



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH**

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

Licensee: E.&M. Estates Ltd.
dba Overlander Motor Inn
c/o Lindsey E. Gasparini
1118 Lakeview Crescent
Williams Lake, BC V2G 1A3

Case: EH16-135

For the Licensee: Lindsey E. Gasparini
(The "Licensee's Representative")

For the Branch: Maria Caduhada

General Manager's Delegate: R. John Rogers

Date of Hearing: April 5, 2017

Date of Decision: April 21, 2017

**Liquor Control and
Licensing Branch**

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INTRODUCTION

E.&M. Estates Ltd. (the "Licensee") holds Licensee Retail Store Licence No. 191958 (the "Licence"), pursuant to which it operates a liquor store identified in the Licence as the Overlander Motor Inn at 1118 Lakeview Cres., Williams Lake, B.C., V2G 1A3 (the "Establishment").

According to the terms of the Licence, the Licensee may sell liquor from 9:00 a.m. to 11:00 p.m. Monday through Sunday.

The Licence is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Licensee Retail Store Licence, Terms and Conditions, A Guide for Liquor Licensees in British Columbia" (as of January 23, 2017 called the "Terms and Conditions Handbook").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action dated November 4, 2016 (the "NOEA") (Exhibit 1 tab 1).

The Branch alleges that on September 24, 2016, the Licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* R.S.B.C. 1996, c. 267 (the "Former Act") by selling, giving or otherwise supplying liquor to a male minor ("Minor Agent #85"). Item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* BC Reg 244/2002 (the "Regulation") sets out the range of penalties for a first contravention of this type: a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty. The Branch proposes a monetary penalty of \$10,000.

The Licensee has admitted that its employee sold liquor to Minor Agent #85 and to the facts as set out in the NOEA. However, the Licensee disputes the finding of a contravention based upon a due diligence defence.

As of January 23, 2017, the Former Act was replaced with the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Current Act") which came into force on that date.

Therefore, although this hearing was held pursuant to the provisions of the Current Act, as the contravention referenced in the NOEA was alleged to have occurred prior to January 23, 2017, this decision has been made pursuant to and in accordance with the provisions of the Former Act and the Regulation.

For the purposes of this hearing and in accordance with Section 5 of the Current Act, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by Section 51 of the Current Act.

RELEVANT STATUTORY PROVISIONS OF THE FORMER ACT AND REGULATION

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

Supplying liquor to minors

33 (1) A person must not

(a) sell, give or otherwise supply liquor to a minor.

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

Schedule 4 Enforcement Actions

Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
2	A breach of section 33 of the Act [<i>selling liquor to minors</i>]	10-15	20-30	30-60	\$7 500 - \$10 000

ISSUES

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

EXHIBITS

- Exhibit 1: Branch book of documents, tabs 1 to 15.
- Exhibit 2: A copy of a document entitled "House Policies – Beer & Wine Store".
- Exhibit 3: Copies of a set of documents purporting to be minutes of monthly staff meetings for the Licensee's staff for each of the months from January 2016 to and including March 2017.
- Exhibit 4: An envelope containing a coloured photocopy of a picture of Minor Agent #85 and a photocopy of a picture of his identification (which envelope was sealed at the conclusion of the hearing).
- Exhibit 5: A copy of a Notice of Enforcement dated May 22, 2012 issued against the Licensee with respect to the licensed liquor store it operated under the name and style of Red Dog Licensed Liquor Store.

WITNESSES

The Branch called the liquor inspector ("Inspector A") who issued the NOEA. The Branch did not call Minor Agent #85.

The Licensee's Representative, together with the person who was the manager of the Establishment on September 24, 2016 (the "Former Manager"), and the current manager of the Establishment (the "Current Manager") gave evidence on behalf of the Licensee.

PROTECTING THE IDENTITY OF THE MINOR AGENT

To protect the identity of Minor Agent #85, and with the agreement of the parties, at the conclusion of the hearing once the same had been shown to the Licensee's Representative, a colour photocopy of Minor Agent #85's photograph and a photocopy of a photograph of his identification were placed in an envelope, marked as Exhibit 4, and the envelope was sealed. A notation was then placed on the envelope that it was not to be unsealed or its contents disclosed without a court order.

EVIDENCE—BRANCH

The Licensee confirmed that it accepted the facts as they are set out in the NOEA as to what occurred in the Establishment on September 24, 2016 with respect to the alleged contravention.

