



**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 RSBC c. 267

Licensee: Haney Hospitality Ltd.
dba Haney Motor Hotel
22222 Lougheed Hwy.
Maple Ridge, BC V2X 2T2

Case No. EH03-170

APPEARANCES

For the Licensee: Dennis Coates, QC
Michael Jahnke

For the Branch: Shahid Noorani, Advocate

Enforcement Hearing Adjudicator: M. G. Taylor

Dates of Hearing: June 14 and 29, 2004

Place of Hearing: Surrey, B.C.

Date of Decision: July 28, 2004

Introduction

Haney Hospitality Ltd. operates the Haney Motor Hotel ("the Hotel") with three (3) liquor licences:

Liquor Primary Licence, Tommy's Bar ("Tommy's") No. 017240,
Liquor Primary Licence, Caddy Shack Cabaret No. 139071, and
Licensed Retail Store, (LRS) No. 194234

The Hotel is located in an area of mixed commercial and residential. The Liquor Primary Licence (LPL) No. 017240 permits operating hours in Tommy's from 12:00 Noon to 2:00 A.M., Monday through Saturday, and from 11:00 A.M. to 12:00 Midnight on Sunday. The licensed capacity is 268 persons inside and 67 on the patio.

Alleged Contraventions and Recommended Enforcement Action

By Notice of Enforcement Action (NOEA) dated November 27, 2003, the branch alleged that on October 24, 2003 (business day of Thursday, October 23, 2003; referred to in this decision as October 23/24, 2003), the licensee contravened section 35 of the *Liquor Control and Licensing Act* by permitting a minor to be in the premises.

The prescribed penalties for this contravention are contained in *Liquor Control and Licensing Regulation*, Schedule 4, Item 3. The ranges of penalty for a first contravention are 1 to 3 day licence suspension and \$1,000 to \$3,000 monetary penalty. The branch's recommended enforcement action is a one (1) day licence suspension.

Applicable Statutory Provisions

See Appendix A attached

Issues

1. Did the licensee contravene section 35 by permitting a minor to be in the premises?
 - a. Has the licensee established the defence under section 33(5): Did the employee asked for, examine and act on the authenticity of identification?
 - b. Has the licensee demonstrated due diligence in attempting to prevent the contravention?
2. If the licensee committed the contravention, is the recommended penalty appropriate?

Exhibits

Exhibit No. 1	Book of Documents, tabs 1 - 30
Exhibit No. 2	Large Scale Floor Plan
Exhibit No. 3	Incident Report
Exhibit No. 4 A, B, and C	Identification confiscated from patrons
Exhibit No. 5	Incident Report
Exhibit No. 6	Incident Report
Exhibit No. 7	Extract from Licensee's Policy Manual: Doorman duties and responsibilities
Exhibit No. 8 A and B	Identification confiscated from patrons
Exhibit No. 9	Door Policy Manual as of Oct 03
Exhibit No. 10	Affidavit of owner/manager, dated January 22, 2004
Exhibit No. 11	Progressive Alcohol Awareness Manual & Study Guide
Exhibit No. 12	Article from the Vancouver Sun, June 14, 2004

Evidence*Overview*

There was no dispute that the police officer found at least one minor inside the licensed establishment on October 23/24, 2003. That is a contravention of section 35 of the *Act*. The licensee defended against the allegation saying

- a) that the door control employee asked the minor for identification and acted on the authenticity of that identification, as per section 33(5) of the *Act* and section 45 of the *Regulation*; and
- b) that the licensee had policies and procedures in place to afford a defence of due diligence.

The branch witnesses were the minor, a police officer and a liquor inspector. The licensee's witnesses were two door security employees, the general manager of Tommy's, and the owner/manager of the licensee.

The Branch's Evidence

The minor was not a willing witness. She was summonsed to attend the hearing, and was accompanied by her father who was in the hearing room during her testimony.

The minor testified that she was seventeen (17) years old on October 23/24, 2003, when she went to Tommy's. She was with a girlfriend who was sixteen (16) years old and a male who was of legal drinking age. Her girlfriend gave her some identification just before she entered Tommy's; the date of birth was for a nineteen (19) year old. The minor recalled that there were a couple of door security employees on duty when they arrived. There was no line up and they chatted briefly with the door security before entering. She recalled that they were allowed in and then the door security remembered to ask for identification as they were walking in. She testified that he glanced at it and handed it back without asking any questions. She also testified that she had an extra piece of identification in the same name, but it was in her purse and she was not asked to produce it. She recalled that the entry area was well lit and that she was the first one of her group to enter. She testified that her girlfriend also had false identification and that they did not use the same one.

