



**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: EH09-010

For the Licensee: Malvinder Randhawa

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: October 6 & 13, 2009

Place of Hearing: Penticton BC

Date of Decision: November 10, 2009

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 AM to 11 PM seven days per week. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication: '*Guide for Liquor Licensees in British Columbia*'.

Alleged Contraventions and Proposed Penalties

The branch's allegations and proposed penalty are set out in the Amended Notice of Enforcement Action (the "NOEA") dated June 25, 2009:

1. The branch alleges that on January 16, 2009 the licensee contravened Section 33(1)(a) of the *Liquor Control and Licensing Act* by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a ten (10) 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 license suspension for 10 - 15 days and/or a monetary penalty of \$7500 - \$10000.

2. The branch also alleges that on January 16, 2009 the licensee contravened section 43 of the *Liquor Control and Licensing Regulation* by failing to verify that its employee had successfully completed the "Serving it Right: The Responsible Beverage Service Program." The proposed penalty is a one (1) day suspension of the liquor licence (item 23, Schedule 4 of the *Regulation*).

Item 23 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a license suspension for 1 - 3 days and/or a monetary penalty of \$1000 - \$3000.

The licensee disputes the contraventions.

RELEVANT STATUTORY PROVISIONS

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

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

Liquor Control and Licensing Regulations (the Regulations)

Beverage service training

43 (1) For the purposes of this regulation and section 13 of the Act, training program means the training program entitled "Serving It Right: The Responsible Beverage Service Program", delivered under the auspices of a person or organization approved by the general manager.

(2) For the purposes of section 13 (1) of the Act, the following licence categories are prescribed:

- (a) winery licences containing an endorsement referred to in section 18 of this regulation;
- (b) winery licences and brewer's licences issued to establishments that provide samples in a sampling room designated by the general manager under section 53 (1) of the Act;

(c) liquor primary licences, liquor primary club licences, food primary licences, licensee retail store licences and special occasion licences.

(3) For the purposes of section 13 of the Act, the training program is prescribed.

(4) Repealed. [B.C. Reg. 133/2007, s. (a).]

(5) Successful completion of the training program by each person must be evidenced by a certificate of completion issued in the name of that person by an authority approved by the general manager.

(6) Repealed. [B.C. Reg. 133/2007, s. (a).]

(7) The following persons in the following situations are exempt from the requirement to complete the training program:

(a) an unpaid manager or unpaid server in a club that is operated under a liquor primary club licence;

(b) subject to any terms and conditions imposed under section 12 (2) and (3) of the Act, a server in a food primary establishment;

(c) an unpaid server in an establishment licensed under a private special occasion licence or a public special occasion licence;

(d) a person in whose name a private special occasion licence is issued, unless that person is acting on behalf of an organization, association or other organized group of persons.

(e) a server who

(i) has successfully completed a liquor server training program required by another province and approved by the general manager, and

(ii) is able to provide documentary proof of his or her successful completion of the program when requested to do so by the general manager, an officer of the Liquor Control and Licensing Branch or a peace officer.

(8) Subject to subsection (7) of this section, before allowing a person to manage or serve liquor in a licensed establishment to which section 13 of the Act applies, the licensee must verify that the person has successfully completed the training program.

(9) A person who claims to have successfully completed the training program must produce his or her certificate of completion when requested to do so by the

general manager, an officer of the Liquor Control and Licensing Branch or a peace officer.

[am. B.C. Regs. 448/2004, s. (a); 133/2007, ss. (a) and (b); 109/2009.]

