



**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: 1000774 B.C. Ltd.
dba Mumford's Beerhouse and Grill
5422 Hwy 16 West
Terrace, BC V8G 0C6

Case: EH16-085

For the Licensee: Tyson Hull and Christine Hull,
Representatives of the Licensee

For the Branch: Hugh Trenchard, Branch Advocate

General Manager's Delegate: Dianne Flood

Date of Hearing: May 24, 2017

Date of Decision: June 16, 2017

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The Licensee, 1000774 B.C. Ltd., operates a licensed establishment known as Mumford's Beerhouse and Grill ("the establishment") under Liquor Primary License #208705 ("the License"). The establishment is located at 5430 Highway 16 W, Terrace, BC. Under the Licence, the Licensee may sell liquor between the hours of 11:00 a.m. to midnight Sunday to Thursday and between the hours of 11:00 a.m. to 1:00 a.m. on Friday and Saturday.

The Licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication *Guide for Liquor Licensees in British Columbia* (the "Guide"). Under the licence, off-premises sales are permitted and the Family Foodservice term and condition permits minors accompanied by a parent or guardian in all licensed areas until 10:00 p.m. when meal service is available.

Tyson Hull and Christine Hull attended the hearing as the Licensee's representatives.

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 August 3, 2016 (the "NOEA").

The Branch alleges that on July 14, 2016, the Licensee contravened section 33(1)(a) of the Liquor Control and Licensing Act R.S.B.C. 1996, c. 267 (the "Former Act") by selling, giving or otherwise supplying liquor to a minor ("the Minor Agent"). Item 2, Schedule 4 of the Liquor Control and Licensing Regulation BC Reg. 244/2002 (the "Former Regulation") sets out the range of penalties for a first contravention of this type: a 10-to-15 day licence suspension and/or a \$7,500-to-\$10,000 monetary penalty. The Branch proposes a monetary penalty of \$7,500, noting that under a 10-day suspension of a Liquor Primary licence the establishment would have to be closed so that not even food could be served during that time.

The Licensee admits that its employee sold liquor to the Minor Agent and to the facts as set out in the NOEA. However, the Licensee disputes the finding of a contravention, claiming a defence of due diligence.

On January 23, 2017, the Liquor Control and Licensing Act S.B.C. 2015 c. 19 (the "Current Act") replaced the Former Act and this hearing was held under the Current Act. However, as the contravention set out in the NOEA is alleged to have occurred prior to January 23, 2017, this decision is made pursuant to and in accordance with the provisions of the Former Act and its Regulation.

For the purposes of this hearing, and in accordance with section 5 of the Current Act, the general manager has delegated to me the powers, duties and functions provided to the general manager by section 51 of the Current Act and Part 6 of the current Liquor Control and Licensing Regulation.

RELEVANT STATUTORY PROVISIONS

The relevant statutory provisions are:

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.

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002 Schedule 4

Minors

Enforcement Actions

Item	Contravention Period of Suspension (Days) Monetary Penalty				
		First Contravention	Second Contravention	Subsequent Contraventions	
2	A breach of section 33 of the Act [selling liquor to minors]	10-15	20-30	30-60	\$7 500 – \$10 000

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, tabs 1 to 14

Exhibit 2: Licensee's Book of Documents, tabs 1 to 8

WITNESSES

The Branch called the liquor inspector ("Inspector A"), who attended at the premises with the Minor Agent on July 14, 2016 and who later issued the NOEA (Exhibit 1, tab 1) to give evidence.

Both of the Licensee's representatives and a staff member ("the Staff Member") gave evidence on behalf of the Licensee.

EVIDENCE—BRANCH

Inspector A reviewed the facts set out in the NOEA. As the Licensee accepts the facts as alleged in the NOEA to have occurred in the establishment on July 14, 2016, Inspector A's evidence and those facts are summarized here.

The Minors as Agents Program

Inspector A testified that the Minors as Agents Program (MAP) was authorized by legislation to enable the Branch to verify licensees are complying with their responsibilities not to sell liquor to persons under the age of 19 years (minors), with consequences to follow if they do. He said a number of efforts were made to ensure licensees were aware of the program, including the Liquor Line newsletters and the LCLB MAP 2013/14 Annual Report (Exhibit 1, tab 11).

