



**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:	Tap & Barrel Restaurants Ltd. dba Tap & Barrel 1 Athletes Way Vancouver V5Y 0B1
Case:	EH15-064
For the Licensee:	Daniel Frankel
For the Branch:	Jay Blackwell
General Manager's Delegate:	Nerys Poole
Date of Hearing:	March 1, 2016
Date of Decision:	March 22, 2016

**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

Tap & Barrel Restaurants Ltd. dba Tap & Barrel (the "licensee") owns and operates a restaurant, with food primary licence number 304996 (the "licence") at 1 Athletes Way in Vancouver (the "restaurant").

According to the terms of its licence, the licensee may sell liquor from 9:00 a.m. to midnight, Sunday through Thursday and 9:00 a.m. to 1:00 a.m. on Fridays and Saturdays. The food primary licence has a lounge endorsement that allows for liquor service without the requirement for food. This area allows minors to be present only if accompanied by a parent or guardian.

The licence is, as are all liquor licenses issued in the Province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" (the "Guide").

Mr. Daniel Frankel, the owner of the establishment (the "owner"), appeared as the licensee's representative at the hearing and gave evidence. The licensee's Director of Operations and Development asked questions of the licensee's witnesses. She did not testify.

The licensee is alleged to have contravened the *Liquor Control and Licensing Act* (the "Act") on May 23, 2015, by selling liquor to a minor who was acting as an agent of the branch under the Minors as Agents Program ("MAP"). The licensee admits that its employee sold liquor to the minor agent. However, the licensee disputes the finding of a contravention, on the basis that its policies, practices, procedures and training establish a defence of due diligence.

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 June 9, 2015 (the "NOEA") (Exhibit 1, tab 1).

The Branch alleges that on May 23, 2015, the licensee contravened section 33(1)(a) of the Act, by selling, giving or otherwise supplying liquor to a minor. 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 (item 2, Schedule 4, *Liquor Control and Licensing Regulation*). The branch proposes a monetary penalty of \$7,500.

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 15
Exhibit 2: Sealed photo of Minor Agent and photocopy identification
Exhibit 3: Licensee's book of documents, tabs 1 to 5

ORDER TO DELETE ANY REFERENCE TO MINOR AGENT'S NAME OR OTHER IDENTIFYING FACTORS

With the agreement of the parties, a copy of the minor agent's photo and identification was placed in an envelope and marked as Exhibit 2, with a notation that it is not to be unsealed or disclosed without a court order. Exhibit 2 has been sealed to protect the identity of the minor agent. At the hearing, the branch provided the licensee and its witnesses with an opportunity to view the photo of the minor agent and identification with birth date. The minor agent did not appear as a witness for the branch.

WITNESSES

The Branch called one witness:

- The Regional liquor inspector who wrote the NOEA and was present at the establishment on May 23, 2015 (the “liquor inspector”).

The licensee called five witnesses:

- The assistant general manager at the restaurant for the last two years, who was initially hired in July 2012 as a server (the “AGM”).
- A server at the time of the contravention, initially hired as a hostess in 2012, and since September 2015, has been a junior accountant at the licensee’s head office (the “junior accountant”).
- A server, who was working as a server at the time of the contravention, and since December 2015, has been the office manager (the “office manager”).
- The general manager of the restaurant who was in the restaurant at the time of the contravention but not working (the “general manager”).
- Mr. Daniel Frankel, the owner of the corporate licensee and licensee’s representative.

All of the licensee’s witnesses gave evidence about the licensee’s policies and their implementation in the restaurant. The general manager explained what happened to the bartender who served the minor agent on May 23, 2015 (the “bartender”).

FACTS

The Licensee accepts the facts of the contravention as set out in the NOEA (Exhibit 1, tab 1) and in the testimony of the liquor inspector.

On May 23, 2015, two liquor inspectors attended the restaurant with a minor agent employed by the branch under the MAP. At the start of the shift, the female minor agent was photographed and her identification viewed and photocopied to confirm that she was 17 years old on May 23, 2015 (Exhibit 2).

