear on time. The third party operators indicated they would be seeking permission to allow them extra time to clear and that the Mayor will be in support of their application. For now and until such time they receive a permission, they have made a commitment to address the issue – addressing 44.1.

The issue of one male seen continuing to consume liquor could not explained as it is during a time others are leaving and no one else is consuming but because the timing of the cams is inconsistent enforcement is not recommended and therefore the commitment by the licensee to ensure no one is consuming after ½ hour past service hours – addressing 44.3.

All legislative provisions surrounding these contraventions, including the penalty provisions were discussed and reiterated to all parties. They were also reminded of previous alleged contraventions and compliance meetings/opportunities to correct issues.

Discussion also took place regarding education for staff. The operators indicated they have already made sure all staff are aware of their respective responsibilities as well as legislative provision surrounding these contraventions

The following commitments are being made by the licensee and third party operators and I will include third party operator names and signatures on the document so the commitments show as being from all parties involved.

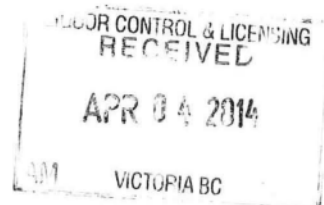


The commitments are:

1. Identify all camera's installed in the establishment on official floor plan with corresponding camera angles/view.
2. Annual check of surveillance systems to include cameras and applicable software to ensure good working order.
3. Installation of additional camera facing table/area which previously did not have surveillance – ensuring all licensed areas are included in surveillance
4. Section 38.3 (b) – ensure all liquors sales/service ends by the time required by their license
5. Section 44.1 (a) – ensure all patrons are cleared from the establishment within ½ hour of liquor service ending and to begin clearing time earlier on busy nights to ensure all patrons have time to obtain their coats/jackets within the time frame required.
6. Section 44.3 - ensure no patrons continue to consume liquor beyond ½ hour after liquor service hours have ended.

Future compliance will continue to be monitored through routine inspections.

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No. B011700



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: Executive Plaza  
Establishment address: 405 North Road

Coquitlam BC

Licensee name: Sangor Investments Ltd

Licence #: 010354 Date CN issued: FEB 15/14

Date and time of alleged contravention(s): FEB 11/14 02:00-02:30 am

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

	Contravention	Section
1	Unlawful Sale of	5.383 <input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
2	Liquor	(b) <input 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

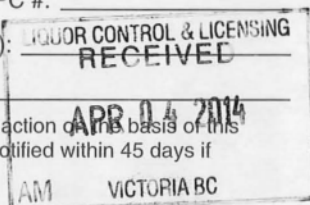
Details: continued liquor service  
beyond liquor service hours.

Inspector name: N. Atkinson Badge #: 90

Telephone: 862657 LPC #: \_\_\_\_\_

Management acknowledgement (name and title): \_\_\_\_\_

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)

No. B011699

BRITISH  
COLUMBIALiquor Control and Licensing Act  
and Regulation 244/2002**CONTRAVENTION NOTICE**Liquor Control and Licensing Branch,  
Ministry of Public Safety and Solicitor General

Establishment name: Executive Plaza  
 Establishment address: 405 North Rd  
Coquitlam BC  
 Licensee name: Somoor Investments Ltd  
 Licence #: 010354 Date CN issued: Feb 15/14  
 Date and time of alleged contravention(s): Feb 14/14 02:40 am

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

	Contravention	Section
1	Fail to clear patrons	44.1a <input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg
2	Allow consumption	44.3 <input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg
3	12 hour after	<input type="checkbox"/> Act <input type="checkbox"/> Reg
4	Liquor service hrs ended	<input type="checkbox"/> Act <input type="checkbox"/> Reg

Details: - patrons not removed by  
2:30 am on Feb 14/14  
- male patron continues to  
consume liquor after 2:30 am

Inspector name: N. Sathian Badge #: 90  
 Telephone: 862657 LPC #: \_\_\_\_\_

Management acknowledgement (Name and title): \_\_\_\_\_

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.

