



**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:	SRK Ventures Ltd. dba Mr. Mikes Steakhouse Casual Unit L130 – 32555 London Ave. Mission, BC
Case:	EH14-087
For the Licensee:	Rupinder Sidhu
For the Branch:	Hugh Trenchard
General Manager's Delegate:	Nerys Poole
Date of Hearing:	March 3, 2015
Date of Decision:	April 24, 2015

**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

SRK Ventures Ltd. dba Mr. Mikes Steakhouse Casual (the “licensee”) holds a valid Food Primary Licence No. 303962 (the “licence”) for the restaurant located at Unit L130 – 32555 London Ave., Mission (the “restaurant”). The restaurant is permitted to serve liquor from the hours of 9:00 am to 12:00 midnight seven days per week.

Rupinder Sidhu is the principal of SRK Ventures Ltd. and appeared as the licensee’s representative during the course of 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 penalty are set out in the Notice of Enforcement Action dated July 14, 2014 (the “NOEA”). The branch alleges that on June 24, 2014, 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 enforcement action outlined in the NOEA is a 10 day suspension. Item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* (the “Regulation”) sets out a range of penalties for a first contravention of this type: a 10 to 15 day licence suspension and/ or a \$7,500 to \$10,000 monetary penalty.

The licensee agrees that its employee sold liquor to a minor. The licensee raises a defence of due diligence to the contravention. If I do not find due diligence, the licensee submits that it has no compliance history, that it has a very good record in the community as a family restaurant, and that a warning is sufficient for this first contravention.

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.

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 16.
- Exhibit 2: Unredacted copies of minor identification (to be sealed at conclusion of hearing).
- Exhibit 3: Licensee's Book of Documents.
- Exhibit 4: Licensee's written submission on Server's Serving It Right Certificate, undated.
- Exhibit 5: Branch's written submission on Server's Serving It Right Certificate, dated March 17, 2015.
- Exhibit 6: Licensee's Reply to Branch's submission on Server's Serving It Right certificate, dated March 19, 2015.

WITNESSES

The Branch called two witnesses:

- The liquor investigator who wrote the NOEA and was present at the restaurant on June 24, 2014 (the "Investigator")
- The liquor inspector who was also present at the restaurant on June 24, 2014 (the "Inspector")

The licensee called three witnesses:

- Rupinder Sidhu, the principal of the corporate licensee (the "Owner")
- The server who served the minor agent on June 24, 2014 (the "Server")
- The assistant general manager of the restaurant (the "Manager")

PROTECTING THE IDENTITY OF THE MINOR AGENT

The minor agent was not called as a witness. At the hearing, the branch provided the licensee with an opportunity to view the photograph of the minor agent and identification with birth date and also permitted the licensee's witnesses the opportunity to view the minor agent's photograph.

To protect the identity of the minor agent, and with the agreement of the parties, at the conclusion of the hearing the copy of the minor agent's photograph and identification was placed in an envelope, marked as Exhibit 2, with a notation that it is not to be unsealed or disclosed without a court order.

FACTS

The facts of the contravention on June 24, 2014 are undisputed.

On June 24, 2014, the Investigator, the Inspector and a minor agent were conducting inspections in Mission. The Minors as Agents Program (MAP) inspections are used to test compliance with the Act's prohibition against selling or supplying liquor to persons under the age of 19.

Prior to going to the restaurant, the minor agent was photographed and his identification was photocopied. Both the Inspector and the Investigator confirmed that the minor agent was 16 years old on the date of the contravention (sealed copy of identification and photo in Exhibit 2).

The licensee's Food Primary licence permits the sale of liquor without the purchase of food and minors are allowed to attend in the restaurant without a parent or guardian. If a minor remains in the lounge, he must be accompanied by an adult. Minors are not permitted to purchase liquor under any circumstances.

The minor agent entered the restaurant at 2:03 p.m. on June 24, 2014. He entered through the front doors and walked directly to the bar area and sat down on a stool at the bar. The Inspector and the Investigator followed approximately 30 seconds later. The Investigator, the Inspector and the minor agent were the only patrons in the restaurant. The Server approached the Investigator and the Inspector when they entered and the Inspector asked to see a menu. While they viewed the menu, they observed the minor agent seated at the bar.

