



**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:	FSJ Hops Cold Beer and Wine Store Ltd. dba Hops Cold Beer and Wine 7 – 470 Stuart Drive W Fort St. James, BC
Case:	EH14-080
For the Licensee:	Scott Cameron
For the Branch:	Cristal Scheer
General Manager's Delegate:	Nerys Poole
Date of Hearing:	November 26, 2014
Date of Decision:	December 22, 2014

**Liquor Control and
Licensing Branch**

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INTRODUCTION

FSJ Hops Cold Beer and Wine Store Ltd., dba Hops Cold Beer and Wine (the "licensee") owns and operates the Hops Cold Beer and Wine Store at 7 – 470 Stuart Drive W, Fort St. James, BC (the "LRS"). The licensee holds Licensee Retail Store licence number 192030 (the "licence"). According to the terms of its licence, the licensee may sell liquor from 9 a.m. to 11 p.m., Monday through Sunday.

Mr. Scott Cameron (the "Owner") is the principal and owner of the corporate licensee and appeared as the licensee's representative at the hearing.

The licensee is alleged to have contravened the *Liquor Control and Licensing Act* (the "Act") on June 21, 2014, by selling liquor to a minor who was acting as an agent of the branch under the Minors as Agents Program ("MAP"). The licensee admits that its employee sold liquor to the minor agent. However, the licensee disputes the finding of a contravention, on the basis that its policies, practices, procedures and training establish a defence of due diligence.

The licence is, as are all liquor licenses 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 penalty are set out in the Notice of Enforcement Action dated July 9, 2014 (the "NOEA"). (Exhibit 1, tab 1)

The Branch alleges that on June 21, 2014, the licensee contravened section 33(1)(a) of the Act, by selling, giving or otherwise supplying liquor to a minor. The range of penalties for a first contravention of this type is a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty (item 2, Schedule 4, *Liquor Control and Licensing Regulation*). The branch proposes a monetary penalty of \$7,500.

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: Branch Book of Documents, tabs 1 to 14
Exhibit 2: Licensee's Book of Documents, tabs 1 to 10
Exhibit 3: Copy of photograph and identification of the minor agent
Exhibit 4: DVD of statement of LRS assistant manager
Exhibit 5: Notarized statement of LRS assistant manager, dated September 4, 2014
Exhibit 6: Serving It Right Manual

Order to delete any reference to minor agent's name or other identifying factors

With the agreement of the parties, a copy of the minor agent's photo and identification was placed in an envelope and marked as Exhibit 2, with a notation that it is not to be unsealed or disclosed without a court order. Exhibit 2 has been sealed to protect the identity of the minor agent. At the hearing, the branch provided the licensee and its witnesses with an opportunity to view the photo of the minor agent and identification with birth date. The minor agent did not appear as a witness for the branch.

WITNESSES

The branch called one witness: the liquor inspector who attended the LRS with the minor agent on June 21, 2014.

The licensee called two witnesses: the LRS General Manager and the Owner of the LRS.

The licensee submitted a DVD of a recording of the LRS assistant manager (Exhibit 4).

Her written statement dated September 4, 2014 was also submitted as Exhibit 5.

Neither of the female clerks who were in the LRS at the time of the incident on June 21, 2014, testified at the hearing.

FACTS

June 21, 2014 incident

The following facts are set out in the NOEA and are undisputed.

On June 21, 2014, two liquor inspectors attended the LRS with a minor agent employed by the branch under the MAP. The purpose of attending the LRS with the minor agent was to test compliance with the Act's prohibition against selling liquor to minors. The branch implemented the MAP in 2011, after the Act was amended to allow the branch to employ minors as agents for this purpose.

According to Exhibit 2 and the testimony of the liquor inspectors, the minor agent was 17 years old on the date of the inspection of the LRS.

The inspection team arrived at the LRS at 12:51 p.m. The first liquor inspector entered the LRS. There were two female clerks at the till. One of the clerks was counting money at the counter ("LRS clerk 1") and greeted the liquor inspector. The other clerk was seated ("LRS clerk 2"). The first liquor inspector walked to the back of the LRS.

