



**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: 445521 B.C. Ltd.
dba Baci's – A Taste of Italy
3728 East Hastings Street
Burnaby, BC V5C 2H5

Case: EH20-001

For the Licensee: Mehran (Marino) Roshanaei

For the Branch: Hugh Trenchard

General Manager's Delegate: Nerys Poole

Date of Hearing: Written Submissions

Date of Decision: April 30, 2020

**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

445521 B.C. Ltd. dba Baci's – A Taste of Italy (the "Licensee") operates a restaurant known as Baci's – A Taste of Italy at 3728 East Hastings Street in Burnaby, B.C. (the "Restaurant"). The licensee holds Food Primary Licence No. 119611 (the "Licence").

According to the terms of the Licence, the Licensee may sell liquor from 11:00 a.m. to midnight, seven days a week. The Licence shows a capacity of 60 in area Patron 01.

The Licence is, as are all liquor licenses issued in the Province of British Columbia, subject to the terms and conditions contained in the publication "Food Primary Terms and Conditions", (the "Handbook"), (exhibit 1, tab 7).

Mr. Roshanaei is a principal of the corporate Licensee and signed the Licensee's written submission. Mr. Roshanaei participated in the pre-hearing conference call with the branch representatives on March 11, 2020. He stated that he was choosing a penalty-only written submission and confirmed his agreement with the following elements of a penalty-only written submission:

- The licensee admits that it contravened as alleged in the Notice of Enforcement Action dated February 5, 2020 (the "NOEA") (exhibit 1, tab 1)
- The licensee is not pursuing a due diligence defence to the contravention
- The licensee disputes the proposed enforcement action (penalty)

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Branch's allegations and proposed penalty are set out in the NOEA.

The allegation is that the Licensee contravened its Licence on December 18, 2019 by exceeding the person capacity and occupant load for the service area, contrary to Section 78(1) of the *Liquor Control and Licensing Regulation*, B.C. Reg. 241/2016, (the "Regulation").

The range of penalties for a first contravention of section 78(1) *Regulation* is a 3 to 7-day suspension and/or a \$3,000 to \$7,000 monetary penalty (item 17, of Schedule 2 of the *Regulation*). The Branch proposes a suspension of 7 days or a monetary penalty of \$7,000. I note that the NOEA has a proposed enforcement action on page 2 of a 3-day suspension or a \$3000 monetary penalty. Under the section 'Proposed Enforcement Action' on page 6 of the NOEA, the branch proposes a 7-day suspension or a monetary penalty of \$7,000, noting reasons for choosing the higher end.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation, B.C. Reg. 241/2016

Capacity requirements

78 (1)If the general manager has established a person capacity for the service area under a licence or endorsement, it is a requirement of the licence that the number of people in the service area at one time must not exceed the following:

- (a)the person capacity;
- (b)if there is an occupant load for the service area, the occupant load.

(2)If, under section 73 (1), a patron capacity applies to a service area, it is a requirement of the licence that the number of patrons in the service area at one time must not exceed the following:

- (a)the patron capacity;
- (b)if there is an occupant load for the service area, the occupant load.

Schedule 2

Item	Contravention	Monetary Penalty			Period of Suspension (Days)		
		First Contravention	Second Contravention	Subsequent Contravention	First Contravention	Second Contravention	Subsequent Contravention
Overcrowding							
17	Contravention of section 78 (1) or (2) of this regulation [<i>per son or patron capacity and occupant load in service area exceeded</i>]	\$3,000 - \$7,000	\$7,000 - \$11,000	\$11,000 - \$15,000	3-7	7-11	11-15

ISSUES

As the Licensee admits that 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 9
- Exhibit 2: Letter from Branch to Licensee and branch advocate, dated March 12, 2020, summarizing telephone pre-hearing conference call
- Exhibit 3: Licensee's written submission dated March 19, 2020
- Exhibit 4: Email chain between the branch registrar, the advocate and licensee dated March 21 to March 31, 2020

SUMMARY OF RELEVANT FACTS

As the Licensee admits the contravention occurred, the Licensee accepts the following facts as set out in the NOEA.

At the time of the contravention on December 18, 2019, the Licensee held a valid Food Primary Licence No. 119611, expiring on March 31, 2020. The patron capacity and occupant load for the service area of the restaurant was 60 patrons.

On December 18, 2019, a branch liquor inspector entered the Restaurant at approximately 6:55 pm and conducted an inspection. A male staff member greeted him at the door. The male staff member was later identified as Mr. Roshanaei.

