

**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 R Pub Ltd.
o/a R Pub
16753 – 100 Street NW
Edmonton, Alberta
T5X 3Z9**

concerning alleged contraventions

DATE OF HEARING:	October 15, 2014
HEARING PANEL:	Mr. J. P. Hansen, Panel Chair Ms. T.L. Lawrence, Panel Member
LICENSEE REPRESENTATIVES:	Ms. S., General Manager Mr. P., Director/Shareholder
COMPLIANCE AND SOCIAL RESPONSIBILITY:	Mr. H., Hearing Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an incident report dated August 14, 2014, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 91(2) of the *Gaming and Liquor Act* (GLA), without a hearing, on R Pub Ltd. operating as R Pub, Edmonton.

The Licensee subsequently applied for a hearing under Section 94(1) of the GLA. A Hearing Panel of the Board of the AGLC met to hear the following alleged violation:

1. Section 5.3.6(a) Licensee Handbook: selling or serving more than two standard sized drinks to one patron at one time after 1:00 a.m.

The Licensee and the Hearing Panel were provided with a hearing file containing the incident report dated August 14, 2014 and various documents pertaining to alleged incidents occurring on the premises of R Pub, Edmonton on August 10, 2014. Mr. H. presented the case on behalf of the CSR Division. Ms. S. and Mr. P. represented R Pub Ltd.

The Chair confirmed with Ms. S. and Mr. P. that they admitted the facts set out in the incident report, but had a due diligence defence and wished to speak to penalty. The incident report and Hearing package were entered into evidence by CSR as Exhibit #1. A handwritten statement of B. V. was entered into evidence by the Licensee Representatives as Exhibit #2.

II. The Issue

Did the Licensee sell or serve more than two standard sized drinks to one patron at one time after 1:00 a.m.?

III. Evidence – excerpted from incident report dated August 14, 2014

As a result of a complaint regarding over service at the premises, an operating check was conducted and the following is reported:

On Sunday, August 10, 2014 at 00:59 hrs., two inspectors entered the premises. One of the inspectors approached the bar and ordered two beers, bringing one back to the other inspector. The inspectors sat at a table by themselves and observed the service bar where two females were working along with a karaoke attendant.

At 01:05 hrs., a male patron in possession of a draft beer ordered two shooters and was served the same by a female bartender.

At 01:25 hrs., one of the inspectors approached the service bar with his beer in hand and sat down. At 01:29 that inspector was approached by the same female bartender (later identified as B. V.) and the inspector ordered four shots. The bartender served the inspector the shots and, after paying, the inspector remained at the bar for several minutes holding on to all of the drinks in front of him.

At 01:34 hrs., when it was apparent that the bartender who served the inspector was not going to comment on the number of drinks the inspector had in front of him, both inspectors exited the premises leaving all the drinks behind.

Evidence of Ms. S.

Neither Ms. S. nor Mr. P. were at R Pub on the morning in question, being August 10, 2014. Ms. S. acknowledged that the bartender, B. V., did serve the four shots; however, because B. is good worker, Ms. S. chose to appear in her defence.

B. was the only bartender on staff during the busy shift on the morning of August 10, 2014. The other girl who was working was training as a server.

Ms. S. confirmed that B. is aware of the four shots that she served. She said that B. remembers serving the inspectors one beer each when they came in. She further advised that B. looked over at the inspectors' table to see who was sitting there and how many people there were, and that B. believed that the four shots were going to the three people who were sitting at the inspectors' table and another person standing up. Ms. S. advised that the reason that so many people were coming up to the bar and ordering their drinks, instead of being served at the tables, was because the girl who was on the floor was working one of her first shifts and was slow.

Ms. S. – cross-examined by Mr. H.

At the time of this incident, there were only two staff members working, being B. V. and another new server who was being trained by B..

Ms. S. confirmed that she was not in the premises at the time of the incident, but advised that she does work seven days a week. The measures taken by Ms. S. to ensure that staff members follow instructions when she is not there include cameras, phone, and spot checks. Ms. S. further advised that she has spent a lot of time working with the core staff, bartending and serving along side of them. Hands-on training in all areas, namely customer service, intervention of over-drinking, delegating, and removing people from the premises, is provided by Ms. S..

Currently, there is no formalized training manual in R Pub. Ms. S. feels that the hands-on training works best at their pub. A copy of the Licensee Handbook is located in her office at the pub, and it is available to everyone.

On the morning of August 10, 2014, B. was supervising. Although B. has been working at R Pub for over one year, the ProServe number indicated on B.'s handwritten statement appears to indicate that she just recently completed her ProServe. Ms. S. advised that this ProServe information actually reflects a renewal, and that her last name may have changed because of her recent marriage. Further discussion followed regarding B.'s understanding as to how many people were at the inspectors' table, as the inspectors reported there were two people in their party, and B.'s handwritten statement reflects that there were four. Ms. S. and Mr. P. both agreed that this misunderstanding may have arisen from the possibility of the customers near the pool table possibly mingling with the inspectors at their table.

Regarding training of staff when a patron approaches the bar and requests more than two standard drinks, Ms. S. advised that the staff knows everyone who comes into the pub, and that is why this incident stood out to B.. B. did not know the two inspectors and assumed that they were sitting with other patrons. Because B. "assumed" this, Ms. S. and Mr. P. are accepting responsibility for B.'s actions.

Ms. S. and Mr. P. are aware that seminars are conducted by the AGLC inspectors for free of charge, but they have not taken advantage of these primarily due to "time management".

