



**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: SARJ Enterprises Ltd.
dba Shaughnessy Pub & Beer & Wine Store
2089 Lougheed Hwy
Port Coquitlam, BC V3B 1A8

Case: EH12-193

For the Licensee: Surjit Janjua

For the Branch: Cristal Scheer
Hugh Trenchard

General Manager's Delegate: Nerys Poole

Date of Hearing: September 19, 2013

Place of Hearing: Surrey, BC

Date of Decision: October 22, 2013

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, SARJ Enterprises Ltd. dba Shaughnessy Pub & Beer & Wine Store, operates a licensee retail store ("LRS"), i.e. a private liquor store, in Port Coquitlam under Licensee Retail Store License No. 191560, with liquor sales from 9:00 a.m. to 11:00 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* (the "Guide").

Surjit Janjua is the principal of the corporate licensee and appeared as the licensee's representative at the hearing.

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 dated September 6, 2012 (the "NOEA"). The branch alleges that on July 31, 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 suspension of twenty (20) days, as this is a second contravention of this type within 12 months.

For a second contravention of this type, item 2 of Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation") provides for a licence suspension of twenty (20) to thirty (30) days.

The licensee agreed that its employee sold liquor to a minor. The licensee raises a defence of due diligence as well as argues for a lesser penalty than the proposed 20 day suspension.

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. Preliminary issue: admissibility of licensee's documents brought to the hearing.
2. Did the contravention occur?
3. If so, has the licensee established a defence to the contravention?
4. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

- Exhibit No. 1:** Branch's Book of Documents, tabs 1 to 15
- Exhibit No. 2:** Photograph and Identification of the Minor Agent (sealed exhibit, only to be opened by the adjudicator or court)
- Exhibit No. 3:** List of Employees' names and signatures, indicating their acknowledgement that they must ask for identification of anyone who appears to be under 25 years old (undated)
- Exhibit No. 4:** Licensee Retail Store Licence Terms and Conditions, A Guide for Liquor Licensees in British Columbia, updated June 2007
- Exhibit No. 5:** Server Program Manual, Serving It Right (44 pages)
- Exhibit No. 6:** Hospitality Industry Risk Management, Emergency Planning & Employee Policy and Procedures Manual revised Oct. 2012
- Exhibit No. 7:** 19 photos showing cameras and signs in the LRS

Exhibit No. 8: Letter from an employee of Licensee dated January 26, 2013

Exhibit No. 9: Copy of front of Incident Log Book with entries on pages 3, 4 and 5, dated March 6, 12 and 21 (no year), April 10, 2013, April 21, 2013, and May 15, 2013

Exhibit No. 10: Letter from Store Manager dated November 6, 2012

PRELIMINARY RULING ON LICENSEE'S DOCUMENTS

The licensee presented some documents at the beginning of the hearing. The branch advocate had not seen these documents (Exhibits 3, 6 and 9) before the hearing.

Enforcement Hearing Rule 10 on pre-hearing disclosure states that the branch advocate and the licensee will exchange copies of anything they intend to submit as evidence at the hearing at least fourteen (14) days before the hearing.

A letter from the branch registrar, dated March 19, 2013, notifying the licensee of the enforcement hearing date of September 19, 2013 also set out the final date of August 30, 2013 for disclosure of documents and witness names. In addition, the branch advocate sent an email to the licensee noting that any documents intended to be relied on at the hearing should be disclosed to her 14 days before the hearing.

The branch advocate asked that I exclude the documents, or in the alternative, that she have an hour to copy and review them.

Enforcement Hearing Rule 12 states that I may make determinations regarding the admissibility of evidence. I reviewed the purpose of the *Enforcement Hearing Rules*, described as branch policy designed to explain the enforcement hearing process. The introduction to the Rules notes that the adjudicator may exercise discretion when imposing the Rules in order to ensure administrative fairness.

I made a ruling at the hearing that, in the interest of hearing efficiency and fairness to the licensee, the documents be admitted and that the branch advocate have an hour to review the documents, as she requested. I exercised my discretion to admit these documents at the hearing as they are relevant to the issue before me and the branch advocate agreed that a one hour adjournment would be sufficient for her to review them.

