



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

IN THE MATTER OF

A hearing pursuant to Section 20 of

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

Licensee: Paul Bunyan Hotels Inc.
dba Westside Liquor Market
10-155 Malcolm Drive
Quesnel, BC V2J 3K2

Case: EH12-107

For the Licensee: Peter Klassen, Legal Counsel

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Dianne Flood

Place of Hearing: Kelowna, BC

Date of Hearing: November 28, 2012

Date of Decision: February 14, 2013

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The Licensee, Paul Bunyan Hotels Inc., operates a licensee retail store under the name of Westside Liquor Market at 10-155 Malcolm Drive, Quesnel, BC under Licensee Retail Store Licence 195278. Under the licence, liquor sales are permitted from 9:00 a.m. to 11:00 p.m., seven days a week. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication *Guide for Liquor Licensees in British Columbia* (the "Guide").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalties are set out in the Notice of Enforcement Action (the "NOEA") dated May 16, 2012. The Branch alleges that on May 5, 2012, the Licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act"), sell, give or otherwise supply liquor to a minor. The proposed penalty is a monetary penalty of \$7500 (Item 2, Schedule 4, of the *Liquor Control and Licensing Regulation*).

The Licensee does not dispute the contravention but makes a defence of due diligence.

RELEVANT STATUTORY PROVISIONS

***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,

ISSUES

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

EXHIBITS

Exhibit 1: The Branch's Book of Documents

Exhibit 2: Photograph of the Minor and copies of her identification [Note: these items were ordered to be placed in a sealed envelope, to be opened only upon an order of the Supreme Court of British Columbia or the undersigned adjudicator.]

Exhibit 3: The Licensee's Employee Orientation package, signed by the Clerk who sold the liquor to the Minor

Exhibit 4: The Clerk's one page written statement about the contravention

Exhibit 5: The Licensee's Book of Documents

Exhibit 6: 8 pages of Staff Meeting Reports

Exhibits 7A and 7B: Copies of two signs that were posted on the premises

Evidence

The Branch's evidence

A liquor inspector (the "Inspector") gave evidence about the "Minors as Agents" Program whereby persons under the age of 19 years attend at liquor stores supervised by liquor inspectors, and attempt to buy liquor. No attempt is made to hide the minor's age or otherwise deceive licensees. She also described the Branch's efforts to ensure that licensees are aware of the program and its use as a public safety enforcement program.

The Inspector testified that, on May 5, 2012, the Inspector, together with another inspector, was conducting routine inspections with a minor hired as an agent (the "Minor"). At the beginning of the day, the Minor was photographed and her age of 17 years and identification confirmed by the Inspector. A copy of the Minor's photograph and her identification was marked as Exhibit 2 and, at the request of the Branch Advocate, and with the agreement of the Licensee and its legal counsel, that exhibit has been sealed to protect the identity of the Minor.

At about 2:44 p.m. the Inspector and the Minor attended at the premises. The Inspector entered the premises and the Minor followed shortly after. No other persons or staff, other than the Clerk on duty, were present. The Minor proceeded directly to the cooler, removed six cans of beer, and proceeded to the cash register. The Minor had a short conversation with the Clerk, purchased the liquor with cash, and left the store. She was not asked for any identification.

The Inspector testified that she had a clear view of the entire transaction, and overheard the conversation between the Minor and the Clerk which consisted of the Minor's statement that it was a nice day to be working, and the Clerk's response that he didn't mind as it was his last day of work as he was moving out of town. The Inspector then left the store. Both the Inspector and the Minor made notes of the event, which are included in Exhibit 1. A Contravention Notice was issued.

The Licensee's evidence

The Licensee does not dispute that liquor was sold to a minor as alleged but says the defence of due diligence applies. The Licensee's counsel called four witnesses: the Clerk who sold the liquor, the General Manager who is also a shareholder of the Licensee, and two other employees, including the Store Manager at the time of the contravention.

