



**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: Northland Properties Corporation
dba Denny's Restaurant
1759 West Broadway
Vancouver, BC V6J 1Y2

Case: EH19-078

For the Licensee: Robert Toor, Licensee's Legal Counsel

For the Branch: Andeep Kang

General Manager's Delegate: Dianne Flood

Date of Hearing: January 23, 2020

Date of Decision: February 27, 2020

**Liquor and Cannabis
Regulation Branch**

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INTRODUCTION

The Licensee, Northland Properties Corporation dba Denny's Restaurant, operates a licensed establishment known as Denny's Restaurant ("the Establishment") under Food Primary License No. 301410 ("the License"). The establishment is located at 1759 West Broadway, Vancouver, BC, V6J 1Y2. Under the Licence, the Licensee may sell liquor between the hours of 9:00 a.m. to midnight, from Sunday to Thursday and between the hours of 9:00 a.m. to 1:00 a.m., from Friday to Saturday.

The Licence is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Food Primary Licence Terms and Conditions Handbook", (the "Terms and Conditions Handbook"), which is available on the Liquor and Cannabis Regulation Branch's website.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor and Cannabis Regulation Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action dated September 16, 2019 (the "NOEA").

The Branch alleges that on August 27, 2019 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 7, 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 seven to eleven-day licence suspension and/or a \$7,000-to-\$11,000 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.

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 of the general manager under section 51 of the *Act* and Part 6 of the *Regulation*.

RELEVANT STATUTORY PROVISIONS

The relevant statutory provision is:

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

Supplying liquor to minors

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

ISSUES

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

EXHIBITS

- Exhibit 1: Branch's Book of Documents, tabs 1 to 19
- Exhibit 2: The Minor Agents' identification documents (sealed)
- Exhibit 3: The Server's SIR Certificate
- Exhibit 4: The Licensee's Liquor Service Policy, signed by the Server
- Exhibit 5: A photograph of a sticker that says "WE CHECK ID"
- Exhibit 6: A photograph of a sticker that says "Check ID BEFORE YOU SERVE LIQUOR"
- Exhibit 7: A photograph of another sticker that says "Check ID BEFORE YOU SERVE LIQUOR"
- Exhibit 8: A photograph of another sticker that says "Check ID BEFORE YOU SERVE LIQUOR"
- Exhibit 9: A photograph of another sticker that says "WE CHECK ID"
- Exhibit 10: A photograph of a poster about the difficulty in assessing the age of persons
- Exhibit 11: Progressive Discipline record for the Server
- Exhibit 12: Copy of two pages entitled "Employee Hire Kit 2"

WITNESSES

A liquor inspector who participated in the inspection of the Establishment on August 27, 2019 gave evidence on behalf of the Branch ("Inspector A").

The Server who served the Minor Agent and the General Manager of the Establishment gave evidence on behalf of the Licensee.

EVIDENCE – BRANCH

Inspector A gave evidence about the Minors as Agents Program, the facts set out in the NOEA, and licensees' responsibilities. As the Licensee accepts the facts as alleged in the NOEA to have occurred in the establishment on August 27, 2019, the Inspector's evidence and those facts are summarized here.

The Minors as Agents Program

Inspector A testified that the Minors as Agents Program (MAP) was 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. He said a number of efforts were made to ensure licensees were aware of the program, including the March 2011 Liquor Line newsletter (Exhibit 1, tab 16) and that licensees are reminded of the MAP at routine inspections, which usually take place every two years.

On August 27, 2019, pursuant to the MAP, Inspector A, two other Inspectors and two Minor Agents conducted several MAP inspections of licensed premises in Vancouver to test compliance with the *Act*. The Licensee's Establishment was one of those premises.

At the start of the day, Minor Agents 127 and 129 were photographed, their identification viewed and photographed, and their respective ages confirmed to be under 19 years (Exhibit 1, tabs 7 and 8 – redacted versions).

The Inspection of the Establishment

At about 3:00 p.m. on August 27, 2019, the Minor Agents and Inspector A and another liquor inspector ("Inspector B") entered the Establishment to conduct a routine inspection under the MAP. The Minor Agents sat at one booth, Inspector B sat in another booth with a clear line of sight of the Minor Agents, and Inspector A sat at a third booth, down from the others and with a partial view of the Minor Agents.

