



**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:	British Columbia Wine Institute dba Sardis Park VQA Wine Store 100G-6640 Vedder Road Chilliwack, BC V2R 0J2
Case:	EH13-154
For the Licensee:	Miles Prodan
For the Branch:	Cristal Scheer
General Manager's Delegate:	Nerys Poole
Date of Hearing:	Written Submissions
Date of Decision:	December 9, 2013

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**Liquor Control and  
Licensing Branch**

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## INTRODUCTION

The licensee, British Columbia Wine Institute (“BCWI”) dba Sardis Park VQA Wine Store (the “wine store”) holds a Wine Store Licence number 304059. A third party operator, 0854584 B.C.Ltd. operates the wine store, which is located in Chilliwack. The wine store’s hours of sale are from 9:00 a.m. to 11:00 p.m. seven days per week. Mr. Miles Prodan, President and CEO of the licensee, BCWI, provided the written submission on behalf of the licensee.

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 dated August 26, 2013 (the “NOEA”). The branch alleges that on July 25, 2013, 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 10 day suspension of its licence.

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 10 to 15 days and/or a monetary penalty of \$7,500-\$10,000.

The licensee does not dispute the contravention nor is the licensee pursuing a defence of due diligence. The licensee disputes the proposed enforcement action. The licensee requests that, if any penalty is imposed, that it be a monetary penalty.

**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 Book of Documents, tabs 1 to 13

**Exhibit 2:** Licensee's three page submission with attachments

**EVIDENCE**

As the licensee does not dispute the contravention, the licensee is deemed to accept the facts as set out in the NOEA.

On July 25, 2013, the branch conducted a Minors as Agents Program (MAP) inspection at various liquor retail outlets in the Chilliwack area. Two liquor inspectors accompanied a minor agent who was 18 years old at the time. The minor agent and her identification were photographed at the start of the shift (redacted copies at tab 6 of Exhibit 1). The minor agent maintained the same appearance and clothing throughout her shift.

At about 1:45 p.m. on July 25, 2013, the two liquor inspectors and the minor agent arrived at the wine store. The first liquor inspector entered the store and the minor agent followed. The wine store had no other customers. There was one female staff member behind the cash register counter and a male maintenance person on a ladder.

To maintain a line of sight of the minor agent, the first liquor inspector stood near the front door and pretended to be on a cell phone having a conversation. The minor agent selected a bottle of wine, Jackson Triggs Black Series Chardonnay 2010 (photograph at tab 4 of Exhibit 1), and approached the cash register counter at the front of the store. The female employee at the cash register scanned the bottle of wine, which cost \$12.09. The minor agent paid for the bottle of wine, which was placed in a paper bag. The minor agent then left the wine store with the bottle of wine. The first liquor inspector escorted the minor agent back to the vehicle.

At no time during the transaction was the minor agent asked to produce any identification.

At 2:00 p.m., the two liquor inspectors returned to the wine store and spoke with the third party operator and the female employee. The third party operator signed and acknowledged receipt of the contravention notice. On July 30, 2013, the first liquor inspector discussed the alleged contravention with the licensee contact person. At that time, the first liquor inspector rewrote the Contravention Notice and replaced it with an amended Contravention Notice amending the date of the contravention (tab 3 Exhibit 1). This Contravention Notice was hand delivered to the third party operator.

### **SUBMISSIONS – BRANCH**

The branch submits that the contravention of section 33(1)(a) has been proven and there is no evidence of due diligence.

Given the seriousness of a public safety contravention such as this, a penalty is warranted and the proposed penalty of a 10 day suspension falls within the penalty range as set out in Schedule 4 of the Regulation.

## SUBMISSIONS – LICENSEE

As noted, the licensee does not dispute the alleged contravention nor does it submit a defence of due diligence. The licensee disputes the proposed penalty and asks that the proposed penalty of a ten day suspension be changed to the minimum monetary penalty of \$7,500.

The licensee acknowledges that, as the license holder and party responsible for appointing and educating its third party operators, it is ultimately responsible for the contravention. The licensee submits that, because of the consignment model at VQA Wine Stores, a 10 day suspension of the wine store's operation would affect not only BCWI and the third party operator, but it would also greatly and unfairly affect the wineries whose wines are consigned for sale from Sardis, Sardis' staff and its valued customers.

The licensee in its submission included branch materials that it says was forwarded to all 21 of its third party operators. Hard copies or electronic correspondence related to the MAP, sale of liquor to minor and/or the Serving It Right Program that was received at BCWI would have been forwarded to all stores. The licensee's protocol during the annual certificate renewal process is to request that third party operators ensure they review all current branch requirements as they relate to VQA Wine Stores. The licensee requires its third party operators to reply to confirm they have received, read and understood these requirements.

