



**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: STS Restaurant Group Ltd. dba Orrange
Kitchen and Bar
110 – 1125 Nicola Ave.
Port Coquitlam V3B 8B2

Case: EH17-012

For the Licensee: Brian Orrange

For the Branch: Hugh Trenchard

General Manager's Delegate: Nerys Poole

Date of Hearing: June 28, 2017

Date of Decision: July 18, 2017

**Liquor Control and
Licensing Branch**

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INTRODUCTION

STS Restaurant Group Ltd., dba Orrange Kitchen and Bar (the "licensee") owns and operates a restaurant, with food primary licence number 213139 (the "licence") at 110 – 1125 Nicola Avenue in Port Coquitlam (the "restaurant").

According to the terms of its licence, the licensee may sell liquor from 9:00 a.m. to 2:00 a.m. Monday to Sunday.

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

Brian Orrange is a principal shareholder of the STS Restaurant Group Ltd., the corporate licensee and owner of the restaurant. Mr. Orrange appeared as the licensee's representative at the hearing and gave evidence.

The licensee is alleged to have contravened the *Liquor Control and Licensing Act* on February 18, 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 admits that its employee sold liquor to the minor agent. However, the licensee disputes the finding of a contravention, on the basis that its policies, practices, procedures and training establish a defence of due diligence.

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 March 16, 2017 (the "NOEA") (Exhibit 1, tab 1).

The Branch alleges that on February 18, 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

S77 (1) Subject to the regulations, a person must not

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

ISSUES

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

EXHIBITS

Exhibit 1: Branch's book of documents, tabs 1 to 15

Exhibit 2: Licensee's documents

WITNESSES

The Branch called one witness: the liquor inspector who wrote the NOEA and was present at the establishment on February 18, 2017 ("liquor inspector 1").

The licensee called one witness: Brian Orrange.

FACTS - re: Incident on February 18, 2017

The Licensee accepts the facts of the contravention as set out in the NOEA and in the testimony of the liquor inspector.

On February 18, 2017, two liquor inspectors attended the restaurant with a minor agent employed by the branch under the MAP. At the start of the shift, liquor inspector 1 reviewed and photographed the minor agent's identification and photographed the minor agent. The minor agent was 17 years old on February 18, 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. The branch implemented the MAP in 2011, after the Act was amended to allow the branch to employ minors as agents for this purpose.

The restaurant is licensed as a food primary establishment and possesses a food primary licence. As a licensed food primary restaurant, minors are permitted but not allowed the service of alcohol.

At approximately 5:51 p.m., the minor agent entered the restaurant with liquor inspector 2. Liquor inspector 1 remained in the vehicle. The minor agent communicated with a hostess and informed her that she would like a seat at the bar and that she was waiting for another person. The minor agent sat at the bar. A bartender approached her and informed the minor agent that she would return in a moment. When the bartender returned, the minor agent ordered a Smirnoff Ice. The bartender asked her if she wanted it in a glass and the agent responded "sure." The bartender then poured some of the product into the glass and placed it in front of the minor agent, along with the remainder of the bottle. The minor agent reported that the bartender did not request identification from her.

Liquor inspector 2 took possession of the liquor at this point. The minor agent left the restaurant and joined liquor inspector 1 in the vehicle.

Liquor inspector 1 then entered the restaurant and saw liquor inspector 2 talking with the manager by a table located near the entrance and stairwell to the second level of the restaurant. Liquor inspector 2 informed liquor inspector 1 that the bartender served liquor to the minor agent. He pointed out the product, a bottle of Smirnoff Ice on a table beside a glass with a lemon on the rim. Liquor inspector 2 photographed the Smirnoff Ice and indicated the bartender who served the minor agent.

Liquor inspector 1 spoke to the manager on duty who noted that the owner, Brian Orrange, was in the restaurant. Liquor inspector 1 asked to speak with Mr. Orrange. When Mr. Orrange arrived at the table, liquor inspector 1 informed him that the restaurant had been tested for compliance using the MAP and that the bartender had served liquor to the minor agent without requesting identification. Mr. Orrange stated that he was aware of the program and he had advised his staff about it. He stated that the bartender had been employed with the restaurant since they opened approximately four years earlier. Liquor inspector 1 and Mr. Orrange discussed the enforcement process and his options moving forward.

The manager identified the bartender and provided a "New Hire Form" which specified her employment information and her Serving It Right number.