On July 14, 2016, pursuant to the MAP, Inspector A, an RCMP officer in plain clothes, and the Minor Agent conducted a series of inspections in the City of Terrace to test compliance with the prohibition under the Act against selling liquor to minors.

At the start of the day, the Minor Agent was photographed, his identification viewed and photographed, and his age confirmed to be 16 years old (Exhibit 1, tab 9 – redacted versions). The Minor Agent carries no identification and if asked for identification he will say he has none.

The Inspection of the Establishment

At about 1:17 p.m. on July 14, 2016, the Minor Agent entered the establishment, followed by Inspector A. The Minor Agent went to the bar, asked a staff person who was behind the bar what they sold for off sales, and she responded by listing those products. The Minor Agent asked for a certain beer product and handed her cash in payment. She then gave the Minor Agent the beer and he left the establishment. No identification was requested at the time of the purchase or before the Minor Agent exited the establishment with the liquor product.

Inspector A observed the sale transaction but he did not hear the conversation between the Minor Agent and the staff person. Inspector A testified that the staff person seemed to be distracted, looking down at something and did not make eye contact with the Minor Agent. He said she did not appear to give the sales transaction the attention it deserved.

The Minor Agent then left the establishment with the purchased liquor and returned to the inspection vehicle where he completed the observation form and his statement (Exhibit 1, tab 8). Inspector A also exited the establishment and an extract of his notes for that day (Exhibit 1, tab 7).

Inspector A completed the Contravention Notice (Exhibit 1, tab 2) and returned to the establishment at 3:15 p.m. He spoke to Mr. Hull, advised him that liquor had been sold to a minor, and gave him the Contravention Notice.

The Licensee's responsibilities

Inspector A testified that the Licence is subject to the Terms and Conditions found in the Guide (Exhibit 1, tab 10). Inspector A said he expected licensees to be aware of all of the contents of the Guide, including the prohibition against sales to minors and the identification requirements. Inspector A said the interview sheet (Exhibit 1, tab 6) was completed by another inspector with the Licensee's representatives when the licence was transferred and it shows that the Licensee was aware of these responsibilities.

Enforcement Action

In the NOEA, Inspector A said that the reasons for pursuing enforcement action include the impacts of liquor on growing bodies and developing minds, the effects on individuals and society of irresponsible drinking behavior learned at an early age, the inability of minors to metabolize alcohol in the same manner as adults such that it has a more intoxicating effect, and that liquor is a significant factor in many crimes committed by youth.

Inspector A confirmed there were no compliance history issues for this establishment under this Licensee.

Inspector A confirmed he had never issued a violation notice against an employee for serving a minor. He said when issuing a contravention notice he would not always know if the person who made the sale was a directing mind of the Licensee and, as such, would be responsible as the Licensee. He also said the Branch holds licensees responsible for proper training of its employees. When issuing a contravention notice, inspectors did not know what employee training has been given.

Other matters

When presented with copies of photographs of two persons both born in 1995 (Exhibit 2, tab 4), Inspector A agreed he would ask the female person for identification, but likely not the male person. He said that was because he had a son about the same age, with a similar scruffy beard, and he knew his son was of legal age to purchase liquor.

When asked, Inspector A could not offer any explanation for the increase in the failure rate for the MAP at retail liquor stores, when the failure rate for licensed premises remained the same, as reported in the MAP Annual Report.

Inspector A confirmed that when Licensee's representative learned of the contravention he had been very co-operative but very upset. He said the Licensee's representative had asked very responsible questions and asked him to attend the next staff meeting. Inspector A said he attended that meeting and the engagement with staff was good. He said the staff seemed very concerned, asked good questions and seemed like a good unit. He said one staff member brought up the issue of liquor and minors and driving, and the impacts on the community of minors consuming alcohol.

Inspector A said he wished more licensees took the time and effort and treated the issues with the seriousness that this Licensee did.