The licensee submits that it has recently restructured its BC VQA Wine Store Committee, which now includes BC VQA Wine Store third party operator representation. This committee, submits the licensee, will now be involved with reviewing and developing policy to assist the third party operators and BCWI to work together on issues of importance. The licensee has already drafted policy and protocol for review by the committee at its first meeting, aimed at ensuring the licensee and third party operators work more closely on annual licensing renewal, including ensuring third party operators are informed of and are complying with the Act and Regulations and the Branch's Wine Store Terms and Conditions Guide. The licensee intends to

implement, at minimum, an annual compliance session with each of its current and future third party operators.

With respect to the third party operator at the wine store where the contravention occurred, the licensee says that it will request that the third party operator contact her regional branch inspector to make arrangements for an education session for herself and her high level staff, and that she ensure such information is made available in written format to all current junior staff, as well as all future staff. The licensee will also request copies of all current and future staff's Serving It Right certifications.

Finally, the licensee acknowledges that it is ultimately the party responsible for any contraventions and says that a lengthy closure would negatively affect many innocent parties. Thus, the licensee requests, if any penalty is imposed, that it be a monetary penalty in lieu of the proposed suspension.

## **REASONS AND DECISION**

### **Contravention**

Based on the undisputed evidence as set out in the NOEA, I find that:

- An 18 year old minor, acting as agent for the branch, entered the wine store on July 25, 2013
- The minor agent purchased a bottle of wine which was then delivered to the two liquor inspectors in the vehicle and marked for identification
- The employee on duty did not ask for any identification while completing the transaction

### **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. The licensee did not present a defence of due diligence. I find that the licensee has not established a defence of due diligence.

I therefore find that the licensee contravened section 33(1)(a) of the Act by selling liquor to a minor on July 25, 2013.

## **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.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. Enforcement action is intended to both redress the licensee's non-compliance, and to encourage future compliance by way of deterrence.

I find that a penalty is warranted on the facts of this case to ensure future compliance and for general deterrence. Selling liquor to minors is a significant public safety issue because of the following:

- The negative effects of alcohol on growing bodies and developing minds
- The effects 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, resulting in a more intoxicating effect on minors, and
- The fact that liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft

The Minors as Agents Program demonstrates the branch's intention to ensure that licensees are not serving or selling liquor to minors. The branch has taken measures to advise licensees of the seriousness of the problem and to educate them on their responsibilities. Despite those initiatives, an 18 year old minor was able to purchase liquor from the licensee's employee, without being asked to produce any proof of age.

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.

Having found that a penalty is warranted, I am required to impose at least the minimum, either a licence suspension of 10 days or a monetary penalty of \$7,500.

The licensee requests a monetary penalty be substituted for the proposed suspension. I have considered whether it is appropriate to do so in this case.



In 2007, the provincial government transferred administrative responsibility for private wine stores from the Liquor Distribution Branch to the Liquor Control and Licensing Branch and, in 2010, passed legislation enabling them to be licensed. This legislation took effect in February 2013. Prior to the change in legislation, private wine stores had operated as appointees under the *Liquor Distribution Act* and were thus not subject to the same enforcement regime as other liquor licensees.

As wine stores now fall under the Act and its enforcement regime, they are subject to the same penalties as other licensees. As noted in some of the branch information provided to licensees, the intention of the transfer was to level the playing field for all retail stores and to allow for a more equitable compliance and enforcement system. (Exhibit 2, Branch Policy Directive, No.13-06, dated February 8, 2013)

With respect to the MAP, wine stores received the information on this program as did other licensed retail stores. This information (emails, letters from the branch, Liquor Line summaries) indicated that a first contravention would result in a monetary penalty of \$7,500. The report on the MAP in November 2011, the Liquor Line of June 2012, a letter dated October 2012 announcing the expansion of MAP to Food Primary licensees (Exhibit 2), indicated that licensees found to have contravened section 33(1)(a) of the Act under the MAP were assessed a \$7,500 monetary penalty for a first contravention.

The November 2011 branch report on the MAP stated that the branch will generally recommend the minimum monetary penalty of \$7,500 unless the outlet has a compliance history of similar activities or the facts of the individual case warrant a different penalty.

As I have noted, the licensee has no compliance history. I find there is nothing on the facts of this case to warrant a different penalty from the monetary penalty imposed in similar situations involving the Minors as Agents Program.

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.

I conclude that, given the information about the MAP provided to licensees and the history of penalties to date for first contraventions by licensed retail stores, it is appropriate and reasonable in this case to substitute the minimum monetary penalty of \$7,500.

## **ORDER**

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7,500 to the general manager of the Liquor Control and Licensing Branch on or before January 10, 2014.

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*

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Nerys Poole  
General Manager's Delegate

Date: December 9, 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