



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licensee: Bear Creek Liquor Store Ltd.
dba Bear Creek Liquor Store
Unit 103 – 13588 88th Avenue
Surrey, BC V3W 3K8

Case: EH14-004

For the Licensee: Andrew Gay

For the Branch: Peter Mior

General Manager's Delegate: Nerys Poole

Date of Hearing: May 13 and 14, 2014

Date of Decision: July 2, 2014

**Liquor Control and
Licensing Branch**

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7066

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC
<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

Bear Creek Liquor Store Ltd. (the "licensee") owns and operates the Bear Creek Liquor Store at Unit 103, 13588 88th Avenue in Surrey, BC (the "liquor store"). The licensee holds Licensee Retail Store licence number 192873 (the "licence"). According to the terms of its licence, the licensee may sell liquor from 9 a.m. to 11 p.m., Monday through Sunday.

The licence is, as are all liquor licenses issued in the Province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" (the "Guide").

Mr. Andrew Gay appeared as the licensee's legal counsel at the hearing. The owner of the liquor store appeared as the licensee's representative at the hearing (the "Owner").

The licensee is alleged to have contravened the *Liquor Control and Licensing Act* (the "Act") on December 14, 2013, by selling liquor to a minor who was acting as an agent of the branch under the Minors as Agents Program ("MAP"). The licensee admits that its employee sold liquor to the minor agent. However, the licensee disputes the finding of a contravention, on the basis that its policies, practices, procedures and training establish a defence of due diligence.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action dated January 16, 2014 (the "NOEA") (Exhibit 1, tab 1).

The Branch alleges that on December 14, 2013, the licensee contravened section 33(1)(a) of the Act, by selling, giving or otherwise supplying liquor to a minor. The range of penalties for a first contravention of this type is a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty (item 2, Schedule 4, *Liquor Control and Licensing Regulation*). The branch proposes a monetary penalty of \$7,500.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*****Supplying Liquor to Minors**

33(1) A person must not

- (a) sell, give or otherwise supply liquor to a minor.

ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

- Exhibit 1: Branch's book of documents
- Exhibit 2: Unredacted copies of minor identification (to be sealed at conclusion of hearing)
- Exhibit 3: LCLB Policy Directive no.07-02
- Exhibit 4: Licensee's Book of Documents
- Exhibit 5: Statement of licensee's sales clerk (the "First Clerk")

WITNESSES

The Branch called one witness:

- The Liquor Inspector who wrote the NOEA and was present at the liquor store on the evening of December 14, 2013.

The licensee called two witnesses:

- The Owner of the liquor store.
- An employee who was working in the liquor store on the evening of December 14, 2013 (the "Second Clerk").

The Owner was not present in the liquor store on the evening of December 14, 2013. The Owner gave evidence about the management of the store and the policies and procedures of the store, as well as the implementation of those policies and procedures. The First Clerk who sold the liquor to the minor agent did not testify at the hearing. The licensee submitted a written statement from him (Exhibit 5). The Second Clerk, who testified at the hearing, was present in the store when the sale to the minor occurred.

ADMISSIBILITY OF DOCUMENTS

During the hearing, I made rulings on the admissibility of two documents. Under *Enforcement Hearing Rules 12 and 14*, I have the authority to make decisions on admissibility of evidence and the discretion to admit and consider evidence whether or not the evidence would be admissible in a court of law.

The Branch objected to the inclusion of tab 15 of Exhibit 4. The Branch objected because the Branch did not receive this document until the date of the hearing, long after the deadline for disclosure of documents. The document is a one page reminder provided to the licensee's employees with their pay cheques. The reminder deals with the importance of checking for ID and asking for two pieces of identification. The Branch conceded that, because of the brevity of the document and its contents, which were a repetition of the ID policies of the licensee, there was no prejudice to the Branch if admitted. I admitted this document into evidence.