The Server returned to the minor agent at the bar and asked what she could get for him. The minor agent asked for a pint of Canadian. The Server then said they did not have any Canadian and asked if he would like an ale instead. The minor agent responded that an ale sounded good. The Server then proceeded to pour an ale into a glass and placed it in front of the minor agent. At no time did she request any identification from the minor agent or ask his age. The minor agent then left the restaurant and returned to the vehicle to write his minor agent observation form and the minor agent statement. (Exhibit 1, tabs 8 and 9)

The Investigator and the Inspector identified themselves as inspectors to the Server and asked to speak with an owner or manager. The Inspector advised the Server that she had just served a minor agent. The Server was unable to produce her Serving It Right certificate. She informed them that there was no manager on duty and that she was in charge of the restaurant until 3:00 p.m. She also advised them that she is often on her own from Monday to Wednesday from 11:00 to 3:00p.m. The Inspector then asked the Server to phone a manager, which she did. The Inspector spoke to the Manager on the phone.

The Inspector asked the Manager if he was aware of MAP and he said he thought he had heard about it from previous visits from the branch. The Inspector also asked the Server if she was aware of MAP and she said she did not know what it was.

The Inspector asked for a receipt for the beer and took a photograph of the product. (Exhibit 1, tabs 12 and 13)

LICENSEE'S POLICIES, PROCEDURES AND TRAINING

The Owner gave evidence about the management of the restaurant, its policies and procedures, and the training given to its employees. The Manager testified about the implementation of the policies and how employees are trained and reminded about the policies. The Server explained that she thought the minor agent was of age and that she did not know why she did not follow the restaurant's policy of asking for identification.

Other than cross-examining the licensee's witnesses, the branch did not present any evidence during the hearing to dispute the evidence of the licensee on its policies, practices and training. I have made findings of fact below from the licensee's documents and the testimony of the licensee's witnesses.

Policies and Procedures

The licensee has a large binder that is distributed to all Mr. Mike's franchise holders. This binder includes all the policies, procedures and instructions that franchisees are required to follow in the management of Mr. Mike's restaurants. The licensee did not provide this binder as evidence. However, the Owner stated that this binder includes policies relating to service of alcohol. Franchisees must follow BC liquor laws and the service of alcohol requirements as set out in the Serving It Right booklet. Much of the binder deals with menu items, wine suggestions, guidance re: food service, health inspection, etc. The binder sets out a six week training program for franchisees. The Owner uses some of this program to train the staff.

The Owner referred in her testimony to Mr. Mike's Liquor Administration Binder which has some instructions with respect to alcohol service. Exhibit 3 includes one page from this binder with a section titled "Serving It Right/ Alcohol Service Intervention Protection." This section instructs licensees to make photocopies of employees' Serving It Right certificates and to write the date that each employee started working in the restaurant on these photocopies. Exhibit 3 includes photocopies of various staff members' SIR certificates, but without any dates to indicate the start of their employment with the restaurant. According to the licensee's post-hearing submission on the Server's SIR certificate (Exhibit 4), the licensee requested SIR certificates from all employees on August 28, 2014 and made photocopies then.

Exhibit 3 includes a page with the title "Mr. Mikes Steakhouse & Bar" and a section on minors. The document notes the prohibition against selling to anyone under the age of 19 and the consequences of doing so: a minimum ten day suspension or a \$7500 fine. It describes acceptable identification and gives tips on how to verify identification. Under "ID Requirements," it states: "You must do an initial assessment of every patron before selling or serving them liquor." The document instructs licensees as follows: "you and your staff are expected to put in place effective systems to meet this obligation."

None of the written documents or signs in place before the contravention refer to checking for ID of anyone who appears to be under the age of 30. However, the Manager testified that, since the current owners took over the management of the restaurant in 2012, they instructed staff to ask for ID of anyone who appeared to be under 30.

