



**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:	Vancouver Arena Limited Partnership dba Rogers Arena 800 Griffiths Way Vancouver, BC V6B 6G1
Case:	EH13-065
For the Licensee:	Andrew Gay
For the Branch:	Cristal Scheer
General Manager's Delegate:	Nerys Poole
Dates of Hearing:	November 19, 20, 28, 2013
Date of Decision:	January 22, 2014

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The licensee, Vancouver Arena Limited Partnership (“VALP”) dba Rogers Arena, (the “licensee”) operates the Rogers Arena located in downtown Vancouver. Rogers Arena is a large arena that hosts concerts, events and hockey games. Rogers Arena has both a Food Primary and a Liquor Primary Licence. This decision deals with the Liquor Primary Licence #167879 (the “licence”) which allows liquor sales from 11:00 a.m. to 1:00 a.m. Monday to Saturday and to midnight on Sunday.

The total patron capacity for the licence is 24,800. The actual seating capacity for events or hockey games in Rogers Arena is 18,000.

The licence has a number of terms and conditions, one of which permits minors to be present while liquor is being served. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication “Guide for Liquor Licensees in British Columbia” (the “Guide”).

The licensee is alleged to have contravened the *Liquor Control and Licensing Act* on March 14, 2013, 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 an employee of the licensee’s third party operator sold liquor to a minor. 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.

The Executive Vice President and Arena General Manager (AGM) for Canucks Sports and Entertainment, the parent company of VALP, appeared as the licensee’s representative during the course of the hearing and also as a witness for the licensee. The licensee contracts with a third party operator, Aramark Sports and Entertainment Corporation (“Aramark”), to operate the food and beverages part of the arena operation, which includes all alcohol sales in the arena. For the sake of clarity in this decision, I use the term “licensee” when discussing its submissions, presentation of evidence in hearing, and its overall responsibility as the holder of the liquor primary licence. I use VALP and Aramark to distinguish between the staff, policies, training and practices of each organization.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "branch") allegations and proposed penalties are set out in the Notice of Enforcement Action dated April 4, 2013 (the "NOEA"). The branch alleges that, on March 14, 2013, the licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act") by selling, giving, or otherwise supplying liquor to a minor.

The proposed enforcement action outlined in the NOEA is a \$7,500 monetary penalty. Item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation") sets out a range of penalties for a first contravention of this type: a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

33 (1) A person must not

- (a) sell, give or otherwise supply liquor to a minor.

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

Notices of contravention

- 64 (1) If an inspector forms the opinion that a licensee has committed a contravention, the inspector must, unless otherwise authorized by the general manager, provide written notice to the licensee that the inspector is of the opinion that the licensee has committed a specified contravention.
- (2) If, after considering the alleged contravention, the inspector proposes that enforcement actions should be taken against the licensee in response to that alleged contravention, the inspector must, after forming that opinion, provide written notice to the licensee
- (a) specifying which enforcement actions the general manager proposes to take against the licensee should the licensee agree under subsection (3) that the licensee has committed the contravention, and

- (b) notifying the licensee that, unless the licensee provides a notice of waiver in accordance with subsection (3),
- (i) the general manager will determine whether the alleged contravention occurred and the enforcement actions, if any, that are to be taken in relation to that alleged contravention, and
 - (ii) an enforcement hearing may be scheduled for that purpose.

ISSUES

1. Did the liquor inspector, when making the decision to issue the NOEA, properly exercise her discretion under section 64 of the *Regulation*?
2. Did an employee of the licensee's third party operator sell liquor to a minor?
3. If the employee sold liquor to a minor, has the licensee met the onus of establishing a defence of due diligence?
4. If the answer to issue 3 is no, what penalty, if any, is appropriate?

EXHIBITS

- Exhibit 1:** Branch Book of Documents, tabs 1 to 14 and tab 17 (with tabs 15 and 16 removed)
- Exhibit 2:** A sealed envelope, with a notation that it not be unsealed or disclosed without a Court Order, containing copies of two photographs of the Branch's minor agent identified below as "the minor agent", together with a copy of a photograph of the minor agent's British Columbia Driver's License and BC ID card
- Exhibit 3:** Excerpt from Liquor Control and Licensing Branch Compliance and Enforcement Policy and Procedures Reference Manual, Last Update - October 2013
- Exhibit 4:** Excerpt from Liquor Control and Licensing Branch Compliance and Enforcement Policy and Procedures Reference Manual, Last Update – September 2011, Desk Reference
- Exhibit 5:** Liquor Control and Licensing Branch Minors as Agents Program – 2011/12 Annual Report, with cover page and one page excerpt

- Exhibit 6:** Liquor Control and Licensing Branch Policy Directive No.07-02, dated February 16, 2007
- Exhibit 7:** Licensee's Book of Documents in 2 volumes, tabs 1 to 38
- Exhibit 8:** Excerpt from Liquor Control and Licensing Branch Compliance and Enforcement Policy and Procedures Reference Manual, Last Update - March 2013
- Exhibit 9:** Resume of liquor consultant, president of Rising Tide Consultants Ltd. (undated)
- Exhibit 10:** One page titled with liquor consultant's name, with list of bullet points indicating some of his clients (undated)

PRELIMINARY RULINGS

Ruling on Admissibility of tabs 15 and 16

The licensee objected to the inclusion of tabs 15 and 16 of Exhibit 1. The licensee submitted that these two documents are inadmissible for reasons of relevance and on the basis of the public interest in encouraging those in the liquor industry to participate in commenting on proposed liquor policy changes and changes to legislation. Tab 15 was a submission to the Liquor Policy Review, dated September 26, 2013, from the liquor consultant who testified in the hearing. Tab 16 was a letter dated September 27, 2013, from the AGM to John Yap, MLA. I agreed with the licensee on this objection, ruled these two documents inadmissible, removed them from Exhibit 1 and handed them to the branch advocate. I did not look at the contents.

Ruling on Identification of Minor

The licensee was shown Exhibit 2 and was asked for a commitment to not disclose the minor's name or other identifying details. The licensee's legal counsel agreed on the condition that I seal the envelope at the time of completing this decision.

WITNESSES

The branch called the two liquor inspectors who were present at the Rogers Arena on the evening of March 14, 2013 and observed the sale of the liquor to the minor agent.

The Licensee called ten witnesses: three VALP management staff, six Aramark staff and a consultant in the liquor industry.

The three VALP management staff were:

1. the AGM, the executive vice-president of Canucks Sports and Entertainment, a parent company of VALP and the General Manager of the Rogers Arena;
2. the VALP Duty Manager who was on duty on the evening of March 14, 2013 and was the first to meet with the liquor inspectors after the incident; and,
3. the Manager of Security, Safety and Alcohol Compliance, responsible for the security, occupational health and safety and alcohol compliance functions at Rogers Arena (the "VALP Security Manager").

The six Aramark staff were:

1. the Aramark General Manager;
2. the Division Manager;
3. the Events Supervisor who worked on the evening of March 14, 2013 and was responsible for supervising the hawkker who sold the liquor to the minor;
4. the Alcohol Compliance Officer;
5. the Human Resources Manager; and,
6. the Aramark TIPS trainer who is Aramark's Office and Operations Manager at Save-on Foods Memorial Arena in Victoria.

The licensee's witnesses testified about the operation of Rogers Arena, the alcohol policies of both VALP and Aramark, the training provided to employees of both organizations, the steps both organizations take to ensure its staff apply the policies and training, and the post-incident changes to policies.

FACTS

The licensee admits that an employee of Aramark sold liquor to a minor on March 14, 2013, and does not dispute the branch's facts about this sale.

The licensee provided evidence about the policies, procedures and training of both VALP and Aramark, in support of its defence of due diligence. The branch did not present any evidence to contradict the evidence of the licensee on its policies, practices and training. I have made findings of fact below from the undisputed evidence of the licensee.

The branch raised a few issues with respect to the operation and the application of the licensee's policies. I address these issues under Reasons when I determine whether the facts presented meet the test of due diligence.

Sale of Liquor to a Minor on March 14, 2013

On March 14, 2013, two liquor inspectors and a minor agent were conducting inspections under the Minors as Agents Program ("MAP"). The branch introduced MAP in 2011 and hired 17 or 18 year old minors to assist in carrying out compliance inspections. The branch provided notification to licensed establishments of this program.

At the start of their shift on March 14, 2013, the two liquor inspectors photographed the branch's minor agent and two pieces of her identification before proceeding to conduct inspections at several licensed establishments in the downtown area of Vancouver. The minor agent was 17 years of old on March 14, 2013. (Exhibit 2)

At about 6:40 p.m., the two liquor inspectors escorted the minor agent to the main gates of Rogers Arena. The minor agent had a pre-purchased ticket and entered the arena. The minor agent carried no identification on her person, a requirement of the MAP inspections. The two liquor inspectors then walked around the exterior of Rogers Arena to the security entrance at Gate 9 and entered, after identifying themselves and signing in with security at about 6:47 p.m. The two liquor inspectors contacted the

minor agent by cell phone and arranged for her to meet them at level 100 in the concourse of the Rogers Arena.

