



**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:	0755 Restaurant & Lounge Incorporated dba 0755 Restaurant & Lounge Unit 2188-3779 Sexsmith Road Richmond, BC V6X 3Z9
Case:	EH12-204
For the Licensee:	Randall Olafson
For the Branch:	Peter Mior
General Manager's Delegate:	R. John Rogers
Date of Hearing:	June 19, 2013
Place of Hearing:	Vancouver, BC
Date of Decision:	August 8, 2013

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7059

Location:
4th Floor, 3350 Douglas Street
Victoria BC

<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

The corporate licensee, 0755 Restaurant & Lounge Incorporated, (the “Licensee”) owns and operates the *0755 Restaurant & Lounge* at Unit 2188 – 3779 Sexsmith Road in Richmond (the “*0755 Restaurant & Lounge*”) under Food Primary Licence Number 304745 (the “Licence”). The authorized representative of the Licensee is Randall Olafson.

Under the Licence, liquor sales are permitted from 9:00 a.m. until Midnight every day of the week. The permitted capacity under the Licence for *0755 Restaurant & Lounge* is 283 persons allocated among a restaurant area, an interior lounge area, and an upper mezzanine area. Minors are permitted into the interior lounge area when accompanied by an adult, but they cannot be sold, served or consume liquor.

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”) allegations and proposed penalties are set out in the Notice of Enforcement Action (the “NOEA”) dated September 17, 2012.

The Branch alleges that on Thursday, August 30, 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 enforcement action outlined in the NOEA is a monetary penalty of \$7,500 as provided for in Item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* (the “Regulation”).

The Licensee disputes the alleged contravention and the penalty proposed by the Branch in the NOEA and this hearing has, therefore, been scheduled.

Pursuant to section 3 of the *Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002, the General Manager of the Branch has delegated to the undersigned the powers, duties and functions imposed upon the General Manager by, and referred to in, Section 20 of the *Liquor Control and Licensing Act* and section 65-69 of the *Liquor Control & Licensing Regulation* for the purpose of this enforcement hearing.

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,

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Schedule 4

Enforcement Actions

Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
2	A breach of section 33 of the Act (<i>Selling liquor to minors</i>)	10-15	20-30	30-60	\$7,500- \$10,000

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 No. 1:** Branch's Book of Documents, Tabs 1 to 15 inclusive.
- Exhibit No. 2:** A sealed envelope containing copies of two photographs of the Branch's minor agent identified below as "Agent #14", together with a copy of a photograph of her British Columbia Driver's License and Identity Card.
- Exhibit No. 3:** The Statement of the Licensee's Kitchen and Front End Manager.
- Exhibit No. 4:** The Statement of the member of the Licensee's staff who is alleged by the NOEA to have served Agent #14.

EVIDENCE – THE BRANCH

Upon the commencement of the hearing, the branch advocate advised that the Branch intended to call as witnesses Inspector A and Inspector C, Branch liquor inspectors who were present at the establishment when the alleged contravention occurred, together with Agent #14. With the consent of the representative of the Licensee, it was agreed that Agent #14 was not required to testify.

Inspector C

Inspector C was affirmed and directed to Tab #13 of the Branch's Book of Documents which she identified as a news release dated July 14, 2010 issued by the Branch and relating to the establishment of the Minors as Agents Program ("MAP").

The MAP Program

With reference to Tab #13, Inspector C testified that in June 2010 the Act was amended to permit the Branch to employ minors as agents to test compliance with the Act's prohibition against selling, giving or otherwise supplying liquor to minors. Pursuant to this authority, the Branch established MAP. Under the MAP, the Branch hires as agents 17 and 18 year old minors who clearly appear to be under the age of 19 for the purpose of carrying out inspections to determine compliance with the Act with respect to supplying liquor to minors.

In carrying out such an inspection, the MAP agent enters the licensed premises without personal identification and orders liquor. If the MAP agent is asked for personal identification, the MAP agent advises that he/she does not have the requested personal identification and, if refused service, immediately leaves the licensed premises. If the MAP agent is either not asked for personal identification and is served liquor, or has advised that he/she does not have personal identification and is nevertheless served liquor, the MAP agent (once the liquor is served) immediately leaves the licensed premises.