EVIDENCE – LICENSEE

Both of the Licensee's representatives and a staff member ("the Staff Member") gave evidence on behalf of the Licensee.

The Staff Member

The Staff Member has been employed by the Licensee for about two years, on a part-time basis. She is one of about 10 part-time staff.

She said that the one or both of the Licensee's representatives are present at the establishment every day. She testified that they are clear and firm about the Licensee's policy to check identification for anyone who appears under 30 years old. She said the need to check for identification is discussed regularly with staff, on a day-to-day basis and raised at every staff meeting. She said there are sticky notes about it, "everywhere" in the establishment. She also testified that the legal date of birth is shown on each of the three cash registers, so servers can write it down in their notebook where they record food and drink orders so they can check it if necessary, or they can just check at the cash register.

The Staff Member testified that the Licensee's policy is for staff to communicate to each other about the need to ask specific customers for identification. She said this meant that if one staff member thinks identification needed to be asked for [by another server], or looked at more closely, they would check in with that other staff member. If identification had not been asked for, either the first server, or the person who raised it would then ask the customer for identification. They had strategies for how to do this – i.e. "I'm not sure I caught the date correctly".

The Staff Member said the need to remind another server [to check for identification] did not arise very often, but the staff did not hesitate to do this. She said the policy was clear and well known to the staff. There is not many staff, and they all worked well as a team.

The Staff Member said the Licensee's policy of "no harm, no foul" was that the servers should go back to ask for identification, even if the person's drink order had already been filled. She understood that under the policy, no negative financial or other consequences will apply to the server if a drink that is already poured is then not served. She said the "no harm, no foul" policy meant no harm to ask for identification at any time, because there was no "foul" to the server for not having done that earlier. Also, she said, there is no issue about getting another server [who may not have asked for identification] in trouble. She testified that all staff were aware of the strategy and she believed it helped them help each other. She said that because a second server could go and ask for identification, it provided a second avenue to allow checking. The Staff Member testified that this policy was in place before the incident and clearly understood by staff, but was only put in writing after the incident.

The Staff Member testified that she understood that if she did not ask for identification and served someone who was a minor she would be at fault and would be terminated. She also knew that use of cell phones was prohibited with a "three strike" rule, so that on third time the person would be fired.

The Staff Member testified that when she was hired, the Licensee placed strong emphasis on the SIR requirements and the need for checking for identification. She was told to look at the customer in the eye and check the two pieces of identification and

make sure they matched each other, and that the picture and age shown on the identification matched the person presenting it.

She said the Licensee gave oral "quizzes" on how and what to look for, and described the quizzes as more in the nature of a discussion. She said staff were encouraged to communicate with each other about identification needs. She said she knew to ask for two pieces, one government issued and one other supporting piece. She said she made sure both were official and matched each other and the person. She looked for things like if it was age appropriate, if it had expired, the picture and the colour of eyes and height. She said if in doubt she knew she could ask questions about the date of birth, and other questions. She said when trained they were taught to proceed with caution.

The Staff Member said staff meetings were held every three to four months, and every meeting started with going over the need to check for identification. She said all staff were expected to attend.

She also said an Incident Log was kept and it was available to staff as were various papers and notices about important issues including identification. According to the Staff member, these were kept in a drawer in the office. She said she had never had cause to fill out an incident report as she never had anyone without identification who had not returned later with identification, so she did not think she needed to report that.

The Staff Member said the Licensee also kept a Communications Book, where daily food features were listed, and questions of staff might be written, and directives from management noted. She testified that staff are required to initial beside any notice that dealt with liquor related items, to show they had read them.

The Staff Member described the Licensee's culture on compliance as to ID anyone who looks under 30 and to not over-serve. She said it was well understood and practiced by serving staff. She said management reminded them every day to check for identification. She said even on busy nights all staff follow the SIR practices.

The Staff Member said that signs about identification requirements were posted on the counter, near the door, on all three computers (cash registers), behind the bar, at the servers' station, plus the government required signs were posted on the door.

Licensee Representative

Licensee's Representative testified that she has many years of experience in the hospitality industry, first as a server, then as a manager. She was solely responsible for managing the establishment from when the Licensee first took over the License until about 18 months ago when her husband became more involved.