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 1 | Branch Book of Documents #1, tabs 1 – 19. |
| Exhibit 2 | Agreed Statement of Facts. |
| Exhibit 3 | CD video disc. |
| Exhibit 4 | One page excerpt from staff meeting notes. |
| Exhibit 5 | Gables Liquor Store Guidelines for Employees. |
| Exhibit 6 | E-mail messages from Malvinder Randhawa. |
| Exhibit 7 | Letter of October 9, 2009 from CEO of go2 Tourism HR Society. |
| Exhibit 8 | Decision of General Manager LCLB EH06-104 & 105 May 28 2007 re: Harbans Kaur Randhawa dba Three Gables Hotel. |

EVIDENCE

AGREED STATEMENT OF FACTS

The parties agreed by way of an Agreed Statement of Facts (exhibit 2) and during the course of the hearing that on January 16, 2009 three minors, female residents of Summerland BC, two of whom were 17 years of age and one eighteen years of age

entered the Licensee Retail Store of the Three Gables Hotel and purchased liquor. The minors were not requested to produce nor did they produce any identification at that time.

THE LIQUOR CONTROL AND LICENSING BRANCH

Police officers, witnesses A and B testified that they are members of the RCMP currently stationed at the Penticton detachment. They were on duty the evening of January 16, 2009, working in plain clothes as part of the crime reduction team making observations of liquor licensed establishments in the city of Penticton with the local liquor inspector. The Three Gables liquor store was one of the establishments being observed.

At approximately 7:25 PM they observed three young females enter the liquor store. They appeared to be under 19 years of age, the legal age for purchasing liquor within the province of BC. The liquor inspector entered the liquor store shortly after the young females. The police officers waited outside and discreetly followed them to their vehicle in a nearby parking lot. The officers identified themselves and the young females were requested to produce identification. They produced valid BC drivers' licenses containing their dates of birth showing that two were 17 years old and the third 18 years old. The liquor, consisting of a 750 ml bottle of vodka, two cans of a vodka beverage and 12 cans of beer, was seized and the young females were escorted back to the liquor store and identified to the clerk on duty as being minors. They were subsequently sent on their way. They were not issued violation tickets for any applicable liquor offences. The officers obtained a disc copy of the videographed sales transaction from the liquor store's video security system (exhibit 3).

They made notes of their observations and actions (exhibit 1, tabs 4 & 5) and forwarded a report to the liquor inspector (exhibit 1, tab 3).

A branch liquor inspector, witness C testified that he 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 license (exhibit 1, tab 11) for the liquor store allows the sale of liquor between 9 AM and 11 PM 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 13. He referred to excerpts from the Guide dealing with: "Your Role as a Licensee" (p 3); "Serving It Right: BC's Responsible Beverage Service Program" ("SIR") (p 9) and "Minors" (p10).

On the evening of January 16, 2009 he was conducting covert compliance inspections of licensed establishments in Penticton with police officers A & B. The Three Gables Liquor Store was on the list of establishments being checked as he had received complaints from other licensees as well as members of the public that the store was selling liquor to minors. At approximately 7:25 PM he observed three young females approach and enter the Three Gables liquor Store. As they appeared to be minors, under 19 years of age he followed them inside. They shopped through the store, picking up non-alcoholic mix, beer and cans of a vodka beverage. These were taken to the clerk at the front checkout where they requested a bottle of vodka that is kept for purchase behind the counter. The clerk (witness D) rang up the sales and each of the three young females contributed cash towards the total purchase price. The inspector was in position to observe and overhear the transaction. No identification was requested of, nor produced by, any of the young females. They left the liquor store shortly followed by the inspector.

The inspector met up with the police officers who advised him that the young females were all minors under 19 years of age. They proceeded back to the liquor store where the officers and inspector identified themselves to the clerk (witness D) who had completed the sales transaction. The inspector advised the clerk that the young females were minors and asked him why he had not requested their identification. He

responded that they been in the store before and had produced identification. The inspector asked him for his "SIR" certificate. He said that he did not have it with him but he would provide it at a later date. He provided the inspector with a copy of the sales receipt for the transaction (exhibit 1, tab 6).

The inspector testified that at the time of the sales transaction the clerk was the only employee in the retail area at the front of the store. He later determined that there were two other employees working in the back storage area.

