



**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:	Clare Investments Ltd. & Liampat Holdings Ltd. dba Robin Hood 13468 72 <sup>nd</sup> Avenue Surrey, BC V3W 2N8
Case:	EH12-183
For the Licensee:	Patrick O'Loughlin
For the Branch:	Olubode Fagbamiye
Enforcement Hearing Adjudicator:	Dianne Flood
Place of Hearing:	Surrey, BC
Date of Hearing:	January 30, 2013
Date of Decision:	March 5, 2013

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**Liquor Control and  
Licensing Branch**

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## INTRODUCTION

The Licensee, Clare Investments Ltd. & Liampat Holdings Ltd., operates a licensee retail store under the name of Robin Hood Liquor Store at 13468 72<sup>nd</sup> Ave., Surrey, BC under Licensee Retail Store Licence 191735. Under the licence, liquor sales are permitted from 9:00 a.m. to 11:00 p.m., seven days a week. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the *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 August 10, 2012. The Branch alleges that on July 11, 2012, the Licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act"), sell, give or otherwise supply liquor to a minor. The proposed penalty is a monetary penalty of \$7500 (Item 2, Schedule 4, of the *Liquor Control and Licensing Regulation*).

The Licensee does not dispute the contravention but makes a defence of due diligence.

## 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
- Exhibit 2:** Floor plan of the premises
- Exhibit 3:** Licensee's Pub Policy Sheet for Servers
- Exhibit 4:** Licensee's Beer Store Clerk Policy Sheet
- Exhibit 5:** Licensee's Cash Handling Policy for the Pub and Beer Store Staff
- Exhibit 6:** Licensee's Identification Requirements Policy
- Exhibit 7:** Hand written note from the Clerk who sold the liquor to the Minor
- Exhibit 8:** Hand written notes for a staff meeting held June 21, 2012
- Exhibit 9:** Photocopies of two signs and two notices that were posted on the premises and photographs of the signs and notices, as posted in the staff room, at the cash desk and various other places throughout the premises.
- Exhibit 10:** Two pages of employment records regarding the Clerk

Exhibits 3 to 7 were all signed by the Clerk.

## **Evidence**

### ***The Branch's evidence***

A liquor inspector ("Inspector A") gave evidence about the "Minors as Agents" Program (MAP). Under the MAP, persons under the age of 19 years are hired by the Branch and then attend at liquor stores and, supervised by liquor inspectors, attempt to buy liquor. No attempt is made to hide a minor's age or otherwise deceive licensees. Minors do not carry wallets or purses. The minors only carry cash when they enter premises. The MAP is intended to test and ensure that liquor is not being sold to minors.

Inspector A testified that on July 11, 2012, he and another inspector ("Inspector B") conducted routine inspections with a minor hired as an agent (the "Minor"). At the beginning of the day, Inspector A photographed the Minor and her age of 18 years was confirmed. A copy of the Minor's photograph and her identification are included as part of as Exhibit 1, but have been redacted from the other copies of that document to protect her identity.

Inspector A said that at about 9:45 p.m. on that day, the two Inspectors and the Minor attended at the premises. Inspector A entered the premises and the Minor followed shortly after. Two staff persons were in the store but no other customers. Inspector A observed the Minor go to the cooler and remove a four pack of a liquor product. The Minor then proceeded to the cash register and paid the Clerk for the product. Inspector A had a clear view of the entire transaction and did not see the Minor produce any identification. The Minor then left the store with the liquor product. Inspector A also left the store.

The Inspectors and the Minor made notes of the event, which are included in Exhibit 1. The Minor reported that the Clerk scanned the product and told the Minor the price was \$11.25. The Clerk then asked the Minor if she had identification. The Minor replied that all she had was a \$20 bill. The Clerk did not ask again for identification, accepted the money, made change, and allowed the Minor to leave the store with the liquor product. A Contravention Notice was issued to the Licensee.

Inspector A gave evidence about the Guide to the Terms and Conditions (the "Guide") (Tab 5 of Exhibit 1) which is intended to assist licensees and sets out the various responsibilities. He also gave evidence about the Serving It Right program (Tab 6 of Exhibit 1). He testified about the seriousness of the contravention and the consequences of selling liquor to minors. Inspector A also described the Branch's efforts to ensure that licensees are aware of the MAP, and the Branch's intention for it to be a public safety enforcement program.