EVIDENCE – THE BRANCH

The branch called two witnesses: the regional liquor inspector who prepared the NOEA and attended at the LRS on the date of the alleged contravention (“Liquor Inspector A”) and the liquor inspector who accompanied Liquor Inspector A to the LRS (“Liquor Inspector B”).

Liquor Inspector A

The two inspectors conducted an inspection as part of the “Minors as Agents” Program (“MAP”). Liquor Inspector A described the MAP and how it came into being. In 2010, the Province brought in legislation to allow the branch to hire minors to test for compliance with the provision in the Act prohibiting the sale of liquor to minors. The branch initiated the MAP in 2011 and began hiring agents, young-looking people of 17 or 18 years of age.

Liquor Inspector A referred to Exhibit 1, tab 9, a letter dated February 7, 2011 that was sent out to all Licensee Retail Store owners advising licensees of the MAP (and attaching the branch’s publication Liquor Line dated March 2011). The letter notes that the government considers the selling of liquor to minors to be a public safety priority because of the serious negative consequences associated with liquor consumption by minors. Liquor Inspector A was responsible for the hiring and training of minor agents in her region.

She recounted the events of July 31, 2012. At about 2:18 pm, Liquor Inspector A attended the Shaughnessy Pub LRS in Port Coquitlam with Liquor Inspector B and the minor agent. The minor agent entered the LRS and Liquor Inspector A followed 15 to 20 seconds behind him. No other patrons were in the LRS. Liquor Inspector A had a clear view of the minor agent who walked to the back of the store to the coolers, where he opened the cooler door and pulled out a package, later identified as a six pack of Keystone beer. He then walked to the front counter and deposited the product on the counter. The clerk scanned the product. After paying for the product, the minor agent exited the store and delivered the product to Liquor Inspector B in the vehicle who marked the product for identification purposes (later photographed, tab 11, Exhibit 1).

The minor agent filled out an observation sheet to document the details as to what occurred with respect to the sale (minor agent's statement at tab 8, Exhibit 1). He noted that the clerk in the LRS did not request identification. Liquor Inspector A made the same observation as she watched the transaction.

Liquor Inspector A prepared the Contravention Notice (tab 2, Exhibit 1) and returned to the store with Liquor Inspector B at about 2:26 pm. They spoke to the clerk who made the sale and learned her name (the "Clerk"). The liquor inspectors explained that she had just sold liquor to a minor agent. The Clerk indicated she was aware of the MAP as there had been a sale to a minor several months before. She told them she had been working in the LRS for about 24 years. She asked about the minor agent and asked if he was of Asian origin and the liquor inspectors agreed he was. She commented that it was difficult for her to tell the age of Asians. She then went to the back of the LRS and returned with the manager. The manager said she too was aware of the MAP and said they had put up signs in the store about the previous penalty for the earlier contravention.

Liquor Inspector A identified the photograph of the minor agent who attended the LRS and his identification showing his date of birth, indicating he was 17 years old at the time of the alleged contravention. I later sealed the photo and identifying information in an envelope and marked it as Exhibit 2 to protect the identity of the minor agent.

A redacted copy is found at tab 10 of Exhibit 1.

Liquor Inspector A referred to the Guide at tab 6, Exhibit 1, and stated that it is provided as a resource tool for licensees and is intended to be used for training of the staff. She specifically referred to page 21 of tab 6, the section dealing with minors and ID requirements. She noted that the Guide is available on the branch's website where it is regularly updated.

Liquor Inspector A referred to the LRS Inspection Interview Sheet at tab 5, Exhibit 1, a document used by the branch to document any licence transfers and to process any changes. The declaration on page 2 of this Interview sheet, signed by the then manager and Surjit Janjua in March 2008, states that they:

- had the presentation for their licence class
- had received a copy of the Guide; and,
- were responsible for ensuring that they and their staff understood and followed the Act, the Regulations and the terms and conditions in the Guide and on the face of the licence

Liquor Inspector A reviewed the NOEA at tab 1, Exhibit 1 and explained the branch's reasons for recommending the enforcement and penalty. Access to alcohol for minors is a serious public safety concern for the branch and members of the public. She stated that the effects of alcohol consumption on young people are well documented. Alcohol can impair the ability of young people to form sound judgements and may lead to tragic consequences. The MAP exists because of the branch's priority on this public safety issue.