Liquor inspector 1 wrote and issued Contravention Notice B006851 and handed it to the manager who signed it. Liquor inspector 2 paid \$7.19 for the product and obtained a receipt. The liquor inspectors left the restaurant at approximately 6:13 pm.

The licensee did not cross-examine liquor inspector 1.

LICENSEE'S EVIDENCE

The Contravention

As noted, the licensee does not dispute the facts of the contravention. The licensee submits it has a full defence to the contravention and presented evidence of its due diligence.

Mr. Orrange stated that he was present in the restaurant on the evening of the contravention. He was upstairs attending to some issues arising from a charity event being held in the upstairs area of the restaurant.

Bartender's Statement about the Contravention

The licensee entered a statement from the bartender who served the minor agent on February 18, 2017. The licensee had intended the bartender to give evidence herself but unfortunately her other job as a nurse prevented her from appearing on the day of the hearing. Despite the shortcomings of an unsworn written statement not subject to cross-examination, I have accepted the statement and given it some weight. Mr. Orrange testified about the anguish expressed by the bartender after the incident, her sincere regret over the incident and her unblemished record as a valued employee of the restaurant since its opening.

The bartender has worked at the restaurant since it opened in April 2013. She has bartended for 15 years. She had never had a single issue with the liquor laws or been reprimanded for violating any liquor laws. She has always maintained a high standard for herself and has been seen as and been complimented on being a bartender with high standards who portrays professionalism every day that she works. She is not afraid to ID guests or to cut someone off before they have had too much to drink and also ensures that anyone who needs it has a safe ride home. She has always upheld the Serving It Right standards and she takes pride in doing so.

On the evening of February 18, 2017, the restaurant was busy. She stated that a second bartender usually comes in at 5:30 and on that evening the second bartender was late and did not start until 6 p.m. As a consequence, she was very busy making the drinks and tending to customers. When the minor agent sat down at the bar, the bartender asked her to wait a minute because she was so busy. When the minor agent asked for the Smirnoff Ice, the bartender says she remembers thinking to herself "Should I ID her?" At that moment, she was so busy she made an error in judgement. She thought the young woman looked well over 19, but not over 30. She states she made a poor judgement call by not requesting ID at the time. Apart from being busy, she stated that

she was dealing with some stress resulting from her other employment and therefore not as focused as she normally would have been.

The bartender stated that she felt terrible after the incident. She could not believe she had served an under-age girl. She has three kids of her own and would not be happy if they were served one day while under-age. She stated she has a clean and flawless bartending record and is the first one to help teach the new servers and bartenders about the liquor laws and to uphold the restaurant's policies. She felt she had let the restaurant management down. The incident has really hit her hard because she knows that the restaurant has an impeccable track record for abiding by the liquor laws and enforcing a "no tolerance" policy when it comes to over serving or serving under-aged guests. She has had multiple guests leave because she has requested ID and they could not provide it. She stated that this incident happened due to a poor judgement call on her behalf and a mistake that she has definitely learned from. She continues to have regrets over not IDing the minor agent and states she can only learn from this situation and grow from there.

She added that Orange is a great restaurant and one that takes pride in ensuring staff adhere to liquor laws and guests get home safely. The bartenders ID guests who look under 30. She stated that the rest of the staff is also more diligent, now more than ever, as a result of the contravention. She apologized for her mistake and stated that staff has taken away an important message from this incident and that additional measures have been taken to prevent this from ever happening again.

Licensee's Policies, Procedures and Training

Mr. Orange gave evidence about the policies and procedures of the restaurant, the training received by new hires, ongoing training and the implementation of the restaurant's policies.

The Licensee's Policy on Identification Requests

Mr. Orange stated that the restaurant's policy is to request ID of anyone who appears to be under 30. He stated this policy has been in place since the restaurant opened. Management emphasizes this to all staff. The orientation manual provided to all employees states under Service of Alcohol:

Always ask for 2 pieces of ID from anyone who looks under the age of 30, you must be 100% sure!

It's not just the restaurant that can get fined if you serve a minor. YOU can too.
If someone poses a problem, get a leader.
(underlining in original)

The server training manual notes under Communication with the guest:

ID Check: Always ask for ID unless you are 100% sure guest is Age of Majority. 2 pieces of ID are required, one of which must be government issue

When asked about the wording of being 100% sure if a guest is the "Age of Majority", Mr. Orange stated a server, to be 100% sure of someone's birthdate, would have to be serving a mother, sister or close friend if the guest appeared to be under 30. Servers and bartenders are trained to ask for ID if guests appear to be under 30. The emphasis, constantly made by management, is that servers must be 100% sure.

