



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENSING BRANCH  
IN THE MATTER OF  
A hearing pursuant to Section 51 of  
*The Liquor Control and Licensing Act, S.B.C. 2015, c. 19***

Licensee: Mac's Pizza Ltd. dba Boston Pizza (Prince George), 2500 Vance Road, Prince George V2N 1N5

Case: EH17-032

For the Licensee: Duke Van Hoang Nguyen and Robert Toews

For the Branch: Maria Caduhada

General Manager's Delegate: Nerys Poole

Date of Hearing: August 23, 2017

Date of Decision: September 19, 2017

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**Liquor Control and  
Licensing Branch**

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## INTRODUCTION

Mac's Pizza Ltd. dba Boston Pizza (Prince George) (the "licensee") owns and operates a restaurant, with food primary licence number 214787 (the "licence") at 2500 Vance Road in Prince George (the "restaurant").

According to the terms of its licence, the licensee may sell liquor from 11:00 a.m. to 1:00 a.m. from Sunday to Thursday and from noon to 2:00 a.m. on Fridays and Saturdays.

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").

Duke Van Hoang Nguyen and Robert Toews appeared as the licensee's representatives at the hearing.

The licensee is alleged to have contravened the *Liquor Control and Licensing Act* on April 1, 2017, by selling liquor to a minor who was acting as an agent of the branch under the Minors as Agents Program ("MAP"). The licensee raises two defences to the contravention. First, the licensee says that its server brought a beer to the table after the minor agent ordered it, but that the minor agent was not at the table at the time she actually put the beer on the table. Secondly, the licensee disputes the finding of a contravention, on the basis that its policies, practices, procedures and training establish a defence of due diligence.

For the purposes of this hearing, and in accordance with section 5 of the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Act"), the general manager has delegated to me the powers, duties and functions provided to the general manager by section 51 of the Act and Part 6 of the *Liquor Control and Licensing Regulation*.

## 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 May 12, 2017 (the "NOEA") (Exhibit 1, tab 1).

The branch alleges that on April 1, 2017, the licensee contravened section 77(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 3 of Schedule 2 of the *Liquor Control and Licensing Regulation*). The branch recommends either a ten day suspension or a monetary penalty of \$7,500.

## RELEVANT STATUTORY PROVISIONS

*Liquor Control and Licensing Act, S.B.C. 2015, c. 19*

### Supplying liquor to minors

- 77 (1) Subject to the regulations, a person must not
- (a) sell, give or otherwise supply liquor to a minor,

## ISSUES

1. Did the server serve the minor agent within the meaning of section 77(1)(a) and thus contravene the section of the Act?
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 Book of Documents, Tabs 1 to 18
- Exhibit 2 page from Licensee's House Policies – highlighting the certification required re. SIR as a condition of employment
- Exhibit 3 Server's SIR certificate
- Exhibit 4 Excerpt from UServe Boston Pizza training website
- Exhibit 5 Customer Count showing numbers between noon and 2:00 pm

## WITNESSES

The Branch called one witness: the liquor inspector who attended the restaurant with the minor agent on April 1, 2017 (the “liquor inspector”).

The licensee called two witnesses:

- the restaurant manager (the “manager”)
- the server who sold the liquor to the minor agent (the “server”)

## EVIDENCE - BRANCH

On April 1, 2017, the liquor inspector attended the restaurant with a minor agent employed by the branch under the MAP. At the start of the shift, the liquor inspector reviewed and photographed the minor agent’s identification and photographed the minor agent. The minor agent was 17 years old on April 1, 2017. The purpose of attending the restaurant with the minor agent was to test compliance with the Act’s prohibition against selling liquor to minors.

At about 1:40 p.m. on April 1, 2017, the liquor inspector and the minor agent entered the restaurant. A hostess seated them. The liquor inspector and the minor agent were sitting across from each other. The liquor inspector testified that the restaurant did not appear to be very busy.