### COMPLIANCE MEETING

Inspector's Name: N. Safavian Date: Oct. 5/10  
Office Location: SRO - 9180 King George Hwy Surrey

#### ESTABLISHMENT INFORMATION:

Establishment Name: Executive Plaza Coquitlam - Foggy Dew  
Establishment Address: 405 North Road Coquitlam  
Licence No.: 010354 Licence Class: LP Expiry date: April 30, 2011  
Licensee Name: Sanoor Investments Ltd

#### MEETING DETAILS:

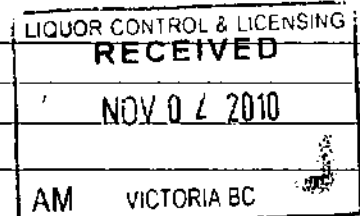
Attendees at compliance meeting:

Name: <u>PAUL GRUBAUR</u>	Association/Position: <u>GEN. MGR.</u>	Contact No: <u>604-418-6666</u>
Name: _____	Association/Position: _____	Contact No: _____
Name: <u>ROGER GIBSON</u>	Association/Position: <u>OWNER</u>	Contact No: <u>604-351 4900</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): \_\_\_\_\_

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 Section 6 - Capacity  
☐ Relevant section(s) of the Compliance and Enforcement Program, Policy and Procedures Manual  
☐ Relevant section(s) of the Guide to Liquor Licensees  
☐ Other \_\_\_\_\_



Commitments made by licensee: PROVIDED NEW COUNTERS FOR SECURITY.  
- DEDICATED (2) SECURITY PERSONS ONLY TO PATRON ENTRY.  
- DEDICATED SECURITY PERSON FOR PATIO OCCUPANCY.  
- REGULAR MEETINGS TO SECURITY PERSONS.

Other \_\_\_\_\_

Inspector Name: [Signature] Inspector Signature: [Signature]  
Licensee Name: ROGER GIBSON Licensee Signature: [Signature]



**BRITISH  
COLUMBIA**

No. B001596

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: Executive Plaza, Coquitlam  
Establishment address: 405 North Rd, Coquitlam  
Licensee name: Sanoor Investments Ltd  
Licence #: 010354 Date CN issued: Oct 28/10  
Date and time of alleged contravention(s): Oct 5/10 00:00

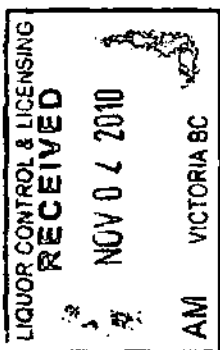
On the date noted above, the following alleged contravention(s) of the  
Liquor Control and Licensing Act or regulation were identified:

	Contravention	Section
1	Allow Third Party Operator	17.1 <input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
2	without approval	<input 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: 3<sup>rd</sup> Party operating establishment  
without approval - requested  
application be submitted on Oct 5/10  
to date no application has been  
received

Inspector name: N. Safavian Badge #: 90  
Telephone: 586-2657 LPC #: \_\_\_\_\_  
Management acknowledgement (name and title): \_\_\_\_\_  
VIA 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.

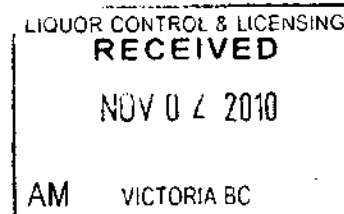




**FILE COPY**

October 28, 2010

Farida Sayani  
Executive Plaza Coquitlam  
405 North Road  
Coquitlam BC V3K 3V9



Dear Ms. Sayani:

Re: **Third Party operator of Foggy Dew Irish Pub**

I am writing further to a meeting which was held on October 5, 2010 with Roger Gibson, Third Party Operator and Paul Gaudaur, Manager of the pub. During the meeting, it was found that the operator of the pub has been in place for several years without having obtained approval by the Branch.

