



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licensee:	Star Paving Ltd. dba The Dime Roadhouse 1565-1567 Commercial Drive Vancouver, BC V5L 3Y1
Case:	EH12-283
For the Licensee:	Mr. Dan Wilson
For the Branch:	Mr. Peter Mior
General Manager's Delegate:	R. John Rogers
Dates of Hearing:	November 4 & 5, 2013
Date of Decision:	January 21, 2014

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The corporate licensee, Star Paving Ltd. (the "Licensee"), owns and operates The Dime Roadhouse at 1565-1567 Commercial Drive, Vancouver, B.C. ("*The Dime Roadhouse*") under Food Primary Licence Number 072390 (the "Licence").

Under the Licence, liquor sales are permitted from Sunday to Thursday, inclusive, between the hours of 9:30 a.m. and 1:00 a.m. and on Friday and Saturday between the hours of 9:30 a.m. and 2:00 a.m.

Mr. Dan Wilson is a principal of the company which is the majority owner (the "Controlling Shareholder") of the Licensee and represented the Licensee at the Hearing.

The Licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication Guide for Liquor Licensees in British Columbia (the "Guide")

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalties are set out in the Notice of Enforcement Action (the "NOEA") dated January 17, 2013.

The Branch alleges that on December 8, 2012 the Licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act") by selling, giving or otherwise supplying liquor to a minor. If this allegation is proven, it would be a second contravention of section 33(1)(a) by the Licensee within a 12 month period. The proposed enforcement action outlined in the NOEA is a suspension of 20 days, as provided in item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation"). The penalty range for a second contravention of section 33(1)(a) of the Act is a 20-30 day licence suspension (see item 2, Schedule 4 of the Regulation).

The Licensee takes the position that the Licensee's employee did not intentionally sell liquor to a minor and that, in any event, the Licensee took reasonable efforts to prevent the alleged sale of liquor to the minor so that the defence of due diligence applies.

Pursuant to section 3 of the Regulation, the General Manager of the Branch has delegated to the undersigned the powers, duties and functions imposed upon the General Manager by, and referred to in, section 20 of the Act and section 65-69 of the Regulation for the purpose of this enforcement hearing ("Hearing").

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Supplying liquor to minors

33 (1) A person must not

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

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Schedule 4

Enforcement Actions

Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
2	A breach of section 33 of the Act (<i>Selling liquor to minors</i>)	10-15	20-30	30-60	\$7,500- \$10,000

ISSUES

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

EXHIBITS

- Exhibit 1:** Branch's Book of Documents, tabs 1 to 15 inclusive.
- Exhibit 2:** A sealed envelope with a notation that it is to be opened only upon an order of the Supreme Court of British Columbia or the undersigned adjudicator and containing copies of two photographs of the Branch's minor agent, identified below as "Agent #33", together with a copy of photographs of each of his personal identification documents bearing his birthdate.
- Exhibit 3:** A copy of a letter dated October 2012 from the Assistant Deputy Minister and General Manager of the British Columbia Liquor Control and Licensing Branch with the caption on the letter reading "Minors as Agents Program to Monitor Food-Primary Establishments" and addressed to "Dear Licensee".
- Exhibit 4:** The Licensee's Book of Documents, tabs 1-9 inclusive.
- Exhibit 5:** A copy of the Central Securities Register of the Licensee showing a change in ownership control of the Licensee on April 19, 2012 to the Controlling Shareholder, which change of ownership interest is reflected in the Branch's records.

Agreement to protect the identity of the minor agent

The Licensee's representative agreed that the identity of Agent #33 was to be kept confidential and that he would maintain this confidentiality outside the confines of this Hearing. Redacted copies of the documents contained in Exhibit 2 are included at tab 7 of Exhibit 1.

At the Hearing, the Licensee's representative was given an opportunity to view the photographs in Exhibit 2 prior to them being placed in the sealed envelope.

Agent #33 did not appear as a witness at the Hearing.

Withdrawal of documents in Exhibit 1

The Licensee objected to the entry into evidence of the documents at tabs 12 and 13 of Exhibit 1 on the grounds that the relevant date of these documents, ownership of the Licensee had changed and control of the Licensee had evolved to the Controlling Shareholder. Based upon this objection, the Branch withdrew from Exhibit 1 the documents at tabs 12 and 13.

The Licensee's representative confirmed that, as majority shareholders of the Controlling Shareholder, he and his partner became the directing mind of the Licensee as of April 2012. This is illustrated by the Central Securities Register in Exhibit 5. The Controlling Shareholder would be considered to be the directing mind of the Licensee from that date to the present.

EVIDENCE – BRANCH

The Branch called as its witness Liquor Inspector A ("Inspector A").

The Minors as Agents Program

Inspector A testified as to the following with respect to the Minors as Agents Program ("MAP").

In June 2010, the Act was amended to permit the Branch to employ minors as agents to test compliance with the Act's prohibition against selling, giving or otherwise supplying liquor to minors. Pursuant to this authority, the Branch established MAP.

Under this program, the Branch hires as agents 17 and 18 year old minors, who clearly appear to be under the age of 19, for the purpose of carrying out inspections to determine compliance with the Act with respect to supplying liquor to minors. In the delivery of MAP, no attempt is made to hide the minor's age or to otherwise deceive a licensee in order to make it appear that the agent is older than 19 years of age.

MAP includes training for the newly hired MAP agents on the relevant provisions of the Act, training on how to make and document observations during an inspection, and important safety considerations in carrying out their duties. A MAP agent is specifically instructed that, if asked for identification during an inspection, the minor agent is to advise the questioner that the minor agent is not carrying any identification and is to be truthful when responding to questions about age.

Commencing in 2011, the General Manager has communicated with all parties licensed under the Act to advise them that MAP inspections are being conducted whereby minors (under the supervision of a liquor inspector) would be visiting government and private liquor stores and attempting to purchase liquor. In this communication, the General Manager identifies the penalties for licensees found to be non-compliant. In October 2012, licensees were notified that the MAP program was being expanded to include establishments having a food primary licence. Inspector A confirmed that Exhibit 3 was a copy of this notification.

Identification of Agent #33

Inspector A identified the documents in the envelope (marked as Exhibit 2 and at tab 7 of Exhibit 1) as copies of photographs of Agent #33 and his two pieces of identification taken at the start of his shift on December 8, 2012. She testified that Agent #33 was wearing the clothing he had on for these pictures during his entire shift that evening so that his appearance in these photographs was the same as his appearance when the alleged contravention occurred. Inspector A also noted that Agent #33's two pieces of identification established that Agent #33's age was 18 years old on December 8, 2012.

The investigation team

Inspector A testified that on December 8, 2012 she, liquor inspector B ("Inspector B"), liquor inspector C ("Inspector C"), and Agent #33 constituted an investigation team. The task of this investigation team was to assess compliance by food primary establishments and liquor retail stores in Vancouver regarding the identifying and requesting of identification from a person under the age of 19 who has ordered liquor.

Inspection of *The Dime Roadhouse*

Inspector A testified that, on December 8, 2012, Agent #33 entered *The Dime Roadhouse* followed closely behind by Inspectors A and B. Inspector C remained in his car parked on the street directly outside the establishment.

Upon entering *The Dime Roadhouse*, as no member of staff attempted to seat them, Inspector A testified that Agent #33 went directly to the bar and seated himself at the corner of the bar between two other patrons of the establishment. Inspectors A and B went to a table about 10 feet away from where Agent #33 was sitting. This location, Inspector A noted, afforded her with a direct line of sight to Agent #33. Inspector A identified the document at tab 10 of Exhibit 1 as a copy of the floor plan of *The Dime Roadhouse* and identified on this document where she and Agent #33 had entered and were sitting.

Prior to Inspector B seating himself, Inspector A testified that Agent #33 was served alcohol. She noted that the elapsed time between Agent #33 entering *The Dime Roadhouse* and him being served liquor was about 15 seconds. She also testified that the establishment was not overly busy at the time.

Upon being served alcohol, Agent #33 made eye contact with Inspector A. She followed Agent #33 to the door of *The Dime Roadhouse* as he exited the premises, ensuring that Agent #33 got safely into the car with Inspector C.

As Agent #33 was leaving the premises, Inspector A testified that Inspector B went directly to where Agent #33 had been sitting and seized the served liquor. Inspector A went to locate the general manager (the "General Manager") of *The Dime Roadhouse*, and Inspector A advised her of the alleged contravention.

