



**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:	Galaxy Hotels Ltd. dba Liquor Plus 2915 Douglas Street Victoria, BC V8T 4M8
Case:	EH05-149
For the Licensee:	L. R. Wilson
For the Branch:	Sonja Okada
Enforcement Hearing Adjudicator:	M. G. Taylor
Date of Hearing:	February 23, 2006
Place of Hearing:	Victoria
Date of Decision:	May 4, 2006

INTRODUCTION

The licensee, Galaxy Hotels Ltd., operates the Liquor Plus licensee retail store at 2915 Douglas Street, Victoria, B.C. under Licensee Retail Store Licence (“LRS”) No. 195228 with hours of operation from 9:00 a.m. until 11:00 p.m. seven days a week. As with all LRS licenses, it is subject to the terms and conditions contained in the publication ‘Guide for Liquor Licensees in British Columbia’ (“the Guide”).

ALLEGED CONTRAVENTIONS

By Notice of Enforcement Action (NOEA) dated November 14, 2005, the Liquor Control and Licensing Branch (“the Branch”) alleged that on August 27, 2005, the licensee contravened Section 45(2) of the *Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (the “*Regulation*”), by failing to request two pieces of identification from a person appearing to be under the age of 25 years before allowing the person to enter the licensed establishment, or before selling or serving liquor to the person.

The branch’s recommended enforcement action is a \$1,000 penalty (Item 4, Schedule 4, of the *Regulation*).

RELEVANT STATUTORY PROVISIONS

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

Section 45(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.
-

ISSUES

1. Did the licensee fail to request two pieces of identification from a person appearing to be under the age of 25 before selling liquor to the person?
2. If yes, has the licensee demonstrated a defence of due diligence?
3. If the licensee contravened as alleged, what, if any, is the appropriate enforcement action?

EXHIBITS

Exhibit No. 1	Branch's Book of Documents, Tab 13 removed
Exhibit No. 2	Licensee's Book of Documents, Tab 5 removed
Exhibit No. 3	Daytime photographs of the agents
Exhibit No. 4	Liquor Plus brochure and tent card
Exhibit No. 5	Liquor Plus Policy Manual
Exhibit No. 6	Liquor Plus Employment Information Package
Exhibit No. 7	Important Reminder Notice

EVIDENCE

The branch called as witnesses two agents who were involved in this incident and a compliance and enforcement officer (C & E officer). The licensee's witnesses were the director of the company who is the operating manager ("operating manager"), a Liquor Plus store manager and a store supervisor.

During 2004 and 2005, the branch employed young people, between the ages of 19 and 25 years, as agents to conduct compliance checks to assist the general manager in determining whether licensees were complying with Section 45(2) of the *Regulation*. The agents attended many licensed premises in a day, including lounges, pubs, restaurants and LRSs.

Branch's Evidence***The Agents***

There were two agents, a woman and a man, who attended this LRS on August 7, 2005, and who gave evidence at the hearing. In Exhibit No. 1, tab 6, and Exhibit No. 3 there are photographs of the agents showing their appearances in the evening and morning, respectively, of August 27, 2005.

The female agent testified that she was 21 years old as of August 27, 2005, that she and her colleague entered this LRS at approximately 8:40 p.m., and that she looked for and did not find her choice beverage "Tabu" and that her colleague was served first at the cash register. She testified that there may have been two other customers in the store. There were two male cashiers and both were friendly. She asked one of them for Tabu and he said they didn't have it in stock. She picked up a Cooler and returned to the cashier to pay. The cashier commented to her that her friend had left before her, as though he thought they were together and that it was odd that he left without her. Then the cashier asked her for identification and she produced her passport. She paid cash, did not get a receipt and left the LRS. She testified that if a receipt was not offered she did not ask for one because she did not want to chance identifying herself as a covert agent.

When she returned to the vehicle, her colleague and their supervisor were sitting in the front seat talking and her colleague was completing his form. When she started completing her agent form, all three of them had a discussion about the description of the cashiers because she and her colleague were describing different people.

She testified that the evening photograph would have been taken prior to the start of their evening shift because that was mandatory policy. According to the

branch's procedures, if they changed clothes or made any other changes to their appearance during a shift, a new photograph would be taken.

