



**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: Social 242 Lounge & Grill Ltd.
dba Social 242 Lounge and Grill
242 Lawrence Avenue
Kelowna, BC, V1Y 6L3

Case: EH16-116

For the Licensee: Daniel Mulgrew
(The "Licensee's Representative")

For the Branch: Maria Caduhada

General Manager's Delegate: R. John Rogers

Date of Hearing: February 16, 2017

Date of Decision: March 2, 2017

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Social 242 Lounge and Grill Ltd. (the "Licensee") holds Food Primary Licence number 128185 (the "Licence"), pursuant to which it operates the Social 242 Lounge & Grill at 242 Lawrence Avenue, Kelowna, B.C., V1Y 6L3 (the "Establishment").

According to the terms of the Licence, the Licensee may sell liquor from 11:00 a.m. to 1:00 a.m. Monday through Saturday and from 11:00 a.m. to Midnight on Sunday.

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")(as of January 23, 2017 called "Terms and Conditions Handbook").

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 October 3, 2016 (the "NOEA") (Exhibit 1 tab 1).

The Branch alleges that on August 23, 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 male minor ("Minor Agent #97"). Item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* BC Reg 244/2002 (the "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 penalty of a 10 day licence suspension.

The Licensee has admitted that its employee sold liquor to Minor Agent #97 and to the facts as set out in the NOEA. However, the Licensee disputes the finding of a contravention based upon a due diligence defence.

As of January 23, 2017, the Former Act was replaced with the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Current Act") which came into force on that date.

Therefore, although this hearing was held pursuant to the provisions of the Current Act, as the contravention referenced in the NOEA was alleged to have occurred prior to January 23, 2017, this decision has been made pursuant to and in accordance with the provisions of the Former Act and the 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.

RELEVANT STATUTORY PROVISIONS OF THE FORMER ACT AND REGULATION

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 Enforcement Actions

Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
2	A breach of section 33 of the Act [<i>selling liquor to minors</i>]	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 book of documents, tabs 1 to 14.
- Exhibit 2: An envelope containing a coloured photocopy of a picture of Minor Agent #97 and a photocopy of his identification (which envelope was sealed at the conclusion of the hearing).
- Exhibit 3: A copy of a letter dated February 7, 2011 from Karen Ayers, then Assistant Deputy Minister and General Manager of the Branch, to licensees advising them of the introduction of the Minors as Agent Program ("MAP").
- Exhibit 4: A copy of a letter dated October 2012 from Karen Ayers, then Assistant Deputy Minister and General Manager of the Branch, to food primary licensees advising them of the application of MAP to food primary licensees.
- Exhibit 5: A copy of a document entitled "Social Orientation Package" supplied by the Licensee to each new hire.
- Exhibit 6: Photocopies of signs posted throughout the Establishment together with photocopies of notes made by the Licensee's Representative prior to shift meetings of the Licensee's employees.
- Exhibit 7: Photocopies of emails from the Licensee's Representative to the Licensee's employees, which emails dated from January 4, 2014 to and including July 29, 2016.

WITNESSES

The Branch called the liquor inspector, ("Inspector A"), who issued the NOEA. The Branch did not call Minor Agent #97.

The Licensee called the Licensee's Representative and the server who allegedly served liquor to Minor Agent #97 on August 23, 2016.

PROTECTING THE IDENTITY OF THE MINOR AGENT

To protect the identity of Minor Agent #97, and with the agreement of the parties, at the conclusion of the hearing once the same had been shown to the Licensee's Representative, a colour photocopy of Minor Agent #97's photograph and a photocopy

of a photograph of his identification were placed in an envelope, marked as Exhibit 2, and the envelope was sealed. A notation was then placed on the envelope that it was not to be unsealed or its contents disclosed without a court order.

EVIDENCE – BRANCH

The Licensee confirmed that it accepted the facts as they are set out in the NOEA as to what occurred in the Establishment on August 23, 2016 with respect to the alleged contravention.

