



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 20 of
*The Liquor Control and Licensing Act RSBC 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 Mulligan Tam Pearson Law Corp.
For the Branch:	Olubode Fagbamiye
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	July 26, 2011
Date of Decision:	August 25, 2011

INTRODUCTION

The licensee, R.G. Facilities (Victoria) Ltd. operates Save on Foods Memorial Arena (SOFMA) located in Victoria BC. The arena hosts a wide range of events primarily related to trade shows, conferences, conventions, banquets and entertainment and sporting events. The licensee holds Liquor Primary Licence 037093 allowing liquor sales from 9:00 a.m. to midnight seven days a week. The liquor sales and service has been contracted by the licensee to Aramark Entertainment Services (Canada) Inc. (Aramark) which has been approved as a third party operator by the Branch. The security and guests services functions have been contracted by the licensee to International Crowd Management Inc. (ICM). 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" as well as those terms and conditions shown on the face of the licence.

On November 3, 2007, members of the Victoria Police Department (Vic PD) present at the arena during a professional hockey league game observed young persons, who they believed to be minors, in possession of and in one instance consuming liquor (beer). This was reported to the branch which subsequently issued a contravention notice (CN) and convened an enforcement hearing. The hearing was conducted by a delegate of the general manager of the branch, who on August 13, 2008, issued a decision finding a contravention of the *Act* and ordering a ten (10) day suspension of the liquor licence. The decision was taken to judicial review before Mr. Justice N. Brown of the BC Supreme Court who in written reasons dated May 8, 2009, quashed the decision and ordered a rehearing before a new adjudicator. He directed at paragraph 130: "Should the new hearing result in a finding that RG contravened s. 33(1)(c), the penalties imposed in the first adjudication shall stand; provided that the new adjudicator may consider mitigatory information derived from witness evidence that was not available at the first hearing."

ALLEGED CONTRAVENTIONS AND PROPOSED PENALTIES

The branch in an Amended Notice of Enforcement Action (NOEA) dated January 6, 2011, alleges that on November 3, 2007, the licensee contravened section 33(1)(c) of the *Liquor Control and Licensing Act* (the Act) by permitting a minor to consume liquor. A 15 day liquor licence suspension was proposed. [I pause to note that although the NOEA indicates a proposed penalty of a 15 day licence suspension, the branch advocate in his submissions indicated that a 10 day licence suspension was being sought.]

Item 2 of Schedule 4 of the Regulation to the Act provides a range of penalties for a first contravention of this type of a licence suspension for 10 - 15 days and/or a monetary penalty of \$7500 - \$10,000.

The licensee disputes the contravention.

RELEVANT STATUTORY PROVISIONS

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

Supplying liquor to minors

- 33** (1) A person must not
- (c) in or at a place under his or her control, permit a minor to consume liquor.

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002**When a suspension is to be served**

67 (1) In this section, "**business day**" means, in respect of a licensee, a day specified by the general manager as a business day.

(2) If a licensee accepts a suspension under section 64 (3) (b) or if the enforcement actions referred to in section 65 (1) include a suspension, the suspension must

(a) unless the general manager considers that a different day of the week is more appropriate, take effect on the same day of the week as the day on which the contravention for which the suspension was imposed was committed, and

(b) continue in effect on each business day until the number of days on which the suspension has been in effect equals the number of days in the accepted or determined period of suspension.

(3) The general manager may, subject to subsection (2), determine the date on which the suspension begins.

ISSUES

1. Did the contravention occur?
2. Was the licensee duly diligent?
3. If the contravention is proven, should the full ten day licence suspension imposed during the first adjudication stand?

EXHIBITS

1. Amended NOEA January 6, 2011.
2. Reasons for Judgement, May 8, 2009, Mr. Justice N. Brown, BC Supreme Court.
3. Decision of the general manager, August 13, 2008.
4. Exhibits 1 – 4 pertaining to general manager's decision of August 13, 2008.
5. ICM security and guest services employee records of November 3, 2007.
6. ICM policies.

EVIDENCE – The Branch

The branch advocate advised that the branch was relying on the record and exhibits of the previous hearing and would not be presenting any witnesses.

