DECISION OF THE

GENERAL MANAGER

LIQUOR AND CANNABIS REGULATION BRANCH

IN THE MATTER OF

A hearing pursuant to Section 51 of

The *Liquor Control and Licensing Act*, S.B.C. 2015, c. 19

Licensee:	Northland Properties Corporation dba Government Street Liquor Store & Wine Shoppe 310 – 1755 West Broadway Vancouver, BC V6J 4S5
Case:	EH20-023
For the Licensee:	Rob Toor and Jeff Leonard
For the Branch:	Karol Kudyba
General Manager's Delegate:	Nerys Poole
Date of Hearing:	November 16 and 17, 2020
Date of Decision:	December 18, 2020

INTRODUCTION

Northland Properties Corporation (the "Licensee"), holds Licensee Retail Store Licence No. 195446 (the "Licence") for a licensee retail store in Penticton doing business as Government Street Liquor Store & Wine Shoppe (the "LRS").

A Third-Party Operator, 0844541 B.C. Ltd. operates the LRS. The LRS is located at 1173 Government Street in Penticton.

The Licence permits the sale of liquor between the hours of 9:00 a.m.to 11:00 p.m., from Monday to Sunday.

Rob Toor appeared as the representative of the corporate Licensee, Northland Properties Corporation. Jeff Leonard appeared as the representative of the Third-Party Operator, 0844541 B.C. Ltd. Both Mr. Toor and Mr. Leonard cross-examined the Branch's witness and made submissions. I refer to them by name when they are doing this and refer to "the Licensee" to include both.

The Licence is, as are all licensed retail store licences issued in the Province, subject to the terms and conditions contained in the publication "Licensee Retail Store Terms and Conditions handbook" (the "Terms and Conditions Handbook"), which is available on the Liquor and Cannabis Regulation Branch's website.

CONDUCT OF THE HEARING

I conducted the hearing using Microsoft Teams, the video conferencing platform used by the Branch for remote hearings. This was the first enforcement hearing conducted by the Branch using this technology. Both the Branch and the Licensee agreed to the use of this technology to conduct the hearing as the COVID pandemic was in its second wave at the time of hearing.

The Branch Advocate prepared a hard copy binder of the Branch's documents (Exhibit 1) and the Licensee's documents (Exhibit 2) for the hearing delegate and provided hard copies of Exhibit 3. In addition, the Branch Advocate displayed the various documents on screen when witnesses were testifying about a particular document. I identified each of the exhibits to the Licensee prior to marking them as exhibits. The technology

worked well, with only two occasions where Mr. Leonard lost video and voice contact and I paused the hearing until he was back online. No complaints were made during the hearing about the conduct of the hearing in this format.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor and Cannabis Regulation Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action dated March 30, 2020 (the "NOEA").

The Branch alleges that, on March 4, 2020, the Licensee contravened section 77(1)(a) of the *Liquor Control and Licensing Act*, S.B.C. 2015 c. 19 (the "*Act*") by selling, giving or otherwise supplying liquor to a minor.

Item 7, Schedule 2 of the *Liquor Control and Licensing Regulation*, B.C. Reg. 241/2016, (the "*Regulation*") sets out the range of penalties for a first contravention of this type: a seven to eleven-day licence suspension and/or a $7,000 to $11,000 monetary penalty.

The Licensee disputes that its employee sold liquor to a minor and takes issue with some of the facts describing the alleged contravention, as set out in the NOEA. If I find the sale of the liquor to the minor occurred, the Licensee claims a defence of due diligence. In addition, the Licensee raises a number of preliminary issues as outlined below.

For the purposes of this hearing, and in accordance with section 5 of the *Act*, the general manager has delegated to me the powers, duties and functions of the general manager under section 51 of the *Act* and Part 6 of the *Regulation*.

RELEVANT STATUTORY PROVISIONS

The relevant statutory provision on the main issue is:

***Liquor Control and Licensing Act*, S.B.C. 2015, c.19**

> Supplying liquor to minors
>
> 77 (1) Subject to the regulations, a person must not
>
> (a) sell, give or otherwise supply liquor to a minor.

The relevant statutory provisions on the preliminary issues are:

***Liquor Control and Licensing Act*, S.B.C. 2015, c.19**

Service and receipt of documents

> **68** (1) Documents that are required or allowed under this Act to be given or served on a person must be given or served in accordance with the regulations.
> (2) A document given or served in accordance with subsection (1) is conclusively deemed to be received, in relation to a specified method of service, as provided in the regulations.

Liquor Control and Licensing Regulation, B.C. Reg. 241/2016

Ways to give or serve documents — general

> **198** (1) For the purposes of section 68 (1) of the Act, a document that is required or allowed under the Act to be given or served on a person, other than the general manager, must be given or served in accordance with this section.
> . . .
> (3) If a person is a corporation, the ways to give or serve a document are
> (a) by leaving the document with an officer or director of the corporation,
> (b) by sending the document by ordinary mail, registered mail or courier to the registered office of the corporation,
> (c) by sending a copy of the document by electronic mail to the electronic mail address provided by the corporation, or
> (d) by transmitting a copy of the document to a fax number provided by the corporation.
>
> (5) If a person is a licensee, additional ways to give or serve a document are
> (a) by leaving the document with an individual who works in the establishment,
> (b) by sending the document by ordinary mail or registered mail to the mailing address of the licensee as set out in the licence, or
> (c) by leaving the document in a mailbox or mail slot at a business address provided by the licensee.

Deemed receipt

> **199** For the purposes of section 68 (2) of the Act, a document given or served in accordance with section 198 of this regulation is conclusively deemed to be received,
>
> (a) if the document is left with an individual, on the day it is left,
>
> (b) if the document is sent by ordinary mail, registered mail or courier, on the 5th day after it is mailed or received by the courier,
>
> (c) if the document is left in a mailbox or mail slot, on the 3rd day after it is left,
>
> (d) if the document is attached to a door or other conspicuous place, on the 3rd day after it is attached,
>
> (e) if the document is sent by electronic mail, on the 3rd day after it is sent, and
>
> (f) if the document is transmitted to a fax number, on the 3rd day after it is transmitted.

MAIN 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 is appropriate?

PRELIMINARY ISSUES

The Licensee raised several issues and argued for dismissal of the contravention based on one or all of the issues raised as follows:

1. Whether the delivery of the NOEA and the consequent delay in the receipt of the NOEA by the Licensee prejudiced the Licensee's ability to mount a defence to the alleged contravention;
2. Whether the error in the date of the alleged contravention in one section of the NOEA was sufficient to warrant a dismissal;

3. Whether the absence at the hearing of the Liquor Inspector, who attended at the LRS with the minor agent, was sufficiently prejudicial to the Licensee and effectively prevented the Licensee from providing full answer and defence, such that a dismissal is warranted.
4. Whether the Branch's Minors as Agents Program contains an inherent bias against private liquor stores and is not an accurate representation of real life – and thus skewed to the Branch getting infractions.

I will address the preliminary issues first and will set out the evidence, submissions and my findings on these issues before proceeding to the main issues. If I find that a dismissal of the contravention is warranted for any of these issues, I do not need to proceed to the main issues.

EXHIBITS

Exhibit 1: Branch's book of documents tabs 1 to 20
Exhibit 2: Licensee's group of documents, tabs 1 to 9 – attached in Branch binder
Exhibit 3: Additional documents submitted by Licensee on Nov.13, 2020 – 14 pages

WITNESSES

The Liquor Inspector who participated in the MAP inspection of the LRS on March 4, 2020, but did not enter the LRS, gave evidence on behalf of the Branch ("Liquor Inspector A").

The Licensee called the following witnesses:

- Jeff Leonard, the Third-Party Operator and representative at the hearing
- The LRS Manager
- The female employee of the corporate licensee in its Vancouver office (the "Vancouver Office Employee")
- The superintendent of the building owned by the corporate Licensee in Vancouver (the "Building Superintendent")

EVIDENCE ON THE PRELIMINARY ISSUES

The Delivery of the NOEA

Liquor Inspector A did not have personal knowledge of the delivery of the NOEA. The author of the NOEA, Liquor Inspector B, was unable to appear as a witness at the hearing because of medical issues. He provided a statement of his involvement with the alleged contravention, signed on October 13, 2020 (exhibit 1, tab 16). His statement included the following at paragraph 25:

> On March 31, the NOEA was mailed via registered mail to the Licensee, as the Licensee is ultimately responsible for the liquor licence.

Liquor Inspector A, in his testimony, referred to the Licensee's contact information sheet at tab 17 of exhibit 1. Liquor Inspector A testified that this information is on file with the Branch, in the POSSE database. The Branch sends any documents or correspondence to the mailing address for the Licensee as listed on the contact sheet. This sheet identifies the Licensee as Northland Properties Corporation with a mailing address of 310-1755 Broadway W, Vancouver, BC V6J 4S5 and an email address of a female employee in the corporate offices. The third-party is identified as 0844541 B.C. Ltd. with a mailing address in Penticton (542 Nelson Ave.) and an email for Jeff Leonard. The establishment is identified by name as the Government Street Liquor Store & Wine Shoppe with the location address of 1173 Government Street, Penticton, BC V2A 4V3. Beside the location address is the mailing address for the establishment which is shown as 310-755 Broadway W, Vancouver BC V6J 4S5. Below the location address is the "Establishment Contact" with the name of Rob Toor (corporate Licensee representative in this hearing) and his email address and phone number.

