

**MINISTRY OF ATTORNEY GENERAL  
JUSTICE SERVICES BRANCH  
BRIEFING NOTE**

**Advice to Attorney General**

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**PURPOSE:** For INFORMATION for David Eby, QC  
Attorney General

**ISSUE:**  
Daylight Saving Time – Issue Summary

**SUMMARY:**

- Most of British Columbia observes Daylight Saving Time (DST) and has done so for many years. Currently, DST is observed between the second Sunday in March and the first Sunday in November.
- Public groups continue to advocate for the elimination of the bi-annual time change.

**BACKGROUND:**

- DST was implemented in Canada in 1915 to reduce coal consumption and to extend daylight hours for factory work to aid in the war effort.
- Since 1945, legislating DST has been left to the provinces. In 1952, 54% of British Columbians voted in favour of a plebiscite to introduce DST.
- Since the late 1960s, DST in Canada has been closely or completely synchronized with its observance in the United States. Most jurisdictions in Canada and the US move their clocks ahead by one hour on the second Sunday in March and back by one hour on the first Sunday in November. Consequently, the majority of BC observes Pacific Standard Time (PST) for four months of the year and Pacific Daylight Time (PDT) for eight months.

- In 1972, a referendum was held in five BC electoral districts that border Alberta, asking the public, “Are you in favour of Pacific Standard time, including Pacific Daylight Saving time, as it is applicable now throughout the province?” The results of this referendum led to some communities in northwest and southeast BC adopting Mountain Time year-round, with or without observing Mountain Daylight Time (MDT). These communities include Cranbrook, Dawson Creek, Fernie, Fort St. John, and Kimberley.
- BC’s current regulation came into effect in 2007 to parallel the changes that took place in the U.S. to extend DST. Before making the change, government conducted a limited public consultation, which resulted in over 4,000 responses. The vast majority of respondents (92%) were in favour of changing BC’s DST observance to match that of the United States and other Canadian provinces. A relatively small number (approximately 10%) favoured abolishing the time change and observing either PST or PDT all year round.

### **Other Jurisdictions**

- The European Union is considering ending DST permanently in 2019 after an online survey showed over 80% of participants supported abolishing changing the clocks twice a year. However, the survey has been criticised as unrepresentative of the EU as a whole, as nearly two-thirds of the responses were from Germany.
- California has recently held a public consultation which showed the majority favoured adopting DST permanently. The Federal Uniform Time Act currently only allows for states to opt out of DST by remaining on standard time year-round. The proposed policy change by California to remain on DST will require two-thirds approval in the legislature, then passage in Congress, and a presidential signature.
- Washington senators are proposing a bill that would implement DST year-round. One senator has recommended that the bill be put through a ballot initiative to increase public input. Bill SB 5139 is currently in front of the Senate and has gone through a public hearing. If it passes, it will still need Congress’s approval. If it fails to pass, legislators are proposing that the state seeks approval from the Department of Transportation to change Washington to year-round Mountain Standard Time.
- Oregon legislators have also proposed a bill that would maintain DST in Oregon year-round. The bill is on the docket for a March 12<sup>th</sup> Senate Committee meeting.
- Florida passed a similar bill in 2018 to implement DST year round, and is awaiting permission from the federal government. To date, the bill has faced opposition in Congress, particularly from broadcasters and parent-teacher organizations.

- In 2017, the Alberta legislature voted against a bill to eliminate DST. A legislative committee received extensive public input, with about two-thirds in favour of eliminating DST.
- If BC were to adopt PDT year-round out of step with other jurisdictions, BC would effectively be observing MST, which would move the province into a different time zone from Washington and California unless they make a similar change. And unless Alberta followed suit, BC would synchronize its clocks with Alberta's for the portion of the year Alberta observes MST, but not when it observes MDT.

### **Recent Public Debate in British Columbia**

- There has been growing public pressure to eliminate time changes, including an online petition created in 2015 which has garnered over 25,000 signatures.
- In September 2018, UBCM narrowly voted in support (52.3%) of a resolution asking the provincial government to consider eliminating DST.

### **Scientific Studies**

- Some studies have attempted to measure certain health and social effects of changing the clocks, particularly respecting automobile accidents and heart attacks.
- One tally of 16 traffic studies by a physician at Sunnybrook Health Sciences Centre in Toronto found the following:
  - six studies indicated an increased risk of crashes after the spring time change, while three studies indicated a decreased risk; and
  - seven studies found no significant difference either way.
- Likewise, there are conflicting studies respecting rates of heart attacks following the spring and fall time changes.

## **DIFFERENT MANNERS OF TIME OBSERVANCE:**

### **Keep Biannual Time Change**

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**Adopt DST Year Round**

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## **Adopt PST Year Round**

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**Table #1: Predicted Sunrises and Sunsets in Vancouver 2019**

<b>Vancouver</b>	<b>Current Sunrise</b>	<b>Current Sunset</b>	<b>Sunrise if PST Year-round</b>	<b>Sunset if PST Year-round</b>	<b>Sunrise if PDT Year-round</b>	<b>Sunset if PDT Year-round</b>
March 10 <sup>th</sup> (PDT takes effect)	7:36am	7:09pm	6:36am	6:09pm	7:36am	7:09pm
June 21 <sup>st</sup> (Summer Solstice)	5:06am	9:21pm	4:06am	8:21pm	5:06am	9:21pm
November 3 <sup>rd</sup> (PST takes effect)	7:03am	4:47pm	7:03am	4:47pm	8:03am	5:47pm
December 21 <sup>st</sup> (Winter Solstice)	8:05am	4:16pm	8:05am	4:16pm	9:05am	5:16pm

**Table #2: Predicted Sunrises and Sunsets in Prince George 2019**

<b>Prince George</b>	<b>Current Sunrise</b>	<b>Current Sunset</b>	<b>Sunrise if PST Year-round</b>	<b>Sunset if PST Year-round</b>	<b>Sunrise if PDT Year-round</b>	<b>Sunset if PDT Year-round</b>
March 10 <sup>th</sup> (PDT takes effect)	7:38am	7:05pm	6:38am	6:05pm	7:38am	7:05pm
June 21 <sup>st</sup> (Summer Solstice)	4:39am	9:46pm	3:39am	8:46pm	4:39am	9:46pm
November 3 <sup>rd</sup> (PST takes effect)	7:15am	4:33pm	7:15am	4:33pm	8:15am	5:33pm
December 21 <sup>st</sup> (Winter Solstice)	8:27am	3:50pm	8:27am	3:50pm	9:27am	4:50pm

**OTHER MINISTRIES IMPACTED/CONSULTED:**

- None

**Prepared by:**

Tarynn McKenzie  
Policy Analyst  
Justice Services Branch  
778-974-3688

**Approved by:**

Neil Reimer  
Director, Policy and Legislation  
Justice Services Branch  
778-974-3695

**Approved by:**

Kurt J.W. Sandstrom, QC  
Assistant Deputy Minister  
Justice Services Branch  
778-974-3689

**MINISTRY OF ATTORNEY GENERAL  
COURT SERVICES BRANCH  
BRIEFING NOTE**

**PURPOSE:** For DECISION for the Honourable David Eby, QC  
Attorney General

**ISSUE:** There is no formalized commitment between government and the Judiciary to develop emergency response and recovery plans.

**DECISION REQUIRED/ RECOMMENDATION:**

**Recommend Option 1:**

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**SUMMARY:**

- There is a 33 percent chance that a major earthquake will occur on the West Coast within the next 50 years. Such an event will have massive social and economic implications for the province. There is also an ongoing risk of a catastrophic flood in the lower Fraser River.
- The continuity of government will be critical following such events, i.e., ensuring the continuation of constitutional government and essential provincial services.
- British Columbia's justice system, like the rest of government, is vulnerable to an operational disruption following such events.
- Senior officials must be prepared to effectively lead government and its operations during and following such events to ensure timely social and economic recovery.