Liquor Inspector A identified the Waiver Notice dated March 5, 2012 at tab 13, Exhibit 1, signed by the Licensee, accepting the monetary penalty of \$7,500 for a contravention of section 33(1)(a) in the LRS, as set out in the Notice of Enforcement Action dated December 21, 2011, for the incident that occurred on December 14, 2011.

In cross-examination, Liquor Inspector A was asked about the branch's policy in hiring minor agents and what the goal was in choosing individuals for this purpose. She responded that the only goal was to hire persons under the age of 19. In addition, the branch will look for young people who are capable of taking direction and have some writing skills. When asked if the goal of the branch was entrapment, Liquor Inspector A said no, the goal is to test licensees' compliance with the Act.

Liquor Inspector B

The second witness for the branch was Liquor Inspector B who attended at the LRS on the date of the alleged incident and remained in the vehicle while the minor agent and Liquor Inspector A entered the LRS. His role in this MAP inspection was to mark the purchased product as an exhibit and to accompany Liquor Inspector A into the LRS to present the Contravention Notice.

EVIDENCE – THE LICENSEE

The Clerk

The Clerk who sold the alcohol to the minor agent testified. She stated that she had been working in the LRS for 24 years, and working for this licensee since the company took over the licence in 2007. The licensee terminated her after this incident on July 31, 2012.

With respect to the incident, she said she thought the minor agent was older than 19. She stated she tried to do her best and did not deliberately sell alcohol to a minor. She felt that the branch had entrapped her with this one incident. She thought the branch had hired the minor agent because he looked older. She knew about the first contravention in December of 2011 and subsequent penalty of \$7,500 as a notice about it was posted on the board in the LRS. She stated that she always checks identification and that she was having a bad day when this incident occurred.

On cross-examination, the Clerk stated that she thought the minor agent was 25 years old. She said she had a Serving It Right certificate but had not received any training from the licensee. She said the owner would come in every day and tell employees to check for identification. When asked about whether she had reviewed the Guide, she stated it was always in the store. She said she had read the Serving It Right documents. She agreed there were no buttons indicating the requirement to ask for identification. She said there were stickers noting this requirement in the LRS. She said they rarely had staff meetings and she could not remember the last time she had attended one. She said there were no agendas or minutes kept of staff meetings. She agreed there were no employee manuals in the LRS.

The Assistant Manager

The Assistant Manager had been a cashier in the LRS prior to being promoted to Assistant Manager about a month before the hearing. She was not present in the LRS at the time of the incident on July 31, 2012. She had been working for nine years at the LRS but had taken a break in that period. She returned to work at the LRS at the end of July 2012, just before the incident on July 31, 2012.

The Clerk trained her when she initially started working at the LRS. The Assistant Manager stated she took pride in her job and that management emphasized the importance of asking for identification.

She said the manager was always there and that the owners were often present, emphasizing the importance of requesting identification. She said that signs were posted everywhere as a reminder and that bulletins from the branch were always posted. She agreed she was aware that an inspection could occur at any time.

The Assistant Manager stated she had read the Serving It Right Manual and the Guide probably about 35 times and that they were always available in the LRS for employees to read.

The Assistant Manager testified about some of the changes that have occurred in the LRS since the July 31, 2012 incident. She said they now have a swiper which allows the staff to swipe identification as well as the black light which shows when citizenship cards are fake. She said more notices about ID requirements were posted in the LRS. In the past, she stated that she had handed in dozens of fake ID to the RCMP.

She identified the various photos submitted by the Licensee (Exhibit 7). She explained there were now 16 surveillance cameras in the store. The photos showed some views of the surveillance cameras and signs posted at various places in the store about the requirement to ask for ID. One states that staff may be fined \$575 for selling liquor to a minor. Another notice tells employees to check for two pieces of ID if a customer looks younger than 30 years old. She stated this was taped to the front counter before July 31, 2012. Another notice reminds customers that if they are under 25, they must have two pieces of identification ready to show.