The minor agent's first three attempts to purchase liquor in the arena were from a kiosk stand, a hawker and a Mike's hard lemonade stand. None of the three sold her liquor. At about 7:12 p.m., the minor agent approached a male hawker who was standing at gate 15 on level 100. The two liquor inspectors were standing about 10 to 15 feet away from the minor agent and the hawker. They had an unobstructed view of the minor agent and the hawker but could not hear the conversation. The two liquor inspectors watched as the hawker lifted a Budweiser beer from his tray, poured the contents of the can into a plastic cup, placed a lid on the cup and handed it to the minor agent who then gave him money and received change.

At no time did the hawker or any other employee request identification from the minor agent during this transaction.

The two liquor inspectors and the minor agent started walking towards Gate 18, where the three of them set the liquor down at one of the tables. The first liquor inspector smelled the contents of the cup, confirmed it was beer, and took photos (Exhibit 1, tab 4). The minor agent then made notes, as did the two liquor inspectors. Each of them composed their notes, independently of each other. The minor agent completed her observation notes (Exhibit 1, tab 5), signed them and then the first liquor inspector signed to indicate they were complete.

The minor agent proceeded to her seat in the arena and the liquor inspectors completed their notes. (Exhibit 1, tab 2)

The two liquor inspectors asked an employee to contact the VALP Duty Manager. The liquor inspectors advised the VALP Duty Manager of the incident with the MAP minor and the sale of the liquor and issued the Contravention Notice (Exhibit 1, tab 4). The VALP Duty Manager signed the Contravention Notice, acknowledging receipt.

The first liquor inspector, at her office later, returned a call from the AGM and informed him that the branch would be proceeding with enforcement action on the alleged contravention and would be sending out the NOEA.

On the basis of the above undisputed facts, I find that an Aramark employee sold liquor to a minor on March 14, 2013.

Policies, Training and Practices of the Licensee relating to Alcohol Service at Rogers Arena

Management of the Food and Beverage Operations at Rogers Arena

Several of the licensee's witnesses explained the management structure at Rogers Arena and the operational relationship between VALP and its third party operator, Aramark.

Rogers Arena has approximately 70 locations where alcohol is served. Alcohol is available at the concession stands where customers line up to purchase, at the premium service restaurants, within the club section where it can be delivered to a customer's seat, and from hawkers, who carry a tray of beverages and walk around. Rogers Arena introduced hawkers in January 2013.

VALP manages all security personnel and decisions that may affect security, including oversight of alcohol policies within the arena. VALP employees do not sell or serve alcohol. VALP contracts with Aramark to operate the food and beverage services at the Rogers Arena. The Aramark General Manager reports to the AGM as the representative of its client. The AGM has the final approval over any changes to alcohol policies that are implemented by Aramark employees.

The AGM manages over 1500 staff: about 200 on the VALP security team, over 350 hosts including ushers, ticket takers and concierge, about 70 staff in engineering, ice-making and housekeeping, about 150 on their retail team, about 35 box office staff, about 60 on the live entertainment team and about 800 on the Aramark food and beverages team. The AGM has five directors who report directly to him: the director of engineering and

housekeeping, the director of retail, the director of ticketing, the director of events services (which includes security), and the Aramark General Manager.

The Aramark Division Manager reports directly to the Aramark General Manager. The Aramark Division Manager manages all Aramark employees at the Rogers Arena, including the hawkers who sold the liquor to the minor agent. He oversees the Concessions Manager, all the concessionary employees, and the purchasing and warehousing for the food and beverage operations in the Rogers Arena, including the sale of all alcoholic beverages. All Aramark serving staff, including Stand Leaders, are unionized.

The Concessions Manager's function is to oversee all the concession stands and the hawkers to ensure that policies and signage are given to all the relevant locations and posted accordingly. They also ensure all staff receive a briefing reiterating any policies in place for a particular evening. The Concessions Manager reports to the Division Manager.

The Events Supervisors report to the Concessions Manager and manage up to five concession stands each with corresponding Stand Leaders to ensure service is being carried out responsibly. The Events Supervisors are on the concourse during events and observe the service. The Events Supervisors mingle with the patrons, while Stand Leaders remain behind the counter.

The Stand Leaders manage one concession stand with anywhere from one to six cashiers or servers. The hawkers report to and are supervised by a stand leader. Each stand leader is responsible for the food and beverage operation and inventory at that concession stand, including customer service and implementation of the alcohol service policies.

The Alcohol Compliance Officers roam the Rogers Arena wherever alcohol is served. The Alcohol Compliance Officers are non-union employees. The Aramark Alcohol Service Policy sets out the duties of these officers, which include: auditing cashiers, observing alcohol service by the cashiers, servers and hawkers and filling out the appropriate documentation in their reports to management at the end of an event

(Exhibit 7, tab 17). The Alcohol Compliance Officers manage policies with respect to the appropriate signage to indicate the alcohol cut off times and ID policies, drink limits for events, portion limits and general alcohol service. They also ensure that all staff are Serving It Right certified.

Liaison between VALP and Aramark

The AGM explained that the relationship between VALP and Aramark is critical to ensure the Canucks Sports and Entertainment organization is meeting its corporate responsibility to the community. The AGM said that VALP management is very aware that selling alcohol in the arena is a privilege and a responsibility. Thus, effective and regular communications with Aramark are essential to ensure success in this area.

The management of VALP and Aramark liaise on issues relating to alcohol and will jointly discuss alcohol policies and particular event-specific policies and/or practices, such as drink limits, cut off times for alcohol sales, beer garden arrangements, age for ID checks, etc.

Senior management of both organizations meet regularly. At the beginning of the hockey season in September, Aramark will review with VALP their plans for staff training for the upcoming year, procedures for dealing with new staff, and any changes to government regulations or house policies. The AGM has a weekly meeting with the Aramark General Manager, and a monthly meeting with the boss of the General Manager, who oversees the region. They will discuss strategies to ensure alcohol compliance, food quality issues, speed of service and service in general.

During events, staff of the two organizations communicate constantly. The VALP security team provides support to Aramark staff as requested.

Policies Relating to Minors - Aramark

Aramark's Alcohol Service Policy (Exhibit 7, tab 5) includes an introduction by its President: "this Policy establishes the performance standards to be met at **all** ARAMARK Sports and Entertainment venues that sell or serve alcoholic beverages." (bolded and underlined in original)

The Key Principles of the Alcohol Service Policy include:

3. **No Service to Minors: Identification Required for Persons Appearing under the Age of 30.**

No alcoholic beverages may be sold or served to any persons under the age of twenty-one (21), the legal age for consumption in all of the United States. For each purchase transaction, any customer who appears to be age thirty (30) or under must be required to show valid, government-issued photographic identification, which proves that they are not under the legal age for consumption.

5. **Each Server must have a Current, Active and Valid Training Certification.**

No one may sell or serve alcoholic beverages unless they hold a current, active and valid certification in an approved alcoholic beverage service training program from (a) TEAM (Techniques for Effective Alcohol Management) training sponsored by the TEAM coalition ("TEAM"), (b) TIPS (Training for Intervention Procedures) program sponsored by Health Communications, Inc. ("TIPS") or (c) for states with mandatory programs (e.g. Texas Alcoholic Beverage Commission), the state mandated program. If a state requires a supplemental training certification, each server must also possess that certification. The requirements under this paragraph are collectively referred to in this Policy as an "Approved Training Certification."

10. **Signage.** Signage will be posted at all points of sale notifying customers of key components of this Policy.

11. **Disciplinary Action for Violations.** Employees violating this Policy will be subject to disciplinary action up to and including termination.
(bold and underlining in the original)

This section concludes with the following paragraph:

More stringent requirements may be implemented at the local level as circumstances warrant. In no event may these requirements be made less rigorous or less stringent. Records of the execution and management of this Policy will be retained as required by this Policy.

With respect to the reference to no service to anyone under the age of 21, a note under the 'No Service to Minors' section at page 5 states: "in Canadian provinces, adhere to the applicable drinking age requirements in the jurisdiction in which the facility is located."

Local management ensures that steps are taken to incorporate local rules and that signage is updated to reflect the current policies and any rules specific to a jurisdiction.

The Alcohol Service Policy sets out the acceptable forms of identification that must be requested of anyone who appears to be under the age of 30 and includes a list of valid photographic identification. Employees are instructed that "anyone who appears to be thirty (30) years of age or younger, who cannot produce proper identification and proof of age, will not be served." At page 16, under a section on Disciplinary Standards, the Policy states that service to a minor will result in the termination of the server.