The purpose of attending the restaurant with the minor agent was to test compliance with the Act's prohibition against selling liquor to minors. The Branch implemented the MAP in 2011, after the Act was amended to allow the Branch to employ minors as agents for this purpose.

The restaurant is licensed as a food primary establishment and possesses a food primary licence. As a licensed food primary restaurant, minors are permitted but not allowed the service of alcohol. The licence has a lounge endorsement that allows for the service of alcohol without the requirement for food. Minors are permitted in the lounge area of the restaurant only if accompanied by a parent or guardian.

At approximately 7:06 p.m., the minor agent entered alone through the front doors of the restaurant and proceeded to the lounge area after speaking with a host. The minor agent located a vacant seat at the bar in the lounge area and sat down. The two liquor inspectors were standing approximately twenty-five feet from the minor agent and had a clear and un-obstructed view of the minor agent and the bartender. The minor agent sat at the bar for a few minutes until the bartender arrived to take her order. The minor agent requested a "Smirnoff Ice." The bartender told her they did not carry that product. She then asked for a Corona and was told they did not carry that product, so she then asked for a "Parallel 49" beverage. The bartender indicated she would not like the product as it was too dark a beer and recommended a Pilsner beer. The bartender returned with a Pilsner beer and served it to the minor agent at approximately 7:10 p.m. At no time did the bartender request identification from the minor agent to verify her age.

Once she had been provided with the beer, the two liquor inspectors approached her and she then left the establishment and returned to the vehicle outside where she completed the minor agent observation form and the minor agent statement form. (Exhibit 1, tab 9)

The liquor inspector asked for the manager on duty. The general manager identified himself but explained he was finished his shift and was not actually working. The liquor inspector then asked for the person in charge on that shift. The assistant manager arrived and stated she was in charge of the restaurant that evening. At the request of

the liquor inspectors, she showed them the liquor licence. The liquor inspector explained that the bartender had sold alcohol to the minor agent. The assistant manager gave the liquor inspectors the name of the bartender and told them that the bartender had been working there about one month. The assistant manager is no longer working at the restaurant and did not testify.

The liquor inspector issued the contravention notice (Exhibit 1, tab 2). The assistant manager signed the notice to acknowledge service. The liquor inspectors left the restaurant at approximately 7:38 p.m.

On June 1, 2015, the liquor inspectors spoke to the owner and advised him of the contravention and of the enforcement process.

LICENSEE'S EVIDENCE

The Contravention

As noted, the licensee does not dispute the facts of the contravention. The general manager gave evidence about the bartender and what happened to her after the incident.

When asked if the bartender gave him any explanation about her failure to request ID of an obviously under-age female, he stated that she could give him no explanation. She had worked with him at previous establishments and was a trusted bartender who had bartended for many years. As a consequence of the contravention and of the non-negotiables form signed by all staff at the time of hiring, the general manager terminated the bartender when she arrived for her next shift.

He then followed up with staff about the contravention, reviewed the non-negotiables form with them all and explained that management had terminated the bartender as a result of her failure to request ID of the minor agent. He explained the seriousness of the offence and he reviewed the non-negotiable forms again to ensure all staff had signed.

Licensee's Policies, Procedures and Training

The licensee's witnesses gave evidence about the policies and procedures of the restaurant, the management of the restaurant, the training received by new hires, and how the policies are implemented in the restaurant.

The Licensee's Policy on Identification Requests

The licensee has a policy of requiring all staff who serve alcohol to request identification of anyone who appears to be under 30. Staff must ask for two pieces of ID. The training manuals set out this policy under "Responsible Alcohol Service."

All the witnesses demonstrated a good understanding of this policy and the importance of asking for two pieces of ID and what constitutes acceptable ID: at least one must be government issued with a photo and signature and age of the person, with a secondary piece showing the person's name and signature.

Management instructs all staff that, if they are in any doubt about a person's age as to whether or not they are under 30, they must request ID. If staff are uncomfortable with asking, they are instructed to ask for a manager. Staff receive a script to use – usually the requirements from the branch – that they can read out to show guests this is the law and therefore the restaurant must comply.