The LRS licence No. 195446 (tab 3 of exhibit 1) gives the establishment name and the Licence name as "Government Street Liquor Store & Wine Shoppe" with the location address as 1173 Government Street Penticton, BC V2A 4V3. The LRS Licence states that it is issued to: Northland Properties Corporation and notes the Third-Party Operator as 0844541 B.C. Ltd.

Liquor Inspector A referred to the delivery of registered mail to the corporate offices of the Licensee at 310-1755 West Broadway, which, according to the statement of Liquor Inspector B was the NOEA, (exhibit 1, tab 11). Liquor Inspector A stated that this information is the Canada Post record, with tracking number, showing delivery to the Vancouver office of the Licensee. Tab 11a shows a registered mail receipt with the tracking number and handwritten beside the "To" is "Government Liquor Store." There is no address or city on this receipt. Tab 11b notes that Canada Post received this delivery on March 31 and that it was delivered on April 2. Under April 2, it notes that it was "delivered to recipient's front door, Vancouver, BC" at 10:42 a.m. Under March 31, it notes that the item was picked up by Canada Post in Kelowna, B.C. at 3:21 pm. Tab 11c is another Canada Post document, showing the same tracking number and the delivery date of 2020-04-02 and notes that "signature option was not requested."

Liquor Inspector A referred to section 68 of the *Act* which sets out how documents are to be served and that they must be served in accordance with the regulations. He then referred to section 198 of the *Regulation* which describes the various ways to give or serve documents, and includes, for a corporation, "by sending the document by ordinary mail, registered mail or courier to the registered office of the corporation." He noted section 199 of the *Regulation* which deals with "Deemed receipt." "A document given or served in accordance with section 198 of this *Regulation* is conclusively deemed to be received", which includes (b) "if the document is sent by ordinary mail, registered mail or courier, on the 5th day after it is mailed or received by the courier."

In cross-examination, Liquor Inspector A agreed there was nothing in tab 11 or other evidence to indicate the NOEA was delivered to Northland Properties Corporation at its address of 310-1755 Broadway W, Vancouver BC V6J 4S5. He believed it was sent to this address as this is the address in the NOEA. He agreed it would be more specific to include the actual address of the Licensee in the tracking information at tab 11. He agreed that a liquor inspector should make best efforts to ensure a licensee receives the NOEA and is able to deal with it. He agreed that he was not the one who sent the NOEA and that Liquor Inspector B who sent the NOEA was not available to testify at the hearing. He agreed he was aware of the situation with respect to the COVID 19 pandemic and that he was aware that some offices were closed during this period. He agreed, to the best of his knowledge, that no copy of the NOEA was delivered at the time (early April) to the Third-Party Operator or to the LRS location address.

Mr. Toor asked Liquor Inspector A about the purpose of the statement at the bottom of the contravention notices:

> The general manager Liquor and Cannabis Regulation Branch may proceed with enforcement action on the basis of this contravention notice. The licensee will generally be notified within 45 days if enforcement action is proposed.

Mr. Toor asked Liquor Inspector A if there was any cut-off date for issuance of a Notice of Enforcement Action after issuing a contravention notice. Liquor Inspector A was not aware of any such date and agreed that the Branch tries to issue the Notices of Enforcement Action within the 45-day time period to ensure memories of all parties are accurate. In response to a question in cross-examination from Mr. Leonard, Liquor Inspector A noted that the regional manager would likely step in if there was a significant amount of time between a contravention notice and the decision to proceed with enforcement action.

Liquor Inspector A further agreed in cross-examination that there was no evidence, other than the address on the NOEA itself, to show it was delivered to the Vancouver address for Northland Properties Corporation, no evidence to show any electronic transmission – by fax or email - of the document at the time of the Canada Post alleged delivery.

The Vancouver Office Employee testified about the situation in the Northland offices at 310-1755 West Broadway in March/April. Their offices were closed down and locked from mid-March to mid-April. She described the office building as open to the public, with five floors of maybe 30 to 40 offices in total. Northland Properties Corporation uses two floors. She explained that, during the closure period, they had put a sign on the front door of the office at unit 310 to ask people delivering mail to contact the Building Superintendent. She stated she may have come to the office once during this one-month period of closure. She stated that most of the time the mail was left outside the front door of unit 310.

She testified that the first email she received about this issue was the one sent to her and Rob Toor on April 24, 2020 from the Case Administrator for the Branch (exhibit 3), requesting times for a prehearing conference call. She was not copied on the previous emails, dated March 10, 2020, when the Branch sent the contravention notice to the email address for Northland Properties Corporation provided in the Branch's contact information for the Licensee (tab 17 of exhibit 1).

In cross-examination, the Vancouver Office Employee said she was unaware of any policy of Northland Properties Corporation to ensure mail was properly received and safeguarded during the month's closure of their offices. She did not know of anyone, other than the Building Superintendent, who was tasked with receiving the mail. She did not know how often the mail was checked. She was aware that the Building Superintendent had been told to collect mail and put it in his offices. There was no specified policy to forward mail to anyone and stated it was quite chaotic when they returned from the month's closure, sorting through mail that had arrived during that time.

The Building Superintendent testified about his assigned role in dealing with the mail that arrived at 310-1755 Broadway W, Vancouver. He stated that they had put a note on the door at unit 310 for anyone to call his number to ask him to pick up any important mail. He said sometimes people would leave packages on the top of the mailbox or in the hallway or in the lobby downstairs. He stated that there were often people in the building going through mail that was left in publicly accessible places, not always their own mail. He could not remember if anything came in from the Branch but admitted that was some time ago so his memory may not be the best.

On April 24, 2020, both the corporate Licensee and the Third-Party Operator received an email from the Case Administrator for the Branch. According to Mr. Leonard, this was the first communication he received from the Branch that indicated the Branch was proceeding with enforcement action for the alleged contravention on March 4, 2020.

In cross-examination, Mr. Leonard was asked about the mailing address for the establishment (the LRS), as noted in the Branch's contact information (exhibit 1, tab 17) as 310 – 1755 Broadway W, Vancouver. When they built the LRS ten years ago, he said they did not have an address, so they used the corporate Licensee's address at the time. When asked why he had made no efforts to change the address since that time, he said the Liquor Inspector never told him this is something he should do. He thought this was part of the educational aspect of a liquor inspector's job.

Date in NOEA

Liquor Inspector A testified that there was an error in the date in one section of the NOEA. On page 2 of the NOEA, in the boxed table graph with headings of No., Title of Contravention, Section of the Act/Regulation, Date and Time of Contravention(s), Proposed Enforcement Action, under Date and time of Contravention(s), is 2020-MAR-05 9:30 PM. The alleged contravention occurred on March 4, 2020.

At the bottom of page 2 of the NOEA (same page as error) is a heading in bold: "March 4, 2020 MAP inspection". Page 3 of the NOEA sets out the narrative of the MAP inspection at the LRS and begins with paragraph 5 – "On March 4, 2020. . .".

On page 3, under Elements of the Alleged Contravention(s), is a paragraph referring to "the MAP inspections on March 4, 2020."

The contravention notice (exhibit 1, tab 2) shows the date and time of the alleged contravention as March 4, 2020 at 9:30 p.m. The contravention notice was issued on March 5, 2020 and signed by Liquor Inspector A who delivered it to the LRS.

The written statement of Liquor Inspector B, who was unavailable for the hearing, recounts the events of the MAP inspection and gives a wrong date of March 5, 2020 in paragraph 4.

Mr. Leonard testified that he received notification of the March 4 alleged contravention on March 5 when Liquor Inspector A delivered the contravention notice. The store clerk called him as she was working and had received the contravention notice. He stated she was quite stressed, and he told her he would review the CCTV tapes with her, and she could explain to him what happened. He did this on March 6. He found the camera angles from the CCTV footage for 9:30 pm on the evening of March 4, 2020,

that showed the minor agent and Liquor Inspector B in the LRS. The store clerk explained why this happened to her and why she had a brief lapse in that particular moment. Mr. Leonard stated he was calling her as a witness and would let her explain why she had a lapse in judgement on the evening of March 4, 2020.

Absence of Liquor Inspector at the Hearing

Liquor Inspector B was unable to attend the hearing due to a medical issue. Liquor Inspector B entered the LRS on the evening of March 4, 2020, just before the minor agent. He took some photos which were included in the Branch book of documents showing the store clerk at the till and the bottle of red wine purchased by the minor agent (exhibit 1, tab 8). He wrote up his notes on the Branch POSSE system (exhibit 1, tab 10) and he signed a statement on October 13, 2020, recounting the events of March 4, 2020 (exhibit 1, tab 16), incorrectly noted as March 5, 2020. Liquor Inspector B was the author of the NOEA.

MAP inspections in government and private liquor stores

Mr. Leonard entered 15 pages showing the statistics for MAP inspections at government liquor stores throughout the Province from January 1, 2015 to August 13, 2020 (exhibit 2, tab 6). Exhibit 2, tab 7, included four pages: page 1 showed the date of most recent inspections (of any type) at nine Penticton licensed retail stores. Page 2 showed the MAP inspections at 8 licensed retail stores in Penticton from January 1, 2015 to May 13, 2020, with one alleged contravention identified on March 4, 2020 (the subject of this hearing). Pages 3 and 4 has a title of "Number of Contraventions Identified by Branch", from January 1, 2015 to May 13, 2020, with a list of contraventions under Okanagan-Kootenay and a further list under "All Regions Combined" with numbers on the right side showing numbers of contraventions identified, numbers not pursued and numbers pursued. The list for all regions combined shows that there were 147 contraventions of a sale to a minor identified. Of those 147 contraventions, 141 were pursued.