The minor agent entered the LRS and walked to the back cooler. He selected a six pack of Coors Light cans and took it to the counter. LRS clerk 1 scanned the Coors Light cans and advised the minor agent that the bill was \$15.25. The minor agent handed her a twenty dollar bill. LRS clerk 1 gave the change to the minor agent and handed him the Coors Light cans in a white plastic bag. The minor agent thanked LRS clerk 1 and left the LRS. No one requested identification from the minor agent. No one asked him how old he was.

The minor agent returned to the vehicle where he gave the Coors Light cans to the second liquor inspector, who tagged the Coors Light cans as evidence (Exhibit 1, tab 6). The minor agent immediately completed the observation form and a written narrative detailing his involvement concerning the sale of the liquor (Exhibit 1, tab 5).

At approximately 5:46 p.m., the second liquor inspector spoke to the LRS manager and advised him of the incident. The LRS manager was not present at the time of the contravention. The second liquor inspector requested that he retain any video surveillance of the incident.

On June 23, 2014, the second liquor inspector sent a contravention notice (Exhibit 1, tab 2) by registered mail to the licensee and owner of the LRS. She also spoke by phone to the owner who indicated that his staff had notified him of the contravention.

LICENSEE'S POLICIES, PROCEDURES AND TRAINING

The licensee's two witnesses gave evidence about the management of the liquor store, its policies and procedures, the training given to employees, and how the policies are implemented in the LRS. Neither witness was present in the LRS at the time of the contravention.

The licensee submitted a DVD of a recording of the assistant manager at the time, with a written notarized statement repeating what was on the DVD (Exhibits 4 and 5 respectively). The assistant manager was not present in the LRS at the time of the contravention and did not testify at the hearing.

The assistant manager had worked for the LRS business for a total of 11 years, the last four with the current owner. She stated that she was involved in training staff, including educating them about types of acceptable ID and the signs of intoxication. She referred to training the staff on primary and secondary identification and the LRS motto: "if in doubt do not serve."

The assistant manager stated that she was responsible for holding monthly mandatory meetings where topics included "Liquor board and store policies." She referred to updating staff on any new policies and the requirement to have staff sign off on policies. She said management works with employees on a regular basis and they shadow new staff to make sure all procedures are followed.

The LRS General Manager was asked in cross-examination if she could repeat the LRS motto that the assistant manager referred to in her statement. She was unable to answer this question.

Training

The LRS General Manager has worked for the licensee since 2011. She was responsible for the training of all new hires after that date. She explained that the LRS has a training binder (Exhibit 2, tabs 2 and 8). When a new employee is hired, he or she works with two more experienced employees from one to two weeks, depending on the experience of the new employee. One of the experienced employees is a member of the management team.

Management reviews the training binder as part of the new employee's training. The new employee signs the policy documents to show he or she has read and understood everything. The LRS General Manager emphasized that they ask new employees to repeat the information back to them to be sure they have understood what they have read. Management also uses the Serving It Right manual as part of the training. The review of the training binder may take up to two hours and is done one-on-one.

The ID training includes reviewing valid IDs, reminders about false IDs, tips for verifying IDs—including asking for zodiac signs, asking young-looking purchasers to spell their name and give their birthdate. New employees are told to assess the individuals when answering. The more experienced employee or management will ask the new staff about a young looking customer and whether or not the new staff would request ID and why, giving reminders about what to look for and posing questions to consider: Is individual slow in responding? Is he/she nervous?

The training includes teaching staff about the consequences to minors of alcohol consumption. The bodies of young people are still growing and are more susceptible to the negative effects of alcohol. All employees must have their Serving It Right certificates. If they don't have it on applying, they are required to take the course before starting work. Management provides them with the Serving It Right manual. Exhibit 2, tab 6 contains copies of the Serving It Right Certificates of LRS clerks 1 and 2, the assistant manager, the manager, the LRS General Manager and the licensee Owner.