The Bar Training Guide refers to asking for ID of anyone under 25:

Serving Minors

The penalties for serving minors are severe. The minimum fine liable for the restaurant is \$500 and the liquor license privileges could be revoked or suspended. Liquor inspectors have the ability to suspend our liquor license from 24 hours to 2 weeks if there are any infractions found during routine audits and spot checks. Two pieces of ID **must** be taken from people who look under 25.

It's the Law

- It is against the law to serve alcohol to an intoxicated person
- It is against the law to serve alcohol to a minor
- It is against the law to serve alcohol to the point of intoxication

Orange Kitchen & Bar AS WELL as the employee can be held legally responsible for violation of the above laws.

(bold in original)

When asked about the discrepancy here with the server training manual, Mr. Orange stated that the policy of the restaurant is to ID anyone who appears to be under 30 and that the "under 25" reference may have been a type-o and should be corrected.

Training

Mr. Orange gave evidence about the training the restaurant provides to new hires, and to any employee who is promoted to a higher position, e.g. from a server to bartender. He stated that occasionally existing employees take the training as a refresher. He set up this training program. He stated that the bartender was a trainer, but not a leader. A leader would be in a management position, either himself or his manager.

All new hires, whether a hostess, server or bartender receive three days of classroom training followed by three days of shadow shifts. Kitchen staff are not required to do this same training. All new hires must complete this training to the satisfaction of the leader and the trainer before they are allowed to work their first shift on their own. Mr. Orange stated that he has three servers or bartenders who are qualified to conduct the training. The bartender who served the minor agent acted as a trainer.

The first three days of classroom training are about 3 hours or more each day. The trainees learn about all the policies of the restaurant including the requirement to ask for ID of anyone who appears to be under 30.

After the classroom training, new hires must take the shadow training. The shadow training is another three days. Mr. Orange provided the Server Shadow Training Guide that explains the shadow shifts and what is involved on each day. He described the three sessions of shadow training as "I show you, we do it together and then you show me."

On Shadow Shift 1, the trainee is always with the trainer. The trainer does not enter any bills into the system on day 1. The shift consists of 80% trainer and 20% trainee doing the tasks. It is an opportunity to observe and ask questions. Under Shift Focus, one of the bullets states:

Review and reinforce ID'ing any and all guests who you are not 100% sure are age of majority

On Shadow Shift 2, the responsibilities during this shift are mixed with 50% trainer and 50% trainee. The trainee is required to do the Halo work for every order (issuing the bills and entering into the system). The trainer and trainee are always together during this shift. Under Shift Focus, one of the bullets states:

Trainee shows how to complete proper ID check

On Shadow Shift 3, the responsibilities are 80% trainee and 20% trainer. The trainee is now responsible for all the tasks and the trainer observes and critiques the trainee's work. The two are never separated during this shift. Under Shift Focus, one of the bullets states:

Trainee demonstrates proper ID check

After every shadow shift, the trainer and trainee must fill out a form indicating the date of the shift, the comments of each and the comments of the leader. The leader, trainer and trainee sit down and discuss how each shift went, what was completed properly

and what needs to be worked on. The three of them then sign the forms. Either Mr. Orrange or the manager sign off on the forms after each shadow shift.

On the Shadow Shift 3 form, it states:

After shadow 3 Leader and Trainer will determine if a 4th shadow is needed or if trainee is ready to serve on their own (bold in original)

Mr. Orrange stated that this training system allows him as an owner to know that any new staff on the floor know the Orrange policies. Mr. Orrange added that, at this point, a new hire may be dismissed as not being suitable for the restaurant or they may decide he/she needs more training before being allowed to serve on his/her own.

In addition to the above six days of training, bartenders undergo an additional three days specific to bartending. Mr. Orrange provided the Bar Training Guide which sets out the three days of shadow shifts for bartenders. The first paragraph in this guide states:

The Bartender Training at Orrange Kitchen & Bar consists of 3 Shadow Shifts with one of the senior Bartenders. These shifts will commence once a verbal food and bar test has been given to you by a Leader and a score of 100% has been achieved. Each shift has an outlined expectation, focus and form for the trainee, trainer and leader to track progress. Throughout these shifts you will be trained on both the Day Bar (opening, prep, order, receiving, etc.) and the Night Bar (cross-over, closing bar, stocking, etc.). At the end of the 3rd shift, an audit will be performed by a Leader to ensure you are ready for a solo shift behind the Bar, otherwise a 4th Shadow Shift may be arranged.