The inspector made a written request to the licensee for documents related to the operation of the liquor store. He requested "SIR" certificates for all employees, minutes from staff meetings, training sessions and disciplinary interviews as well any policy, procedures and training manuals for the operation of the store (exhibit 1, tab 16). The documents were received as requested (exhibit 1, tabs 7 & 8; exhibits 4 & 5). Copies of the "SIR" certificate for the employee on duty at the time of the subject transaction (witness D) was issued on February 6, 2009, i.e. following the date of the transaction. The inspector checked with the administrator for the "SIR" program and was advised that this was the only certificate on record for that person.

The licensee and her husband attended a compliance meeting with the liquor inspector on April 15, 2009. The requirements regarding the sale of liquor to minors, requesting identification and ensuring that staff had "SIR" certificates were discussed. They advised the inspector that the clerk making the sales transaction had received on the job training from the licensee and the night manager of the liquor store when he commenced employment in September 2008. They had requested his "SIR" certificate and were told by him, his mother and two previous employers that he had received the certificate.

The inspector testified that the licensee could have ensured that the clerk had his certificate by viewing and making a copy of it or requesting a copy from the

administrator of the "SIR" program. He issued a contravention notice to the licensee for the two alleged contraventions (exhibit 1, tab 10).

The inspector completed the NOEA on June 25, 2009 (exhibit 1, tab 1) for the alleged contraventions. He recommended the minimum suspension penalty for each contravention. He was concerned that permitting minors to have access to liquor can lead to serious consequences. The licensee has a responsibility to ensure that all persons purchasing liquor are of legal age. The "SIR" program assures a licensee that an employee has received training and knows his responsibilities. The licensee cannot have that assurance without seeing an employee's certificate.

The inspector was asked by the licensee's representative what was the branch's requirement when a patron appeared to be under 25 years of age and had produced identification many times previously and was known to be of legal age. The inspector responded that it is the licensee's responsibility to ensure that the person is of legal age. In his opinion that did not occur here because the minors definitely did not appear to be of legal age.

EVIDENCE - THE LICENSEE

Licensee witness D testified that he is currently 21 years old and has been working in licensed restaurants since he was 14 years old. When he started working he received a copy of the "SIR" program, completed the worksheet and gave it to the restaurant manager who forwarded it to the head office. He did not receive a certificate but believes that he passed the exam because it was necessary to have it to continue working there. He was shown how to check identification properly by checking such things as the signature and eye colour. He was not permitted to serve liquor until he reached 19 years of age. He then worked for another licensed restaurant. They asked if he had a "SIR" certificate. He told them that he did and they took his word.

He commenced working at the Three Gables liquor store in the fall of 2008, working in the back storage area. He started working in the front area at the checkout in December 2008. The licensee, Harbans Randhawa asked him if he had a "SIR" certificate. He told her that he did. She told him to bring it to her. He procrastinated. He received training from the licensee whilst working with her on the day shift. The training was more thorough than he had previously received at the restaurants. The licensee stressed that he must check identification and must not serve intoxicated persons. She quizzed him and told him the differences between real and fake identification. The liquor store does not allow the sale of liquor to minors and the licensee stressed that on a daily basis along with the importance of checking identification. He was told to read the store "Guidelines for Employees" which was posted in the liquor store (exhibit 5). Regular mandatory staff meetings were held.

He was working at the liquor store at the front checkout the night of January 16, 2009. Two other employees were working in the back storage area. He recalls the three female customers coming in and purchasing liquor. He had seen them before in the liquor store and had seen them drinking in licensed nightclubs in Penticton. He believed that they were his age or perhaps older because they were all bigger than him and more mature. He had checked two of them for identification previously and had seen either a BC Driver's License or BC Identification card and a second piece of identification from each, a health card and a SIN card. After the incident the licensee told him that he couldn't work at the liquor store until he had a "SIR" certificate. He took his "SIR" exam again in February 2009, passed and received a certificate. He has since gone on to other employment.

Licensee witness E testified that he has worked at the Three Gables liquor store for approximately two years and had previous experience working in licensed restaurants. He is familiar with the Act and the Guide. When he started to work at the liquor store the licensee asked him he had a "SIR" certificate. He does and it is posted in the liquor store. The licensee went through the "SIR" exam with him and explained how to check identification. The licensee works in the store seven days a week and daily reminds

staff about checking identification and not serving intoxicated patrons. She often calls to remind them after she has gone home.