The Branch's second objection was to the statement of the First Clerk, dated May 5, 2014 (Exhibit 5). The Branch objected to the statement because the Branch received this well after the deadline for production of documents and because the Branch had no opportunity to cross-examine the First Clerk on the truth of the contents. The licensee's lawyer stated that he had drafted the document for the First Clerk's signature. The licensee's lawyer also stated that the licensee was unable to persuade the First Clerk to attend the hearing and thus he chose to obtain the written statement instead. The Branch pointed out that the Branch registrar has the authority to issue summons to require a witness to attend. I agreed to admit the document, but recognized the prejudice to the Branch in the delay in producing this document. I also noted that I

would give less weight to this document because the First Clerk was not available for the Branch to cross-examine on the statements made in the document.

FACTS – DECEMBER 14, 2013 INCIDENT

The following facts are undisputed.

On December 14, 2013, two liquor inspectors attended the liquor store with a minor agent employed by the Branch under the MAP. The purpose of attending the liquor store with the minor agent was to test compliance with the Act's prohibition against selling liquor to minors. The Branch implemented the MAP in 2011, after the Act was amended to allow the Branch to employ minors as agents for this purpose.

At the hearing, the liquor inspector noted she had made an error in the NOEA when she indicated the minor agent's age as 17. According to Exhibit 2 and the testimony of the liquor inspector, the minor agent was actually 16 years old on December 14, 2013.

The minor agent entered the store at approximately 6:14 p.m., with the two liquor inspectors not far behind him. The minor agent went to the cooler where beer and other products were stored. He picked up a four pack of bottled ice coolers. He took the product to the sales clerk at the counter. The sales clerk scanned the product and the minor agent paid for it and he then exited the store with the product at approximately 6:16 p.m. The two adult liquor inspectors observed the minor agent from a position in the liquor store where they were able to see the transaction at the counter but could not hear the conversation.

The minor agent returned to the vehicle where he gave the coolers to one of the liquor inspectors, who tagged the cooler product and secured it in the trunk of the vehicle (Exhibit 1, tab 7). The minor agent then filled out an observation form noting the purchase (Exhibit 1, tab 4) and then made a statement about what occurred in the liquor store (Exhibit 1, tab 5).

At approximately 6:33 p.m., the two liquor inspectors re-entered the liquor store and talked to the First Clerk. They explained to him what had occurred and issued a contravention notice for a violation of section 33(1)(a) of the Act (Exhibit 1, tab 8). They asked for and received a copy of the receipt for the sale of the coolers and advised the First Clerk to retain any video surveillance of the sale.

On December 17, 2013, the liquor inspector spoke with the Owner of the liquor store about the incident.

The photos of the video surveillance (Exhibit 4, tab 6) show two clerks behind the counter at the time of the sale to the minor agent. At the time the minor agent entered the store, the Second Clerk was taking a short break, sitting in a corner, while ready to respond if a customer entered. A customer entered so the Second Clerk went to the second cash register and responded to this customer while the First Clerk was completing the transaction with the minor agent.

LICENSEE'S POLICIES, PROCEDURES AND TRAINING

The licensee's owner gave evidence about the management of the liquor store, its policies and procedures, and the training given to employees. The Second Clerk testified about the implementation of the policies and how employees are trained and reminded about the policies.

Management of Liquor Store

The liquor store is a family-owned business. The Owner stated that his family owns the one liquor store and has owned it since July 2012. He manages the store on behalf of the family. He is generally at the liquor store between 40 and 60 hours a week. The Owner is responsible for the hiring, training and supervision of employees, and drafts the store policies.

The liquor store has two full-time employees, one of whom is an assistant manager, and four part-time employees. The First Clerk was a part-time employee. The part-time employees work about three seven-hour shifts a week.

Policy Manual

The Owner explained the history of the Policy Manual of the liquor store (Exhibit 4, tab 1). He personally drafted this manual at the time the liquor store opened. He did his own research of liquor policies, both in BC and in other jurisdictions, to determine what would work in his liquor store.

