



**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: Strathcona Hotel of Victoria Ltd.
dba Strathcona Hotel
919 Douglas Street
Victoria, BC V8W 2C2

Case: EH17-091

For the Licensee: Greg Harney

For the Branch: Maria Caduhada

General Manager's Delegate: A. Paul Devine

Date of Hearing: March 28, 2018

Written Submissions: Received April 18, 2018

Place of Hearing: Victoria, BC

Date of Decision: May 17, 2018

**Liquor Control and
Licensing Branch**

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ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Licensee operates several liquor primary facilities and a food primary restaurant inside the Strathcona Hotel which is located at 919 Douglas Street in Victoria B.C. It operates these facilities under Liquor Primary Licence Number 136243 ("Licence"). The Licence is, as are all such liquor licences issued in the Province, subject to the terms and conditions set out in the August 2017 publication "Liquor Primary Terms and Conditions" (the "Handbook").

The Liquor Control and Licensing Branch ("Branch") specified its allegations and proposed penalties against the Licensee in a Notice of Enforcement Action (NOEA) letter dated October 30, 2017. The Branch alleges that on September 29, 2017 several inspections were conducted in the Victoria area to test the compliance of food primaries, licensed retail stores, liquor primaries, and catering facilities operating in the area with respect to their obligation not to sell, serve or supply liquor to minors.

The three liquor inspectors involved in these compliance inspections utilized two persons who were minors in accordance with the "Minors as Agents" Program ("MAP") that the Branch implemented in 2011. Provisions in the *Liquor Control and Licensing Act* (the "Act") allow the Branch to engage minors to test compliance with the obligation of licensees not to sell or supply liquor to underage individuals.

It is alleged in the NOEA that at about 6:03 p.m. on September 29, Liquor Inspector A engaged in an inspection of one of the liquor primary facilities operated by the Licensee. A female Minor Agent identified as "Minor Agent #105" was used in the inspection of the Licensee's facility on the day in question. She was 18 years of age at the time of the inspection. The two entered through the Courtney Street entrance to the Sticky Wicket Pub which is located inside the Hotel. There was no security or other staff seen at the entrance, and so the inspection team proceeded upstairs to a venue identified as the "Games Room." They seated themselves and a server greeted them at the table. Minor Agent #105 ordered two Kokanee beers and two glasses of water. The order was taken by the server and the beverages provided without requesting identification.

After Inspector A photographed the beer, Minor Agent #105 told the server something had come up and they had to leave. The server offered to let them go without charge but the Minor Agent insisted on paying and receiving a receipt. The two departed and once outside they made notes of the encounter. Two inspectors returned to the Hotel and spoke with the Duty Manager to advise of the contravention. A Contravention Notice was provided at that time.

POSITION OF THE LICENSEE

The Licensee does not dispute that a clerk in its employ sold liquor to the Minor Agent as alleged. Instead, it intends to pursue a defence of due diligence. For this reason, the evidence concerning the breach of the *Act* will be limited in scope.

RELEVANT STATUTORY PROVISIONS

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

77 (1) Subject to the Regulations, a person must not

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

Liquor Control and Licensing Regulation, B.C. Reg. 244/2016

Schedule 2 Enforcement Actions (Minors)

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
3	A breach of section 77 of the <i>Act</i> (Selling liquor to minors)	10-15	20-30	30-60	\$7,500-\$10,000

ISSUES

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

EXHIBITS

Exhibit 1: Branch Book of Documents.

Exhibit 2: Book of Documents of the Licensee

Exhibit 3: Bartender Training and Test Manual

Exhibit 4: Email December 8, 2015 "Hello Team" re: Contravention Notice

EVIDENCE

The Branch first called one of the three liquor inspectors that was involved in the MAP inspection on September 29, 2017. Inspector B testified that the MAP program had been discussed previously with the Licensee. It was also his practice to remind licensees in the Victoria area that MAP inspections would be taking place from time to time. As well, the program was discussed in newsletters such as the Liquor Line published by the Branch and distributed to licensees throughout the province.

The Inspector B was not directly involved in the inspection conducted inside the facilities of the Licensee. After he was informed of the sale of alcohol to the Minor Agent who was involved in the inspection, he issued a Contravention Notice detailing the breach. He also subsequently authored the NOEA which recommended penalty enforcement consisting of either a monetary penalty of \$7500 or a ten-day license suspension. The Inspector decided to proceed with penalty enforcement because of the public safety concern about selling liquor to minors.