Exhibit 2, tab 8, has a page of "LRS Inspections since 2015" – with a list of nine licensed retail stores in Penticton, the date of the last inspection and the number of inspections over a five-year period. This list shows the Government Street Liquor Store (the subject of this hearing) having been inspected twice over the five-year period, with the second inspection on March 4, 2020. The second page is headed "GLS Inspections since 2015" listing eight government liquor stores in Penticton and within one-hour drive of Penticton and shows only one of the eight having been inspected, which occurred in 2016.

SUBMISSIONS ON PRELIMINARY ISSUES

The Delivery of the NOEA

Rob Toor for the corporate Licensee made a submission in some detail on this issue. He referred to the statement at the bottom of the contravention notice that indicated a licensee will generally be notified within 45 days.

He submitted that proper service of documents is an important and crucial aspect of any regulatory process. Mr. Toor cited a B.C. Supreme Court decision, *Orazio v. Ciulla* (1996) 57 WWR 641 (BCSC), for the principle that documents must be served in accordance with the rules. He did not provide a copy of the decision. I found a decision by this name from 1966 – citation *Orazio v. Ciulla* 1966 CanLii 430 (BCSC) and nothing in 1996 and concluded this was the case he was referring to. He quoted the following:

> The object of all service is of course only to give notice to the party on whom it is made, so that he may be made aware of and may be able to resist that which is sought against him; and when that has been substantially done, so that the Court may feel perfectly confident that service has reached him, everything has been done that is required.

Mr. Toor pointed to the Canada Post tracking document which does not show the address or name of the corporate Licensee. He also referred to the somewhat chaotic situation that was occurring during that period when the NOEA was allegedly delivered to the office of the corporate Licensee. The Province was in the midst of trying to deal with a pandemic. Many offices were closed, including the office of the

corporate Licensee. There was no evidence to show that the NOEA was actually delivered to the office of the corporate Licensee on April 2. There were a number of other delivery methods available to the Branch, including email. The Branch, recognizing that offices were closed and knowing many people were working at home, should have chosen this method of delivery in addition to any registered mail delivery.

Mr. Toor submitted that the notification that the corporate Licensee received on April 24 via the Branch email, that the Branch was taking enforcement action, prejudiced the Licensee's ability to mount a proper defence. The Licensee forwarded this email to Mr. Leonard as the Third-Party Operator who received this notice 51 days after receipt of the contravention notice.

Mr. Leonard explained about his CCTV footage and submitted that, if he had known at an earlier date that the Branch was going to take enforcement action, he would have saved the CCTV footage to a thumb drive. He also submitted that, if he had been notified at an earlier date, he may have signed a waiver that may have allowed him to serve a suspension while the LRS was closed for a period in early April.

He did not understand why the Branch could not have delivered or sent the NOEA directly to him at the LRS address or to his email.

The Branch Advocate submitted that the Licensee and the Third-Party Operator admit they received the NOEA via the April 24 email from the Branch. Section 199(e) of the *Regulation* deems any email to be received on the third day after it is sent. Therefore, the Licensee was deemed to have received the NOEA by April 27 at the latest. This is not a situation where the Licensee never received notice that enforcement action was being taken.

The Branch's options for sending documents like the NOEA include sending by regular mail. The registered mail option is not a requirement under the *Regulation* and therefore not essential to prove delivery. Further, the Branch Advocate pointed out that Mr. Leonard admitted that he had made no efforts to change the Third-Party Operator contact information on the Branch's contact sheet and still has not done so.

Date in NOEA

Mr. Toor submitted that an error in date is critical and that, pursuant to section 51(7) of the *Act*, if the general manager proposes to take enforcement action, the general manager must specify the reasons for that action in a written notice. Mr. Toor submits that the error in the NOEA here does not meet this test of specificity. Mr. Leonard made no submissions on the error in the NOEA.

The Branch Advocate submitted that the contravention notice gives the correct date of March 4, 2020. The error in the NOEA is only in one place while elsewhere in the NOEA, the correct date is noted. As a result of receiving the contravention notice, Mr. Leonard testified that he reviewed the CCTV footage for March 4 and reviewed the evening with the store clerk. There was never any confusion on the part of Mr. Leonard as to when the contravention occurred.

Absence of Liquor Inspector at the Hearing

Mr. Leonard argued that he had a right to confront his accuser, i.e. Liquor Inspector B who attended at the LRS and took the photos. Without being able to cross-examine Liquor Inspector B on his behaviour in the LRS and what he was able to observe in the LRS, Mr. Leonard argued that he was unable to provide full answer and defence and therefore a dismissal was warranted.

The Branch Advocate submitted that Mr. Leonard was told prior to the hearing date that Liquor Inspector B was unavailable, and he did not ask for a further adjournment on this basis. Mr. Leonard had already asked for the hearing to be adjourned twice before as he was awaiting documents from his Freedom of Information request. The Branch Advocate further submitted that there is sufficient evidence, from the photos of the bottle of wine, from the minors agent's observations and Liquor Inspector A's testimony about the MAP as well as from Mr. Leonard himself, to support a finding of a contravention, without the statement or testimony of Liquor Inspector B.

MAP inspections in government and private liquor stores

Mr. Leonard submitted that the Branch has an inherent bias against private liquor stores when conducting their MAP inspections. The statistics on government liquor store MAP inspections v. private licensee retail store MAP inspections demonstrate this bias. He points to the list of government liquor store inspections within one-hour drive of Penticton to emphasize that the Branch is failing to conduct MAP inspections of government liquor stores to the same extent as the Branch conducts inspections of licensee retail stores.

Mr. Leonard submits that, as a result of this imbalance in MAP inspections, the system is skewed against private licensee retail stores getting more infractions.

The Branch Advocate merely stated that this is irrelevant to whether or not a contravention occurred at the LRS here.

CONCLUSIONS AND FIINDING ON PRELIMINARY ISSUES

As noted, if I find that a dismissal is warranted on any of the preliminary issues, I have no need to proceed to the evidence of the alleged contravention or to make findings on the alleged contravention.

Preliminary Issue 1:
Whether the delivery of the NOEA and the consequent delay in the receipt of the NOEA by the Licensee prejudiced the Licensee's ability to mount a defence to the alleged contravention

I find the following facts with respect to the NOEA and the Licensee's notice of the contravention:

- The LRS received a hand delivered copy of the contravention notice on March 5, 2020;
- Mr. Leonard retrieved the March 4, 2020 CCTV footage and discussed the incident and the video footage of the incident with the store clerk on March 6, 2020;

- Northlands Corporation received the contravention notice dated March 5, 2020 by registered mail on March 10, 2020, and requested Mr. Leonard to "take care of this as soon as possible;"
- The NOEA is dated March 30, 2020;
- Canada Post delivered a package in Vancouver on April 2, 2020 and issued a tracking receipt to the Branch;
- The receipt did not show the name of Northlands Corporation nor did it show the address for Northlands Corporation;
- The offices of Northlands Corporation in Vancouver were closed from about mid-March to mid-April;
- Northlands Corporation had put a sign on the door requesting the Building Superintendent be notified of any important mail;
- During the period of closure, mail was often left at the door outside the office or in other areas of the building that were accessible to the public;
- There is no evidence to show that anyone in Northlands Corporation received the NOEA prior to April 24, 2020;
- Mr. Leonard did not receive the NOEA prior to April 24, 2020;
- The LRS was closed for 12 days in early April;
- Northlands Corporation received an email dated April 24, 2020 from the Branch case administrator requesting a prehearing conference and notifying them that the Branch was proceeding with enforcement action.

Both Mr. Toor and Mr. Leonard emphasized the statement at the bottom of the contravention notice, stating that a licensee will generally be notified within 45 days if enforcement action is proposed.

Mr. Leonard submitted that he did not call anyone at the Branch to follow up on any action that might be taken as he basically [my words] 'wanted to let sleeping dogs lie.' He thought the Branch might have forgotten about him. He stated if he had known the Branch was taking enforcement action, he might have accepted a waiver and served a suspension during the LRS closure. Mr. Leonard argued he was prejudiced by the delay in receipt of NOEA because he did not save his CCTV footage. He deleted the video of the alleged contravention 44 days after the event. A prudent licensee would have made the effort to save the CCTV footage if it was going to help his defence.

I find that both the corporate Licensee and Mr. Leonard in the LRS were notified 51 days after receipt of the contravention notice. I find that the facts about the possible delivery of a piece of registered mail and likely loss of this registered mail, whether or not actually delivered to the Northlands corporate office in Vancouver, are not relevant to my decision on this issue.

There is no mandatory statutory requirement that a licensee, after receiving a contravention notice, **must** be notified within 45 days if the Branch decides to take enforcement action. The wording at the bottom of the contravention notice is clear – a licensee will "**generally** be notified within 45 days." There may be administrative issues within the Branch that delay issuance of a Notice of Enforcement Action. In this case, the NOEA was dated well within the 45 days but obviously not received until just outside this time.

I accept that neither the corporate Licensee nor Mr. Leonard received the NOEA until after the 45-day period. I further acknowledge the difficulties that the COVID 19 pandemic was causing during this period, resulting in closures at the corporate Licensee's offices and for the LRS. It would have been prudent for the Branch to send an email, with the NOEA attached, to both the corporate Licensee and Mr. Leonard, given that a number of people were working at home and not receiving regular or registered mail. However, the *Act* and the *Regulation* does not require this. Further, I have found that the eventual email from the Branch on April 24, provided the notice that the Branch was taking enforcement action.