At approximately 7:11 pm, the liquor inspector conducted a count of patrons in the service area. He started the count from zero and counted each patron while keeping a tally in his head. He began the count of patrons near the bar area, then the stage/dance floor area and then the remaining seating area, which was the furthest seating area away from the main entrance door.

At approximately 7:12 pm, the liquor inspector concluded his first count and noted there were 73 patrons in the service area of the Restaurant. He observed that two-thirds of patrons were seated and approximately one-third of patrons were standing. There was little movement between the patrons within the service area. The liquor inspector noted that the noise level was loud, presumably from the conversations between patrons.

At the time that the liquor inspector concluded the first count, he looked back at the main entrance door and observed people entering the Restaurant. He observed Mr. Roshanaei greeting people as they entered.

At approximately 7:13 pm, the liquor inspector concluded a second count which indicated there were 75 patrons in the service area. He had a clear view of the main entrance and observed people entering the Restaurant.

At approximately 7:15 pm, the liquor inspector concluded a third count which indicated there were 89 patrons in the service area. He continued to observe people entering the Restaurant.

The liquor inspector began a fourth count but did not conclude it as Mr. Roshanaei interrupted him and asked him "What are you counting?". The liquor inspector informed Mr. Roshanaei that he had conducted a count of patrons and the Restaurant was over capacity. The liquor inspector suggested that Mr. Roshanaei conduct a count, but he did not. The liquor inspector then asked Mr. Roshanaei if he was aware of the number of people in the Restaurant and Mr. Roshanaei replied, "Yes, one hundred." When asked again, Mr. Roshanaei said again "Yes, one hundred people."

Mr. Roshanaei told the liquor inspector that they were hosting a private event and then said to the liquor inspector: "You need to leave" and "You can't be here." Mr. Roshanaei then raised his right arm in close proximity to the liquor inspector's left arm to physically guide the liquor inspector away from the service area.

The liquor inspector explained the requirements of the licence regarding over capacity, but Mr. Roshanaei continued to verbally interrupt him, stating at this time: "get a real fucking job" "doing this on Christmas" and "get a real job."

The liquor inspector walked to the bar area and discussed over capacity and requirements with the bartender there. The bartender stated that he understood that the Restaurant was over capacity. Mr. Roshanaei continued to interrupt the liquor inspector while he was speaking with the bartender.

At approximately 7:18 pm, the liquor inspector determined that the inspection could not be completed due to the licensee's hostile and angry attitude towards him. He then exited the Restaurant through the main door.

The liquor inspector positioned himself on the sidewalk, approximately five feet away from the main entrance and observed people entering or exiting the Restaurant. The liquor inspector kept track of people entering and exiting, using the time indicated on his cell phone.

At 7:21 pm, the liquor inspector observed four people enter the Restaurant. At 7:23 pm, he observed one person enter the Restaurant. At 7:24 pm, he observed one person enter the Restaurant. At 7:28 pm, he observed one person enter. At 7:31 pm, he observed two people enter. At 7:36 pm, he observed four people exit the Restaurant. The liquor inspector then decided it was time to leave the area because only four people exited while he was standing outside.

SUBMISSIONS – BRANCH

The branch advocate replied to the Licensee's written submission, stating (exhibit 4):

The evidence of the liquor inspector shows the licensee was uncooperative and hostile toward the liquor inspector during the inspection and sought to interrupt the inspector's inspection on multiple occasions during the evening. While the licensee submits that it was unfortunate timing for the inspector's inspection, it is precisely in those busy circumstances in which the inspector's obligation to ensure public safety in the restaurant is paramount. The branch submits that these are aggravating considerations in the determination of the appropriate penalty.

The Licensee submits there are five exits in the restaurant. The floor plan (exhibit 1, tab 4) shows only three exits.

SUBMISSIONS – LICENSEE

In its submission dated March 19, 2020 (exhibit 3), the Licensee asked that the penalty be waived or that the minimum allowed is appropriate in the circumstances.

The Licensee stated that the Restaurant has been in operation for about 30 years with an excellent compliance record with both liquor and fire inspections.