Policies Relating to Minors - VALP

As noted above, VALP employees do not sell or serve alcohol. As VALP holds the liquor licence, VALP accepts that it is ultimately responsible for ensuring that alcohol service in Rogers Arena is compliant with the law. Therefore, VALP ensures that its staff are aware of the responsibilities of the Aramark servers and other staff and that VALP staff are trained in alcohol service policies. VALP management instructs its staff to inform them if they observe any rules being compromised. VALP management will address any issues with Aramark management.

The AGM has the ultimate say over any changes to alcohol policies at Rogers Arena, whether they are Aramark or VALP policies. Aramark management may recommend changes to policy and VALP will determine if they align with its visions and values. The Aramark General Manager confirmed this and added that if there were any changes to the ID policy with respect to requesting identification of anyone who appears under the age of 30, he would also need approval of his head office.

The VALP parent company, Canucks Sports and Entertainment, publishes a Guest Services Team Handbook (2011/12 version at Exhibit 7, tab 28), a resource for its employees at Rogers Arena. This handbook includes a section on Alcohol Management (pages 49 to 57) and the following statement: **“Alcohol Management is the responsibility of each Guest Services team member working in the Rogers Arena.”** (bolded in original)

Included in the issues addressed under this section is the statement that “servers are required to ask for two pieces of identification when verifying that a customer appears to be under the age of 30” and next, the two pieces of identification that must be produced (repeating the wording from the branch Guide (Exhibit 1, tab 10)).

The section on Evictions (page 55) notes that guests will be immediately evicted for any of the following, with a list that includes the following:

Providing a minor with alcohol. If an adult is suspected of giving a minor an alcoholic beverage to consume, the Supervisor, Security or Police must request a photo ID check of those consuming alcohol who appear to be under age. If the guest is found to be under age, the guest will be evicted, as will the guest supplying the alcohol to the minor. A Supervisor should be advised when a minor is found to be in possession of alcohol and a parent or guardian should be contacted.

The risk management component of the VALP policies is referenced under Serving Policies, at page 50 of the Guest Services Team Handbook, which states that “the decision to allow the sale and consumption of alcoholic beverages during events at Rogers Arena is at the discretion of management.” In making this decision, management may consider several factors including:

- Desires and interests of the group or organization promoting or organizing the event
- Interests of the fans and audience
- Age and profile of the audience expected to attend the event
- Nature of the entertainment to be provided and audience appeal
- Number of people expected to be in attendance
- Day of week and time of day of event
- Level of food service
- “Energy level”, participation and emotional appeal of the event

Training of Aramark Employees

Every year, Aramark managers are required to take the internal on-line training as a refresher about the Aramark Alcohol Service Policy. (Exhibit 7, tab 5)

All employees who are involved in the service of alcohol must take the TIPS (Training for Intervention Procedures) program every three years. Aramark considers this training to be extremely important in ensuring responsible alcohol service and compliance with alcohol rules and regulations. All managers must be TIPS certified, in order to ensure that they are fully aware of alcohol service issues and the rules. Both the Aramark General Manager and the Division Manager are TIPS certified and take this training every three years. The Aramark Division Manager is also a certified TIPS trainer and recertifies for this every year. The Aramark Division Manager was not aware of any Canadian equivalent to the TIPS program.

Aramark keeps a record of the dates their employees complete the TIPS training and the expiry dates to ensure all employees recertify every three years (Exhibit 7, tab 10). The hawker who sold the alcohol to the minor had taken the test on June 7, 2011 and the Aramark record shows his three year expiry date as June 7, 2014. A record of TIPS students' test scores (tab 32, Exhibit 7) shows the hawker's test score of 85% in 2011, the date of his last training session. Employees must achieve 70% to pass the TIPS training exam. All students who take the TIPS training receive the TIPS Concession Participant Manual (Exhibit 7, tab 7).

The TIPS participant manual includes policies related to identification procedures and the steps to take to ensure identification is valid. There is also a list of "Underage Warning Signs" to help alert employees to clues to help identify minors in a lineup waiting to purchase. The TIPS trainer explained that this section is always emphasized in the training sessions.

The last four pages of the manual include "BC Laws and Regulations Summary" dated November 21, 2009 and includes a section on laws specific to identification of minors in B.C. The document at Exhibit 7, tab 33 shows excerpts from the branch's website on identification requirements and minors. The TIPS trainer will use the website information in her training sessions (rather than the November 21, 2009 summary) to ensure she is providing the most up to date information. The TIPS trainer always emphasizes the local B.C. requirement for two pieces of ID when training the employees at Rogers Arena and elsewhere in B.C.

The TIPS trainer uses the training DVD (Exhibit 7, tab 8) to help with class discussion about various scenarios. I viewed this training DVD. Scenarios include those where a server has to decide whether or not to request identification from someone. The trainer will often pause the video and discuss the scenario and possible responses with the class participants. She will ensure any information in the video that is not consistent with B.C. laws is raised and discussed so that participants are trained in the current B.C. laws. The training also includes role playing where participants act out different situations and the whole class then discusses possible techniques to use in these situations.

The Concessions Participants Exam (tab 7, Exhibit 9) is a sample TIPS test and includes questions on all the various components discussed in the class, including a question about how to avoid serving minors.

The Trainer Manual for TIPS trainer certification (Exhibit 7, tab 11) provides more information for the trainers. The section on Checking IDs provides a list of suggested steps to follow to avoid problems and concludes with “**If you still have doubts, don’t sell.**” (bolded in original)

All new non-management Aramark employees at Rogers Arena receive the Aramark Employee Handbook (Exhibit 7, tab 3), which is specific to Rogers Arena. The handbook notes that the rules and regulations in the handbook form part of the terms and conditions of employment. The handbook states that all Aramark servers and managers must have completed the provincial Serving It Right program as it is a legislative requirement and that they “have a full understanding of the program and that it is implemented into the establishment’s daily routine.”

This handbook includes a section on employee discipline and identifies a list of violations that are subject to immediate termination of an employee. The list includes alcohol violations and “violation of any federal, provincial or local law, including but not limited to improper serving of alcoholic beverages.”

Employees are required to sign and date the Certificate of Compliance at the end of the Employee Handbook, indicating that they have received and read the handbook and understand that they are required to have a valid Serving It Right certificate. The hawker who served the minor on March 14, 2013 signed this Certificate of Compliance on September 29, 2012. (Exhibit 7, tab 4)

Training of VALP Employees

VALP uses the TEAM (Techniques for Effective Alcohol Management) program to train its employees on alcohol compliance issues. TEAM is an industry wide program that is used in many venues across North America and is referred to in the Aramark Alcohol Service Policy as an alternative to TIPS training. VALP also provides job specific

training to its new employees. This training focuses on VALP policies and procedures and B.C. liquor laws and regulations.

All VALP employees, including all security personnel and hosting staff—ushers, event housekeepers, cleaners working during an event—must take the TEAM training. The Security Manager explained that cleaning staff are required to take TEAM because they are part of the front line staff, who monitor the washrooms for cleanliness and who report to security staff if they observe any problems in the washrooms. Hosts and housekeeping staff receive 12 hours of training, comprising four hours of general orientation on the first day and on the second day, eight hours of training specific to their job duties. Security staff receive an additional 16 hours training from two retired Vancouver Police Department members. This training includes security management issues and a case study on alcohol management and responsibilities with respect to the service of alcohol.

The VALP Security Manager took the TEAM Train the Trainer program and, as a qualified TEAM trainer, trains the new employees. The training for VALP staff usually takes place at the arena, in one of the clubs or restaurants. VALP tries to ensure that all employees are retrained every two years.

The TEAM Participant Manual (Exhibit 7, tab 25) used in the training program includes the topic of service to minors and the importance of requiring identification. The program uses case scenarios to encourage participants how to effectively respond to different situations they may encounter. One section addresses the acceptable forms of ID and how to know when ID may be fake and the follow up questions to ask an individual when in doubt.

The Security Manager uses two PowerPoint presentations when he trains staff, one with the TEAM logo that he uses as a refresher for current employees (Exhibit 7, tab 26) and another presentation with Canucks logo that he uses with new hires (Exhibit 7, tab 27). Both presentations deal with alcohol compliance issues. The Canucks logo presentation includes the VALP policies and the requirement to ask for two pieces of ID when anyone appears under the age of 30. The training for VALP staff includes any updates/modifications for local laws.

The Vancouver Canucks Guest Services Team handbook (Exhibit 7, tab 28) features in the training. All staff receive this pocket handbook and are encouraged to carry it with them at all times. The trainers highlight certain areas of importance, including the section on alcohol management. The Security Manager photocopies this section (pages 49 to 57) and provides it as a separate handout during the training to emphasize the importance of this issue.