He was working as the supervisor the night of January 16, 2009. He was in the back storage area stocking the coolers with another employee at the time of the incident with the three minors. He came to the front of the store when he saw the liquor inspector talking with witness D. The three females were standing outside. He testified that he would have checked the minors for identification had he served them. He asked witness D why he had not checked their identification. He told him that he had seen their identification before and had seen them at other bars in town.

Licensee witness F testified that he worked at the Three Gables liquor store for three and a half to four months starting in March 2009. He was not working there in January 2009 nor is he currently. He had previous experience working in bars in Edmonton and working for a liquor distributor. When he started at the Three Gables he worked with the licensee for the first week. She was very adamant about checking identification. If he had any doubt about the authenticity of any identification he refused service.

Licensee witness G testified that she has been the licensee of the Three Gables liquor store since 2003. She is familiar with the legislation and the terms and conditions of the liquor license. She is responsible for hiring and training new employees. If a new employee does not have a "SIR" certificate they are given a copy of the "SIR" book to take home and study. She then questions the employee on the provisions following which the employee writes the exam and obtains a certificate. New employees start in the back storage area, eventually working in the front checkout area. They start by working with her on dayshift. She watches them and if they make a mistake she corrects them. When they see a customer come in she asks the new employee if they would ask that person for identification. She teaches them practical things like how to check identification properly and not to serve intoxicated patrons. She teaches them to assess each person as they enter the store. If a person is young they must ask for their identification. She prepared a "Guidelines for Employees" document about two to three

years ago (exhibit 5). All employees are told to read it and it is posted in the liquor store.

When witness D started working at the liquor store in September 2009 she asked him if he had a "SIR" certificate. He said that he did because he had worked at two licensed restaurants previously. She told him to bring his certificate in and reminded him from time to time. His mother came into the store on one occasion and she asked her whether he had his certificate. His mother said that he had it when he worked at the licensed restaurant. She had no reason not to believe her.

She was working earlier in the day on January 16th. She left the store sometime between 5:30 – 6:00 p.m. Witness E worked the evening shift starting at 4:00 p.m. He is the supervisor in her absence. She told him to call her at home if there were any problems.

Licensee witness H testified that he has worked at the Three Gables liquor store since the end of May 2009. He previously worked at the Government Liquor Store (GLS) for two months stocking shelves and serving customers. He did not have a "SIR" certificate while working there and was never requested to produce one. When he spoke with the licensee about working at the Three Gables she told him that he needed to get his certificate prior to working there. She gave him the booklet to study, following which he took the exam. He received better training from the licensee than when working at the GLS. He worked with the licensee for several days when he first started working there. She reminds staff every day not to serve minors or intoxicated persons.

Licensee witness I testified that he is the husband of the licensee. Following the January 16th incident he tried without success to locate the "SIR" certificate for witness D by contacting both restaurants where he had worked previously.

He exchanged a series of emails with the administrator of the "SIR" program (exhibit 6) requesting certificate information for himself and witness D. He provided his date of

birth and advised the administrator that he had taken the test at the same time as the licensee and provided her certificate number. He advised the administrator that witness D had taken the test approximately six years previously and provided his date of birth. The administrator responded that the licensee took the exam on April 15, 2004 but there was no information on file that either he or witness D obtained a certificate (exhibit 6, pp 1, 2, 5 & 6).

He testified that he was certain that he had obtained a "SIR" certificate. The issue had arisen at a previous hearing and the certificate was produced at that time.

[I pause to note that as the issue of the accuracy of the "SIR" program records was germane to the issues in this hearing an adjournment was permitted to allow the branch to respond. This resulted in the branch tendering exhibit 7, a letter from the CEO of the program and exhibit 8 a copy of the previous hearing decision.]

