



**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:	City of Langford dba Langford Lanes 1089 Langford Parkway Langford, B.C. V9B 0A5
Case:	EH13-113
For the Licensee:	Rick Erdman
For the Branch:	Hugh Trenchard
General Manager's Delegate:	Daniel M. Graham
Date of Hearing:	April 23 & 24, 2014
Date of Decision:	June 11, 2014

**Liquor Control and
Licensing Branch**

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

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC
<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

The City of Langford (the "Licensee") operates Langford Lanes (the "Establishment") through a third party operator (Langford Bowling and Entertainment Ltd. (the "Company")) under Liquor Primary Licence 302262 (the "Licence"). The Establishment is located at 1089 Langford Parkway, Langford, BC.

The Licence specifies hours of liquor service daily, seven days a week, from 9:00 a.m. to 2:00 a.m. The Licence is, as are all liquor licences in the province, subject to the terms and conditions contained in the publication Guide for Liquor Licensees in British Columbia (the "Guide").

Mr. Rick Erdman, a consultant for the Company (the "Consultant"), represented the Licensee for the purposes of this hearing.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in a Notice of Enforcement Action dated September 12, 2013 (the "NOEA"). The Branch alleges that on Thursday, May 9, 2013 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.

The proposed sanction is a \$7,500 monetary penalty. This proposed monetary penalty falls within the penalty range set out in item 2, schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation"). The range of penalties for a first contravention of this type is a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

The Licensee admits the *actus reus* of the contravention, but seeks to establish the defence of due diligence.

For the purposes of this hearing, and in accordance with section 3 of the Regulation, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by section 20 of the Act and sections 65-69 of the Regulation.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267***

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: The Branch's Book of Documents, tabs 1 to 15 inclusive.
- Exhibit 2: Photograph and identification of the Branch's minor agent (the "Minor Agent"), a sealed exhibit only to be opened by the adjudicator or court.
- Exhibit 3: The Licensee's Book of Documents, tabs 1 to 12 inclusive.
- Exhibit 4: A letter from the Licensee's Manager of Parks and Recreation, dated April 17, 2014.
- Exhibit 5: A letter from the Licensee's City Administrator, dated April 17, 2014.

Exhibit 6: A Banquet Sheet from the Establishment, under a covering e-mail dated August 9, 2013.

Exhibit 7: Licensee's booklet of photographs, containing 12 photos.

EVIDENCE – BRANCH

The Branch called two witnesses: the regional liquor inspector ("Inspector A"), and a second liquor inspector ("Inspector B").

Inspector A

Inspector A testified that he had been an inspector in British Columbia for five years and in another province for three years before that. He said that he has conducted approximately 1,500 inspections. He stated that the main purpose of liquor inspections is to enhance public safety.

Inspector A testified that the Licence (tab 3, Exhibit 1) and the Guide (tab 5, Exhibit 1) were in effect on May 9, 2013.

The Minors as Agents Program ("MAP")

Inspector A testified that the MAP was implemented in 2011, after the Act was amended to allow the Branch to employ minors as agents for the purpose of testing compliance with the prohibition against selling liquor to minors. He explained that Licensees were notified of the MAP by way of an article in the Branch's newsletter Liquor Line in March 2011 (tab 13, Exhibit 1), followed up with a letter sent to all licensees from the General Manager in October, 2012 (tab 12, Exhibit 1). Under the MAP, the Branch has hired 16 to 18 year-old minor agents to carry out compliance inspections.

Inspection of the Establishment

Inspector A testified that on Thursday, May 9, 2013 he and another inspector ("Inspector B") were conducting MAP compliance inspections with a third liquor inspector ("Inspector C") and a minor agent ("Agent 49"). He stated that at the start of the shift, Agent 49 was photographed, and her identification was checked and photocopied to confirm that Agent 49 was under 19 years of age.