The Server stated that the policy to request ID of anyone who appeared to be under 30 was in place when she started in October 2013.

When asked about the Guide, the Manager stated he was not familiar with it. The Owner suggested that the Guide was a resource for the licensee, not the staff.

Hiring and Training Staff

The licensee trains its staff for several shifts before allowing them to serve on their own. New staff must shadow another staff member until the Owner and Manager are satisfied that they are comfortable with communicating with guests. The Owner and/or Manager monitor the new staff to ensure they ask for two pieces of identification.

The licensee has a New Employee Orientation Handbook that they review with new employees. The licensee did not provide a copy of this handbook. Exhibit 3 includes a copy of the 'Check, Please' document from the handbook. This one page document includes a list of 35 items under the heading "New Employee Orientation." The list of items includes "Serving Alcohol." Testimony from the Owner, Manager and Server indicated that the reviewer spends an average of 10 to 20 minutes on this item.

When asked what is included in the discussion of "Serving Alcohol", the Owner stated that they review the requirement to ask for two pieces of identification. There are examples of acceptable ID: the first is a government issued photo ID, i.e. a BC driver's licence or BC ID card, and a secondary piece, such as a credit card, SIN card or passport.

The Manager stated that he reminded all staff to check for ID of anyone who appears under 30. He tells them to request two pieces of ID and what types of ID are acceptable. He also suggests tips for checking for fake ID. He tells staff that, if they have any doubts, not to serve.

The Manager trained the Server over a period of one and a half hours. He then told her to review all the information at home and to return for a training shift. He shadowed her over a period of two weeks. He often tests staff on various topics. He tests them by observing and critiquing them. The licensee did not submit any examples of written tests.

At the top of the “Check, Please” document, the employee is asked to ensure that he/ she has read the New Employee Orientation Handbook. There is space to note how long the orientation took with a statement that “This orientation should take a minimum of 60 minutes.”

The Server signed the Check, Please document on October 13, 2013, when she was hired. The note on the document indicates her orientation took 35 minutes. Other staff members signed Check, Please document on the following dates with the length of time of orientation noted in brackets: March 20, 2010 (no minutes noted), February 17, 2012 (75 minutes), July 5, 2012 (110 minutes), July 4, 2014 (20/ 25 minutes), July 23, 2014 (75 minutes), August 9, 2014, (no minutes noted), September 20, 2014 (45 minutes). The current manager signed on March 20, 2010 with a note stating his orientation took 2 hours and 15 minutes. Of the nine Check, Please documents included in Exhibit 3, five staff signed before the incident on June 24, 2014. Of the nine documents, only four of the nine had a notation indicating the orientation took 60 minutes or longer.

When the Owner was asked why the Server’s orientation only took 35 minutes, the Owner explained that the Server had prior experience at a restaurant and that prior experience is considered when they are determining how long to review these items. The Manager explained that the 35 minutes refers to a review of the items in the Orientation Manual as listed on the Check, Please document. In addition to this, he stated that he uses the Mikes’ B.E.S.T. training manual and will review items in this over the course of the two week training period of any new employees.

Signage and Tests

The restaurant has six places with signage regarding checking for ID, as noted with symbols A to F in the floor plan in Exhibit 3. The letter “G” on the floor plan shows the location of the office where the files and the various binders are kept. Exhibit 3 includes photos of the different signs.

The signs include:

- A memo board reminder to “make sure we I.D. everyone, 2 pieces”
- A branch-issued notification re: 2 pieces of ID required and types of acceptable ID
- A notice about potential fine of \$575 for staff for selling liquor to a minor (placed after June 24, 2014)

- A branch-issued sign re: “Check Photo I.D.” with reminders about the acceptable birth date for service in 2014.

None of the signs in place at the time of the contravention state to check ID of anyone appearing to be under 30.

