



**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:	The Squires Four Public House Ltd. dba Squires Four Public House 6301 Stickle Road Vernon, BC V1B 3R4
Case:	EH12-077
For the Licensee:	Serry Massoud
For the Branch:	Olubode Fagbamiye
General Manager's Delegate:	Nerys Poole
Place of Hearing:	September 27, 2012
Date of Decision:	October 26, 2012

Liquor Control and
And Licensing Branch

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INTRODUCTION

The licensee, Squires Four Public House Ltd., operates a licensee retail store ("LRS"), i.e. a private liquor store, in Vernon under Licensee Retail Store License No. 192337, with liquor sales from 9:00 a.m. to 11:00 p.m. seven days per week.

Serry Massoud is the principal of the corporate licensee. Both Mr. Massoud and his Director of Operations appeared as representatives of the licensee at the hearing.

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* (the "Guide").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "branch") allegation and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated May 3, 2012. The branch alleges that on April 18, 2012, the licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act") by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a \$7,500 monetary penalty.

For a first contravention of this type, Item 2 of Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation"), provides a range of penalties: a licence suspension for ten to fifteen days and/or a monetary penalty of \$7,500 - \$10,000.

The licensee does not dispute that an employee contravened section 33(1)(a) of the Act by selling liquor to a minor. The licensee submits that they have a complete defence in that they were duly diligent. The licensee further submits that, given the history of this licensee, a warning is a sufficient penalty, if a contravention is found to have occurred.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*****Supplying liquor to minors**

33 (1) A person must not

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

ISSUES

1. Did the contravention occur?
2. If so, has the licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

Exhibit 1: Branch's Book of Documents, tabs 1 to 16.

Exhibit 2: Licensee's Documents submitted as a package and marked as one exhibit

EVIDENCE**Branch's Evidence**

The branch liquor inspector who prepared the NOEA was the only witness for the branch. On April 18, 2012, he was conducting an inspection as part of the "Minors as Agents" Program. The branch established this program in 2011 to monitor compliance with the provision of the Act prohibiting the sale of liquor to minors.

The liquor inspector was working with two other inspectors and a minor agent on the evening of April 18, 2012. Prior to visiting the Squires Four Public House LRS ("Squires Four LRS"), the three liquor inspectors and the minor agent met at the branch office, took photos of the minor and of his driver's licence confirming his birth date. The liquor inspector identified the photos of the minor in exhibit 1 (Tab 11) and stated the appearance and dress of the minor in the photo reflected his appearance that evening. He was wearing a hat and clear glasses, as shown in the photos. The liquor inspector, a second inspector and the 17 year old minor drove to the Squires Four LRS and parked in the parking lot.

The liquor inspector entered the Squires Four LRS at 7:53 p.m. on April 18, 2012. He did not identify himself as a liquor inspector and acted as a customer. He saw two female employees in the store and no other customers. He asked the older female employee for a vodka product. Both female employees were explaining to him about the product and where he might get it. The minor agent then entered the store and walked to the cooler and picked up a six pack of Pilsner beer. He carried it to the counter where the younger female employee sold the beer to the minor without entering into conversation with him. She did not ask for any identification.

The minor left the store and delivered the six pack of beer containing 5% alcohol to the other liquor inspector in the vehicle. The six pack of beer was labeled at the branch office as an exhibit for the hearing and presented at the hearing with the label identifying it and where it was purchased. A photo of the six pack is included in exhibit 1 at tab 12.

The liquor inspector stated that the younger employee continued giving instructions to him about where to find the vodka product while she was completing the transaction with the minor. The liquor inspector said he directed his questions to the older employee. He said the conversation probably lasted about one minute. He was standing at an angle so he could continue to keep an eye on the minor when he was purchasing the beer. The liquor inspector described the younger employee who sold

the beer to the minor, as in her late 20s or early 30s. At no time did the younger employee indicate that he was distracting her.

The liquor inspector said the licensee was notified about the incident the following day by the other liquor inspector who issued the Contravention Notice (tab 2 of exhibit 1).