The Branch submitted a copy of Agent 49's photo and her identification. I placed these items in an envelope and marked it as Exhibit 2, with a notation that it is not to be opened unless required by law. Redacted copies are located at tabs 9 and 10 of Exhibit 1. Exhibit 2 has been sealed to protect the identity of Agent 49. At the hearing, the Branch provided the Licensee with an opportunity to view the photo of Agent 49 and her identification with birth date.

Inspector A testified that, at about 7:25 p.m. the inspection team drove into the parking lot of the Establishment. He said that he, Inspector B, and Agent 49 entered the Establishment at 7:29 p.m. while the Inspector C stayed in the Branch vehicle. The lone server (the "Server") prompted Agent 49 to be seated at the bar, while Inspectors A and B stood at the bar about eight feet away.

Inspector A referred to the approved floor plan of the Establishment (tab 4, Exhibit 1) to indicate where they had entered and the locations where they stood at the bar in the lounge area, referenced on the floor plan as "Person 02". The lounge area is a portion of the red-lined area in the Establishment, and is known as the Galloping Goose Grille. There were perhaps two other patrons.

Inspector A testified further that:

- The Server offered Agent 49 a menu, from which Agent 49 ordered a Smirnoff Ice. The Server asked whether Agent 49 would like it served with a glass of ice which Agent 49 declined. The Server delivered a bottle of Smirnoff Ice and put it down in front of Agent 49, who paid for the drink and received a receipt. At

no time did the Server request identification from Agent 49. Inspectors A and B had an unobstructed view of the transaction.

- Inspector B took Agent 49 out to the Branch vehicle while Inspector A photographed the Smirnoff Ice and the receipt (tab 11, Exhibit 1).
- Inspector A met with the Establishment's shift manager and advised her of the inspection. Inspector B returned to the lounge and issued a contravention notice (the "CN") (tab 2, Exhibit 1) to the shift manager alleging a contravention of section 33(1)(a) of the Act. Both inspectors left the Establishment about 7:41 p.m.
- After returning to the Branch vehicle, Agent 49 completed a Minor Agent Statement (tab 7, Exhibit 1) and a Minor Agent Observation Form (tab 8, Exhibit 1).
- Shortly after the inspection, Inspector A prepared his notes (tab 6, Exhibit 1).
- Some months afterwards Inspector A prepared the NOEA (tab 1, Exhibit 1). He decided to take enforcement action because serving alcohol to minors is a serious public safety issue. He explained that the proposed penalty falls within the range set out in schedule 4 of the Regulation, and that it is appropriate to ensure the Licensee's compliance in the future.

Cross-examination of Inspector A

In response to questions from the Consultant, Inspector A stated that:

- He was not aware of any particular rationale for having selected the Establishment for inspection. Inspector C was the local inspector and it was she who prepared the list of establishments to be inspected.
- He had never caught any minors outside of the MAP program himself, but he had drafted Notices of Enforcement Action in circumstances where the RCMP had discovered minors in licensed establishments.
- At the time of the subject inspection, he had been unaware of the terms and conditions of the Licence, and in particular had not been aware that the Licence provides that minors are permitted in the Establishment's licensed lounge area until 10:00 p.m. when the Establishment is being used for recreation purposes on a day to day basis.

- The inspection took about 12 minutes from the time the inspectors entered until the time Inspectors A and B left.
- He did not recall seeing any signs posted in the Establishment with respect to checking for ID, and did not recall making any other observations related to due diligence.

Inspector B

Inspector B testified that he has been a liquor inspector for over 4 years, and during that time has conducted 2-3,000 liquor inspections, including over 1,000 inspections of liquor primary establishments. He is based in another part of the province and the Establishment is not within the geographic area for which he is responsible.

