



**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: 0950223 B.C. Ltd.
dba Browns Social House (Town Centre)
120 – 2950 Glen Drive
Coquitlam, BC V3B 0J1

Case: EH17-085

For the Licensee: Michael Ratz

For the Branch: Maria Caduhada

General Manager's Delegate: Nerys Poole

Date of Hearing: February 14, 2018

Date of Decision: March 7, 2018

**Liquor Control and
Licensing Branch**

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

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

INTRODUCTION

0950223 B.C. Ltd. dba Browns Social House (Town Centre) (the “licensee”) holds Food Primary licence number 305653 (the “licence”). Browns Social House (Town Centre) (the “restaurant”) is located at 120 – 2950 Glen Drive in Coquitlam. The licence specifies hours of liquor service daily, from 9:00 a.m. to midnight.

Michael Ratz is a principal of the corporate licensee and appeared at the hearing as the licensee’s representative. For ease of reference, I will refer to Mr. Ratz as the licensee.

The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication “Food Primary Terms and Conditions” (the “Handbook”). (Exhibit 1, tab 12)

The licensee is alleged to have contravened *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the “Act”) on September 22, 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 bartender 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 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 October 2, 2017 (the "NOEA"). (Exhibit 1, tab 1)

The branch alleges that on September 22, 2017, the licensee contravened section 77(1)(a) of the Act, by selling, giving or otherwise supplying liquor to a minor. The range of penalties for a first contravention of this type is a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty (item 3 of Schedule 2 of the *Liquor Control and Licensing Regulation*). The branch recommends either a ten day suspension or a monetary penalty of \$7,500.

RELEVANT STATUTORY PROVISIONS

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

Supplying liquor to minors

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

ISSUES

1. Did the 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 16
- Exhibit 2: one page from licensee's General Manager orientation manual with heading "Responsible Alcohol Service"
- Exhibit 3: one page from licensee's Server orientation manual with heading "Responsible Alcohol Service"
- Exhibit 4: one page from licensee's Host-tender orientation manual with heading "Alcohol Service Responsibilities"
- Exhibit 5: one page with employees' names and their Serving It Right certificate numbers
- Exhibit 6: New Hire Form for bartender who sold the alcohol to the minor agent (the "bartender")
- Exhibit 7: letter of resignation of the bartender
- Exhibit 8: bartender's resume
- Exhibit 9: excerpt from fall 2017 Liquor Line, with article on Duty of Care, with employees' signatures attached
- Exhibit 10: Non-negotiables form signed by the bartender
- Exhibit 11: photo of staff room poster, indicating licensee's directions to all bartenders/servers to ask for two pieces of ID if the guest looks under 30 years old
- Exhibit 12: 6 pages of Photos of signage in the restaurant
- Exhibit 13: Notification to all bartenders and servers about September 22, 2017 incident with employee signature, dated September 23, 2017

WITNESSES

The Branch called one witness:

- the liquor inspector who was part of the inspection team on September 22, 2017 and the author of the NOEA (the “first liquor inspector”)

The licensee called four witnesses:

- the restaurant manager (the “manager”)
- a server from the restaurant (“server 1”)
- a server/bartender from the restaurant (“server 2”)
- Michael Ratz (the “licensee”)

FACTS OF THE ALLEGED CONTRAVENTION

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

On September 22, 2017, minor agent inspections were conducted to test compliance at various liquor establishments in Coquitlam. Two branch liquor inspectors accompanied the minor agent. At the beginning of the shift, the first liquor inspector photographed the minor agent and his identification to confirm he was 17 years of age on September 22, 2017 (Exhibit 1, tab 6). The first liquor inspector photographed the minor agent again, at 2:30 in the afternoon outside the restaurant, as he noticed the minor agent had removed the hoodie worn in the earlier photographs. (redacted photo also at tab 6)

