

HEARING BEFORE A PANEL
OF THE BOARD OF THE
ALBERTA GAMING AND LIQUOR COMMISSION

IN THE MATTER OF the Gaming and Liquor Act
Revised Statutes of Alberta 2000, Chapter G-1
current as of June 12, 2013
and the Regulation

and

IN THE MATTER OF 1661529 Alberta Ltd.
o/a Gentlemen's Liquor Store
4810 – 50 Avenue
Wetaskiwin, Alberta
T9A 1J7

concerning alleged contraventions

DATE OF HEARING:	September 3, 2014
HEARING PANEL:	Mr. James (Jim) Hansen, Panel Chair Mr. William (Bill) A. Clark, Panel Member
LICENSEE REPRESENTATIVES:	Mr. P., Director/Shareholder
COMPLIANCE AND SOCIAL RESPONSIBILITY (CSR):	Mr. H., Hearing Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an Incident Report dated July 22, 2014, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 74(3), *Gaming and Liquor Act* (GLA), without a hearing, on 1661529 Alberta Ltd. o/a Gentlemen's Liquor Store, Wetaskiwin.

The Licensee subsequently applied for a hearing under Section 94(1), GLA. A Hearing Panel of the Board met to hear the following alleged violation: **Section 74(3), *Gaming and Liquor Act*: No liquor licensee may permit a minor to enter or be in any licensed premises if the licence prohibits minors from entering into or being in the licensed premises.**

The Licensee and the Hearing Panel were provided with a hearing file containing the Incident Report dated July 22, 2014 and various documents pertaining to alleged incidents occurring on the premises of Gentlemen's Liquor Store, Wetaskiwin on June 14, 2014 (corrected at the hearing to refer to the date June 13, 2014). Mr. H. presented the case on behalf of the CSR Division. Mr. P. represented Gentlemen's Liquor Store.

Mr. P. confirmed receipt of the Incident Report dated July 22, 2014, did not admit the facts in the Incident Report, and wished to proceed with a Board Hearing with AGLC witnesses available. The Incident Report and hearing file was entered into evidence as Exhibit #1.

II. The Issue

Did the Licensee permit a minor in a licensed premises where minors are prohibited?

III. Evidence

Inspector E. – evidence led by Mr. H.

Inspector E. and Inspector Z. conducted operating checks in the municipality of Wetaskiwin on Friday, June 13, 2014. At 8:57 p.m. the inspectors observed three young-looking females (two of whom were extremely young-looking and appearing under the age of 25) and three young-looking males enter the main doors of the Gentlemen's Liquor Store. Inspectors E. and Z. entered immediately after and, noted upon entering that, there were no other customers in the store.

Inspector E. described the layout of the store. Immediately to the right of the entrance is the service/sales area. On the opposite side is a half-wall that directs the customers past the sales area to the general area where liquor products are sold. Accordingly, Mr. P. or the staff members would have the opportunity to ask for ID without a young person gaining access to the actual sales area.

The three females proceeded to the spirits section, and the three males entered the beer cooler. All three males then exited the beer cooler and proceeded to the service counter. One of the males made a purchase without being asked for identification. The three females then proceeded to the front as well. The second male, identified as Minor #1, produced a \$20 bill from his wallet and Mr. P. commenced processing the purchase. At that time, Inspector E. interjected, identified himself, and asked everyone to produce their identification. Minor #1 did not have identification. The third male did not have identification. Two of the three females did not have identification. One female was able to produce identification to Inspector Z., indicating she was of legal age. At that time, the inspectors separated the males and females.

Inspector E. interviewed the males. Of the two males interviewed by Inspector E., one male (Minor #1) indicated that he was 18 but was unable to produce identification. The other male (male #3) indicated that he was of legal age and that his identification was in a vehicle parked outside the liquor store. Inspector E. permitted the first male that he identified as being of legal age to get the identification, which verified male #3 as being of legal age. During his interview, the second male (Minor #1) admitted to Inspector E. that he was 17 and provided the birthdate of March 25, 1997.

Inspector Z. interviewed the two females and determined that two of the females were 16 and 17.

The inspectors then called the police. Upon police arrival one of the females indicated that she was not 17, but was in fact 16, and that information was confirmed by the police. Of the six individuals, one male and two females were confirmed by the RCMP to be under the age of 18. The inspectors advised the police of the details of the situation, and the police officers decided not to charge the minors. The male (Minor #1) was released to an adult, and the two females were escorted from the premises by the police officer to their parents.

