

Liquor Control and Licensing Branch Minors as Agents Program

2011/12 Annual Report



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This is a first 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 was preceded by an interim report issued in November 2011. This report covers the 2011/ 12 fiscal year up to March 31st, 2012.

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 minor¹.

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.

¹ Section 33(1) of the Liquor Control and Licensing Act

Compliance Check Project Compliance Rates 2003 – 2009 Results by Store Type				
	GLS ² (%)	RAS ³ (%)	OTHER ⁴ (%)	LRS ⁵ (%)
2003	N/A	N/A	N/A	15
2004	57	13	5	27
2005	60	17	14	21
2008*	77	24	20	36
2009	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 inspections and enforcement action is to promote voluntary compliance. In that context, the implementation of the Minors as Agents Program is intended to promote compliance with the prohibition against selling liquor to minors.

Prior to the launch of the program, LCLB notified all licensee retail stores, manufacturers, rural agency stores, and wine store appointees by direct mail about the Act amendment and the specifics of the new program. LCLB also publicized its program through press releases and its *Liquor Line* newsletter. The Liquor Distribution Branch issued a memorandum to its government liquor store employees regarding the program, and industry association ABLEBC (Alliance of Beverage Licensees of British Columbia) included an article on the new program in its spring 2011 edition of *The Publican* newsletter. As well, where a contravention has been found either by way of a waiver or by a decision from the general manager’s hearing delegate, the results are posted on the LCLB web site.

As an added incentive to be compliant, those stores who have sold to a minor have now been

2 Government Liquor Stores

3 Other private liquor stores, including VQA Stores, Independent Wine Stores, Brewery Stores, and Commercial and Land Based Wine Stores

4 Licensee Retail Stores

5 All figures are rounded to the nearest 1 %.

identified as high risk for future non-compliance, and they will be tested again. If a store is 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.

The purpose of these communications efforts was to remind liquor retail outlets of their responsibility to refuse service to minors, to highlight the importance of this requirement as a significant public safety issue and focus of branch enforcement activity, and to encourage voluntary compliance.

Risks Associated with Youths Accessing Liquor

The 2004 Canadian Addictions Survey⁶ 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 problems⁷. 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 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 2008⁸.

6 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.

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

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

The branch 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

LCLB operates the Minors as Agents Program as one component of its 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 program is designed to evolve 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 the interior and northern regions of the province.

A primary consideration during the development, training and launch was the safety of the minor agents. The parents of all minor agents hired for the program were required to provide their consent and were fully informed throughout, and the training included orientation in WorkSafe BC safety standards. The agents also received training in making and documenting observations, and were specifically instructed not to change their normal appearance or attire, to respond truthfully to any staff inquiries, and not to provide false identification.

The minors used for the project were selected through police contacts, schools with law enforcement programs or previous participation in the age based tobacco 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 store for risk. Once the store has been deemed safe, the minor enters under close observation by the inspectors, selects a product, and attempts a purchase. Store logistics dictate the proximity of the inspector, however the inspector stays as close to the minor agent as possible at all times. Where a minor agent is asked for identification they state they can go and get it. The minor does not in any manner attempt to convince a clerk to make the sale.

Once back in the vehicle, if the purchase attempt has been successful, the minor turns over any purchased liquor and receipt to the liquor inspector for proper retention and documentation. The minor then immediately fills out an observation report and any successful purchase attempts is also documented by the liquor inspector.

A team may conduct up to 20 inspections a shift; however this can vary dramatically depending upon the geography, the weather, and the results; where a sale occurs it takes much more time to process the evidence and tell the licensee of what has taken place.

In those cases where purchase attempts have been successful, the store's staff did not request identification. In some cases, the inspectors have reported that the claimed to know the minor, and therefore identification wasn't necessary,⁹ or the clerk told the minor "not to worry about it". Of significant concern are those cases where sales staff has sold liquor to the minor agent despite acknowledging their obvious youth.