In the delivery of MAP, no attempt is made to hide the minor's age or to otherwise deceive a licensee in order to make it appear that the agent is older than 19 years of age. MAP includes training for the newly hired MAP agents on the relevant provision of the Act together with training on how to make and document observations during an inspection and important safety considerations in carrying out their duties.

Inspector C identified Exhibit #13 as part of a general communication program conducted by the General Manager to all parties licensed under the Act to advise them of MAP and of the fact that MAP inspections are being conducted to determine compliance with checking the identification of persons who appeared to be minors. In this communication, the General Manager identifies the penalties for licensees found to be non-compliant.

Inspection of the 0755 Restaurant & Lounge

Inspector C testified that on Thursday, August 30, 2012 three Liquor Inspectors, being herself and Inspector A and Inspector B, and MAP agent #14 ("Agent #14") constituted an investigation team. This team was involved in conducting MAP inspections at several licensed establishments in the Municipality of Richmond to assess compliance regarding the requesting of identification from a person under the age of 19 years who has ordered liquor. At the commencement of the shift, Inspector C testified that she photographed Agent #14 and her identification was examined and photographed to confirm that she was 18 years of age. Copies of these photographs were produced as Exhibit #2 and identified by Inspector C.

Inspector C identified Tab #3 of Exhibit 1 as a copy of her notes made immediately following the occurrence of the alleged contravention. With reference to these notes, Inspector C testified that at about 9:50 p.m. on August 30, 2012, she and Agent #14 entered the *0755 Restaurant & Lounge* for the sole purpose of assessing the establishment for compliance. Agent #14 had in her possession only her cell phone and some money. Inspectors A and B remained in their car in the parking lot.

Upon entry, Inspector C testified that both she and Agent #14 were greeted by the female hostess at the hostess stand. Inspector C testified that she heard Agent #14 asked for 3 menus and to be seated in the lounge area. Inspector C testified that she was similarly seated in the lounge area, separate from but with an unobstructed view of Agent #14 who was seated by herself. Inspector C identified Tab #10 of Exhibit 1 which was a floor plan of the establishment and on it, as part of her testimony, pointed out where she and Agent #14 had been seated.

Inspector C testified that, once seated, Agent #14 was approached by a male server. Inspector C testified that she saw this server subsequently place a bottle of a Smirnoff Ice and a glass of ice on the counter in front of Agent #14. Inspector C testified that once she had observed this transaction, she notified Inspectors A and B by text message that Agent #14 appeared to have been served liquor. Thereupon, she testified that she and Agent #14 left the premises, departing at approximately 9:55 p.m.

Inspector C identified the pictures included in Tab #4 of Exhibit 1 as being photographs of the bottle of Smirnoff Ice and the glass of ice referred to above together with a copy of the bill for this liquor in the amount of \$8.90.

Inspector C then identified Tabs #5 and #6 of Exhibit 1 being the Minor Agent Observation Form and the Minor Agent Statement, respectively, which Inspector C testified Agent #14 completed once outside the establishment and Inspector C signed off on. Both of these documents contained the statement by Agent #14 that "No ID Requested".

Cross-examination of Inspector C

On cross-examination by the Licensee's representative, Inspector C testified that she didn't know if the owner of the Licensee was present at the time the contravention occurred. The only staff that she was in contact with was the hostess who seated her.

When asked by the Licensee's representative how Inspector C might judge whether or not a person was a minor, Inspector C confirmed that, to her knowledge, the Branch had not established a set procedure for judging whether or not a patron was a minor.

Inspector C confirmed to the Licensee's representative that prior to entering the establishment, Agent #14 was not coached as to how to act.

Inspector A

Inspector A was affirmed and confirmed that he was one of the Liquor Inspectors accompanying Agent #14 on August 30, 2012. He identified Tab #2 of Exhibit 1 as a copy of a page from his notebook relevant to the matters before the hearing.

In his testimony, Inspector A confirmed that he and Inspector B remained in their vehicle in the parking lot while Inspector C, together with Agent #14, entered the *0755 Restaurant & Lounge*. Once he had received a text message from Inspector C that it appeared that Agent #14 had been served liquor, Inspector A testified that he and Inspector B entered the establishment and asked to speak to the manager. They were directed to the Licensee's manager on duty who confirmed that the owner of the Licensee was not on site.