The NOEA

The facts in the NOEA might be summarized as follows:

- On September 24, 2016, Inspector A, Inspector B and Minor Agent #85 constituted an inspection team pursuant to the Branch's Minors as Agents Program ("MAP") to test compliance with the Former Act and the Regulation at several licensee retail liquor establishments in the Williams Lake area;
- At the start of the shift on this date, Minor Agent #85 was photographed (a redacted copy of which is included in Exhibit 1 tab 7), his identification viewed and photographed (a redacted copy of which is also included in Exhibit 1 tab 7) and his age confirmed to be 17 years old;
- At 6:00 pm on Saturday, September 24, 2016, while Inspector A remained in the inspection vehicle, Minor Agent #85 followed Inspector B into the Establishment, selected a 6 pack of Budweiser canned beer from the cooler, and took his selection to the male staff member (the "Staff Member") at the Establishment's cash counter.
- The Staff Member greeted Minor Agent #85 and asked him "That all for you today?" and Minor Agent #85 responded "Yep".
- The Staff Member then rang in the beer purchase, received the \$20 bill offered by Minor Agent #85 in payment, gave Minor Agent #85 his change for the purchase, and asked Minor Agent #85 if he would like a bag, an offer Minor Agent #85 declined.
- At no time during this transaction did the Staff Member ask Minor Agent #85 for identification.
- Minor Agent #85 then left the store with the purchased beer and returned to the inspection vehicle where he completed the observation form and his statement (Ex 1 tab 4 and Ex 1 tab 5, respectively).
- Inspector B observed the actions of Minor Agent #85 in the Establishment and confirmed that at no time did the Staff Member ask Minor Agent #85 for his identification.

- Inspector B took a photograph of the beer purchased by Minor Agent #85 (Ex 1 tab 6).
- On September 27, 2016, Inspector A telephoned the Licensee's Representative to advise him that the Staff Member had sold liquor to Minor Agent #85.
- On September 29, 2016, Inspector B issued the contravention notice for selling liquor to a minor (Ex 1 tab 8), which document Inspector B sent to the Licensee by registered mail.

Inspector A

In her testimony, Inspector A:

- Testified that she has worked for the Branch for three and a half years and is responsible for an area extending from Prince George to Valemont and 100 Mile House to Bella Coola, so that Williams Lake is within her area of responsibility.
- Testified that MAP was introduced in 2011 for the purpose of testing the compliance of licensees in British Columbia in observing the prohibition against serving liquor to minors and she identified the various methods the Branch has deployed to communicate the introduction of and the progress of MAP to such licensees (Ex 1 tab 14).
- Identified a copy of the Licence (Ex 1 tab 9), a document summarizing the legal ownership of the Licensee (Ex 1 tab 13), and a corporate structure report (Ex 1 tab 13) showing that in addition to the Licence, the Licensee owned the following licences:
 - 003368 – Liquor Primary – Overlander Motor Inn
 - 036079 – Liquor Primary – Red Dog Roadhouse (licence dormant)
 - 077870 – Food Primary – Overlander Motor Inn.
- Noted that a term of the Licence restricted the sale of packaged liquor within a defined area, which area was set out on the official plan (Ex 1 tab 10).
- Noted, as well, that a term of the Licence made it subject to the provisions of the Terms and Conditions Handbook; and that the Terms and Conditions Handbook dealt specifically with the requirement to request two pieces of identification from a customer stating clearly that the onus was on the Licensee to demonstrate that it had made such a request if service of liquor to a minor occurred.

- Identified the copy of the NOEA (Ex 1 tab 1), confirmed that she was its author, and that to the best of her knowledge the facts contained in this document were correct.
- Identified a copy of her notes relating to the incident on September 24, 2016 (Ex 1 tab 3) together with the notes of Inspector B (Ex 1 tab 2).
- Testified that the NOEA included a two page section entitled "Enforcement Action" containing the following:

Past Enforcement Action Taken:

Date of Incident	Licence Number	Finding of Contravention	Enforcement Action
May 5, 2012	LRS#195452	Minor – Sell, give or otherwise supply liquor to minor. s. 33(1)(a) Act	10 day suspension
June 21, 2014	LRS#195452	Minor – Sell, give or otherwise supply liquor to minor. s. 33(1)(a) Act	15 day suspension
June 21, 2014	LRS#191958	Minor – Sell, give or otherwise supply liquor to minor. s. 33(1)(a) Act	\$7500 monetary penalty