A staff member ("the Server") came to the Minor Agents' booth and Minor Agent 129 asked for a beer. The Server delivered a bottle of beer to the table, put the bottle of beer in front of Minor Agent 129 and left. No identification was requested from either of the Minor Agents at the time of the purchase. The Minor Agents made no attempts to deceive or mislead the Server about their ages.

Inspector A approached the Minor Agents' booth, secured the liquor and directed the Minor Agents to leave. Inspector A took photographs of the beer and the receipt for it and left. Inspector B advised the Server that she had served liquor to a minor. The Server provided a copy of her SIR certificate. Inspector B then spoke to and subsequently issued the Contravention Notice to the on-duty manager (Exhibit 1, tab 2).

The Minor Agents returned to the inspection vehicle where they each completed an Observation Form and Statement (Exhibit 1, tabs 5 and 6). Inspectors A and B also made their notes of the incident (Exhibit 1, tabs 3 and 4).

The Licensee's responsibilities

Inspector A testified that the Licence is subject to the Food Primary Terms and Conditions Handbook, (Exhibit 1, tab 15). A copy is given to licensees when they are issued their licenses and licensees are expected to know the contents. Identification requirements are set out in the Terms and Conditions Handbook. The Terms and Conditions Handbook also set out the prohibition against serving minors and the expectations for systems to effectively prevent that from happening.

Enforcement Action

In the NOEA, Inspector A said that the reasons for pursuing enforcement action include the impacts of alcohol 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 issues for this Establishment as set out in Exhibit 1, tab 14. This Licensee has no prior contraventions, and this is the first contravention for sale of liquor to a minor. The MAP inspections are conducted either randomly or targeted, based on a complaint. Here, the Licensee was selected on a random basis. No complaints had been made about it.

Inspector A confirmed the only training program the Branch requires of servers is the SIR program and that the Branch does not provide or direct other training for servers. Inspector A agreed that the SIR program trains servers how to ID people. Inspector A testified that if a licensee has questions about training for servers, the licensee could ask the inspector responsible for the licensee's area. In addition, the Branch's Training Coordinator could be asked, but not all licensees may know that.

EVIDENCE – LICENSEE

The Licensee's Legal Counsel admitted the Server sold liquor to the Minor Agent as set out in the NOEA. The Licensee claims a defense of due diligence, based on the Licensee's training processes, systems and steps taken to ensure the sale of liquor to minors will not happen.

The Licensee's Legal Counsel called the Server who served the Minor Agent and the Licensee's General Manager for this location to give evidence on behalf of the Licensee.

The Server

The Server testified that she had been employed by the Licensee for about one year and five months. Prior to that she had worked as a server at a restaurant for about eight years. She obtained her SIR while working at that other restaurant and she had had it for almost five years. Her SIR certificate was entered as Exhibit 3.

Adequate training

The Server testified that she had been given five days training by the Licensee. She said each training day was about four or five hours, conducted about two shifts a week. Sometimes the trainer was the manager, other times it was a supervisor or other server. She said she did not serve alcohol until the five days of training was completed.

The Server said the training on liquor service included the hours of service, the kinds of alcohol served and the identification requirements. She testified she was taught to ask for two pieces of identification: one government photo ID, with the birth date and a second piece that has the person's name, like student ID. During her five days of training she shadowed others and observed them asking for identification. She testified that those other persons followed proper procedures for asking for identification.

The Server confirmed that after her training was completed, she signed off on the Licensee's liquor service policy and identification requirements (Exhibit 4). She agreed that once it was signed, she had not reviewed that document, nor had she been referred back to the Licensee's written policies on liquor service.

The Server confirmed that her training did not include any discussion of what physical or other signs to look for when assessing a person's age or to watch for young people coming in and trying to look older. She said that she was told to look at the identification to see if it was real or fake by looking at the birthdate and the address. The Server testified that being Asian she often has trouble assessing the age of persons who are not Asian.