She testified that she is primarily responsible for training staff. She had used an experienced bartender to train staff on one occasion. He was trained to follow her training processes.

She said job descriptions are given to employees when hired and she goes over them with the new employee. The written job descriptions for servers and bartenders (Exhibit 2, tab 2) include information about the need for identification and reference the SIR requirements on what to check for in identification.

She said she spends one week when training new employees which, with all of the staff being part-time, consists of at least three shifts. She testified that she goes over how to check identification and trains them to use eye contact and to look at the customer and their identification. She said she teaches staff that if there is any doubt, to ask questions to verify the identification. She said she talks to new hires about the reasons for checking identification, including the effect of alcohol on young persons and the dangers of that.

She said she makes it clear that the policy is to check identification for anyone who appears under 30 and if they don't have identification management will back up the server in refusing service. She also said because of the family food service condition of the license, where minors can enter with a parent or guardian, she goes over with staff about the need to confirm with the guardian that they are in fact the guardian and as such take responsibility for the minor.

Her evidence was that the new employee then shadows her and she spends time outlining the Licensee's policies and their job responsibilities, including the need for identification and how to review and assess the identification presented. She tests new employees on their understanding of their job responsibilities, including the requirement for and how to assess identification, by having them "teach" her those things, as if she was the new employee. She said this ensures they actually understand what they need to do.

According to the Licensee's representative, the new employee then works directly with a specific, experienced employee for one week, consisting of at least two or three shifts. The experienced employee coaches and observes the new employee and then reports back to the Licensee's representative if the new employee is ready to work on their own or needs more training.

She said staff are trained to communicate with each other, and the need to ask for identification and to address that as a team. She said the staff are told to talk through with customers why they need to ask for identification.

She said the training on identification requirements is followed up at staff meetings and in other communications. They go over how to do a proper check for identification and reminded if they have any second questions or instincts about whether to request identification, they can go back to the customer and do it. She also testified that the impacts of underage drinking have been brought up.

She said staff meetings have been held since the establishment was opened and minutes are always taken. She said staff were told about the MAP and that the establishment would be tested [by liquor inspectors].

She testified that she did "pop quizzes" or "spot checks" with staff on the rules and their responsibilities for checking identification, as a good way to check on their knowledge and identify any gaps. She did these one-on-one to be sure each one knew and to avoid group pressure. She said this also helped her to know if she needed to change or do something different in training. She said she had been doing this before the sale to the Minor Agent.

She testified that she discusses with all employees the reasons why the sale of liquor to minors is prohibited, including issues like drinking and driving and the possibility for harm. She said she often cuts out articles from the paper about incidents related to over-service or drinking and driving and distributes them to staff. These materials and others are also left for staff to look at in the staff room. She said she thinks its important for staff to understand the ramifications in the real world and the impacts on the licensee, the server, the minor and the community.

She testified that they conduct spot checks of staff by sending in young looking individuals every few months, to make sure staff are asking them for identification. She also said that she and Mr. Hull ask people they know in the small tight-knit community if they have been asked for identification. She said they have not heard once that identification was not asked for.

She said the government required signage is posted. She said Mr. Hull posts additional signage about the need to ask for two pieces of identification.

Her evidence was that when the establishment opened, an Incident Report binder was developed based on SIR recommendations. It is kept in the office. When hired, all staff are shown how to use it. She said that prior to the sale to the Minor Agent, staff were not always diligent about completing incident reports, but that reporting has since improved. Four reports of refusing minors were made in October and November, 2016. She attributed these incidents to family and staff Christmas parties held at the establishment.

Also she said a Communications Binder includes all the rules and staff have to initial that they have read any instructions. Any sensitive issues are written up on a separate sheet and distributed to staff to read. She gave as an example when the family food service was added to the License. She said she made sure staff understood when and how minors could legally enter the premises by providing extra training on this, before it came into effect.