Exhibit 3 includes copies of memos for staff. Management places these memos on the bulletin board for staff to check on a daily basis. A copy of a memo dated June 24, 2013 has all the staff signatures to show the servers signed and read. This memo states:

All servers are required to follow MIKES B.E.S.T. As the recent quiz taken by all servers shows that everyone understands as to what is required and what MIKES B.E.S.T. is therefore, consider this as your warning. (If you need more training now is the time to ask). If MIKES B.E.S.T. not followed you may be suspended.

The Server did not sign this as she did not start employment until October 2013. The Manager stated that the Server would have received the manual at the time she was hired and she would have been tested using Mike’s B.E.S.T. quiz. The licensee did not submit any document attesting to the fact that the Server took this test or signed something similar to this Mikes B.E.S.T. memo.

According to the Manager, the Mikes B.E.S.T. quiz outlines what is expected of each server, outlines interactions with a table, what to say in certain situations, how to ID properly. Once staff complete the quiz, the Manager will review and check and make them redo if they have any wrong answers. It is an open book quiz and staff are able to look at Mikes B.E.S.T. manual. The licensee did not submit any copies of these quizzes or of the manual.

The licensee asks its serving staff to sign various forms of memo communications to ensure they have read them. An example of this is a memo entitled “Important Memo” and signed by all staff after the June 24, 2014 incident. Staff were also asked to sign the Minors as Agents Program Update after the incident.

Staff Meetings and Reminders

The Owner and/ or Manager hold staff meetings once every three months. Before the contravention, they did not keep notes. Since the contravention, they have started doing so. With new staff, they allow them to work three to four weeks and then go back and review various things with them. They have one-on-ones with staff at the time of hiring.

The Owner and/ or the Manager chat regularly with the staff either in a group meeting or individually to remind all servers to check two pieces of ID.

Post-Incident Actions and Policy Changes

As a result of the service to the minor on June 24, 2014, the Manager suspended the Server from working at the restaurant for 30 days. Exhibit 3 includes a copy of the employee warning notice signed by the Server on June 25, 2014 which notes the infraction as “served alcohol to a minor”. The plan for improvement is noted as:

- Retrained on our standards when it comes to liquor laws.
- I.D. everyone that looks younger than 30.
- Revisiting serving it right.

Exhibit 3 includes a copy of a memo that states:

Important Memo

Remember to I.D. your tables I don't care if you know them or you think they look old enough. If they look under 30 years old I.D. them I cannot stress the importance of this. You should all know this already. Please sign below once you've read.

Ten staff signed this memo after the incident.

The Owner requested staff sign a “Minors As Agents Program Update” information sheet after the incident. The information in this sheet came out after the June 24, 2014 incident. Staff signed this sheet. (Exhibit 3)

All staff were asked to sign a one page handwritten document setting out the policy of identifying people under 30 years old, repeating the 2 pieces of I.D. requirement, and encouraging servers to I.D. even friends and not to be shy to ask. Staff signed this document on June 29, 2014, after the contravention. (Exhibit 3)

SUBMISSIONS—BRANCH

The branch notes that the licensee does not dispute that one of its employees served a minor on June 24, 2014. The branch submits that the evidence presented by the licensee of its policies and training is insufficient to establish the defence of due diligence.

The proposed penalty of a 10 day suspension is appropriate in the circumstances of this case.

SUBMISSIONS—LICENSEE

The licensee agrees that the Server contravened the Act by serving a minor on June 24, 2014. However, the licensee argues that it has established a defence of due diligence.

The licensee submits that its policies and practices demonstrate its adherence to BC's liquor laws. The licensee states that the evidence of its training, signage in the restaurant, and meetings with its employees demonstrates it has been duly diligent. The licensee submits that the Server made an honest mistake on June 24, 2014 when serving the minor agent. The licensee points to the changes they have made since the contravention as further evidence of their efforts to ensure they are compliant with the liquor regulations.

If I do not find that the licensee has established the defence of due diligence, the licensee requests a warning instead of a ten day suspension, as this is a first contravention.