Inspector A testified that he and Inspector B notified the manager that a minor agent employed by the Branch under the MAP had just been on site and was able to purchase liquor without being asked for identification. Inspector A testified that he and Inspector B secured possession of the bottle of Smirnoff Ice and glass of ice, photographed them, paid for the liquor, and obtained a receipt for this payment.

Inspector A identified Tab #8 in Exhibit 1 as a copy of Contravention Notice #B005376, the subject of this hearing, which was issued by him that night to the Licensee. The Inspector pointed out the manager's signature thereon acknowledging receipt of a copy of the contravention notice.

In his testimony, Inspector A confirmed Inspector C's observation that during the course of the inspection of the *0755 Restaurant & Lounge* that it did not appear to be a busy time for the establishment.

Inspector A was then directed to Tab #9 of Exhibit 1 which he identified as the Licence. He confirmed that one of the terms and conditions contained in the Licence was that the Licensee was subject to the provisions contained in the publication "Guide for Liquor Licensees in British Columbia", as amended from time to time (the "Guide").

Inspector A was then directed to Tab #11 of Exhibit 1 which he identified as a copy of the Guide referred to in the Licence. On page 11 of the Guide, Inspector A confirmed that under the heading "Your Role as a Licensee", the document made it clear that the Licensee was legally responsible for understanding how the Act, the Regulation to the Act, and the specific terms and conditions of the Licence affected the operation of the *0755 Restaurant & Lounge*. Inspector A confirmed that the Guide went on to provide that the Licensee was legally responsible for ensuring that its employees follow B.C.'s liquor laws and the terms and conditions of the Licence, even when the owner of the Licensee was not on site at the *0755 Restaurant & Lounge*.

Inspector A was then directed to page 24 of the Guide which he observed states that minors are allowed in *0755 Restaurant & Lounge* on their own, but that it is against the law for the Licensee or its employees to sell, serve or supply liquor to a minor, and that the Licensee and its staff are expected to put in place effective systems to meet this obligation. Inspector A further testified that the Guide goes on to state that part of this obligation includes that the Licensee demonstrating that it and its staff are preventing minors from obtaining liquor by verifying a customer's age and asking for two pieces of identification prior to serving them liquor. The Guide notes that if the customer is not able to produce such identification, then service must be refused.

Inspector A confirmed that a copy of the Guide was made available to the Licensee as a part of the final inspection process for the Licence. Included in this final inspection process was an educational component dealing with the Guide.

Inspector A then identified Tab #12 of Exhibit 1 as the inspection review sheet with respect to the Licensee's final inspection on November 30, 2011 confirming that: the owner of the Licensee had attended the educational session as part of the final inspection; the terms and conditions of the Licence had been discussed with the Licensee and its owner; and, these terms and conditions had been clearly understood.

Inspector A was then directed to Tab #14 of Exhibit 14 which he identified as particulars of a compliance meeting he held with the owner of the Licensee and the manager on June 27, 2012 which came about as a result of the Licensee self-reporting a fight outside the *0755 Restaurant & Lounge*. Inspector A testified that as a result of the cooperation of the Licensee and its staff that no contravention notice was issued for that incident.

Inspector A further testified that at this compliance meeting held only two months before the issuance of Contravention Notice #B005376, among other matters he had discussed were the obligations imposed upon Food Primary Licensees, including the requirement to prevent the sale of liquor to minors. Inspector A also testified that he had described the MAP to the meeting and advised that the Branch would be active in the Municipality of Richmond under the MAP to ensure that servers are confirming personal identification before selling or serving liquor to minors.

Inspector A then identified Tab #1 as a copy of the NOEA and advised that under MAP the Branch policy is that as it is a public safety issue an inspector has no discretion as to whether or not to issue a notice of enforcement. If liquor was served to a minor agent under MAP, Branch policy specifies that a notice of enforcement has to be issued for that contravention.

Cross-examination of Inspector A

In cross-examining Inspector A, the Licensee's representative noted that Inspector A had a great deal of experience as a liquor inspector. The Licensee's representative asked Inspector A how over that time Inspector A had established criteria for judging whether or not a patron was a minor. Inspector A testified that it was not an easy task and that many times he had asked for identification and the patron was 26 or 27 years of age. Inspector A confirmed that it was often difficult to determine a patron's age.

The Licensee's representative directed Inspector A to pages 24 and 25 of the Guide in Tab #11 of Exhibit 1 and had Inspector A confirm that nowhere on these pages were guidelines given by the Branch as to how a licensee was to identify a minor.

