

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE LIQUOR CONTROL ACT



- and -

IN THE MATTER OF alleged violations of **ss. 58, 61(1)(a)** and **61(2)** of the *Nova Scotia Liquor Licensing Regulations*; and violation of a condition of 2015 NSUARB 271 Decision and Order, dated December 22, 2015, by **King's Corner Bar and Grille Limited** holder of Eating Establishment Liquor License 002913 and Lounge Liquor License No. 002914 for premises known as **Kings Corner Bar & Grille and Ma & Pa's Kitchen and The Back Alley Lounge**, located at 777 King St, Bridgewater, NS

BEFORE: David J. Almon, LL.B., Member

PARTIES: **KING'S CORNER BAR and GRILLE LIMITED**
Michael K. Power, Q.C.

SERVICE NOVA SCOTIA
ALCOHOL, GAMING, FUEL and TOBACCO
Duane A. Eddy, LL.B.

HEARING DATE: February 2, 2017

DECISION DATE: March 30, 2017

DECISION: Board finds that the Licensee contravened ss. 58, 61(1)(a) and (2) of the *Liquor Licensing Regulations*. The Board finds alleged violation of Board Order condition was not proven.

I INTRODUCTION

[1] On November 14, 2016, the Nova Scotia Utility and Review Board (“Board”) received the following letter from John MacDonald, Executive Director, Alcohol, Gaming, Fuel and Tobacco Division of Service Nova Scotia (“AGFT”):

In accordance with the *Liquor Control Act* section 47B(1)(b), I, as the Executive Director, am referring a disciplinary matter to the Nova Scotia Utility and Review Board for a formal hearing.

Please advise this office of the date, time and location of the hearing, once it has been determined.

Licensee:

King’s Corner Bar and Grille Limited

Mailing Address:

777 King Street, Bridgewater, NS B4V 1B6

People:

Sharon Saulnier, Principal Person
Carey Walker, Manager

This office has provided the disclosure package relating to this matter to the Licensee. Further, this office will provide any support required by the Review Board in relation to these proceedings.

[Exhibit K-1]

[2] This Decision is further to a public hearing held at the Bridgewater Justice Centre, Bridgewater, Nova Scotia, on February 2, 2017. The disciplinary hearing was convened as a result of allegations by the Executive Director, AGFT, of violations of ss. 58, 61(1)(a) and 61(2) of the *Nova Scotia Liquor Licensing Regulations* (“*Regulations*”); and a violation of a condition of [2015 NSUARB 271], NSUARB Decision and Order, dated December 22, 2015, by King’s Corner Bar and Grille Limited (“Licensee”), holder of Eating Establishment Liquor License No. 002913 and Lounge Liquor License No. 002914.

[3] Section 47B of the *Liquor Control Act* states:

Authority of Executive Director

47B (1) Where a licensee fails to comply with the terms and conditions of a license, has contravened this Act or the regulations or is convicted of an offence under the *Criminal*

Code or a quasi-criminal statute, the Executive Director may, in accordance with the process prescribed in the regulations,

(a) take any action set out in clauses 47(1)(b), (c) and (d); or

(b) refer the matter to the Review Board.

(2) A licensee may appeal a decision made pursuant to clause (1)(a) to the Review Board in accordance with the appeal process prescribed in the regulations.

(3) Where the Executive Director has, in the course of performing the powers, duties or functions conferred upon the Executive Director pursuant to this Act, received information regarding the Licensee or communicates with the Licensee or with another person concerning the license, the Executive Director is not disqualified from taking any action pursuant to clause (1)(a). 2011, c. 21, s. 7.

[4] Pursuant to s. 47E(3), where the Executive Director refers a matter to the Board pursuant to s. 47B(1)(b), the Board may apply any remedy available pursuant to subsection 2, that is, impose conditions; rescind/amend conditions; suspend all or any part of a license; cancel all or any part of a license; and, order such remedy as the Board considers appropriate.

[5] Duane A. Eddy, LL.B., represented the AGFT and Michael K. Power, Q.C., represented the Licensee. Mr. Eddy called two witnesses: Sgt. Trevor Mitchell, Bridgewater Police Service; and Ryan MacLellan, Compliance Officer, AGFT. Mr. Power called three witnesses: Sharon Saulnier; Michael Habib; and Bryce Veinot.

II EVIDENCE - ALCOHOL, GAMING, FUEL & TOBACCO

Sgt. Trevor Mitchell

[6] Sgt. Trevor Mitchell has served with the Bridgewater Police Service since December 1999. On the night of Saturday, April 23, and early Sunday morning, April 24, 2016, he was on patrol and attended at the Back Alley Lounge ("licensed premises"). His evidence centred on events which occurred at the licensed premises.

[7] Throughout his testimony he referred to DVD interior video surveillance collected from the licensed premises and exterior video surveillance obtained from the Bridgewater Police Service [Exhibit K-2, Tab 6].

[8] In the interest of protecting the privacy of the patrons, their surnames are omitted.

[9] Briefly, the video depicts "Natalie" dancing at times, in a group, and alone, on the stage floor of the bar, and, at times appearing to be staggering, arms flailing in the air and drinking from a beer bottle. At one point, the camera captures her exiting the premises, and after a brief period, she re-enters the bar and proceeds onto the dance floor, moving on the stage and, at times, dancing alone. At one point, she appears to fall to the floor, after taking off an outer shirt and swinging it around in her hand on the dance floor.

[10] "Candace," "Patron 2," is observed on camera, on the dance floor with a bottle of beer in her hand. She is seen exiting the premises, whereupon she sits down on an exterior wall, near the main entrance, setting a bottle beside her. "Natalie" is seen exiting the bar, and sits on the wall with two other patrons. Another customer, "Patron 3," breaks a beer bottle on the wall and appears to attempt to drink from the broken bottle and then throws it on the sidewalk. "Natalie" appears to pick up an object and throws it, appearing to stagger backward.

[11] Sgt. Mitchell identified "Natalie" by name and observed that she was "very intoxicated" and determined this by observing:

..... slurred speech, her movements. Her lack of movements, in this case. And...and it's hard to describe someone that's, you know, highly intoxicated. But you're laying on the

ground, non-moving until we approach you, and then when you do get up you're...you're just completely staggering and slurred speech and strong smell of alcohol.

[Transcript p.16, lines 1-6]

[12] He also observed two other individuals in the vicinity, whom he described as "very intoxicated." Sgt. Mitchell then observed the video surveillance footage from inside the licensed premises, identifying the same female individual whom he witnessed lying on the ground, outside the licensed premises.

[13] He then reviewed a number of "occurrence summaries" relating to incidents which occurred at or around the licensed premises, from February 2016 to January 2017, such incidents as disturbing the peace/causing a disturbance, assaults, impaired operation of a motor vehicle, breaches of the peace, and various violations under the *Liquor Control Act*.