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**BACKGROUND:**

- The Province is currently working to ensure it is prepared for a catastrophic event.
- This work is receiving increased attention and support due to several factors, including:
  - the number of country's impacted by recent events such as earthquakes, hurricanes, and severe weather storms;
  - the risk of a damaging earthquake in BC; and,
  - BC's 2017 and 2018 flood and wildfire seasons which have been the worst in the province's history and have highlighted potential vulnerabilities in the Province's ability to respond to catastrophic events.
- According to Natural Resources Canada, there is a 33 percent chance that a major earthquake will occur on the West Coast in the next 50 years. Such an event could be accompanied by tsunamis, landslides, and major flooding.
- The location of government and judicial centers on an active fault line almost guarantees the future necessity of plans which will ensure critical government functions continue after a catastrophic event.

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**DISCUSSION:**

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**OPTIONS:**  
**Option 1 Recommended**

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**OTHER MINISTRIES IMPACTED/CONSULTED:**

- Ministry of Public Safety and Solicitor General




Richard J. M. Fyfe, QC  
Deputy Attorney General

**DATE:**

March 7, 2019

**OPTION 1 APPROVED**



David Eby, QC  
Attorney General

**DATE:**

March 14, 2019

**Prepared by:**

Lynda Cavanaugh  
Assistant Deputy Minister  
Court Services Branch  
250 356-1527

**Approved by:**

Richard J. M. Fyfe, QC  
Deputy Attorney General  
250 356-0149

**Attachment:**

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Withheld pursuant to/removed as

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**MINISTRY OF ATTORNEY GENERAL  
LIQUOR DISTRIBUTION BRANCH  
BRIEFING NOTE**

**PURPOSE:** For INFORMATION for David Eby, QC  
Attorney General

**ISSUE:** Commercial BC Craft Cider Industry Requests

**SUMMARY:**

- In an email dated February 11, 2019 (Appendix A), Ms. Nathaly Nairn, co-founder of Windfall Cider (which is classified as a commercial cidery) requests that the Minister review the government's policies pertaining to the commercial cider industry.
- In her email, Ms. Nairn asserts that the legislation pertaining to mark-up and classification of cider is outdated, and that based on the Business Technical Advisory Panel's (BTAP) report<sup>1</sup>, a revision to legislation is required to support growth of the BC cider industry.
- On January 12, 2018, Minister Eby met with Michelle Carr, General Manager of the Liquor and Cannabis Regulation Branch (LCRB), R. Blain Lawson, General Manager of the Liquor Distribution Branch (LDB) and Cailey Murphy, Managing Director of Communications and Government Relations (representing at the time Windfall Cider and Sunday Cider), to discuss regulations as they apply to distribution and sale of craft cider.

**BACKGROUND:**

- BC cider producers (as well as mead and sake producers) are currently licensed by the LCRB as "wineries" and operate under the LDB Winery Sales Agreement for same. The LDB categorizes cider as a "refreshment" beverage.
- For the purpose of mark-up, LDB has two winery designations: commercial and land-based. Based on 2018 data, there are approximately 309 land-based wineries and 52 commercial wineries in BC. Of those wineries, only 32 are strictly cider-producers.
  - Of the *commercial* wineries:
    - 14 produce both wine and cider,
    - 9 produce only cider.
  - Of the *land-based* wineries:
    - 36 produce both wine and cider,
    - 23 produce only cider.

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<sup>1</sup> Business Technical Advisory Panel Report, pages 24-26

## DISCUSSION:

- Windfall Cider is a small cidery that manufactures its cider using 100% BC apples at its location in Vancouver. They currently have six SKUs registered with the LDB. It is designated as a commercial cidery, and therefore does not receive the benefits provided to land-based wineries (see Appendix B for details regarding benefits provided to BC land based wineries).
- As there is no certification program for cider products (such as the one administered by the BC Wine Authority in relation to BC VQA wines) the mark-up reductions<sup>2</sup> that are provided to BC commercial wineries on their sales of VQA products are not available to BC cideries, regardless of whether or not they use 100% BC inputs (e.g. apples, pears).
- As such, all commercial BC cider is subject to the full mark-up rate of 73%.
- In 2017 the BC Commercial Craft Cider Industry<sup>3</sup>, of which Windfall Cider is a member, provided a written submission to BTAP (Appendix C) requesting the following:
  - Create a separate category for BC cider - define BC Cider as an alcoholic cider fermented with 100% BC apples or pears, no concentrates or artificial additives, minimum 80% juice content (i.e. no more than 20% water or other fruit juice additions).
  - Create a new mark-up rate for commercial craft cider similar to the craft beer mark-up structure<sup>4</sup> (with adjusted volumes for craft cider);
  - Expand the BC Liquor Store Program for offering unlisted beer products to include craft cider.
    - The Program allows BCLS to directly offer non-listed beer from the local breweries that produce under 100,000 hectolitres annually. Over the course of 2018, the LDB considered creating similar programs for other manufacturers but the issue was put on hold due to trade-related concerns.
- Other proposals presented over the years by the BC cider industry have included:
  - Waiving the on-site manufacturing facility criterion for land-based wineries/cideries;
  - Basing the mark-up exemption for cider on the use of 100% BC products (apples/pears); and
  - Implementing a rebate program for cider that is 100% BC-grown and produced, similar to the current rebate program for BC VQA wines.

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<sup>2</sup> Commercial wineries that use 100% BC grapes and have VQA certified wines are exempt from paying mark-up on their direct sales of those wine products. They also receive a 50% rebate for VQA sales through LDB channels, and a 7% commission for non-VQA products that are directly delivered.

<sup>3</sup> This group is comprised of the following commercial cideries: Cliffside Cider, Northyards Cider Co., and Windfall Cider.

<sup>4</sup> The mark-up structure for beer is a flat rate per litre, whereas the mark-up for wine, spirits and refreshment beverages is calculated as a percentage of the supplier cost

- It should be noted that while Ms. Nairn and the BC Commercial Craft Cider Industry maintain that the classification of craft cider as a “refreshment” beverage and the associated mark-up is “cost prohibitive and stifling growth in the sector”, BC cider sales (wholesale) have increased by 132% since 2013/14 (from 5,604,153 litres sold in 2013/14 to 13,021,622 litres sold in 2017/2018), which appears to indicate a healthy industry growth.

### **Implications**

- BC cider industry requests pose a number of challenges to the LDB including:
  - Providing benefits, such as a lower mark-up rate, specific to BC craft cider producers could further irritate international and inter-jurisdictional trade complaints and discussions.
  - Lowering the mark-up rate for BC cider would result in revenue loss to government, which would be significant if this benefit was extended to both BC and import manufacturers (in order to comply with trade agreements).
  - Other stakeholder groups, such as smaller BC commercial distilleries, that have requested similar benefits be extended to them, would expect the same changes (e.g. lower mark-up rates) for their industry.
- Appendix D provides a list of other implications related to the requests put forward by Ms. Nairn and other BC commercial cider producers. The appendix also outlines the challenges posed to the LCRB (removing the onsite store requirement) and the Ministry of Agriculture (creating a BC VQA category for cider) by these requests.
- Should government wish to extend benefits to the BC craft cider industry, further analysis, broad stakeholder consultation (industry, government ministries, and municipalities) and Treasury Board approval would be required.

### **OTHER MINISTRIES IMPACTED:**

- Ministry of Agriculture
- Liquor and Cannabis Regulation Branch

#### **Prepared by:**

Anita Mlinar  
Senior Policy Analyst  
BC Liquor Distribution Branch  
604 252-3032

#### **Approved by:**

Blain Lawson  
General Manager and CEO  
BC Liquor Distribution Branch

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### **Attachment(s)**

Appendix A: Email to Minister Eby dated February 11, 2019, from Nathaly Nairn, Windfall Cider

Appendix B: BC Land-Based and Commercial Wineries – Benefits and Obligations

Appendix C: Submission to Business Technical Panel on Liquor Law and Policy – Commercial Craft Cider Industry

Appendix D: Cider Policy Change - Implications

## Appendix A

### Email to Minister Eby dated February 11, 2019 from Nathaly Nairn, Windfall Cider

**From:** Nathaly Nairn <[nathaly@windfallcider.ca](mailto:nathaly@windfallcider.ca)>

**Date:** February 11, 2019 at 3:48:31 PM EST

**To:** [david.eby.MLA@leg.bc.ca](mailto:david.eby.MLA@leg.bc.ca)

**Cc:** Jeff Nairn <[jeff@windfallcider.ca](mailto:jeff@windfallcider.ca)>, Cailey Murphy

<[cailey@nnwcommunications.ca](mailto:cailey@nnwcommunications.ca)>,

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[blain.lawson@bcldb.com](mailto:blain.lawson@bcldb.com), Sacha

fabry <[sacha.fabry@g3consulting.ca](mailto:sacha.fabry@g3consulting.ca)>

**Subject:** Technical Panel on Liquor Law and Policy: BC Commercial Craft Cider Industry

Dear Mr. Eby,

I trust this email finds you well.