Inspector A confirmed, when asked by the Licensee's representative, that the Licensee's owner, XQ, was a passionate and enthusiastic owner, a sincere and honest man, who was quite agitated when his staff breached the rule. XQ had told his staff in front of Inspector A that they were not to breach the rules.

When asked by the Licensee's representative to describe how Inspector A found that the Licensee and its staff operated the *0755 Restaurant & Lounge*, Inspector A responded that whenever he had been on the premises there had not been a great number of patrons and, therefore, not a lot to inspect.

EVIDENCE – THE LICENSEE

The representative of the Licensee advised that it had been the intention of the owner of the *0755 Restaurant & Lounge* to be present at the hearing of this matter, but that at the last minute urgent family business had required that XQ travel and he was, therefore, not able to attend the hearing. In XQ's absence, the Licensee's representative intended to give evidence on the Licensee's behalf.

The Licensee's representative was affirmed and entered into evidence the statements of the kitchen and front of house manager and the server which statements are referred to above and identified as Exhibits No. 3 and No. 4, respectively. The Licensee's representative testified that the manager and the server had been on duty at the *0755 Restaurant & Lounge* when the alleged contravention occurred.

The representative of the Licensee testified that he owns a consulting firm which, among other matters, deals with liquor licensing issues. The Licensee's representative's consulting firm was engaged by the owner of the Licensee, XQ, to assist him in opening the *0755 Restaurant & Lounge*. Part of this engagement involved an education session for XQ on the rules involved in operating an establishment serving liquor prior to XQ attending the education session at the Branch. This prior education session was to ensure that XQ understood the complexities and nuances of operating such an establishment and, to assist with this understanding, the Licensee's representative engaged the assistance of both Inspector A and Inspector C. As part of this education session, the Licensee's representative as well engaged the Richmond RCMP and undertook with the RCMP a discussion of the gangs and gang-related problems in Richmond dealing with such issues as gambling and after hours drinking. For the first few months after opening the *0755 Restaurant & Lounge*, the Richmond RCMP monitored the situation and there was no problem whatsoever.

The Licensee's representative testified that in his opinion XQ had a passion immediately from the beginning of the entire process to do things right as he wished to open additional establishments. Following the opening of the *0755 Restaurant & Lounge*, XQ was constantly asking the Licensee's representative what additional steps should be taken, what things should be changed to upgrade the establishment. Indeed, the Licensee's representative testified that XQ is currently in the process of again further upgrading the *0755 Restaurant & Lounge*.

The Licensee's representative testified that XQ has worked very hard on his operations manual and has turned over a lot of staff to get good employees.

In summary, the Licensee's representative testified that XQ has had all of the challenges that a new operator has as well as having to look out for gangs and other activities in Richmond which are the concern of the RCMP. The Licensee's representative further testified that XQ has clearly demonstrated to the Licensee's representative that XQ would never personally sell nor permit the Licensee's staff to intentionally sell liquor to a minor. He has had signs posted in the establishment cautioning the employees of the Licensee against selling liquor to minors and advising them that if they do so that their employment will be terminated. From XQ's policy setting, on which the Licensee's representative assisted, the Licensee's representative testified that he believes that XQ has done everything as an owner to restrain the Licensee's staff from selling liquor to a minor.

Cross-examination of the Licensee's Representative

The Licensee's representative confirmed that he did not have any of the operations manuals of the Licensee with him to present to the hearing, nor any of the tests administered to the staff of the Licensee. Similarly, the Licensee's representative confirmed that he did not have with him, to present to the hearing, any examples of the signage he had referred to in his testimony.

The Licensee's representative testified that he was actively involved with the employee training undertaken by the Licensee, but that he did not have any of the training material to present to the hearing. In addition, the Licensee's representative confirmed that he did not train the server as part of this training.

SUBMISSIONS – THE BRANCH

The Branch submitted that the evidence before me clearly demonstrates that the contravention has been proven and that, therefore, the recommended penalty of \$7,500 is appropriate and necessary in order to ensure voluntary compliance in the future by the Licensee with respect to the provisions of Section 33(1)(a) of the Act.

