



**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:	Gamma's Marine Inn Ltd. dba Gamma's Marine Inn c/o Michele A. Whiting PO Box 425 Gibsons, BC V0N 1V0
Case:	EH15-088
For the Licensee:	Michele Whiting and Chris Danroth
For the Branch:	Hugh Trenchard
General Manager's Delegate:	Daniel M. Graham
Date of Hearing:	January 12, 2016
Date of Decision:	February 22, 2016

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Gramma's Marine Inn Ltd. (the "Licensee") operates a licensed Liquor Retail Store doing business as Gramma's Marine Inn (the "Establishment") under Licensee Retail Store Licence #191099 (the "Licence"). The Establishment is located at 412 Marine Drive, Gibsons, B.C.

The Licence specifies hours of liquor sales from 9:00 a.m. to 11:00 p.m. seven days a week. The Licence is, as are all liquor licences in the province, subject to the terms and conditions contained in the publication *A Guide for Liquor Licensees in British Columbia* (the "Guide").

Ms. Michele Whiting and Mr. Chris Danroth, principals of the corporate Licensee, represented the Licensee for the purposes of this hearing. Throughout these reasons for decision, the principals and the corporate Licensee - individually or collectively - may be referred to as "the Licensee" as the context requires.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in a Notice of Enforcement Action dated October 7, 2015 (the "NOEA"). The Branch alleges that on September 19, 2015 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 who was acting as an agent of the Branch under the Minors as Agents Program ("MAP").

The proposed penalty is a \$7,500 monetary penalty, which falls within the penalty range set out in item 2, schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation"). The range of penalties for a first contravention of this type is a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

The Licensee admits that its employee sold liquor to the minor agent, and accepts the facts as outlined in the NOEA. However, the Licensee disputes the finding of a contravention on the basis that its policies, practices, procedures and training establish a defence of due diligence.

For the purposes of this hearing, and in accordance with section 6.1 of the Act, the general manager has delegated to me the powers, duties and functions provided to the general manager by section 20 of the Act and sections 65-69 of the Regulation.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

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 1: The Branch's Book of Documents, Tabs 1 to 15 inclusive.

Exhibit 2: The Licensee's Book of Documents, Tabs 1 to 27 inclusive.

WITNESSES

A liquor inspector (the "Inspector") provided evidence on behalf of the Branch.

The Licensee called the Establishment's store manager, its sales clerk, and Ms. Whiting as witnesses.

EVIDENCE - BRANCH

The Licensee accepts the facts of the contravention as set out in the NOEA (Exhibit 1, tab 1).

On September 19, 2015 the Inspector, along with another liquor inspector and a minor agent were conducting MAP inspections in the Sunshine Coast area to test compliance. At the start of the shift the inspectors photographed the minor agent and reviewed his identification to confirm the minor agent was 18 years of age (Exhibit 1, tab 9).

At about 3:35 p.m. the minor agent entered the Establishment followed a few seconds later by the inspectors. The minor agent went immediately to the refrigerated area of the Establishment and selected a six pack of Molson Canadian beer. He then went to the service counter, located near the entrance. He paid for the beer and received change from the sales clerk. The minor agent left the Establishment at approximately 3:36 p.m. and returned to the inspection team's vehicle to complete the minor agent observation form and the minor agent statement (Exhibit 1, tab 8). At no time was the minor agent questioned by the sales clerk about his age or asked for identification.

After returning to the vehicle and completing Contravention Notice B017107 (Exhibit 1, tab 2), the inspectors re-entered the Establishment and introduced themselves to the sales clerk. In response to a question from the inspectors the sales clerk confirmed that he had been in the industry for a long time and was well aware of the MAP. The Inspector issued the Contravention Notice to the sales clerk.

Cross Examination of the Inspector

In response to questions from the Licensee, the Inspector responded that:

- He could not recollect seeing signs and notifications in the Establishment in respect of the legal drinking age or the need for identification.
- He did not think to ask for the sales clerk's Serving-it-Right ("SIR") certification at the time of the inspection.
- The minor agent was also sold alcohol by a government liquor store during another inspection the same day.
- On September 19, 2015 the Inspector had observed that a large white vacuum truck was working on the sewer in front of the Establishment and was taking up space in the front parking lot.

EVIDENCE – LICENSEE

The Licensee called the store manager, the sales clerk and Ms. Whiting to adduce evidence of the management of the Establishment and the sales clerk's role on September 19, 2015 as well as evidence of the Licensee's policies and procedures, the training given to its employees, and the implementation of its policies.