Pursuant to Section 17.1 of the Act, a licensee must not allow another person to use his or her license without having first obtained the written approval of the general manager. Mr. Gibson and Mr. Gaudaur were advised of this requirement and it was requested that they submit an application as soon as possible. To date no application has been received by the Branch.

A contravention notice is being issued to you for violating this requirement. Please contact me at your earliest convenience to discuss this matter. My direct line is 604-586-2657.

Sincerely,

Neclem Safavian  
Inspector #90  
Compliance & Enforcement Division

Enclosure: Contravention Notice B001596

Cc: Roger Gibson/Paul Gaudaur, Foggy Dew Irish Pub

Ministry of Public Safety  
& Solicitor General

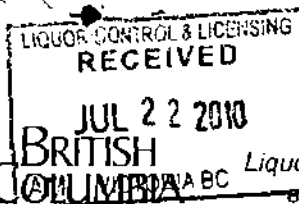
Liquor Control and  
Licensing Branch

Mailing Address:  
Suite 101  
9180 King George Highway  
Surrey, BC V3V 5V9

[www.hsd.gov.bc.ca/lclb](http://www.hsd.gov.bc.ca/lclb)

Telephone: 604 586-2641  
Facsimile: 604 586-2640





No. B001590

BRITISH COLUMBIA BC 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: Executive Plaza Coquitlam

Establishment address: 405 North Rd Coquitlam

Licensee name: Sanor Investments Ltd

Licence #: 010354 Date CN issued: July 19/10

Date and time of alleged contravention(s): July 17/10 06:00 am

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 6.4)	<input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg
2	Occupant Load	<input 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: Permit more patrons  
into licensed establishment  
than permitted by  
person capacity

Inspector name: N Satavian Badge #: 910

Telephone: 586-2657 LPC #: ✓

Management acknowledgement (name and title):  
VIA MAIL to Paul Gaudant

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)

**BRITISH  
COLUMBIA****Ministry of  
Public Safety and  
Solicitor General****Liquor Control and  
Licensing Branch**Mailing Address:  
PO Box 8292 Stn Prov Govt  
Victoria, B.C. V8W 9J8  
Telephone: (250) 387-1254  
Facsimile: (250) 387-9184**No. C004754****COMPLIANCE MEETING**Inspector's Name: N. Safavian Date: Mar. 25/09  
Office Location: SRO - 9180 King George Hwy Surrey**ESTABLISHMENT INFORMATION:**Establishment Name: Executive Plaza Liquor Store  
Establishment Address: 405 North Rd Coquitlam BC V3K 3V9  
Licence No: 010354 Licence Class: NO LICENCE NUMBER FOR FILING Expiry date: \_\_\_\_\_  
Licensee Name: \_\_\_\_\_**MEETING DETAILS:**

Attendees at compliance meeting:

Name: <u>Paul Grandeur</u>	Association/Position: <u>General Mgr</u>	Contact No: <u>604-418-6000</u>
Name: <u>s.22</u>	Association/Position: <u>Asst. Manager</u>	Contact No: <u>s.22</u>
Name: _____	Association/Position: _____	Contact No: _____
Name: _____	Association/Position: _____	Contact No: _____
Name: _____	Association/Position: _____	Contact No: _____
Name: _____	Association/Position: _____	Contact No: _____

Reason compliance meeting was convened (cite CN # if relevant): AM VICTORIA BC

Information reviewed at the meeting:

- ☒ Relevant section(s) of the Liquor Control and Licensing Act S.43 Drunkenness
- ☐ 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 013-14 Over-service & Intoxicated Patrons
- ☒ Other Penalty Schedule Items 9-11

Commitments made by licensee:

Ongoing meetings with staff to discuss over-service and intoxicated patrons. Staff will be aware of patrons exhibiting signs of intoxication and stop service upon noticing. Intoxicated patrons will be removed immediately from licensed areas. Licensee will organize an information session by LCIB for all staff to attend.