The inspectors then had a conversation with Mr. P. and they informed him of the situation and what would happen. Inspector E. also addressed the issue of identification. Concurrently, a young-looking male entered the liquor store and walked past them. Inspector E. motioned towards Mr. P. because he did not make any attempt to ask for identification, at which time Mr. P. spoke up and asked the male if he had identification. The male replied, "yes", continued walking to the shelf and picked up his liquor product. The young male was not asked by Mr. P. to view the ID at any time, at which time Inspector E. interjected and explained to Mr. P. how to ask for identification. Inspector E. identified himself to the young person, asked to see his identification, and spelled out the necessary steps for Mr. P. to ask for ID. He advised Mr. P. to confirm the date of birth, compare the picture to the individual that produced it, and, once satisfied, continue with the sale. It was Inspector E.'s impression that had he not interjected, Mr. P. would not have asked.

Inspector E. confirmed that Mr. P. had ample opportunity to request identification, from the time that the six individuals initially entered the store (when they should have been asked) to the point when they were in the sales area. At no time did Mr. P. ask for identification, refuse entry, or ask anyone to leave the premises.

Inspector E. – cross-examined by Mr. P.

The first customer that made a purchase was over age 18 and had identification. Although this individual is a regular customer, the policy and the law requires that anyone who appears under the age of 25 is required to have identification and is required to produce it on demand upon each entry, regardless of whether they are a regular customer. The laws are the same in all stores throughout the Province of Alberta. Based on the layout of the Gentlemen's Liquor Store, it is Inspector E.'s view that Mr. P. had ample opportunity to catch the young people as they entered the store and ask them to leave.

While it is Mr. P.'s impression that the three ladies did not proceed to the till, because the inspectors interjected and ushered them into the back room, the offence of a minor being in licensed premises was committed as soon as they entered the store and Mr. P. did not ask for identification and examine it as required.

Inspector E. – questioned by Mr. Clark

Inspector E. did not view signage inside the store, or at the entrance, regarding "Under 25". The inspector's attention was primarily focused on the activities that were going on. As well, after the fact, he did not view any posters or signage in the sales area, at the cash register, or at the door.

Evidence of Mr. P.

Mr. P. advised that he has clear signs outside the door and inside the store indicating "no minors". As well, inside the store, there are signs regarding "Under 25". When the six individuals came in, and both inspectors rushed to get to the back of the store, there were 8 to 10 people in line and Mr. P. was busy and working alone. Mr. P. works by himself, 7 days a week, 12 hours a day. Mr. P. stated that he asked customers for identification and they acknowledged that they had it. Mr. P. added that he can't leave the customers and check everyone's identification. If he is not busy then he can ask, but he was very busy at that time, between 9:00 and 10:00 that evening.

Mr. P. said that he knows the three males that entered the store that night. They are regular customers that work in the oilfield. The three ladies that entered were new to Mr. P.. He said that they rushed in and one of them picked up a mickey of vodka or something similar, but did not come to the till. They were 10 or 15 feet back, and when they were proceeding to the till the inspectors rushed to take them to the back room and asked them for identification. Only the two gentlemen came to the till, and Mr. P. said he knows them to be over 18. Mr. P. said when asked for identification, they took it from the car and showed it to the inspectors. Mr. P. insisted that he did not sell anything to minors.

Mr. P. –cross-examined by Mr. H.

Mr. P. is currently ProServe certified and has a copy of the Retail Liquor Store Handbook in his store. Mr. P. recalls reviewing Section 4.4 with respect to minors in a retail liquor store approximately two and one-half years ago. Mr. P. has not read it since, but said he is aware, legally, of what he is doing. Mr. P. is aware that within that policy it indicates that minors may not enter a Class D retail liquor store, unless accompanied by a parent, guardian or spouse who is an adult. Mr. P. is also aware that under Section 4.4.4 of that policy it is the Licensee's responsibility to request identification when a person who appears to be under the age of 25 attempts to buy liquor or enters a retail liquor store.

In connection with the three males, Mr. P. stated that they are each over age 23. However, the second male person who was attempting to make a purchase, and previously described as Minor #1, was confirmed by a police constable as being 17 years of age (DOB 97 MAR 25). In connection with the three females, Mr. P. stated that none of them were near the till and that they were brought to the back room by the inspectors to be identified.

Mr. P. maintained that, notwithstanding the layout of the sales area in relation to the entrance and exit of that liquor store, and the half-wall that directs customers past the sales area, the three female customers were not asked for identification because there were 8 to 10 customers in line and he can prove this with his sales receipts.

Mr. P. - questioned by Mr. Clark

Mr. P. was the only person working in the store at the time. Mr. P. confirmed that the sales receipts from his till would confirm the time of purchase, so he would be able to demonstrate that there were a number of people in the store at the time of the alleged incident.

Mr. P. – questioned by Mr. Hansen

Mr. P. was asked if he could provide receipts showing checkout times; however, Mr. H. interjected and offered to alternatively produce the other inspector to testify as to the number of patrons he observed at the time of the incident.

Inspector Z. – evidence led by Mr. H.