The Policy Manual has a section on minors which includes the following (bold, underlining and capitals in original):

1.1 Prohibitions that apply to Minors

It is an offence for a minor:

- to purchase or consume liquor or cigarettes in the liquor store
- to enter or remain in a liquor store
- to have liquor in their possession; or
- to provide false or altered identification as a means to gain access to liquor or cigarettes.

1.2 Prohibition on Serving Minors

Staff are prohibited from selling, giving or supplying liquor or cigarettes to minors. It is an offence to sell or provide liquor or cigarettes to anyone **under 19 years of age**. Management and staff of the liquor store are responsible to ensure liquor is not sold or provided to minors. Staff may be **fined \$575.00** for selling liquor to a minor.

**SELLING LIQUOR TO ANYONE UNDER 19 YEARS OF AGE WILL
RESULT IN IMMEDIATE TERMINATION OF YOUR EMPLOYMENT**

1.3 Minors in possession of liquor

Staff must not allow a minor to have liquor in his or her possession in the liquor store.

1.4 Identification of minors

Licensee staff are required to ask for proof of age whenever a person who appears to be **under 30 years of age** attempts to buy liquor or cigarettes or to enter the Liquor Store unaccompanied by a parent, guardian or spouse who is an adult.

Staff must not sell liquor or cigarettes to a minor or permit a minor to enter, or remain in, the liquor store. Staff must ask for **two pieces of identification** when verifying a patron's age. The pieces of identification must include one of the following:

- a passport
- a driver's licence that displays a photograph and the date of birth of the holder, or
- an identification card, issued by a government agency, that displays a photograph and the date of birth of the holder

And **one** other piece of identification that displays at least

- an imprint of the person's name and their signature, or
- an imprint of the person's name and their picture

(Please refer to the ID Checking Guide or ask Management for assistance)

PENALTY FOR NOT ASKING FOR TWO PIECES OF ID FROM ANYONE WHO APPEARS TO BE UNDER THE AGE OF 30 YEARS OLD:
FIRST OFFENCE: MINIMUM ONE WEEK SUSPENSION WITHOUT PAY
SECOND OFFENCE: IMMEDIATE TERMINATION OF YOUR EMPLOYMENT

1.5 Verifying the authenticity of identification

Staff may do one or more of the following to verify that identification is authentic:

- have the person provide a sample signature and compare the signature to the signature on the identification.

- ask for additional pieces of identification. If the additional identification still leaves some uncertainty, staff should ask the patron to leave.
- ask the person what their zodiac sign is
- ask the person for their middle name and how to spell that name, and/or
- ask the person for information that is on the identification such as address, postal code, etc.

Identification should be carefully examined under good lighting and should be used to ensure the:

- a) photograph is a true likeness and has not been substituted;
- b) the plastic laminate has not been tampered with; and
- c) the lettering of the name, date of birth and other data have not been altered

Staff are encouraged to retain identification that is clearly false. Inspectors will collect false identification from management and forward to compliance and enforcement headquarters for return to the issuing agency, if possible.

Staff shall telephone police whenever a minor attempts to purchase liquor, is found consuming liquor or is found in the licensed premises without an adult.

1.6 Permitting minors in the store

Minors are only permitted in the liquor store when they are accompanied by a parent or guardian who is shopping. Minors, including the minor children of management or staff, may not be employed or appear to be employed in the liquor store, including any area within or about the premises where product is stored or sold and any empty container return areas.

After sections on dealing with intoxicated persons, weapons, liquor consumption, illicit or private liquor, shoplifting/theft, robbery, and difficult or irate customers, the Policy Manual concludes with the following:

9.1 Serving it Right

The Responsible Beverage Service Program is a correspondence course that educates staff about their legal responsibilities when serving liquor. It provides effective techniques to prevent problems related to over-service, service to minors and service to intoxicated patrons.

9.2 Staff must complete training program

Serving it Right must be completed by all staff. There is no grace period for completion of the training program.

If anything in this Policy Manual is unclear or if you have any questions regarding this Policy Manual please contact a Manager and they will assist you.