Management of the Establishment and the Sales Clerk's Role

The store manager testified that she has been employed by the Licensee for 25 years, the last 23 as store manager. Her duties include hiring, training, inventory, sales, customer service, and staff supervision. She stated that "head office" prepares standard operating procedures ("SOPs") and policy manuals.

The store manager testified that the sales clerk has been employed by the Licensee for 27 or 28 years. She stated that during her supervision and observations of the sales clerk, he asks for identification appropriately, is not afraid to refuse service and has done so many times. She has never had to reprimand him for a failure to ask for ID.

The sales clerk stated that he had been employed as a sales clerk at the Establishment for 30 years. He has no supervisory role. He stated that he has no hesitation about refusing service to patrons when necessary and has done so many times.

The sales clerk said that on the day of the contravention the operator of the vacuum truck working outside the door of the Establishment (who was an acquaintance of the store clerk) was frequently in and out of the store to access the Establishment's plumbing and to ask the store clerk questions about the plumbing issue. He said that the truck was running and it was noisy. The sales clerk said that he was distracted by the truck operator, but acknowledged that distraction was not an excuse for the contravention. He referred to security camera video coverage (which had previously been provided to the Branch by the Licensee) as evidence of the nature of the distraction. He stated that he was aware of the seriousness of the contravention and would never knowingly ignore the prohibition against selling liquor to a minor. The store clerk said that the minor agent definitely looked under age, but he had simply made a human error. He did not think that after 30 years on the job additional training would have prevented the contravention.

Hiring, Training, and Testing of Employees

The store manager stated that she goes through the SOPs/manuals with new hires. All new hires are required to have SIR certification (Exhibit 2, tab 24). She also keeps a copy of the Guide in a binder. All staff have access to the Guide. New employees are shadowed for a period of time.

The store manager referred to an Age Identification Check policy included in the Licensee's Operations Manual (Exhibit 2, tab 2). She said that in verifying ID, employees are taught to look at the customers' eyes, ears, hair, lines, and moles and to compare with the picture ID. They are also taught to ask for a signature test, and to ask for a third piece of ID if necessary to be sure of the customer's age.

New directives from management – for example, describing new policies, procedures, or risks – are posted on the wall “a few times a week” and staff are required to read, sign, and comply. As an example, the sales manager identified a memo to staff dated February 18, 2011 informing staff of the commencement of MAP (Exhibit 2, tab 5). It had been signed as having been read by a number of employees including the store manager and the sales clerk. Attached to this memo was a February 7, 2011 letter from the Branch to licensees with details of the MAP and information about preventing the sale of liquor to minors. Examples of other such staff memos, including information about MAP and ID checks are included in Exhibit 2 (tabs 6, 8 and 9).

The store manager referred to other memos and “SOP signoffs” signed and acknowledged by the sales clerk dated January 2011, August 2012, January 2013, and January 2015 (Exhibit 2, tab 12).

To test servers, the Licensee has developed a Six Month Mandatory Liquor Store Servers Questionnaire and Review sheet (the “Questionnaire”). Store managers are to review the identification policies, operation manuals and any memos with each server every six months. The Questionnaire includes a number of questions about IDing to be answered in writing by the server. The store manager identified Questionnaires completed by the store manager (Exhibit 2, tab 11) and the sales clerk (Exhibit 2, tab 12), both dated September 22, 2015. Completed Questionnaires go to head office and are kept in each employee’s personnel file.

The store manager stated that two I.D. checking guides (United States & Canada edition, and International edition) are kept in a drawer next to one of the tills to serve as references for staff to verify ID (Exhibit 2, tab 18).

Ms. Whiting testified that it was formerly the Licensee’s practice to periodically test staff with formal quizzes prepared with questions developed from the Guide. That practice went out of use, but has now been replaced with use of the Questionnaire.

She also testified that the new staff are shadowed by experienced staff for anywhere from 4 to 5 days, to two weeks depending on their level of experience when hired and their observed performance. All new staff are subject to a 90 day probationary period.

She said that staff are taught not to be concerned about causing problems by refusing service.

