

## Liquor Control and Licensing Branch Minors as Agents Program (MAP)

### 2013/ 14 Annual Report

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This, the third 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, covers the 2013/14 fiscal year up to March 31<sup>st</sup>, 2014.

Over the past three years, the Minors as Agents Program (MAP) has become a regular LCLB inspection tool. Future annual reporting on the program will be included in Branch reports and, to ensure ongoing transparency, statistics on the MAP will be posted on the Liquor Control and Licensing Branch website.

### Background

In 2003, the LCLB introduced a series of Compliance Check Projects (CCP) in which youthful-appearing adults attempted to purchase liquor. Agents were chosen for their young-looking appearance 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 that age identification is requested of the person to whom liquor is being sold. The CCP continued through various iterations for five years. Since the agents were 19 years of age or older, no enforcement action could be taken against establishments that failed to request identification.

The compliance rate for the CCP was a measure of the percentage of times that a sales person requested two pieces of identification from the youthful-looking agents. Between 2003 and 2009 the compliance rate was low and it did not generally improve over time. The overall provincial compliance rate for 2009 was 29%, clearly demonstrating an ongoing problem with age verification when purchasing alcohol.

This finding highlighted the ongoing risk of minors accessing alcohol through liquor retail outlets and led to the creation of the Minors as Agents Program. In 2010, the *Liquor Control and Licensing Act* was amended 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 legislation also permits the LCLB to take appropriate enforcement action when there are incidents of non-compliance. The use of minors has proven to be an

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

effective and efficient method for enforcing age-of-sale laws and a support to the overall goal of decreasing the commercial availability of alcohol to youth.

### **Minors as Agents Program Goals**

The LCLB's goal for inspection and enforcement action is to promote voluntary compliance. In that context, the MAP is intended to increase licensees' compliance with the prohibition against selling liquor to minors. Although the MAP cannot prevent access to alcohol by minors, it does mitigate access to alcohol through licensed venues.

As the licensee community becomes more aware of the existence of the MAP, the expectation of age-based compliance checks should increase the compliance rate. It is worth noting that some licensees are demonstrating more due diligence, and succeeding on this basis at hearings. Due diligence on the part of licensees is the most effective means of preventing the sale of liquor to minors.

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

Health Canada's Canadian Alcohol and Drug Use Monitoring Survey (Summary of Results 2010) shows an encouraging trend. Between 2004 and 2010, there was a statistically significant decline in past-year alcohol use among youth, 15 – 24 years of age, from 82.9% to 71.5%.<sup>2</sup> In spite of this decrease in consumption, alcohol continues to be a significant element of the youth and young adult culture.

The age at which young people start consuming liquor is known to be a strong predictor of risk for a number of health and social problems, including 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 among 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>3</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 but a robust compliance effort, coupled with meaningful enforcement, will significantly limit access and promote compliance.

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<sup>2</sup> Health Canada. *Canadian Alcohol and Drug Use Monitoring Survey, 2012*

<sup>3</sup> Anderson, Peter and Baumberg, Ben (2006) *Alcohol in Europe: A Public Health Perspective: A Report for the European Commission*. Institute of Alcohol Studies, UK.

Education and a certainty of apprehension are two highly influential factors in assuring compliance. 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.

In the 2013 report Strategies to Reduce Alcohol-Related Harms and Costs in Canada: A Comparison of Provincial Policies, the authors observed: "It is important that a jurisdiction has the capacity to enforce the legal drinking age in both on-premise and off-premise outlets. The benefits of a higher drinking age are only realized with adequate and consistent enforcement. Mystery shopper programs are effective in holding alcohol retailers accountable and ensuring that alcohol retailers are not selling alcohol to individuals below the legal drinking age. Similarly, liquor inspection programs conducted by the liquor authority and supported by law enforcement initiatives afford the needed support for underage alcohol sale enforcement."<sup>4</sup>

### **MAP Inspection Policies and Procedures**

LCLB operates MAP 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 more than 10,000 permanent licensed establishments and appointment stores and about 25,000 special occasion licensed (SOL) events annually.

The program was launched in May 2011, focusing on the urban centres of Vancouver Island and the Lower Mainland, where all types of liquor retail outlets were visited. The program now reaches all regions of the province and tests all types of liquor licences.