In cross-examination, Inspector B agreed that business of the Licensee had been operated by the same family for many years. He had always had good relations with family members involved in the business and with other management personnel. As well as liquor primary facilities, the Licensee also operated a food primary restaurant. There were some 1600 seats altogether in the facilities operated by the Licensee. The Inspector had attended staff meetings conducted by the Licensee and was aware of its server training program. While he was not familiar with the support staff training, he did know that even non-serving staff working for the Licensee had Serving It Right (SIR) certification. He had recommended that support staff have SIR certification, and the Licensee adopted his recommendation. The Inspector recognized as well that the Licensee was involved in programs such as ServeAll which seek to improve the ability of licensees to prevent minors or unfit individuals from entering their premises.

Inspector B acknowledged that a food primary restaurant is located on the left side of the entrance to the ground floor of the Licensee's facility. A hostess is usually present when guests come in through this entrance. He did not recall a sign there advising patrons to wait to be seated.

Inspector B agreed that he has had good relations with the Licensee. He attended staff meetings on invitation from the Licensee. As well, he met with security staff from time to time for discussions about industry issues, and issues such as the removal of intoxicated patrons from the facilities. He regarded the Licensee's Employee Handbook as being at the top end of the industry. He was also familiar with the Server Training Manual. More recently, he recommended a change in the ID policy of the Licensee from checking ID of patrons who appear to be under 25 to checking when patrons appeared to be under 30 years of age. He did so because it is hard to estimate the age of patrons. His recommendation was implemented by the Licensee.

Inspector B was questioned about the basis for hiring minors for the MAP inspections. He observed that most of those who are hired had an interest in police work as a career. The Branch looked at school marks, personal accomplishments, and whether they were proactive in the community. There was no focus on whether the minor looked older. The main basis for hiring was age, in the range from 17 to 18 ½ years. The minors are instructed to be truthful in respect of a possible sale of liquor. Afterwards, the minor

may use an excuse such as a requirement to leave unexpectedly. While this is not true at the time, it is a means of extracting the minor without risk.

Inspector B agreed with the suggestion that if employees could be fined by the Branch as provided for in the *Act*, it would improve employee diligence. He also expressed the view that he considered the Licensee to be very diligent.

The Minor Agent ("MA") and Inspector A comprised the inspection team which conducted the compliance inspection of the Licensee on September 29, 2017. MA testified that she was 18 years and four months of age at the time. Inspector A was 34 years old. Both recalled entering on the ground level of the licenced premises before going upstairs to the liquor primary facility known as the "Games Room." Neither recalled seeing a sign at the downstairs entrance which read: "No one under 19 past this point", and which advised patrons to wait to be seated. Inspector A noted that there is a food primary restaurant located on the main floor, and so minors can be inside those licensed premises under certain circumstances. As well, persons under 19 can be inside the liquor primary facilities with a parent or guardian until 10 p.m. because it has a food service endorsement.

Once upstairs in the Games Room, Inspector A and MA sat near the bar. MA ordered a beer for each of them. She told the server that they were okay with drinks, so did not need food. Inspector A noted that when the order was taken and the beer was served, MA was not asked for ID. Inspector A took a picture of the product after it was served, and MA then told the server they had to leave. The server told them that they did not have to pay but MA insisted on making the payment for the beer.

EVIDENCE OF THE LICENSEE

The evidence of the Licensee was first provided by one of the principles of the company that owns the Hotel (the Licensee). He testified that the Hotel has been in business in Victoria since 1913. It has been in his family since the mid-1940's. There are 69 rooms in the hotel and 1600 seats in the hospitality premises. There are two food primary facilities on site where minors are permitted to be present. As a policy, the Licensee does not

permit minors to be in the licensed premises areas at all unless there is a special event arranged in advance.

The Licensee utilizes an Employee Handbook which has been in place since 1990, and which is updated at least annually. The head of Human Resources maintains this resource. Employee communications are achieved through a staff website, a bulletin board, Facebook, monthly departmental meetings, and weekly management meetings. Meetings are also held with staff during special events.

As a policy, the Licensee does not want minors drinking on the premises as there is no upside to permit this to occur. Insurance for the facility is expensive, and due diligence is required to maintain costs. Insurance representatives are brought to the facility to talk with staff about issues such as slips and falls, serving minors, and other related issues. Servers are told that they can be held individually liable when such issues arise.