Approximately a half hour after entering, the minor gave the false identification to her male friend who took it to his truck. The minor testified that she danced and had a couple of drinks which she purchased from the beer tub. She stated that no staff asked her for identification inside Tommy's. She also stated that Tommy's was not busy when they arrived, but it got busier.

The minor recalled that the police officer approached her after she had been in Tommy's for about two (2) hours. She recalled the officer was on his own, was not accompanied by a Tommy's employee, that she was at a booth, and that when he asked her for identification she said it was in the vehicle. The officer took her outside. When he asked for her name she gave him the one on the false identification. Her girlfriend came outside, spoke with the officer and at his request went to the vehicle to get the identification. While her friend went to the vehicle, the officer warned her about being charged with obstructing a police officer and she then gave her real name and admitted to being underage.

The officer wrote a violation ticket to the minor and phoned her parents to come to get her. At the hearing, the minor admitted not having paid the fine.

The police officer testified that at the time of this incident he had been in the R.C.M. Police for thirty (30) years and had done thousands of licensed premises inspections. At approximately 12:30 A.M. on October 24, 2003, he attended Tommy's for a routine inspection. He testified that usually Tommy's is good at keeping minors out, the staff is cooperative with the police, and the staff assist in the parking lot at closing time to ensure patrons leave in an orderly way. Generally, Tommy's does a good job but on this night they did not and he found it necessary to issue a Licensed Premises Check (LPC).

He did not recall whether he spoke with the door security or whether an employee accompanied him on his inspection. However, he testified that an employee usually accompanies him. The officer testified that he saw a young

woman he thought could be a minor, at one of the booths with several other patrons. He asked her for identification and she said it was in the vehicle. The officer said Tommy's was noisy so he asked her to go out to the foyer.

The officer testified that another young woman came out and asked him why he was pestering her friend. He suggested she could be of assistance by getting her friend's identification from the vehicle. While she was going to the vehicle, the officer warned the other young woman about an obstruction charge; she then gave her true name and date of birth (1985-12-11). The officer took her to the police vehicle.

When the other young woman returned, the officer got her to admit her real name and date of birth, confirming that she was sixteen (16) years old. She did not produce false identification.

The officer testified that the minors told him they used the same identification to get into Tommy's and that they passed it between them when they entered. He testified that the minors resembled each other and resembled the photograph on the false identification. However, he could see that the photograph was not either of them. The identification was for a twenty (20) year old. He said he held the false identification for a long time, but could not recall which case it related to and, eventually, destroyed it.

The officer testified that there have been occasions when he has found a minor inside a licensed establishment, has been satisfied that the licensee had done what it could to keep minors out, and hasn't issued a LPC. However, on this occasion, he was of the view that the licensee had not done a good job at keeping minors out. The officer testified that he has become familiar with the manager at Tommy's and has found him to be genuinely concerned about keeping minors out. The officer has had the manager to his house for coffee and they have talked about liquor related issued. The officer does not agree with the

licensee's practice of having cheap drink nights, such as the night of October 23/24, 2003. He testified that he has seen the staff at Tommy's refuse to allow an intoxicated person to enter. He also testified that on occasion the staff have given him four to six pieces of confiscated identification.

The officer wrote the LPC and gave a copy to the manager of Tommy's. The time on the LPC is 0030 hours, but he was unable to say whether that was the time he entered the premises or the time he wrote the LPC. The officer wrote notes from the occurrence from the mobile work station in his vehicle, on the same night (Ex. No. 1, tab 5).

The liquor inspector introduced documents in Exhibit No. 1 reviewing the branch's file for this licensee's from 1996, when the licensee applied for a liquor licence, to the present, including the compliance history. There are no proven contraventions but there have been LPCs, CNs, and enforcement meetings.

In 1996 the branch issued a warning letter concerning minors in the LRS. In 1996 the police issued a Licensed Premises Check (LPC) for cheap drinks and overcrowding in the Caddy Shack lounge. In 1998 the police issued a LPC for overcrowding and minors in Tommy's. In 1999 the branch wrote a letter to the licensee about overcrowding, exotic dancers, and free drinks in Tommy's and the Caddy Shack. In 2001, the branch issued a Contravention Notice (CN) to Tommy's citing 2 patrons without identification and two patrons who were intoxicated. In February 2002, the branch issued a CN to the Caddy Shack for "patron participation with exotic dancer." In March 2002, the branch issued a CN to Tommy's Cabaret for failing to verify proper identification.