The server approached their table and asked if she could get them started with drinks. The liquor inspector requested water. The minor agent ordered a Budweiser beer. The server asked if he would like “the Special” and the minor agent responded “a bottle.”

The server returned shortly and placed the bottle of Budweiser beer in front of the minor agent and the glass of water in front of the liquor inspector. She then asked if they were ready to order food and he said not yet. The server then left.

The liquor inspector took a photo of the Budweiser beer in front of the minor agent. Neither the liquor inspector nor the minor agent moved the drinks. The liquor

inspector then advised the minor agent to leave the restaurant and to return to the vehicle where a second liquor inspector was.

Once at the vehicle, the minor agent completed the observation form and the statement form as required. (Exhibit 1, tabs 4 and 5) The minor agent's statement says:

“she [the server] placed the Budweiser bottle in front of me with a frosted glass, then left our table. The alcohol was placed directly in front of me and the water was placed in front of my handler [the liquor inspector.] At no point was I asked for ID.”

The handwritten notes of the liquor inspector, made on April 1, 2017, confirm that the minor agent was seated at the table when the bottle of Budweiser was placed in front of him.

The liquor inspector gave evidence about the training of minor agents and the instructions on the procedures they must follow. They instruct all minor agents to stay sitting until the alcohol ordered is placed in front of him or her. The liquor inspector then photographs the alcohol. Once this is done, the liquor inspector dismisses the minor agent before notifying anyone in the restaurant about the contravention.

In the present case, the minor agent and the liquor inspector followed this procedure. He said the reason for dismissing the minor agent before speaking about the alleged contravention to a manager or owner is to ensure the safety of the minor agent in case any conflict or upset occurs as a result of the disclosure of the alleged contravention.

When asked in cross-examination if the minor agent may have got up to use the washroom, the liquor inspector was clear in his response. He always tells minor agents to use the washroom ahead of time to avoid any chance of having to leave the table while being served. He referred to the photograph of the Budweiser beer and stated that the figure in front of the Budweiser beer and frosted glass is the minor agent. (Exhibit 1, tab 6)

After the server placed the Budweiser beer and the water on the table, the liquor inspector informed the second liquor inspector waiting in the vehicle that a contravention had occurred. He then dismissed the minor agent who returned to the vehicle.

After the minor agent had left, the server returned to the table and the liquor inspector asked to speak to the manager. The server led the liquor inspector to the back of the restaurant where he met the manager. He explained who he was and what had occurred and that he would be issuing a contravention notice. He paid for the Budweiser beer, obtained a receipt and took a photo of the receipt. (Exhibit 1, tab 8)

As the liquor inspector who testified was not the author of the NOEA, he was asked to confirm the accuracy of the statements in the NOEA according to his recollection of the events. He confirmed that the statements in the NOEA were accurate. The NOEA repeats the statements about the Budweiser beer being placed in front of the minor agent, the liquor inspector photographing this and the liquor inspector then advising the minor agent to depart.

About an hour later, at 2:50 p.m., the liquor inspector returned to the restaurant, issued the contravention notice and provided a copy to the manager. (Exhibit 1, tab 9)

## **EVIDENCE – LICENSEE**

### **The Alleged Contravention**

As noted, the licensee questions whether the minor agent was actually present when the server came to the table with the Budweiser beer and the water.

The server gave evidence about this. She testified that she remembered taking the drink order from the minor agent but she did not recall the minor agent being there when she delivered the beer to the table. She stated the restaurant was busy at the time and she was very busy serving about 7 or 8 tables with an average of five persons per table. In cross-examination she agreed that most probably the minor agent was there, but that she could not recall exactly.

The manager confirmed the server's statement that the restaurant was busy at the time of the alleged contravention. To support this, the licensee submitted one page showing the numbers of customers in the restaurant between noon and 2:00 p.m. (Exhibit 5) The manager pointed out that the document demonstrates that the total customer count over this two hour time period was 116 persons: 75 between noon and 1:00 p.m.; 41 between 1:00 p.m. and 2:00 p.m. The restaurant capacity is 193 so, in his opinion, it was a busy day. Because it was a Saturday, people were lingering over their lunch, so the customer count between 11 and noon (34) may still have been present for a time after noon, while those who were counted between noon and 1:00 may not have left until after 1:00 p.m.