Inspector Name: N. Safavian Inspector Signature: N. Safavian  
Licensee Name: s.22 Licensee Signature: s.22

LCLB132

COPY 3: HEAD QUARTERS ESTABLISHMENT FILE  
CBCS-73660-20

No. B 006910



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: Executive Plaza (Coquitlam)

Establishment address: 405 North Rd  
Coquitlam BC V3K 3V9

Licensee name: Sanoor Investments Ltd

Licence #: 010354 Date CN issued: 30/10/89

Date and time of alleged contravention(s): 21/28/89 10:00 AM

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

	Contravention	Section
1	Permit person to	432) <input checked="" type="checkbox"/> Act <input type="checkbox"/> Reg
2	became intoxicated	<input 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 patron found to  
be over intoxicated  
by Inspector & police

Inspector name: N. Sataviam Badge #: 90

Telephone: 586 2657 LPC #: \_\_\_\_\_

Management acknowledgement (name and title):  
VIA 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)

### COMPLIANCE MEETING

Inspector's Name: Neelam Safavian Date: 2008 Mar 03  
Office Location: Surrey

#### ESTABLISHMENT INFORMATION:

Establishment Name: Executive Plaza Coquitlam - Foggy Dew  
Establishment Address: 405 North Road Coquitlam BC V3K 3V9  
Licence No.: 010354 Licence Class: LP Expiry date: 2008 Apr 30  
Licensee Name: Sanoor Investments Ltd (3rd party Gibson Hospitality)

#### MEETING DETAILS:

Attendees at compliance meeting:

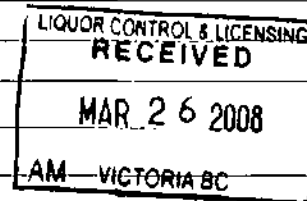
Name: <u>Roger Gibson</u>	Association/Position: <u>Third Party op.</u>	Contact No: <u>351-4900</u>
Name: _____	Association/Position: _____	Contact No: _____
Name: _____	Association/Position: _____	Contact No: _____
Name: _____	Association/Position: _____	Contact No: _____
Name: _____	Association/Position: _____	Contact No: _____
Name: _____	Association/Position: _____	Contact No: _____

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

0007502 - Overcrowding & Intoxication

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
- ☒ Other \_\_\_\_\_



Commitments made by licensee:

Met & security & management - discussed capacity and plans to keep within the person capacity.

Other \_\_\_\_\_

Inspector Name: N. Safavian

Inspector Signature: [Signature]

Licensee Name: Roger Gibson

Licensee Signature: [Signature]



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: Executive Plaza Coquitlam  
Establishment address: (Froggy Dew)  
405 North Rd Coquitlam BC  
Licensee name: Suncoor Investments Ltd.  
Licence #: 010354 Date CN issued: 01/31/2008  
Date and time of alleged contravention(s): MM/DD/YY 00:00

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 person capacity	6(4) <input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg
2	permit intoxicated person to remain	43(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: LPE by Coquitlam RCMP

3 counts - 400, 430 + 450

Drumman Count 400 Capacity 388

Intoxicated Patron removed by Police

Inspector name: Nelam Satavian Badge #: 90

Telephone: 586-5421 LPC #: B026461

Management acknowledgement (name and title):  
by 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.

LIQUOR CONTROL & LICENSING  
**RECEIVED**

FEB 06 2008

AM VICTORIA BC



The Best Place on Earth

January 31, 2008

Nurdin Sayani  
Executive Plaza Coquitlam  
The Foggy Dew  
405 North Road  
Coquitlam BC V3K 3V9

Dear Mr. Sayani:

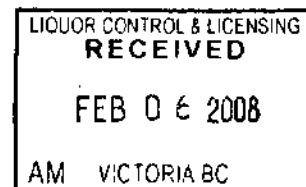
Re: **Licensed Premise Check conducted at The Foggy Dew on November 18, 2007**

I am writing as a follow up to the Police Licensed Premise Check Notice issued to you by Coquitlam RCMP on November 18, 2007. Police counts as well as your doorman's count indicate that your patron/staff capacity exceeded your approved person capacity. This is a contravention of section 6(4) of the Act. The police reports also indicate that an intoxicated person was removed from the premises. This constitutes a contravention of section 43(2)(b) of the Act.