### ***The Licensee's evidence***

The Licensee does not dispute that liquor was sold to the Minor as alleged but says a defence of due diligence applies. Mr. O'Loughlin gave evidence on behalf of the Licensee and called three other witnesses - the Licensee's General Manager, the Assistant General Manager, and a Supervisor.

### ***Mr. O'Loughlin's evidence***

Mr. O'Loughlin described himself as a hands-on operator. He said he works 12 hour days, 6 to 7 days a week, between this premise and the adjacent pub (which is under a different licence) and another retail liquor store and pub (which are also under a different licence). Mr. O'Loughlin said he takes his responsibilities as a licensee seriously and he tries to follow all the rules. He says the Licensee's compliance history of no prior offences shows that.

Mr. O'Loughlin said the store policy is to "ID" anyone who appears younger than 30 years old. He testified that he interacts with the managers and staff on a daily basis. He constantly reminds the managers and staff, and also prompts the managers to remind staff, about the need for proper identification and how to prevent and lookout for purchasers who are under the legal age to buy liquor. He actively monitors staff for compliance by attending the premises to observe staff several times a week. On finding out about the contravention, he fired the Clerk.

Mr. O'Loughlin said that the Licensee is proactive in trying to prevent the sale of liquor to minors. Once every six months the Licensee has a big staff meeting that all staff are paid to attend. Minutes are not kept but the General Manager's notes for agenda purposes for the June 2012 meeting were presented as Exhibit 8. A list of attendees was not presented, but Mr. O'Loughlin said payroll records would confirm attendance by all staff.

Individual "staff meetings" are held daily and weekly where the requirements to ID are talked about—how to ID, how to look for fake ID, to look at the actual pictures, what a fake ID looks like—to the point where he said staff are sick to death of hearing about it. In his opinion, it was better to do this one-on-one as it engaged the staff person more directly than covering this information at a large meeting. He also described the signs and posters that are posted in the store and the staff room, which were depicted in Exhibit 9. He said lapel buttons referring to the need for 2 pieces of identification were also distributed to staff.

Mr. O'Loughlin testified that the Licensee's policies, Exhibits 3 to 6, were all gone over with new staff who were required to sign them. While those policies were specifically addressed to the pub staff, there was lots of crossover of staff between the two establishments and the policies applied to both establishments. The policies Exhibits 3 to 5 did not address the issue of the sale of liquor to minors—that was considered important enough to have a separate policy, which was Exhibit 6. Mr. O'Loughlin acknowledged that the identification policy, Exhibit 6, did not articulate the proper forms

of identification that could be accepted. The copies of the policies submitted as exhibits had all been signed by the Clerk.

Mr. O'Loughlin said that the Licensee or its supervisory staff cannot be present at all hours the store is open to watch over staff. The only thing the Licensee can do is to train and constantly remind staff, which is what he does. He says even if a supervisor was present, that would not have prevented the sale as the supervisors don't watch over individual clerk's shoulders at all times. Instead, the focus is on having practises in place, ensuring clerks have a clear understanding of them, and giving constant reminders about them. He says the note, Exhibit 7, indicates that the Clerk acknowledged that it was her stupidity that was responsible for the contravention, not a lack of training.

Mr. O'Loughlin and all staff, including the Clerk, had their Serving It Right certificates. He said that video surveillance is in place but is not used to actively monitor staff. Mr. O'Loughlin said that to monitor the staff by video on a continual basis would be prohibitively expensive, and even when reviewed for thefts, the tapes were not of much assistance.

Mr. O'Loughlin testified about a secret shopper program that the Licensee used. That program consisted of the General Manager asking various friends and family to attend the premises and report back about their experiences. The program is used sporadically and Mr. O'Loughlin could not say if the Clerk had been assessed under the program. He had not thought to bring any documentation about the program to the hearing. Staff had not been told of the program, until very recently when unexplained thefts became a problem. Since telling staff about the program by posting a notice in the staff room, the thefts had stopped. Staff were told the secret shopper program included video monitoring.

*The General Manager's evidence*

The General Manager (the "GM") testified that she has worked for the Licensee for more than 20 years. She is responsible for day-to-day operations, and oversees the hiring of new employees. She works full-time, Monday to Friday, not on weekends or nights.

