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:	Palomino Holdings Ltd. dba Buffy's Licensed Liquor Store 6858 West Coast Road Sooke, BC V9Z 0V2
Cases:	EH18-031
For the Licensee:	Amelia Staunton, Legal Counsel Fayme Hodal, Articling Student
For the Branch:	Hugh Trenchard
General Manager's Delegate:	Dianne Flood
Date of Hearing:	September 18, 2018
Date of Decision:	October 18, 2018

INTRODUCTION

The Licensee, Palomino Holdings, operates a licensed establishment known as Buffy's Licensed Liquor Store ("the establishment") under Retail Store Licence #195173 ("the License"). The establishment is located at 6858 West Coast Road, Sooke, BC. Under the Licence, the Licensee may sell liquor between the hours of 9:00 a.m. to 11:00 p.m. from Monday to Sunday.

The Licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication "Licensee Retail Store Terms and Conditions Handbook" (the "Guide").

For the purposes of this hearing, and in accordance with section 5 of the Act, the general manager has delegated to me the powers, duties and functions provided to the general manager by section 51 of the Act and Part 6 of the Regulation.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Amended Notice of Enforcement Action dated May 29, 2018 (the "NOEA").

The Branch alleges that on March 20, 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 (the "Minor Agent").

Item 3, Schedule 2 of the Liquor Control and Licensing Regulation, B.C. Reg. 241/2016, (the "Regulation") sets out the range of penalties for a first contravention of this type: a 10-to-15 day licence suspension and/or a $7,500-to-$10,000 monetary penalty.

The Licensee, by its legal counsel, admits that its employee sold liquor to the Minor Agent and to the facts as set out in the NOEA. However, the Licensee disputes the finding of a contravention and claims a defence of due diligence.

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 *[supplying 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

1. The Branch's Book of Documents, tabs 1 to 17
2. The Licensee' s Book of Documents, tabs 1 to 25

WITNESSES

Inspector A gave evidence on behalf of the Branch.

Ms. Ryan (FR) and Mr. Ryan (JR), the Principals of the Licensee, and two staff members, the Management Assistant and the Cashier Supervisor, gave evidence on behalf of the Licensee.

EVIDENCE—BRANCH

Inspector A testified about the Minors as Agents Program, the facts set out in the NOEA, the Licensee's compliance history and licensees' responsibilities under their licences.

As the Licensee accepts the facts as alleged in the NOEA to have occurred in the establishment, the Inspector's evidence is summarized here.

The Minors as Agents Program

The Minors as Agents Program (MAP) is authorized by legislation to enable the Branch to verify licensees are complying with their responsibilities not to sell liquor to persons under the age of 19 years (minors), with consequences to follow if they do. Efforts have been made to ensure licensees were aware of the program, including the Liquor Line newsletters and on administrative inspections.

The Inspection of the Establishment

On March 20, 2018, pursuant to the MAP, Inspector A, another inspector ("Inspector B"), and a Minor Agent conducted a MAP inspection with respect to the establishment.

As part of the inspection process, the Minor Agent was photographed, his identification reviewed and photographed, and his age confirmed to be 17 years.

At about 2:35 p.m., the Minor Agent and Inspector B entered the establishment. The Minor Agent took a six-pack of beer from the cooler, paid for it, and left the establishment. No identification was requested from the Minor Agent at the time of the purchase or at any time before the Minor Agent exited the establishment.

The Minor Agent returned to the inspection vehicle where he completed the observation form and his statement (Exhibit 1, tab 12). Inspector B also exited the establishment and later that day emailed Inspector A, confirming his observation of the sale to the Minor Agent without any request for identification. (Exhibit 1, tab 9.)

The Contravention Notice

Inspector A completed the Contravention Notice (Exhibit 1, tab 2) on March 21, 2018 and called the Licensee's principals. He was told they were away on vacation. He left a message and mailed the Contravention Notice to the Licensee.

The Licensee's responsibilities

The Licence is subject to the Terms and Conditions of the Guide (Exhibit 1, tab 15). At page 5, the Guide sets out the prohibition against serving minors and the expectations for a house policy to prevent that. Identification requirements are set out at page 6 of the Guide.