The Clerk's evidence

The Clerk testified that he worked for the Licensee from September 2011 until May 2012, when he moved from Quesnel. He identified a series of documents as the orientation package he received when he started working for the Licensee (Exhibit 3). The package, signed October 18, 2011, included:

- A signed acknowledgement of receipt of the package and several statements about training that had been given, principally in relation to theft and personal safety
- A one page statement from the General Manager about procedures for robbery, dated May 27, 2010
- A 3 page statement of safety procedures, dated May 27, 2010
- A one page statement on Information on Preventing the Sale of Liquor to Minors
- A one page letter to staff, from the General Manager, about the requirement to ID anyone who appears under the age of 25, dated August 15, 2011
- A risk assessment for the store
- A completed sample worker orientation checklist addressing WorkSafe issues

The Clerk was 20 years old, had retail food sales experience, but had not worked at a liquor store before. The Clerk testified that his training was provided by the Store Manager, who worked with him for his first few shifts, and he was told to "ID" anyone who looked less than 25 years old. The Store Manager would point out customers who might be underage. He was told to ask for 2 pieces of identification – picture ID and another, for example, a Care Card. After three months probation he was given an overview of anything he needed to improve upon and the opportunity to ask any questions he might have had.

The Clerk did not have a Serving it Right certificate. The Clerk testified that the Store Manager told him it would be a good idea to get it and he meant to, but he didn't because of the cost and he had other bills to pay.

The Clerk said that staff meetings were more like discussions with the Store Manager and whoever was there and were about things that had happened, like robberies. It was hard to get all the staff together for meetings due to the various hours they worked and other jobs or commitments like school that some of them had. The Store Manager told the staff to watch for minors and regularly went over that with staff. The Store Manager did not use any tests to check the Clerk's knowledge, but she did ask if he understood and if he didn't, then she would explain. His assessment of age was based on facial and body appearance and pretty much on personal knowledge.

The Clerk admitted that on May 5, 2012 he sold liquor to the Minor without asking for any identification, but said that he thought she was of legal age. He did not recognize the minor from the photograph in Exhibit 2 but thought that she had been in nicer, more formal clothes that day, and said that girls could dress up to look older.

May 5, 2012 was the Clerk's last day of work at the store and he was not thinking about his duties. Instead, he was thinking about his move away from town and the logistics associated with the move, and everything he had to do before he moved. The Clerk testified that although he usually would have asked the Minor for identification, because he was excited about the move, his mind was on other things. The Clerk said that he had ID'd many people during the course of his employment, perhaps as many as 10 to 15 on a busy Friday or Saturday night, and he had refused to serve persons who had not presented ID when requested.

The General Manager's evidence

The licence was issued in 2004 and the General Manger had been actively involved in the store activities on a daily basis since then. She typically works at the store seven days a week, from about 8 a.m. to 1 p.m. most days. She personally observes employees' performance and thinks the Licensee has good employees. The Licensee has a security camera and, on the odd occasion when she has time, the General Manager views the tapes to see how employees are doing. She said that the tapes showed that the staff do ask customers for identification, even some customers in their

40's. Throughout her testimony, she expressed pride in the Licensee's employees and their good work performance.

The General Manager testified that the only previous compliance issue for the Licensee was an employee once asking for only one piece of identification, instead of the two pieces required at the time; however, that person was not underage. A compliance meeting was held with the Branch. The GM did not fire the employee who made that sale but did make sure that the employee understood his responsibilities to ask for 2 pieces of identification.

The General Manager said that making sure employees understood the identification requirements was always important. Quesnel is a small town and about 85% of their customers are known to staff but, in the summer, college kids come home and their friends come with them, and also tourists and others, so it was necessary to bring to the attention of staff the need to ask for identification.

Over the years there has been staff turnover and, because the staff came on at different times throughout the day, the General Manager started using memo's to inform staff. The General Manager testified that she subsequently created an orientation package to make sure all employees got the same information about the store's processes, the liquor laws, and safety. Staff were to read these materials and sign them so the General Manager knew that had been done. These materials were presented as Exhibit 5 and included the following:

- Pages 1 to 2: a March 2007 memo about, amongst other things, the importance of asking for identification, with reference to make sure this is being done before the busy summer season starts
- Pages 3 to 6: four pages of general instructions, prepared in or about 2010, and given to each employee that include a three line note on ID'ing people before ringing purchases