On April 23, 2002, at the licensee's request, the branch's liquor inspector conducted a compliance meeting. The people attending for the licensee were the manager, two bartenders, marketing manager, bar manager and head waitress.

In June, August, September 2002, and April 2003, the branch issued CNs for improper advertising. On April 28, 2003, there was another compliance meeting attended by the licensee's general manager. On May 23, 2003, the police issued a LPC for disorderly conduct in the parking lot at closing time.

The branch did not pursue enforcement action for any of the above-noted alleged contraventions.

On March 12, 2004, the branch employed agents to attend licensed premises to test whether licensees were asking for two (2) pieces of identification as required by law. The agents were between nineteen (19) and twenty-five (25) years old. By letter dated March 18, 2004, the branch informed this licensee that two agents attended Tommy's and were either not asked to produce identification at all, or not asked for the required two (2) pieces. The licensee permitted them to enter and to purchase alcohol. Similarly, within fifteen (15) minutes of the attendance at Tommy's, the agents reported not having been asked for identification at the Caddy Shack and having been asked for only one (1) piece of identification at the LRS. The branch issued CNs for these incidents.

The liquor inspector testified that when she received the LPC for the October 23/24 incident she contacted the police officer and the manager of Tommy's. The manager of Tommy's told her that the staff had asked to see two (2) pieces of identification. She said that she considered the manager's evidence in determining whether there was evidence of due diligence. She testified that the officer did not tell her that in his experience this licensee does a good job. Other than delivering the summons to the minor, she did not have contact with her and did not interview her prior to issuing the CN.

The inspector testified that she has attended workshops on assessing due diligence. She explained that due diligence for a licensee means more than just putting together binders of rules of procedures; it means ensuring that staff know

the law and know that they must comply. In this case, she found that there had been past incidents and she determined it was appropriate to pursue enforcement action.

The licensee's evidence

Two door security employees testified and I refer to them door security No. 1 and door security No. 2. Door security No. 1 began working for this licensee in July 2003, his first time working in a licensed establishment. He testified that on October 23/24, he was still being trained and he worked door security from 9:00 P.M. to 10:00 P.M. He was working with an experienced door security employee who had since left this employment. After 10:00 P.M. he worked security inside which included watching for minors and asking for identification. His shift goes to about 2:30 A.M. after the parking lot has cleared.

Door security No. 1 testified that he was told during his shift that there was an incident with minors and he saw the officer outside talking with the young women. At the end of his shift he completed Exhibit No. 3, an incident report. When he completed the incident report he left the date of the incident blank. He testified that he has another job he works at 7:30 A.M. so he was in a rush to leave and probably assumed he would complete the report later, but forgot about it. He showed the time of the incident as 9:30 P.M. because he thought that was when the police escorted the minors out. He did not see his incident report again until the day of the hearing.

He testified to asking these patrons for identification and asking them questions to verify the identification. He said they answered his questions correctly, did not show signs of nervousness, were not sweating and did not stutter. He testified that he will not admit patrons without seeing proper identification and secondary identification and, therefore, he knew he asked for and checked the identification of these patrons. When questioned about the specific people, he was vague

about whether he actually remembered them and he could not remember whether he asked them questions to verify the identification. He testified that the experienced door security working with him would also have looked at the identification.

He testified that young people frequently try to get in to Tommy's and that he has turned away four or five per night. He submitted three examples of altered identification that had been presented at the door although he could not verify whether he had personally seized any of them.

Door security No. 2 testified that he had been employed in Tommy's for ten (10) months the time of this incident and his position was both head of door security and assistant manager for security and promotions. He reported to the manager of Tommy's, who was present the night of this incident. He prepared two incident reports, Exhibit No. 5 which he prepared that night and No. 6 which he prepared approximately one month later when he learned that the branch would be taking enforcement action. He was not at the door when these patrons came in.