The Licensee also uses a Server Training and Information Manual which contains policies on issues including liquor service. All staff in the food and beverage area must have SIR certification whether or not they are involved in serving directly. There is a Support Staff Training Manual which touches on ID requirements for liquor service. Security staff also deal with this in basic security training. All serving staff must take the online SIR quiz conducted by the Licensee. Results are posted online.

The Licensee maintains good relations with the local liquor inspector. It posts information provided by the Branch which includes a warning that individuals can be fined for serving liquor to minors. While staff are warned about this, there is no known incident where an employee has been fined. The Licensee has a policy to terminate staff who fail to enforce its obligations with respect to liquor service.

The Licensee takes other steps to fulfill its obligations regarding the sale of liquor. It meets with the Liquor Inspector regularly to discuss liquor sales issues at the Hotel. It also has a membership in the Victoria Late Night Advisory Committee to work with government and the police to reduce police calls in the food and beverage industry. Safety is always a concern. For example, there are discussions about transporting clients who may be impaired so that they can make it home safely. He made a recommendation to raise minimum drink prices as low prices encourage overconsumption.

The Licensee does not dispute liquor was sold to an underage person. He noted, however, that the door where the Minor Agent and Liquor Inspector entered the Hotel property off of Courtenay Street opens at 11:30 AM. There is always a hostess present before the doors open. There is normally a hostess present at the hostess station unless a customer is being shown to a table. The hostess has SIR training, and will ask for ID if customers are going into the liquor primary areas. There is a sign where the hostess greets customers which advises they should wait to be seated, and which states that no one under 19 is allowed beyond this point. In the evening, security staff are at the door, and they will also ask for ID.

While there was no dispute that liquor was sold to the Minor Agent, the server who made the decision not to ask for identification was an experienced and valued employee. She made a mistake. For this she was terminated in accordance with the policies of the Licensee. Afterwards, there was a meeting with all staff to discuss the MAP incident and communications were sent around to staff by memoranda. The staff were also aware that the server had been terminated in accordance with the policies of the Licensee.

In cross-examination, the Licensee agreed its ID checking policy had changed. Previously staff were to ask ID from anyone that looked under the age of 25. Now they check anyone that appears to be under the age of 30. While the terms of the Licence permit minors to be in the Games Room when accompanied by a parent or guardian, the Licensee does not allow this is a matter practice. It is only permitted for special events such as conferences. If there is a critical incident like service to a minor or intoxication, it is discussed with employees. There is also an incident log and 100 cameras inside the licensed premises. Pictures may be used for discussions with staff. The staff are also told about MAP inspections directly and by memoranda.

The server who was involved in the sale of liquor during the MAP inspection testified (the Server). She testified that she began employment with the Licensee in 2013. Previously, she had server experience in Alberta. Before she was hired, she signed an acknowledgement that she would be terminated if she sold liquor to underage customers. After she was hired, she received training from the Human Resources manager. Included was training on the Server Training Manual and the Employee

Handbook. The original training was ongoing for 2 to 3 weeks. After this, there was a three-month probation, and an employee evaluation after one year of employment. She recalled that there were quizzes of staff from time to time which were mandatory. ID was discussed during staff meetings and training sessions. The Licensee had staff meetings to discuss upcoming events. When she worked in the Games Room, she coordinated with the bartender. Any employee could ask the customer for ID. As well, one could ask a fellow employee if a customer had been asked for ID. Employees were aware that the Licensee maintained an Incident Log Book. If there was an incident, management was advised, and it was recorded in the Log Book.

She understood the policy of asking for ID from anyone that appeared to be under 25. The requirement was repeated by management from time to time. She knew that she would be terminated if she did not do this.

The Server stated that the incident on September 29 was entirely her responsibility. She was never confused about the requirements for asking for ID. She did not intend to serve an underage individual. She thought that both the Minor Agent and the Liquor Inspector that accompanied her were over 25 years of age. She also provided a sworn affidavit in which she stated the Minor Agent and Liquor Inspector entered the Games Room through the Sticky Wicket pub, and so their ID would normally be checked by the hostess there.

The Server did not believe she was working for the Licensee when the policy changed to ask anyone who appeared to be under the age of 30 for ID. After the MAP incident, she was suspended for a time until the Branch issued the NOEA. She recalled there was an email to staff about the incident. She believed there was also a staff meeting but she had been terminated at this point. She could not recall if there were training exercises during the four years in which she was employed by the Licensee but performance evaluations were done annually.