Enforcement Action

If the minor is able to buy liquor the store is issued a contravention notice (CN) for the alleged contravention, often within an hour of 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 store 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 store disputes the matter in any way, the general manager's hearing delegate will conduct an enforcement hearing. LCLB oral hearings generally take place in the same community where the retail outlet is located. However, they can also take place by way of written submissions or teleconference call. The hearing decision is issued in writing. If the store is dissatisfied with the decision, they 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.

⁹ Minors do not enter retail outlets where there is a possibility that they are known, rather they work outside the area in which they live and or attend school.

Results

The following table summarizes Minors as Agents Program inspection results since its launch, which coincides with the 2011/12 fiscal year.

Compliance Statistics Fiscal Year 2011-2012 Results by Store Type				
	GLS	LRS	RAS	Other
Total Inspections	98	344	5	2
Sales to a minor	4	54	1	1
Non-compliance rate	4 ¹⁰ %	16 %	not yet	not yet
Compliance Rate	96 %	84 %	available	available

There are 1383 liquor retail outlets in the province¹¹. To date, the branch has tested approximately 51 % of all Licensee Retail Stores (LRS) and 50 % of all Government Liquor Stores (GLS).

Preliminary results for both government liquor stores and licensee retail stores are encouraging, indicating that the first year of the new program has been very successful in preventing the sale of liquor to minors.

While the Minors as Agents Program shares elements in common with previous, similar programs (CCP), there are also significant differences. While CCPs focussed on the requirement to check identification for the purposes of purchasing liquor, the use of minor agents has allowed the branch to focus on the more critical public safety issue, which is the actual sale of liquor to a minor. For these reasons it is difficult to draw comparisons between the two programs, particularly with respect to compliance rates.

Few Rural Agency Stores (RAS) and other types of liquor retail appointment stores have been tested to date since there were very few of these types of stores in the test areas. An insufficient number of these types of stores have been inspected at this point in time for any conclusions to be reached. Once the program expands more broadly into more rural areas, the RAS test rate is expected to increase. In addition, some types of outlets pose inspection challenges due to restricted opening hours and limited stock. LCLB will continue over time to test as many liquor retail outlets as possible in the province while focussing on those establishments identified as high risk as the program becomes an integral tool in the compliance and enforcement program.

For a first contravention of selling liquor to a minor, the Liquor Control and Licensing Regulation penalty schedule sets out a monetary penalty of between \$7500 to \$10,000 and or a 10 – 15 day suspension. If a second contravention should occur¹², the penalty schedule provides for a 20 – 30 day suspension.

¹⁰ All figures are rounded to the nearest 1 %.

¹¹ 2010/11 Liquor Distribution Branch Annual Report: 197 government liquor stores, 672 licensee retail stores, 223 rural agency stores, 233 on-site manufacturer stores, 35 off-site manufacturer stores, 12 private wine stores, and 11 duty free stores.

¹² 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.

For the purposes of the roll out, 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. Critics of suspensions say it unfairly impacts the liquor retail outlet's staff. The purpose of any penalty is to promote future compliance. The regulatory scheme places ultimate responsibility on the business. It is the business that is responsible for selling the liquor to a minor and it is the business that is responsible for the consequences of violating the Act.

To date, all recommended penalties have been the minimum \$7500 monetary penalty.

A summary of enforcement activity as of March 31st, 2012 is as follows:

Contravention Notices Issued	60
Notices of Enforcement Action (NOEA) Issued	51
Notices of Enforcement Action Withdrawn	1
Waivers signed	33 (65 %)
Proceeding by way of an enforcement hearing	10
Licensee has not yet decided how to proceed (i.e., by signing a waiver or attending a hearing)	7
Hearing decision pending	3
Hearing decision issued (proven)	7
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.

Next Steps

Given the initial success of the Minors as Agents Program, LCLB is expanding to other areas of the province and also intends to eventually use the program to monitor compliance in other types of licensed establishments.

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.

Initial inspection data indicates that the program is having a significant and positive impact on voluntary compliance. 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

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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.

Instead, LCLB must conclude that liquor sales to minors are the result of a lack of adequate training and supervision of liquor retail store staff or are motivated by a desire for profit at the expense of public safety. Those stores who have sold to a minor have now been identified as high risk for future non-compliance and they will be tested again.

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.

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