There is a section on Serving Minors, quoted above.

Similar to the server training, there is a form to be filled out after each shadow shift, with the Leader, Trainer and Trainee signing off on it. On the Shadow Shift 3, the shift focus list includes:

Trainee demonstrates proper ID check

When asked about how this would be done, Mr. Orrange explained that the trainer would observe the trainee asking a patron for ID and the trainer and trainee would then discuss what happened. If the trainee did not properly perform the ID check, e.g. did not ask someone who appeared to be under 30 or did not ask for two pieces of acceptable ID, the trainee would not be able to have a shift on his/her own or the trainee may not be hired. Mr. Orrange added that if the trainer notes that the trainee does not ask a patron for ID when he/she should, the trainer will step in and do so.

The licensee did not provide any signed copies of the shadow shift forms. Mr. Orange testified that the signed copies were all in a file in his office and that these included copies signed by the bartender.

Serving It Right

In November of 2016, the restaurant implemented a new payroll scheduling system, called Big Chip Connect. Every new employee must sign into it and enter their Serving It Right number. If an employee does not sign in with their Serving It Right number, management is prevented from scheduling them on this system. Mr. Orange testified that this holds his leaders accountable to ensure all new hires have their Serving It Right.

Tests

All staff must complete a written test in which they must receive 80% or better. The majority of the questions involve product knowledge. There are questions about the restaurant's policy with respect to requesting identification.

Point of Sale (POS) Reminders and Signage

All the restaurant's POS terminals have a reminder sign immediately beside them, with the heading 'CHECK PHOTO I.D.' The branch provides these signs to licensees. The licensee included a photo of the POS terminal signs in Exhibit 2. The sign has a red, yellow and green light. The red light says stop and shows two birth years that indicate a patron will be underage. The yellow light says Caution and indicates the birth year in which a patron may have turned 19. The green light says OK and indicates two birth years that indicate a patron is over the age of 19.

There are no other signs about checking for ID in the restaurant. Mr. Orange stated that they post signs that come from the branch in the washrooms. They had one up about ID requirements and more recently, they have posted one about overservice.

Staff Meetings and Daily Reminders

The management holds quarterly meetings with staff where they discuss any changes to menu, corporate policy, including ID policy, and any incidents that may have arisen since the last meeting. Mr. Orange stated that he sets an agenda for these meetings but does not keep minutes. The most recent meeting was held on June 12, 2017 where the discussion focussed on overservice. They held a meeting almost immediately after the incident on February 18, 2017. At that meeting the focus was on what happened, why it

happened and the importance of consistently applying the policy of requesting ID of anyone who appeared to be under 30.

Management has regular pre-shift meetings with staff where, along with discussions about any food product changes, they discuss policy and remind staff about ID checks.

In addition, every Wednesday at 3:30, they have meetings with the shift leaders to discuss any concerns, highlights, changes to menu, etc..

Dismissal for Not Requesting ID

Mr. Orange stated that he has dismissed employees in the past or has not hired trainees who have failed to properly perform ID checks. He did not dismiss the bartender as a result of this incident as he knew she had been undergoing some stress, she had been a competent and reliable bartender since the restaurant opened, and he felt she deserved another chance and would learn from this error in judgement.

Mr. Orange explained that on the day of the incident, he spoke to her afterwards and she was very distraught. He wrote it up and placed it in her file. He stated it was extremely out of character for her not to follow the rules. Immediately after the incident, the bartender took some time off as she was preparing for exams for her nursing qualifications. He expects that she may return in July to work part-time in addition to her fulltime position as a nurse. He has no problem bringing her back because of his confidence in her abilities and his belief that she has learned from this mistake.

The restaurant does not have a policy that states that employees will be dismissed if they serve minors. He says they have a policy stating reasons for which an employee may be dismissed, and it includes any illegal activities.

Secret Shoppers

Mr. Orange has used family and friends who appear under 30 to see if staff are regularly checking for ID and asks them to report back to him about the experience.

Logbook

All incidents are recorded in a computer program excel spread sheet. These are then discussed with staff, often at pre-shift informal meetings. Mr. Orange referred to the types of incidents that would be in the logbook. Only he and the manager write up incidents in this program. A server will report verbally to the manager or to him and they will then note it in the computer program. The types of incidents reported include

turning away a table for lack of ID, stopping service of alcohol to someone, someone taking off without paying, etc.

