



**DECISION OF THE
GENERAL MANAGER
LIQUOR AND CANNABIS REGULATION 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:	Big White Ski Resort Ltd. 5315 Big White Rd Kelowna, BC V1P 1P4
Cases:	EH18-023 and EH18-026
For the Licensee:	Peter Plimmer
For the Branch:	Maria Caduhada
General Manager's Delegate:	R. John Rogers
Date of Hearing:	August 14, 2018
Date of Decision:	September 26, 2018

**Liquor and Cannabis
Regulation Branch**

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

Location:
Fourth Floor, 645 Tye Road
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

INTRODUCTION

Big White Ski Resort Ltd. (the "Licensee") holds Food Primary Licence No. 129236 (the "Food Primary Licence"), pursuant to which it operates an establishment called "Big White Ski Village (Happy Valley Day Lodge)" on Big White Mountain, Big White, B.C., V1X 4K5 (the "Day Lodge"). The Licensee, as well, holds Licensee Retail Store Licence #195452 (the "LRS Licence") pursuant to which it operates an establishment called "Big White Beer and Wine" located at 5315 Big White Road, Big White B.C., V1P 1P3 (the "LRS").

According to the terms of the Food Primary Licence, the Licensee may sell liquor from 11:00 a.m. to 1:00 a.m. Monday through Saturday and from 11:00 a.m. to Midnight on Sunday. According to the terms of the LRS Licence, the Licensee may sell liquor from 9:00 a.m. to 11:00 p.m. Monday through Sunday.

The Food Primary Licence is, as are all food primary liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Food Primary, Terms and Conditions " (the "Food Primary Terms and Conditions Handbook"). Similarly, the LRS Licence is, as are all licensee retail store liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Licensee Retail Store, Terms and Conditions " (the "LRS Terms and Conditions Handbook").

Appearing at the hearing on behalf of the Licensee was the CEO of the Licensee (the "CEO"), together with the Vice President of Hospitality of the Licensee (the "VP Hospitality"), the Director of Food and Beverages (the "FB Director") and the Manager of the LRS (the "LRS Manager").

Although there were two separate contravention notices issued by the Branch containing two separate allegations, with the consent of the parties these two matters were heard consecutively with the allegation contained in the contravention notice issued for the Day Lodge dealt with first, followed by the allegation contained in the contravention notice issued for the LRS.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Day Lodge

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty with respect to the Day Lodge are set out in the Notice of Enforcement Action dated April 4, 2018 (the "Day Lodge NOEA") (Day Lodge Exhibit 1 tab 1).

The Branch alleges that on March 16, 2018, the Licensee contravened Section 77(1)(a) of the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Act") by selling, giving or otherwise supplying liquor to a minor ("Minor Agent #111"). Item 3, Schedule 2 of the *Liquor Control and Licensing Regulation* BC Reg 241/2016 (the "Regulation") sets out the range of penalties for a first contravention of this type as being a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty. The Branch proposes either a 10 day licence suspension starting on a Friday and continuing for successive business days until completed or a monetary penalty of \$7,500.

The Licensee has admitted that its employee sold liquor to Minor Agent #111 and to the facts as set out in the Day Lodge NOEA. However, the Licensee is pursuing a due diligence defence to the contravention.

The Licensee in its submissions at the hearing has requested that if a penalty is imposed for the contravention alleged in the Day Lodge NOEA that the penalty be a monetary penalty rather than a suspension of the Food Primary Licence.

The LRS

The Branch's allegations and proposed penalty with respect to the LRS are set out in the Notice of Enforcement Action dated April 6, 2018 (the "LRS NOEA")(LRS Exhibit 1 tab 1).

The Branch alleges that on March 16, 2018, the Licensee contravened Section 77(1)(a) of the Act by selling, giving or otherwise supplying liquor to a minor ("Minor Agent #111"). As noted above, Item 3, Schedule 2 of the Regulation sets out the range of penalties for a first contravention of this type as a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty. The Branch proposes either a 10 day

licence suspension starting on a Friday and continuing for successive business days until completed or a monetary penalty of \$7,500.

The Licensee has admitted that its employee sold liquor to Minor Agent #111 and to the facts as set out in the LRS NOEA. However, as with the allegation contained in the Day Lodge NOEA, the Licensee is pursuing a due diligence defence to the contravention.

The Licensee in its submissions at the hearing has requested that if a penalty is imposed for the alleged contravention in the LRS NOEA, that the penalty be a suspension of the LRS Licence rather than a monetary penalty.

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.

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.

Liquor Control and Licensing Regulation, B.C. Reg. 241/2016

Schedule 2

Monetary Penalties and Licence Suspensions

Minors

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

ISSUES

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

EXHIBITS

The Day Lodge

Exhibit 1: An envelope containing:

1. A certified true copy of a full body picture of Minor Agent #111 taken at the start of his shift on March 16, 2018 prior to the occurrence of the alleged contraventions;
2. A certified true copy of a head and shoulder picture of Minor Agent #111 taken at the start of his shift on March 16, 2018 prior to the occurrence of the alleged contraventions;
3. A certified true copy of a picture of the British Columbia driver's license of Minor Agent #111 taken on March 16, 2018 together with a certified true copy of a picture of the school identification of Minor Agent #111 also taken on March 16, 2018;
4. A copy of a Minor Agent Observation Form dated March 16, 2018 completed by Minor Agent #111 following the occurrence of the alleged contraventions, which form is signed by Minor Agent #111;
5. A copy of a Minor Agent Statement dated March 16, 2018 completed by Minor Agent #111 following the occurrence of the alleged contraventions, which form is signed by Minor Agent #111;
6. A certified true copy of a full body picture of Minor Agent #111 taken at the end of his shift on March 16, 2018 after the occurrence of the alleged contraventions; and
7. A certified true copy of a head and shoulder picture of Minor Agent #111 taken at the end of his shift on March 16, 2018 after the occurrence of the alleged contraventions.

Exhibit 2: Branch book of documents, tabs 1 to 13.

Exhibit 3: Licensee's book of documents including:

1. A copy of the 2017/2018 Staff Training Manual for an employee;
2. A copy of the 2017/2018 Staff Training Manual for management;
3. A copy of the agenda for the introduction of new employees of the Licensee;
4. A copy of the information sheet provided to new food and beverage employees of the Licensee;
5. A copy of the slides from a PowerPoint presentation entitled "Big White Ski Resort Ltd. Food and Beverage Liquor Policy";
6. A copy of a document entitled the "Refusal of Sales Log Sheet";
7. A copy of two documents, each entitled "Incident Report"; and
8. A copy of a set of documents following a title document which reads "Documents Implemented after March 16th 2018".

The LRS

Exhibit 1: The same envelope constituting Day Lodge Exhibit 1 containing the same documents;

Exhibit 2: Branch book of documents, tabs 1 to 14.

Exhibit 3: Licensee's book of documents including:

1. A copy of a document entitled "Acknowledgement + Receipt";
2. A copy of a document entitled "Liquor Store Team Handbook";
and
3. A copy of a document entitled the "Refusal of Sales Log Sheet".

WITNESSES

The Day Lodge

The Branch called Inspector A, a member of the inspection team referenced in the Day Lodge NOEA and the author of the Day Lodge NOEA.

The CEO, the VP of Hospitality and the FB Manager all gave evidence on behalf of the Licensee.

The LRS

The Branch called Inspector B, a member of the inspection team referenced in the LRS NOEA and the author of the LRS NOEA.

The CEO, the VP of Hospitality and the LRS Manager all gave evidence on behalf of the Licensee.