The Assistant Manager identified a letter she signed on January 26, 2013 (Exhibit 8). She wrote this letter to explain the stress and worry she was experiencing as a result of a threatened closure of 20 to 30 days and how this would affect her financially.

Cross-examination

In cross-examination, the Assistant Manager stated she looked for certain characteristics or behaviour to help identify minors: their style of dress, what they were looking for in the store, how they approached her. She said she always greets someone at the door and has eye contact with the person to help her determine if he is nervous or not. She added that if someone is purchasing a lot of product, this could mean the person is underage and buying for friends.

In her new position as Assistant Manager, she reviews the Guide and the Serving It Right Manual and has reviewed it with her staff. She was able to summarize some of the key sections of the Guide and stated she often looks at the latest versions on line.

When directed to the photos of the minor agent (Exhibit 2), the Assistant Manager was asked if she would request identification of him. She agreed she would, if he came into the store.

She said her employer had tested her, but never in writing. She said they had had a staff meeting the previous Monday to the hearing. The Assistant Manager said, before the incident, there had been very few staff meetings and that some of the employees wanted more, to discuss issues about requesting ID, handling cash, keeping the store safe.

She agreed there was no sign-in sheet for staff meetings and no minutes.

She agreed she was aware of the previous contravention for selling liquor to minors, but she was not an employee of the company at that time.

Since the incident on July 31, 2012, the Assistant Manager said that everything has changed. The Serving It Right manual and the Guide are available to all employees. She said there were lots of employee manuals but she did not bring any to the hearing. She said staff are reminded every day about the importance of checking ID. She was not aware of the use of any buttons.

When asked about Exhibit 3, the list of employees' signatures with no dates noted, she stated this was from the week before the hearing. She agreed this system was not in place on July 31, 2012.

She was asked if the Incident Log Book (Exhibit 9) contained any incidents of not serving to minors. She said it did not.

When referred to the consultant's report dated October 2012 (Exhibit 6), the Assistant Manager stated she has never signed a card similar to the one at page 24, where employees acknowledge that they have reviewed and understood the policy and guidelines manual.

Licensee's Representative

Mr. Surjit Janjua testified at the hearing. He said he is not involved with the day to day operations. He will generally go in for an hour or two every day to make sure everything is going well. He does not usually communicate with the employees as this is the responsibility of his managers.

He stated that he has one manager for the LRS and one for the pub. He stated that they have done a lot of reorganization in the last year and a half. Both managers were let go in May of this year for reasons he would rather not disclose. The new manager joined the company a month ago.

The Licensee's Representative testified about the consultant they hired after the previous contravention of selling liquor to a minor in December 2011. He said the purpose of hiring the consultant after the first contravention was to help them to prevent this kind of thing from happening again. The consultant came to speak to their managers in early 2012 but did not provide the manual until October 2012 as it was being revised.

The Licensee's Representative said they keep one copy of the consultant's report in the pub and one in the LRS. When the report arrived, all employees were supposed to read and sign it. New employees were given the manual to read and to sign.

When asked what evidence he had brought to show that employees had signed the manual page acknowledging they had read it, the Licensee's Representative said he only had the one page with employees' signature acknowledging the requirements to ask for identification (Exhibit 3). He added later that this practice only began after October 2012.

When asked about staff meetings, he responded that the LRS was a small store with one full time employee and one night shift employee. There were only 14 shifts in the store. Thus, they only held informal meetings when there was an overlap between shifts. He said he would attend these informal meetings once in a while but not all the time.

He agreed there were no formal agendas and that the issues would include such things as dealing with cash issues, unruly customers and ID checks.

When asked about the incident log book and whether they recorded anything about the December 2011 incident, he said no - as they only had the two employees, they communicated verbally with staff about the incident.

Since the July 31, 2012 incident, they have installed new cameras, one focussing on the cashier. When asked if they reviewed the videotapes of July 31, 2012 with the staff, the Licensee's Representative said there was really not much to see. The employee did not ask for identification, which was clear from the videotape.

When asked about Exhibit 4, the 2007 Guide, he said he just picked up the one that was in the store to bring to the hearing.