Aramark Hiring Process

The Aramark Human Resources Manager gave evidence about the hiring process at Aramark. Aramark advertises for new employees on line and/or holds a job fair. They ask interested applicants if they are over the age of 19 and if they have their Serving It Right certificate. If so, they then review their prior experience, conduct interviews, do reference checks and finally offer positions.

Aramark looks for applicants with related experience in the food and beverage industry. Aramark considers this an asset because of the importance of understanding about alcohol service and customer safety.

Once a position is offered and accepted, the new employees participate in an orientation session of two hours, which includes a review of food safety and sanitation, the employee handbook (proper guest services, payroll, uniform etc.), sexual harassment policy and the Aramark recognition program for employees called Be the Difference (a way to recognize when employees go above and beyond). The orientation is in groups at the arena. Alcohol service rules are reviewed. Everyone is reminded about the Serving It Right certification and told to bring their card. The management staff discuss the arena environment and the challenges that differ from a restaurant environment.

As noted, all new employees involved in the service of alcohol are required to go through the TIPS program. The Aramark Human Resources Manager is a TIPS certified trainer. She was not aware of any B.C. equivalent to TIPS and TEAM, beyond the Serving It Right program.

Once new employees take the TIPS training and pass successfully, they are required to have three training shifts before working on their own. During the first shift, the new employee shadows a senior employee. On the second shift, the senior employee shadows the new employee and will work in tandem while on the third shift the new employee works on his/her own while still being observed by the senior employee. The management will then make a decision as to whether or not the new employee is ready to start on his/her own and if not, further training is offered.

Alcohol compliance issues are a big part of the training, including an emphasis on identification of minors. During the training shifts, if in doubt about a purchaser being over 30, the two employees will discuss and assess how to make the decision to request identification and how to refuse service. The new employee is constantly being checked on his/her judgement of age.

All new employees go through a probationary period of 15 events. If a new employee commits a violation of any of the alcohol compliance rules or policies, the person is immediately terminated during probation.

Prior to the introduction of hawkers at Rogers Arena, the licensee asked for information about Aramark's experience with hawkers at the Nat Bailey Stadium in Vancouver. Aramark indicated there were no complaints about hawkers at Nat Bailey Stadium being non-compliant with liquor laws. The hawker who sold the alcohol to the minor agent had been working at Nat Bailey stadium since 1992 and had no record of discipline. Before his first shift at Rogers Arena in January 2013, the hawker went through the same application and training process as other new employees. As his TIPS training was still valid, he did not have to repeat that.

Application of Aramark and VALP Alcohol Policies

Senior management involvement and staff liaison

Senior personnel of both Aramark and VALP attend most events. The AGM attends about 95% of events as he takes a personal interest in ensuring an event proceeds

smoothly and safely. He considers it his responsibility to ensure his staff and team are performing their duties well.

The Aramark General Manager also attends most events, and is usually on the floor observing what is going on. He ensures his management team is actively involved on the floor and that policies are being followed. He will do table checks in the restaurants, conduct 'on the floor' checks with guests, and will watch for overservice and ID checks.

VALP management discusses with Aramark management specific policy changes for different events. At some events, the arena may impose a limit of one drink per person, instead of the usual two drink limit. At others, management may decide to introduce a beer garden, to reduce the opportunity for minors to purchase alcohol. This is usually done at higher risk events, i.e. concerts that draw a young crowd. The AGM pointed out that this is all done as part of their ongoing efforts to ensure alcohol compliance and that this is not something mandated by the branch.

The introduction of a beer garden at an event allows staff to control the sale of alcohol in a smaller footprint. This may be done because of the age of the expected guests and the high energy expected of a certain crowd. Management and staff are then able to restrict any alcohol consumption to the beer garden and thus restrict minors' access. The VALP security team will stand at the entrance points and will do an initial ID check there. Servers are also expected to do a secondary check inside.

There is significant cooperation and liaison between the two groups of employees. VALP security personnel and hosts interact with Aramark staff with respect to alcohol compliance issues. Security personnel will work with the Aramark Alcohol Compliance Officers. They will receive a briefing on how to work together to create a safe environment for the guests. If an issue arises when Aramark staff are dealing with a guest, the Aramark staff will immediately call VALP security to attend.

VALP and Aramark employees may approach anyone at any time who has liquor in their possession to ask for identification, if they believe the person may be a minor. They all watch for "pass-offs" – the handing off of alcohol purchased by an adult to a minor – and will either call security or deal with it themselves.

The VALP security team works very closely with the Vancouver Police Department (“VPD”). VALP pays for VPD officers to attend events and team up with the security staff to assist with any issues that may arise in the arena.

Role of Alcohol Compliance Officers

The Alcohol Compliance Officers provide a system of monitoring the Aramark employees to ensure compliance with the alcohol policies of Aramark.

The Alcohol Service Policy (Exhibit 7, tab 5) addresses the use of Alcohol Compliance Supervisors or Officers and states:

All stadiums, arenas, ballparks and other sporting venues (including minor league venues and spring training facilities) and all amphitheaters (collectively, “Stadiums and Arenas”) must deploy at least one (1) Alcohol Compliance Supervisor who will be responsible for monitoring and enforcing compliance with this Policy. In addition, all major league Stadiums and Arenas that permit the sale of service of alcoholic beverages by roving vendors [hawkers] must deploy at least one (1) additional Alcohol Compliance Supervisor to monitor compliance by roving vendors. All Alcohol Compliance Supervisors must have no event duties other than alcohol compliance.

Their specific responsibilities with respect to ensuring all staff are complying with the Policy are (page 12):

1. Confirm that each server of alcoholic beverages possesses a current, active and valid Approved Training Certification [noted under discussion of Training for Aramark];
2. Check that servers are following proper ID procedures;
3. Check that servers are following the portion and per transaction serving limits;
4. Monitor that no one who is visibly intoxicated is being served alcoholic beverages;
5. Ensure that anyone observed serving minors or serving over the drink limit is immediately removed from service and reported to the appropriate manager for discipline;

6. Stop any patron observed near a point of sale or service with more than the drink limit or any minor observed in possession of alcohol;
7. Watch for “pass-offs” near points of sale or service (that is, the passing of an alcoholic beverage to a person who would not be properly served under this Policy – for example, the handing off of a beer to a minor or a visibly intoxicated person);
8. Ensure that all supervisors sign the event sheet procedures of the day’s event;
9. Check that all required signage is displayed at each point-of-sale where alcoholic beverages are served;
10. Ensure that hours of service and sales cut off times are observed;
11. Coordinate alcohol compliance efforts of other supervisory personnel;
12. Coordinate and assist in the “Mystery Shopping” required by this Policy;
13. Ensure completion and filing of Alcohol Compliance documentation for an event as required by this Policy.

At the time of the incident on March 14, 2013, three Alcohol Compliance Auditors or Officers were working (Exhibit 7, tab 17). Reports from the Alcohol Compliance Officers indicate there were four Alcohol Compliance Officers working February 6 and 15, 2013 and three were working on February 17, 26 and March 2, 2013.

If the Alcohol Compliance Officer observes a server violating the policy by serving someone who appears to be under the age of 30 without checking for ID, she will approach the cashier and will herself request ID. She then issues a reminder to the cashier about the importance of checking for ID and will also talk to the Stand Leader in charge and the Events Supervisor to notify him/her that the policy was not being followed. At the end of the night, she will make a report about the incident.

On the evening of March 14, 2013, the Alcohol Compliance Officer did not record the sale of the liquor to the minor as she did not observe this sale.

Pre-Event Briefings

The VALP Duty Manager will generally meet with the Aramark Division Manager prior to a hockey game. They will discuss the alcohol cut off time for the evening, any special programs they may have, and mitigation measures if they feel it may be a "high risk" night. For example, they may limit the drinks to one drink per purchase and/or they may cut off alcohol service earlier than usual.

About two hours before the opening time of an event, the VALP Duty Manager holds a briefing session with the VALP supervisors of the hosting and security staff, usually about 14 to 16 supervisors who oversee the actual event staff. She discusses the start time, a run through of any plans for the hockey game and any special ceremonies or activities. She provides all staff with briefing sheets that provide the list of contacts and their numbers for the event, managers who are working that evening, any concourse activities that may be happening, cut off times for service, and the birthdate staff must use when checking ID.

After the briefing with the VALP Duty Manager, each supervisor will then give briefings to its group of staff and hand out the briefing notes for the evening. The Duty Manager and her staff will always review the requirement for checking ID of anyone who appears to be under the age of 30.