Inspector A noted that the General Manager was very unhappy as she was aware of the previous contravention involving *The Dime Roadhouse* which occurred approximately six months earlier on June 17, 2012 (the "First Contravention"). Inspector A identified the document at tab 8 of Exhibit 1 as a copy of Contravention Notice number B016223 (the "Contravention Notice") which was issued by Inspector B to the Licensee on December 8, 2012 and acknowledged by the General Manager.

Inspector A testified that Inspector B, the General Manager, and the bartender who allegedly served liquor to Agent #33 (the "Bartender") then met at the back of *The Dime Roadhouse*. At that meeting, the Bartender confirmed that he had served liquor to Agent #33 without asking for his identification. The Bartender confirmed that he had been working for *The Dime Roadhouse* for approximately six months, and he was concerned about losing his job.

Inspector A identified the documents at tabs 5 and 6 of Exhibit 1 as copies of the Minor Agent Observation Form completed by Agent #33 and the notes completed by him following the alleged contravention, both of which documents she confirmed she had initialed for identification. In addition, Inspector A identified the documents behind tab 4 of Exhibit 1 as copies of photographs that she had taken immediately following the alleged contravention showing the bottle of Kokanee beer served to Agent #33 and the bill for this beer. Inspector A noted her initials on this bill and stated that Inspector B had paid this bill.

Inspector A further identified the document at tab 3 of Exhibit as a copy of the notes that she had written on December 8, 2012 following the alleged contravention.

Inspector A identified the document at tab 1 of Exhibit 1 as the NOEA drafted by Inspector B.

The Guide

Inspector A identified the document at tab 9 of Exhibit 1 as a copy of the Licence and testified that it was in effect on December 8, 2012. She noted that the Licence was subject to the terms and conditions contained in the Guide. She also identified the document in tab 11 of Exhibit 1 as a copy of the Guide relating to food primary licences and entitled "Food Primary Terms and Conditions", which terms and conditions were in effect on December 8, 2012.

Inspector A noted that page 11 of the Guide provides that the Licensee is legally responsible for understanding how the Act, Regulation and the terms of the Licence affect the operation of *The Dime Roadhouse*. She observed that the Guide on this page goes on to state that if the Licensee does not carry out these legal responsibilities, it could face serious penalties, including the suspension or loss of the Licence. And, she noted, the Guide states that the Licensee is responsible for ensuring that its employees follow British Columbia liquor laws and the terms and conditions of the Licence, even when the Licensee's representative is not on site.

At page 24 of the Guide, Inspector A noted the provisions dealing with minors. She observed that these provisions state that:

- Minors are allowed in a food primary establishment only when accompanied by an adult
- It is against the law to sell, serve, or supply liquor to a minor and it is expected that the Licensee and its staff will put in place effective systems to enforce this prohibition
- The Licensee must demonstrate that it is preventing minors from obtaining liquor by doing an initial assessment of every patron before selling or serving them liquor
- When seeking to verify a customer's age, the Licensee and its employees must ask for two pieces of identification and if the person cannot produce two pieces of acceptable identification that proves that they are 19 or older, that this customer must be refused service

Waiver Notice

Inspector A identified the document at tab 14 of Exhibit 1 as a copy of a waiver notice ("Waiver Notice") dated August 22, 2012 and agreed to by the Licensee. Inspector A noted that the Waiver Notice confirms that on June 17, 2012 the Licensee admitted to the having committed a contravention of section 33(1)(a) of the Act and agreed to pay a monetary penalty of \$7,500.

The NOEA

Inspector A identified the document in tab 1 of Exhibit 1 as a copy of the NOEA which was authored by Inspector B. As well, Inspector A identified the document in tab 2 of Exhibit 1 as a copy of Inspector B's notes made on December 8, 2012.

Cross-examination of Inspector A

When questioned as to how many MAP investigations Inspector A had been a party to over her career, she stated that she had participated in about 100. She confirmed that generally she didn't advise a licensee when it had passed a MAP inspection. She stated that it is Branch policy to expect that a licensee will ask for identification prior to serving liquor to a patron who is possibly a minor; and, as expected normal behaviour, it should not be highlighted when a licensee passes a MAP inspection.

Inspector A testified that the Branch used to have on hand laminated signage which dealt with the requirement to ask a person for two pieces of identification prior to serving liquor to a patron who might be a minor. Originally this signage was handed out to licensees, but since the Branch had moved more to a paperless environment, this signage was available online for a licensee to download and display on site. Inspector A confirmed that the photograph on page 2 of tab 5 of Exhibit 4 was a picture of one of these signs.

The pictures on page 1 of tab 5 of Exhibit 4, Inspector A identified as a picture of stickers which are handed out by the Branch and which contain the colours red, yellow and green. The purpose of the stickers, she testified, was to assist a staff member of a licensee to determine whether a particular date of birth on a piece of identification tendered by a patron made the presenter of the identification under the age of 19, about 19 or over the age of 19. If the date of birth falls in the red zone on these stickers, it means that the presenter of the identification is under 19 years old; if it falls in the yellow zone caution is encouraged when making a decision as to whether the presenter is over or under 19; and if it falls in the green zone it means the presenter is over 19.

Inspector A further confirmed that the pictures on page 3 of tab 5 of Exhibit 4 were also a picture of one of these signs and stickers (collectively the signs and stickers in the pictures at tab 5 of Exhibit 4 are identified as the "Signs and Stickers").

When referred to tab 6 of Exhibit 4, Inspector A recognized the document as containing eight photographs of *The Dime Roadhouse* as taken by the establishment's CCTV system. She confirmed that among these photographs was a photograph of the bar at which Agent #33 was seated and noted that he had placed himself at the far end of the bar closest to the front of the establishment. She testified that she and Inspector B were seated in the same room at a table against the wall and out of camera range.

EVIDENCE – LICENSEE

The Licensee called seven witnesses and, in addition to the Guide, referenced seven sets of documents contained in Exhibit 4, which documents dealt with:

1. The operations manual for staff of *The Dime Roadhouse*;
2. Examples of posts on the Facebook page established for staff of *The Dime Roadhouse*;
3. Notes made by the Operations Manager;

4. Notes made by the General Manager;
5. Signs and Stickers used at *The Dime Roadhouse*;
6. The CCTV camera system installed at *The Dime Roadhouse*; and
7. The employee contract for staff of *The Dime Roadhouse*.

The Licensee's witnesses

The seven witnesses called by the Licensee were:

1. The Bartender: The Bartender is the bartender who is alleged in the Contravention Notice to have served liquor to Agent #33 on December 8, 2012 at *The Dime Roadhouse*. The Bartender testified that he was hired by the Former General Manager to work at *The Dime Roadhouse* in May 2012. He stated that serving Agent #33 without previously asking him for identification was a "bad bounce", meaning that normally he would have asked Agent #33 for identification, but that this time he slipped up by failing to do so. Consequently, December 8, 2012 was his last day of work at *The Dime Roadhouse*.

When asked on cross-examination how often he was working at *The Dime Roadhouse* from the start of his employment in May 2012 until he was terminated on December 8, 2012, the Bartender testified that he would be away a week or two each month on an irregular schedule to work in his other career.

When further asked on cross-examination how many staff meetings he had attended during his employment, he could not recall the number. He confirmed that attendance at a staff meeting was supposed to be mandatory, but because many of the staff had other jobs, missing a staff meeting for these people was tolerated. However, he testified, if he didn't attend a staff meeting, a manager or another staff member would either give him notes of the meeting or he would get a brief synopsis or a Facebook update of what occurred at the staff meeting that he had missed.

On cross-examination, the Bartender confirmed that asking minors for identification was a “no brainer”, he knew that it had to be done, and it was standard policy for any of the bars he had worked in across the country. He confirmed that, prior to the First Contravention, the policy of *The Dime Roadhouse* was to ask only patrons who appeared to be minors for identification. Following the First Contravention, the policy was changed to one asking every patron for identification prior to serving alcohol.

2. The General Manager: The General Manager is the general manager of *The Dime Roadhouse* and she was working at the establishment at the time the alleged contravention occurred.

She testified that she was hired by the Operations Manager at the end of July 2012 as general manager of the Licensee to replace the Former General Manager. She had previously been an assistant general manager at another licensed establishment where her responsibilities included staff development and the training of new staff. She testified that one of the major reasons for her hiring by the Licensee was to bring her training experience to the operations of *The Dime Roadhouse*.