Compliance Meetings

Licence	Date	Topic
003368	March 24, 2015	Contravene term & condition – Exceed maximum drink size, s. 12 Act, Contravene term & condition – Pricing s. 12 Act, Contravene term & condition s. 12 Act
003368	July 08, 2016	Contravene term & condition, s. 12 Act, Permit drunkenness (sic) or violent, quarrelsome, riotous or disorderly conduct, s. 36(2)(a) Act, Permit intoxicated person to remain, s. 43(2)(b) Act

003368	January 20, 2016	Permit drunkness (sic) or violent, quarrelsome, riotous or disorderly conduct, s. 36(2)(a) Act, Permit intoxicated person to remain, s. 43(2)(b) Act, Permit person to become intoxicated, s. 43(2)(a) Act, Sell or give liquor to intoxicated person, s. 43(1) Act
003368	May 17, 2016	Permit intoxicated person to remain, s. 43(2)(b) Act, Permit person to become intoxicated, s. 43(2)(a) Act, Sell or give liquor to intoxicated person, s. 43(1) Act
003368	March 17, 2011	Permit intoxicated person to remain, s. 43(2)(b) Act
003368	December 06, 2012	Operate contrary to the public interest/disturb persons in the vicinity, s. 20(1)(c.1) Act
195452	December 05, 2012	Consume liquor while working – Employee, s. 42(3) Reg.

- Identified a copy of a Notice of Enforcement Action dated May 22, 2012 issued against the Licensee in its carrying on business as Red Dog Licensed Liquor Store under its Licensee Retail Store licence #195452 (Ex 5) and confirmed that as referred to above under the heading “Past Enforcement Action Taken”, the Licensee’s liability was confirmed and a 10 day licence suspension was imposed. She noted that the Red Dog Licensed Liquor Store has since been closed.
- Testified that because of the Licensee’s poor compliance history, she had recommended the maximum monetary fine of \$10,000.

EVIDENCE – LICENSEE

The Former Manager

The Former Manager testified that she was the manager of the Establishment on September 24, 2016 when the incident referenced in the NOEA occurred, although she was not present in the Establishment at that time. In October 2016, she stated, her duties at the Establishment were assumed by the Current Manager.

The Former Manager testified that while she was manager of the Establishment she held meetings of the staff every month and at those meetings the issue of ensuring that the staff asked for identification was addressed. As well, she stated, the subject of

asking for identification was addressed with the staff every day and that she referenced it at every staff shift change.

She confirmed that there was signage in the Establishment dealing with the question of the requirement of customers to produce identification if asked.

With respect to the Staff Member, she testified that she was extremely surprised that he would have sold liquor to Minor Agent #85 without asking for identification as the Staff Member was usually rigorous about asking customers for identification. She confirmed that following this contravention, the Staff Member was fired.

Cross Examination of the Former Manager

On cross examination, the Former Manager testified that she had been hired to work at the Establishment in the spring of 2012. She stated that her employment duties included doing the books and payroll for both the Establishment and the Red Dog Licensed Liquor Store, as well as ordering product and doing the merchandising. She was also responsible for ensuring that the staff of the Establishment had their Serving it Right certificates.

When shown the list of house policies provided by the Licensee (Ex 2), the Former Manager testified that she had first seen this document in 2012, and believed that it was revised in 2014, and that it was further revised to reference cell phones in the summer of 2016. She stated that every new employee when hired received a copy of this document and that she had kept a copy for each employee in the employee's payroll file.

She stated that she believed that the Staff Member was hired in October of 2015 and the reason the document entered as Ex 2 and containing the signature of the Staff Member was dated April 7, 2016 rather than October 2015 was because Ex 2 was a copy of a later revision of the document.

For his training when he was hired, she testified, the Staff Member job shadowed an experienced staff member for both a day shift and a night shift and then he was on his

own. She stated that if the Staff Member hadn't understood what the job was about after these 2 shifts, that he would not have been suitable for the job.

The training the Staff Member had received, she confirmed, did not include a written test, but rather involved a conversation with her to ensure that he understood his duties. This approach she felt worked as, when she was employed by the Licensee, there were only 4 employees working at the Establishment.

