

**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
1550096 Alberta Ltd.
o/a Passion KTV Lounge
10805 – 105 Avenue NW
Edmonton, AB T5H 0K9**

concerning alleged contraventions

DATE OF HEARING:	March 30, 2015
HEARING PANEL:	Mr. J.P. Hansen, Panel Chair Ms. S.L. Green, Panel Member Mr. W.A. Clark, Panel Member
LICENSEE REPRESENTATIVE:	Mr. L., Approved Contact
COMPLIANCE AND SOCIAL RESPONSIBILITY:	Mr. H., Hearing Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

After receiving a report dated November 25, 2014 from the Vice President of the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming & Liquor Commission (AGLC) the Board of the AGLC, at its January 22, 2015 meeting, convened a hearing for 1550096 Alberta Ltd. o/a Passion KTV Lounge, Edmonton. A hearing was subsequently scheduled for March 30, 2015.

A Panel of the Board met to hear the following alleged violations:

- 1. Permit unauthorized persons in Class A minors prohibited licensed premises during unauthorized hours – GLA s. 71(2); and**
- 2. Failure to comply with a condition imposed on the licence – GLA s. 91(1)(a).**

The Licensee and the Panel were provided with a hearing file containing the incident report dated November 4, 2014 and various documents pertaining to alleged incidents occurring on the premises of Passion KTV Lounge, Edmonton, on October 18, 2014. Mr. H. presented the case on behalf of the CSR Division. Mr. L. represented Passion KTV Lounge.

Mr. L. confirmed he received the Notice of Hearing dated March 3, 2015. The incident report and hearing file were entered into evidence by the CSR Division as Exhibit #1.

II. The Issue

Did the Licensee:

- Permit unauthorized persons in Class A minors prohibited licensed premises during unauthorized hours?
- Fail to comply with conditions imposed on the licence?

III. Evidence

Inspector M. – evidence led by Mr. H.

Before Mr. H. called his first witness, he provided the Panel Members and Mr. L. with a copy of an earlier hearing decision that clearly outlined the conditions that were previously imposed upon this Licensee in July 2014.

Inspector M. currently works for the AGLC in St. Albert. She has worked as an Inspector for 9 years. On October 18, 2014, at 2:36 a.m., Inspector M. and Inspector Mi. conducted an operating check at Passion KTV Lounge. When they arrived, the front door was propped open. Upon entering, Inspector M. observed Mr. L. and Mr. Z. behind the service bar, and a female later identified as patron Y. L. walking from the direction of the karaoke rooms. Inspector M. identified herself to Mr. L. and asked if there were any patrons left in the premises. Mr. L. directed an Asian female to take the Inspectors towards the karaoke rooms. In karaoke room B3, Inspector M. observed a male patron, later identified as W., singing Karaoke. Another patron, later identified as S. was also in that room. During the time that the Inspectors were speaking to those two patrons, the Asian female that led them to room B3 removed two plastic pony jugs that were filled approximately half full with brownish green liquid from the table in that room. Two other male patrons, D. and We., also approached the Inspectors during this time. There were five patrons and four staff members within the premises at the time of the operating check.

Inspector M. first spoke with Mr. W. who reported that he arrived at 11:00 p.m. and had consumed three Barcardi Breezer coolers. She then spoke to Mr. D., who said he arrived at 11:00 p.m. and had consumed three to four cups of Hennessy cognac mixed with green tea. Next, she spoke with Mr. We.. He said that he had arrived at 10:00 p.m. and had consumed two cups of Hennessy mixed with green tea. Inspector M. then spoke with Ms. S. who reported that she had arrived at 11:00 p.m. and had not consumed any liquor. Lastly, Inspector M. spoke with Ms. L. who reported that she arrived at 11:00 p.m. and had not consumed any liquor.

At 2:48 a.m. the patrons left the premises. The Inspectors spoke to the remaining staff members who were there. A female staff member later identified as P., another female staff member identified as C., and as well Mr. Z., were able to produce their ProServe certificates.