The liquor inspector testified about the results of a search of Serving It Right certificates for the licensee's employees. His search results indicated that one of the Squires Four LRS employees who had been on duty in the morning and early afternoon of April 18, 2012, as noted on the licensee's time sheets (not during the alleged contravention), obtained her Serving It Right certificate on April 30, 2012, after the date of the alleged contravention.

The liquor inspector identified the LRS Inspection Interview Sheet, dated October 27, 2009 and signed by Mr. Massoud. Mr. Massoud filled this out when he purchased Squires Four LRS and requested the transfer of the liquor licence. He indicated that he had viewed the branch's presentation "What you need to Know About Your Liquor Licence," he had reviewed a copy of the Guide and agreed, as a licensee, he was responsible for ensuring that he and staff employed in his establishment understand and follow the Act, the Regulation and the Guide and any terms and conditions printed on the face of the licence. Mr. Massoud noted on the Interview Sheet that he has a Serving It Right certificate.

The liquor inspector identified a Compliance Meeting report, signed by another inspector, dated January 15, 2010 (tab 7 of exhibit 1). An employee of the licensee, not Mr. Massoud, signed the report. The report says the meeting was to discuss the outcome of the Minor Compliance Project for 2009. The liquor inspector testified that his normal practice would be to have the licensee sign these meeting reports, to ensure he was aware of them.

The liquor inspector set out in the NOEA the notifications that the branch has given about the Minors as Agents Program:

- July 2010: a government press release announced changes to the Act allowing the use of minors as agents for the purpose of checking compliance with the Act;
- February 7, 2011: the general manager of the branch wrote to all Licensee Retail Store licensees and advised them that “Beginning later in February, and on an on-going basis, minors will visit public and private stores, under the close supervision of a liquor inspector, and will attempt to buy alcohol;”
- February 25, 2011: the Publican, a periodical for all members of the Alliance of Beverage Licensees of British Columbia, published an article by the general manager describing the Minors as Agents Program and further advising of the program’s implementation;
- March 14, 2011: the branch issued its first edition of the branch newsletter. This newsletter was mailed to all licensees in the province and contained an article titled “Hiring Minors to Monitor Retail Compliance.”

In the present case, the liquor inspector considered a monetary penalty of \$7500 appropriate to reinforce the seriousness of selling liquor to minors. Ultimately, the branch’s goal is to achieve voluntary compliance and the recommended penalty is intended to reinforce this goal to the licensee.

Licensee's Evidence**Witness A – Mr. Massoud**

Mr. Massoud, principal of the licensee, gave evidence of his history as a liquor store and pub owner and licensee. He has worked 22 years in the liquor service industry and has never had a contravention before this one. He operated a cabaret in Richmond for many years. He also owned a hotel in Enderby which included a pub and liquor store. He purchased the Squires Four Pub and LRS in 2009. He has had a Serving It Right certificate since 1991.

On the evening in question, he agreed that the two female employees on duty at the Squires Four LRS were responsible for checking identification, selling liquor, and generally were in charge of the store at the time. Normally, a third employee who moves from the pub to the LRS is in charge of supervising the store but she was not in attendance that evening. There were no door persons at the store.

He has 16 video surveillance cameras in operation in the pub and the LRS. He often monitors them from his home. On the evening in question, he was not monitoring them, nor was any other staff. Monitoring of the videos is done on a random basis. He did not view the video tapes of the evening of April 18 until six days after the alleged contravention. The video machine erases the events after seven days. He stated that, unfortunately, they neglected to save the copy on the day they viewed it. When they decided to save a copy the next day, the machine had automatically erased it.

Witness B - Director of Operations

The Director of Operations (the “director”) for Squires Four Public House Ltd. appeared at the hearing as a representative of the licensee along with Mr. Massoud, and gave evidence. She started working for Mr. Massoud as general manager of his pub and hotel in Enderby in 2001 and then joined him at Squires Four LRS six months after he purchased it.

As director, she keeps in touch with all the managers and discusses policies and procedures with them. She meets with the LRS staff about every 4 to 6 weeks to review minors’ identification, safety issues, vacation times and importance of diligence, etc.