When asked, she testified that there was not an incident log book for the Establishment, but rather a memo book which was in the staff office left opened on the desk, in which book, staff members could make entries and check on what entries had already been made. With respect to the sale of liquor to Minor Agent #85, the Former Manager could not remember whether or not she had entered it in the book, but that when the Staff Member had been fired, she had certainly discussed the incident with the other employees.

With respect to the monthly staff meetings she held, she stated that there was no advanced notice, but that these meetings were announced in the memo book or posted and as they were mandatory, if an employee was unable to attend, a copy of the minutes from the meeting was available for the absent employee to review.

The Current Manager

The Current Manager testified that she had worked for the Licensee for the past four and a half years, first at the Red Dog Licensed Liquor Store and, starting in the middle of October 2016, at the Establishment. She stated that she didn't know the Staff Member as she had started at the Establishment after he had been fired.

She confirmed that she had her Serving It Right certificate.

In her role as manager of the Establishment, she testified, she frequently raised the issue of ensuring that employees asked customers for their identification. For new hires, she stated that she gives them approximately 3 days of training and, following this training, for every shift change she raised with all the employees the obligation to ensure that they ask for identification and that they did not serve intoxicated customers.

Cross Examination of the Current Manager

On cross examination, the Current Manager testified that she did occasional spot checks on employees in the Establishment to ensure that they were following all due diligence procedures. She stated that there are written instructions on opening and closing procedures for the Establishment as well as the House Policies as set out in Ex 2. She stated that in January, 2017, she had revised these House Policies with Ex 2 being the most recently updated document.

As the Establishment currently has only 3 employees, she testified, she does most of her training and supervising by sitting down to discuss the House Policies with the employees and quizzing them verbally on their understanding of these policies without conducting a written test.

The Current Manager confirmed that she held staff meetings every month to which attendance was mandatory, but that if an employee was not able to attend a meeting, that she talked to the employee the next day to let the employee know what was covered at the meeting. She stated that the date and time of these staff meetings were written on the calendar together with the details of the employee shifts.

When asked, the Current Manager testified that when she had started at the Establishment, as she was unable to find the old log book, she has introduced into the operations of the Establishment the procedure of keeping an incident log book near the telephone. She confirmed that employees are required to enter incidents in this log book as they occur.

Defence of Due Diligence

In his testimony, the Licensee's Representative confirmed that the Licensee did not dispute that on September 24, 2016, the Staff Member sold liquor to Minor Agent #85 without asking Minor Agent #85 for identification.

However, the Licensee's Representative stated that the Licensee was relying on a defence of due diligence and to that end introduced into evidence two sets of documents which he submitted established the defence of due diligence.

The first, Ex 2, he testified constituted a statement of the 39 House Policies with respect to the Establishment and included additional requirements set out under the heading "Dress Code" and the additional 14 requirements under the heading "Cash Handling House Rules".

He noted that Item 6 of the first 39 policies states:

6. It is the responsibility of each employee to I.D. patrons to ensure that no minors are being served. They are to have 2 pieces of identification – one must have a name, photo, date of birth and a signature, the second piece must have a name, with either a photo or a signature.

The second set of documents (Ex 3), he testified, were copies of minutes of staff monthly meetings, with the first such set of minutes dated January 2016 and the last dated March 22, 2017. The Licensee's Representative noted that item 2 in each of these minutes dealt with the requirement to ask customers for identification, with the majority of these entries being stated as:

2. Discussed with staff about the need to continue to be diligent in asking our customers for ID to everyone that appears to be under the age of 25 and also do not serve individuals who are intoxicated. The fines for staff members (sic) are anywhere between \$230 - \$575 and a fine for the store is between \$7000 - \$10000 or a 10 day shutdown. This is our business and it is essential for the success of this business.

The Licensee's Representative testified that these two sets of documents were indicative of the strong culture of compliance maintained by the Licensee at the Establishment.

SUBMISSIONS – BRANCH

The Branch submitted that the Licensee had admitted that on September 24, 2016 liquor was sold by the Staff Member, an employee of the Licensee, to Minor Agent #85 who at the time of the sale was a minor. Therefore, the Licensee had admitted to the contravention referenced in the NOEA.

Due Diligence

The Branch further submitted that the Licensee had not made out the essential elements of the due diligence defence in that it had not established on a balance of probabilities that:

- The Licensee had at the time of the contravention a culture of compliance with respect to the prohibition of the sale of liquor to minors in the form of consistent and clear policies and routines;
- The Licensee had documentation to demonstrate training policies focused around asking for identification ; and
- The Licensee had designed and maintained a testing and monitoring regime that was effective, consistent and appropriate to prevent the occurrence of the contravention.

