

A Hearing Under Section 6 of the *Tobacco Control Act* R.S.B.C. 1996, c. 451  
as amended

Regarding an alleged Contravention of Sections 2(2) and 2.4(a) of the  
*Tobacco Control Act* R.S.B.C. 1996, c.451

- by -

0749470 B.C. Ltd. dba Kimberley Shell,

(the “Respondent”)

Administrator’s Delegate under Section 5 of the <i>Tobacco Control Act</i> :	Hugh McCall
Date of Hearing:	July 23, 2014
Place of Hearing:	By teleconference
Date of Decision:	July 23, 2014
Appearing:	
0749470 B.C. Ltd. dba Kimberley Shell:	Malcolm Sargent, Rhona Sargent
For the Interior Health Authority:	Stan Thiessen, Tobacco Enforcement Officer

## Decision

### Background

1. On May 29, 2014, the Administrator issued a Notice of Administrative Hearing to determine whether or not 0749470 B.C. Ltd. dba Kimberley Shell (“Kimberley Shell”) had contravened Section 2(2) of the *Tobacco Control Act* (the “Act”) by selling a tobacco product to a minor on March 9, 2014.

2. Based on information that Kimberley Shell was not contesting the sale of tobacco to a minor, the hearing was set for July 23, 2014 by conference call. On July 10, 2014, Malcolm Sargent confirmed on behalf of Kimberley Shell that it was not denying the contravention.
3. At the hearing on July 23, 2014, Mr. Sargent acknowledged that Kimberley Shell had contravened Section 2(2) of the Act and consented on behalf of Kimberley Shell to a 30 day prohibition of the sale of tobacco products and a fine of \$1,000.00 payable upon receipt of the Administrative Penalty Notice.
4. The parties agreed that the prohibition on the sale of tobacco products would begin Wednesday, September 3, 2014 and would end Thursday, October 2, 2014.

## **Law**

5. Section 6.1 of the *Act* provides that, if the administrator is satisfied that a person has contravened the *Act*, the administrator may a) make an order imposing a monetary penalty on the person, in accordance with the prescribed schedule of penalties and b) prohibit the person, in accordance with the prescribed schedule of prohibition periods, from selling tobacco or offering to sell tobacco.
6. Section 13 of the *Tobacco Control Regulation* sets out a number of factors the administrator must consider in imposing an administrative penalty.

## **PENALTY**

7. The parties have agreed that the following penalty is appropriate:
  - a) A monetary penalty in the amount of \$1,000.00; and
  - b) A 30 day license suspension from the opening of business on September 3, 2014 to the close of business on October 2, 2014.
8. I am satisfied that the jointly agreed upon penalty is both in compliance with the *Act* and *Regulations*, and is appropriate in the circumstances.
9. I have also considered evidence that employees of Kimberley Shell previously sold tobacco products to minors prior to the contravention on March 9, 2014. Within the previous 60 months, Kimberley Shell's employees sold tobacco to Minor Test Shoppers on January 25, 2014, , March 13, 2011, October 23, 2010 and January 23, 2010.
10. I have also considered that Kimberley Shell is a small family run business without the resources of a large corporation. I understand that Mr. Sargent has always co-operated with Tobacco Enforcement Officers and paid 3 violation tickets for previous sales of tobacco to minors.
11. In addition, I have given significant weight to the penalty recommendation of the Tobacco Enforcement Officer who was present at the time of the contravention. In her report to the Administrator, she recommended a 30 day suspension and a \$1,000.00 fine, noting that it was consistent with principles of progressive enforcement and that it should have sufficient

impact to obtain the goal of ensuring that Kimberley Shell takes the necessary actions to prevent further sales to minors.

12. I have also noted that in spite of warnings, three violation tickets and the Tobacco Enforcement Officer's efforts to assist Kimberley Shell to implement systems which will assist it in preventing the sale of tobacco to minors, such sales have continued.
13. Taking all of the above into account I confirm the consent penalty agreed to by the parties.

### **ORDER**

14. Pursuant to Section 6.1(2) of the *Act*, I **ORDER** that Kimberley Shell pay a monetary penalty in the amount of **\$1,000.00**, which is due and payable upon service of the Administrative Penalty Notice. I **FURTHER ORDER** that Kimberley Shell be prohibited from selling tobacco or offering to sell tobacco at 445 Ross Street, Kimberley, B.C. for the period beginning with the opening of business on September 3, 2014 until the close of business on October 2, 2014.



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Hugh McCall, Administrator's Delegate