POST- HEARING SUBMISSIONS RE: SERVING IT RIGHT CERTIFICATE

At the conclusion of the hearing, I reviewed the exhibits and noted that the copy of the Server's Serving It Right certificate in Exhibit 3 showed the first six numbers as "140624." As I am familiar with Serving It Right certificates from previous hearings as a delegate of the General Manager, I believed this indicated that the Server obtained her certificate on June 24, 2014, which was the date of the alleged contravention.

I, therefore, made an order that the licensee provide a sworn affidavit from the Server as to the date and time she received this Serving It Right certificate and a copy of any Serving It Right certificate she may have had in the past, and any written submission from the licensee on this issue. I also ordered that the branch provide a submission in response, with an opportunity for the licensee to reply. I received the above submissions and marked them as Exhibits 4, 5 and 6.

Licensee

The licensee provided a written submission, marked as Exhibit 4, in response to the order I made after the hearing,

The licensee provided evidence of its employment application forms for the Server and its advertisements for employees. The advertisements require all applicants to have a valid Serving It Right (“SIR”) certificate. The Server’s resume indicates she has a SIR certificate (2009). The Server’s application form for Mr. Mike’s has a check mark beside ‘yes’ to indicate she has a SIR certificate. The form does not ask for the SIR number.

The licensee stated in its submission that the Server showed the Owner a copy of her SIR certificate. The licensee submitted that they would not hire anyone without seeing the person’s SIR certificate and that the new hire would not start a serving shift until the required forms are on file.

The licensee stated in its submission that, on August 28, 2014, as a result of receipt of information about the Minors as Agents Program Update, she requested all the employees sign this form and to provide their SIR certificates at that time. The Server did so and the licensee made copies of all the SIR certificates (included in Exhibit 3). The first six numbers of the Server’s SIR certificate number in Exhibit 3 is 140624. The licensee did not provide any other copies of a SIR certificate for the Server.

Exhibit 4 has a copy of an email dated March 9, 2015, from the Server to the email address for Serving It Right, requesting confirmation that she had received the SIR certificate as a result of writing the online test in her foods class in high school in 2009/ 10. She explains in the email that she requested a copy of her SIR certificate on June 24, 2014 and asks for an explanation as to why the number is different from the certificate she claims she received in 2009/ 10.

The Server provided a notarized letter dated March 9, 2015 in which she explains that she showed the Owner her SIR certificate when she was hired in October 2013. She states she received the SIR certificate in 2009/ 10 in her foods class in high school. She cannot remember the number of her SIR certificate received at that time. The Server states that, after the contravention occurred on June 24, 2014, she called the number of the Serving It Right office and asked for her SIR number. She used a different email from when she had received her original SIR certificate in 2009/ 10. She was not aware that the copy she received from the SIR office in June of 2014 was different from the certificate she originally had. The Server states that she lost her wallet a few months prior to the incident on June 24, 2014 and this is why she no longer had a copy of the original SIR certificate. She attached a copy of her driver's license to show she had to request a new one after losing her wallet and showing the date of reissue as September 2014.

In response to the branch's submission below, the licensee submits that the Server produced a SIR certificate at the time of hiring and that the branch in its training of liquor licensees does not train licensees on how to verify SIR certificates (licensee's reply, Exhibit 6). The licensee points out that, as a business owner, they have to trust their employees and, until a proper verification system is introduced for licensees, licensees cannot be expected to ensure such SIR certificates held by their employees are valid.

Branch

I have marked the branch's post-hearing submission as Exhibit 5. The branch submits that the Server did not hold a valid SIR certificate when the licensee hired her in October 2013, and that she only obtained one a few hours after the incident on June 24, 2014.

The branch obtained a printout from the Go2HR organization that administers the Serving It Right program and tests. The attached printout indicated that the Server took four exams between 4:44 pm and 5:53 pm on June 24, 2014. The Server received her SIR certificate number at 5:53 pm on June 24, 2014. The Go2HR organization has no record of any prior SIR certificate issued to the Server. The Go2HR organization or its predecessor has been administering the SIR tests and issuing SIR certificates and maintaining records since 1989 and would certainly have had a record of any SIR certificates in 2009/ 10. The high school attended by the Server was not a customer of

Go2HR prior to 2015 and, even if it had been, only the Go2HR organization can issue the SIR certificates.

