

## Liquor Control and Licensing Branch Minors as Agents Program

### 2012/ 13 Annual Report

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This is the 2nd annual report on the Liquor Control and Licensing Branch's (LCLB) use of minor agents to monitor compliance with the legislative prohibition against selling liquor to minors. This report covers the 2012/ 13 fiscal year up to March 31<sup>st</sup>, 2013.

#### Background

In 2010 government amended the *Liquor Control and Licensing Act* to provide authority for a minor employed or contracted by the province to legally purchase liquor from all types of liquor retail outlets and licensed establishments for the purpose of testing licensee compliance with the Act's prohibition on supplying liquor to a minor<sup>1</sup>.

The Minors as Agents Program follows a series of previous Compliance Check Projects (CCP), which involved the use of youthful-appearing adults attempting to purchase liquor. Youthful-looking agents were chosen specifically to raise questions as to whether they were, in fact, minors. CCP agents were hired to enter liquor retail outlets and test for compliance with the requirement to request identification to determine the age of a person to whom liquor is being sold. The CCP began in 2003 and went through various iterations up until 2008/2009. However, as the agents were 19 or older, the LCLB did not have authority to take enforcement action against those establishments which failed to request identification.

The table below shows the results of the CCP from 2003 through 2009. The compliance rate is a measure of the percentage of times the sales person requested 2 pieces of identification from the youthful-looking agents. Between 2003 and 2009 the compliance rate was very low, particularly in private liquor stores, and did not generally improve over time. The overall provincial compliance rate for 2009 was 29 %. This clearly demonstrated an ongoing problem with age verification when purchasing alcohol and as a result highlighted the ongoing risk of minors accessing alcohol through liquor retail outlets.

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<sup>1</sup> Section 33(1) of the Liquor Control and Licensing Act

**Compliance Check Project  
Compliance Rates 2003 – 2009  
Results by Store Type**

	GLS <sup>2</sup> (%)	RAS <sup>3</sup> (%)	OTHER <sup>4</sup> (%)	LRS <sup>5</sup> (%)
<b>2003</b>	N/A	N/A	N/A	15
<b>2004</b>	57	13	5	27
<b>2005</b>	60	17	14	21
<b>2008*</b>	77	24	20	36
<b>2009</b>	56	22	33	26

\* Identification checking requirements changed in February, 2007 from checking two pieces of any person appearing to be under the age of 25 years to checking two pieces of identification when verifying age

The low compliance rate coupled with the challenges of using regular inspection methods to identify licensees selling liquor to minors, led to the Act amendment and the development of the current Minors as Agents Program. The use of minors is a very effective and efficient method for enforcing age-of-sale laws. This approach has been used with great success by a number of American jurisdictions and here in British Columbia for enforcement of the *Tobacco Control Act*. The amended legislation now provides tools for the LCLB to ensure incidents of non-compliance are met with appropriate enforcement action that aims to decrease the commercial availability of alcohol to youth.

### Program Goals

The LCLB's goal for the Minors as Agents Program is to promote compliance with the prohibition against selling liquor to minors. We do not believe the program can prevent access to alcohol by minors, however it can certainly mitigate that access through licensed venues.

Prior to its launch, LCLB notified all licensees of the Minors as Agents Program. As anticipated, the program has generated some notoriety in the licensee community. The more common it becomes for licensees to expect age based compliance checks the higher the compliance rate should be.

<sup>2</sup> Government Liquor Stores

<sup>3</sup> Rural Agency Stores

<sup>4</sup> Other private liquor stores, including VQA Stores, Independent Wine Stores, Brewery Stores, and Commercial and Land Based Wine Stores

<sup>5</sup> Licensee Retail Stores

As an added incentive to be compliant, those outlets who have sold to a minor have now been identified as high risk for future non-compliance, and they will be tested again. If an outlet found to be selling to minors a second time, and the date of the second contravention is within twelve months of the first, the penalty is a 20 – 30 day licence suspension.