PROTECTING THE IDENTITY OF THE MINOR AGENT

As the Licensee was not disputing that the contraventions alleged in both the Day Lodge NOEA and the LRS NOEA had occurred, with the agreement of the parties and in order to protect the identity of Minor Agent #111, redacted photocopies of the photographs contained in the envelope identified as Day Lodge Exhibit 1 and LRS Exhibit 1 were provided to the Licensee. These redacted photocopies of the pictures of Minor Agent #111 and his identification are included in Day Lodge Exhibit 2, tab 6, and in LRS Exhibit 2, tab 6, and the redacted photocopies of the Minor Agent Observation Form and the Minor Agent Statement are included in Day Lodge Exhibit 2, tabs 3 and 4, and in LRS Exhibit 2, tabs 3 and 4.

The original of these photographs within the envelope identified as Day Lodge Exhibit 1 and as LRS Exhibit 1 will be sealed in the envelope in which they are contained and will be kept on file with the Branch and not disclosed without a court order.

THE DAY LODGE ALLEGATION

EVIDENCE – BRANCH

The Day Lodge NOEA

The evidence given by the Branch with respect to the allegation contained in the Day Lodge NOEA might be summarized as follows.

The Minors as Agents Program

The Day Lodge NOEA notes that in 2011 the Act was amended to permit the Branch to establish its Minors as Agents Program ("MAP") for the purpose of carrying out MAP inspections to ensure that a licensee was not selling or supplying liquor to persons under the age of 19 in contravention of the Act. Best practices for a licensee where a patron appeared to be of a young age were to inspect two pieces of identification to verify the age of this patron. To ensure that these best practices are being followed by licensees, the Branch has hired 16-18 year old minors as agents of the Branch to carry out compliance inspections, which inspections are often complaint driven. These minor agents so hired are given training on the Act and the Regulation, on making and documenting observations, and on safety considerations.

Establishments licensed under the Act and the Regulation were first notified of the institution of MAP by way of a government press release in July 2010. Following this initial notification, there have been ongoing and regular communications from the Branch to these licensees and to the industry about MAP and its continuing activities.

The Alleged Contravention

The Day Lodge NOEA states that on Friday, March 16, 2018, Inspectors A and B, together with Minor Agent #111 constituted an inspection team pursuant to MAP to test compliance with the Act and the Regulation at several licensed establishments in the Big White area.

At the start of the shift on this date, Minor Agent #111 was photographed (redacted copies of which are included in Day Lodge Exhibit 2 tab 6), his identification was viewed and photographed (redacted copies of which is also included in Day Lodge Exhibit 2 tab 7), and his age was confirmed to be less than 19 years of age.

At 4:46 p.m. on Friday, March 16, 2018 Inspector B together with Minor Agent #111 entered the Day Lodge and proceeded to the bar top area. They were greeted by a male server (the "Server") who asked them "What would you like?" Minor Agent #111 requested a bottle of Kokanee beer, whereupon the Server took a bottle of Kokanee beer from the cooler, opened the bottle, gave it to Minor Agent #111 and requested that Minor Agent #111 pay the sum of \$6.87. Minor Agent #111 handed the Server a twenty dollar bill and received \$13.10 in change.

Inspector B observed this transaction from approximately 5 feet away and noted that at no time did the Server ask Minor Agent #111 for identification.

Once Minor Agent #111 was served, he and Inspector B relocated to a table nearby and a photograph was taken of the bottle of Kokanee beer (Day Lodge Exhibit 2 tab 5). Following the taking of the photograph, Minor Agent #111 placed the bottle of Kokanee beer in a garbage can and together with Inspector B left the Day Lodge, returning to the inspection team's vehicle. In the company of Inspectors A and B, Minor Agent #111 completed and signed the Minor Agent Observation Form (Day Lodge Exhibit 2 tab 3) and the Minor Agent Statement (Day Lodge Exhibit 2 tab 4).

Later that evening at 8:06 p.m., Inspectors A and B returned to the Day Lodge and spoke to the FB Director advising her that the alleged contravention had occurred. Inspector A then issued Contravention Notice B021930 ("Day Lodge Contravention Notice")(Day Lodge Exhibit 2 tab 7) to the FB Director, a copy of which was sent to the Licensee by registered mail on March 21, 2018.

Evidence of Inspector A

Inspector A testified that he was the Regional Inspector for the Branch with responsibility for the interior and the northern part of British Columbia, a post that he has held for 3 years. He oversees the activities of Inspector B, the liquor inspector responsible for ensuring the Licensee's compliance with the terms and conditions of the Food Primary Licence. Inspector A has been employed as a liquor inspector with the Branch for 8 years.

Inspector A identified a copy of the Day Lodge NOEA and confirmed that he was its author and confirmed its accuracy. He also confirmed that he together with Inspector B were members of the inspection team of which Minor Agent #111 was a part on March 16, 2018.

Inspector A confirmed the identity of the following items in Exhibit 2:

- The Food Primary Licence (Day Lodge Exhibit 2, tab 8), testifying that this was in effect on March 16, 2018;
- The floor plan of the Day Lodge (Day Lodge Exhibit 2, tab 9), identifying where the sale of the liquor to Minor Agent #111 is alleged to have occurred and confirming that this sale was within the licensed service area of the Day Lodge;
- A copy of the Food Primary Terms and Conditions Handbook (Day Lodge Exhibit 2, tab 10) and testified that the terms and conditions in this document were binding on the Licensee on March 16, 2018 pursuant to the terms and conditions of the Food Primary Licence, specifically with respect to the requirement to request identification from patrons who appeared to be minors;
- A copy of a document entitled "Legal Entity Summary" (Day Lodge Exhibit 2, tab 11), noting that this document set out that the CEO was a shareholder of the Licensee and confirmed that Inspector A had dealt with the CEO in matters affecting the Licensee;
- Copies of documents (Day Lodge Exhibit 2, tab 12) notifying licensees since the amending of the Act in 2010 of the creation and ongoing existence of MAP;
- A copy of the notes of Inspector B made following the alleged sale of liquor to Minor Agent #111 (Day Lodge Exhibit 2, tab 2), a redacted copy of the Minor Agent Observation Form completed and signed by Minor Agent #111 immediately following the alleged contravention (Day Lodge Exhibit 2, tab 3), a redacted copy of the Minor Agent Statement completed and signed by Minor Agent #111 immediately following the alleged contravention (Day Lodge Exhibit 2, tab 4), and a copy of a picture of the Kokanee beer bottle taken following the alleged contravention (Day Lodge Exhibit 2, tab 5); and
- Redacted copies of pictures showing two pieces of identification for Minor Agent #111 and pictures taken of Minor Agent #111 before and after the inspection shift on March 16, 2018 (Day Lodge Exhibit 2, tab 6).

Inspector A testified that the Licensee was not notified of the alleged infraction immediately after its occurrence. His evidence was that later in the evening of March 16, 2018, he and Inspector B returned to the Day Lodge and spoke to the FB Director. During the course of this meeting, he stated, the Day Lodge Contravention Notice was issued, a copy of which he confirmed as Day Lodge Exhibit 2, tab 7, and he further

confirmed the signature of the FB Director on the document acknowledging receipt of a copy of the Day Lodge Contravention Notice.

EVIDENCE – LICENSEE

Evidence of the CEO

The CEO testified that he was President and CEO of the Licensee and represented its largest shareholder. In his testimony, he stated that he wished to emphasize that the business purpose of the Licensee was to operate a family friendly and family-oriented resort and not to sell liquor. Indeed, he stressed, the sale of liquor was a very minor part of the Licensee's overall business operations.