She said she is active on Facebook and uses social media to promote the restaurant and also to respond to customers. She referred to Exhibit 2, tab 6 as an example of explaining to a customer why service was refused. She noted customers were sometimes confused about when and how minors could legally enter the premises under the family food service terms and conditions of the License. She said she had prepared and posted a video about that on the Licensee's Facebook page and it had received about 1,100 views. She said she had been actively using Facebook from before the establishment opened, but was not sure when the video was posted.

She testified that Mr. Hull undertook an internal compliance audit of the operations in June, 2016. She said he wanted to make sure that the establishment was meeting all requirements. The audit identified that all staff had SIR certificates, which are kept in a binder, but some certificates were undated. While those certificates were valid, she said Mr. Hull wanted to make sure that there were no gaps, so he directed those staff members to get new, dated SIR certificates.

She said she recalled the day of the incident. She said there were two staff, plus herself, on duty for the lunch shift. She said the server [who served the Minor Agent] appeared to be distracted and not as friendly and out-going as usual, but was not crying and gave no other visual signs. Ms. Hull learned the server's friend's mother had died that morning. She said the server was also scheduled to work the afternoon shift so Ms. Hull asked the second server if she would work that shift instead. Ms. Hull said the other server was willing to do that, but the server in question said she was all right and she wanted to stay at work. Ms. Hull said from what she observed about the server's behaviour during the lunch shift and the subsequent conversation with her, she thought the server was able and capable to work, so she let her stay on. After the lunch shift was over, it was not busy and as Ms. Hull had some administrative responsibilities to take care of, she left the establishment. She said in her experience the server was competent and she trusted her.

She testified that she viewed the tape of the transaction where the server sold liquor to the Minor Agent. She said the server clearly was looking at her cell phone and, contrary to the Licensee's policy for staff to engage with customers, did not pay any attention to the Minor Agent. She said it was unfortunate that when the Minor Agent came in, the

other server was busy in the back of the establishment. She believed that with their policy, the other server would have "jumped in" and questioned the sale and the sale would not have happened.

She said staff are prohibited from using their cell phones at work, as it is too distracting. She said the Licensee has a "three strikes and you are out" rule about using cell phones at work. She said it is apparent from the videotape that the server's cell phone came out after Ms. Hull left the premises. She said the server was terminated but she was not involved as her husband took care of that.

Licensee's Representative

Licensee's representative testified that he was financially involved from when the license was transferred to the Licensee and became actively involved in operating the establishment about 18 months ago. He said he did not have a background in the hospitality industry, but he got his SIR and has been eager to learn from Ms. Hull and others he knows in the industry that he meets with frequently and talks to about what the Licensee can do better.

He testified he took the operation of a liquor establishment seriously. He said he learned from his background in forestry and construction that a moment's inattention can lead to serious injury or death. He said he brought that awareness to the operation of the establishment and that from the start of his active involvement, he was constantly looking for ways for the Licensee to improve service and meet its legal requirements. He said he was improving the Licensee's documentation for things like minutes of staff meetings. He said the liquor inspector had been very helpful.

As an example, he said that in about June, 2016, he conducted an audit of all the employees' SIR certificates, to make sure they were all up to date. He determined that two servers had valid, but undated certificates. He said he immediately removed them from serving responsibilities and he would not let them serve until they showed him new, dated certificates, which meant they had to take the course and the test again. He was upset that one of the servers he had required get a new SIR certificate was the very

same server who, not a month later, sold the liquor to the Minor Agent. He said this was very frustrating for him.

He said that the responsibility not to serve minors was drilled into the employees, by direct conversations and at staff meetings. He said he knows that people can become complacent, so he looks for new ways to keep employees aware and engaged in not selling to minors. He said the "stickies" the Staff Member referred to in her testimony was one way he tried to keep the staff alert to the issue. He said he changed up the type of messages and the locations of the messages frequently so that staff would pay attention to them. He said he had been doing this since he became involved in the operations.

He also testified about what he referred to as the "no harm, no foul" rule. This is the policy the Staff Member described, whereby staff are encouraged to check identification at any stage of the process, even if they may have already ordered a drink from the bartender for the person. He said he did not want staff being penalized (by virtue of being responsible financially for a poured drink not served) to inhibit them in any way from checking for identification. He gave an example of the kinds of things staff were warned to watch out for, as a person going to the bathroom and having another customer order for them. He testified that he tried to lead by example and he had gone to tables and double-checked that the customers had been asked for identification. He said the policy had pre-existed the incident and was discussed with staff again after the incident.

