



DECISION OF THE
GENERAL MANAGER
LIQUOR AND CANNABIS REGULATION BRANCH

IN THE MATTER OF
A hearing pursuant to Section 51 of

The Liquor Control and Licensing Act, S.B.C. 2015, c. 19

Licensee: Club Ilia Ltd.
dba Club Ilia Eatery and Lounge
8902 University High Street
Burnaby, BC V5A 4Y6

Case: EH19-016

For the Licensee: Fred Soofi
Tina Blakeman

For the Branch: Hugh Trenchard

General Manager's Delegate: Nerys Poole

Date of Hearing: Written Submissions

Date of Decision: October 7, 2019

**Liquor and Cannabis
Regulation Branch**

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria, BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7066

Location:
Fourth Floor, 645 Tye Road
Victoria, BC V9A 6X5

www.gov.bc.ca/liquorregulationandlicensing

INTRODUCTION

Club Ilia Ltd. (the “Licensee”), operates a licensed establishment under the name of Club Ilia Eatery and Lounge, at 8902 University High Street, Burnaby, BC (the “establishment”). The Licensee has a food primary licence no. 303735 (the “Licence”).

Mr. Fred Soofi represented the Licensee at the pre-hearing conference call held July 10, 2019. At the pre-hearing conference call, summarized in the Branch’s letter of July 15, 2019, Mr. Soofi stated that the Licensee is admitting the alleged contravention but is objecting to the recommended penalty. This matter has therefore proceeded as a penalty-only written submission. Ms. Tina Blakeman, General Manager of the establishment, signed the Licensee’s written submission dated September 16, 2019.

The Licence permits liquor sales from 9:00 a.m. to midnight, from Monday to Sunday. The Licence is, as are all liquor licences issued in the Province of British Columbia, subject to the terms and conditions contained in the publication “Food Primary Terms and Conditions” (the “Handbook”).

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The alleged contravention is operating contrary to the primary purpose of the food primary licence, pursuant to section 18(1)(a) of the *Liquor Control and Licensing Regulation* (the “Regulation”). Food primary establishments must be primarily engaged in the service of food during all hours of operation. Liquor service is to be an accompaniment to food service. A contravention occurs if the primary focus of a food primary establishment shifts from the service of food to the service of liquor.

The penalty range set by the *Regulation* in force at the time of this alleged contravention is a suspension of the licence for a period of 10 to 15 days or a monetary penalty of \$7,500 to \$10,000 for a first contravention, (Item 1 of schedule 2). The Branch proposes the minimum penalty for this first contravention – either a ten-day suspension or a monetary penalty of \$7,500. The Branch considers the minimum penalties to be appropriate to reinforce the seriousness of the contravention and to gain voluntary compliance.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Regulation, B.C. Reg. 241/2016*****Rules and requirements**

18 (1) The following rules and requirements apply to a food primary licence:

(a) the primary purpose of the business carried on in the service area when liquor is being sold or served must be the service of food;

Schedule 2 as amended by B.C. Reg. 137/2017

Operating Outside of Licence Purpose					
1	Contravention of section 18 (1) (a) of this regulation [<i>service of food in the service area under a food primary licence not the primary purpose of the business</i>]	10– 15	20– 30	30– 60	\$7 500– \$10 000

ISSUE

As the Licensee admits the contravention occurred and is presenting no defence to the contravention, this matter has proceeded as a penalty-only written submission.

Therefore, the only issue for my consideration is: what penalty, if any, is appropriate?

EXHIBITS

Exhibit 1: Branch's book of documents, tabs 1 to 18

SUMMARY OF RELEVANT FACTS

As the Licensee admits the contravention occurred, the Licensee accepts the following facts as set out in the Notice of Enforcement Action dated May 1, 2019 (the "NOEA"). (exhibit 1, tab 1).

At the time of the contravention on February 1, 2019, the Licensee held a valid Food Primary Licence No. 303735, expiring on November 30, 2019.

On February 1, 2019, two liquor inspectors (“liquor inspectors 1 and 2”) entered the establishment at or about 23:25. Liquor inspector 2 noted that patrons were ordering drinks from the bar area. Liquor inspector 1 entered the back room of the establishment and noted that there were two “beer pong” tables set up. He observed that the individuals playing the game appeared to be consuming glasses of beer.

