



**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:	Conmac Enterprises Ltd. dba Victoria Airport Travelodge 2280 Beacon Avenue Sidney, BC V8L 1X1
Case:	EH12-138
For the Licensee:	Robert Pearson, Legal Counsel
For the Branch:	Olubode Fagbamiye
General Manager's Delegate:	A. Paul Devine
Date of Hearing:	November 2, 2012
Place of Hearing:	Victoria, BC
Date of Decision:	April 26, 2013

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7059

Location:
4th Floor, 3350 Douglas Street
Victoria BC
<http://www.pssg.gov.bc.ca/lclb/>

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

Conmac Enterprises Ltd. (“the Licensee”) operates a Licensee Retail Store (“LRS”) located at Sidney, BC under Licence Number 191677. The Licensee does business under the name “the Victoria Airport Travelodge”. Under the terms of the licence, it is like all liquor licenses in B.C., subject to the Terms and Conditions set out in “A Guide for Liquor Licensees in British Columbia.”

The Liquor Control and Licensing Branch (the “Branch”) issued a Notice of Enforcement Action on June 14, 2012 (the “NOEA”). In the NOEA, the Branch alleged that on May 28, 2012, the Licensee sold liquor to a minor contrary to section 33(1)(a) of the *Liquor Control and Licensing Act* (The “Act”). The minor to whom the liquor was sold was involved in the Branch’s “Minors as Agents Program” (“MAP”). MAP operates under an amendment to the *Act* which was brought into force in 2010. It allows the Branch to employ minors as agents for the purpose of testing compliance with the prohibition against selling liquor to minors. Licensees were advised of the program by way of a letter from the General Manager of the Branch on February 7, 2011, and by a further announcement contained in the “Liquor Line” published in March 2011.

The proposed penalty for the alleged contravention was a \$7,500 monetary penalty (Item 2 of Schedule 4 of the *Regulation* under “Minors”) This item number of the *Regulation* provides a range of penalties for a first contravention consisting of a licence suspension for 10-15 days or a monetary penalty of \$7,500 to \$10,000.

The Licensee objected to the proposed enforcement action, and so a hearing was set to deal with the objection. I was appointed as a Delegate of the General Manager for the purpose dealing with this matter.

RELEVANT STATUTORY PROVISIONS

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

Section 33(1) A person must not

- (a) sell, give or otherwise supply liquor to a minor,
- (b) have liquor in his or her possession for the purpose of selling, giving or otherwise supplying it to a minor, or
- (c) in or at a place under his or her control, permit a minor to consume liquor.

(2) Subsection (1) does not apply if liquor is

- (a) given to a minor by his or her parent, spouse or guardian in a residence for consumption in the residence,
- (b) administered to a minor by or under the authority of a medical practitioner or dentist for medicinal purposes, or
- (c) given or otherwise supplied to a minor in accordance with the regulations.

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

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 No. 1: Branch Book of Documents

Exhibit No. 2: Licensee Book of Documents

Exhibit No. 3: Cans of Strongbow purchased by Agent 21

EVIDENCE

Evidence - The Branch

The Branch bears the onus of calling evidence on the balance of probabilities sufficient to support the proposed enforcement action. To this end, the Branch produced a book of documents marked as "Exhibit One". The Branch also called one witness, Liquor Inspector A.

LIQUOR INSPECTOR A

Liquor Inspector A testified that the LRS is attached to a hotel and the Licensee also operates a pub in the hotel. The LRS shares a commercial parking lot with the hotel and with a fast food outlet. On May 28, 2012 the witness was involved in the MAP with another liquor inspector. At the beginning of the shift, pictures were taken of the female teenager who had been hired for the MAP to test compliance of LRS's in the Victoria area (identified in the hearing as "Agent 21".)

At about 6:35 p.m., the Liquor Inspector entered the LRS operated by the Licensee. There were two clerks in the store but no patrons. Agent 21 then entered the store and went to a cooler and selected four cans of Strongbow cider. She went to one of the clerks who was operating a cash register, and paid for her purchase of Strongbow with a \$20 bill. The clerk asked if she wanted a bag but did not ask for identification.

In terms of prior history, the Liquor Inspector testified that there had been a compliance meeting in 2009 concerning a compliance check when the Branch employed agents between the ages of 19 and 22 who had a youthful appearance. The concern was that the LRS clerk had only asked for one piece of identification instead of two.