The VALP briefing note for March 14, 2013 is titled Event Staff Game Sheet (Exhibit 7, tab 30). Under Concessions/Food and Beverage is "Legal Drinking Age March 14, 1994" in bold and the cut off times for service of alcohol at the concessions and for the hospitality suites. The "Legal Drinking Age" is included on all VALP staff briefing sheets as an easy reference point for staff.

Similar to the VALP practice, Aramark holds briefing sessions with its staff prior to the events. These usually take place one hour before the event starts and are usually held in the family seating area in the club section of the arena. Front-line staff must attend these briefing sessions. Management held a briefing session on the evening of March 14, 2013.

Aramark management prepares a set of briefing notes that encompass all the service guidelines for the evening. All Stand Leaders pick up a copy of the notes and sit in on a briefing session held by the Concessions Manager and Events Supervisors, where the policies and procedures for the evening are reviewed. The Alcohol Compliance Officers attend these briefings. The Stand Leaders will then brief their servers verbally as well.

Aramark staff received the briefing note for the March 14, 2013 event, titled Concession's Briefing Notes (Exhibit 7, tab 13). A box on the right hand column has "The birthdate we are looking for legal drinking age is **March 14, 1994.**" (bolded in original) and below this is:

Remember that we are responsible for every guest that drinks alcohol in our building and asking anyone that appears to be under the age of 30 for ID.

- 2 drinks per person
- **You are asking for ID for anyone that looks under 30 years of age.**
- You are cutting guest off that has had enough for the evening.
- You are pouring beer to the tide line.

(bolded in original)

On the evening of March 14, 2013, the Stand Leader and the Events Supervisor, who were responsible for supervising the hawker who sold the alcohol to the minor agent, provided the briefing to their staff. The Events Supervisor briefed each of her staff, including the hawker who sold the liquor, and reminded them about the requirement to ask for two pieces of ID of anyone who appeared to be under the age of 30. She spoke with the hawker who sold the liquor at approximately 7:05, about eight minutes before he sold the liquor to the minor agent. She did not find out until the end of the evening about the incident and was shocked because she had just given him the reminder before the incident happened.

Signage

Aramark's Alcohol Service Policy (Exhibit 7, tab 5) has requirements for the posting of signs at locations that sell alcoholic beverages and sample signage. Required signage includes "Legal Drinking Age Sign" and "Identification Requirement Sign."

The signs at Rogers Arena are adapted to B.C. liquor laws and conform to the Aramark Service Policy requirements. Photos of various signs at Rogers Arena are at Exhibit 7, tab 34. The first photo is titled "Conditions of Admittance" and notes that guests will be denied entry if in possession of alcohol and "for any other conduct deemed to be inappropriate to the peace and good order of events or which may adversely affect the safety of persons or property." The second photo shows a large sign above a concession stand, indicating the requirement for two pieces of ID. These signs are found throughout the Rogers Arena.

The signs on the hawkers' trays include similar messaging re: two pieces of ID (photos at Exhibit 7, tab 37) and the same note that is on the larger sign: "Having two pieces of identification does not guarantee liquor service. If we have any doubts about your ID, you will not be served."

Reporting Requirements

Both VALP and Aramark have requirements for reporting about incidents or providing regular reports on alcohol compliance generally.

Aramark Alcohol Compliance Officers must fill out an Alcohol Compliance Event Recap Report, an Alcohol Compliance Inspection Report, and an Alcohol Incident Report if there are any incidents noted. The Alcohol Compliance Officer who testified at the hearing signed the reports for the evening of March 14, 2013 (Exhibit 7, tab 17). Her area included level 100 where the hawker who sold the liquor to the minor was working.

The Event Recap Report for March 14, 2013 indicates three Alcohol Compliance Officers were working that evening. The report confirms that ID procedures were reviewed with all servers at the pre-event meeting, and that the Event File contains a signed copy of the Pre-Event Checklist, any related handouts regarding alcohol service, and evidence that all servers have a current, valid and active training certification.

The Alcohol Compliance Officer did not observe any violations of the Alcohol Service Policy nor any alcohol-related incidents. The Alcohol Compliance Inspection Report confirms that both the hawkers' trays and concession stands were displaying the appropriate signage. She confirmed in the designated box that she did not observe anyone serving alcoholic beverages to a minor, nor did she stop any minor in possession of an alcoholic beverage. She did not observe the hawker who sold the liquor to the minor.

An Alcohol Compliance Inspection Report for February 17, 2013 indicates that the Alcohol Compliance Officer asked for ID from two young looking customers as she did not see the vendor ask for ID. She testified that no action was taken as she did not know whether the vendor had asked for ID; she was just checking to make sure the two customers were of legal drinking age, which they were.

The Division Manager reviews these reports and does a follow-up as needed. Depending on what is reported, there may be discipline of an employee.

Aramark Stand Leaders and Events Supervisors sign off each event evening on a one page checklist report, described as a Stand Pack (examples at Exhibit 7, tabs 21 to 24). The stand is identified at the top or, if it deals with hawkers, the level where the hawkers are working is noted. The first example at tab 21, marked "100 hawkers" (indicating level 100 hawkers) is dated March 14, 2013. The bottom two bullets on the checklist ask for "# of persons Denied Alcohol Service During Event" and "# of Persons Denied Alcohol Service Due to 2 ID Policy". On this form, a zero is written in for both of these. Stand # 323 indicates two persons were denied alcohol service due to 2 ID policy on March 14, 2013.

The branch advocate questioned the licensee's witnesses about this reporting and the low number recorded on this form for denial of alcohol service, given the large number of people who attend hockey games. The AGM and the VALP Security Manager provided an explanation for this low number as hockey games generally attract an age demographic of 35 to 45, purely because of the high cost of the hockey game tickets. When younger people attend, especially those under 19, they are usually with parents who can afford the tickets.

At the end of an event, the stand packs are turned in to the Concessions Manager who asks for an explanation of what happened and why, when reviewing the bottom two entries on the checklist. These may be used as the basis for additional training and are kept in the event file.

VALP has its own incident reports (Exhibit 7, tabs 18, 19 and 20). VALP staff will fill them out if they are involved in an incident, whether it is an eviction, something involving a minor, or any other alcohol compliance issue. Management reviews these incident reports. If a season ticket holder is involved in an incident, VALP will send the report to the season ticket holder account representative who will review, and in some cases, may pull the season tickets. These reports are also used as case studies in employee training.

Secret or Mystery shopper program

Aramark's Alcohol Service Policy (Exhibit 7, tab 5, page 13) includes the requirement for a mystery shopper program to be conducted at all stadiums and arenas, once a month during the season, defined as 'while a venue is open and operating'. The mystery shopper program is designed to test for compliance in two key areas. One is to test that servers are requesting ID. Aramark contracts with a third party company, Pinkerton's, which hires individuals who are of legal drinking age but appear to be under the age of 25. Pinkerton's must provide reports on its mystery shopping visits to the Aramark management (Exhibit 7, tab 6). As part of their reporting back, the shoppers are required to respond to the question "Did server request proper identification?"

Pursuant to the Alcohol Service Policy at page 30, the dates of the mystery shopping should vary monthly and remain unknown to everyone other than the General Manager and Alcohol Compliance Supervisor.

Rogers Arena Aramark staff were not following this requirement in the Aramark policy. Several event briefing notes in the licensee's documents refer to the fact that an alcohol service audit may be or will be conducted tonight (Exhibit 7, tabs 13 and 14). The Aramark General Manager stated that these notifications in the briefing notes are no longer included, although he was unclear as to the date when they were stopped.

Discipline of Aramark Employees

Once management received notification from the liquor inspectors that the hawker had sold liquor to a minor, he was immediately pulled off the floor. After a meeting with management, the hawker was terminated. Although the hawker had been a longtime employee with Aramark and this was a first-time violation for him, management took this action as all employees are notified in the handbooks, training, and policy manuals that service to a minor is grounds for termination.

The Aramark Human Resources Manager discussed some examples of discipline measures taken against Aramark employees for liquor violations (Exhibit 7, tab 36). An employee received a written warning on February 15, 2013 for failure to ask for ID of a guest who was visibly under the age of 30, but over 19. This occurred as a result of a Pinkerton secret shopper investigation.

Whenever violations occur and employees are disciplined, management informs staff as a reminder to them of their responsibility when serving alcohol. The Human Resources Manager recounted one incident of over-service at the Brew House in the arena (notice at Exhibit 7, tab 36). The employee received a written warning and management decided to retrain all 30 staff at the Brew House with the TIPS program.

Compliance History

Compliance history of a licensee is a factor I generally consider when imposing a penalty. In the context of demonstrating due diligence, compliance history may be relevant in assessing the effectiveness of a licensee's policies.