A primary consideration of the MAP is 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. Required training for minor agents includes orientation in WorkSafe BC safety standards and instruction in making and documenting observations. Agents are specifically instructed to make no changes to 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 if asked for identification, they are to respond truthfully: "I don't have it with me."

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<sup>4</sup> Giesbrecht, Norman; Wettlaufer, Ashley; April, Nicole; Asbridge, Mark; Cukier, Samantha; Mann, Robert; McAllister, Janet; Murie, Andrew; Pauley, Chris; Plamondon, Laurie; Stockwell, Tim; Thomas, Gerald; Thompson, Kara; Vallance, Kate (2013) *Strategies to Reduce Alcohol-Related Harms and Costs in Canada: A Comparison of Provincial Policies*. Toronto: Centre for Addictions and Mental Health

The minors selected for the project are recruited through police contacts, schools with law enforcement programs and/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 hearings.

For the most common type of inspection, minor agents are usually accompanied by two liquor inspectors. At the beginning of each inspection shift, the minor agent is photographed and his or her identification is documented by the inspectors. Prior to commencing an 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 to make a purchase. Logistics dictate the proximity of the inspector, but the inspector maintains a clear line of sight to the minor agent at all times. When a minor agent is asked for identification, they say that they do not have it with them. The minor does not, in any way, try to convince a clerk or server to make the sale.

Where a purchase is made, the minor agent fills out an observation report, immediately after he or she returns to the vehicle. The purchase is also documented by the liquor inspector.

A team may conduct between two and twenty inspections during a shift. The number of inspections varies according to distances to be traveled; types of establishments being inspected; and the results, i.e. where a sale occurs it takes time to process the evidence and tell the licensee what has taken place.

In the past year, a new approach has been introduced whereby agents often work in teams, e.g. two or three minors, or two minors and a 19 year old, enter an establishment and attempt to purchase liquor. Another new method of inspection is to have minor agents, accompanied by adults, enter an establishment and proceed to order liquor.

Since the MAP is a risk-based inspection program, focusing its efforts on establishments frequented by a young demographic or where police or complaints have generated intelligence that cause the establishment to be identified as high risk for sale to a minor. Other establishments are sometimes checked *ad hoc*, based on geography and/or ease of access.

On the basis that private Special Occasion Licence (SOL) and catered events are not high risk, they are not inspected. Private residences are not entered or inspected.

Large, public SOL events are now routinely inspected. These inspections test for compliance, using minors as agents in crowded open air environments where minors could potentially access liquor being sold at the event.

## **MAP Enforcement Action**

If a minor agent is able to purchase 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 usually 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 MAP contraventions result in waivers.

## **MAP Results**

The following table summarizes the MAP inspection results for the 2013/14 fiscal year.

Of the 1423 liquor retail outlets in the province<sup>5</sup>, 195 are Government Liquor Stores (GLS) and 670 are Licensee Retail Stores (LRS). Over the past three years, 216 GLS inspections and 799 LRS inspections have been conducted through the MAP. In total, over the same period, including all licence types, 1255 MAP inspections have been carried out.

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<sup>5</sup> 2012/13 Liquor Distribution Branch Annual Report: 195 government liquor stores, 670 licensee retail stores, 221 rural agency stores, 279 on-site manufacturer stores, 35 off-site manufacturer stores, 12 private wine stores, and 11 duty free stores.

**MAP Compliance Statistics  
Fiscal Year 2013-2014  
Results by Store Type**

| <b>2013/14</b>             | <b>BC Liquor Store</b> | <b>Licensee Retail Store</b> | <b>Rural Agency Store</b> | <b>Special Occasion Licence</b> | <b>Food primary</b> | <b>Liquor primary</b> | <b>Wine Store</b>    | <b>Total</b> |
|----------------------------|------------------------|------------------------------|---------------------------|---------------------------------|---------------------|-----------------------|----------------------|--------------|
| <b>Total Inspections</b>   | 33                     | 130                          | 11                        | 1                               | 50                  | 26                    | 2                    | 253          |
| <b>Sales to a minor</b>    | 6                      | 28                           | 1                         | 0                               | 22                  | 12                    | 1                    | 70           |
| <b>Non-compliance rate</b> | 18%                    | 22%                          | Too small a data set      | Too small a data set            | 44%                 | 46%                   | Too small a data set | 28%          |
| <b>Compliance Rate</b>     | 82%                    | 78%                          | Too small a data set      | Too small a data set            | 56%                 | 54%                   | Too small a data set | 72%          |