He reiterated Ms. Hull's testimony on the training processes and objectives. He said they go over with staff the reason why liquor is not served to minors, so they know the reasons why that is. He said the job shadowing with and coaching by the more experienced employee [after the week of training] gave the Licensee a second opinion on the new hire's abilities and awareness of their responsibilities. He said the more experienced employee will quiz the new hire on things like how old is the customer.

He also said they gave the staff articles on real life examples of the impacts of service, like car accidents caused by drinking and driving and articles on gluten in food. He

said staff are required to read the articles and sign off on the articles that has been done. He described trying to leave "a trail of bread crumbs" for the staff to follow.

He testified that he was always going up to staff and testing them by asking them for the requirements for identification.

He also said that with Terrace being a small town, he and Ms. Hull know many local people and frequently canvass people they know who look under 30 whether they were asked for identification when served in the establishment. They will also ask other people they know if they have observed anything untoward in the establishment when they (Mr. and Ms. Hull) are not there. He said that being a small town, people are quick to let you know if something is amiss.

Additionally, he testified that he ran a "secret shopper" program, to actually test whether employees asked for identification when he or Ms. Hull were not present. He included in Exhibit 2, Tab 4, a written statement by an individual who was one of the secret shoppers, who said that the staff had asked both him and his girlfriend for identification. He selected these persons to test the staff because they are not local and would not be known to the staff.

Included with that statement are photographs of the two secret shoppers. These were the photographs shown to Inspector A who said he would not have asked the male person for identification. He said this shows their staff is vigilant about requesting identification. He also said the Facebook complaints about not being served without identification even when over the legal age, which were described by Ms. Hull, showed their system was working.

He said that staff knows that if they need an answer, he will get it, saying that was his due diligence to them. He gave the example of where an intoxicated person, a "good customer" who needs to be refused service by staff, when he is not there. He told staff to treat all customers the same, even if a good customer.

He also testified that the Licensee has a policy of providing free rides home if needed and if a ride is refused they will offer a hotel room in their adjacent operation.

He also testified that he seeks appropriate assistance when the Licensee has issues. He said he has sought the advice of the local RCMP and then went back to the staff and worked out strategies. For example, he said, the staff is told to bring out free pop to a customer who has had a couple of doubles, or to slow down service to them, or only bring single drinks to them, even if they ask for doubles.

He said that staff meetings are held at least every 90 days and always address the issue of checking for identification. He said minutes were kept and made available to staff to review. All staff are expected to attend and if they can't, they must review the minutes from the meetings before they start their next shift. He included examples of some staff minutes in Exhibit 2. He acknowledged that perhaps the minutes could be more detailed.

He said an Incident Log is kept and he is trying to upgrade the system. He acknowledged that staff was slow to complete reports and expressed frustration with that, saying they (staff) were paid to do that. He did suggest that having only four incidents of no identification reported in October and November showed that their system of checking was working.

He testified that he is trying to improve staff reporting by giving them positive feedback when they report an incident. He said he also tries to reinforce with staff their responsibilities by recognizing when they did the right thing and how they handled it, by giving them recognition at a staff meeting.

He expressed frustration about the Licensee's seeming inability to avoid a contravention despite all he had done. He felt he had done everything he could think of to keep the staff focused and alert to the issue of not selling liquor to minors.

He said when he learned of the contravention he was upset. He viewed the videotape and in his mind, the contravention was clear. He said the tape showed the server was engrossed in looking at her cell phone and did not even look up at the Minor Agent when serving him. This was clearly a contravention of his repeated directions to staff to make eye contact with every customer to assess them for age. He said that if the second

server had not been in the back, involved with another customer, she would have caught the sale before it was completed.

He testified that the server was dismissed for using her cell phone, contrary to policy. This was in part to assure staff they would be backed up if they made an honest mistake, but there was no honest mistake here, just a careless lack of attention.