The CEO testified that the Licensee did not dispute that the alleged contravention occurred, however that he believed that the failure of the Server to ask Minor Agent #111 for identification was a mistake of the Server and not a reflection of the Licensee's inadequate staff training policies. Indeed, he emphasized, the action of the Server on March 16, 2018 in not asking Minor Agent #111 for identification was contrary to all policies of the Licensee and was actively discouraged by the Licensee.

Evidence of the VP of Hospitality

The VP of Hospitality testified that as Vice President of Hospitality he was responsible for the operations of both the Day Lodge and the LRS. He wanted to emphasize that in the presentation of the evidence of the Licensee, he wanted to highlight the time and effort that the Licensee put into the training of its employees so that each employee fully understood what obligations that employee undertook to ensure compliance with the terms and conditions of the Food Primary Licence and the Serving It Right certificate. He stated that these obligations are continually stressed by the Licensee starting with the initial "on boarding" of each employee, continuing through that employee's training, and then the follow up documentation that each employee is required to sign.

He testified that he believed that the Server made a mistake and acted contrary to his training. However, he stated, the Licensee is determined to learn from this incident and has implemented additional policies to ensure that an incident like this does not happen in the future.

Evidence of the FB Director

The FB Director testified that she was the Director of Food and Beverage for the Licensee.

The Employee Training Manual

The FB Director noted the first document entitled “the 2017/2018 Staff Training Manual for an employee” included in the Licensee’s Book of Documents (Day Lodge Exhibit 3) and testified that the Licensee updated this document yearly. She stated that each new employee and each returning employee must go through this document as part of the “onboarding operation” at the start of the ski season and must sign the last page of this document confirming that the employee had read and understood the contents of this training manual. She noted that at pages 5 and 6 of this document reference was made to the requirement to ask for two pieces of identification from any patron who appeared to be under the age of 30 and included a description of what forms of identification were acceptable for this purpose in British Columbia.

The FB Director testified that this training manual forms a part of an overall discussion with employees when its contents are reviewed, including the fact that patrons of the Licensee seeking liquor service include visitors from outside of Canada and what forms of identification would be acceptable from such patrons. During these discussions, the FB Director noted, these employees are instructed to consult with a manager if there is any doubt as to the validity of a particular form of identification and that the overall policy is that if there is any doubt as to whether or not a presented piece of identification qualifies, that the employee should not serve liquor to that patron.

The FB Director noted that the last page of the particular copy of the the 2017/2018 Staff Training Manual for an employee document included in the Licensee’s Book of Documents (Day Lodge Exhibit 3) was a copy of the last page of the copy of this 2017/2018 Staff Training Manual for an employee document signed by the Server on

November 14, 2017, which, she testified, was the Server's first day of employment with the Licensee.

The Management Training Manual

The FB Director then noted the second document entitled "the 2017/2018 Staff Training Manual for a manager" and testified that this document was a copy of the document for supervisors and management employed by the Licensee. She noted that it was similar to the training manual for the employees referenced above, and, as with the employee training manual, deals with the requirement for servers to ask for two pieces of identification from patrons who appear to be under 30 years of age, and what would constitute the acceptable forms of this identification. She noted that the last page of the particular copy of the the 2017/2018 Staff Training Manual for a manager document included in the Licensee's Book of Documents (Day Lodge Exhibit 3) was a copy of the last page of the copy of this 2017/2018 Staff Training Manual for a manager document signed on November 14, 2017 by the manager who was on duty at the time the Server served Minor Agent #111 on March 16, 2018.

The FB Director testified that management and supervisory employees received 5 hours of this start of season training while the other employees received 3 hours. However, once this initial overall training had been completed, ongoing training specific to the tasks of the individual employee were conducted prior to the opening of the ski season. During this subsequent training, the applicable training manual is revisited to emphasize the specific sections relevant to that employee. She estimated that of this subsequent training up to 4 hours would be taken up dealing with the issue of the need for identification and the various forms of international identification that an employee might encounter.

The Information Sheet

The FB Director referenced the document in the Licensee's Book of Documents (Day Lodge Exhibit 3) entitled "Welcome to the Food and Beverage Team!!!" and testified that a copy of this document was sent out to each employee by email prior to them arriving to start work for the Licensee. She noted that this document included details of the requirement for obtaining a Serving it Right certificate before a front of house employee commenced work and instructions as to how to go about obtaining this certificate.

The PowerPoint Presentation

The next of the Licensee's documents referenced by the FB Director was the copy of the slides from a PowerPoint presentation entitled "Big White Ski Resort Ltd. Food and Beverage Liquor Policy". This mandatory training regime, she testified, is provided to all front of the house employees who have gone through the initial training, who have obtained a Serving it Right certificate, and who are involved in the serving of alcohol.

The FB Director noted that this presentation dealt in detail with the Licensee's commitment to the responsible serving of alcohol and detailed, among other items dealing with the serving of liquor, the requirement to ask for two pieces of identification from any customer who appeared to be a minor. She noted, as well, reference to what forms of identification were acceptable and the warning that as the Licensee had a "zero tolerance policy" for serving liquor to minors, that if a server failed to ask for identification and a minor is served, that this employee would be terminated immediately.

Following the incident on March 16, 2018, the FB Director testified that the training contained in this PowerPoint presentation was again presented to the relevant employees on March 17, 2018 and as referenced below, following this presentation, the Licensee required each such employee to sign the document entitled the "Big White Food and Beverage Liquor Policy Acknowledgement".

Refusal of Sales Log Sheet

The FB Director then referenced the "Refusal of Sales Log Sheet" (Day Lodge Exhibit 3) and noted that the Licensee's policy was that when a patron had been refused the service of alcohol, to ensure that there was a written record of the event, the employee who had refused service was required to document this event on this log sheet and the reason for the refusal of service. She testified that as well, each refusal of service was the subject of a discussion between the employee refusing service and the relevant manager and that the manager acknowledged this follow up discussion by signing the log sheet opposite the signature of the employee.

She pointed out that the copy of the Refusal of Sales Log Sheet included in the Licensee's exhibits contained a notation that on March 16, 2018 at 2:45 p.m., approximately two hours prior to the service of liquor to Minor Agent #111, that the Server refused service to three girls due to the fact that they could not produce acceptable identification. The FB Director noted that not only did the Server refuse service to these three girls, but that he also documented this fact. In addition, she noted, the Server's entry and follow up discussion was confirmed by the initials of the manager of the Day Lodge to whom the Server reported on March 16, 2018. The FB Director confirmed that this manager works under her direction.

The Incident Reports

The next of the Licensee's documents were two incident reports (Day Lodge Exhibit 3), one of which, the FB Director noted, was completed and signed by the Server following his service of liquor to Minor Agent #111, and the second was completed and signed by the manager of the Day Lodge who was on duty when this service occurred. The Server's incident report confirmed that he had sold liquor to Minor Agent #111 without asking for identification. The manager's report was completed by the manager after she had been contacted by Inspectors A and B later on that day and confirmed the contents of the Server's incident report.

Other Measures Taken to Effect Compliance Prior to the Incident on March 16, 2018

In her testimony, the FB Director referenced a copy of a picture of the Licensee's staff information board (Day Lodge Exhibit 3) which she testified was one of the main methods by which the Licensee communicated with its employees. This picture showed, she noted, copies of notices posted on this information board dealing with the Licensee's policies involving the serving of liquor, including the requirement to ask for identification.

The FB Director further testified that the Licensee's point of sale system contained a sign-on message which read "Anyone who looks under the age of 30 years old MUST be ID'd". To complete the signing-on process, the server signing on must enter the relevant key on the point of sale system to acknowledge that the message had been read. The purpose of this message was to remind servers of the requirement to ask for identification when they logged onto the point of sale system at the start of each shift.

