



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

IN THE MATTER OF

A hearing pursuant to Section 20 of

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

Licensee:	Harbans Kaur Randhawa dba Three Gables Hotel 353 Main Street Penticton BC V2A 5B7
Case:	EH06 -104 & 105
For the Licensee:	Joseph Gereluk, Legal Counsel
For the Branch:	Shahid Noorani
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	April 3, 4, 17 & 26, 2007
Place of Hearing:	Penticton & Victoria, BC
Date of Decision:	May 28, 2007

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Harbans Kaur Randhawa, dba Three Gables Hotel holds Licensee Retail Store Licence No. 193061 for a Licensee Retail Store (LRS) (commonly known as a 'Cold Beer & Wine Store'). The licence permits the sale of packaged liquor for off-premises consumption only. The licensed hours for the sale of liquor are 9 a.m. to 11 p.m., seven days per week. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication 'Guide for Liquor Licensees in British Columbia'.

Alleged Contravention and Recommended Enforcement Action

The branch's allegations and recommended enforcement action are set out in the two Notices of Enforcement Action (NOEA) dated August 9, 2006 (EH06-104 & 105, exhibit 1, tabs 1 and 7).

EH06-104

The branch alleges that on April 21, 2006, the licensee contravened:

1. Section 33 of the *Liquor Control and Licensing Act* (the *Act*) by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a four (4) day suspension of the liquor licence (item 2, Schedule 4 of the *Regulation*).

Item 2 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 4-7 days and/or a monetary penalty of \$5000-\$7000.

2. Section 45(2) of the *Liquor Control and Licensing Regulation* (the *Regulation*) by failing to request two pieces of identification from a person appearing to be under the age of 25 before allowing the person to enter the licensed establishment, or before selling or

serving liquor to the person. The proposed penalty is a \$1000 penalty (item 4, Schedule 4 of the *Regulation*).

Item 4 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 1-3 days and/or a monetary penalty of \$1000-\$3000.

EH06-105

The branch alleges that on May 12, 2006, the licensee contravened:

3. Section 42(3) of the *Liquor Control and Licensing Regulation* when the licensee or an employee consumed liquor while working in the licensed establishment. The proposed penalty is a one (1) day suspension of the liquor licence (item 27, Schedule 4 of the *Regulation*).

Item 27 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 1-3 days and/or a monetary penalty of \$1000-\$3000.

4. Section 12 of the *Act* by selling liquor outside of the hours of sale permitted under the licence. The proposed penalty is a one (1) day suspension of the liquor licence (item 46, Schedule 4 of the *Regulation*).

Item 46 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 1-3 days and a monetary penalty of \$1000-\$3000.

5. Section 45(2) of the *Liquor Control and Licensing Regulation* by failing to request two pieces of identification from a person appearing to be under the age of 25 before allowing the person to enter the licensed establishment, or before selling or serving liquor

to the person. The proposed penalty is a \$1000 penalty (item 4, Schedule 4 of the *Regulation*).

Item 4 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 1-3 days and/or a monetary penalty of \$1000-\$3000; and provides a range of penalties for a second contravention of this type of a licence suspension for 3-6 days.

6. Section 33 of the *Liquor Control and Licensing Act* by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a fourteen (14) day suspension of the liquor licence (This penalty is greater than that set out in item 2, Schedule 4 of the *Regulation* for a first contravention).

Item 2 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 4-7 days and/or a monetary penalty of \$5000-\$7000; and provides a range of penalties for a second contravention of this type of a licence suspension for 10-14 days.

Section 20 (2.1) of the *Act* authorizes the general manager, where it is in the public interest to do so, to impose a monetary penalty greater than the amount provided for in the prescribed schedule or suspend a licence for a period longer than that provided for in the prescribed schedule.

The licensee disputes all six contraventions.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, [RSBC 1996] Chapter 267

Licences

12 (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.

(2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

Supplying liquor to minors

33 (1) A person must not

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

(b) have liquor in his or her possession for the purpose of selling, giving or otherwise supplying it to a minor, or

(5) It is a defence to a charge under this section if the defendant satisfies the court that, in reaching the conclusion that the person was not a minor, the defendant

(a) required that the person produce identification, and

(b) examined and acted on the authenticity of the identification.

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

Consumption of liquor in licensed establishments

42 (3) A licensee, and the employees of the licensee, must not consume liquor while working in the licensed establishment.

Minors

45 (1) For the purposes of section 33 (5) of the Act, identification means both of the following:

(a) one of the following:

(i) a passport;

(ii) a driver's licence that displays a photograph and the date of birth of the holder;

(iii) an identification card, issued by a government agency, that displays a photograph and the date of birth of the holder;

(b) one other piece of identification that displays

(i) the person's name, and

(ii) one or both of the person's signature and picture.

(2) A licensee must request 2 pieces of identification from any person appearing to be under the age of 25 before

(a) allowing the person to enter the licensed establishment, if the establishment is one in which minors are not allowed, or

(b) selling or serving liquor to the person.

(3) The pieces of identification required under subsection (2) must include

(a) one piece of the identification referred to in subsection (1), and

(b) one other piece of identification that displays the person's name and at least one of the person's signature and picture.

[It should be noted that subsections 45(2) and (3) while in force at the time of the alleged contraventions have subsequently been repealed.]

ISSUES

1. Did one or more of the contraventions occur as alleged?

2. If so, is a penalty appropriate and what is a reasonable penalty?

EXHIBITS

The following exhibits were presented:

- Exhibit No. 1:** Branch book of documents #1, tabs 1-8 and 11 & 12.
- Exhibit No. 2:** Student identity card.
- Exhibit No. 3:** Hand drawn map of the area surrounding the Three Gables Hotel.
- Exhibit No. 4:** Photographs marked 1-10.
- Exhibit No. 5:** Hand-written witness statement.
- Exhibit No. 6:** Hand-written notes.
- Exhibit No. 7:** Hand-written notes.
- Exhibit No. 8:** "Serving It Right", "Server Program Manual".
- Exhibit No. 9:** Typewritten statement.

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH**EH06-104** (Alleged Contraventions 1 & 2)

Branch Witness A testified that on April 21, 2006, she was 17 years old. At some point during the evening, the exact time she cannot recall, she entered the Three Gables liquor store on two separate occasions making purchases of liquor and tobacco. On the first occasion she purchased a quantity of liquor and tobacco for a group of friends who waited outside in the parking lot. She dispersed the liquor and tobacco to the group then immediately re-entered the liquor store to purchase a bottle of vodka and tobacco for herself. The clerk on both occasions was a Caucasian male. She completed the purchase, then exited the store and crossed the street to meet with a group of friends.

At this point she was approached by two plainclothes police officers driving an unmarked police vehicle. She was asked for her name and age and told the officers that she was 21 years old. She showed them her cousin's student identification card that bears her cousin's first initial and surname, photograph and date of birth that indicates an age of 21 years. The officers did not believe her and told her that she could be charged if she provided false information about her identity. She then told them the truth about her age and the identification. The officers seized the liquor and the identity card (exhibit 2). She provided a tape-recorded statement to the police officers (exhibit 1, tab 6). In her statement she did not tell the officers that she had been into the liquor store and purchased liquor and tobacco on two occasions that night.

She testified that she and her cousin are both females and have the same first initial and surname. They are similar in height and weight. On that night she was dressed-up, wore make-up, had coloured her hair blond and worn it down so as to appear the person in the photograph of her cousin's student card.

She testified that she does not recall whether she was requested to present identification during her first purchase that night, but recalls that she was not requested to present identification on the second visit when she purchased the liquor and tobacco for herself. She has purchased liquor at the Three Gables liquor store on several previous occasions and had used her cousin's student card on some of those occasions. She has also used it on one occasion at another liquor store. She has never been refused the sale of liquor when using the card. She also carries her Social Identification Number (SIN) card to present, if requested, for a second piece of identification.

She testified that at the time of the aforementioned occurrences she had not been drinking but had previously smoked some marijuana. She was nervous and still under the influence of the marijuana when talking to the police officers.