Use of the Policy Manual with Employees

The Owner testified that he reviews the Policy Manual with new staff when they are hired. He sits down with them and spends about 45 minutes to an hour going through the manual and asking the employee to initial after each section. The employee then signs at the end of the manual as well as the Owner.

The Owner said he also reviews this manual with staff, probably on a quarterly basis, to ensure they continue to understand the importance of the policies.

Training, hiring and monitoring of staff

The Owner is responsible for hiring and training employees. The Owner stated that he tries to hire more mature persons as he generally finds them to be more responsible, more trustworthy, and there is less turnover in the staff.

The Owner described the training he provided to the First Clerk. The training took place over about four shifts. He reviewed the Policy Manual with the First Clerk and explained everything required of him. He worked shifts with him, having the First Clerk shadow him and then shadowing the clerk. He emphasized what was required. He witnessed the First Clerk reading the Policy Manual and signing it. The First Clerk

initialled and signed the policy manual on July 16, 2012, at the time of his hiring (Exhibit 4, tab 1).

The First Clerk had an opportunity to ask questions and said he understood it all. When the First Clerk was hired, he had his Serving It Right certificate. (Exhibit 4, tab 2)

When the Owner was with the First Clerk in the store, he watched him and gave him tips on how to check for identification, how to estimate a person's age, how to prevent fake identification and what signs to watch for. He reminded the First Clerk that, if in doubt at any time, he could refuse the sale. He spent time with the First Clerk at the till and watched him interacting with customers. After the training, the Owner had no concerns about the First Clerk's ability to deal with identification issues and to do what was required.

When the store first opened in July 2012, the Owner said he was there from about 8:30 in the morning until about 11:30 at night to ensure all procedures were being followed properly.

Staff are encouraged to review the Policy Manual on a regular basis after initial training. If they review the manual on their own time, without the Owner present, this is not recorded. If they review the manual with the Owner or the assistant manager present, this review takes about 45 minutes and is recorded on a chart. The First Clerk reviewed the Policy Manual with the Owner twice and with the assistant manager once, on May 8, August 16, and November 16 of 2013 (Exhibit 4, tab 3).

Signs, Notices, and Reminders to Staff

The Owner described the pop-up question on the computer screen when a sale is initiated. The pop-up alert asks "? Did you check for two pieces of ID?" (Exhibit 4, tab 12). The clerk must respond yes before a sale can proceed. If no, the sale cannot proceed. The Owner explained that the clerks must always respond yes to allow the sale to proceed and will put in yes when customers are clearly over 30 years of age. He stated the pop-up question is a reminder to the staff to ask for ID at the point of sale.

The Owner keeps an excerpt from Serving It Right inside the liquor store's incident log book, which is located right beside the cash register. This excerpt addresses how to deal with underage drinkers and fraudulent ID, and provides tips to retail liquor store employees to help identify when minors might be trying to purchase liquor (Exhibit 4, tab 4).

The licensee submitted a number of photos taken in the liquor store (Exhibit 4, tab 6). These photos show the notices displayed around the store about the ID requirements. At the second entry door, there is a notice stating that two pieces of ID are required, and what is acceptable. The same notice is located on a cooler in the store. The counter top where the transaction is made contains this same notice about ID. The ATM machine in the store has the same notice located above it. These are all notices issued by the Branch, and were in place at the time of the incident. Another photo shows a notice about the \$575 fine that may be imposed on staff if liquor is sold to a minor. This is located right beside the cash register.

Another photo shows the handscanner used by employees for clocking in and out on their shifts. The employee must place his/her hand on the machine to record their time in order to be paid. There is a sign at the bottom of the machine, made by the Owner, that states: "You must ID everyone who appears to be under 30 years of age and ask for 2 pieces of ID." The Owner stated that this sign has been there since the liquor store opened.