- Page 7: the blank form for employees to acknowledge receipt of the Licensee's orientation materials, (but unlike the one signed by the Clerk and included in Exhibit 3, this one includes a statement about being informed of the importance of ID'ing anyone who appears under 25 years old, and the kinds of identification that are acceptable)
- Page 8: an undated sheet used to track that employees had been given the orientation package (the Clerk who sold the liquor to the Minor is not listed)
- Page 9: a September 15, 2009 memo to staff about the need to ID if the person appeared to be under 19 years old, signed by the then employees
- Page 10: May 27, 2010 instructions on what to do in a robbery, unsigned by employees
- Page 11: an undated excerpt from, the General Manager thought, the Serving it Right program, about asking for and verifying identification
- Page 12: an August 15, 2011 memo to staff on the need for and how to ask for identification, not signed by staff
- Pages 13 to 21: a workplace risk assessment and WorkSafe materials
- Page 22 to 23: a copy of the acknowledgement of receipt of the orientation materials by the Clerk who sold the liquor to the Minor
- Page 24: a memo of September 15, 2009 about the need to ID signed by the then employees (this appears to be a duplicate of page 9, above)
- Page 25 to 27 is a series of three "Westside Liquor Store staff meeting Reports" listing various of the employees by name:
 - dated April 7, 2009, about the importance of 2 pieces of ID and a recent failure to ask for two pieces (the earlier contravention referred to above)
 - dated December 1, 2009, about getting 2 pieces of ID when making deliveries
 - dated February 2, 2010, about various matters, including the need to ask for ID in store and on deliveries

- Page 28 to 31: four pages of instructions, that appeared to be a duplicate of pages 3 to 6, above
- Page 32: a copy of a one page letter from the Branch about the Minors as Agents Program, dated February 7, 2011 with a handwritten note “if we get written up and you’re on shift you are Fired!” dated October 2011, and signed by staff in the presence of the General Manager
- Pages 33 to 34: copies of the two signs posted in the store about the need to be 19 years to enter the store and the kinds of identification to satisfy that requirement

The General Manager also produced a series of additional “Staff Meeting Reports” (Exhibit 6), which had not been produced in advance of the hearing but the Branch advocate did not object to their admission into evidence. The dates and contents of those reports were:

- July 5, 2010, reminding about BB (Billy Barker) days and the expectations of new faces in town and the need to ask for identification and watch for thefts
- November 26, 2010, about winter’s approach and, amongst other things, the importance to ID anyone under age 25
- March 14, 2011, about three issues, including the need to ask for ID before ringing in product
- July 16, 2011, about an assault on a delivery and the need for ID on deliveries
- December 5, 2011, about the Christmas season and then importance to “ID, ID, ID”
- January 11, 2012, listing changes in delivery protocol and reminding of the need for 2 pieces of identification
- April 2, 2012, about a robbery and the delivery protocol and the need to ID anyone under 25 years
- May 7, 2012, about the sale to a minor which is the subject of this hearing

All of these Staff Meeting Reports list various employees by first name. The General Manager said these matters would have been raised with the day staff and then the evening staff as they came in and then any others on the next day that they worked. Full staff meetings were difficult with the various hours staff keep. The General Manager testified that only three such meetings had been held which were breakfast meetings and, for that reason, were not too popular with staff.

The General Manager testified that the differences between the Clerk's orientation package (Exhibit 3) and those documents in Exhibit 5 were attributed to an old letter being used in the Clerk's package that should not have been used. The Clerk's lack of a Serving it Right certificate was also an oversight -- all the other employees had a certificate.

The high staff turnover was attributable to staff leaving Quesnel, not to any issues with staff. The Clerk, like the others, was a good employee, and the General Manager had no concerns with his performance; if anything, this Clerk made an extra effort to follow instructions.

The cameras were intended for theft issues, and not to review staff, but the General Manager did review the tape of the incident. She agreed she would have ID'd the Minor, but thought a 20 year old clerk may not have, as his perspective may be different. The General Manager cited the Inspector's evidence that she thought the Clerk was about 25 years old when he was only 20, but the General Manager agreed that it is not what a person looks like but what their age is that is important. The GM agreed that determining age is subjective and the only way to be sure is to ask for Identification.

The various directions to staff did not tell them how to assess age, but the General Manager worked with them verbally on that. The General Manager did not use tests, "secret shoppers", or photographs of known minors to ensure staff understood who to ask for identification. While not a test, if a staff person appears to be wavering, then the General Manager will intervene and tell them to ask for identification. The General

Manager had seen all staff refuse service for no ID and had commended staff for doing that. The staff know that if they serve a purchaser without ID, they will be fired. No staff persons have had to be fired for a breach of this store policy.