The General Manager has been employed by the Licensee for 11 years. He testified that he oversees budgets, human resources, marketing, and employee orientation. He attends staff meetings and writes employee policies in concert with the Human Resources personnel. In respect of liquor licensing, he communicates with the liquor inspectors who come to inspect the Licensed facilities from time to time. The General

Manager speaks to Liquor Inspector B frequently to seek his advice. As a policy, the Licensee tries to build strong relationships with the liquor inspectors because they have a common goal in service to the public.

The General Manager testified that there have been employee manuals in place for the 11 years of his employment. Included is the Server Training Manual, which is updated as different serving standards and the law changes. The staff that deal directly with customers are required to sign a statement acknowledging that they will be terminated if they sell liquor to a minor. There is also a Support Staff manual which is also updated regularly. The General Manager discusses the manuals with new staff, at which time he emphasizes the Licensee's liquor sales policies and Serving It Right policies. The Human Resources Manager also reviews the manuals and the policies with new staff. Significant time is spent going through the manuals and discussing issues involving ID, intoxication, the redline area of the Licensee, and related issues. Annually employee contracts are renewed at which time there are discussions about any Contravention Notices that might have been received, updates on the law regarding the sale of liquor, and issues arising from discussions with the liquor inspector.

As a policy, the Licensee does not want minors in its liquor primary facilities even if they are entitled to be there with the parent or guardian. The only exception is when there are special occasions such as private group bookings, and minors are ID'd during these events. As well, minors attending a private group booking event are not allowed to go to any of the other liquor primary facilities in the Hotel.

The General Manager noted that the Serving It Right quizzes which are utilized by the Licensee are changed annually. Staff are expected to take these quizzes quarterly. The emphasis is on alcohol service issues, although there may also be a quiz for servers working in the food primary restaurant. The tests are marked by the Human Resources staff. There are regular meetings with staff at which Human Resources personnel take minutes. The minutes are posted on the bulletin board in the staff room. There are fireside chats with four or five employees at a time to discuss how to improve performance. Staff are monitored over issues involving asking for ID or watching for intoxication among the patrons. Management will assist in removing a patron who is intoxicated.

The General Manager described the entrance area where the Minor Agent and Liquor Inspector entered the licensed facilities. It opens into a hostess station with a sign requesting that customers wait to be seated. There is also a sign advising of the need for ID to gain entrance to the liquor primary facilities. The hostess at the station has a SIR certification, and will ask patrons for ID. The hostess is always present unless she is busy seating a customer in the food primary restaurant. There is a hostess present at least until security staff take over at the outside door at night. Security staff also ask patrons for ID. The Licensee also utilizes a ServeAll ID scanner. ID is scanned to ensure it is valid and to advise whether it has been refused anywhere else.

SUBMISSIONS

Branch

In brief, the Branch maintains that the defence of due diligence is not made out, and so enforcement action consisting of a 10-day license suspension or the imposition of a \$7500 monetary penalty should be imposed. The sale of liquor to a minor on September 29, 2017 was result of a failed system, and not because of the lapse in judgment of the server. The Licensee failed to demonstrate, based on their written records, that it explained the need to prevent the sale of liquor to minors or the harm of selling liquor to minors. There was no written record that staff were told about the Minors as Agents Program or that underage drinking is a public safety priority of the government. Further, there were no guidelines for determining a patron's age, and no strategies demonstrated on how to prevent sale of liquor to minors, and use of a cautionary approach by asking for ID in cases of doubt.

The Branch submits that the written records did not demonstrate adequate training on the prevention of the sale of liquor to minors. As far as an effective implementation of its systems was concerned, the Server did not indicate that she had any testing or performance evaluations done after she completed her probationary period during the ensuing four years of her employment. She was not told about the Branch's MAP compliance testing. Tests administered to employees such as a bartender test and SIR quiz focused more on intoxication and other operational matters. The quizzes which were administered to servers also focused more on intoxication and other operational

matters. Nor did the memos on the staff Bulletin Board contain any reminders about minors, how to prevent the sale of liquor to minors or how to check for ID.

While the evidence showed that the Licensee held meetings where the checking of ID was discussed, there were no minutes produced to illustrate the type of information that was imparted during these meetings. There is no requirement for staff to review the incident log book before the start of the shift. During the MAP inspection on September 29, 2017 at about 6 p.m. there was no server or host stationed at the entrance to the Games Room where the inspection was carried out. There was no email sent to staff about the Licensee's ID policy and checking underage patrons after the incident occurred.