The Go2HR organization contact stated in an email dated March 11, 2015 that the numbers for SIR certificates do not get changed by email and that the Go2HR organization had no account for the Server to recover prior to June 24, 2014.

The branch submits that the Server either intentionally misrepresented herself as having a SIR certificate at the time of hiring, or that she had an honest but mistaken belief that she actually had one. Further, the licensee may have had an honest but mistaken belief that the Server possessed a SIR certificate at the time of hiring. Finally, the branch submits that it is the licensee's responsibility to ensure that the Server had a valid SIR certificate at the time of hiring. The licensee's failure to do so is a further weakness in the implementation of its policies. This and other weaknesses in its systems mean that the licensee has not established a defence of due diligence.

REASONS AND DECISION

Contravention

The licensee has admitted that the contravention of section 33(1)(a) occurred on June 24, 2014. I find, therefore, that the licensee contravened section 33(1)(a) of the Act by selling 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, has 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. 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.

Directing mind

The Server had nothing to do with the development of the policies or with staff training. I find that the Server is not the directing mind of the licensee.

The Owner stated that, as a franchisee, they follow the policies of Mr. Mike’s restaurants and incorporate these policies into their staff training. The Owner also ensures the liquor laws of BC are followed by posting signs and reminding staff of the importance of requesting identification. The Manager assists with training the staff and implementing the liquor policies. I find that the Owner and possibly the Manager are

directing minds of the corporate licensee. Neither were present in the restaurant at the time of the contravention.

I move to the second part of the analysis as set out in *Beverly Corners*.

Adequate training and other systems

The licensee has presented evidence of its policies, procedures and employee training. It would have assisted me to actually see all the binders referred to by the Owner and the Manager, particularly all the sections on serving alcohol. Nevertheless, I have relied on the evidence of the licensee's witnesses to draw conclusions about the contents of the binders.

I find there are some weaknesses in the licensee's system, particularly with respect to training on how to assess an individual's age for the purpose of determining when to ask for identification, and with respect to the reminders to staff to request ID of anyone under 30.

I accept the witnesses' testimony that the restaurant has had a policy of instructing its employees to request ID of anyone who appears to be under 30 and that this policy was in place at the time of the incident on June 24, 2014. However, I find that the signage and memos to staff did not emphasize this policy to staff until after the contravention. The signs in the restaurant reflect the importance of requesting two pieces of ID, but do not indicate the importance of checking ID of anyone who appears to be under 30. A policy of checking for ID of anyone under 30, or under 25, is not a requirement under the Act or regulations. However, such a policy can provide guidance to staff about how to assess an individual's age and when they should be requesting ID. Erring on the side of asking for ID of anyone who appears to be under 30 can assist staff in accurately identifying when they might be in danger of serving a minor. As is evident from the testimony of the Server, it is easy to make a mistake if one is only assessing whether or not a person is 19, while it is less likely to happen if one is deciding if someone is 30 or over. In the present circumstances, the Server decided that this 16 year old minor agent looked 19 and so proceeded to serve him without asking for ID.

I find that the licensee's system of training by reviewing Mr. Mike's policies in its binders, shadowing its new employees over a period of two weeks, and using a quiz to test the knowledge of its new hires provides a good beginning. However, I find there are inconsistencies in the time spent on the orientation of new hires as is shown on the Check, Please documents in Exhibit 3.

I note the Manager's testimony that the orientation is just one part of the training and that, during the two week training period, new hires receive additional information on serving alcohol and ID requirements. This is important as 10 to 20 minutes spent on serving alcohol (as part of Check, Please document orientation) is insufficient to stress the various issues that arise from service of alcohol, not the least of which is how to assess if someone is underage. When employees are left on their own in the restaurant, as was the Server here, these employees must have a clear understanding of their responsibilities under the Act and regulations.