The director was not present in the LRS on the evening of April 18, 2012. She identified the licensee’s documents, marked as exhibit 2:

- Photos numbered 1 to 14
- Copies of Serving It Right certificates for two employees and Mr. Massoud
- Signed statements from 4 employees dated May 24, 2012, acknowledging importance of requesting identification
- Time Sheets from November 2011 to May 2012 with staff signatures and acknowledgement that 2 pieces of valid identification must be requested of minors
- Submission on due diligence

She reviewed the photos, all taken after the date of the alleged contravention, and pointed out the shots of the video camera surveillance of the LRS in photos numbered 1 to 3. Photo No. 4 is a shot of the cash machine with time and date (partially hidden in photo) that records purchases.

The photos, numbered 5 and 7 to 13 in exhibit 2, show the various signs around the store, at the entrance and at the counter indicating the criteria for acceptable ID and the notice that anyone under 30 will be asked for ID. Photo No. 6 shows two buttons on a board indicating "I ask for 2 pieces of ID." Photo No. 14 is of an email notice from Able BC attaching a copy of a branch letter re: the Minors as Agents Program. She stated that the LRS posted this on their notice board for staff information on Sept. 29, 2011, with large lettering "Please Read!! Important info."

She agreed that, at the time of the alleged contravention, there were only the two female employees working in the store, with no supervisory staff present and that no one was monitoring the video at that time.

She described the young female employee who sold the liquor to the minor as an "ID freak". With respect to the evening in question, she felt that the video she and Mr. Massoud observed showed that the employee was distracted by the liquor inspector's questions. She noted that the video showed the employee looking around the minor and addressing herself to the liquor inspector. She stated she spoke with the employee who said she was talking back and forth to the liquor inspector at the time the minor was purchasing the six pack. The employee did not specifically state she had been distracted. The director and Mr. Massoud surmised this from watching the video of the incident. She added that she later discovered that the employee was undergoing some family problems which may have affected her work abilities. This employee was terminated shortly after the incident.

She agreed that one of the LRS employees who worked on the morning/early afternoon shift of April 18, 2012, did not have her Serving It Right certificate. She stated that this employee had worked for Squires Four LRS for about one month. One of the liquor inspectors brought this to her attention the day after the incident. This employee obtained her Serving It Right certificate on April 30, 2012.

The director did not have her Serving It Right certificate until very recently (about one week before the date of the hearing). She felt, as Director of Operations, it was unnecessary for her to have it, but Mr. Massoud encouraged her to get it. She agreed she occupies a management position. She stated she was not directly responsible for training staff. Her role is more supervisory, making sure staff is doing their job correctly.

Prior to the date of the alleged contravention, she agreed the licensee had no written policies, no written training manual for staff, no written tests conducted for staff on sale of liquor to minors, no 'secret shopper' program conducted in the LRS. Any training or instructions to staff were done verbally. The licensee had no incident log book at the time of the alleged contravention. At meetings with staff, she agreed there are no written agendas, other than perhaps manager's notes, and no written minutes. He agreed further that she has not reviewed the Guide with the LRS staff.

She did not ask the employees to produce any written report about the incident respecting the alleged contravention. She stated that they (she and Mr. Massoud) did not believe it "would come to this"; she thought they would only be issued a warning.

Since the alleged contravention on April 18, 2012, the director has developed a statement for staff members to sign, which acknowledges the importance of asking for identification of "anyone who looks the age of 30 or under" and referring to various signs around the store emphasizing the ID requirements for the purchase of liquor. Four employees signed these on May 24, 2012.

Witness C – employee

Witness C was the older female employee on duty in the LRS on the evening of April 18, 2012. When the liquor inspector entered the LRS, she was engaged in doing her cashout for the end of the shift, which includes walking the store and checking stock, etc. The other employee was at the till. She completed her shift at 8:00 pm, shortly after the liquor inspector and minor agent left the LRS.

When asked about the other employee on duty being distracted by the liquor inspector's questions, Witness C stated that the other employee did not mention this on the night in question. She spoke to the younger employee after the incident and after she had met with the director and Mr. Massoud. The younger employee mentioned the presence of the person who was asking questions and the fact that he was just talking and did not purchase anything.