Inspector B testified that:

- On the night of May 9, 2013, he was conducting MAP inspections with Inspectors A and C, and Agent 49. Prior to starting the inspections Agent 49 was photographed (tab 10, Exhibit 1) and her identification documents were photocopied (tab 9, Exhibit 1). The identification documents showed Agent 49 was 17 years old at the time of the subject inspection, turning 18.
- Inspector C stayed in the Branch vehicle during the inspection so as not to compromise its covert nature.
- He didn't recall there being any other patrons in the lounge area of the Establishment during the subject inspection.
- He and Inspector A were about 8 to 10 feet away from Agent 49 and had a clear view of the transaction when the Server delivered a Smirnoff Ice to Agent 49.
- He took Agent 49 back out to the vehicle to complete the Minor Agent Statement (tab 7, Exhibit 1) and Minor Agent Observation Form (tab 8, Exhibit 1). Inspector B returned to the Establishment and served the CN (tab 2, Exhibit 1).
- He prepared his inspection notes on his iPhone at the time of the inspection (tab 6, Exhibit 1).

Cross examination of Inspector B

In response to questions from the Consultant, Inspector B stated that:

- He was not aware of any minors having been caught outside of the MAP program, but the Branch does inspect for minors outside of MAP.
- He could not recall seeing any signs posted in the Establishment with respect to the production of ID.
- He did not know why Agent 49 did not complete the box on the Minor Agent Observation Form with respect to whether 2 pieces of ID were requested. He said that Inspector C would usually have checked the form.
- He was not aware of any specific reason for the Establishment to have been selected for a MAP inspection on May 9, 2013.
- He did not recall seeing any other young looking people in the Establishment that evening and he saw nothing else untoward.
- He did not recall there being any other Licensee staff in the room at the time the Server gave Agent 49 a menu.

EVIDENCE – LICENSEE

The Licensee called 4 witnesses: 1) a director of the Company (the “Director”); 2) the Beverage Manager/Supervisor of the Establishment (the “Supervisor”); 3) the Server; and 4) the President/majority shareholder of the Company (the “President”).

The Director

The Director testified that he is the director of the Company and he was the Company representative who negotiated the operating agreement for the Establishment with the Licensee. He said that he had owned and operated another bowling alley and licensed establishment on the Lower Mainland for many years and had no problems there with the Branch. The CN is the first the Company has ever had for service to a minor.

The Director testified that he lives on the Lower Mainland and he comes over to the Establishment every two or three months. The Director said that he communicates regularly with the City Administrator by e-mail and keeps the Licensee well informed about operations at the Establishment.

The Director said that he was advised immediately after service of the CN, and that he contacted the Licensee that night to advise it of the alleged contravention. He pointed to letters from the Licensee's Manager of Parks and Recreation (Exhibit 4) and the City Administrator (Exhibit 5) as confirmation that the Manager of Parks and Recreation regularly inspects the Establishment, and that the Licensee is very satisfied with the Company's management of the Establishment. He stated that he has never been approached by the Manager of Parks and Recreation with any concerns about serving minors, and that the Company's relationship with the Licensee is not in danger of termination as a result of this contravention.

The Director referenced a number of the exhibits and explained them as follows:

- The Banquet Sheet and covering e-mail (Exhibit 6) demonstrate that each party who hosts an event at the Establishment is advised in writing that "Our policy for serving alcohol is for patrons to provide 2 pieces of ID at the time of placing an order for alcoholic beverages. You must be at least 19 years of age to purchase alcohol in BC...We reserve the right...to deal with ...underaged patrons to the fullest extent."
- The photos in Exhibit 7 demonstrate that the Company has numerous signs posted in the Establishment specifying that 2 pieces of ID are required and that staff and patrons can be fined for (among other things) minors possessing, purchasing or consuming liquor. The Director testified that to the best of his knowledge the photos were posted in the Establishment on the night of the contravention and they are still posted.
- The endorsements for minors in the Licence (tab 2, Exhibit 1) are the same as the ones in the Director's former establishment on the Lower Mainland. He said these endorsements allow minors anywhere within the floor plan.