## **Risks Associated with Youths Accessing Liquor**

The 2004 Canadian Addictions Survey<sup>6</sup> revealed that 91% of youth aged 15 years and older have consumed alcohol at some point. Alcohol is clearly part of the youth and young adult culture.

While the fact of liquor consumption by youth and especially by minors is troubling, even more worrisome are the patterns of consumption exhibited by youth. The Centre for Addiction and Mental Health's low-risk drinking guidelines specify no more than two drinks per day with a maximum of 14 drinks per week for men and nine for women. However, the Canadian Addictions Survey revealed that more than 90% of 15-24 year old males and 85% of similarly aged females exceed these low risk drinking guidelines. Forty percent of those 12 and older reported occasionally binge drinking, which is defined as consumption of more than five standard drinks on a single occasion for males or more than four drinks for females.

The Canadian Addiction Survey also points out that binge drinking on a monthly or more frequent basis is one of the strongest predictors of alcohol-related harm. Binge drinkers are almost twice as likely to experience harm as those who never engage in heavy drinking. There is considerable overlap in the research between binge drinking among youth and other at-risk behaviours, such as youth violence and delinquency. The age at which young people start consuming liquor is also known to be a strong predictor of risk for a number of health and social problems, such as violence, sexual assault, unwanted pregnancy, crime, traffic accidents, and the inter-generational effects of drinking during pregnancy (Fetal Alcohol Syndrome Disorder). There is also a correlation between heavy alcohol use and mental health conditions (e.g. depression, anxiety), and serious negative effects on work, study, and relationships, especially within the family.

Approaches that limit the availability of liquor have been shown repeatedly to be some of the most effective ways to manage alcohol-related harm. Easy access to liquor has been linked to increased overall consumption, which is in turn linked to risky use and increased alcohol-related health and social problems<sup>7</sup>. The BC Provincial Health Officer reports that per capita alcohol consumption in BC increased in nine of the ten years between 1996 and 2006 based on Statistics Canada data. Beginning in 2002, consumption increased more quickly in BC than for the rest of

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<sup>6</sup> Adlaf, E.M., Begin, P., & Sawka, E. (Eds.). (2005). *Canadian Addiction Survey (CAS): A national survey of Canadians' use of alcohol and other drugs: Prevalence of use and related harms: Detailed report*. Ottawa: Canadian Centre on Substance Abuse.

<sup>7</sup> Peter Anderson and Ben Baumberg, (2006) *Alcohol in Europe: A Public Health Perspective. A report for the European Commission*. Institute of Alcohol Studies, UK.

Canada. This diverging trend has created a 0.5 litre per capita gap between average consumption in BC and average consumption for all of Canada in 2008<sup>8</sup>.

The LCLB is responsible for mitigating the harms associated with the sale and service of liquor in and around licensed establishments. The harm associated with the growing availability of liquor to minors is troubling. Using minors as agents to test compliance will not completely prevent youths from accessing liquor however a robust compliance effort coupled with meaningful enforcement will significantly limit access and promote compliance.

Education and a certainty of apprehension are two highly influential factors in obtaining compliance. The awareness of the MAP and the potential for a considerable penalty is intended to significantly improve compliance with age-based liquor restrictions. This program will also contribute to an overall social and business culture of intolerance toward the easy access of liquor by minors.

### **Inspection Policies and Procedures**

The Minors as Agents Program is one component of LCLB compliance and enforcement activities. The Compliance and Enforcement Division, with a staff of 35 liquor inspectors province-wide, regulates the operation of over 10,000 permanent licensed establishments and appointment stores and about 25,000 special occasion licensed (SOL) events annually.

The Minors as Agents Program has evolved in measured and informed increments. It is the first program of its kind in the country. As such, and given the primary safety considerations of the minor agents involved, the branch has proceeded with caution. In this context, the program began in May 2011 in the urban centres of Vancouver Island and the Lower Mainland, where the greatest number of retail outlets are concentrated. All types of liquor retail outlets in those geographical areas were visited. The program has now reached into all regions of the province and has tested virtually all types of liquor licences.