Mr. Orrange apologized for not providing a copy of the logbook. He stated he would know better next time, but hoped there would not be a “next time.”

Mr. Orrange mentioned they have a Facebook page that is available for staff to comment and note items or incidents to bring to attention of other staff. This is a private page and not open to the public.

The Guide

Mr. Orrange stated that the Guide is located in his office and that it is accessible to all staff if they wish to review it. He used sections of the Guide and of the Serving It Right manual to compile their training materials.

Licensee’s Philosophy for Restaurant

Mr. Orrange testified about his philosophy for the management of his restaurant and his emphasis on ensuring staff follow all liquor laws. He stated that he is aware of pubs in the area who are known for serving under-age patrons. He said most of his staff have their own kids and their parents are often customers in the restaurant. He wants to run a place that is safe for families. He said that the restaurant is known in the community as a place that has strict standards with respect to serving under-age patrons or over-service. He said they have turned away whole groups when one or two in the group are unable to show ID. He said the restaurant is located in an area with two high schools nearby. It is extremely important to him that under-age patrons are not served. He says minors know not to try in his restaurant.

SUBMISSIONS - BRANCH

The branch notes that the licensee agrees with the facts of the contravention as set out in the NOEA.

The branch refers to the absence of some key documents, in particular signed copies of the trainee forms. The branch submits that this is a deficiency in the evidence.

SUBMISSIONS - LICENSEE

The licensee’s final submission was brief. The licensee admits that an employee sold liquor to a minor agent on February 18, 2017. The licensee submits that the evidence of its policies, practices, procedures and training and the implementation of those policies demonstrate due diligence. The licensee regrets not having the signed copies available

for the hearing but states that he has provided sworn testimony that these documents exist in the restaurant files. The licensee submits that they have a full defence to the contravention.

REASONS AND DECISION

Contravention

The licensee has admitted that an employee sold liquor to a minor.

I find that an employee of the licensee sold liquor to a 17 year old minor on February 18, 2017.

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.

As set out in *Beverly Corners* above, the three questions I must answer are:

1. Was the employee who committed the contravention the directing mind?
2. If no, did the licensee implement adequate training and other systems to prevent the sale of liquor to minors?
3. Did the licensee take reasonable steps to ensure the effective application of that education and the operation of those systems?

1. Directing Mind

Neither the licensee nor the branch made submissions on the question of the directing mind. The directing mind of a corporation is someone who is responsible for the development and supervision of the implementation of corporate policy. On the evidence here, I find that Mr. Orrange is a directing mind. He was present on the evening of the contravention but not in the area where the bartender sold the alcohol to the minor agent.

I find the bartender who served the minor agent was not a directing mind. I therefore move to the second stage of the *Beverley Corners* analysis.

2. Adequate Training and Systems

The licensee submitted evidence of its training documents, showing the number of training days for positions as servers and bartenders. The licensee’s training manual indicates two variations on the age at which the employees must request ID of the patrons: one indicating employees must request ID of anyone who looks under 25 and the other indicating its policy of requesting ID of any patrons under 30 who request alcohol. In addition, one section of the training manual instructs servers and bartenders to be “100% sure” that a patron is the “age of majority.” Mr. Orrange explained that the

“under 25” direction may have been a type-o or something left over from earlier documents. He testified that the restaurant policy since its inception has been to instruct its employees to request ID of anyone who appears to be under 30. The bartender’s written statement supports the policy of “under 30.”

I accept the licensee’s explanation for the reference to ‘under 25’ and find that the licensee instructs its staff to request identification requests of patrons who appear to be under 30. I find further that the reference to being 100% sure that a patron is the age of majority does not conflict with the overall rule of asking patrons for identification if they appear to be under 30. I find staff is well trained in this policy and in other aspects of the policy, including types of acceptable ID and the requirement for two pieces. I recommend that the licensee ensure that all statements with respect to requesting ID in its training manuals be consistent. There is no legal requirement that servers must ask if someone appears under 25 or under 30. The Guide does not provide an age at which servers should request ID of patrons, merely stating that “if there is any doubt whether a customer is 19 or over, you and your employees should verify age by asking for two pieces of ID . . .” (Exhibit 1, tab 13, page 6). The licensee’s use of being 100% sure that a customer is of the age of majority reflects this statement in the Guide.