At or about 23:28 pm, two more liquor inspectors (“liquor inspectors 3 and 4”) entered the establishment. Liquor inspectors 3 and 4 observed the following:

- A male seated at the front of the establishment with a money box
- Tables in front of the bar area were removed with exception of some being used as “beer pong” tables
- The “beer pong” cups were filled with what appeared to be water
- Some of the interior chairs were moved out on to the patio
- A DJ was playing music in the corner across from the bar area
- Patrons were dancing to the music the DJ was playing
- The music was loud enough that the two liquor inspectors could only communicate by standing very close to each other and leaning in to talk

Liquor inspectors 3 and 4 conducted a walk-through of the area. They entered the area past where the DJ was playing and noted the 2 “beer pong tables” set up with patrons in the area. There was no seating available in this area. As noted in the NOEA, beer pong is a game that requires the patron to get up from their seat within the food service area and is likely to shift the primary focus away from the service of food.

Liquor inspector 3 went to the bar area and asked to order food but was told that the kitchen was closed. Liquor inspector 3 asked when the kitchen closed and an employee (later identified as the shift manager) stated it closed at 22:45 hours.

Liquor inspector 4 took photos of patrons doing shots at the bar (shot-skis). As described in the NOEA, a shot-ski is a ski that is set up with four shots that allows four patrons to line up and drink the shots simultaneously. Liquor inspectors 3 and 4 watched as servers continued to accept liquor orders at the bar and serve liquor to the patrons.

Liquor inspector 4 requested to speak with the shift manager in the kitchen area. The shift manager took the four inspectors to the kitchen area where the inspectors noted that all of the kitchen equipment were off and no staff was in the kitchen. The equipment was cold to the touch.

The shift manager agreed that she knew the requirements of a food primary licence, i.e. the establishment could only serve liquor if the kitchen was open. The shift manager confirmed that the kitchen had closed at approximately 22:45 and that liquor service had continued.

Sales receipts obtained from the establishment for February 1, 2019, indicate that food was sold up to 22:33 and liquor was sold up to 23:50. The ratio of receipts from food sales to receipts from liquor sales, from 22:30 to 00:00, was 1 food receipt to 31 liquor receipts. The CCTV video of the seating area submitted by the Licensee shows that staff had begun cleaning at 22:30. The condiments in the kitchen had been covered at 22:35. The last food order was pulled from the oven at 22:30 and the last food order was removed from the kitchen at 22:42. The last that an employee was seen in the footage was at 22:59.

The timesheet submitted by the Licensee for February 1, 2019, states that the kitchen manager, the cook, and a dishwasher were off shift at 23:00. The last time-out recorded for kitchen staff was another dishwasher who recorded his time-out at 23:15.

The service areas in front of the bar service area and to the left of the bar service area had no tables available for use by patrons with the exception of tables that were being used for 'beer pong'. A DJ was playing music in the establishment and the music was loud enough that it was difficult to hear someone speaking outside of two feet away. The service area in front of the bar and to the left of the bar were dimly lit.

On February 4, 2019, the Branch issued a contravention notice to the Licensee for operating outside the licence purpose. (exhibit 1, tab 2)

SUBMISSIONS – BRANCH

The Branch has submitted the book of documents (exhibit 1) with the NOEA at tab 1, which outlines the elements of the contravention and summarizes the facts as noted above.

The Branch sets out its reasons for pursuing enforcement:

- The service of food in the service area was not the primary purpose of business, as required by the food primary licence
- Food primary establishments must be primarily engaged in the service of food whenever liquor is being sold or served.
- It is contrary to the public interest for the Branch to allow restaurants to operate as bars. The current liquor licensing process requires public and local government or First Nations' input for liquor primary licences but not for food primary licences. Obtaining a food primary liquor licence for a restaurant and then operating as a bar circumvents this process. Restaurants operating as bars also tend to be associated with community complaints from neighbours about noise, drunkenness and unruly patrons.

The Branch sets out its reasons for the proposed recommended penalty in the NOEA:

- The recommended suspension of ten days or the monetary penalty of \$7,500.00 falls within the penalty range set out in Schedule 2, Item 1 of the *Regulation* for a first contravention of this type.

- The Branch submits the minimum penalties for this first contravention are considered appropriate to reinforce the seriousness of the contravention and to gain voluntary compliance.

In response to the Licensee's written submission dated September 16, 2019, the Branch merely noted that the Licensee did not express a preference for a monetary penalty or a suspension, if the delegate concludes a penalty is warranted. The Branch made no further submissions.

SUBMISSIONS – LICENSEE

In its written submission dated September 16, 2019, the Licensee requests leniency in the amount of the recommended penalty of either \$7,500.00 or 10-day licence suspension.

The Licensee argues for a lesser penalty, due to the fact that this is the Licensee's first contravention in ten years of operation.