Its been over a year since we met in your office along with Blain Lawson to discuss the classification and taxation of commercial craft cider in British Columbia.

Since we meet we have launched our first flagship (Windfall Jackpot) into the market to a warm reception in the community, we are working together with private stores and restaurants to bring our craft product to the growing market of cider enthusiasts. The excitement of our first year in business has been marred by the disadvantage that we face with the current classification and taxation of craft cider.

We all agree that this legislation must be updated and a revision was recommended by Mike Hicken in his report summited in April 2018.

I want to now follow up with you on this matter: what is your position on this file? What do you recommend as the next step for us, small business owners working hard to grow a new category in BC? With the current taxation, we will simply not be able to remain competitive and achieve our goal of raising the profile of BC Cider in Canada.

Sincerely,

Nathaly Nairn



Nathaly Nairn

*Co-Founder , Windfall Cider*

m: [6047834190](tel:6047834190)

w: [windfallcider.ca](http://windfallcider.ca)

e: [nathaly@windfallcider.ca](mailto:nathaly@windfallcider.ca)

## **Appendix B**

### **BC Land Based and Commercial Wineries - Benefits and Obligations**

#### *Land Based Wineries*

- The intent of the Land-Based Winery Policy (the “Policy”), which applies to land-based cideries also, is to encourage the growth of BC’s agricultural industry by supporting wineries that are manufacturing product with 100% BC agricultural inputs, which they are growing, maintaining and harvesting themselves.
- The Policy is also intended to support agri-tourism, as manufacturers that grow and sell their product on the same acreage are generally accepted to be more attractive tourist destinations than those located in industrial areas.
- The significant benefits associated with the Policy recognize the considerable effort and investments made by these wineries in order to comply with the Policy.
- **Land-based wineries** are required to:
  - Use 100% BC inputs (honey, grapes, fruit or rice);
  - Own or lease at least 2 acres of vineyards or orchards at the licensed winery site, or 2.5 acres of rice paddy, and use the land to farm and manufacture the product;
  - Ensure that a minimum of 25% of the product must come from land owned or leased by the producer;
  - Produce the product at the agricultural site; and
  - Use traditional wine, cider or sake making techniques.
- Land-based wineries are not required to remit mark-up on their direct sales;
  - Full mark-up applies if the product is non-VQA and is sold through LDB channels, and
  - A 50% rebate is paid to land-based wineries for BC VQA sales through LDB channels.
- Both land-based and BC commercial wineries are permitted to direct-deliver to wholesale and hospitality customers (“direct sales”).

#### *Commercial Wineries*

- In contrast, commercial wineries may source their inputs from BC or elsewhere, which includes the ability to import the wine itself in bulk.
- Commercial wineries must also remit full mark-up on all sales, except that they:
  - Are not required to remit mark-up on direct sales of VQA products (currently there is no VQA designation for BC cider);
  - Receive a 50% rebate for VQA sales through LDB channels; and
  - Receive a 7% commission for non-VQA products that are directly delivered.
- There is also a restriction on common ownership with commercial wineries



## Appendix C

### Submission to Business Technical Panel on Liquor Law and Policy: BC Commercial Craft Cider Industry

Please find below a submission regarding the classification and taxation of commercial craft cider on behalf of Cliffside Cider, Northyards Cider Co., and Windfall Cider. Any questions can be directed to Cailey Murphy, Principal, NNW Communications, per below.

#### Overview:

- BC's liquor legislation has a two-tier taxation structure for "land-based" ciders and "commercial" ciders, which does not reflect the emerging craft cider industry.
- Land-based ciders – typically located in agricultural centres – own orchards and grow their own apples.
- All other ciders are classified as commercial ciders – often situated in urban centres – purchase their apples or apple juice from suppliers.
- Commercial ciders are subject to higher taxes regardless of where they source their products.

#### Issue:

Cider is currently categorized as a "Pre-Mixed Cocktails and Coolers" by the BC Liquor Distribution Branch (LDB), under the category of "Refreshments".

It finds itself categorized with products such as Mike's Hard Lemonade, Growers and other 'cooler' styled beverages that are generally made with high levels of sugar, artificial flavouring and the addition of spirits.

Numerous BC commercial craft cider producers, alternatively, create their cider using nothing other than 100% BC apples – like wine, craft cider accumulates its alcohol content through fermentation, rather than the addition of spirits.

Because craft cider is categorized as a "Refreshment" it is subject to a 73% markup. Craft beer, comparatively, is subject to a 12-14% markup.

The difference, according to an article published by BC Business Magazine (June 2016), amounts to approximately \$1.32 on a six pack of craft beer versus approximately \$4.71 for a comparable amount of craft cider.<sup>1</sup>

While there was a time when "cider" in Canada predominately meant large scale production of a sweet, fizzy, cooler style beverage that was logically categorized with other similar "refreshments", today's craft cider industry bears no such resemblance.

The burden of this makes it nearly impossible for commercial craft cider producers to make a competitively priced product for the market.

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<sup>1</sup> <https://www.bcbusiness.ca/bcs-liquor-laws-put-craft-cider-at-a-distinct-disadvantage>

BC Liquor Stores have also introduced a program to allow stores to offer non-listed beer products from local microbreweries. This currently does not, but should, apply to locally produced cider thereby giving the industry the opportunity to showcase their products at local stores. Currently, outside of private liquor retailers, British Columbians do not have broad access to BC produced cider from BC apples.

### **Background:**

In recent years the cider industry in BC has been steadily growing. From pioneers on Vancouver Island and in the Okanagan to new urban craft producers in Vancouver, British Columbian cideries have been leaders in redefining the cider market across the province.

As awareness and popularity of cider continues to grow, there is considerable potential for the growth of the craft cider industry in BC. In 2012, Sea Cider was the only cidery to use B.C. apples that was up and running in the province, but by 2016 there were seven operating and another dozen in the process of starting up.

There is currently a growing demand for cider in BC. According to the BC Liquor Distribution Branch *Liquor Market Review*, cider sales accounted for \$76 million in sales in 2016, up from \$49 million in 2011; however, the numbers provided in the *Liquor Market Review*, do not indicate domestic in origin or what qualifies as a domestic cider from an ingredients standpoint, although it is differentiated from malt-based, spirit and wine/fruit coolers.<sup>2</sup> With products available from both small and large-scale producers, consumers have a wide range of domestic and import products from which to choose.

Due to a lack of a clear distinction for BC small-batch craft cider, there is currently no delineation in the regulation between traditional, small-batch ciders made from 100% fermented BC apple juice versus mass produced, sweeter and heavily-carbonated alternatives made from apple juice concentrate or artificial flavours.

The BC Craft Cider industry is currently estimated at \$2 million.<sup>3</sup> Comparatively, the Ontario craft cider industry is estimated at \$35 million,<sup>4</sup> demonstrating an enormous amount of growth potential.

The benefits of a growing cider industry are far reaching and include supply chain sectors such as orchardists and apple growers, packers and juicers. It takes 3-4 lbs of apples to make one litre of cider.<sup>5</sup> BC has a large agricultural sector that stands to benefit from locally produced cider made from BC apples, creating jobs at production centres and orchards across the province.