I conclude that the delivery of the NOEA and the consequent delay in the receipt of the NOEA by the Licensee did not prejudice the Licensee's ability to mount a defence to the alleged contravention.

Preliminary Issue 2:
Whether the error in the date of the alleged contravention in one section of the NOEA was sufficient to warrant a dismissal;

I find that there was an error in one section of the NOEA showing a date of March 5 for the alleged contravention.

Mr. Toor emphasized the importance of specificity in a NOEA and referred to section 51(7) of the *Act* to support his argument, which states:

> (7) If the general manager proposes to take action under subsection (1), the general manager must provide written notice to the licensee
>
> (a) **specifying** the reason under subsection (1) for which the general manager proposes to take action, (bold added)

I find that there were a number of other sections in the NOEA that indicated the correct date of the alleged contravention as March 4, 2020. I do not agree with Mr. Toor that "specifying the reason" under section 51(7)(a) includes any error, date or otherwise, as being a fatal flaw to justify dismissal. Errors happen and it is a question of fact as to whether a particular mistake in a Notice of Enforcement Action is sufficiently grievous to warrant a dismissal of the contravention. In this case, it is not. Mr. Leonard was well aware of the correct date when he received the contravention notice. He reviewed the events of the alleged contravention for the correct date. The other dates in the NOEA showed the correct date and thus, if there had been any confusion in the minds of the corporate Licensee or Mr. Leonard, the question to ask prior to this hearing would be whether the "March 5" date in one section was a mistake, given the other references to March 4 and given the contravention notice which showed the correct date.

I find that the error in the date of the alleged contravention in one section of the NOEA is not sufficient to warrant a dismissal.

Preliminary Issue 3:
Whether the absence of the Liquor Inspector who attended at the LRS with the minor agent was sufficiently prejudicial to the Licensee and effectively prevented the Licensee from providing full answer and defence, such that a dismissal is warranted.

Liquor Inspector B who attended at the LRS at the time the minor agent was in the LRS was not available for the hearing for medical reasons. He wrote out a statement on October 13, 2020 describing the events of March 4, 2020 (error in his statement showing March 5, 2020). The Licensee would have received a copy of this statement as part of the Branch disclosure. The Licensee did not request an adjournment at that time or at the hearing, based on the absence of the Liquor Inspector. Mr. Leonard wanted to

question Liquor Inspector B about his behaviour in the LRS and whether he could actually see what was occurring at the till as he reported.

In my Reasons below on the alleged contravention, I discuss the evidence as a whole to determine whether or not a contravention was committed on March 4, 2020. Without considering the statement of Liquor Inspector B, I find there is sufficient evidence to determine whether or not a contravention was committed. As for "confronting his accuser" as stated by Mr. Leonard, it is the Branch as a whole that is taking enforcement action against a Licensee. This is not a criminal proceeding. This is an administrative regulatory hearing to determine whether or not a licensee committed a contravention on a balance of probabilities. Hearsay is permitted even though it may be given less weight than *viva voce* evidence. I find the Licensee was not prevented from providing full answer and defence. Therefore, a dismissal is not warranted on this basis. I note that Mr. Leonard had, in his list of witnesses prior to the hearing and at the start of the hearing, indicated that the store clerk who allegedly sold to the minor agent would appear to testify. For whatever reason, Mr. Leonard chose not to call the one person who might have provided more detail about what happened on the evening of March 4, 2020. This is his right. I merely note this, not to draw any adverse inference from her failure to testify, but to refute Mr. Leonard's submission that the absence of Liquor Inspector B prevented him from providing full answer and defence.

Preliminary Issue 4:
Whether the Branch's Minors as Agents Program contains an inherent bias against private liquor stores and is not an accurate representation of real life – and thus skewed to the Branch getting infractions

As a hearing delegate of the general manager, I am tasked with the job of conducting a hearing and making a determination as to whether or not a contravention occurred and if so, whether there is a defence of due diligence. In doing so, other issues may arise related to procedural fairness and process, as above, and I make determinations on those as necessary.

On the question about the accuracy or not of the MAP use of minor agents v. real life scenarios, I discuss under the evidence of the alleged contravention below the practices of the Branch with respect to hiring and training minor agents. On the question of whether or not there is an inherent bias against private liquor stores and whether or not there are more inspections and more contraventions found against private liquor stores than against government liquor stores, this is not something I can determine in this hearing. This involves policy decisions based on statistics, allocation of resources, and other matters that are not part of this hearing. I accept the evidence presented by Mr. Leonard about the differences in the Penticton area showing fewer inspections of government liquor stores. However, this is not a matter that I can deal with in this hearing as it is irrelevant to the task before me – did this LRS commit a contravention or not?

If I find a contravention, it is not relevant to my determinations as to whether or not another LRS or another government liquor store is ever inspected. The Licensee here has a responsibility to follow the *Act*, the *Regulation*, and the terms and conditions of its licence, regardless of how many other licensed establishments may be following the rules or not, or being inspected or not. If Mr. Leonard feels there is significant inequity in the Minors as Agents Program in its inspections of private v. government liquor stores, he may choose to raise it with his industry association and/or with the Branch.

I turn now to the evidence and submissions with respect to the alleged contravention.

EVIDENCE OF ALLEGED CONTRAVENTION – BRANCH

Liquor Inspector A was the only Branch's witness as Liquor Inspector B, who entered the LRS on March 4, 2020 and who authored the NOEA, was away on medical leave. As noted above, Liquor Inspector B provided a statement for the hearing. (exhibit 1, tab 16)

The inspection team, made up of Liquor Inspector A, Liquor Inspector B and the minor agent, conducted Minors as Agents Program ("MAP") compliance inspections at liquor licensed establishments in Peachland, Summerland, Penticton and Oliver on March 4, 2020. Liquor Inspector A stated that the LRS was selected for inspection on a random basis.

Prior to going on an inspection with a minor agent, the liquor inspectors will review the training and instructions to make sure the minor agent is reminded of what to do. They remind the minor agent to be honest and, if asked for their age, to tell the truth. The minor agents will usually leave their identification in the vehicle. They followed this protocol on the evening of March 4, 2020.

Liquor Inspector A described the events of March 4, 2020 and reviewed the narrative in the NOEA. At the beginning of the shift, he and Liquor Inspector B attended at the Branch office. They photographed the minor agent and verified and photocopied her identification. (exhibit 1, tabs 6 and 7). The minor agent was 16 years old.

At 9:23 pm, the inspection team arrived at the LRS. At approximately, 9:25 pm, Liquor Inspector B entered the LRS and proceeded to an area across from the sales register which, according to his statement, gave him a complete view of the cash registers in the LRS. Liquor Inspector B did not identify himself as an inspector.

At approximately 9:26 pm., the minor agent entered the LRS and proceeded to the east side of the store to the wine retail section. The minor agent selected a bottle of red wine containing alcohol and proceeded to the sales register. A female store clerk greeted the minor agent as the minor agent placed the bottle of wine on the counter and handed the store clerk a $20.00 bill. The store clerk scanned the bottle of wine and gave the minor agent $1.50 in change.

At approximately 9:28 pm, the minor agent exited the LRS. Liquor Inspector B exited the LRS shortly after at approximately 9:30 pm and met with Liquor Inspector A to brief him. Liquor Inspector B and the minor agent commenced writing their notes. (exhibit 1, tabs 9 and 10)

In the minor agent's statement, she describes going to the wine section, choosing a bottle of Diabolica red wine, paying for the wine and then leaving the LRS. In the observation form, she notes the details of her purchase and "ID not requested."

Liquor Inspector A testified that they secured the bottle of wine, placed a seal on it and put it in their lockup. The photo at exhibit 1, tab 8c shows the Diabolica red wine with the Branch seal on it. The minor agent was photographed again at the end of the evening shift, to show there had been no change in her appearance during the inspections. (exhibit 1, tab 7)

Liquor Inspector A testified that he wrote out the contravention notice and delivered it to the LRS on March 5, 2020. He sent a copy to the Licensee's address in Vancouver.

In cross-examination, Liquor Inspector A was asked about how the Branch selects minor agents. He explained that the Branch provides the liquor inspectors with a list of minor agents and the liquor inspectors will select one for a particular shift. He stated there are no specific physical criteria for a minor agent. He does not choose based on body type or physical appearance. In his experience with minor agents, they come in all shapes and sizes. Once they turn 18 ½ years old, they are no longer used as minor agents. They instruct minor agents to dress as they normally would - going to school or going out with friends. When asked if minor agents, as they gain experience in the job, become more confident, he agreed that they would probably become more comfortable in doing the job. When asked about coaching minor agents about how to behave in an establishment, Liquor Inspector A just reiterated what he said previously about being honest and that minor agents do not receive coaching on types of liquor they should choose when in an establishment. They instruct minor agents to act their age.

In a later question from Mr. Toor, Liquor Inspector A referred to the training and instructions given to minor agents as described in the Branch's Liquor Line newsletter (exhibit 1, tab 12):

> First, minor agents are trained to do nothing to influence a sale. For example, when in a liquor store, the minor will walk up to the counter with the alcohol and wait for the clerk to ask them for ID. If the clerk asks them if they have ID, they must respond truthfully that they do not. Second, minor agents do not use false identification.