The male agent testified that he was 19 years old on August 27, 2005. He recalled that the evening photograph was taken around 5:00 or 6:00 p.m., but he also testified that it could have been taken later if, for example, their supervisor had forgotten to take it at the start of the shift. He testified that he was dressed the same when he was at Liquor Plus as in the photograph, and that is noted on the agent form. When they entered Liquor Plus at approximately 8:30 – 8:40 p.m., he had his Driver's Licence and Social Insurance Number card with him. He testified that he went in with his female colleague, picked up a single, tall can of FAXE beer, took it to the cash, paid and left the store. He stated that there were two young male clerks who acknowledged them but did not make eye contact. When he took his purchase to the cash, the clerk punched in the code, told him how much it was and took the money. The clerk did not ask him for identification. The agent testified that he did not get a receipt. He recalled that the clerk printed the receipt, crumpled it and threw it into the garbage. He returned to the vehicle and completed the agent form.

Compliance and Enforcement Officer

The C & E officer testified that he was the officer responsible for this establishment as of August 27, 2005, and has worked with this licensee for four years. He explained some of the licensing processes and the information given to licensees about their responsibilities, the branch's rules and *Regulation*, and the requirement for two pieces of identification from anyone appearing under 25 years old. He testified that when the *Regulation* was first introduced the compliance rate was very low. Therefore, the branch developed a policy that no enforcement action would usually be taken until there were two previous alleged contraventions and, probably, a Compliance Meeting between the C & E officer and the licensee. The reason for the policy was to give licensees time to become

accustomed to the *Regulation*, put policies and procedures in place, and train staff. In this case, the licensee had received Contravention Notices dated December 20, 2004, and May 5, 2005, and there was a Compliance Meeting on March 14, 2005. The C & E officer met with the operating manager concerning this incident, reviewed the branch's policy manual with him, and reviewed the licensee's policy manual. The C & E officer has given assistance to the operating manager over the years. He acknowledged that the licensee has a comprehensive, 32 page employee handbook/manual containing rules, regulations and policies. He testified that he was aware of, and had seen, the licensee's separate memorandum to staff concerning identification policy, contained in Exhibit No. 6. Additionally, the licensee has a notice, Exhibit No. 7, advising employees of the requirements for two pieces of identification. The operating manager advised him that the notice is placed in the employees pay cheques four times per year.

The C & E officer testified that he has not found this licensee to be a problem in the past and that this licensee is "not part of the 5%" of licensees the branch has to manage.

Licensee's Evidence

Operating Manager

The operating manager stated that his family has operated liquor establishments in Victoria for many years. His business partner has been in the retail food business for ^[1] years and has applied the knowledge he gained there in the Liquor Plus business. In particular, he noted the similar laws concerning the prohibition on sales of cigarettes and alcohol to minors. They operate four Liquor Plus outlets with 87 employees. Initially, they planned to open these stores when the government said it was going to close down the Liquor Distribution Branch

^[1] Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

(LDB) stores. However, the government changed directions and now they are in competition.

The prices in Liquor Plus are the same as in the Liquor Distribution Branch stores, which has made them unpopular with the other retail outlets. The operating manager testified that, in order to establish this business as a viable alternative to the LDB, they have put policies and practices in place to ensure an elevated level of service. He noted that rather than hiring 'cashiers' they hire 'sales clerks.' Their staff train for at least one week before they operate the cash registers. The Staff Time Sheet (sample at Exhibit 2, tab 2) includes an acknowledgement that the staff members know they have to request two pieces of identification from any customer appearing under the age of 25 and it refers to the staff manual for information of what is acceptable identification. The starting salary is on par with the LDB employees and, after 90 days, their employees get a benefit package, which offers more than the government package at LDB. The operating manager noted the importance of establishing a staff of core, experienced, mature employees.

The LRS under consideration in this hearing has a kitchen and a training area that seat up to 50 people. The licensee offers cooking classes with guest chefs, wine seminars, a radio program, classes on wine and food and classes on beer and spirits. They recently hired a sommelier. They hold regular classes for the staff in order to improve their knowledge of the products. In each class, a portion of the time is devoted to discussing the Liquor Control and Licensing Branch rules and *Regulation*, and issues that arise with patrons. The operating manager testified that they have stopped stocking certain products with high alcohol content and low prices in order to curtail over service. He also testified that there are particular pieces of identification that they will not accept because of the incidents of faked cards.

The operating manager testified that they hold management meetings once per week attended by him, his business partner, the store managers from four outlets, and the controller. The business at the meetings includes the day-to-day management concerns, specials, other business concerns, and dealings with the government. He testified that they have a Director of Personnel, who is responsible for approving new employees. The employees are trained with an extensive employee manual. The manual contains the rules the employees must follow and sets out the penalties for not following the rules. Notices about the government *Regulation* are posted in the store, in the washrooms, and at the tills.