In its submissions, the Branch noted that notwithstanding the Licensee's evidence that the Licensee wished to do it right, that:

1. No staff manuals were produced at the hearing reflecting this commitment;
2. There was no evidence before the hearing that the Licensee provided its staff with a regular training regime or confirmation that its employees understood their training by submitting examples of test materials its staff were required to take and pass;
3. With respect to the Licensee's server there was no evidence before the hearing to the effect that he had been properly trained; and,
4. There was no evidence before the hearing of signage posted within the establishment dealing with staff's obligations with respect to this training.

The Branch pointed out that Agent #14 was 18, and that it is evident from her picture that she looks her stated age.

Most importantly, the Branch submitted, at a meeting merely two months before the subject contravention occurred, Inspector A testified that he had discussed with the owner of the Licensee (XQ) and with the staff of the Licensee the obligations imposed upon Food Primary Licensees, including the requirement to prevent the sale of liquor to minors. Inspector A further testified that he had described the MAP to this meeting and had advised that the Branch would be active in the Municipality of Richmond under the MAP to ensure that servers were confirming personal identification before selling or serving liquor to minors.

SUBMISSIONS – THE LICENSEE

In his submissions, the Licensee's representative acknowledged that Agent #14 was underage and that she was served liquor.

However, the Licensee's representative submitted that there are no guidelines set out by the Branch for licensees to follow dealing with when to ask a patron for identification. The only direction from the Branch is that it is contrary to the Act to serve a minor. The lack of these guidelines was confirmed in cross-examination by both Inspectors A and C.

The Licensee's representative submitted that the Licensee and the Licensee's owner, XQ, have done everything within their ability to ensure that liquor is not sold to minors at the *0755 Restaurant & Lounge*. He noted that Inspector A confirmed that XQ was diligent, honest, and enthusiastic about operating the *0755 Restaurant & Lounge* in a manner consistent with the terms and conditions of the Licence and Branch policies.

The Licensee's representative submitted that notwithstanding XQ's unavoidable absence from the hearing due to a family matter in China, that as the controlling mind of the Licensee that he has met the test of due diligence.

As the Branch has not set out specific criteria for identifying minors, the Licensee's representative submitted that the Licensee should not be liable for making a mistake with Agent #14 and that therefore no penalty should be assessed against the Licensee.

The representative of the Licensee submitted that the owner of *0755 Restaurant & Lounge, XQ*, was a passionate and enthusiastic owner and one very concerned with operating his establishment in accordance with the provisions of the Licence. Indeed, the Licensee's representative noted that Inspector A had confirmed under cross-examination that XQ had expressly cautioned the staff of *0755 Restaurant & Lounge* in the presence of Inspector A that they were to strictly comply with all of the provisions of the Licence and that XQ would not condone any breach.

The Licensee's representative submitted that XQ had with the assistance of a liquor licensing company established an operations manual.

The Licensee's representative further submitted that XQ has done everything within his control to advise his establishment against selling liquor to a minor. That XQ is diligent, honest and enthusiastic about operating his food primary in a manner consistent with the terms of his Food Primary Licence. That XQ has demonstrated that, as the controlling mind of the establishment, he has met the test of due diligence.

Finally, the Licensee's representative submitted that if I felt that a penalty was warranted, that the fine should be rescinded or reduced to zero.

REASONS AND DECISION

Contravention

I find that the Branch has proven that the contravention as alleged in the NOEA did occur. Indeed, the Licensee's representative admitted as much.

As referred to above, the Licensee's representative submitted that the Licensee should not be held responsible for its employee serving a minor because the Branch has not set out criteria by which a server can identify a minor. I don't accept this submission. It is the Licensee which bears the responsibility for ensuring that minors are not served in its establishment. The Licensee has a statutory obligation included as a term and condition of the Licence to ensure that a minor is not served alcohol. This requires the Licensee to ascertain that it and its employees have the ability to tell the difference between a minor and an adult. Where there is any doubt, the appropriate and required response is to require the patron to produce identification.

In any event, the Licensee's representative's argument that there are no criteria established by the Branch to determine how to identify a minor will not assist the Licensee. Section 33(1)(a) is a strict liability offence and, apart from the due diligence defence discussed below, once the contravention has been proven, the Licensee is liable under section 33(1)(a) of the Act.

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 follows:

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.