Witness I testified that the information received from the program administrator in exhibit 7 is not accurate. It shows that the licensee took the "SIR" by submitting a paper exam on April 15, 2004. The licensee took the exam on-line using the computer of a neighbouring business. Further, he (witness I) has received a certificate. He is unable to locate it at this time.

He testified that at the pre-hearing conference on September 18th the branch advised that it would call the three minors as witnesses. The licensee was not advised until the day before the hearing that the minors would not be presented as witnesses. He attempted to contact the three witnesses without success. The branch could have requested the police detachment to assist in locating the minors and have them attend as witnesses.

SUBMISSIONS – LIQUOR CONTROL AND LICENSING BRANCH

The branch advocate submitted that there is evidence supporting each of the contraventions. The evidence of the liquor inspector is that he had received complaints about minors being able to purchase liquor at the Three Gables liquor store. This led to surveillance of the liquor store by the inspector and two police officers. Their attention was drawn to three young appearing females entering the liquor store. Investigation revealed that they were all minors and were permitted to purchase liquor. They were not requested to produce any identification. It was subsequently determined that the clerk on duty who sold the liquor to the minors did not have a "SIR" certificate as required under the Act and Regulations.

He submitted that the licensee has not established due diligence. The licensee has written guidelines but does not ensure that they are followed. The licensee did not ensure that her employee had a "SIR" certificate by requiring that it be shown to her. The "SIR" program records do not show a certificate having been issued for the clerk on duty (witness D) at the time of the sale of liquor to the minors. Witness I takes exception with the records but offers no evidence to support his concerns. In his e-mail to the "SIR" administrator (exhibit 6) he stated that he took the "SIR" exam in 2007 at the same time as the licensee. The records show that the licensee took her exam in 2004 and that there is no record of a certificate being issued to witness I. Witness I is not credible on this point.

The advocate submitted that the branch made every effort to locate the three minors and have them attend as witnesses at the hearing. A processor server was engaged to locate the minors and serve subpoenas for their attendance. The processor server was unsuccessful in locating the minors.

He submitted that in the circumstances surrounding the contraventions, penalties for each contravention are necessary to ensure future voluntary compliance by the

licensee. The branch has recommended the minimum suspension penalty for each contravention.

SUBMISSIONS – LICENSEE

The licensee representative submitted that in signing the Agreed Statement of Facts (exhibit 2) he expected that the minors would appear as witnesses at the hearing as had been indicated by the branch during the pre-hearing process. Police constable A viewed the minors' driver's licenses and when he questioned the liquor store clerk as to why identification was not requested from the minors he was told that the clerk had seen their identification on a previous occasion. This should have alerted the officers to the possibility of the minors having false identification and an investigation into that issue. That was not done, nor were the minors presented as witnesses. The branch could have requested the assistance of the police to locate the minors and ensure their attendance at the hearing. The branch publication "Enforcement Hearing Rules" provides that one of the purposes of the rules is to ensure the fair adjudication of the alleged contraventions. That has not occurred here. The licensee did not have opportunity to question the three minors and make a full defence to the alleged contraventions. The licensee could have questioned the minors about the fake identification and whether they knew the clerk and whether he had requested their identification previously. Had the licensee known that the minors would not be presented as witnesses he would have requested that the hearing be delayed to allow the branch further time to locate the minors.

He submitted that the liquor inspector testified that if staff check the identification of patrons and are certain of their age then the identification need not be checked on subsequent occasions. This is the same instruction that the licensee had given the clerk on duty at the time of the sale (witness D). The clerk did not check the minors' identification on the occasion of the alleged contravention because he had seen it previously and seen them in other licensed establishments. He had no reason to refuse them service.

The licensee representative submitted that the employees receive proper training from the licensee. New employees start by working directly with the licensee and she instructs them on the requirements for the sale of liquor. Staff meetings are held and notes taken (exhibit 4). The licensee has written policies (exhibit 5) to guide staff. She does not have written tests because she believes that by stressing the requirements orally employees will have a better grasp of them. She does everything possible to educate, train and supervise her staff. Witness E testified that he would have checked the identification of the three minors had he served them. That is evidence that he has received proper training. The licensee is available to staff at any time they have a problem and drove back to the liquor store following the incident with the minors to take care of what had occurred. She takes pride in her business. She believes that the clerk did not deliberately sell liquor to minors. He had an honest assumption that they were of age.