> Minor agents do not alter their appearance or change their behaviour to hide their age. In real life however, minors may attempt to hide their age when overtly breaking the law. Some may wear sunglasses or a hat or scarf. Others may avoid eye contact, speak quickly, use slang and interact with their friends while also interacting with sales clerks. As the program evolves, MAP inspections will mirror the conduct and manner of youth culture, e.g. smart phones, headwear, tattoos, youthful attire, sunglasses, etc. Overt, planned or designed attempts to obscure or distract a server or clerk, such as dressing up, costuming, or decorating minor agents, will not be permitted.

Mr. Leonard questioned Liquor Inspector A about the photo taken by Liquor Inspector B of his line of sight to the cashier (exhibit 1, tab 8a). When asked if Liquor Inspector B could have heard the conversation at the till, Liquor Inspector A referred to Liquor Inspector B's statement (exhibit 1, tab 16) where he viewed the minor agent at the till but made no comment about overhearing the conversation. Liquor Inspector A noted that the photo showed a more restricted view as it is through the camera lens while Liquor Inspector B would have been able to see a wider view in real life.

EVIDENCE OF ALLEGED CONTRAVENTION– LICENSEE

Mr. Leonard testified for the Licensee, stating what he knew about the alleged contravention. As noted above, he first heard of the alleged contravention on March 5 when the store clerk phoned him to tell him she had received a contravention notice. He assured her they would review the CCTV tape together and she could explain what happened. They did that on March 6, 2020.

The LRS manager watched the CCTV footage on March 6, 2020 but did not participate in the conversation on March 6, 2020 between the store clerk and Mr. Leonard. He could not remember much about his observations of the CCTV footage. He said that Mr. Leonard spoke to all the staff about the March 4 incident.

After viewing the CCTV footage, Mr. Leonard thought the minor agent looked older than her age and that she was dressed in more adult-like clothes. He also thought that she looked confident in what she was doing. In his experience of over 38 years in the hospitality industry, minors trying to buy alcohol are generally nervous. He observed Liquor Inspector B moving around in the LRS and thought he was acting suspiciously. Mr. Leonard took some photos to support his opinion that it would have been difficult for Liquor Inspector B to have a clear line of sight to the till. (exhibit 2, tabs 1 to 3). Mr. Leonard stated he would have liked to question Liquor Inspector B about this.

In cross-examination, Mr. Leonard agreed that, in his review on March 6, 2020 of the CCTV footage of the alleged contravention, he observed the Liquor Inspector enter the LRS, saw him go to the red wine section, then into the craft beer section and then pull out his phone. He saw the minor agent go to the sales counter but could not hear the conversation. He noted that she made a purchase and left the LRS. He also confirmed that a bottle of Diabolica wine was sold during that time frame when the alleged contravention occurred and that there were no voids on the cash sheet for this. He confirmed this meant the sale was completed. When asked if he could recall his conversation with the store clerk about the alleged contravention, he could not recall exact words. He assumed she would have referred to the sale.

Because of COVID 19, the LRS closed its doors in early April to prepare the safety measures in the LRS as required by the Provincial Health Orders. The LRS remained closed until April 14, 2020. He stated if he had been made aware in a timely manner that the Branch was taking enforcement action, he would have considered waiving a hearing and taking a suspension during their period of closure.

Mr. Leonard indicated, both before the hearing and in his testimony, that the Licensee would be calling the store clerk to testify. She still worked in the LRS and he stated she would explain her emotions and what happened that night. Mr. Leonard decided later in the hearing not to call the store clerk as a witness.

He stated that he did not keep the CCTV footage after 44 days. He deleted it as he thought the Branch was not proceeding with enforcement action as he had not received the NOEA at that point. When asked about saving it on a thumb drive, he said he could not get the full file on a thumb drive. He did not know it might be important. He admitted he did not contact anyone at the Branch or Liquor Inspector A whose contact information was at the bottom of the contravention notice. He did not want to raise the issue and hoped they would forget about taking any enforcement action. Once he received more information from the Branch about the hearing and due diligence, he realized he should have saved it for the hearing.

EVIDENCE OF DUE DILIGENCE – LICENSEE

Both Mr. Leonard and the LRS manager gave evidence of the training, policies, practices and procedures of the LRS. Mr. Leonard testified that he has spent 38 years in this type of business and has never had a liquor infraction. The LRS manager has worked in the LRS for about ten years.

The LRS has only six employees. Mr. Leonard stated there are generally two on a shift except for some shifts when the LRS manager is on his own.

Training

Mr. Leonard described the training for new hires in the LRS. He is responsible for the hiring and the initial orientation. Mr. Leonard is responsible if there is a need to terminate an employee. Prior to starting in the store, new hires are asked to sit in the upstairs office and to read the LRS Staff Handbook, with either him or the LRS manager, (exhibit 2, tab 9).

He said he encourages any questions and will ask questions to make sure they understand each section. After they have read the LRS Staff Handbook, he asks the new hire to sign at page 14 under the following statement:

> By signing this document, you agree that you have read all 14 pages of this Handbook and understand it completely and have had any questions regarding it answered by the manager or owner.

He stated they keep these signed sheets on file. He did not provide any examples of a signed sheet at the hearing.

New hires begin with four-hour shifts for one week and will shadow senior employees for at least two weeks if they appear to be really competent but more likely for a month. The new hire will shadow with two other employees working in the LRS. They will then be allowed to operate the till, always working with another employee.

Either he or the LRS manager will give new hires a tour of the LRS, take them to the till and explain the POS system. They will role play with the new hires to ensure they understand the importance of asking for ID. They will explain how to ask for ID and what to look for on fake IDs. He said they had a book they purchased a few years ago that explained about fake IDs and gave examples. He says that now a lot of young people can order fake IDs from China – which are often very good.

All new hires are on probation for at least three months. Probation periods may last longer if they feel a new hire needs it.

He will ask a more experienced employee or the LRS manager to shadow the new hires and watch how they interact before they even touch the till. After they feel a new hire is confident on the till, which can be anywhere from three days to three months, they may be allowed to operate on their own, but always with a senior employee watching them until their probation is complete.

They do not have any specific policies written down other than the LRS Staff Handbook. They have no written materials specifically on what topics are covered in the training or a checklist of topics, other than what is in the LRS Staff Handbook.

The LRS manager repeated much of what Mr. Leonard said about the training. He emphasized that he encourages new hires to ask questions if in doubt about anything. He stated they do some role playing on the till, including how to ask for ID. They explain what to look for in fake ID. He confirmed that new hires are usually on probation for three months, and during the initial two to three weeks, they are shadowing either the LRS manager or a senior employee and later, they are being

observed by one of them as they work. The decision to hire someone is usually made jointly between him and Mr. Leonard.

In cross-examination, Mr. Leonard stated they do not give any quizzes on the training, oral or otherwise. Neither do they train about the dangers of alcohol for young people. He said his staff know about this from their Serving It Right training.

LRS Staff Handbook

Mr. Leonard described the LRS Staff Handbook as a work in progress. The exhibit entered at the hearing is a version of the LRS Staff Handbook that was updated after the alleged contravention in March. According to Mr. Leonard, the change in the age of requesting ID was the only change. The LRS Staff Handbook has a section on "Legal Age":

> As a liquor retailer, we have a responsibility to ensure that the people we serve are of a legal age to purchase alcohol. During your training we will show you the identification you are required to see if you are unsure of a customer's age. It is your responsibility to make sure you do not sell alcohol to underage persons. You must always ask anyone that appears to be **under the age of 35 for two pieces of I.D.** One must be government issued and must include: Name, Photo, Birth Date and Signature (i.e. – Drivers Licence, Passport, B.C.I.D.). From time to time we will hire a company to do a compliance check to ensure compliance with the law.
>
> The penalty for selling minors alcohol is in two parts. For a first offence the store will be fined a minimum of $7,000 - $10,000 and/or a closing of the store for seven days.
> (bold in the original)

Mr. Leonard stated that the previous wording about asking for I.D. required staff to ask for two pieces of I.D. of anyone who appears to be under the age of 25. This was updated to 35 after the alleged contravention, in August of 2020. When there is a change made to the LRS Staff Handbook, they ask staff to reread the Handbook, particularly the changes. The LRS manager stated they will explain what the changes were and why they were made and will ask for questions.

They keep the LRS Staff Handbook in the office on a table where staff fill out their daily cash sheets.

Cameras

Mr. Leonard stated they have 14 cameras that he and his wife will often watch to ensure staff are making requests for identification. If he feels a store clerk should have asked a young-looking person and did not, he will call them and ask why they did not and suggest they need to.

The LRS manager said he leaves the cameras and the technology to Mr. Leonard as he is not very good at this.

Reminders and Ongoing Communication with Staff

At the start of every shift, employees must sign a Daily Cash Sheet (exhibit 2, tabs 4, 5) prior to starting a shift, which states:

> **I acknowledge that I must ask anyone who looks under 25 years old for 2 pieces of valid ID!!**
> (bold in original)

There is a place for a signature right after this and underneath this are two boxes which list the types of acceptable ID. Below this is the warning:

> **The Penalty for Selling Minors Liquor is:**
> **First Offence - $10,000.00 fine and 5 day suspension**
> **Second Offence - $15,000.00 fine and up to 15 days suspension.**
> (bold in original)

The LRS manager stated the staff sign this sheet every day at the start of their shift. When asked why the information above for the penalties is incorrect, the LRS manager said they want to scare staff into making sure they always ask for ID.