<sup>2</sup> [http://www.bcldb.com/files/Liquor%20Market%20Review\\_Q3\\_December\\_2016.pdf](http://www.bcldb.com/files/Liquor%20Market%20Review_Q3_December_2016.pdf)

<sup>3</sup> <https://www.bcbusiness.ca/bcs-liquor-laws-put-craft-cider-at-a-distinct-disadvantage>

<sup>4</sup> <https://ontariocraftcider.com/economic-impact-cider-ontario/>

<sup>\*</sup> Estimated based on 2016 *Liquor Market Review*

<sup>5</sup> [http://bcfarmcraftedcider.com/BC\\_Farm\\_Crafted\\_Cider/About\\_us.html](http://bcfarmcraftedcider.com/BC_Farm_Crafted_Cider/About_us.html)

Growth and proliferation of craft cideries stand to benefit a number of BC industries including, agricultural, agritourism, tourism and hospitality providers. Support of the craft cider industry will be reinvested in BC through the creation of jobs, payments to governments/government agencies and investments in communities.

**Conclusion:**

- Because craft cider is categorized as a “Refreshment” it is subject to a **73% markup**. Craft beer, comparatively, is subject to a 12-14% markup.
- This categorization is outdated and does not reflected the emerging craft nature of the cider industry in BC and is inconsistent with craft beer.
- The tax rate is cost prohibitive and stifling growth in the sector.

**Recommendations:**

- Define BC Craft Cider as an alcoholic cider fermented with 100% BC apples or pears, no concentrates or artificial additives, minimum 80% juice content (ie. no more than 20% water or other fruit juice additions).
- Create a new markup rate for commercial BC Craft Cider akin to the craft beer markup structure (with adjusted volumes for craft cider).
- Expand the BC Liquor Store program for offering unlisted local beer products to include craft cider.

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Rob Weys  
Managing Partner  
Cliffside Cider

Kathleen van der Ree  
Co-Founder  
Northyards Cider Co.

Jeff Narin  
Founder  
Windfall Cider

**For more information:**

Cailey Murphy, M.A.  
Principal  
NNW Communications  
cailey@nnwcommunications.ca

## **Appendix D**

### **Craft Cider Policy Change Requests - Implications**

#### **Industry Request: create a separate category for BC cider**

- Creating sub-categories for each BC winery manufacturer type (sake, mead, cider), within LDB's Winery Sales Agreement to tailor policy requirements, benefits, obligations, and or mark-up to specific industry would:
  - Raise further trade scrutiny;
  - Weakens the notion that significant benefits will be accompanied by significant obligations;
  - The income loss to the LDB could be significant based on the cider volumes. Further financial analysis would be required, as would Treasury Board approval;
  - "Slippery slope" – if sake and/or cider get specific, new benefits, the wine industry may start to lobby for the same benefits, which could lead to more significant trade or financial implications.

#### **Industry Request: create a new mark-up rate for commercial craft cider akin to the craft beer mark-up structure (with adjusted volumes for craft cider)**

- Changing the mark-up structure for craft cider *specifically* to a graduated mark-up (for example, similar to beer or craft distillers) would have the following implications:
  - Significant revenue loss to government based on lost mark-up, assuming this benefit was extended to both BC and import manufacturers (this would require further financial analysis);
    - BC's mark-up structure is aligned with other Canadian provinces as most have a mark-up on cider higher than the mark-up applied to beer products (in Ontario, mark-up on cider is 60.6% whereas mark-up on beer is volumetric so it is not directly comparable);
  - This would require LDB IT system changes;
  - Some BC wineries and distilleries would likely disapprove of this change; Breweries would likely also not be in favour due to the potential for loss market share;
  - If this benefit were only to be extended to BC manufacturers, further trade scrutiny is expected.

#### **Industry Request: expand the BC Liquor Store Program for offering unlisted beer products to include craft cider.**

- If LDB was to consider making 100% BC inputs the only criteria for mark-up exemption, this would likely:
  - Generate a significant criticism from current cidery/winery owners that had to make a substantial investment in land to receive the mark-up benefit;
  - A large number of current or new manufactures choosing to locate their store in more urban areas could cause significant challenges for local government

- (Vancouver municipality has already expressed concerns about wine on grocery store shelves);
- Would likely face criticism from health advocates in terms of increased accessibility of alcohol;
- LDB would have a hard time proving the origin of the product (LDB already struggles auditing this under the current policy).
- Would likely cause further scrutiny from our trading partners.

### **Related BC Cider Industry Requests and Implications**

- Government could consider maintaining the land-based winery criteria by exploring the expansion of BC VQA certification program (under the Ministry of Agriculture) to encompass other alcoholic beverages. Extending the land-based winery benefits to any manufacturer that uses 100% BC inputs (e.g. tree fruit, barley and other grains, or rice) would have the following implications:
  - Regulations that enable BC VQA certification are only applicable to grape wine; would require development of new regulations for a similar certification program for cider producers;
  - Not advisable to create a VQA-comparable program for sake, with only one current sake producer in BC;
  - Further increases trade risks;
  - BC beer industry will likely seek the same benefit for those using 100% BC hops only vs. 100% BC inputs (e.g. barley);
  - There are currently no resources or framework in place for auditing of 100% BC products except wine, which already proves to be difficult;
  - Could impact LDB distribution, if large-scale producers switched from direct delivery to LDB distribution;
  - Significant financial implications (further analysis required based on options);
  - This option would require Treasure Board approval. Extensive consultations would be required with industry, and regulation changes would also be required.
- LCRB could remove the requirement that on-site stores must be co-located with manufacturing facility. Under this option, some of the cideries could potentially qualify to become a land-based winery. However, this would pose the following implications:
  - Significant trade irritant, although Washington State, for example, permits this;
  - Current wineries that have invested heavily in land and their tasting room/onsite store may voice significant opposition;
  - A large number of current or new manufacturers choosing to locate their store in more urban areas could cause significant challenges for local government (Vancouver municipality has already expressed concerns about wine on grocery store shelves);
  - Could face criticism from health advocates in terms of increased accessibility of alcohol;

- Stand-alone off-site stores may not be a viable option as many wineries that have off-site licenses don't use them (person operating an on-site store can perform other functions at the winery when there are no tourists visiting the winery);
- Extensive consultation would be required;
- Requires regulatory change;
- Further consideration should be made if the manufacturing facility and the on-site store should be co-located. Manufacturers could potentially have their manufacturing site wherever they want regardless of where the store is located (but this would require further exploration. At this time, moving the manufacturing facility is less problematic than moving the on-site store as it is a lot easier to move an on-site store to a different location than it is to move a manufacturing facility from the land where crops are grown.

**MINISTRY OF ATTORNEY GENERAL  
JUSTICE SERVICES BRANCH  
BRIEFING NOTE**

**Advice to Attorney General**

This document contains information protected from disclosure by one or more of the following:

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Disclosure of information in this BN may constitute an offence under an enactment, result in the waiver of privilege, prevent government from protecting the information from disclosure or result in a breach of an undertaking to the court.

**PURPOSE:** For DECISION OF David Eby, QC  
Attorney General

**ISSUE:**  
s.13; s.12

**DECISION REQUIRED/ RECOMMENDATION:**

s.12; s.13

**SUMMARY:**

s.12; s.13

**BACKGROUND:**

s.12

- One of the CEO's priority recommendations is to extend the campaign period for snap elections by as few as four days, or as many as 10 days, as needed to

maintain general voting day on a Saturday. The number of days would vary depending on the day of the week the election is called.