The licensee representative accepted that the clerk at the time of the sale of liquor to the minors did not have a "SIR" certificate at that time. The licensee had asked the clerk about his "SIR" certificate at the beginning of his employment at the liquor store. The clerk said that he had obtained it prior to working at two licensed restaurants. The licensee had no reason not to believe him. She made certain that all other employees had "SIR" certificates. She was not negligent in her responsibility.

He submitted that it would not be proper to impose a penalty where the branch has not provided a fair hearing.

REASONS AND DECISION

Alleged contravention 1 (selling, giving or otherwise supplying liquor to a minor)

The evidence is that on January 16, 2009 three young appearing females entered the Three Gables liquor store and purchased liquor. Subsequent investigation by a police officer revealed that all three were minors, under the legal age for the sale of liquor.

There is no evidence to the contrary on this point, and I find on a balance of probabilities that is what occurred. That is, on its face, a contravention of section 33(1)(a) of the Act.

The licensee's representative has submitted that the hearing process has been unfair to the licensee in that the branch failed to present the three minors as witnesses. This prevented the licensee from questioning the minors and from making a full defence to the alleged contravention. I am satisfied that the branch made a reasonable effort to compel the minors' attendance by engaging the services of a process server. It is common in legal proceedings to use a process server to locate witnesses and to serve subpoenas compelling their attendance as witnesses. That was done in this case. Unfortunately it was not successful. That said, I am not convinced that having the three minors as witnesses would have furthered the licensee's defence. We could have formed our own opinion on how old the minors appeared to be. We do however have uncontested evidence from the police officers and the liquor inspector that they appeared young and underage. Licensee witness E testified that based on their appearance he would have checked their identification. The minors could have corroborated the clerk's evidence (witness D) by testifying that he did check their identification and that they did frequent other licensed establishments. They could have testified that they used falsified or fake identification. They could not testify that they were not minors at the time. I am satisfied that the investigation by the police officers has established the dates of birth of the three young females and that they were minors at the time of the alleged contravention. On the whole I find that the absence of the three minors as witnesses has not prevented the licensee from making a full defence to the alleged contravention and has not unduly prejudiced the licensee.

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 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 are on duty to see if they were experiencing any problems.

Other than to call them from time to time to determine if there were any problems the licensee did not have any system in place to determine whether employees were meeting their responsibilities when she was not present. There is a history of this establishment selling liquor to minors that should have alerted the licensee of the need to place additional safeguards in place. Exhibit 8 is a copy of a decision of the general manager dated May 28, 2007 which dealt with incidents occurring during April and May 2006. A contravention of section 33 (1)(a) of the Act was found. In the circumstances of that case the maximum suspension penalty was imposed. While there is some improvement on the part of the licensee in that written guidelines for employees have been created (exhibit 5), it is not clear that they are being followed. The guidelines require an employee to make sure the picture on the identification is clear and that the identification has not been tampered with. Employees are to ask random questions about a person's date of birth or address and perhaps have them write their signature so it can be compared with those on the identification. There is no evidence that was done by the clerk in this instance. The licensee could require that all young appearing patrons produce identification on each and every occasion that they wished to purchase liquor. Such practices would go a long way to ensuring that liquor is not sold to minors and to discouraging minors from attempting to purchase liquor at the store. The licensee could use the services of "secret shopper" agencies to ensure that staff are carrying out their responsibilities when she is not present. I am satisfied that these are reasonable measures and could be easily put into effect by the licensee.

I find that the licensee was not duly diligent.

In conclusion, on the whole of the evidence, I find on a balance of probabilities, that on January 16, 2009, the licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* by selling liquor to a minor.