Employee evidence

A current employee testified it was the Licensee's policy that if a person looks 25 years old or younger, staff are to ask for 2 pieces of identification: picture ID and a second piece to verify. If there is no ID, then no sale is to be made. She personally asked for ID perhaps 2 or 4 times a week, assessing age by looks and facial features, and perhaps once a month no ID was presented and she refused the sale.

The Employee testified that when she was hired she was required to get her Serving It Right certificate. She was given a verbal orientation, and then learned how to do the job under supervision. She did not receive the orientation package (Exhibit 5) when hired in 2008 because it was initiated after that. She did get a copy when it was initiated and recalled reviewing some, but not all, of its contents. This Employee had attended two staff meetings in the four years since being hired.

The former store manager

The Store Manager was hired in 2005, became store manager in 2007, and left in 2012 when she moved away from Quesnel. When hired, she already had a Serving it Right certificate, but upgraded it a couple of years later.

The Store Manager testified that store policy was to always ID anyone who appears under 25, 2 pieces of ID – one government issued picture, the second with the name like a credit card or birth certificate. She learned this from the then store manger when she started, and she told new staff when they started. For new staff she generally worked a couple of shifts with them, and then they are constantly reminded. The staff are told of the consequences of not asking for identification, that the store could get a fine or be shut down and that the staff person would be fired if they get "written up".

The Store Manager reviewed Exhibits 5 and 6, highlighting the instructions given to staff about the need to ask for identification, and said staff were reminded “over and over” again about not selling liquor to minors. She said the signs posted in the store (Exhibits 7A and 7B) also remind staff about the need for 2 pieces of identification.

The Store Manager thought the orientation package was first instituted in 2009 or 2010. She was involved in initiating it and deciding what should be included. She usually gave it to new employees within the first few shifts and asked the employee to go home and review it and then come back if they had any questions. However, staff were not tested at meetings or in other ways to ensure they understood the need for identification. She acknowledged that it was her mistake not to follow up with the Clerk about getting his Serving It Right certificate.

The Store Manager believed the Clerk sold the liquor to the Minor because his mind was on his move and his new job. Although she knew he was excited about his move and new job, she was not concerned about him working that day. In addition to the Clerk, there was another staff person on duty that day, but she was junior to the Clerk only in terms of the length of service but had the same duties and functions. The Store Manager did not know where the other clerk was when the sale was made – she might have been in the office or having something to eat.

SUBMISSIONS

The Branch says the Licensee’s employees may have had knowledge about the requirement not to sell liquor to minors, but they did not have any training on how to assess age. This especially applies to the Clerk, who did not have a Serving it Right certificate, which is a glaring omission. The Minor looked her age and should have been asked for identification and refused service. To prevent the sale, staff simply had to request identification, but did not. The Licensee had no system to test or monitor employees’ understanding or compliance, and when tested by the Branch on May 5, 2012, the Clerk failed.

The Licensee says that it is very diligent about how employees are to deal with minors and that nothing more could have been done by it to prevent this sale. Training and orientation materials addressing the issue were provided to new employees. The Licensee reminded staff in writing of their obligation to check for the age of minors on at least 12 separate occasions between 2009 and 2012, and the consequences of the failure to do so were clearly spelled out for staff – they would be fired. The Licensee says this Clerk was ordinarily very conscientious, asking for identification and refusing sales if proper identification was not produced. The Clerk's mind was just not on his job that day. The Licensee had no reason to think that the Clerk would not perform his duties properly that day. The Licensee's compliance history, only one small infraction, shows that it is conscientious, and that the systems in place to prevent underage sales works well and achieves the Branch's policy objective of not selling to minors. As such, the Licensee could have done nothing more to prevent the sale and has met the test for due diligence.

REASONS AND DECISION

The Licensee does not dispute that on May 5, 2012 a minor was allowed to buy liquor from the Licensee's retail liquor store, and as such I find that the Licensee contravened section 33(1)(a) of the Act and the terms of its licence.

Due Diligence

The Licensee is entitled to a defence if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The Licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with.

The legal tests:

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

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.

