



**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:	R.G. Facilities (Victoria) Ltd. dba Save on Foods Memorial Arena 1925 Blanshard Street Victoria, BC V8T 4J2
Case:	EH07-159
For the Licensee:	Michael Mulligan
For the Branch:	Olubode Fagbaymiye
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	June 17 & 18, 2008
Place of Hearing:	Victoria, BC
Date of Decision:	August 13, 2008

## **INTRODUCTION**

The licensee holds a liquor licence for the sale and distribution of liquor at the Save on Foods Memorial Arena, located on Blanshard Street in Victoria.

The liquor service is managed by a third-party operator as noted on the licence.

The arena is home to a wide range of events targeted at varying segments of the community. The events include children's entertainers, hockey and sporting events, speaking engagements, concerts, and family entertainment. The arena is the home ice for the Salmon Kings hockey franchise.

Liquor is available on the premises in accordance with the terms and conditions of Liquor Primary Licence No. 037093, and the accompanying letters referred to in the licence terms.

During a Salmon Kings home game on November 3, 2007, two members of the Victoria Police Department (VPD) attended at the establishment and observed what they believed to be minors in possession of and consuming liquor contrary to the terms of the licence.

## **PRELIMINARY MATTERS**

At the commencement of the hearing, counsel for the licensee and the branch advocates made several preliminary applications.

The licensee submitted:

1. The branch has no jurisdiction to hear this matter on the basis that the licensee did not receive proper notice of the issue to be adjudicated. Counsel submitted that section 20 of the *Liquor Control and Licensing Act*, R.S.B.C. 1996, c 267 (*Act*) requires that specific notice of the allegations against a licensee be made in advance of a hearing. He argued that the allegation is of a contravention of section 33 of the *Act* without specificity as to what subsection is applicable. He says this is inadequate notice.

I ruled orally on this application as follows:

I have considered the submission of the licensee that the *Notice of Enforcement Action* (NOEA) and other process must be specific as to which subsection of section 33 of the *Act* the branch intends to rely on.

I confirm the general reference to section 33 in the process documents issued by the branch. I also note that in the licensee's correspondence with the branch and in the pre-hearing documents, there is no reference to notice given by the licensee that it wishes further specificity in the allegations.

In light of what I consider to be *prima facie* adequate notice of the issues to be considered at this enforcement hearing, I order that the hearing will proceed.

I will reserve the option of reconsidering the licensee's submission with respect to lack of jurisdiction in more depth when deciding on the merits of the issues in my written decision.

2. It is entitled to an order that the branch disclose the names and contact information for all of the minors involved in the incident on November 3, 2007, at Save On Foods Arena. The branch opposed the application.

The licensee submitted that without such disclosure it is unable to mount a proper defence to the allegations. The licensee indicated that the branch refused to provide any information regarding the minors or other people with whom the primary minor (who received the violation notice) was associating that night. Counsel was therefore unable to contact the potential witnesses. Ultimately, counsel submits, the branch provided a name but insufficient information to identify the potential witness and track him down for questioning. The licensee submitted that without that information it was unable to find out what occurred, at which cashier station the beer was purchased, and whether the minor used fake identification, etc.

The branch advised that counsel asked for the names of all of the persons described in police documents as being present at the relevant time for which the branch had contact information. The branch contacted the VPD and was advised that the branch was obligated to withhold the names and contact information provided in the police report until and unless they had VPD approval to release that information. The VPD then produced a *releasable* copy of the documents. The branch promptly provided this copy to the licensee. The branch indicated that it had offered the licensee that it would contact the minor and provide the licensee counsel's contact information to the minor of interest to the licensee. The branch did so, but the minor said he was not interested in talking to the licensee. A copy of the document in issue is at tab 9, page 3 of the branch's book of documents.

I ruled orally on this application as follows:

I will not order that the branch produce any information with respect to potential witnesses that they are not going to call to present evidence at the hearing. Notice is required only for matters relating to which the branch intends to call evidence. With respect to the persons accompanying the minor - the branch is not relying on any documentary or *viva voce* evidence from them and therefore is not obligated to produce anything relating to them.

With respect to witnesses that the branch does intend to call, I find that the branch followed the course of conduct provided in *R.v. Dosange* 2006, BCPC 253 (CanLII), Docket 61769-1. The branch sought the consent of the minor for disclosure of the relevant information. The branch offered the licensee's contact information to the minor and invited the minor to contact the licensee. The minor declined. At that point the branch could do nothing more. I find that the branch followed appropriate procedure in requesting a releasable copy of the police report to forward to the licensee, seeking consent of the minor for disclosure, and offering up the licensee's contact information to the minor.

The licensee submitted that notwithstanding that the branch may have done what it was obligated to do, the lack of the specific information the licensee requested made a defence of the allegations impossible. It asked therefore that I order that the branch be prohibited from calling the minor witness, who was not provided for the licensee for questioning before the hearing.

I ruled orally as follows:

There is considerable social interest in protecting minors. The Supreme Court has provided a reference guide to the proper process for disclosure of documents containing information pertaining to minors in *R. v. Dosange*. I have not been provided with any authorities instructing as to whether the branch should be prohibited from calling a minor witness who was not made available for the licensee to interview prior to the hearing.

I find that the disclosure of the minor's involvement and the circumstances surrounding the event is adequate notice as to what the minor might be called upon to testify at a hearing. The subsequent timely notification that the minor will be called to testify is adequate notice to the licensee to allow preparation for cross-examination. I find that the documents provided to the licensee (contained in the branch's book of documents) are adequate to inform the licensee of the

purpose to which the branch intends to put the minor witness at the hearing. Accordingly, the branch may call the minor witness to testify. In the event that the witness's testimony proves to be prejudicial to the licensee in a way that could not have been anticipated and might have been answered had the licensee been provided with advance notice, I will consider an application for adjournment at that time.

The branch made application to amend the NOEA to correct the date of the alleged contravention. Page 1 of the NOEA identifies the date and time as Nov 08, 2007 8:40 PM. The branch indicated that the correct date and time is Nov 03, 2007 8:40 PM. The branch submitted that the error was typographical or inadvertent and of no consequence.