After the incident he asked Inspector A to attend the next staff meeting and talk to staff about the issue and he expressed gratitude to Inspector A and another inspector for doing that.

He said that even though the Licensee is for a Liquor Primary, they really operate more like a restaurant.

SUBMISSIONS – BRANCH

The Branch Advocate submitted the evidence and the Licensee's admissions supported a conclusion that liquor was sold to a minor and the contravention was proven.

He also reviewed the evidence of due diligence and suggested where it may have fallen short was in the documentation of the Licensee's policies and staff meetings.

SUBMISSIONS – LICENSEE

The Licensee's representative admitted the contravention occurred but relied on a defence of due diligence. He said that the Licensee takes its responsibilities seriously and so has taken substantial efforts to prevent a contravention from happening. He says despite these best efforts, things can happen that are outside of the Licensee's control. He noted the lack of any legal consequence for a server for serving a minor. While as a licensee he was willing to take full responsibility for the contravention, he thought if servers also had a consequence, they might pay better attention to their part in avoiding sales to minors.

The Licensee's representative said the Licensee's training program is directed and focused on the requirements to comply with the Act and the conditions of the License. New staff members are not allowed to serve liquor until the Licensee is satisfied they fully understand their responsibilities and have been tested on their ability to apply their training.

The Licensee's representative submitted that they have an aggressive, on-going program to ensure staff ask for identification. Despite these best efforts, the incident was a bad mistake by a staff member, who was fired for her role in it.

The Licensee's representative submitted that due diligence has been established and a penalty is not warranted.

ANALYSIS AND REASONS

Contravention

The Licensee admits that a staff member sold liquor to a minor. Based on that admission, the evidence and the submissions I find that the Licensee contravened section 33(1)(a) of the Former Act by selling, giving or otherwise supplying liquor to a minor.

Due Diligence

A licensee is entitled to a defence if it can show that it was duly diligent in taking reasonable steps to prevent the contravention from occurring.

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

One comment on the defence of reasonable care in this context should be added. Since the issue is whether the defendant is guilty of an offence, the doctrine of respondeat superior has no application. 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 of that decision).

In these circumstances, the court said, 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, 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 the 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 Branch did not allege nor is there any evidence to suggest that the server who made the sale was a “directing mind” of the Licensee. On this basis, I find she was not and I move on to consider the second step in the due diligence analysis.

Steps to avoid the sale

The Licensee must establish two things - it has taken reasonable steps

- to train its staff in procedures to identify if potential purchasers are of legal age and thus avoid the potential for a contravention, and
- to ensure those procedures are consistently acted upon and any potential issues are properly dealt with.

The analysis of the standard to be met - that is, what is reasonable - must be undertaken in consideration of the public policies and potential consequences that underlie the prohibition against selling liquor to minors, which include:

- the effects of liquor on growing bodies and developing minds
- the effects on individuals and society of irresponsible drinking behaviour learned at an early age
- a minor's lack of capacity to metabolize liquor in the same manner as an adult
- that poor choices are made by minors when consuming liquor and liquor is a significant factor in many crimes committed by youth

The standard is not one of perfection – that is, that a contravention will never occur. Rather, it is what is adequate training, systems, and monitoring within this public policy context. The circumstances of each case have to be considered in determining whether the due diligence threshold has been achieved.

Adequate training to prevent the sale of liquor to minors

Strict legal limits are in place to prevent minors from buying liquor and significant effort must be undertaken to ensure that staff members fully understand their responsibilities in that regard.

In this case, the Licensee's evidence of training regarding the prevention of the sale of liquor to minors included:

- New employees are required to have their SIR certification.
- The written server and bartender job descriptions distributed to employees when hired include information about the need for and what to check for in identification.

- Initial training is undertaken over at least three shifts and includes training on the Licensee's policies and the employee's responsibilities to request identification, how to review and assess the identification presented, and the reasons for not selling liquor to minors.
- New employees are tested on their understanding of their job responsibilities, specifically including the requirement for and how to assess identification, to ensure they actually understand what they need to do.
- New employees then work directly with a selected, experienced employee for at least two or three shifts. The experienced employee coaches and observes the new employee and then reports back if the new employee is ready to work or needs more training, thereby providing a second, experienced opinion on the new employee's understanding and ability to meet their responsibilities on responsible service.