The *Beverly Corners* case determines that if the directing mind of the licensee is not a party to a contravention of Section 33(1)(a) of the Act, then the due diligence defence applies and the licensee will not be found liable if it is able to demonstrate on a balance of probabilities that it had in place at the time of the contravention not only the necessary staff training and systems to prevent the sale of liquor to minors, but that it was taking the necessary steps to ensure that this training and the systems were being effectively implemented on an ongoing basis.

In the absence of the owner, XQ, the Licensee's representative has made several submissions on his behalf to the effect that the Licensee has every intention of meeting all the terms of its Food Primary Licence. Indeed, Inspector A at the hearing testified to the fact that he had been present when XQ was exhorting the Licensee's staff to ensure that they carefully observed all these obligations, including the prohibition of the sale of liquor to a minor. In XQ's absence from the hearing due to unfortunate family matters abroad, I accept his good intentions and that of the Licensee to properly operate the *0755 Restaurant & Lounge*.

However, to be successful in establishing a defence of due diligence, the onus is on the Licensee to demonstrate the necessary training and systems and ongoing compliance with them. Unfortunately for the Licensee, good intentions alone are not sufficient to satisfy this onus and to establish the defence of due diligence. There must be evidence of a training and compliance program and the necessary systems in place to clearly

demonstrate that the Licensee has put its intentions into actions, and has used every effort to ensure that its staff are not only well motivated but also trained in proper procedures. This training must be reinforced and monitored to ensure compliance.

There is no evidence before me of a training program, a training manual, regular staff testing to ensure understanding and compliance, or appropriate on-premises signage to serve as a constant reminder of the owner's good intentions. I therefore find that the Licensee has not establish the defence of due diligence.

I find that on August 30, 2012 the Licensee contravened Section 33(1)(a) of the Act and the terms and conditions of the Licence by selling, giving or otherwise supplying liquor to a minor.

PENALTY

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

- Take no enforcement action
- Impose a monetary penalty on the Licensee
- Suspend all or any part of the Licence for a period of time
- Attach additional terms and conditions to the Licence or rescind or amend existing terms and conditions attached to the Licence
- Cancel all or any part of the Licence
- Order the Licensee to transfer the Licence

My authority to impose any penalty is discretionary. I am not bound to order the penalty proposed in the NOEA. 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 in Schedule 4 of the Regulation and may impose higher penalties when it is in the public interest to do so. In other words, even if I were of a mind to do so, I am not empowered by the Act to reduce an imposed penalty to zero as requested by the Licensee's representative.

The Branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance with the Act, the Regulation, and the terms and conditions of the licence which is the subject of the enforcement action.

The factors that I am to consider in determining the appropriate penalty in this matter include: whether there is a proven compliance history; whether there is 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 before me of a proven contravention of Section 33(1)(a) of the Act for this Licensee at the *0755 Restaurant & Lounge* within the twelve months preceding August 30, 2012. Therefore, I find this to be a first contravention for the purposes of Item 2 in Schedule 4 of the Regulation.

As above set out, Item 2 of Schedule 4 of the Regulation provides for a penalty for first contraventions of Section 33(1)(a) of the Act to be a monetary penalty of between \$7,500 and \$10,000, a suspension of the Licence for a period of between 10 and 15 days, or both such a penalty and a suspension.

The Branch has recommended a monetary penalty of \$7,500. This is the minimum monetary penalty for this particular contravention.

There can be no doubt but that a contravention of Section 33(1)(a) of the Act is at the high end of the seriousness scale where a licensee has breached the terms of a licence, and that any penalty with respect to this contravention by the Licensee should

reflect the gravity of this breach. The consumption of liquor by minors can lead to a host of social ills. Therefore, it is appropriate that a penalty be imposed on the Licensee for the contravention.

However, it is clear from the evidence before me that the Licensee acknowledges the seriousness of the contravention. It is also clear from the evidence before me that the owner, XQ, has every intention of having the Licensee's staff comply with the terms and conditions of its Food Primary Licence going forward.

I therefore accept the Branch's recommendation that a minimum penalty for a first contravention is in order.

ORDER

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7,500 (Seven Thousand Five Hundred Dollars) to the General Manager of the Branch on or before September 6, 2013.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the *0755 Restaurant & Lounge* by a Branch inspector or a police officer.

Original signed by

R. John Rogers
Enforcement Hearing Adjudicator

Date: August 8, 2013

cc: Liquor Control and Licensing Branch, Vancouver Office
Attention: Donna Lister, Regional Manager

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