Policies and Practices Related to Prevention of Service to Minors

The store manager stated that the corporate group which includes the corporate Licensee maintains a common Liquor Retail Store Policy Manual (Exhibit 2, tab 1). It includes the following Identification Policy and Policy of Exclusion:

“During the hours of operation, the responsibility for I.D. policy enforcement falls to the retail clerk. Under no circumstances is alcohol to be sold to a minor or to an intoxicated customer. Violating this policy is grounds for immediate disciplinary action up to and including dismissal. No exceptions will be made. The legal age in B.C. is 19 years of age. The process of I.D. enforcement is as follows:

Anyone who appears to be under the age of 25 must produce 2 valid pieces of ID (emphasis included)

First type of valid I.D. accepted are issued by a government agency:

1. B.C. driver's license
2. International driver's license with photo
3. Passport (current photo)
4. B.C. Identification card (with BC Provincial Seal)

Second type of Valid I.D. accepted must include a imprint of person's name and signature:

1. Credit Card
2. Care card
3. Social Insurance Card

False ID is to be retained and given to the liquor inspector as proof you are following LCLB rules and regulations.

Ways you can verify Identification:

1. Ask customer middle name and how to spell it
2. Ask the customer their Zodiac sign
3. Ask the customer their birth date
4. Ask the customer their address
5. Customers who stall or try not to answer the question

Underage people are permitted in the Liquor Primary Retail Outlet only when accompanied by parents or guardians of legal age. The customer will not be permitted in opening any alcoholic beverage on the premises."

The Establishment (along with the Licensee's adjacent restaurant) have an Operations Manual (Exhibit 2, tab 2) which includes the following provision regarding age identification checks:

"All servers must have taken the online Serving it Right Course and have a valid SIR number on file. Servers will be retrained and tested twice a year on the Serving it Right Course and in particular service to minors. The drinking age in B.C. is 19 years. It is the responsibility of 'every single employee' to ensure that minors are not served liquor at Grammas. Always check I.D. if you are unsure of the age. If you serve a minor, not only do you face a personal fine of not less than \$500.00 from Liquor Control and Licensing Board you will be terminated. Never allow a customer to talk you into serving a minor. Be polite but firm. If you sense a problem, call the manager immediately. Servers are ultimately responsible for the I.D. check. Please read the policies below:

1. Any persons looking under the age of 25 must provide two pieces of ID handed to you free and clear of any wallet or covering or holder.
2. One piece of ID must be government issue have the holders picture, signature, birth date and the holders name is printed not handwritten eg; passport, driver license.
3. The second piece of ID must have the holders name and signature eg; credit card, BC Medical card.
4. Carefully check both pieces of ID, take you time and compare picture on card to patron in front of you, both signatures on the back of each card match, ask questions like birthdate, Zodiac sign or street address. If you have any doubt whatsoever do not serve them and politely ask them to leave.

Minors

Minors are allowed in the Galley restaurant anytime but must be accompanied by a parent or guardian in the liquor store and in the pub where no minors are allowed past 10pm daily..."

The store manager also referenced a Licensee memo/policy dated July 22, 2011 (Exhibit 2, tab 7) kept in "a binder at the back" which includes the following provisions:

- "Customers of any age can enter the Galley Restaurant. If they want an alcoholic beverage and they look under 30 they must have 2 pieces of ID and show them to you..."
- Please Please Please remember to ID, this is part of your job, customers might not like it but you are doing your job, you don't make the rules but must abide by them. It's your job."

The store manager said that SOPs/manuals are reviewed annually and amended as needed. Memos posted on the wall are put in the manual binder when taken down. Servers and store clerks are told that their decisions not to serve a patron are final, and won't be second-guessed by management or supervisors.

Signage

Tabs 14 through 23 (excluding tab 18) of Exhibit 2 show photos of signage posted throughout the Establishment advising that a minor is defined as a person under the age of 19, that anyone may be asked to show two pieces of ID, and that anyone looking under the age of 30 is required to show two pieces of ID - at least one of which must be picture ID issued by a government agency. The photos show signs at the front entrance, at the two tills, the back wall, and the wall beside the front door.

Reminders to Staff

The store manager stated that the point of sales screens in the Establishment each display a date which changes daily to remind staff of the birthdate required to demonstrate the legal drinking age of 19 years (Exhibit 2, tab 13). The sales manager provides frequent oral reminders to staff about the importance of IDing.

Meetings and Minutes

During cross examination the store manager stated that the Licensee does not hold formal staff meetings. Employees are spoken to individually "when something new comes out."

Recording Incidents

The store manager explained that the Licensee maintains an incident log in which employees, such as the sales clerk, are required to note incidents including potential non-compliance by customers (Exhibit 2, tab 26).

Ms. Whiting stated that all staff have been made aware of the circumstances of the contravention.