The GM or the Assistant GM trains all new employees. The process is to sit down and explain the Licensee's policies including ID requirements to the new person. This takes about 1½ hours. This is followed by 4 to 7 training shifts, depending on the person's experience. A training shift involves the new person working directly with an experienced staff member who provides directions and monitors the new person. After that, a second sit down meeting is held where the new person's understanding of the policies is reviewed and they are required to sign off on a copy. No written tests are used to test staff understanding of the policies.

The GM said that the ID policy was on a separate sheet from the other policies to give it a higher importance. The Licensee's policy is to ask anyone appearing under the age of 30 years for identification. The policy, Exhibit 6, does not set out what constitutes proper identification or how to check for fake ID. The GM says that information is given to staff verbally.

The GM conducts the formal staff meetings. Her hand written notes for the June 2012 meeting (Exhibit 8) lists the topics she wanted to discuss. Discussion of the ID requirements took about 20 to 25 minutes at that meeting. The Clerk was among the staff who attended the meeting.



The GM said she, the Assistant GM and Mr. O'Loughlin routinely discuss ID requirements with staff, on a daily and weekly basis, to the point where staff complain about being told about them, so she tries to mix it up by using different questions about ID. She also specifically monitors staff to ensure they are following policies, and testified that Mr. O'Loughlin also attended at the store to monitor staff compliance. Notes were not made about these conversations or monitoring because to do so would take up all her time making notes.

She testified that she had posted the notices and posters depicted in Exhibit 10, and that posting had been done prior to the date of the contravention.

The GM described the operation of the secret shopper program. She would ask family and friends and other persons involved in the industry who were unknown to staff and happened to be in the area to attend the premises. Afterwards, she would ask them about the service. She said this program included having young people tell her if they were asked for identification, but she did not know a lot of people in that age group so that did not happen often, perhaps once or twice a month.

The GM said she would look at the receipt and the videotapes and determine who was the staff and if necessary the staff would be warned to be more careful. She said if a discussion was held then a written warning would be issued to the staff person, but she could not recall issuing any such warnings. She said that the secret shopper program operated randomly and sporadically, depending on if someone was available. Program records were kept but had not been brought to the hearing. She could not say which staff had been assessed under the program. She said a reason this program was used instead of a professional program was cost. Staff were not told about the program until recently when a notice was posted in the staff room.

The GM testified that with all the training and reminders given to staff, the only way to avoid selling to a minor would be to supervise every sale, which is not the industry standard. Another alternative would be to ID everyone, but that that would offend those who were clearly of age and it would be bad for business if the Licensee was the only one to do this.

The staff numbered about 10 or less, including both full and part-time staff. While the Licensee had more long-term than short-term staff, turnover in the clerk positions was high, which the GM says is the norm in the industry.

#### *The Assistant General Manager's Evidence*

The Assistant GM testified that she worked full-time with day, night and weekend shifts. She had the responsibilities of the GM when she was not there, including responsibility for training new employees. Her description of the training of new employees and about the Licensee's policies was substantially the same as that of the GM. The Assistant GM said she gave the Clerk one day of training and the Supervisor gave the Clerk a second day of training. She had monitored the Clerk, and did not think the Clerk gave any cause for concern about not asking for ID. She said no formal documentation of the training or monitoring is kept.

She also testified that Mr. O'Loughlin and the GM frequently prompted her to remind staff, and that the three of them reminded staff on a daily basis about the importance of identification. She said she monitored staff for compliance with the store's policy on ID and if a staff person looked like they were not going to ask for identification when they should, she would step in and remind them or ask for the ID herself. She also knew that Mr. O'Loughlin frequently came in to monitor staff because the staff would be talking about it the next day. The Assistant GM did not have any knowledge about how the secret shopper program was conducted.

The Assistant GM also said that there were other information sheets employees were required to sign, which included a sheet about staff having to pay a monetary penalty for non-compliance, and another sheet that directed staff to step in if they saw another staff person not asking for ID when they should. These sheets were not produced as exhibits.

### *The Supervisor's Evidence*

The Supervisor testified that she worked for the Licensee for about six years. She did training, supervision and also worked as a cashier. The Supervisor said she worked full-time on days, evenings and weekends. She confirmed that the June 2012 meeting was held, identification requirements were discussed and the Clerk was in attendance. She also confirmed the daily reminders given to staff about ID. In her opinion, the Licensee's staff understood the need to ask for ID, what to look for and who to ID, and what was acceptable and what was unacceptable as identification.