Door security No. 2 testified that he accompanied the police officers around the room at approximately 11:15 P.M. He recalled there were two police officers and that when they stopped at the booth to check identification, the second officer produced a flash light. The officer asked all the patrons at the table, approximately six patrons, to produce their identifications and flashed the light on all of them. One patron did not have identification, another patron then approached the group, and the police escorted two of them outside to the parking lot. Door security No. 2 accompanied them out. As they passed door security No. 1 he asked him about these patrons and was told that they both presented two (2) pieces of identification.

Door security No. 2 referred to an extract from the licensee's policy manual (Exhibit No. 7) which all door security employees have to read and are tested on.

One section specifies "Our policy is No ID – No Entry." He testified that at the time of this incident, October 2003, he was not aware that two (2) pieces of identification was mandatory for everyone under twenty-five (25) years old. He did not know that requirement had been legislated effective December 2, 2002. However, as of January 1, 2004, he made sure that everyone had two (2) pieces.

He also testified that he had not read, or been provided with, the Guide to Liquor Licensees until January 2004. He said that Exhibit No. 7 was the manual he had been trained on, and there is a more recent manual with the requirement to ask for two (2) pieces of identification.

The general manager of Tommy's testified that he has been employed with the licensee for nine (9) years and has been the general manager of Tommy's for three and a half (3 ½) years. He testified that on a busy night there will be up to eight security employees. Their duties include screening patrons as they enter, watching for and solving problems before they develop, and patrolling the parking lot every twenty minutes. He confirmed that door security No. 2 was being trained as an assistant manager at the time of this incident.

The general training for new employees is to familiarize them with their responsibilities, train them how to handle situations and potential problems, and have them read the policy manual which is constantly being updated. The training takes approximately one and a half hours (1 ½) and is followed by a test. Other training is one-on-one with experienced employees.

He said that minors' attempting to enter is an ongoing problem and he showed a box of confiscated identification which he estimate to be 450 pieces collected over one and a half (1 ½) years. He testified that he has an employee who trains the others on what to look for with identification and how to detect false ones. He also testified that there are staff meetings every other week where they go over problem solving and updating.

The general manager testified about the door security procedures. It is standard practice to have patrons wait in line for a while, to judge their temperament. Then they are asked for two (2) pieces of identification. As of the summer of 2003, the policy was to require two (2) pieces from everyone under the age of twenty-five (25). He acknowledged that the legal requirement for two (2) pieces from everyone under the age of twenty-five (25) started in December 2002. However, this licensee did not adhere to the requirement immediately. He testified that there was a period of adjustment during which the licensee consciously decided not to enforce the new legislation. By October 2003 the staff had been told they had to ask for two (2) pieces. He produced a door staff manual which he said was in effect as October 2003. In 2004, the licensee produced the Progressive Alcohol Awareness Manual & Study Guide for employees. That document sets out the legislative requirements for identification. The licensee's policy, since 2004, is to require two (2) pieces from everyone under the age of thirty (30).

The general manager stated that in 2002 the licensee posted signs advising patrons that they might be asked to produce three (3) pieces of identification. He recalled these signs were replaced with the signage for the new identification requirements in December 2003.

The general manager surmised that door security No. 2 had forgotten when the licensee implemented the requirement to ask for two (2) pieces. He acknowledged that the training was different when door security No. 2 was hired and that he would not have been tested as other employees are now. He also could not say whether he had provided him with a copy of the Guide for Liquor Licensees.

The general manager testified that he does spot checks of the door security to ensure they are complying with the identification requirements. He has not used

outside spotters, or decoys. Tommy's attracts a young crowd, with an average age of nineteen and a half (19 ½) to twenty and a half (20 ½).

The owner/manager of the licensee testified that there are five managers at the Haney Hotel – the controller, a manager for each licensed premises, and the manager of the hotel rooms. The owner/manager supervises all of them. He attends the establishment at least three (3) days per week and is in daily communication with the managers. He produced an affidavit that he previously prepared for submission to the branch in January 2004. Attached to that are copies of the Haney Hotel Beer and Wine Store house rules, an employee acknowledgement of the rules dated October 23, 2002, notes from a staff meeting on August 5, 2003, concerning the new LRS, and other related documents.

He testified that he ensures the managers are aware of liquor law requirements so they can train the employees. Employees are aware that if they do not follow the liquor laws they will be disciplined and their employment terminated. He stated that the general manager of Tommy's has various people he relies on as his assistants. Door security No. 2 may have been termed 'assistant manager', but that was a loose term. He acknowledged that the door staff reported to door security No. 2 who in turn reported to the general manager of Tommy's. However, he stated that he relies on the manager to ensure everything is being done properly.