An improvement to the licensee's training would include instructions to staff on what to look for to determine if someone looks under 30. The Server stated that she thought the minor agent appeared confident and, therefore, she assumed he was over 19. Confidence is not an indicator of age and staff must be thoroughly trained in the licensee's policy of asking for ID of anyone who appears to be under 30. At the time, the Server made no assessment as to whether the minor agent was under 30. She admitted in her testimony that she thought he was 19 so she served him without requesting ID.

Effective application and operation of the systems

In this step, I must assess whether the licensee has taken reasonable steps to ensure the effective application of its training and the operation of its systems. I find that there are serious shortcomings with the application and implementation of the licensee's policies. The test for due diligence is not perfection. However, a licensee must demonstrate, through its evidence, that it has taken reasonable steps to implement its policies in a consistent and effective manner.

I accept the testimony of the Owner that she and her husband are hardworking, dedicated, and community-minded restaurant owners who have no intention of contravening the liquor laws. Intention is not the test for establishing due diligence. A licensee must not only have the policies and training in place to demonstrate its due diligence but also must show that these policies are being implemented.

The most significant shortcoming in the implementation of the restaurant's policies is the licensee's failure to follow the terms and conditions of the Guide, as well as its failure to implement and follow its own policy document.

The terms and conditions in the Guide are part of the liquor licence. The Guide (page 30) states:

Serving It Right must be completed by all licensees and managers, and any staff who may be left in charge. . . .

You are responsible for making sure your employees take Serving It Right. You must keep photocopies of their Serving It Right certificates, ready for inspection by a liquor inspector or police officer at all times.

The licensee's own binder, Mr. Mike's "Liquor Administration Binder" requires licensees to make photocopies of every employee's Serving It Right certificate and to write the date the employee started working in the restaurant (one page document from Exhibit 3). The licensee did not do this.

I find that the Server did not have a Serving It Right certificate until after the incident occurred on June 24, 2014. I rely on the emails of the Go2HR organization (Exhibit 5) to make this finding. The Go2HR organization is the only issuing body for SIR certification. I draw no conclusion about whether or not the Server honestly believed she had a SIR certificate and/ or whether or not the licensee honestly believed she had one. The fact remains that, if the licensee had followed the directions in the Guide and its own policy of photocopying the Server's SIR certificate at the time of hire, the licensee would have been able to establish either:

- a) It honestly relied on a document presented to it by the Server, and could have presented this document at the hearing to make the case that the licensee had either been misled and/ or the Server had erred in her understanding of the document; or,
- b) It would have ascertained at the time of hiring that the Server's SIR certificate was either not hers, or was not a valid SIR certificate.

The licensee has submitted that the branch needs to train licensees on how to verify SIR certificates and that they have to trust their employees when they claim to have these required documents. I do not agree with this submission. The licensee is responsible for ensuring its employees are properly trained and that they have their SIR certificates. As previously noted, the failure here was not just that the Server did not have a valid SIR certificate. It was the fact that the licensee failed to implement its own policy and to follow the clear instructions in the Guide on this issue.

I note other shortcomings in the licensee's implementation of its stated policies. The Check, Please document instructs restaurant owners to ensure the orientation time on the listed items takes a minimum of 60 minutes. The evidence from the licensee demonstrates that this was not followed in the training of the majority of staff who signed the Check, Please documents. The Owner tried to justify the 35 minutes orientation time for the Server by explaining she had worked elsewhere as a server. There is no doubt that the Server required further training particularly on the issue of requesting ID of anyone who appeared to be under 30. The licensee did not follow its express stated policy here of ensuring at least an hour's training on the orientation items. The Server's testimony about her belief that the minor agent was over the age of 19 indicates to me that she requires further training on the importance of determining when to request ID.

Another weakness is the fact that the Manager was not familiar with the Guide. The Owner tried to justify this by saying the Guide was just for the licensee. The Guide states that a licensee must follow the terms and conditions as set out in the Guide. It is an essential training tool for all licensees, managers and staff. Licensees are responsible for making sure their employees follow BC's liquor laws and the terms and conditions of its licence (which include those set out in the Guide), even when the licensee is not on site (page 11). In particular, the Guide should be a critical part of any training for staff who are left alone as the Server was here.