The Liquor Inspector testified that the Branch takes the sale of liquor to minors very seriously. In the NOEA which she had issued, a \$7,500 penalty was proposed. This is the minimum contained in the Schedule for a first contravention. The proposed penalty was for a first time contravention with no prior history. She recommended the minimum penalty to ensure future compliance.

In cross-examination, the Liquor Inspector agreed that the Licensee had complied with her request to provide her with documents under section 73 of the *Act*. She did not ask for the Licensee to provide any additional documents. The Liquor Inspector agreed that a licensee may test the compliance of its staff by the use of a secret shopper, and she had recommended it to other licensees. She did not, however, know how many licensees actually use this method of compliance testing. It was pointed out that Agent 21 reported the clerk who was not involved in the transaction was sitting on the floor when she purchased the cider. The Liquor Inspector said that the second clerk was sitting on a stool but still had a clear line of site in the area where Agent 21 made the purchase.

Evidence – the Licensee

STORE MANAGER

The Store Manager testified that he has been in charge of the LRS for 13 years. Prior to that, he was a bartender, and has been in the retail sale of liquor industry for a total of 19 years. He is therefore familiar with the liquor laws of the Province, and the procedures for their enforcement. The clerk who sold the liquor to Agent 21 was a new hire. Since she was 19 or 20 years old, she did not have a prior experience in the sale of liquor. As a result, the training that she was provided took longer. She had obtained her “Serving it Right” certification, and spent two to three weeks being trained. This consisted of watching others working, and being shadowed and observed when she worked. She was also taken through the policies and guidelines of the Licensee. When she was observed, she did not appear reticent to ask for ID.

The Store Manager noted that in the first paragraph on the first page of these policies and guidelines, employees are warned in large bold letters:

“DUE DILIGENCE: Anyone under 25 needs to be asked for two pieces of ID (Check ID chart for acceptable ID) Always ID everyone. Even regulars. They need to have it with them! There are secret shoppers that come into the store who will be seeing if we ID them and/or others that are under the age of 25. If this procedure is not followed all the time termination of employment will follow.”

The Store Manager noted as well that employees enter their time on a timesheet which states at the top “I acknowledge that it is the LAW, and my job to ask anyone who looks as though they may be a minor (under 19) for two pieces of valid ID.” Employees are also advised of the requirements for valid ID, and the penalties that can be levied for selling to minors.

The Store Manager testified that a secret shopper had been used once a few months prior to the incident that led to the NOEA. Employees both in the pub and in the LRS were tested. Only one employee in the LRS was tested at the time because overuse of the secret shopper would result in the process becoming ineffective.

The Store Manager testified that after employees are trained, they are monitored. Employees are trained to ask for identification, spot intoxicated customers, and to look out for bootlegging. New employees are quizzed to make sure they understand these issues. As well, in staff meetings, employees are reminded about maintaining vigilance for all of these problems. Training is conducted by the Store Manager and the Assistant Manager. Memoranda are sent to staff reminding them to check for ID. The Licensee also maintains an incident log, a copy of which was produced in evidence.

May 28, 2012 was the first night that the new employee was working without the direct supervision of a manager. The Store Manager testified that the junior clerk was assigned to work with a senior clerk who was effectively in charge for any issues that arose during the evening. The Store Manager said he began work at 8 a.m. His timesheet showed that he left work at 4 p.m. that day.

In cross-examination, the Store Manager agreed that the policies and guidelines had detailed procedures for robberies, shoplifting, and operating the cash register but did not have similar detailed procedures for asking about ID. He said that these procedures were conveyed orally. He acknowledged that the Licensee was aware of the MAP as a result of communications from the General Manager. A memorandum was sent to staff about the program in January 2012, almost a year after it was announced publicly. The Manager testified that staff are questioned orally at staff meetings, and are also given written tests about liquor issues. He agreed that the tests have not been disclosed for purposes of the hearing. He said that the store has video surveillance but it is not monitored remotely.