December 18, 2019 was one of the busiest nights for the Restaurant with a number of office parties going on in the Restaurant. The timing of the inspection (around 7:00 pm) was between sittings. Mr. Roshanaei requested that the inspection occur on a later day because he was so busy. The Restaurant is a family-owned business and, therefore, Mr. Roshanaei is very important to the smooth running of the Restaurant. The numbers were increasing, in part, because Mr. Roshanaei was trying to deal with the liquor inspector's questions when normally he would be at the door controlling traffic flow. The Licensee does not contest the numbers at over 60 but submits that this was an unusual night and unfortunate timing. The Licensee further submits that, although the Licensee is required to comply with the limits on its Licence, the overage was not large. Because of the timing of the inspection (between sittings), many patrons were standing and an accurate count would have been very difficult.

The Licensee submits the Restaurant has five exit doors and could be licensed for larger gatherings with no physical changes, so the Licensee submits that while the numbers exceeded the Licence limits, it was not a safety issue.

As to the penalty, the Licensee asks that it be waived. If a penalty is ordered, the timing is not important and can be imposed at the discretion of the general manager.

In a separate email to the registrar, the Licensee indicated it preferred a suspension to a monetary penalty, (exhibit 4)

REASONS AND DECISION

Contravention

The Licensee admits the contravention occurred. I therefore find that the Licensee has contravened Section 78(1) of the *Liquor Control and Licensing Regulation*, B.C. Reg. 241/2016.

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 *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.

I find that a penalty is warranted in the circumstances as described in the NOEA and as repeated by the branch advocate in his submission. The Licensee was uncooperative and hostile toward the liquor inspector and sought to interrupt the inspection on multiple occasions during the evening. The Licensee's defence to this was that it was a busy night and he would normally have been at the door trying to control the numbers if the liquor inspector had not been questioning him and attempting to conduct his inspection.

I remind the Licensee of its responsibility towards liquor inspectors who may enter at any time. A licensee is required to “always allow Liquor and Cannabis Regulation Branch inspectors and/or police officers to enter your establishment. Never impede their entry in any way,” (handbook, page 33, exhibit 1, tab 7). I find that the Licensee’s hostile behaviour and response to the liquor inspector on December 18, 2019 was contrary to its responsibility to allow liquor inspectors to enter at any time. I find further that a busy night is often when a liquor inspector may enter a licensed establishment to check on issues such as overcrowding.

Having found that a penalty is warranted here, I turn now to what is an appropriate penalty. I consider the following factors: 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 17 in Schedule 2 provides a range of penalties for a first contravention of this type: a 3 to 7-day suspension and/or a \$3,000 to \$7,000 monetary penalty. The Licensee has indicated its preference for a suspension, if I decide to impose a penalty.

I have considered the compliance record of the licensee. As noted by the Licensee in its submission, the restaurant has been in operation for around 30 years with an excellent compliance record both with liquor inspections and with fire department inspections. The Branch has presented no evidence to dispute this and has noted in the NOEA (page 9) that “no compliance history found” and “no compliance meetings found.”

Given the length of time that the Licensee has been in business with no compliance issues, I have determined that the minimum penalty is appropriate in the circumstances. I however emphasize to the Licensee that liquor inspectors are entitled

to enter the restaurant at any time and that “a busy night” is not an excuse to impede their entry. I further remind the Licensee that I have considered the behaviour of Mr. Roshinaei towards the liquor inspector as an aggravating factor in deciding to impose any penalty. Such behaviour is not to be tolerated and may be a factor in deciding to impose a penalty in the higher range as proposed by the branch advocate. In the present time, I have chosen not to impose a penalty in the higher range.

The Licensee has indicated a preference for a suspension. I therefore impose a suspension of the Licensee's liquor license for three (3) days. The three days in which the Licensee will be prohibited from selling liquor are May 11, 12 and 13, 2020. During this time, the Licensee may be open and sell food as a restaurant.

ORDER

Pursuant to section 51(2)(c) of the Act, I order a suspension of Food Primary Licence No. 119611 for a period of three (3) days to commence at the end of day on May 10, 2020 and to continue each succeeding day until the suspension is completed. To be clear, the days of suspension of the Licence are May 11, 12 and 13, 2020.

To ensure this order is effective, I direct that the Food Primary Licence be held by the Branch or the Burnaby RCMP detachment from the end of day on May 10, 2020 until the licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

Signs satisfactory to the general manager notifying the public that the Licence is suspended will be placed in a prominent location in the establishment by a branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

Nerys Poole
General Manager's Delegate

Date: April 30, 2020

cc: Liquor and Cannabis Regulation Branch, Surrey Office
Attn: McKenzie Castle, Regional Manager

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