A primary consideration during the development, training and launch of the program was the safety of the minor agents. The parents of all minor agents hired for the program are required to provide their consent and are fully informed throughout. The required training includes orientation in WorkSafe BC safety standards. The agents also receive training in making and documenting observations, are specifically instructed not to change their normal appearance or attire and to respond truthfully to any licensed establishment staff inquiries. They are required to leave their identification in the vehicle, and where they are asked for identification they simply tell the truth: I left it in the car.

The minors used for the project are selected through police contacts, schools with law enforcement programs or previous participation in the age based tobacco

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<sup>8</sup> British Columbia. Office of the Provincial Health Officer. Public health approach to alcohol policy: an updated report from the Provincial Health Officer, December 2008.

enforcement program. Minor agents are paid while being trained, for travel time, while conducting inspections and while giving evidence at any hearing.

Minor agents are accompanied by two liquor inspectors. At the beginning of each inspection shift, the minor agent is photographed and their identification is documented by the inspectors. Prior to commencing an individual inspection, the inspectors assess the outlet for risk. Once the outlet has been deemed safe, the minor enters under close observation by the inspectors, selects a product, or is seated as the case may be, and attempts a purchase. Logistics dictate the proximity of the inspector, however the inspector has a clear line of sight to the minor agent at all times. Where a minor agent is asked for identification they state they left it in the car. The minor does not in any manner attempt to convince a clerk or server to make the sale.

Where there is a purchase made, and once back in the vehicle, the minor agent immediately fills out an observation report. The purchase is also documented by the liquor inspector.

A team may conduct from 2 to 20 inspections a shift. The volume will vary depending upon the geography, the type of establishment inspected and the results, i.e. where a sale occurs it takes time to process the evidence and tell the licensee of what has taken place.

### **Enforcement Action**

If the minor is able to buy liquor the licensee is issued a contravention notice (CN) for the alleged contravention, usually immediately after the sale. Once the CN is issued, the branch then issues a notice of enforcement action (NOEA) outlining the particulars of the branch's allegations and setting out the proposed penalty.

The licensee has the option to:

- Admit that the contravention occurred and accept the proposed penalty; or
- Admit that the contravention occurred but dispute the proposed penalty; or
- Dispute that the contravention occurred.

If the licensee disputes the matter, the general manager's hearing delegate will conduct an enforcement hearing. Hearings may be oral and in-person or by way of written submission. Oral hearings generally take place in the same community or the closest larger community. The hearing decision is issued in writing. If the licensee is dissatisfied with the decision, the licensee may petition for a judicial review by the BC Supreme Court.

At any time after receipt of the NOEA, the subject may waive their opportunity for a hearing by admitting that the contravention occurred and accepting the proposed penalty. This is called a waiver. Approximately 65 % of contraventions result in waivers.

## Evolution

This year, as planned, and while maintaining our graduated approach, the program expanded into Food Primaries (FPs or licensed restaurants), some Special Occasion Licences (SOLs), and a few Liquor Primaries (pubs or taverns).

For FPs we focussed our inspections on those establishments frequented by a young demographic or where police or complaints had generated intelligence that caused the establishment to be identified as high risk for sale to a minor. Other establishments were checked in a purely *ad hoc* manner, partly based on geography and/or ease of access.

While no private SOLs were inspected, the Minors as Agents Program did inspect some large public SOL events. These inspections were intended to test for compliance and test our own protocols and procedures using minors as agents in crowded open air environments where minors could potentially access liquor being sold at the event. Public SOL events will be inspected in future on a more routine basis.

A few pubs and taverns (LPs) were inspected. Where the LP was deemed absolutely safe for the minor agent, it would be inspected. These were rare however the evolution of the program is now including LPs on a more routine basis.

## Results

The following tables summarize inspection results since the launch of the program in the spring of 2011.