Other Measures Taken to Effect Compliance After the Alleged Contravention

The FB Director referenced the "ID pledge" that following the alleged contravention each employee of the Licensee involved in the serving of alcohol was required to sign at the start of the morning shift at 11:00 a.m. and the evening shift at 4:00 p.m. This pledge includes the agreement by the employee to ask for identification from any guest who appears to be under the age of 30 years old. The FB Director noted that it was the responsibility of each manager to go through this document each day on a regular basis to ensure that each employee for which the manager was responsible and who was on shift that day had signed this document.

The FB Director testified that following the alleged contravention the Licensee, as well, had included the following improvements to its compliance program:

1. It had changed the sign-in entry message on the Licensee's point of sale program to include the additional phrase "If you have not yet signed the ID pledge, please do so now". She noted that a copy of a picture of this revised message on the point of sale system was included in the Licensee's documents (Day Lodge Exhibit 3).
2. The sign-in system was also changed so that each employee is now required to record that employee's confirmation of having received and having understood this message about signing the ID pledge each time the employee logs onto the system for a transaction rather than at the start of the employee's shift as it was previously.
3. Managers and supervisors were now required to sign an additional document confirming that the signatory understood the terms and conditions of the Food Primary Licence, the Act and the Regulation with respect to the service of alcohol.
4. Each point of sale system in the Day Lodge now has a notice which sets out the date of birth before which a patron must be born to be old enough to be served alcohol. These laminated notices, she testified, are updated on a regular basis.
5. As was referenced above, the Licensee started the mystery shopping program. Under this program, the FB Director engages a third party who is over 19 years of age to go on each occasion to three specific locations owned by the Licensee, to attempt to purchase alcohol, and to complete a review identifying the location, the Licensee's employee who was the server, and whether or not the mystery shopper was asked for identification.

The FB Director testified that the last document included in the section of the Licensee's Documents entitled "Documents Implemented after March 16th 2018" (Day Lodge Exhibit 3), was a document entitled "Big White Food and Beverage Liquor Policy Acknowledgement" which document is now presented to each employee following the training PowerPoint presentation referenced above. This document sets out the Licensee's policies on the service of liquor, including the requirement to ask for identification from anyone under the age of 30 years old, and requires the signature of the employee and the employee's manager to confirm that the document had been read and understood, including the understanding that if the employee served liquor to a minor that the employee's employment with the Licensee would be immediately terminated.

The FB Director noted that this termination policy was confirmation of the policy prior to the alleged contravention and confirmed that once the Licensee was advised that the Server had served liquor to Minor Agent #111, that the Server was immediately sent home from the Day Lodge and his employment was terminated the next day.

In summarizing her testimony, the FB Director confirmed that she is heavily involved in the ongoing training of the Licensee's employees and that following the initial training at the start of the ski season, she is constantly reminding staff and managers of the requirement to ask for identification and of the importance of compliance with the Licensee's policy of responsible liquor service.

The Cross Examination of the FB Director

On cross examination, the FB Director testified:

- The manager on duty on March 16, 2018 when the alleged contravention occurred was not a member of the management of the Licensee, but rather a seasonal employee;
- That she agreed that the copy of a picture of the Licensee's staff information board (Day Lodge Exhibit 3) showed notices that did not specifically reference the age of 30 as the age criterion for asking for identification, but noted that page 5 of the Licensee's employee training manual clearly reference this age;
- That she didn't believe that MAP was discussed with the Licensee's employees prior to the alleged contravention;

- That the training of the Licensee's employees definitely included discussions about the adverse effects of liquor on minors;
- That she was present for all training although other employees of the Licensee do help with employee training. She noted that following the initial training at the start of a ski season she was constantly involved with the employees reminding them of the Licensee's policy on responsible liquor service;
- That at the start of the ski season, each employee of the Licensee received a copy of the Licensee's employee training manual in a binder with the employee's name on it together with a copy of the employee's employment contract with the Licensee. In addition, she confirmed, copies of the training manual are kept in the FB Director's office and behind the bar of the Day Lodge;
- That at the beginning of each shift there is a shift meeting at which the Licensee's liquor policy is usually discussed;
- That the Licensee has a CCTV system which she regularly monitors to ensure that the Licensee's employees are acting in accordance with the Licensee's liquor policy and this provides her CCTV access to both the Day Lodge and to the LRS;
- That following the alleged contravention, on March 17th and March 18th meetings were held with all employees of the Licensee, the alleged contravention was discussed in detail, a revised PowerPoint presentation was made to all employees, and each employee was required to sign the Big White Food and Beverage Liquor Policy Acknowledgement (Day Lodge Exhibit 3);
- That the FB Director does not have formal meetings of the Licensee's employees with an agenda and minutes, as, she testified, with over 200 employees working over 9 locations, such formal meetings would not be feasible. However, there are regular meetings of the Licensee's managers every Friday during the ski season;
- That apart from management, there is no formal training as to how to complete an incident report. However, there is formal training for the Licensee's employees on how to complete the log sheets and a copy of these log sheets are kept behind the bar at the Day Lodge, and the management reviews and discusses with the employees their use of and their contents on a daily basis;
- That when the alleged contravention occurred it was not busy at the Day Lodge and, apart from the Server, there were two or three other servers and one other bartender;

- That the Day Lodge is a location for families without any restriction on when minors can be present, so that it is not uncommon for people under the age of 19 to be present. This is why the Licensee believes that it is very important that the Licensee's employees working in the Day Lodge be careful about the age of the patron to whom they serve liquor;
- That there is a written test given to the Licensee's employees on a reasonably regular basis and a portion of this is to test an employee's knowledge of the Licensee's policy of responsible liquor service. The employee's manager marks these tests to ensure that each employee has achieved a mark of 80% or higher, the manager goes over the test results with the employee, and if an employee does not achieve at least this 80% mark, the employee is sent home by the manager to study the material and to rewrite the test the next day;
- That the termination of the Server for the alleged contravention was the first time the Licensee has had to terminate the employment of an employee for serving liquor to a minor; and
- Following the alleged contravention, the Licensee has carried out the new mystery shopper program on at least three occasions prior to the end of the ski season and the results of the program was a finding of complete compliance.

SUBMISSIONS – BRANCH

The Branch noted that the Licensee has agreed that its employee served liquor to Minor Agent #111 on March 16, 2018 in the Day Lodge as set out in the Day Lodge NOEA in contravention of section 77 (1) (a) of the Act which prohibits the sale of liquor to a minor.

With respect to the Licensee's claim of due diligence, the Branch submitted that during the day of March 16, 2018, the Day Lodge was not busy, there were enough staff on duty to ensure the Server was not rushed, the Server had a conversation with Minor Agent #111 giving the Server the opportunity to assess the age of Minor #111 and to ask Minor Agent #111 for identification, and the fact that the Server failed to do so leads to the conclusion that the training provided by the Licensee to the Server was inadequate and did not meet the standard required for a due diligence defense.

A possible deficiency in the Licensee's training regime was the lack of memos or proper signage referencing the 30 year old age limit. Also, with respect to pre-shift meetings, there were no copies of memos or copies of minutes from these meetings to reinforce what was discussed; to clearly demonstrate how effective was the communication to each employee and to confirm that the Licensee's policy dealing with responsible liquor service was understood by all of the employees present.

The Branch submitted that the Licensee's system in place at the date of the alleged contravention to ensure responsible liquor service was lacking in clarity and consistency and therefore this system did not engender an environment of compliance with its employees.

The Branch submitted that the Licensee had not established a defense of due diligence, that the Licensee was liable for the contravention and that the recommended penalty of either a 10 day suspension of the Food Primary Licence or of a fine of \$7,500 should be imposed.

