

NOVA SCOTIA REGULATORY AND APPEALS BOARD

**IN THE MATTER OF THE LIQUOR CONTROL ACT
and the LIQUOR LICENSING REGULATIONS**

- and -

IN THE MATTER OF allegations of infractions under Sections 61, 64, and 76 of the ***Nova Scotia Liquor Licensing Regulations***, and 47B(1) of the ***Liquor Control Act*** made by Investigation and Enforcement, Alcohol, Gaming, Fuel and Tobacco Division of Service Nova Scotia against **ROUTE 19 BREWING INC.**, located in Inverness, Nova Scotia

BEFORE: Julia E. Clark, LL.B., Vice Chair

PARTIES: **ALCOHOL, GAMING, FUEL & TOBACCO**, a DIVISION of
the **DEPARTMENT OF SERVICE NOVA SCOTIA**
Duane A. Eddy, Counsel

ROUTE 19 BREWING INC.
Bradley D.J. Proctor, Counsel
Nakita Samson

HEARING DATE(S): September 18-19, 2024

FINAL SUBMISSIONS: February 19, 2025

DECISION DATE: **May 20, 2025**

DECISION: The Board finds that the Licensee contravened s. 64(1) of the ***Liquor Licensing Regulations***. The Board will accept further submissions regarding what penalties, if any, should apply.

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1.0 INTRODUCTION

[1] Route 19 Brewing Inc. (Route 19 and/or Licensee) operates Route 19, a restaurant, lounge and brewery in Inverness, Nova Scotia.

[2] On April 8, 2024, the Executive Director of the Alcohol, Gaming, Fuel and Tobacco (AGFT) division of the Department of Service Nova Scotia, referred a request for a disciplinary hearing to the Nova Scotia Utility and Review Board under s. 47B(1)(b) of the *Liquor Control Act (Act)*, R.S.N.S. 1989, c. 260. AGFT alleged that Route 19 violated sections 61, 64, and 76 of the *Liquor Licensing Regulations*, N.S. Reg. 365/2007 (*Regulations*). Route 19 contests the alleged violations.

[3] This case involves the tragic death of Dallas Lewis, who was employed as Route 19's Brewmaster since it opened in 2019. Mr. Lewis was found critically injured on Route 19's premises on the evening of July 13, 2023. He later died from multiple blunt force injuries consistent with a fall from a height. Dallas Lewis was the cherished partner of Erinn Lewis. He was an admired colleague and friend to the staff and owners of Route 19.

[4] After learning about the circumstances of a death at a licensed premises, AGFT Compliance Officer Wanda Meisner (CO Meisner) investigated and, on October 8, 2023, AGFT served Route 19's Director and President, Paul Aucoin, with reports alleging infractions of the *Regulations*. AGFT's Executive Director later referred the matter to the Board to consider the alleged infraction.

[5] The Board held a public hearing in Port Hood, Nova Scotia on September 18 and 19, 2024. The Board must determine whether the AGFT has demonstrated, on a balance of probabilities, that the Licensee committed the alleged violations. The Board must also determine an appropriate penalty, if applicable. At the end of the hearing, the

Board indicated that, if it concluded the Licensee contravened the *Regulations*, it may schedule a further process at a party's request or on the Board's initiative, for further submissions on what penalty, if any, the Board should consider. This decision addresses the Board's findings and reasons on the contravention. The Board reserves its decision on an appropriate resolution.

[6] Section 76 of the *Regulations* prohibits a Licensee from allowing an employee to drink alcohol in the licensed premises while on duty. Mr. Lewis had been working in the brewery earlier in the day, and Ms. Lewis understood that he was going to miss their pre-arranged plans because he was staying late to work. Mr. Lewis was helpful to other staff and treated Route 19 as his own. Route 19 staff deferred to him because of his role as Brewmaster. While socializing, he engaged in some activities that could lead someone unaware of his role to believe he was actively working. He should not have engaged or been permitted to engage in these activities, especially once he had consumed alcohol on the premises. Despite this, the evidence supports the Licensee's position that Mr. Lewis was not on duty during the relevant time. Mr. Lewis had no official duties in the restaurant and lounge area. The brewery was not in operation and associated activities had ceased. The elements needed to prove the violation were not established on a balance of probabilities.

[7] Section 64(1) of the *Regulations* prohibits a licensee from permitting any activity in or about the licensed premises that "is detrimental to the orderly control and operation of the licensed premises." Route 19 contravened this *Regulation* on the evening of July 13, 2023. The Board finds the Licensee failed to draw a clear line between allowable behaviour for on-duty and off-duty employees. Allowing a person, including an

off-duty employee, access to closed areas of the establishment when that person has been drinking alcohol shows a lack of control. Despite Mr. Lewis's kind and helpful nature, he should not have been permitted to repair equipment, serve himself and others, or enter the closed brewery and upper floors of the Licensed Premises. The Licensee must empower their managers and bartenders to enforce the rules, no matter who the patrons are.

[8] The Board finds that, on the evening of his death, Mr. Lewis was intoxicated by alcohol while he was on the premises of Route 19 in contravention of s. 61(2) of the *Regulations*; he was provided with alcohol when he was at risk of becoming intoxicated, which violates s. 61(1). However, as discussed in more detail later in this decision, the Board accepts that staff of Route 19 were not aware of those facts, and the Licensee established a defence to the violations.

[9] Following its review of the evidence, the Board finds that Route 19 contravened s. 64(1) of the *Regulations* by permitting activity on the Licensed Premises that was detrimental to the orderly control and operation of the Licensed Premises. The other alleged infractions are dismissed.

[10] Given this mixed outcome and the Licensee's request to make further submissions pending review of the Board's findings and reasons, the Board will schedule a further process for the parties to provide additional submissions on whether the Board should impose or change conditions on the license, suspend or cancel all or part of the license, or order some other resolution.

2.0 BACKGROUND

2.1 Board's Jurisdiction

[11] AGFT regulates all liquor licenses issued under the *Liquor Control Act*. The Executive Director of AGFT granted the Licensee Eating Establishment License #006536 and Lounge License #006537 on June 27, 2018. Neither license has been suspended for any disciplinary matters under the *Act*. The Licensee also held, at all material times, a Brewery Permit issued by the Nova Scotia Liquor Corporation granting approval to “possess, manufacture, and retail beer products in the amount of 26,000 HL/year.” [Exhibit R-10, pg. 7]

[12] Section 47B of the *Act* sets out the process of the Board's review:

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.

[13] Section 47E(3) allows the Executive Director to refer a matter to the Board, and thereby allows the Board to apply any remedy that is available to the Executive Director under s. 47(1)(b), that is, to impose conditions, rescind or amend conditions, suspend all or any part of a license, cancel all or any part of a license, or order another remedy, as the Board considers appropriate.

[14] This appeal was referred to the Nova Scotia Utility and Review Board (Review Board). On April 1, 2025, after the close of evidence and argument in this matter, that Board was succeeded by the Nova Scotia Regulatory and Appeals Board upon the proclamation of the *Energy and Regulatory Boards Act*, S.N.S. 2024, c. 2, Sch. A., the *Energy and Regulatory Boards Act* replaced references to the former Board with references to the Regulatory and Appeals Board. The legislation also maintains the jurisdiction of the Board and the assigned member to decide the matter.

2.2 Licensee Details

[15] Route 19 Brewing Inc. is the incorporated entity operating the restaurant, lounge and brewery known as Route 19 Brewing, in Inverness, Nova Scotia. The restaurant, lounge and brewery are located at 16030 Central Avenue, Inverness, Nova Scotia. At the relevant time, it operated seasonally, from approximately mid-May to mid-October. Route 19 is owned in part by Wayne Gillis and Paul Aucoin, who are both directors of the company. The Licensee holds Eating Establishment License No. 006536 and Liquor License No. 006537, issued under the *Regulations*. The AGFT is responsible for issuing licenses and regulating licensed premises under the *Act* and *Regulations*.

[16] Route 19 also holds a Brewery Permit issued by the Nova Scotia Liquor Corporation (NSLC). The permit allows the Licensee to manufacture and sell beer to the public on the premises. NSLC oversees the receipt, distribution and control of alcohol in the province. It is also governed by the *Act*. The Licensee's liquor license includes the NSLC Permit as a condition on the license.

[17] Dallas Lewis was Route 19's Brewmaster. He was responsible for brewing and manufacturing the alcoholic products sold by the Licensee. He was a crucial part of Route 19's operations.

2.3 Hearing Process

[18] This matter was referred to the Nova Scotia Utility and Review Board in a letter from Jonpaul Landry, Executive Director, AGFT, which indicated:

Re: DISCIPLINARY ACTION
Route 19 Brewing Inc.
Paul Aucoin, owner and operator
16030 Central Ave.
Inverness, Nova Scotia

(License type: Eating Establishment #006536 and Liquor License # 006537)

Alleged Violations: 61 of the *Liquor Licensing Regulations*
64 of the *Liquor Licensing Regulations*
76 of the *Liquor Licensing Regulations*

Incident Date: July 13th, 2023

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.

This office has provided the disclosure package relating to this matter to the licensee. Alcohol, Gaming, Fuel and Tobacco will provide any support required by the Review Board in relation to these proceedings, inclusive of filing a certified copy of the Record relied on for this referral, pursuant to Regulation 85 G of the *Liquor Licensing Regulations*.

[Exhibit R-1]

[19] Prior to the hearing, AGFT provided disclosure of materials to the Licensee pursuant to s. 47B(1)(b) of the *Act*. AGFT submitted a book of documents, by consent, including a USB drive of audio files and one USB of video files [Exhibit R-10]. AGFT also submitted the expert report of Dr. Jake Yorke, M.D., D. Phil, FRCPC, Medical Examiner, and his proposed expert qualification statement and C.V., on August 23, 2024, with a supplemental report filed September 12, 2024. AGFT and the Licensee exchanged

proposed witness lists on September 9 and 12, 2024, respectively. There were no objections during any of the preliminary processes.