In cross-examination, the server agreed that being busy was not an excuse for not requesting ID. She should have assessed the situation properly and requested ID. She stated she has been taught about the importance of not serving minors and the reasons why.

The manager was present in the restaurant on the date of the alleged contravention. He did not see the liquor inspector until after the alleged contravention occurred. He did not observe the service to the minor agent.

The manager stated that when the liquor inspector informed him as to the alleged contravention, he removed the server from the floor. He and the server waited in his office for the liquor inspector to return which he did over an hour later. He stated that the server was extremely upset and was crying for most of that time in his office. She told him at the time that she could not remember the minor agent being at the table when she served the beer. She knew she had made a mistake and felt very badly about it.

The server testified how upset she had been over the incident. She stated that as soon as the liquor inspector spoke to her when she returned to the table for the food order, she knew what had happened. She was aware of the MAP from the information provided by the manager and knew that she had made a serious mistake.

In cross-examination she agreed that the minor agent was most probably there when she served the beer, she just could not recall it. She also agreed that there was no reason for the liquor inspector or the minor agent to lie about this.

### **Licensee's Policies, Procedures and Training**

Both the manager and the server gave evidence about training, policies and procedures in the restaurant.

#### Management Structure

The manager testified about his experience in the restaurant. He has worked in the restaurant for the last seven years. He hosted for 2 ½ years, became a server for six to eight months and then became a manager. He has been the general manager for the last two years. He has several managers underneath him and supervises 22 employees in the restaurant. The manager has his Serving It Right certificate.

The manager hires the staff, is responsible for the day to day operations, including management of the kitchen, orientation for new staff, training for all employees and generally making sure everything is working well. He reports to the owners.

#### Experience of Server

The server has worked in the restaurant and bar industry for eight years. She has worked in this restaurant for the last three years as a server. She has her Serving It Right certificate. (Exhibit 3) Before this incident, she had never been written up for any disciplinary matter in the restaurant. In her years as a server, she has never committed a liquor law infraction. She is very conscientious about requesting ID and avoiding service to minors. She has always asked for ID of anyone appearing to be under 30 and stated that this is the policy of the restaurant.

## Training

The manager is responsible for hiring new staff. He did not hire the server as he was not the general manager when she started at the restaurant. He was involved in training her.

When he hires new staff, he conducts an interview with them to determine if they are the right fit for the restaurant. On the first day of training, new hires do not work on the floor. The manager reviews the house policies and procedures, which include everything from grooming to certification, including ensuring they have their Serving It Right number.

Boston Pizza has a website which includes a UServe course and quiz. Management requires all new hires to take this UServe at the time of hiring and before they actually begin work on the floor. All employees are required to retake this course and quiz on an annual basis.

The licensee submitted 3 pages titled U-Serve: Responsible Alcohol Service Training. (Exhibit 4) The copy submitted shows that the server had taken the U-Serve training. The course takes about 20 to 30 minutes to complete on line. The manager stated that all new servers must complete this course in his office. The document refers to the quiz that servers must take after the training. The licensee did not submit any further written details about the content of the course.

Responding to a question in cross-examination about the contents of the U-Serve course, the manager stated that it has similar information to the Serving It Right course, including information about blood alcohol content and a discussion on service to minors. When asked if an employee could pass the test without getting a correct answer on service to minors he responded "could be."

The server testified about the U-Serve course and stated she believed there were about 10 questions about service to minors out of the 50 questions. She believed that, to pass the quiz, one must answer at least 45 questions correctly. She took the course again after the alleged contravention on April 1, 2017. She has taken the course and quiz

about three times over her three years' employment in the restaurant. She says that the manager gives servers a reminder to take the course at the time of expiry after one year. She stated that they also receive reminders on line about taking the course again.