Systems in Place

The Server identified the photographs of:

- the sticker that said, "We check ID", posted at the POSitouch station where she placed orders (Exhibit 5).
- the sticker that said, "Check ID before you serve liquor", posted at the bar in the establishment (Exhibit 6).
- the two other stickers that said, "Check ID before you serve liquor", posted at the front of the restaurant POSitouch stations (Exhibits 7 and 8).
- the other sticker at the bar that said, "We check ID" (Exhibit 9).
- the poster behind the bar about the difficulty in assessing the age of persons (Exhibit 10).

All of these, she said, were in place on August 27, 2019. She said although English is her second language, it was easy for her to understand these signs.

The Server testified that each of the four POSitouch stations had something on them that reminded servers to check identification. She agreed that she would see one of these signs every time she punched in an order, which she would be doing every five to ten minutes.

The Server agreed that Exhibit 11 (her Progressive Discipline record) says to request identification from all persons who look to be under 30 and Exhibit 4 (the Licensee's liquor service policy) says to request identification from all persons who look to be under 25. She said her practice was to request identification of all persons who look to be under 25.

The Server said that, about two or three times a shift, the manager would randomly check whether she was asking for identification. She testified that when asked, she had always asked for identification and never had to be directed to go back and ask.

She also testified that daily meetings were held and at some of those, but not all, staff was reminded of the need to check for identification. She described these meetings as more of a conversation.

The Server was not aware of an incident log book being kept, but thought the supervisors kept a log book. She said most of the communication with her supervisors was verbal, not in writing. She also said the managers could see video of the premises from the office and may come out and talk to staff.

The Server testified that about four times a year a meeting is held with all servers to go over the seasonal menu changes. All servers are expected to attend those meetings. She did not know whether minutes were kept of those meetings.

The Server said no staff meeting was held after the contravention. The only meeting about the contravention that she knew about was between the Server, the manager and the General Manager.

The Server testified she was not aware of the MAP and had not been told about it by her managers.

The Server said that after she was told she had served the Minor Agent, she felt panicked, shocked and guilty. She agreed she had no excuse for having served the Minor Agent. She said she was working alone that day and was busy. She said when she is busy, she can ask for help, but she did not do that on August 27.

She testified the General Manager spoke to her and later had her sign the record of Progress Discipline, acknowledging the incident and giving her a warning on her record (Exhibit 11). She said this was the first time she was disciplined and didn't know what the reference in that document to a previous verbal warning was about. She also said although that document referred to her as a certified trainer, she had not done any additional training, nor had she actually done any training of others.

The General Manager

The General Manager has worked for the Licensee since June 2015, starting as a server, moving up to a management role in 2016, and became a manager at this location in 2018. He became the general manager at this location after August 27, 2019.

The General Manager has the Ontario equivalent of an SIR certificate. He said new hires must have their SIR certificate when hired, or they have to get it.

Adequate Training

The General Manager testified that as general manager he implements the Licensee's policies and procedures for this location, which is one of about 20 locations for the Licensee in British Columbia, with about another 37 across Canada. The General Manager did not develop the Licensee's in-house training program, which is standardized across Canada, but he is in charge of ensuring the servers at this location are trained and he delivers that training.

He testified the Licensee's program for new hires consists of fourteen days, with five of those being training days. He said Day 1 consists of about two hours of e-learning. As part of that, the General Manager or another manager goes over the Licensee's liquor policies with the new hire. He said they cover the hours of service (which he said was important because service is permitted only during certain hours and the restaurant is open 24 hours) and checking for identification, including what documents are acceptable and the need for two pieces. He said he would show the new hire what he would do and what he would ask and demonstrate that. He said he then goes through Exhibit 4, the Licensee's liquor policy, line by line with the new hire who then signs off that they know that policy. He acknowledged that Exhibit 4 does not mention British Columbia's legal age of 19 years, nor did the e-learning module do that.

He initially testified that the Day 1 e-learning module included questions the new hire must answer on-line. He said some new hires get the questions right the first time, with others taking two or three tries. He later clarified that the e-learning component used when the Server was hired had questions and answers on some of the training modules, but not on the liquor service module.