**Compliance Rate by Year and Licence Class**

| <b>Compliance Rate By Year</b> | <b>BC Liquor Store</b> | <b>Licensee Retail Store</b> | <b>Rural Agency Store</b> | <b>Special Occasion Licence</b> | <b>Food primary</b> | <b>Liquor Primary</b> | <b>Manufacturer / Wineries</b> | <b>Average</b> |
|--------------------------------|------------------------|------------------------------|---------------------------|---------------------------------|---------------------|-----------------------|--------------------------------|----------------|
| 2011/ 12                       | 96%                    | 83%                          | too small a data set      | no data                         | no data             | no data               | too small a data set           | 86%            |
| 2012/ 13                       | 92%                    | 72%                          | 68%                       | too small a data set            | 49%                 | too small a data set  | too small a data set           | 71%            |
| 2013/ 14                       | 82%                    | 78%                          | too small a data set      | too small a data set            | 56%                 | 54%                   | too small a data set           | 72%            |

## MAP Penalties

MAP initiated penalties are set by the Liquor Control and Licensing Regulation [the Regulation]. The Regulation was not amended made when the MAP was introduced, nor does it differentiate between methods of discovering cases of non-compliance.

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 ten to fifteen day suspension. If a second contravention should occur<sup>6</sup>, the penalty schedule provides for a 20 – 30 day suspension.

For the purposes of the MAP, unless the outlet has a poor compliance history or the facts of the individual case warrant a different penalty, the LCLB usually recommends the minimum monetary penalty of \$7500. The purpose of any penalty is to promote future compliance. The regulatory scheme holds the licensee responsible for contravening the Act by selling liquor to a minor. Penalties are set to be most effective in harm prevention. The harms associated with the sale of liquor to minors are numerous and well documented.

### MAP Enforcement Activity Fiscal Year 2013-2014

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|--|-----|
| Contravention Notices Issued   | 70  |
| Notices of Enforcement Action (NOEA) Issued  | 78  |
| Notices of Enforcement Action Withdrawn  | 1   |
| Waivers signed   | 52  |
| Proceeding by way of an enforcement hearing  | 19  |
| 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)   | 15  |
| Hearing decision issued (not proven)   | 1** |

\*\* contravention proven but licensee successful in due diligence defence

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

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<sup>6</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.

## **Due Diligence**

The holder of the license 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 occurring. Whether or not the licensee can demonstrate due diligence depends on the circumstances of each case. At an enforcement hearing, the General Manager's delegate determines 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**

MAP is now a fully integrated tool in promoting compliance with age-based restrictions on access to alcohol. All licence types are inspected on a routine risk based approach. With the implementation of recommendations coming out of the Liquor Policy Review, some of which create new points of entry for minors, the MAP is a highly effective tool to test for compliance and all new licensees, or license classes will be tested.

## **Conclusions**

Restricting access to liquor by minors is a key public safety priority for the LCLB. The LCLB believes that growing awareness of the MAP inspections, together with a strong likelihood of apprehension and significant penalties, has become an effective strategy in preventing the sale of liquor to minors at licensed establishments. It seems unlikely that the sale of liquor by a licensee to a minor is motivated by profit, at the expense of public safety. Rather, LCLB concludes that liquor sales to minors are the result of inadequate training or supervision. In any case, non-compliance is easily correctable. Requesting and assessing identification is a simple and straight-forward process that is the responsibility of those agencies that Government has granted the privilege to sell liquor. That privilege comes attached with a significant social responsibility.

LCLB expects that as the program continues, it will have a further positive impact on preventing liquor sales to minors. The province-wide Liquor Policy Review that was undertaken in the past year confirmed the continued usefulness of the MAP in assessing compliance with age based restrictions on the sale of liquor. The program is a strong support to the Branch in meeting this element of its public safety mandate.