The marijuana may have affected her memory of the events but she believes that her recollection of the second purchase is accurate.

Police Officers 1 and 2 testified that they have been members of the RCMP for 15 years and six years respectively. They are currently stationed at the Penticton detachment and were working April 21, 2006, from 6 p.m. to 3 a.m. as part of the crime reduction team of which officer 1 is in charge. They and police officers 3 and 4, who were also assigned to the team, were in plain clothes using unmarked police vehicles to make patrols of the city checking licensed establishments. They occupied one vehicle while the other two officers occupied the other. Part of the team's responsibilities is to monitor the operation of liquor licensed establishments to ensure compliance with the law concerning such things as; the over-service of liquor, intoxication of patrons and sale to underage persons. On this occasion they were conducting observations of several licensed establishments suspected of selling liquor to minors. The Three Gables liquor store was one of the establishments being observed.

Just prior to 10 p.m. they drove past the Three Gables liquor store where they noted several youths in the back lot of the liquor store. They parked the vehicle in a nearby lot from which they could see the back of the liquor store and the youths, but could not see the front entrance doors. They observed a blond haired female from the group walk toward the front of the building and appeared to enter the front of the liquor store and exit shortly thereafter carrying a white plastic bag. She appeared to be in her late teens, borderline whether she was of legal age to possess liquor. She approached the youths in the back parking lot and appeared to be dispersing items from the bag to them. She then crossed the street in front of the liquor store. Officer 1 provided a hand drawn map of the area surrounding the liquor store (exhibit 3).

At this point they called upon the other two officers to check the female. They maintained their observations of the female until they saw her approached by the other officers. They then proceeded to look for the remaining youths, three young males, and found them approximately two blocks down the alley. Officer 1 observed one of the youths put something into the bushes which when retrieved was found to be a bottle of rye whiskey. The youths were identified and found to be underage. They said that witness A had obtained the liquor for them. The liquor was seized and the youths were cautioned about possessing liquor underage and sent on their way. They were not charged.

The officers testified that they did not make any notes at the time of the incident but officer 1 made typed notes (exhibit 1, tab 4) concerning the incident at approximately 2:30 a.m. prior to going off shift. A Licensed Premises Check (LPC) (exhibit 1, tab 3) was subsequently written and delivered to the manager of the liquor store, witness D, on May 31, 2006. The manager checked the shift schedule and told officer 1 that witness J was working the night of April 21, 2006. The officer included this information in his report written on that date (exhibit 1, tab 14).

Police Officer 3 and 4 testified that they have been members of the RCMP for approximately three and a half and four years respectively. They are currently stationed at the Penticton detachment and were working April 21, 2006, from 6 p.m. to 3 a.m. as part of the crime reduction team. They and police officers 1 and 2 were in plain clothes using unmarked police vehicles to make patrols of the city checking licensed establishments. They occupied one vehicle, while the two other officers occupied the other.

At approximately 10:05 p.m. they were requested by police officer 1 to check a female with a white plastic bag coming from the Three Gables liquor store that was suspected of bootlegging liquor. They drove to the area and approached the female walking towards a group of youths in a parking lot. She was carrying a

white plastic bag that was found to contain a bottle of vodka and cigars. She provided her name, said that she was 21 years old, and produced a student card with a date of birth in 1985. The officers testified that she looked younger than the age provided and the photograph on the card did not look like her. She was known previously by officer 4 and was cautioned about providing false identification at which time she provided her date of birth in October 1988. She said that she had purchased the liquor and tobacco from the clerk working in the Three Gables liquor store. She had not been requested to produce identification. The liquor, cigars and the student card (exhibit 2) were seized. She provided a tape-recorded statement (exhibit 1, tab 6) to officer 3 and was allowed to proceed on her way. She was not charged.

The officers did not go into the liquor store to advise the staff about the incident. Whether establishments are notified of the problems occurring at the time of the occurrence depends upon the circumstances. Here they were conducting ongoing observations of several licensed establishments and did not advise the establishment of problems encountered until the observations were completed. Officer 3 made typed notes (exhibit 1, tab 5) concerning the incident either prior to going off shift at 3 a.m. or at 6 p.m. the following day when he returned to duty.

EH06-105 (Alleged Contraventions 5 & 6)

Branch Witness B testified that on May 12, 2006, he was 18 years old. At approximately 8 p.m. he entered the Three Gables liquor store with a friend who is either 19 or 20 years old and of legal drinking age. They were both making separate purchases of liquor. He believes that he was first to the checkout station, followed by his friend. The clerk was a young male, witness G, who was known to his friend. He purchased a bottle of vodka and a mixer and made a debit card payment. He was not requested to produce identification. His friend also purchased liquor. Both purchases were put into separate white plastic bags and they exited the store together.

Outside the store they were approached by two or three undercover police officers and asked for their ages. He advised the officers that he was 18 years old. He showed them his BC Learner's Licence, his Care Card and a European student card that he had ordered on the Internet that indicates that he is of age. The police did not charge him, nor did they caution him about using fake identification. One officer said that they were going to charge the establishment, "We're going to nail them with a fine."

He testified that he has been into the Three Gables liquor store on approximately 10 separate occasions, purchasing liquor on eight of those occasions. On the first occasion he was asked to produce identification but the person in the line-up behind him had previously seen him buy cigarettes and told the clerk that he knew him to be of age. The clerk said, "OK, but next time bring ID." He was never again asked for identification. He believes that he may look older than 18 years. He has successfully purchased liquor from two other establishments without being required to produce identification.

Police Officer 1 testified that he was working May 12, 2006, from 6 p.m. to 3 a.m. as part of the crime reduction team making patrols of licensed establishments. At approximately 8:30 p.m. he noted two males who appeared to be underage enter the Three Gables liquor store. He parked the police vehicle and with another officer, who did not appear as a witness, approached the males as they left the liquor store. Officer 1 testified that witness B was found to be underage, 18 years old and was in possession of a white plastic bag containing a bottle of vodka which he said was purchased in the liquor store and that he had not been requested to provide identification. He said that he had purchased liquor there on previous occasions. The liquor was seized and the young male sent on his way. He was not charged. Officer 1 with the assistance of the other officers involved completed typewritten notes at approximately 2:30 a.m. prior to going off shift (exhibit 1, tab 13).

A Licensed Premises Check (LPC) (exhibit 1, tab 9) was subsequently written and delivered to the manager of the liquor store on May 31, 2006. The manager checked the shift schedule and told officer 1 that witness J was working the night of May 12, 2006. He told the officer that this was a good employee and the young male must have been using fake identification. The officer included this information in his report written on that date (exhibit 1, tab 14).

Branch Witness C testified that on May 12, 2006, he was 16 years old. He was certain of the date, May 12, 2006, because that was the date on which he had met his girlfriend. It was either a Friday or Saturday. During the evening he believes sometime between 8 - 9 p.m. he and two young female friends, he believed to be 15 & 16 years old, were waiting outside of the Three Gables liquor store attempting to get someone to bootleg for them, i.e. purchase liquor on their behalf. There were also several homeless persons loitering in the area, one of whom he requested to purchase liquor but the man wanted \$6 for doing so.

He then asked another male who refused and told the witness that he was the manager of the liquor store. He told the witness not to give any money to the homeless persons to purchase liquor as they would just scam him for the money; he had seen it happen before. The two young females then spoke with this male who then said, "OK, just this one time."

The witness told the manager that they wanted two cases of beer. The manager told him that would be \$34. The witness knew from previous purchases that the cost of the beer was in fact only \$28 and told the manager that he only had \$32. The manager agreed, took the money and told them to meet him at the back of the store. The manager then opened the side window into the liquor store and told the clerk, to give him a bottle of Sherry for the homeless persons loitering in the area. The clerk handed the manager a brown paper bag that appeared to contain a bottle. The manager gave it to one of the homeless persons and told them to leave the area.