Nevertheless, it is a safe practice for a licensee to instruct its servers and bartenders to ask ID of anyone appearing to be under 30 if they want to avoid serving minors. I find that the bartender here, on her own admission, did not follow the restaurant’s policy. I find that the staff training emphasizes the importance of requesting ID and that the training does not end at the time of hiring. Management tests staff during the training program and continues to give reminders to all staff. Mr. Orange stated that often current staff will be included in the training of new hires to refresh them on the restaurant’s policies, including policies regarding the liquor laws.

I find that the forms that new trainees must fill out at the end of each training session and at the end of the shadow shifts demonstrate the importance that management places on ensuring the new hires fully understand what is required of them with respect to adhering to the liquor laws. I find further that management has dismissed employees in the past for not requesting ID and that failure to do so in the circumstances of this contravention does not negate the fact that employees are generally aware of the consequences of not requesting ID. I find that the training system - where new trainees may “fail” in the shadow shifts and thus either have to undergo more shadow shifts or alternatively, may not be hired at that point - indicates the strictness with which management regards adherence to its standards and the liquor laws.

I find that the licensee has implemented an effective training program and other systems for its employees, with consistent emphasis on responsible alcohol service in its training manuals, in order to prevent the sale of alcohol to minors.

3. Effective Application and Operation of its Systems

A licensee must not only demonstrate it has policies in place and has provided the necessary training to its employees, it must also demonstrate that it has taken reasonable steps to ensure the effective application of that education and the day-to-day operation of those systems.

The licensee's oral evidence of its pre-shift meetings indicates the regularity of these meetings and the topics discussed, including the importance of requesting identification of its patrons. The licensee has signage at every point of sale terminal to alert servers and bartenders to the year of birth for anyone 19 and over. I recommend that the licensee add a few more signs in the restaurant to alert customers that ID will be requested of anyone appearing to be under 30.

Further evidence that demonstrates the licensee's application of its policy with respect to requesting ID includes:

- regular monitoring by Mr. Orrange or the manager to ensure staff are requesting ID of anyone who appears under 30
- pre-shift meetings
- daily reminders about checking ID
- direction in manual to staff to consult with a leader if any issues re. ID checks
- weekly meetings with shift leaders
- practice of requiring additional shadow shifts of new trainees, if needed
- requirement in payroll scheduling system to ensure all employees have their Serving It Right number before being eligible to be paid
- testing of staff
- recording of incidents on computer spread sheet – used for discussion with staff
- private Facebook page for staff to discuss issues or incidents that may arise at work
- observation of staff by management and regular follow up to ensure “under 30” patrons are IDed
- the use of family or friends as “secret shoppers” to ensure employees are requesting ID

I find that the above practices demonstrate that the licensee is ensuring the effective application of its policies and the day to day operation of its systems to prevent the sale of alcohol to minors.

As noted above, I have accepted the written statement of the bartender. Based on the evidence from Mr. Orrange about her state of mind and her excellent record as an employee of Orrange and as a bartender, I find that the failure to ask for ID in this

circumstance was a momentary lapse in judgement on her part. I accept her statement that she felt sincere remorse over this incident and that it would not happen again.

Despite having the best training and regular reminders, people will make mistakes. In this case, the bartender has indicated how sorry she is for her error. In particular, she knows that, as a trainer of new hires, well versed in the restaurant's policies, she never should have made this mistake.

I have addressed both questions in the second part of the Beverly Corners analysis. I find that, on a balance of probabilities, the licensee has met the onus of establishing due diligence. The licensee has provided documentation and testimony to support its defence. The standard of reasonableness does not mean that all conceivable steps must be taken. I note the comments of Mr. Orrange with respect to knowing what documents to produce "next time" and his sworn evidence that the signed copies of the trainee forms exist.

I have noted some deficiencies in the documentary evidence: the absence of the signed copies of the forms and the absence of copies of logbook entries. I have accepted the verbal testimony that these documents exist. Other than the branch decisions on due diligence, the branch does not provide a checklist as to what constitutes due diligence in any given case. Each case will depend on the particular circumstances of a licensee and its operations. Licensees are well advised to review branch decisions to ensure they have the necessary policies and practices in place. I was impressed with the sincerity of Mr. Orrange's testimony. I was also persuaded by Mr. Orrange's statements about the restaurant's policies and their efforts to ensure all employees understand and adhere to these policies and to the liquor laws.

On the facts here, I find that the licensee has taken sufficient steps to establish the defence on a balance of probabilities.

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.

Nerys Poole

Date: July 18, 2017

General Manager's Delegate

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