When asked about the photos in exhibit 2, of the notices in the LRS re: criteria for ID, she confirmed that they had been in place since before the alleged contravention. She said that, if the notice taped to the counter became unreadable, it was replaced right away. She stated the sign-in time sheets for staff were used before the contravention.

Witness D – supervisor

Witness D is the licensee's supervisor who supervises both the Squires Four LRS and the pub. She was not in the LRS on the night of the alleged contravention. She agreed that the notices re: ID shown in the photos were all in place prior to the incident. She confirmed that the licensee had no written incident log book prior to the contravention, no written agendas or minutes of meetings, no written tests and no 'secret shopper' program. She watched the videotape of the incident and observed that the younger employee who served the minor was looking around the minor and directing her conversation to the liquor inspector. She said this was visual observation only as there is no audiotape.

She stated that after the incident, she was demoted to being the supervisor of the pub only and no longer supervisor of the LRS.

SUBMISSIONS

Branch

The branch says that there is no dispute that the licensee, through its employee, sold liquor to a minor. Further, the branch submits there is little evidence of written policies in place or training of staff to support a defence of due diligence. In this case, the employee, who was unsupervised, sold the liquor to the minor without requesting identification of any sort. Written policies are essential to provide for consistency in training and outcomes to ensure staff always ask for ID when presented with a young-looking purchaser.

The branch submits that any distraction of the employee, as alleged by the licensee, is not a valid reason for ignoring the requirements to ask for ID. The failure of some of the licensee's employees to have valid Serving It Right certificates is a further indication of the licensee's disregard of the law and is fatal to supporting a defence of due diligence.

The evidence of the signs and posters in the LRS, which emphasize the criteria for ID and what staff must do, is insufficient to prove due diligence. The employees must follow up and act upon these directions. Further training and written tests to the staff will help ensure that the licensee's staff do what is required under the law.

The branch is pursuing enforcement action in this case as supplying liquor to minors is a significant public safety issue because of the following:

- The effects of alcohol on growing bodies and developing minds;
- The effect on individuals and society of irresponsible drinking behaviour learned at an early age;
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult; therefore, liquor has a more intoxicating effect on minor; and
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft.

In the present case, the minor was only 17 years of age. The minor looked his age and made no attempt to deceive or mislead when he made his purchase. The employee made no attempt to ask for any piece of identification. The branch is therefore recommending the monetary penalty of \$7500 to ensure future voluntary compliance.

Licensee

The licensee does not dispute that one of their staff sold liquor to a minor. However, the licensee submits that they have exercised due diligence through their warnings to staff - the notices posted in the LRS and verbal directions - by reminding them of the importance of asking for identification from minors and how to do so.

The licensee submits that it was their employee who let them down in this instance. She failed to do her job. They also submit that they observed her on the video being visibly distracted by the questions of the liquor inspector at the time she was serving the minor. They were unable to hear any of the conversation as there is no audiotape, but their observations indicated their employee was distracted and did not exercise her normal diligence in asking for ID from customers.

Since the alleged contravention, they terminated the employee who served the minor and demoted the LRS manager/supervisor, who is no longer manager of the LRS.

The licensee points out that an experienced liquor inspector, as the one who testified here, was not able to correctly estimate the age of the staff member on duty. He estimated her age at late 20s or early 30s when she is actually only 20 years old. Even experienced liquor inspectors err when determining the age of someone.

The licensee states that they did everything they could reasonably do at the time. They were attentive and persistent in reminding staff of their duty to request ID from minors. The licensee is not at fault here; the staff let them down.