EVIDENCE – The Licensee

Two senior Vic PD police officers, an inspector and a sergeant, testified that they were working in uniform the evening of November 3, 2007. The department had previously received complaints that minors were on occasion consuming liquor in the arena. They made a routine liquor inspection of the arena during the course of a professional league hockey game. They entered from the south end during the course of the first period of the game. There were approximately 1500 fans within the bowl seating area of the arena most of whom were sitting in the center sections, few in the end sections. Their attention was drawn to two boisterous groups of young appearing persons seated in the end section behind the visiting team's goalie.

Observing the first group of three youths it appeared that all were in possession of beer in plastic cups. The sergeant observed one of the youths take a sip of what appeared to be beer from the cup in his possession. The group appeared to have noted the police officers' presence and put the beer out of sight. After observing the group for a further period of time the officers approached and spoke with them. They determined that the liquid in the cups was beer. It was determined that one of the three was of legal drinking age; the other two were 16 and 17 years of age. The three were escorted from the bowl seating area to the concourse. The 17 year old who had been observed consuming beer from the plastic cup was issued a violation ticket. The three were turned over to arena security personnel and escorted from the premises.

The officers returned to the bowl seating area of the arena. The second period had commenced with the teams having changed ends. The second group of youths had changed their seating to once again sit behind the visiting team's goalie. They all were holding what appeared to be beer in plastic cups. It appeared that they had observed the officers' presence and put the cups onto the floor in front of them. The officers observed the group for a period of time during which the cups remained out of sight. None of the group was observed to have consumed from the cups. The officers approached the group. The cups had been turned over with the contents spilled onto the floor. The officers were satisfied from its appearance that the spilled contents was beer. The four were identified and it was determined that one was nineteen years of age and the remaining three were 17 and 18 years of age. They were escorted from the bowl seating area, turned over to arena security and escorted from the premises.

The officers testified that during the time they were watching the groups of youth there were identifiable arena staff in the vicinity stationed at the entrances to the bowl seating areas, however, none approached the groups of youths. At one point they observed a female staff member standing at the entrance to the bowl seating area also watching them. The staff member did not approach the youths or take any action towards them.

An employee of ICM testified that he has worked at the arena for ICM since March 2005, first in guest services and then in security. He has previous experience as a police officer and extensive experience in corrections and probation services particularly dealing with youths. He holds a provincial security licence and instructs Basic Security Training for ICM security staff, which includes information on alcohol related issues. The arena has a “zero tolerance” policy regarding liquor related infractions. Guests are not allowed to bring liquor into the arena, intoxication is not permitted, and minors are not permitted to possess or consume liquor. Guests breaking the rules are evicted from the premises. Briefing sessions are held with employees prior to each event. He introduced the ICM employee records for the night of November 3, 2007 (Exhibit 5). There were 10 security employees, 26 guest services employees and two medics on duty. Those employees with a radio are marked with an “R”.

Guest services employees are primarily responsible for ticket taking and ushering. They do not deal directly with any problems occurring with guests. They provide the eyes and ears for the security staff. If a problem is observed they are to contact their supervisor or a security rover. They are not to leave their post. They watch for intoxication or persons with liquor brought from outside the arena, they are not trained to determine the age of guests.

All security employees are stationed at the arena entrances prior to the start of an event to prevent prohibited items being brought into the arena. Once the event commences they are stationed at the three access gates, the visitor and home vomitories and the home dressing room. The four security rovers work in teams of two and move throughout the entire arena complex looking for security issues and liquor compliance. They are trained to look for over-boisterous behaviour, groups of young people sharing beverages in cups or drinking surreptitiously

On the night of November 3, 2007, he was working as a security "rover". He recalls the officers identifying the group of three youths, one who was observed consuming beer. He evicted them from the premises. He does not recall dealing with the second group of four youths. He also evicted four youths that night and believes they were turned over to police officers on site. He is familiar with the ICM Policies at Exhibit 6. They are general policies not related specifically to SOFMA. He agreed that the policies deal primarily with detecting impairment. They are not specific to preventing minors from consuming liquor. He is unaware of any policy related to prevention, his duty is to "detect, not prevent". He testified that the Aramark manuals found at Exhibit 4 are for Aramark food and beverage employees and not ICM employees.