At approximately 1:55 p.m., the inspection team arrived at the restaurant. The minor agent entered the restaurant at 1:57 p.m., seconds ahead of the two liquor inspectors who followed closely behind him. The minor agent went directly to the bar and seated himself. The two liquor inspectors stood in the restaurant area in clear view of the minor agent who was approximately 15 to 20 feet away from them. The two liquor inspectors observed a female bartender working behind the bar. The minor agent reported that the bartender approached him and asked if he wanted a drink. The minor agent requested a Rickards Red. The bartender told him they did not carry that beer so he then asked for a Stella Artois beer. The bartender then turned away and poured a glass of beer from the tap marked Stella Artois and placed the glass of beer on a coaster in front of the minor agent. At no time did the bartender ask to see identification from the minor agent. The first liquor inspector observed that there was very little or no eye contact between the bartender and the minor agent when she served the beer. The first liquor inspector noted that the restaurant was not very busy. There were only a few patrons. He stated that the bartender appeared to be busy, moving around the bar area. She appeared somewhat distracted when serving the minor agent. The first liquor inspector approached the minor agent and photographed him with the beer in front of him. The minor agent then departed the restaurant with the second liquor inspector.

The first liquor inspector took possession of the beer and asked a male staff member if a manager was available. The male staff member identified himself as the owner Michael Ratz. The first liquor inspector explained to the licensee that the bartender had just served a beer to the minor agent and did not ask for identification. He then explained the next steps for enforcement and issued the contravention notice. (Exhibit 1, tab 9) The second liquor inspector returned to the restaurant and paid for the beer and received a receipt. Both liquor inspectors left the restaurant at 2:30 p.m.

EVIDENCE – LICENSEE

The Contravention and the Bartender

As noted, the licensee does not dispute the facts of the contravention. The manager and the licensee testified about the bartender who served the minor agent. The licensee submitted the bartender's new hire form, the non-negotiables form signed by her, her resume and her letter of resignation. (Exhibits 6, 7, 8 and 10)

The manager explained that the bartender had told her, about one month before the incident, that she would be leaving as she had found work elsewhere. She submitted her formal letter of resignation about 2 weeks prior to the incident indicating her last day at the restaurant would be September 29, 2017. The bartender had one more shift after the incident on September 22, 2017 and, as she was leaving anyway, the manager and the licensee allowed her to work her last shift.

Both the licensee and the manager testified that the bartender had been a reliable worker and had over 7 years experience bartending and serving in the restaurant industry. The bartender had held supervisory positions in other restaurants. Her work experience included training other staff in restaurant practices and policies. The new hire form for the bartender shows her Serving It Right number.

The licensee was working in the restaurant on September 22, 2017. He was walking around the restaurant observing. He does not normally serve any patrons. He remembered seeing the two liquor inspectors standing not far from the door and asked if he could seat them. At the time he did not know they were liquor inspectors. He did not remember noticing the minor agent enter and proceed to the bar. After the incident

he observed the video and saw the minor agent then and agreed he looked about 17. He testified that, if he had seen the minor agent at the bar, he would have intervened and asked for ID.

He said he was very upset by the incident and made sure he immediately informed the staff about the incident. The day after the incident he typed up a notice to all bartenders and servers explaining that the restaurant had served a 17 year old minor and stating that the restaurant will be fined for this incident. The notice added:

Having our Liquor Licence is critical to our business. Without it we jeopardize our ability to make enough money to carry on successfully. This means we could all be out of work.

You all have the responsibility to be vigilant in asking for ID to ensure this does not happen again. There are no excuses.

It is that simple.

The licensee submitted a sample of this notification signed by one of the staff and dated September 23, 2017. (Exhibit 13) The licensee held one on one meetings with each staff member to explain what happened and to ask them to sign this sheet, to show they had read it.

Licensee's Experience and Role in the Restaurant

The licensee testified about his experience in the restaurant industry. He has been in the restaurant business his entire working career, almost 40 years. He has been a franchisee with Browns for about four and a half years. Prior to that, he worked for the

Keg restaurant chain for about 15 years, where he had about 55 managers who reported directly to him, with somewhere between 800 and 900 staff.

As noted, he was working on the afternoon of the contravention. He is in the restaurant most days, usually in the office or checking things on the floor. On September 22, 2017, he started work at noon and worked till 10 or 11 in the evening.

Staff Training

All four of the licensee's witnesses testified about the training in the restaurant. The manager is the primary person responsible for hiring and training new staff. The manager has worked at the restaurant since November of 2013. She started as a server and has been a manager for about three and a half years.