The manager went into the liquor store, then came around the back and handed the witness a white plastic bag with the beer. He did not ask any of their ages, nor request that they produce any identification. The witness and the two girls then proceeded down the alley where they were stopped by two undercover police officers. The officers said that they witnessed the transaction and requested their names and dates of birth and told them that they would be in trouble if they lied. The officers seized the liquor and sent them on their way.

The witness testified that later that night, approximately 11:30 p.m.-midnight, he was walking home past the liquor store with his brother when he saw the manager get into a white pick-up truck and drive away.

Police Officers 2 & 3 testified that they were working May 12, 2006, from 6 p.m. to 3 a.m. as part of the crime reduction team making patrols of licensed establishments. At approximately 9:25 p.m. they noted several youths standing near the entrance to the Three Gables liquor store. They parked the vehicle in a lot approximately 60 feet away. They observed three youths, a male and two females, all who appeared to be underage talking to witness J whom they knew to be employed at the liquor store. After two to three minutes the youths went along the south side of the building to the rear and the store employee went along the north side of the building towards the rear where they lost sight of him.

The officers changed the location of their vehicle enabling them to see the back entrance of the liquor store. They observed the youths standing near the rear of the building. Witness J exited the rear door, spoke again to the youths and re-entered the building. A few minutes later he exited the rear door and handed the male youth a white plastic bag. The officers did not observe any money change hands. Witness J then got into a white pick-up truck and drove away. The three youths proceeded along the alley. They observed the youths until they cleared the immediate area of the liquor store then approached them on foot. The male

youth was identified as witness C. He was determined to be 16 years old, the young females, 16 & 17. The white plastic bag contained two six-packs of beer.

They asked witness C how he obtained the liquor. He told them that they approached one of the homeless persons loitering in the area to purchase the beer for them but he ripped them off for \$10. They then told their story to witness J. He said that he would help them out this one time. They told him that they were ninety cents short. He said that was okay. He did request identification; they told him that they had none.

The liquor was seized and the youths sent on their way. Police officer 2 made hand-written notes of the occurrence at the time (exhibit 6) and completed a typewritten report just prior to going off shift (exhibit 1, tab 15). Officer 3 completed typewritten notes at the end of the shift (exhibit 1, tab 16).

The officers were uncertain whether there were homeless persons in the area of the liquor store during the time of the incident, however, did say that that is often the case.

A Licensed Premises Check (LPC) (exhibit 1, tab 12) was subsequently written and delivered to witness D at the liquor store on May 31, 2006. At that time officer 2 advised the manager about the incident and that the youths were underage and said they were ninety cents short when they purchased the liquor. Witness D responded, "sometimes we help people out."

EH06-105 (Alleged Contravention 3)

Police Officer 1 testified that he was working May 12, 2006, from 6 p.m. to 3 a.m. as part of the crime reduction team making patrols of licensed establishments. At one point during the evening, he was on foot near the Three Gables liquor store and walked past the open rear door. Walking by he was able

to see into the back area of the store up to the front sales counter. He observed four males sitting drinking beer. They appeared to be right in between the front store area and the rear storage area. One of the males he knew to be witness D who had a beer in his hand. He believed that the beer was Molson Export. He couldn't say with 100% certainty but it appeared to be beer.

He did not make any notes at the time of the incident but made typed notes (exhibit 1, tab 13) concerning the incident at approximately 2:30 a.m. prior to going off shift. His notes indicate that the time of his observations was 10:18 p.m. and that the store had closed at 10 p.m.

A Licensed Premises Check (LPC) (exhibit 1, tab 10) was subsequently written and delivered to the manager, witness D, at the liquor store on May 31, 2006. He told witness D that he was seen drinking a beer inside his store, he giggled and said, "It was probably a long day and I had a beer." The officer included this information in his report written on that date (exhibit 1, tab 14). The officer agreed that the manager's comment about drinking a beer may be taken to be a general comment and not specific to the events of that night.

EH06-105 (Alleged Contravention 4)

Police officers 1 & 4 testified that they were working May 12, 2006, from 6 p.m. to 3 a.m. as part of the crime reduction team making patrols of licensed establishments. They had made intermittent patrols to the Three Gables liquor store during the evening and returned after the store was closed at 11 p.m. They noted what they believed to be witness D's car, described by officer 4 as a blue BMW or other type of European car and by officer 1 as a grey BMW parked near the rear. They knew the vehicle to have been driven by the manager in the past. At approximately 11:30 p.m. the officers were seated in the police vehicle with another officer [did not appear as a witness] parked on Main Street from which they could view the rear door of the Three Gables liquor store

approximately 100 feet distant. There was sufficient illumination from the rooms upstairs of the store and from surrounding businesses to allow them to see the area. Approximately 10 minutes later a male and female approached the back door, knocked and were admitted inside. They were not noted to be carrying anything at the time.

They were inside for approximately five minutes then exited carrying a plastic bag.

Officer 1 testified that the plastic bag was white in colour, officer 4 believed it to be brown. Officer 4 followed the male and female on foot while the other officers followed in the vehicle. The officers overtook the two persons on Martin St., just south of the hotel and identified themselves as police officers. Officer 4 checked to see what was in the bag. He found a bottle of Pepsi, a bottle of rye whiskey and a cold can of beer. The male said that he had just bought them from inside the liquor store. The cost was \$25, he had \$30 but the clerk said that he couldn't make change and the \$30 was agreed upon. The male told the officer that he did not receive a receipt. The clerk recorded the transaction on a piece of paper. The liquor was seized and the officer took a written statement from the male possessing the liquor (exhibit 5). The male was determined to be of age, the female was determined to be 18 years old, but was not in possession of the liquor at any time during the officers' observations. The liquor was seized and the male and female sent on their way. Officer 4 testified that the rye whiskey was in a brown paper bag that was inside the brown plastic bag. [I pause to note that the bags, a light brown or beige plastic bag and a standard brown paper bag commonly used for glass liquor containers were produced for the hearing, but not made subject of an exhibit.]

The three officers resumed their observation of the rear of the liquor store from their vehicle. At approximately 11:55 p.m. they observed witness D and one (officer 1) or two (officer 4) other persons exit the store through the rear door.

They got into the manager's vehicle and drove away. The officers discontinued their observations.

Officer 1 made typed notes (exhibit 1, tab 13) concerning the incident at approximately 2:30 a.m. prior to going off shift.

A Licensed Premises Check (LPC) (exhibit 1, tab 11) was subsequently written and delivered to witness D at the liquor store on May 31, 2006, by officer 1. When told of the circumstances, the manager said that sometimes people call in before closing and if they arrive shortly after closing hours they would sell them the liquor. He said that this is a common practice in other liquor stores as well. The officer included this information in his report written on that date (exhibit 1, tab 14).

A branch liquor inspector testified that she is responsible for the geographical area in which the Three Gables liquor store is located and is responsible for maintaining the branch files for the establishment. The licensee retail store licence (exhibit 1, tab 17) for the liquor store allows the sale of liquor between 9 a.m. and 11 p.m., seven days per week. It is subject to the terms and conditions contained in the branch publication "Guide for Liquor Licensees". A copy of the Guide is available to all licensees through the branch's Internet site. The Guide in effect at the time of the alleged contraventions is found at exhibit 1, tab 18. She referred to excerpts from the Guide dealing with: "Your Role as a Licensee" (p.3); "Hours of Sale" (p.7); "Minors" (p.10); and "Identification Requirements" (p.10).

She is familiar with the liquor store, having made seven visits there prior to May 2006. She has met with both the licensee and the manager of the store on occasion when circumstances required it concerning complaints of problems occurring in the rooms upstairs and the need to maintain a liquor primary licence.

She first became aware of the problems occurring at the liquor store when she received a phone call from police officer 1, followed by the receipt of the LPCs and the police reports. She drew-up two Contravention Notices (exhibit 1, tabs 4 & 8) outlining the alleged contraventions and delivered them to the liquor store on June 8, 2006. While there she looked for signage in the store concerning the requirement to request two pieces of identification for persons appearing to be under 25 years of age. Referring to the photos at exhibit 4, she testified that she recalls seeing the branch sign "2 pieces of ID required" as depicted in photo 1, but not the sign titled "NOTICE" as depicted in photos 1 – 4, nor the "Do Not Enter, Staff Only" sign as depicted in photos 5 & 6.