I find that these shortcomings, combined with the licensee's failure to document and prove that the Server had a valid SIR certificate at the time of the contravention, are fatal to the licensee's defence of due diligence.

I note the post-contravention changes made by the licensee, with respect to having staff sign its policy of requesting ID of anyone who appears to be under 30. These demonstrate the licensee's desire to comply with the liquor laws. However, I cannot rely on after the fact changes as evidence of the licensee's due diligence before the contravention occurred.

In conclusion, I find that the licensee has not established a defence of due diligence and thus the contravention stands.

PENALTY

Pursuant to section 20(2) of the Act, having found that the licensee has contravened the Act, the Regulations 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 either a licence suspension or a monetary penalty 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 branch has consistently indicated that the sale of alcohol to minors is a significant public safety issue and a high priority for enforcement. The NOEA outlines why the branch considers this a significant public safety issue:

- 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; therefore, liquor has a more intoxicating effect on minors.

- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault, and theft.

The MAP demonstrates the branch's intention to ensure that licensees are not serving or selling liquor to minors. The branch has taken measures to advise licensees of the seriousness of the problem and to educate them on their responsibilities. Licensees were notified of the MAP in a number of publications/ news releases:

- July 2010: a government press released announced changes to the Act allowing the use of minors as agents for the purposes of checking compliance with the Act.
- February 7, 2011: the General Manager of the branch wrote to all licensees and advised that "Beginning later in February, and on an on-going basis, minors will visit public and private stores, under the close supervision of a liquor inspector, and will attempt to buy alcohol."
- February 25, 2011: The Publican, a periodical for all members of the Alliance of Beverage Licensees of British Columbia, published an article by the General Manger describing the MAP and further advising of the program's implementation.
- March 14, 2011: the LCLB issued its first edition of the branch newsletter. This newsletter was mailed to all licensees in the province and contained an article titled "Hiring Minors to Monitor Retail Compliance."

Despite these reminders about the importance of not serving minors, a 16 year old minor was able to purchase liquor from the licensee's employee, without being asked to produce any proof of age. The licensee took over ownership of the restaurant in 2012 and submits that this was after all the above notifications. However, the Owner agreed that she had a copy of the MAP information in her back office. The licensee signed the Food Primary Inspection Interview Sheet on August 27, 2012 (tab 14, Exhibit 1), accepting responsibility for ensuring that the licensee and its staff fully understand and follow the Act and Regulations.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. Enforcement action is intended to both redress the licensee's non-compliance, and to encourage future compliance by way of deterrence. I find that a penalty is warranted here to emphasize the importance of ensuring minors do not have easy access to liquor, to encourage future voluntary compliance from the licensee, and to ensure specific and general deterrence in society at large.

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.

There is no record of a proven contravention of the same type for this licensee at this establishment within the preceding 12 months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty. Item 2 in Schedule 4 provides a range of penalties for a first contravention of this type: a 10 to 15 day licence suspension and/ or a \$7,500 to \$10,000 monetary penalty.

The licensee requests that I impose a warning for this contravention. I find that the circumstances here require more than a warning. The licensee is responsible for ensuring all its serving staff have up to date and valid SIR certification, and failed to do so here. The licensee's staff need a strong reminder of the importance of requesting identification to ensure minors are not served in the restaurant. Having found that a penalty is warranted, I am required to impose at least the minimum, as set out in the penalty schedule. I find the proposed penalty of a 10 day suspension to be reasonable and appropriate.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of Food Primary Licence No. 303962 for a period of 10 days to commence at the close of business on Monday, June 1, 2015 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the liquor licence be held by the branch or the Mission RCMP police detachment from the close of business on Monday, June 1, 2015 until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Signs satisfactory to the General Manager notifying the public that the licence is suspended will be placed in a prominent location in the establishment by a branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

Nerys Poole
General Manager's Delegate

Date: April 24, 2015

cc: Liquor Control and Licensing Branch, Surrey Regional Office
Attn: Rupi Gill, A/Regional Manager

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