The manager explained that she sits down one on one with new hires, for about an hour and a half to two hours to review the restaurant's policies and procedures as well as the job expectations and dress code. This orientation session includes a review of responsible liquor service from the orientation manual. She stated that she reviews this with all staff, whether they are going to be serving or not. She trains them on how to ask for ID, what signs to look for, what ID to ask for and how to refuse service if ID is not forthcoming. She also trains them on what to watch for in terms of intoxication and how to refuse an intoxicated guest. She emphasizes to staff to speak with a manager or shift leader if they have any doubt or questions.

When the manager was asked in cross-examination about the length of time devoted to service to minors during the orientation period of one and a half hours, she stated perhaps 15 minutes. Server 1 estimated a total of about 30 to 40 minutes for responsible liquor service.

At the end of the orientation, the new hire may take the manual home and keep it. The new hire must complete a written quiz and return it to the manager. The licensee did not submit a sample of the written quiz. The manager stated that there are two or three questions about service to minors in the server written quiz, out of a total of 30 questions. The bartender written quiz has maybe 5 or 6 questions about responsible liquor service, out of a total of 30.

When the manager hires someone, that person must provide a Serving It Right certificate before beginning any training. Management keeps a list of all staff Serving It Right numbers in their files. (Exhibit 5)

As part of their training, new hires must shadow a senior employee for two to three weeks. The senior employee must have a minimum of two years experience. If the new hire has previous serving experience, this may be reduced to one and a half weeks. During the second part of the training period, the senior employee will shadow the new hire and watch for things like checking IDs, etc. Server 1 has worked at the restaurant for three and a half years and testified that she went through one and a half weeks of shadow training.

The senior employees who do the training and the manager will note in a logbook any issues that may arise with a new hire. The manager will discuss any red flags with the senior employee and whether the new hire requires more time or more instruction on specific things, before being allowed to serve on her own.

At the end of the shadow training, new hires are given a verbal test. The manager explained that the second part of the training, where the new hire is shadowed by a senior employee, serves as an opportunity to test the new hire's adherence to liquor laws and the restaurant's standards.

Server 1 stated that, as a senior employee, she sometimes trains new hires. Once she has conducted the training of a new hire, she reports back to the manager. She observes them and notes the body language, how the new hire speaks to a table, whether they are following the rules expected of them, and will then make a recommendation to the manager based on her observations, as to whether or not the new hire is ready to serve on her own.

All staff must sign the non-negotiables form at the start of their employment. The licensee submitted the form signed by the bartender (Exhibit 10). A manager also signs the form at the bottom. The manager reviews this form and each statement with a new hire. The staff member must initial each statement on the form to indicate that he/she has read and understood each point. The form begins with the statement "Participating in any of the below acts will be grounds for immediate termination."

The “below acts” in the list include the following:

- Serving alcohol to minors
- Serving an intoxicated guest and failing to take reasonable steps to ensure he or she gets home safely.

The manager explained that, during the training, they constantly emphasize the importance of asking for ID of anyone who appears to be under 30. She stated that many servers will ask of anyone who appears to be under 40. She herself has asked for ID from a 60 year old woman who appeared much younger. When training new hires and with all its staff, the manager emphasized that all staff are encouraged to ask a manager or senior employee if they are ever in doubt about requesting ID. Most of the servers will just ask for ID if they have any doubt about the customer’s age, rather than consulting with management. All staff are instructed to watch for any service to someone they may think appears to be young and are encouraged to double check with a server if they believe a young looking person is being served.

Server 2 has worked at the restaurant for about two and a half years. She started hosting, then moved to expeditor and then serving and bartending. She has been bartending and serving for over one year now. She reiterated the importance placed on proper liquor rules during her orientation training session. The manager emphasized to her to always ID if any doubt at all.

When Server 2 started as a host, even though not serving herself, she was trained in and made very aware of the policies regarding liquor service and of the importance of ensuring minors are not served. She explained that the work ethic of all the staff is evident in the restaurant. Everyone takes their job very seriously and management ensures that the restaurant is run very professionally.

Server 1 explained that during the orientation period, there is some discussion about how to assess for age. Management will emphasize the importance of making eye contact with a customer, listening to the voice and closely assessing their appearance. Server 1 testified that there is constant monitoring of the service. Management or a senior employee will come up behind a server and ask if they have checked ID of a particular customer. She stated management is always checking on the servers to ensure this is done.