A former employee of ICM testified that he had been a police officer for 28 years prior to working as a security employee for ICM for 3 1/2 years. On the night of November 3, 2007, he was working at SOFMA as the event supervisor and as such was in charge of all ICM employees. He attended a pre-game meeting for the heads of all the various departments of the arena to discuss what issues might be expected during the night. They discussed the hours of liquor sales and the persons required when sales were closed off. There were no particular alcohol compliance issues raised. All employees coming on duty sign-in (Exhibit 5) and are reminded that they are to contact security or advise their supervisor of any issues arising regarding liquor or contraband. Staff on duty in the seating area is advised to have security deal with any issues. The only matter which the seating staff would deal with on their own would be to advise persons that liquor was not permitted in the no drinking seats and to have them sit elsewhere.

There were 10 security staff on duty the night of November 3, 2007, including himself (Exhibit 5). Four of the security staff were designated as "rovers". These are more experienced security staff that work in teams of two to patrol the entire arena including the bowl seating areas. The remaining security staff is stationary. Staff at the access gates pay particular attention to young person's wearing bulky clothing to ensure they are not concealing liquor or contraband.

He testified that the management of SOFMA take liquor related issues very seriously. Closing time for liquor sales are strictly adhered to. Minors found with liquor are automatically evicted as are unruly or intoxicated persons. It is a family venue particularly during hockey games.

He testified that he had not previously seen the Aramark policy manuals (Exhibit 4) and had just recently seen the ICM policy manual. With his previous police experience and experience at the arena in Vancouver, he didn't require further information.

The president of R.G. Facilities (Victoria) Ltd., the operating company for the licensee (licensee representative) testified that he has worked for the licensee for 13 years, was present and in charge of the arena the night of November 3, 2007. He has previous experience in arena operations and the restaurant and nightclub industry.

The licensee has contracted with Aramark to provide food and beverage services at SOFMA. Aramark's manuals are found at Exhibit 4. The licensee has contracted with ICM to provide security, ticket takers and guest services at SOFMA and the Kelowna arena operated by the licensee since 1999. ICM is the largest and best of such organizations in the province and are employed at most arenas in the province. They are responsible to ensure a safe and secure environment. The ICM policy manual (Exhibit 6) is in effect at both locations. It is discussed and updated on a regular basis. ICM are obligated to be aware of the liquor law requirements and to train their staff and do so. The licensee receives reports from ICM on an event basis with monthly wrap-up reports and discussions. All department heads at SOFMA meet before each event to discuss any issues or concerns.

Alcohol sales is a service provided at SOFMA because of a demand by patrons. To curb excessive consumption the prices have been set relatively high and the number of sales points reduced. Liquor sales are closed earlier than required by the licence. There is no interest in selling liquor to underage persons. Two pieces of identification are required for each purchase and persons under 23 years of age can only purchase one drink at a time. ICM and its staff are aware of the licensee's position.

He testified that following receipt the branch's decision of August 13, 2008, ordering the suspension of the liquor licence, the suspension was served commencing as required in the decision. He did not recall the exact dates when liquor service was suspended but did recall that the dates included a Home Show event which commenced on a Thursday evening and proceeded until Sunday and would normally have offered liquor sales to guests. The remaining days were served during the regular business days of the arena. The police were advised of the licence suspension. There was no requirement to inform the branch. He does not recall whether the licence was picked up by the police.

The arena is open from Monday to Friday at a minimum; events usually take place during evenings and weekends. The arena houses a store, a small concession, a restaurant and the administration office. The liquor licence covers the operation of the concession and the restaurant. The restaurant does not operate on a daily basis but only for booked events. The concession is open daily for lunch from 11 a.m. to 2 p.m. It does not attract business off the street, but is for people working at the arena. On rare occasions police officers will come for lunch from their offices located in a neighbouring building. The concession represents a marginal business activity.

SUBMISSIONS – Branch

The branch's submission is summarized as follows:

The elements of the contravention have been proven. A minor was observed consuming liquor within the licensed area. The licensee knew or ought to have known, the minor was readily visible to the sergeant, staff in the vicinity failed to take any action to prevent the occurrence. The licensee was not duly diligent. The licensee did not provide adequate training to staff to effectively monitor the bowl seating areas and did not have an effective system to detect and prevent minors from consuming liquor in the bowl seating area. The written policies developed by the licensee and its contractors do not deal with the issue of minors consuming liquor in the bowl seating area. The security supervisor on duty at the time was not aware of his employer's written policies during the 3 ½ years of his employment with the company. The branch had made its concerns known to the licensee at an earlier meeting, but the licensee failed to ensure there was adequate supervision and control to prevent the contravention. The licensee needed to develop better controls not just at the point of liquor sales, but within the seating areas as well. The licensee representative was present at the time of the contravention and was the directing mind of the licensee.