The manager stated that new servers are not allowed to serve on their own for the first two to three weeks. After new servers complete the U-Serve course, the manager gives them an orientation around the restaurant. The new servers then watch other experienced servers before they start serving on their own. He emphasizes the requirement to ask for ID of anyone who appears under 30. He tells them to closely check any ID presented, to check to ensure ID has not expired, to closely check the birthdate, to compare the photo on ID with the person. He tells them to ask for ID even if they are a bit unsure if the person is under 30.

The manager meets with new servers during their training period of two to three weeks after their shifts to review what they have done and to be sure they are doing everything properly. He does not give them any formal quiz (other than the UServe) but does do random questioning of new servers, as he thinks necessary.

The manager has annual performance reviews with his employees to discuss how they are doing, where they may need to improve, etc. They will review house policies at that time, including the importance of requesting ID. This is in addition to the requirement to take the UServe every year.

### Boston Pizza House Rules

The licensee submitted a copy of a one page excerpt from the House Rules for Boston Pizza. (Exhibit 2)

Under the heading Certificates:

All servers must have a Serving it Right certificate as a condition of your employment. We will require a copy for our records.

The manager testified that the house policy is about 12 pages and that this page is the only one that deals with liquor service. The house policy deals with a range of issues including scheduling, vacations, grooming, discipline, bullying and use of social media. He stated that he was not involved in the original house policy but that he has been involved in updating the current one. He said the last update was about 3 years ago. He testified that all new employees receive a printed copy of the house policy. Employees cannot access the online house policy. Management has to print it off and provide to employees.

New hires are required to sign, to indicate they have read and understood the house policy. The server testified that she did so. The licensee did not provide copies of any house policy signed by employees.

### Reminders and Other Aids

The manager testified that he reviews with all his staff the two types of ID that are acceptable, what the main piece of ID must be and the secondary piece. He tells staff to check out signatures on ID, to make sure ID has not expired and to compare the ID photos with the individual.

He gives reminders on a daily basis about the importance of requesting ID of anyone who appears under 30. He tells them if they are not sure if a customer appears to be under 30, to ask for ID. The server confirmed that the manager reminds staff regularly about the importance of checking for ID. She stated that he is "always on our case about it" - at pre-shift meetings, staff meetings and often at other times. The server also confirmed the policy of asking for ID of anyone who appears to be under 30. She thought there might be signage about this at the bar.

All computer tills have a reminder about the correct birthdate for someone who is 19. This changes every day and is written in big letters in the top right hand corner of the screen as a check for staff when entering sales.

The manager testified that, prior to the alleged contravention, he had explained the MAP to his staff and that they were aware of the potential for a MAP inspection in the restaurant.

### Memo Wall and Signs

The restaurant has a memo wall where management and others post memos and reminders about various things. There is usually a reminder on the memo wall about asking for ID of anyone who appears to be under 30.

The restaurant has signs about the types of ID that are required. They also have signs about drinking and driving, U-Serve and drug and alcohol posters.

The licensee did not submit any photos of the memo wall or of its signage in the restaurant.

### Pre-Shift Meetings and Staff Meetings

The manager testified about the pre-shift meetings that are held every day with the staff on shift. He reminds them of various things, including to always ask for two pieces of ID of anyone who appears under 30 and what date they should be watching for to determine if someone is at least 19. He acknowledged in cross-examination that he may not remind staff about ID checking at every pre-shift meeting, but he said he would remind them "very often."

The manager stated that he holds regular meetings with his other managers to discuss the day to day operations, including the importance of ID requests of anyone who appears to be under 30.

He holds full staff meetings about every three months. At these meetings, management reminds all staff of the importance of not serving minors and requesting ID of anyone who appears to be under 30. Often at these meetings, they will review the steps to take when requesting ID and how to determine if there is a fake ID presented.