The licensee objected and cited section 64 of the *Liquor Control and Licensing Regulation* B.C. Reg. 244/2002 (*Regulation*) and section 20 of the *Act* as authority that an adjudicator does not have jurisdiction to amend a NOEA at the hearing. The licensee also asked that I declare the NOEA void as it is incorrect and I have no jurisdiction to amend it.

I ruled orally as follows:

Section 20 of the *Act* provides that the GM must provide a licensee with written notice of the action in accordance with *Regulation*.

Section 64 of the *Regulation* provides that the inspector must provide written notice to a licensee that the licensee has committed a specified contravention. And the inspector must provide written notice to the licensee that enforcement action will be taken. The notice must indicate which enforcement action the GM proposes.

In this case the issue is whether the notice provided - complete with an erroneous date in the NOEA - constitutes notice of a specified contravention.

A review of the documents that could be considered notice to the Licensee reveals the following references to the date of the alleged contravention:

Violation Ticket	November 3, 2007
Contravention Notice	November 3, 2007
NOEA p1	November 8, 2007
NOEA p2, schedule 1	November 3, 2007
NOEA p3, schedule 1	November 3, 2007
Police General Occurrence Report	November 3, 2007

There appears to be no authority that grants jurisdiction an adjudicator to amend a document to cure a deficiency in notice at an enforcement hearing. The lack of jurisdiction to amend a document, however, is not necessarily fatal to the document. I find that on the whole, the documents indicate that the contravention is alleged to have occurred on November 3, 2007, and not on November 8, 2007. I find the NOEA is valid notwithstanding the error on its face. I will accept any submissions from counsel as to the applicability or weight to be attributed to the document.

As to notice, I have heard no persuasive challenge to the licensee's right to procedural fairness. The licensee has had adequate notice of the date of the allegation. It is able to prepare a defence to the allegations based on the information contained in the pre-hearing enforcement documents. There are at least five references to the correct date in the documents that can be considered notice of the alleged contravention. I find that those references reasonably suggestive of the fact that the date on p1 of the NOEA is an error. This error was identifiable as such to the careful reader. Further, the branch and the licensee participated in a pre-hearing conference at which the substantive issues in dispute

were canvassed and the licensee made no reference to having any issue with or concern over the date of the alleged contravention.

I deny the branch application to amend the NOEA, and deny the licensee's application to declare the NOEA a nullity.

## **ALLEGED CONTRAVENTIONS**

By the NOEA dated January 7, 2008, the branch alleged that the licensee contravened section 33 of the *Act*, by supplying liquor to minors.

Schedule 4 of the *Regulation* establishes prescribed penalties for contravention of the *Act* or *Regulation*. For a first contravention of this section, the range of penalty is ten (10) to fifteen (15) days licence suspension and/or \$7,500 to \$10,000 monetary penalty.

## **RELEVANT STATUTORY PROVISIONS**

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

#### **Action against a licensee**

**20** (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

(a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence;

...

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

...



(c) impose a monetary penalty on the licensee in accordance with the prescribed schedule of penalties;

(d) suspend all or any part of the licensee's licence in accordance with the prescribed schedule of licence suspensions;

...

(4) On taking action against a licensee under subsection (2), the general manager must

(a) provide the licensee with written notice of the action in accordance with the regulations,

(b) set out in the notice the reasons for taking the action,

(c) set out in the notice the details of the action including

(i) if a monetary penalty is imposed, the amount of the penalty and the date by which the penalty must be paid, and

(ii) if a suspension is imposed, the period of the suspension and the dates on which the suspension must be served, and

(d) [Repealed 2002-48-37.]

### **Supplying liquor to minors**

**33** (1) A person must not

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

(b) have liquor in his or her possession for the purpose of selling, giving or otherwise supplying it to a minor, or

(c) in or at a place under his or her control, permit a minor to consume liquor.

(2) Subsection (1) does not apply if liquor is

(a) given to a minor by his or her parent, spouse or guardian in a residence for consumption in the residence,

(b) administered to a minor by or under the authority of a medical practitioner or dentist for medicinal purposes, or

(c) given or otherwise supplied to a minor in accordance with the regulations.

- (3) A person has liquor in his or her possession when the person has it in his or her personal possession or knowingly
- (a) has it in the actual possession or custody of another person, or
  - (b) has it in or at a place, whether or not that place belongs to or is occupied by the person, for the use or benefit of the person or another person.
- (4) If one of 2 or more persons, with the knowledge and consent of the rest, has liquor in his or her possession, it is deemed to be in the possession of each of them.
- (5) It is a defence to a charge under this section if the defendant satisfies the court that, in reaching the conclusion that the person was not a minor, the defendant
- (a) required that the person produce identification, and
  - (b) examined and acted on the authenticity of the identification.
- (6) A person who contravenes this section commits an offence and is liable on conviction to a fine of not less than \$500.

### ***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 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.

(3) The general manager may hold an enforcement hearing to determine whether the licensee committed the alleged contravention and, if so, to determine what enforcement actions are to be taken against the licensee as a result, unless, within 14 days after the date of the notice referred to in subsection (2), or within such longer period as the general manager considers appropriate, the licensee provides to the general manager a notice of waiver, in form and content satisfactory to the general manager, by which the licensee expressly and irrevocably

- (a) agrees that the licensee has committed the contravention,
- (b) accepts the specified enforcement actions,
- (c) waives the opportunity to have an enforcement hearing on the matter, and
- (d) agrees that the finding of contravention and the specified enforcement actions will form part of the compliance history of the licensee.

## ISSUES

- Did the licensee contravene any of the provisions of section 33 of the *Act*?
- If it is found that the licensee did contravene the *Act* as alleged, is a penalty warranted, and what is the appropriate penalty?

- Was there a breach of administrative fairness in the process leading up to the enforcement hearing? In particular, was the allegation of breach of section 33 of the *Act* specific enough to constitute notice in accordance with the applicable notice provisions of the *Act* and *Regulation*.