He has posted notices about fines of \$575 and about the need to ask anyone under 30 for identification (Exhibit 7). He said these notices were posted after the first incident in December of 2011.

When asked if he has employed secret shoppers to test his employees, he replied no.

SUBMISSIONS - BRANCH

The branch submits that the contravention of section 33(1)(a) has been proven and there is insufficient evidence to support a defence of due diligence. Most of the changes to improve the implementation of policies recommended by the consultant were put in place after the contravention on July 31, 2012. In this incident, a long-time employee failed to ask for ID of a 17 year old minor. The 20 day suspension is the minimum for a second contravention of the same type within a 12 month period.

The evidence demonstrates that the first contravention did not result in the changes required to ensure this second contravention did not occur. Given the seriousness of a public safety contravention such as this, a penalty is warranted to send a message to the licensee and to ensure future compliance.

SUBMISSIONS - LICENSEE

The licensee does not dispute that the Clerk sold alcohol to the 17 year old minor agent. He agreed it was not an excuse that the minor agent was Asian and he does not accept that as an excuse. The licensee has terminated the Clerk as it is company policy to terminate any employees who sell liquor to minors.

The licensee asks what more could they do to prevent mistakes such as the one that occurred on July 31, 2012. He feels he has done everything possible but that mistakes will happen.

The licensee submitted that, after the first incident, they examined their policies. They posted more signs in the LRS and asked the manager to attend six times a week. He and the managers constantly emphasized the importance of checking for identification. This incident was caused by a lapse in judgement by the Clerk.

After the December 2011 incident, he talked to the consultant who gave him a list of recommendations to implement.

The licensee submitted that the recommended suspension of 20 days is a serious financial consequence for the licensee and for the LRS employees. It also affects their reputation in the area.

REASONS AND DECISION

The following findings of fact are not disputed:

- A 17 year old minor, acting as agent for the branch, entered the LRS on July 31, 2012 and purchased a six pack of beer and exited the store
- The store clerk on duty did not ask for any identification while completing the transaction
- The minor agent left the store and handed the six pack of beer to a liquor inspector in the vehicle

I therefore find that the licensee contravened section 33(1)(a) of the Act.

Due Diligence

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

The leading case is: *R v. Sault Ste. Marie* (1979) 2 SCR 1299, where at page 1331, Dickson, J. sets out the test of due diligence:

One comment on the defence of reasonable care in this context should be added. Since the issue is whether the defendant is guilty of an offence, the doctrine of respondeat superior has no application. The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the

effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

The BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2012 BCSC 1851, recently considered and clarified the application of the defence of due diligence in the context of the sale of liquor to a minor contrary to the *Liquor Control and Licensing Act* (see paragraphs 41 to 44).

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

1. Whether the employee who made the sale was a directing mind of the licensee – if so, the defence of due diligence is not available and the inquiry stops there.
2. If the employee who made the sale was not a directing mind of the licensee (and there is no requirement that a “directing mind” must be on the premises when the sale is made), then the questions to be considered and answered are whether the licensee had:
 - a. implemented adequate training and other systems to prevent the contravention (the sale of liquor to minors); and,
 - b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

Both of these issues are factual, and will depend on the evidence presented. The onus is on a licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

Step 1 - directing mind

I find that the employee who made the sale was not a directing mind of the licensee. I also find that the manager who was in the back of the store at the time of the transaction was not a directing mind. There was no evidence to suggest either of these employees were responsible for formation of company policy or implementation of such policy. I therefore find that the “directing mind” of the corporate licensee was not present at the time of the sale.

Step 2 - implementation of systems and steps to prevent the contravention

The licensee hired a consultant after the first incident in December 2011. At that time, the consultant provided some training to the managers. There was no evidence that this training was passed on to the employees in the LRS. The licensee did not receive the consultant’s report (Exhibit 6) and its recommendations until October 2012, after the July 31, 2012 incident. Even after receiving the report and after the July 2012 incident, the evidence was sparse as to the extent this report was reviewed with any employees.