There are no agendas for these meetings, other than a list of items that the manager might prepare for himself to review. They do not keep minutes of any of the meetings, other than the safety meetings, as required by law.

The server confirmed that she attended the daily pre-shift meetings and the staff meetings every three months. She said the staff were often given a heads up about what would be discussed at the staff meetings, either personally from the manager or from posts on the memo wall.

### Recording/Discussing Incidents

Management keeps a record of incidents in a logbook. The logbook is not available for staff to record or review the incidents. Management uses the logbook incidents to remind staff about issues that have arisen. The manager stated that he recorded the April 1, 2017 incident in the logbook. The server was aware of the logbook and stated that only management recorded incidents in the logbook, not staff. Staff do not have access to the logbook.

With respect to discussion about issues about service to minors or intoxication of patrons, the server testified that the staff would discuss these incidents amongst themselves. Management encouraged staff to do this and to learn from each other.

### Annual Testing

All serving staff must take the UServe course and quiz every year. This course certifies them for a year at a time and expires at the end of one year.

### Branch Guide

The manager stated that the branch Guide is kept in his office and is available to employees at any time. He may bring out the Guide to refer to something at staff meetings.

## Post-Incident

The manager immediately removed the server from the floor right after the incident occurred. He wrote up a disciplinary note in her file. This was her first write-up in her file. According to the manager, three write-ups in an employee's file will result in dismissal of that employee.

The manager testified that the server did not work for two days after the incident. The server testified that the reason she did not work was because of her being upset over the alleged contravention.

The manager testified that he had a meeting with staff to explain what happened after the incident on April 1, 2017. He did not identify the server but explained that the restaurant had been inspected under the MAP, and that a minor agent had been served.

The server stated that management raised the incident in a staff meeting, as a general discussion without identifying her as the server. They reviewed all the policies on service to minors. Management posted another memo about importance of requesting ID and about MAP. When asked in cross-examination if there was a change to policy about requesting ID of anyone who appears to be under 30, she said no, it remained as before, there was only a memo about MAP. She stated all the employees were required to retake the UServe course after that meeting.

The server completed her testimony by once more emphasizing how upset she had been about the incident, how badly she felt about letting down the owners of the restaurant with her mistake, and how the restaurant management had done everything possible to ensure staff requested ID and to prevent mistakes such as this one. She said this was solely her mistake.

## **SUBMISSIONS – BRANCH**

With respect to the question of whether the minor agent was at the table when the beer was served, the branch advocate submits that the server's memory may have been affected by her emotional upset. The branch submitted sufficient evidence of the minor agent at the table to support a finding of a contravention.

With respect to the evidence of due diligence, the branch advocate submits that the licensee has not provided enough documentation to support a defence of due diligence and therefore the defence fails. She submits either a monetary penalty of \$7500 or a license suspension of ten days is reasonable and appropriate to remind the licensee of the seriousness of this violation and the importance of not serving minors in future.

### **SUBMISSIONS – LICENSEE**

The licensee submits that it has demonstrated due diligence and thus it has a full defence to the contravention. The licensee says it has provided evidence of its policies, meetings, reminders to staff and training to support the defence. The licensee has been working in this industry for 25 years and cares very much about the safety of the public and its employees. The licensee submits that, despite the training and reminders given to staff, an experienced server made a mistake and failed to ask for ID in this instance.

If I find the defence fails, the licensee asks for a \$7500 monetary penalty and not the ten day suspension.

### **REASONS AND DECISION**

#### **Contravention - Did the server serve the minor agent within the meaning of section 77(1)(a) and thus contravene the section of the Act?**

The branch presented considerable evidence to support a finding that the minor agent was seated at the table at the time the beer was placed in front of him. The liquor inspector testified that the minor agent was there at that time. The minor agent's statement states that the server placed the beer in front of him. The photo taken by the liquor inspector of the beer shows a figure at the table. According to the liquor inspector, this figure is the minor agent. The liquor inspector testified about the training given to minor agents, which includes emphasizing to the minor agents that they must remain at the table until dismissed. The liquor inspector stated that the minor agent followed these instructions in this case.