The Inspectors then spoke with Mr. L. who indicated the following:

- He is aware that patrons are not permitted in the premise after 2:00 a.m.
- He tries his best to get everyone out before 2:00 a.m.
- The five patrons that the Inspectors spoke to had not been served any liquor after 1:00 a.m.
- He asked the Inspectors to “show him mercy”.
- He has completed ProTect but hadn't received his completion certificate because he was asked to expand on some of his test answers.
- He completed ProServe and produced his certificate to Inspector M..

Mr. L. advised the Inspectors that he has an incident log but was not able to locate it at that time. Additionally, Mr. L. further advised that he was not aware a surveillance warning sign was one of the licence conditions, but said he would post a sign at the entrance to the premises.

The Inspectors exited the premises at 3:11 a.m.

The operating check of the premises on October 18, 2014 was a routine check. Prior to this visit, the Inspectors were told that on October 4, 2014 at 2:00 a.m., two other Inspectors had visited the premises and felt at that time that the Licensee may have operated past 2:00 a.m. Prior to the October 4, 2014 visit, there were three other checks: July 2014, August 2014 and September 2014.

On October 18, 2014 there were four staff members working including Mr. L., and five patrons in the premises that were able to produce identification and prove that they were all of age. When the Inspectors entered karaoke room B3, the Asian female who led them there removed the pony jugs very quickly and the Inspectors were not able to obtain a sample of the contents, although Mr. L. advised there was no liquor in them. Based on the time of the morning in question, the five patrons were unauthorized persons to be in the premises.

When the Inspectors initially entered the premises, they could see Mr. L. and Mr. Z. behind the service bar, and Ms. L. coming from the karaoke room. When they entered karaoke room B3 and saw that there was a patron still singing, that told them that the Licensee was continuing to operate at that hour. Inspector M. did not see Mr. L. doing any clean-up duties or cashing out duties. Mr. L. did not advise the Inspectors that any other staff members had been working in that premises prior to their arrival.

Passion KTV Lounge is not a large premise. It has an occupancy of 149 persons and it has three karaoke rooms. The Licensee had five patrons present in the morning in question, but there were four staff members working, so they had enough staff to remove those patrons before 2:00 a.m.

On the night in question, Mr. L. asked the Inspectors to “show him mercy” and commented that the Inspectors are “in here every weekend”. The latter statement is not accurate, in that there were only four checks prior to October 18, 2014 – one per month in July, August, September, and one on October 4.

Subsequent to October 18, 2014, two further incidents have occurred with respect to this premise and the conditions that are imposed on this liquor licence. On December 20, 2014, two Inspectors conducted an operating check and found three unauthorized patrons. The Licensee was cautioned. On Friday, March 27, 2015, an operating check was conducted with the Public Safety Compliance Team and there were issues with conditions not being met. Among those issues was that the surveillance sign was missing and a board approved manager or director/shareholder was not on site. On the October 18, 2014 visit, neither of the other directors/shareholders, being Ms. K. or Mr. T., was present.

Inspector M. – questioned by Panel

Two Inspectors conducted a check on October 4 at 2:00 a.m. From that visit, and based on the number of patrons remaining in the premises at that hour, they raised concerns with the Licensee that they were operating past 2:00 a.m. However, once the Inspectors spoke to the staff, the patrons did leave at 2:00 a.m.

On December 20, 2014, Inspectors entered the premises at 2:22 a.m. and the Licensee was given a caution regarding patrons being on site past 2:00 a.m.

Evidence of Mr. L.

Mr. L. confirmed that on the evening of October 17, 2014, he was performing cash out duties when Inspector M. walked in at 2:30 a.m. They had already cleared out most of the patrons. Thirty people were at the door already. When the Inspectors walked in there was only one room left, because those patrons had not yet paid. Everyone has to line up to pay. The music is usually shut off at 1:50 a.m., however, these remaining patrons turned the music on themselves. They already had the

money from other patrons, and then they “asked them to pay and they paid already and they were about to leave”. Mr. L. advised that their mistake was not getting everybody out before 2:00 a.m.