Subsequent to the hearing of this matter, the BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2012 BCSC 1851, considered the defence of due diligence in the context of the sale of liquor to a minor contrary to the *Liquor Control and Licensing Act*. The court found that it was an error of law to require that the corporation had to have an employee who was the directing mind present on site. The court found that when the correct legal test was applied to the General Manager's findings of fact about the status of the employee who made the sale and about the licensee's policies and procedures to prevent the sale of liquor to minors, a contravention would not have been found and the decision was quashed (see paragraphs 41 to 44).

As such, the defence of due diligence is to be considered in two stages: firstly, was the sale made by an employee who is the directing mind of the licensee – if so then the defence of due diligence is not available and the inquiry stops there. If the sale was made by an employee who is not the directing mind of the licensee (noting there is no requirement that a “directing mind” must be on the premises when the sale is made), then the next step is to consider if the licensee had both:

- Implemented adequate training and other systems to prevent the contravention (the sale of liquor to minors), and
- 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 on the evidence presented. The onus is on a licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

Findings of fact and applying the law to the facts:

I find that all of the witnesses called at the hearing were candid and credible and I accept their evidence of the facts surrounding the sale to the minor and of the training and systems in place with respect to the sale of liquor to minors.

I find that the Minor was youthful in appearance, a reasonable person would have asked her to produce identification in order to purchase alcohol and in accordance with Minors as Agents Program she would not have produced identification so that the sale should not have taken place.

I find that the Clerk who made the sale of liquor to the Minor was not the directing mind of the licensee. There was no directing mind of the Licensee on the premises, nor was there any legal requirement for such a person on the premises.

I accept the evidence of the Clerk who sold the liquor to the Minor that he ordinarily asked for 2 pieces of identification if he had any doubt as to age of the person and that he would refuse to sell liquor to a person who could not produce an acceptable picture ID and one other to verify their name, if asked for ID. I also accept his evidence that on the day in question he was unusually distracted by his upcoming move away from town, that the move was a big event in his life, it was imminent and he had a lot to think about and do to accomplish the move. I also accept the evidence about the move because it was corroborated by the oral testimony of the Inspector, who recalled the conversation between the Minor and the Clerk about the move, and also by the notes of the Minor, tab 3 of Exhibit 1, made at the time of the sale.

I accept the Store Manager's evidence that she had no reason to suspect that the move would distract the Clerk from his responsibilities so that she ought not to have scheduled him for work or had another employee supervise him. He had been a reliable and responsible employee up until then and the move was not a reason for her to think that he would not continue to be responsible.

However, finding this sale to the Minor to be momentary lapse in otherwise good conduct is not enough to support a defence of due diligence. The examination must extend beyond the specific sale to consider the broader issue of what training and systems were in place to prevent sales to minors and what steps were taken to ensure they were effective. If a licensee establishes on a balance of probabilities that it had done everything a reasonable person would expect in terms of training and putting systems in place to prevent the sale, and also effectively monitored that training and systems, then the licensee may be excused from the finding of fault associated with the sale. However, if the systems and monitoring are not what a reasonable person might expect, then the licensee is at fault and a contravention must be found, despite the sale being otherwise out of character for the Clerk.

With respect to training, the Licensee prepared and distributed an orientation package that has changed over time. The orientation package given to this Clerk (Exhibit 3) contains two short documents about the need for identification: the one page "Information on the Preventing the sale of Liquor to Minors" and the memo from the General Manager about preventing the sale of liquor to minors and the need to ask for 2 pieces of identification. The sample orientation package submitted as part of Exhibit 5 included two additional references to the need to ask for 2 pieces of identification. The explanation for the discrepancy was that the package changed over time and that the Clerk's package inadvertently contained some out-dated material that ought to have been replaced. The list used to track acknowledgement of receipt of the orientation package by new staff did not record the name of the Clerk who made the sale, but there is no question that he did get the package, albeit an out-dated one. Also, by the date on Exhibit 3, the Clerk was only given or at least did not acknowledge receipt of the package until at least two weeks after he began working. The Clerk did not have nor did he obtain a Serving It Right certificate, which was an oversight by the Store Manager.

All staff were trained by the Store Manger over several days, and were given constant oral reminders to ask for 2 pieces of identification if in doubt, with some informal discussion about how to assess the age of the person. However, no written training manual or formal checklist of topics to be covered was submitted as evidence, so presumably none was used or available. No examples or aids to illustrate and assess age were provided to new staff. No evidence was presented of any examples used to show staff what valid identification looked like, or how to look for fake identification. Staff were observed on the job, but no tests were held during or at the end of the probationary period to test the ability to monitor age; staff were simply invited to ask questions if they had any.