In the licensee's written submission on due diligence, they say the following facts demonstrate the licensee has exercised due diligence:

- Time sheets that were established in November of 2011 and that are regularly signed by staff, which specifically state the requirements for asking for ID and note the fines and closures that could be a consequence of not complying;
- Seven cameras of the 16 camera DVR system that are trained on various locations in the LRS, that can be seen from Mr. Massoud's home, his IPAD, his computer in his office as well as the actual monitor in the office (photos 1 to 3);
- Meetings with staff where they review ID policy, issues with minors, as well as safety and theft prevention and the increased chance of minors entering store during special occasions such as spring break, long weekends, Halloween etc. and the need to be extra diligent at these times;

- Since the contravention, licensee has produced a written document that is now signed by each staff member that refers specifically to issues around minors and importance of requesting ID;
- The supervisor of the LRS is well versed in the policy of identifying minors. She pops in and out of the LRS and reviews policy regularly with staff;
- “2 piece of ID” Buttons that are available for staff to wear (exhibit 2, photo No. 6);
- September 29, 2011 notice alerting staff and licensee to Minors as Agents program, posted in LRS since November 2011;
- Notice posted at the till indicating the ID requirements;
- Other notices in the LRS relating to criteria for acceptable ID.

Finally, this was an error in judgement of one of their staff. The licensee feels that they have been “attentive, heedful, earnest and persistent with their rules and policies and they have shown proper attention and care to help staff to make the right decisions.” Unless every single person entering the store is asked for 2 pieces of ID, the licensee submits that errors are inevitable and in this case, it was a reasonable one, given the distraction by the liquor inspector as well as some personal issues that were obviously affecting this staff member.

REASONS AND DECISION

The licensee does not dispute that the employee on duty on April 18, 2012, sold liquor to the minor agent.

I find that:

- A 17 year old minor, acting as agent for the branch, entered the Squires Four LRS on the evening of April 18, 2012;
- His hat and glasses did not obscure his appearance and could be expected to be worn by any number of young people;
- He picked up a six pack of beer (5% alcohol content) and took it to the counter where the employee on duty sold him the beer;
- The employee on duty did not ask for any identification nor enter any conversation at all with the minor;
- The minor left the store and handed the beer over to the liquor inspector in the government vehicle.

The licensee raised the issue as to whether or not their employee was distracted by the liquor inspector who entered the LRS and engaged the two employees in conversation just prior to the entrance of the minor. I consider this to be a question of whether or not the employee's alleged distraction prevented her from the due diligence that she might normally have exercised as a result of the licensee's instructions to its employees to ask for identification.

Due Diligence

The licensee is entitled to a defence if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with.

The onus is on the licensee to prove this defence on the balance of probabilities. Further, the due diligence that must be established is that of the accused alone.

Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

R. v. Sault Ste. Marie [1978] 2 S.C.R. 1299 @ 1331

Here, the licensee submits that it had the policy and procedures in place and that their employee(s) failed to follow through on them. In establishing whether or not the licensee has proved a defence of due diligence, I must first ask who was the "directing mind" at the time of the alleged contravention.

As noted in the B.C. Supreme Court decision, *Plaza Cabaret Ltd. v. British Columbia (Liquor Control and Licensing Branch, General Manager)* 2004 BCSC 248, para.27,

Such person need not be an officer or director of the licensee. It would be the individual or individuals, perhaps the general manager or the shift manager or supervisor, who had sufficient authority in respect of the sphere of relevant operations to be worthy of the appellation 'directing mind and will' of the licensee.

I find that, on the evening of April 18, 2012, the employee who sold the liquor was the “directing mind” of the corporation. The LRS supervisor who regularly “checked in” on the LRS was not present at all that evening. There was evidence that there was regular monitoring of the video surveillance cameras. However, on that evening, no one was monitoring them. I find that, without any supervisor checking in or monitoring of the employees, the two employees on duty were responsible for the operation of the LRS during their shift. The principal for the licensee testified that both employees were in charge of the LRS on the evening in question. There is no evidence to suggest that the older employee was supervising the young employee who sold the liquor. The employee who sold the liquor to the minor was acting as cashier, had the authority to sell liquor and was required by law to check for identification. As the employee at the cash register at the time of the purchase, she was the one in charge of making a determination as to whether or not the person before her was 19 years old or older.