It should be noted that because the Inspectors visited the premises in the early hours of the morning, the date Mr. L. was referring to was actually the early hours of October 18, 2014, not the evening of October 17, 2014.

Concerning the caution given on December 20, 2014, Mr. L. advised that everyone was out by 2:00 a.m. and three patrons returned wanting to use the washroom.

Mr. L. – questioned by the Panel

The Licensee charges rent per room on an hourly basis, so the patrons pay at the end before they leave. The patrons usually want to separate the bill, so it takes a very long time to charge everyone separately.

On the night in question, they had removed all of the liquor at 2:00 a.m. The jug in question contained green tea.

Mr. L. – cross-examined by Mr. H.

With the assistance of other staff, Mr. L. starts collecting payment from the patrons prior to 2:00 a.m. They had been starting to collect at 1:50 a.m., but now they are aware that there is not enough time so they have recently starting collecting at 1:30 a.m. Mr. L. is in charge of the premises on a daily basis. Prior to this licence period being issued in July 2014 to Mr. T. and Ms. K., Mr. L. had not worked in, or been employed in, another licensed premise, even though he had passed his ProServe on August 29, 2013 and it was activated. Prior to that, when the other licence was in effect, Mr. L. did work at Passion KTV Lounge for one month as a trainee.

When the premise was sold to the new directors/shareholders, and Mr. L. was hired as the board approved manager, no major changes were made to the operation from that of the previous owners.

In order to receive the current liquor licence, conditions were imposed by the Board of the AGLC. The one issue that Mr. L. had with the conditions was that a director/shareholder or the board approved manager must be at the premises at all times. He would like to have that condition removed as he finds it unreasonable. It is impossible for him to work every single day. Ms. K. and Mr. T. have other jobs and can only work on weekends, so Mr. L. works there almost every day. Mr. L. additionally added that they do not like to be restricted to closing at 2:00 a.m., however, that condition has since been lifted and they are now able to close at 3:00 a.m. On October 18, 2014, Mr. L. felt that generally they were meeting the conditions imposed at that time.

Mr. L. advised that now that they are once again able to close at 3:00 a.m., he does the last call for liquor to patrons by 2:00 a.m. and the patrons can stay until 3:00 a.m. They shut down the music by 2:30 a.m. or 2:40 a.m. based on how many patrons they have, and then the patrons start lining up to pay, and they get everyone out before 3:00 a.m.

They have not had an incident where they had the time condition on their licence and have had a difficult patron who did not want to leave on time. All of their patrons obey the law and they just leave.

One of the conditions on the licence is that the premise is required to be supervised at all times by a ProTect trained staff member during all operating hours. Mr. L. agreed that on October 18, 2014, that condition was not met. Mr. L. has not yet completed the ProTect test and Mr. Z. completed his ProTect testing on January 9, 2015. The other two female staff members do not have their ProTect certification.

A staff training seminar has not been requested from the AGLC. Mr. L. was under the impression that the staff only needs their ProServe card.

Mr. L. – questioned by the Panel

Mr. L. wrote his ProTect exam in September of 2014. However, he did not complete it and he did not pursue it as he has since hired staff members that have it.

Regarding the surveillance sign, Mr. L. advised that there was a sign at the door but it was just paper. There is now better signage. Concerning the incident log, Mr. L. was looking for it during the operating check but the Inspector said it was okay as long as he had it.

Mr. L. is aware that the AGLC provides staff training but he has not utilized it.

Mr. L. spoke again of the condition that requires the board approved manager or director/shareholder to be on duty at all times. Passion KTV Lounge is open seven days a week. Mr. L.'s two other designates are not able to work other than Friday and Saturday as they have other jobs. As well, those designates cannot be at the premises by 6:00 p.m. on those days, which is their opening time. Mr. L. advised that, as a result, he is totally in charge and working seven days a week.