The server admitted in cross-examination that the minor agent was probably there, just that she could not recall him being there. I suspect that the server's memory was affected by her upset over her mistake and that she was probably recalling the third time she returned to the table to take the food order. At that point, the liquor inspector had dismissed the minor agent after taking the photo of the beer in front of him. When the server returned for the third time, the liquor inspector then asked her if he could speak with the manager.

I find that the minor agent was seated at the table when the server placed the beer in front of him. I therefore find the licensee contravened section 77(1)(a) of the Act, by serving liquor to a minor. I turn now to the question of due diligence.

### **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.

#### Directing Mind

The manager is responsible for most of the hiring and for establishing and updating policies in the restaurant. The manager did not make the sale to the minor nor did he observe the sale. The server had nothing to do with the development of the house policies or with staff training. I find that the server who served the liquor to the minor agent is not a directing mind.

#### Adequate training and other systems

The manager testified extensively about the training regime for new hires. On their first day, new servers do not work on the floor of the restaurant. They are required to review the house policy and to take the UServe course and quiz as provided by Boston Pizza. The manager sits with the new employees and reviews the house policy with them. New employees must sign a copy of the house policy. The manager provides

them with a copy. He is available to answer questions about the policies. All new employees must have their Serving It Right certification.

Before starting to work on the floor, new employees must take and pass the Boston Pizza UServe course and quiz. According to the server, there are probably about ten questions related to service to minors out of the 50 questions and she believed they must answer 45 out of the 50 questions correctly in order to pass the quiz. If they do not, they may retake the quiz. The manager has stated that all new employees must take this quiz in his office.

Once servers start on the floor, before serving on their own, the manager will emphasize to them the importance of requesting ID of anyone who appears to be under 30. He will review with them the types of acceptable ID and ways to identify authentic IDs and to ensure that the ID belongs to the individual presenting it. The new servers do not personally serve in the first two to three weeks, depending on their level of experience. New servers shadow others for several shifts during these two to three weeks before being allowed on the floor on their own. The server stated that she may have started on her own earlier than others because of her previous experience in the industry.

I find, based on the testimony of the manager and the server, that the licensee's training system for new employees is adequate. I find that the licensee's employees, through the requirement to have the Serving It Right, the requirement to take the Boston Pizza UServe course and quiz, the review of this information with the manager and the time new hires spend on the floor shadowing experienced servers, demonstrate that new hires are adequately trained in the liquor laws prior to starting to serve in the restaurant.

I agree with the branch advocate that more documentation showing the contents of the UServe course would have been useful evidence. However, I find that the manager's oral evidence about its contents demonstrate its focus on liquor service and ways to avoid liquor contraventions.

I recommend that the licensee introduce more guidance about liquor laws in its house policy document. The only reference to liquor service is the requirement that employees have their Serving It Right Certificates. There is no reference to the UServe requirement in the house policy or its contents, or the policy as described by the manager to request ID of anyone appearing to be under 30.

I find the house policy document to be inadequate with respect to guidance/instructions about liquor service. A short reference to Serving It Right is not sufficient in a document that all employees must read and sign to acknowledge they have understood the contents.

Despite this deficiency in the house policy document, I find that the UServe course provides sufficient guidance for employees on the liquor policies and laws. All new employees must take this course and quiz about liquor service. I also find that the annual requirement to take the UServe course and quiz provides important ongoing training and reminders to the restaurant staff.

I find that the requirement to take the UServe course and quiz compensates for the absence of information about liquor service in the house policy document. I encourage the licensee to add more information about the liquor laws and its own policies about ID requests to the house policy document.

I find that the licensee has implemented an adequate training program and other systems for its employees.