[14] Sgt. Mitchell testified that he had increased concerns about the levels of intoxication by patrons at the licensed premises, and that he alerted the Acting Chief of Police, reading from an April 25, 2016, e-mail he authored, to him, about that concern:

...Now that the warmer weather is coming more people are coming out. Last night and tonight we dealt with three females and one male, all coming from The Back Alley, completely hammered to the point of laying on the sidewalk, which would have been "Natalie" XX tonight. Patrick XX last night was barely walking and hammered. "Candace" XX tonight was using the concrete wall to hold herself up. I locked Patrick up last night after he gave me the finger and walking into a pole, and tonight a taxi happened along and took the three females, or I would have locked them up too. I said perhaps a call to the liquor inspector is needed to visit, pay a visit, because there's no way they get that drunk off a couple drinks. Be nice to set the tone early.

[Transcript, p.31, lines 16-22; p.32, lines 1-10]

[15] Based on his experience in attending the licensed premises he stated:

I'm going to...I'll say my opinion is some people coming out of there are highly intoxicated, period. How they got to that point, between being in there and coming out and laying on the sidewalk or...to the point where I've seen some of them not really know where they are, they're...they're drinking a lot or consuming a lot.

[Transcript, p.34, lines 6-11]

[16] Under cross-examination, Sgt. Mitchell was asked whether he was able to determine whether impairment or intoxication comes solely from alcohol consumption:

A. Well, it's an interesting question. I'm one of two drug recognition experts in this service. So I had the opportunity to go to Jacksonville, Florida to take a course...

Q. Mm-hmm.

A. ...in the recognition of impairment. Several drugs and alcohol. Without doing a whole, complete hour-long exam, which would determine what they are impaired of, my opinion in "Natalie"'s case it would be alcohol.

[Transcript, p.39, lines 12-19]

[17] He also admitted that he was very familiar with "Natalie," depicted in the video tape. He described her as "anti-authority" and in addition to consuming alcohol, "could" have imbibed:

...a mickey from their (sic) purse or their buddies. They could pop a pill or two. There could be a period of time when the consumption of other intoxicants could have occurred.

[Transcript, p.41, lines 5-8]

[18] He also described the cooperation he received from the licensed premises:

I would say that as far as dealings that I've had with them, very cooperative. As far as...hard to say how to put it, but yeah, they do call with regards to someone possibly being impaired. They do call for assistance in having someone removed that they don't want there. I mean, I've been there before where they've actually helped us, assist us looking for liquor outside. Someone may have dumped some...some bottles or something outside. But I would describe it as being cooperative.

[Transcript, p.52, line 8-15]

Ryan MacLellan

[19] Ryan MacLellan is a Compliance Officer for AGFT. His primary responsibilities are observing activities at licensed premises and ensuring that licensed premises are abiding by the *Liquor Control Act* and the *Liquor Licensing Regulations*. His jurisdiction is, primarily, Lunenburg and Queens Counties, and within that jurisdiction is the licensed premises at 777 King Street.

[20] Mr. MacLellan testified that all licensees are required to submit to a staff instruction as a licensing requirement, and in the case of the Licensee the staff instructions occurred in 2015 and 2016. He gave an overview of what comprises a staff instruction:

A. ...One or several of us will go to a premises or an agreed meeting place. We sit down, preferable be...preferably, excuse me, with as many staff members as possible - management, bar staff, wait staff - generally anybody who would have dealings with alcohol, and we review...basically, we take the Liquor Licensing Regulations and we have a list of the regulations that we generally like to review as we're going through them and tick them off. And entertain any questions, offer explanations if things are unclear. I like to keep it very interactive. I'd say somewhat informal but still giving a high level of information to the licensees and staff.

Q. Is the issue of over-service addressed in that instruction, or is it part of some other training?

A. No, that's...that's one of our primary concerns in this business and specifically in the staff instructions. Section 61, which speaks to the over-service, drunk patrons, is...is gone over and we review, you know, what are the signs of drunkenness, what are the signs of intoxication. You know, what...what do you look for when a patron comes in, how do you approach a patron, what sort of things do you ask a patron. So we certainly spend a lot of time on the over-service issue and we also look at...underage is a big issue, verifying identification and I...and then sort of ease into the other lesser...lesser important, I guess, for day-to-day operation.

[Transcript, p.86, line 6 to p. 87, lines 6]

[21] As part of his investigation, Mr. MacLellan testified that he attempted to speak with managers about the incidents he observed on the surveillance footage, but was advised that they were no longer in the employ of the Licensee.

[22] Mr. MacLellan testified that he had been at the licensed premises earlier in the evening, but was not actually there, later that night of Saturday, April 23, and early morning Sunday, April 24, 2016, at the time surveillance video captured the sequence of events described above.

[23] His testimony revolved around his observations from reviewing the video footage and from conversations he had with police officials and licensed premises personnel, which he detailed in an Inspection Report reproduced below:

Occurrence: **Date:** April 24, 2016 **Time:** 02:12
Violation: Removing liquor from licensed premises; Persons not permitted in, or to be served in, licensed premises; Violation of NSUARB Decision and Order 2015 NSUARB 271 M06830
Section: NSLLR 58; NSLLR 61(1)(a) and 61(2); 2015 NSUARB 271 M06830 Condition (a)

DETAIL/RECOMMENDATIONS:

The writer received an e-mail from the Deputy Chief of the Bridgewater Police Service, Scott Feener. The email was a forwarded message from Sergeant Trevor Mitchell, and is attached. The message included Sgt. Mitchell's concerns of patrons being overserved at The Back Alley Lounge. Sgt. Mitchell described patrons coming from the Lounge as "completely hammered", "...barely walking and hammered...", "...using a concrete wall to hold herself up." He further wrote that he lodged one patron in cells for being drunk, and would have lodged others if a taxi was not immediately available.

The writer met with manager Brody Chiasson on April 26 at the premises to collect video surveillance of the nights Sgt. Mitchell was concerned with. The nights of Friday April 22, and Saturday April 23. The volume of the recording device was limited, not all cameras were able to be recorded, and the length of recording was not as long as was wanted by the writer.

The writer met with Sgt. Mitchell and Cst. Bartlett on April 28 at the Bridgewater Police station. Sgt. Mitchell provided the writer with video surveillance footage of the exterior of these premises, showing the main entrance to the Lounge on Victoria Road, and the front of the building on King Street. They reviewed video footage with the writer, both the footage collected by the writer and that from Sgt. Mitchell.

Footage collected from the premises for the night of Friday April 22 proved inconclusive as the patrons Sgt. Mitchell was concerned with were not visible in the footage collected.