SUBMISSIONS – LICENSEE

The Licensee submitted that its training program is and was on March 16, 2018 extensive and consistent to ensure a climate of compliance with the Licensee's policy of responsible liquor service, including the clear requirement to ask for two pieces of identification from any customer who appeared to be under 30 years of age.

The Server clearly operated outside this climate. As the incident report demonstrates, the Server was aware that he had done so, that he had failed to do what was required of him, and hence, he had lost his job.

REASONS AND DECISION

Contravention

The Licensee has admitted that on March 16, 2018, as alleged in the Day Lodge NOEA, liquor was sold to Minor Agent #111 by the Server, one of its employees, in contravention of section 77(1)(a) of the Act.

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

Due Diligence

As the Server sold liquor to Minor Agent #111 in contravention of section 77(1)(a) of the Act, the Licensee is liable unless it can demonstrate that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The onus falls on the Licensee to demonstrate on a balance of probabilities this due diligence and, in doing so, the Licensee must not only clearly demonstrate that it has established procedures to identify and prevent from happening activities that might lead to this contravention of the Act, it must also clearly demonstrate that it continues to ensure that such procedures are consistently in operation and acted upon by its employees.

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

One comment on the defence of reasonable care in this context should be added. Since the issue is whether the defendant is guilty of an offence, the doctrine of respondeat superior has no application. The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

The BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2012 BCSC 1851, 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 *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 their determination will depend upon the evidence presented. In summary, *Beverly Corners* provides that as referenced above the onus is on the Licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

Directing Mind

The Licensee’s “directing mind” is someone who is responsible to design and supervise the policies of the Licensee rather than an employee who carries out these policies.

The evidence before me suggests that the FB Director would be considered to be the directing mind of the Licensee with respect to the Day Lodge on March 16, 2018, and I so find. As the FB Director was not in the Day Lodge when the contravention occurred, I find that the Licensee’s directing mind did not sell liquor to Minor Agent #111 and move to the second part of the analysis as set out in *Beverly Corners*.

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

The onus is on the Licensee to prove on the evidence before me that it has met the test for due diligence and can demonstrate that it has implemented adequate training and other systems and has taken reasonable steps to ensure the application of this training and the operation of its systems in a consistent and effective manner.

Therefore, in addition to evidence of a reasonably rigorous initial training environment, the Licensee must provide evidence of ongoing reinforcement of this training and culture which should most likely include at a minimum the following:

1. A minimum age policy which requires any customer under a certain age to be asked for identification
2. Appropriate signage;
3. Appropriate training manuals including current best practices;
4. An incident log book utilized and regularly reviewed;
5. Regular staff meetings at which compliance matters are stressed and the discussions of these matters recorded by way of minutes; and
6. Written quizzes for the employees testing them for an understanding of the Act, the Regulation and the Food Primary Terms and Conditions Handbook.

In the testimony before me by the CEO, the VP of Hospitality and the FB Director, it was quite clear that the overall intention of the Licensee in the operation of the Day Lodge was to operate a family friendly ski resort and that the service of liquor was more a form of convenience to the Licensee's customers rather than a primary business activity. However, even with this reduced business focus, I found no reduced focus on the Licensee's insistence on and compliance with its responsible liquor service policy. Indeed, I was very impressed with this focus in the Day Lodge operations not only before the occurrence of the contravention, but, as importantly, with the immediate response and remedial activities following the contravention.

I note that the evidence before me demonstrates that the Licensee operates mainly on a seasonal basis and that the vast majority of its staff are employed only for the ski season lasting from approximately November until April. This means that at the start of each ski season, although there might be employees returning to work for the Licensee from the previous season, the vast majority of the employees are new hires. In addition to being new to the Licensee's operations, many of these employees are coming from outside of Canada. This means that the training program at the beginning of each ski season must include not only the operational training required for each employee to perform his or her duties in the Day Lodge, but, as well, a form of acclimatisation whereby items such as the forms of identification acceptable under the Act and the Regulation are discussed and agreed upon.

As a part of the documentary evidence submitted by the Licensee, the Licensee provided copies of:

1. The Information Sheet – the document provided to each employee at the start of the ski season to assist this employee to understand the environment in which the employee would be working during the ski season;
2. The 2017/2018 Staff Training Manual for an employee – the document setting out the employee’s responsibilities and the Licensee’s expectation of the employee in performing the employee’s duties, a copy of the last page of which on the document introduced into evidence by the Licensee included the signature of the Server confirming that he had read and understood the terms of the manual;
3. The Power Point presentation entitled “Big White Ski Resort Ltd. Food and Beverage Liquor Policy” constituting the mandatory training regime following the initial training and provided to all front of the house employees who were to be involved in the serving of alcohol after they had obtained their Serving it Right certificate;
4. The 2017/2018 Staff Training Manual for management – a document similar to that provided to each employee, but with a focus on the manager’s duties, a copy of the last page of which on the document introduced into evidence by the Licensee included the signature of the manager to whom the Server reported at the time of the contravention, which signature confirmed that she had read and understood the terms of the manual;
5. The Refusal of Sales Log Sheet - a document facilitating the Licensee’s policy of requiring the documentation of a refusal of service of alcohol and confirmation by the respective manager’s initials that the event had been discussed between the employee refusing service and that employee’s manager;
6. The picture of the staff notice board containing notices dealing with the Licensee’s policies involving the serving of liquor, including the requirement to ask for identification; and
7. The picture of Licensee’s point of sale system containing the sign-on message that read “Anyone who looks under the age of 30 years old MUST be ID’d” for the purpose of reminding servers of the requirement to ask for identification when they logged on at the start of each shift.

The above items, the FB Director testified, were in place prior to the contravention.

Following the contravention the following additional measures were implemented:

1. Every employee of the Licensee was required to again take the training program associated with the PowerPoint presentation and to sign the document entitled "Big White Food and Beverage Liquor Policy Acknowledgement";
2. The implementation of the "ID pledge" program requiring the signature of each employee of the Licensee involved in the serving of alcohol at the start of that employee's shift;
3. The change in the sign-in entry message on the Licensee's point of sale program to include the additional phrase "If you have not yet signed the ID pledge, please do so now";
4. The change in the point of sale sign-in system to require that each employee record that employee's confirmation of having received and having understood this message about signing the ID pledge each time the employee logged onto the system for a transaction;
5. The requirement of managers and supervisors to sign an additional document confirming that the signatory understood the terms and conditions of the Food Primary Licence, the Act and the Regulation with respect to the service of alcohol;
6. The inclusion of the notices setting out the date of birth before which a patron must be born to be old enough to be served alcohol; and
7. The start of the mystery shopping program.

On cross examination, the FB Director agreed that:

1. At the time of the contravention, the Day Lodge was not busy or understaffed;
2. Formal meetings of the Licensee's employees with an agenda and minutes were not held at which meetings responsible liquor policy was discussed;
3. The copy of a picture of the Licensee's staff information board did not specifically reference the age of 30 as the age criterion for asking for identification; and
4. MAP was not discussed with the Licensee's employees prior to the contravention.

Although prior to the contravention, the Licensee's culture of compliance with respect to responsible liquor service could not be said to be "perfect" as was acknowledged by the Licensee in the actions it took following the contravention, perfection is not the standard to which it must be held to establish a due diligence defence. The standard is that the Licensee has demonstrated on a balance of probabilities that at the time of the contravention it had in place the training and systems to generate a climate of compliance which met the test referenced in the *Sault Ste. Marie* and *Beverly Corners* decisions.

The evidence before me listed the various training programs and related systems which, I am satisfied, established and maintained at the Day Lodge a regime of compliance with respect to responsible liquor service.