The General Manager testified that the e-learning program is now more interactive and visual and includes a mock video on identification and questions and answers on the liquor service module. He said the Licensee is working on having all employees take the new course. He noted the Branch had not provided any training materials to the Licensee.

The General Manager said he personally trained the Server on Day 1. He said he told her to check for identification if the person looks to be under the age of 50 and if she was in any doubt, she should check for identification. He said he discusses with staff how to assess when to ask for identification, saying if the person has grey hair or a cane and a hard time walking, then the servers don't need to ask for identification. He testified he spent about 20 minutes covering these with her.

The General Manager testified Day 2 is spent going over the establishment's layout and menu items.

He said Day 3 and 4 are spent with more e-learning, about two hours each day. Topics covered include the employee's responsibilities and duties, the restaurant layout, menu, drink recipes, brand recipes, brand standards, the POSitouch system, how to process payments and make drinks, allergy issues, fire and emergency procedures, and what to do if there is a slip-and-fall accident. The new hire will then shadow a senior server for the remaining two or three hours of each training shift. He said the server being shadowed will show the new hire how to ask for identification but admitted that will only happen if a young-looking customer asks for liquor.

He said the new hires and the senior server will discuss how some people don't always look their age, and the sheer spectrum of how looks can be different from the actual age, and so, that is why, it is important to ask if the person appears to be 30 years or younger.

He testified that on Day 5 the new hire is shadowed by the General Manager, who is there to review, assist and evaluate the new hire's performance, including asking for identification.

The General Manager said the five days of training is followed by nine days of further close supervision, where the new hire first takes on one or two tables on their own, and then gradually takes on more tables as they prove able to do that.

The General Manager confirmed that the reference in Exhibit 11 to the Server as a certified trainer did not mean that the Server had taken any specific training to be a trainer and confirmed she had not actually trained any other servers.

Systems in Place

He said there was discussion with staff every day about the need to request identification. He testified servers are briefed for about five minutes every day on the menu and the need to check identification and they are asked to commit to that responsibility. He said that a one-on-one meeting is held with each employee each month to make sure the employee understands anything new, and it includes the need to ask for identification.

The General Manager testified that if a young-looking person is seen coming in, servers are reminded by the manager to check for identification. He was not aware of any circumstances of staff not requesting identification when they should have. The General Manager testified that on holidays and for special events, he specifically reminds staff about the need to check for proper identification.

The General Manager reviewed the photographs entered as Exhibits 5 to 10 and confirmed all the stickers were in place on August 27, 2019, saying he took the photographs about two days after the contravention. He said he put the stickers up when he started at the establishment and replaces them if they come off. The stickers are intended to serve as a reminder of the need to check for identification. He said one of these is at each terminal and so is a reminder when ringing in an order. The terminals are not set up with any prompts about age or checking for identification, but the terminals' home screen note the year of birth for a person who turns 19 years.

He said he knew that English is a second language for many of the staff, and to ensure that they understand their responsibilities, the reminder messages are kept simple and the one-on-one review is done every month. He also said that he understood that many of those employees would have had to pass an English proficiency test when they came to Canada, so they would have some level of understanding of English. He acknowledged that the servers new to Canada can have difficulty assessing customers' ages, but the Server had never expressed that to him.

The General Manager also testified that the need to check for identification was reinforced at the quarterly staff meetings, which are held to review seasonal menu changes. No agenda is made, or minutes kept, but he said that identification requirements would be covered and if a staff person misses the meeting, a one-on-one meeting is held with them.

The General Manager said a logbook is kept but is made available to managers only. It is used mainly for scheduling and ordering. The General Manager said the contravention was noted in the incident logbook, but a copy of the logbook was not produced into evidence.

He said that video monitoring was used to observe for theft or other incidents but not for monitoring if servers were asking for identification. He said the manager on the floor would be doing that.

The General Manager produced a copy of the Licensee's Liquor Policy (Exhibit 12). He agreed that this document sets out the same information as in Exhibit 4, except the age for requesting identification. He also agreed the Licensee's Policy refers to checking for identification of anyone who looks under the age of 25 years. The General Manager reiterated that he tells staff to check for identification if the person looks to be under the age of 50.