Policies and procedures

The LRS General Manager testified about the policies signed by staff at the time of hiring. LRS clerk 1 signed an LRS policy titled "Providing Safe & Responsible Service - Hops Cold Beer & Wine Store Policy" dated September 5, 2013, when she was hired (Exhibit 2, Tab 2). The assistant manager signed the same policy on November 8, 2012 (Exhibit 2, Tab 4).

The policy signed by the LRS clerk 1 and the assistant manager includes one statement with respect to minors: "It is against the law to sell liquor to a minor; if an employee sells liquor to a minor there will be an immediate dismissal of the employee."

Despite this policy of immediate dismissal, the LRS General Manager did not immediately dismiss LRS clerk 1 for selling liquor to a minor. She was dismissed several weeks later for failure to show up at work. The licensee gave no explanation as to why this policy was not followed.

The same policy includes information about intoxication and a requirement to "document all incidents of intoxicated customers and action you took in an incident log book." LRS clerk 1 also signed a WCB employee policy and a policy on the use of the company owned vehicle on September 5, 2013.

The licensee submitted an unsigned policy entitled “things to remember” (Exhibit 2, tab 2). This policy mentions that 19 is the legal drinking age in BC, with a list of acceptable ID on the back. After stating the requirement for two pieces of ID, the policy says: “If any doubts about a customer’s ID, or if they cannot provide you may refuse service.” (underlining added)

LRS clerks 1 and 2 and the assistant manager signed the following Checklist and initialled beside each bullet point, after the incident on June 26, 2014:

Please check if you agree and understand the following:

- Everyone that look/acts like they are under age of 30 you will ask for 2 pieces of ID.
- It is solely your responsibility not to serve minors or intoxicated people.
- You will print in logbook any refusal of service with the name of who is on duty, date/time and reasoning...
- You will attend a monthly person-to-person meeting with owner/manager to review all responsibilities new and old.
- You will ensure to the best of your ability that minors re not using of age patrons to buy them alcohol.
- Any doubt of soberness service will be denied.
- Any doubt of age you will require 2 pieces of ID
(Exhibit 2, Tabs 2, 3 and 4)

The LRS General Manager stated that the House Policy with a header of Fort St. James Hotel (Exhibit 2, tab 3) was in place well before the incident on June 21, 2014, as this was the name on policies prior to the name change to Hops. She adopted this from the Serving It Right manual at the time, which is why it has the requirement to ID anyone who looks under the age of 25. LRS clerk 2 signed this policy, but not LRS clerk 1. This policy includes a section on identification of underage patrons, as follows:

No one under the age of 19 will be sold alcohol on the premises.

1. Management will post a notice at the entrance stating that staff will ID anyone who looks under 25 years of age.
2. Staff will ask for two pieces of ID from anyone at the counter:
 - a) First piece, issued by a government agency, should include the person’s name, signature, birth date and picture (passport or driver’s licence)

- b) Second piece must include an imprint of the person's name plus their signature and/or picture (Credit card or Care card)
3. Staff will feel and observe the document to ensure it is valid. If unsure, verify the information by asking the patron their age, date of birth, height and/or zodiac sign.
4. Staff will check with sample print outs to review acceptable forms of ID if in doubt.
5. Staff will refuse service if fake or invalid ID is suspected.
6. Staff will alert management or the police if the person does not want to leave or if the situation has the potential to get out of control.
7. Staff is not allowed to take Status cards at all.

This House Policy has a section on keeping an incident log, which refers to recording incidents involving intoxicated persons and other potentially dangerous situations, and includes the following:

1. Staff and management will record all incidents in a bound book, recording incidents:
 - a) about underage patrons
 - b) about intoxicated patrons including refusal of service
 - c) Including Date, Time, nature of incident, description or names of parties involved, possible witnesses , and actions taken
 - d) Retain sales records, if necessary.