When asked about the role of the host, the General Manager explained that they do not ask for ID at the front door because the Tap & Barrel is a restaurant and patrons may have no intention of requesting alcohol.

Policy on Termination for Failure to ID

All staff must complete the "non-negotiables" form (Exhibit 3, tab 3). This form has a list of actions or failures to act that will result in the employee's immediate dismissal. The bartender signed this form when she started work in early May of 2015. Exhibit 3, tab 5 includes her signed form.

The statement at the top of this form is:

“Participating in any of the below acts will be grounds for immediate dismissal.”

The list includes:

- Failing to ID any guest who orders alcohol and appears under the age of 30
- Serving alcohol to a minor.
- Serving an intoxicated guest and failing to take reasonable steps to ensure he or she gets home safely.

The employee must initial each item on the list of non-negotiables. A manager reviews the form with the employees to ensure they understand everything.

Training

The licensee's witnesses testified about the training given to new hires and the training manuals (Exhibit 3, tab 2). On the first day of training, new employees must fill out all the forms, sign where required, and provide their Serving It Right numbers before they proceed.

In February of 2015, management introduced a new more extensive program of training. Management asked all existing staff at the time as well as new hires to take the new training. Exhibit 3, tab 2 includes a Training Checklist with topics noted for each day of training, starting with Day 1 as the Orientation day for all positions. Day 2 is the product day, again for all. Day 3 and 4 are for host training and include menu and product reviews. Days 5 and 6 deal with reviews of products and service reviews. Days 7, 8 and 9 are for Server training. Bartender training has slightly different topics for Days 8 and 9 and a third day 10 to complete Bartender training. By the time a bartender completes the program, she/he will complete at least 10 days of training. Beside each item under the training day is a column to check “complete” with any “notes” in another column.

Part of the training for servers and bartenders includes some shifts on the floor, where they shadow a more senior person. Once training sessions are complete, a senior employee will shadow new hires for several shifts to ensure they understand the rules and requirements of the restaurant. The office manager stated she was shadowed for six shifts before serving on her own.

The general manager and the AGM were both involved in the development of the training program with the Director of Operations and Development having the overall responsibility for the manuals. The owner reviewed the package when complete. The training program prior to February 2015 had similar content but did not have the daily outline as provided in the Training Checklist.

The General Manager Orientation (Day 1) has a section on Responsible Alcohol Service (p.10). This sets out the policy requirement to request ID of every guest who appears to be under 30. The training includes types of acceptable ID and discussion about how to assess if anyone is under 30, with emphasis on asking if in doubt. The general manager estimated they spend about 30 to 45 minutes on identification requests in this first day of training.

The Server Manual (p.14) and the Bartender Manual (p.6), in Exhibit 3, tab 2, each have a page on Responsible Alcohol Service with more detail than in the General Manager Orientation manual. The server and bartender training includes more discussion about types of ID, what is acceptable, what the consequences are if ID is not requested and why this issue is so important to the licensee as a company.

The bartender who served the alcohol to the minor agent had taken this training when she started in early May of 2015. Although she had worked in other locations for this licensee, management required her to go through this new training at the time of her hiring at the restaurant.

The junior accountant explained she went through the training as a server in February of 2015. Even though she had been working in the restaurant as a server and had undergone training when she started in 2013, she was required to take the new training program, as were other current employees. She did not take the bartender training as

she did not bartend. She confirmed that she received extensive training about requesting ID of anyone under 30, how to assess acceptable ID, what types of ID are required.

The junior accountant described the company's on-line accounting system that ensures that no one can start working on the floor or be paid until the necessary information is in the system. This information includes the Serving It Right certificate, any food safe certification, a signed non-negotiables form and a few other items unrelated to liquor service. The bartender who served the minor agent was under this new system.

The office manager testified about her training as a server. She said, at the beginning of each training shift, a manager would outline in detail what they were going to review that day. After each day of training, they were tested and the managers reviewed the tests and made sure their answers were correct. She confirmed she had gone through the General Manager Orientation and the Server Manual training. She said the trainers emphasized the section on Responsible Alcohol Service and how serious the company takes this and how important it is to ask for ID of anyone who appears to be under 30, as well as the two types of ID that are acceptable. Employees were reminded that they could be written up if they did not follow this policy. When asked how she identified under 30 year olds, she said she would ask for ID of anyone she thought looked under the age of 40 as she did not like to take chances.