GENERAL MANAGER

The General Manager testified that he oversees the hotel, pub, and the LRS. He has worked there for 12 years in his current position, and is very familiar with liquor licensing matters. He said that the managers and their assistants are responsible for training. He engaged the secret shopper to check for compliance. After the employees were tested in February 2012, he sent a memo to staff congratulating them on their compliance. He also said that the video surveillance system could be monitored remotely by him, although this fact was not widely known by other staff, including the Store Manager. He did not monitor the video surveillance system on the evening when Agent 21 visited the store.

He testified that there were signs inside the store that reminded customers about sales to minors. There were also signs around the cash registers. Since this incident, there is now a reminder on each till asking employees if they had checked their customer's ID. This reminder must be cleared in order to allow the transaction to complete.

In cross-examination, the General Manager acknowledged that the clerks present when Agent 21 made her purchase were both authorized to ask for identification, and were responsible for selling liquor to the general public. The policy of the Licensee is to put a senior employee together with all new staff. The senior employee is responsible for making decisions in the absence of a manager for such issues as a request for a discount. The General Manager acknowledged that the sign-in sheets that had been produced to the Liquor Inspector were dated May 2012. He said that the sign-in sheets had been in for at least a year prior to that date. He agreed that there was some older stock of sign-in sheets which were used occasionally that did not carry the warning about checking for ID. He testified that while the secret shopper program had only been used once prior to the incident, it has been used twice since. Only one of the employees of the LRS was tested on the first occasion that the secret shopper was used as he did not want staff to become overly aware of the people involved in the program.

FORMER OWNER

The former owner of the LRS testified that he has since sold the business. During his time operating this facility and previously the Charles Dickens at the Empress in Victoria, there had only been one incident involving the Branch; the Compliance Meeting in 2009 involving checking two pieces of ID. Otherwise, the former owner testified that he had a clean record dealing with the Branch over the years. The new Licensee had no interest in attending the hearing on the NOEA as it was not affected by the outcome. The former owner chose to pursue the matter, however, because he felt strongly that the Licensee had done everything reasonable to prevent sale of liquor to minors.

SUBMISSION OF THE BRANCH

The Licensee advised that it does not dispute the contravention occurred as alleged. It argues, however, that it acted with due diligence, and so a penalty should not apply. The Branch notes that since the Licensee does not dispute that a sale to a minor took place, the alleged contravention is made out. As a result of this admission, the Branch directed its submissions to the issue of due diligence.

With respect to the defence of due diligence, the Branch does not expect perfection. It is enough to show that reasonable steps were taken to avoid the occurrence of the contravention. There must be a directing mind present when the contravention takes place. It does not have to be a manager. In this case, it was both of the clerks, and neither took steps to avoid the sale to a minor.

The Branch submitted that there were deficiencies in the application of the policies of the Licensee. The clerks failed to follow the policies when the contravention occurred. Neither of the sales clerks asked for ID. The policies failed because the age of a young-looking patron was not questioned. The Licensee may have general policies but when the directing mind on site ignores them or fails or makes no effort to follow them, the policies cannot demonstrate due diligence. These policies are detailed in other respects but not on the process for checking ID. They fail to articulate detailed procedures for making requests for identification. They do not stipulate that it is against the law to sell to minors or that it is against the law for them to be on site without an adult accompanying them. The employees did not sign acknowledging the policies until after their employment started, and employee sign-in sheets reminding about ID checking were not consistently used by the Licensee.

The Licensee said that it gives written tests to its employees about ID checking but did not produce them in evidence. The Branch submitted that there was no formal supervision of staff on the night in question. Video surveillance is available but not routinely reviewed; nor was its existence revealed to the Branch before the hearing.

While a secret shopper was used prior to the contravention, it was only used on one occasion and only tested one of the LRS employees. The clerk who worked with the new employee was not called to testify about the events that occurred during the evening.

The Licensee did not have written policies and procedures for the training and supervision of staff on the task of checking identification. As well, the employees who were involved in the incident did not sign the policies that are used by the Licensee until after their employment began.

The Branch submitted that the employee time sheets that remind employees to check ID were not consistently used as old stock that did not have this warning was also in use. As the result of a Compliance Meeting in 2009 concerning asking patrons for two pieces of ID, the Licensee committed to using written tests for its employees to test their knowledge of procedures in the sale of liquor. This was not done; nor did the Licensee keep written records of its monthly meetings with staff as promised.