Licensee's Policies and Practices

Orientation Manuals

The licensee submitted excerpts from three of the orientation manuals that are prepared by Browns Social House head office for all franchisees. The corporate head office updates these manuals from time to time. The office in the restaurant has copies of the manuals available to employees.

The General Manager Orientation Manual is used as part of the orientation for all staff. The excerpt submitted is titled "Responsible Alcohol Service." (Exhibit 2) This page includes the Browns Social House liquor service rules that staff must follow:

- It is illegal to serve an intoxicated person.
- It is illegal to serve alcohol to a minor. All guests who appear under the age of 30 must provide 2 pieces of government issued ID.
- It is illegal to serve alcohol to the point of intoxication.

The remainder of this page includes signs to watch for to identify intoxication, requirement for alcohol service certification and guidelines on refusing service to an intoxicated guest.

The Server Orientation Manual is used as part of the orientation for all servers, including the bartenders. It is titled "Responsible Alcohol Service" and repeats the same information in the excerpt from the General Manager Orientation Manual. (Exhibit 3)

The Host-tender Manual is part of the orientation for all bartenders. The excerpt submitted is titled "Alcohol Service Responsibilities" and includes a bullet about responsible service. (Exhibit 4)

- All servers and Bartenders MUST comply with the minimum requirements that pertain to alcohol service in your jurisdiction. (Example: Serving It Right (BC), Alcohol Service Permit (Washington)).

Logbook

The restaurant has a daily logbook that is used only by the managers and shift leaders or senior employees. They will note anything of concern about new hires, orientation issues, food issues, general information about products, any staff issues, etc.

The general staff do not have access to the logbook, either for recording something or for reading it. Management will use the logbook to discuss any issues at its weekly meetings.

Meetings

The manager or the shift leader will hold a meeting with staff before each shift. They do not have an agenda or minutes for these meetings. These pre-shift meetings will often include reminders about ID checking.

Management does not hold regular all staff meetings. They may have one once a year. If there are any incidents that require a review with staff, management will usually sit down one on one as the licensee did after the contravention on September 22, 2017.

The licensee, the manager and the shift leaders hold a weekly management meeting on Tuesdays. These meetings provide the pre-shift focus for the upcoming week and serve as an opportunity to discuss issues that may have arisen the previous week.

Reminders

Management puts messages on the Point of Sale system, which may change every day or every few days. Messages include a variety of things such as upcoming contests as well as reminders re: checking IDs. The message pops up on the system at the beginning of each shift. The messages are constantly changing, although can be left for up to three weeks at a time. Immediately after the contravention, they put up a reminder message about the importance of checking for ID of anyone who appears to be under 30.

If a manager or shift leader notices a table of young people, he or she will always double check to make sure the server has requested ID.

Server 1 and the manager testified that staff always go to the staff room before starting their shift. Staff will always check the bulletin board for any notices. The bulletin board in the staff room has a reminder about ID checking, in red print:

All Bartenders/Servers MUST ask for two pieces of ID if the guest looks under 30 years old!

Below this is the description of what is acceptable as a first piece of ID and as a second piece. (Exhibit 11)

The manager testified that the licensee posts on the staff bulletin board articles of interest that relate to the staff's job responsibilities, especially with respect to liquor service. Exhibit 9 is an article about Duty of Care from the Liquor Line and has signatures of the employees on the front acknowledging that they have read the article.

Testing of Staff

When asked about any regular testing of staff, other than the initial quiz after orientation, the manager replied that management tests the servers by watching them. She or the licensee or shift leaders are always observing the servers and will speak to them immediately if they feel it necessary. She said that they have a low turnover of staff and that most of their staff have been with them for a while and know what is expected of them in terms of ID checking.

Signage

The licensee submitted a photo of the traffic light sign with reminder to check photo I.D. (Exhibit 12) The branch produces these signs for licensees and shows stop, caution and Ok with the years beside each. This sign is located on the squirrel machine. The servers both testified that this is something they always see when they pick up the coasters by the machine, prior to serving a guest.

As noted, the bulletin board in the staff room has a sign emphasizing the importance of ID checking if a guest looks under 30.

Awareness of MAP

Server 1 stated she was aware that the branch will send in minors to check on licensed establishments. She did not know it by its name of MAP but she was aware it happened.