[20] After correspondence on scheduling and with the parties' consent, the Board set hearing dates for September 18-19, 2024, at Council Chambers in Port Hood in Inverness County, Nova Scotia. A Notice of Disciplinary Hearing was published on the Board's website and social media channels. The hearing was held on the scheduled dates and all witnesses testified in person. At the joint request of Counsel, the Board approved the exclusion of all witnesses from the hearing room, except the instructing clients. Counsel made brief oral submissions at the close of evidence and the Board asked for final written submissions. Counsel for the parties agreed to concurrent submissions with each having a right of reply. The Board received comprehensive submissions from each party and a supplemental rebuttal submission from the Licensee. The Licensee reserved the right to provide additional submissions on sentencing pending review of the Board's reasons on the violations.

[21] On the second day of the hearing, the Board encountered difficulties with the recording equipment, and for a period during that morning, Board staff were not available to monitor the recording. Mr. Landry, having some familiarity with the equipment, was present in the hearing room and assisted for that brief period in ensuring the audio was recording. There is a discussion about these arrangements on record, but it is irrelevant to the Board's decision.

2.4 Parties and Witnesses

[22] Duane A. Eddy represented AGFT for the Province of Nova Scotia. Brad Proctor and Nakita Sampson represented the Licensee. AGFT pre-filed Dr. Yorke's expert

report and called seven witnesses. The Licensee called two witnesses. This section of the decision briefly introduces these witnesses with a summary of the subject matter of their testimony. Where a witness's evidence is relevant to the Board's findings on an issue, it will be addressed in later sections of the decision dealing with the Board's analysis of that issue.

2.4.1 Witnesses and Evidence for AGFT

[23] Erinn Lewis is Dallas Lewis's spouse. Ms. Lewis told the Board about Mr. Lewis's kind, happy, helpful nature, his brilliant mind, and his many talents and contributions. When Mr. Lewis died, she lost her husband and, as she described him, her soul mate. Ms. Lewis explained that Mr. Lewis was overworked and felt he needed to leave Route 19 because his responsibilities were consuming him. She provided a copy of a text exchange where Mr. Lewis indicated that he was quitting, on April 21, 2023. She felt he was unsupported and pressured into staying with the company. She told the Board about Mr. Lewis's dedication to his craft and the long hours and unpredictable schedule he worked. She testified about their past disagreements about Route 19, as well as his complicated relationship with alcohol use and the difficulties it sometimes caused in their otherwise happy partnership.

[24] Dr. Jake A. Yorke, MD, D. Phil, FRCPC, of the Nova Scotia Examiner Service was qualified, without objection, as an expert in the field of Forensic Pathology, "capable of giving opinion evidence pertaining to examinations (post-mortem) of deceased persons to obtain clinical information related to any disease or injury present; and the cause and manner of death in humans." [Exhibit R-4]. His qualifications were supported by a curriculum vitae [Exhibit R-3], Medical Examiner's Report [Exhibit R-5]

and supplemental disclosure including his Report of Postmortem Examination [Exhibit R-9]. Dr. Yorke conducted the post-mortem examination of Mr. Lewis on July 14, 2023. He confirmed his expertise in interpreting toxicological reports with respect to blood alcohol concentration. He clarified he was not qualified to say how a level of alcohol impacts impairment. [Transcript, pp.12-13]

[25] CO Meisner was the principal compliance officer for AGFT who investigated the incident for AGFT and issued Route 19 with three Infraction Reports on October 16, 2023 [Exhibit R-10, Tab 4]. At that time, she had been employed by AGFT since 2017. Her responsibilities included inspecting licensed premises and ensuring licensed premises abide by the *Act* and the *Regulations*, and investigations. Her jurisdiction was the territory including Richmond and Inverness Counties. She confirmed that Route 19 had not been subject to other disciplinary proceedings under the *Act* and *Regulations*, and during its last routine inspection on July 7, 2023, had no violations of the *Regulations*.

[26] CO Meisner was assigned to investigate the circumstances surrounding Mr. Lewis's accident at the Licensed Premises. She interviewed Route 19's owner Wayne Gillis and employees Marina Makrides and Teagan Stewart about the events of July 13, 2023 [Exhibit R-10, Tab 6-USB]. She observed the surveillance footage, communicated with Ms. Lewis and the office of the Medical Examiner and took photos filed as Exhibit R-10, Tab 9. Her testimony outlined her observations after reviewing the video footage and her conclusions from her interviews with witnesses. She detailed her observations in a final inspection report dated January 26, 2024 [Exhibit R-10, Tab 3]. She also provided a timeline notation based on her review of the video surveillance, embedding photos and screenshots from the video for reference [Exhibit R-10, Tab 10].

[27] Marina Makrides was the Front-of-House Manager at Route 19 from May 2022 and was working the afternoon and evening of July 13, 2023. She provided an initial statement to CO Meisner and at the hearing testified to her firsthand observations. She worked closely with Mr. Lewis. She maintained that she did not observe Mr. Lewis showing signs of intoxication on July 13, 2023. She explained the typical policies and practices at Route 19 and the roles of its employees. She did not see him behind the bar serving drinks, and stated it was only the bartenders and occasionally a server that should have had access to that area. She explained that the table where Mr. Gillis and Mr. Lewis were sitting did not have a server assigned but Bartender Teagan Stewart had served the table from the bar, and she put in a food order for them. Ms. Makrides said that Route 19 had a particularly busy dinner hour, and the team had performed well all day. It was a positive atmosphere with Mr. Gillis and his party in attendance. She was one of the first people to find Mr. Lewis outside the brewery. She testified to the efforts of Route 19 staff to get emergency care and medical assistance for Mr. Lewis.

[28] Teagan Stewart was working as a bartender at Route 19 for the evening of July 13, 2023. He was present until the end of the night through the events that occurred after Mr. Lewis was found critically injured. He gave an audio-recorded statement to CO Meisner on August 2, 2023. He testified to his experience working at Route 19 and with Mr. Lewis prior to the events of July 13, 2023, and his observations about that evening.

[29] Andrew J. MacLean is the Acting Director of Investigation and Enforcement for AGFT. He testified that he reviewed the evidence collected by CO Meisner in the case file with the objective of ensuring that the evidence supported the violations, and AGFT authorized the issuance of infractions. He did not conduct his own investigation but

reviewed the file and video evidence. Mr. MacLean explained the reasons he believes that the brewery is part of the licensed premises for the purposes of the *Act* and *Regulations*. He also explained some of the indicia and information AGFT relies on in its determination that an infraction report is warranted.

[30] Jonpaul Landry, Executive Director of AGFT, testified briefly about his referral of the three alleged infractions to the Board, and his determination on whether s. 61, 64 and 76 had been violated. He did not conduct his own investigation but reviewed the file and video. He agreed with CO Meisner and Mr. MacLean that the infraction reports were warranted. He testified about signs of intoxication and his earlier training in that area as a motor vehicle officer. He provided examples of circumstances he would and would not consider to constitute conduct detrimental to the orderly control of a licensed premises and addressed factors to consider in an evaluation of someone's level of impairment, including seasoned drinkers.

2.4.2 Witnesses for the Licensee

[31] Wayne Gillis is a Partner/Co-Owner of Route 19 and Director of the company. He was present at the Licensed Premises on the evening of July 13, 2023, and had been socializing with Mr. Lewis and other friends in the restaurant area over the course of that evening. He testified about the sequence of events that evening and his knowledge of Mr. Lewis's behaviour and demeanour. He also testified about Mr. Lewis's work arrangements and his expectations for staff of the Licensed Premises.

[32] Paul Aucoin is the President of Route 19 and Partner/Co-Owner. He was not present on the night of the incident. Mr. Aucoin did not attend the brewery often and had little knowledge of the day-to-day business. He testified about his interactions with

Ms. Lewis after she told him about her concerns that Mr. Lewis drove home after drinking at the brewery. Mr. Lewis called him the day after that conversation and they discussed Mr. Lewis tasting, but not drinking, the product, and taking lunch to make sure he was eating during the day. Mr. Aucoin told Mr. Lewis he was totally opposed to drinking and driving [Transcript, p. 544, 546].

2.5 Evidentiary Issues

[33] During CO Meisner's direct examination in the video surveillance evidence, Mr. Proctor objected to CO Meisner providing opinion evidence on whether Mr. Lewis appeared to be intoxicated or under the influence of alcohol, because she was not qualified as an expert. Mr. Eddy argued that CO Meisner's duties as a compliance officer include identifying signs of intoxication or individuals under the influence of alcohol in licensed premises. He said the Board can accept her evidence of her observations and how she used those to determine her findings as to whether violations occurred. The Board allowed the line of questions, indicating that it is common for the Board to hear evidence from the regulating body or their employees on their reasoning, and any use of the evidence in the final decision is a matter of weight.

[34] After the exchange of arguments, and while the Board was in its deliberative process, Counsel for the Licensee wrote to the Board on February 10, 2025, on the admission of post-hearing evidence, noting a Worker's Compensation Board (WCB) decision related to the incidents of July 13, 2023, and Mr. Lewis's death. The Licensee sought the Board's guidance on whether the decision should be included as part of the record, or for review, to allow the Board to assess its relevance. The AGFT objected to the decision being considered by the Board for any purpose. The Board sought additional

submissions from the parties on the admission of this post-hearing evidence and received submissions from the Licensee on February 18, 2025, and the AGFT on February 19, 2025.