A Contravention Notice is enclosed for your attention. Please contact me at 604-586-5421 to by February 15, 2008 to discuss this matter further.

Sincerely,

Neelam Safavian  
Inspector  
Fraser Valley Region



Ministry of Public Safety  
and Solicitor General

Liquor Control and  
Licensing Branch

Mailing Address:  
Suite 101  
9180 King George Highway  
Surrey, BC V3V 5V9

Telephone: 604 586-2641  
Facsimile: 604 586-2640

Location:  
Suite 101  
9180 King George Highway  
Surrey, BC

[www.pssg.gov.bc.ca/lclb](http://www.pssg.gov.bc.ca/lclb)

No. B 026461

BRITISH  
COLUMBIALiquor Control and Licensing Act  
and Regulation 244/2002

## POLICE LICENSED PREMISES CHECK (LPC)

Establishment name: Executive Plaza Liquithum  
 Establishment address: 405 North St.  
Liquithum Licence #: 010354  
 Licensee name: Executive Plaza Liquithum  
 Date and time of alleged contravention(s): 11.18.2007 01:00

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

	Contravention	Section
1	<u>Overcrowding beyond licence capacity</u>	6(H) <input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg
2		<input 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: Three counts executed by  
Members. 400-430-450.  
Door man's count 386 + 14 staff  
= 400

Police officer: Lst. PARSONS  
 Badge #: 54747 Dept./Detach.: Liquithum  
 Police Incident/File #: LQ 07-42602  
 Manage <sup>s.22</sup> (name and title): \_\_\_\_\_

A copy of this LPC will be forwarded to the Liquor Control and Licensing Branch.  
 The branch may issue a contravention notice and proceed with enforcement  
 action as a result of the alleged contravention(s).

Copy 3: LCLB head quarters copy (forward to LCLB field office)



No. B 008334



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: EXECUTIVE PLAZA COQUITZAM

Establishment address: 405 NORTH RD (EAST SIDE)  
COQUITZAM BC V3K 3V9 (SHERBROOK ST)

Licensee name: SANJOOR INVESTMENTS

Licence #: 010354 Date CN issued: 12/10/06

Date and time of alleged contravention(s): 11/1/06 00:00

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

	Contravention	Section
1	<u>FAIL TO REQUEST ID</u>	<u>45(2)</u> <input type="checkbox"/> Act <input checked="" type="checkbox"/> Reg
2		<input 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: DOORSTAFF ACCEPTED

A ROADSIDE SUSPENSION TICKET

AS ID FROM A FEMALE PATRON

Inspector name: LISTER Badge #: \_\_\_\_\_

Telephone: 604-775-0056 LPC #: \_\_\_\_\_

Management acknowledgement (name and title): \_\_\_\_\_

"MAILED"

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)

ENTERED IN POSSE

LIQUOR CONTROL & LICENSING  
RECEIVED

DEC 21 2005 B002261

BRITISH  
COLUMBIALiquor Control and Licensing Act  
VICTORIA BC  
and Regulation 244/2002**CONTRAVENTION NOTICE**Liquor Control and Licensing Branch,  
Ministry of Public Safety and Solicitor GeneralEstablishment name: Executive Plaza CoquitlamEstablishment address: 405 North Rd. CoquitlamLicensee name: Sanoor Investments LtdLicence #: 010354 Date CN issued: 12/16/05Date and time of alleged contravention(s): 12/16/05 21:45On 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 licence s.6(4)	<input type="checkbox"/> Act <input type="checkbox"/> Reg
2	Capacity	<input 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: 2 Counts taken by CEOE.N.470 & 1 Ken fire chiefKen Gordon - 440Cap. 388Inspector name: E. Nazareth Badge #: 59Telephone: 586 2657 LPC #: \_\_\_\_\_

Management acknowledgement (name and title): \_\_\_\_\_

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)