There was no evidence of effective supervision of the clerks in store. The manager left at around 5 p.m., and there was no formal supervision at night. The Branch submitted that this failure to effectively supervise contributed to the contravention, so the Licensee was not duly diligent.

While the General Manager testified that he reviewed the Terms and Conditions Guide with senior staff, the Store Manager testified he hadn't seen it. The fact there was video surveillance available to the General Manager was not disclosed to the Branch or reviewed by the Licensee. The Branch argued that an adverse inference should be drawn that the evidence would be harmful.

The Licensee had also committed to implementing a secret shopper program in 2009 but only introduced the program in February 2012. As well, only one staff member in the LRS was tested, while 10 employees worked there. Proximity of staff was also an issue. The senior clerk was working in close proximity to the clerk that sold liquor to Agent 21. She wasn't called as a witness to explain why she didn't say anything despite the fact that she still works for the Licensee.

SUBMISSIONS OF THE LICENSEE

The contravention is admitted but the Licensee argues it exercised due diligence in accordance with the jurisprudence. The onus to establish due diligence is on the balance of probabilities. There are two threshold questions. First, was the employee involved a directing mind of the Licensee? If not, was the Licensee duly diligent? The standard is reasonableness, not perfection. Did the Licensee take reasonable steps to avoid the contravention?

The Licensee submits that two witnesses testified that the new clerk was trained for a full five days because she was not previously experienced with the sale of liquor. There is no dispute that the policies of the Licensee were reviewed and signed by the employees, and all had reviewed them and signed them before the incident with Agent 21. Everyone knew they had to defer to senior staff. The clerk was a very junior employee with only ten days of experience, so she was not a directing mind of the Licensee. The position of the other clerk is not clear. Agent 21 described her as sitting on the floor, and she was not called to testify about this. As a result, there is an issue about whether she could observe Agent 21 at the time.

The Licensee observed that it used payroll time sheets well before the incident which reminded employees to ask for ID. Staff were reminded each time they entered their hours of work on these time sheets. Moreover, the bottom of the time sheet advises staff that the sale of liquor to a minor is a contravention with minimum fine of \$7,500.

The training of the clerk who sold to Agent 21 was extensive, taking over 10 days in total, during which time she could ask about policies. Signs are in place at the cash register and in the staff room to remind employees about ID checking.

Two witnesses testified that the sign in sheets were used by staff on a regular basis. The Licensee did employ a secret shopper before the incident, and all of the staff were found to be compliant. The secret shopper continues to be used by the Licensee to test staff compliance.

The Licensee submits that it did not call the clerk who was working in the store on the night in question because it decided to admit the contravention. Her evidence therefore was not required. The Store Manager wasn't present during the evening but was readily available to staff. The sworn testimony of the Store Manager was that the time sheets warning staff to check ID were used before the incident involving Agent 21. Further, written reports produced in evidence showed the Licensee met the commitments it made to the Branch. The video surveillance evidence wasn't known to Store Manager, so it wasn't disclosed to the Branch. It was only used by the General Manager because he oversees managers as well as staff.

Finally, the Licensee argued that the proposed penalty has no deterrent value because the former owner has sold the Hotel and retired. He feels strongly about the issue, and so has pursued the matter at his own expense. The standard to establish due diligence is based on a reasonable person test, not one of doing everything possible to avoid the contravention. The test is met here.

ANALYSIS AND DECISION

The issues before me are whether the contravention as alleged by the Branch is proven, and if so, was the defence of due diligence made out by the Licensee? If not, what penalty, if any, is warranted in all of the circumstances?

The Licensee admits the contravention occurred as alleged but argues that it acted with due diligence. A defence of due diligence if made out will vitiate the penalty proposed by the Branch. There must, however, at a minimum be evidence to establish that the contravention happened despite diligent steps taken by the Licensee to prevent its occurrence. The onus is on the Licensee to establish that it acted with due diligence.

The principle of due diligence is discussed in *R. v. Sault Ste. Marie* [1978] 2 S.C.R. 1299. In this decision, the Supreme Court of Canada established that where an individual or corporation was found to be guilty of what are described as strict liability offences (that is, offences where state of mind is not a necessary component to establish liability), there was a defence available if the accused party could show that it took all reasonable steps in the circumstances to prevent the occurrence of the offence. At page 1331, the Court described the defence as follows:

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 that employment, the question will be whether the act took place without the accused 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 offense 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 were the directing mind and will of the Corporation, whose acts are therefore in law the acts of the corporation itself.