[35] The Board, by decision letter to the parties dated March 7, 2025, declined the Licensee's offer to provide the WCB's decision and did not review its contents prior to deciding that procedural issue. The Board determined that, despite the Board's relaxed rules of evidence under s. 27 of the *Energy and Regulatory Boards Act*, information about the outcome of the WCB decision was irrelevant to the Board's determination under a separate statutory scheme. It was not in the interest of justice to admit the decision as evidence, or otherwise, for the Board's consideration. The Board reserved the right to comment further on the issue in this final decision but simply adopts those reasons.

3.0 ISSUES

[36] The Board must decide whether the AGFT proved that the Licensee violated sections 61(1), 61(2), 64(1) and 76 of the *Regulations*. If the Board finds any of the violations have been proven, it must then consider whether the Licensee has proven the defence of due diligence.

[37] If any of the violations are proven and not excused by the due diligence of the Licensee, the final issue is the appropriate penalty. Given the Board's mixed finding that one of the three alleged infractions was proven, the Board will provide an opportunity for a supplementary process on the issue of penalty.

4.0 ANALYSIS AND FINDINGS

4.1 Burden of Proof

[38] The burden of proof in disciplinary matters, like this one, is on the AGFT, who must show, on the balance of probabilities, that the Licensee committed the alleged violations. At the relevant times, CO Meisner was a compliance officer with the authority to investigate the licensed premises and issue infraction reports. After a referral from the Executive Director, it then falls to the Board to determine if the *Act*, *Regulations*, or conditions on a license were violated. Violations of the *Regulations* are regulatory offences and fall into the category of “strict liability” offences. If the Board finds, on the balance of probabilities, that an offence has occurred, the Licensee can present a defence of due diligence.

[39] The due diligence defence allows the Licensee to avoid penalty if the Licensee satisfies the Board that it took all reasonable steps to prevent the violations, or the Licensee had an “honest but mistaken belief” exonerating them from liability. This burden is on the Licensee.

[40] The Board has addressed the burden of proof and the components of the due diligence defence in past decisions, including the following instructive comments from the then Liquor License Board in *Caribou Holdings Company Limited*, 2001 NSUARB 6, quoted in *King's Corner Bar and Grille Ltd. (Re)* 2017 NSUARB 48, (affirmed 2018 NSCA 9):

It is the Board's understanding that the defence of 'due diligence' has two components. A person must have taken all reasonable measures to prevent an occurrence; or have a reasonable and honest belief in facts, which, if true, would render the party'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 in original]

[*Re King's Corner Bar and Grille Limited*, 2017 NSUARB 48, para. 60]

[41] The AGFT says that, not only did the offences occur, but the Licensee also did not exercise due diligence to prevent them. The Licensee says, if the Board finds that AGFT proved any contravention of the *Regulations*, the Licensee has established, on a balance of probabilities, that it either took all reasonable steps to prevent the violation(s) or, had a “reasonable and honest mistaken belief.”

[42] In determining the intent of statutory language, the Board follows the Supreme Court of Canada’s “modern contextual approach” to legislative interpretation through the evolution of cases to *Rizzo & Rizzo Shoes, Ltd. Re.*, [1998] 1 SCR 27. As quoted in *Alementary Services, Ltd., Re.*, 2009 NSUARB 100 at para. 25, in *Rizzo*, Justice Iacobucci describes:

...Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be found on the wording of the legislation alone. At p. 87, he states:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[*Alementary Services*, para. 25]

[43] The Nova Scotia Court of Appeal reiterated the modern principle of statutory interpretation in *Sparks v. Holland*, 2019 NSCA 3. Farrar, J.A., stated:

[27] The Supreme Court of Canada and this Court have affirmed the modern principle of statutory interpretation in many cases that “[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at ¶21).

[28] This Court typically asks three questions when applying the modern principle. These questions derive from Professor Ruth Sullivan’s text, *Sullivan on the Construction of Statutes*, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10.

[29] Ms. Sullivan's questions have been applied in several cases, including *Keizer v. Slaunwhite*, 2012 NSCA 20, and more recently, in *Tibbetts*. In summary, the Sullivan questions are:

1. What is the meaning of the legislative text?
2. What did the Legislature intend?
3. What are the consequences of adopting a proposed interpretation?

(Sullivan, pp. 9-10)

[44] The modern rule of statutory interpretation was recently reiterated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65:

A court interpreting a statutory provision does so by applying the "modern principle" of statutory interpretation, that is, that the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."

[*Vavilov*, para. 117]

[45] The Court elaborated on this concept in the context of administrative tribunals:

[119] Administrative decision makers are not required to engage in a formalistic statutory interpretation exercise in every case. As discussed above, formal reasons for a decision will not always be necessary and may, where required, take different forms. And even where the interpretive exercise conducted by the administrative decision maker is set out in written reasons, it may look quite different from that of a court. The specialized expertise and experience of administrative decision makers may sometimes lead them to rely, in interpreting a provision, on considerations that a court would not have thought to employ but that actually enrich and elevate the interpretive exercise.

[120] But whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. [Emphasis added]

[*Vavilov*, paras. 119-120]

[46] The Board must also have regard to the *Interpretation Act*, R.S.N.S. 1989, c. 235, including s. 9(5), and s. 11:

9 (5) Every enactment shall be deemed remedial and interpreted to ensure the attainment of its objects by considering among other matters

- (a) the occasion and necessity for the enactment;

- (b) the circumstances existing at the time it was passed;
- (c) the mischief to be remedied;
- (d) the object to be attained;
- (e) the former law, including other enactments upon the same or similar subjects;
- (f) the consequences of a particular interpretation; and
- (g) the history of legislation on the subject.

11 (1) The preamble shall be read as part of an enactment to assist in explaining its purport and object. law shall be considered as always speaking and, whenever any matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to each enactment, and every part thereof, according to its spirit, true intent, and meaning.

(2) An interpretation or definition section or provision contained in an enactment applies to the whole enactment unless

- (a) a different intention is expressed; or
- (b) the meaning of the interpretation or definition section or provision is inconsistent with the context or purpose of the enactment.

[47] The purpose and intent of the *Act* is described in s. 137:

Purpose and Intent of Act

137 The purpose and intent of this Act are to prohibit transactions in liquor which take place wholly within the Province except under Government control, and every Section and provision of this Act and of the regulations dealing with the importation, sale and disposition of liquor within the Province through the instrumentality of a Corporation, and otherwise, provide the means by which such Government control shall be made effective, and nothing in this Act shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the Province, and nothing in this Act shall apply to the keeping or having of any liquor by the Corporation or to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures or preparations, where such having or keeping is authorized by this Act, nor to the possession by a sheriff or his bailiff of liquor seized under executive or other judicial or extra-judicial process or sales under executions or extra-judicial process to the Corporation. R.S. c. 260, s. 137; 2001, c. 4, s. 29. [Emphasis added]

[48] The Supreme Court of Canada in the case of *R. v. Comeau*, 2018 SCC 15, reiterated that provinces are permitted to enact schemes to manage the supply and demand of liquor within their borders. As the Court found in that case involving the New Brunswick liquor control scheme, the Board finds that in Nova Scotia's legislation, the

control of the sale, storage and distribution of liquor is managed “with a view to diverse internal policy objectives.” [Comeau, para. 124]. The purpose and intent described in s. 137 of the *Act*, as it relates to this proceeding, is to “prohibit transactions in liquor... except under Government control.” One means of that control is through the licensing of establishments where sale and drinking of alcohol is permitted.

[49] The *Regulations* impose detailed conditions on the sale and service of alcohol in licensed premises, carrying out the intent of the *Act* to control a substance which is intoxicating and, therefore, hazardous. A principal purpose of the regulatory scheme is to ensure public safety.

4.2 Infraction No. 4256 - Failure to ensure a person who is apparently under the influence of alcohol or drugs is not permitted to be in, or be served in, the Licensed Premises (s. 61)

[50] The Board must determine if an offence occurred under any of the elements of s. 61 of the *Regulations*, which states:

Persons not permitted in, or to be served in, licensed premises

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 or drugs;
- (b) a person who it is reasonable to believe will become intoxicated if they consume any more liquor.

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

[51] AGFT asserts that the Licensee permitted Mr. Lewis to remain, and be served in, the Licensed Premises after he became intoxicated. AGFT also alleges that the Licensee provided him with liquor when he was either apparently under the influence of liquor or could reasonably be believed to become intoxicated if he consumed any more liquor. The Licensee asserts that AGFT has not demonstrated on a balance of

probabilities that Mr. Lewis was provided with liquor while he was intoxicated, or that the Licensee served him with knowledge that he would become intoxicated if he consumed more liquor. If Mr. Lewis was intoxicated, the Licensee denies awareness and claims staff reasonably believed that he was not intoxicated.

[52] Section 61(1)(a) uses different terminology than s. 61(1)(b) and s. 61(2). It refers to being “under the influence of liquor or drugs”, rather than an “intoxicated” person or a person believed at risk of “becoming intoxicated”. The term “intoxicated” has been interpreted by the Supreme Court of Nova Scotia in the context of charges against a person arrested for being intoxicated in a public place contrary to subsection 87(1) of the *Act*. That interpretation is instructive to the Board for the interpretation of the *Regulations*, made under that *Act*. Providing a summary of past cases, Muise, J. stated:

[12] The general principle emanating from the applicable jurisprudence is that the effects of alcohol must be substantial to meet the definition of "intoxicated" for the purposes of the offence of being intoxicated in public. For instance, even if those effects are sufficient for a finding of impaired operation of a motor vehicle, they may not be sufficient to constitute intoxication in public under Section 87 of the *LCA*.