Prior to March 20, 2018, Inspector A had met with the Licensee's principals in the course of routine administrative inspections and the MAP is one of the things they would have discussed.

Inspector A stated that an inspector will note and follow up on issues of non-compliance on an inspection, but it is the Licensee's responsibility to ensure they are in compliance with the Act. Liquor inspectors do not review licensees' policies to ensure they are compliant with their responsibilities.

Enforcement Action

In the NOEA Inspector A set out the reasons for pursuing enforcement action, which include the impacts of liquor on growing bodies and developing minds, the effects on individuals and society of irresponsible drinking behavior learned at an early age, the inability of minors to metabolize alcohol in the same manner as adults such that it has a more intoxicating effect, and that liquor is a significant factor in many crimes committed by youth.

Inspector A confirmed the compliance history for this establishment as set out in Exhibit 1, tab 6. He said some of the earlier history shown in that document related to former owners and so he did not consider those when addressing this contravention.

This Licensee failed a MAP inspection in 2014, but was tested again in 2016 and passed the inspection. For this reason, Inspector A considered the contravention on March 20, 2018 to be a first contravention for the sale to a minor. He agreed that after a contravention, licensees often improve their procedures to prevent sales to minors.

Inspector A confirmed that the range of penalties on a first contravention of this nature is a 10-to-15 day suspension and/or a monetary penalty of $7,500 to $10,000.

EVIDENCE – LICENSEE

The Licensee admitted the sale of liquor to the Minor Agent occurred as set out in the NOEA and claimed a defense of due diligence based on the Licensee's training processes, systems and steps taken to ensure the sale of liquor to minors did not happen and also based on the particular circumstances of the sale.

The Principals of the Licensee, and two staff members, the Management Assistant and the Cashier Supervisor, testified on behalf of the Licensee. Their evidence addressed the hiring and training processes and the systems in place to ensure compliance with the prohibition against selling liquor to minors. They also gave evidence about the employee ("the Cashier") who sold the liquor to the Minor Agent and about the sale to the Minor Agent. Their oral evidence was supported by the extensive documentary evidence, including photographs, set out in Exhibit 2.

The Licensee also owns and operates the pub adjacent to the establishment, with FR being primarily responsible for the establishment and JR being primarily responsible for the pub, with some shared responsibilities.

The Principals testified they take their responsibilities as licensees seriously. Sooke is a small town and they said they recognize they have a responsibility to keep their customers and the community safe. They regularly attend conferences and seminars addressing due diligence issues. When possible, the Management Assistant and the Cashier Supervisor and other staff also attend. FR routinely reviews the Liquor Line and other trade publications on due diligence matters. In 2006 they hired a consultant who was a former Branch inspector to help develop the Licensee's policies and systems.

The Hiring and Training Processes

FR testified that she did the hiring for the establishment, assisted in the interview process by the Cashier Supervisor. One of the qualities she looks for in a new employee is the ability to say no to customers as that may be necessary from time to time. All new hires have to produce their SIR certificate before starting work.

Once hired, an employee is given the Licensee's Staff Rules and its Staff Policy and Procedures Manual to review. These also apply to the adjacent pub, also operated by the Licensee.

The Staff Rules are a one-page, closely spaced document with 15 items listed. The first item states it is the right of all staff to demand ID from any person. It also sets out the requirements for two pieces, one of which is government issued, and the need to check it to ensure the pieces match each other and the description matches the person. It states service is to be refused if two pieces are not produced, if the identification appears to have been tampered with or if it does not match the person. A copy of the Rules is included in the Licensee's documents (Exhibit 2, tab 5).

The Staff Policy and Procedures Manual is a nine-page document. Item number 3, at page 4, is specifically directed to the need to ensure liquor is not sold to minors. The stated requirement is to request two pieces of identification from anyone who looks 30 years old or younger. It sets out the types of acceptable identification and the importance to check the physical description on the identification to the person presenting it. Factors in assessing age are suggested, noting ways people might try to look older. Some of the policy is more directed to the pub, such as checking identification at the door. A copy of the Manual is kept at both tills, as a quick reference for staff. A copy of the Manual is included in the Licensee's documents (Exhibit 2, tab 6).