LRS clerk 2 and the assistant manager signed an updated version of the above policies on July 8, 2014, after the incident (Exhibit 2, tabs 3 and 4). The updated version reflects the change in policy to ID anyone who looks under 30 years of age. The section on the Incident Log remains the same.

LRS clerk 1, LRS clerk 2 and the assistant manager signed the following letter on June 26, 2014, after the incident:

This letter confirms that management and ownership has provided you with all proper information and training in regards to the law against serving minors (18 years old or younger) and intoxicated people. You understand and have no concerns in doing your job to I.D. any person that looks under age of 30 or refuse service to anyone intoxicated.

In the event you do serve a minor you agree that management and ownership have done due diligence in training you and serving the minor and intoxicated people was due to your misjudgment 100%. You are also aware that a fine from LCLB may be applicable.

(Exhibit 2, Tabs 2, 3 and 4)

Videos/cameras in LRS

Management, when working in the office have a camera that allows them to see the counter where transactions take place and to see other blind spots in the LRS to watch for stealing.

Monthly meetings and other reminders

The LRS General Manager testified about the monthly meetings held with staff and stated that she has held these meetings since she started in 2011. On cross-examination, she agreed that it is a WCB requirement to hold monthly meetings. With one exception, the licensee did not submit any agendas or minutes of any meetings that took place before June 21, 2014. The exception is a note about a mandatory staff meeting at the RCMP detachment on February 28, 2013 (Exhibit 2, Tab 9). One of the items mentioned in the list of bullet points is: "Always ask for 2 pieces of ID if customer looks 30 years of age or younger." The remaining documents with notes of staff meetings are from post-incident meetings.

The LRS General Manager agreed that management prepared much of the paperwork about these meetings after the incident. However, she insisted the meetings occurred well before the incident.

The LRS General Manager asked her staff to sign a document indicating the training they had received when hired and the fact of the monthly meetings. Staff signed this document on October 23, 2014 and the LRS General Manager agreed it was for the purpose of the hearing. The document at Exhibit 2, tab 10 states:

Attention all Staff/in regard to Staff training when hired

By signing this letter I agree to the following:

- Management has provided me with the training that is required in order to do my job in a responsible manner upon hiring before my first shift.
- Management is holding monthly meetings to keep us informed.
- Management is always available to help or to provide more training if required.
- Management informed me that I may be fined for serving a minor or an intoxicated person.
- Management has gone over expectations required for serving minors and intoxicated customers.

I certify that I signed this letter freely and upon my own choice and that I clearly understand the above stated.

The LRS General Manager stated that this document confirms that staff received the training when hired and participated in monthly meetings before the incident. She said that everything stated in this document has been in place since 2011.

The LRS General Manager stated that she communicates with staff on a daily basis. Examples of this communication are the reminder text memos that she sends through the computer at the till (undated memos at Exhibit 2, tab 10)

Signs and notices in the LRS

The LRS has signs about the requirement for two pieces of ID and about requesting ID from anyone who appears to be under the age of 25. There are also signs about the potential for staff to be fined for selling liquor to a minor. Staff can point to these signs to explain to customers that this is part of their job (photos at Exhibit 2, tab 8).

The cash register till has a pop-up notice asking the clerk: "Have you checked ID for this customer?" The transaction cannot continue unless the clerk pushes one of the buttons: Yes, No or Over 25. The LRS General Manager stated that this question is part of the software and that she cannot change it to reflect policy of asking for ID of anyone under 30. There is also a sign on the till that changes daily to show the date of birth for someone to be 19 years of age.

The Owner stated that the staff's paycheques have reminders about house policy. The licensee did not present any documents to show what these reminders are.

The Guide and the MAP

The LRS General Manager stated there is a copy of the Guide in the back office. Staff do not have access to this office. She said the last time she reviewed the Guide would have been when she trained a new employee in November 2013.

When asked about the MAP and any alerts provided to staff about this program, she thought there might be something in the training binder in the LRS. She said that management would review any notices from the branch in staff meetings and during the one-on-one training.