Mr. H. – questioned by the Panel

This premises has been licensed a total of four times, the first licence period being October 8, 2010 until December 13, 2011. At that time, it was operated by the same licensed company (1550096 Alberta Ltd.) with different directors/shareholders in charge.

On December 14, 2011, 1550096 Alberta Ltd. underwent a sale of directors/shareholders. A new licence was issued with five directors/shareholders and this licence ran until March 6, 2014. During this licence period, there was a May 3, 2012 incident report with after-hours violations cited. A hearing was conducted in June 2012 and conditions were imposed at that time.

The next licence period started on March 7, 2014. It was the same licensed company with three different directors/shareholders. This licence should have run until March 6, 2015, but it was cancelled by a hearing Panel on May 21, 2014. To summarize, there was an April 20, 2014 incident report for after-hours violations and conditions being breached, which is essentially the exact same legislation that is before the Panel. A May 21, 2014 hearing was convened. Prior to that hearing taking place, the CSR Division became aware that between March 7, 2014 until May 21, 2014, 1550096 Alberta Ltd. had undergone three sales of shares. As well, prior to the May 21, 2014 hearing, the premises was sold to Mr. G. L. and the current director/shareholder, Mr. T.. During that hearing, Mr. T. and Mr. L. attended with several other shareholders and, as it could not be determined who actually had care and control of that licensed premises, the hearing Panel at that time cancelled the liquor licence.

A few months later, the CSR Division received a new application with the same licensed company, but this time with Ms. K. and Mr. T. as the sole directors/shareholders. This application was approved in July 2014 with the conditions that are currently on the liquor licence. The only condition that currently is not on the licence is the after-hours violation, because the July 7, 2014 hearing decision indicated that particular condition would only apply for a period of six months without any disciplinary issues. Although the incident in question allegedly happened within those first six months, the six-month time period has since elapsed. Without a confirmed disciplinary action such as this hearing, that condition was automatically removed until such time as the Licensee is found in contravention of the condition. They now follow their normal operating hours of service until 2:00 a.m. and then all patrons removed by 3:00 a.m.

One of the conditions of the last hearing was that notice be provided regarding further changes of shareholders. During the current licence period, the CSR Division is unaware of any director/shareholder changes occurring.

IV. Summation

Mr. H.

The matter before the Panel is a violation of not only s. 91(1)(a) of the GLA - failure to comply with a condition imposed on the licence, but also s. 71(2) - permitting unauthorized persons in Class A minors prohibited licensed premises during unauthorized hours. These violations are certainly 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 not only expected by Albertans, but demanded by the AGLC.

The evidence outlined by Inspector M. is clear. An operating check was conducted, and that operating check revealed that the premise was breaching conditions imposed upon the liquor licence. The conditions that were specifically being breached included: permitting unauthorized persons in the premises after 2:00 a.m.; failing to maintain an incident log book and providing it to AGLC Inspectors upon request; failing to post signage advising the general public that video surveillance is, or may be, in operation; and failing to have one ProTect certified staff member on duty at all times for the purpose of supervising patrons, staff and activities within the premises. As well, on Friday and Saturday evenings, from 10:00 p.m. until 2:00 a.m., a ProTect certified staff member must be easily identifiable by wearing a bright colored shirt, jacket, vest or other suitable garment, none of which was in operation on October 18, 2014.

The nine conditions that were imposed upon the Licensee from that previous decision were due to ongoing issues with this premise operating outside the approved hours of liquor service and sale in the Province of Alberta, and not abiding by conditions imposed on the liquor licence.