JR testified that the Rule and the Policies and Procedures are updated every so often, as new things come to his attention. For example, he said he updated them in response to a checklist of questions asked by his insurer about liability issues. He said staff are given notice of updates by a memo and the changes are posted on the whiteboard.

When training a new staff member, FR and the Cashier Supervisor said they will tell staff to make sure the identification matches the person presenting it. The staff members are also given tips on what to look for, to assess if a person is 30 years of age. Examples provided include beards, make-up, glasses, and skin tone. Staff are told if in doubt about the validity of the identification produced, to ask questions about such things as the person's horoscope and if not satisfied, to refuse service. The Cashier Supervisor will review her own and the employee's identification with the new employee, to show them what to look for and if the pieces of identification match.

FR said a new employee is given time to review the Rules and the Policy and Procedures Manual and then is required to sign off that they have read and understood them. They are subsequently given a written test on the Policy that is marked by JR and reviewed with them. JR described the test as intentionally asking open-ended questions to provoke descriptive responses that can be assessed for clarity of understanding. Copies of the test were included in the Licensee's documents (Exhibit 2, tab 5).

The Cashier Supervisor gave evidence on how she trains the new employees on the floor. Employees are trained to greet customers as they enter, to give them time to assess if the customer might be intoxicated or if identification should be requested. She reviews the responsibility to check for identification if a person looks to be 30 or younger, what is acceptable and how to assess what is presented, to ensure it matches the person presenting it. Her testimony was that she spends five to seven shifts with them. Only when she is satisfied that they understand their duties, including how and when to ask for identification, is the new employee allowed to work without direct supervision.

New staff are on a 90 day probationary period and since May 2017 a second meeting is held with the new employee before that time period expires, to make sure they understand their responsibilities.

Systems in Place to Prevent Sales to Minors

The Licensee's witnesses also gave evidence of the steps the Licensee has taken to ensure that liquor is not sold to minors. Those steps include the following:

Signage:

- Branch-issued signs about the need for two pieces of identification are posted in the store.
- Signs created by the Licensee are posted in several locations within the establishment, advising customers that if they look if 30 years or younger identification will be requested.
- The till has a notation on it of the year as of which persons turn 19. That note is changed every January 1. A copy of the Policy and Procedures Manual is also kept at the tills.
- A whiteboard situated at the entry to the establishment from the adjacent office that is used for staff scheduling is also used for handwritten notices about the need to check for identification. The notes are changed frequently.

Photographs of the signs, the till and the whiteboard are included in the Licensee's Book of Documents (Exhibit 2, tabs 7 and 12). The Licensee's witnesses' oral evidence is that the signs, till notices and whiteboard were all in place on March 20, 2018.

Staff meetings:

- Group staff meetings are held once a year, usually in October or November. Staff are paid to attend and attendance is mandatory. The meetings take about two hours. At least two weeks advance notice is given. Agendas are made and minutes kept that show checking for identification or refusing to over-serve are typically the first and second items discussed at the meeting. JR testified that the reason for checking for identification - the physical and social harms to minors and the community as a result of underage drinking - are discussed. He said that to try to avoid repetition, examples of harms are given, and points and tips on how to identify customers' ages are given and discussed.

  On occasion guest speakers are invited, like the local RCMP.

The Cashier Supervisor briefs anyone who misses a meeting. Minutes of the meetings are posted on a bulletin board in the office, near the whiteboard.

Copies of employee timesheets for the meeting dates, notices of the meetings, agendas and minutes for meeting held between 2013 and 2017 are all included in the Licensee's Book of Documents (Exhibit 2, tabs 10 and 11).

- Individual "two-on-one" meetings are conducted by FR and the Cashier Supervisor with each employee. The Licensee considers these individual meetings to be more valuable in checking up on employees' understanding of their job responsibilities than the larger group meetings. A checklist of topics is used, titled Employee Orientation. "Due diligence/checking id" is listed under the first item on the checklist. These meetings were added to the Licensee's practices in 2017 and are held twice a year. Copies of various employees' completed checklists are included in the Licensee's Book of Documents (Exhibit 2, tab 8).