## **SUBMISSIONS**

**The Branch** says that, since the Licensee admitted the contravention, the only issue is whether due diligence applies. The Branch says the test for due diligence is whether there is (i) adequate training provided and (ii) reasonable systems that effectively monitor the application of that training. The Branch says the Licensee's training is not adequate and its systems to monitor it are not effective. In *Aztec Properties Company Ltd. v. General Manager of the Liquor Control and Licensing Branch*, 2005 BCSC 1465, at paragraph 18, the court accepted that the existence of a policy, without evidence of effective effort to enforce it, is not sufficient to establish the defence of due diligence.

More specifically, the Branch says the defence fails because:

1. The information given to staff about identification, Exhibit 6, is deficient in its content. This is especially obvious when Exhibit 6 is compared to page 21 of the Guide (Tab 5, Exhibit 1). Exhibit 6 does not give information on the acceptable pieces of ID and how to verify that identification, which the Guide does. To be effective, a policy should be able to stand alone, and staff should be able to read and understand their responsibilities without the need for discussion or further additional information.
2. Exhibit 6 is inadequate in that its form as a memo, instead of a clear policy like exhibits 3 and 4, gives it less prominence than those documents. Also, it is only addressed to the pub staff, not the retail store staff.
3. The lack of documents or records of training, monitoring, and of any problems that were identified and how they were addressed, goes to show the system in place falls short of the reasonable expectations of a Licensee. The lack of minutes of meetings means there is no way to confirm what was covered.
4. The lack of a written test to ensure employees are asking for proper ID on a consistent and regular basis - the SIR Program uses written tests to test comprehension and sets a standard in the industry for that kind of testing.
5. The secret shopper program was unknown to staff and no documents to support the oral evidence of the program was produced. No dates, no names, no pass/fail, what was being tested and how it was being tested.

The Branch is not obliged to request documents; it is up to the Licensee to establish the defence.

The sale being made shows that the Clerk was not adequately trained, and her understanding and compliance with the Licensee's policies were not effectively monitored. The Clerk was not distracted or busy when she made the sale to the Minor, she simply did not require the Minor produce identification which would have prevented the sale.

The Branch also says that selling liquor to a minor is a serious offence with serious consequences and the lack of a prior record does not mean a Licensee should be excused.

**The Licensee** says that the defence of due diligence ought to apply and it is very diligent about how employees are to deal with minors and that nothing more could have been done by it to prevent this sale, short of requiring all customers produce identification, regardless of age.

The Licensee says training and orientation materials addressing the issue are provided to new employees, with daily reminders given. The Licensee says the Clerk was ordinarily very conscientious, asking for identification and refusing sales if proper identification was not produced—the Clerk's mind was just not on her job that day. The Licensee had no reason to think that the Clerk would not perform her duties properly that day. Additional supervision would not have prevented the sale. Things can still happen despite monitoring—it depends on the training, and the Licensee has adequate training.

The Licensee disputes that written tests are the only way to test understanding—there are many different ways to test different people. In the Licensee's opinion, individual meetings are better than larger general staff meetings as more directly engaging with staff. Video surveillance of staff would not help—operations can't be monitored 24/7 as if it was Las Vegas. Video surveillance is simply a tool that can assist. In the business it is used mostly for theft.

The Licensee submits that the expectation to document everything is too high; however, the Licensee did have other documents. The Licensee has documents about its training, monitoring, and secret shopper programs but the Licensee did not fully understand or appreciate the need to bring them to the hearing. He thought the oral evidence of three witnesses would be sufficient to establish what the Licensee did. The oral evidence about the signs and notices establish that they were in place on the date of the

contravention, even though the photos were taken later. There is no reason not to accept this, or any other oral evidence given on the Licensee's behalf.

The Licensee says that the Clerk admitted it was her own stupidity that was responsible for the sale. She knew what she had done was wrong, which implicitly means she knew what was right and just did not do it.

The Licensee says if the Branch started enforcing the law against employees directly, then employees would pay more attention and greater compliance would be achieved. As it is, he says, the employee gets fired but just goes to another retail store and gets another job right way, which is what happened here. He did his job and fired the Clerk, but is still being penalized despite his best efforts.

The Licensee would welcome a Branch requirement that all customers had to be ID'd, so that asking for ID would not be subjective. Then there could be no excuse for not asking. This would also mean there would be no negative impacts for licensees as they would all be doing it and customers would not get angry because it would not be just this Licensee who required it be done.