The General Manager was not on duty on August 27, 2019. He said he followed up the incident with the Server, taking the disciplinary action as set out in Exhibit 11. He said not all other staff were told about the incident, but they all knew something had happened and all were told to make sure they checked for identification.

The General Manager said this was the first contravention for the establishment. He said despite the Server having been trained and given all the tools, she still failed to ask.

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.

The Branch Advocate suggested the Licensee failed to meet the test of due diligence.

She said both the oral and written evidence of the training and systems to prevent sales of liquor to minors is weak. She noted that no physical evidence of the training program was provided nor was any evidence of testing the effectiveness of that training. She noted the incident logbook was not made available to serving staff, so they did not have access to that information.

The Branch Advocate noted the Server did not recall any training on how to assess a patron's age and may have been confused by the Licensee's inconsistent and confusing directions to check age, if the person appeared to be under 25, 30 or 50 years old.

SUBMISSIONS – LICENSEE

The Licensee's Legal Counsel admitted the contravention occurred but relied on a defence of due diligence. He said that the Licensee has taken considerable efforts through its training program to prevent a contravention from happening. He noted the five-day training program, with time specifically spent on the Licensee's policy on serving liquor and the shadowing of senior servers.

The Legal Counsel noted the on-going and frequent daily reminders to staff and the additional reminders at the quarterly staff meetings. He said another key component of that reminder system was the signage at the POSitouch terminals, viewed by the servers whenever placing an order.

The Legal Counsel highlighted the Licensee's good compliance history and the lack of any previous contraventions. He said that despite its best efforts, things can happen, as it did here. He referred to the decision in Case EH17-032 ("*Boston Pizza*") and that the standard is not one of perfection. Rather, he suggested, the standard is one of what is reasonable, which he submitted the Licensee had exceeded.

The Legal Counsel submitted that due diligence has been established and a penalty is not warranted, but if a penalty was to be imposed, a fine would be preferred to a suspension.

The Legal Counsel also suggested that if the government does not think the SIR program is adequate training, the government as the legislator and overseer of the system has the responsibility to provide that additional training, not licensees. Or, he suggested, the government should require the SIR certificate be renewed more frequently, perhaps annually or every two years. These efforts, he said, would better promote the Branch's goal of compliance.

ANALYSIS AND REASONS

Contravention

The Licensee's Legal Counsel admitted 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 Server who made the sale was a “directing mind” of the Licensee. On this basis, I find that she was not and I move on to consider the second step in the due diligence analysis.

Steps to avoid the sale

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 behaviour 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 are 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. I turn then to the tests as set out by the Court and the evidence presented in relation to those tests.

Adequate training to prevent the sale of liquor to minors

Selling liquor is not like selling the other items on the Licensee's menu. Rather, significant responsibility applies to the sale of liquor, including preventing the sale to minors. Licensees must provide adequate and thorough training to ensure that staff members fully understand and carry out their responsibilities in this regard.

In this case, the Licensee's evidence of training to prevent the sale of liquor to minors includes all servers being required to have their SIR certification and five training days, each day being of four to five hours.

The Licensee's policies about serving liquor, the hours of sale and the employee's responsibilities to request identification are all covered on Day 1. I am concerned about the limited time spent on these very important topics. I am also concerned there was no testing of the Server's actual understanding of the policy and her responsibilities. However, testing is now in place, and while that illustrates the Licensee's commitment to improving their training, I am concerned that new hires are given several opportunities to successfully pass the test, without evidence of following up those failed attempts to ensure that the new hires in fact do fully understand their responsibilities.

I also have some concerns about the effectiveness of the shadow training. The number of opportunities in which identification would need to be requested and verified could vary substantially on each of the training shifts, so that the opportunity and effectiveness of the training on these important items could be in question. Further, there is no evidence that the General Manager meets with the senior servers and seeks their input on what the new hire has actually observed and learned. This could limit the ability for the General Manager to effectively assess if a server has been adequately trained in carrying out their responsibilities. However, weighed against these concerns is the General Manager's own shadowing of the Server on the Day 5 and his personal assessment of the Server, and the Server's clear and emphatic evidence that she did receive proper training from the senior servers on when to request and how to assess identification. Also, the General Manager testified the new hires and the senior server will discuss how some people don't always look their age, and the sheer spectrum of how looks can be different from the actual age, so that is why it is important to ask if the person appears to be 30 years or younger.