## **EXHIBITS**

- Exhibit No. 1: Branch's Book of Documents.
- Exhibit No. 2: Alcohol Service Policy and Procedure
- Exhibit No. 3: Concession Participation Manual
- Exhibit No. 4: Aramark Covering Letter and Compliance Sheets

## **EVIDENCE**

Two experienced VPD officers testified at the hearing. They indicated that they attended the Save On Foods Memorial Arena together on November 3, 2008, to do a licensed premise check (LPC). They walked into the arena through the south door closest to the VPD parking lot. The police station is adjacent to the arena. There were approximately 1500 people in the arena, watching a Salmon Kings hockey game. The VPD members stopped at the entrance to the seating area of the arena, approximately twelve rows up from the ice. They observed that most of the fans were situated on either side of the rink near centre ice. There were some individuals gathered to the rear of the rink ends, behind the goaltenders. To the right of the members, there was a group of three males, five or six rows up from the ice surface, behind the visiting goaltender.

One of the VPD members testified that he saw one of the identified males drinking from a plastic beer cup of the type provided by the establishment. Both of the members observed that the group of males was exhibiting boisterous behaviour of the kind that would normally attract attention to them. The VPD members testified that there were few people near the boisterous group, that the group was readily

visible to anyone who chose to look in that direction, and that the males appeared to be very young. There was a second group of patrons three or four rows behind the first group. The second group consisted of four very young looking males. One of the inspectors testified that he believed the two groups were made up of friends, due to the interactions of the two groups. The second group was banging on the seats and yelling at the visiting goaltender. The police inspectors remained in place for five to seven minutes observing the two groups of youths.

The VPD members testified that they saw a female who appeared to be a security officer, observing the youths from the opposite side of the seating section. As the police officers watched the youths, they also watched to see if this or other security personnel would engage the youths.

The hockey period ended, and the VPD members approached the first group of youths. The police noted that their movement caused the second group to quickly arise and depart. Once with the first group, the police observed two cups of what appeared to be beer in the possession of the youths. The cups were one-third to half full. The officers invited the youths to follow them outside, where the police asked for identification. The youth who had been seen consuming from one of the cups provided his name and birth-date. He was 18 years old. The VPD members confirmed the youth's identity with the aid of the CPIC system, smelled and inspected the contents of the cup and determined to their satisfaction, that it was beer. They issued the minor a violation ticket (Exhibit No. 1, tab 5). The officers could not determine which of the other two youths was consuming beer and accordingly did not issue a second ticket.

The VPD members contacted the arena security and the minor's parents. The security staff promptly evicted the youths from the premises.

The two police officers went to the other end of the arena to continue their LPC. As the officers entered the seating area on the opposite side of the arena, they immediately observed the four young males that made up the second group of youths they had earlier observed. Each of the youths was carrying a cup of the kind that the arena utilized for the service of beer. The youths were *en route* to seats behind the visiting goaltender, who had moved from one end of the ice to the other in between hockey periods. The VPD members noted that the four males saw the officers. The police waited 10 to 15 minutes to see if the youths would drink from their cups. They did not witness any consumption of the drinks.

The officers approached the youths to check for identification. When they reached the seating area, they observed all four cups tipped over on the floor and pools of liquid on the floor by the cups. The pools of liquid were described as "still flowing." The officers indicated that the liquid looked like and smelled like beer. The officers checked one of the youths for identification and determined that he was 18 years old.

The officers stated that the four youths were seated alone, there were few other patrons in the area, and the youths were loud and were banging the seats in front of them and yelling at the visiting goaltender. The youths were drawing attention and were quite visible to anyone who cared to look in their direction.

The VPD inspectors exited the seating area and once again sought out security personnel. They found a security agent near the concession stands, away from the arena seating area. They advised the security agent as to the location of the youths and told the security agent that over the course of a short period of time, two identification checks had produced two minors apparently in the possession of liquor. The police officers suggested that the security personnel could be more vigilant.

The police officers testified that the second group of youths was expelled from the premises as was the first, but that the second group did not go quietly. The youths proclaimed that they were regular attendees and season's ticket holders and should not have been removed or treated as they were.

The officers testified that during their stay at the arena on November 3, 2008, they saw no arena security personnel monitoring the arena bowl or present in the seating area around the ice rink, until they went looking for security officers in the area where the concessions and offices are located.

The VPD members identified their notes, the violation ticket given to the minor, and the police records in Exhibit No. 1.

One of the males from the first group of youths testified. He confirmed that he attended the Save On Foods Arena on November 3, 2007, with his friends to watch a Salmon Kings game. He said he paid a stranger to buy him a beer because he was under age. He testified that he was 17 years old. He said that the police approached him while he was seated in the arena with his friends. The police asked for identification, and he complied. He followed them outside and was given a ticket for consuming alcohol and being under-age.

The liquor inspector testified. He identified all of the branch documents involved in the enforcement action (Exhibit No. 1), and the relevant file documents relating to the Save On Foods Memorial Arena. These exhibits include the arena's licence documents, hours, limitations and redlined area etc. He specifically pointed out that the seating areas in the bowl of the arena are part of the redlined area of the establishment. He also testified that the branch had received several complaints about the arena, particularly about illegal drug use during concerts. The inspector said he was concerned about whether the licensee was able to control the arena in all situations when the arena management determined that it was appropriate to open for liquor service. He described a term of the licence, that liquor service was

only to be available when the licensee was certain that it could appropriately control and monitor liquor service for an individual event.

At a meeting on September 19, 2007, the liquor inspector talked to the licensee about overservice and minors obtaining liquor at hockey games and other events in the arena. He testified that he believes the licensee's direct sales from liquor service kiosks; "works pretty well, but that is where the appropriate supervision of patrons ends." The inspector said that once patrons take beer into the stands, there is a lack of supervision and control. He said that he discussed his view that the licensee was losing control over responsible liquor service by not monitoring patrons in the stands. He confirmed that he had advised the licensee that there was an obligation to ensure no minors were in possession of, or consuming liquor, and that there was no overservice to patrons.