Sgt. Mitchell and Cst. Bartlett were able to identify a patron, identified as "Natalie", in the footage collected from the premises of the night of Saturday April 23. Sgt. Mitchell said that was the same patron he and Cst. Shannon Bartlett roused from sleeping under the sign outside of the entrance of the premises. Sgt. Mitchell and Cst. Bartlett said "Natalie" was highly intoxicated and struggled to get to her feet. Once she was on her feet, Sgt. Mitchell said "Natalie" started to walk home, and was followed by a patrol car, as seen at 01:40hrs in the video footage he provided. (The time stamp on the video received from the Bridgewater Police was not adjusted for daylight savings time, so is displayed one hour behind actual time.) Sgt. Mitchell said "Natalie" was permitted to walk home as she was known to police and lived very close to the premises.

As the writer reviewed the video footage collected from the Back Alley, the writer followed the activities of the patron identified, as "Natalie", by Sgt. Mitchell. The writer is familiar with the patron identified as "Natalie", having had several brief conversations with her, and seeing her in these and other premises multiple times prior to this incident. A time-line of observations of the collected video footage are attached to this report. At these noted times: 00:30, 00:41, 00:52, 00:57, 00:59, 01:04, 00:14, 01:27, 01:30, 01:36, 01:40, 01:56, 01:59, "Natalie" is seen on the video holding a beer bottle, drinking from a beer bottle, and/or showing signs of intoxication. Of particular significance, "Natalie" can be seen falling to the floor while dancing at 01:40hrs with no obvious cause other than her own impairment. She recovers, and a short time later takes off a top-layer shirt and swings it above her head. "Natalie" appears to be drunk in the video.

The writer also observed another female, Patron #2, with black hair, wearing black pants, and carrying a black bag, take a beer bottle off the half wall defining the dance floor area at 01:53hrs in Camera 4, then walk through Camera 2 with the beer bottle visible in her left hand, then leaves the premises through the main entrance and can be seen in Camera 1 with the beer bottle outside. The patron was able to walk through and out of the premises with the beer bottle, uncontested by staff, and sat on the half wall just outside the main entrance. The writer was also familiar patron #2 and would say she appeared drunk as her movements appeared somewhat exaggerated as she communicated with others. Patron #2 left the view of Camera 1 for a short time, and during that time another patron, #3, all dressed in black, staggers in the camera view, attempts to sit on the half wall but misses the wall and falls to the ground, appearing drunk as she is unsteady and staggers. Sgt. Mitchell said these two patrons were the ones he described as "completely hammered", that one was "...using (a) concrete wall to hold herself up" and the same patrons he watched leave in a taxi, as seen at 01:42hrs on the Bridgewater Police video footage he provided.

The writer attempted to return to the premises with the ability to collect more video footage on May 5. Carey Walker, Bill Girvan, and Mike Habib were there and permitted the writer access to view and record the surveillance footage. The writer had previous experience operating the surveillance system, observing and operating it with previous employees. When the writer attempted to get the requested footage, the premises surveillance system would only return to April 24 at 17:00hrs, only 12 days of footage. That is a violation of the license condition agreed upon by the Executive Director and the Licensee on December 22, 2015, which states "All video surveillance equipment will be kept in working condition including the existing 11 video cameras. Video surveillance will be made available to the AGFT Division upon request at any time and will be stored for a minimum of 14 days." Further attachments include: Bridgewater Police General Report dated April 23, 2016, Bridgewater Police Occurrence Summaries dated April 23, 2016 and April 24, 2016

RECOMMENDATIONS:

The writer recommends infractions be issued for violations of NSLLR sections 58, 61(2), and 2015 NSUARB 271 M06830 Condition (a).

These violations are of the same nature as those in 2015 that incurred infractions and resulted in a two day license suspension and imposed conditions. The writer will consult with the Regional Manager and Director of Investigation and Enforcement to discuss a potential penalty.

[Exhibit K-2, Tab 3]

[24] He commented on the recommendations made at the conclusion of his investigation, commencing with a violation under s. 58:

A. Well, after meeting with our then-regional manager, Tracy, we felt it was appropriate to issue infractions. Well, we issued infractions under Tab 4 under sections 58, which is removing alcohol from the premises.

Q. And that was in relation to Patron 2, who we saw on the video grab a bottle of beer, proceed outside, and set it on the edge...

A. Yes.

Q. ...outside?

[Transcript, p.79, line 22 - p.80, line 8]

[25] With respect to violation of s.61(1)(a) he testified:

"...A Licensee must not sell or provide liquor in their licensed premises to any of the following."

And (a) refers to, "A person who is apparently under the influence of liquor."

Q. And from the video footage that you obtained did you see the bartender or anyone working within the establishment serve Ms. "Natalie" ...a beer?

A. I...no, I wasn't able to get that footage because of the limited capacity of my memory stick, and when I returned with more capacity it wasn't available.

...

Q. Okay.

...

Q. And so had it gone back the full 14 days what you would... are you saying you would have been able to obtain footage of the service of liquor within the establishment? Or what...why is the...

A. Yes, I would have been able to get a recording of all cameras available.

Q. Right.

A. Yeah.

Q. So that's why you weren't able to ascertain whether or not "Natalie" was served the beer.

...

...Sgt. Mitchell's report saying they were highly intoxicated.

...

Q. So how could you determine that she was too intoxicated to be in a premises from the video, essentially?

A. Well, just based on her behaviour within the premises. Generally, when I enter a premises I sort of look for the outliers, the ones that don't really fit in. If you're in a quiet dining room and somebody is loud and boisterous and causing a scene, then they tend to draw the focus. If you're in a loud, busy bar and somebody is quiet in the corner, possibly sleeping or passed out, they would draw some attention.

This, everybody was up dancing but she sort of seemed to take it a step further, where she was on the stage by herself a fair amount. The twerking, I guess we'd call it, sticking her backside out towards the crowd, taking her shirt off, falling down in the video, stumbling, falling back on the stage. Those are all sort of signs and symptoms that they've been drinking and would appear she probably had too much and was carrying a bottle throughout

the video, majority of the video, including the last several minutes that we saw her before she left.

[Transcript, p.80, line 13 to p.83, line 13]

[26] Regarding s.61(2), he testified:

A. ...61(2) just reads: "A Licensee must not permit a person who is drunk to be in their licensed premises." We could relate that to the three patrons that we did see, the three female patrons: "Natalie", Patron 2, and the third patron who fell off the wall. All were reported by Sgt. Mitchell to be highly intoxicated.

I think he used the word "hammered" to describe it and said he was considering removing them to cells had a cab not come. So based on that, and seeing their activity within the bar, that they had been drinking, I concluded that that bar is where they had become drunk.