Having a manual such as this on the shelf in the store is not sufficient. Management must discuss the recommendations with staff and implement them through training and regular reminders, as well as through documentation of incidents that occur such as refusal of service to minors.

Similarly, the photos of notices with respect to requesting identification (Exhibit 7) are only effective if acted upon, and reinforced at staff meetings or through review of house policies with staff. Further, the evidence as to when these notices were in place was somewhat vague: some were in place prior to the July 31, 2012 incident; others were placed after the incident. Such posters and signs must be reinforced to staff. They are no more than window dressing when not acted upon.

The licensee does not hold regular staff meetings. Any meetings they have with staff are informal. There are no agendas or minutes. The licensee's response to formal staff meetings is that they operate a small store with few employees and thus such formal meetings are not necessary. Formal meetings may be unnecessary when there are very few staff. However, it is important to document issues discussed at short informal meetings. The licensee would then be able to demonstrate that staff are receiving information about important policy changes, that management is constantly reminding staff about the importance of checking for ID, and that staff is following through on these reminders.

There was no written evidence to show that the previous contravention in December of 2011 was discussed with the employees. There was no evidence that the incident was recorded in a logbook, nor was there evidence of a discussion of strategies to put in place to prevent future contraventions.

The Licensee's Representative testified that he believed all employees were signing the acknowledgement page showing they had read and understood the manual. However, the recently appointed Assistant Manager who now is responsible for training employees testified that she had not signed this page. There was no written evidence showing any other employees had signed this page. The Assistant Manager stated that the practice of having employees sign the acknowledgement page with respect to requesting identification of patrons under the age of 25 began after the July 31, 2012 incident. The undated sheet submitted in evidence (Exhibit 3) was signed the week prior to the hearing.

The Licensee's Representative asked at the hearing what more they could do to prevent these mistakes. Some suggestions for the licensee are found in the Guide and the Serving It Right manual, as well as in the manual the licensee received from its consultant.

The consultant's manual contains some valuable advice about the importance of having documented policies and guidelines in place, and keeping records showing that these policies are reviewed and reinforced on a regular basis (Exhibit 6, Introduction, page 3). This manual also strongly recommends keeping an incident logbook. There was no evidence presented to show that such a book was being kept prior to the July 31, 2012 incident. The logbook excerpts submitted by the licensee (Exhibit 9) showed dates of March to May 2013.

The Serving It Right manual (excerpts included in Exhibit 1, tab 7 and a complete version of an earlier edition submitted by the licensee as Exhibit 5) emphasizes the importance of establishing house policies with staff involvement and input and the need to constantly reinforce such policies. There was no evidence to support a finding that the licensee was doing this prior to the July 31, 2012 incident. The now Assistant Manager testified that she has reviewed the Guide and Serving It Right manual with staff but this only started happening after the July 31, 2012 incident.

There was no evidence from the licensee of any formal written testing of employees nor was there any evidence of a secret shopper program. Both of these practices can assist a licensee in helping ensure future contraventions of this nature do not occur and, if they do occur, will help the licensee demonstrate that it is making every effort to prevent such contraventions.

Age identification

On July 31, 2012, an employee with 24 years of experience working in an LRS failed to ask for identification and sold liquor to a minor. In her testimony, she suggested that the minor agent looked 25 years old and that it was difficult for her to tell the age of Asians. She felt that the branch had entrapped her by using an older looking agent.

I have several responses to the Clerk's suggestion:

1. I have viewed the photos of the minor agent and he is young looking.
2. The Clerk testified that she thought the minor agent looked 25 years old, yet she failed to ask for ID even though the notices in the LRS require employees to check ID of anyone who appears under 30.
3. The Assistant Manager in her testimony agreed, after looking at the photo of the minor agent, that she would have asked him for ID.
4. The Licensee's Representative agreed in his testimony that the excuse of having difficulty identifying the age of Asians was not a valid one. I agree. The lower mainland region is comprised of many people of different ethnic origins and it is the responsibility of every LRS employee to ask for ID to prevent sales of liquor to minors.