The owner/manager acknowledged that he did not implement the new identification requirements in December 2002. He stated that it required major reconditioning of staff and patrons. He acknowledged that requiring two (2) pieces of identification is an additional safeguard against minors being admitted. He recalled that the signs for the new identification requirements were posted in June or July 2003. However, he stressed that the prior policy had been to check identification for anyone under twenty-five (25) years old and that the posted

signs alerted patrons to possibly needing three (3) pieces of identification. The licensee produced the Progressive Alcohol Awareness Manual & Study Guide, which specifies the new identification legislation requirements, in March or April 2004, and which is provided to every employee.

The owner/manager testified that he thought there were video surveillance cameras in Tommy's at the time of this incident, but he did not view the tape. When he heard that the police officer had confiscated identification, he was satisfied that the minor had shown identification at the door.

Submissions

Section 33(5) Defence

Section 33(5) of the *Act* provides a defence if the licensee asked for, examined, and acted on the authenticity of identification. Section 45(1) of the *Regulations* defines what acceptable identification is for the purposes of a defence under section 33(5). Section 45(2) requires a licensee to request two (2) pieces of identification from anyone appearing to be under the age of twenty-five (25) years.

The licensee submitted that for the section 33(5) defence, there is no requirement of asking for two (2) pieces of identification. Failure to request two (2) pieces of identification is a separate contravention not alleged here which, the licensee observed, may not be enforceable since it only applies if a person *appears* to be under twenty-five (25) years.

The licensee submitted that the evidence of door security No. 1 established that he asked for and examined two (2) pieces of identification from each patron and asked questions of them to verify their identification. Although the minor said she did not produce the second piece of identification, door security No. 1 said she

did. The police officer's testimony was that both of the minors resembled the photograph in the false identification. Since he destroyed the identification there is no ability to compare the minor who testified to the photograph.

The licensee submitted that the evidence establishes the section 33(5) defence.

Due Diligence

The licensee submitted that the branch is required to prove the substantive contravention beyond a reasonable doubt and that the licensee may demonstrate the defence of due diligence on a balance of probabilities (*532871 B.C. Ltd. dba The Urban Well v. General Manager Liquor Control and Licensing Branch*, 2004 B.C.S.C. 127).

The licensee referred to a number of cases under the *Tobacco Sales Act* involving minors purchasing cigarettes. In *R. v. C.C. Eric James Management Ltd.*, 2000, B.C.P.C. 178, the court held that failure by an employee to require identification is not conclusive, but that one must look at the actions by the employer, the directing mind of the corporation, to determine whether the employer has a defence of due diligence. The Court stated, at paragraph 6:

A useful question to keep in mind, and perhaps another way of expressing the test when reviewing the actions of an employer in a case such as this, is what else might the employer have done to prevent the commission of this offence. If it is possible to identify and articulate preventive actions which are reasonable, and which common sense demands in the circumstances faced by the employer, and which were not undertaken, then the defence of due diligence would not protect the employer.

The Court provided a list of evidence of preventive measures in that case including:

- oral training and written materials for new employees;
 - an automatic computer prompt reminding employees of the age issue;
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- posting of signs about the legal age;
- posting of communications from the Health Board;
- using decoy purchasers;
- posting an earlier violation notice;
- verbal reminders to employees;
- isolating one till run by an experience employee for cigarette purchases;
and
- instruction to employees to request identification from anyone appearing to be under 25 years old.

The Court found that this evidence established the defence of due diligence.

In *R. v. 348095 B.C. Ltd.*, 2003 B.C.P.C. 58, the Court found that due diligence had been made out based on the following factors:

- New employees were given oral instructions about the law;
- New employees were required to sign acknowledgements of the employer's instructions;
- The employer used "Shop Watch" to check whether employees were following instructions;
- Employees who did not comply were disciplined;
- Signs required by legislation were prominently posted in the store.

Another case referred to by the licensee was *General Manager, Liquor Control and Licensing Branch v. Lonsdale Hotel Inc.*, 2002 BCCA 436. Two minors had been found inside the licensed establishment and admitted to having false identification. The Court of Appeal dismissed an appeal by the branch from a decision of the Liquor Appeal Board (LAB) finding that the licensee had taken reasonable measures to prevent minors from gaining admission.