Secret shopper program:

The Licensee uses a secret shopper program. JR hires young looking persons who are 19 to 22 years old and unknown to the Licensee's employees. He meets with the secret shopper, directs them to enter the store or pub and buy liquor, and to report back to him with the employee's name and whether they asked for identification. The secret shopper completes a written report on each employee tested. Every employee is tested, even the Cashier Supervisor, so the tests are conducted over several different days or evenings. The program is conducted once a year and has been in place since 2007. The employees are not given any advance notice that the secret shopper program is being used. Copies of the directions given to the secret shoppers and their reports on the employees are included in the Licensee's Book of Documents (Exhibit 2, tab 16).

The reports show that when tested, the employees have, for the most part, requested identification from the secret shopper. In 2015, several pub employees failed the test and did not ask for identification. Letters of reprimand, putting the employee on probation, were issued to those employees. Copies of those letters are included in the Licensee's Book of Documents (Exhibit 2, tab 17).

The Licensee recently decided to increase the secret shopper program to three times a year and to reward employees who pass with a gift certificate.

Video Surveillance

FR has an app on her phone that allows her to remotely monitor what is going on in the store, including the till area, using an extensive video camera system with cameras both inside and outside the store. She testified that she checks the app several times a day and uses it to ensure staff are asking for identification. She testified that she has never seen a situation where staff ought to have asked for identification but did not, that could not be explained – for example, the cashier was related to the person and knew their age for sure.

Communications

The Licensee uses various forms of communication with staff.

- A Communications Book where management and staff can write in anything of concern or interest. It is used for a variety of messages, including to remind staff to check for identification. Staff members are expected to review it at the start of their shift. The intent is for staff to work as team and give each other the best information possible to do their jobs. A copy of the Book is included in the Licensee's Book of Documents (Exhibit 2, tab 13).
- A "Quick Entry Log" where staff record when they have refused service, noting the date and time, the person's description, the reason why they were refused service, that is due to intoxication, lack of identification or other reason, and the person's response/outcome. Staff members are directed to record the incidents as soon as possible and to review the book at the start of their shift. FR reviews it weekly and the Cashier Supervisor reviews it daily to ensure staff are making entries and are following the Licensee's policies. A copy of the Log is included in the Licensee's Book of Documents (Exhibit 2, tab 14).
- A whiteboard is used to remind staff of the need to check identification. FR said the actual messages are changed frequently so staff will pay more attention. For example, on occasion the message will advise that the RCMP or the MAP program is operating in the area even when they are not, as a means for the Licensee to keep staff alerted to the need to ask for identification. Photographs of

whiteboard and various messages are included in the Licensee's Book of Documents (Exhibit 2, tab 7)

- A copy of the Policy and Procedures Manual is kept near both tills, as a ready and easy reference for staff.
- FR and the Cashier Supervisor Staff will give regular oral reminders to staff to check identification, with special reminders being given around special events like Halloween, grad season, tourist season, and others.
- Text messaging between the Principals and staff is also used. Staff are told they can contact the Principals for any issue and copies of various texts were produced to show that the Principals and staff did that. Copies of various tests are included in the Licensee's Book of Documents (Exhibit 2, tab 15).
- Staff are also warned to watch for "bootlegging", where underage persons will ask a person of legal age to buy liquor for them, and are directed to refuse to make such sales.

The Contravention

FR and the Cashier Supervisor also gave evidence about the Cashier's employment history and the contravention. The Managerial Assistant also gave evidence about the contravention.

According to FR and the Cashier Supervisor, the Cashier worked part-time, sometimes alone, other times with others, including the Cashier Supervisor. He was described as hard-working and fun to work with.

When hired in 2013 the Cashier was given the Staff Rules and the Staff Policy and Procedures Manual and he signed a declaration that he had read and understood them. He was tested on the Rules and Policies and his test was marked and reviewed with him. Copies of the Cashier's SIR certificate, the signed Declaration, and the marked test are included in the Licensee's Book of Documents (Exhibit 2, tabs 19, 20 and 21).