The Licensee changed its ID check policy from 25 to 30 years of age but did not produce communications to staff regarding the change, the reason for the change, and any notice of re-training. While the licensee did hold meetings where the checking of ID was discussed, there were no minutes produced to demonstrate the type of information given during these meetings. The Server testified that the meetings were not mandatory but if she missed a meeting, she was brought up to speed afterwards. There was, however, no copy of minutes of meetings or emails sent to employees about missed meetings.

Licensee

The licensee submits that it is a family owned and operated business. The family and their employees have a great respect for the law, including the applicable liquor licensing legislation. It works closely and has a good relationship with the Branch, particularly with Liquor Inspector B. It cares about its staff and about public safety, and it puts a great deal of its resources into training and updating staff. The Licensee requires all front-end staff to have SIR certification, which trains employees in obtaining ID from customers who might be minors. The Licensee adds to this information initially, and continuously during employment by way of meetings, bulletins, emails, contract renewals, and testing.

The Licensee is critical of the Branch for not enforcing the legislative provisions which provide for a monetary penalty against individual employees who fail to obtain identification from minors. The Licensee argues that this negatively impacts its due

diligence. The Licensee is also critical of the MAP process which it described as a scheme of entrapment. Especially in this case, where the Minor Agent was in the company of a relatively young liquor inspector. Both of them ignored signage which asked that they wait to be seated, and they elected to go to the liquor primary area instead of the food primary area on their own volition. In doing so, their purpose was to encourage a server to make an error in judgment.

The Licensee notes that Liquor Inspector B testified that the Licensee was, in his experience, duly diligent. Further, the test for due diligence as set out in *Central City Brewing Co. v. British Columbia (Liquor Control Licensing Branch)*, [2013] B.C.J. No. 2746, must not be set too high because it would otherwise create an offense of absolute liability. In order to establish the defence, the Licensee need only show on a balance of probabilities that it exercised all reasonable care to establish a proper system to prevent the commission of the offense and took reasonable steps to ensure the effective operation of the system.

ANALYSIS

Contravention

As noted earlier, the first issue for determination is whether the contravention of sale to a minor occurred as alleged by the Branch. The Licensee does not dispute this allegation, and so I find it is a fact that the Licensee contravened the *Act* on the day and time, and in the manner alleged in the NOEA. Moving then to the second issue, is there a defence to the contravention? The Licensee claims that it acted throughout with due diligence. The onus on this defence lies with the Licensee.

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 in question 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 the problems are consistently addressed.

The leading case on establishing the defence of due diligence is the decision of the Supreme Court of Canada in *R. v. Sault Ste. Marie* (1979) 2 SCR 1299. At page 1331 in the reported decision, Dickson, J. sets out the test of due diligence as follows:

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, more recently 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 - 44). The Court described the analysis of the defence of due diligence in two stages. First, determine if 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 ceases. If the employee who made the sale, however, 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 first, did the licensee implement adequate training and other systems to prevent the contravention (the sale of liquor to minors), and second, did the licensee take reasonable steps to ensure the effective application of the training and the operation of those systems. Both of these issues are factual, and they will depend on the evidence presented.

The Court also noted at paragraph 22 that public safety in the distribution of liquor is maintained through the establishment of high standards for compliance with statutes and regulations. Licensees who undertake reasonable precautionary measures against the sale of liquor to minors are encouraged to seek even higher standards because the amount of care taken goes to the defence of due diligence. The standard, however, is not

one of perfection. The Court noted “Conviction will have a deterrent effect only if the licensee is encouraged to have better and stricter standards. If it matters not how high the standards that are employed, then businesses will not be encouraged to impose the highest standards in order to avoid contravention of the legislation, and public safety in the sale of liquor to minors will suffer generally as a result.”

As noted earlier, the onus is on the Licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing both that it has adequate training and other systems to avoid a contravention, and that it takes reasonable steps to ensure the effective application of these systems.

As noted in *Beverley Corners, supra* the defence of due diligence will not succeed if the contravention was caused by a person who is a directing mind of the Licensee. In this case, the contravention in question occurred because of the actions of a server who did not exercise management duties. Further, the server did not have a role as a directing mind of the Licensee. She testified that the contravention occurred as a result of her actions alone. On this evidence, I find that the Licensee is not precluded from putting forward the defence of due diligence.