- The Establishment's Guidelines for Responsible Beverage Service (the "Guideline") (tab 4, Exhibit 3) provides direction to staff including the following:

"Ensure you ask for 2 pieces of ID for all individuals ordering alcohol who appear to be 30 years of age or under (remember, a lot of people look older than they really are!)

- First piece must be government issued photo identification
 - Second piece must have the person's name and signature or picture.
 - Ensure you are matching the person in front of you with the person in the picture
 - Make sure you check the ID for signs it has been altered (raised photo edges or writing, peeling laminated edges etc)
 - Ask for verification (ask for signature, zodiac sign, address etc)
 - Watch and pay special attention to groups with minors in them to ensure they are not served by us, or not given alcohol by an individual of age in their group."
- Each new employee is required to sign a copy of the Guideline acknowledging that he/she has read and understands it. Tab 4, Exhibit 3 contains a copy of the Guideline signed by the Server.
 - He does not recall ever receiving the October 2012 notification about the MAP (tab 12, Exhibit 1).
 - He may have read the March 2011 Liquor Line but can't recall the details.
 - The Establishment's Employment Manual (the "Manual") (tab 1, Exhibit 3) is used by the President and the Company management team to train staff. All employees are given a copy and are required to sign that they have read and understood the Manual.
 - Each new employee is subject to a 90 day probationary period with evaluations at 30, 60 and 90 days (tab 3, Exhibit 3).
 - Each new employee is given training with respect to the Guidelines and the Manual and is required to sign a Common Policy & Procedure Overview (tab 5, Exhibit 3) to acknowledge this.

- The House Rules for Responsible Beverage Service (the “House Rules”) (tab 6, Exhibit 3) provide, among other things, that “No one under the age of 19 years will be served alcohol”, “Ask for 2 pieces of ID for anyone who looks under the age of 25”, and “Check to make sure ID matches the person in front of you and that it has not been altered.”
- Each employee is required to sign and date a copy of the Non Negotiable Rules document (tab 7, Exhibit 3) which specifies, among other things, that “Violation of liquor laws is not permitted” and “this list is not inclusive, please refer to our House Policies for Responsible Beverage Service...”
- Managers prepare Pre-Shift Notes (examples at tab 8, Exhibit 3) which are posted prior to each shift and staff are instructed to read them. Verbal instructions to staff are also frequently used.
- Staff are given written notice of any new procedures being implemented in the form of a Responsible Service Initiative (“RSI”) and are required to sign that they have read same. Signed examples related to procedures for putting a stamp mark on the hand of anyone appearing to be under the age of 30, and detailed instructions for checking ID are included at tab 9, Exhibit 3.
- Staff are given notice and reminders of various issues by means of Memos which are posted in the administration area and staff are required to sign each new Memo at the beginning of the shift. Examples are included at tab 11, Exhibit 3.
- The Server was disciplined for her failure to follow policy by not asking for ID. She was given a written counselling and a final warning (tab 10, Exhibit 3).

The Director testified that the Establishment’s first line of defence is the front desk where staff are trained to refuse entry if there is a problem. They are not bouncers who physically eject patrons. They are trained to contact management or security staff if patrons cause a problem. He said patrons are asked for ID before they come in. The front desk is staffed only on Fridays and Saturdays.

Cross-examination of the Director

In response to questions from the Branch advocate, the Director stated that:

- The Company's corporate culture with respect to responsible beverage service is based in part on the loss of a family member to a drunk driving incident some years ago. He said it is not just lip service.
- Staff are trained to contact a manager if they are not comfortable with confronting a particular patron. He denied a suggestion that some staff may be afraid to ask for ID, stating that security is present on weekends and that management is always present.
- The Pre-Shift Notes started out as a daily requirement but are now used only on an "as needed" basis.
- There is nothing in the Company policy or manuals specifically dealing with how to estimate the age of a person. It is left up to the servers as being "common sense," and staff are closely observed by managers to ensure they are exercising "common sense."
- The differences in direction to check ID of persons under 30 in the Guideline and under 25 in the House Rules is not confusing. It is intended to help staff.
- There is nothing in the training materials with respect to the risks and dangers inherent in the consumption of alcohol by minors.
- After the alleged contravention meetings were held with all staff to advise them of the incident and to re-emphasize their training with respect to asking for ID. Before the incident, staff meetings were held on a regular basis.