As the general manager of the Licensee, her responsibilities included managing the overall operations of the establishment with a focus on hiring proper staff, training them, and ensuring that they carried out their duties in accordance with the Licensee’s policies. However, she confirmed that she was not the directing mind of the Licensee and had no authority to make any decisions on behalf of the Licensee at the policy level.

She testified that, when confronted with the allegation that he had served liquor to Agent #33, the Bartender was very apologetic acknowledging that he had “messed up”. She noted that the Bartender was not shocked when he was fired and sent home. He was annoyed, she claimed, but he also understood what was happening.

3. The Former General Manager: The Former General Manager testified that he was the general manager of *The Dime Roadhouse* when it first opened on May 4, 2012. As he was hired just three weeks prior to this opening, he stated, he had only these three weeks to hire and train the approximately 35-40 staff required to operate the establishment prior to its opening. He served as the general manager of *The Dime Roadhouse* until the end of July 2012 when he was replaced by the General Manager.

He confirmed that he was general manager of *The Dime Roadhouse* when the First Contravention occurred. He testified that when it occurred the establishment was extremely busy, but this was not a valid excuse for permitting the First Contravention to occur. The server who committed the First Contravention was fired. On cross-examination, the Former General Manager confirmed that the server who sold liquor to a minor in the First Contravention was an experienced staff member.

When asked on cross-examination as to whether or not he tested his staff on their knowledge and understanding of the liquor laws, the Former General Manager testified that there was a checklist at the back of the operations manual that he was using for the purpose of staff members assuring themselves that they were aware of the liquor laws. However, he stated, that as he had hired experienced staff who fully understood the rules—he relied on their experience to make sure that they complied with the liquor laws.

He testified that, from the time of the First Contravention until the day he ceased his employment with the Licensee, there were no changes to policy at *The Dime Roadhouse*, but rather a focus on the staff being required to follow the existing policies.

4. The Operations Manager: The Operations Manager testified that she is the operations manager for the Controlling Shareholder. She stated that she has worked in the hospitality industry for eight years; first as a server, then a manager, moving to a general manager. She has been in her current role with the Controlling Shareholder for the past two years. As operations manager, her role is to hire all the general managers which work for licensees associated with the Controlling Shareholder, to oversee these general managers, and to make sure that their management teams are working in accordance with the policies and directives established by the Controlling Shareholder.

She testified that she was acting as operations manager of the Controlling Shareholder when the First Contravention occurred and she was aware that the Licensee admitted to the contravention and paid a fine of \$7,500.

The Operations Manager stated that she had hired the General Manager as the General Manager came from a good corporate background and she wanted someone who would bring structure and who had a background in staff training.

5. The Former Bartender: The Former Bartender testified that he was hired in the middle of May 2012 by the Former General Manager to work for the Licensee as a floor manager and a bartender and that he was working on December 8, 2012 with the Bartender. He no longer works at *The Dime Roadhouse* having terminated his employment with the Licensee in April 2013.

When shown the picture of Agent #33 in Exhibit 2, the Former Bartender confirmed that he would have asked Agent #33 for identification in accordance with the policy of *The Dime Roadhouse* because Agent #33 looked to be under 30 years old.

On cross-examination, the Former Bartender confirmed that he was working at *The Dime Roadhouse* for the Licensee at the time of the First Contravention, although he was not working that particular day. Following the First Contravention, the Licensee was more adamant about checking for identification. The Licensee's policy did not change, he testified, it was just that its employees

were urged to be more aware, to make sure not to leave any grey areas, and to be more on top of matters.

The Former Bartender testified on cross-examination that on December 8, 2012 the policy of the Licensee was that any patron a server believed to be under the age of 30 was to be asked for two pieces of identification before serving liquor. When asked how a server was to know whether or not a patron was under 30, he stated the staff members were instructed that they were to use their own judgment.

After December 8, 2012, the Former Bartender testified, the policy of the Licensee was changed requiring a server to ask every patron, no matter what age, for identification prior to serving the patron liquor.

6. The Former Server: The Former Server worked as a server at *The Dime Roadhouse* from Spring 2012 until March 2013.

The Former Server was shown the picture of Agent #33 in Exhibit 2 and testified if Agent #33 had asked the Former Server to serve him liquor, that prior to doing so she would have asked Agent #33 to produce two pieces of identification to prove that he was 19 years old or older. She said that she would do this as she believed that the policy of the Licensee at that time was that anyone who appeared to be under 40 years of age should be asked for two pieces of identification prior to serving liquor to that person.

When asked on cross-examination what changes were made to operating procedures between the occurrence of the First Contravention and December 8, 2012, the Former Server testified that the General Manager had organized more staff meetings, but that there were no tests introduced to ensure that the employees fully understood the operating policies of the Licensee.

7. The Technician: The Technician testified that he is a shareholder of the Licensee. He stated that he has been working in the hospitality industry for ten years during which he has developed his business of providing repair and maintenance services to establishments, including *The Dime Roadhouse*.

The New Operations Manual

The Former General Manager testified that that he had an operations manual when he opened *The Dime Roadhouse* in May 2012, but that it was not the document reproduced at tab 1 of Exhibit 4 (the "New Operations Manual"). He noted that in his operations manual it stated that, for any patron who looked to be under 30 years of age, the staff was to ask that patron to produce two pieces of identification prior to serving that patron liquor. He advised that he further instructed his staff that, unless a patron looked "really old", the patron had to be asked for identification prior to serving that patron liquor.

The General Manager testified that she and the Operations Manager were responsible for reworking the Former General Manager's staff manual and turning it into the New Operations Manual.

She testified that the phrase "BLACK & WHITE POLICIES AND PROCEDURES" which is included as a heading on page 5 of the New Operations Manual meant that the items following this heading were non-negotiable. If a staff member did not adhere to proper identification policies and all the information outlined in the Guide, such activity or lack thereof would be cause for immediate dismissal.

The General Manager identified on page 10 of the New Operations Manual the statement that a staff member was to ask for identification from any patron who requested alcohol. She testified that this was the policy of *The Dime Roadhouse* when the New Operations Manual came into existence in August 2012. A couple of months later, following resistance from customers to this blanket policy, it was changed to requiring identification from every patron ordering alcohol who appeared to be under 40 years of age. If a server had a problem from a patron objecting to the request for identification, the server was instructed to seek help from the floor manager on duty. It was this

manager's responsibility to support the staff member and to deal with this objection attempting to smooth it over by explaining the requirement for identification.

The Operations Manager testified that the Licensee did not reprint the New Operations Manual to reflect this change in policy to a 40 year old age limit, but rather that they fully discussed it at meetings of floor managers and of staff. She pointed out that on page 5 of the New Operations Manual it stated that policies and rules were subject to revision and that this policy change was one of the revisions made.

She noted that the content on page 10 also referred to the fact that liquor inspectors conducted audits and spot checks to check for infractions and set out the penalties for serving minors. As well, it states that the Licensee views the issue of serving minors very seriously and that, if a staff member knowingly serves alcohol to a minor, it is grounds for immediate termination.

The Bartender confirmed that upon starting his employment at *The Dime Roadhouse* he was given an operations manual, but he did not think that the New Operations Manual was the operations manual he was given to work with.

The Former Server testified that, when she started her employment at *The Dime Roadhouse* in Spring 2012, she had been supplied with an operations manual by the Former General Manager. She identified the New Operations Manual as a document which was given to her by the General Manager and was used by the Licensee for its staff at the time she left her employment in March 2013. She noted that the New Operations Manual was a much more complete document.

The Former Server was referred to page 5 of the New Operations Manual and confirmed that it stated that failure by a member of the staff of *The Dime Roadhouse* to adhere to proper identification policies and "all information outlined in the BC Food Primary Guide" would be cause for immediate dismissal. She confirmed that she understood what this provision meant in the New Operations Manual and that she was aware of prohibition against serving liquor to minors in the Guide. As well, the Former Server noted, it dealt with the requirement to ask for two pieces of identification and

that it referred to the fact that the Branch conducted audits and spot checks to ensure that this requirement was being met.

The Former Bartender similarly confirmed that the contents on page 10 of the New Operations Manual dealt with the requirements to ask for identification before serving liquor to a minor and noted that, if an employee failed to do so, the employee could be liable for a fine of \$575 and *The Dime Roadhouse* could be liable for a fine of \$7,500. The Former Bartender noted reference on that page to copies of notices for fines and identification requirements attached to the back of the Operations Manual, but acknowledged that, although he had not before seen these specific notices, he had before seen notices similar to these and was aware of their contents.