Implementation of Policy of "Under 30"

Server 1 testified about how much emphasis is placed on ID checking of any customer who may appear to be under 30. She explained about the signs near the coasters. As they always use coasters when serving a drink, the sign is very visible as a reminder to ask for ID. Server 2 also testified that this sign near the coasters serves as a constant reminder to check ID.

Server 2 described the restaurant's approach to ensuring minors are not served as consistent and repetitive. Management will often ask if a server has requested ID if they notice a young crowd. Servers feel they have the backing of management to ensure that minors are not served in the restaurant. Checking for ID has become second

nature to her. She will ask for IDs multiple times on a shift, just part of her job as a bartender and she takes it very seriously.

Server 1 stated that they have a young crowd who come to their restaurant. As a result of this, she will often ask for ID a number of times during one shift. She never hesitates to ask and knows that she will always be backed by the management. When a host sees someone young-looking enter the restaurant, the host will often remind a server to request ID. It is part of the culture of the restaurant. She stated that the message about the importance of ID checking has been consistent throughout her years of working at the restaurant.

SUBMISSIONS – BRANCH

The licensee does not dispute that an employee served the minor agent. The licensee has contravened section 77(1)(a) of the Act. The branch advocate submits that the licensee's evidence does not establish a defence of due diligence.

The branch advocate submits the defence of due diligence is negated by the fact that the directing mind was present in the restaurant at the time of the contravention and failed to prevent it. The licensee is responsible for the policies of the restaurant and ensures the Browns Social House policies are implemented. He is responsible for the overall supervision and management of the store and thus is the directing mind.

Further, the licensee's evidence of due diligence is inadequate to support the defence. The licensee has a limited focus on preventing service of liquor to minors and on the importance of making eye contact with customers. Service to minors is, from the testimony of the manager and the servers, only a small percentage of the overall initial training. There is no regular meeting with all staff to discuss ways to prevent

contraventions such as this one. The licensee has submitted no documentation to show ID checking is discussed in pre-shift meetings. The steps taken are inadequate and, considering the consequences of such a contravention, a penalty is warranted.

SUBMISSIONS – LICENSEE

The licensee agrees that the contravention of serving a minor occurred. The licensee takes full responsibility for what happened on September 22, 2017. He does not deny the details as set out in the NOEA.

The licensee submits that the evidence of its training, policies, practices and procedures establish a defence of due diligence. The licensee submits that the restaurant has a strong culture of adherence to the liquor laws and trains its staff accordingly. The licensee was present in the restaurant at the time of the contravention but did not observe the minor agent enter the restaurant nor did he see him seated at the bar. If he had, he would have made sure that the bartender had checked his ID as he agrees that the minor agent did not look 19, and certainly did not look over 30. It is his practice to observe his staff and if he has any doubt about the age of a patron, he will check with a server to make sure she has asked for ID.

The licensee submits further that minors are permitted to enter a restaurant with a food primary licence. He stated that, because they are allowed to come into the restaurant, he and his staff are extra vigilant about making the ID requests at the time of service.

REASONS AND DECISION

Contravention

The licensee has admitted that the contravention of section 77(1)(a) occurred on September 22, 2017. I find, therefore, that the licensee contravened section 77(1)(a) of the Act by selling liquor to a minor.

The licensee submits that it has a full defence to the contravention as the evidence of its training, policies, practices, and procedures establishes the licensee's due diligence.

Due Diligence

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

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

The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability

of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

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

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

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

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

Directing Mind

I find that Michael Ratz is a directing mind of the corporate licensee. The evidence shows that the corporate head office of Browns Social House provides franchisees with written policies. The licensee agreed that he might be able to add to the written policies and improve on them, but not reduce or limit a policy, e.g. change the request for ID of those who appear to be under 30 to those who appear to be under 25. Michael Ratz is a principal shareholder of the corporate licensee and as such, is responsible for the overall operation of the restaurant.