When staff receive their pay cheques twice a month, they also receive the following notice in the envelopes (Exhibit 4, tab 15):

REMINDER:

1. Staff is required to ask for proof of age whenever a person who appears to be under 30 years of age attempts to buy liquor or cigarettes or to enter the Liquor Store unaccompanied by a parent, guardian or spouse who is an adult. Staff must not sell liquor or cigarettes to a **minor (anyone under 19 years of age)** or permit a minor to enter, or remain in, the liquor store. Staff must ask for **two pieces of identification** when verifying a patron's age.

2. Staff are prohibited from providing or selling liquor to anyone who appears to be intoxicated by liquor or a drug.
3. Please review your Policy Manual/Employee Handbook to ensure compliance with Store Policy. If anything in the Policy Manual is unclear or if you have any questions regarding the Policy Manual please contact a Manager and they will assist you. (bold in original)

Implementation of Policies

Aside from the initial hiring process and the regular review of the Policy Manual by staff, the Owner testified that he often reminds staff about the ID policy. He monitors the staff through a video screen in his back office and remotely, from his laptop computer. When he is in his back office, he is able to watch the screen from 16 cameras in the store. He watches the sales counter and till area, in order to check that staff are following the ID policy. If he observes a staff member selling to a customer who he thinks is under 30 and he sees that the staff member has not requested ID, he will approach the counter, stop the sale and ask for ID himself. His staff are aware that he watches them on the video system, as well as remotely through his laptop or his cell phone. He watches the cameras for a minimum of one hour when he is in the store and will watch them when he has free time outside the store.

The Owner said he also has audio communication with the staff. The liquor store has an intercom system that allows the Owner to listen to any conversational exchange between a customer and the staff. If he hears something that concerns him, he will go out and speak directly to the staff member.

The Owner holds regular meetings with his staff, usually once a month. Because the store is small and has only a small number of staff working at any one time, he will have individual meetings with staff members. He uses these meetings with individual staff to bring to their attention any issues he may be concerned about. These meetings provide an opportunity for his staff to share any concerns they may have about other staff members, something they may be unwilling to do in a group setting.

Topics discussed at these meetings include: reminders about checking IDs, any issues that may have arisen with customers, any improvements that might be needed, etc. The Owner said he does not keep written records of these meetings, although he will use notes himself as reminders as to what he wishes to discuss.

The Owner keeps an incident log book right beside the cash register (some examples at Exhibit 4, tabs 8 and 11, including the December 14, 2013 incident). Any time there is a major issue, staff are required to fill out an incident report. The First Clerk filled out the incident report for December 14, 2013. Several incident reports deal with refusal of service because no ID was presented.

An ID checking guide (Exhibit 4, tab 5) is kept in the store with the incident log book. The Owner stated that these guides are intended as aids to the sale staff to help them identify international ID and different types of BC ID. These guides are used in training and kept with the log book for easy reference.

In addition to the Owner's regular monitoring of staff through the video and audio equipment and by his presence in the store, the Owner has initiated a mystery shopper program to check that staff are asking for ID of anyone who appears to be under 30 years of age. The Owner hires people over the age of 19 who appear to be under the age of 30 to check to ensure staff are following the store ID policy. The licensee submitted several mystery shop reports (Exhibit 4, tab 14). One of these reports dealt with an incident on April 29, 2013, involving the First Clerk, who failed to ask the mystery shopper customer for ID.

As a result of this incident, and according to the store policy, the First Clerk was suspended for one week and told any future incidents would result in termination. The First Clerk provided a written statement, dated May 5, 2014 (Exhibit 5), describing this incident and his failure to request ID. He noted that the Owner reviewed the Policy Manual with him at the time and gave him suggestions on how to handle different scenarios. The First Clerk stated that he fully understood the instructions from the Owner about the ID policy. The Owner stated that the First Clerk was receptive, that he took accountability for his actions, and that he understood the seriousness of the issue.

The Owner also said that the First Clerk fully understood the consequences if a second incident of this nature were to happen.

After this incident in April, and the First Clerk's suspension in May of 2013, the Owner continued to monitor him and felt confident, up to the incident on December 14, 2013, that he was following the store policy.