The licensee also referred to the decision of the B.C. Supreme Court in *The Plaza Cabaret v. General Manager Liquor Control and Licensing Branch*, 2004 B.C.S.C. 248, at paragraphs 24 and 25:

[24] Section 36(2)(b) makes it an offence for a “person holding a licence or the person’s employee” to permit unlawful conduct in the establishment. I do not construe the section to mean that the licensee is the guarantor of its employee’s conduct. The word “or” is disjunctive. An employee may permit unlawful conduct. For that, he or she may be prosecuted under s. 48 of the *Act*. Section 20 of the *Act* does not contemplate regulatory enforcement against the employee.

[25] If a licensee is not to be responsible for unlawful conduct occurring in its establishment within the meaning of s. 36(2)(b), it must prove, on a balance of probabilities, each of two facts: that the employee was not the directing mind of the licensee in relation to that part of the licensee’s operations in connection with which the unlawful conduct arose, and, if that proof is provided, that those who were in fact responsible for that part of the licensee’s operations were duly diligent in attempting to prevent the occurrence of unlawful conduct or activities.

The licensee submitted that the directing mind is the owner/manager who is in charge seven days week or the general manager of Tommy’s, but it could not be anyone lower in seniority. Further, the employer’s training, particularly of door security, was reasonable and consistently diligent in an effort to prevent minors being admitted and, therefore, the employer should not be held responsible for the actions of the employees.

The licensee submitted that it had taken reasonable and prudent measures to prevent the sale of liquor to minors by:

1. providing each employee with the House Rules Manual, which they had to read and sign;
 2. having specific rules for door security duties and responsibilities for checking identification and steps to take to prevent service to minors;
 3. training in customer service;
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4. holding regular staff meetings during which employees were informed about the requirements for 2 pieces of identification for anyone appearing to be under 25 years;
5. training in detecting false, fraudulent or altered identification; and
6. informing staff of the severe consequences of supplying a minor.

Reasons and Decision

It is clear from the evidence that the licensee permitted a minor to enter Tommy's bar. That is a contravention of section 35. The licensee defends against this allegation by saying that employees always ask for identification, the minor produced identification, and that the licensee's policies and procedures demonstrate due diligence.

Section 33(5) Defence

Under section 33(5), it is a defence to an allegation under section 35 to show that the employee required the minor to produce identification and examined and acted on the authenticity of the identification. In the *Lonsdale Hotel* case, the LAB and the Court of Appeal referred to an earlier Court of Appeal case, *Twilight Zone Cabaret v. Liquor Control and Licensing Branch* (1995), 5 B.C.L.R. (3rd) 280, in which the court stated:

In my opinion, there is no failure to comply with the requirements of s. 35 if the defendant is able to satisfy the tribunal of those two things, namely, that he required that the person produce identification and that he examined and acted on the authenticity of the identification.

Following that direction, the LAB stated that:

... the tribunal should ask whether it is satisfied that the licensee has required that a person produce identification and that the licensee has examined and acted on the authenticity of the identification. The court also says that the tribunal must be satisfied that the process of examining and evaluating the identification is as full and complete as the *Act* requires.

There is a major factual dispute between the evidence of the minor who testified and that of door security No. 1. The minor said that the door security asked to see the identification, after she had already been admitted, and that he glanced at it and handed it back. She said he did not ask for the second piece and did not ask her any questions. I find that the minor had no motivation to be untruthful. She admitted to seeking admission to a licensed establishment knowing it was illegal and to having borrowed identification. She also admitted to purchasing alcohol when she was inside. She did not give any indication of not being able to remember what occurred at the front door or with the police officer. I have considered that she was involved in unlawful activity, but find that does not undermine the credibility of her evidence when she testified. Her testimony was clear, matter-of-fact, and credible.

Door control No. 1 initially was clear on his evidence concerning this minor and her companions, but later testified that he had based his testimony on his usual practice, not on specific recollection of these people. For example, he said he would not allow anyone in without proper identification and secondary identification and therefore he knew he asked these people. He acknowledged that he could not remember whether he had questioned them about the identification. Having considered all of his evidence, I find that in his testimony and even when he wrote the incident report, he was reporting what he knew to be required procedures, not necessarily what he did with these specific patrons. Unlike the minor, I find he had some motivation to colour his evidence because it could affect his employment.

I have carefully considered the evidence and I find the minor's testimony more trustworthy. I find that the minor was admitted without showing any identification, then was asked for identification and showed one (1) piece which the door security did not carefully examine.