- Elections BC advised Ministry staff that four days is the minimum extension needed for Elections BC to gain any practical advantage in mobilizing to conduct an unexpected election.
- The CEO's report said that legislators may wish to consider higher expenses limits for a longer campaign, but that the CEO would not make a recommendation on this policy question.
- At least one other jurisdiction has provided a longer campaign period for snap elections: Manitoba's *Elections Act* provides that to call an election, the Lieutenant Governor in Council must make an order that "sets as election day a Tuesday (i) that is 28 days after the date the writ is issued, in the case of a fixed date election, or (ii) that is at least 28 days but no more than 34 days after the writ is issued, in the case of any other election." Manitoba does not provide for increased expenses limits for snap elections, however.
- The *Election Act* campaign period is currently 28 days, regardless of whether the election is a fixed date election or a snap election.
- The current campaign period expenses limits are:

	<i>Election Act</i> amount	2019 estimated limits (adjusted for inflation)
Political parties	\$1.16 per registered voter	\$3,816,775
Candidates	\$58,000	\$59,217
Third party advertisers (per electoral district and overall)	\$3,000 and \$150,000	\$3,063 and \$153,147

## DISCUSSION:

s.12

- The CEO consulted with the Election Advisory Committee (EAC) in April 2018, prior to making his recommendations. The EAC meeting minutes reflect that an EAC member asked whether higher expenses limits for longer snap election campaigns would be included in the CEO's recommendation. Elections BC had not considered the issue at that point, but suggested that limits could possibly be pro-rated.
- Ministry staff have not consulted on this question with political parties or others familiar with managing election campaigns.
- Some campaign expenses for political parties and candidates are essentially "fixed" and unlikely to increase due to a longer campaign period. Examples might include



nomination deposits; some professional services like graphic design and videography for promotional materials, costs to audit disclosure reports, etc.; campaign signs; furniture and equipment; and social functions/thank you parties.

- Other expenses for political parties and candidates are variable and would increase, for example more campaign travel for candidates and party leaders; running advertising for a longer period of time; possibly an additional month of rent on a campaign office, depending on the timing of the election and length of the campaign; additional printed materials for distributing while canvassing; and more public opinion polling.
- Third party advertising sponsors' expenses limits apply to campaign period election advertising, which is a more limited category of expenses compared to parties and candidates. The value of election advertising is the price paid for "preparing and conducting election advertising."
- For third parties, the initial costs for production of the advertising materials may be fairly fixed; however, paying for dissemination of the advertising over a longer time frame is likely to increase their expenses.

s.13

- It is difficult to predict how a snap election might affect the ability of political parties, candidates and third parties to fundraise, and consequently difficult to predict how relevant increased expenses limits might be in practice.

**OPTIONS:**

s.12; s.13

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**Option 2**

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- Reducing the daily average by half would result in the following range of possible limits for a campaign period longer by four days and by 10 days (see Option 2A in the Appendix for more detailed results).

	32-day campaign	38-day campaign
Political parties	\$4,089,401	\$4,498,346
Candidates	\$63,447	\$69,791
Third party advertisers (per electoral district and overall)	\$3,282 and \$164,086	\$3,610 and \$180,494

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**Option 3:**

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**Option 4:**

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**OTHER MINISTRIES IMPACTED/CONSULTED:**

- No other ministries have been consulted on this issue.

**DATE:**



Richard J. M. Fyfe, QC  
Deputy Attorney General

March 11, 2019

**RECOMMENDED OPTION APPROVED**

s.13



David Eby, QC  
Attorney General

March 21, 2019

**Prepared by:**

Alayna van Leeuwen  
Senior Policy Analyst  
Justice Services Branch  
778 698-4224

**Approved by:**

Neil Reimer  
Director  
Justice Services Branch  
778 974-3695

**Approved by:**

Julie Williams  
Acting Assistant Deputy Minister  
Justice Services Branch  
778 974-3689

**Attachment:**

Examples of potential expenses limits resulting from applying options 1 – 4.

## APPENDIX

s.13

s.13 Reduced pro-rated (50% of daily average)

s.13 provide a reduced pro-rated amount (i.e. reduce the daily average by half). Daily increase equals \$68,157 per day for political parties; \$1,057 for candidates; and \$55 (electoral district) and \$2,735 (overall) for third party advertisers.

	<b>2019 limit – 28 day campaign</b>	<b>32 day campaign</b>	33 day campaign	34 day campaign	35 day campaign	36 day campaign	37 day campaign	<b>38 day campaign</b>
Political Party	\$3,816,775	<b>\$4,089,401</b>	\$4,157,558	\$4,225,715	\$4,293,876	\$4,362,028	\$4,430,185	<b>\$4,498,342</b>
Candidate	\$59,217	<b>\$63,447</b>	\$64,504	\$65,561	\$66,619	\$67,676	\$68,734	<b>\$69,791</b>
Third Party (ED)	\$3,063	<b>\$3,282</b>	\$3,336	\$3,391	\$3,446	\$3,501	\$3,555	<b>\$3,610</b>
Third Party (Overall)	\$153,147	<b>\$164,086</b>	\$166,821	\$169,555	\$172,290	\$175,025	\$177,760	<b>\$180,494</b>

s.13

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Withheld pursuant to/removed as

s.13



## BRIEFING NOTE

CLIFF # 559654

**Prepared for:** Hon. David Eby, Q.C., Attorney General and  
Minister responsible for ICBC, **for INFORMATION**

**Subject:** Status Update: ICBC's Material Damage (MD) Program Redesign.

### Background:

- In fall 2017, Cabinet approved or endorsed a suite of measures under the Rate Affordability Action Plan (RAAP) to address the long-term financial sustainability of ICBC.
- The suite of measures included elements of a redesign of ICBC's Material Damage (MD) programs to better manage escalating claims cost trends that are partially driven by increasingly technologically complex vehicles and ineffectual supplier management practices.
- The current elements of redesign will change policies/practices to be in line with insurance industry standards, strengthen governance and further address fraud, eliminate program inefficiencies, recognize supplier investments, and improve the collective performance and compliance of the MD industry.
- As proposed, the redesign encompasses internal ICBC policy and procedural changes and does not require regulatory or legislative amendment.
- The content below is intended to provide a status update on the MD program redesign.

### Discussion:

- In 2018, ICBC MD program costs were approximately \$1.5B and have been increasing approximately \$100M per year over the last 5 years. The average cost of repair continues to increase higher than the rate of inflation due to evolving technology in vehicles and associated costs of repair, which directly increases pressure to Basic and Optional insurance rates. This trend, in fact, is North America-wide and helps explain, in part, the financial stress on auto lines for all property & casualty insurers.
- The current programs are outdated and lack the controls necessary to curb escalating claims costs, therefore require significant reforms.

### Status of current MD policy changes made to date

#### *Glass Policy Changes:*

##### Moulding Allowance

- In June 2018, ICBC updated its glass material allowance policy to only pay glass suppliers a moulding allowance when the moulding was replaced.

##### National Auto Glass Specifications (NAGS) vs Original Equipment Manufacturer (OEM)

- In June 2018, ICBC also updated its glass policy so it would pay the lesser of the NAGs or OEM price. In recognition of complications experienced by industry, in



## ICBC BRIEFING NOTE

October 2018, ICBC paused its best price glass policy while working with industry to develop the proposed glass tiering model.

### NAGS Discount Increase

- In June 2018 ICBC also increased the discount it applied to all glass replacements from -11% off NAGS to -25%.
- ICBC is on target to achieve s.17 savings on the combined policy changes to date.
- The glass pricing benchmark used in the material damage industry (NAGS) is changing in September. Specific details and impacts of the national pricing changes are unknown at this time.

s.13; s.17

s.13; s.17

### *Alternative Transportation Services (ATS)*

- ICBC previously proposed changing the ATS policy to only compensate collision repair suppliers when a customer is provided a courtesy vehicle; not when customers are provided other forms of transportation (e.g. courtesy shuttle) or the customer does not require any alternate transportation.

s.13; s.17

### *Collision and Glass tiering programs*

- Through industry advisory committees (IACs) established in the fall 2018, ICBC has engaged the MD industry with the support of Deloitte Canada to redesign the current ICBC Collision and Glass supplier tiering models. The high-level design established through engagement with the IACs will be discussed more broadly with industry beginning spring 2019. Key features of the tiering and governance models include:

	Principles	Features	Outcomes
<b>Tiering Model</b>	<ul style="list-style-type: none"><li>▪ Performance driven</li><li>▪ Customer focused (safe, repair guarantees, low cost)</li><li>▪ Regional differentiation</li></ul>	<ul style="list-style-type: none"><li>▪ 3 distinct levels, with differentiated expectations/benefits</li><li>▪ Key performance indicators (KPIs) to manage tiering placement</li><li>▪ Explicit customer guarantees</li></ul>	<ul style="list-style-type: none"><li>▪ Streamlined claims handling, shop autonomy</li><li>▪ Improved customer experience</li><li>▪ Increased profitability for top tier shops</li><li>▪ Recognition of shops that adopt industry best practices (staff, technology)</li></ul>
<b>Governance</b>	<ul style="list-style-type: none"><li>▪ Stronger Oversight</li></ul>	<ul style="list-style-type: none"><li>▪ Progressive discipline</li></ul>	<ul style="list-style-type: none"><li>▪ More appropriate</li></ul>

## ICBC BRIEFING NOTE

	Principles	Features	Outcomes
<b>Model</b>	<ul style="list-style-type: none"><li>▪ More Engagement</li><li>▪ More Transparency</li></ul>	<ul style="list-style-type: none"><li>▪ Better data and technology to manage ICBC-shop interactions</li></ul>	<ul style="list-style-type: none"><li>presence in all shops</li><li>▪ Revamped backend reviews, with processes tailored to manage individual claim and shop risks</li><li>▪ Reduced incidences of fraud, effective consequences for poor performers</li></ul>

- The proposed changes are forecasted to achieve savings of approximately s.17 s.17 annually upon maturity (estimated at FY2022), subject to people, process and technology analysis and implementation planning.
- Critical to the success of the new models and achieving cost savings, is the ability for ICBC to adequately incent industry to aspire to top tier status. Through the IACs, industry indicated that financial benefit (i.e., higher rates) was the top motivating factor for suppliers. To achieve this, ICBC has attempted to strike a balance between providing financial gains to industry for those who earn it through process efficiency gains, varying levels of increased autonomy, and direct financial incentive.

### Next Steps

- ICBC will close out the IACs and work to prepare/coordinate broader province-wide discussions with MD industry targeting completion summer 2019.

#### ICBC Key Contact:

Chris Tupper  
Director, Government & External Affairs  
Phone: 604-982-1228  
Email: [chris.tupper@icbc.com](mailto:chris.tupper@icbc.com)

#### ICBC Business Area Contact:

Vito Albanese  
Sr. Director, Claims Strategy & Programs  
Phone: 604-982-4310  
Email: [vito.albanese@icbc.com](mailto:vito.albanese@icbc.com)

Date: 12 March 2019

**MINISTRY OF ATTORNEY GENERAL  
LIQUOR AND CANNABIS REGULATION BRANCH  
BRIEFING NOTE**

**PREPARED FOR:** For INFORMATION for Premier John Horgan

**DATE OF MEETING:** Thursday, March 14, 2019

**ATTENDEES:** Anthony Von Mandl, owner, Mark Anthony Group Inc  
Paul (last name not provided)

**ISSUE:**

- 1) Discussion of ways government can support future growth in the wine industry requested by Anthony Von Mandl.
- s.17

**BACKGROUND:**

- Anthony Von Mandl started in the wine industry in the 1970's as an importer. He bought Mission Hill Winery in 1981 and his company Mark Anthony Inc is now involved in several wineries (Appendix A).
- His wineries are categorized as commercial wineries by the Liquor Distribution Branch (as opposed to land-based wineries) because they produce both wine that is made with import grapes or juice and wine made with 100 per cent BC grapes.
- As such, his wineries remit mark-up on all their wine not made with 100 per cent BC grapes. They do not remit mark-up on their wine that is produced with 100 per cent BC grapes and are certified VQA.

**Future growth in the wine industry**

Mr Von Mandl indicated he wished to discuss the following topics:

- Growth of the 10,000 industry jobs
  - Further use of technology
  - Red tape reduction
  - Expanded agri-tourism opportunities
  - Building the BC wine market in Canada before foreign expansion
  - Support of the Government and your initiatives
- No detail on these subjects was provided.
  - The Liquor and Cannabis Regulation Branch is not aware of any requests or proposals related to these broad topics. Consequently, background is not available.

### State of the BC wine industry:

- In 2009 there were 185 licenced wineries in BC, compared to 372 today (includes all types of wineries – grape, mead, fruit, cider).
- In 2009, BC wineries sold just under 29M litres of wine; in 2018 that number was 42M litres – a 46 per cent increase.
- The BC Wine Institute reports;
  - the wine industry contributes \$2.8B annually to the economy
  - BC wineries welcome more than 1M visitors annually
  - BC wine is the top-selling wine in the province

### Government support for the wine industry:

Liquor Distribution Branch

s.17

### Ministry of Agriculture

- BC Ministry of Agriculture's primary mandate is the economic development of the industry, including the wine sector for both the grape growers and the wineries.
- To support economic development and industry competitiveness, there are a variety of programs and services that can be accessed by the wine industry to assist in improving business development, market development, innovation, and environment sustainability.
- Examples of some of these programs include: the Buy BC Partnership Program, BC Land Matching Program, BC Indigenous Agriculture Development Program, BC Agri-Business Planning Program, Canada-BC Agri-Innovation, and the BC Agrifood and Seafood Market Development.
- In 2018, the Ministry of Agriculture also provided research funding to the BC Wine Centre of Excellence.

### Requests of Government

Mark Anthony Group Requests

- The LDB and the LCRB have not received any recent requests from the Mark Anthony Group with the exception of dormant licences (see attached note).

#### Industry Requests

- The BC Wine Institute has recently shared a report they commissioned that proposes that a third-party regulatory reporting entity be established to report to various regulatory agencies on the sector's behalf.
- The proposal is being discussed by government, led by the Ministry of Agriculture.

**Prepared by:**

Vince Cournoyer  
A/Manager, Liquor Policy  
Liquor and Cannabis Regulation Branch  
778 974-2983

**Approved by:**

Mary Sue Maloughney  
Assistant Deputy Minister and General  
Manager  
Liquor and Cannabis Regulation Branch

s.17

**Attachments:**

Appendix A - Licences  
Appendix B - Briefing Note – Dormancy

## **Appendix A**

Winery licences that Mark Anthony Group Inc and/or Anthony Von Mandl are involved with:

- Mission Hill
- Road 13 Vineyards
- Checkmate Artisanal Winery
- Cedar Creek Estate Winery
- Martin's Lane Winery

**MINISTRY OF ATTORNEY GENERAL  
LIQUOR & CANNABIS REGULATION BRANCH  
BRIEFING NOTE**

**PURPOSE:** For INFORMATION for Premier John Horgan

**ISSUE:** Dormancy and off-site wine stores

**SUMMARY:**

- Dormancy is when a licensee (restaurant, pub, bar, private liquor store, wine store, winery, brewery, distillery and UBrew/UVin) ceases to operate.
- The Liquor Control and Licensing Act (the Act) and Regulation were amended in 2017 and prescribe the general manager to cancel a liquor licence if an establishment is dormant for two years.
- The rationale for the prescribed period is different for different classes of licences; however, it ultimately comes down to licences are meant to be operated and not 'stored' addressing concerns related to long periods of closure by licensees.
- Licensees impacted by the January 23, 2019 dormancy deadline were provided notification and opportunity to request the Liquor and Cannabis Regulation Branch (the Branch) grant extension to the dormancy period of their licence. The regulations provide dormancy extensions in specific circumstances, generally related to renovations, redevelopment, and disasters (i.e. fire or flood, etc.) beyond a licensee's control.

**BACKGROUND:**

- Wine Store licences originated as agents appointed by the Liquor Distribution Branch, under various models, in the 1980s.
- The Branch took over responsibility for administering these appointments in 2012, and they were converted to licences February 1, 2013, establishing the Wine Store category of licences. This was part of an effort to ensure that all retailers are subjected to the same regulatory and enforcement framework.
- Off-site winery store licences ("off-site stores") are a subcategory of Wine Store licence that are authorized to sell only products produced by an associated winery, owned by the same licensee.
- Section 61 of the Liquor Control and Licensing Regulation imposes a moratorium on new wine store licences.