SUBMISSIONS – BRANCH

The Branch notes that the licensee has admitted that one of its employees sold liquor to the minor agent on December 14, 2013.

The Branch further submits that the procedures put in place by the Owner were not sufficient to ensure the First Clerk did not sell the liquor to the minor agent. Because of the seriousness of the section 33(1)(a) contravention (i.e. the effect of alcohol on young people), the Branch submits that a penalty of \$7,500 is warranted.

SUBMISSIONS – LICENSEE

As noted above, the licensee has admitted that an employee sold liquor to the minor agent on December 14, 2013. However, the licensee submits that the evidence demonstrates that it has been duly diligent through its policies and procedures, and the implementation of those policies and procedures in the liquor store.

The licensee states that it had a spotless compliance record prior to this incident and that the extensive steps that it has taken to prevent sales to minors demonstrate that this was an error or lapse on the part of one employee who knew the law, knew the store policy, and had been regularly reminded of that policy.

The licensee has established reasonable policies and procedures to deal with the prevention of service to minors. These include its Policy Manual and its review and signing off by employees, written reminders throughout the store of the ID policy, written reminders with the employees' paycheques, training at the time of hiring new

employees, ongoing training and monitoring by the owner, the system of mystery shoppers, and the incident log book to record any incidents during an employee's shift.

The licensee says that the employee was not a directing mind in that he had no role in the development of the store policies and had not been delegated any executive function as part of his job.

Finally, the licensee submits that highly compliant and motivated licensees who operate at or above the industry norm should be given the benefit of their diligence to encourage others to match their example. The licensee's policies here and the implementation of these policies meet or surpass the industry norm.

REASONS AND DECISION

Contravention

The licensee has admitted that the contravention of section 33(1)(a) occurred on December 14, 2013. I find therefore that the licensee contravened section 33(1)(a) of the Act by selling liquor to a minor.

I address the question of the defence of due diligence below.

Due Diligence

The licensee is entitled to a defence if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with.

The leading case is: *R v. Sault Ste. Marie* (1979) 2 SCR 1299, where at page 1331, Dickson, J. sets out the test of due diligence:

The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place

without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

The BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2012 BCSC 1851, considered and clarified the application of the defence of due diligence in the context of the sale of liquor to a minor contrary to the *Liquor Control and Licensing Act* (see paragraphs 41 to 44).

In these circumstances, the defence of due diligence is to be considered in two stages:

1. Whether the employee who made the sale was a directing mind of the licensee – if so, the defence of due diligence is not available and the inquiry stops there.
2. If the employee who made the sale was not a directing mind of the licensee (and there is no requirement that a “directing mind” must be on the premises when the sale is made), then the questions to be considered and answered are whether the licensee had:
 - a. implemented adequate training and other systems to prevent the contravention (the sale of liquor to minors); and,
 - b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

Both of these issues are factual, and will depend on the evidence presented. The onus is on a licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

I agree with the licensee's submission that the policies and procedures that may be introduced and implemented in one type of business may not be the same in another type of business. The Owner testified about the nature of this small business. He and his family own the one liquor store. It is not a large business nor is it run by a large corporation. The standard required of a small family business to meet the test of due

diligence may not be the same as those standards one might expect of a chain of stores or an operation in a stadium where minors are permitted. Each business should be judged from the perspective of the size and nature of the business. This is one reason why the Branch does not set a standard for all licensees to follow when it comes to due diligence.

The Liquor Inspector agreed that the Guide sets out the requirements and rules but leaves it up to the business owner to determine how to ensure these requirements and rules are followed. In response to a question from the licensee's counsel, the Liquor Inspector agreed that every business is different and therefore it is left to licensees to determine what is appropriate for their business.

The question of what is appropriate for a licensee to set as the age to ask for identification is a good example of how policies may vary and how, even with a set policy, some employees may choose to go beyond a policy to ensure they meet the objective of not serving minors.