[Transcript, p.83, line 18 to p.84, line 4]

[27] Mr. MacLellan testified that, as a condition of its license - as part of a joint settlement agreement stemming from previous violations - stated in the December 22, 2015, Decision & Order of the Board [2015 NSUARB 271], all video surveillance equipment was to be kept in working condition and that it had to be stored for a minimum of 14 days. He stated that the Licensee blamed the missing footage on a system that "was insufficient" and unable to be expanded or that Brody Chiasson (an employee) had been relieved of duty and tampered with the system.

[28] In the course of his testimony, all described in his report, Mr. MacLellan referred to the video depicting activity in the bar, and, in particular, the movements of "Natalie" variously described as dancing, twerking, falling over while on the stage, taking her outer shirt off and swinging it around, and falling backwards.

[29] Under cross-examination, Mr. MacLellan testified that he attended at the premises on April 26 to download the contents of the video onto his memory stick. As the memory stick did not have sufficient capacity he returned nine days later on May 5, with

the additional data stick, hoping to transfer the data. Mr. MacLellan was questioned by

Counsel on this event:

Q. And this will follow up a phone call that the client, of course, alerted you on or about May the 5th. This would be almost immediately when they became aware that the system wasn't recording for the 14 days, was only capacity, or shall we say it was only retaining, for 11 days. Okay? That they took were concerned that you were concerned about this deficiency. And they indicated there that they were unaware that it had the capacity of less than two weeks, and my client was hoping to correct this deficiency or amend the order without the threat of a suspension. So they reacted almost immediately when they became aware that there had been a technical violation of the 14-day notice.

A. Yes.

Q. But there was no other violation as far as that condition of license was concerned and the video from that particular night existed at the time you first entered the premises.

A. Yes, when I first requested it.

Q. Right.

A. Every...everything was there.

Q. Everything was there?

A. The limited capacity of the memory stick didn't allow me...

Q. Were you aware of the limited capacity of the memory stick?

A. I...well, I knew the capacity of it. I didn't know the capacity or the size of the video I'd be requesting.

Q. I see.

A. It was the memory stick that was issued to me by the office.

Q. Did it have other data or gigabytes or terabytes? Did it have other data on it?

A. No, no. Other than the sort of...there's a safe lock that is just installed on the...

Q. I see.

A. As a security measure. Other than that, no.

Q. So what sort of capacity did that memory stick have?

A. Eight gigabyte.

Q. Pardon?

A. Eight gigabyte.

Q. Eight? Eight gigabyte? Okay. All right.

A. I went and purchased a 32-gig.

Q. Right, but you were issued the eight gigabyte.

A. Initially, yes.

Q. Right. Was that standard issue?

A. ...I don't think it's a standard thing. This is fairly new technology for us all.

Q. Right.

A. I believe, anyway. For me it certainly is.

Q. Okay.

THE CHAIR: Can I just ask a question, if you don't mind me interrupting?

MR. POWER: Sure.

THE CHAIR: So when you put the stick in on the first time you were there...

A. Mm-hmm.

THE CHAIR: ...you could tell that there was 11 days' worth of video on that?

A. Yeah. Well, this is the video that I collected that day.

THE CHAIR: But you couldn't collect the whole thing.

A. I couldn't get it all because...

THE CHAIR: Yeah.

A. ...of the capacity, yeah.

THE CHAIR: But there was 11. It turns out there should have been, what, 14?

A. Yes.

THE CHAIR: 14, but there was 11 days' worth of video on the machine?

A. It went back...now I didn't verify on the 26th ...

THE CHAIR: Yeah.

A. ...that it went back 14 days.

THE CHAIR: You didn't.

A. I was just looking for that segment of time.

THE CHAIR: Okay.

A. The 23rd into the 24th.

THE CHAIR: And then when you went back the second time how far did it go back?

A. It went back to April 24th at 5 p.m....

THE CHAIR: Okay.

A. ...I believe it was.

THE CHAIR: And it should have gone back to...

A. The 22nd.

THE CHAIR: Okay.

A. 21st.

[Transcript, p.103, line 17 to p.107, line 8]

[30] Under cross-examination, Mr. MacLellan next testified to the sobriety of

“Natalie”:

Q. What of her behaviour led you to the conclusion that she was intoxicated on the premises?

A. Her behaviour on the dance floor where she went continuously around from patron to patron, very handsy, touchy, appeared to get very close and intimate with a number of them. She was up on the stage sticking her backside out towards the crowd, spanking herself, and based on my previous interactions with her, those don't appear to be normal.

Q. Previous interactions when?

A. ...I've seen her in the premises a number of times. She's also a cook or was a cook in another premises in Lunenburg.

Q. But you're not comparing her behaviour that day or that segment of time.

A. I'm...

Q. Or are you?

A. ...comparing what I've seen in the video to when I have seen her stone-cold sober or what I'm...

Q. Right.

A. ...assuming would be sober, where she's at work or having just entered the bar previously when I've been there.

Q. You've referred to her falling down. Okay. In her intoxicated state on the video that was demonstrated here to this hearing I saw her successfully negotiate without incident from the dance floor to the top of a speaker.

A. Mm-hmm.

Q. And then I saw her hop down not once but twice from the stage to the floor without incident and then negotiating the stage. And she fell down once, and that was it.

A. She fell down one time and then as she sat on the stage again she fall backwards, catching herself with her arms.

Q. In a boisterous manner that...

A. I...the last falling-back was not a boisterous, it was...it appeared to be a loss of balance.

Q. But that's totally subjective, though.

A. It could be, yes.

Q. I mean, there's no...she could have just been showing off for her friends. She could have been attempting to attract a male species partner or a female species partner.

A. ...I guess. I can't...

Q. Exuberant behaviour.

A. I can't speak to her (inaudible - talkover).

Q. Exuberant behaviour, drawing attention to herself for a number of reasons. But...or just be somebody having a good time out on Saturday night and having a good time.

A. Yes.

Q. Yeah.

A. Having a drink.

Q. Having a drink. Well, that's what you do, usually, in taverns and lounges.

A. Absolutely.

Q. You usually have a drink.

A. But you don't usually take your shirt off and fling it around your head...

Q. Well...

A. ...and fall down.

Q. ...that would be totally speculative. There would be lots of...I saw people there doing the twerking, something I never ever saw in a bar, but apparently it's quite common.

A. Yeah, I've seen it a number of times, yes.

Q. I was...I'm learning that for the first time.

A. But the number of times...the number of times I've been in the premises I can honest...well, I won't say, Honestly say, but I cannot recall another time when I've seen a female patron remove her shirt.