On June 14, 2006, she met with witnesses D and J for the purpose of discussing the contravention notice and the police LPCs. Witness D introduced himself as the owner of the liquor store, and witness J as the store manager and his best employee.

During the meeting she read out the CNs and LPCs dealing with each of the alleged contraventions and received their explanation for each:

- Contraventions 1 & 2, April 21, 2006 - liquor sold to a 17 year old female minor and failing to request two pieces of identification. They told the inspector that witness J was working that night and that the person must have shown fake identification. The inspector told them that the description provided by the minor of the person making the sale as being a dark skinned male, sounded more like witness D, to which witness D responded that he could have been working that night.
- Contravention 3, May 12, 2006 - licensee or employee consuming liquor while working. Witness D said, "Yes, I may have had one."

- Contravention 4, May 12, 2006 - selling liquor outside of the hours of sale permitted under the licence. Witness D said that sometimes when they get calls shortly after closing, they will sell liquor to that person. He said that this was the practice of other liquor stores when offering the sale and delivery of liquor.
- Contraventions 5 & 6, May 12, 2006 - [1st incident] Liquor sold to an 18 year old male minor and failing to request two pieces of identification. Witnesses D & J said that he must have shown fake identification. [2nd incident] Liquor sold to a 16 year old minor on the parking lot and failing to request two pieces of identification. Witness J said that he remembered the homeless person taking money from the kids but he couldn't recall the date. The kids approached him to buy liquor and he said to them, "Don't you know that I'm the manager of the liquor store" and he told them to get lost.

In general discussion regarding the alleged contraventions they advised her that they would be putting up more signs concerning the identification requirements and would be installing a security camera system. She advised them that they must also ensure that employees be made aware of their responsibilities and be trained to meet them. The inspector made written notes of her discussion (exhibit 7).

The inspector testified that in making the recommendations for the penalty for each contravention, she reviewed the branch file for the establishment. A compliance meeting form dated December 22, 2003 (exhibit 1, tab 19) revealed that the previous liquor inspector had met with the licensee on that date and discussed the requirement to check two pieces of identification of patrons appearing to be under 25 years of age. The licensee undertook to meet with staff and to stress the need to check identification.

The inspector testified that she assumed that the licensee had not changed her practises, given the circumstances outlined in the LPCs received from the police. She recommended the minimum penalty for each contravention with the exception of the sale of liquor to the 16 year old minor, which took place in the parking lot. She felt that in the circumstances, a greater penalty was warranted as the person making the sale described himself and was introduced to her by witness D as the manager of the liquor store.

EVIDENCE - THE LICENSEE

Licensee Witness D testified that he is a long-time resident and businessman in Penticton with a background in business administration, marketing and accounting. He is the husband of the licensee/owner of the Three Gables Hotel. They have been involved in the ownership and operation of the hotel since September 1999. When they assumed the operation, the previous owner spent one or two months with them familiarizing them with the operation and the liquor licensing requirements.

He has been the manager of the Licensee Retail Store (liquor store) since 2002. He obtained the 'licensee' certificate of the "Serving it Right: Responsible Beverage Service Program" ("S.I.R.") in late 2005 or early 2006 and has read both the 'licensee' and 'server' program manuals. He is familiar with the *Liquor Control and Licensing Act and Regulations*, although has not read them in recent years. He depends upon the branch bulletins to keep abreast of any new requirements. If any questions arise, he contacts the local liquor inspector.

All employees have been told that they must comply with all of the requirements and check for identification. Prior to these allegations, the only time that a problem was brought to their attention was in December 2003 when the previous liquor inspector met with them and advised them that he had received a complaint that a minor had purchased liquor from the store. The inspector

advised them that the contravention was not proven, but was to be taken as a warning.

The licensee works at the liquor store during the day shift, and he works there on the evening shift. During the time period of the alleged contraventions there were two other persons employed at the store, witness J, who worked evenings on Fridays, Saturdays, Mondays and Tuesdays and a nephew, witness G, who worked on a part-time basis. As the manager he covers the day shift two days a week to allow the licensee time-off and works those evenings not covered by witness J. It is common that he is in the store for some period of time on most days to ensure that everything is running properly and to assist and provide a break to the person working.

Witness J has been employed at the liquor store on two separate occasions. When first hired, he met with the licensee and was informed of the requirements not to serve intoxicated or underage persons and to check the identification of all persons appearing to be under 25 years of age. He is reminded on a day to day basis. Witness J has a "S.I.R." certificate and is familiar with the program manuals. He at one time resided in the upstairs of the building and managed the residential units on behalf of the licensee. He is considered a good, trustworthy employee, well liked by the customers and conscientious in his duties. He is careful in checking identification including the signature on credit cards to ensure that they are genuine. If problems arise during his shift, he either contacts the licensee or himself.

Witness G worked part-time from January or February to October of 2006. As he was on a trial basis, he was not required to obtain a "S.I.R." certificate. He never asked him whether he obtained the certificate or not. He was informed of the requirements and responsibilities of the job and reminded regularly about them by the licensee. As a young person growing up in Penticton he knew the ages of other young people in town and checked them for identification.

He testified that April 21, 2006, being a Friday, witness J, would have been the person working during the evening. Although he was not working that evening himself, he would have gone into the store to check on the operation and may have taken over for a short period of time to allow the clerk to have a break. In that case, the clerk would have been the only person logged onto the cash register and rather than log on himself, he would have completed any sales under the clerk's log-on.

May 12, 2006, also being a Friday, witness J, would have worked that night. Witness D testified that he is certain that he did not. The date sticks out in his mind because it was the day before a golf tournament in which he participated. He spent most of the day at home and boating with a friend, witness F. He and witness F drove to town at approximately 6:30 p.m. They checked the liquor store, witness J was on duty, and everything was good. He and witness F went next door to the pub where they spent the evening drinking and talking with friends about the golf tournament the following day that was being sponsored by the pub. They left the pub between 11:15 - 11:30 p.m. The liquor store was closed, and he didn't go inside. He had another friend drive himself and witness F in the vehicle that he was using that night, a blue Honda. The licensee owns a silver BMW that he on occasion drives.

Witness D testified that prior to the police officers coming to the liquor store with the LPCs on May 31, 2006; he was unaware of their investigation or concerns. He was working when they arrived and was busy with a customer. They asked him about having a beer in the back of the store. At the time he was not aware of what they were referring to and he told them he might have, as on one occasion he does remember having sat outside the back of the store drinking beer. He denied that that was on May 12, 2006.

He discussed the police reports and the allegations with witness J who had worked on April 12 and May 31, 2006. Witness J told him that he requests identification from everyone and said, "You know how strict I am."

He and witness J met with the liquor inspector on June 14, 2006, at her office to discuss the police reports. He does not recall introducing witness J as the liquor store manager, as he is an employee and does not have any managerial responsibilities. Witness J may describe himself as the manager of the residential portion of the building.

He testified that he may refer to himself as the owner; because he is married to the licensee/owner people often make that assumption. The inspector may believe that he is the owner as he is the person who deals with her the most. He told the inspector that there must be a mistake about the dates as he was not working either April 21 or May 12, 2006. Witness J worked both of those evenings. They didn't discuss the particular incidents with the inspector, only that the dates alleged didn't make sense. The liquor inspector said that she would check with the police and get back to them.

They also had a discussion about after-hours sales because another liquor store in town was advertising sales to 11:30 p.m. The liquor inspector explained that liquor sold by 11 p.m. could be delivered to 11:30 p.m. He testified that they do not sell liquor after hours. Sometimes if it is busy at closing it can be difficult to get the door locked at 11 p.m. On occasion there will be a line-up inside at the cash that can take eight to ten minutes to clear. This occurs at every liquor store. They don't operate a delivery service; if someone phones for liquor delivery, a taxi is utilized.