The licensee’s witnesses who observed the video of the evening testified that the liquor inspector’s questions may have distracted one or both employees. I accept that the liquor inspector, as noted in the NOEA, “engaged the two female staff members in conversation concerning product.” Given the fact that the video was not disclosed to the branch and not available at the hearing, I give less weight to the evidence of the licensee’s witnesses who testified about their observations of the video. It is incumbent on licensees to ensure such evidence is available for review by the branch, when a contravention is alleged.

With respect to the alleged distraction of the employees by the liquor inspector, I find that this conversation with the liquor inspector does not justify the failure of the employee to ask for identification of a 17 year old minor. The evidence is that there were no other customers in the store. If a customer is able to “distract” the attention of employees by simple questions about product and thus allow a minor to purchase liquor, this would enable minors to attend stores during busy times, when other customers are present, and purchase liquor in the expectation that those charged with

the responsibility for requesting ID would be otherwise occupied. No doubt there are many times when there is more than one customer in the LRS. The employees at all times are expected to perform their job, which includes adhering to the law on requesting ID of young customers, regardless of how busy they may be with other customers.

I find that the employee who sold the liquor to the minor was the directing mind of the licensee on the evening in question, did not exercise due diligence as she did not request any identification of the minor agent and ignored the notices in the LRS emphasizing the importance of requesting two pieces of ID. The notices and verbal warnings of the licensee were inadequate to ensure consistent application of the need to ask for ID.

If I am wrong in concluding that the employee who sold the liquor was the “directing mind”, I turn now to consider whether Mr. Massoud as the principal of the corporate licensee and/or the supervisor/director of the LRS exercised due diligence. In determining whether the licensee exercised due diligence, I ask two questions:

1. Did the licensee implement adequate training and other systems to prevent the contravention?
2. Did the licensee take reasonable steps to ensure the effective operation of its systems?

With respect to the importance of adequate training and other systems, I find that the licensee’s evidence of written notices in the LRS, re: ID criteria, the signed time-in sheets noting the ID requirements, and verbal instructions to staff were not sufficient to prevent the contravention occurring.

I find the licensee failed to implement adequate training and other systems based on the following evidence:

- No written policies in place, other than posted notices in LRS re: criteria for ID;
- No written tests to ensure staff understand the requirements of the law;
- No written training manual;
- No incident log book;
- No written agendas for meetings, nor written minutes as reminders to employees of verbal instructions;
- No supervision of the employees on duty on April 18, 2012.

I find the licensee failed to take reasonable steps to ensure the operation of the systems it did have in place. There was no training of employees about the contents of the Guide, nor regular follow-up with respect to ensuring their employees follow the Guide requirements.

The licensee submits that they have been “attentive, heedful, earnest and persistent with their rules and policies and they have shown proper attention and care to help staff to make the right decisions.” Unless every single person entering the store is asked for two pieces of ID, the licensee submits that errors are inevitable.

The licensee points to the liquor inspector’s estimate of the younger employee’s age as an error on his part and as evidence that errors do occur and even experienced liquor inspectors do not always guess an individual’s age correctly. The ability of the liquor inspector to guess someone’s age is not the issue; a more appropriate question to the liquor inspector might have been whether or not he would have requested ID of the twenty year old employee, if that person were attempting to buy liquor from him.

Errors of some sort may be inevitable but, if the proper procedures are in place, the chances of them occurring are lessened. In this case, I find that not only did the licensee fail in having the proper procedures in place but that those that were (i.e. notices and time sheets) were not “sufficiently reasonable steps” to ensure the instructions were followed.

The licensee posted the notice about the Minors as Agents Program (exhibit 2, photo No. 14, email from Able BC). Simply posting such a notice is not sufficient; a licensee must ensure meetings are held with staff to remind them of the importance of the contents of such notices and to ensure that staff are aware and are implementing the ID requirements. Similarly, the buttons on the bulletin board (exhibit 2, photo No. 6) stating “I ask for 2 pieces of ID” were not being worn on the evening of April 18, 2012. As noted in the implementation of house policy section of the Serving It Right manual, the licensee must review its written policies and the Guide and offer training sessions, both verbal and written, to their employees to ensure policies are acted upon consistently.