The NOEA

The facts in the NOEA might be summarized as follows:

- On August 23, 2016 Inspector B and Minor Agent #97 constituted an inspection team pursuant to the Branch's MAP to test compliance with the Former Act and the Regulation at several licensed establishments in the Kelowna area;
- At the start of the shift on this date, Minor Agent #97 was photographed (a redacted copy of which is Exhibit 1 tab 6), his identification viewed and photographed (a redacted copy of which is Exhibit 1 tab 6) and his age confirmed to be 17 years old;
- At approximately 6:51 PM on Tuesday, August 23, 2016, Minor Agent #97, together with Inspector B entered the Establishment and were met by an employee of the Licensee (the "Server") who sat them at a booth table, gave them menus and told them that it was happy hour;
- There were 2 other patrons inside the Establishment and 10 others on the patio outside;
- The Server returned with two glasses of water and asked Inspector B and Minor Agent #97 what they would like to drink. Minor Agent #97 asked for a bottle of Budweiser beer, as did Inspector B;
- The Server brought the two bottles of Budweiser beer, placing one in front of Minor Agent #97 and the other bottle in front of Inspector B. Inspector B took a picture of Minor Agent #97 with a menu and the bottle of Budweiser beer (a redacted copy of which is Exhibit 1 tab 5);
- Minor Agent #97 asked for the bill for the Budweiser beers which the Server gave to him (a copy of which is Exhibit 1 tab 7). Minor Agent #97

paid the bill with a twenty dollar bill, and was given a receipt for the transaction together with the change from the twenty dollar bill;

- Minor Agent #97 and Inspector B left the Establishment and went to their car where Minor Agent #97 completed the minor agent observation form (a redacted copy of which is Exhibit 1 tab 3) and the minor agent statement (a redacted copy of which is Exhibit 1 tab 4);
- Inspector B then sent an email to Inspector A advising Inspector A of the service of beer to Minor Agent #97 and included a copy of the picture showing Minor Agent #97 with the Budweiser beer (Exhibit 1 tab 5);
- Upon receipt of the email from Inspector B, Inspector A emailed the Licensee's Representative advising him of the contravention and that a contravention notice would be issued together with a demand letter; and
- The Licensee's Representative subsequently acknowledged receipt of the contravention notice and the demand letter and identified the Server to Inspector A together with her serving it right certificate number.

Inspector A

In his testimony, Inspector A:

- Stated that he has worked for the Branch for six and a half years and is currently the Acting Regional Manager for the Interior Area;
- Identified the copy of the contravention notice B015509 (the "Contravention Notice") (Exhibit 1 tab 8) as being the contravention notice he had prepared and forwarded to the Licensee together with the demand letter seeking to identify the Server;
- Identified the NOEA (Exhibit 1 tab 1) which he had subsequently issued;
- Identified copies of the correspondence to licensees in Exhibits 3 and 4 outlining the introduction of MAP and its application to food primary licensees and stated that based upon these and other communications between the Branch and the licensees, that he was of the opinion that licensees should be well aware of MAP;
- Testified that in accordance with MAP, Minor Agent #97 was photographed at the commencement of his shift on August 23, 2016 and at the end of his shift to ensure that he had not changed his appearance during the shift and had, as well, had a copy of his identification copied, all of which he confirmed were included in Exhibit 1 tab 6;

- Confirmed that at no time did the Server ask Minor Agent #97 for his identification;
- Identified the Licence (Exhibit 1 tab 9) and noted that one of the terms and conditions of the Licence was that the Licensee comply with the terms of the Guide;
- Noted that pages 33 and 34 of the Guide dealt with the prohibition against serving liquor to minors and the requirement to ask for two pieces of identification to verify a patron's age prior to serving liquor to that patron;
- Testified that the Branch takes very seriously the service of liquor to a minor due to the repercussions from minors getting access to alcohol; and
- Testified that as the Licensee had no record of previous enforcement actions being taken against it similar to the matter at hand, he believed that a 10 day suspension of the Licence preventing the Licensee from serving liquor during that period of suspension was a reasonable penalty as the Licensee would still be able to serve food during the period of this suspension and would be able to work with its staff during the suspension to better train them in order to ensure future compliance with the prohibition against serving liquor to minors.

EVIDENCE – LICENSEE

The Server

In her testimony, the Server confirmed that she had served liquor to Minor Agent #97 as alleged. She stated that when Minor Agent #97 and Inspector B entered the Establishment on August 23, 2016, they didn't make eye contact with her or engage her. She remembered that she was flustered when speaking to them and had walked to the kitchen to check on some food for another table and mentioned to the chef how uncomfortable she felt from her encounter with Minor Agent #97 and Inspector B.

Immediately after Minor Agent #97 and Inspector B had left the Establishment, the Server testified that she knew that something was wrong and advised the Licensee's Representative of that fact as soon as he returned to the Establishment and prior to the Licensee's Representative receiving the email message from Inspector A.

The Server testified that not asking Minor Agent #97 for his identification prior to serving him liquor was completely out of character for her and that she was not certain as to why she had done so.

The Licensee's Representative

The Licensee's Representative testified that he was the owner operator of the Establishment which has been in business for approximately 4 years. The Establishment operates seven days a week in the evenings from 5:00 pm until 9:00 pm as a dinner club offering casual fine dining and is rated in the top five restaurants on rating sites for the area of the City of Kelowna in which it operates. From 9:00 pm until closing it operates more as a lounge with its kitchen open offering appetizers.