The NOEA states that the licensee has no compliance history and specifically no contraventions on the issue of selling liquor to a minor. The hawker who sold the liquor to the minor on March 14, 2013 had no history of any prior violations of the *Act* or policies. There was no history of contraventions by hawkers at the Nat Bailey stadium or in the two and a half months they had been used at Rogers Arena. The Aramark Division Manager stated that Aramark, in its history of operating arenas and stadiums in B.C. for over a decade, has never had a contravention of the liquor rules or regulations.

I find that the licensee promotes a culture of alcohol compliance in its operations, both through its own policies and through the policies of its third party operator, Aramark.

Post-Incident Events and Policy Changes in the Arena

At about 7:45 p.m. on the evening of March 14, 2013, the Duty Manager notified the AGM and the Aramark Division Manager of the incident. The AGM and the Aramark Division Manager were present in the arena on the evening of March 14, 2013.

The AGM immediately phoned his boss and emailed the Canucks ownership and VALP legal counsel. He then called the Aramark General Manager and requested a meeting that night with him and his team. He met with the Aramark General Manager at about 9:30 that evening.

When the AGM initially spoke with the Aramark General Manager, he asked if the hawker had been removed from his position and was assured that he had been pulled from the floor. A March 14, 2013 time sheet for the hawkers employed that evening shows, in handwriting, the hawker's shift beginning at 5:00 p.m. and appearing to end at 7:04 p.m. (Exhibit 7, tab 12). The 7:04 p.m. time is likely an error as the incident occurred at about 7:12 according to the liquor inspectors. Nevertheless, it is clear from this form that the hawker did not complete his shift and was removed sometime shortly after the incident.

At their 9:30 meeting, the Aramark General Manager informed the AGM that the hawker admitted to serving the minor. The Aramark General Manager told the AGM that there had never been an issue with him before and that he had been a longtime employee at the Nat Bailey stadium. The Aramark General Manager surmised that this was a bad judgement call on the hawker's part and he suspended him pending an investigation. Because the Aramark employees are in a union, management did not terminate him immediately. The AGM was fully in support of termination of the hawker and advised the Aramark General Manager that the licensee expected this to happen as this was consistent with the policies of both the licensee and Aramark.

On March 15, 2013, the day after the incident, the hawker made a written signed statement (Exhibit 7, tab 35). In his statement, the hawker said the Aramark Division Manager called him into his office and told him that he had served a minor. The hawker said he had done three ID checks on guests that evening and did not recall serving a minor or anyone who appeared to be a minor. In his written statement, he said that he frequently asked for identification of guests and that he had never been in a situation like this before in all his years of work in the industry.

As a result of the incident, management made some policy changes. The AGM asked Aramark to recommend some changes to address the incident. Aramark recommended they implement a policy of asking for ID of everyone, as is done in some states in the U.S. They all agreed that this would be a good thing to do for a period of time, to send the message to staff and to customers. Management issued staff with "We ID" badges that said this was the policy in the arena.

This policy lasted about a month. They found some challenges with it. According to The AGM, one evening he had to deal with an outraged elderly woman who did not have ID and was refused service because of it. Management decided to return to the ID under 30 policy that had been in place before. They then made the decision to increase the number of alcohol compliance officers from four to six, to add two more Stand Leaders to supervise the hawkers on each level (100 and 300), to increase the number of secret shopper events, and to increase the amount of training to staff.

An Aramark employee, a hawker, was disciplined on March 18, 2013 for not following the 'ID everyone' policy (notice at Exhibit 7, tab 36). He was suspended for three events for failing to ask for ID of a customer who was not a minor. The hawker was disciplined because he was not following the new policy of requesting ID of all guests who wished to purchase alcohol.

The AGM went to the branch to talk to the liquor inspectors about adding more policy changes to ensure such an incident did not happen again. They instituted a few policy changes as a result of this discussion. One suggestion from the branch was to make the concourses bigger. They are doing this next year. The AGM stated that the liquor inspectors commended the VALP Security Manager and his team for doing a great job. He is also working with the branch to resolve any issues arising from its planned expansion and creation of a 20,000 square foot sports bar. The new sports bar is under construction in the new tower.

Post-incident changes do not assist a licensee in establishing a defence of due diligence for a contravention. Nevertheless, I have referred to them here as they demonstrate the licensee's ongoing efforts to be responsive to an incident such as this one.

I have made findings of fact about the licensee's policies, training and implementation of its policies, from the evidence presented by the licensee. I found the licensee's witnesses to be credible and forthright in their answers, both in direct and under cross-examination. The branch presented no evidence to dispute the facts presented about VALP's and Aramark's training and policies. The branch raised a few points with respect to the consistent application of the policies. I deal with these points under Reasons and Decision.

SUBMISSIONS – BRANCH

Section 64 of the Regulation

The branch submits that the liquor inspector exercised her discretion in making the decision to proceed to enforcement action. She observed the sale to the minor agent, considered the seriousness of this public safety contravention, the similarity of the

contravention to other MAP cases, the branch's goal of consistency in pursuing enforcement action, and made her determination that enforcement action should be taken in this case.

Sale of Liquor to Minor

The licensee has admitted to this.

Due Diligence

The branch acknowledges that the hawker was not the directing mind and, therefore, the issue is whether or not the licensee has brought evidence of its policies, procedures, training and implementation of such policies with its staff in order to establish a defence of due diligence

The branch noted some areas of weakness in the application of the licensee's policies. I address these points under Reasons.

SUBMISSIONS – LICENSEE

The licensee admits that an employee of the licensee's third party operator, Aramark, sold liquor to a minor and that the employee did not ask the minor for identification. However, the licensee asserts that, both through its third party operator and itself, that it has demonstrated a defence of due diligence to the alleged contravention.

Secondly, the licensee submits that the liquor inspectors violated section 64 of the *Regulation* and fettered their discretion.

Section 64 of the *Regulation*

The licensee submits that this issue is preliminary to the issue of due diligence and therefore should be addressed first.

The licensee argues that section 64 of the *Regulation* provides discretion to the liquor inspector when forming the opinion that enforcement action should be taken. In the present case, the licensee says that the liquor inspector who issued the NOEA and who testified at the hearing failed to exercise that discretion in that she failed to determine whether enforcement action was necessary in order to achieve voluntary compliance.

The licensee cites section 10.1.1 of the branch's *Compliance and Enforcement Policy and Procedures Reference Manual* (Exhibit 3, Manual update of October 2013 and Exhibit 8, Manual update of March 2013):

Every time an inspector issues a contravention notice, the inspector will determine whether it is necessary to recommend enforcement action against the licensee in order to achieve voluntary compliance. The inspector will make this determination for each contravention identified on the contravention notice. Factors that the inspector may consider include:

- The licensee's compliance history
- The seriousness of the contravention
- The evidence of the contravention
- Any other relevant factors

The licensee says that the wording in the policy and the regulation supports its argument that the liquor inspector must exercise its discretion when forming the opinion to take enforcement action.

The licensee refers to the testimony of the liquor inspector who composed the NOEA and says it is clear from her evidence that she failed to exercise any discretion:

- The liquor inspector decided to issue a NOEA while she was still at the Rogers Arena on March 14, 2013
- The NOEA (Exhibit 1, tab 1, page 3) says that, when the liquor inspector met with the licensee's representative (about 45 minutes after the violation), the liquor inspector "advised that enforcement action would be undertaken regarding this contravention"

- Under cross-examination, the liquor inspector agreed that prior to making the decision to take enforcement action, she did not do anything to investigate what proactive measures the licensee was taking to prevent contraventions
- The liquor inspector conceded that she has taken enforcement action in all her MAP cases
- The liquor inspector made no mention of the three compliant inspections conducted by the minor agent at Rogers Arena on the evening of March 14, 2013, just prior to the sale by the hawker

The licensee submits that, had the liquor inspector properly “considered” the matter and asked herself what, if anything, was necessary to bring the licensee into “voluntary compliance” it is difficult to conceive how she could conclude that enforcement was necessary.

The licensee submits that it is significant that the liquor inspector drafted the NOEA by cutting and pasting from other NOEAs. The licensee cites the evidence of the liquor inspector who said that she cuts and pastes from other NOEAs to ensure the same treatment was given to this case as was given to past MAP cases involving sales to minors. She said that this is a goal of the branch. The licensee submits that this is classic fettering.

The licensee submits further that any investigation by the liquor inspector would have revealed the extensive proactive measures taken by the licensee and its third party operator, both before and after the incident, showing “voluntary compliance.” The licensee says that there is an obvious unfairness to the licensee that it finds itself in an enforcement hearing because there was a failure on the part of the liquor inspector to properly exercise its discretion to determine whether or not enforcement action was necessary to achieve voluntary compliance.