Sometimes one or more employees may sign the cash sheet, as on the one for the day of the alleged contravention. The cash sheet shows one signature which is crossed out and then another's initials. The LRS manager explained that sometimes only one till is in use so they will just use the one cash sheet for two shifts. And sometimes they may have three signatures in total in the signature line after the "I acknowledge. . . " statement above.

When asked in cross-examination about the change in policy to "under 35" in the LRS Staff Handbook, Mr. Leonard said they have not yet changed this reminder on the cash sheet to match the new policy.

The cash sheet has a heading "Voids & Base Cost" – with a place to insert the time, then the reason for – either cost, delete, refund or void – and beside that a space to give reason. The Cash sheet for March 4, shows the name of the store clerk who allegedly sold the bottle of wine to the minor agent. During her shift, she deleted three sales, at 6:13 pm, 10:37 pm and 10:54 pm., because customers did not have two pieces of ID. The minor agent was allegedly served at 9:30 pm on March 4, 2020. Mr. Leonard testified that the three entries on the cash sheet for March 4, 2020 show that the store clerk checked for ID at three different times with three different customers.

Mr. Leonard testified that his wife will review the cash sheets on a daily basis and ask staff to explain why there were deletions. He will review them at least once a month to see how often a particular staff person is requesting ID and if not enough, will speak to them about it.

The LRS manager stated that he sees his staff almost every day. In addition to the cash sheet that they must sign when they start their shift, he will generally raise the issue of ID two or three times every shift. He said the question of avoiding sales to minors is very high on their list of reminders to staff – he said on a scale of one to ten – a ten. He said they will discuss a person's looks often after a person is refused service.

He said the LRS has a white board with daily reminders written on it that is kept in the staff room and seen by all staff when signing in for their shift. There is always a reminder about checking for ID. Mr. Leonard said they often write different messages on the white board to catch staff's attention, such as a rhyming verse: "Roses are red, Violets are blue, if you don't ask for ID, we will get you." They change the messages on the white board about twice a month.

The LRS manager explained that the LRS has two tills. If he is working beside someone and notices a customer that he thinks should be asked for ID and the employee at the till hasn't done it, he will step in and do it. He will then have a discussion with the employee afterwards to explain why he/she should have asked for ID.

The LRS manager explained he assesses people's age by looking at how they are dressed, whether they are nervous, what their mannerisms show. He will discuss these things with employees when raising the issue of how to ask for ID.

The LRS manager said that employees will usually check for ID about three to five times a shift, often a little more on weekends.

The LRS manager stated that he talks to Mr. Leonard's wife almost every day, and that Mr. Leonard is usually in the LRS at least once a day. He will raise any issues with either Mr. Leonard or his wife. His wife will review the cash sheets and ask him questions – e.g. why did a staff member delete a bill? Was there theft? Card declined? Inadequate or no ID? She wants to know the reason for any deletions and will ask the LRS manager to talk to the employee if she feels it necessary.

When asked about staff meetings, both Mr. Leonard and the LRS manager stated they do not have regular staff meetings as they are such a small store. They talk to staff one on one and use social media to communicate with all staff as well.

Serving It Right

All employees have their Serving It Right certification. Mr. Leonard did not produce any documentary evidence of this. When asked about ongoing training of staff, the LRS manager referred to the fact that they must retake this certification every three years.

He emphasized that ongoing training occurs every day. As they are a small LRS with few staff, he is able to speak with employees every day about issues, including reminders about ID checking.

Signage

Both Mr. Leonard and the LRS manager testified about the number of signs they have in the LRS – reminders to staff and customers that ID will be requested. Some are Branch-issued signs and others are signs Mr. Leonard made himself. He said that at the top of the stairs is a sign on the door about the importance of asking for ID. At the bottom of the stairs is another sign. Both tills have a sign reminding the staff to ask for ID. At the swing door into the cooler, there is a sign on the post re. ID requests. On the till itself, there is a date stamp that shows the age of date of birth if one is 19. Also, on the till is the red, yellow, green light sticker to indicate year in which someone is sure to be 19, is not 19 and may be 19. A sign re. ID is at the handwashing station. A sign at the exit door reminds customers about ID checking and notifies customers that they are on camera.

Mr. Leonard pointed on the floor plan to all the different places in the LRS where there are signs regarding ID requests, (exhibit 1, tab 4). Mr. Leonard did not provide any photos of the signage at the hearing.

Logbook

Both Mr. Leonard and the LRS manager stated that they used to have a logbook but gave it up as the staff complained it took time to write events down and not everyone could read other staff's writing. The young staff work much more on social media than with written logbooks. They have a staff Facebook page. In addition, they use Instagram, snapchat, etc. Staff will talk to each other almost every day. He said they will raise any issues in their shift on this social media – either customers with no ID, appearing intoxicated, refusing service, attempted theft, etc. He said they have had a few incidents where customers were bootlegging in the parking lot. Staff will warn staff coming on the next shift about these people – either in person or through the social media. The LRS manager thought the person to person communication that they encourage amongst their staff is a better tool than social media or a logbook. Because they are all a small staff, it is easy to communicate this way.

The LRS Staff Handbook contains a section titled Log Book and lists what it should be used for including:

- To ensure communication between staff and management
- If you have an issue with a certain customer, report it in the logbook so other staff will know and be ready for the next encounter.

Secret shoppers

When the LRS manager and Mr. Leonard were asked about the reference in the LRS Staff Handbook to hiring "a compliance company to do a compliance check to ensure compliance with the law" they said that they had not done this but they wanted to make staff believe that they might do it, (Ex.2 tab 9, page 3). On occasion, Mr. Leonard has asked young-looking friends to let him know if they were not asked for ID when making a purchase.

Knowledge of MAP and Terms and Conditions for LRS (the "Branch Handbook")

The LRS manager had not been aware of the MAP prior to the incident on March 4, 2020. When asked about the Branch Handbook, he stated he was not aware of this. In redirect from Mr. Leonard, he said he was "for the most part" aware of the terms and conditions for the LRS but he had not read the Branch Handbook.

SUBMISSIONS – BRANCH

The Branch Advocate submitted that the evidence shows an employee in the LRS sold a bottle of red wine to a minor on March 4, 2020 in the LRS. Setting aside the evidence of the minor agent's statement and observation form and the statement of Liquor Inspector B, the Branch Advocate submits that I have sufficient evidence to find that the licensee has contravened section 77(1)(a) of the *Act* - the testimony of Mr. Leonard about what he saw on the CCTV footage, the documentary evidence for the cash sheet of that evening that does not void a sale at 9:30 pm, the photo of the seized red wine, and the testimony of Liquor inspector A about the procedures in place for that evening inspection at the LRS on March 4, 2020.

With respect to the evidence of due diligence, the Branch Advocate submits that the Licensee has failed to adequately train its employees.

He points to the absence of any training in the LRS Staff Handbook of the dangers of supplying liquor to minors. The LRS Staff Handbook does not describe the dangers of supplying liquor to minors – only threats of penalty. A significant portion of the training comes from on the job training. Training may not occur on a consistent basis as the LRS has no training handbook setting out what to train, etc. There was no evidence of post training quizzes or any type of formal review. The section in the LRS Staff Handbook "Customer Service" discusses how to greet customers, etc. but says nothing about the importance of assessing a customer's age when they enter the LRS. Mr. Leonard agreed they have never hired a secret shopper service. No logbook is used as management believe the young staff respond better to information provided through social media. No documentary evidence was provided to show types of messages. The cash sheets contain incorrect penalty information while correct amount is in the LRS Staff Handbook. The LRS Staff Handbook was changed after the alleged contravention to direct employees to ask anyone who looks under 35. The Licensee did not provide a copy of the LRS Staff Handbook as it was prior to the March 4 incident. The Branch Advocate noted the acknowledgement and requirement for signatures on the cash sheets and the "under 25" requirement.

The Branch Advocate submits that ongoing training and constant communication to staff about selling alcohol to minors is key. The Licensee had an opportunity to call the store clerk to describe how she understood the training she received. The Licensee relies on the Serving It Right training to educate employees about the dangers of serving liquor to minors.

Overall, the Branch Advocate submits the evidence of due diligence is weak. The Licensee has not provided sufficient documentation to demonstrate its policies are in place and followed.

The Licensee has not met the onus of establishing due diligence and therefore, I should find a contravention of section 77(1)(a) and impose the recommended penalty in the NOEA.

SUBMISSIONS – LICENSEE

Rob Toor made submissions on the preliminary issues as described above. He made no submissions on the alleged contravention or due diligence.

Mr. Leonard made a submission on the alleged contravention and on due diligence. He submits that the level of due diligence they exercise in the LRS is above and beyond what many liquor stores do. He has seen where they may need to rectify some things in the store and will do so.

He believes the Branch has changed its focus from an education role to an enforcement role. The Branch used to offer more help with training and education. He believes that, because the third-party operators are not properly recognized by the Branch, this causes a severe breakdown in education.

With respect to the alleged contravention and the minor agent, he stated he made a request to the Branch to compare the clothing of the minor agent as shown in the Branch photo to the clothing she might normally wear. The Branch refused this request. He submits that the minor agent dressed to deceive. He also stated that he was never informed that he might request the minor agent to attend as a witness so did not do so. Mr. Leonard asks if an employee thinks someone is over 30, is this a failure to comply with the law? He noted that the cash sheet for the evening of March 4, 2020 demonstrates that the store clerk was asking for ID of other customers that evening – in fact, she did it three times. He also stated that the store clerk told him that the Liquor Inspector B was distracting her as she felt he was behaving suspiciously.