I wish to comment on the "entrapment" suggestion as this was raised by the Clerk as well as by the Licensee's Representative when cross-examining Liquor Inspector A. Entrapment is a criminal law concept and would not generally apply in the context of enforcement of liquor laws. Licensees agree, when they are issued a liquor licence, that they are responsible for ensuring that they and their staff understand and follow the Act, the Regulation, the terms and conditions in the Guide and any terms and conditions on the face of their licence (Inspection Interview Sheet, tab 5, Exhibit 1).

The branch has a legislated duty to enforce the Act and Regulation and to ensure that licensees comply. The branch introduced MAP to assist its inspectors to check for compliance with the prohibition on alcohol sales to minors. The branch gave written notice to all LRS owners about the MAP in 2011. This is not entrapment, but a tool used by a regulatory regime in order to uphold its legislated duty to the public. The branch has consistently indicated that the sale of alcohol to minors is a significant public safety issue and a high priority for enforcement.

Conclusion

The licensee has failed to demonstrate that it had the policies in place to prevent such contraventions and failed to demonstrate that any policies it did have were reviewed and reinforced with its employees. Regular and consistent reminders through staff meetings or training or testing will assist this licensee to equip its employees to ensure such incidents do not happen in the future.

In response to the licensee's question about what more he can do, I recommend that, in addition to other points noted above, he educate his staff about the negative societal effects that occur when minors consume alcohol. Through such education, staff will understand why it is important for them to be consistent about checking for identification of potential underage purchasers.

I conclude that the licensee has failed to establish a defence of due diligence with respect to this contravention.

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 compliance. The factors that I have considered in determining the appropriate penalty in this case include: whether there is a proven compliance history, a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety, and the well-being of the community.

The licensee's compliance history is set out in the NOEA (Exhibit 1, tab 1). Of significance for this decision is the contravention in December of 2011, in which the licensee signed a waiver admitting the contravention. Less than 12 months later, a second contravention of the same type (selling liquor to a minor) occurred.

As noted above, under the discussion of due diligence, I have found that, after the December 2011 incident, there was very little evidence of changes to the policies or training of staff to ensure such contraventions did not happen again.

The licensee through the testimony of the Assistant Manager presented some evidence of changes it has made since the July 31, 2012 incident. Any changes to prevent future occurrences are commendable and to be encouraged. However, post-contravention changes do not relieve the licensee of a penalty for a contravention.

I find that the licensee has failed to demonstrate that the first incident and subsequent penalty resulted in improved policies or staff training. I find that the absence of such evidence demonstrates that a further penalty for this second contravention is warranted to ensure future voluntary compliance.

Selling 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

The MAP demonstrates the branch's intention to ensure that licensees are not serving or selling liquor to minors. The branch has taken measures to advise licensees of the seriousness of the problem and to educate them on their responsibilities.

Having found that a penalty is warranted, I am required to impose at least the minimum, which is a twenty (20) day suspension for a second contravention of the same type within a 12 month period. I find this to be reasonable and appropriate given the importance of ensuring minors do not have easy access to liquor, to encourage future compliance from the licensee, and to ensure specific and general deterrence in society at large.

The financial hardships that staff may suffer as a result of a 20 day suspension are unfortunate. Two of the letters submitted in evidence from staff (Exhibit 10) ask for a monetary penalty rather than a suspension. Under the Regulation, monetary penalties are available for first contraventions only. As this is a second contravention and as I have found the penalty to be warranted, I am ordering the suspension of the LRS licence for 20 days. It is always open to a licensee to continue paying its employees during a suspension period, especially when the employees who will be affected by the suspension were not involved in the incident.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Licensee Retail Store Licence No. 191560 for a period of twenty (20) days to commence as of the close of business on **Monday, November 25, 2013**, and to continue each succeeding business day until the suspension is completed.

To ensure this Order is effective, I direct that Licensee Retail Store Licence No. 191560 be held by the branch or the RCMP Coquitlam Detachment from the close of business on **Monday, November 25, 2013** or until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Original signed by

Nerys Poole
Enforcement Hearing Adjudicator

Date: October 22, 2013

cc: Liquor Control and Licensing Branch, Surrey Office
Attn: Michael Clark, Regional Manager
Liquor Control and Licensing Branch, Vancouver Office
Attn: Cristal Scheer, Branch Advocate