The NOEA refers to a conversation between the second liquor inspector and the manager and the spouse of the Owner in which she reminded them of the MAP. This conversation occurred on May 28, 2014, just over three weeks before the contravention. The Owner confirmed in his testimony that this conversation occurred.

Delivery sales

The LRS General Manager stated that about 10 to 20% of the LRS business comes from home deliveries. The LRS staff, who are trained as cashiers and who have a driver's license, do the deliveries. They do not receive any specific training about asking for IDs at the door when they deliver a product. They receive the standard training about requesting identification of anyone who appears to be under 30, and follow the same rules that apply to sales in the LRS.

Testing

There is no formal testing. However, the LRS General Manager and the Owner testified that they will question staff about various policies at different times to check on their knowledge.

Incident log book/ statements about incident

The policy signed by LRS clerk 1 (dated September 5, 2013) requires employees to record incidents related to intoxication and other potentially dangerous situations, with no mention of recording incidents with underage patrons (Exhibit 2, tab 2). The House Policy with a header of Fort St. James Hotel Inc. Cold Beer and Wine Store, undated and signed by LRS clerk 2 and the assistant manager, refers to recording incidents with underage patrons (Exhibit 2, tabs 3 and 4). The licensee did not provide any samples of recorded incidents of any sort from a log book.

The two LRS clerks wrote out personal statements explaining the incident on June 21, 2014 (Exhibit 2, tab 7). LRS clerk 1 thought that LRS clerk 2 knew the minor agent and his age, when LRS clerk 2 asked LRS clerk 1 to serve him. LRS clerk 2 thought the minor agent was maybe 21 or 22 years old and stated she did not know that LRS clerk 1 did not request ID before serving the minor agent.

SUBMISSIONS – BRANCH

The branch notes that the licensee has admitted that one of its employees sold liquor to the minor agent on June 21, 2014.

The branch reviewed the evidence of the licensee's training, policies and procedures. The branch submits that the contravention here was not merely the failure of an employee to follow the written policies but a failure in the implementation of those policies. The branch says the licensee has not met the test for due diligence.

Because of the seriousness of the section 33(1)(a) contravention, i.e. the effect of alcohol on young people, the branch submits that a penalty of \$7,500 is warranted.

SUBMISSIONS – LICENSEE

The licensee/Owner made a brief submission, having made most of his points as a witness. He submits that his management staff have provided the necessary training and that the LRS has adequate policies in place to prevent contraventions such as this one. He stated that, if there are further things they should be doing, he would like to know what those are. He submits that his staff generally know their job and the importance of following the written policies with respect to requesting ID. In this case, LRS clerk 1 made a mistake. The licensee submits that they have a full defence to the contravention as they have met the test of due diligence.

REASONS AND DECISION

Contravention

The licensee has admitted that the contravention of section 33(1)(a) occurred on June 21, 2014. I find, therefore, that the licensee contravened section 33(1)(a) of the Act by selling liquor to a minor.

I address the question of the defence of due diligence below.

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 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:

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, has 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).

In these circumstances, the defence of due diligence is to be considered in two stages:

1. Whether the employee who made the sale 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 made the sale was not a directing mind of the licensee (and there is no requirement that a “directing mind” must be on the premises when the sale is made), 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 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.

Directing mind

I find that LRS clerk 1 is not the directing mind of the LRS and that the directing mind was not on site at the time of the incident. LRS clerk 1 had nothing to do with the development of the policies or with staff training.

The LRS General Manager stated that she created or updated the LRS policies. The Owner reviews the policies and approves them. I find that either the LRS General Manager or the Owner or both are directing minds of the corporate licensee.

I move to the second part of the analysis as set out in *Beverly Corners*.

Adequate training and other systems

The licensee presented evidence about the training given to new hires, the length of time of that training, and the nature of the training. The licensee submitted its training binder with policy documents signed off by staff, including ones signed off by LRS clerk 1. I find that the licensee has met the onus with respect to providing training to new staff. However, I find there are weaknesses with respect to the written policies used to train new staff.