[13] Most cases have required an extremely high level of impairment. The Court in *R. v. Hofmeister*, 2008 NSPC 46 (N.S. Prov. Ct.), cited multiple articulations of the requisite level of impairment from various decisions. They include the following:

- (a) That a person has become so "stupefied by liquor" that he has "lost the capacity ... to prevent himself from causing 'injury to himself or be a danger, nuisance or disturbance to others'".
- (b) "Extreme conditions of alcohol impairment" existed.
- (c) "A person is unable to take care of him or herself or is a danger to other persons."

[14] The Court in *R. v. Lively*, 2007 NSSC 301 (N.S. S.C.), at paragraphs 41 to 43, approved of, and applied, the approach that, if a person has sufficient capacity that "he is unlikely to cause injury to himself or be a danger, nuisance or a disturbance to others", he does not meet the definition of intoxicated under the *LCA*.

[19] Section 1 of the *Liquor Act*, R.S.Y. 2002, c. 140, expressly states that "'intoxicated' and 'intoxicated condition' each mean the condition a person is in when their capabilities are so impaired by liquor that they are likely to cause injury to themselves or be a danger, nuisance, or disturbance to others". In my view, this is a codification of the definition most widely accepted in jurisprudence.

[22] For these reasons, in my view, a person is in an intoxicated condition, for the purposes of Section 87 of the LCA, when they are so impaired by alcohol that, due to such impairment, they: are unable to take care of themselves; are likely to cause injury to themselves; or, are likely to be a danger, nuisance, or disturbance to others. [Emphasis added]

[*R. v Peters*, 2017 NSSC 132]

[53] Section 61(1)(a) uses “under the influence of liquor,” which is also undefined. Section 88 of the *Act* uses the same language in respect of sales of liquor by employees of the Nova Scotia Liquor Commission. In the context of the *Criminal Code*, in a very old case out of New Brunswick, the County Court Judge summarized well the interplay between the two phrases “under the influence of liquor” and “intoxicated”:

... I do not think that being “under the influence” [Criminal Code, R.S.C. 1927, c. 36, s. 285(4)] necessarily implies being “intoxicated” or drunk. Every intoxicated person is under the influence of liquor, but it does not follow that every person under the influence of liquor is intoxicated. It is a question of degree, the original information alleges what may well be a moral lapse, but still fall short of attaining that stage of alcoholic exhilaration which Parliament has branded as a criminal offence, punishable by imprisonment.

[*R. v. Ouellette* (1931), 55 C.C.C. 389 at 391 (N.B. Co. Ct.) Hayward Co. Ct. J. Westlaw]

This brief discussion captures my interpretation. Impairment by alcohol is a matter of degree.

[54] Some positive action of selling or providing alcohol to a person who is apparently under the influence of alcohol or at risk of being intoxicated is required to prove s. 61(1). Prior to becoming intoxicated a person could remain at the Licensed Premises and, as Mr. Stewart described it, be “cut off” and not served any more alcohol. Under subsection 61(2), no direct action is required. Whatever circumstances brought a person to a state of intoxication, a Licensee cannot allow that person to remain in the Licensed Premises.

[55] The evidence demonstrated that it is more likely than not that at the time of his death, Mr. Lewis was intoxicated. There is no question that he was present at the

Licensed Premises. He had been served alcohol earlier and had access to alcohol at the taps and potentially elsewhere. His blood alcohol concentration, tested after his accident was 0.276g/100ml, between three to four times the legal limit to drive. Though this measure, as Dr. Yorke explains, is not determinative of his level of impairment, it is supporting evidence indicating that his uncharacteristic gait and behaviours were a result of his alcohol consumption.

[56] CO Meisner and Mr. MacLean discussed the signs of alcohol intoxication or impairment an enforcement officer looks for, including changes in demeanor, staggering, slurred speech, bloodshot eyes. CO Meisner's evidence is based on her observations as an inspector and former RCMP officer with significant experience in enforcement of the *Act and Regulations*. CO Meisner was a straightforward witness and did not embellish her testimony. The Board found her evidence to be credible and reliable.

[57] Ms. Makrides, Mr. Stewart and Mr. Gillis acknowledge that Mr. Lewis was having a good time during the evening but all of them indicated that Mr. Lewis did not display signs of intoxication obvious to them. They deny that he appeared to be intoxicated while he was in their presence. On cross-examination Ms. Makrides and Mr. Stewart said they did not see Mr. Lewis stagger, slur his words, or demonstrate other signs. Mr. Gillis was socializing and drinking himself that evening, but Ms. Makrides and Mr. Stewart were on duty and were not drinking. In the video evidence, Mr. Lewis and Mr. Gillis occasionally appear more boisterous than other patrons seated at tables. Ms. Makrides and Mr. Gillis say Mr. Lewis was "happy" and "having fun." Neither Ms. Makrides or Mr. Stewart believed that Mr. Lewis needed to be "cut off", served water, or asked to

leave the bar. Ms. Makrides and Mr. Stewart knew Mr. Lewis well and were equipped to compare his typical demeanour and actions to those they observed in the lounge.

[58] Counsel for AFGT took witnesses through the video surveillance evidence including specific times where Mr. Lewis can be seen, to observe and comment on his demeanour and activities. Looking back through the video, witnesses, including Mr. Stewart, confirmed occasions where Mr. Lewis stumbled, danced, and used surfaces as support. In particular, Mr. Stewart was asked to review video taken between 22:07 and 22:24, and testified as follows:

MR. EDDY: Do you see Dallas?

A. Yes.

Q. I'll pause it. Do you see Dallas in this shot?

A. Yes.

Q. Yeah. Okay. I'm going to play the video. What's he doing now? He's motioning. Can you see?

A. Yeah.

Q. What's he doing?

A. Dancing.

Q. And the video that we looked at where he was turning the corner and you said he was staggering, stumbling, that was 22:07. Correct?

A. Yes.

Q. This is 22:15. Correct?

A. Yes.

Q. Would you say at this point he's feeling it?

A. Yes.

Q. I'm not going to play the whole video. It goes on for a few more minutes, but I'm going to jump ahead here to 22:22. Is that you at ... behind the bar now?

A. Yes.

Q. Yeah. What are you doing now?

A. Pouring a beer.

Q. Is that for the table? We can see as the video progresses, but can you tell if that's ... these drinks are for the table?

A. Yes.

Q. And we'll just let the ... yeah, we'll let the video play, too. So after we saw him at 22:07, turned the corner, you said he was stumbling, staggering, and then we saw him dancing. You said, Yeah, he was feeling it. Now you're pouring drinks, more drinks for the table?

A. Yes.

[Transcript pp. 343-344]

[59] Earlier Mr. Stewart had described what he meant by "He was feeling it" which he used in his audio-recorded statement to CO Meisner. On cross-examination he

agreed that he did not feel he was at the point where he needed to intervene and stop Mr. Lewis from consuming more alcohol:

- Q. Okay. You ... I think ... I forget the exact wording you used, but I think my friend characterized it fairly from ... I think it's been consistent from what you told Officer Meisner to what you told my friend today that you sensed he was feeling it?
- A. Yes
- Q. Okay, but is it fair to say that although you sensed he was feeling it, you did not feel he was at a point that you needed to cut him off?
- A. Yes. I didn't feel like I needed to ...
- Q. Okay.
- A. Cut him off.
- Q. And when you were interviewed by Officer Meisner on August 2nd did you also tell her the same thing? You could sense he was feeling it but did not sense that he was at the point that you needed to intervene and cut him off.
- A. Yes
- Q. Does that remain your position here today?
- A. It does.

[Transcript, pp. 376-377]

[60] By the time Mr. Lewis is last seen on the main floor video holding a beer at 22:24, the video surveillance had captured brief incidents where he demonstrated periodic signs of being under the influence of alcohol. The Board also finds that, after hearing the testimony of CO Meisner, Mr. Landry and Mr. MacLean, and after careful review of the video evidence, it is reasonable to conclude that, by approximately 22:15, Mr. Lewis may have become intoxicated if he consumed any more liquor.

[61] In the segment of video surveillance footage taken at approximately 22:31 on the upper floor in the hallway outside of the storage closet and ladder to the roof access, Mr. Lewis can be seen. He looks to have a cigarette in his mouth although it is difficult to make out. He uses his keys to open the closet. At 22:37 of the video, Mr. Lewis comes out of the closet. The video surveillance from the upstairs hallway shows Mr. Lewis in a different state than when he appeared downstairs. At this point, Mr. Stewart states that Mr. Lewis looks "intoxicated."

- Q. Beer. Okay, so that's 22:24. Do you see the time stamp?
- A. Yes.

- Q. Okay. What does this video depict? What area of the ... of Route 19?
- A. That's the upstairs hallway and entrance to the brewery.
- Q. Okay. Is that Dallas?
- A. Yes.
- Q. What's the time-stamp on this?
- A. (inaudible - talkover).
- Q. It's 22:31. Can you see that? Is that correct?
- A. 22:31, yes.
- Q. So at 22:24 we just looked at, that was when the beers were served to the table. Correct?
- A. Yes.
- Q. So this is approximately seven minutes after that?
- A. Yes.
- Q. Do you know what Dallas would have been doing in the corner? What's in the corner there? Do you know?
- A. There's a closet that has roof access, as well as multiple cleaning supplies.
- Q. Okay. Can you see him? It looks like he's ... I see keys jingling ... like, the shining of keys. Do you see that? Or I know ... probably not, but can you?
- A. I can (inaudible - talkover).
- Q. Okay. Would there be a reason ... is there anything next to him? Is there a door of some sort?
- A. Yeah, there is a door to get into that closet, and it's usually locked.
- Q. Yeah. Looks like he's ... he went into the door?
- A. Yes.
- Q. Yeah. Okay. You see Dallas coming out?
- A. Yes.
- Q. How does he look to you?
- A. He looks intoxicated.
- Q. How is his walk? Does he normally walk like that?
- A. Not like that, no.