Adequate Systems and Training

Due diligence requires first that a Licensee initiate adequate systems and training to try to ensure that a contravention does not occur. The exercise of due diligence does not guarantee that a contravention will never occur. It is intended, however, to reduce the likelihood of a contravention occurring to a reasonable and acceptable level. The analysis of what is adequate or reasonable must take place in the context of the public policy considerations and potential consequences underlying the prohibition against selling liquor to minors:

1. the effects of alcohol on growing bodies and developing minds;
2. the effects on individuals and society of irresponsible drinking behaviour learned at an early age;
3. a minor’s lack of capacity to metabolize alcohol in the same manner as an adult; and
4. liquor is a significant factor in many crimes committed by youth.

The evidence of the Licensee regarding its systems can be summarized as follows. For new employees, the Licensee utilizes its Employee Handbook which is updated at least annually. The Employee Handbook explains that staff communications are effected by a Staff Only website, a bulletin board, a Facebook group, and by Departmental and General Meetings. There is a page for servers setting out the ID policy of obtaining two pieces of ID from customers who appear to be under the age of 25.

As well, there is a Server Manual for servers that are directly involved in customer service and a Support Staff Manual for employees who do not directly engage in customer service. The Server Manual has three pages on dealing with intoxicated patrons, and one page that deals with ID requirements. All of the serving and support staff are required to have SIR certification whether or not they are directly involved in customer service. Support staff involved in host or hostess duties are expected to ask for ID.

The General Manager testified that he and the Human Resources Manager spend considerable time during initial training going over these documents, and in discussing the policies of the Licensee with respect to service to minors, patron intoxication, and the redline area of the licensed facilities. The Server testified that her initial training took two to three weeks, followed by three months of probation. The training included review of the policies in the Employee Handbook and Server Training Manual. She was also required to sign a contract stating that she would be terminated if she sold liquor to a minor.

The Branch was concerned that the documents of the Licensee focused more on dealing with intoxicated customers than on its ID policies. The Employee Handbook does explain the ID policy of the Licensee, and the evidence is that this policy is emphasized along with other liquor service issues during initial training of the server staff. Based on the whole of this evidence, I conclude that the Licensee meets the first test of due diligence because it has adequate systems and training in place to prevent a contravention of the *Act*.

The second limb of the test for due diligence requires evidence of reasonable steps to ensure that the initial training remains effective. The Branch maintains that the Licensee fails to meet this test. It submits that the Server did not testify about receiving any training after she passed probation. Notes of meetings with staff indicated that ID issues were discussed but they fail to identify how staff were instructed to check for ID. The Bulletin Board had notices about checking for 2 pieces of ID but did not explain how to assess the age of patrons.

One of the criticisms levelled by the Licensee is the failure of the Branch to enforce the provisions of the *Act* which provides for a monetary penalty to be levied against individuals who sell liquor to minors. The Licensee maintains that the failure to enforce these provisions negatively impacts its due diligence. Liquor Inspector B also expressed his view that enforcement of these provisions would have a positive impact on reducing the incidence of liquor sales to minors. While that may be, the Licensee must accept the conditions on which it operates its business as it finds them. All licensees in the Province must operate their businesses in the face of currently prevailing conditions. Otherwise, the defence of due diligence would have no meaning.

The Licensee was also critical of the manner in which the Liquor Inspector and the Minor Agent conducted their inspection. It referred to the inspection as a "sting" operation. The Licensee was, however, aware of the existence of MAP inspections. The Branch generally tries to conduct these in a fair manner. There was an example of this in the evidence of Liquor Inspector B that there was an alleged failure in a previous MAP inspection was not pursued because the Minor Agent stated she was an industry representative, and so was given a discount.

It could be argued that the relatively youthful Liquor Inspector made the Minor Agent appear older in his company. Once again, these are the circumstances that licensees must deal with and develop adequate systems to address effectively.

There is one aspect of the inspection where I have some sympathy for the position of the Licensee. Neither the Minor Agent nor Inspector A recalled seeing a sign when they entered the premises the Licensee asking patrons to wait to be seated. The Branch submitted that the absence of the hostess when the inspection team entered the facility was a failure in the systems of the Licensee. I am satisfied, however, on the oral and

photographic evidence of the Licensee that there is a hostess station and signage asking patrons to wait to be seated. As the Server noted in her sworn affidavit, the inspection team entered the Games Room through the Sticky Wicket Pub, and the hostess at the Pub would normally check ID. The failure of the inspection team to wait before entering the Games Room in accordance with the sign imposed an element of unfairness in the subsequent events. By going around the hostess, the inspection team removed one level of diligence that has been put in place by the Licensee.