**DISCUSSION:**

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s.14; s.17



s.14

Public interest

- There is, arguably, less public interest/safety concern surrounding long-dormant wine stores than other licence types; however, subjecting them to the same criteria as other licensees, and specifically other retailers, aligns with the broader policy objective that licences are issued to be operated, and that all retailers should be subject to the same requirements.
- Licensees have a responsibility to notify the branch when they cease operations and also to remain informed of liquor law and policy.
- A number of policy directives were issued beginning in 2016 informing industry of the upcoming changes.
- To date, there has not been a compelling public interest reason to why dormant licences that do not meet the prescribed extension criteria should remain active.

Next steps

s.13; s.14; s.17

**Prepared by:**

Josh Huska  
A/Director  
Liquor and Cannabis Regulation Branch

s.17

**Approved by:**

Dugald Smith  
Executive Director  
Liquor and Cannabis Regulation Branch

s.17

**Approved March 11, 2019 by:**

Mary Sue Maloughney  
Assistant Deputy Minister and General  
Manager  
Liquor and Cannabis Regulation Branch

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**MINISTRY OF ATTORNEY GENERAL AND  
MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL  
LIQUOR & CANNABIS REGULATION BRANCH  
BRIEFING NOTE**

**PURPOSE:** For DECISION of David Eby, QC Attorney General, and Mike Farnworth, Minister of Public Safety and Solicitor General

**ISSUE:** Security screening requirements for cannabis marketing licence applicants and their staff.

**RECOMMENDED DECISION:**

Marketing licence applicants and associates to undergo basic criminal record search (CPIC) and investigate further if there is a relevant conviction. Do not security screen sales staff and their supervisors.

**SUMMARY:**

- The Liquor and Cannabis Regulation Branch (LCRB) intends to open the application process for cannabis marketing licences later this spring and direction is required regarding the level of security screening for applicants and their staff.

**BACKGROUND:**

- The *Cannabis Control and Licensing Act* (the CCLA) prohibits the marketing and promotion of cannabis without a licence unless it is directed to government only.
- The marketing licence does not permit the licensee to buy or sell cannabis. The Liquor Distribution Branch (LDB) purchases cannabis from federally licensed producers and then sells directly to non-medical cannabis retail licensees. All LDB financial transactions will continue to be with producers and retailers and not with marketing licensees.
- It is expected that most marketing licence applicants will be federally licensed producers selling in the BC market. However, it is likely some 3<sup>rd</sup> party marketing companies contracted to represent licensed producers will also apply.
- This licence class is analogous to the agent licence in the *Liquor Control and Licensing Act*. Agents represent liquor manufactured outside the province but imported into BC through the LDB. Agents cannot sell product to liquor licensees or the public but may advertise and promote their products to them. The agent licensing process is very straightforward with typically no security screening beyond the applicant consenting to a criminal record search and submitting a completed personal history form. A unique feature of licensing agents is that the person must have products registered (or about to be registered) with the LDB. Agent sales staff and supervisors are not security screened.
- The federal *Cannabis Act* permits licensed producers to promote and market their products in the following ways:
  - Directly to persons of age if the producer knows their name;
  - In places where minors are prohibited; or

- By telecommunications, e.g. the Internet, if the producer takes reasonable steps to ensure minors do not access the information.
- The CCLA prohibits a cannabis retailer from accepting or requesting inducements and prohibits a person from offering such inducements to promote a class or brand of cannabis. The *Cannabis Act* also contains prohibitions on licensed producers offering inducements.
- BC's licensing of retailers and marketers ensures both can be held accountable through administrative penalties for inducement contraventions.

**DISCUSSION:**

s.14; s.16

s.14; s.16

s.13; s.16

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Withheld pursuant to/removed as

s.13; s.16

s.13

**OTHER MINISTRIES IMPACTED/CONSULTED:**

Ministry of Public Safety and Solicitor General



Richard J. M. Fyfe, QC  
Deputy Attorney General

**DATE:**

March 19, 2019

**DATE:**

Mark Sieben  
Deputy Solicitor General

RECOMMENDED OPTIONS APPROVED  
/NOT APPROVED

**DATE:**

David Eby, QC  
Attorney General

RECOMMENDED OPTIONS APPROVED  
/NOT APPROVED

**DATE:**

Mike Farnworth  
Minister of Public Safety  
and Solicitor General

**Prepared by:**

Holli Ward  
A/Director, Policy and Legislation  
Liquor and Cannabis Regulation Branch  
778-974-2981

**Approved on March 15, 2019 (via e-mail) by:**

Mary Sue Maloughney  
Assistant Deputy Minister and General  
Manager  
Liquor and Cannabis Regulation Branch

s.17

**Approved by:**

Dugald Smith  
Deputy General Manager  
Liquor and Cannabis Regulation Branch

s.17



**Prepared for:** Hon. David Eby, Q.C., Attorney General and minister responsible for ICBC, for DECISION

**Subject:** Vicarious liability for leased vehicles used for transportation network services (TNSs), taxis, small buses and limousines

**Issue:** Current vicarious liability limitations for leased vehicles under the Insurance (Vehicle) Act and Regulation are likely to create a major impediment to operation for TNS drivers who lease their vehicles.

**Background:**

- In 2007, in response to court cases that demonstrated that lease companies (i.e., lessors) face unlimited liability, both the *Motor Vehicle Act* (s. 86) and *Insurance (Vehicle) Act* (s. 82.1) were amended to limit a lessor's liability to \$1M and to ensure the full liability would rest with the lessee. This vicarious liability cap applies to the owners (i.e., lessors) of all leased vehicles and short-term rental vehicles, except for taxis, limousines (limos) and buses, which are specifically excluded under the *Insurance (Vehicle) Regulation* (IVR) (s. 181).
- For excluded vehicle types, lessors continue to face unlimited liability. When a leased vehicle is used as a taxi, bus or limousine, the leasing company, as owner of the leased vehicle, can be held fully liable for all losses, including personal injuries, and damage arising from an accident involving the leased vehicle.
- Transportation network services (TNS's) that are about to launch in BC are a form of commercial passenger vehicle within the legal definition of taxi; therefore, unless there are amendments to the IVR, lessors of such vehicles (i.e., all major auto companies) will be subject to unlimited liability when the vehicle is used as a TNS.
- The Canadian Finance and Leasing Association (CFLA) and the Global Automakers of Canada have written to the Ministry of Attorney General requesting that BC amend the IVR so that the owners (lessors) of leased vehicles and rental companies would not be faced with unlimited liability for taxis and limos.
- These requests have been prompted by the anticipated launch of TNS's in BC. It is anticipated that drivers of TNS vehicles will be operating newer, more expensive vehicles, many of which are likely to be leased. This is in contrast to taxis, which are rarely leased due, in part, to these vehicles accruing very high kilometers that make leasing impractical.
- The CFLA believes that the auto finance sector faces unsustainable risks if lessors have unlimited liability for leased vehicles that provide TNS's. While taxis and limos are registered and licensed as such by ICBC, lessors are unlikely to know if their leased vehicle is being operated for TNS's, and they



cannot effectively monitor or prevent such TNS uses that expose them to unlimited liability. Absent any changes to BC's vicarious liability laws, lessors are likely to seek to prohibit the use of leased vehicles for TNS operations as they do taxis today.