Q. Well, she removed an outer layer and...

A. Yes.

Q. ...used it as a flag or as a...

A. Right.

Q. As something to attract attention to herself. But whether...

A. I guess that would be subjective as well...

Q. Yes.

A. ...depending on her intention.

[Transcript, p.115, line 1 to p.118, line 7]

[31] Mr. MacLellan then commented on the behaviour of "Candace":

Q. What behaviour did you see that was evidence of intoxication?

A. Her unsteadiness. She was...appeared off balance at times. The fact that she took a bottle out and then eventually smashed it on the...the wall.

Q. Right.

A. Then attempted to take a drink and threw what she had away.

Q. And neither of them, any of them, were arrested or detained for drunkenness in a public place by an officer of the law.

A. No, but I do believe Sgt. Mitchell said had a taxicab not arrived at that time and agreed to take them home he would have taken them in custody.

Q. But they were released to go home. They...

A. Yes.

Q. Put in the cab and sent home.

A. Yes.

Q. All right. I also observed "Natalie" walking outside the tavern. There was no...there didn't appear to be any stumbling.

A. It's certainly possible. I also observed her standing stationary for a moment and then having to take several steps back to catch herself.

Q. Right. Did you see where she was slapped by one of her friends?

A. Yes, that was...

Q. Yeah, struck in the face?

A. That was the lady who took the...

Q. Yeah.

A. ...beer bottle out.

Q. Yeah, but there was also a period of time with... especially with respect to "Natalie", that there was at least a 40-minute interval of, shall we...from the time of...approximately, maybe a little longer. From approximately 1:56 to 2:40, when we have no video and the licensee would be...would not be required to have video outside of the premises.

...

Q. But there's a 40-minute interval when these parties could have engaged in all sorts of other activities involving the ingestion of intoxicants, the consumption of alcohol and/or drugs which would have resulted in their increased intoxication or impairment.

A. I suppose they could have.

Q. Right.

[Transcript, p.118, line 13 to p.120, line 2; p.121, lines 1-6]

III EVIDENCE – LICENSEE

Sharon Saulnier

[32] Sharon Saulnier is the owner of the licensed premises. She testified that she delegated most of the day-to-day activities to her husband, Michael Habib, and that she was not on duty the night of the alleged infractions. She testified as to the respective responsibilities of Candace Peach and Brody Chiasson, who were employed first as a bartender and doorman, respectively, before moving into the management of the premises. She testified that both individuals had experience in the business and participated in training and familiarization with Ryan MacLellan, and understood the procedures and the rules and regulations associated with the management of the premises.

Michael Habib

[33] Michael Habib testified that he and Ms. Saulnier purchased the tavern in 2014 and spent approximately \$200,000 in renovations, turning it into the King's Corner

Bar and Grille over a two-year span. Initially, he and Ms. Saulnier managed the business until February 2016, when they entered into a management agreement with Corey Walker, Brody Chiasson and Candace Peach.

[34] He testified that when they assumed ownership of the premises they installed a video surveillance system along with alarms, for approximately \$20,000.

[35] Mr. Habib testified that at the time of the joint settlement hearing and subsequent issuance of the Board's Decision and Order on December 22, 2015, for violations of the *Liquor Licensing Regulations*, the video surveillance equipment was working.

[36] He acknowledged that Ryan MacLellan conducted a training session with all the staff covering all the "dos and don'ts," related to proper management of the licensed premises.

[37] Mr. Habib responded to questions from his counsel, reviewing Exhibit K-2, Tab 3, offering comments on "Natalie," "Candace" and "Patron 3" who were described in the Inspection Report and who were the subject of the video coverage.

[38] He described "Natalie" as "a very eccentric girl...a free spirit":

What you guys saw on there is the same thing we saw every time she was here. Nine out of ten times she wouldn't even have a drink.

... a lot of people out here have handicaps and...drug addictions but they are prescription drugs. So we are limited to what we can say to them but I find that a lot of them that what we believe is either drug induced intoxication or liquor intoxication, a lot of them are just the way people are and I mean, we've had issues where we are going to throw somebody out and the person doesn't drink. So you're really limited, and what I...the...what I saw today with "Natalie" is, that's "Natalie". I mean, everybody is going to interpret it differently. I...to me if somebody was that intoxicated and passed out under a sign, to have her jump in a taxi and go home, all of a sudden find out the next day that they got out of the taxi, got hit by a car or hit their head or anything else, I mean, our jobs are to protect them and for the Police to send them home determines what level they believe they were intoxicated.

But if she jumped up and ran around the building three times, was she playing around? Because "Natalie" is an attention...she loves attention. She likes to be the center of attention.

[Transcript, p.162, line 1 to p. 163, line 8]

[39] He also testified that she "does a lot of drugs."

[40] Mr. Habib remarked on "Candace":

Candy is another one that does a lot of drugs. If...if you watch Candy on the video at no time do you see her with a drink until she's leaving, and when she's leaving she picks up a drink and walks out. What I saw...and again, I've now seen these people for two years. I think she was high. I don't think she was drunk.

[Transcript, p.164, lines 20 to p.165, line 2]

[41] Regarding "Patron 3," who is described as "the lady who couldn't find the wall to sit down," Mr. Habib observed:

A. Yes. She does not drink. She's actually high as a kite all the time. We have thrown her out many times. We've refused her entry many times, and again, what...the problem you have is that when you have a group of ten people and she's not moving from the table you don't realize how high they are...

[Transcript, p.166, lines 1-5]

[42] Mr. Habib also reviewed the occurrence summaries offering a further elaboration to each of the reports.

[43] Mr. Habib testified that, "because protocols weren't followed," as a result of the activities that took place at the bar that evening, both Mr. Chaisson and Ms. Peach, along with the doorman, Brandon, "who wasn't on the door the whole time," were released from their positions.

[44] Under cross-examination, he testified that when the video system was re-installed and re-programmed, in February 2016, after a renovation of the premises, the cameras had two options for recording: continuous and intermittent. Their surveillance system should have operated on an intermittent basis, but was programmed to operate continuously.

[45] When Mr. MacLellan attempted to download the sequence of events on April 26, 2016, he discovered that he did not have enough memory in his memory stick.

[46] Mr. Habib suggested that, immediately upon his discovery, if Mr. MacLellan had left the premises, drove down the road to Staples, picked up another memory stick and came back, he could have captured the rest of the downloaded camera footage (on the memory stick).

[47] Mr. Power questioned him further:

Q. So had...let's say, hypothetically, had the footage been able to go back to the time where Mr. MacLellan wanted it to go back we would have had all the cameras and we would have had all the evidence in terms of the service of alcohol. Correct?

A. Yes.

Q. And all the vantage points within the bar...

A. Exactly.

Q. ...to have a complete picture.

A. And understanding.

[Transcript p.194, lines 3-11]

[48] Mr. Habib continued:

A. You know, it's a funny thing. I...you're saying that the videos weren't working the day Ryan was there. He openly admitted that he fully did his memory stick up. We screwed up by not knowing that it was on consistent in the 12 days. Had we known that it would have been on...on intermittent. You guys made the mistake of sending an eight-gigabyte hard-drive and not driving across town and picking up another one. Because, again, I would love to see all the video footage.