### Effective Application and Operation of its Systems

The licensee presented the following to demonstrate that it applies its policies and ensures the system is operating in conformity with its policies:

- Reminders to staff every day at pre-shift meetings about the policy of requesting ID of anyone appearing to be under 30
- Emphasis to staff that, if unsure at all as to whether a patron is under 30, staff should ask for ID

- Memo wall – used to remind staff about important items, usually includes a reminder about requesting ID
- Computer tills have a reminder re. birthdate in top right corner for staff to confirm correct date when looking at ID
- Instructions to staff on the types of acceptable ID and how to assess them
- All staff are required to have Serving It Right certificates
- All staff, when they begin working at the restaurant and on an annual basis thereafter, are required to take the Boston Pizza UServe course and quiz
- Regular meetings, which include reminders about requesting ID – pre-shift meetings, meetings with all staff every 3 months, management meetings
- Annual performance reviews by the manager
- Incident logbook - for management use only – used to discuss any incidents at staff meetings or pre-shift meetings or at other times as needed
- Manager had informed his staff about the MAP; server aware of MAP
- The Guide is available for reference by management and the staff
- Some signage in the restaurant re. ID

The branch advocate submits that the absence of written documentation, or photos, to support all the oral evidence is a flaw in establishing proof of due diligence. When I make findings on the evidence of due diligence, it helps to see photos of any signage, copies or photos of the incident logbook, copies of the policy signed by employees, etc. However, in this case, the manager and server have testified about these. I accept the oral testimony as evidence of the licensee's efforts to take reasonable steps to ensure the effective application of its training and implementation of its systems. However, I remind this licensee and others that written documentation may provide added proof to assist me in my findings. In some cases, if the oral testimony is not persuasive or complete enough, the written evidence provides the necessary evidence for a finding of due diligence.

As noted above in the discussion of training, I find that the use of the Boston Pizza UServe course makes up for the deficiency in the house policy document. Again, it would have been helpful for me to see the complete contents of the course. However, the testimony of the licensee's witnesses provided me with enough information to conclude that this course is a useful training tool on the liquor laws. The fact that

management requires staff to retake this course on an annual basis is a strong indicator of the licensee's commitment to ensuring its staff are up to date and aware of the importance of the liquor laws.

The evidence of the server - her years of experience, her "clean record" in terms of any liquor infractions, her extreme upset over what happened, her obvious awareness almost immediately of what she had done, i.e. serve a minor agent - support my conclusion that this was an unfortunate oversight by an otherwise reliable employee. The server testified that the licensee had done everything to remind staff about the MAP, about the importance of requesting ID of anyone appearing to be under 30, about the daily reminders to staff, etc. In this instance, she failed to follow the restaurant's policy to request the ID.

The server was quick to acknowledge in cross-examination that the number of people in the restaurant is not an excuse for her failure to ask for ID. She is responsible for always assessing the customers and following the policy of requesting ID of anyone who appears to be under 30. She was emphatic that this was solely her mistake, and was not due to any failing in the licensee's training or policies.

As has been said in other decisions on due diligence, perfection is not required in a licensee's systems. The standard of reasonableness does not mean that all conceivable steps must be taken, nor that all supporting documentation must be provided. The systems required to demonstrate due diligence may vary depending on the nature of the operation and the type of licence.

I find that the licensee has taken reasonable steps to ensure the effective application of its training and the operation of its systems.

There are a few improvements the licensee could make to its systems. If staff is able to record incidents in the logbook, this provides a daily resource for other staff to review and discuss, and also can serve as reminders about checking ID and what to look for. The introduction of a pop-up question on the till is another tool to remind staff to request ID before completing a sale. Secret shoppers are another resource for checking on staff to be sure they are requesting ID of anyone under 30.

I find that, on a balance of probabilities, the licensee has met the onus of establishing due diligence.

### **Conclusion**

I therefore find that the licensee has established the defence of due diligence and thus has a complete defence to the contravention of section 77(1)(a) of the *Act*.

As there is no finding of a contravention, I do not need to consider the issue of penalty.

*Original signed by*

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Nerys Poole

General Manager's Delegate

Date: September 19, 2017