To demonstrate the Licensee's training standard and its attention to detail for the training of each staff member, the Licensee's Representative entered into evidence Exhibit 5 which is entitled "Social Orientation Package". He testified that a copy of Exhibit 5 is delivered to each new staff member hired by the Licensee.

The Licensee's Representative pointed out that this document covers such topics as the Licensee's core values, a dress code, cleanliness, staff discounts, the use of cell phones, staff scheduling, and training. He noted that Exhibit 5 is a four page document and that one of these pages is devoted to explaining why checking for a customer's identification is important. He highlighted the fact that this page was headed in bold print "Why is ID'ing important" and included the following sentence, also in bold print:

As servers and bartenders one of our key goals every day is to make relationships with our guests and ID'ing people offers us an advantage and wealth of information that you are able to use.

The Licensee's Representative testified that this sentence reflected one of the basic philosophies of the Licensee to the effect that being in a position to ask for a patron's identification should be looked upon not as an obligation, but as an opportunity for the server to get to know the customer. With the information on the customer's identification the server is better able to understand the customer's wishes which, in turn, assists the server to better do his or her job. He used as an example the ability to

find out a patron's birthdate so that a special birthday dessert could be offered to the patron. This approach, he stated, gives the server a wonderful opportunity to build rapport with the customer. He noted that with this philosophy, the number of "walk outs" had dropped significantly.

The Licensee's Representative also entered into evidence Exhibit 6 which he testified was a collection of photocopies of signs which are posted throughout the Establishment. He noted that Exhibit 6 also included a photocopy of a collection of notes that he had made in preparation for him conducting pre-shift staff meetings. He pointed out that the signs posted throughout the Establishment included signs which set out what the date of birth had to be on a piece of identification to demonstrate that the holder of the identification was at least 19 years old. For example, he referenced the photocopy of the sign which stated that "The ID date for 19 years old is THIS DAY 1998" and testified that the wording on these signs will change in each calendar year so that the server is not required to mentally calculate a person's age.

The Licensee's Representative stated that each of the pre-shift notes included in Exhibit 6 were copies of notes he had made for himself in preparation for holding a pre-shift meeting with his staff and pointed out that each of these notes included a reminder to himself to raise with his staff at the pre-shift meeting the importance of asking patrons for identification.

The Licensee's Representative testified that the Establishment is located in the nightclub area of Kelowna and is surrounded by liquor primary establishments with doormen who don't allow minors into their establishments. The Establishment, however, being licensed as a food primary does permit minors to enter and, therefore, must be particularly aware of the requirement to ask for identification. It is for this additional reason, that the Licensee's Representative has developed the philosophy focused on asking for identification which is referred to above.

The Licensee's Representative entered into evidence as Exhibit 7 copies of emails to the Establishment's staff that he had sent out over the years for the purpose of advising the staff of their work schedules. He noted that as well as including the work schedules, the Licensee's Representative referenced in these emails the importance of asking

patrons for identification. He stated that as a staff member probably opens the email on a daily basis to review a work schedule, that this would mean a daily reminder to this employee of the requirement to ask customers for identification.

The Licensee's Representative pointed out that Exhibit 5 included a section entitled "Termination" and noted that these grounds for termination included a server serving alcohol to an underage customer.

He testified that when he returned to the Establishment on August 23, 2016 and received the email from Inspector A about the service of alcohol to Minor Agent #97 referenced in the NOEA, he immediately terminated the Server's employment. Despite her termination, the Licensee's Representative testified that the Server was sufficiently upset with what had happened that she on her own time held meetings with the Establishment's staff relating what had happened and stressing the importance of asking all customers for identification.

The Licensee's Representative testified that the Server was rehired in December of 2016, not as a server, but as a hostess until the matter of the contravention was resolved.

On cross examination, the Licensee's Representative testified that:

- He alone sets the policies for the Licensee.
- He has a serving it right certificate.
- He keeps himself abreast of changes to liquor policies implemented by the Branch.
- On August 23, 2016, he was not in the Establishment at the time of the contravention, but came in later that night.
- There are additional copies of pre-shift memos referencing the importance of ID'ing customers and he would provide such additional documentation if requested to do so.
- There are regular mandatory staff meetings, but there are no staff minutes kept as they have a small staff of only 7 or 8 people. He has notes or talking points, but not a formal agenda.
- Every week he emails schedules to staff, and was willing to provide more examples of these documents if requested to do so.