[Transcript, p.196, lines 8-15]

[49] Mr. Habib acknowledged the condition, by way of an Order of the Board, to be able to store footage for 14 days.

[50] He was further questioned by Mr. Eddy:

Q. Now it didn't occur to you when you're bringing a contractor in to install this surveillance footage to ask them basic questions, How long can I store this footage, if I put it on this setting can I store it longer? It didn't occur to you to actually double-check or check it off

with this contractor when they're installing this video? You just let them do their thing and didn't ask them any questions.

A. ...you know, before that, we had pulled up video footage for well into the three or four weeks because it was on the intermittent. When they put it back in after the renovation they had put it on consecutive. Had we known that the parameters were changed we would have dealt with it. On one hand you're telling me that I should have had...had a crystal ball to look into the future and say, One day I'm going to find out this isn't right. The minute we found out it wasn't right we called somebody in to fix it.

Q. Well, there's a reasonable amount of due diligence with respect to...

A. I thought it was doing the 14 days.

Q. And it's the same as regulations. There's a reasonable amount of due diligence. This condition requires a reasonable amount of due diligence, sir. Would you agree with that?

A. I do, but it was doing...

[Transcript, p.202, line 22 to p.203, line 21]

[51] Mr. Eddy continued with the same line of questioning:

Q. ...All the AGFT's position is, is you have a licensee in this matter, Ms. Saulnier. You are assisting her with the business. She employs, at the time, two managers. She entered into a condition which is by order of the Board dated December 22nd, 2015, to have this 14-day surveillance retention in place. And you know the rationale, which is, in circumstances where there is an incident, the AGFT can go in and go back and look at footage and there's...

A. Absolutely.

Q. There's a mutual benefit to having this condition.

A. Absolutely.

Q. Correct?

A. Absolutely.

Q. Yes.

A. I will tell you this. When I found out it wasn't 14 days it sickened me because I agreed to this order and we had, all the way up, well over 14 days. Well over. And Ryan knows it because there's been many a times he's come back to get other footage, and because when they turned it back on they made a mistake. I can't turn the clock back and fix it, but I have fixed it since. And just to let you know, we went to a two-terabyte system even though...and we're on intermittent. So now we can probably get 50 days.

[Transcript, p.207, lines 2-22 to p.208, line 1]

Bryce Veinot

[52] Bryce Veinot testified that he was contacted by Mr. Habib to perform an independent consultation, as a security industry specialist, regarding the equipment installed, particularly as it relates to “motion only or the constant record settings” set up in the licensed premises.

[53] It was his opinion that:

...the setup is done properly. The wiring from the cameras into the video recorder, the settings for the quality of recording on the cameras, all of what I saw would be very similar if not exact to the same way that I would install a system. The only thing that becomes different would be the exact settings that were used. Having every single camera set to constant-record is not something that's standard, and that's most likely similar to Mr. Habib's testimony. It obviously would have been an oversight on the installer, and it's just not common.

[Transcript, p.220, lines 10-18]

[54] It was his evidence that no one had tampered or attempted to tamper with the system.

IV FINDINGS

[55] In December 2015, the Licensee appeared before the Board at a joint settlement hearing *via* telephone conference, for the imposition of a penalty, with respect to the Licensee's violations of *Regulations* 61(1)(a) & (b) and 61(2), respecting a prior matter. The AGFT and Licensee jointly recommended that the Eating Establishment and Lounge Liquor licences be suspended for two days. As well, the video lottery registration certificate was also suspended for two days.

[56] As part of that Decision and Order, the following condition was included:

IT IS FURTHER ORDERED that the Licensee shall have the following condition attached to its Eating Establishment Liquor License Nos. 002913 and 003243, and Lounge Liquor License Nos. 002914 and 003244:

All video surveillance equipment will be kept in working condition, including the existing 11 video cameras, Video surveillance will be made available to the Alcohol, Gaming, Fuel and Tobacco Division upon request at any time and will be stored for a minimum of 14 days.
[Emphasis added]

[2015 NSUARB 271]

[57] Scarcely four months later, AGFT was advised by the Bridgewater Police of events on the night of April 23 and the early morning of April 24, 2016, which led to charges for violations of ss. 58, 61(1)(b), 61(2) of the *Regulations*, and a breach of the video surveillance condition.

[58] The burden of proof in disciplinary matters, such as the present one before the Board, is upon the AGFT, which must show, on the balance of probabilities, that the Licensee committed the alleged violations.

[59] The defence of due diligence, which is available to the Licensee in these matters, has been addressed by the Board in previous decisions. Regulatory violations of the present kind fall into the category of “strict liability” offences as opposed to “absolute liability” offences. The due diligence defence allows the Licensee to avoid a penalty being imposed by the Board if the Licensee satisfies the Board that all reasonable steps were taken to prevent the violations from occurring.

[60] In a Decision dated July 25, 2001, the Board stated that:

Counsel for the Licensee has raised the issue of due diligence as a defence against a suspension of licensing privileges in this case. The Board has, in the past, considered similar arguments. In a 1997 decision of the then Liquor License Board in **Caribou Holdings** Company Limited (which was a disciplinary proceeding involving a violation of **Regulation 14g**), the Board made the following observation:

The Board does not dispute that Mr. Clarke's attendance at the licensed establishment was diminished during this period due to health problems. His responsibility to ensure compliance with the regulations, however, did not diminish. Essentially, Mr. Clarke has no satisfactory explanation to offer the Board as to why contraband liquor was found in his establishment. Under these circumstances the Board cannot accept an explanation from a licensee which consists simply of speculation of unsubstantiated suspicions concerning a long departed staff member.

Either Mr. Clarke knew about the sale of smuggled liquor in his premises, or it took place without his knowledge. The Board finds his evidence less than credible, and is troubled by

his acknowledged failure to raise the liquor-related problems with the people whose help he sought in order to resolve problems in the bar. The Board is also troubled by his cavalier approach to securing the liquor storage area. This is not typical of the average, reasonable licensee. The Board finds that these slack controls created an opportunity for contraband liquor to be introduced to the general liquor supply, with little or no method to ascertain who was responsible for the infraction.

In the Board's view, Mr. Clarke failed to take all reasonable precautions to prevent this type of occurrence. It is the Board's understanding that the defence of 'due diligence' has two components. A person must either have taken all reasonable measures to prevent an occurrence; or have a reasonable and honest belief in facts, which, if true, would render the person's conduct innocent. The Board finds no evidence of either circumstance in this case, and, therefore, the defence of 'due diligence' cannot apply in this instance.