Based on the evidence, I find that in its training program the Licensee pays significant time and attention on explaining the need and how to prevent the sale of liquor to minors, including the reasons why liquor should not be sold to minors.

An important element to establish adequacy of the training is testing employees to ensure that they understand their responsibilities. On the evidence, I am satisfied that the Licensee adequately tests its employees on the need for, when to request and how to properly assess the identification that is offered.

In this case, I find that the Licensee has implemented adequate training to prevent the sale of liquor to minors and I find the Licensee met the standard for reasonable training regarding the prevention of the sale of liquor to minors.

Adequate systems to prevent the sale of liquor to minors

With respect to ensuring its policies on identification were put into practice and consistently acted upon, I find that the Licensee has put in place a number of measures:

- Government required signs were posted on the door.
- Notes about the need for and various identification requirements are posted in various locations: on the counter, on all the cash registers, behind the bar, and at

the servers' station. These notes are changed frequently to keep the requirements fresh in the minds of staff.

- An automatic notice on the cash registers gives the date of birth for legal age to purchase liquor.
- Daily reminders are given to staff about the need to request identification and how to properly do that.
- Pop quizzes are frequently given to staff to assess their on-going understanding of the need to request identification and how to properly do that.
- Staff are actively encouraged to and do communicate with each other about the need for and properly requesting identification, so there is a "second set of eyes".
- The Licensee's "no harm, no foul" policy actively encourages staff to take responsible steps with respect to liquor service without fear of negative consequences for themselves or their fellow employees.
- The Licensee actively engages with staff to develop effective strategies to put the Licensee's identification and over-service policies into action.
- The Licensee holds staff meetings at which not only is the need for checking identification discussed but so are the harms of selling liquor to minors.
- The Licensee has an effective "secret shopper" program, plus engages with the larger community to ensure on-going compliance with its responsibilities.

The Licensee regularly engages with staff about the need to comply with responsible service, on an on-going basis by daily reminders, by refreshed written notices, and by regular staff meetings, including notices about how to properly assess the identification presented and the harms of underage consumption. Communication and team strategies are provided to staff to ensure that they continue to implement their training. Staff are tested, both knowingly by "pop quizzes" and by secret shoppers. I find all of these to be good, solid indicators of meaningful on-going steps to ensure the effective application of the employee training and the operation of systems to prevent the sale of liquor to minors.

But based on the evidence, I also find that the Licensee has not always adequately documented the steps it has taken. I find that its policies could be better documented in writing and better maintained. Its staff meeting minutes could be more fulsome. Its Incident Log could be better maintained. However, I am mindful that this is a small

operation, with only 10 or so part-time staff, and one of the Licensee's representatives is typically present at all times.

I found Mr. Hull to have a high degree of sensitivity to the Licensee's responsibility for the sale of liquor. His attempts to identify and improve on any gaps in the Licensee's systems pre-dated the incident. The seriousness with which he takes his responsibilities is evidenced by his demand that all staff have dated SIR certificates. I accept that the Licensee is truly troubled by the sale to the Minor Agent. I am also influenced by Inspector A's comments about this Licensee's efforts to operate safely and responsibly.

I find that the evidence of the Licensee's short-comings in documentation is outweighed by the evidence of its meaningful, on-going steps to ensure the effective, consistent application of the employees' training to prevent the sale of liquor to minors and the operation of systems properly to deal with any potential issues. On this basis, I find that the Licensee's systems and procedures meet the standard of what is reasonable to expect from it to prevent the sale of liquor to minors.

Based on the foregoing, I find that the Licensee has successfully established a defence of due diligence with respect to the contravention. As such, I do not need to discuss any penalty.

Original signed by

Dianne Flood

General Manager's Delegate

Date: June 16, 2017

cc: Liquor Control and Licensing Branch, Surrey Office
Attn: Rupi Gill, Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attn: Hugh Trenchard, Branch Advocate