However, the most telling indication of this climate of compliance was the copy of the Refusal of Sales Log Sheet relevant to the time of the contravention. The fact that this document contains a notation that on March 16, 2018 at 2:45 p.m., approximately two hours prior to the service of liquor to Minor Agent #111, the Server refused service to three girls due to the fact that they could not produce acceptable identification and that in accordance with the Licensee's policy the Server documented this fact is the best evidence of the Licensee's climate of compliance.

Further, the fact that this entry and follow up discussion was confirmed by the initials of the then responsible manager of the Day Lodge further establishes that a climate of compliance sought to be engendered by the Licensee for responsible liquor service did in fact exist at the Day Lodge at the time of the contravention. The entry in this document suggests very strongly that the contravention was a mistake on the Server's part and a clear deviation from the Licensee's known standard of compliance at the Day Lodge.

On the evidence before me I find that the Licensee has demonstrated a defense of due diligence for the contravention alleged in the Day Lodge NOEA.

THE LRS ALLEGATION

EVIDENCE – BRANCH

The LRS NOEA

The evidence given by the Branch with respect to the allegation contained in the LRS NOEA might be summarized as follows.

The Minors as Agents Program

As in the Day Lodge NOEA, the LRS NOEA notes the amending of the Act to permit the Branch to establish MAP, the purposes of MAP, how it is carried out, and the ongoing notification to licensees of its existence.

The Alleged Contravention

The LRS NOEA confirms, as set out in the Day Lodge NOEA, the establishment on Friday, March 16, 2018 of the inspection team consisting of Inspectors A and B, together with Minor Agent #111 to test compliance with the Act and the Regulation at several licensed establishments in the Big White area. Similarly, it confirms the steps taken at the beginning and end of the shift to photograph Minor Agent #111 and to confirm his age as being under 19 years of age.

The facts of the alleged contravention contained in the LRS NOEA included the following.

At 6:23 p.m. on Friday, March 16, 2018 Inspector B together with Minor Agent #111 entered the LRS and, as the only customers in the LRS at that time, were greeted by an employee of the LRS standing behind the till (the “Cashier”). The Cashier asked if they were looking for anything in particular, and then proceeded to recommend the Okanagan Cider Strawberry Rhubarb (the “Cider”) to Minor Agent #111 as a good product. Following this recommendation, Minor Agent #111 selected a six-pack of the Cider, the Cashier requested from Minor Agent #111 the sum of \$14.10, Minor Agent #111 gave the Cashier a \$20 bill and received back \$5.90 in change plus a receipt. Prior to leaving the LRS with Minor Agent #111, Inspector B discussed craft beer with the Cashier.

During his time in the LRS, Inspector B observed that although there was signage posted and visible near the till where the Cashier was standing, which signage explained the penalties for serving a minor and stated a requirement that staff were to request at least two pieces of identification, at no time while he and Minor Agent #111 were in the LRS did the Cashier ask Minor Agent #111 for identification.

Once Minor Agent #111 was served the Cider by the Cashier, he and Inspector B returned to the inspection team's vehicle. In the company of Inspectors A and B, Minor Agent #111 completed and signed the Minor Agent Observation Form (LRS Exhibit 2 tab 3) and the Minor Agent Statement (LRS Exhibit 2 tab 4).

A short time later, Inspectors A and B entered the LRS and asked to speak to a manager. As a manager was not available, the inspectors spoke to the Cashier, advising him that they believed that he had sold liquor to a minor. They asked him to produce a copy of his Serving It Right certificate which the Cashier was unable to do. Nor was he able to produce copies of these documents for any of the other employees of the LRS.

Inspector A issued Contravention Notice B021933 (the "LRS Contravention Notice") (LRS Exhibit 2, tab 7) to the Cashier and sent a second copy of the LRS Contravention Notice to the Licensee by registered mail.

Evidence of Inspector B

Inspector B testified that he was recently employed by the Branch as a liquor inspector, although he had had experience useful to his duties as a liquor inspector in his previous occupation. He confirmed that he was the liquor inspector directly responsible for ensuring the Licensee's compliance with the terms and conditions of the LRS Licence.

Inspector B identified a copy of the LRS NOEA, stated that he was its author and confirmed its accuracy. He also testified that he together with Inspector A were members of the inspection team of which Minor Agent #111 was a part on March 16, 2018.

Inspector A confirmed the identity of the following items in Exhibit 2:

- The LRS Licence (LRS Exhibit 2, tab 8), testifying that this was in effect on March 16, 2018;
- The floor plan of the LRS (LRS Exhibit 2, tab 9), identifying where the sale of the liquor to Minor Agent #111 is alleged to have occurred and confirming that this sale was within the licensed service area of the LRS;
- A copy of the Licensee Retail Store Terms and Conditions Handbook (LRS Exhibit 2, tab 10) and testified that the terms and conditions in this document were binding on the Licensee on March 16, 2018 pursuant to the terms and conditions of the LRS Licence, specifically with respect to the requirement to request identification from patrons who appeared to be minors;
- A copy of a document entitled "Establishment Compliance History" (LRS Exhibit 2, tab 11), pointing out that this document confirmed that the Licensee had no compliance history with the Branch;
- A copy of a document entitled "Legal Entity Summary" (LRS Exhibit 2, tab 12), noting that this document set out that the CEO was a shareholder of the Licensee and confirmed that he had dealt with the CEO in matters affecting the Licensee;
- Copies of documents (LRS Exhibit 2, tab 13) notifying licensees since the amending of the Act in 2010 of the creation and ongoing existence of MAP;
- A copy of his notes made following the alleged sale of liquor to Minor Agent #111 (LRS Exhibit 2, tab 2), a redacted copy of the Minor Agent Observation Form completed and signed by Minor Agent #111 immediately following the alleged sale of liquor to him (LRS Exhibit 2, tab 3) without any input from Inspector B, a redacted copy of the Minor Agent Statement completed and signed by Minor Agent #111 immediately following the alleged sale of liquor to him (LRS Exhibit 2, tab 4), and a copy of a picture of the six-pack of the Cider taken by Inspector B following the alleged sale of liquor to Minor Agent #111 (LRS Exhibit 2, tab 5); and
- Redacted copies of pictures showing two pieces of identification for Minor Agent #111 and pictures taken of Minor Agent #111 before and after the inspection shift on March 16, 2018 (LRS Exhibit 2, tab 6).

Inspector B testified that the Licensee was notified of the alleged infraction shortly after its occurrence when he and Inspector A returned to the LRS and, when there was no manager present, spoke to the Cashier, got his identification, and delivered the LRS Contravention Notice to the Cashier, subsequently sending a copy of the LRS Contravention to the Licensee by registered mail.

EVIDENCE – LICENSEE

Evidence of the CEO

The CEO testified that the Licensee considers the LRS a convenience to visitors to the Big White Ski area and, therefore, that it is not operated as a profit centre. He stated that although he acknowledged that the LRS was an investment and a business, that as the entire purpose of the Licensee was to operate a family friendly resort, the Licensee's primary intention with respect to the LRS was to ensure that there was a liquor store onsite which provided this convenience to its visitors, but which operated in accordance with the Licensee's values. In keeping with this purpose, he testified, the LRS has limited opening hours and its product selection is in the higher priced range which would appeal more to the resort's customers.

He stated that the action of the Cashier in selling liquor to Minor Agent #111 on March 16, 2018 without asking for identification was an act completely outside the Cashier's training and the Licensee's direction as an employee as to how to carry out his duties in the LRS.

Evidence of the LRS Manager

The LRS Manager testified that he was responsible for the day to day operations of the LRS.