FR and the Cashier Supervisor held a two-on-one meeting with the Cashier on May 26, 2017 where due diligence in checking for identification was discussed. A copy of the checklist used in that meeting, signed by the Cashier and the Cashier Supervisor, is included in the Licensee's Book of Documents (Exhibit 2, tab 20).

The Cashier had been tested by the secret shopper in December, 2016 and again as recently as February 16, 2018 and had passed both times. Copies of the secret shopper reports are included in the Licensee's Book of Documents (Exhibit 2, tab 22).

In or about December 2017 or early January, 2018, the Cashier advised FR he had a serious medical condition but wished to continue working while under treatment. She agreed, wanting to support the Cashier and also because she had no legal ability to not agree. She asked the Cashier Supervisor to keep an eye on how the Cashier was doing and testified she frequently asked her how he was doing.

Both FR and the Cashier Supervisor testified they kept an eye on the Cashier and never observed him not ask for identification when appropriate. Until the sale to the Minor Agent on March 20, 2018, neither FR nor the Cashier Supervisor had any reason to think the Cashier was not properly asking for identification. He made various entries in the Quick Entry Log of instances when he refused service for lack of identification, including one shortly before March 20, 2018 (see Exhibit 2, tab 14).

The Cashier Supervisor testified she had worked with the Cashier as recently as March 17, 2018 and he was appropriately asking for identification on that date. The time sheet for March 17, 2018, confirming the Cashier Supervisor and the Cashier worked together on that date is included in in the Licensee's Book of Documents (Exhibit 2, tab 9).

On Tuesday, March 20, 2018, the Principals were in Mexico on vacation. JR would typically check his emails, but FR had her phone turned off. The Cashier Supervisor was off duty as Tuesdays are her regular day off. The Management Assistant, who acted in the Principals' absence, was in Victoria getting supplies. The Cashier was working alone but there was staff in the pub and the adjacent office and warehouse if he needed assistance. He did not ask anyone for any assistance.

After getting notice of the sale of liquor to the Minor Agent, FR, the Cashier Supervisor and the Managerial Assistant looked at the video camera tapes of that date. They testified that the Cashier did not look like himself, saying he was leaning on the counter, had a faraway look and was not engaging with customers as he normally did.

On Friday, March 23, 2018 the Managerial Assistant advised the Cashier he had sold liquor to a minor and so would have to be supervised while working. She testified that he was shocked and upset that he had made the sale. She supervised him for the rest of his shift that day.

On Saturday March 24, the Cashier Supervisor worked with the Cashier, to ensure he was asking for identification. At the end of the day, the Managerial Assistant gave the Cashier a letter of reprimand from the Licensee, putting the Cashier on 90 days probation, confirming he would not be allowed to work unsupervised and that he would be given additional training and feedback to ensure he had the necessary skills. The Licensee did not want to terminate the Cashier for the sale to the minor as he had always been a good employee and he was ill. The Cashier immediately resigned, apologizing in writing for his "lapse in judgment". Copies of the letter and resignation are included in the Licensee's Book of Documents (Exhibit 2, tab 25).

On June 4, 2018, the Cashier wrote an additional note indicating he had been under medical treatment at the time of the sale and not feeling well, but had failed to let anyone know. He also stated that he had been properly trained to ID customers. A copy of the note is included in the Licensee's Book of Documents. (Exhibit 2, tab 24)

FR testified that the Cashier is still undergoing treatment and so was unable to attend the hearing.

SUBMISSIONS – BRANCH

The Branch Advocate submitted the evidence and the Licensee's admissions supported a conclusion that liquor was sold to a minor and the contravention was proven.

He suggested that due to the Licensee's absence on vacation, the staff may have slackened off in their responsibilities.

SUBMISSIONS – LICENSEE

The Licensee's counsel admitted the contravention occurred but said the Licensee relied on a defence of due diligence.