On cross-examination, the Former Bartender didn't recall when he had received a copy of the New Operations Manual, but he testified that it would have been after the General Manager had been hired. After receiving this document, he admitted, he had never gone back to review it again. It was his opinion that as he has been in the hospitality industry long enough, he knew its ins and outs.

On cross-examination, the General Manager was referred to the New Operations Manual which stated that every patron who sought to be served liquor at *The Dime Roadhouse* was to be asked for identification and to her evidence that the policy was changed to the present policy of asking only those patrons who appeared to be under the age of 40. When asked how this change in policy was communicated to staff members, she testified that it was through floor managers and staff meetings. When further asked why the New Operations Manual was not changed to reflect the changed policy, she testified that with 20-30 staff members it would have been a waste of paper to reprint the entire New Operations Manual for a change in one line of text.

When she was asked in cross-examination why the New Operations Manual was not immediately changed when the policy was changed from asking for identification from every patron who asked for liquor to only those who appeared to be under the age of 40, the Operations Manager responded that Licensee tries to update the New Operations Manual once a year as it gets to be a lot of work if it is done every month. The Operations Manager stated that she believes that the New Operations Manual has

been updated since its creation in August 2012. However, as there have not been many policy changes, she testified that the only significant change to the New Operations Manual would be the change in policy dealing with asking for identification for patrons who look less than 40 years old.

When further asked on cross-examination about testing a staff member's knowledge and understanding of the contents of the New Operations Manual, she testified that there are no written tests for staff members based upon the contents of the Operations Manual. Rather the management of *The Dime Roadhouse* goes through things verbally with the staff, quizzing them on their understanding.

As well, she further stated on cross-examination, the staff acknowledged when they signed a copy of the Employee Contract that they were aware of the existing policies and procedures of the Licensee. For new corporate policies, she testified, the staff have sign in sheets. But when asked, she was not able to produce copies of these sheets.

The Guide

The General Manager testified that every staff member of *The Dime Roadhouse* was required to have his or her Serving It Right certificate and to be familiar with the provisions of the Guide.

She confirmed that all the staff members of the Licensee were aware of the provisions on page 24 of the Guide dealing with minors and specifically that people under the age of 19 were permitted in *The Dime Roadhouse* but that they were not to be served liquor. To demonstrate that this prohibition was being observed, she testified, it was the Licensee's policy that each member of the staff was to do an assessment of every patron before selling or serving liquor to that patron and verifying their age by asking them for two pieces of identification.

The General Manager confirmed that failure to follow this policy and to ask for identification was included in the reference as being a cause for immediate dismissal referred to on page 5 of the New Operations Manual. She further confirmed that all staff members of *The Dime Roadhouse* knew of this requirement to ask for identification. She testified that she had trained them in this requirement, including how to ask for and ensure that the identification proffered by a patron was, in fact, a valid piece of identification all in keeping with the provisions of the Guide.

The Bartender, the Former Bartender and the Former Server all confirmed that they had taken the Serving It Right training and had received their certificate.

The Bartender recognized the Guide as being part of the package he was given when he started work. He testified that he was aware of the provisions on pages 24 and 25 of the Guide dealing with the prohibition against serving liquor to minors and the requirement to ask for two pieces of identification to verify a patron's age

Both the Former Bartender and the Former Server confirmed that they had received a copy of the Guide and that they had read and understood its contents. They confirmed that it was a policy of *The Dime Roadhouse* for every staff member to have done so.

Facebook Posts

When referred to the documents at tab 2 of Exhibit 4 (the "Facebook Posts"), the Former General Manager identified these documents as copies of screenshots of the Facebook page which he had created for the purpose of communicating with the staff of *The Dime Roadhouse*. He confirmed that every member of the staff of the establishment had to be a member of this page. The purposes of the page, he testified, was to be a tool whereby every member of the staff got information at the same time, a form of electronic noticeboard.

The Former General Manger noted that each of the Facebook Posts contained a box which incorporated a check mark followed by the phrase "Seen by everyone". He testified that this check mark meant that every member of *The Dime Roadhouse* staff had seen this post. This was, he stated, because when each member of the staff went to the particular Facebook page on which this post was set out, this viewing event was recorded and logged.

He noted that every staff member had to change the settings on their smart phone so that they would be notified when a new posting was made to this Facebook page and that a staff member would not be permitted to start a shift unless and until he or she had seen all the postings on the page. He confirmed that this policy was enforceable as management was able to see who had and who had not seen a particular posting. He testified that usually it took no longer than a day for every member of the staff to have seen a particular posting.

The Former General Manager was directed to one of the Facebook Posts dated June 19, 2012, two days after the First Contravention had occurred, noting that it was from the Operations Manager to all staff of *The Dime Roadhouse*. In this post, the Operations Manager wrote that the MAP program was active and stated that she could not stress the importance of asking for identification and following all liquor laws.

Following this posting, the Former General Manager testified, he called a meeting of the staff of *The Dime Roadhouse* at which time he discussed the First Contravention, the fact that it had cost the Licensee \$7,500, and that a second contravention could cost the Licensee a 20 day suspension. He testified that he again reviewed the liquor laws with the staff and stressed the importance of asking for identification.

On cross-examination, the Former General Manager confirmed that, although he knew whether or not a particular staff member had seen a Facebook Post, he did not know how he could ensure that such staff member had read and understood the policies included within the post.

The Bartender in his testimony confirmed that he had seen the posting by the Operations Manager on June 17, 2012 which posting stated in part:

ALL STAFF: The liquor board is out in full force and has been sending in undercover underage people to see if we are following bc liquor law regulations and ID'ing our patrons. I can not stress the importance of making sure we are always asking for ID as well as making sure we are following all other liquor laws (food, over service etc.) it is a must so please always be aware

He confirmed, as well, the page of the Facebook Posts which contained a posting by a manager of *The Dime Roadhouse* on August 4, 2012 and which stated in part "Please check a patron's ID prior to taking an order so we can avoid spillage for those without proper ID." He testified that this posting was to ensure that employees of *The Dime Roadhouse* asked for identification prior to taking an order so as to prevent the situation occurring where, after liquor had been poured, it turned out that the patron was a minor and the liquor had to be thrown away. The Bartender stated that this posting was "really redundant" as the policy was that the server should ask for identification prior to giving the order to a bartender.

The Operations manager identified the Facebook post of August 4, 2012 as a post of a floor manager working for *The Dime Roadhouse* who had initially worked for the Sheriff's department before working in nightclubs and bars. It was her opinion that he was well aware of the identification policies and procedures.

The Bartender also confirmed that he had seen the post among the Facebook Posts which contained a posting by the Operations Manager on August 21, 2012 and which stated in part:

MEMO: Hey all, I know that we have gone over this many times but I can't stress the importance of ensuring that we are always ID'ing our patrons. We will be sending in underage customers who will try to buy drinks to make sure this is being done, anyone who is caught not ID'ing will be fired on the spot, and this is a zero tolerance policy company wide. Also just a reminder there is now a \$575 personal fine for the server or bartender responsible for serving them from the liquor board, based on this I'm sure you can understand how imperative this is

The Operations Manager confirmed that she had made the above posting on the staff Facebook page and testified that, in this post, she was referring to the passage in the New Operations Manual dealing with the requirement for staff to ask for identification before serving liquor and highlighting the penalties for not doing so.

Finally, the Bartender confirmed that he had seen the Facebook post included among the Facebook Posts which contained a posting by the General Manager on October 4, 2012 and which stated in part:

Heya kids, we now sell cigarettes for \$10 ea!! there is a button on the computer under N/A Beverages the bar tenders will have behind the bar. the most important thing to remember is ID ID ID ID ID ID ID ID !!!!!!!

Both the Former Bartender and the Former Server testified that they were working at *The Dime Roadhouse* when the Facebook Posts had been put up and they had both read them. The Former Server testified that she would visit the staff Facebook page a couple of times a day.

When on cross-examination, the General Manager was referred to her posting on the staff Facebook page on October 4, 2012 she confirmed that the reference to "ID" was in the context of selling cigarettes at *The Dime Roadhouse*. She agreed that it could be interpreted in the context of the requirements for asking for identification prior to selling cigarettes as well as to prior to serving liquor.

When questioned on cross-examination about her use of the staff Facebook page, the Operations Manager responded that she used it to communicate with staff and relied on the "seen by everyone" tab to ensure that every member of the staff had seen it. When asked how she was able to ensure that each member of staff really understood what was included in the posting, she testified that she did this through staff meetings and through follow up one-on-one discussions.