During the training of employees who become servers or bartenders, the AGM stated they spend about five hours specifically on liquor rules and regulations. As a manager, the AGM is required to understand the responsibilities of a licensee, what the liquor laws are and to be able to communicate these to staff on a regular basis.

The AGM testified about the training on the specifics as to how to determine if someone is under 30. She explained they will offer examples in a group format, using individuals in the group. She is under 30 and will use herself as an example and will use kitchen personnel who may be only 18. The group format allows them to discuss people's perspectives on what constitutes an "under 30" look. She also will provide different types of ID as examples to demonstrate what is acceptable or not.

When the AGM was asked about the incident on May 23, 2015 and how the bartender could have served a 17 year old despite all the training she took only a few weeks before, she responded, "people are human, they make mistakes." She did not know exactly why the bartender did not follow the policy but stated that management can do all the training, give people reminders, etc. but, at the end of the day, there is always the potential for human error.

Testing

Employees must complete written tests of about 3 to 4 pages during the training period. As noted above, the trainers issue tests at the end of each day of training. The trainers review the tests with the employees and will ask questions if there are any mistakes in the answers or to emphasize things like types of acceptable ID, consequences of not asking, etc.

Pre-shift Meetings, Reminders and Monitoring

All staff must attend the pre-shift meetings before their shift starts. Exhibit 3, tab 4 includes samples of pre-shift meeting notes from dates in April through September of 2015. The witnesses stated that these meetings always include reminders about the ID policy. The pre-shift meeting notes prior to the contravention show "ID" or "IDing" noted beside the heading "Daily Focus." After the contravention, management added another heading: "Today's legal date" where the managers would highlight the birth date someone must have that day in order to be served alcohol. The witnesses said this heading was added but, even before the heading was there, they usually mentioned this at the pre-shift meetings. The AGM stated they had been compiling pre-shift notes for these meetings since the date of opening of the restaurant.

Both the junior accountant and the office manager testified that they would often discuss at these pre-shift meetings how to determine if someone was under 30 and what features to look for. When she was a server, she pretty much requested ID of everyone in order to be sure. She also testified about management giving them oral quizzes and reminders about the ID policy. She requested ID about 6 or 7 times at least in a shift. The office manager stated she would usually request ID of anyone wanting alcohol

service. Unless someone was obviously old, with grey hair or other features, she would ask for ID.

The general manager explained, that in addition to the initial training, there are regular follow-ups to discuss product knowledge, menu changes, anything specific to the liquor regulations and compliance with liquor laws. The office manager testified about this too, saying management conducts one on ones with staff to ensure they are up to date with current policies.

The general manager said, as there is a regular turnover of staff, they usually involve all staff when management reviews these things with new hires. They use the training of new staff to refresh the existing staff about important issues, such as identification requests.

Management and senior staff do spot checks in the restaurant to ensure all their staff are complying with the policy of requesting ID of anyone who appears to be under 30. It does not matter if the guest is not a minor. If the staff member has not asked for ID of someone who appears to be under 30, he/she will usually be written up with a note placed in his/her file.

The owner emphasized management's support of staff on the implementation of the policy. He stated there are no exceptions to the policy of requiring two pieces of ID of anyone a server thinks may be under 30. He illustrated this with a story of a friend who texted him to say he was in the restaurant and had been asked for ID and he did not have any but wanted to be served. Although the owner was aware the friend was over 40, he supported the server who asked for the ID and explained to his friend that he could not be served unless he had the required two pieces of ID. The AGM, the licensee's first witness, emphasized that "it doesn't matter who you know, the rules are strict and we follow them and cannot serve if a customer does not have ID as requested."

Log Book and Incident Reports

The restaurant keeps reports of incidents, usually incidents involving injuries, difficult guests, any incidents that might involve police, etc. They wrote up the incident on May 23, 2015 and used it for discussions with staff. They do not keep reports of ID checks because as a restaurant, people are not removed; they are just not served alcohol. If an unaccompanied minor is in the lounge, he/she is asked to move to the restaurant area.