[Transcript, pp. 346-347]

[62] Ms. Makrides, Mr. Stewart, and Mr. Gillis all acknowledged that when Mr. Lewis is last seen on video at 22:37 in the upper hallway, he was or may have been exhibiting signs of intoxication, in contravention of s. 61(2). Ms. Lewis, recalling viewing that video, acknowledged the same when questioned by Mr. Eddy on her observations:

- Q. And of the video ... you've identified the video. He was upstairs. The door. What did you observe about Dallas in that video that was different than the Dallas that you know?
- A. That's ... that wasn't my Dallas. My Dallas was the Dallas who fell on the ground and fought for an hour and a half to stay alive and then when found thought only of others. But the man on that video was ... he was inebriated.
- Q. Mm-hmm, and was Dallas a smoker? Did he smoke cigarettes?
- A. Not a habitual ... he didn't ... he wasn't ... how would ... he would have been ... if he consumed a extensive amount of alcohol he would have a cigarette. He was not a smoker ...
- Q. Yeah

- A. ... per se. With that being said, he was under extreme amount of stress and he was concerned that he might buy smokes, and I picked him up one of those vapes in case he had an emergency.

[Transcript, p. 411]

For Ms. Makrides and Mr. Stewart, the hearing was the first time they had seen the video of Mr. Lewis in the upstairs hallway. They did not observe that behaviour and Mr. Lewis was not within sight of the lounge area. From my own observation of the video, Mr. Lewis's demeanour and physical movements are markedly different than seen on the video captured just a few minutes earlier in the lounge at 22:22. He appears unsteady and off-balance, with a staggering gait.

[63] Mr. Stewart testified about times when he believed Mr. Lewis displayed signs of impairment from alcohol at the end of a workday. The Board heard about a past, unexplained, fall, where Mr. Lewis was injured in the brewery. Ms. Lewis told the Board of her concerns about occasions when Mr. Lewis arrived home from Route 19 under the influence of alcohol, especially during the spring of 2023. She called Paul Aucoin, the President of Route 19, about her concern about Mr. Lewis driving home after consuming alcohol at Route 19. Mr. Aucoin confirmed the conversation and his later admonition and warning to Mr. Lewis that further incidents would not be tolerated. Mr. MacLean and Mr. Landry testified that someone with an alcohol use disorder or someone with a higher tolerance for alcohol may be better able to mask signs of impairment.

[64] The Board makes no findings about Mr. Lewis's level of alcohol tolerance or ability to conceal impairment. There was conflicting evidence about the nature of his problems with alcohol and insufficient evidence in this hearing to conclude he had a chronic condition. The Board did not give speculative commentary on this issue any

weight. The video surveillance evidence, and the testimony of the witnesses who were present, give a reliable perspective on Mr. Lewis's actions and behaviour.

4.2.1 Violation of s. 61

[65] On the evidence presented, the Board finds on a balance of probabilities, that Mr. Lewis was under the influence of alcohol and/or at risk of becoming intoxicated on the occasion he was served or provided with alcohol at 22:24. Several minutes later, at 22:31, Mr. Lewis's demeanor in the upstairs hallway and his known blood alcohol content (taken several hours later), indicate that it is more probable than not that he was intoxicated while in the Licensed Premises. These are violations of section 61.

4.2.2 Due Diligence Defence

[66] At the next stage of analysis, once AGFT proves the violation, the burden shifts to the Licensee to prove its due diligence, that is, that it took all reasonable steps to prevent the violations from occurring or had a reasonable and honest belief in a set of facts that would render the Licensee's conduct innocent. The Board is persuaded by the evidence of Ms. Makrides and Mr. Stewart, supported by Mr. Gillis's testimony on this subject, that, on a balance of probabilities, Mr. Lewis's behaviour throughout the evening masked his level of impairment.

[67] AGFT's witnesses, CO Meisner, Mr. MacLean and Mr. Landry, viewed the video evidence and concluded that Mr. Lewis was showing signs of being under the influence of alcohol and intoxication. The Board accepts their testimony which supports the Board's finding that the elements of subsections 61(1) and 61(2) were met and, at least *prima facie*, a violation occurred in this case. However, they were not direct witnesses at the Licensed Premises. They reviewed the video evidence with knowledge

of the outcome of the events of that night. When the video is reviewed after the event, other known facts, including the report of the medical examiner and the findings on Mr. Lewis's high blood alcohol content may give context that may influence the viewer's impressions.

[68] The Board does not doubt the truthfulness of CO Meisner, Mr. MacLean and Mr. Landry on their observations from the video evidence. Their testimony was credible and reliable, and informed by their experience identifying the signs of intoxication and evaluating behaviour in a licensed environment. As explained by Mr. MacLean, as part of their duties, compliance officers are mandated to assess individuals for intoxication and receive training around the signs and symptoms of intoxication [Transcript, p. 283, line 3]. The Board notes, however, that this is not a case where the compliance officer and AGFT officials made observations at the time of the alleged offences, as is often the case when an infraction is issued. Their conclusions are drawn after post-incident review of the video evidence and interviews with the employees. They are drawn with the knowledge of the terrible outcome that would befall Mr. Lewis, and his toxicology examination results.

[69] In this case, on the issue of whether Mr. Lewis would have appeared to a reasonable person to be under the influence of alcohol or drugs, or visibly intoxicated over the course of the evening, the Board accepts the evidence of Mr. Stewart, Mr. Gillis and Ms. Makrides about their direct observations of Mr. Lewis's behaviour and apparent level of impairment on July 13, 2023. They had direct observations of Mr. Lewis and the other events that were going on. The Licensee directed the Board to *3019339 Nova Scotia*

Limited, 2001 NSUARB 74 (*Pirate's Lure Dining Room*), para. 71, where the Board found that greater weight should be placed on evidence brought from firsthand observations.

[70] The Board finds that, as the responsible employees at Route 19, Mr. Stewart and Ms. Makrides did not know and could not reasonably have known, Mr. Lewis's degree of intoxication. Ms. Makrides testified that the feeling in Route 19 was celebratory. To her, this explained Mr. Lewis dancing alone and with server Sammie Burton, shown on the video at 22:07. Without knowing the outcome of the evening, it is reasonable that this behaviour over approximately 30 minutes was unremarkable. Until he was alone and captured on video surveillance on the second level, he did not demonstrate clear signs of intoxication that would have been obvious to a reasonable person. Mr. Stewart, Mr. Makrides and Mr. Gillis believed he was in a good mood and having fun, not intoxicated or on his way to intoxication. Many of the incidents where the video shows Mr. Lewis stumble or waver briefly on video took place when Route 19 staff were occupied elsewhere with their other work tasks. There is no evidence they deliberately ignored the signs. Mr. Lewis's apparent level of intoxication, evident once he left the group and was alone upstairs, would not have been reasonably anticipated based on his behaviour while in the presence of his colleagues. Their belief was reasonable and honest, even if it was mistaken.

[71] The Board finds that the Licensee has met the burden of the defence of due diligence because of an honest but mistaken belief that Mr. Lewis was not intoxicated.

4.3 Infraction No. 4258 - Permitting an employee of the Licensee to consume liquor in the licensed premises while on duty (s. 76)

[72] Section 76 of the *Regulations* prohibits a licensee from allowing employees to drink on duty, other than for sampling purposes:

Employees not to consume liquor while on duty

76 A licensee must not permit an employee of the licensee to consume liquor in their licensed premises while on duty, other than liquor consumed in the presence of a registered representative to sample the liquor.

[73] The Board finds that AGFT has not proven on a balance of probabilities that Mr. Lewis was consuming liquor in the Licensed Premises while on duty, based on the evidence in this matter.

[74] Thursday, July 13, 2023, was a “Canning Day” at Route 19 and a workday for Mr. Lewis. He can be seen on video arriving at 06:17 and parking his Jeep in front of the silo outside the brewery. According to notes outlining Mr. Lewis’s work activities provided in an email from Evan Gillis to Wayne Gillis on August 22, 2023 [Exhibit R-10, Tab 7, p. 72], Mr. Lewis canned an order for a corporate client and “product for in-house” with four packaging helpers. This activity can be seen in the video timeline over the course of the day until 15:53, when boxes of product were loaded into the Route 19 delivery van, which departed at 16:19. By 17:47, Ms. Meisner identifies Wayne Gillis and guests at the table closest to the bar. Mr. Lewis can be seen at the table at 17:56. In his statement to CO Meisner on August 2, 2024, Mr. Stewart indicated that when he arrived for his shift at approximately 18:00, the brewery was not operating. He confirmed his recollection that Mr. Lewis was off duty at that time on cross-examination at the hearing. At 18:01, Mr. Lewis is seen on video surveillance taking a can to the bar, retrieving small glasses from the bartender and taking them to the table. Mr. Stewart identified these as sample glasses.

[75] AGFT argued that after consuming alcohol at the Licensed Premises, Mr. Lewis performed work duties, by conducting a brewery tour for patrons seated at a neighbouring table, continuing to enter the brewery over the course of the evening,

serving liquor, and doing other activities to help in the restaurant area. Ms. Makrides, Teagan Stewart and Wayne Gillis testified that Mr. Lewis did not, or they did not see him, engage in any brewery-related work activities during the evening. At one point at 18:52, he can be seen on video behind the bar, pouring glasses of beer and taking them to the table where he was sitting with Mr. Gillis and his guests. He returns and dispenses one more and takes that to the table. There is a bartender or server at the end of the bar at that time. Mr. Lewis is not seen consuming any drinks on any of these occasions. He also took empty glasses and food dishes from the table and returned them to the bar and carried beer from the bar area to the table. Over the course of the evening, he was wearing his Route 19 "Brew Crew" t-shirt.