The licensee failed in its duty to ensure all employees have Serving It Right certificates. One employee (who did not testify) who was on shift on the morning of the alleged contravention had worked at the LRS for about one month and did not have her Serving It Right certificate. The liquor inspector brought this to the attention of the director after the contravention occurred. The director, who admittedly occupied a management position and supervised staff to ensure they were doing their job, did not obtain a Serving It Right certificate until September of 2012.

I find that the failure of the licensee to ensure that all its employees have Serving It Right certificates is also fatal to the second part of the due diligence analysis in that ensuring employees have the Serving It Right certificate is key to proving it has taken reasonable steps to ensure the operation of the systems it has in place. As noted in the Guide, at page 20:

Serving it Right must be completed by all licensees, managers, sales staff, and servers. If you are licensed as a public or private corporation, the licensee portion of this requirement is met if any director, officer or employee responsible for controlling the sale of liquor completes the Serving it Right program.

You are responsible for making sure your employees take Serving It Right. You must keep photocopies of their Serving It Right certificates, ready for inspection by a liquor inspector or police officer at all times.

The Serving It Right program manual (page 42, tab 9 of exhibit 1) refers to the importance of implementing house policy:

Management will need to emphasize the seriousness of its commitment to responsible beverage service. Once written policies are established, management must communicate them to staff, ensure that staff is trained to implement them, and require staff sign a statement indicating that they have read and understood the policies. Management must encourage and support the staff in carrying out these policies, which should also be reviewed periodically to ensure that they are still effective in achieving their goals.

The manual proceeds to offer helpful tips for managers and licensees on effectively implementing house policy. The licensee in this case would do well to review these tips and ensure their implementation in the LRS. I note the director's testimony that some improved systems are now in place with the requirement that employees sign a written document acknowledging the importance of requesting ID, as well as ensuring all employees have their Serving It Right certificate. This is "after the fact" and tends to support my conclusions that effective systems were not in place on the date of the alleged contravention.

I find that the evidence does not support a defence of due diligence. I find that on April 18, 2012, the licensee contravened section 33(1)(a) of the *Act*, by selling, giving or otherwise supplying liquor to a minor.

PENALTY

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

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the licensee to transfer the licence

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

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

The licensee emphasizes the absence of contraventions in his years in the liquor industry and asks for leniency in a penalty in this case. I note the reference to a compliance meeting with an employee of the licensee on January 15, 2010. Mr. Massoud testified he was unaware of this compliance meeting. The signature at the bottom is not that of Mr. Massoud, but of one of his employees. Given the uncertainty with respect to the licensee's knowledge of this compliance meeting, I have not considered it in determining whether or not a penalty is warranted.

I find that the absence of written policies, regular training and testing of staff about these policies, and the failure of the licensee to ensure all staff has Serving It Right certificates warrants the imposition of a penalty.

The Minors as Agents program demonstrates the branch's intention to ensure that licensees are not serving or selling liquor to minors. The branch has taken measures to advise licensees of the seriousness of the problem and to educate them on their responsibilities. Despite those initiatives, in this case an obviously youthful patron was able to purchase liquor without being asked to produce any proof of age. Permitting minors access to liquor can and has resulted in very serious consequences. All reasonable measures to ensure both general and specific deterrence within society at large should be undertaken.

Having considered all of the evidence and submissions, and the seriousness of the contravention, I find that a penalty is necessary to ensure future voluntary compliance.

There is no record of a proven contravention of the same type for this licensee at this establishment within the preceding twelve months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty. The branch has proposed the minimum monetary penalty suspension for a first contravention of this type. In the circumstances here I find that the minimum monetary penalty of \$7,500 is necessary, appropriate and reasonable.

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7500 (Seven Thousand Five Hundred Dollars) to the general manager of the Liquor Control and Licensing Branch on or before **November 26, 2012**.

Signs satisfactory to the general manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor Control and Licensing Branch inspector or a police officer.

Original signed by

Nerys Poole
Enforcement Hearing Adjudicator

Date: October 26, 2012

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Gary Barker, Regional Manager
Liquor Control and Licensing Branch, Victoria Office
Attn: Olubode Fagbamiye, Branch Advocate