The Second Clerk testified that he asks for identification of anyone that he does not identify as "old." He uses clues like baldness, grey hair, and wrinkles, to determine whether or not to request identification of a customer. In his view, this is the only way to be sure, as sometimes a 40 year old may look like a 25 year old and the other way around.

The Directing Mind

I find that the Owner is the directing mind of the business. Neither of the sales clerks who were working on the evening of December 14, 2013 had anything to do with the development of policies or procedures of the liquor store. The Owner was not present on the evening of December 14, 2013. I thus turn to the second stage of the Beverly Corners analysis.

Adequate Training and Other Systems

As noted above, the Owner provided considerable evidence about the steps he takes when hiring and training new staff. He also described the policies and procedures he has put in place in order to ensure his employees are aware of the law and specifically on how to prevent the sale of liquor to minors. These include:

- The licensee's Policy Manual, which outlines in detail the requirement to ask for ID of anyone under 30, the types of ID that are acceptable, and the consequences if an employee fails to request ID
- Review of the Policy Manual with the employees at the time of hiring
- Requirement for staff to initial the various sections and to sign the Policy Manual after the review of the employee manual
- Quarterly reviews with staff of the Policy Manual and a chart that records these reviews have taken place
- Training of new staff by shadowing the Owner and the Owner shadowing the employee for several shifts
- Bi-monthly reminders included with the staff's pay cheques of the ID requirements regarding asking for ID of anyone who appears under 30
- Regular meetings with individual staff members to discuss various policy or store issues with emphasis on the ID policies

I find that the licensee has drafted policies and implemented training on these policies to guide staff to ask for ID of anyone under 30. The emphasis in the policy of asking for ID of anyone under 30 helps to ensure staff will not sell to minors.

Effective Application and Operation of the Systems

The licensee presented considerable evidence of the steps taken by the Owner to ensure staff are applying and following the ID policies:

- The pop-up question on the cash register that requires the employee to answer yes or no to whether or not ID has been requested prior to completing a sale

- The presence of Branch signs around the store, setting out the importance of ID and the requirement that two pieces be provided
- The Owner's sign about the importance of requesting ID of anyone who appears to be under 30, which is placed on the handscanner machine that employees must use to track their hours of work
- The Owner's regular monitoring of staff through his presence in the store, his observations of the store's cameras and the audio communication
- Regular reminders to all staff of the ID policy and the consequences of not adhering to the policy, through the regular reviews of the Policy Manual, the notices on bulletin boards, and at meetings with the Owner
- Mystery shopper program designed to test employees on their adherence to the ID policy and the consequences that may occur if an employee fails to request ID
- Requirement for all staff to have their Serving It Right certificates
- The incident log book that is kept to record any incidents relating to refusals of sales, whether because of intoxication or absence of ID
- The evidence of the action taken by the Owner when the First Clerk failed to ask for ID of a mystery shopper

The test for due diligence is not perfection. The test is whether a licensee has implemented adequate training and other systems and taken reasonable steps to ensure its application and operation of its systems. The fact that the First Clerk failed to request ID of the minor agent and thus contravened section 33(1)(a) does not determine the issue. The licensee is entitled to present a defence of due diligence to support its argument that it has taken all reasonable steps to try to prevent such contraventions. (*Central City Brewing Company Ltd. v. British Columbia (Liquor Control and Licensing Branch)* 2013 BCSC 2301, at para.39)

I find that the licensee had adequate ID policies, training, and practices in place in the liquor store. I find further that the licensee has taken reasonable steps to ensure the application and operation of its systems.

CONCLUSION

I find that the licensee contravened section 33(1)(a) on December 14, 2013. I find that the licensee has met the onus of establishing a defence of due diligence and thus has a complete defence to the contravention.

Thus, I do not need to consider the issue of penalty.

Original signed by

Nerys Poole
General Manager's Delegate

Date: July 2, 2014

cc: Liquor Control and Licensing Branch, Surrey Regional Office
Attn: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Peter Mior, Branch Advocate