The actions of the party that causes the breach of the legislation cannot be the “directing mind” of the Licensee. This requirement is described in the decision of *Plaza Cabaret Ltd. v. British Columbia (Liquor Control and Licensing Branch General Manager)*, 2004 BCSC 248. The British Columbia Supreme Court stated that the Licensee must show on the balance of probabilities that the employee involved in the contravention was not the directing mind in respect of the operations of the business, and those who were in fact responsible were duly diligent in attempting to prevent the unlawful conduct from occurring.

The “directing mind” for the Licensee is an individual who can be said to represent the directing force of the Company in the conduct of the assigned activity. This individual need not be an officer or director of the Licensee but must be more than a servant or agent.

It is therefore up to the Licensee to establish on the evidence that it acted with due diligence. As well, the contravention cannot be occasioned by someone who was acting in the context of the “directing mind” at the time that it occurred. *Plaza Cabaret, supra.* requires consideration of who is the directing mind “as far as supervision is concerned.” On the evening in question, the liquor sales in the LRS were being carried out by two store clerks. The junior clerk had just finished her training, and a more senior clerk was assigned to work with her on the evening of May 28, 2012. Neither of these individuals had management responsibilities. They both reported to the Store Manager, who in turn reported to the General Manager. Neither of the clerks could be said to be a directing force in the hierarchy of the LRS, and so would not satisfy the test of acting as the directing mind of the Licensee.

There is no requirement that one of the staff members on duty must be found to be the directing mind. In this case, neither of the clerks had supervisory duties. While one clerk was more senior, it cannot be said that she was a directing force for the Licensee.

The test of due diligence as articulated in *Sault Ste. Marie (supra)* requires that the Licensee show both that it exercised all reasonable care to establish proper systems to prevent the contravention from occurring, and that it took reasonable steps to ensure the effective operation of these systems.

I am satisfied on the evidence that the Licensee meets the first test, that it had proper systems in place to prevent the contravention from occurring. While the systems were not perfect, as pointed out by the Branch in its submissions, they met the test of reasonableness. Staff were all trained on the policies and procedures of the Licensee, which include prominent warnings about checking for ID. Staff were supervised on a continuing basis afterwards for compliance with these policies. The sign-in sheets for staff warned at the top in bold upper case letters that the law requires that ID must be obtained. The penalties for not asking for ID were also described. While some old stock of sign-in sheets without this warning was still being used, I am satisfied that the staff of the LRS received regular warnings about the need to check for ID. Memorandums are provided to staff warning about checking for ID, and oral reminders were regularly given to staff as well. There are signs in the store and by the cash registers reminding patrons and staff about asking for ID. As well, although it would have been preferable for written records to be produced, I accept the evidence of the Licensee that it conducts regular staff meetings where the issue of checking for ID was discussed. The Licensee also employed a secret shopper prior to the incident in question, and staff were found to be compliant. While not all of the staff who worked unsupervised at the LRS were tested, I agree with the Licensee that the secret shopper could not return repeatedly on the same day to test all employees on all shifts without risking detection, and so rendering the compliance testing ineffective.

The second test for due diligence considers if the Licensee took reasonable steps to ensure the effective operation of the systems in order to prevent the contravention. The fact there was a contravention obviously brings into question the effectiveness of the procedures used by the Licensee. I have found that the Licensee satisfied the first part of the test because it exercised all reasonable care to establish systems to prevent the contravention from occurring. The remaining issue is one of supervision of staff when they are working alone. The threat of the secret shopper would encourage staff to be diligent when serving customers without management present. The use of the video system could also be an effective management tool for ensuring that staff were compliant with their duties when management was not present. While the video system was available for this purpose to the General Manager, I do not believe it was routinely used for the surveillance of staff. Otherwise, the Store Manager would have to know of its existence, and be routinely apprised of any deficiencies in the performance of his staff. As well, staff should know they are under surveillance for it to be an effective tool for their supervision.