As a result of the licensee's failure to put in effective procedures to monitor the licensed areas a 10 day licence suspension is warranted. The dates of a suspension are within the authority of the branch to determine, not the licensee. There is no evidence that the licensee has served a licence suspension. The branch was not informed that the licensee was serving the suspension and the liquor licence was not turned over to the branch or the police as required.

SUBMISSIONS – Licensee

The licensee's submission is summarized as follows:

For a contravention to be found it must be established that the licensee "permitted" the minor to consume the sip of beer in that the licensee did not observe as high a degree of diligence as it should have or shut its eyes to the obvious; *Ed Bulley Ventures [2001] BCLI No. 5, Appeal No.L-9905 BC Liquor Appeal Board*. The evidence of the security rovers, the event supervisor and the licensee representative is that the licensee did not shut its eyes. The issue of minors consuming liquor is taken seriously and there is zero tolerance. The licensee does not try to achieve profits by selling liquor to minors. It does not try to maximize liquor sales but acts to restrict liquor sales. The evidence as a whole is of the security rovers patrolling the premises looking for problems as well as other security staff. Security staff training dealt with liquor issues. The licensee showed a high degree of diligence. Four youths were evicted by security staff that night. That is evidence of diligence. The test is not one of perfection. The licensee and its employees were doing their best. The evidence is of a licensee caring very much with responsible employees. This is not "permitting". There was little to be observed, only one of the two experienced officers saw the minor take a sip of beer. Boisterous youths heckling the opposing goalie are not indicative of minors consuming liquor.

If a contravention is found, it is submitted that the licensee has already served the entire suspension penalty as ordered in the previous decision. "Business day" as defined in section 67 of the Regulation is "a day on which the establishment is normally for business". It does not refer to days on which liquor is being sold. The suspension is to commence on the day of the week on which the contravention occurred and continue on succeeding business days until completed. There is no discretion to impose intermittent suspensions. The suspension cannot be imposed only on those days when ticketed concerts are occurring.

REASONS AND DECISION

In reaching this decision I have considered the evidence presented during the course of this hearing, as well as the evidence outlined in the previous decision and the exhibits presented at both hearings.

The evidence supporting the contravention is clear and unchallenged. A minor, 17 years of age, was observed by a police officer consuming liquor (beer) in the licensed bowl seating area of the establishment. Whether this constitutes a contravention as alleged by the branch is dependent upon whether this activity was “permitted” by the licensee and whether the licensee was duly diligent in taking reasonable steps to prevent the contravention from occurring.

“Permit”

The BC Liquor Appeal Board in its decision in *Ed Bulley Ventures* (supra) approved the interpretation of “permit”: “a licensee may be said to permit something where the licensee does not exercise as high a degree of diligence as it should have in the circumstances, or where the licensee shuts its eyes to the obvious or allows something to go on, not caring whether an offence is committed or not.”

The licensee has argued that the evidence of the security rovers, the event supervisor and the licensee representative is that the issue of minors consuming liquor is taken seriously by the licensee and there is zero tolerance for its occurrence. Trained security staff move through, and are stationed in, the seating areas watching for and dealing with problems including minors consuming or in possession of liquor. The incident where the minor took a sip of beer was brief and only witnessed by one of the officers.

I am not satisfied that the licensee has exercised as high a degree of diligence as it should have in the circumstances. The security system in the bowl seating area is largely dependent upon guest services or security employees carefully observing the patrons and reporting any problems noted to a supervisor or security rover. Two teams of security rovers are charged with the responsibility of making observations and dealing with problems within the entire arena complex.

Here we have two uniformed police officers noting a potential problem involving boisterous youths and making observations of their conduct. They observe that the youths are in possession of liquor (beer) and one of the youths, later identified as being 17 years old, is observed by one of the officers consuming what appears to be and is later confirmed as being liquor (beer). Identifiable arena employees are in the vicinity and in one instance an employee watches the activities of the youths, yet no action is taken by any employee to either deal with the youths or satisfy themselves that no problem exists. In the circumstances I find that the licensee has not exercised as high a degree of diligence as it should have in the circumstances and may be said to have permitted the minor to consume liquor in the licensed seating area.