The General Manager's notes

The General Manager identified the documents at tab 4 of Exhibit 4 as copies of pages from her personal notebook. She testified that these notes were reminders to herself to discuss the matters listed in her notes with the floor managers of *The Dime Roadhouse* at manager meetings. She and the Operations Manager held weekly meetings with all floor managers.

She identified items on one of these two notes as "liquor inspector" and "proper ID" and testified that these particular notes were probably made in October 2012. The General Manager also identified a copy of her notes in her notebook made on September 19, 2012 which referenced "ID ing". She identified another copy of a page from her notes for a meeting of managers in November 2012 as referencing "expired ID".

She testified that reference to "proper ID" was to give the message to ensure that staff members were paying attention to ensure that they were having the proper identification shown to them.

She testified that the notes she made in her notebook in October 2012 (a copy of which are at tab 4 of Exhibit 4) were probably made in response to the letter in Exhibit 3.

The Operations Manager's notes

The Operations Manager identified the document at page 3 of tab 3 of Exhibit 4 as pictures of pages of her notebook written on June 26, 2012 and September 18, 2012. These extracts from her notebook, she testified, were examples of her manager meeting notes for her weekly meetings of the General Manager and floor managers of *The Dime Roadhouse*. She noted that from her notes on June 26, 2012, there was a statement saying "liquor board ID, ID, ID", and from her notes on September 18, 2012 there was a statement saying "make sure to ID".

She suggested that the reference to identification in the notes of the General Manager from September 19, 2012 (tab 4, Exhibit 4) was as a result of the discussions referred to in her notes of September 18, 2012.

When asked on cross-examination if she had copies of agendas from staff meetings of *The Dime Roadhouse*, the Operations Manager responded that she did not have such copies apart from notes in her notebook (examples at page 3, tab 3, of Exhibit 4). Before staff meetings, she and the General Manager would sit down and run through what they were going to talk about at the meeting. She testified that there were more notes referring to the necessity to check for identification, but she takes a lot of notes and it would take quite a while to go through them and locate notes on this topic, so the ones presented are date specific and examples on this topic.

Meetings of managers and staff

The Bartender and the Former Server testified that staff meetings were held at *The Dime Roadhouse* sometimes every two weeks, sometimes more often and usually held by the General Manager. At these staff meetings and at shift changes, they confirmed, the requirement to ask for identification and to be careful about accepting false identification was a common topic, especially after the First Contravention.

In his capacity as a floor manager of *The Dime Roadhouse*, the Former Bartender testified that his responsibilities included opening and closing the establishment and ensuring that staff were following the policies and rules of the Licensee, including asking for identification prior to serving liquor. He stated that he held staff meetings every month to a month and a half and participated in weekly manager meetings. At the staff meetings, issues such as asking for identification, comparing the picture on offered identification to the person offering it, and concerns about over-serving were discussed.

Both the Operations Manager and the General Manager testified that they would meet with the floor managers on a regular basis and they would discuss any current issues that were happening at *The Dime Roadhouse*. The intent of these meetings was for the purpose of supporting the managers so they, in turn, had the tools and were able to support the rest of the staff. They would coach the managers in, for example, how to determine proper identification.

The Operations Manager and the General Manager confirmed that they held staff meetings every four to six weeks and sometimes more often. The requirement to ask for identification was discussed at each one of these staff meetings. There were three shifts at *The Dime Roadhouse* and at the start of each shift the staff and the floor manager would go over whatever new policies and procedures they wanted the staff to know and issues that had arisen which were dealt with in the New Operations Manual. They testified that these meetings were always with a view to ensuring that the staff were aware that it was the policy of *The Dime Roadhouse* to be one hundred percent compliant with the law and the Guide.

On cross-examination, the General Manager confirmed that floor managers' meetings for *The Dime Roadhouse* occurred weekly but testified that, other than the notes she made before the meeting, there were no minutes of these meetings. Sometimes, she stated, there would be an agenda distributed before the meetings but she didn't have a copy of such an agenda to introduce into evidence.

The Operations Manager testified on cross-examination that attendance at the staff meetings at *The Dime Roadhouse* was mandatory, and that staff had to sign in for each meeting. However, she did not have with her copies of examples of such a sign in sheet. She testified that if a staff member did not show up to a manager or staff meeting, there was a follow up with that staff member so that the staff member was told on a one-on-one basis what went on at the staff meeting.

Signs and Stickers

The Operations Manager identified a copy of an email dated June 29, 2012 to the principals of the Controlling Shareholder (page 1-2, tab 3, Exhibit4). She confirmed that this email documented her activities on the day the email was produced and included the phrase "Sent out the sign from the BC Liquor and Liscensing (sic) for all the Gms to print, laminate and put in VISIBLE places throughout the restaurant". She confirmed that the Signs and Stickers in the pictures behind tab 5 of Exhibit 4 were pictures of copies of the sign and the stickers she sent out.

The Former General Manager identified the Signs and Stickers and confirmed that he had followed the instructions of the Operations Manager with respect to the Signs and Stickers and had placed them in visible places throughout *The Dime Roadhouse*. The General Manager confirmed that the Signs and Stickers were in place upon the commencement of her employment.

The Former Bartender identified some of the pictures of the Signs and Stickers as pictures of straw caddies and noted that the stickers on these straw caddies were in place to remind staff of *The Dime Roadhouse* to ask patrons for identification. These straw caddies were located in front of the wells on the bar of the establishment, he noted. He confirmed that one of these straw caddies was in front of the Bartender within a couple of feet from the place where Agent #33 was sitting at the bar and was served liquor by the Bartender. The Former Bartender also identified the Signs and Stickers as pictures of server stations in *The Dime Roadhouse*. He confirmed that they were positioned in a manner such that every time a server went to the server station, these stickers were visible to the server.

Both the Bartender and the Former Server confirmed that they were aware that the purpose of the Signs and Stickers was to assist servers and bartenders to determine whether or not a patron was 19 years of age or over from the birthdate on the identification presented by the patron; and to assist in determining what constituted proper identification in accordance with the provisions of the Guide.

The CCTV camera system

The Technician testified that the copies of pictures included at tab 6 of Exhibit 5 were copies of images taken by the CCTV camera system at *The Dime Roadhouse*. He arranged to have this camera system installed in early July 2012 following the First Contravention.

He confirmed that it was possible to monitor the CCTV system from the office at the back of the establishment. In addition, he noted, these cameras could be viewed remotely online by staff members by using their smart phones or computers. He stated that besides himself, the Licensee's representative, General Manager and Operations Manager had access to this CCTV system online. The Technician confirmed that by using the CCTV camera system it was possible for a person not on site at *The Dime Roadhouse* to observe whether or not a patron of the establishment had been asked for identification prior to being served liquor.

The Operations Manager and General Manager testified that, when they were not on site at *The Dime Roadhouse*, they used their smart phones to access the CCTV camera system to keep track of what was happening in the establishment in real time. The Bartender, Former Bartender, and Former Server each confirmed that they were aware that the Operations Manager and General Manager had this capability.

The Employee Contract

The Operations Manager identified the document at tab 7 of Exhibit 4 as a staff letter of acknowledgement which she had drafted (the "Employee Contract"). In 2012, she oversaw approximately 300 employees and, to the best of her knowledge, every one of these employees had signed one of these letters.

The Former Server noted that the Employee Contract stated that the employee signing the document understood that:

1. It was against the law to serve or supply liquor to a minor;
2. Before selling liquor to a patron, the employee had to do an initial assessment of that patron. She noted that this policy applied to every patron and was not restricted to patrons the employee believed might be a minor;
3. When verifying a patron's age, the employee must ask for two pieces of identification which met the criteria set out in the Employee Contract; and
4. If the patron could not produce two pieces of acceptable documentation that proves that they are 19 or older that the patron must be refused service.

She also noted that the Employee Contract had many points whereby the employees completing this document had to write their initials confirming that they had understood the contents of the Employee Contract. The Former Server confirmed that she had signed a copy of this document including the portions requiring her initials. She also noted that she had initialed the last page of the Employee Contract which confirmed that she had read the New Operations Manual as well as the Guide.

The Bartender testified that he believed that he had signed an employment contract with the Licensee, but that it was not the Employee Contract. The Former Bartender confirmed that he had signed an employment contract with the Licensee, but he could not remember if the document that he had signed was a copy of the Employee Contract or was a document produced by the Former General Manager.