Signage

The restaurant has several signs alerting both customers and staff about the ID requirements. There are signs on the outside of the bar visible to guests, emphasizing that minors in the lounge area must be accompanied by a parent or guardian. All the pay stations have a sign visible to servers or bartenders as reminders about checking for ID and the year in which someone must be born to be 19. These signs state: "You must be 19 or older. Check photo ID." They include red, green and yellow traffic light coloured dots with the birth year at which someone is 'OK', the birth year on which you must exercise 'caution' and the birth year on which someone cannot be served – 'stop'. The sign for 2015 showed:

- 1998 or 1997 – STOP (red light)
- 1996 – CAUTION (yellow light)
- 1995 or 1994 – OK (green light)

The licensee did not include photos of these signs in its book of documents. With the agreement of the branch advocate, the licensee showed these photos at the hearing on a cell phone and a witness identified them and stated where they were located.

Management Meetings

The owner and the Director of Operations and Development meet once a week. The management team representing all the corporate licensee's establishments meet once a week. They usually have agendas for the meetings. The licensee did not submit them as evidence.

The Guide and the MAP

All the licensee's witnesses were familiar with the Guide. The general manager said they used it as a source of information for the training manuals. Not all witnesses were familiar with the MAP. After questioning in more detail about what the MAP was, most of the witnesses were aware that the branch was inspecting establishments to determine if minors were being served.

Philosophy of Corporate Licensee – from Owner

The owner testified about his company and its philosophy and values. He is the sole shareholder of the corporate licensee. He delegates much of the direct management responsibilities of his restaurants to other staff. He has worked in the industry in various licensed establishments for about 16 years. He has never had a liquor contravention in any of his licensed establishments. He opened the first Tap & Barrel in the summer of 2012 and now has three licensed restaurants. He talked about the company's emphasis on encouraging local products. He believes the systems they have put in place in his restaurants compare favourably to other companies that have been around for 30 years or more. He said they have made a lot of changes in management structure in the last two years as they develop and learn.

He stated he is familiar with MAP although he had heard different names for it. He stated his three restaurants have information about the MAP and the Guide. They built their training manuals using the Guide as a source.

He said they have excellent relationships with the various organizations and agencies they work with, such as the City, their landlords and the branch. He thinks they are an exemplary licensee, while acknowledging there is always more to learn and areas to improve in. He is very proud of the relationships they have forged with the various groups they deal with.

Post-Contravention

As noted, the general manager dismissed the bartender when she came to work for her next shift after the incident on May 23, 2015. Management held follow-up meetings with staff about the incident to review with all staff the importance of requesting ID of anyone under 30. The junior accountant described the multiple follow-up meetings that management held after the contravention to ensure all were aware of what happened and the consequences to the bartender.

Management changed the pre-shift meeting notes slightly to add the section "Today's Legal Date" to ensure they always highlight this at the meetings.

Apart from this specific change in the pre-shift meeting notes, management and senior staff are even more diligent and repetitive about their reminders to staff to keep them aware of the importance of requesting identification and of the consequences of not doing so, as set out in the non-negotiables form that they all sign.

SUBMISSIONS – BRANCH

The branch notes that the licensee agrees with the facts of the contravention as set out in the NOEA.

The branch makes no submissions on the question of due diligence. The branch refers me to the NOEA for the reasons for the recommended penalty of \$7500.

SUBMISSIONS – LICENSEE

As noted, the licensee admits that an employee sold liquor to a minor agent on May 23, 2015. The licensee submits that the evidence of its policies, practice, procedures and training and the implementation of those practices demonstrate due diligence and therefore I should find that they have a defence to the contravention.

REASONS AND DECISION

Contravention

The licensee has admitted that an employee sold liquor to a minor but that its policies, procedures and training all establish a defence of due diligence.

I find that an employee of the licensee sold liquor to a 17 year old minor on May 23, 2015.

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, 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.