The liquor inspector also testified that he believed the licensee was not appropriately observing the conditions of its licence, in particular the responsibility to offer no liquor service during events that are targeted at minors. For an example he cited the recent *Billy Talent* concert, at which many of the attendees were young children who were dropped off by their parents. He said that liquor service was available and it was a mistake for the licensee to offer liquor on that occasion. The inspector testified that he was assured at the September 19, 2007, meeting that the licensee would ensure that employees were trained adequately, the seating area in the arena would be sufficiently monitored, and there would be future compliance with all of the terms of the licence.

A third member of the VPD testified. He indicated that he has been a sergeant for 28 years. He indicated that on September 19, 2007, he attended at the Save On Foods Memorial Arena for a meeting with the liquor inspector, the licensee's representatives, and some of the "licensee's operators." He indicated that the purpose of the meeting was to address concerns over compliance issues, and the VPD and branch mandates to ensure that the terms and conditions of the licence



are met. He said that the licensee has been cooperative with the police and has been instituting changes at the liquor service kiosks to control alcohol related issues. He confirmed that the licensee frequently hires off-duty police officers to assist with security issues during large-scale events. He also indicated that the licensee has since this allegation, instituted one drink limits to patrons to make it difficult for those patrons to hand-off liquor to minors.

The sergeant indicated that the licensee is “doing all they can to achieve compliance at the [alcohol service] kiosks.”

### **APPLICATION TO DISMISS**

At the close of the branch’s case, licensee’s counsel made an application to dismiss the allegation on the basis that the branch did not present specific enough evidence to indicate whether it was pursuing section 33(1)(a) or section 33(1)(c) of the *Act*. He submitted that all of the public information available; the *Act*, the *Regulation*, and the branch’s enforcement desk reference indicate that the branch is limited to a specific allegation: either *supplying to minor* or *permitting a minor to consume*, but not both. He submitted that the language of the material suggests that the branch is pursuing section 33(1)(a) *supplying liquor to a minor*, and for that allegation, the branch provided no evidence that could lead to the finding of a contravention.

Counsel for the licensee submitted that it would not be procedurally fair to require the licensee to present evidence, and he asked for a ruling that the allegations be dismissed at this point.

I ruled as follows:

After the branch had presented its witnesses and completed entry of its evidence, and with the branch's book of documents entered as an exhibit, the licensee made application that the matter be dismissed. Counsel for the licensee submitted that the branch had not made out a case, and the licensee should not be required to defend itself.

It seems to me that there are two issues:

1. The specificity of the allegations made against the licensee, and the adequacy of notice of those allegations, and
2. Whether the branch has presented sufficient evidence to make out its case.

The administrative process set in motion by the branch requires that an adjudicator determine whether or not a contravention occurred as alleged, and if so, whether a penalty is required and what penalty is appropriate.

The burden of proof has been determined by the Supreme Court to be the balance of probabilities.

There is no onus to be overcome by either the branch or the licensee beyond that imposed by the burden of proof.

It is the adjudicator's obligation to determine on the facts what occurred at the relevant times, and apply that determination to the *Act* and *Regulation* in order to establish whether or not there has been a contravention.

The licensee has no obligation to call evidence or to make submissions.

The *Act* allows that the general manager may on the general manager's own motion take action against a licensee and may impose penalties or cancel a licence with or without a hearing (*Act* section 20). Administrative law and the principles of natural justice require that the branch follow appropriate and proper process in pursuing enforcement action against the licensee.

The licensee claims that the notice given of the allegations was not specific enough to allow a proper defence of the claim. This was raised as a preliminary matter and I ruled as follows:

*In light of what I consider to be prima facie adequate notice of the issues to be considered at this enforcement hearing, I order that the hearing will proceed.*

*I will reserve the option of considering licensee counsels submission in more depth following the hearing and deciding on the merits of the issue in my written decision.*

I have heard no submission that would cause me to reconsider my earlier position. With respect to issue No. 1, I will not determine the hearing at this point.

The licensee says that the language of the branch documents leading up to the hearing indicate that the branch's allegation is specifically directed to subsection 33(1)(a) – that the licensee gave liquor to a minor. Further, the licensee submits that the evidence to this point demonstrates no possibility of such a finding in light of clear indication that the liquor was provided to the minor by a stranger.

The branch's allegation is of a contravention of section 33. I have already determined that whether that allegation is specific enough to allow the licensee to mount a defence, is a matter I wish to consider after the hearing and determine in a comprehensive written decision. I will not dismiss the allegation at this point. Whether or not the branch has made out its case is a matter I am not prepared to

decide now. I note that if there were a persuasive argument that the licensee would be prejudiced by being required to present a defence at this point, I might decide otherwise. I have heard no such argument.

I understand the licensee's witnesses are standing by and the licensee is prepared to proceed with its case, and I find that it would be in the interest of a fair and expedient resolution of this matter to proceed.

I deny the application.

Counsel for the licensee asked that the following be noted in my decision:

Please note the licensee's objection to continuing. The decision is prejudicial. I do not know what to defend against. The section that we are dealing with is not specific enough. I have requested clarification as to which defense I am to mount based on the plethora of available allegations that the branch has made, and the adjudicator has indicated only that the licensee is free to defend the branch's allegations as it feels fit based on the documentation and notice provided.

The licensee's general manager testified for the licensee. He said that as a result of the September 19, 2007, meeting and this contravention notice, he has implemented changes that go beyond the licence requirements. Those changes include:

- No liquor on concert floor during general admission shows.
- One beverage limit at a time for patrons buying beer at the kiosks. A patron would have to stand in line twice for two beers.
- Reduced number of kiosks selling liquor.
- Liquor sales closed earlier at events to reduce liquor-related issues.

The manager said he is doing his best, and that he wants to be an example of quality service and compliance. He also indicated that unlike other liquor primary licensees, his primary business is ticket sales rather than liquor sales. Liquor, he says, is a "necessary service" to his patrons rather than a core business.

The facilities event coordinator testified. He indicated that he is employed directly by the licensee. He said there was a security system including crowd management in place on November 3, 2007. He indicated that there was, on that occasion, adequate security personnel to do the job required, and that there were mobile "rovers" on duty at the time of the alleged contravention. The rovers, he said, actively go through the bowl of the arena looking for incidents as they occur. He listed the names of the security personnel on staff that night and described their level of experience and training.