The first question to answer in determining a defence of due diligence is whether the employee who made the sale to the minor was the directing mind of the licensee. The bartender was not a directing mind of the licensee. The licensee was present in the restaurant. I accept his testimony that he had no knowledge of the minor agent until he later viewed the video. I accept that, if he had noticed the minor agent enter and proceed to seat himself at the bar, he would have double checked to be sure the bartender asked for ID. Even if the licensee had noticed the minor agent enter the restaurant, this would not negate the defence of due diligence as minors are permitted entry to food primary licensed establishments. If the licensee had been behind the bar, observing the bartender making the sale to the minor agent, even if he did not make the actual sale, I would most likely have found that the defence of due diligence was not available. This was not the circumstance here.

Having found that the directing mind did not make the sale, nor observe the sale, I turn to the question as to whether the licensee has established a proper system to avoid such contraventions and whether the licensee has taken reasonable steps to ensure the effective operation of its systems.

Adequate training

All new hires must have their Serving It Right certificates prior to starting any training with the licensee. The licensee provided a list of all staff and their Serving It Right numbers, including that of the bartender. (Exhibit 5)

The initial orientation lasts about one and a half hours and includes a review of the alcohol service responsibilities in the orientation manual. The manager testified that the bartender or host-tender orientation manual includes the same page as the server orientation and general manager orientation manuals. (Exhibits 2 and 3) Most bartenders begin as servers and receive the server orientation first.

I find that the orientation session, with a one on one review with the manager, provides sufficient emphasis on responsible alcohol service, including the requirement that all servers must ask for two pieces of ID of anyone who appears to be under 30. Although I was not provided a copy of the written quiz given to new hires after the orientation session, I accept the verbal testimony of the manager that this quiz includes several questions on responsible alcohol service.

I find further that the shadow training procedures followed by the manager or senior employees with new hires, ensures that new staff are constantly being reminded of responsible alcohol service. I find that the system employed by the licensee, where the trainer and the manager review any issues that may arise during this shadow training, ensures that there is further training or education on specific topics as needed. I find that the verbal testing of a new hire is an additional check on the server's knowledge before she begins on her own.

I find that the non-negotiables form (Exhibit 10 with signature of the bartender), which must be signed before a new hire begins her shift, emphasizes the importance of preventing service to minors and the consequences of not doing so.

Although there is no formal system of ongoing training, I find that the presence of the manager and/or the licensee on the floor, as well as the policy of servers watching each other with respect to service to young people, provides further training and reminders on how to assess for age and when to request ID. I find that management is constantly monitoring its staff to ensure that servers always ask for ID of any customers who appear to be under 30.

I note the absence in the evidence of any discussion of the serious consequences to minors if they consume alcohol. This may be because the question was not asked or the licensee neglected to mention it. I recommend that the licensee include this in its training and orientation to demonstrate that, not only is it the law, but it is important to understand why it is the law. These serious consequences are set out in the NOEA and emphasize that supplying liquor to minors is a significant public safety issue because of:

- The effects of alcohol 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 alcohol in the same manner as an adult therefore, liquor has a more intoxicating effect on minors, and
- Liquor is a significant factors in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft.

I do not find that the absence of the above renders the training overall inadequate. I recommend however that it be included in the orientation and training. I find that the training regime is adequate. I find that the system of watching out for each other and generally monitoring any service to young people provides further training to employees on when to ask for ID.

Policies of the Licensee re: ID Checking

I find that the licensee's policy of requesting ID of anyone who may appear to be under 30 provides a safeguard to prevent service of minors. I find that staff are well aware of this policy and in some cases will ask for ID of customers who appear to be under 40.

The non-negotiables form emphasizes to new hires that the licensee takes service to minors very seriously and that it warrants the most serious disciplinary action, i.e. immediate termination. I find that the licensee here should have terminated the bartender immediately and not have allowed her to work her last shift. I accept that the licensee was reluctant to do so because of her good record of employment up to that point, her notice of resignation and the fact that she only had one more shift. Nevertheless, I find that failure to take immediate action against the bartender may have sent the wrong message to other employees.

Establishing a system like the non-negotiables form, outlining the consequences, is only as good as its implementation. However, I recognize, in the present circumstances, there were some justifiable reasons for not immediately terminating the bartender. I therefore do not find the failure to terminate the bartender to be a fatal flaw in the defence of due diligence.

Effective Application of the Policies

The next step in the due diligence analysis is the question as to whether the licensee has taken reasonable steps to ensure its staff consistently apply the training and the stated policies of the licensee. In this case: what steps has the licensee taken to ensure staff are consistently following its policy of requesting ID of anyone who appears to be under 30?