The inspector suggested that more signage might be useful. Subsequently, more signs have been posted regarding the identification requirements. They have also installed security cameras, which record the sales transactions. The recordings are retained for 15 - 18 days and available for review if necessary.

They have tried to operate the liquor store properly. Given the number of customers served and the lack of problems, he believes that they have a good record. He would like to work more closely with the police and the liquor inspector.

Licensee Witness E testified that she and her family are long-time residents of Penticton. She is the licensee and owner of the hotel and liquor store. Her husband, witness D, works in the liquor store and manages the inventory. She works day shift in the liquor store and is responsible for payroll and finances and the hiring, training and scheduling of staff.

They first took over the operation of the hotel in 1999 by way of an agreement for sale and operated under the previous owner's licence. She became the owner and the licence was transferred to her in 2003. Upon taking over the operation in 1999, the previous owner spent four to five weeks with them acquainting them with the business and the liquor licensing requirements. She is familiar with the *Act and Regulations* as well as the "Guide to Licensee" and the program manuals for the "S.I.R." program (exhibit 8). She obtained her "licensee" "S.I.R." certificate shortly before or after the liquor licence was transferred to her name in 2003. Witness D did not get his certificate until 2005, although he had been working in the hotel since the year 2000. She would remind him to write the exam and get the certificate but he would say that he is too busy; he had read the program manual and knew the requirements. Finally she told him that he must write the exam.

In training new employees she meets with them and explains the nature of the business and the liquor licensing requirements. They are instructed not to serve minors or intoxicated persons. They are instructed that they must request two pieces of identification from all persons appearing to be under 25 years of age. One piece of identification must be government issued with a photograph of the person. If they are uncertain of the person's age, then they request identification and if there is any doubt, don't serve the person. If any of the employees have any issues while they are on duty, they are instructed to call either her or witness D.

At the time of the alleged contraventions in April and May 2006 there were two other employees in the liquor store. One was a full-time clerk, witness J, who worked evenings four to five days a week. He had worked for two to three months approximately two or three years ago, left, then returned during the summer of 2005 to work full-time. He was a conscientious and honest employee. He did not have any managerial responsibilities. He lived upstairs in the hotel at one point and managed the residential units. She has never received any complaints about him. She believes, but is not certain, that he had his "S.I.R." certificate.

The other employee was her nephew, witness G, who worked part-time as a clerk in the liquor store. As a part-time employee he did not have a "S.I.R." certificate but she told him to read the program manual. He worked early evenings but never Fridays or Saturdays. He could not have been working either April 21 or May 12, 2006, as they are both Fridays. She maintains a calendar on which she records the employees' shifts. It shows that witness J worked on both of those dates. Each person working in the liquor store has their own access code for the cash register and must log on and off with their own code. She agreed that although each have their own code, a person could conduct sales under another's code if that person was logged on.

She knew that witness D was not working the evening of May 12, 2006. She worked day shift on that day; he spent the day and evening with his friend and getting ready for the golf tournament occurring the following day. She was driving the grey BMW, he drove the blue Honda.

She was first informed of the contraventions alleged to have occurred on April 21 and May 12, 2006, following the police officers' visit to the store at the end of May. She was very disappointed and didn't believe that the contraventions could have occurred. She was particularly disappointed that they weren't notified soon after the April 21, 2006 allegation, which would have allowed them to take action to prevent any further problems. She had an expectation that if there were problems suspected the police or liquor inspector would alert them. The current liquor inspector does not visit regularly as the previous inspector did. The previous inspector met with them in 2003 when he felt that there was a problem concerning a minor. Following his visit she made the other employees aware of the discussion with the inspector and the need for vigilance.

Once she learned of the current allegations she instructed witnesses D & J to meet with the liquor inspector to find out the details of what was alleged to have occurred. At the meeting they told the inspector about the confusion concerning the dates. The inspector said that she would check on it and get back to them. They never heard further from her.

In early June they had more signs printed and placed throughout the store (photos at exhibit 4, 1 - 6). They installed a security camera system which records the point of sale location and the back warehouse area of the liquor store (photos at exhibit 4, 7 - 9). The recordings are maintained and reviewed.

It is her intention to work closer with the liquor inspector and police officers in the future in order to be alerted to any possible problems and to be able to deal with them.

She testified that the suspension penalties as recommended will result in the daily loss of \$5 - \$6000 in sales and create embarrassment for her and her family who are well known within the community.

Licensee Witness F testified that he is currently a part-time employee at the Three Gables liquor store. He has worked there on a part-time basis since October 2006 when their full time clerk left. He works evenings two to three days a week. He was hired by witness E and provided training on customer service, the operation of the cash register and the rules concerning identification and told that he must not serve intoxicated persons or minors. She is very strict and reminds him regularly of his responsibilities. If he has any questions, or a problem arises he phones her, which he has done on a couple of occasions.

He has studied the "S.I.R." program manual but hasn't written the test and received the certificate as he does not know how much longer he will be working there. He is not familiar with the "Guide to Licensees" or the *Act and Regulations*.

He testified that he spent May 12, 2006, with witness D at his residence and doing some boating. They drove into town, he in his van, witness D in his Honda and stopped by the liquor store sometime between 6 - 7p.m., then went to the pub next door and played pool for the evening. At the end of the night a friend drove both he and witness D to his residence in his friend's truck. Witness D spent the night at his place and went to the golf tournament the following day.

Licensee Witness G testified that he is the nephew of the licensee, witness E. He has worked as a part-time clerk at the Three Gables liquor store off and on from the time he turned 19 in 2005. He worked there for approximately seven months in 2005 until leaving for college that fall, returning to work there during April and May and from July to October in 2006. He worked four to five shifts a week, Monday to Thursday nights, often working with his uncle, witness D. His shift schedules were kept on a wall calendar in the office of the liquor store. When he began working there his uncle and aunt explained his duties and responsibilities to him and were always reminding him to be sure to check for two pieces of identification. He is familiar with the "S.I.R." program. The manuals are kept in the liquor store office and he took the course when he was in school. He passed the examination but never sent in the payment, so he doesn't have a certificate.

He does not know the person described as witness B by name but may recognize his face if he saw him. He became aware of the allegation of having served a minor when his uncle told him of the allegations that he had sold liquor to witness B. He testified that that was impossible because he was not working May 12, 2006, a Friday. He had arranged with his uncle that he never worked Fridays or Saturdays. Witness J worked on those nights.

Licensee Witness H testified that he has expertise in computer systems and works as a consultant in that field. He was requested by the owners of the Three Gables hotel to look at the software system in the liquor store to provide an analysis of the system and a report for the dates of April 21 and May 12, 2006.

The software is ACER 2000. This version of the software has a flaw that prevents reports from being printed. The software program connects the computer system with the cash registers. It requires a password before allowing access. It records the time that a password holder logs in, the time and details of transactions, and the time the password holder logs out. It does not allow more

than one person to be logged in at a time. During the course of his analysis he determined that the system, in recording the times of transactions, consistently ran 20 minutes ahead of real time, e.g. a transaction recorded at 9 a.m. would have occurred at 8:40 a.m.

He examined the log-on and log-off times for:

April 21, 2006:

- Witness E logged on at 9 a.m. [8:40 a.m. real-time] and off at 4:15 p.m. [3:55 p.m.]
- Witness J logged on at 4:17 p.m. [3:57 p.m.] and off at 11:28 p.m. [11:08]

May 31, 2006:

- Witness E logged on at 9 a.m. [8:40 a.m.] and off at 4:50 p.m. [4:30 p.m.]
- Witness J logged on at 4:56 p.m. [4:36 p.m.] and off at 11:28 p.m. [11:08 p.m.].

He agreed that it was possible for one person to complete transactions after another person had logged on, in which case the transaction would be shown as that of the person logged on and not of the other person who completed the transaction. He is aware that the store has two cash registers but does not know whether both could be operated at the same time.