The till tapes contain advertisements as well as cautions, for example about drinking and driving. There is a mandatory policy that staff give receipts from till tapes. There is also a six-foot policy – if a customer walks within six feet of an employee, the employee must acknowledge the patron and ask to be of assistance. It is mandatory for staff to wear nametags.

The operating manager testified that there are video cameras positioned around the store, inside and outside. The tapes are kept for 10 days. This incident occurred on August 27, 2005, but he did not receive notice until approximately September 17, 2005. If he had found out earlier, he could have burned a CD of the video, seen the agents, seen the car, and used the CD for training purposes.

The operating manager also testified that they use 'silent shoppers' who look under age to test whether the employees are following the *Regulation*. This was noted in the C & E officer's notes. He testified that he has attended training sessions put on by the branch. Additionally, he has had many conversations with the C & E officer over the years and has benefited from his suggestions. He noted that the time sheet acknowledgement was one of those suggestions.

At the time of these alleged contraventions, the store manager was a person with 19 years experience in the industry. The two sales clerks were part-time staff

who were 19 and 20 years old. They would have received training from the employee manual and would have attended at least one class, which would have covered issues of proper identification. The operating manager testified that he was amazed and shocked to learn that they did not ask for proper identification. He felt he had to make an example of them and so he cut back their hours.

Store Manager

The store manager stated that he has been in retail business for ^[2] years including ^[3] years at the grocery outlet run by one of the Liquor Plus owners. For nine years, he managed one of the stores. He has supervised a staff of 50 people. He was the manager of the Douglas Street outlet in August 2005 and then became the manager of the Royal Oak store, with a staff of 15 under him. He testified that new employees at Liquor Plus are trained with the employee manual and in the stores. They are required to read the company policies and sign each page indicating they understand the requirements. The company pays for them to take the Serving It Right program.

The store manager testified that employees are not permitted to share a till, unless one of them is the manager or supervisor. If employees want to switch tills, they have to exchange floats, and enter the employee identification number into the till. Employees are required to follow a dress code of black pants, neatly dressed and name tag. If an employee comes to work dishevelled, he/she will be sent home.

The management meetings occur each Tuesday. One quarter of each meeting is directed to enforcement issues. Following the meetings, policy issues are raised with employees on a one-to-one basis. There is also a 'communication book' in each store for passing on information.

[2] Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

[3] Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

It is usual to employ three staff and one supervisor during a shift and that is how many were working at the Douglas Street outlet on August 27, 2005. If the store manager is not present, the supervisor is responsible and, if the supervisor is on a break, the lead sales clerk is in charge. When the licensee received the Contravention Notice, they made a point of going over identification policies with every staff member.

The store manager acknowledged that younger staff may find it more difficult to ask people for identification because of peer pressure from customers their own age. He testified that he addresses this through continuous education, training and reminders. He also testified that he has his own policy that staff must ask for identification from anyone appearing under 30 years old.

The store manager also testified that the management has a zero tolerance level in following provincial *Regulation* and in staff appearance and conduct. The operating manager is in the store every day and is always available by telephone to deal with questions or problems. He testified that two employees had been fired for not following proper procedure on identification. In once instance, the employee's failure was detected though the silent shopper. He testified that the licensee uses the silent shopper about twice per month.

Store Supervisor

The store supervisor testified that she had worked for liquor plus since ^[4] and had been employed in the hospitality industry for ^[5] years. She is familiar with the rules and *Regulation* governing the sale and service of liquor, including identification requirements. She had been the supervisor of the Douglas Street

[4] Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

[5] Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

outlet for approximately ^[6], as of the hearing. Her duties include opening and closing the store, supervising when management is not present, handling cash, and accessing the safe.

The store supervisor testified that employees understand that the legal age is 19 years old but unless the customer looks older than 25 they have to produce identification. She tells the younger staff to ask for identification if the person appears to be under 30 years old. She stated that she accepts BC Identification, Drivers' Licences and Passports as primary identification and that she prefers identification with the hologram on. She testified that there is a notice concerning proper identification requirements attached to each of the three till monitors. She also testified that it is policy to put the customer's receipt into the bag. She confirmed the previous testimony that employees do not share tills.

The store supervisor testified that she does not have regular breaks and is usually not off the floor for more than a couple of minutes. When she is leaving, she advises the sales clerks. She is always available by intercom.