The Licensee states that it operates a small "non-chain" restaurant in a community where most merchants do not last one year. Their customer base is comprised of Simon Fraser University Faculty and Admin Staff and most sales are at lunch. The community that comes in the evening is primarily young families. The Licensee does not want to lose these customers. The Licensee actively supports all local fundraisers and non-profit events. The Licensee is involved with the Terry Fox Foundation, the Elementary School, Childcare Centre, and Trottier Observatory, to name a few.

The Licensee submits that it fully understands the alleged contravention. They have held a manager meeting to make sure that they are serving alcohol within the licence purpose and all of the details that it encompasses. The Licensee feels that the contravention was a situation that they had not prepared for and that they have now learned from it.

In response to the branch response to the above, asking whether the Licensee preferred a monetary penalty or a suspension, the Licensee submitted that they do not feel that it would be an option to close for ten (10) business days due to the service they provide to the community. Instead, the Licensee hopes to pay a smaller amount in the form of a monetary penalty, if a penalty is warranted.

REASONS AND DECISION

Contravention

The Licensee admits the contravention occurred. I therefore find that the Licensee has contravened section 18(1)(a) of the *Regulation*.

Due Diligence

The Licensee is entitled to a defence if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The Licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with.

The Licensee admits that the contravention occurred. The Licensee has not raised a defence of due diligence. I turn now to the question of penalty.

PENALTY

Pursuant to section 51(2) of the *Liquor Control and Licensing Act*, having found that the Licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the Licence, I may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence

- Cancel all or any part of the licence
- Order the licensee to transfer the licence

I am not bound to order the penalty proposed in the NOEA. However, if I find that either a licence suspension or a monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 2 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.

The factors that I have considered in determining the appropriate penalty in this case include: whether there is a proven compliance history; 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.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. Enforcement action is intended to both redress the licensee's non-compliance, and to encourage future compliance by way of deterrence.

There is no record of a proven contravention of the same type for this Licensee at this establishment within the preceding twelve months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 2 and calculating a penalty. Item 1 in Schedule 2 provides a range of penalties for a first contravention of this type: a ten-day licence suspension and/or a monetary penalty of \$7,500.

The Licensee refers to the effect that a ten-day suspension will have on its patrons and the community. The Licensee emphasizes its support for local fundraisers. By operating as a bar with a food primary licence, the Licensee is affecting its local community in a negative way. A food primary licence does not require approval by local government who are required to review liquor primary licences and to consider the effect of a liquor primary licence on the neighbourhood.

The Licensee says that they have now had a manager meeting and that they will now be complying with the requirements of a food primary licence. The facts of the evening of February 1, 2019 demonstrate that the shift manager was well-aware of the requirement of food service yet there was no food service available for the last hour and a half of its operation.

The following statements are from the handbook: (exhibit 1, tab 15)

You are responsible for operating all areas of your service area as a restaurant whenever you serve liquor.

The kitchen must be fully equipped to produce food on your full menu and must be open and staffed whenever liquor is served.

The décor and lighting must be suitable for dining and table service.

Any entertainment and games offered must not distract from the service of food.

You must operate as a restaurant whenever you serve liquor. Restaurants cannot shift their operation to become a bar during certain hours of the day, unless you have obtained a liquor primary licence, which enables you to operate your establishment as a bar when it is not operating as a restaurant.

The fact that the Licensee is now making every effort to comply with the restrictions of a food primary licence does not relieve the Licensee of the consequences of its actions on February 1, 2019. The Branch encourages voluntary compliance and expects licensees to comply at all times with their licence restrictions. The Licensee should have been familiar with the Handbook requirements and made efforts in ensuring that its employees were following them. As noted, the shift manager stated to the liquor inspectors that she knew of the requirements of a food primary licence and confirmed that the liquor service had continued after the kitchen had closed. This admission shows a blatant disregard for the requirements of the Licence. I find that a penalty is warranted here to encourage future compliance and to operate as a deterrent to other licensees.

I note the Licensee's preference for a monetary penalty. As a delegate of the general manager, if I find a penalty is warranted, I am required to impose the minimum as set out in Schedule 2 of the Regulation – in this case, I impose the minimum monetary penalty of \$7,500.

ORDER

Pursuant to section 51(2)(b) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7,500 to the General Manager of the Liquor and Cannabis Regulation Branch on or before November 8, 2019.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor and Cannabis Regulation Branch inspector or a police officer.

Original signed by

Nerys Poole
General Manager's Delegate

Date: October 7, 2019

cc: Liquor and Cannabis Regulation Branch, Vancouver Office
Attn: Peter Mior, Regional Manager

Liquor and Cannabis Regulation Branch, Victoria Office
Attn: Hugh Trenchard, Branch Advocate