Licensee Witness I testified that he operates the pub next door to the Three Gables liquor store. He works every Friday night and was working the night of Friday May 12, 2006. He has known witness D for approximately six to seven years. He recalls that witness D came into the pub the night of May 12, 2006, about 6 p.m. and left after closing, approximately 11:30 p.m. They spent time that night discussing the pub's annual golf tournament being held the following day that both were attending.

Licensee Witness J testified that he worked at the Three Gables liquor store during the time period of the alleged contraventions. He worked there initially for about six months approximately three years ago. He left and returned the following summer for about one and a half to two years, leaving in October 2006 to return to Alberta. He was employed as a clerk. He worked weekends and other evenings during the week. Witness G worked there from time to time on evening shifts during the week, but never on the weekends.

His duties were to stock the coolers and customer sales. He also managed the rooms upstairs for a period of time. During the time period that he worked at the liquor store they used brown paper bags for bottles of spirit liquor and other items sold in glass containers and white plastic bags for beer. They did use beige plastic bags for a period of time.

When he was first employed at the liquor store he received training from witness E. She explained how to operate the sales system and briefed him on the identification requirements. She regularly reminded him of the responsibilities of the job and often called when he was working to see if there were any problems. He has read the "S.I.R." program manual and has a "S.I.R." certificate which he believes that he obtained about one and a half years ago, but is not certain. It's possible that he did not obtain it until sometime after the alleged contraventions. He was not told by witness E that he must obtain it.

He testified that he was strict about checking identification. He believes that he is a good judge of age and required identification from all persons appearing to be under 30 years old. They were required to produce two pieces of identification, one must be government issued with a photograph. If they were unable to produce the identification, they were not served. If the identification did not appear to be genuine, he did not accept it. He would sometimes question the person about the identification or compare signatures to determine if it was

genuine. Repeat customers were still required to produce identification, even if returning on the same night.

At 11 p.m. closing time he would lock the front entrance to the store and assist the customers inside to quickly complete their sales. He would then roll down the shutters on the doors, total-up the sales for the night, re-stock the shelves, set the alarm, lock-up and leave.

Panhandlers often loitered outside harassing customers for money. He tried to move them along. If they made a purchase it was always the cheapest sherry. If they ordered something else, he knew that they were bootlegging for someone else and he refused service. Young persons often hung around in the parking lot. He tried to move them along as well.

On April 21, 2006, he was working evening shift from 4 p.m. to 11 p.m. He does not recall the person described as witness A, nor does he recall seeing the student card in exhibit 2. He would not accept the student card as it is not government issued and further it looks as if the photograph has been tampered with. Referring to the police report at exhibit 1, tab 5; he testified that if it was him at the cash she would have had to produce identification other than the student card.

On May 12, 2006, he worked evening shift from 4 p.m. to 11 p.m. He testified separately to the incidents alleged to have occurred that night:

- He does not know the person referred to as witness B, a minor alleged to have purchased liquor at approximately 8:30 p.m. If he had come into the store he would have been required to produce two pieces of identification.
- He denied selling liquor to a minor on the parking lot at approximately 9:25 p.m. He did not give a bottle of sherry to one of the panhandlers. He

worked alone until closing at 11 p.m. and it was not possible that he left at 9:30 p.m. getting into a white pick-up and driving away.

- Witness D was not inside the liquor store drinking at any time during the time that he was working that night. He recalls witness D coming into the store sometime between 4 - 5 p.m., then leaving to go to the pub next door. He is certain that he did not return later in the evening as he recalls being annoyed that he did not return to stock the coolers as was the normal practice. He remembers that he met witness D in the parking lot accompanied by his friend witness F as he locked up the liquor store around 11:30-11:45 p.m. and was leaving for the night. They talked briefly about the golf tournament being held the following day. He believes that witnesses D and F had just left the pub next door and were going to their vehicles. He was on foot and walked home.

The witness testified that he did not work at the liquor store the following day Saturday, May 13, 2006, as he was working on a vehicle belonging to witnesses D & E's son. Witness E phoned him at one point during the day to see if he could cover the shift, but he was unable to do so. He does not know who worked that evening. Witness E said that she would try to contact witness D, but he is not aware whether she was successful. She may have worked the shift herself.

He was not at the liquor store on May 31, 2006, when the police officers came with the reports concerning the alleged contraventions. He discussed the allegations with witnesses D & E. He told them that the alleged contraventions didn't make sense and didn't occur.

On June 14, 2006, he went with witness D to meet with the liquor inspector. He does not recall her reading out the police reports outlining each alleged contravention, but rather she referred to the citations, i.e. LPCs and CN at exhibit 1, tabs 8 –12. He recalls telling the inspector he would not have served the female minor witness A without seeing proper identification. He told the

inspector that he did on occasion tell the youths hanging around the store that he was the manager, as that seemed to have a greater effect on them in getting them to leave. He was asked by the kids on a couple of occasions to purchase liquor for them, he would tell them that you've asked the wrong person and tell them to leave. He recalls that they discussed with the inspector whether a signed credit card was sufficient as a second piece of identification. The inspector said that she would check and get back to them. She did not do so. They also discussed what was allowed under a delivery system. He asked her whether it was allowed for a person to purchase liquor before 11 p.m. and then pick it up later. He had permitted the employees of the pub next door to purchase liquor during their rest break and then pick it up later after the pub closed. The inspector said that the practice was not allowed and he discontinued doing it.

SUBMISSIONS – LIQUOR CONTROL AND LICENSING BRANCH

The branch advocate submitted that there is evidence supporting each of the contraventions.

The minors presented as witnesses for contraventions 1, 2, 5 & 6 were clear in their evidence, straightforward and honest. There was no discrepancy in their evidence on any of the salient points. There may have been slight variations on minor cursory points, however, this goes to the truthfulness of the witnesses. The witnesses were not motivated by anything other than to tell the truth.

The evidence given by the four police officers corroborated that of the minors and established the contraventions 1, 2, 5 & 6. Concerning contraventions 3 & 4, the officers observed witness D inside the liquor store consuming beer with three other males. They saw him exit later and leave with two of these males in the licensee's BMW. The evidence concerning the after hours sale of liquor was presented by the police officers who observed the male and female enter the

back door of the store after closing hours and leave with liquor, which they said was purchased at the liquor store. The licensee's witnesses differed on whether they left in the Honda owned by witness D, or in a friend's truck.

He submitted that the evidence of the witnesses presented by the branch was to be preferred to that of the witnesses for the licensee. All of the witnesses for the licensee were motivated by family, friendship or business relationships.

Concerning the issue surrounding the day and date of contraventions 3–6. He submitted that the licensee provided evidence that witness G never worked Fridays, and that the time and dates worked by all employees was kept on a calendar. That calendar could have been made available as evidence. That it was not provided gives rise to an adverse inference.

He submitted that the licensee's evidence that any further contraventions could have been prevented had she been notified about the April 21, 2006, contravention in a more timely fashion, does not allow for a defence to the later contraventions. He referred to the BC Supreme Court decision of *Richards on Richards* [2004] BCSC 616, wherein the court looking at a similar situation did not accept that argument and noted "It was always within the ability of the [licensee] to voluntarily comply...."

He submitted that the licensee has not established due diligence. She relied almost exclusively on the "S.I.R." program training for her employees, yet did not ensure that all employees had completed certification.

He submitted that in the circumstances surrounding the contraventions, penalties for each contravention are necessary to ensure future voluntary compliance by the licensee. With the exception of contravention 6, all penalties recommended by the branch are the minimum for each contravention. The circumstances surrounding contravention 6, wherein the employee who was held out on

occasion to be the manager of the liquor store bootlegged liquor to a minor were sufficiently egregious to warrant a significant penalty. Further, it was a second contravention occurring after the same type contravention occurring on April 21, 2006, and a greater penalty is thus warranted.

SUBMISSIONS – LICENSEE

In his submission, counsel for the licensee drew a distinction between those alleged contraventions occurring on April 21, 2006, and those of May 12, 2006.

