

**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 November 1, 2010
and the Regulation**

and

**IN THE MATTER OF 586307 Alberta Ltd.
o/a Crowfoot Wine and Spirits – Springbank Hill
7422 Crowfoot Road NW, Unit 201
Calgary, Alberta
T3G 3N7**

concerning alleged contraventions

DATE OF HEARING:	November 19, 2014
HEARING PANEL:	Mr. W.J. Anhorn, QC, Panel Chair Ms. T.L. Lawrence, Panel Member
LICENSEE REPRESENTATIVES:	Mr. R., Vice President (Operations)
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 27, 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*, without a hearing, on 586307 Alberta Ltd. operating as Crowfoot Wine and Spirits – Springbank Hill, Calgary.

The licensee subsequently applied for a hearing under Section 94(1) of the *Gaming and Liquor Act*. A Hearing Panel of the Board of the AGLC met to hear the following alleged violation:

Section 4.4.4 Retail Liquor Store Handbook: Failure to request proof of age from a person who appears to be under 25.

The licensee and the Hearing Panel were provided with a hearing file containing the incident report dated August 27, 2014 and various documents pertaining to alleged incidents occurring on July 17, 2014 and August 14, 2014. Mr. R. confirmed he received the incident report dated August 27, 2014 and Notice of Hearing dated October 30, 2014 and does not dispute the facts contained in the incident report but wishes to speak to the penalty. The incident report was entered into evidence by

the CSR Division as Exhibit #1. The CSR Division also presented the Panel with photographs of the Agents in question taken prior to the commencement of their shifts.

Mr. H. presented the case on behalf of the CSR Division. Mr. R. represented 586307 Alberta Ltd.

II. The Issue

Did the licensee fail to request proof of age from a person who appears to be under 25?

III. Evidence – excerpted from the incident report dated August 27, 2014

*On July 17, 2014 Agents C. and M. entered the premises and observed that there were no patrons inside. A “No Minors” sign was observed at the front entrance. “Under 25” signage was observed within the premises. Only one staff member was observed within the premises. The Agents selected a 375 ml bottle of Smirnoff Vodka and approached the sales counter where they observed a male staff member **working** behind the counter, later identified as Mr. Z.. Agent C. placed the bottle of vodka on the sales counter and Mr. Z. processed the sale. At no time were the Agents asked for proof of age. The Agents then exited the premises.*

On August 14, 2014 Agents C. and H. entered the premises and observed two patrons inside. A “No Minors” sign was observed at the front entrance. “Under 25” signage was observed within the premises. Only one staff member was observed within the premises. The Agents selected a 375 ml bottle of Smirnoff Vodka and approached the sales counter where they observed a male staff member working behind the counter, later identified as Mr. Z.. Agent C. placed the bottle of vodka on the sales counter and Mr. Z. processed the sale. At no time were the Agents asked for proof of age. The Agents then exited the premises.

Inspector B., together with Agents C. and H., re-entered the premises. Inspector B. identified himself to Mr. Z. as an AGLC Inspector. Mr. Z. provided his valid ProServe certification and indicated he was aware of the “Under 25” policy and stated he had received additional training from the licensee in regards to AGLC policy requirements for requesting identification. Mr. Z. advised he had been employed at the premises for seven months. Mr. Z. believed Agent C. to be 23 years of age and Agent H. 25 years of age. Mr. Z. informed he did not request identification from the Agents because he believed them to be over the age of 18.

Evidence of Mr. R.

Agent C. was the AGLC Agent who conducted both operating audits. She also purchased the same product and the cashier was the same in both instances. The AGLC did not make an effort to encounter a different employee at the premises during the audits. There was no time for the AGLC to determine a pattern of behavior; one cashier does not lead to a pattern of behavior within the Crowfoot Wine and Spirits organization. Agent C. is attractive and it is likely the cashier was nervous when the Agent approached the service counter and he processed the sale without requesting identification.

Mr. R. – cross-examined by Mr. H.