He also testified that the person that the police believed was a security officer (who watched, but did not act with respect to the minors at the first end of the arena), did not match the description of any security officer on staff - but rather one of the janitorial staff who may have been on site at the time.

He said that the security staff does not have its own personnel training manual designed for the arena, but that there is an incident logbook in which the events of November 3, 2007, were entered.

He said that the management of the arena was "probably the most proactive management that [he] has ever worked with regarding compliance."

The final witness was the manager of the food and beverage service provider. He confirmed that the food and beverage service provider is the third party operator of the licensed establishment. He indicated that his company is retained by the licensee. He identified his Service and Policy Procedures Guide (Exhibit No. 2), Procedures Manual (that accompanies a three-hour training course for

employees, Exhibit No. 3), and the Staff Compliance Sheets (Exhibit No. 4) that are to be signed by each concession server before each shift at the arena.

This witness said that only persons over the age of 23 years can obtain more than one drink at a time at the liquor service kiosks. Anyone under that age can only obtain one drink at a time. He confirmed that there are signs around the building that say there is a limit of two alcohol drinks per person, per visit to a liquor kiosk unless the person is under 23, and then the limit is one per visit to the concession stand.

The food and beverage manager also confirmed that the Procedures Manual (Exhibit No. 3) is used in many American states and Canadian provinces by the parent company, and it is not tailored to the individual legal requirements of British Columbia licensees.

He testified that other than the Serving It Right program, training for staff consists only of the two programs identified by Exhibits No. 2 and No. 3.

He said that his company hires an American firm to do compliance audits on a monthly basis by way of mystery shoppers. The audit sheets are at Exhibit No. 2 (between the front cover and tab 1).

He also identified tab 13 of Exhibit No. 1 as being an arena policy statement available to the public online at the arena's website.

## **SUBMISSIONS**

The branch submitted the following:

Two police officers entered the licensed establishment on November 3, 2007, to do a routine LPC. The arena was less than one quarter full, and the patrons were spread out and easily visible to anyone who cared to look at them. The police immediately noted two sets of boisterous youths who were obvious and drawing attention to themselves. Two identity checks resulted in the identification of two underage patrons in possession of alcohol - one of whom was observed consuming it. The police saw either no security personnel in the main seating area, or one security person observing the young-looking patrons but taking no action. The minor who was observed drinking the liquor had paid another patron to purchase it for him. He drank most of the beer without being approached by any security personnel or arena staff member.

The branch also submitted that the licensee failed to make a case for due diligence. The advocate submitted that the licensee's claim to diligence was based on foreign boilerplate policies and procedures manuals and training guides that do not adequately take into account the nature and quality of the licensed establishment.

The licensee submitted the following:

The minors were not in plain sight. One of two officers observed one minor take one sip of beer. The remainder of the 10 minutes during which the officers observed the minors produced no further observations of consumption. One of the officers who was observing did not see even that one sip of beer. This is confirmation that the minors were not in plain sight.

It cannot be said that the staff failed to engage the minors, because there was no obvious problem. Minors are allowed in the arena by the terms of the licence. Banging on the seats is neither illegal nor unusual during hockey games. There was no obligation to engage the youths, absent visual clues of alcohol possession.

The evidence did not indicate that the policies and procedures were boilerplate, but that they are comprehensive systems replete with undercover monitoring personnel and supervision.

The security staff has considerable experience and is well suited to its role.

The licensee argued that the definition of “permit” in *Ed Bulley Ventures Ltd. v. British Columbia (Liquor Control and Licensing Branch General Manager)* [2001] B.C.L.I No. 5, Appeal #L9905, requires that the licensee shut its eyes to the potential for a contravention and not care whether it occurs or not. Counsel argued that this cannot be said to represent the facts, as the evidence discloses that the licensee expelled the minors when the minors were brought to the licensee’s attention.

## **ANALYSIS AND DECISION**

### **Notice, Jurisdiction, and Administrative Fairness**

The date of the alleged contravention is clear from a review of the whole of the documents that were provided to the licensee in a timely fashion before the hearing. The erroneous identification of the date on page one of the documents, in light of the circumstances described in my first consideration of this matter above, is neither fatal to that document nor a significant error that would attract significant consequences. I find the correct date of the allegation and the branch’s understanding of the alleged contravention is unambiguous from a reading of the



documents provided to the licensee and on which the branch indicated it would rely at the hearing.

Section 20 of the *Act* provides that the branch general manager must provide the licensee with written notice of the action in accordance with the *Regulation*.

Section 64 of the *Regulation* requires written notice of a specific contravention.

### **Notices of contravention**

**64** (1) If an inspector forms the opinion that a licensee has committed a contravention, the inspector must provide written notice to the licensee that the inspector is of the opinion that the licensee has committed a specified contravention.

The branch has provided written notice, and identified the alleged contravention as section 33 of the *Act*. The licensee says that is not specific enough because section 33 describes several distinct ways in which a person may contravene the section.

Subsection 33(1) includes three distinct methods of contravention; 33(1)(a) selling or supplying liquor to a minor, 33(1)(b) possessing for the purpose of supplying to a minor, and 33(1)(c) permitting a minor to consume liquor in a place under his control.

Subsection 33(2) provides three statutory defences to contraventions of s. 33.

Subsection 33(3) qualifies the definition of the allegation described in 33(1)(b).

Subsection 33(4) is a deeming provision relating to 33(1)(b).

Subsection 33(5) provides further defences to any contravention of s. 33.

Subsection 33(6) provides minimum statutory fine for a contravention of s. 33.

Section 33 is entitled: Supplying liquor to minors. The section describes both detailed qualifications of the contravention and defences to it.

The NOEA provides a summary of the evidence of the police officers and a description of the circumstances leading up to the allegation. It is hard to imagine one reading the complete NOEA and the other documents provided to the licensee and not coming away with an understanding of the details of the allegation. The police observed an individual who was later determined to be a minor, consuming liquor in the licensed premise. The branch had no evidence of that liquor being served or sold to the minor. The police observed another individual who was later determined to be a minor, in possession of liquor in the licensed premise. The branch had no evidence of the liquor being served or sold to that minor.