[76] Ms. Makrides did not recall seeing Mr. Lewis pouring beer. She indicated that the bartenders and manager are typically the only employees allowed behind the bar to pour drinks:

- Q. Do you recall Dallas pouring drinks for himself or others?
- A. No, I don't recall.
- Q. You don't recall?
- A. No.
- Q. Is that common for employees to go ...
- A. No.
- Q. ... behind the bar and pour a beer?
- A. No, no, even servers aren't allowed to go behind the bar to pour drinks for their own tables unless they're busy and the bartender gives them permission. The only ones behind the bar would be bartenders or myself.

[Transcript, p. 150]

[77] Ms. Makrides testified that she had no supervisory responsibilities over Mr. Lewis or any of the brewery activities as the Front-of-House Manager. Similarly, Mr. Lewis did not have any duties in the restaurant and lounge area, other than occasionally helping with equipment. Her evidence demonstrated that there was little to no overlap between the operations of the brewery, which Mr. Lewis managed, and the restaurant and lounge,

which Ms. Makrides managed. She confirmed that Mr. Lewis had no responsibility for serving, clearing tables, managing the bar area, or directing any of the kitchen staff, servers or retail staff. This testimony was confirmed by Mr. Gillis, who also testified that he did not ask Mr. Lewis to stay late at work.

[78] Mr. Gillis was questioned about the brewery equipment located on the roof, which is accessible through the hatch in the upper-floor storage closet. There is a glycol unit, which is part of the chilling system used in the manufacturing process, on the roof. Mr. Gillis testified that the glycol unit was functioning on July 13, 2023, and there was no need or reason for anyone to go to the roof to inspect it that evening. All of the readings and controls are accessible from a panel on the lower floor of the brewery [Transcript, p. 492-493].

[79] Ms. Lewis believed that Mr. Lewis had to stay late to finish tasks at work. She testified that, after working a full day on July 12, 2023, Mr. Lewis did not arrive home until after midnight on July 13, 2023. He then left before she was awake later that morning. Video evidence identified by Ms. Makrides shows his Jeep arriving at the Route 19 parking lot at 6:17 on July 13. Ms. Lewis spoke to her husband at 16:40 and again at 19:40 about plans they had made to go swimming that evening, but she said he told her he had “things to finish up at work.” [Transcript p. 396] Ms. Lewis felt her husband was exhausted and working too much. As discussed, she had concerns about Mr. Lewis consuming alcohol at Route 19 in the past and then driving the hour-long commute to their home. She communicated those concerns to Mr. Aucoin, and tried to inform Wayne Gillis, though she was not able to reach him [Transcript, p. 404-405].

[80] As already discussed, there was some speculation by witnesses that Mr. Lewis had access to, and may have consumed alcohol in, the brewery or back office without being seen. There is no evidence that he consumed alcohol at any point earlier than the first time he is seen consuming a beer in the lounge at 19:32, which he obtained from the bartender. Other than the fact of his access to areas not covered by video surveillance and his higher-than-expected blood alcohol content, there is no credible evidence of this. In particular, there is no evidence suggesting he consumed alcohol at all before 17:43, and not while canning and other activities were taking place in the brewery.

[81] AGFT and Route 19 disagree on the issue of whether the brewery forms part of the “Licensed Premises”. The Licensee says that the brewery is regulated under the *Nova Scotia Liquor Corporation Regulations*, N.S. Reg. 77/2023 (*NSLC Regulations*). Its Brewery Permit, issued by the NSLC according to the *Act*, certifies that Route 19 has “received approval to possess, manufacture, and retail beer products.” [Exhibit R-10, Tab 2, p. 7]. The Licensee says that the brewery is excluded from the Licensed Premises.

[82] Under the *Act*, the NSLC can issue a permit for “purchase, storage, manufacture or transfer of liquor.” A brewery permit is among the classes of permits the NSLC may issue to a manufacturer under s. 22 of the *NSLC Regulations*. Section 42(1) of those regulations allows a manufacturer holding a brewery permit to operate a retail store, with notice to the NSLC. AGFT noted that Route 19’s Eating Establishment liquor license includes the NSLC Retail Permit as “a condition on the license.” The reference to the Permit in the license conditions shown in Exhibit R-10, Tab 2, p. 8, states:

5. Pursuant to sections 22, 22A, and 67 of the Liquor Licensing Regulations (the “Regulations”) the maximum number of persons permitted in the licensed establishment is listed in the attached table, unless a fire official or final inspection conducted by a member

of the Investigation and Enforcement Division, subsequently sets a different occupancy load.

6. NSLC Retail Permit [Emphasis added]

[Exhibit R-10, Tab 2, p. 8]

[83] The Terms and Conditions of the Brewery Permit [Exhibit R-10, Tab. 2, p. 10] cover a variety of matters applicable to the manufacturer, including rules for retail sales. It does not cover on-site consumption or service of alcohol.

[84] A licensee must comply with the terms and conditions on a license or may face the same potential consequences under s. 47B(1) of the *Act* as for a violation of other parts of the *Act* or the *Regulations*. The reference to the NSLC Permit as a condition on the License shows an intention to have a direct requirement for the licensed premises to comply with its NSLC Permit (an obligation Route 19 would have in any event). If the terms of the Permit are not complied with, it creates a corresponding violation of the *Regulations* that could evoke a penalty under those regulations. The Permit Terms and Conditions do not refer to the license or licensed premises.

[85] The Board notes that Condition 10 on the Liquor License indicates a distinction between “licensed establishment” and “manufacturing facility”:

10. Sale of liquor manufactured onsite for the purposes of off-premises consumption is approved and subject to the following conditions:

The licensee may only sell liquor that was manufactured in their adjacent facility;

The licensed establishment and the manufacturing facility must be owned and operated by the same licensee.

The liquor must be sold in a sealed bottle.

Partially consumed bottles, regardless of whether or not they are sealed may not leave the licensed premises... [Emphasis added]

[Exhibit R-10, Tab 2, P. 8-9]

[86] The *Regulations* consider the scenario where a Licensee is also a permit holder, and where a permit may be issued for “all or part of a licensed premises.” Section 58B also indicates, with respect to the sale of liquor produced and purchased in the licensed premises, that:

Sale of liquor for consumption away from the licensed premises

58B With the approval of the Executive Director, a licensee may permit a customer to take liquor that was produced by a licensee and purchased in the licensee’s licensed premises away from the licensed premises, if all of the following requirements are met:

- (a) the liquor must have been produced by the licensee under a permit issued under the *Nova Scotia Liquor Corporation Regulations* made under the Act that authorizes the licensee to produce liquor;
- (b) the manufacturing facility that is subject to the permit referred to in clause (a) and any licensed premises in which the liquor is sold must be owned and operated by the same licensee;
- (c) the liquor must be sold in a licensed premises that is located adjacent to the manufacturing facility that is subject to the permit referred to in clause (a) or in one of up to 4 additional licensed premises operated by the same licensee;

[87] Section 58B(c) distinguishes between a “licensed premises” and a “manufacturing facility that is subject to the [NSLC] permit”. However, s. 58B(a) expressly considers that a “licensee” may produce liquor, as authorized under the NSLC permit. Similarly, s. 35A contemplates that a permit and license may overlap all or part of the same premises:

Permit granted under Nova Scotia Liquor Corporation Regulations

35A If a permit is granted under the Nova Scotia Liquor Corporation Regulations made under the Act for all or part of a premises that is the subject of a permanent license,

- (a) the licensee must post the permit in the premises while the permit is in effect;
and

[88] In the Board’s plain reading of the *Act* and *Regulations* there is no apparent barrier for overlapping regulation of the brewery space by AGFT and NSLC, within their respective scopes of authority over licensed establishments where manufacturing and retail on the premises is allowed. In any event, neither party provided the Board with a

case law nor statutory interpretation analysis on the legislative interaction between the regulation of on-site manufacturing facilities and licensed premises. A legal finding by the Board on the question of whether the brewery forms part of the licensed premises in this case is not required to decide the core question of whether AGFT has proved a violation of s. 76 of the *Regulations*.

[89] In the Board's view, a key aspect is that s. 76 refers to an "employee of the licensee" not being permitted to consume alcohol in their licensed premises while on duty. Notably, it does not use an "employee of the licensed premises" or "an employee on duty at the licensed premises" (Emphasis added). Section 2(f) of the *Act* defines "licensee" as "a person who holds a valid license under the *Act* and [the] *Regulations*."

[90] The Board interprets "their licensed premises" to refer to any premises for which the licensee has a license. Route 19 Brewing Inc., as an incorporated entity, is the person holding the Eating Establishment and Lounge licenses, as well as the Brewery Permit for manufacturing and retail on the premises. Mr. Lewis, as an employee of the manufacturing side, had different responsibilities from Ms. Makrides, Mr. Stewart, and the other employees of the restaurant/lounge, but they are all employees of the legal entity of Route 19 Brewing Inc. Whether Mr. Lewis was "on duty" in either the "manufacturing facility" or the "licensed establishment", he should not have been allowed to consume alcohol in the Licensed Premises, other than to sample (as allowed under s. 62 of the *Regulations*), or test the product.

4.3.1 Finding that s. 76 was not violated

[91] On the evidence as summarized in the previous section, the Board does not find that, on a balance of probabilities, Mr. Lewis's activities on July 13, 2023, crossed the

necessary threshold to find that he was an “on duty” employee of the Licensee at the time he consumed alcohol in the lounge area. On a balance of probabilities, the Board believes that, despite his flexible working hours, he was not on duty that evening and did not consume alcohol while on duty.