### Discussion:

- The exclusion of taxis, buses and limos from the \$1M vicarious liability cap under the IVR is broadly interpreted to extend to all vehicles that carry passengers for a commercial purpose, including those carrying passengers in relation to business purposes (e.g., free hotel shuttle) or for religious activities.
- The unlimited liability has the effect of requiring lessors of such vehicles to take a higher duty of care. It also serves to provide another source of compensation for vehicle occupants in vehicles where there are likely to be multiple passengers and where the passengers are unrelated to a driver or vehicle for which the passengers have no relationship or control.
- ICBC's Basic insurance for vehicles that carry passengers for a commercial purpose provides \$1M in liability protection. TNS vehicles will also have this same level of protection. If a \$1M limit of lessor's vicarious liability were to apply as it does for other leased vehicles, lessors would be fully protected by ICBC's Basic insurance carried by the lessee.
- The only other jurisdictions in Canada that have unlimited liability are Nova Scotia and Ontario. Alberta has a liability cap that also excludes passenger vehicles-for-hire, but only in the case of an "arm's length" lease (i.e., where the lessor does not control the selection, use, care, or operation of the vehicle used in the passenger services being provided). This serves to prevent circumventing liability where the lessor has a role in the operation of vehicles for hire.
- Larger capacity vehicles (i.e. buses) present a different financial risk as the available liability coverage is split among a larger pool of victims. For these vehicles, potential accident victims should have recourse to as many sources as possible. Further, it can be expected that lessors of larger capacity vehicles have an additional responsibility to ensure the type of vehicle leased to an operator is appropriate for that use, that operators of their vehicles meet high standards, and that lessees are adequately insured for the risk they represent.
- Changes to limit the liability of lessors could result in a reduction in crash victims' ability to recover damages. ICBC's Basic Underinsured Motorist Protection (UMP) coverage could also have greater exposure as nearly every British Columbian has access to \$1M (per-person) of UMP through holding a valid BC Driver's Licence or Owner's Certificate (or living in the household of someone who holds either). It could also expose the lessee or negligent driver to financial liability as the lessor would not be a source of compensation. These risks can be mitigated by purchasing additional liability insurance for the vehicle from ICBC or a private insurer.

## ICBC DECISION NOTE

- Changes to vicarious liability in the IVR are not expected to impact taxis or limos to the same extent as TNS vehicles. Leases are usually based on a vehicle being returned to the lessor with average mileage and as close to the original condition as possible. Taxis and limos are normally subject to modifications (e.g., painting of corporate colours; installation of fare meters, cameras and taxi signs; upholstery modifications; and, frame modifications) and accrue high kilometers incongruent with lease limitations. Today, nearly all taxis and the majority limos are owned outright versus leased.

### Options:

**Option One:** Revise the exclusion from the \$1M liability cap (currently under section 181 Insurance Vehicle Regulation) to extend the cap to all commercial passenger vehicles with a seating capacity of 7 or less<sup>1</sup>, where the lessor and lessee are at “arm’s length.”  
**[Recommended]**

#### Pros

- Prevents passenger-for-hire vehicle owners from circumventing their liability exposure using corporate structures by becoming a lessor.
- Provides an increased inventory of vehicles available for TNS’s in BC.
- Provides an additional finance option for taxis, limos, and other commercial passenger vehicles.
- Level playing field for taxis, limos, and vehicles used for TNS’s.
- Removes unlimited liability exposure to lessors that do not control the selection, use, care, or operation of the vehicle (i.e., arm’s length lessors).
- Maintains protections for larger capacity vehicles and limits ICBC’s financial exposure to UMP.
- BC regulation can be modeled after Alberta experience.

#### Cons

- May eliminate a source of compensation for victims in catastrophic crashes.
- Potential, albeit limited, increased exposure to ICBC’s UMP coverage.

**Option Two:** s.13

s.13

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<sup>1</sup>Seven is the usual maximum seating capacity for typical large private passenger vehicles (e.g. mini-vans and SUVs) and would serve to adequately limit ICBC’s financial exposure. Seven seats would also align with a “six passenger” maximum used by some TNS. This number can be reviewed once more details of the TNS model are known.

## ICBC DECISION NOTE

s.13

**Option Three:** s.13

s.13

### Next Steps

- Include drafting instructions with Modernizing Passenger-Directed Transportation project regulatory package.

#### ICBC Key Contact:

Rob Termuende  
Sr. Government Relations Advisor

#### ICBC Business Area Contact:

Myrthee Blanco  
Sr. Director, Product and Customer Strategy

**Date:** March 14, 2019



Richard J. M. Fyfe, QC  
Deputy Attorney General

**DATE:**

March 20, 2019

**OPTION 1 APPROVED**



David Eby, QC  
Attorney General

**DATE:**

March 21, 2019

**MINISTRY OF ATTORNEY GENERAL  
LIQUOR DISTRIBUTION BRANCH  
BRIEFING NOTE**

**PURPOSE:** For INFORMATION for David Eby, QC  
Attorney General

**ISSUE:** Update on the Trade in Alcoholic Beverages Working Group (TABWG)

**BACKGROUND:**

- In July 2017, the federal-provincial-territorial Alcoholic Beverages Working Group (ABWG) was established under the Canadian Free Trade Agreement.
  - The group's mandate was to develop recommendations for governments to consider that would enhance trade in alcoholic beverages, while being mindful of social responsibility and international trade obligations.
- The ABWG developed a report that was submitted to the Committee on Internal Trade (CIT)<sup>1</sup> on July 5, 2018.
  - See Appendix A s.16  
s.16 This info was collected in November 2018.
- At the November 2018 CIT meeting, Ministers directed federal, provincial and territorial trade officials to draft an action plan on trade in alcoholic beverages, detailing proposed actions, both collectively and in each jurisdiction, as well as specified timelines.
  - This action plan is to be provided to the CIT at its next meeting, scheduled for late May.
- At the First Ministers Meeting in December 2018, Premiers also tasked responsible ministers with the drafting of an action plan.<sup>2</sup>
- As a result, in January 2019, a new federal-provincial-territorial working group (the TABWG) was established to develop the action plan, with representation from trade policy, finance and alcohol policy.
  - BC is represented on this working group by officials from the Liquor Distribution Branch, the Trade Policy and Negotiations Branch, and the Ministry of Agriculture.
- Based on the ABWG report, the TABWG is developing an action plan for the CIT, which will include collective, multilateral and jurisdiction-specific action items, along with timelines for implementation, as follows:
  - Collective action to:
    - Create a national website to improve transparency and accessibility of information related to each party's alcoholic beverage retail and distribution system;

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<sup>1</sup> The Committee on Internal Trade is a federal committee made up of provincial and territorial trade and economic development ministers. BC is represented by the Honourable Bruce Ralston, Minister of Jobs, Trade and Technology.

<sup>2</sup> See the communiqué that came out of the First Ministers Meeting [here](#).

- Multilateral action to:
  - Assess whether there are any feasible models for implementing direct-to-consumer (DTC) sales in a manner that meets specific criteria identified in the ABWG report;

s.13; s.16

- Actions by individual parties to:
  - Increase or remove personal use exemption limits;
    - The LDB has started the process to amend the Liquor Possession Regulation.
  - Develop and enhance e-commerce platforms for the sale of alcoholic beverages;
  - Refine processes associated with listing practices to increase transparency and accessibility of information;

s.13; s.16; s.17

**NEXT STEPS:**

- The TABWG will continue to work on the draft action plan, to be completed for the next CIT meeting in May 2019.

**OTHER MINISTRIES IMPACTED/CONSULTED:**

- Ministry of Agriculture
- Ministry of Jobs, Trade and Tourism

**Prepared by:**

Melissa Tang  
Senior Policy Analyst  
BC Liquor Distribution Branch  
s.17

**Approved by:**

Blain Lawson  
General Manager and CEO  
BC Liquor Distribution Branch  
604 252-7412

**APPENDIX:**

Appendix A:

s.16

(as of November 2018)

## Appendix A

s.16

(as of November 2018)

### RECOMMENDATIONS OF THE ALCOHOLIC BEVERAGES WORKING GROUP

Party: British Columbia

<b>Recommendations</b>	<b><i>Does your government support this recommendation?</i></b>	<b><i>How does your government intend to respond to this recommendation? (if supported)(please include time lines)</i></b>	<b><i>If your government does not support a recommendation: an explanation on the reason</i></b>
1. Developing and Enhancing E-Commerce Platforms			
2. Improving Transparency and Accessibility of Information			
3. Improving Listing Practices			

s.13; s.16

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Withheld pursuant to/removed as

s.13; s.16



s.13; s.16

4. Improving Existing, and  
Considering New Sales  
Channels

5. Increasing or Removing Personal Use Exemption Limits
6. Increasing Transparency in Pricing

s.13; s.16

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Withheld pursuant to/removed as

s.16; s.13