With respect to their due diligence, he submits that facebook and other social media are more efficient tools than a logbook, which is why the LRS gave up using a logbook.

He stated they do their best to make sure their employees are well trained, including in making ID requests. He submitted that each business is different and needs to be dealt with based on those differences.

On the question of penalty, if I find that a monetary or licence suspension penalty is warranted, the Licensee prefers a monetary penalty.

REASONS AND DECISION

Contravention

The Licensee has not admitted to the contravention. However, Mr. Leonard gave evidence of his observations of the CCTV footage on March 4, 2020 and of his discussions with the store clerk who allegedly sold the bottle of Diabolica wine on March 4, 2020. He admitted to observing a customer [the minor agent] at 9:30 p.m. on March 4, 2020 come to the till with a bottle of red wine and he admitted to the fact that the customer paid and walked out with the bottle of wine.

Mr. Leonard's objections to a finding of a contravention are based on allegations of deception and distraction. He questioned whether the dress of the minor agent was intended to make her look older. He questioned whether she was more confident than the average minor in an LRS and he questioned whether the presence of Liquor Inspector B in the LRS distracted the store clerk at a critical moment. He never called the store clerk to testify about her feelings or concerns, despite indicating at the hearing that he intended to call her.

Liquor Inspector A testified about the process of hiring minor agents, the instruction the Branch gives them in terms of their clothing, their behaviour, etc. He agreed that a minor agent who has performed a number of such inspections may exude more confidence than a minor from the community making an effort to buy alcohol.

I find that the Branch, in selecting its minor agents and in training them on how to behave, emphasizes that they are to act as they might normally and to dress in clothing that they would normally wear. I find that, in real life situations, where store clerks are required to assess a customer's age, they must do so regardless of the customer's behaviour or dress or level of nervousness.

I find that the store clerk in the LRS sold a bottle of alcoholic red wine to a minor agent on the evening of March 4, 2020. I base this finding on the following:

- Liquor Inspector A's evidence about the procedure for hiring minor agents and their training;
- Liquor Inspector A's evidence about the pre-inspection process with the minor agent;
- The ID of the minor agent showing her age as 16 years old (exhibit 1, tab 6);
- Liquor Inspector A's evidence about the evening of March 4, 2020 and his knowledge of the inspection of the LRS based on normal MAP procedures and his observations of the minor agent entering and leaving the LRS;
- Mr. Leonard's testimony about his observations of the CCTV footage at 9:30 p.m. on March 4, 2020;
- Mr. Leonard's conversation with the store clerk on March 6, 2020;
- The photo of the seized bottle of Diabolica red wine (exhibit 1, tab 8c);
- The daily cash sheet for March 4, 2020 showing three entries for "didn't have two pieces of ID" none of which occurred at 9:30 p.m. when the minor agent was purchasing the wine;
- The minor agent's statement and observation form indicating "ID not requested," (exhibit 1, tab 9).

I have also reviewed the statement of Liquor Inspector B who was unable to testify at the hearing. I agree the statement is hearsay as is the statement of the minor agent. Hearsay may be admissible in these enforcement hearings, although it may be given less weight. I have the discretion to admit hearsay and to determine the weight I may give it. I have made my finding of a contravention based on evidence other than Liquor Inspector B's statement. I note that his description of the evening's events is consistent with the other evidence I have listed (apart from the error in his statement with respect to the date).

I agree that Mr. Leonard did not have the opportunity to cross-examine him about his behaviour and actions in the LRS. I did not hear directly from the store clerk on how his presence may have affected her. I have Mr. Leonard's suggestion that it did. I accept Mr. Leonard's explanation of the store clerk's lapse in judgement. However, for

the purposes of finding a contravention at this stage of the analysis, the fact remains that she sold the bottle of wine to a 16-year-old girl without requesting identification.

There is no doubt that other situations in the LRS where there may be distractions – some purposeful if one minor is seeking to distract while another makes the purchase – that do not relieve the LRS employees from being vigilant about preventing service to minors. Distractions in a licensed retail store may explain a failure to ask in a given situation. When this occurs, the licensee has the defence of due diligence to demonstrate it has all the necessary training, policies and procedures in place to excuse a lapse in judgement for whatever reason.

I have found that the Licensee has committed the contravention of section 77(1)(a) of the *Act* by selling liquor to a minor.

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

Due Diligence

A 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. A 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, 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 *Liquor Control and Licensing 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.

As set out in *Beverly Corners* above, the three questions I must answer are:

1. Was the employee who committed the contravention the directing mind?
2. If no, did the licensee implement adequate training and other systems to prevent the sale of liquor to minors? and
3. Did the licensee take reasonable steps to ensure the effective application of that education and the operation of those systems?

1. Directing Mind

The directing mind of a corporation is someone who is responsible for the development and supervision of the implementation of corporate policy, including hiring and training procedures. Mr. Leonard and the LRS manager are involved in the hiring and

training procedures and Mr. Leonard sets the LRS policies. Neither Mr. Leonard nor the LRS manager were present in the LRS on the evening of March 4, 2020.

I find the store clerk who made the sale was not a directing mind. I therefore move to questions 2 and 3 of the *Beverley Corners* analysis.

2. Adequate Training and Systems

Mr. Leonard and the LRS manager testified about the hiring process and the training of new hires. All new hires are on probation for three months. The LRS has a shadowing process that may last from two weeks to a month for new hires, in which they shadow a senior employee before being allowed to work at the till.

They both referred to the LRS Staff Handbook (exhibit 2, tab 9) as the document that new hires are required to read and sign that they have read and understood. New hires are encouraged to ask questions about the LRS Staff Handbook. The LRS Staff Handbook contains all the written policies of the LRS. The LRS has no written materials such as a checklist for what topics must be covered in training – the trainers rely on the LRS Staff Handbook and discussions amongst themselves.

Although the LRS Staff Handbook in place on March 4, 2020 was not submitted in evidence, I accept the testimony that the LRS Staff Handbook was changed after the incident from requiring staff to ask for ID from anyone who appears to be "under the age of 25 years" to "under the age of 35 years." And I accept that there were no other changes to the Handbook.

When asked about training staff on why minors should not be served and the dangers of selling alcohol to minors, the answer was that all staff have their Serving It Right and receive this information when updating this certification.

Since most of the training is done by either Mr. Leonard or the LRS manager, I accept that there is some consistency in the training as they regularly discuss issues between them. However, I recommend that the LRS consider developing an outline of points or checklist to be covered in the training, particularly with respect to requesting ID, and other liquor service issues. A good shadow training system is only as good as the topics

that are covered during the training period. The Licensee should have a checklist of matters to be covered and confirmation that those items were actually covered, especially in relation to the sale of liquor. The content should include education on the dangers of selling alcohol to minors so that staff fully understand why this is a very serious issue, and it is not just because of potential penalties. It is not sufficient for a licensee to rely on the Serving It Right training to educate staff on these important issues.

I find that the section on Legal Age in the LRS Staff Handbook sets out the importance of asking for two pieces of ID and what that ID must be. It also sets out the penalty for selling alcohol to minors. However, I find that the section on Legal Age is a bit sparse in its information. A written outline of points to cover would ensure that senior employees who are being shadowed by a new hire are familiar with the critical points to emphasize: about what to look for in assessing minors in their behaviour and mannerisms, about the importance to ask for ID if in doubt at all about a customer's age, what questions to ask if one suspects fake ID, the dangers of selling alcohol to minors, how to deal with distractions in the LRS, etc. The section on Customer Service should include the importance of assessing a customer's age when they first enter the store.

The training does not include any formal quizzes, oral or written. A written checklist on avoiding service to minors would provide the content for any questions to test new hires throughout their training, and as part of ongoing training.

I have noted some improvements the LRS might make in its training, in terms of providing an outline to ensure key points are communicated. I have considered the size of the LRS – only 6 staff in total – and I have recognized that much of the training is done by two people who have been doing this for some time. I find that the length of time for training new hires is adequate. With respect to the content in the training program, I find there are deficiencies.

I am particularly troubled by the testimony of the LRS manager who admitted he had not read the Branch Handbook which sets out the terms and conditions for an LRS. When pressed in re-examination by Mr. Leonard, he agreed he was aware of the terms and conditions for an LRS but had not read the Branch Handbook. As noted in the Introduction to the Branch Handbook:

> This handbook outlines the requirements of the *Liquor Control and Licensing Act*, Regulations and terms and conditions that relate to owners of licensee retail stores. It is the responsibility of the licensee to be aware of and to operate in compliance with these rules.

The LRS manager had never heard of the Minors as Agents Program until the incident on March 4, 2020 occurred. He thought the program was "pretty new." The LRS manager was unfamiliar with the Liquor Line that is published and sent out to all licensees and that contains information about the MAP and other policies and programs the Branch considers important information for licensees to be aware of. The Liquor Line of spring 2015 (exhibit 1, tab 12) contains a fairly detailed update on the status of the Minors as Agents Program which has been in place since 2011, and includes the following paragraph:

> Finally, we believe the more you and your staff know about the MAP program, the lower the chance a minor will be served. We encourage you to share this information with your staff. We have reproduced this as a Fact Sheet and it is available on our website, under Latest News.