Redirect of the Director

In response to questions from the Consultant, the Director testified that daily management of the Establishment is left up to the President and his management team and that many of the Director's responses under cross-examination reflect his personal expectations rather than personal knowledge of the management team's practices.

The Supervisor

The Supervisor testified that she has 25 years' experience in the alcohol service industry and is responsible for hiring, training, shift scheduling, and ordering liquor for the Company. She said that she is responsible for supervising the servers throughout the entire red-lined area in the Establishment.

Asked to describe the training that staff receive with respect to minors, the Supervisor stated that all servers are required to have a Serving It Right certificate. They are also taught to look for style of dress, patrons who are quiet or are not comfortable in looking at the server. Staff are taught to request ID from anyone who looks under age 30. She said that new staff are observed closely during their probationary period, but are also routinely observed thereafter. The Supervisor said that she will usually consult with the President or his wife (who is also part of the management team) before firing someone.

The Supervisor testified that a copy of the Licence is posted on the bar and at the VIP bar, and she is aware of the provisions for minors.

In describing the hiring process, the Supervisor said that she goes over the Company's policy documents with staff and has them sign. They are advised that the Company is serious about ID checks, the Establishment is a family environment, and servers are not there to push alcohol. New servers are assigned to shadow an experienced staff member for two weeks if they haven't served before. If deemed ready for added responsibility after two weeks new servers are assigned a small section, while still remaining under the close supervision of a team leader. New staff are advised that they are under probation for three months.

With respect to the Server, the Supervisor testified that:

- She believes the Server signed a copy of the Employment Manual (tab 1, Exhibit 3) as it is Company policy to do so.
- The Supervisor goes over the House Rules (tab 6, Exhibit 3) with new staff and makes a copy of their Serving It Right certificate. The Server was trained in accordance with Company standards.

- New employees sign an employment contract (tab 3, Exhibit 3). The contract signed by the Server is at tab 4, Exhibit 3.
- The Supervisor goes over the Guideline with each new hire. The Server signed this document (tab 4, Exhibit 3).
- The Server's resume shows that she had experience in beverage service as well as her Serving It Right and Foodsafe certificates prior to being hired by the Company on May 17, 2012 (tab 4, Exhibit3).
- The Server has worked under the Supervisor since she was hired and has proven herself to be reliable, hardworking, attentive, and good with customers. The Server has been used to train other servers, and the Supervisor has never seen her fail to ask for ID. The contravention was out of character for her.

The Supervisor went on to testify that the first House Rule is to ask for 2 pieces of ID from anyone who appears to be under the age of 25. However, the Supervisor said that she tells her staff verbally that they must check anyone who looks under 30. She does not feel this confuses her staff and she has never had a complaint about it from staff. She said that staff are trained as to what kinds of ID are acceptable: primary government-issued ID such as drivers licence, social insurance card, passports, BCID; and, secondary ID such as a national defence card.

The Supervisor stated that the President attends all management meetings and gives direction to managers/supervisors. There is good communication at the management level. In her opinion the Establishment is well run and staff turnover is small. She said that she often sees and speaks with the Manager of Parks and Recreation in the Establishment and that he has not ever complained to her about the operation.

The Supervisor was not working on the night of the contravention but agreed that the disciplinary action was appropriate in that the Server is one of their best staff and this incident was out of character for her.

Cross-examination of the Supervisor

In response to questions from the Branch advocate, the Supervisor stated that:

- She had started working at the Establishment in October, 2011.
- She doesn't use the Pre-Shift Notes anymore (tab 8, Exhibit 3), as it is more effective to speak to staff personally at the beginning of each shift.
- The written training materials don't contain information about how to recognize if a person is under age 30, but the Supervisor stresses it verbally "all the time".
- All staff are trained to talk to a supervisor or manager if a situation makes them uncomfortable.