Mr. R. received the November 4, 2013 letter from the Director of the CSR Division regarding the Under 25 program. Crowfoot Wine and Spirits continued to operate their business as usual following receipt of the November 4, 2013 letter. Social responsibility is one of their number one concerns. All employees receive a formalized training program when they are hired. Crowfoot Wine and Spirits has a staff training handbook that speaks to all AGLC policies, legislation and procedures. The handbook also covers Crowfoot Wine and Spirits’ corporate policies. The handbook is reviewed with an employee by a manager at the time of hire. The employee signs an acknowledgement when they receive the training.

Mr. R. is unable to say why the cashier in question did not request identification from the Agent. It could just be that Agent C. was attractive and the cashier was flustered. The cashier no longer works for Crowfoot Wine and Spirits but he was not dismissed from his employment as a result of the incidents in question.

Mr. R. – questioned by the Panel

The cashier in question did not work another shift after Mr. R. was alerted to these incidents. Crowfoot Wine and Spirits is a family run business with 17 retail locations. They also have a distribution centre and employ approximately 120 staff. Mr. R. oversees operations and human resources for the organization.

Each employee receives a new employee handbook, which is reviewed page by page with the employee by a manager. A new employee does not work alone until management is convinced the employee is able to manage the job they have been assigned.

Crowfoot Wine and Spirits intends to do their own Under 25 testing of their retail locations. They do not wish to be labeled by the AGLC as not complying with the Under 25 policy or any other policy. Crowfoot Wine and Spirits has paid two AGLC related fines in the past 20 years.

IV. Summation

Mr. H.

The AGLC takes the issue of minors trying to obtain liquor very seriously. It is often difficult to tell if a person is of legal age just by looking at them, so licensees must ask for proof of age in order to eliminate any situation where a purchaser of liquor is potentially a minor. That is why the AGLC implemented this policy and the policy is regulated. Every individual in the liquor industry must assume responsibility for ensuring liquor is not served to minors and the CSR Division believes the AGLC took reasonable and sensible steps in this matter. The Under 25 Program is well publicized and the AGLC supplies signs and pamphlets to licensees advising them of their responsibilities. The AGLC advised licensees that audits would be undertaken, as noted in the November 4, 2013 letter from the Director of the CSR Division.

During two separate audits conducted at the premises, the Agents were not asked for identification when liquor service was requested and ultimately provided. During both of these audits the premises was not busy and clear violations of the policy occurred. Section 121 of the *Gaming and Liquor Act* states "if an employee or an 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".

Mr. R. has indicated to the Panel that he took reasonable steps based on Section 121 of the *Gaming and Liquor Act*. The CSR Division respectfully disagrees with Mr. R.'s assertions, as more could have been done to prevent the contraventions from occurring. Better and ongoing supervision and correct, clear and consistent training of staff are reasonable steps that the licensee could employ.

The CSR Division respectfully submitted that the original administrative sanction previously offered by upheld.

Mr. R.

Mr. R. does not believe a fine is appropriate given the circumstances. He believes the AGLC should work in partnership with liquor retailers and the imposition of a fine with respect to this matter does not feel like a partnership.

V. Finding

The Panel makes a finding of a violation of Section 4.4.4 Retail Liquor Store Handbook: Failure to request proof of age from a person who appears to be under 25.

On two separate occasions, a staff member failed to request identification from the AGLC Agents. While the licensee presented evidence he provides on the job training and reminds employees to check for identification, the Panel finds he did not take all reasonable steps necessary to prevent the incidents in question from occurring and the training he provided to Mr. Z. was clearly not effective.

VI. Penalty

Mr. R. does have a staff training process in place and advised the Panel he intends to take additional steps, including increased training for employees, in an effort to ensure compliance with all AGLC policies. While the Panel finds that a warning is not appropriate, in accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following reduced penalty for a violation of Section 4.4.4 Retail Liquor Store Handbook:

Penalty: A \$500 fine - **OR** - a 2 day suspension of Class D retail liquor store licence 772596-1. The fine is to be paid within 2 months of the date of this decision or on or before Saturday, April 18, 2015 or the suspension served commencing Sunday, April 19, 2015 and continuing until the close of business on Monday, April 20, 2015.

Signed at St. Albert this 18th day of February, 2015.

A handwritten signature in black ink, appearing to be 'W.J. Anhorn', written over a horizontal line.

W.J. Anhorn, QC, Hearing Panel Chair