### Compliance Statistics Fiscal Year 2011-2012 Results by Store Type

2011/ 12	GLS	LRS	RAS	Other	Total
<b>Total Inspections</b>	95	344	5	2	446
<b>Sales to a minor</b>	4	54	1	1	60
<b>Non-compliance rate</b>	4 % <sup>9</sup>	16 %	too small a data set	too small a data set	13 %
<b>Compliance Rate</b>	96 %	84%	too small a data set	too small a data set	87 % <sup>10</sup>

<sup>9</sup> All figures are rounded to the nearest 1 %.

<sup>10</sup> Includes RAS and Other data.

There are 1407 liquor retail outlets in the province<sup>11</sup>. There are 197 GLS and 672 LRS. To date, over the two-year life of the program, we have done 180 GLS inspections and 670 LRS inspections. In total, over this same two-year period, including all licence types, we have done 960 Minors as Agents Program inspections.

**Compliance Statistics  
Fiscal Year 2012-2013  
Results by Store Type**

2012/ 13	GLS	LRS	RAS	SOL	FP	LP	Manu- facturers / Wineries	Total
<b>Total Inspections</b>	85	326	50	6	71	6	11	555
<b>Sales to a minor</b>	7	90	16	4	36	2	4	159
<b>Non-compliance rate</b>	8 %	28 %	32 %	too small a data set	51 %	too small a data set	too small a data set	29 %
<b>Compliance Rate</b>	92 %	72 %	68 %	too small a data set	49 %	too small a data set	too small a data set	71 % <sup>12</sup>

**Compliance Rate by Year and Licence Class**

Compliance Rate By Year	GLS	LRS	RAS	SOL	FP	LP	Manu- facturers / Wineries	Avg.
2011/ 12	96 %	84%	too small a data set	no data	no data	no data	too small a data set	87 %
2012/ 13	92 %	72 %	68 %	too small a data set	49 %	too small a data set	too small a data set	71 %

The above data demonstrates there is more work to do on the part of both industry and government to prevent the sale of liquor to minors at licensed establishments.

<sup>11</sup> 2011/12 Liquor Distribution Branch Annual Report: 197 government liquor stores, 672 licensee retail stores, 220 rural agency stores, 260 on-site manufacturer stores, 35 off-site manufacturer stores, 12 private wine stores, and 11 duty free stores.

<sup>12</sup> Includes LP, Manufacturers, and SOLs.

Overall the results are disappointing. The compliance rates for GLS and LRS have both declined; the LRS compliance rate has declined by over 10 %.

The Rural Agency Store [RAS] compliance rate of 68 % clearly shows that this sector needs to pay more attention to this issue. RAS are not under the jurisdiction<sup>13</sup> of the LCLB, rather they are appointments under the *Liquor Distribution Act* [LDA]. The Liquor Distribution Branch is responsible for these appointments. The LCLB is treating the RAS, as far as inspections, gathering and presenting the evidence, in the same manner as all other stores. Non-compliant RAS are issued a CN and a NOEA. The NOEA is sent to the RAS and to the LDB. The LDB then deals with the individual RAS under the authority of the LDA. Once the RAS come under the jurisdiction of the LCLB they will be treated like all other licensees.

The Food Primary [restaurant] compliance rate of 49 % demonstrates that the industry needs to put more thought and resources into requesting identification from youthful patrons. However, this compliance rate is likely affected by how FP targets are identified, i.e. usually complaint driven. As well, these are the early results for FPs. As with the retail stores which began with very low compliance rates during the Compliance Check Projects and have subsequently risen, we expect the FP compliance rates to improve over time.

## Penalties

Penalties are set by the Liquor Control and Licensing Regulation [the Regulation] and the regulation does not differentiate on how the compliance came about nor were any amendments made when the Minors as Agents Program began.

For a first contravention of selling liquor to a minor, the Regulation penalty schedule stipulates a monetary penalty of between \$7500 to \$10,000 and or a 10 – 15 day suspension. If a second contravention should occur<sup>14</sup>, the penalty schedule provides for a 20 – 30 day suspension.