She said that the Licensee takes its responsibilities seriously and understands the public safety concerns about the sale of liquor to minors. She says the Licensee has taken considerable efforts through its training program to prevent a contravention from happening. She described the Licensee's efforts as thorough and stringent. She reviewed the steps taken by the Licensee in its systems and programs to prevent the sale to minors.

Counsel submitted that the witnesses were all credible, and their evidence was fulsome and honest. She referred to the extensive documents in support of the oral testimony. She said the Licensee had a culture of expectation and compliance with the Act and the prohibition against the sale of liquor to minors, with its training and on-going warnings to staff about the need for proper identification.

Counsel reviewed the Cashier's knowledge of and his history of properly requesting identification. She said the evidence was clear the Licensee had no reason to think the Cashier would not be properly requesting identification on March 20, 2018.

The Licensee's counsel said the standard to be applied is reasonably adequate, not one of perfection. She submitted that the Licensee's systems had been more than adequate, and that those systems were regularly enforced.

The Licensee's representative submitted that due diligence has been established and a penalty is not warranted.

ANALYSIS AND REASONS

Contravention

The Licensee admits that a staff person sold liquor to a minor. Based on that admission, the evidence and the submissions, I find that the Licensee contravened section 77(1)(a) of the Act by selling, giving or otherwise supplying liquor to a minor.

Due Diligence

A licensee is entitled to a defence if it can show that it was duly diligent in taking reasonable steps to prevent the contravention from occurring.

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

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

The BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch),* 2012 BCSC 1851, considered and clarified the application of the defence of due diligence in the context of the sale of liquor to a minor contrary to the then Liquor Control and Licensing Act (see paragraphs 41 to 44 of that decision). In these circumstances, the court said, 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, then the questions to be considered and answered are whether the licensee had:
    a. implemented adequate training and other systems to prevent the contravention (the sale of liquor to minors); and,

b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

Both of these issues are factual, and will depend on the evidence presented. The onus is on 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 Branch did not allege nor is there any evidence to suggest that the Cashier who made the sale was a "directing mind" of the Licensee. On this basis, I find he was not and I move on to consider the second step in the due diligence analysis.

Steps to avoid the sale to a minor

The Licensee must establish two things - it has taken reasonable steps

- To train its staff in procedures to identify if potential purchasers are of legal age and thus avoid the potential for a contravention, and
- To ensure those procedures are consistently acted upon and any potential issues are properly dealt with.

The analysis of the standard to be met - that is, what is reasonable - must be undertaken in consideration of the public policies and potential consequences that underlie the prohibition against selling liquor to minors, which include:

- The effects of liquor 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 liquor in the same manner as an adult
- That poor choices are made by minors when consuming liquor and liquor is a significant factor in many crimes committed by youth.

The standard is not one of perfection – that is, that a contravention will never occur. Rather, it is what is adequate training, systems, and monitoring within this public policy context. The circumstances of each case have to be considered in determining whether the due diligence threshold has been achieved.

In my analysis, I have considered all of the oral and documentary evidence submitted at the hearing. Overall, I found all the witnesses, both those for the Branch and for the Licensee, to be forthright and their evidence to be compelling. The evidence presented by the Licensee's witnesses was cohesive. That oral evidence was supported by extensive written documentation. After considering all of the evidence, I make the following findings.

Adequate training to prevent the sale of liquor to minors

Strict legal limits are in place to prevent minors from buying liquor and significant training efforts must be undertaken by licensees to ensure that staff members fully understand their responsibilities in that regard. In this case, the Licensee's evidence of training regarding the prevention of the sale of liquor to minors included:

- All servers are required to have their SIR certification.
- Written rules and policies have been developed and are updated regularly. The rules and policies specifically and prominently address the need for and how to check for proper identification. New employees are given the rules and policies with time to review them, an opportunity to discuss them, and are then required to sign off on understanding them.
- The need to check for identification is discussed with the new employee and specific examples of what to look for and be aware of are given, with a review of their own and the Cashier Supervisor's identification.
- The new employees are tested on their understanding of the rules and policies. The test is fulsome and the results are reviewed with the new employee to address any deficiencies.
- The new employee works under the Cashier Supervisor's direct supervision for at least five shifts, until she is satisfied they understand their responsibilities. Of note, the employees are trained to greet and assess customers when they come into the store for age and intoxication issues.