Assigning a new employee to work with a senior clerk before being allowed to work alone is also potentially a reasonable way to ensure that new employees understand their duties and obligations with respect to the sale of liquor. The system failed here, however, despite the fact there were no other customers in the store, and despite the fact the senior clerk had a clear view of Agent 21.

The second test in establishing due diligence is to demonstrate steps were taken to ensure effective operation of the Licensee's systems. In respect of this, the Licensee had two clerks working unsupervised when the contravention occurred. There was no arrangement to check on the activities of the clerks when they worked alone during the evening. The clerk who failed to ask for ID was new but she had been partnered with an experienced clerk to oversee her work. This could be seen as a step in establishing due diligence but I have no evidence as to why the senior clerk failed to suggest to her companion that Agent 21 be asked for ID. This clerk is still employed by the Licensee,

and so could have been called as a witness. According to the testimony of the Liquor Inspector, there were no other customers in the store when Agent 21 attended there. As well, the senior clerk was sitting on a stool, and had a clear line of site to the area where the second clerk was working. The onus is on the Licensee to establish due diligence, and I am left without evidence as to why the Licensee's systems failed on the night in question. For this reason, the defence of due diligence is not made out.

PENALTY

I turn now to consider penalty. Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *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 Notice of Enforcement Action. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound by the minimums set out in Schedule 4 of the *Regulation*. I am not bound by the maximums and may impose higher penalties if warranted in the public interest.

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

The Licensee has asked me to consider waiving the penalty proposed by the Branch. Since the minimum penalty has been proposed, it cannot be reduced. It can only be waived if I conclude that the circumstances warrant taking no enforcement action.

There are several past decisions in which the Delegate has determined not to take enforcement action. These include:

- EH10-056 – Element Night Club
- EH08-006 – Bird of Paradise
- EH08-056 – Carlton Lodge (Longhorn Pub)
- EH05-112 – Irish Times Pub
- EH08-096 – Brown Bridge Pub

Each case is dependant on its own facts. In my view, a decision not to apply a penalty in the circumstances here would normally require at least the following elements to be present:

- The Licensee has a history of compliance and cooperation with the Branch so that one can confidently conclude there will be little likelihood of a repeat of the contravention;
- The facts surrounding the contravention are not so egregious that public safety becomes an overriding concern;

- There is some compelling or unusual reason for considering no penalty in face of a contravention. For example, in *Element Night Club (supra)* a delay by the Branch in issuing a Contravention Notice operated to the prejudice of the Licensee.

There is a history of cooperation by the Licensee, and no record of a proven contravention of the same type at this establishment within the preceding 12 months of this incident. While there was a Compliance Meeting with the Branch in 2009, there was no record of ongoing problems either with the Branch or with the police. On the contrary, it is apparent from the evidence of the Licensee that over the years has taken its responsibilities seriously with respect to the sale of liquor to the public. As well, the Licensee has now retired after a lengthy career in the hospitality industry, during which time he testified that he has met or exceeded his obligations.

The issue of selling liquor to minors, however, is a serious one as is apparent from the minimum penalty for a contravention under the *Regulation*. In *Brown Bridge Pub, supra* the Delegate decided to take no enforcement action when a minor was found inside a licensed premises because there was no evidence the minor was served alcohol, and the reason the minor was inside the premises was not for the purpose of consuming alcohol.

On the facts here, Agent 21 was sold liquor and could have consumed the same without hindrance. There are no compelling circumstances in respect to the sale of liquor to the minor Agent on the facts before me. Two clerks both saw Agent 21 in circumstances where there was more than an adequate opportunity to ask for ID. While I agree that the Licensee is not likely to repeat the contravention in view of his retirement, the facts are such that the public safety concern for selling liquor to minors is not mitigated at the establishment. I therefore conclude on the whole of the evidence that it is not appropriate to decide no penalty in this case.

ORDER

Pursuant to section 20(2) of the *Act*, and Schedule 4 of the Regulation, I find that the Licensee is required to pay a monetary penalty of the sum of Seven Thousand Five Hundred Dollars (\$7,500) to the General Manager of the Liquor Control and Licensing Branch on or before May 31, 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

A. Paul Devine
Enforcement Hearing Adjudicator

Date: April 26, 2013

cc: Liquor Control and Licensing Branch, Victoria Office
Attention: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attention: Olubode Fagbamiye, Branch Advocate