[92] The Board notes that Mr. Lewis spent several hours socializing with Mr. Gillis and his guests without reprimand or expectation that he undertake any additional work. However, the evidence shows that he engaged in at least one activity that was within his usual scope of work tasks. He was either asked, or offered, to provide a group of customers at a neighbouring table with a tour of the brewery and upper lounge. Route 19 normally charges for brewery tours and the guests did not pay for Mr. Lewis to walk them through the brewery and upstairs. Nevertheless, Mr. Gillis acknowledged that Mr. Lewis performed a truncated tour of less than five minutes, as also indicated by the video surveillance. He explained it as “a dare.” It encouraged interaction with a neighbouring table of guests who were interested in the brewery.

[93] In the Board’s view, Mr. Lewis’s actions and Mr. Gillis’s encouragement and/or failure to intervene in this instance demonstrated poor judgment and a lack of supervision and control. They took liberties with Mr. Lewis’s free access to areas of Route 19 that were otherwise closed to the public at that time of day. It should have been closed to Mr. Lewis after his shift ended, unless he had work to do. Despite this, the Board is not convinced that this brief, unpaid, walk through the brewery means that Mr. Lewis was on or returned to duty to complete the tour. The Board finds that, though ill-advised, Mr. Lewis had already “clocked out.” Although Mr. Lewis is a salaried employee, it is not reasonable to consider him to always be on duty any time he is in the vicinity of his

workplace. Offering this truncated tour, in these circumstances, was outside the scope of his employment duties.

[94] Even if the Board is wrong, the Board also finds that Ms. Makrides, Mr. Stewart and Mr. Gillis understood and believed that Mr. Lewis was off duty at the time he was permitted to consume alcohol in the restaurant area. The Board finds this belief was honest and reasonable. Their testimony was consistent that the brewery lights were off, and the canning activities had been shut down by at least the time Mr. Stewart arrived at 18:00. On video, the lights appeared to remain off until Mr. Lewis led the guests through the brewery to the upstairs lounge. Mr. Lewis assisted the front-of-house staff from time to time, but those tasks were not part of his brewery work duties. The Board finds that, from staff's perspective, Mr. Lewis remained at the bar to socialize with Mr. Gillis and his guests, after work. The Board finds that a person looking at the totality of the circumstances objectively would reasonably believe the same.

4.4 Infraction No. 4257- Permitting activity in or about the Licensed premises that is detrimental to the orderly control and operation of the Licensed Premises (s. 64)

[95] Infraction No. 4257 alleges that the Licensee failed to prohibit activity in the Licensed Premises that was detrimental to the orderly control and operation of the Licensed Premises, in contravention of s. 64(1) of the *Regulations*:

Activities not permitted in licensed premises

64 (1) A licensee must not permit any activity in or about their licensed premises that is detrimental to the orderly control and operation of the licensed premises.

[96] For the reasons that follow, the Board finds that, on a balance of probabilities, the Licensee violated s. 64(1) of the *Regulations* and did not demonstrate due diligence by taking all reasonable measures in the circumstances to prevent activity detrimental to the orderly control and operation of Route 19.

[97] The Board does not accept the interpretation that, for the purposes of this provision, the Licensed Premises associated with Route 19's Liquor Licenses refers only to the area where alcohol service takes place. In *Ellen Fickler Inc (Aly Kat Lounge) (Re)*, 2017 NSUARB 2, the Board previously interpreted the phrase "in or about" the licensed premises to pertain to incidents or occurrences proximate to the operation of the licensed premises and incidents or occurrences caused by the operation of the licensed premises. The Board also interprets the provision this way. The Board finds this section is broad enough, in this case, to cover any of the activities taking place in the lounge area of the Licensed Premises as well as any areas associated with the brewery, hallways, stairwells and other spaces.

[98] According to the Medical Examiner's Report, the cause of Mr. Lewis's death was multiple blunt force injuries. The manner of death was ruled an accident. Toxicology examinations showed that his blood alcohol concentration was 276 mg/dL (0.276 g/100ml). Dr. Yorke testified that the level of alcohol in Mr. Lewis's blood was not a direct contributor to his death. The investigation, which was confirmed by Ms. Makrides' testimony, indicated that Mr. Lewis was found on the ground near brewery equipment "in a pool of blood." Though initially conscious, he was declared dead approximately 30 minutes after arrival at the hospital. The section of the report reviewing the circumstances of his death were read into the record:

Investigation revealed that the location where he was initially found in the brewery was below an access hatch, two stories from the concrete ground. The hatch is used to access equipment. Video review shows no other people in the area at the time. Video also shows the decedent ascending the stairs toward the hatch, and not returning. There is blood spatter noted on the inferior aspect of some of the brewery equipment at the scene.

At autopsy, the body was that of an adult man with multiple blunt force injuries [...]

Histologically, there was no significant natural disease.

Toxicology testing showed an ethanol concentration of 276 mg/dL. Cotinine (a nicotine metabolite) was presumptively positive, and naloxone is administered during resuscitation. Toxicology findings do not impact cause of death.

Considering the scene, circumstances, and autopsy findings, death is attributed to multiple blunt force injuries [...]

[Exhibit R-5, Tab 1, pp. 1-2]

[99] The Medical Examiner's Report, based on information from the police investigation, indicated that the roof access hatch, which is normally closed, was found open after Mr. Lewis's accident. The roof is reached by a utility ladder in the storage closet that the video shows Mr. Lewis entering at 22:31. He enters the storage closet at 22:37 and does not exit again. The video stopped recording shortly after 22:48 for an unknown reason. Ms. Makrides discussed, in her interview with CO Meisner, that she had accessed other video recordings from the computer system around that time and speculated that may have caused the other feeds to stop recording [Transcript p. 235]. Ms. Makrides also told the Board that it was discovered after Mr. Lewis's accident that the exterior camera that pointed at the brewery silo had been knocked off its mounting.

[100] Mr. Lewis was found roughly an hour later by Ms. Makrides on the ground at the base of the brewery silo. Mr. Lewis was the only employee to have his own key to the storage closet on the upper floor, and there may have been another in the office [Transcript, p.14; p. 491]. The only alternate exit from the storage closet door is the ladder inside to the roof hatch which opens to the roof. The likely conclusion is that Mr. Lewis went to the roof from the storage closet and fell from that height, landing at ground level, where he was found. With the available evidence, we don't know Mr. Lewis's actions between entering the storage closet and when he was found injured, nor the reason he was on the roof.

[101] CO Meisner testified about the reasons she determined that s. 64(1) had been violated, stating:

Q. Pertaining to the infraction that you issued pertaining to Regulation 64(1), why did you determine that 64(1) was violated by the licensee? **A.** This is activities not permitted in licensed premises, "A licensee must not permit any activity in or about the licensed premise that is detrimental to the orderly control and operation of the licensed premises."

A. In here Mr. Lewis is consuming alcohol. He's also entering and exiting the manufacturing area in the presence of Mr. Gillis ... and provides me that information in his statement. There is a lack of control, as Mr. Lewis is allowed unfettered access to every part of the premises.

There's no monitoring of his actions. There's no monitoring of his activities. He is behind the bar, he's in and out of the manufacturing area, and lastly, he's accessing an area in the upstairs after having consumed liquor.

And finally, Mr. Dallas Lewis is unaccounted for, for a period of over an hour at the premises that night. There did not appear to be a responsible manager appointed or on site to monitor the control in the premises, and that's the reason why I determined that there was a violation of section 64(1).

[Transcript, p. 111]

[102] Other than CO Meisner's final conclusion that there did not appear to be a responsible manager appointed or on site to control the premises, the Board agrees with CO Meisner's reasons for finding that Section 64(1) was violated on the night of July 13, 2023. The other observations in that report were corroborated by the video evidence or by statements of Ms. Makrides, Mr. Stewart or Mr. Gillis during their respective testimonies. Ms. Makrides was onsite as a responsible manager. Mr. Stewart was in charge of the bar. However, because of their relationships with Mr. Gillis and Mr. Lewis, they did not appear to have exercised the same control over their activities as they said they would have for other patrons. Ms. Makrides was also preoccupied with scheduling and a conflict involving other staff and was not attentive to the comings-and-goings from Mr. Gillis's table, behind the bar, or through the brewery doors. As an owner and director of the Licensee, Mr. Gillis also sets an example for employees. He did not object to Mr. Lewis's involvement in the service of alcohol or wandering behind the bar.

4.4.1 Violation of s. 64(1)

[103] Allowing Mr. Lewis to lead other patrons through the brewery area and second floor of the facility when he was not on duty and had consumed alcohol is an “activity... detrimental to the orderly control and operation of the licensed premises.” As discussed, the evidence did not convince the Board, on a balance of probabilities, that Mr. Lewis met the criteria of “an employee of the licensee” consuming alcohol while “on duty” at the time he was served alcohol. However, an unknowing patron of Route 19 could reasonably draw the conclusion that Mr. Lewis, wearing his “Brew Crew” T-shirt and leading other customers through the brewery, had been drinking beer while he was working. Mr. MacLean and Mr. Landry made their own determinations that Route 19 failed to meet its obligations under s. 64(1). They both highlighted that Mr. Lewis would have appeared to the public to be acting as an employee while consuming alcohol or showing signs of intoxication [Testimony of Mr. MacLean, Transcript, pp. 290-292; Testimony of Mr. Landry, Transcript pp. 319-320]. Mr. Lewis took on tasks like helping to repair the dishwasher and clearing tables that were not part of a Brewmaster’s job description. He was a helpful person and took pride in his role at Route 19. Nevertheless, patrons are not allowed to serve themselves or their companions beer from the taps. When Mr. Lewis went behind the bar, he would have looked like either an employee, or a customer breaking the rules. The Board finds that the Licensee’s failure to redirect Mr. Lewis showed a lack of recognition for the boundaries of responsible alcohol service as set out in the *Regulations*. Leaving the public with an impression that a working employee is flouting the *Regulations* is conduct detrimental to the orderly control of the Licensed Premises.