I agree with the Branch that the policies of the Licensee with respect to asking patrons who appear to be under 25 were not always clearly articulated. While front of staff servers acknowledged the policy when they signed a commitment agreement at the beginning of their employment, subsequent reminders posted on the staff bulletin board and elsewhere focused on asking for ID from anyone who appeared to be under 19. On the other hand, front of the house servers were required to take regular quizzes that dealt with service issues such as dealing with intoxicated patrons. One of the quizzes in evidence dealt with the ID policy of the Licensee and asked servers to provide examples of primary and secondary ID. Minutes of a Server and Support Staff Meeting and Training Session in January 2016 reminded servers to check ID, and double check with the host if unsure. An email to staff in June 2016 attached a memo about the ID requirements for verifying age in B.C., and staff were required to sign an acknowledgment that they had reviewed the document.

The Branch submitted that the contravention was due to a failed system of staff training by the Licensee on applying its ID policies. There is, however, a body of evidence to suggest that the Licensee has taken steps to address the issue of minors on its premises including communications with staff over liquor service issues including ID checking. These include:

- The Licensee does not permit minors inside its liquor primary facilities even though its food services endorsement permits them to be there with a parent or guardian.
- The Licensee maintains close cooperation with the local Liquor Inspectors. Liquor Inspector B's recommendations about hiring support staff with SIR certification and changing the policy to ask for ID from patrons appearing to be under 30 instead of 25 were both adopted.

- Liquor Inspector B and his predecessor have been invited to address staff on liquor service issues.
- Liquor Inspector B stated that in his opinion, the Licensee does act with due diligence in these matters.
- The Licensee has invited insurance industry personnel to address staff on due diligence issues pertaining to liquor service.
- The servers are required to take regular quizzes including questions about the ID policies of the Licensee.
- Support staff employed as hostesses will ask patrons for ID before they are admitted into the liquor primary areas.
- Security staff working in the evenings also ask patrons for ID.
- Human Resources personnel meet regularly with staff and the matters discussed in those meetings are posted on staff bulletin boards.
- Evidence of training included minutes of a Server and Support Staff Meeting and Training Session in January 2016 in which servers were reminded to check ID, and to double check with the host if unsure.
- An email to staff in June 2016 attached a memo about the ID requirements for verifying age in B.C., and staff were required to sign an acknowledgment that they had reviewed the document.
- Fireside chats are conducted with small groups of employees from time to time.
- The Licensee uses a ServeAll scanner to check ID offered by patrons.
- The Licensee utilizes an incident log book. While it is maintained by management, it can be used to train employees about incidents that occurred previously.
- The Server testified that she received annual performance evaluations as an employee. As well, she attended staff meetings put on by Human Resources personnel where ID issues were discussed. She testified that staff cover for each other in asking whether a patron has been ID'd.
- The Server also testified that she was not mistaken about the Licensee's ID policy and she was not afraid to ask patrons for ID. Instead, she made a mistake. She thought that the Minor Agent and the Liquor Inspector were both over 25 years of age.
- The manner in which the inspection team entered the Games Room circumvented the hostess who would have had an opportunity to ask for ID.

CONCLUSION

The documented records of the staff meetings conducted by the Licensee were scant in confirming the detail the points of discussion with staff about its ID policies. I accept, however, based on the evidence outlined above that those discussions did take place.

I note that it appears that steps have been taken to rectify this short coming subsequent to the occurrence of the contravention. The recent policy of checking for ID from patrons appearing to be under 30 had been documented. As well, there are recent email records of discussions with staff on ID issues.

The test for due diligence is not perfection. It is whether on the balance of the evidence the Licensee took reasonable steps to ensure the effective operation of its systems. Based on the evidence set out above, I am satisfied that the Licensee acted with due diligence by taking such reasonable steps.

In view of my conclusion that the Licensee acted with due diligence, it has a defence to the contravention outlined in the NOEA. Therefore, no enforcement action is required.

Original signed by

A. Paul Devine
General Manager's Delegate

Date: May 17, 2018

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