Staff turnover was high. Only two or three staff meetings have ever been held. Instead, written reminders to staff were used, some of which addressed multiple issues. Additionally, the matters were apparently discussed with staff as they reported to work, but the "Staff Meeting Reports" to document those discussions were not signed by the staff as having been discussed and simply listed the then staff by name.

Two signs about the need for identification were posted in the store. Management stressed to employees a no tolerance policy when it came to sale of liquor to minors and commended staff who refused sales without identification.

Does all of the above meet the test of what a reasonable person would expect of procedures to prevent the sale of liquor to minors and ensuring that those procedures are consistently acted upon and problems are dealt with? In determining what a reasonable person would expect, it is valuable to be reminded that selling liquor to minors is a significant public safety issue and it needs to be prevented because of:

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

I am also guided by the court's finding in *Beverly Corners* that there was sufficient evidence in the decision of the General Manager of Liquor Licensing and Control Branch to support the defence of due diligence. The evidence in the General Manager's decision which supported that finding included:

- All staff had to have a Serving it Right certificate before they could start to work
- The training of cashiers was formalized with a training manual, training lists, and a defined two day training period, with a sign off on the policy and practice manuals. Cashiers were trained to make eye contact with each customer, to check for 2 pieces of identification, to look for fake identification, and to record cancelled sales because of failure to produce identification
- Several aids were in place to assist cashiers: the year of birth for persons 19 year of age was shown at the till, a poster illustrating acceptable types of identification and a book containing copies of out of province driver's licenses was posted at the till, and a system of hand signals and code word alerts for suspected minors in the store was developed and maintained
- Staff were frequently reminded of their obligations through staff meetings, emails, sign-off sheets, labels posted on shelves, notices posted on the tills and in offices, and reminders on their name tags and in their pay envelopes

However, this is not a checklist of what is required to meet the test of due diligence – what will be required will depend on the facts of the situation.

Considering the case law and all of the evidence in this case, and applying the standard of what a reasonable person would expect in this situation given the significant public safety issues related to the sale of liquor to minors, I find the Licensee failed to have adequate training on how to effectively assess age or systems in place to prevent the sale to minors. I also find that the Licensee failed to have in place adequate systems to track and monitor training and effective operations. The systems that were in place were haphazard and too many "inadvertent" omissions were made: not ensuring the Clerk got his Serving it Right Certificate; the Clerk was given an outdated version of the staff orientation manual; the listing of the distribution of the orientation manual to staff did not

include this Clerk. There was no formal training manual, no checklists, no formal aids to assisting in how to determine age, or any tests given. In addition, the late production of the various "staff meeting reports" indicates that they may not be kept in an organized fashion and thus easily accessible to staff to review.

I have considered the lack of signatures by staff to indicate they had discussed the matters referred to in the reports and understood them, the lack of in-person staff meetings to reinforce with staff and encourage discussion about preventing underage sales and how to assess age -- all of this indicates the stated policy of no sales of liquor to minors was not effectively followed up to ensure it was being effectively applied. Given the serious consequences of a sale to a minor, a reasonable person would expect more to be in place. I find the Licensee failed to meet the standards and the defence of due diligence is not available to it.

PENALTY

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

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the licensee to transfer the licence

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

The Branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. The factors that are considered in determining the appropriate penalty include whether there is a proven compliance history, a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

There is no record of a proven contravention of the same type for this licensee at this establishment within the preceding 12 months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty. Item 2 in Schedule 4 of the Regulation provides a range of penalties for a first contravention of this type: a 10-15 day licence suspension and/or a \$7,500 to \$10,000 penalty.

Selling liquor to a minor is a serious public safety issue. The threat of serious consequences to the youth and to the public in general is significant.

ORDER

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7500 to the general manager of the Liquor Control and Licensing Branch on or before March 15, 2013.

Signs satisfactory to the general manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor Control and Licensing Branch inspector or a police officer.

Original signed by

Dianne Flood
Enforcement Hearing Adjudicator

Date: February 14, 2013

cc: Liquor Control and Licensing Branch, Surrey Office
Attention: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Peter Mior, Branch Advocate