Concerning the alleged contraventions occurring on April 21, 2006, he submitted that the issue to be decided is, did the female minor purchasing the liquor on that date present an image of reasonably appearing to be a person over 25 years of age. She was variously described by the police officers that dealt with her as possibly being of age. The only officer who described her as being a minor had dealt with her previously and knew her to be underage. The minor, witness A, testified that when planning to use the fake identification she deliberately dressed, dyed her hair and wore make-up to look like her cousin in the photograph and to appear older. The evidence of witness J who was working in the liquor store was that he was strict about requiring identification from all persons who look close to 25 years old.

Concerning the contraventions alleged to have occurred on May 12, 2006, he submitted that the issue to be decided is whether these incidents occurred on May 12, 2006, as alleged. This issue was made known to the branch prior to the hearing, yet was not fully responded to by the branch in presenting its evidence. For example, police officers notes purportedly written at the time of the incidents were not dated. The evidence of the witnesses presented by the licensee is that the incidents purported to have occurred on that date couldn't have occurred. He referred to each separate contravention alleged to have occurred on May 12, 2006:

- Sale of liquor to the minor at approximately 8:28 p.m.
- The evidence of branch witness B was that witness G served him. Witness B had no significant event to which he could refer to be certain of the date. Witness G testified that May 12, 2006, was a Friday and he never worked on Fridays. Witnesses presented by the licensee confirmed this.
- Sale of liquor to the minor at approximately 9:25 p.m. The evidence of branch witness C was inconsistent and was contrary to that given by licensee witness J, who was able to recall the events of that day.
- Consumption of liquor by an employee on duty at approximately 10:18 p.m. The evidence of officer 1 was that the incident was observed at 10:18 p.m. after the store had closed at the usual time of 10 p.m. All evidence presented was that the store hours of sale were to 11 p.m., not 10 p.m. The evidence of witness D that he had been in the store earlier in the evening, sometime between 6 - 7 p.m. and did not return later was corroborated by witnesses F, I and J.
- After hours sale of liquor at approximately 11:30 p.m. This could not have occurred as alleged. The evidence is that witness D was not in the store at that time and the store had been closed by witness J. Further, the bag used to carry the liquor was beige in colour, whereas the plastic bags used by the store were white. The persons alleged to have made the purchase of the liquor were not presented as witnesses.

Counsel submitted that due diligence provides a complete defence to the allegations. Here the licensee provided training to all employees utilizing the "S.I.R." program manuals. The licensee as a parent viewed the sale of liquor to minors a serious matter. She regularly reminded employees about their responsibilities and checked to see if there were any problems. Employees were told to call her if they had any problems. The licensee was the directing mind; no other person had management responsibilities. He referred to the branch's previous decision, *671643 BC Ltd. dba Sauce Restaurant* (General Manager's

decision EH06-009 dated August 31, 2006), wherein the licensee was found duly diligent and drew a parallel to the circumstances here.

Counsel submitted that should any of the contraventions be found to have occurred, consideration should be given to the manner in which the police investigation was carried out, the purpose of the enforcement legislation and whether a monetary penalty would be sufficient. Had the licensee been made aware of the incident occurring April 21, 2006, it is likely that steps would have been taken by the licensee to ensure there were no further incidents. Had the licensee been notified earlier of the allegations, witnesses could have been interviewed earlier before memories faded enabling the licensee to make a full defence to the allegations.

The licensee's testimony reveals that these matters have been taken seriously. More signs were posted in the store and a video system installed. The licensee intends to have more communication with the local liquor inspector in the future in order to prevent problems occurring. There is no need to assess a penalty, the lesson has been learned and the desired effect attained.

Should penalties be assessed, consideration should be given to penalties in the range of \$1000 per contravention. The extraordinary penalty recommended for the sale of liquor to the minor on the parking lot was recommended because the inspector believed that the sale was made by the person who was the manager of the liquor store. That has been found not to be the case. The employee suspected of selling the liquor in that case was a clerk and had no managerial responsibilities.

REASONS AND DECISION

EH06-104 (Alleged Contraventions 1 & 2)

The evidence is that on April 21, 2006, a minor, witness A, was found in possession of liquor that she had purchased at the Three Gables liquor store. There is no evidence to the contrary on this point, and I find on a balance of probabilities that that is what occurred. That is a contravention of section 33(1)(a) of the *Act*.

There is a defence to this contravention in section 33(5) if it can be shown that the person making the sale required the minor to produce identification, examined and acted on the authenticity of the identification. The evidence of the minor is that she purchased liquor twice in fairly quick succession on that date. She could not recall whether she was requested to produce identification on the first occasion, but is certain that she was not requested to produce identification on the second occasion. I find that witness J was the person making the sale. He is the person who the licensee's witnesses testified was on duty on that date at the time in question, and is a Caucasian male as described by the minor in her *viva voce* evidence.

Witness J testified that when working at the liquor store he always checked identification of persons who appeared to be under 30 years of age. He checked it for every sales transaction, even where there was more than one by the same person on the same day. While he does not recall this particular transaction he testified that he would have checked the identification of witness A before completing the sale. Further, he would not have accepted the student card as identification because it was not government issued identification and the photograph appeared to have been altered.

I prefer the evidence of witness A. She recalled the occurrences. She may have been requested to request identification on the first purchase, but was certain that she was not requested to do so on the subsequent purchase. Further, the identification that she would have produced if requested consisted of a student card bearing her cousin's date of birth and photograph. I find that the defence in section 33(5) has not been made out.

Section 45 (2) of the *Regulation*, as it was in force at the time of the contravention, required that a licensee must request two pieces of identification from any person appearing to be under the age of 25 before selling liquor to that person. Counsel for the licensee has submitted that whether the person appears to be under 25 is subjective, and that there is evidence to support the finding that the minor dressed and made herself appear older and could have appeared 25 years of age or older. I agree that the evidence of the minor is that she did dress and make up to look older and similar to her cousin's photograph.

The evidence of the police officers that dealt with her at the time was that she appeared to be 18 to 19 years of age at best. Further, I had the opportunity to observe the minor when she appeared as a witness. While she may not have dressed or have made up to appear older as she did on April 21, 2006, she is nonetheless an obviously young appearing person, of doubtful age to legally be purchasing liquor. I find on a balance of probabilities that on April 21, 2006, the minor was a person appearing to be under the age of 25 and from whom two pieces of identification should have been requested. I find that the evidence is that she was not requested to produce two pieces of identification as required by section 45(2) of the *Regulation* as it was then in force. That is a contravention.

The licensee is entitled to a defence to the finding of the contraventions, if it can be shown that she was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures

to identify and deal with problems, she must ensure that those procedures are consistently acted upon and problems dealt with.

Here the licensee, utilizing the "S.I.R." program materials, had instructed and trained liquor store employees with particular attention to the provisions of not selling liquor to minors and requesting and checking identification. Employees were reminded of their responsibilities and the licensee checked with them from time to time while they were on duty to see if they were experiencing any problems.

While the licensee has placed much weight on the "S.I.R." program manuals, she failed to ensure that staff fully understood the training materials. None of the persons working at the liquor store were required to obtain "S.I.R. certification in the time frame as required by the *Regulation*. Certification ensures that the person reading the program materials has comprehended and is able to apply the principles and requirements of the course materials. Section 44 of the *Regulation* requires that all servers working in a LRS require a "S.I.R." server certificate after a period of employment of 120 days. I am satisfied that that refers to 120 consecutive calendar days and not 120 working days, and refers to both full and part-time servers. The evidence is that the licensee and witnesses D, G and J all failed to obtain the certification in the required time frame. The situation continued to exist to the date of the hearing with witness F working in the liquor store without having obtained certification within the required time frame.

At the time of the contraventions the licensee did not have any system in place to determine whether employees were meeting their responsibilities, other than to call them from time to time to determine if there were any problems. She relied on the liquor inspector or police officers to advise her if problems existed.