The notice documents make repeated reference to the absence of any action taken by the licensee or its agents with respect to those minors.

I find that reference to section 33 is specific enough in the context of the whole of the documents provided to the licensee to constitute adequate notice of the allegations made against the licensee. I find also that the reference to section 33, without indicating which subsection or subsections the branch intends to rely on is in the context of the whole of the documents provided to the licensee specific enough to satisfy the requirements of section 20 of the *Act* and section 64 of the *Regulation*. The disclosure of documents and the opportunity presented to the licensee to participate in a pre-hearing conference together provided adequate notice of the case that the licensee would meet at the enforcement hearing.

I have heard no persuasive argument that the licensee has been denied notice or procedural fairness, or that the general manager of the branch lacks the jurisdiction to hear, or decide this matter.

## **Contraventions and related findings**

A patron in the first group of youths was observed consuming what appeared to be beer, in the seating area of the bowl of the arena.

I accept the testimony of the police officers, and find on the balance of probabilities that the patron was a minor, that the minor had beer in his possession (liquor), and that he was within the seating area of the bowl of the arena. I accept the testimony of the liquor inspector that the seating area of the bowl of the arena is within the redlined area of the licensed establishment. There was no significant doubt raised pertaining to any of these findings.

A patron in the second group of youths was observed walking to a seat in the bowl of the arena with what appeared to be a cup of beer. When the police officers approached the youth, there was a cup tipped over on the ground at the youth's feet, and a puddle of liquid around it.

I accept the testimony of the police officers, and find on the balance of probabilities that this patron was a minor, and that the minor had beer in his possession (liquor) prior to it being spilled on the floor. Again, this was within the read-lined area of the licensed establishment. There was no significant doubt raised pertaining to any of these findings.

A finding of contravention of section 33(1)(a) requires that a person sell, give, or otherwise supply liquor to a minor. I find the evidence presented does not offer any insight into the details of how the licensee may have sold, gave, or supplied liquor to the minor in the second group. I find it is insufficient for a finding of a contravention of this subsection to establish that a minor was in possession of beer contained in a cup of the type used by the licensee at the concession booths. I cannot say, for example, that the minor did not bring his own beer into the arena and pour it into a similar cup in order to avoid being noticed.

A finding of contravention of section 33(1)(c) requires that in or at a place under his or her control, the licensee permitted a minor to consume liquor. I find that the seating area of the bowl of the arena is a place under the licensee's control. As I have already determined that the minor in the first group did consume liquor in the seating area, the remaining issue is whether the licensee permitted it.

For the purposes of the *Act*, the issue of whether the licensee permitted something is defined as whether the licensee observed as high a degree of diligence as it should have done in the circumstances or whether it can be said that it had shut its eyes to the obvious, or allowed something to go on, not caring whether an offence was committed.

*Ed Bulley Ventures Ltd. v. British Columbia (Liquor Control and Licensing Branch General Manager)* [2001] B.C.L.I No. 5, Appeal #L9905

The branch argued that the licensee did not observe as high a degree of diligence as it should have in the circumstances. I agree. In support of this finding, I accept the officers' testimony and find that the two police officers observed no security personnel monitoring approximately 1500 patrons inside the seating area of the arena. The officers observed the first group of youths for eight to ten minutes and observed no presence of or intervention by security or staff. The officers observed the second group of youths walk to their seats. They observed no presence of or intervention by security or staff in that location. I find that the police observed no security or licensee staff in the seating area of the arena during two periods of observation totalling 18-25 minutes.

Liquor service was available and the licensee knew or ought to have known that the destination of most of the liquor was the seating area in the bowl of the arena, where the patrons would be seated for the hockey game.

I accept the evidence of the event coordinator that the uniformed individual that the police officers thought was a security guard was in fact not so employed.

Licensee's counsel argued that the definition endorsed in *Ed Bulley Ventures* requires that the licensee not care whether a contravention occurred or not. I disagree with this interpretation. I find that the definition in *Ed Bulley Ventures* provides alternatives: Did the licensee observe as high a degree of diligence as it should have, *or* did it shut its eyes to the obvious, *or* did it allow something to go on, not caring whether an offence was committed?

I find that the licensee did permit the minor to consume liquor contrary to section 33(1)(c) of the *Act*.

I find that contravention occurred as alleged.

It is worth noting that the evidence discloses that the licensee goes beyond its responsibility in carefully managing the distribution of liquor in the liquor distribution concession booths or kiosks. The standard of compliance and care at those locations is high. The evidence discloses that the general manager of the facility is experienced and knowledgeable, and therefore must know that virtually all of the liquor sold at the kiosks will be consumed at the patrons' seats in the arena. Yet the evidence also discloses no indication that those patrons are monitored while in the seating area adequately or at all.

### **Due Diligence**

If the licensee could have avoided the contravention through the exercise of reasonable care, *or due diligence*, and can establish that it did in fact exercise such care, this is a complete defence to the allegation.

The onus is on the licensee to demonstrate on a balance of probabilities that it took all reasonable steps to prevent the contravention.

*R. v. Sault Ste. Marie* [1978] 2 S.C.R. 1299 @p.1325

In order to consider whether the licensee did take all reasonable steps, one must determine the identity of the directing mind. This is particularly relevant in this case, where the licensee is not the third party operator and the third party operator appears not to be involved in security for the arena or monitoring the seating area in the bowl of the arena.

The food and beverage manager testified that he is employed by the third-party operator and the third-party operator is responsible for food and beverage distribution in the arena, including liquor service. His evidence discloses no involvement by the third-party operator in the provision of security services or monitoring services within the bowl or seating area of the arena.

The facilities coordinator for the arena testified that he is employed by the licensee. His evidence discloses that the licensee contracts out the provision of security personnel, ushers, and medical staff for events in the arena, including Salmon King hockey games. Security personnel are responsible for monitoring the seating area of the arena and rovers are supposed to be on the lookout for issues that need attention. In his evidence, he disclosed that no liquor specific training is required for security personnel.

The Supreme Court said in *Sault St. Marie*:

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.