I find the Licensee keeps a good record of the staff receiving, reviewing and understanding the Rules and the Policies and having signed off on them. I also find that testing of the employees on the need to request identification is adequate and the Licensee's records of this to be good.

Based on all of the evidence, I find that the Licensee pays adequate time and attention in its training program on explaining the need and how to prevent the sale of liquor to minors. I find the Licensee's training of employees to assess customers for age and intoxication as they come in the door and the review of actual identification to be good practices.

On this basis, I find that at the time of the contravention the Licensee had implemented adequate training to prevent the sale of liquor to minors and I find the Licensee met the standard for reasonable training regarding the prevention of the sale of liquor to minors.

However, I do note that the Staff Rules simply advise that it is the employee's right to ask for identification. The Rules might be clearer about the Licensee's expectation that the employee must ask anyone under 30 years of age for identification. And while the Licensee is clearly alert to the harms of the sale of liquor to minors as the reason why staff should prevent such sales, the training program does not seem to specifically address this and could be revised to include it. I also note that the Policies currently make reference to an outdated provision of the Act and I recommend they be updated as the Act and the Regulations are amended.

Adequate systems to prevent the sale of liquor to minors

Not only must a licensee have proper training, it must ensure that it implements on-going processes to ensure that the training is put into practice and consistently acted on. Effective, on-going reminders and notices are critical to ensuring that the trained staff continuously and effectively use the tools they have been given. In this regard, I must evaluate what was in place at the time the contravention occurred.

I find that the signage, the various forms of communications, staff meetings, surveillance and secret shoppers program are all effective and on-going processes to ensure staff members fulfill their responsibility task for identification. All of the efforts are good and I find that collectively they meet the need for on-going processes to support the training.

Staff meetings are reasonably regular, staff are paid to attend and attendance is mandatory. Minutes taken at those meetings include the legal obligations about liquor service and the reasons why, including the harms to minors. The two-on- one meetings reinforce the responsibilities.

Frequent and varied reminders are given to staff to be alert to the need to request identification. And on holidays or for special events, employees are specifically reminded about the need to ask for proper identification.

Some other steps stand out as good practice.

I am especially impressed with the Licensee's secret shopper program, the fulsome records kept of that program and the immediate and appropriate action taken when some staff members failed in their duties.

I also found the video surveillance cameras, and the frequent review of them, to be a good tool to ensure employees are appropriately asking for identification, even when management is not on the premises.

The Quick Entry Log Book's numerous and frequent entries noting when and why staff members refused service to a customer is particularly persuasive evidence of the effectiveness of the training and on-going programs. The entries clearly show staff regularly refuse service for no or faulty identification. The entries often detail why the identification was faulty (for example, only one piece, or no picture id). To me this is clear and cogent evidence the staff both understand and act on their duty to request identification.

I am also convinced from the evidence that the Cashier had adequate training, he participated in on-going processes, and was repeatedly tested and passed the tests on carrying out his responsibility to ask for identification. The Licensee had no reason to suspect the Cashier would not carry out his duties responsibly as he always had, even though ill. I find that it is simply unfortunate that on March 20, 2018 no one else was on the premises and the ordinary level of oversight was not provided, but that need could not have been reasonably anticipated.

CONCLUSION

The due diligence standard is not one of perfection, but of adequate training and systems. On the whole of the evidence I am satisfied that the Licensee has adequate training and systems in place with respect to preventing a contravention of section 77(1)(a) of the Act.

Based on the foregoing, I find that the Licensee has met the onus of establishing a defence of due diligence with respect to this contravention. As such, I need not discuss any penalty.

Original signed by

Dianne Flood
General Manager's Delegate

Date: October 18, 2018

cc: Liquor and Cannabis Regulation Branch, Victoria Office
Attn: Stephen Hitchcock, Regional Manager

Liquor and Cannabis Regulation Branch, Victoria Office
Attn: Hugh Trenchard, Branch Advocate