He stated that the LRS at March 16, 2018 was operated by only 3 employees, one of which was the Cashier. Of these employees, 2 had worked in the LRS in the previous year, and the Cashier was hired and started work mid-season on February 16, 2018. On the date of his commencement of work, the Cashier signed the Acknowledgement + Receipt form (LRS Exhibit 3) acknowledging that he had read and understood the contents of the 2017/2018 Staff Training Manual for an employee (Day Lodge Exhibit 3).

As the employee group in the LRS was small, the LRS Manager testified, the employees worked together and created a climate of compliance around the Licensee's policy with respect to the responsible sale of liquor. This policy was set out in the Licensee's Liquor Store Team Handbook (LRS Exhibit 3) which, he noted, contained reference to an employee's requirement to have a Serving it Right certificate, reference to asking any customer who appeared to be under the age of 30 for 2 pieces of identification, and set out what would constitute acceptable types of identification for that purpose. The LRS Manager testified that a copy of this employee handbook was kept in the LRS, that every employee knew where to find it, and that every employee who worked at the LRS had to read and understand this employee handbook. He added that this document was gone through on a regular basis to ensure that every employee was following its provisions.

The LRS Manager noted that the Licensee's documents (LRS Exhibit 3) included a copy of a picture of the notices dealing with the responsible sale of liquor, which notices were mounted on the wall of the LRS, and, he testified, similar posters were, as well, fastened to the point of sale terminal.

The LRS Manager noted the additional copy of a picture in the Licensee's documents (LRS Exhibit 3) which showed the message which appears on the Barnet point of sale system used in the LRS. He testified that prior to enabling an employee to complete a sale, the system required that the employee touch a button on the screen confirming that prior to completing the sale the employee had asked for two pieces of identification. He noted, as well, that this screen also indicated the date before which the customer providing identification had to have been born to ensure that at the date of the sale that customer produced the proper identification to prove that the customer was over the age of 19. The LRS Manager confirmed that this date advanced every day to ensure its currency.

The LRS Manager testified that the Cashier was trained on a regular basis by the LRS Manager and the 2 other experienced employees. He stated that the Cashier was well trained and was not permitted to work unsupervised until the LRS Manager felt that the Cashier was doing his job properly.

The day following the sale of liquor to Minor Agent #111, the LRS Manager testified, the Cashier was fired. He stated that the other employees of the LRS were required to go through the revised PowerPoint presentation referred to above and to sign the document entitled the "Big White Food and Beverage Liquor Policy Acknowledgement".

The LRS Manager identified the Refusal of Sales Log Sheet (LRS Exhibit 3) as being a copy of the log sheet from the LRS and confirmed that none of the entries on this log sheet had been made by the Cashier.

However, he noted, the practice in the store was to ensure that before a customer attempted to complete a purchase that the customer was aware of the requirement to have two pieces of identification if the customer appeared to be under 30 years of age. Therefore, he suggested, the fact that there were no entries by the Cashier might be attributed to the fact that he was good at asking people about identification prior to them attempting to complete a sale transaction and so, in situations where a customer did not have the requisite identification, there would be no notation on the Refusal of Sales Log Sheet, although it could be said that the customer would have been refused a sale.

The Cross Examination of the LRS Manager

On cross examination, the LRS Manager testified:

- That the Cashier was alone in the LRS at the time the incident occurred and that the Cashier's Serving it Right certificate was on file in the LRS. He did not understand why the Cashier was unable to produce it when requested to do so by Inspectors A and B;
- That the Cashier was not involved with the management of the LRS or involved in the making of store policy;
- That the training program for the Cashier was:
 - On the first and second day of his employment, he would have been monitoring what was happening in the store and was shadowing either the supervisor or the LSR Manager;

- The employee handbook would have been gone through on day one and then was referenced on an ongoing basis together with the signs dealing with responsible liquor sales;
- The Cashier would have had up to 4 days of training with no test at the end, and it would have been up to the determination of the LRS Manager or the supervisor as to whether or not the Cashier was ready to proceed with his work; and
- Although there were regular discussions about any of the Licensee's updated policies, there were no regular pre-shift or special meetings to deal with these matters;
- That the mystery shopping program implemented after the issuance of the LRS Contravention Notice together with the sign in acknowledgement about checking for identification referenced above now includes the LRS;
- That the Cashier did not complete and sign an incident report similar to that signed by the Server;
- At 10:00 a.m. on the morning following the issuance of the LRS Contravention Notice, the Licensee held a meeting of the employees of the LRS including the LRS Manager and the Cashier to discuss what had happened the previous evening;
- The employees of the LRS did not get the PowerPoint training offered to other employees of the Licensee and referred to above as the customer traffic in the LRS was different from that of the Day Lodge. This was because, he stated, the LRS traffic involved far fewer customers and a more personalized form of service than that in the Day Lodge;
- That even though he had not done so, the Cashier had to have confirmed that he had asked Minor Agent #111 for identification otherwise he would not have been able to complete the sale transaction to Minor Agent #111 through the point of sale system;
- That following the alleged contravention, the LRS Manager now insists that on a daily basis and before an employee starts a shift that the employee sign a pledge agreeing to ask for two pieces of identification from any customer who appears to be under the age of 30; and
- That part of an employee's training is how to assess how old a customer is, what are the factors to look for, and to focus on the age of 30 and not 19.

SUBMISSIONS – BRANCH

The Branch noted that the Licensee has agreed that its employee sold liquor to Minor Agent #111 on March 16, 2018 at the LRS as set out in the LRS NOEA in contravention of section 77 (1) (a) of the Act which prohibits the sale of liquor to a minor.

With respect to the Licensee's claim of due diligence, the Branch noted that at the time of the sale on March 16, 2018, the LRS was not busy, there was ample opportunity for the Cashier to have had a conversation with Minor Agent #111 giving him the opportunity to assess the age of Minor #111 and to ask Minor Agent #111 for identification. The fact that the Cashier failed to do so leads to the conclusion that the system put in place by the Licensee to ensure compliance was inadequate and did not meet the standard required for a due diligence defense.

A possible deficiency in the Licensee's training regime was the lack of an auditing or monitoring system to check on the effectiveness of its training and to provide concrete evidence of the same. For example, there were no tests conducted after the training to ensure that the Cashier fully understood what was expected of him to ensure that he operated within the culture of compliance the Licensee wished to have operative.

The implementation of the mystery shopping program after the issuance of the contravention notice was another excellent way to monitor this effectiveness.

The Branch submitted that although the Branch fully appreciated the efforts that the Licensee had undertaken following the contravention alleged in the LRS NOEA, it is the Branch's position that prior to the contravention the Licensee did not have such a system in place to ensure responsible liquor service at the LRS and has not, therefore, established a defense of due diligence.

The Branch therefore submitted that the Licensee was liable for the contravention and that the recommended penalty of either a 10 day suspension of the LRS Licence or of a fine of \$7,500 should be imposed.

SUBMISSIONS – LICENSEE

The Licensee submitted that its training program with respect to the LRS is and was on March 16, 2018 extensive and consistent to ensure a climate of compliance with the Licensee's policy of responsible liquor service, including the clear requirement to ask for two pieces of identification from any customer who appeared to be under 30 years old. The Cashier clearly operated outside this climate.

REASONS AND DECISION

Contravention

The Licensee has admitted that on March 16, 2018, as alleged in the LRS NOEA, liquor was sold to Minor Agent #111 by the Cashier, one of its employees, in contravention of section 77(1)(a) of the Act.

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

Due Diligence

As the Cashier sold liquor to Minor Agent #111 in contravention of section 77(1)(a) of the Act, as above stated, the Licensee is liable unless it can demonstrate that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The onus falls on the Licensee to demonstrate on a balance of probabilities this due diligence and, in doing so, the Licensee must not only clearly demonstrate that it has established procedures to identify and prevent from happening activities that might lead to this contravention of the Act, it must also clearly demonstrate that it continues to ensure that such procedures are consistently in operation and acted upon by its employees.