Discipline

As a result of the contravention, the sales clerk was given an Employee Warning Notice and was suspended for a two week period (Exhibit 2, tab 23). As a condition of returning to work he was required to review the manual for ID requirements and to sign a statement that he understands and will comply with the policy. The Licensee stated that if the sales clerk had not been such a good long-term employee he would have been terminated immediately.

Cross Examination of Licensee Witnesses

In response to questions from the Branch advocate, the store manager responded that:

- The Licensee's policy is to request two pieces of ID from anyone who appears to be under age 30. The policy was changed from age 25 to age 30 about a year ago.
- No specific training is provided about how to estimate age. Employees are expected to use their own judgment.
- No role playing is used in training.
- The six-month mandatory Questionnaire was implemented in September 2015 after the contravention occurred. Only verbal testing – once a year - was used before.
- A memo reminding staff about MAP (Exhibit 2, tab 9) is posted on the wall and it is used in discussions/training with new staff.
- The incident log was not used to note failed ID checks before September 19, 2015, but it is now.

In cross examination the sales clerk stated that:

- When he was hired the Licensee trained him by going through the training manual and shadowing him for a period of time.
- When the manual is updated he is required to review it and sign that he has read and understands it. Such updates occur two or three times a year.
- The store manager is in charge of training, but the sales clerk is asked to help out. He frequently reminds other staff of the importance of requesting ID, and he steps up to remind staff to request ID in situations where he believes they have failed to do so.

SUBMISSIONS – BRANCH

The Branch advocate submitted that the Licensee had admitted that the contravention occurred, and that the elements of the contravention had been established.

Regarding the defence of due diligence, the Branch stated that there is a degree of subjectivity in assessing a person's age, and there is a weakness in the Licensee's training in that they don't seem to train specifically about how to assess a person's age.

The Branch advocate deferred to the NOEA with respect to the recommended penalty.

SUBMISSIONS – LICENSEE

The Licensee admitted that the contravention occurred and that alcohol had been sold to the minor agent. He said that the Licensee is a good corporate citizen and is embarrassed and baffled as to how the contravention occurred. He stated that they are willing to learn if there is something missing in the Licensee's training, systems, or monitoring.

With respect to due diligence, the Licensee submitted that the evidence of the Licensee's policies, procedures, training, and implementation establish a defence of due diligence. He stated that the sales clerk had more than enough knowledge and experience and that he'd been "off his game" and distracted by the frequent interruptions by the operator of the vacuum truck. He stated that the Licensee will be implementing training about how to deal with distractions. Finally, the Licensee argued that compliance could be enhanced by implementing a system of personal fines for employees who contravene.

With respect to penalty, the Licensee said that the proposed monetary penalty would be more appropriate than a ten day suspension.

REASONS AND DECISION

Contravention

The Licensee admits that alcohol was sold to a minor.

The evidence and the submissions filed in these proceedings demonstrate on the balance of probabilities that, with reference to section 33(1)(a) of the Act:

- a person (the Licensee, acting through its employee the sales clerk)
- sold liquor (a six pack of Molson Canadian beer)
- to a minor (the minor agent).

Accordingly, I find that on September 19, 2015 the Licensee contravened section 33(1)(a) of the Act by selling, giving or otherwise supplying liquor to a minor.

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:

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 Act.

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.

Analysis

a. *Directing Mind*

The evidence indicates that the sales clerk did not have the degree of express or implied authority to “design and supervise the implementation of corporate policy” to constitute his being a directing mind, as described in *Beverly Corners*. The Branch made no submissions in this regard. Accordingly, I find that the sales clerk who sold the liquor to the minor agent was not a directing mind of the Licensee. There is no evidence

before me to indicate that a directing mind of the Licensee had a direct role in the sale of the alcohol to the minor agent.

Since a directing mind did not commit the contravention I must consider the second stage of the due diligence analysis.

b. Adequate Training and Systems

Due diligence requires that a Licensee takes reasonable steps to try to ensure that a contravention does not occur. The exercise of due diligence does not guarantee that a contravention will never occur. It is intended, however, to reduce the likelihood of a contravention occurring to a reasonable and acceptable level. The analysis of what is adequate or reasonable must take place in the context of the public policy considerations and potential consequences underlying the prohibition against selling liquor to minors:

- 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; and
- liquor is a significant factor in many crimes committed by youth.

The Licensee's witnesses provided evidence about the training provided to new staff, ongoing training and other systems in place with respect to identification of minors and preventing the service of alcohol to minors. This included:

- New employees are subject to a training program conducted by the store manager, including a variable period of shadowing with a more senior employee.
- New employees are required to have SIR certification.
- The training includes information about the legal drinking age of 19, the requirement for 2 pieces of ID, what kinds of ID are acceptable, and how to ask for verification of ID.
- Memos about current risks, issues and Licensee directives are posted and employees are required to sign that they have read and understood the memos. Frequent oral discussions are held with staff individually.