Although the third party operator is responsible for the distribution of liquor from the kiosks or concession stands, and does function ostensibly on the basis of established conventions provided by its parent company, the licensee continues to have direct input into the policies and procedures to which the third party licensee operates. This is evident by the testimony of the licensee's general manager, who said *he* has implemented changes that go beyond the license requirements. Those changes include:

- No liquor on concert floor during general admission shows.
- One beverage limit at a time for patrons buying beer at the kiosks. A patron would have to stand in line twice for two beers.
- Reduced number of kiosks selling liquor.
- Closing liquor sales earlier at events to reduce liquor issues.

The evidence discloses that the third-party operator has no part in the monitoring or supervision of patrons inside the bowl of the arena.

The licensee has subcontracted specific portions of those obligations to a security company that according to the evidence does not have any liquor specific training for its employees.

I find therefore, that the licensee has reserved for itself, critical components of its obligations under the terms of the licence, including those described in section 33(1)(c) of the *Act*. I find that the licensee's general manager was the directing mind of the licensee at the time of the contravention.

Having found the directing mind, the next questions are whether the licensee implemented adequate training and other systems to prevent the contravention, and whether the licensee, or its general manager took reasonable steps to ensure the effective operation of the system.

*Aztec Properties Company Ltd. v. General Manager of the Liquor Control and Licensing Branch*, 2005 BCSC 1465, paras. 18-19

I find that the contravention of section 33(1)(c) of the *Act*, occurred within the bowl or seating area of the arena. The licensee put in place a third party operator who had no control or monitoring function in that area, and no policies or procedures for monitoring that area. In support of this finding, I cite the testimony of the food and beverage manager, who said:

The servers we train at Aramark work at the concession booths. The servers do not work in the stands. The security and ushers work in the stands. We have nothing to do with that.

I accept the evidence of the food and beverage service manager of the third party operator that the third party operator uses Exhibits No. 2, 3, and 4 as training and policies manuals. However, a careful review of those documents confirms that they contain nothing that addresses the management, monitoring, or supervision



of patrons in the seating area of the arena. The compliance audits address only compliance at the kiosks, do not address random checks inside the arena, and the manual does not state that two pieces of identification are required when checking for age verification. The service manager's answer was that the manuals are used in many American states and Canadian provinces and are neither specific to British Columbia, nor modified for use in British Columbia.

Further, I note that the online arena policies at the arena's website (Exhibit No. 1 tab 13) make no reference to alcohol service.

Essentially, notwithstanding the inapplicability of some of the provisions of the policies and procedures manual to serving liquor in B.C., the third-party operator seems to have reasonable control of the sale of liquor at the kiosks (this is consistent with the evidence of the third police sergeant who testified on behalf of the branch) but little if any control of the patrons once they have purchased liquor and left the concession areas to watch an event in the main bowl of the arena.

The licensee retained a contractor to provide security for the bowl, but the evidence discloses no instructions from the licensee to monitor liquor possession and consumption in the seating area or to watch for minors with liquor in the seating area. The evidence also discloses that the security contractor had inadequate training and policies in place to assure effective compliance with liquor laws or the terms of the licence, and in fact, no training manual for security personnel whatsoever.

This is particularly disconcerting because in this liquor primary establishment, unlike most others in British Columbia, minors are permitted to interact with adults. As the adults have access to liquor, one would expect a heightened awareness of the need to monitor and supervise both the minors and the consumption of liquor in the arena.

I accept the testimony of the event coordinator that the security personnel were experienced individuals who were highly qualified, but the evidence discloses that they were not on post to monitor the possibility of minors in possession of liquor in the bowl of the arena. In that respect I accept the evidence of the police officers that they watched the minors in possession and one of the minors consume for eight to ten minutes at one end of the facility without observing any roving security personnel, and observed a minor in possession at the other end of the facility again without noting any security personnel in the stands. I accept that the liquor in the possession of the second group was only visible for the duration of the youths' transit to the stands- but the police testimony was clear that they did not see any security personnel while they stood watching the minors on that occasion. I find that there was a notable lack of security presence inside the seating area or bowl of the arena.

As for actually monitoring the seating area for the possibility of contraventions of the *Act, Regulation*, or terms of the licence, I find the neither the licensee nor the security contractor acted on the obvious. The police walked in and immediately saw minors interacting with liquor. The minors were in the open and were seated (first group) or walking (second group) in the usual areas and in the usual manner. They were not hiding their possession or consumption of liquor until spotting the police nearby. I find that any rovers or suitably trained and observant security forces in the area would have seen what was there to be seen.

I find that the licensee had inadequate policies or procedures in place to monitor patrons in the establishment, and failed to execute on any policies or procedures that might have been in place to monitor patrons in the establishment. Security and monitoring personnel either were absent from the critical seating area of the arena or failed to act on what was there to be seen.

Reasonable steps could have been taken including the implementation of policies and procedures to ensure the supervision and monitoring of patrons in the seating area, and specifically the recognition of and action on any interaction of minors and alcohol contrary to the terms of the liquor primary licence. The provision of better training for security staff in the seating area of the arena and more security presence in arena would also be reasonable steps that the licensee or its contractors could have taken to obtain compliance with the licence terms.

Standard SIR and TIPS training for servers in the concession booths is clearly insufficient as the only liquor training for employees in the arena, not only because of the restricted location (not in the seating area) but because a stadium or arena has unique issues that are not relevant to the typical liquor primary licensee and would therefore not be covered in those standard courses.

The programs provided by the American parent company of the food and beverage contractor do not adequately address the jurisdiction specific issues (two pieces of ID) and arena unique environment required of this British Columbia liquor primary licence. Further, the local arena operator has no authority to revise or rewrite the policies and accordingly those policies do not have the flexibility to function for this arena in this jurisdiction.

The licensee failed to establish that it exercised due diligence in the operation of the licensed establishment such that it took reasonable steps to prevent the contravention.

## **PENALTY**

Pursuant to section. 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

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

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound by the minimums set out in Schedule 4 of the *Regulation*. However, I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the NOEA.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

The branch recommended a fifteen (15) day suspension and submitted the following reasons for the recommended penalty:

- Supplying liquor to minors or permitting minors to consume liquor are significant public safety issues because of the effects of alcohol abuse on growing bodies and developing minds.
- There are significant effects on individuals and society of irresponsible drinking behaviour learned at an early age.
- Minors may not have the same capacity to metabolize alcohol as do adults therefore, liquor may have a more intoxicating effect on minors.
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, and theft.