I find that the licensee was not duly diligent.

In conclusion on the evidence, I find on a balance of probabilities that on April 21, 2006, the licensee contravened:

- Section 33 of the *Liquor Control and Licensing Act* by selling liquor to a minor; and
- Section 45(2) of the *Liquor Control and Licensing Regulation* by failing to request two pieces of identification from a person appearing to be under the age of 25 before selling liquor to the person.

EH06-105 (Alleged contraventions 3, 4, 5 & 6)

These alleged contraventions arise from a series of incidents alleged to have occurred during the evening hours of Friday, May 12, 2006. The first issue to be determined is whether the incidents could, on a balance of probabilities, have occurred on May 12, 2006, as alleged. On this issue the evidence given by the witnesses presented by the branch is completely at odds with the evidence given by the witnesses presented by the licensee.

The branch presented two minors who testified that they separately and at different times and circumstances purchased liquor from the liquor store during the evening of May 12, 2006. These transactions were witnessed by police officers who were making observations of the liquor store. The officers interviewed the minors and seized the liquor. The police officers also observed two other incidents during the course of that evening giving rise to separate alleged contraventions. Some notes were made by the police officers at the time of the incidents. Other notes and reports were made later at the end of their shift at approximately 2:30 a.m. of May 13, 2006. The police officers testified individually about their observations and actions taken that night.

Having heard all of the evidence given by the witnesses presented by the branch, I am satisfied that the only witness having any independent memory of the date of the transactions was witness C. He testified that he recalled it to be May 12, 2006, a Friday or a Saturday, because that was the day that he met his girlfriend. I am concerned that not being able to place the date as a Friday gives rise to some doubt to the accuracy of his recall. I am satisfied that the remaining witnesses presented by the branch depended upon pre-hearing preparation to recall the date rather than from independent memory. The police officers reviewed their notes and reports for this purpose. Interestingly, none of the witnesses presented by the branch testified as to the day of the week that the incidents occurred. The police officers' testimony was corroborated by notes and reports, copies of which were made exhibits and presented into evidence.

The witnesses presented by the licensee testified to some independent memory of the date on which the incidents were alleged to have occurred. Witnesses D, F and I recalled the day and date because it was the day before a golf tournament, in which they were either involved or were aware of. Witness G did not testify to having memory of the specific day and date other than that May 12, 2006, being a Friday he could not have been working as alleged because he never worked on a Friday. Witness J testified that he had some independent memory of the day and date because it preceded the day on which he worked on the vehicle belonging to the licensee's son. Also, he recalled being somewhat annoyed that witness D did not come to the liquor store to stock the coolers as was normal routine. The evidence that the incidents could not have occurred on the date as alleged was corroborated by the testimony of witness H that the computer system showed that the only person who was logged on to the sales system to conduct sales transactions during the evening of May 12, 2006, was witness J and not witnesses D or G.

In my view, the vastly different body of evidence presented by the branch and the licensee cannot co-exist. One or the other must be accepted. It seems to me that the situation gives rise to two possibilities; witnesses for the branch got the date wrong, or the witnesses for the licensee were less than truthful.

There is no evidence that the witnesses for the licensee coloured their evidence. One could consider that as all the witnesses were associated with the licensee by family, employment, or business relationships there may be motive for each to provide a sympathetic interpretation of their recollection. That however, is not evidence that they in fact did so.

The reliability of the witnesses for the branch as to the date of the incidents giving rise to the contraventions comes down to the notes and reports made by the police officers. If these notes are to be relied upon to determine the issue of the date of the alleged contraventions, they must stand the test of examination.

Unfortunately those notes made at the time of the incidents and which were presented into evidence as exhibits 5 & 6 do not show the date of the occurrences. They appear to be excerpts from more lengthy notes, chronologically oriented with notations as to the times of the occurrences. There is nothing to indicate the day or date of the occurrences.

Other notes and reports were made at the end of the shift at approximately 2:30 a.m. and were placed into evidence as exhibit 1, tabs 13, 15 & 16.

The notes at tab 13 show the date of the occurrence as May 12, 2006. An examination of the notes raises an issue of their accuracy. The notes indicate that at 10:18 p.m. the liquor store was closed. That is contrary to evidence presented during the hearing that the store operated to 11 p.m. each day of the week. Witness J testified that on May 12, 2006, he worked the evening shift, closing at 11 p.m. and leaving around 11:30 p.m. Witness H testified that the

computer recorded that witness J logged on to the sales system at 4:56 p.m. (4:36 p.m. real time) and off at 11:28 p.m. (11:08 p.m.). Also the notes contained an error concerning the identity of one of the officers. We were told during the course of the hearing that the reference in the notes to officer 2 under the heading "11:40 p.m." should properly read officer 4.

The report at tab 15 shows the date of the occurrence as 06-05-12 (May 12, 2006). An examination of the report also raises an issue of its accuracy. Officer 2 testified that he completed the report at approximately 2:30 a.m. prior to going off shift, yet he signed and dated the report 06-05-12 (May 12, 2006). That should have read May 13, 2006. It appears that either the date of the occurrence or the date that the report was completed is in error. I note that this is in contrast to the report at tab 5, which dealt with the events of April 21, 2006. Officer 3 testified that the report was completed either prior to going off shift at 3 a.m. or prior to commencing the next shift at 6 p.m. That report is properly signed and dated 2006-4-22 (April 22, 2006).

The report at tab 16 shows the date of the occurrence as 2006-05-12 (May 12, 2006). It is not dated. Officer 3 testified that he completed it prior to going off shift.

In conclusion, I find that there are sufficient errors in the aforementioned notes and reports to preclude them as being conclusive evidence of the date of the alleged contraventions.

I find that on the whole of the evidence presented by both the branch and the licensee, the evidentiary burden that the incidents giving rise to the alleged contraventions occurred on May 12, 2006, has not been satisfied.

PENALTY

EH06-104 (Contraventions 1 & 2)

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a license or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a licence

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

There are no previous proven contraventions of the same type for this licensee within the year preceding this incident. Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegations as first contraventions. The ranges for first contraventions of these types are:

- Section 33 of the *Liquor Control and Licensing Act* (the *Act*) selling liquor to a minor. Item 2 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 4 - 7 days and/or a monetary penalty of \$5000 - \$7000.

- Section 45(2) of the *Liquor Control and Licensing Regulation* (the *Regulation*) failing to request two pieces of identification from a person appearing to be under the age of 25 before selling liquor to the person. Item 4 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 1 - 3 days and/or a monetary penalty of \$1000 - \$3000.

The branch's primary goal in bringing enforcement action is to achieve voluntary compliance. Considering all of the evidence presented during the course of the hearing, I have concerns that at the time of the contraventions the Three Gables liquor store was an all too accessible source of liquor to minors in the community. Minors obtaining and consuming liquor is a serious matter that can lead to dire consequences. I find that a penalty is necessary to ensure future compliance. In the circumstances, a significant penalty is warranted and appropriate. I find that the maximum seven day suspension penalty for the contravention of section 33 of the *Act*, and that the maximum \$3000 monetary penalty for the contravention of section 45 of the *Regulations*, are necessary and appropriate. That a suspension penalty may cause embarrassment and a loss of sales revenue is not sufficient reason to refrain from imposing such a penalty where it is in the public interest to do so.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Retail Store Licence No. 193061 for a period of seven (7) days, to commence as of the close of business on Thursday, June 14 2007, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*).

To ensure this Order is effective, I direct that the Liquor Retail Store Licence No. 193061 be held by the branch or the RCMP Penticton Detachment from the close of business on Thursday, June 14, 2007, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay a monetary penalty of Three Thousand Dollars (\$3,000) relating to Liquor Retail Store Licence No. 193061. The monetary penalty must be paid no later than the close of business on June 26, 2007.

[ORIGINAL SIGNED]

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: May 28, 2007

cc: RCMP Penticton Detachment

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

Liquor Control and Licensing Branch, Surrey Office
Attention: Shahid Noorani, Branch Advocate