The licensee summarizes this portion of its submission by saying that the appropriate result here would have been to decline to take any enforcement action under section 20 of the Act. The licensee says that a preliminary investigation by the liquor inspector as to what might be necessary to achieve voluntary compliance would serve the public interest by not clogging the enforcement system with cases for which enforcement is not necessary for the protection of the public.

Sale of Liquor

The licensee admits that an employee of its third party operator sold liquor to a minor agent of the branch.

Due Diligence

The licensee submits that the evidence of its policies, procedures, training and implementation of its policies establishes a defence of due diligence, and thus the licensee should not be held responsible for the momentary error or lapse by one of its employees.

I address the licensee's submissions on due diligence under Reasons.

REASONS AND DECISION

Issue 1 - Did the Liquor Inspector, when making the decision to issue the NOEA, properly exercise her discretion under section 64 of the Regulation?

I reject the licensee's submission that the liquor inspector failed to properly exercise her discretion under section 64, for the following reasons.

In her direct testimony, the liquor inspector described the process she followed when making the determination to pursue enforcement action:

1. In all contraventions, she will look at the seriousness of the contravention. Public safety matters such as overcrowding, intoxication, selling to minors

are given more importance. Enforcement action is generally taken in those public safety types of contraventions.

2. She considers this policy with respect to the seriousness of a contravention when making a determination to take enforcement action.
3. In the present case, she considered the sale of liquor to a 17 year old minor to be a serious public safety contravention. The minor did not have any fake ID—the server did not request ID. These are all factors she considered when making a determination to proceed to enforcement action.
4. The branch has sent out information to licensees about the MAP to ensure licensees are fully aware of the importance the branch places on ensuring liquor is not sold to minors.

I do not agree with the licensee's assumption that, because the liquor inspector stated under cross-examination that she had taken enforcement action in all her MAP cases, this means she did not exercise her discretion here. The liquor inspector set out her reasons in the NOEA for pursuing enforcement. She repeated the key points in her testimony: serious public safety issue, age of minor who made no attempt to deceive, no request for identification. The fact that the liquor inspector "cut and pasted" from other NOEAs does not in itself mean a failure to exercise discretion. In a busy administrative regulatory world, it is not uncommon to "cut and paste." She stated that this did not mean she did not consider the particular factors of the situation.

The fact that the liquor inspector stated on the evening of March 14, 2013 that she would be pursuing enforcement action does not preclude the exercise of discretion. She considered the facts before her as she knew them on that evening, found this was a serious public safety contravention, and determined that it followed a similar pattern to other MAP cases where enforcement action was taken. Consistency in pursuing enforcement action is a legitimate goal of the branch and is referred to in the branch's *Compliance and Enforcement Policy and Procedures Reference Manual*.

The Licensee submitted that the liquor inspector failed to analyze or determine whether enforcement action was necessary to bring the licensee into voluntary compliance. I find that an investigation into what might bring a licensee into voluntary compliance, as outlined by the licensee here, is very similar to an investigation into whether or not a licensee has exercised due diligence. The wording of section 10.1.1 in the branch's *Compliance and Enforcement Policy and Procedures Reference Manual* updated September 2011 (Exhibit 4) included the following: "whether the evidence indicates that due diligence or another statutory defence applies" as an additional factor for the liquor inspector to consider when determining whether to recommend enforcement action. This factor was deleted from the policy manual in September 2012, as indicated in the March 2013 version. (Exhibit 8)

The evidence demonstrates that the liquor inspector considered the listed factors in the manual when making her determination: the licensee's compliance history, the seriousness of the contravention, the evidence of the contravention, and any other relevant factors. The licensee submits that "any other relevant factors" should include an investigation into what may be necessary to bring the licensee into voluntary compliance. I agree that the introductory paragraph of section 10.1.1 in the policy manual includes the statement that "the inspector will determine whether it is necessary to recommend enforcement action against the licensee in order to achieve voluntary compliance." This policy direction must be considered along with the branch's goal of consistency in pursuing enforcement action against licensees. The liquor inspector considered the branch's treatment of MAP cases and the importance of treating licensees similarly and fairly and decided to issue the NOEA.

The licensee suggests that an investigation into the circumstances of the hawker's sale of the liquor would have established that the hawker had been reminded of its ID policy just minutes before the sale of the liquor, that the hawker participated in a pre-event briefing and that further investigation would have uncovered "a vast body of evidence of the proactive measures taken by VALP and Aramark to prevent sales to minors." This is all evidence that goes to the question as to whether or not the licensee has established a defence of due diligence. The onus is on the licensee to bring this evidence to a hearing and make this defence once the contravention itself has been

proven or admitted as in this case. A liquor inspector may investigate and consider such evidence but there is no mandatory requirement to do so.

The licensee submits that the consequence of a liquor inspector not making this investigation before issuing a NOEA is that “the enforcement system will clog with cases for which enforcement is not necessary for the protection of the public.” The evidence of the licensee’s policies, procedures, training and implementation of the policies is within the purview of the licensee. An extensive investigation by a liquor inspector of such evidence would undoubtedly take over much of a liquor inspector’s duties and may still result in an enforcement hearing, as ultimately, it is up to the licensee to bring this evidence to a hearing if it wishes to establish a due diligence defence.

I find that the liquor inspector exercised her discretion under section 64 of the Regulation, on the evening of March 14, 2013, when making her determination to recommend enforcement action. I find that there was no obligation on her to investigate the policies and procedures that were in place at the arena. The hearing was lengthy – three long days. As noted, the evidence of the licensee focused on establishing its defence of due diligence. The length of this hearing demonstrates the extent of the licensee’s evidence of its policies, procedures and training – the same evidence that MAY have established if it was necessary to take enforcement action to bring the licensee into voluntary compliance. I find that it was open to the liquor inspector to not proceed with an extensive investigation into the licensee’s policies and procedures. This hearing is the appropriate place for the presentation of that evidence and for a decision as to whether or not the evidence supports the licensee’s defence of due diligence.

Issue 2 - Did an employee of the licensee’s third party operator sell liquor to a minor?

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’s third party operator sold liquor to a 17 year old minor on March 14, 2013.

Issue 3 - If the employee sold liquor to a minor, has the licensee met the onus of establishing a defence of 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 Law

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:

One comment on the defence of reasonable care in this context should be added. Since the issue is whether the defendant is guilty of an offence, the doctrine of respondeat superior has no application. 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 B.C. 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 *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.

The answer to these two questions depends on the evidence presented. Both of the issues under the second part of the test are factual. The onus is on a licensee to establish this defence on a balance of probabilities.

Application of the Law to the Facts

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?

Question 1: Was the employee who committed the contravention the directing mind?

Both the branch and the licensee agreed that the employee who sold the liquor was not the directing mind of the licensee. I agree and the evidence supports this finding.

Having established that the employee was not the directing mind, I turn to the two questions in the second part of the test as laid out in *Beverley Corners*.

Question 2: Did the licensee implement adequate training and other systems to prevent the sale of liquor to minors?

The licensee provided considerable evidence about the policies and training programs of both VALP and Aramark with respect to ensuring compliance with alcohol regulations and their policies. In this decision, I have focused on the policies and practices relating to avoiding service to minors. The licensee's witnesses testified about other alcohol service policies relating to controlling over-intoxication, such as the one or two drink limit, monitoring of guests' behaviour, and reducing opportunities for bringing alcohol into the stadium. I have only touched briefly on these in my decision as the focus here is on the sale of liquor to a minor.

The following list summarizes the findings I made above under Facts:

- VALP and Aramark senior management are actively involved in the day-to-day operations of the Rogers Arena
- Both the senior managers of VALP and of Aramark have extensive food and beverage experience at large venues
- VALP and Aramark senior management hold weekly meetings to discuss any issues related to alcohol policy and any changes to the policy for specific events
- VALP senior management oversees and approves any changes to alcohol policies in the arena
- VALP and Aramark cooperate on adapting policies to the risk level of an event, e.g. drink limits, beer gardens to limit access to minors
- VALP and Aramark employees communicate regularly and provide support to each other during events
- The policy in the arena is to check ID of anyone who appears to be under the age of 30
- Aramark's Alcohol Service Policy sets out this policy and requires signage of this policy at all points of sale
- The TIPS training for Aramark employees and the TEAM training for VALP employees include local laws and policies
- All Aramark employees must sign a Certificate of Compliance indicating they have their Serving It Right certificate and have reviewed the Aramark Employee handbook

- All Aramark staff must take the TIPS training program and must renew this training every three years and achieve 70% pass mark on the exam
- VALP Guest Services Team Handbook covers alcohol policies and B.C. laws and regulations
- VALP requires its staff to take the TEAM training program, although none of their employees serve alcohol
- Aramark's Alcohol Service Policy requires all stadiums and arenas to hire Alcohol Compliance Officers whose sole duties are to monitor staff to ensure compliance with the local laws and Aramark's policies
- Aramark's new hires serve a 15 event probationary period where they initially receive on-the-job training and are partnered with a more experienced staff member for their first three training shifts
- Aramark employees are disciplined if found in violation of the alcohol policies and are aware of the consequence of termination if they serve a minor

Several of the Aramark employees were unaware of the Guide and had either never seen it or had never reviewed it. I have noted above the directives found in both the VALP and the Aramark policies about checking for ID of anyone under 30. Although the TEAM and the TIPS training manuals are not specific to British Columbia, the trainers emphasized that local laws are discussed in the training sessions. In addition, I have noted that this training provides comprehensive and detailed information to assist staff to identify minors: how to watch for clues in their behaviour that may indicate an underage guest, how to request ID of anyone under 30, how to ask questions to help ascertain whether a minor may be offering fake ID, etc.