Inspector Z. conducted an operating check of the Gentlemen’s Liquor Store with Inspect E. on June 13, 2014. When the six individuals entered the liquor store shortly before 9:00, Inspector Z. confirmed that the inspectors entered immediately after them. Inspector Z. also confirmed that when he entered, there were no patrons at the sales area with Mr. P. and the retail liquor store was not busy.

Inspector Z. – cross-examined by Mr. P.

Inspector Z. recalled that the store has a counter with a till and half-wall when you enter. With the six individuals who came into the store, there is not enough room to have another 10 people in line. Inspector Z. acknowledged that once the six individuals were led to the back of the store by the inspectors to be identified, other customers did enter the store; but not when the initial six customers and the two inspectors initially entered.

IV. Summation

Mr. H.

The matter before the Panel is a contravention of Section 74(3) of the GLA.

The AGLC takes the issues of minors having access to liquor very seriously, and it is often very difficult to tell whether a person is of legal age by looking at them. The Under 25 program in Alberta recognizes that difficulty. The AGLC is charged with ensuring compliance with the legislation and policies, and Albertans expect that Licensees that are not in compliance with the legislation and policies are held accountable. Licensees are required to ask, receive and examine proof of identification to eliminate a ny situation where a minor may be sold or permitted to be in a licensed premises that prohibits them.

In this particular case, six youthful patrons entered the retail liquor store and were permitted to be in that store. One of the later-confirmed minors, Minor #1, was in the process of making a liquor purchase from Mr. P. himself when the AGLC inspectors acted by requesting their identifications. Three of the patrons were confirmed to be minors. The independent evidence of the inspectors is that the premises was not busy, and the entrance and exit of the stores is such that Mr. P. could have easily requested their identification, refused entry, or asked those who did not have identification to leave the premises.

The understanding of the Licensee, as to what his obligations are, are not accurate. Section 4.4.4 of the Retail Liquor Store Handbook clearly requires staff to ask for proof of age when a person who appears to be under 25 enters the retail liquor store, not only at the service counter. Mr. P. is ProServe certified and should be aware of his responsibilities as a liquor Licensee. In the opinion of the CSR Division, the Licensee could have faced a violation of selling or providing liquor to a minor, in that Minor #1 was in the process of a liquor sale with Mr. P. when the inspectors acted and requested identification.

With respect to a suggested penalty, the Licensee has already been offered a reduced penalty, as the first occurrence listed under the administrative sanction guidelines was a violation of Section 74(3) of the GLA, with three or more minors, is a \$3,000 or 16-day suspension. With that in mind, the CSR Division respectfully submits that a breach of Section 74(3) of the GLA did in fact occur, and recommends that the original administrative sanction already offered, of a \$2,000 fine or an 8-day suspension, already offered, is upheld.

Mr. P.

Mr. P. insisted that he did nothing wrong. He was busy at the time of the alleged incident and did not sell anything to minors. Mr. P. only wants justice.

V. Finding

The Panel makes a finding of a violation of Section 74(3) GLA: *No liquor licensee may permit a minor to enter or be in any licensed premises if the licence prohibits minors from entering into or being in the licensed premises.*

Concerning the three male patrons, the Panel heard Mr. P. insist that all three were regular customers, and all of them were over age 18. While the first male that made a purchase was over age 18, the individual later described as "minor #1" was prepared to make a purchase with a \$20 bill and was then proven to be underage. If minor #1 had been allowed by the inspectors to make his intended purchase, Mr. P. could have faced a violation of selling liquor to a minor

Regarding the three female patrons, two of the girls were proven to be 16 years old.

All six of these patrons should have been asked for identification as soon as they entered the store. The Panel believed the evidence of the inspectors stating that the store was empty before the six patrons entered the store, and confirming that Mr. P. was not busy at the time that they entered. Also, evidence was presented to demonstrate that the layout of the store allowed for ample opportunity for Mr. P. to question these individuals as they entered. Mr. P. did not take all reasonable steps to ensure that minors did not enter the premises.

VI. Penalty

The Panel has heard the Licensee's comments regarding his understanding of ProServe. However, the Panel is concerned that on the night of the incident in question, Mr. P. did not demonstrate a clear understanding. Accordingly, the Panel directs that Mr. P. re-take his ProServe training by March 1, 2015.

In accordance with Section 91(2) GLA, the Hearing Panel imposes the following penalty for a violation of Section 74(3) GLA.

Penalty: A fine of \$2,000 **OR** an 8-day suspension of Class D Liquor Licence Number 772087-1. The fine is to be paid within 2 months of the date of this decision or on or before Wednesday, February 11, 2015 or the suspension served commencing Thursday, February 12, 2015 and continuing until the close of business on Thursday, February 19, 2015.

Signed at St. Albert this 11th day of December, 2014.



James (Jim) Hansen, Hearing Panel Chair