- Branch staff and Senior Police Officers met with the licensee's managers to discuss several liquor related safety concerns. Discussed with the managers was the ongoing need for security staff to be trained and vigilant to ensure minors were unable to obtain alcohol.
- Having security on site is insufficient to ensure public safety and responsible liquor service.
- Permitting a group of minors to openly consume liquor and behave in a boisterous manner in a licensed establishment sets a poor precedent for the other youth in attendance.
- It is the responsibility of the licensee to ensure the terms and conditions of their liquor licence is adhered to.
- The youth involved were well below the legal age of 19 and the contravention took place during an event that is targeted at families. This should be neither tolerated by society nor allowed to stand as an example to other youth attending the arena.

The licensee submitted that the recommended penalty is inconsistent with the *Act*. Counsel says that section 33 is unlike other sections in the *Regulation* that carry ranges of penalty in Schedule 4. Section 33, he submits, is one of very few sections for which the legislation specifies a specific penalty. He points to section 33(6) and argues that the *Regulation* is inapplicable here because the legislature has specified a penalty. His argument is that the general gives way to the specific, and therefore the penalty associated with a breach of section 33 is the penalty specified in subsection 33(6). Counsel submits that as this is the penalty the legislation saw fit to specify, the provisions of the *Regulation* do not apply (s.20).

I disagree. In my view, section 33(6) creates an offence for which a conviction attracts a fine of not less than \$500. The language of the provision is significantly different than that used consistently elsewhere in the *Act* and *Regulation* (*offence, conviction vs. contravention, fine & penalty*), and therefore supports an interpretation that this subsection creates an offence separate and apart from the contravention of the *Act*.

In the event that I am wrong in that regard, I would nonetheless find that the \$500 fine specified in section 33(6) is a minimum, and has no impact on a determination in which the general manager finds the appropriate penalty be something greater than that amount.

Licensee's counsel further submits that even if the provisions of the *Regulation* as to penalty do apply, section 20(2.) of the *Act* requires that the general manager must take into account the licensee's entire compliance history and the particular circumstances. He points to the lack of a compliance history and submits that no penalty is appropriate.

At the commencement of the hearing I noted the unusual nature of the venue, being an establishment holding a liquor primary licence that's primary business is not liquor sales. I asked for the branch and licensee to be prepared to make submissions at the end of the hearing as to what dates, if any should be avoided in the event that a suspension is ordered. This is contrary to the usual policy that the inconvenience or financial implications to a licensee of a licence suspension will not be taken into account for the purposes of determining when a suspension should take effect. However, the critical difference to this licensee, being host to special events as the primary function of its operation, justifies consideration of this matter.

In response to my request, the licensee indicated that in the event that a suspension is ordered, it would strongly recommend the first week of September be avoided due to a unique scheduling of events. The branch took no position on this request.

Finally, the licensee submitted that in the event that a penalty is ordered, a monetary one of \$7,500-\$10,000 would be preferred to a suspension.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding these incidents ("compliance history"). Accordingly, pursuant to the *Regulation*, Schedule 4, this is a first contravention. Pursuant to Schedule 4, item 2, the range of penalties for first contraventions is ten (10) to fifteen (15) days suspension and/or a monetary penalty of \$7,500- \$10,000.

I find that a penalty is warranted.

I also find that a suspension is appropriate to send a clear message to the licensee, the third-party operator, its contractors and employees, and the community that the branch takes this public safety matter seriously.

A 15 day suspension was recommended based on several factors including the age of the youth involved, the target audience at the Salmon Kings hockey game, the previous warning to the licensee and the failure by the licensee to avoid this contravention notwithstanding previous discussions with the branch.

I agree with the reasons put forth by the branch for the proposed penalty. However, in light of the atypical nature of the liquor primary establishment, a fifteen day suspension would prohibit the sale of liquor at individual events spanning a considerable portion of the establishment's calendar year. I find the appropriate penalty is a ten (10) day suspension.

In a typical liquor primary establishment, a ten day suspension would be deemed to be ten business days or ten days that the establishment would normally be open for business. This is normally described in the resulting order. As the typical liquor primary establishment sells liquor as its primary function, a suspension of the license equates to a closure of the establishment. In the case of the Save On Foods Memorial Arena, the primary function of the establishment is the production of a wide variety of large events, for which the provision of liquor is an adjunct service.

A term of the licence is that liquor will only be available at events not aimed primarily at youth audiences (approval letter March 15, 2005, Tab 10, Exhibit No. 1). A suspension of the liquor licence is only effective on a day on which the liquor licence was otherwise available to authorize the sale and service of liquor. Accordingly, this suspension is to be effective for ten consecutive days on which events are hosted at the arena, which events are not aimed primarily at youth audiences. Of course this does not affect the ability of the arena to be open and host the scheduled event. Liquor services, however, will not be available on those occasions.

The ten day suspension also applies to liquor service and consumption in the private booths within the arena. I direct that the licensee remove any liquor in the private booths to ensure that it is unavailable to patrons during the days of the suspension.

## **ORDER**

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 037093 for a period of ten (10) days to commence at the close of business on Friday, September 12, 2008, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (section



67 of the Regulation), and at which liquor would normally be available to patrons of an event hosted by the Save On Foods Arena.

To ensure this order is effective, I direct that Liquor Primary Licence No. 037093 be held by the branch or the Victoria City Police from the close of business on Friday, September 12, 2008, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served. Further, suspension signs notifying the public that the licence is suspended will be placed in prominent locations in the establishment by a branch inspector or a police officer, and must remain in place during the period of the suspension.

*Original signed by*

Sheldon M. Seigel  
Enforcement Hearing Adjudicator

Date: August 13, 2008

cc: Victoria Police Department - Sgt. Jim Simpson

Liquor Control and Licensing Branch, Victoria Regional office  
Attn: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Surrey Regional office  
Attn: Olubode Fagbamiye, Branch Advocate