As set out in *Beverly Corners* above, the three questions I must answer are:

1. Was the employee who committed the contravention the directing mind?
2. If no, did the licensee implement adequate training and other systems to prevent the sale of liquor to minors?
3. Did the licensee take reasonable steps to ensure the effective application of that education and the operation of those systems?

1. Directing Mind

Neither the licensee nor the branch made submissions on the question of the directing mind. The directing mind of a corporation is someone who is responsible for the development and supervision of the implementation of corporate policy. On the evidence here, I find that the general manager is probably a directing mind. As the general manager was not working at the time of the incident (although present in the restaurant), whether or not he is a directing mind does not affect my decision on due diligence.

I find the bartender who served the minor agent was not a directing mind.

2. Adequate Training and Systems

The licensee submitted evidence of its training manuals, the number of training days for various positions and its policy of requesting ID of any patrons under 30 who request alcohol. Its witnesses testified about the content of the manuals, the training sessions and the testing of new employees.

I find that the licensee has a very clearly articulated policy with respect to identification requests of patrons who appear to be under 30. I find staff is well trained in this policy and in other aspects of the policy, including types of acceptable ID and the requirement for two pieces. I find that the staff training emphasizes the importance of IDing and that the training does not end at the time of hiring. Management tests staff during the training program and continues to give oral quizzes and reminders to all staff. Management's practice of using the training of new hires to include other staff and to refresh them all on the importance of IDing further emphasizes to staff how important this is to management.

I find that the "non-negotiables" form provides further evidence of management's emphasis on the importance of preventing sales to minors. Even before employees start on the floor, they are made aware of this policy by having to sign and initial the grounds for dismissal. The form signed by the bartender demonstrates she was aware of the consequences of not asking for ID of someone appearing to be under 30, not just of allowing minors to be served. And unfortunately for her, she suffered the consequences of not following this policy.

I find that the licensee has implemented an effective training program and other systems for its employees, with consistent emphasis on responsible alcohol service in its training manuals, in order to prevent the sale of alcohol to minors.

3. Effective Application and Operation of its Systems

A licensee must not only demonstrate it has policies in place and has provided the necessary training to its employees, it must also demonstrate that it has taken reasonable steps to ensure the effective application of that education and the day-to-day operation of those systems.

The licensee's notes of its pre-shift meetings demonstrate the regularity of these meetings and the topics discussed, including IDing patrons. The evidence from the licensee's witnesses about one on one interactions on the floor between management and servers and about group discussions as to how to assess if someone is over 30 all illustrate the importance the licensee places on compliance with the liquor laws with respect to minors.

I find further that the licensee has signage around the restaurant to emphasize that ID will be requested if a patron wishes to be served alcohol and that minors must be accompanied by a parent or guardian in the lounge area. The pay stations all have the reminders about the year of birth for someone to be 19.

I find that the pre-shift meetings, the regular reminders on the floor, the opportunities for discussion about ID requests, the oral quizzes, and the signage in the restaurant demonstrate that the licensee is ensuring the effective application of its policies and the day to day operation of its systems to prevent the sale of alcohol to minors.

The licensee's witnesses could offer no explanation for the error made by the bartender on May 23, 2015, despite her comprehensive training as a new hire only a few weeks before. I agree with the AGM that, despite having the best training and regular reminders, people will make mistakes. In this case, the mistake cost the bartender her job.

I have addressed both questions in the second part of the *Beverly Corners* analysis and I find the licensee has met the onus of establishing due diligence. The licensee has taken care to provide the necessary documentation and testimony to support its defence. The standard of reasonableness does not mean that all conceivable steps must be taken. On the facts here, I find that the licensee has taken sufficient steps to establish the defence on a balance of probabilities.

Conclusion

I therefore find that the licensee has established the defence of due diligence and thus has a complete defence to the contravention of section 33(1)(a) of the *Act*.

As there is no finding of a contravention, I do not need to consider the issue of penalty.

Original signed by

Nerys Poole
General Manager's Delegate

Date: March 22, 2016

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

Liquor Control and Licensing Branch, Victoria Office
Attn: Jay Blackwell, Branch Advocate