There were also prior concerns of 1550096 Alberta Ltd. changing its owners on numerous occasions and the AGLC not being notified. Prior to this licence being issued to the current Licensee, the premises came before a Panel of the Board on May 21, 2014 to address an April 20, 2014 incident, whereby the premises allegedly violated the same legislation which is now before the Panel. During that May 21, 2014 hearing, the Panel could not proceed on the matters before them, as it could not be properly determined who had actual care and control of the premises. The Panel elected to cancel the liquor licence at that time as per the *Gaming and Liquor Regulation*. Mr. L. and Mr. T. attended that hearing. During that April 20, 2014 incident, Mr. L. and the current director/shareholder, Mr. T., were operating the premises as owners and managers in training when these alleged violations occurred. Five days later, Mr. L. and Mr. T. were listed as the primary directors/shareholders of the applicant company.

On June 24, 2014, another hearing was convened at the request of the Licensee, as there were new directors/shareholders of 1550096 Alberta Ltd., being Ms. K. and Mr. T.. At that time, the Director of the CSR Division denied the application before it relating to concerns of how the premises would continue to be operated, and the lack of clarity of who was actually operating this licensed premises. During that hearing, Mr. L. advised the hearing Panel that he does not believe the operating hours of premises should have been restricted, because the busiest time for them was between 12:30 a.m. and 2:00 a.m. and they needed to operate during those hours to keep the business profitable.

On July 7, 2014 the Panel rendered its decision and approved the liquor licence to the premises to the current Licensee with nine conditions attached to it which were previously provided at this hearing, including the restriction of unauthorized patrons or persons being in the premises after 2:00 a.m.

Mr. L. has come before the Panel to suggest that he has improved his operation and they now have new processes to deal with patrons after 2:00 a.m. I am uncertain as to how Mr. L. felt that that premises was particularly busy on October 18, 2014 when there were four staff members working with five patrons at 2:36 a.m. I would suggest to the Panel that although this is a new Licensee with new directors/shareholders, Mr. L. seems to be the constant with this operation and the premises continues to this day to violate the GLA. Also, to Mr. L.'s point that the AGLC is unfairly targeting his establishment, this premise has not been checked any more frequently than any other premises, even though it should be warranted under these conditions that were imposed upon the liquor licence. The premise was checked a total of four times prior to the October 18, 2014 operating check. It is evident to the CSR Division that this premises and its approved manager never intended to operate within the hours authorized on its liquor licence and have decided to ignore the opportunity provided by the Board to operate with care and control required of a liquor licensee. They were not acting responsibly within the legislation.

It is in the opinion of the CSR Division that there has been little evidence provided to the Panel to suggest that the Licensee took any reasonable steps to prevent any one of these violations from occurring. Mr. L. has not been able to provide the Panel with any tangible evidence that they tried to improve upon the operation, knowing that there were issues with the premises in the past.

The CSR Division respectfully submits that breaches of s. 71(2) and s. 91(1)(a) of the GLA did occur, and recommends that the Panel immediately cancel the liquor licence to this Licensee. Alternatively, if the Panel feels that the cancellation of the liquor licence is not warranted, the CSR Division respectfully suggests that the Panel consider a penalty of \$5,000 or a 20-day suspension for a violation of s. 71(2) of the GLA and a \$1,000 or 4-day suspension for violation of s. 91(1)(a) of the GLA. In addition to this alternate recommendation, the CSR Division would suggest that all conditions imposed on the liquor licence as stated in the July 7, 2014 hearing decision are re-imposed for a minimum of a one year period to the current Licensee.

Mr. L.

Mr. L. advised that he and his two designates do not know the history of this business. They purchased this business at the end of March 2014, and the only violation has been in October 2014. The previous incident from March 2014 happened on the licence at that time to the previous owners, which was on Mr. L.'s second day of training. Under Mr. L.'s control, they have only had one problem. He does not understand why the CSR Division wants to cancel their licence or re-impose those conditions. The fine was supposed to be \$500 or a 2-day suspension for the incidents that happened on October 18, 2014, yet the CSR Division is now saying they want to cancel the licence or impose a \$5,000 fine.