Due Diligence

The licensee is entitled to a defence to the allegations of the contravention if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions 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 dealt with.

The leading case is: *R. v. Sault Ste. Marie* [1978] 2 S.C.R. 1299. At p. 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 respondent 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.

In the context of liquor enforcement in British Columbia, the BC Supreme Court in the case of *Plaza Cabaret v. General Manager Liquor Control and Licensing Branch*, [2004] BCSC (para. 25), set out the criteria a licensee must meet in order for it to be found not responsible for a contravention under the *Act*:

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

The court in Plaza clarified that the directing mind need not be an officer or director of the licensee:

It would be the individual or individuals, perhaps the general manager or the shift manager or supervisor, who had sufficient authority in respect of the sphere of relevant operations to be worthy of the appellation of 'directing mind and will' of the licensee. (para 27)

Here, I find that the directing mind of the licensee at the time of the contravention was the licensee representative. The licensee has contracted out food and beverage services to Aramark and guest and security services to ICM. However, the licensee retains the overall authority for operating the arena. Both Aramark and ICM are reputable companies in their respective fields. Both have developed training and policies to guide their employees in carrying out their duties. Their policies and procedures have been approved and accepted by the licensee.

Having considered all of the evidence I am satisfied that the policies and procedures developed for the sale of liquor at the public kiosks are sufficient, and if diligently carried out will meet the licensee's responsibility to prevent liquor from being sold to minors. There are however continuing problems related to the licensee's responsibility to ensure that minors do not possess or consume liquor. The licensee had been made aware of the branch's concern in this regard at a meeting held between branch and licensee officials. A liquor inspector testified to this effect during the previous hearing:

"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 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.”

The evidence before me does not support that the licensee has met its undertakings and responsibilities. ICM Policies at exhibit 6 do not deal specifically with the need for all guest services and security personnel to pay particular attention to the potential problem of minors obtaining liquor legally purchased by an adult and consuming it within the licensed areas of the arena. The majority of ICM staff are employed in guest services. The system in place is much dependent upon them reporting potential problems including underage persons in possession of or consuming liquor to a supervisor or security employee. The evidence does not show that these guest services employees have received sufficient training or instruction in identifying underage persons. Further, it is disconcerting that the senior ICM employee on duty at the time and responsible for the supervision of all guest services and security staff at the time of the alleged contravention had not read the aforementioned policies. While the individual had considerable experience it nonetheless is incumbent on ICM and the licensee to satisfy themselves that all persons working at the arena are familiar with and apply the authorized policies and procedures.

The police officers observing the boisterous behaviour of the young person's did nothing more than to continue their observations during which it was observed that they were of questionable age, were in possession of liquor (beer) and one of the youths was observed consuming liquor. There were other arena employees in the vicinity, one of whom watched the youths for a period time yet no action was taken. The security rovers on duty either did not patrol within the areas of the youths or failed to make observations of their behaviour and take appropriate action.

In conclusion, I find that the licensee has not been duly diligent.

Having considered all of the evidence, I find that on November 3, 2007, the licensee contravened section 33(1)(c) of the *Liquor Control and Licensing Act* (the Act) by permitting a minor to consume liquor.

PENALTY

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

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a 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 to follow the minimums set out in Schedule 4 of the *Regulation*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the Notice of Enforcement Action.

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.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee for this licence within the year preceding this incident. I therefore find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

In the circumstances of this case I am satisfied that the licensee has not successfully or sufficiently ensured that it has met its responsibilities to take all reasonable measures to prevent minors from consuming liquor within its establishment. I am satisfied on the evidence that it was only the timely intervention of the police officers which prevented the four underage youths from further consuming the liquor in their possession.

The contravention is serious. Permitting minors to consume liquor is considered by the branch to be a public safety issue which can have serious community and personal consequences. In the circumstance of this case, I find that a penalty is warranted.