It is a long standing principle of the liquor licensing regulatory regime in this province that Licensees are ultimately responsible for the operation of their licensed premises. Even Licensees who are not hands-on owners and who operate their businesses through managers are responsible to ensure the licensed premises operates in compliance with the law. This is a fundamental aspect of the licensing process which ensures accountability. [Emphasis added]

[2001 NSUARB 6]

[61] The Board will canvass the alleged violations, in turn.

(a) Regulation 58 – removing liquor from licensed premises

58 Except as provided in ss. 58(a) and 58(b) a licensee must not permit liquor that was sold in their licensed premises to be taken from the premises.

[62] AGFT alleges that the Licensee permitted beer to be removed from the licensed premises contrary to the *Regulations*.

[63] This alleged violation was documented by Ryan MacLellan. When reviewing the surveillance tape during his testimony, he observed, as did the presiding Member, the patron described as ““Candace”” who had:

... removed a bottle of beer from...from the premises. It was visible in her hand as she left, and when she sat outside she was on the ledge just outside the main entrance and she sat the bottle between her and another female patron...

[Transcript, p.59, line 21 to p.60, line 2]

[64] He continued with the observation:

The female patron who had carried the beer bottle out of the premises eventually smashed the bottle after taking a drink. She went to place the bottle on the half-wall and it broke and you can see the foam and...and beer spilled down. After that the...the lady who did break

the bottle attempted to take the neck of the bottle to have another drink, realized it was broken and threw it. "Natalie" did the same, picked it up after it was thrown, whether fooling or intentional, attempted to take a drink and threw it as well.

[Transcript, p.64, line 18 to p.65, line 3]

[65] The evidence from Mr. Habib is that there is usually someone on the door to check patrons entering and exiting the premises. Mr. Habib remarked, after viewing the footage:

I have to wonder why Brandon wasn't on the door the whole time. Because our protocol is, the doorman stays at the door. The staff inside are getting everybody out to...to the door. So I saw Brody and "Candace" on the floor and stuff. I didn't understand why...why Brandon was inside. I lost sight of him there. I don't know if he was in there because he knew everybody, because they're all friends.

[Transcript, p.169, line 8-14]

[66] Mr. Habib then testified that:

....And the reason being is, we have a person on that door, no matter what. For two reasons. One, if something happens outside you got to know that something is happening outside. Two, what if ...what if a kid comes walking in, a minor? You have to be there to ID them. Our second line of defence is our bartender but our first line of defence is that door.

[Transcript, p.169, line 22 to p.170, line 5]

[67] Mr. Habib then explained that because these individuals did not carry out their responsibilities, their employment was terminated.

[68] As Mr. Eddy submitted in argument, there was an admission from the Licensee that their own policies and procedures were not followed and, therefore, the "ultimate responsibility does fall on the Licensee with respect to that violation."

[69] The Board is satisfied that the Licensee did not exercise due diligence to prevent this individual from removing liquor from the licensed premises. Both Ms. Saulnier and Mr. Habib testified that staff are trained with respect to the requirements of the legislation and it is expected that doormen are specifically trained to prevent customers from leaving the premises with alcohol.

[70] The evidence was clear, from reviewing the video tape, and hearing the testimony of both Sgt. Mitchell and Ryan MacLellan, that liquor had been removed from the premises, and from the admissions of Mr. Habib, the doorman was not where he was expected to be – at the door – to prevent such an occurrence.

[71] Based on the foregoing, the Board concludes, on the balance of probabilities, that the Licensee contravened s.58(1).

(b) Regulations 61(1)(a) and 61(2)

Persons not permitted in, or to be served in, Licensed Premises

Section 61(a) & 61 (2)

61(1) A licensee must not sell or provide liquor in their licensed premises to any of the following:

(a) a person who is apparently under the influence of liquor;

...

61(2) A licensee must not permit a person who is drunk to be in their licensed premises.

[72] In his evidence, Mr. MacLellan testified that, aside from the video footage he obtained, he did not see the bartender or anyone working in the bar, serve “Natalie” a beer:

A. ...no, I wasn't able to get that footage because of the limited capacity of my memory stick, and when I returned with more capacity it wasn't available.

[Transcript, p.80, lines 20-22]

[73] Regardless, Mr. MacLellan's evidence was that he did observe “Natalie,” on the tape, holding a bottle of beer:

Q. But you did observe her with a bottle of beer?

A. Yeah, she appeared to be carrying bottles around throughout the video that I did receive.

Q. And based on your infraction report with respect to s. 61(1)(a), does that infraction relate to patron 2? What patron does that charge relate to?

A. Oh. I believe we referred that to both patron 2 and “Natalie”, just based on their behaviour that we see on the video and Sgt. Mitchell's report saying they were highly intoxicated.

[Transcript, p.82, lines 3-11]

[74] Under cross-examination, Mr. MacLellan testified that he had “previous interactions” with “Natalie” “when I have seen her stone cold sober.” The Board observed the video, heard Sgt. Mitchell's characterization of “Natalie” and the others, whom he described as being “completely hammered” or “very intoxicated,” and Mr. MacLellan's descriptions of her “exuberant behaviour,” which included taking her outer shirt off and falling down, all the while carrying a bottle of beer, throughout the video.

[75] “Natalie” appears more intoxicated than any other individual in the licensed premises acting, as Mr. Eddy argued, “more out of the norm than anyone else in the video.”

[76] Sgt. Mitchell's evidence was that he would have jailed “Natalie,” “Candace,” and “Patron 3” for drunkenness, had a taxi not come along to take them away.

[77] The Board is not persuaded by Mr. Power's submissions that “Natalie,” simply, had a “boisterous personality” who was “drawing attention” to herself, which is “completely consistent” with her personality.

[78] In light of Sgt. Mitchell's testimony, the observations made by Mr. MacLellan and his experience as a compliance officer, and his direct contact with “Natalie” on several prior occasions – face to face – he was able to draw a comparison to those interactions, with the actions of “Natalie” on video, and it was his conclusion that she was highly intoxicated.

[79] The Board is satisfied that “Natalie,” “Candace” and “Patron 3” had fallen under the influence of liquor, to the point of being highly intoxicated in the licensed premises. The Board also finds, on the balance of probabilities, that the Licensee served liquor to both “Natalie” and to “Candace.” As described earlier in this Decision, they can both be observed in the video walking in the licensed premises with a beer in their hand. There was no due diligence by the Licensee.

[80] Based on the evidence before it, the Board concludes, on the balance of probabilities, that the Licensee violated Regulation 61(1)(a) and 61(2).

