



**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: Circa Restaurant & Lounge Inc.
dba Circa Restaurant & Lounge
1050 Granville St.
Vancouver, BC V6Z 1L5

Case: EH10-103

For the Licensee: Chak Kar Pang

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: Written Submissions

Date of Decision: November 23, 2010

**Ministry of Housing
& Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Circa Restaurant & Lounge Inc., operates Circa Restaurant and Lounge in Vancouver, British Columbia. Chak Kar Pang (licensee principal) is a director of the corporate licensee. The licensee holds food primary licence number 303340 for the operation of a restaurant and lounge with liquor sales from 9:00 a.m. to 2:00 a.m. seven days a week. The licence capacity of the establishment is 106 persons in area one, 60 in area two and 26 in the lounge interior. 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."

Originally, an oral hearing was scheduled for October 28, 2010. When the licensee indicated that he would not attend, the branch determined that the hearing would take place by way of written submissions instead.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegation and proposed penalty is set out in the Notice of Enforcement Action (the NOEA) dated September 1, 2010. The branch alleges that on August 1, 2010, the licensee contravened section 43(2)(b) of the *Liquor Control & Licensing Act (the Act)* by permitting an intoxicated person to remain in the part of the licensed establishment where liquor is sold, served or otherwise supplied. The proposed penalty is a \$5000 monetary penalty (item 11 of Schedule 4 of the *Liquor Control and Licensing Regulation (the Regulation)*). Item 11 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention: a licence suspension for four to seven days and/or a monetary penalty of \$5000 - \$7000.

The licensee disputes the contravention.

RELEVANT STATUTORY PROVISION

Liquor Control and Licensing Act, RSBC 1996, c. 267

Drunkenness

- 43(2)** A licensee or the licensee's employee must not permit
- (a) a person to become intoxicated, or
 - (b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

ISSUES

1. Did the contravention occur?
2. If so, what penalty, if any, is warranted?

EXHIBITS

1. Branch's package of disclosure documents to the licensee.
2. Branch's letter of October 8, 2010 summarizing the prehearing conference.
3. Branch's letter of October 21, 2010 with attached emails,

EVIDENCE & SUBMISSIONS**The Branch**

The branch's evidence and submissions are summarized as follows:

On August 1, 2010 three liquor inspectors attended at the Circa Restaurant and Lounge at approximately 12:45 a.m. The establishment was operating at capacity. One male patron was observed exhibiting "extreme symptoms of intoxication". He was seated in a chair, weaving back and forth, assisted by two females to keep him from falling over. The two women attempted to assist him to a bench at the table but were unable to prevent him from falling to the floor. He was then assisted onto the bench. While seated, his head would fall forward and then jerk back again. During this time a server continued serving liquor to the table and paid no attention to the patron. The owner (licensee representative) was summoned to the table and the patron pointed out to him. The owner told the inspectors that the patron was, "ok when he came in but had five or six drinks and had gotten drunk very fast". The owner was told that the patron must immediately leave the restaurant.

The inspectors continued with their inspection. Returning approximately 15 minutes later they observed that the intoxicated patron remained at the table. He was still swaying from side to side, unable to control his posture, and he had difficulty keeping his eyes open. From time to time, he would lean his head on the table. Staff continued to serve patrons throughout the establishment, paying no heed to the intoxicated patron. The owner was again summoned and again told that the patron should be removed from the establishment. The manager, assisted by other patrons, then removed the intoxicated patron from the table and walked him to the front door. The patron was extremely unsteady on his feet and

swayed from side to side. The patron was left outside leaning against the window and remained there until his friends left the restaurant.

A contravention notice was completed regarding this incident. A Notice of Enforcement Action was issued with a recommendation for a \$5000 monetary penalty because the owner had the opportunity to intervene with the intoxicated patron but failed to do so.

The branch file maintained for this liquor licence indicates that the licensee representative attended a pre-licence presentation for food primary establishments on February 11, 2009. The food primary licence was issued on February 12, 2009. The branch file also reveals that on November 1, 2009 the licensee contravened section 44(1)(b) of the *Regulation* by failing to take liquor from patrons by the time required. The licensee admitted the contravention, signed a waiver and served a seven day licence suspension.

The Licensee

The licensee did not provide a written submission. During the course of the telephone pre-hearing conference held on October 6, 2010 the licensee representative explained that the patron was not intoxicated when he entered the establishment. He consumed about four or five shots of liquor and then became intoxicated. The patron was allowed to sit down for about five minutes because he could not walk. His girlfriend was helping him when the inspectors entered. The licensee representative was not aware that he was obligated to quickly remove the intoxicated patron. He does not know what else he could have done to remove the intoxicated patron because the patron could not walk and he was a very large man. The licensee cannot afford to pay a \$5000 penalty. The establishment is currently closed because the landlord changed the locks for failure to pay rent and the licensee is trying to raise the money.

On October 18, 2010 an email was received by the branch from a person purportedly acting on behalf of the licensee advising that the property occupied by the licensed establishment had been foreclosed upon and it was no longer in operation. The licensee would not be participating in the October 28, 2010 hearing and would like to terminate the liquor licence immediately. This was followed up by a telephone call from the licensee representative. The licensee representative was advised that any request regarding the liquor licence must be made in writing. No such request was received and a decision was

made by the branch that rather than proceed by way of an oral hearing the matter would proceed by way of written submissions. The licensee was duly advised.

No further communication was received from the licensee and the liquor licence remains in effect.

REASONS AND DECISION

Having considered all of the evidence, I find that on August 1, 2010, the licensee contravened section 43(2)(b) of the *Act* by permitting an intoxicated person to remain in the part of the licensed establishment where liquor is sold, served or otherwise supplied.

DUE DILIGENCE

The licensee is entitled to a defence to the allegations of the contraventions, 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.

Here, there is no evidence upon which I can find that the licensee was duly diligent. There is no evidence of what training the employees received. There is no evidence of what policies and procedures were in place to guide staff in performing their duties. The licensee and the employees on duty did not take sufficient action to prevent the contravention from occurring or continuing. I am satisfied that during the pre-licensing process the licensee received sufficient information on the requirements for operating the establishment in compliance with the *Act*, *Regulations* and the terms and conditions of the licence. In conclusion, I find that the licensee has not been duly diligent.

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.

In the circumstances of this case I am satisfied that the licensee has not realized the necessity of fully complying with the liquor licensing requirements and a penalty is necessary to ensure future compliance. Here the degree of intoxication of the patron was obvious and significant and was known to the licensee who was on site at the time. Permitting intoxicated people to remain in a licensed establishment can have an adverse effect on the operation of the establishment and on the surrounding community.

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 proposed a \$5000 monetary penalty, the minimum monetary penalty for a first contravention of this type. In the circumstances here, of an obviously intoxicated patron being permitted to remain within the establishment, a penalty is necessary for future voluntary compliance. A \$5000 monetary penalty is necessary, appropriate and reasonable.

ORDER

Pursuant to section 20 (2) of the *Act*, I order the payment of a five thousand dollar (\$5000) monetary penalty by the licensee to the general manager on or before Thursday, January 6, 2011.

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: November 23, 2010

cc: Vancouver City Police Department

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

Liquor Control and Licensing Branch, Vancouver Office
Attention: Peter Mior, Branch Advocate