The Branch noted in addition that:

- the Licensee had provided no documentation on the Serving It Right certificate for the Staff Member;
- the Staff Member had signed the House Policies document (Ex 2) six months after he had been hired;
- an incident log book system was only implemented following the incident on September 24, 2016; and
- there was no evidence that new hires were given specific training or that there was ongoing training materials produced and an established system of updated training maintained.

Therefore, the Branch submitted, the Licensee had not made out the defence of due diligence.

As the alleged sale of liquor had been admitted and as the Licensee had demonstrated no defence to this contravention, the Branch submitted that the Licensee should be found liable for breach of section 33(1)(a) of the Act, by selling, giving or otherwise supplying liquor to a minor.

As to the matter of penalty, the Branch noted that as the Licensee had not committed a similar contravention within the preceding 12 month period that the contravention that

occurred on September 24, 2016 was classified as a “first contravention”. Therefore, the applicable monetary penalty fell within a range of between \$7,500 and \$10,000.

The Branch submitted that given the Licensee’s compliance history as set out in the NOEA, the maximum fine of \$10,000 was reasonable and appropriate in the circumstances.

SUBMISSIONS – LICENSEE

The Licensee acknowledged that on September 24, 2016, the Staff Member sold liquor to Minor Agent #85 as alleged in the NOEA.

However, the Licensee submitted that the defence of due diligence applied.

REASONS AND DECISION

Contravention

The Licensee has admitted that on September 24, 2016, as alleged in the NOEA, the Staff Member sold liquor to Minor Agent #85 in contravention of section 33(1)(a) of the Former Act.

To address the Licensee’s submissions on the defence of due diligence.

Due Diligence

As the Staff Member sold liquor to a minor in contravention of section 33(1)(a) of the Former Act, the Licensee is liable unless it can demonstrate that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The onus falls on the Licensee to demonstrate on a balance of probabilities this due diligence and, in doing so, the Licensee must not only clearly demonstrate that it has established procedures to identify and prevent from happening activities that might lead to this contravention of the Former Act, it must also clearly demonstrate that it continues to

ensure that such procedures are consistently in operation and acted upon by its employees.

The leading case is: *R v. Sault Ste. Marie* (1979) 2 SCR 1299, where at page 1331, Dickson, J. sets out the test of due diligence:

One comment on the defence of reasonable care in this context should be added. Since the issue is whether the defendant is guilty of an offence, the doctrine of respondeat superior has no application. The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

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

The Court states that the defence of due diligence is to be considered in two stages:

1. Whether the employee who sold liquor to the minor was a directing mind of the Licensee – if so, the defence of due diligence is not available and the inquiry stops there.
2. If the employee who took such action or failed to take such action was not a directing mind of the Licensee (and there is no requirement that a “directing mind” must be on the premises when the contravention occurs), then the questions to be considered and answered are whether the Licensee had:
 - a. implemented adequate training and other systems to prevent the contravention (the sale of liquor to minors); and,

- b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

Both of these issues are factual, and will depend upon the evidence presented. In summary, *Beverly Corners* provides that the onus is on the Licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

Directing Mind

The Licensee's "directing mind" is someone who can design and supervise the policies of the Licensee rather than an employee who carries out these policies.

The evidence before me suggests that the Licensee's Representative and the Former Manager would be considered to be the directing minds of the Licensees on September 24, 2016, and I so find. As neither the Licensee's Representative nor the Former Manager were in the Establishment when the contravention occurred, I find that the Licensee's directing mind did not sell liquor to Minor Agent #85 and move to the second part of the analysis as set out in *Beverly Corners*.

Implementation of Adequate Training and Systems and Effective Application and Operation of these Systems

The onus is on the Licensee to prove on the evidence before me that it has met the test for due diligence and can demonstrate that it has implemented adequate training and other systems and has taken reasonable steps to ensure the application of this training and the operation of its systems in a consistent and effective manner.

Therefore, in addition to evidence of a reasonable rigorous initial training environment, the Licensee must provide evidence of ongoing reinforcement of this training and culture which should most likely include the following:

1. A minimum age policy which required any customer under a certain age to be asked for identification
2. Appropriate signage;

3. Appropriate training manuals including current best practices;
4. An incident log book utilized and regularly reviewed;
5. Regular staff meetings at which compliance matters are stressed; and
6. Written quizzes for the employees testing them for an understanding of the Current Act, Regulation and Terms and Conditions Handbook.