On cross-examination, the Operations Manager stated that she could not be certain that the Bartender had signed a copy of the Employee Contract, although she knew that he had signed something similar. However, since she had created the Employee Contract template, she testified that she knew that every staff member of *The Dime Roadhouse* had signed one. The Licensee maintains employee files, but, she testified on cross-examination, she has never looked in the employee file for the Bartender.

The secret shopper program

The Operations Manager testified that the Licensee started the program of sending in underage customers to check with compliance for asking for identification. She stated that this program started on an informal basis, but that it has now become more formalized and that the Licensee presently has a database of people they employ as secret shoppers.

This program, she claimed, has increased the awareness of staff working for the Licensee to the extent that recently two patrons had been refused service at *The Dime Roadhouse*. She couldn't recall the program's success before December 8, 2012, as prior to this date; the secret shopper's program was just in its first phases and a little more casual. Now it is more formal.

She testified that in Spring 2013, the Former Server had failed the secret shopper surveillance in that she had asked the patron for only one piece of identification and, as a result, she was suspended for two weeks. Similarly, a general manager at one of the other restaurants she supervised failed to ask a patron for identification and, even though he had worked with the Controlling Shareholder for over seven years, he was suspended for three weeks for breaching the stated policies and procedures.

On cross-examination, when questioned about the Licensee's secret shopper program, the Former Bartender stated that he knew that the Licensee was sending in underage people to check for compliance prior to December 8, 2012, but he was never told if anyone had been refused service or had improperly been granted service.

SUBMISSIONS – BRANCH

The Branch submits that Agent #33, who was 18 years old on December 8, 2012, went into *The Dime Roadhouse* and, without asking Agent #33 for identification, the Bartender served him liquor. Agent #33 appeared to be a minor. The Former Server and the Former Bartender both agreed when examining his photograph that they would have asked Agent #33 for identification before serving him liquor.

The Branch conceded that the Bartender was not the directing mind of the Licensee.

Although it was evident that the Licensee took steps to formalize its policies and procedures and took efforts to communicate these to its staff, these steps were not sufficient to demonstrate due diligence on the Licensee's part.

The Licensee has agreed that the Former Contravention, a contravention of section 33(1)(a) of the Act, occurred on June 17, 2012, only six months prior to December 8, 2012. As this will be the second contravention of section 33(1)(a) of the Act within a 12 month period, if the contravention alleged in the NOEA is found to have occurred, Schedule 4 of the Regulation requires a suspension of between 20 and 30 days. Because of the Licensee's attempt, albeit unsuccessfully, to comply with the provisions of section 33(1)(a) of the Act, the Branch submits that a 20 day suspension is appropriate.

SUBMISSIONS – LICENSEE

After the First Contravention, eight CCTV cameras were installed by professionals at the *The Dime Roadhouse* for the purpose of viewing the activities in the establishment in real time, both in the onsite office and by the General Manager and the Operations Manager offsite on either their smart phones or computers. These cameras offered the viewer the opportunity to clearly observe whether or not a bartender at *The Dime Roadhouse* had requested identification from a patron prior to serving alcohol.

Following the First Contravention, the Former General Manager ensured that the Signage and Stickers provided to him by the Operations Manager were installed at *The Dime Roadhouse*.

As well, the Former General Manager created the Facebook page for the purpose of communicating with the staff of *The Dime Roadhouse* and included a method on it for confirming that each member of the Licensee's staff had seen a particular post. Staff went to the Facebook page regularly to check for their schedules and for any updating on or changes to the Licensee's policies. Therefore, any policies or procedures posted on this Facebook page most likely would be seen by every single staff member within a day or two.

The Former Server confirmed that she had seen the Guide and the New Operations Manual and had a copy of the New Operations Manual at her home. She had signed a copy of the Employee Contract. She stated that she would go to the Facebook page on a regular basis to get her schedules, find out about upcoming events and the Licensee's policies. She testified that she was aware of the identification policies and procedures of the Licensee and was aware of the secret shopper program instituted by the Controlling Shareholder.

The Former Server testified that there were monthly staff meetings and one-on-one reminders from floor managers that went over the Licensee's policies and procedures, including the requirement to ask for identification from anyone appearing to be under the age of 40 before serving that person liquor. These one-on-one meetings, she testified, included training by these managers on what to look for when determining whether or not to ask a patron for identification, such training corresponding directly with the provisions on this topic in the Guide.

The Bartender admitted that he knew the policies and procedures of *The Dime Roadhouse*, he remembered the Stickers and Signage about asking for identification, and there was one of these stickers within a couple of feet of where he served Agent #33 liquor. The Bartender testified that the incidence was isolated and was a "bad bounce" meaning that 99% of the time he would have asked Agent #33 for identification.

The Bartender acknowledged that an employee manual was in place when he worked at *The Dime Roadhouse* and recalled signing something similar to the Employee Contract. He acknowledged that the Licensee focused more on the requirement to ask for identification following the First Contravention. He had heard about this requirement at staff meetings together with other policies and procedures of the Licensee including the discussion of day to day operating situations. He went to six staff meetings between June and December 2012. He acknowledged being part of the staff Facebook page and seeing all the postings on this page while he was an employee of the Licensee. He had a Serving It Right certificate and passed the test for this certificate including the material on the requirement to ask for identification prior to serving liquor to a patron who might be underage. He was aware of the MAP program being carried out by the Branch, as reference to it was included in the Facebook post.

The Former Bartender was aware of the Operations Manual and pointed out three areas which directed that Licensee's staff must ask all patrons for identification before serving them liquor. He confirmed that the Stickers and Signage were in place before December 8, 2012 and that he had seen the posts on the Facebook page about the requirement for asking for identification. He recalls staff meetings where the Licensee's policies and procedures were discussed. He went to weekly floor manager meetings and he testified how, as a floor manager, he trained the staff on the requirement for and the techniques of how to ask a patron for identification. He stated that he would remind his staff that they should ask patrons at tables that looked as if they might be minors for identification. He was aware of the secret shopper program.

The General Manager testified that she had spoken to each staff member either individually or at staff meetings or on multiple Facebook postings prior to December 8, 2012 about the importance of asking patrons for identification. It was part of the Licensee's policies and procedures to do so. In addition, she had spoken about the identification requirement at her weekly manager meetings as evidenced by her notes, copies of which were placed in evidence.

The General Manager testified that Facebook Posts are the main means of communicating with staff. Staff meetings, she confirmed, were held approximately once per month and manager meetings every week with floor managers, including the Operations Manager, to deal with policies and procedures as well as events and daily issues that had occurred during the previous week. The General Manager testified that she was confident that every staff member had read and understood the Operations Manual. She would periodically monitor the CCTV cameras to check on the staff. She testified that she had trained all staff through staff meetings and one-on-one meetings. She testified that the Bartender was upset when he was caught as he knew that his employment would be terminated.

The Operations Manager had written the New Operations Manual with the assistance of the General Manager. There are three places in the New Operations Manual which include the necessity to ask for identification as part of the policies and procedures of the Licensee. The New Operations Manager confirmed that the Licensee's policy following the First Contravention was to ask all patrons for identification prior to

servicing them liquor, but this policy was changed after complaints from patrons to a policy of asking for identification from anyone who appeared to be under 40 years old.

The Operations Manager confirmed that she could see the CCTV camera images via her smart phone and that she regularly checked the cameras, even when working at home, to ensure that staff were obeying the policies and procedures of the Licensee. She confirmed that due diligence was greatly increased after the First Contravention. She noted her weekly notes, copies of which were placed in evidence, that indicated asking for identification was a priority and she had discussed this policy with members of the staff.

The Operations Manager testified that the establishments in which the Controlling Shareholder is involved employ over 300 staff members. She set up the secret shopping program in August 2012 and caught one person not asking for ID. That person was suspended for three weeks. Recently, the secret shopper program had two instances of service being refused when identification was not produced. The General Manager and the Bartender, she testified, were not directing minds of the Licensee.

Following the First Contravention, *The Dime Roadhouse* replaced the Former General Manager with the General Manager, a person who came from a larger corporate setting and was more sensitive to a more rigorous enforcement of the Licensee's policies and procedures. The establishment implemented many new systems, training structures, and a new team bringing in over 20 new and different ways in which *The Dime Roadhouse* educated their staff, including the Bartender, about the requirement to ask for identification. Examples of these included the New Operations Manual, the countless Facebook posts, the notes from the log books of the Operations Manager and the General Manager about managers' meetings, the Stickers and Signage, and the Employee Contract.