The Server

The Server testified that she had experience serving alcoholic beverages before she was hired by the Establishment. She said that she had been trained by her previous employers, and that her training at the Establishment involved going over all the written guidelines. She said that she had read and signed all relevant training documents. She said that her training also involved time spent shadowing the Supervisor and then a couple of other servers. She was given her own section when the Supervisor believed she was competent.

The Server said that signage about ID checking is posted throughout the red-lined area of the Establishment. She said that she is entirely confident in asking patrons for ID, and said that she has had occasion to refuse service because of an ID problem but that it doesn't happen often. She confirmed that she has been trained to find a manager or supervisor if a problem arises that she can't handle herself.

The Server testified that the Company changed to requiring ID for anyone appearing under 30 prior to the contravention occurring. She said that the Supervisor keeps telling staff about the policy. She said that there is no confusion in her mind about whether the policy is to check at age 30 or age 25.

The Server testified that, on the night of the contravention, the Establishment was busy and she was alone to tend bar and serve in both red-lined areas (the lanes and the lounge) because the other staff member phoned in that she was going to be late getting to work. She thought there were 5 to 10 patrons in the lounge area. She stated that she had thought Agent 49 was over 19 but admitted that her failure to ask for ID was contrary to her training and to Company policy.

The Server said that within a half hour to an hour after the contravention, a manager asked her to document what had happened (tab 10, Exhibit 3). She also filled out an incident report form (tab 10, Exhibit 3) on her own initiative without being prompted by the manager since that had been part of her training (tab 10, Exhibit 3).

The Server testified that she has no role in the development of Company policy.

Cross-examination of the Server

In response to questions from the Branch advocate, the Server testified that:

- She would have been more likely to ID Agent 49 if she'd come in with a group of young people. The fact that Agent 49 sat by herself factored into her belief that the agent was older.
- The Server had never been shown training videos and had never been given a practical or written test by the Establishment with respect to assessing age. She had 90-day and one year performance evaluations.
- She was not aware of the incident that the Director had described as forming the basis for a corporate culture about responsible beverage service.
- She was aware of the terms and conditions of the Licence with respect to minors being present in the Establishment, but not being allowed in the lounge after 10:00 p.m. as it was covered in training. It meant staff had to be more diligent regarding ID checks.
- Staff meetings are scheduled in advance and are held every one to two months. Attendance is mandatory. At staff meetings new policies are discussed and existing policies such as the House Rules are gone over.

- She was not told about the MAP and was unaware of it.
- She doesn't know when the photos of the signs regarding ID checks were taken (Exhibit 7), but the signs were all in place at the time of the contravention.

In response to a question as to whether she was aware of the harms that could result from service of alcohol to minors, the Server said that it was illegal and that fines could be levied.

The President

The President testified that he is the directing mind of the Company, responsible for policy development. He is also leader of the management team responsible for operations. Prior to taking on this role in February 2012 he'd had 10 years training by his sister and had worked in the restaurant and hotel industries, as well as at the family's Lower Mainland bowling lane business.

The President stated that he has the family's situation in his mind every day, and that the Company sponsors dry grads and endowment funds.

He testified that staff meetings are held at least monthly – sometimes every two weeks – and that managers and staff are required to attend. He said that since the contravention, he has implemented new procedures to create a better record of staff training so that the Company has a better system of recording and tracking.

Cross-examination of the President

In response to questions from the Branch advocate, the President testified that:

- The Server was busy at the time of the contravention because one staff member failed to show up. Typically there are always two staff on weekdays. It's not typical for staff to fail to show up, but if it happens staff usually respond as a team and managers/supervisors step in to help.