V. Finding

1. The Panel makes a finding of a violation of Section 71(2) of the *Gaming and Liquor Act*: *Permit unauthorized persons in Class A minors prohibited licensed premises during unauthorized hours.*

The evidence was clear, when the Inspectors entered the premise on October 18, 2014 at 2:36 a.m., that there were five patrons inside the establishment who should not have been there beyond 2:00 a.m. When the Inspectors were shown to karaoke room B3, one patron was still singing, and that told the Inspectors that the Licensee was continuing to operate the business at that hour. Additionally, Inspector M. did not see Mr. L. doing any clean-up duties or cashing out duties at the time. There were four staff members in the premises together with the five patrons, so there was sufficient staff to remove all patrons before 2:00 a.m.

While the Licensee argued that he was in fact performing cash out when the inspectors entered the premises, and that they had already cleared out most of the patrons and removed all of the liquor, he did admit that the mistake was not getting everyone out by 2:00 a.m. The Licensee stated that he is now aware that they should start collecting payment a half hour before closing. As well, the Licensee made contradicting statements earlier in the hearing, initially indicating that payment wasn't made by the remaining customers and that was the reason they were not removed, and then said they had paid, so the patrons could have been removed before 2:00 a.m.

It is the Panel's opinion that a violation occurred. Mr. L. admitted he is aware that patrons were not permitted in the premise after 2:00 a.m. Four staff members should have been sufficient to remove the remaining five patrons by 2:00 a.m.

2. The Panel makes a finding of a violation of Section 91(1)(a) of the *Gaming and Liquor Act*: *Failure to comply with a condition imposed on the licence.*

The conditions that were specifically breached on October 18, 2014 include:

- Permitting unauthorized persons in the premise after 2:00 a.m.;
- Failing to maintain an incident log book and providing it to AGLC Inspectors upon request;
- Failing to post signage advising the general public that video surveillance is, or may be, in operation;
- Failing to have one ProTect certified staff member on duty at all times for the purpose of supervising patrons, staff and activities within the premises; and, on Friday and Saturday evenings, from 10:00 p.m. until 2:00 a.m., a ProTect certified staff member must be easily identifiable by wearing a bright colored shirt, jacket, vest or other suitable garment.

There was an admission by the Licensee that all four conditions were breached.

The Panel noted that when these same conditions were imposed on the former shareholders of the company, Mr. L. and Mr. T. were present at that time, and the Panel takes the position that both gentlemen were aware of the inherent obligations.

It is important to have employees ProServe/ProTect trained, and to do in-house training in order to eliminate confusion as to what employees can and cannot do. The Panel feels that employee training was inadequate in this instance.

VI. Penalty

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following penalty for a violation of Section 71(2) and Section 91(1)(a) of the *Gaming and Liquor Act*:

Penalty: A 21 day suspension of Class A liquor licence 774038-1, for both violations. The suspension is to be served commencing Friday, May 1, 2015 and continuing until the close of business on Thursday, May 21, 2015.

The Licensee must request an AGLC staff training seminar on or before Friday, June 19, 2015 and the board approved manager must be ProTect certified on or before Friday, June 19, 2015.

Conditions 1 through 8 imposed on July 7, 2014 will continue. Condition 9 (minimum of one director/shareholder or the board approved manager must be on site at all times during operating hours) will be lifted.

The hours of operation as listed after the initial hearing will continue as follows:

- Monday to Sunday – 10:00 a.m. to 1:00 a.m. Consumption until 2:00 a.m.
- Minors prohibited at all times from this licensed premises .
- Premises to be vacated of all unauthorized people between 2:00 a.m. and 10:00 a.m., unless otherwise endorsed.

Conditions 1 through 8 will apply for a period of six months from the date of this decision.

The Panel feels that the CSR Division should not have extended the hours of operation to 3:00 a.m., as they were aware of alleged infractions within the six months of the conditions being imposed. As well, for future hearings, the Panel recommends that the CSR Division be clear as to what the recommended penalties are, in order that the Licensee is aware of the same prior to the hearing.

Signed at St. Albert this 23rd day of April, 2015.



J. P. Hansen, Hearing Panel Chair