[104] The level of supervision and attention of staff was not sufficient to prevent Mr. Lewis from pouring beer into glasses to carry to the table. AGFT also argued that, by not assigning a server to the table, Route 19 failed to keep a record of alcohol and food sold, a method of monitoring a customer's consumption. The orders were not entered into the electronic system. However, Mr. Stewart testified that he did monitor and was generally aware of the alcohol consumed at the table. He testified that he kept a tally of the orders he took on a paper at the back of the bar. Though Route 19 was not able to produce a record of the tab or calculation of the drinks served, Mr. Stewart explained that the loose paper was likely misplaced in the ensuing emergency after Mr. Lewis was found critically injured. The Board found Mr. Stewart's testimony on this point to be credible and his evidence on the accidental loss of the record of the table's tally was unchallenged.

[105] Mr. Lewis can be seen on video going in and out of the doors from the lounge to the manufacturing area multiple times, approximately 13 times [Testimony of CO Meisner, Transcript p.108] during the evening. Mr. Gillis speculated that Mr. Lewis would have had access to alcohol in the manufacturing area, the back room of the brewery or possibly in the storage room. These areas are out of sight of the restaurant and bar staff who would otherwise be monitoring alcohol sales, consumption, and customer activities. Whether or not Mr. Lewis consumed additional alcohol outside of the main lounge, his free access to other areas created that risk.

[106] The Board concludes that the line between Mr. Lewis's role as the Brewmaster and as a "customer" of the restaurant after his daily work was finished was completely blurred by the privileges he was afforded while he was socializing at the restaurant. Mr. Lewis was a trusted senior employee, like a father figure and friend to

other staff. Immediately after he “clocked out,” shut down the brewery for the evening, and was served alcohol outside of his tasting responsibilities, he should have been treated like a patron. Ms. Makrides’ statement about the absurdity of disciplining Mr. Lewis related to his role as Brewmaster highlighted this lack of a boundary. She may not have had employment-related responsibilities over the Brewmaster, but the manager in control of a licensed premises has the legal authority to control the premises and the people in it. The Licensee must empower her to exercise this authority, and the manager must do so.

[107] The Board would expect some leeway in interactions between staff and regular customers or colleagues, when staff may have knowledge and familiarity with a person’s typical behaviour and alcohol tolerance. However, maintaining order and control for the safety of the public on and about the premises is of utmost importance in this legislative scheme. It is undisputed that over consumption of liquor can be intoxicating and therefore, hazardous. While s. 64(1) relates to the control and operation of the premises, the provision is, in effect, dealing with the safety of the public, as well as patrons and staff.

[108] Once the brewery was closed and its employees were off duty, it should not have been accessible to anyone else. If Mr. Lewis did not enforce that rule for himself, the Licensee was obliged to enforce it. The Licensee permitted his access to the brewery and the closed areas of the lounge, including the upper floor and roof access, with an understanding that he was off duty and knowledge that he had consumed alcohol. Whether or not the Licensee believed Mr. Lewis had reached a dangerous level of impairment, his unfettered access created a significant safety risk and contributed to the

unknown sequence of events that culminated in Mr. Lewis being found alone and critically injured. It was detrimental to the orderly control and operation of the establishment.

4.4.2 Due diligence or mistaken belief defence is not established

[109] The Board is not convinced on a balance of probabilities that the Licensee took all reasonable steps to prevent this violation or can defend it based on an honest but mistaken belief of fact.

[110] First, it would have been a reasonable step, and not onerous in the circumstances, to formally assign a server and track the table's consumption of food and alcohol in the usual manner. Mr. Lewis was back and forth to the bar and behind it, assisting Mr. Stewart with carrying beer to the table, changing the music, and, once, pouring the beer himself. A trained and empowered server could have monitored the table and discouraged this behaviour.

[111] Second, the Licensee knew, or it was not reasonable for it not to know, that, despite Mr. Lewis's competence as Brewmaster, allowing him to access the manufacturing area after he had been drinking must not be permitted. There is no evidence that the Licensee spoke to Mr. Lewis or took any steps to address what Mr. Lewis was doing or where he was going. He should not have had unfettered access to the closed areas upstairs. If he had a good reason to go into those spaces, another employee should have accompanied him or gone instead. Whether the Licensee's responsible personnel knew that Mr. Lewis was entering the brewery, or they were aware and took no action to prevent it, this lack of supervision and awareness was detrimental to the orderly control and operation of Route 19.

[112] In this case, the Licensee cannot successfully argue both sides. If Mr. Lewis was not on duty, he should not have a reason to be working in or around the brewery. If those areas were closed to the public, he should not have been permitted to access them, at will, after he transitioned from being on duty to off duty. On the other hand, if his work responsibilities were expected to be continuous as long as he was on site, he could have conducted those usual activities all evening, but should not have been permitted (under s. 76) to consume alcohol in the Licensed Premises that was unrelated to product testing or sampling.

5.0 SUBMISSIONS ON PENALTY

[113] Section 47E(3) of the *Act* says that, where the Executive Director refers a matter to the Board under s. 47B(1)(b), the Board may apply any remedy available to the Executive Director under s. 47E(2). The possible remedies are: impose conditions on a license; rescind or amend conditions on a license; suspend all or any part of the license for such time as the Board deems appropriate; cancel all or any part of the license; and order such remedy as the Board deems appropriate.

[114] The Licensee took the position that it had not contravened any of the sections of the *Regulations*. It therefore asked the Board to impose no penalty. In its Reply, the Licensee provided some preliminary submissions rebutting the AGFT's arguments and legal precedents on license suspensions but reserved the right to make further submissions after reviewing the Board's findings and reasons on the infractions.

[115] AGFT included arguments and a recommendation for penalty in its written submissions. AGFT also introduced arguments on aggravating factors warranting the Board's consideration in weighing what action to take under s. 47E(3). The AGFT's

submissions on the appropriate remedy were premised on a conclusion that there were three contraventions.

[116] The Board found that the Licensee violated s. 64 of the *Regulations* by permitting conduct that was detrimental to the orderly control and operation of the Licensed Premises. The Board did not uphold the other alleged offences under s. 61 and s. 76. Given these mixed findings, it is appropriate for both parties to have an opportunity to consider and provide additional submissions on what penalty, or action on the license, is appropriate in these circumstances. Therefore, the Board will reserve any decision on penalty until that further process is completed.

[117] The Board has reviewed the cases and arguments already submitted by the parties. At the close of the hearing on the merits, the parties indicated they did not intend to call additional evidence on the issue of penalty. Therefore, the Board suggests, without deciding, that the issue of a penalty can at this stage be addressed as a matter of argument. The Board will convene a conference to discuss the most efficient way to facilitate an exchange of written or oral submissions, and applicable timelines.

6.0 CONCLUSION

[118] On the alleged infraction of s. 64(1) of the *Regulations*, the Board finds that Route 19 permitted Mr. Lewis to continue to access the brewery and other closed areas without supervision. These areas enable access to liquor and are not supervised by any on-duty employees. The Licensee failed to redirect Mr. Lewis from engaging in tasks that the public might expect an employee to complete. After he apparently consumed alcohol with Mr. Gillis and other customers, Mr. Lewis was permitted by the Licensee to take patrons out of the lounge and into the closed brewery to the closed upper lounge. The

Board finds these activities were detrimental to the orderly control and operation of the Licensed Premises. The Board is not satisfied on the evidence that the Licensee took all reasonable steps to prevent the occurrence of this violation. In the Board's view, the defence of due diligence is not made out in this circumstance.

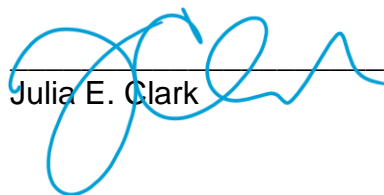
[119] The Board is satisfied that AGFT proved that both subsections of s.61 were violated on the night of July 13, 2023. The Licensee allowed a person to be in the Licensed Premises while intoxicated. Mr. Lewis was provided with liquor, though he was not seen consuming it, when he was at risk of becoming intoxicated. Employees in licensed premises have an important responsibility respecting the consumption of liquor by its patrons. However, the Board finds that the Licensee did not know of Mr. Lewis's true state of impairment until viewing the video evidence that was available, after the fact, to AGFT witnesses and the Board. Based on the available evidence, staff's conclusions were reasonable. The employees present had the reasonable and honest belief that Mr. Lewis was not intoxicated, which established the Licensee's due diligence defense to the offence.

[120] Mr. Lewis was an employee of Route 19, the entity that holds both the relevant liquor licenses and the Brewery Permit issued by the NSLC. The Board was not convinced on a balance of probabilities that Mr. Lewis consumed alcohol in the Licensed Premises while on duty. Therefore, the Board did not find that AGFT proved the violation of s. 76 of the *Regulations*. The evidence weighed in favour of the Licensee's position that Mr. Lewis had no official front-of-house responsibilities in the restaurant or lounge, and he had finished work in the brewery for the evening when he joined Mr. Gillis's party. The Board finds, in any event, that the Licensee had a reasonable and honest belief that

Mr. Lewis was not on duty and need not be prohibited from consuming alcohol with colleagues at the end of his workday.

[121] Given the mixed findings in this decision and recognizing the Licensee's request for an opportunity to consider and provide additional submissions on what the appropriate penalty should be in the circumstances, the Board reserves any decision on what action, if any, should be ordered on the license, until a further hearing can be scheduled to receive submissions on this point.

DATED at Halifax, Nova Scotia, this 20th day of May, 2025.



Julia E. Clark