The evidence of all four witnesses, and in particular that of the two servers and the manager, illustrate the manager's and staff's commitment to the policy of asking for ID of anyone who appears to be under 30. The two servers testified that they ask for ID multiple times during a shift and that they will check with other servers if they see a young crowd at their table. Management will do the same. On September 22, 2017, no one was monitoring the bartender and no one observed the minor agent enter, other than the bartender.

I find that the failure to ask for ID of the minor agent on September 22, 2017 was an error of judgement on the part of the bartender, possibly due to her distraction with other activities behind the bar. I find that this error was not caused by poor training or the absence of a proper system or by the ineffective operation of the system established by the licensee. This was the mistake of the bartender and the fact that the mistake was made does not preclude a finding of due diligence.

According to the testimony of the first liquor inspector, the bartender did not make eye contact with the minor agent, something that staff are trained to do. The first liquor inspector noted that the bar area had perhaps one other customer. Nevertheless, the first liquor inspector observed that, despite the place not being busy, the bartender appeared to be distracted, busying herself behind the bar.

I find that the licensee has established a number of practices and procedures to ensure staff ask for ID of anyone appearing to be under 30:

- Pre-shift meetings that often include reminders to staff about checking ID and asking for two pieces of ID
- Weekly management meetings where management are reminded of specific issues, including the importance of regular ID checking
- Regular monitoring of staff by the manager and/or the licensee to ensure servers and bartenders are not serving young people under 30 without asking for ID
- Encouragement by management to all staff to double check if they notice young-looking people being served by another staff member
- Opportunity for staff to consult with senior staff if in doubt
- Branch sign showing the traffic lights of red, yellow and green that indicate STOP, CAUTION and OK located where it is visible to servers prior to serving a guest
- Reminder on staff bulletin board about ID checking, visible to all staff as they must go to the staff room prior to starting a shift
- Reminder messages on the point of sale till, often about ID checking, especially during busy times
- Posted articles about responsible liquor service on bulletin board in staff room with requirement that staff sign to show they have read

In addition, the licensee keeps an incident logbook and uses it for discussion with staff. Only management can enter in the logbook and read the logbook. However, any issues noted in the logbook are used for discussion with staff. The licensee holds weekly management meetings. The licensee's witnesses were familiar with MAP, although not all were familiar with the "MAP" designation, but they were aware that such inspections could happen anytime.

Although actions taken post-contravention do not provide evidence of due diligence at the time of a contravention, I find that the actions taken by the licensee post-contravention indicate the level of concern he felt when informed of the contravention. He wrote up a description of the contravention and then reviewed what happened, on the day after the incident, one on one with each staff member. He asked each staff member to read and sign what he had written to ensure they were all aware of the contravention and to remind them again of the importance of asking for ID. (Exhibit 13)

I have noted a few areas where the licensee might improve its systems or where the licensee might have submitted written documentation which include:

- Improved documentation of items discussed at meetings
- Copies of quizzes given to new hires
- Copies of logbook entries to indicate where there have been issues regarding responsible alcohol service
- Educating staff about the public safety consequences of serving alcohol to minors, not just the legal consequences
- Following through on the consequences in the non-negotiables form

A few other additions that might improve the licensee's systems include:

- A program of secret or mystery shoppers to regularly test staff compliance with ID checking
- A point of sale reminder on the system to prevent a sale until the server has answered a question about ID checking
- Legal age reminder on the till that changes every day showing birthdate of someone 19 or over

I was very impressed with the sincerity and commitment to ensuring safe and responsible alcohol service as expressed by all the licensee's witnesses. I find that the licensee's staff endeavour to ensure a safe and responsible environment in the restaurant and strive to prevent any liquor contraventions.

As has been noted in other branch decisions, the due diligence standard is not one of perfection, but of adequate training and systems. As with most training programs and systems, there are improvements that the licensee can make. I have noted a few suggested improvements. On balance, however, I am satisfied that the evidence demonstrates that the licensee has adequate training and systems in place with respect to contraventions of section 77(1)(a) of the Act.

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

Original signed by

Nerys Poole
General Manager's Delegate

Date: March 7, 2018

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

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