- Much of the documentation related to staff meetings has not been located and may have been thrown out by a member of staff who is no longer with the Company.
- He was not aware of the MAP. Communications such as the Liquor Line typically go to City Hall rather than to the Establishment despite the address on the License.
- The President has a heightened awareness of the importance of documentation since the contravention and is taking steps to ensure that records are created and retained with respect to employee training and staff meetings.
- He is confident the Company trains its staff very well.

SUBMISSIONS – BRANCH

The Branch advocate submitted that the Licensee had admitted that the contravention occurred, and that the elements of the contravention had been established.

Regarding the defence of due diligence, the Branch argued that:

- The Licensee's policies are inconsistent with respect to the age servers must consider when asking patrons for identification. This confusion indicates that the policy itself was not clearly established at the corporate/management level.
- The evidence indicates that the Server's training was insufficient with respect to how to assess group dynamics, that is, how and when to ask for ID in circumstances other than when groups of young people arrive.
- The Server's evidence with respect to the Establishment being busy is suspect because her recollection of the number of patrons differs from that of Inspectors A and B who are trained to observe and recall their surroundings. If the Establishment was not busy, it is more likely that the Server's failure to ask for ID was related to inadequate training.
- The evidence indicates that the Company did not have clear policy in place with respect to how to react to circumstances where a staff member fails to show up for work.

- The evidence indicates that staff did not have a significant appreciation of the underlying societal and moral concerns with serving a minor.
- The lack of some policy documents and inconsistency in dating of others makes the evidence that these documents were in fact prepared, read, understood, and signed by staff unreliable.
- There is weak evidence of a system of monitoring the practices and progress of staff. There is no documentary evidence that staff meetings occurred, or of the extent to which issues or incidents were discussed or addressed. The evidence is insufficient to show that, prior to the contravention, the Licensee created a system to adjust or correct employee errors as they arose.

SUBMISSIONS – LICENSEE

The Consultant, on behalf of the Licensee, admitted that the *actus reus* of the contravention occurred.

With respect to due diligence, while admitting to deficiencies in its record-keeping, the Licensee submits that the evidence of policies, procedures, training, and implementation establish a defence of due diligence.

The Licensee referred to a number of previous decisions of the General Manager regarding service to a minor. It also referred to the judgment in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)* 2012 BCSC 1851.

Finally, the Licensee submitted that the Company's policies and procedures are consistent with standards in the hospitality industry. They are monitored, enforced and changed as required and, accordingly, the Licensee should not be held responsible for the momentary lapse by one of the Company's employees.

REASONS AND DECISION

Contravention

The Licensee admits that alcohol was served to a minor.

Based on the evidence of Agent 49's identification tendered in Exhibit 2, I find as a fact that Agent 49 was a minor on May 9, 2013.

The evidence and the submissions filed in these proceedings demonstrate on the balance of probabilities that, with reference to section 33(1)(a) of the Act:

- A person (the Licensee, acting through an employee of its third party operator the Company)
- sold liquor (a bottle of Smirnoff Ice)
- to a minor (Agent 49).

Accordingly, I find that on May 9, 2013 the Licensee contravened section 33(1)(a) of the Act by selling, giving or otherwise supplying liquor to a minor.

Due Diligence

The Licensee is entitled to a defence if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The Licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems 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:

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 Act.

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. The onus is on a Licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

Analysis

The evidence indicates that the Director and the President are directing minds of the Company, and that the Server did not have the degree of express or implied authority to “design and supervise the implementation of corporate policy” to constitute her being a directing mind, as described in *Beverly Corners*. The Branch made no

submissions in this regard. Accordingly, I find that the Server who sold the liquor to Agent 49 was not a directing mind of the Licensee.

Since a directing mind did not commit the contravention I must consider the second stage of the due diligence analysis.

a. Adequate Training and Systems

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

- The effects of alcohol on growing bodies and developing minds.
- The effects on individuals and society of irresponsible drinking behaviour learned at an early age.
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult.
- Liquor is a significant factor in many crimes committed by youth.