I am mindful of Mr. Justice N. Brown's direction that if this new hearing results in a finding that the licensee contravened s. 33(1)(c), that the 10 day licence suspension imposed in the first adjudication shall stand provided that I may consider "mitigatory information derived from witness evidence that was not available at the first hearing."

Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4 of the *Regulations* provides a range of penalties for a first contravention of this type. The branch has recommended a 10 day suspension. In the circumstances of this case I find that a 10 day suspension is necessary, appropriate and reasonable.

Counsel for the licensee has argued that if a contravention is found the licensee has served the penalty ordered by the previous decision and that any penalty assessed must meet the requirements of section 67 of the *Regulation*. The branch advocate has argued that it is the general manager's authority to set the dates for the licence suspension, and in this case the general manager did not authorize the licensee to suspend its licence on the dates chosen by the licensee. Further the licensee did not advise the general manager of the suspension or turn over its liquor licence to the branch or the police as ordered in the previous hearing decision.

Section 67 requires that a suspension ordered must take effect on succeeding business days. Until recent February 2011 amendments to section 67 of the *Regulation*, and at the time of the 2008 hearing decision, "business day" was defined as "a day in which the licensee's establishment is normally open for business." That section now reads, "In this section "**business day**" means, in respect of a licensee, a day specified by the general manager as a business day." I am satisfied that in the circumstances of this case the previous definition of "business day" applies. "Business" is not defined.

Counsel for the licensee has argued that a “business day” is not dependent upon whether the liquor is being sold in the establishment. “Business day” must be interpreted giving consideration to the nature and purpose of the legislation or regulation in which it is found. Here we have legislation which provides for the licensing and the control of the sale of liquor. We have a liquor licence issued to an arena facility with licensed areas permitting a capacity of 9338 persons. The arena facility primarily hosts trade shows, conferences, conventions, banquets and entertainment and sporting events. Pursuant to the licence, liquor may be sold and served at such events except for those events aimed primarily at youth. I find that hosting trade shows, conferences, conventions, banquets and entertainment and sporting events not aimed primarily at youth is the business for which the license has been issued.

I do not agree with counsel for the licensee that the suspension would be effective on dates in which liquor is not being sold or served, nor do I agree that the following amount to the “business” for which the liquor licence has been granted: the operation of a restaurant, open for booked events; a concession stand open from 11 a.m. to 2 p.m. primarily for persons working within the facility and which amounts to a marginal business activity; a store; or the administration offices. Those, in my view are ancillary to the “business” for which the liquor license has been issued.

The licensee representative testified that the dates of the suspension served included four days of a home show, where liquor sales and service would have been otherwise available. He was unable to recall the dates; however he testified that they occurred during the period of suspension ordered in the previous hearing decision. The branch advocate argued that any days which the licensee suspended the sale and service of liquor cannot be considered as part of the 10 day suspension ordered because the branch was not advised of the suspension, nor was the liquor licence surrendered to the branch or the police.

There is no evidence before me to contradict what the licensee says about having served four (4) days of the ten (10) day liquor licence suspension. I accept the licensee representative's testimony that the four days of the Home Show when liquor sales and service were suspended by the licensee were within the period of suspension ordered in the previous hearing decision. In conclusion, I accept that the licensee has effectively served four (4) of the ten (10) day suspension. For the aforementioned reasons I do not accept the licensee has served the entire 10 day suspension.

ORDER

Pursuant to Section 20(2) of the *Act*, and Section 67 of the *Regulation* I order a suspension of Liquor Primary Licence 037093 for a period of six (6) business days, to be served as of the close of business on Friday, September 30, 2011, and to continue each succeeding business day until the suspension is completed. Those six business days must be days during which the licensee is hosting a trade show, conference, convention, banquet or entertainment or sporting event during which liquor would normally be sold and served to patrons. The branch will inform the licensee by way of a penalty letter when the six business days of the suspension will be imposed. In order to facilitate that, I order the licensee by September 12, 2011, to provide the branch with its schedule of all booked events during which liquor service will be available to patrons for the period October 1, 2011 – January 31, 2012.

To ensure this order is effective, I direct that the liquor licence be held by the branch or the Victoria Police Department during the period of suspension and until the licensee has demonstrated to the branch's satisfaction that the suspension as ordered has been served.

A suspension sign 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 days of suspension.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: August 25, 2011

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

Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Olubode Fagbamiye, Branch Advocate