In his submission, Mr. Leonard pointed out that things like the Branch Liquor Line go to the corporate Licensee and not to him as the Third-Party Operator. The Licensee did not put into evidence any written agreement or contract between the Licensee and the Third-Party Operator. The Branch considers the person or entity that is the registered licensee to be the responsible party that they communicate with, in this case the Northland Properties Corporation. The Licensee, Northland Properties Corporation, even with a Third-Party Operator, remains legally responsible for the operation of the LRS. A licensee must apply for approval of the third-party operator before entering into any contractual arrangement. If the corporate Licensee is not forwarding critical information about Branch programs and updates, this is an issue between the corporate Licensee and the Third-Party Operator. If Mr. Leonard wishes to receive such

information from the Branch, he should contact the Branch and make sure his email is on file to receive copies of updates such as the Liquor Line.

I find that the fact that one of the two main trainers, the LRS manager who has worked in the LRS for about ten years, is not familiar with the Branch Handbook or with the MAP, is a serious defect in the training program. If one of the main trainers has not read the terms and conditions in the Branch Handbook, I can only assume that key points from the Branch Handbook are not included in the LRS training. The absence of any written materials on what is covered in the training does not allow me to conclude otherwise.

The Branch Handbook is provided to licensees to ensure they understand all the terms and conditions on their liquor licence, which must be placed in a prominent place in the LRS. The licence states:

> The terms and conditions to which this licence is subject include the terms and conditions contained in the licensee Terms and Conditions Handbook, which is available on the Liquor and Cannabis Regulation Branch website. The Terms and Conditions Handbook is amended from time to time. (exhibit 1, tab 3)

Senior management in the LRS – in this case, both Mr. Leonard and the LRS manager – must be familiar with the Branch Handbook, not only with provisions that ensure records are kept, pricing restrictions, and other business-related conditions affecting the overall operation of the LRS, but also to be able to impart some of the key conditions on the licence in their training program. A few examples from the Branch Handbook that LRS employees need to be aware of include:

- Types of acceptable ID (page 7)
- Intoxicated patrons – importance of keeping a record of these (page 7)
- Barring individuals from store and notifying police (page 7)
- No entry of customers to LRS after 11:00 p.m. and how to encourage patrons to make purchase and leave (page 16)
- Consumer tastings (page 18)
- Restrictions on delivery (page 18/19)
- Compliance and enforcement, in particular the warning to never draw attention to liquor inspectors, minor agents or police inside the LRS (page 25)

I acknowledge that the LRS Staff Handbook contains two of the above points – types of acceptable ID, locking doors of LRS at 11:00 p.m. – but it is missing some other critical ones, including the more detailed requirements around home delivery, which are not part of the "How to do Deliveries" instructions for the LRS staff. (exhibit 2, tab 9, page 16). The final bullet above is another critical requirement that LRS staff must be aware of, as failure to follow this warning may compromise the safety of liquor inspectors or minor agents.

My answer to question 2 above is negative: the Licensee has not implemented adequate training and other systems to prevent the sale of liquor to minors. I find the inadequacy is in the content of the training. The Licensee has, therefore, failed to meet the onus of establishing due diligence. Nevertheless, I will proceed to address question 3 in order to provide the Licensee with a complete assessment of its process and procedures and to identify any improvements it might make.

3. Effective Application and Operation of its Systems

A licensee must not only demonstrate it has policies in place and has provided the necessary training to its employees, it must also demonstrate that it has taken reasonable steps to ensure the effective application of that education and the day-to-day operation of those systems.

Mr. Leonard and the LRS manager testified about the cash sheets that must be signed at the start of each shift as a reminder to staff to ask for ID and what two pieces of ID are acceptable. I recommend to the Licensee that it update this section of the cash sheet to change the "under 25 years old" to "under 35 years old" to be consistent with the new policy under the Legal Age section in the LRS Staff Handbook. I further recommend that the penalty for selling liquor to minors be changed to reflect the real consequences of selling liquor to minors and to be consistent with the penalties noted in the LRS Staff Handbook. Providing inaccurate information to its staff will not just "scare" them as suggested by the LRS manager and Mr. Leonard, it may also make them question the veracity of other information given to them.

The LRS has considerable signage around the store. I accept that there are a number to remind staff and customers that ID must be requested. As no photos were provided, I do not know exactly what these signs say about ID requests. I recommend that these signs be consistent with the updated policy of asking for ID of anyone who appears to be under 35. I note that staff also receive reminders about ID checking on the staff white board in the office.

The LRS Staff Handbook, at page 7, has a section titled "Log Book." Mr. Leonard stated they abandoned the logbook and replaced it with social media tools that are regularly used to communicate about any incidents. The licensee provided no documentation of these messages. If these are intended to replace a written logbook, then records must be kept. In a small operation such as the LRS here, a written logbook may not be necessary for all purposes, as long as the staff and management are regularly using the social media tools as described to ensure effective communication between staff and management. The exception to this is the requirement in the Branch Handbook:

> You must write down all incidents of intoxicated patrons and the action you took in an incident log and have the information available for the liquor inspector or police officers. (page 7)

The social media option may be working well in this small operation for many of the communications amongst staff, but the recording of these intoxication incidents is a condition that the LRS must follow. Further, if the logbook is no longer used in the LRS, the LRS Staff Handbook needs to be updated to reflect this. I note that the Log Book section does not even mention the Branch's requirement to keep a record of intoxication incidents.

Similarly, in a small operation such as this, hiring a company to conduct secret shopper visits may not be essential but it can encourage staff to be on their toes. Certainly, ensuring all staff are familiar with the MAP would further encourage staff to be vigilant.

I recommend that Mr. Leonard encourage the LRS manager to read and understand what is in the Branch Handbook. As a trainer of new hires, and as the senior person present in the LRS most days, it is important for him to fully understand and be knowledgeable about the terms and conditions outlined in the Branch Handbook. I further recommend that the Branch Handbook be kept in a prominent place in the LRS so staff are aware of its importance.

I have referred to the steps the Licensee has taken to ensure the effective operation of its systems:

- Signage to remind staff and customers about ID checking
- Daily communication amongst staff and senior managers
- Daily reminders on the cash sheet about checking for ID that require staff signatures
- Communication through social media to ensure staff are aware of incidents
- Review of CCTV footage to monitor staff requests for ID
- Review of cash sheets to identify how often staff are requesting ID
- White board reminders

Despite taking these steps, I find that the absence of information about the content of the training and the deficiencies in the one document the Licensee relies on for its policies, i.e. the LRS Staff Handbook, lead me to conclude that the Licensee has not taken reasonable steps to ensure the effective application of its education and training.

The two questions to establish due diligence – questions 2 and 3 – are obviously linked. A negative answer to either question results in a failure to establish due diligence. A negative answer to the first question – in this case, inadequate content in the training – means it is impossible to conclude that the licensee has taken reasonable steps to ensure the effective application of its education and training. There can be no effective application of its education and training if a licensee has failed to demonstrate that the training is adequate, as I have found here.

I have noted recommendations for the Licensee and encourage the Licensee to implement these changes. Having found that the Licensee has failed to establish due diligence, I find that the Licensee has contravened section 77(1)(a) of the *Act*.

I wish to make a comment on the failure of the License to provide written documentation on a number of issues. Prior to a hearing, the Branch Registrar reminds a licensee of the importance of providing any documentation it wishes to rely on at the hearing. I have noted throughout this decision where the Licensee has testified such things exist but failed to produce the written documentation. These include:

- Serving It Right certificates for its employees
- Sheets signed by employees acknowledging they have read the LRS Staff Handbook (only unsigned copy of page 14 submitted)
- Photos of white board and all signage in LRS
- Copies of FB or social media messages recording notes of any incidents
- Copy of LRS Staff Handbook as it was on March 4, 2020

I have accepted the testimony of the Licensee's witnesses that such things exist and, in this case with a small operation, have not found against the Licensee because of its failure to produce this written documentation at the hearing. Nevertheless, I remind this Licensee and others that written documentation or photos to support a defence of due diligence are important and should be provided to the hearing delegate.

I now proceed to the penalty for this contravention.

PENALTY

Pursuant to section 51(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:

- 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 2 of the *Regulation*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so.

The factors that I have considered in determining the appropriate penalty in this case include: whether there is a proven compliance history; a past history of warnings by the Branch 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 licenses. Enforcement action is intended to both redress the licensee's non-compliance, and to encourage future compliance by way of deterrence.

As noted in the NOEA, the service of liquor to minors is a significant public safety issue because of:

- The effects of alcohol on growing bodies and developing minds;
- The effect 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 minor, and
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft.

The Minors as Agents program 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 sixteen-year-old minor was able to purchase liquor from the Licensee's employee, without being asked to produce any proof of age.

There is no record of a proven contravention of the same type for this Licensee at this establishment within the preceding twenty-four (24) months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 2 of the *Regulation* and calculating a penalty. Item 7 in Schedule 2 provides a range of penalties for a first contravention of this type: a 7 to 11-day licence suspension and/or a $7,000 to $11,000 penalty. The Licensee prefers a monetary penalty to a licence suspension. I therefore impose the minimum monetary penalty of $7,000.

ORDER

Pursuant to section 51(2)(b) of the *Act*, I order that the Licensee pay a monetary penalty in the sum of seven thousand dollars ($7,000.00) to the General Manager of the Liquor and Cannabis Regulation Branch on or before **January 25, 2021.**

Original signed by

Nerys Poole Date: December 18, 2020
General Manager's Delegate

cc: Liquor and Cannabis Regulation Branch, Kelowna Office
Attn: Kurt Lozinski, Regional Manager

Liquor and Cannabis Regulation Branch, Vancouver Office
Attn: Karol Kudyba, Branch Advocate