I find that the licensee has drafted policies and procedures and implemented adequate training at the time of hiring to guide staff to ask for two pieces of ID, one with photo, of anyone who appears to be under the age of 25. More recently, the licensee has updated its policy to reflect the change in asking for ID of anyone who appears to be under 30. I find that the licensee implemented this change in the written policies before the incident. I also find that the failure to have the question on the till changed to reflect the under 30 policy, although it would be preferable, is not a significant weakness.

I find there are inconsistencies in the signing of the policies and in the wording of the licensee's policies. When reviewing Exhibit 2, I had some difficulty in figuring out which employee signed which policy and on what date. This made it difficult to determine which policies were actually in effect at the time of the incident.

LRS clerk 1 signed only one policy relating to liquor service titled "Hops Cold Beer and Wine Store Policy" which included only the one reference about it being against the law to sell to minors, and nothing about the importance of checking for identification or how to check for identification. She signed this in 2013.

LRS clerk 2 and the assistant manager signed the more detailed policy that was, according to the evidence, an earlier version of the house policy. The assistant manager's signature had a date of November 7 and no year, while LRS clerk 2 signed this policy, but there was no date. There was no explanation provided as to why this earlier policy, with more information and guidance about serving underage patrons, was not signed by LRS clerk 1 at the time of her hiring.

There are also inconsistencies in the written policies on the requirement to record incidents with underage patrons. Some policies include this requirement while others do not. The policy signed by LRS clerk 1 required employees to document all incidents of intoxicated customers and action taken in the log book, but nothing about recording incidents with underage patrons. A further inconsistency is the use of the word "may" in some policies as opposed to "must" when requesting identification or refusing service.

I find these inconsistencies to be significant in determining the adequacy of the licensee's systems. I conclude the licensee needs to review its policies for consistency in wording, including the policy on requesting ID for anyone under 30. The licensee must ensure new hires are signing complete policies that apply at the time of hiring.

I turn now to the effective application and operation of the licensee's systems.

Effective application and operation of the systems

In this step, I must assess whether the licensee has taken reasonable steps to ensure the effective application of its training and the operation of its systems. Having found the policies themselves to be inadequate in terms of their consistent messaging to employees, I also find that there are problems with the application and implementation of the licensee's policies. The test for due diligence is not perfection. However, a licensee must demonstrate, through its evidence, that it has taken reasonable steps to implement its policies in a consistent and effective manner.

The Owner and the LRS General Manager testified about steps they have taken to ensure staff are applying and following the ID policies on a consistent basis:

- Monthly staff meetings which often include reminders about service to minors and reminders re: ID checks.
- Signs in the LRS advising of ID requirements, including one at the till showing the date of birth required to be 19 or over on that day.
- Pop-up question on the till that must be answered before a transaction proceeds.
- The LRS General Manager's ability to monitor what occurs in the LRS through the camera in her office.

In addition to the weaknesses in the written policies as discussed above, I find further weaknesses in the second step of the analysis, which include:

- No evidence of logbook entries.
- Very little written documentation of topics discussed at monthly meetings prior to the incident on June 21, 2014.
- Failure to follow through on the written policy of immediate dismissal of LRS clerk 1, with no explanation as to why this was not followed.
- No explanation as to the failure of LRS clerk 1 to press the correct button on the till, which would have prevented the transaction.
- The LRS General Manager's lack of knowledge about the motto "if in doubt do not serve", cited in the assistant manager's statement.
- Very little evidence of ongoing training or daily reminders about ID.
- Failure to use the Guide as a training tool and have it available for staff review.
- No evidence to demonstrate staff were aware of the MAP.
- No evidence of testing of staff other than checking during their initial training at time of hire to be sure they understand what they are signing.

I find that the weaknesses noted above and the inconsistencies in the policies do not meet the test of due diligence. The licensee stated at the hearing that he wished to know what more he could do. The licensee has provided considerable evidence of documents

signed by staff after the incident. I commend the licensee for making every effort to improve its systems after the incident. However, after the incident improvements are not evidence of due diligence at the time of a contravention and thus do not relieve a licensee of a penalty for the contravention.