Reference was made above to the decisions of the Supreme Court of Canada in *Sault Ste. Marie* and the Supreme Court of British Columbia in *Beverly Corners* as cases which have defined the law in this matter and how a licensee might establish its defence of due diligence.

As was above noted, both of the issues identified in *Beverly Corners* are factual, will depend upon the evidence presented, and that the onus is on the Licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

Directing Mind

Again, as is referenced above, the Licensee's "directing mind" is someone who can design and supervise the policies of the Licensee rather than an employee who carries out these policies.

The evidence before me suggests that with respect to the LRS, the LRS Manager would be considered to be the directing mind of the Licensee on March 16, 2018, and I so find. As the LRS Manager was not in the LRS when the contravention occurred, I find that the Licensee's directing mind did not sell liquor to Minor Agent #111 and move to the second part of the analysis as set out in *Beverly Corners*.

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

As above referenced, the onus is on the Licensee to prove on the evidence before me that with respect to the operation of the LRS that it has met the test for due diligence and can demonstrate that it has implemented adequate training and other systems and has taken reasonable steps to ensure the application of this training and the operation of its systems in a consistent and effective manner.

In the testimony before me by the CEO, it was quite clear that, as with respect to the operations of the Day Lodge, the overall intention of the Licensee in the operation of the LRS was to operate within the environment of a family friendly ski resort and that the sale of liquor from the LRS was more a form of convenience to the Licensee's visitors rather than a primary business activity.

In my reasons with respect to my decision concerning the Day Lodge, I noted that, even with this reduced business focus, I found no reduced focus on the Licensee's insistence on and compliance with its responsible liquor service policy. However, I have not found a similar climate of compliance within the operations of the LRS. I acknowledge

that immediately following the occurrence of the contravention, remedial measures were put in place to remedy this short coming. However, the important time for the matter before me was the climate of compliance at the time of the occurrence of the contravention alleged in the LRS NOEA.

Specifically, I note:

1. At the time of the contravention, the LRS was not busy and that the Cashier had ample time to talk to Minor Agent #111 and Inspector B and to ask Minor Agent #111 for 2 pieces of identification;
2. The Cashier, unlike most of the other employees of the Licensee did not commence his employment with the Licensee in November of 2017, but rather approximately a month before the contravention on February 16, 2018. Due to this later start, the Cashier might not have received as extensive a training regime as that offered to other employees of the Licensee who started at the earlier date;
3. Unlike the Server who was required by his manager at the Day Lodge to complete an incident report, the LRS Manager did not have the Cashier complete an incident report on the contravention which occurred in the LRS;
4. That even though a copy of his Serving it Right certificate was on file in the LRS together with a copy of the Liquor Store Team Handbook, when requested by Inspectors A and B to do so, the Cashier was not able to produce it; and
5. That even though the LRS point of sale system required that prior to completing a transaction the user was required to confirm that the user had asked the relevant customer for two pieces of identification, the Cashier still completed the sale of liquor to Minor Agent #111 without having asked Minor Agent #111 for 2 pieces of identification.

However, what was most telling to me and which demonstrated the lack of a climate of compliance at the LRS was the contents of the Refusal of Sales Log Sheet utilized by the LRS.

In his testimony, the LRS Manager confirmed that since the commencement of his employment a month earlier, none of the entries on this log sheet had been made by the Cashier. The LRS Manager attributed this lack of entries to the Cashier's ability to forego customer embarrassment by approaching the question of age prior to a customer

who appeared to be under the age of 30 and discussing with this customer the requirement to produce 2 pieces of identification to establish that the customer was over the age of 19. It is obvious that the Cashier did not utilize this special skill with respect to the conversation he had with Minor Agent #111.

However, an examination of this log sheet reveals no entries recorded on it from February 17, 2018 until March 17, 2018, the date following the contravention at the LRS, when there appear a number of entries almost on a daily basis extending up until and including April 7, 2018. I have difficulty understanding how there could have been no incidents of refusing to serve liquor following the employment of the Cashier up until the day of his termination. He was only one of four employees in the LRS. Surely there were other situations where either the Cashier or one of the other employees in the LRS refused to sell liquor to a patron.

Based upon the evidence before me, and specifically on the compelling evidence of the Refusal of Sales Log Sheet utilized by the LRS, I find that there was not the requisite climate of compliance at the LRS when the contravention alleged in the LRS NOEA occurred on March 16, 2018. I find, therefore, that the Licensee has not established a defence of due diligence with respect to this contravention.

Having denied the Licensee's claim of a defence of due diligence, I therefore find that on March 16, 2018 the Licensee contravened section 77(1)(a) of the Act, by selling, giving or otherwise supplying liquor to a minor at the LRS.

PENALTY

Pursuant to section 51(2)(b) of the Act, having found that the Licensee has contravened the Act, the Regulation and/or the terms and conditions of the LRS Licence by selling, giving or otherwise supplying liquor to a minor at the LRS, I may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the LRS Licence or rescind or amend existing terms and conditions

- Impose a monetary penalty on the Licensee
- Suspend all or any part of the LRS Licence
- Cancel all or any part of the LRS Licence
- Order the Licensee to transfer the LRS Licence

I am not bound to order the penalty proposed in the LRS NOEA. However, if I find that either a suspension of the LRS Licence or a monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 2 of the Regulation. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so.

As there is no record of a proven contravention of the same type as dealt with here for the Licensee within the preceding 12 months of this incident, I find this to be a first contravention for the purposes of Schedule 2 and calculating a penalty. As noted above, Item 3 in Schedule 2 provides a range of penalties for a first contravention of this type to be a 10 to 15 day suspension of the LRS Licence and/or a \$7,500 to \$10,000 monetary penalty.

The Branch has recommended either a 10 day suspension of the LRS Licence or a monetary fine of \$7,500. The Licensee has requested that if a penalty is to be imposed that it be a suspension of the LRS Licence.

The factors that I have considered in determining the appropriate penalty in this matter include:

- whether there is a proven compliance history;
- a past history of warnings by the Branch;
- the seriousness of the contraventions;
- the threat to the public safety; and
- the well-being of the community.

As the matter involves the sale of liquor to a minor, the most important of these factors is the public safety issue because of:

- The effects of alcohol on growing bodies and developing minds;
- The effects on individuals and society of irresponsible drinking behavior learned at an early age;
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult with the result being a more intoxicating effect on minors; and
- The fact that liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft.

I find that the Branch's recommended 10 day suspension of the LRS Licence is appropriate in the matter at hand.

ORDER

As I have found the Licensee successful in its due diligence defence with respect to the alleged contravention at the Day Lodge contained in the Day Lodge NOEA, I dismiss this allegation against the Licensee.

However, I order a suspension of the LRS Licence (Licensee Retail Store Licence 195452) for a period of 10 days to commence at the close of business on Thursday, November 22, 2018 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the LRS Licence be held by the Branch or the Kelowna RCMP from the close of business on Thursday, November 22, 2018 until the Licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Signs satisfactory to the general manager notifying the public that the LRS Licence is suspended will be placed in a prominent location in the LRS by a Branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

R. John Rogers
General Manager's Delegate

Date: September 26, 2018

cc: Liquor and Cannabis Regulation Branch, Kelowna Regional Office
Attn: Kurk Lozinski, Regional Manager

Liquor and Cannabis Regulation Branch, Vancouver Regional Office
Attn: Maria Caduhada, Branch Advocate