I find that the licensee has not established the defence under section 33(5) of having examined and acted on the authenticity of the identification in concluding that the person was not a minor.

Due Diligence

In the *Plaza* case, the Court sets out two criteria for a licensee to meet in demonstrating due diligence. First, the licensee must show that “the employee was not the directing mind of the licensee in relation to that part of the licensee’s operations in connection with which the unlawful conduct arose” and, secondly, that “those who were in fact responsible for that part of the licensee’s operations were duly diligent in attempting to prevent the occurrence of unlawful conduct or activities.”

The first question is whether the employee who admitted the minor (door security No.1) was a directing mind of that part of the licensee’s operation. I agree with the licensee that he was not. He was a new employee, still in training, working under supervision.

The next question is who was responsible for that part of the licensee’s operation. I have no difficulty in finding that both the general manager of Tommy’s and the owner/manager were directing minds of the licensee and were responsible for the door security operations. They both testified to their areas of responsibility and supervision of the staff, the licensee’s policies, staff training, etc. It is possible that an employee in the position of door security No. 2 could be found to be directing mind of the door control operations. However, I am giving the licensee the benefit of my doubt on this and finding that door security No. 2 was not a directing mind.

The last question is whether the licensee has demonstrated due diligence. For reasons that follow, I find the evidence falls short of establishing a sufficient

degree of due diligence to prevent the occurrence of this, or a similar, contravention.

The owner/manager acknowledged that the licensee had not implemented the new identification legislation requirements as of the date of this incident. There was conflicting testimony on when the new signs were posted, whether that was in the summer of 2003 or in January 2004. Door security No. 2 testified that he did not know about the new requirements as of October 2003, a full ten (10) months after they had been legislated. If the signs had been posted in the summer of 2003 as the owner/manager contended, it is apparent that they were not prominent enough to educate the staff.

There was considerable evidence about the licensee's conscious failure to implement the new identification legislation requirements as of the date of this incident. I agree with the licensee that the issue in this hearing is not whether the licensee contravened that requirement. Rather it is whether the licensee had sufficient processes in place to prevent the commission of this contravention, with or without implementing the new requirements.

The evidence about what door security policies were in place in at the time of this incident was hard to pin down. Door Security No. 2, the general manager and the owner/manager had differing recollections of when policies had been implemented. As I noted in the hearing, the policy manuals were not dated when they were updated. Door security No. 2 considered himself to be in charge of the door security employees and to be the assistant manager of Tommy's. He brought to the hearing the policy manual he had been trained on, which I believe he thought was in effect as of the date of the incident.

It may not be crucial which policies were in effect at which point in time, if the policies generally establish that the licensee was duly diligent in doing what was necessary to prevent minors from entering the premises. The witnesses testified

to policies that included a possible requirement for three (3) pieces of identification, asking for identification for patrons appearing under twenty-five (25) years and under thirty (30) years, and implementation of the new identification requirements.

The general manager and the owner/manager acknowledged that door security No. 2 was the head of door security, was performing functions of an assistant manager, and had been fully trained on door security. However, that employee testified that he had not been provided with a copy of the Guide to Liquor Licensees and had not been advised of legislative amendments. There was no evidence that he had read and signed a policy manual, as required by the licensee's training. In my view, these facts point to a lack of diligence on the part of the licensee in ensuring that this key employee understood the importance of complying with the legislation, understood the terms and conditions attached to the licence or understood the seriousness of the consequences for failure to comply with the provisions respecting minors.

The evidence demonstrated that the minor and her friends were in Tommy's for approximately two (2) hours when approached by the police officer. The minor purchased beer, danced, and was with friends at a booth. No staff member questioned her age or asked for identification. The minor and the police officer testified that the other young woman was only sixteen (16) years old. There was no evidence that she was asked for identification while she was inside.

In my view, the facts that the licensee consciously delayed implementing the legislative amendments, that door security No. 2 was not adequately trained or informed of the legislative requirements and that inside staff did not question the minor's age, are indicative that this licensee was not taking its due diligence seriously enough. As the liquor inspector observed, it is not enough to point to policy statements to say we have policies in place; it is necessary to go the

further steps of showing that the licensee has been conscientious in ensuring that staff follow the policies and understand the importance of enforcing the laws.