I find that the Licensee has not met the test of proving the defence of due diligence on a balance of probabilities.

Indeed, the Licensee's present practices as demonstrated by both the testimony of the witnesses before me and the documentation submitted by the Licensee's Representative suggest a culture other than one of strict compliance. For example, rather than highlighting in any manner the requirement to ask for identification from patrons to prevent the sale of liquor to minors, this policy is included as one among 39 other operational issues for the direction of the Establishment's employees.

As well, having a standard item in the minutes of staff meetings of the staff members of the Establishment suggests very strongly that this item is included for form and not for substance. There is no indication in these minutes that this item is discussed or emphasized in any manner at the staff meetings.

More importantly, the Licensee's submission as maintaining a strong culture of compliance is belied by its compliance record both with respect to the Establishment and to the other licences it operates.

Having denied the Licensee's claim of a defence of due diligence, I therefore find that on September 24, 2016 the Licensee contravened section 33(1)(a) of the Former Act, by selling, giving or otherwise supplying liquor to a minor.

PENALTY

Pursuant to section 20(2) of the Former Act, having found that the Licensee has contravened the Former Act, the Regulation and/or the terms and conditions of the Licence, I may do one or more of the following:

- Take no enforcement action

- Impose terms and conditions on the Licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the Licensee
- Suspend all or any part of the Licence
- Cancel all or any part of the Licence
- Order the Licensee to transfer the Licence

I am not bound to order the penalty proposed in the NOEA. However, if I find that either a Licence suspension or a monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the Regulation. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so.

The factors that I have considered in determining the appropriate penalty in this case include: whether there is a proven compliance history; a past history of warnings by the Branch; the seriousness of the contraventions; the threat to the public safety; and the well-being of the community.

As the matter involves the sale of liquor to a minor, the most important of these factors is the public safety issue because of:

- The effects of alcohol on growing bodies and developing minds;
- The effects on individuals and society of irresponsible drinking behavior learned at an early age;
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult with the result being a more intoxicating effect on minors; and
- The fact that liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft.

However, what is also particularly troubling to me is the Licensee's compliance record. As disclosed in the NOEA, the Licensee either as operator of the Red Dog Licensed Liquor Store or the Establishment has, prior to the contravention found in the present matter, been found to have contravened the Former Act on three previous occasions dating back to May 5, 2012. These contraventions have resulted in a 10 day suspension, a 15 day suspension and a \$7,500 monetary penalty.

In addition, the Licensee has been the subject of seven compliance meetings dating back to March 17, 2011.

The Branch's objective is to secure compliance by licensees with the Current Act, the regulations passed pursuant thereto, and the Terms and Conditions Handbook. Wherever possible, the Branch attempts to realize this objective by assisting the licensees with ongoing communication and, where necessary, compliance meetings. Most licensees realizing that being licensed is a privilege and not a right are eager to meet the Branch's compliance objectives. However, some few licensees appear not to share these objectives. Given the compliance track record of the Licensee, it would suggest that it is among this small group.

I agree with the position taken by the Branch and find that the maximum permissible penalty is warranted here to encourage the Licensee to change its ways and its attitude with respect to compliance.

As there is no record of a proven contravention of the same type as dealt with here for the Licensee within the preceding 12 months of this incident, I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty. As noted above, Item 2 in Schedule 4 provides a range of penalties for a first contravention of this type of contravention to be a 10 to 15 day suspension of the Licence and/or a \$7,500 to \$10,000 monetary penalty.

I find that given the compliance record of the Licensee, the maximum monetary penalty of \$10,000 is an appropriate penalty.

ORDER

Pursuant to section 51(2)(b) of the Current Act, I order that the Licensee pay a monetary penalty of \$10,000 to the General Manager of the Branch on or before May 21, 2017.

Signs satisfactory to the General Manager notifying the public that such a monetary penalty has been imposed will be placed in a prominent location in the Establishment by a Branch inspector or a police officer.

Original signed by

R. John Rogers
General Manager's Delegate

Date: April 21, 2017

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

Liquor Control and Licensing Branch, Vancouver Office
Attn: Maria Caduhada, Branch Advocate