The documents signed after the incident include:

- The checklist for employees' signature indicating their agreement with the statements.
- Letter dated June 26, 2014, signed by several employees including LRS clerk 1, confirming they have received the proper training and that management and ownership have done due diligence.
- Document dated October 23, 2014 and signed by several employees indicating training they received when hired and the fact of monthly meetings.

With respect to the letter dated June 26, 2014, I remind the licensee that it is not up to its staff to confirm, in a post-incident letter without testimony, that they have received all proper information and training in the past. Neither is it up to staff to confirm that management and ownership have done their due diligence. The onus is on the licensee, at the time a contravention is alleged, to demonstrate that:

- It has the required policies in place.
- It has provided the necessary training on these policies.
- It has implemented adequate systems to ensure staff receive regular reminders about the policies.
- The established systems are consistently applied and enforced.

This may require calling its staff as witnesses to identify the nature of the training they received and any ongoing reminders, etc.

A licensee is responsible for demonstrating on a balance of probabilities that it meets the test for due diligence. Mere assertions by employees in a signed document do not meet that test, and I give them little weight. The employees' statements are not subject to cross-examination nor am I able to assess the truth of the statements when a witness is not present. Similarly, statements made by an employee, whether by DVD or written

and notarized, are not subject to cross-examination and thus I give the statement of the assistant manager very little weight (Exhibits 4 and 5).

The licensee introduced a checklist for staff to sign and initial after the incident (Exhibit 2, tabs 2, 3 and 4). This is a useful tool that can serve as a regular reminder to staff about the importance of the ID policy. Having staff sign and initial something like this at regular intervals, perhaps three or four times a year, helps to ensure staff are aware of the importance of such policies. Management can supplement these checklists with daily reminders about checking for ID.

The recording of incidents in a logbook is a very effective training tool for management to use by reviewing incidents at staff meetings or at other times. Such reviews of incidents about refusal of service for unacceptable or no ID can help reinforce the message about when to request ID, how to request ID and the types of acceptable ID.

The licensee has made some changes to its policy and to its systems to ensure a more effective application of its policy. As stated above, these changes are commendable but do not provide the necessary evidence to support a due diligence defence at the time of the contravention. I find that the licensee has failed to establish a defence to the contravention.

Having concluded that the defence of due diligence fails, I find the licensee has contravened section 33(1)(a) of the Act and I turn now to the issue of penalty.

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 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 branch has consistently indicated that the sale of alcohol to minors is a significant public safety issue and a high priority for enforcement. The NOEA outlines why the branch considers this a significant public safety issue:

- 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; therefore, liquor has a more intoxicating effect on minors.
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault, and theft.

The MAP demonstrates the branch's intention to ensure that licensees are not serving or selling liquor to minors. The branch has taken measures to advise licensees of the seriousness of the problem and to educate them on their responsibilities. Despite those initiatives, a 17 year old minor was able to purchase liquor from the LRS clerk, without being asked to produce any proof of age.

I find that a penalty is warranted here.

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 and/or the police; the seriousness of the contravention; the threat to the public safety; and the well-being of the community.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. Enforcement action is intended to both redress the licensee's non-compliance, and to encourage future compliance by way of deterrence.

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 provides a 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.

Having found that a penalty is warranted, I am required to impose at least the minimum, which is a \$7,500 monetary penalty for a first contravention. I find this to be reasonable and appropriate given the importance of ensuring minors do not have easy access to liquor, to encourage future voluntary compliance from the licensee and to ensure specific and general deterrence in society at large.

ORDER

Pursuant to section 20(2) of the Act, I order that the licensee pay a monetary penalty in the sum of \$7,500 to the general manager of the Liquor Control and Licensing Branch on or before **January 30, 2015**.

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

Nerys Poole

General Manager's Delegate

Date: December 22, 2014

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

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Cristal Scheer, Branch Advocate