(c) Breach of a Condition 2015 NSUARB 271 Decision and Order dated December 22, 2015

[81] The final charge against the Licensee is for violation of a condition. The Licensee was subject to an Order of the Board requiring it to store video surveillance footage for 14 days.

[82] After renovations were carried out on the property in February 2016, according to the testimony of Mr. Habib, the video surveillance system was reinstalled by Jon Secure, a security company, at a cost of \$20,000. Unbeknownst to the Licensee, the security company set all the cameras to a “continuous” recording, when they should have been set to an “intermittent” recording, as they had been previously set.

[83] Mr. Habib testified as to its storage capacity:

Q. Okay. Now what...with respect to the storage for the 14 days, how did that come about?

A. Well, it's a funny thing. The surveillance cameras are either on intermittent where you cross a camera and...and it turns it on and starts recording and/or consecutive.

Q. Also known as continuous.

A. Or continuous. That's right. The...now the problem you have there is once the renovations were all done and Jon Secure programmed the...the video machine they had put it on consecutive, which...or continuous, which meant every camera was always

recording, not waiting for intermittent. Had it been on the intermittent they would have had 30-some days. Which the...it's a one...it's one terabyte. So that's a lot of data. If you have it on continuous it means it's going 24 7 every single camera. So the more cameras you have, the more data you're taking. So all it was, was simply instead of them clicking this button, they clicked this button. This button kept it running nonstop and the other button would have put it intermittently.

Q. Right, and you would have had 30 days' coverage.

A. Between 28 and 30 days. Because I know before we used to have that.

Q. Right.

A. And Ryan would remember that because Ryan had come in before where we went back three to four weeks looking for stuff on the camera, and it was all there...

[Transcript, p.155, line 15 to p. 156, line 17]

[84] The evidence of Bryce Veinot, the security expert who appeared on behalf of the Licensee, was:

A. In a situation where it is on constant, regardless of whether there's any motion or not, it's just going to record that straight 24-hour block day after day after day. So you could...in a situation, if it was set to constant-record, you may have your 12 days where it was set to motion record only. You could have 25 days. It's a matter of...of how much is running in that motion record.

Q. Yes.

A. And as I said, in the situation where it's a business that doesn't operate on the 24-hour basis you're having large gaps of time that aren't being recorded. So it frees up more space for when the business...

[Transcript, p.215, line 21 to p.216, line 9]

[85] He continued:

A. ...the setup is done properly. The wiring from the cameras into the video recorder, the settings for the quality of recording on the cameras, all of what I saw would be very similar if not exact to the same way that I would install a system. The only thing that becomes different would be the exact settings that were used. Having every single camera set to constant-record is not something that's standard, and that's most likely similar to Mr. Habib's testimony. It obviously would have been an oversight on the installer, and it's just not common.

[Transcript, p.220, lines 10-18]

[86] He was asked whether, upon examination, he saw any evidence that anyone had tampered or attempted to tamper with the system, to which he replied an emphatic “no.”

[87] The evidence of Mr. MacLellan was that prior to the April 23, 2016, incident, he had previous experience downloading data from the video surveillance system at the licensed premises.

[88] Mr. MacLellan testified that he first went back to the licensed premises on April 26, and attempted to download the data on his memory stick. It was then that he discovered that he did not have sufficient memory capacity on the stick.

[89] Under cross examination, Mr. MacLellan testified that the sequence of events he was looking for, from the night in question, was captured on the video:

Q. But there was no other violation as far as that condition of license was concerned and the video from that particular night existed at the time you first entered the premises.

A. Yes, when I first requested it.

Q. Right.

A. Every...everything was there.

[Transcript, p.104, lines 7-12]

[90] For some reason, as was his prerogative, Mr. MacLellan did not return to the licensed premises, with a new memory stick, until May 5, some nine days later. When he downloaded the video, it was then that he – and the Licensee – discovered that the surveillance only went back to 5:00 p.m. on April 24, when it should have contained surveillance back to April 21.

[91] The evidence seems to indicate that had Mr. MacLellan promptly secured another memory stick, rather than waiting nine days, all the information he was seeking from the video surveillance cameras could have been downloaded and transferred to the

memory stick. Because the cameras were incorrectly set at a “continuous” recording, and Mr. MacLellan delayed returning to the Licensed premises with a new memory stick, the video footage he was seeking, on May 5, 2016, was no longer available.

[92] It was after making this discovery that Mr. Habib contacted his lawyer, Mr. Power who, in turn contacted AGFT “hoping to correct this deficiency or amend the order without the threat of suspension.”

[93] In his closing submissions, Mr. Power argued:

...there were errors made but honest but mistaken belief by my client that he got the system that would...it was going to be set up the same as he had previously. They've gone back weeks. Okay? He thought that's what...that's what he hired the Jon Secure company to do and paid good money to have it done and was shocked, dismayed, and alarmed...Look, we thought we were getting a camera system placed on intermittent, or depended upon motion, not constant or current...

[Transcript, p.242, lines 8-18]

[94] The Board is persuaded by the evidence and submissions of the Licensee. It is clear from the evidence that prior to the renovations taking place the security system operated on an “intermittent” basis. When it was reinstalled by Jon Secure, a professional security company hired by the Licensee, at some considerable expense, it is reasonable to have expected it be installed, and to operate, as it had done before.

[95] The evidence of both Sgt. Mitchell and Mr. MacLellan was that in any dealings with the management of the licensed premises they were always “cooperative.”

[96] The evidence of the security specialist, Mr. Veinot, was that there was no evidence of tampering of the surveillance system.

[97] In the Board’s view, the Licensee took reasonable measures to ensure that the surveillance system was installed properly and had an honest belief that it was installed properly. The Board is satisfied the Licensee exercised due diligence with respect to the condition imposed by the Board.

V CONCLUSION

[98] The AGFT is seeking a four-day license suspension in this matter, and that is based on the present infractions, and the previous infractions that formed the subject matter of the Board's Decision and Order dated December 22, 2015, in which the Licensee in that case, for similar violations, received a license suspension of two days.

[99] With respect to the violations of ss. 58, 61(1)(a) and 61(2) of the *Liquor Licensing Regulations*, AGFT has shown, on the balance of probabilities, that the Licensee did not exercise due diligence to prevent these offences from happening. For the alleged violation of the 2015 NSUARB 271 Decision & Order condition, the Board finds that the Licensee showed it exercised due diligence. Thus, that alleged violation is not proven.

[100] Finally, the Licensee should understand that any future repeat breaches of the *Regulations*, will be dealt with more severely.

[101] The Board orders that the Licensee shall have its Licenses suspended for three (3) days, to be served on a Thursday, Friday and Saturday or a mutually agreeable time, after consultation with the AGFT.

[102] The suspension shall also apply to the Video Lottery Registration Certificate.

[103] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 30th day of March, 2017.



David J. Almon