The Canucks Guest Services Team handbook for VALP employees emphasizes the requirement to request two pieces of ID, as described in the Guide. The pre-event briefing notes provided to Aramark employees, titled Alcohol Serving Limits (Exhibit 7, tab 15) outlines the B.C. law with respect to two pieces of ID and what is acceptable as set out in the Guide. One of the licensee's witnesses stated that some of the information in the Guide is not relevant to the arena's situation, e.g. the reference to no minors allowed in liquor primary establishments.

I find that, although some of the Aramark employees were not familiar with the Guide, the training, briefing notes, and written reminders that are provided to all employees include detailed information about the rules and regulations in B.C. and the law relating to minors as found in the Guide. If the critical information from the Guide on identification of minors is offered elsewhere, the fact that not all employees are familiar with the Guide does not determine the adequacy of the licensee's policies and practices.

I find that the Licensee has implemented adequate training and other systems to prevent the contravention.

Question 3: Did the licensee take reasonable steps to ensure the effective application of that education and the operation of those systems?

Again, the licensee presented considerable evidence on this. I made findings of fact above from the licensee's undisputed evidence about the application of its policies and its system of checks and balances to ensure all employees comply with its alcohol policies. These include:

- VALP briefings before every event which emphasize to the non-serving staff the policy on identification of minors
- Aramark briefings before every event which emphasize to all the serving staff the policy on identification of minors
- Briefing notes provided to all staff that highlight the birthdate required in order to be of legal drinking age on the day of the event
- Aramark briefing notes that emphasize the importance of requesting two pieces of ID of anyone who appears to be under the age of 30, and giving examples of the types of acceptable ID (Exhibit 7, tab14)
- Liaison and cooperation between Vancouver Police Department and VALP security staff
- Signage everywhere, including on the hawkers' trays, that sets out the policy of requesting two pieces of ID
- Encouragement by management to serving staff to not serve liquor when in doubt about a person's age
- Instructions to all staff to watch for hand-offs or pass-offs of alcohol to minors and to report this to security staff if it occurs

- The refusal by three servers to serve the minor agent, just prior to being served by the hawker
- Regular verbal reminders from the supervisors to their staff about the ID policy, including a specific reminder from the Events Supervisor to the hawker, only minutes before he sold the alcohol to the minor agent
- The use of Alcohol Compliance Officers to provide a backup system to assist in monitoring staff, and to initiate further ID checks as they deem necessary
- The use of secret shoppers, on average once a month, to check staff compliance with the alcohol policy, especially with respect to requesting identification of minors (reports from Pinkerton at Exhibit 7, tab 6)
- Follow up from other staff, including VALP staff, who may request ID from anyone they suspect may be a minor and who is seen with alcohol
- Policy of eviction of any minor guests found consuming alcohol and of any guests found providing alcohol to minors
- Notice to employees about the fine of \$575 for servers selling liquor to underage customers (Exhibit 7, tab 16)
- Reports from Aramark Alcohol Compliance Officers at the completion of hockey game events on issues with respect to alcohol service (Exhibit 7, tab 17)
- Incident reports from VALP staff for hockey games, some reporting on alcohol violations, most dealing with inappropriate behaviour that was dealt with by VALP staff, some showing the practice of eviction when necessary (Exhibit 7, tabs 18, 19 and 20)
- Aramark “stand packs” from concession stands and hawkers, with a one-page checklist, filled out after every event, which include two questions: one for identifying number of persons denied alcohol service during event, and the second for number of persons denied alcohol service due to two pieces of ID policy (Exhibit 7, tabs 21, 22, 23 and 24)
- Discipline of Aramark employees who failed to ask for ID (Exhibit 7, tab 37)
- Termination of the long-time employee who sold the liquor to the minor on March 14, 2013
- The immediate actions taken by VALP and Aramark senior management on the evening of March 14, 2013, after being notified of the incident
- No compliance history prior to this violation

I find that these facts demonstrate the steps the licensee has taken to ensure the effective application of its training and the operation of its systems.

The branch raised a few points with respect to the consistent application of a few of the Aramark written policies. The first was the notification to employees about the possibility of a mystery shopper attending an event. Senior management testified that they usually, but not always, know when Pinkerton's will be conducting an audit and that, in the past, employees preparing the briefing notes had provided this notice in order to keep employees on their toes. The Aramark General Manager stated that they have now instructed employees to no longer give this notification, to be consistent with the standards set out in the Aramark Service Policy (Exhibit 7, tab 5) re: keeping the dates "unknown to everyone other than the General Manager and Alcohol Compliance Supervisor."

I find that the existence of a secret shopper program is further evidence of the licensee's efforts to monitor its staff for alcohol compliance. Given the presence of the Alcohol Compliance Officers and other supervisors monitoring the servers, I do not find that the failure in this case to follow the specifics in the Aramark Service Policy (about keeping the presence of secret shoppers secret) is significant in terms of establishing whether the licensee has taken reasonable steps to ensure the operation of its systems.

A second point raised by the branch is whether Aramark is following the statement in its Alcohol Service Policy (Exhibit 7, tab 5, page 12) with respect to the number of Alcohol Compliance Officers required to monitor hawkers:

All major league stadiums and arenas that permit the sale or service of alcoholic beverages by roving vendors [hawkers] must deploy at least one (1) additional Alcohol Compliance Supervisor to monitor compliance by roving vendors.

The Alcohol Service Policy requires at least one Alcohol Compliance Officer for stadiums and arenas. Prior to the incident, Aramark employed four Alcohol Compliance Officers for the events at Rogers Arena, with only three present on the evening of March 14, 2013. I agree with the licensee's submission that there is some ambiguity in the policy requirement as to whether the Alcohol Compliance Officer must

be solely focused on monitoring hawkers or that the presence of three or four Alcohol Compliance Officers means they are complying with the intent of the policy.

I find that, with three Alcohol Compliance Officers on the evening of March 14, 2013, the Aramark management at Rogers Arena was complying with the intent of the policy and I leave this to the Aramark management to clarify with its head office. As with the secret shopper program, I find that Aramark's policy requirement for Alcohol Compliance Officers in the arena goes beyond any branch or legal requirement and further demonstrates the licensee's efforts to monitor its staff for alcohol compliance.

Finally, the branch raised the emphasis on speed of service in some of the briefing notes and whether this direction to staff conflicts with the need to ask for two pieces of ID. The licensee's witnesses were very emphatic that speed of service does not override the importance of alcohol compliance. I find that the regular repetition of the ID checking guidelines, both in the briefing notes and in the verbal reminders, as well as the consequence of termination if a server sells liquor to a minor, demonstrate that this is an overriding responsibility of servers, above and beyond speed of service.

In conclusion, I note that both questions in the second part of the *Beverly Corners* analysis refers to implementation of adequate training and other systems and the reasonable steps a licensee has taken. Perfection is not required. I agree with the licensee's submission that the standard of reasonableness does not mean that all conceivable steps must be taken. I find that any flaws in the application of the policies were minimal and are not fatal to establishing a defence of due diligence.

Conclusion

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

This licensee has a massive operation to oversee, with thousands of people attending a variety of events, all of which allow minors in the arena. The AGM was sincere in his statement that the arena considers it a privilege to be able to sell liquor, and that it takes its responsibilities to comply with the liquor laws very seriously. The licensee has put in place a very detailed system of checks and balances to ensure its employees and those of its third party operator comply with the liquor laws, in particular with respect to ensuring no service to minors.

I was very favourably impressed with the comprehensiveness of the licensee's policies and practices. There was no explanation for the error made by this employee on the evening in question and unfortunately, because of his error, he lost his longtime job as a hawker for Aramark. Employees do make mistakes despite the best programs, training, and policies of its employer, and regular reminders from their supervisor.

As I have found there is a full defence to the contravention, I do not need to consider the issue of penalty.

Original signed by

Nerys Poole
General Manager's Delegate

Date: January 22, 2014

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

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Cristal Scheer, Branch Advocate