Steps taken by Ms. S. to ensure that this type of incident does not re-occur, includes Ms. S. speaking to each of the staff members regarding the severity of the consequences.

Ms. S. – questioned by Ms. Lawrence

Ms. S. advised that they currently have eight staff members at the pub.

IV. Summation

Mr. H.

The matter before the Panel detailed a violation of the Licensee Handbook, specifically Section 5.3.6(a), selling or serving more than two standard sized drinks to one patron after 1:00 a.m. This violation is not representative of what the legislation demands of Licensees in the Province of Alberta. Operating under the authority of a liquor licence comes with significant responsibility, and that responsibility is expected by Albertans and required by the Commission. The evidence contained within the incident report is quite clear. An Inspector reported that he observed a male patron being sold two shooters when he was already in possession of a draft beer, thus being served and allowed to be in possession of three standard sized drinks after 1:00 a.m. The inspector was then served more than two standard sized drinks himself, when he was served four shooters when he was already in possession of a beer, thus having a total of five standard sized drinks in his possession after 1:00 a.m. This policy in the Licensee Handbook is directly related to responsible liquor service in a licensed premises. Based on this, the staff member in question was not acting responsibly or within Commission policies.

Section 121 of the GLA reads:

If an employer or agent of a licensee contravenes a provision of this Act, the licensee is deemed also to have contravened the provision unless the licensee establishes on a balance of probabilities that the licensee took all reasonable steps to prevent the employee or agent from contravening the provision.

In the opinion of the CSR there has been little evidence provided before the Panel today to suggest that the Licensee took all reasonable steps to prevent this violation from occurring. A more formalized training program for staff, a staff training seminar provided by AGLC inspectors, and better and ongoing supervision of the licensed premises, are reasonable steps that the Licensee could employ.

The inspectors attended this premises as a result of a public complaint of liquor service issues being provided to patrons. They found the premises to be only 28 percent occupied, which was about 40 patrons, and according to the evidence contained in the incident report observed three staff members (two liquor service members and one karaoke attendant). The premises could have been easily supervised to ensure compliance with Commission policies with that level of occupancy.

CSR respectfully submits that a breach of s. 5.3.6(a) of the Licensee Handbook did in fact occur, and recommends that the original administrative sanction already offered to the Licensee is upheld.

Ms. S.

Ms. S. advised that she would like to see the penalty amount lowered. She spends a lot of time with her staff and feels that she runs a very good, clean place. Ms. S. advised that all of the complaints that they have received are from customers that they have removed as well as staff. She further advised that she runs R Pub so strictly that the staff has to sign “no drugs / no alcohol” documents before they are employed. Ms. S. feels she has the small percentage of servers in the city that can do their jobs and be responsible. She acknowledged that her employee made a mistake, but feels that employee is also very reliable. Ms. S. said she finds it difficult to find someone who does everything—does the job, follows the guidelines and the laws that AGLC has in place, looks after the people that come to the pub and have drinks, and as well looking after the owner’s business, money and alcohol.

V. Finding

- **The Panel makes a finding of a violation of Section 5.3.6(a) of the Licensee Handbook: *selling or serving more than two standard sized drinks to one patron at one time after 1:00 a.m.***

Section 5.3.6(a) of the Licensee Handbook states as follows:

5.3.6 The following restrictions apply to Class A, B and C licensed premises, as well as at Commercial Public Special Events

- a) A maximum of two (2) standard servings may be sold or served to a patron after 1:00 a.m. (see Section 5.3.7)

While the Licensee argued that due diligence had been exercised, with Ms. S. providing hands-on management of the premises seven days a week--as well as cameras, telephone calls and spot checks when she is not there, the Panel felt that the Licensee did not take all reasonable steps and that a violation had occurred. Specifically:

- The Licensee needs to consider Section 5.3.6(a) of the Licensee Handbook more carefully, taking all reasonable steps to ensure that their staff does not sell or serve more than two standard sized drinks to one patron at a time after 1:00 a.m. The Licensee needs to constantly and consistently speak directly with the staff regarding this issue.
- The Licensee’s system of exclusively hands-on training does not appear to cover all instances that arise at R Pub, and the Panel would like to see a change. While the Panel acknowledges that the Licensee Representatives say they work closely with their staff in order to train them, there appears to be gaps regarding what happens when the Licensee is not on the premises and not able to work alongside the staff. A more formalized training program for staff is necessary, together with better ongoing supervision of the licensed premises.

- A staff training seminar provided by AGLC inspectors is available free of charge to the Licensee, and the Panel suggests that the Licensee take advantage of this.

The Panel accepts the evidence as set out in the incident report dated August 14, 2014. The bartender on duty at the time of the incident did not do her job. She assumed that the drinks ordered by the inspector were for the table, and she assumed that there were more than two patrons at that table. There is a reasonable expectation that the bartender question the patron as to who the drinks are for, particularly when a large order is being placed by one patron. The fact that the inspector had a drink in his hand, walked up to the bar and was able to order four more drinks after 1:00 a.m., is unacceptable. The bartender had the responsibility to take all reasonable steps and she did not.

VI. Penalty

The Licensee did not present any information which in the Panel's view mitigated the circumstances of the incident or would cause them to reduce the penalty.

In accordance with Section 91(2) of the GLA, the Hearing Panel imposes the following penalty for a violation of Section 5.3.6 of the Licensee Handbook:

Penalty: A \$750 fine - **OR** - a 3 day suspension of Class Aliquor licence 769619-1. 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 Saturday, February 14, 2015.

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



James (Jim) Hansen, Hearing Panel Chair