Contravention 2 (failing to verify that its employee had successfully completed the “Serving it Right: The Responsible Beverage Service Program.”)

The evidence is that witness D, the liquor store clerk making the sale of liquor to the three minors was unable to produce a “SIR” certificate when requested to do so. He had been asked by the licensee to produce it on prior occasions and was asked by the liquor inspector the night of sale. He testified that he believed that he had obtained the certificate when he started to work in a licensed restaurant several years previously. He never actually received the certificate but operated on that belief for several years while working in licensed establishments. A check with the agency responsible for administering the “SIR” program revealed that a certificate had never been issued to the clerk. The licensee’s representative, Witness I, took issue with the accuracy of the agency’s records, yet the only evidence he offered to support his claim was his recollection that he had obtained a certificate. The witness was unable to produce a certificate and his recollection about when he obtained it was obscure. At one point in his email to the administrator (exhibit 6), he states that he took the exam in 2007 and at another point says he took it at the same time of the licensee (2004). The previous hearing decision (exhibit 8) records his evidence that he obtained the certificate in late 2005 or early 2006. On the evidence as a whole I find that on January 16, 2009, at the time of sale of liquor to the minors the clerk making the sale, witness D did not have a “SIR” certificate.

On the whole of the evidence I find that the licensee did not verify that her employee had successfully completed the “SIR” program. Accepting the word of the employee or of others is not sufficient to meet her responsibility, particularly when it is easy to either require the employee to produce the certificate or to contact the program administrator to determine if a certificate had been issued.

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 asked the clerk when he was hired In September 2008 whether he had a "SIR" certificate. He told her that he did and she requested him to bring it to the store. He did not and she reminded him on occasion. She asked his mother whether he had a certificate and was told that she believed that he did. The certificate was never produced and it was later found that the clerk did not have a certificate, i.e. he had never completed the "SIR" training by January 19, 2009. At a previous hearing in April 2007 (exhibit 8) the issue of "SIR" certification arose and it was found that employees of the liquor store had not obtained "SIR" certification within the time frame then allowed under the Regulations. That should have alerted the licensee to treat the requirement to verify employee certification as a serious matter. It is a relatively easy requirement to meet by a licensee. Establish a rule that no new employee is hired or allowed to commence their duties without first producing a "SIR" certificate. If there is any doubt about a prospective employee's certification make an inquiry with the program administrator. I am satisfied that these are reasonable measures and could be easily put into effect by the licensee.

I find that the licensee was not duly diligent.

In conclusion, on the whole of the evidence, I find on a balance of probabilities, that on January 16, 2009, the licensee contravened section 43 of the *Liquor Control and Licensing Regulation* by failing to verify that its employee had successfully completed the "Serving it Right: The Responsible Beverage Service Program."

PENALTY

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the licence, I 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 licence 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 license suspension for 10 - 15 days and/or a monetary penalty of \$7500 - \$10,000.
- Section 43 of the *Liquor Control and Licensing Regulation* (the *Regulation*) failing to verify that its employee had successfully completed the "Serving It Right: The Responsible Beverage Program". Item 23 of Schedule 4 of *the*

Regulation provides a range of penalties for a first contravention of this type of a license 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 contravention the Three Gables liquor store was an accessible source of liquor to minors in the community. Minors obtaining and consuming liquor is a serious matter that can lead to serious consequences. I find that a penalty is necessary to ensure future compliance. In the circumstances a penalty is warranted and appropriate. I find that the minimum ten day suspension penalty for the contravention of section 33 of the Act is reasonable, necessary and appropriate.

The Province of British Columbia and the hospitality industry have developed a mandatory alcohol service training and awareness program. The licensee has not met her responsibility in verifying that her all of her employees have obtained the required certification. In the circumstances the minimum one day suspension penalty for the contravention of section 43 of the Regulations is reasonable, necessary and appropriate.

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 eleven (11) days, to commence as of the close of business on Thursday, December 10, 2009, 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, December 10, 2009 until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: November 10, 2009

cc: RCMP Penticton Detachment

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

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