I find that the licensee's attempt to demonstrate that it had been conscientious in training staff was not compelling. The licensee acknowledged that Tommy's attracts a young clientele. Accordingly, it is particularly important for this licensee to impress upon staff the importance of examining identification, questioning patrons and refusing entry. The fact that staff has confiscated false identifications is positive evidence. But the facts of this case show that two (2) minors got past door security, who I find did not carefully examine their identification.

One of the tests from the tobacco cases is whether the licensee could have done more by having other preventive measures in place. One obvious preventive measure would have been to implement the new identification legislation when it was enacted. Another measure would be to use Shop Watch or decoy purchasers. Another measure would be to ensure staff are aware of and trained on the most recent legislation and policies.

I appreciate the comments by the police officer that this licensee usually does a good job. But even the officer found that this occasion warranted official action.

I find that the branch has proven the contravention that the licensee permitted a minor to enter the licensed establishment on October 23/24, 2004, and that the licensee has not made out a defence of due diligence.

The branch did not present evidence on the second minor, other than through the minor who testified and the police officer. I am not treating that incident as a proved contravention for either contravention or penalty.

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 have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a license or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a license

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulations*.

I have taken into consideration that this is the first proven contravention since this establishment opened and that the staff was cooperative with the police officer. I have given weight to the compliance history only to the extent that it demonstrates the police and the branch have told the licensee in the past of concerns about minors. The range for first contraventions is 1 to 3 days, or \$1,000 to \$3,000 monetary penalty.

I find that the circumstances warrant imposing a licence suspension. The evidence showed that a minor was admitted, was there for approximately two (2) hours and purchased and drank liquor. The door security identification check was insufficient. The minor was sold liquor and was not approached by staff or asked for identification when she was in Tommy's.

I find that the branch's recommendation of the minimum one (1) day suspension is a light penalty, but I accept that it is an appropriate penalty.

ORDER

Pursuant to section 20(2) of the *Act*, I suspend Liquor Primary Licence No. 017240 for one (1) day for the contravention of permitting a minor to be in the premises on October 23/24, 2003.

I order that the licence suspension take effect as of the close of business on Wednesday, September 15, 2004, and continue through to the opening of business on Friday, September 17, 2004.

The suspension order notice and suspended sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer. A member of the R.C.M. Police Ridge-Meadows Detachment will be requested to attend the premises, take possession of the liquor license and hold it in safekeeping during the term of the suspension.

Original signed by

M. G. Taylor
Enforcement Hearing Adjudicator

DATE: July 28, 2004

R.C.M. Police Ridge-Meadows Detachment

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Mike Clark, Regional Manager

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Shahid Noorani, Advocate

Appendix A

Liquor Control and Licensing Act

Supplying liquor to minors

33 (5) It is a defence to a charge under this section if the defendant satisfies the court that, in reaching the conclusion that the person was not a minor, the defendant

- (a) required that the person produce identification, and
- (b) examined and acted on the authenticity of the identification.

(6) A person who contravenes this section commits an offence and is liable on conviction to a fine of not less than \$500.

Minors on licensed premises

35 A person who holds a licence under this Act or who sells liquor under the *Liquor Distribution Act*, or the person's employee, must not authorize or permit a minor to enter on or to be on premises where liquor is sold or kept for sale except

- (a) if the minor is accompanied by a parent or guardian on premises where liquor is sold exclusively for consumption off the premises,
- (b) with lawful excuse, or
- (c) in prescribed circumstances.

Liquor Control and Licensing Regulation

Minors

45 (1) For the purposes of section 33 (5) of the Act, identification includes the following:

- (a) a passport;
 - (b) a driver's licence that displays a photograph and the date of birth of the holder;
 - (c) an identification card, issued by a government agency, that displays a photograph and the date of birth of the holder.
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- (2) A licensee must request 2 pieces of identification from any person appearing to be under the age of 25 before
- (a) allowing the person to enter the licensed establishment, if the establishment is one in which minors are not allowed, or
 - (b) selling or serving liquor to the person.
- (3) The pieces of identification required under subsection (2) must include
- (a) one piece of the identification referred to in subsection (1), and
 - (b) one other piece of identification that displays the person's name and at least one of the person's signature and picture.
- (4) A licensee must not allow a minor to have liquor in his or her possession in the licensed establishment unless the licence issued for that establishment is a food primary licence or a liquor primary licence for a stadium and the minor is working as a server in the establishment.
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