The Licensee's witnesses provided extensive evidence about the training provided to new staff, ongoing training and other systems in place with respect to identification of minors and preventing the service of alcohol to minors. This included:

- The Supervisor spends a significant amount of time with new hires going over Company training materials such as the Manual, the Guideline, the Common Policy and Procedure Overview, the House Rules, and the Non-negotiable Rules. Employees are required to sign that they have read and understood these documents.
- New employees are required to have Serving It Right certification.
- The Company has a graduated probationary system for new employees including job shadowing, mentoring, and performance reviews.

- The training materials contain information about the legal drinking age of 19, the requirement for 2 pieces of ID, what kinds of ID are acceptable, how to recognize altered ID, how to ask for verification of ID, and the need to watch for “handing off” of alcohol from an adult to a minor within the Establishment.
- Staff are trained with respect recognizing indicators of underage patrons, such as their style of dress, demeanor etc.
- There appears to be no formal testing of employees, though they are observed by supervisors.
- The House Rules specify checking patrons who look under age 25 while the Guideline directs staff to check patrons looking under 30.
- Pre-shift meetings are led by a supervisor prior to each shift. The need for ID checks is gone over frequently.
- Memos and notices are posted on a bulletin board and staff are required to sign that they have read them.

There are gaps in the Company’s records with respect to the Server’s personnel file, but based on the number of training documents that do exist with the Server’s signature, I accept the oral evidence of the Supervisor that the Server was trained in accordance with Company standards.

There is also potential for staff to be confused by the difference between the House Rule and the Guideline as to whether to ask for ID under age 25 versus age 30. I am convinced by the evidence of the Supervisor that she verbally stresses age 30 with all servers, and by the testimony of the Server (who corroborated the Supervisor’s evidence) and stated that she is clear that the policy is to check patrons who look under age 30.

The due diligence standard is not one of perfection, but of adequate training and systems. As with most training programs and systems, there are improvements that the Company could make. On balance, however, I am satisfied that the evidence demonstrates that the Licensee has adequate training and systems in place with respect to contraventions of section 33(1)(a) of the Act.

b. Steps to Ensure Effectiveness

This aspect of due diligence requires the Licensee to take reasonable steps to supervise and monitor its operations sufficiently to ensure that staff are applying their skills and knowledge appropriately, and to ensure that risk-reducing systems are operating effectively.

In the current case, the evidence indicates that:

- A senior manager of the Licensee regularly and frequently inspects the Establishment and is in regular communication with the directing minds and other managers of the Company.
- The Supervisor and her peers regularly communicate with staff with respect to ID checks.
- The Company's incident reporting system was implemented and documented immediately after the contravention by the Server on her own initiative as she had been trained to do.
- A disciplinary process with respect to the contravention was initiated and documented immediately.
- Scheduled staff meetings are held on a regular basis, during which both new and existing policies are gone over.
- Several signs are posted at strategic points within the Establishment to inform and remind staff and patrons that 2 pieces of ID are required and that staff and patrons can be fined for minors possessing, purchasing or consuming alcohol.
- The Licensee has a good compliance record with no previous instances of service to a minor.

On balance, the evidence indicates to me that the Licensee has taken reasonable steps to supervise and monitor its operations to ensure the effectiveness of its training and systems.

Given my conclusions with respect to the adequacy of the Licensee's training and systems, and the reasonableness of its monitoring and supervision, I am satisfied that the Licensee has established the defence of due diligence of the balance of probabilities.

CONCLUSION

I find that the contravention of section 33(1)(a) of the Act has been proven on the balance of probabilities.

I find further that the Licensee has established a defence of due diligence and thus has a complete defence to the contravention.

Accordingly, I do not need to consider the issue of penalty.

Original signed by

Daniel M. Graham
General Manager's Delegate

Date: June 11, 2014

cc: Liquor Control and Licensing Branch, Victoria Office
Attention: Jay Blackwell, A/Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attention: Hugh Trenchard, Branch Advocate