The Licensee's compliance history shows that it is conscientious and their systems in place to prevent underage sales works well and achieves the Branch's policy objective of not selling to minors. As such, the Licensee could have done nothing more to prevent the sale and has met the test for due diligence.

## REASONS AND DECISION

I accept Inspector A's evidence about the facts surrounding the sale of liquor to the Minor. I find that the minor was youthful in appearance, a reasonable person would have asked her to produce identification, and the sale should not have taken place. The Licensee does not dispute that on July 11, 2012 a minor was allowed to buy liquor from the Licensee's retail liquor store, and as such I find that the Licensee contravened section 33(1)(a) of the Act and the terms of its licence.

### Defence of Due Diligence

The Licensee is entitled to the defence if it shows 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 law:*

The Supreme Court of Canada set the legal test for the defence of due diligence in the case of *R v. Sault Ste. Marie* (1979) 2 SCR 1299. That case still stands as the applicable law today. Justice Dickson sets out that test, at page 1331, as:

One comment on the defence of reasonable care in this [an employment] context should be added. ... 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 [the employer's] direction or approval, thus negating wilful involvement of the accused, and whether the accused [the employer] 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 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 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.

*Findings of fact and applying the law to the facts:*

I find that the Clerk who made the sale of liquor to the Minor was not the directing mind of the Licensee. There was no directing mind of the Licensee on the premises, nor did there need to be. The defence of due diligence is not to be denied on that basis, and the inquiry must continue to determine

- a. whether the Licensee had adequate training and other systems in place to prevent the sale of liquor to minors, and
- b. whether the Licensee took reasonable steps to ensure the effective application of that training and those systems.



Does the Licensee's evidence, once weighed and considered, meet the test of what a reasonable person would expect of procedures to prevent the sale of liquor to minors and ensuring that those procedures are consistently acted upon and problems are dealt with? In determining what a reasonable person would expect, it is valuable to be reminded that selling liquor to minors is a significant public safety issue and it needs to be prevented because of:

- the 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, so that liquor has a more intoxicating effect on minors, and
- liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft

I accept the evidence of the Licensee's witnesses about the Licensee's policies, the training given to the Clerk, the June 21, 2012 staff meeting, the daily oral reminders given to staff about ID, and that the signs and notices were posted on the premises on the date of the contravention as depicted in Exhibit 9. However, the question remains whether this evidence meets the onus of establishing the defence of due diligence.

Effective staff training is important especially when, as here, staff turnover is high. I find the Licensee's training to be deficient for the following reasons:

1. The forms of acceptable ID and how to verify that ID is set out in the Guide. This critical information needs to be made clear to staff in their training. The content of the Licensee's ID policy does not include that critical information and so the policy is deficient. While that information (what is acceptable and how to verify it) is given to staff orally, I find that manner of providing this critical information to be insufficient. A comprehensive written policy provides a quick and easy reference when starting employment and throughout their employment, especially when supervisory staff are not present.

In making this finding of insufficiency, I do note that the signs and notices posted in the premises, including those at the cash register, do list what is acceptable ID, but also note that there was no evidence the clerks had information about how to verify if the ID is in fact valid. Testing the validity of ID is an important aspect of preventing sales to minors and needs to be thoroughly explained to new staff, who then need to apply those tests. This is because simply asking for ID without verifying it is not enough to prevent the sale of liquor to minors. I have more to say about the photographs of the signs and posters, below.

2. When the one page ID policy (Exhibit 6) is compared to the detailed 5 page Beer Store Policy Sheet (Exhibit 4), the ID policy lacks anything near the same level of detail or specifics. While the ID policy is purported to be set out in a separate sheet to give it more prominence, instead it appears to be more of an afterthought, and thus may be interpreted by new staff as not being as important.
3. The Licensee's training consists of a sit down meeting of about one and a half hours to review all of the Licensee's policies, followed by on-the-job training. Given the amount of material covered in the other policies (Exhibits 4 and 5), I find it is unlikely that the ID policy, how to assess age, what is valid ID and how to test validity, can or will be given prominence in that 1½ hour meeting. Additionally, no written training manual or a formal checklist of topics to be covered was described or submitted as evidence, so presumably none was used or available during those meetings. Nor was any evidence presented of any examples used to show staff what valid identification looked like or how to check for fake identification.