SUBMISSIONS

The licensee submitted that there is a discrepancy between the morning and evening photographs and there is an issue about when the latter were taken. There was also a discrepancy in the evidence concerning the description of the sales clerks by the branch agents and whether they were wearing nametags. The licensee noted that it would not be possible for different sales clerks to operate the same till. Additionally, the licensee submitted that there would be no reason for the agents not to obtain receipts or read the nametags. The licensee submitted that these discrepancies raise issue with the accuracy of branch's evidence.

^[6] Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

The licensee expressed frustration that the branch does not enforce the *Regulation* against the LDB in the same way as against the private sector. He stated that staff at LDB stores may be suspended for selling to someone without proper identification but if it happens in the private sector, the licensee takes the full brunt of the enforcement penalties. He also acknowledged that he is ultimately responsible for his employees and submitted that he has full procedures and policies in place to ensure they comply with the laws.

ANALYSIS AND DECISION

Although the licensee raised some issues concerning the testimony of the agents, I accept their testimony that their appearances, when they went into this Liquor Plus outlet on August 27, 2005, were substantially as indicated in the photographs at Exhibit No. 1, tab 6. I find, on the preponderance of the evidence, that the agents were under 25 years old, that they did not attempt to hide their youthful appearances, and that the sales clerks sold them liquor without requiring appropriate identification, contrary to Section 45(2) of the *Regulation*.

Due Diligence

It is well accepted that the defence of due diligence applies to contraventions under the *Act*. The B.C. Supreme Court addressed due diligence in *The Plaza Cabaret v. General Manager Liquor Control and Licensing Branch*, 2004 B.C.S.C. 248, a case involving alleged illegal conduct:

[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.

Since the *Plaza* decision, in cases assessing the evidence of due diligence, the branch has stated that a licensee must not only establish procedures to identify and deal with problems, it must ensue that those procedures are consistently acted upon and problems dealt with. As a test of due diligence, the branch has considered whether there were more steps the licensee could have taken to ensure that staff were aware of the legislative requirements and were properly trained to do the job, and whether there were more preventative measures the licensee could have taken to prevent the occurrence of the contravention. (For a discussion of due diligence factors, see for example, *Haney Hospitality Ltd. (dba Haney Motor Hotel)*, EH01-170, July 27, 2004; *Sooke River Hotel Ltd.* EH04-182, June 29, 2005; *Frontiersman Pub Inc, dba Frontiersman Cold Beer & Wine Store*, EH04-180, June 14, 2005; *365158 BC Ltd., dba Muddy Waters Pub*, EH04-177 and EH04-181, July 15, 2005.)

On the evidence, I find that the sales clerks on duty were not the 'directing mind' of the licensee. Therefore, I have considered whether the evidence establishes the defence of due diligence.

I find that the licensee is conscientious about the identification requirements. His evidence demonstrates a high standard for training including group-training sessions and one-on-one training. There is an extensive employee manual, notices posted in the washrooms as well as in the public areas and on the cash registers, a separate memorandum to staff regarding identification issues, a notice that is included quarterly with pay cheques, and the use of the silent shoppers to test employee compliance. Additionally, there is the acknowledgment on the timesheet that the employee understands the *Regulation* concerning proper identification.

The licensee testified to a policy of employing experienced and mature staff. I note that both the store manager and supervisor who testified in this hearing have extensive experience in the hospitality industry. They also testified to imposing their own requirement of having staff ask for identification from patrons appearing to be under 30 years old.

It is apparent from the testimony of the C & E officer that he has had a close working relationship with the licensee. From the licensee's testimony, it is also apparent that he has implemented suggestions from the branch.

I find that the licensee has been diligent in imposing staff policy and discipline to ensure that the requirement for proper identification, including the 'under 25' requirement, is being enforced. Applying the test of whether there is more the licensee could do by way of preventative measures, I have not been able to discern any additional measures. It is apparent that the licensee will have to continue training and reinforcement of the *Regulation*.

I find the licensee has demonstrated a defence of due diligence. Accordingly, I find that the branch has not established the contravention of Section 45(2) of the *Regulation* as alleged.

[ORIGINAL SIGNED]

M. G. Taylor
Enforcement Hearing Adjudicator

Date: May 4, 2006

cc: Victoria Police Department

Liquor Control and Licensing Branch
Attn: Gary Barker, Regional Manager
Vancouver Island/Okanagan/Kootenay

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Sonja Okada, Branch Advocate