The Licensee submits that it has met the standard of due diligence required of it in that, following the First Contravention, the Licensee:

1. Updated its staff manual to the New Operations Manual;
2. Reiterated through the staff Facebook Posts the provisions on requiring identification; and
3. Held monthly staff meetings and weekly manager meetings discussing the requirement to ask for identification and education on what to look for, including discussions on facial recognition, expiry dates, birthdates, and matching signatures.

In addition, the evidence demonstrates that:

1. The Former Server confirmed this training respecting identification, that she had read the New Operations Manual and signed the Employee Contract;
2. The Former Bartender testified that he knew how to check a patron's identification and that he had trained staff in this procedure during his shift;
3. The General Manager and the Former Bartender confirmed that they would see young looking tables in the establishment and check with the staff to ensure that these patrons were asked for identification; and
4. The Bartender confirming that he had read all the Facebook Posts that reiterated some of the New Operations Manual.

The Dime Roadhouse took reasonable steps to ensure the effective application of this education and the operation of these systems through the installation of the CCTV cameras, Facebook reminders, staff meetings reminding staff, the Stickers and Signage posted throughout the establishment, including one posted within two feet of where the Bartender served Agent #33 reminding staff to ask for identification.

The evidence shows that the Bartender was informed of the MAP program ongoing, and, starting in August 2012, the Controlling Shareholder was conducting secret shopper programs. The Operations Manager and the General Manager monitored the CCTV systems installed in July 2012 following the First Contravention to ensure that the bartenders asked for identification. The Operations Manager confirmed that she did see a bartender ask for identification.

The Operations Manager went to the establishment on a regular basis to ensure that the policies and procedures were being followed.

REASONS AND DECISION

Contravention

To establish liability on the part of the Licensee for the allegation contained in the Contravention Notice, the Branch must demonstrate on a balance of probabilities that the Licensee sold, gave or otherwise supplied liquor to a minor. This requires the Branch to prove, on a balance of probabilities, that on December 8, 2012, Agent #33 was a minor and that he was sold liquor at *The Dime Roadhouse*.

I find that the evidence before me clearly shows that on December 8, 2012 Agent #33 was a minor and the Bartender did, in fact, serve liquor to Agent #33 as alleged in the Contravention Notice. Therefore, I find that the Branch has proven on a balance of probabilities that the contravention as alleged in the Contravention Notice did occur.

The Licence by its terms and conditions incorporates the provisions of the Guide. As described in detail in the Guide, the Licensee is liable for the actions of its employees. Therefore, if its employee has been found to have served liquor to a minor contrary to section 33(1)(a) of the Act, the Licensee is liable for this contravention.

Due Diligence

Even though I have found that the Branch has proven the contravention alleged in the Contravention Notice, the Licensee is entitled to a defence if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. To successfully establish such a due diligence defence, the Licensee must not only demonstrate that it has established procedures to identify and deal with ensuring that liquor is not sold to minors, it must also demonstrate that those procedures are consistently acted upon and that any problems arising are dealt with.

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

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 will depend on the evidence presented. It is to be noted that the onus is on the Licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing such adequate training and other systems and ensuring effective application of them.

Directing mind

On the evidence before me, it is clear that the Licensee's employee who sold the liquor to Agent #33 was not the directing mind of the Licensee. For onsite matters, the directing mind at *The Dime Roadhouse* is clearly the General Manager who although present at the establishment when the contravention described in the Contravention Notice occurred, did not directly participate in the contravention. Therefore, I find that the directing mind of the Licensee was not involved in the sale of liquor to Agent #33 on December 8, 2012 and move on to consider the next part of the test.

Implementation of training and systems to prevent the contravention

As noted above, the second stage of the due diligence defence as outlined in the *Beverly Corners* case involves two parts. The first part places an onus on the Licensee to demonstrate, on a balance of probabilities, the existence of adequate training and other systems to enable the Licensee to prevent the contravention from occurring.

It is clear from the evidence before me that following the First Contravention the Licensee implemented certain initiatives to ensure that an occurrence similar to the First Contravention did not again occur. These initiatives were dealt with in great detail in the Licensee's submissions, and include:

1. The creation of the Facebook page for the purpose of communicating with the staff of *The Dime Roadhouse*, including a method of determining that each staff member had seen a particular post on the Facebook page;
2. The holding of regular staff meetings;
3. The hiring of the General Manager with a mandate to create the New Operations Manual;
4. The creation and mounting of the Signage and Stickers for the purpose of reminding staff to ask for two pieces of identification prior to the service of alcohol;

5. The creation of an Employee Contract;
6. The installation of a CCTV system with online access available to both the General Manager and the Operations Manager on their smart phones or computers to enable real time viewing of events at *The Dime Roadhouse* either from the onsite office or from an offsite location; and
7. The establishment of the secret shopper program.

I find on the evidence before me that the Licensee has satisfied the onus upon it and has proven on a balance of probabilities that, following the First Contravention, the Licensee established training and monitoring systems to prevent the sale of liquor to minors sufficient to satisfy the first part of the *Beverly Corners* test.

Reasonable steps to ensure the effective application of the training and systems

The next part of the *Beverly Corners* test is whether or not the Licensee took reasonable steps to ensure the effective application of its training programs and systems to prevent the sale of liquor to minors.

The Staff Facebook Page

Following the First Contravention, it appears that the major tool employed by the Licensee to ensure that its staff training was being effectively carried out by its staff was the employee Facebook page for *The Dime Roadhouse* staff established by the Former General Manager.

It is the submission of the Licensee that the feature of the staff Facebook page that inserts a box containing a check mark followed by the phrase "Seen by everyone" for each of the Facebook Posts means that every member of the Licensee's staff have seen this post. Therefore, when it posts a policy or procedure on this Facebook page and the check mark is indicated for this particular posting, the Licensee submits that every member of the staff has seen this post within 24 to 48 hours of the posting.

I acknowledge that the system put in place by the Licensee ensures that every member of its staff has opened a particular post on the staff Facebook page. However, I am not convinced from the evidence before me that this method deployed by the Licensee ensures that each member of the Licensee's staff has actually read and understood each of these posts. Or, more importantly, if such staff member has read and understood the contents of this post, that this staff member incorporates its contents into his or her working practice.

For example, there appears to be confusion about the Licensee's policy on December 8, 2012 when it came to asking for identification prior to serving liquor to a patron who might be a minor. The Bartender testified that it was the Licensee's policy that every patron was to be asked for identification prior to serving liquor. The Former Server testified that on this date the Licensee's policy was that every patron who appeared to be under the age of 40 was to be asked for two pieces of identification. While the Former Bartender appeared to believe that it was the Licensee's policy that this age limit was the age of 30.

Staff Meetings

All of the Licensee's witnesses before me, other than the Technician, confirmed that meetings of floor managers and staff members were held on a regular basis and that at these meetings operational issues involving *The Dime Roadhouse* were discussed. Unfortunately, other than the Operations Managers' Notes and the General Managers' notes made prior to these meetings as *aide memoirs* for the forthcoming meeting, the Licensee offered no evidence in the form of agendas or minutes that such meetings dealt with matters to ensure that floor managers and staff were fully aware of the contents of the New Operations Manual or to reinforce the Licensee's policies contained in the New Operations Manual with respect to the serving of liquor.

The Operations Manager testified that attendance was mandatory at all staff meetings. However, in his testimony, the Bartender acknowledged that due to the time commitments of his other career while he was employed by the Licensee, he was not a regular attender at staff meetings. He testified that he would find out what was discussed at a meeting that he had missed on an informal basis upon his return from an

out of town trip. There appeared to be no formal follow up by the Licensee to ensure that the Bartender received, understood, and implemented any policies, procedures or directives discussed and introduced at these meetings.

In addition, although claiming that members of the Licensee's staff had to sign in for each staff meeting they attended, the Operations Manager did not produce copies of or examples of such sign in sheets.

The New Operations Manual

The evidence before me given by the Operations Manager and the General Manager is that all members of the staff had received a copy of the New Operations Manual together with a copy of the Guide and had confirmed that they had read both of these documents. However, in his testimony, although recalling that he had been supplied a copy of the Guide and an operations manual by the Licensee during the course of his employment, the Bartender did not believe that it was the New Operations Manual that he had been provided.