The evidence demonstrates that the sales clerk was trained in accordance with the Licensee's standards, and that he plays a role in training newer employees with respect to ID checking.

The due diligence standard is not one of perfection, but of adequate training and systems. There isn't a rote list of steps or elements that will constitute due diligence in all cases. The unique circumstances of each case have to be considered in determining whether the due diligence threshold has been achieved. Over time, the threshold of what constitutes due diligence tends to ratchet upwards as best practices are developed and industry standards evolve. For example, as a result of this case, the Licensee determined that in its circumstances explicit training on dealing with distractions would be a worthwhile addition to its training regime.

While the Licensee's training regime has many elements that one would expect, I find that it falls short of being adequate. Oral one on one discussion of new issues with individual staff is a valuable component, but it is no replacement for periodic, mandatory staff meetings where the key messages and best practices can be reinforced and a culture of compliance can be emphasized in a team setting. It is important that adequate documentation be maintained for such meetings. Estimating age is a subjective skill, but specific training about indicators of age would give the Licensee an indication as to each employee's competency in this area. The written policies should be updated to be consistent with the Licensee's current policy to request ID from individuals who appear to be age 30 rather than age 25. Finally, I note that while the Licensee has implemented mandatory written testing of employees, it did so only after the contravention had occurred and after having abandoned formal oral testing sometime in the past.

On balance, for the foregoing reasons, I find that the Licensee's training and systems regarding contraventions of section 33(1)(a) of the Act fall short of the standard required for due diligence.

The Licensee expressed an interest in learning how it could improve its training and systems. I would suggest that every licensee would do well to be familiar with current decisions by the General Manager as posted on the Branch website at <http://www.pssg.gov.bc.ca/lclb/enforcements/index.htm>. These decisions are not binding on future decision makers, and do not set precedent, but they do provide valuable information to licensees about current standards and practices. They provide a broad menu of tactics that Licensees may use for designing training and testing regimes appropriate to their circumstances.

c. Steps to Ensure Effectiveness

This aspect of due diligence requires the Licensee to take reasonable steps to supervise and monitor its operations sufficiently to ensure that staff are applying their skills and knowledge appropriately, and to ensure that risk-reducing systems are operating effectively.

In the current case, the evidence indicates that:

- Several signs are posted at strategic points within the Establishment to inform and remind staff and patrons that 2 pieces of ID are required and that staff and patrons can be fined for minors possessing, purchasing or consuming alcohol. The Licensee also employs a POS system that reminds staff about the correct birthdate for establishing legal drinking age.
- Staff were notified about the contravention as an opportunity for learning and improving performance.
- A disciplinary process with respect to the contravention was initiated and documented immediately.

On balance, the evidence indicates to me that the Licensee has taken reasonable steps to supervise and monitor its operations.

However, given my conclusions with respect to the inadequacy of the Licensee's training and systems, I find that the Licensee has not successfully established the defence of due diligence on the balance of probabilities.

PENALTY

Pursuant to section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation 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

The Branch has consistently maintained that the sale of alcohol to minors is a significant public safety issue and a high priority for enforcement. The NOEA outlines why the Branch considers this a significant public safety issue:

- 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; therefore, 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

In this case the facts are that the Licensee's employee sold liquor to an 18 year old individual without any request for identification. The Licensee has many elements of good training and systems in place, but for the reasons detailed above has fallen short of proving due diligence. In these circumstances, I find that a penalty is warranted.

The factors that I considered in this case in determining the appropriate penalty include: consideration of 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 the Licensee at the Establishment within the preceding 12 months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

There is no evidence before me to indicate any previous enforcement history against the Licensee or any material compliance history.

In consideration of:

- The serious public safety concerns related to selling alcohol to minors
- The insufficiency of evidence of due diligence
- As mitigated by the Licensee's relatively good compliance record

I find the minimum \$7,500 monetary penalty to be reasonable and appropriate to achieve the Branch's objectives with respect to general and specific deterrence.

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 Branch on or before March 24, 2016.

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 Branch inspector or a police officer.

Original signed by

Daniel M. Graham
General Manager's Delegate

Date: February 22, 2016

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

Liquor Control and Licensing Branch, Victoria Office
Attn: Hugh Trenchard, Branch Advocate