- There was reference to the obligation of staff members to ask for identification in at least one out every two of these emails, one or two times a month, together with a reference to this obligation in pre-shift meetings.
- Following the training of a new staff member, the Licensee's Representative testified that the new staff member is required to write a test on what has been learned. The Licensee's Representative testified that he did not bring to the hearing copies of such tests, but could provide them if required.
- Following menu updates or updates to the training manuals, the Establishment's staff is required to complete mini quizzes on the updates and these mini quizzes include references to asking for identification and other matters dealing with compliance with the liquor laws. He did not bring with him copies of these mini quizzes.
- An incident log book is kept by the Establishment and the incident of August 23, 2016 was logged in it. He did not bring a copy of this log book to the hearing.
- The fact that liquor had been served to Minor Agent #97 was discussed with the Establishment's staff and they were notified of the Server's termination.
- On-going training on compliance with the liquor laws is mainly done through verbal communications, but there is a printed copy of the Serving It Right documentation which is referenced on a regular basis.

On cross-examination, the Server testified that:

- The Licensee does not provide written manuals assisting an employee to deal with forms of identification from jurisdictions other than British Columbia, nor are there written manuals to assist her in determining how to tell who is a minor.
- She has completed at least 4 written tests which test her knowledge of liquor laws, but agreed that most of these tests involved the subject of new menu items.
- If she encounters resistance when she asks for identification, she will get a member of the management to assist her.
- When asked if she agreed that her training was such that she was not adequately prepared to handle the situation which occurred on August 23, 2016, she disagreed and stated that she didn't know what had happened, she is usually so good about asking for identification, and chases everyone else about asking for identification. It was a bad day.

SUBMISSIONS – BRANCH

The Branch submitted that the Licensee has admitted that on August 23, 2016 liquor was sold by the Server, an employee of the Licensee, to Minor Agent #97 who at the time of the sale was a minor.

Due Diligence

The Branch further submitted that the Licensee had not made out the essential elements of the due diligence defence in that:

- The communication between the Licensee's Representative and his staff focused on the business side of the Establishment and not on compliance. Therefore, the Licensee had not established that it had at the time of the contravention created a culture of compliance with respect to the prohibition of the sale of liquor to minors;
- While email reminders to staff is a valuable component, they are no replacement for mandatory staff meetings where key messages can be discussed and best practices reinforced creating a culture of compliance among staff; and
- The Licensee had failed to design and maintain a testing and monitoring regime that was effective, consistent and appropriate to prevent the occurrence of the contravention.

Therefore, the Branch submitted, the Licensee had not made out the defence of due diligence.

As the alleged sale of liquor has been admitted and as the Licensee had demonstrated no defence to this contravention, the Branch submitted that the Licensee should be found liable for breach of section 33(1)(a) of the Act, by selling, giving or otherwise supplying liquor to a minor.

As to the matter of penalty, the Branch submitted that as this was the Licensee's first contravention, the minimum recommended penalty of a 10 day suspension of the Licence was reasonable and appropriate.

SUBMISSIONS – LICENSEE

The Licensee acknowledged that on August 23, 2016, the Server sold liquor to Minor Agent #97 as alleged in the NOEA.

However, the Licensee submitted that the defence of due diligence applies.

The Licensee submitted that the Establishment is a small restaurant with a limited staff, ranging between six and ten people. These staff members see each other every day. The Licensee's Representative is at the Establishment six and a half days a week during the summer and speaks with the staff daily. The Licensee submitted that there is a very close relationship among the staff and a strong culture of compliance and communication. The sale of liquor to Minor Agent #97 by the Server was an abnormal situation, an anomaly.

REASONS AND DECISION

Contravention

The Licensee has admitted that on August 23, 2016, as alleged in the NOEA, the Server sold liquor to Minor Agent #97 in contravention of section 33(1)(a) of the Former Act.

To address the Licensee's submissions on the defence of due diligence:

Due Diligence

As the Server sold liquor to a minor in contravention of section 33(1)(a) of the Former Act, the Licensee is liable unless it can demonstrate that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The onus falls on the Licensee to demonstrate on a balance of probabilities this due diligence and, in doing so, the Licensee must not only clearly demonstrate that it has established procedures to identify and prevent from happening activities that might lead to this contravention of

the Former Act, it must also clearly demonstrate that it continues to ensure that such procedures are consistently in operation and acted upon by its employees.

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:

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 Act (see paragraphs 41 to 44).