In addition, I note that when following objections from regular patrons who were clearly not minors to being asked for identification, the Licensee changed its policy from one asking for identification from *every* patron who came into *The Dime Roadhouse* and ordered liquor (regardless of the patron's apparent age) to a policy requiring staff to ask for identification from any patron ordering liquor who appeared to be under the age of 40. This change was not incorporated into the New Operations Manual within a reasonable time period. If the Licensee was indeed relying on the New Operations Manual to ensure that its policies were being implemented by its staff, one would have thought that this change to the New Operations Manual would have been made currently with the implementation of the new policy rather than relying on word of mouth communication.

Similarly, if the Licensee is relying on the New Operations Manual as one of its main tools to ensure that its employees fully understand its policies and how they are to be implemented, it might be expected that the Licensee was able to provide examples of written tests completed by these employees rather than relying strictly on verbal quizzes.

Signage and Stickers

In its evidence, the Licensee made much of the fact that the Signage and Stickers had been placed throughout *The Dime Roadhouse* to encourage the Licensee's staff to comply with its policy of asking for two pieces of identification from patrons before serving them liquor. Indeed, it was noted, one of these stickers was affixed to the straw caddy immediately adjacent to the place where Agent #33 sat at the bar and was served liquor by the Bartender. One would have thought that if the posting of the Signage and Stickers had been an effective reinforcement of the Licensee's policy, it might have caused the Bartender to have paused and thought to ask Agent #33 for identification prior to taking his liquor order.

The Employee Contract

Although the Employee Contract is rather complete on its face, especially when dealing with the obligation upon the employee to comply with the liquor laws, the evidence of both the Bartender and the Former Bartender is to the effect that, although they had entered into an employment agreement with the Licensee, it was not the Employee Contract.

This oversight suggests an inconsistency in the Licensee's approach to implementing the systems and procedures that it established to ensure the effectiveness of the communication of its policies and procedures and their implementation by its staff. If the Licensee was relying upon the Employment Contract as an effective method of ensuring that an employee was aware of and understood its policies and procedures, one would have thought that it would have ensured that *all* its employees had read, signed and understood the Employment Contract and each of its terms.

The CCTV Camera System

In its submissions, much was made by the Licensee of the installation of this system and its introduction enabling the real time viewing of how operations were being carried out at *The Dime Roadhouse*. Such might be the case, but this camera system appears to serve more as a deterrent to ensure compliance by the Licensee's staff with its policies and procedures. It is not an educational or communications tool for the Licensee's staff to assist them in understanding and incorporating the Licensee's policies into their employment activities.

The Secret Shopper Program

From the evidence before me it appears the secret shopper program implemented by the Licensee and the Controlling Shareholder was proving effective in detecting instances of non-compliance with the Licensee's policies. However, in her testimony the Operations Manager confirmed that on December 8, 2012, this program was in its first phases and was done on a more casual basis greatly reducing its effectiveness.

Conclusion

Although I have found that following the First Contravention the Licensee established training and monitoring systems to prevent the sale of liquor to minors sufficient to satisfy the first part of the *Beverly Corners* test, I find that the Licensee has not satisfied the onus on it to prove on a balance of probabilities that it has taken reasonable steps to ensure the effective application of these training and monitoring systems.

The two part test in *Beverly Corners* reflects the fact that it is not sufficient for a licensee merely to establish training systems to train staff on the licensee's compliance policies which require its staff to comply with the provisions of the Act, the Regulation, the Guide and its licence. The licensee must, as well, through the effective delivery of the training incorporated into these training systems create in its staff an ongoing culture of compliance. This culture of compliance is one whereby a staff member understands the reasoning behind a prohibition against the sale of liquor to minors and in his or her employment activities works to enforce this prohibition; not from a fear of getting

caught and fired, but because the staff member takes a pride in being an active participant in a compliance culture.

This culture of compliance does not mean that mistakes will not happen. Even the best trained employee operating in a culture of compliance will make mistakes. The due diligence defence accounts for these mistakes and relieves the licensee of liability when such mistakes occurred. But first there must exist the training and monitoring systems which are effected by the licensee in a continuous manners so that a culture of compliance exists in its establishment.

I find that as of December 8, 2012 the Licensee had not created the necessary culture of compliance and has, therefore, failed to meet the second part of the test in *Beverly Corners*. Therefore, the defence of due diligence is not available to it.

Age assessment

In its submissions, the Branch referred to the decision of the Supreme Court of British Columbia in *Sandman Hotel Langley Inc. v. General Manager of the Liquor Control and Licensing Branch* 2006 BCSC 417 where at page 9 of his decision, Silverman J. observed:

I agree with the Licensee that assessing age is a purely subjective exercise and impossible to determine with a consistent degree of success. However, that does not afford a defence to the Licensee, and certainly is not suggestive of any due diligence. To the contrary, the predictable difficulties in assessing age can be overcome with only one course of action – extreme caution in every instance. It is an insufficient exercise of due diligence to ask oneself if a person appears over or under the age of 25. Rather, the exercise requires that, in the absence of something approaching absolute certainty as to a person's age, identification should be asked for in every single case.

Although, since the date of this court decision a particular age limit for asking for identification is no longer mandated, the learned judge's cautionary words still resonate. The Licensee's policy to ask every patron for identification was probably heading in the right direction. However, by changing its policy to asking anyone who appears to be under the age of 40 for identification prior to serving them liquor, the Licensee assumes the risk referred to in the court decision.

I note from the evidence before me that about 15 seconds elapsed between the time that Agent #33 sat down at the bar and he was served alcohol by the Bartender. Assessing age is a purely subjective exercise and is very difficult to determine with a consistent degree of success. Relying on a quick multi-second interaction with a customer is not exercising reasonable care and is assuming the risk referred to above in the *Sandman Hotel* case. If the training offered and reinforced by the Licensee had been effective to create a culture of compliance, it is highly probable that the Bartender would have exercised reasonable care, not have assumed this risk, and asked Agent #33 for his identification.

As I have found that the Licensee has not demonstrated a due diligence defence, I find that on December 8, 2012, the Licensee contravened section 33(1) (a) of the Act and the terms and conditions of the Licence by selling, giving or otherwise supplying liquor to a minor.

PENALTY

Pursuant to section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation and/or the terms and conditions of the Licence, I may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the Licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the Licensee
- Suspend all or any part of the Licence
- Cancel all or any part of the Licence
- Order the Licensee to transfer the Licence

I am not bound to order the penalty proposed in the NOEA. However, if I find that a licence suspension is warranted, I am bound to follow the minimums set out in Schedule 4 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.

The factors that I have considered in determining the appropriate penalty in this case include: whether there is a proven compliance history; a past history of warnings by the branch and/or the police; the seriousness of the contravention; the threat to the public safety; and the well-being of the community.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. The Branch's primary goal in bringing enforcement action and imposing penalties is to achieve this compliance. In addition, enforcement action is intended to both redress the licensee's non-compliance, and to encourage future compliance by way of deterrence.

By virtue of the Waiver Notice the Licensee has admitted to the First Contravention which is a proven contravention for the Licensee at *The Dime Roadhouse* of the same type of contravention as set out in the Contravention Notice within the preceding 12 months of this incident. Therefore, I find this to be a second contravention for the purposes of Schedule 4 and calculating a penalty. Item 2 in Schedule 4 provides a range of a 20-30 day licence suspension for a second contravention of this type.

Due to a concern that minors are being permitted to purchase liquor in licensed establishments, the Branch has instituted and is carrying out MAP. Concurrently with the introduction of and the operation of MAP, the Branch has taken measures to advise licensees of the seriousness of serving liquor to minors and to ensure that licensees are fully aware of their responsibilities and of the consequences if they do not meet these responsibilities. Despite these initiatives of the Branch, and despite the Licensee's expressed concern to ensure that it meets its responsibilities and does not supply liquor to minors, we have this situation where liquor has been supplied to a minor without the minor being asked for identification.

It is clear that supplying liquor to minors is a serious contravention giving rise to significant public safety concerns. Early learned behaviour with respect to abuse of alcohol and less effective metabolism of alcohol by minors has proven to be a factor in crimes committed by minors, including assault and driving offences.

The Branch has recommended a penalty of a 20 day suspension. This is the minimum penalty mandated by the Regulation for a second contravention of this nature. In light of the Licensee's attempt to improve its training and systems following the First Contravention, I find that a minimum penalty is appropriate.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of Food Primary Licence Number 072390 for a period of 20 days to commence at the close of business on Friday, February 28, 2014 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the Licence be held by the branch or the police from the close of business on Friday, February 28, 2014 until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Branch inspector or a police officer.

Original signed by

R. John Rogers
General Manager's Delegate

Date: January 21, 2014

cc: Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Peter Mior, Branch Advocate