The General Manager claimed to instruct servers to request identification from patrons who looked to be under 50 years of age. The Server was very clear that she was trained to and did request identification if the person looked to be under the age of 25. Additionally, the Licensee's policy in Exhibit 4 says to ask for identification if the person appears to be under the age of 30, and in Exhibit 12, it says to request

identification if the person appears to be under the age of 25. However, the *Act* does not set an age limit for requesting identification and the Server's clear understanding was to request identification if the person did not appear to be of legal age, she simply failed to do that.

For these reasons, I find that in its training program the Licensee could pay more time and greater detail on explaining the need for and how to prevent the sale of liquor to minors, especially relative to the seriousness of the consequences of the sale of liquor to minors. I also find the Licensee could spend more time documenting the actual training and results of testing of each new hire. However, as the Licensee notes, the standard is not one of perfection. So, while the Licensee comes close to not meeting the standard and there is certainly room for improvement, on the basis of the totality of the evidence, I find the Licensee did provide the Server with adequate training to prevent the sale of liquor to minors.

Adequate systems to prevent the sale of liquor to minors

In addition to proper training, a licensee must also ensure that it implements on-going processes to ensure that its training is put into practice and consistently acted on. Effective, on-going reminders and notices, and monitoring are critical to ensuring that the trained staff continuously and effectively apply the training and directions they have been given.

I find the General Manager's direction to request identification of patrons who look to be under 50 was not being followed by the Server and, I suspect, by others. Given that, I question the accuracy of his observations that staff always appropriately asked for identification. However, the other evidence is that servers are given numerous daily reminders to check for identification. Reminder notices are posted at the POSitouch stations where the servers constantly and frequently attend throughout their shifts. These are good ways to reinforce the server's training. Consideration could be given to occasionally changing the content of the notices and the locations of the notices, to keep the requirements fresh in the minds of staff.

The daily reminders at the pre-shift meetings and throughout the day are also effective and on-going ways to reinforce the need to request and check identification, and both of the Licensee's witnesses testified that this happened on a regular basis. I note the Server did not mention, nor was she asked about, monthly one-on-one meetings with a manager, but the General Manager did testify that those meetings did occur.

Although quarterly staff meetings are held, agendas and minutes are not kept so that the ability to assess whether the policies about the sales to minors are reinforced is limited. In that regard, I accept the General Manager and the Server's evidence that that is done but recommend agendas should be set and should include the legal obligations about liquor service and the reasons why, including the harms to minors. Minutes should be taken and shared with any staff unable to attend, and signed off by those staff members as having been read, to provide evidence that that is being done.

This Licensee is not a "mom and pop" operation, where the principals of the Licensee are hands on with a small number of staff who rarely turnover. In those cases, employee training records and documenting other on-going reminder actions may not be as critical. Here, with several levels of supervisors and a significant number of staff at this and other locations, documenting the activities and messages is more important, to ensure each employee is actually involved in those activities and gets those messages.

So, while the Licensee comes close to not meeting the standard and there is certainly room for improvement, on the basis of the totality of the evidence, I find the Licensee did take reasonable steps to ensure the effective application of its training and have systems in place to prevent the sale of liquor to minors.

CONCLUSION

The due diligence standard is not one of perfection, but of adequate training and systems. As with most training programs and systems, there are improvements that the Licensee can make. I have noted a few suggested improvements.

On balance, however, I am satisfied that the evidence demonstrates that the Licensee has adequate training and systems in place with respect to avoiding 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 do not need to discuss penalty.

Original signed by

Dianne Flood
General Manager's Delegate

Date: February 27, 2020

cc: Liquor and Cannabis Regulation Branch, Vancouver Office
Attn: Peter Mior, Regional Manager

Liquor and Cannabis Regulation Branch, Vancouver Office
Attn: Andeep Kang, Branch Advocate