The Court states that the defence of due diligence is to be considered in two stages:

1. Whether the employee who sold liquor to the minor 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 took such action or failed to take such action was not a directing mind of the Licensee (and there is no requirement that a “directing mind” must be on the premises when the contravention occurs), 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 upon the evidence presented. In summary, *Beverly Corners* provides that 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 Licensee's "directing mind" is someone who can design and supervise the policies of the Licensee rather than an employee who carries out these policies. And this directing mind need not be in the Establishment when the contravention occurred.

The evidence before me is quite clear that the Licensee's Representative and not the Server is the directing mind of the Licensee and I so find. This evidence is also to the effect that the Licensee's Representative was not in the Establishment when the contravention occurred.

I find that the Licensee's directing mind did not sell liquor to Minor Agent #97 and move to the second part of the analysis as set out in *Beverly Corners*.

Implementation of Adequate Training and Systems and Effective Application and Operation of these Systems

I accept the submissions of the Licensee's Representative that the Licensee strives to create and maintain a culture of compliance at the Establishment. It was obvious from the submissions made that the Licensee feels very strongly about ensuring that the rules are followed, including the rules ensuring that liquor is not served to minors. The staff of the Establishment is comprised of a small group of people who have worked together for a long time and who work together well. It was evident from the evidence before me that this small group of employees have embraced and practice daily this culture of compliance.

However, evidence of a good culture of compliance alone is not sufficient to meet the test for due diligence. The onus is on the Licensee to prove on the evidence before me that it has met the test for due diligence. This test is whether a Licensee has implemented adequate training and other systems and has taken reasonable steps to ensure the application of this training and the operation of its systems in a consistent and effective manner. However, this test for due diligence is not a requirement to demonstrate perfection. Rather the test is to demonstrate that the fact that the Server served liquor to Minor Agent #97 on August 23, 2016 was an anomaly within a culture of compliance.

The Licensee's Representative provided evidence of the initial training of each new employee as documented by Exhibit 5. In providing this evidence, his focus was on ensuring that each such new staff member understood that the culture of the Licensee required compliance with respect to the requirement to request identification from customers not strictly for the purpose of following the liquor laws, but as well for the purpose of enabling that staff member to better serve the Licensee's customer. Although such a focus might be taken to distract a staff member from his or her obligation to request identification from customer's before serving them liquor, I do not believe this to be the case.

Rather, such a culture, to my mind, reinforces in the staff member the necessity of making such a request and to that end ensuring that the liquor laws are followed. The important factor is that a culture of compliance is established and maintained in an establishment, notwithstanding the reason underlying this culture.

In addition to the initial training environment, the Licensee's Representative provided evidence of ongoing reinforcement of this training and culture in the form of:

1. signage, some of which had the capacity to be updated to assist the staff member in ensuring compliance by identifying the minimum date of birth for a patron to establish that he or she was not a minor;
2. regular shift meetings;
3. written quizzes for the employees testing them for an understanding of the Licensee's current menu and operating policies; and
4. regular email communication between the Licensee's Representative and the Licensee's staff.

Although, again, the sole focus of these meetings, tests, and emails was not strictly to ensure compliance with the liquor laws, by regularly referencing topics related to the liquor laws, these undertakings clearly served to reinforce a continuing culture of compliance and specifically reinforcing the requirement to ask customers for their identification.

It was submitted by the Branch that a regime of regular staff meetings better serve to properly reinforce compliance with the liquor laws. I agree with the Branch that such a regime accomplishes this purpose. However, I also agree with the Licensee that because of the small number of employees of the Licensee and the fact that the Licensee's Representative was usually on duty at the Establishment, that such a formal regimen in this instance was not as critical given the regimen of daily reminders by the Licensee's Representative on issues such as over service and asking for identification.

In addition, there was evidence before me that following the contravention on August 23, 2016, the Server was immediately dismissed. There was evidence that the Licensee kept a log book to record incidents which occurred in the Establishment, including this contravention. And there was evidence that this contravention was used to further educate the Licensee's employees on the importance of asking for identification.

The Server in her testimony was adamant that she was normally very strict with customers insisting on having them produce proper identification before serving them liquor and that she had the complete support in this position from the Licensee's Representative. She testified that her serving liquor to Agent #97 was very much contrary to her usual practice and to that of the other employees of the Licensee.

I find on the evidence before me that the Licensee's staff compliance training and ongoing monitoring prior to the incident on August 23, 2016 meets the test in *Beverly Corners*. I therefore find that the Licensee has met the onus placed upon it and proven the defence of due diligence on a balance of probabilities

CONCLUSION

Having found that the Licensee has established the defence of due diligence, I find that the Licensee has established a complete defence to the contravention of section 33(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

R. John Rogers
General Manager's Delegate

Date: March 2, 2017

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Stephen Hitchcock, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attn: Maria Caduhada, Branch Advocate