For the purposes of the Minors as Agents Program the LCLB will generally recommend the minimum monetary penalty of \$7500 unless the outlet has a compliance history of similar activities or the facts of the individual case warrant a different penalty. Some critics of monetary penalties argue that some businesses see a monetary penalty as merely being the cost of doing business. Some criticize the \$7500 monetary penalty as punitive. Critics of suspensions say it unfairly impacts the premises' staff. The purpose of any penalty is to promote future compliance. The regulatory scheme places ultimate responsibility on the business, i.e. the licensee. It is the business that is responsible for selling the liquor to a

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<sup>13</sup> Planned for 2013/14

<sup>14</sup> The Penalty Schedule under the Liquor Control and Licensing Regulation defines a second contravention as the same contravention occurring within one year of the previous contravention.

minor and it is the business that is responsible for the consequences of violating the Act. All penalties must be considered in the context of preventing harm. The scale of penalty in the Regulation is set as an equivalent to the potential for harm. The harms associated with the sale of liquor to minors are numerous and well documented.

**Minors as Agents Program Enforcement Activity  
For 2012 – 2013 Fiscal Year.**

Contravention Notices Issued	155
Notices of Enforcement Action (NOEA) Issued	140
Notices of Enforcement Action Withdrawn	0
Waivers signed	92
Proceeding by way of an enforcement hearing	29
Licensee has not yet decided how to proceed (i.e., by signing a waiver or attending a hearing)	19
Hearing decision pending	17
Hearing decision issued (proven)	12
Hearing decision issued (not proven)	0

All enforcement hearing decisions, waiver summaries, and a monthly *Compliance and Enforcement Summary Report* are available to the public on the Branch’s website.

**Due Diligence**

The holder of the licence is responsible for any contraventions regardless of whether or not there was intent to commit the contravention. However, due diligence is available as a defense to the commission of a contravention. This means that the licensee has a full defence to the contravention if it can demonstrate that it took all reasonable steps to prevent the contravention from happening. Whether or not the licensee can demonstrate due diligence depends on the circumstances in each case. It is up to the General Manager’s delegate at an enforcement hearing to determine whether the licensee has met the test of due diligence in the circumstances.

The LCLB takes steps to explain the concept of due diligence to licensees, where necessary, at pre-hearing conferences and by providing examples of previous decisions where due diligence has been discussed.

**Next Steps**

The Minors as Agents Program is now a fully integrated tool in promoting compliance with age-based restrictions on access to alcohol. All licence types have and will be inspected on a routine risk based approach.

## Conclusions

Restricting access to liquor by minors is a key public safety priority for the LCLB. The LCLB believes that awareness of the Minors as Agents Program inspections, coupled with a strong likelihood of apprehension and significant penalties is an effective strategy in preventing the sale of liquor to minors at licensed establishments.

Minors as Agents Program inspection data indicates that the program is having a positive impact. Awareness is very high. We are satisfied with the results of the program to date.

Industry groups and LCLB have worked together to provide free tools such as signage and education for liquor retail stores and their staff. The LCLB is handing out decals that assist licensee staff in determining a person's age when checking identification. The media has assisted by writing articles on the program which creates further awareness. All retail stores have been individually notified of the program and the LCLB is confident that licensees/ appointees and their staff are aware of the inspections and their obligation to ensure they and their employees do not sell to minors. Requesting and assessing identification is a simple and brief process. Therefore, a failure to comply with the law regarding the sale of liquor to minors cannot reasonably be attributed to a lack of knowledge.

We do not believe that the sale of liquor by a licensee to a minor is motivated by a desire for profit at the expense of public safety. Instead, LCLB must conclude that liquor sales to minors are the result of a lack of adequate training or supervision, and at times it appears to be simple ambivalence on the part of servers and retail clerks. Regardless, the non-compliance is correctable with diligence and more robust training and education.

LCLB expects that as the program continues, it will have a further positive impact on preventing liquor sales to minors. We will continue to monitor the success of the program and provide annual reports at the end of each fiscal year.