4. While the GM's evidence was that the on-the-job training was to be 4 to 7 shifts, depending on experience, the Assistant GM's evidence was that the Clerk's actual training was only 2 shifts, without any reference to her level of experience. While the stated procedure was to have a second meeting after training to review the policies and sign off on understanding of all of the policies, in the case of the Clerk, she signed the four policies on four different dates, which would seem to indicate that procedure was not followed with her. This also raises doubt if that procedure is followed with all new staff.
5. While staff was observed on the job, no tests were held during or at the end of the training period to test the ability to assess age and apply the ID policy.

I also find the Licensee's systems in place to ensure effective application of its policies to prevent sales to minors to be deficient for the following reasons:

1. The evidence was that despite daily reminders and frequent monitoring, on occasion there was a need to remind staff to ask for ID or to step in and ask for ID when staff failed to do so. However, there was no evidence of any verbal or written warnings ever being given to staff about the consequences of not asking for ID, or any other negative implications for such staff. So despite constant reminders, staff were at least on occasion not asking for identification, and nothing significant was being done about that, despite the seriousness of the matter and the Licensee's stated policy to do so.
2. The only evidence of non-verbal prompts was of the signs posted in the store and staff room (see more about those below). Buttons were given to staff but there was no evidence of the staff being required to wear them. There was no evidence presented of any documents at the till to assist in determining age (for example, the current date for those turning 19 years of age, examples of the various forms of valid ID, what to look for in fake ID). No evidence was given of any reminders by way of systems or codes in the cash register.

3. The copies and photographs of the signs and posters (Exhibit 9) indicate inconsistencies in the Licensee's ID policy. The poster, page 3 of Exhibit 9, says that all persons under the age of 25 years must have identification to enter and will be required to produce it. This is inconsistent with the ID policy Exhibit 6, which refers to persons appearing to be under the age of 30 years. I note that in fact the photographs that form part of Exhibit 9 show both policies (age 25 and age 30) were posted in the store—one right above the other at the store entry area, and both at the entry. This is confusing. It raises a question of how well the Licensee's policy was articulated to its staff and how the policy was in fact applied.
4. The Licensee's secret shopper program is sporadic and haphazard and whether any particular employee is tested is entirely by chance. The evidence seemed to be that the program was more one ensuring of service standards rather than licence compliance. While records of the secret shoppers' visits were apparently kept, none were produced. There is no reliable evidence about what was tested or how. Additionally, no staff were given any written warning about any failure to comply with any policy as a result of that program, so its effectiveness is, at best, very limited to ensure compliance with the requirement not to sell liquor to minors.
5. Further, while the Assistant GM said that there were other information sheets employees were required to sign, which included a sheet about staff having to pay a monetary penalty for non-compliance and another sheet that directed staff to step in if they saw another staff person not asking for ID when they should, no other witness mentioned these and they were not produced as exhibits. Given that this matter is specifically about the steps taken to prevent underage sales, had these sheets and policies existed, I would have expected them to have been produced or at least referred to by the other witnesses. As such, I give no weight to this evidence.

Considering all of the evidence and the case law, and applying the standard of what a reasonable person would expect given the significant public safety issues related to the sale of liquor to minors, I find the Licensee failed to have adequate training on preventing the sale of liquor to minors. I also find that the Licensee failed to have in place adequate systems to track and monitor effective training and operations. Given the serious consequences of a sale to a minor, a reasonable person would expect something more defined and structured to be in place. I find the Licensee failed to meet the standards and the defence of due diligence is not available to it.

In addition, while the Licensee suggested that the Branch ought to pursue action against staff personally so that staff will experience negative impacts for failure to ask for identification, I find that the Licensee is best placed to take steps to require compliance by staff.

## **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.

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. Item 2 in Schedule 4 of the Regulation provides a range of penalties for a first contravention of this type: a 10-15 day licence suspension and/or a \$7,500 to \$10,000 penalty.

Selling liquor to a minor is a serious public safety issue. The threat of serious consequences to the youth and to the public in general is significant.

## **ORDER**

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7500 to the general manager of the Liquor Control and Licensing Branch on or before April 5, 2013.

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*

Dianne Flood  
Enforcement Hearing Adjudicator

Date: March 5, 2013

cc: Liquor Control and Licensing Branch, Surrey Office  
Attention: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Victoria Office  
Attention: Olubode Fagbamiye, Branch Advocate