

**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 Five Pillar Holdings Ltd.
o/a Wheatland Inn
960 Westridge Road
Strathmore, Alberta
T1P 1H8**

concerning alleged contraventions

DATE OF HEARING:	April 14, 2015
HEARING PANEL:	Mr. B.C. Shervey, Panel Chair Mr. W.A. Anhorn, QC, Panel Member Ms. T.L. Lawrence, Panel Member
LICENSEE REPRESENTATIVES:	Mr. G., Director
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 November 20, 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 Five Pillar Holdings Ltd. operating as Wheatland Inn, Strathmore.

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 5.5.8 Licensee 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 November 20, 2014 and various documents pertaining to alleged incidents occurring on November 14 and 15, 2014. Mr. G. confirmed he received the incident report dated November 20, 2014 and Notice of Hearing dated March 10, 2015. When Mr. G. completed the Consent to Administrative Sanction form dated December 8, 2014, he initially selected Option 4; a hearing with AGLC

witnesses available. Mr. G. advised the Panel he no longer required AGLC witnesses, as he does not dispute the facts contained in the incident report but wishes to present a due diligence defence. The incident report and hearing file were entered into evidence by the CSR Division as Exhibit #1.

Mr. H. presented the case on behalf of the CSR Division. Mr. G. represented Five Pillar Holdings Ltd.

II. The Issue

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

III. Evidence

CSR Division – excerpted from the incident report dated November 13, 2014

On Friday, November 14, 2014 Agents B. and S. entered the premises and observed the occupancy to be approximately 10% of capacity. A “No Minors” sign was observed at the entrance. “Under 25” signage was not prominently posted within the premises. Door control was not in effect. The Agents approached the service bar and were greeted by a male bartender. Agents B. and S. each ordered one bottle of Kokanee beer. The bartender returned with both bottles of beer and Agent B. paid for the beer. At no time were the Agents asked for proof of age. The Agents then exited the premises.

On Saturday, November 15, 2014 Agent M. entered the premises and observed the occupancy to be approximately 5% of capacity. A “No Minors” sign was observed at the entrance. “Under 25” signage was not prominently posted within the premises. Door control was not in effect. Agent M. approached the service bar and was greeted by a male bartender. Agent M. ordered one bottle of Budweiser beer. The bartender returned with the bottle of beer and Agent M. paid for the beer. At no time was Agent M. asked for proof of age. Agent M. then exited the premises.

Inspector Z., together with Agents B., S. and M., re-entered the premises. Inspector Z. identified himself as an AGLC Inspector to the male bartender. The male bartender confirmed that he had sold liquor to Agent M. without requesting his identification. He also confirmed that he had sold liquor to Agents B. and S. on November 14, 2014. The bartender advised that he had been employed with the premises for four days. He advised that he had not received any training from the licensee, however he had 15 years of experience in the liquor industry. The bartender stated that he believed Agent B. to be 16 to 17 years of age, Agent S. appeared to be 22 years of age and Agent M. appeared to be 35 years of age.

Inspector Z. reviewed the incident with the manager, P. G.. P. G. stated he believed Agent B. appeared to be 20 years old, Agent S. appeared to be 19 years of age and Agent M. appeared to be 18 years of age. Inspector Z. advised P. G. he would be contacting the board approved manager, M. G., to review the incident.

Mr. C. – evidence led by Mr. G.

The name of the premises was previously called Don Cherry’s. The premises had been closed for a period of time to conduct renovations and had only recently reopened at the time the audits were conducted.

When Mr. C. hired the bartender in question he asked him if he had a valid ProServe certificate and he said “yes”. He also indicated he had worked in bars and in a casino in the past; he had a substantial resume. He had been working at the premises for less than a month before the incidents occurred. He helped with some painting during the renovations but had only worked in the bar for four days. He was hired to take on the role of training new staff because Mr. C. was going to take on a different role in the kitchen. Mr. C. was not aware of the first audit until after the second audit was conducted.

Mr. C. – cross-examined by Mr. H.

Mr. C. is the bar manager of the Wheatland Inn. The liquor licence was not cancelled during the renovations. Mr. C. has worked for Mr. G. for three years and is responsible for training new staff in the bar. When new staff members are hired, he goes over all AGLC policies with them. The training provided to new staff is mostly verbal. He always looks for staff with

previous experience in the industry. Mr. C. is not aware of the letter dated November 4, 2013 from the Director of the CSR Division.

He observed the new bartender when he first started working at the premises to ensure he was able to perform his duties and properly train other staff members. During his observations, Mr. C. did notice a few areas where the new bartender was lacking experience and/or technique. Mr. C. did not call any of the bartender's reference at the time of hire. Mr. C. spoke to the bartender following the incidents but he did not provide any explanation for the disparity in how old he believed each of the Agents to be. His employment was terminated following the incidents.

Mr. C. – questioned by the Panel

Mr. C. only saw the Agents after they were identified by the Inspector following the second audit. He was responsible for the supervision of the bartender in question. Mr. C. would have requested identification from the Agents because, in his opinion, they definitely appear to be under 25 years of age.

Mr. G.

Mr. G. feels the AGLC should have waited more time to conduct the second audit following the first audit. The audits were conducted back to back nights without any prior notice. The bartender was a new employee but had indicated he had experience in the industry and was ProServe certified. He was hired by the bar manager, Mr. C., to work as a bartender. The bartender was terminated following the incidents.

Mr. G. has been the owner of the premises since 1998. He has a number of good staff and he provides his staff with regular training with respect to over service, service to minors and other AGLC related policies. The premises had been closed for a period of time to perform renovations and reopened in November 2014. Mr. G. believes he should have been contacted by the AGLC following the first audit. He was not provided with an opportunity to address the issue with his staff. Mr. G. received the letter dated November 4, 2013 from the Director of the CSR Division and he posted it in the lounge.

Mr. G. – cross-examined by Mr. H.

Mr. G. was at the premises at the time both audits were conducted but he was not in the bar. The lounge staff were made aware of the U25 Program. The bartender in question did not read the letter dated November 4, 2013 from the Director of the CSR Division because he was a new employee. Mr. C. is primarily responsible for the training of the bar staff. Mr. G. provides training to staff in other areas but not in the bar. The bartender was new so there had not been much of an opportunity to fully train him; his training was in progress.

The new bartender was not in charge of supervising the bar. Mr. C. was in the kitchen working as a chef and was responsible for the overall supervision of the bar. Mr. G. did not have an opportunity to speak with the bartender following the incident because his employment was terminated by Mr. C.. Mr. G. conducts staff meetings approximately every three months. He has not requested an AGLC staff training seminar. Mr. G. acknowledges that this is a serious issue and they addressed the issue with their staff following the incidents.

Mr. G. – questioned by the Panel

During the week there is only one staff member on duty in the bar. On the weekend, additional servers are brought in to help. Different staff work in the bar than work in the lounge, which contains the VLTs. Mr. C. only manages the bar not the lounge.

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, who were 19, 20 and 22 years of age, were not asked for identification from a staff member when liquor service was requested and ultimately provided. During both of these audits, the premises was not busy and a clear violation 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. G. advised the Panel he should not be held responsible based on Section 121 of the *Gaming and Liquor Act* because he and Mr. C. took all reasonable steps to ensure the employee in question did not contravene Section 5.5.8 of the Licensee Handbook. The CSR Division respectfully disagrees with Mr. G.'s assertion as more could have been done to prevent the contraventions from occurring.

The CSR Division questions how much training the new bartender received. Mr. C. advised the Panel there is no formal training program in place for new employees. Mr. C. further indicated he had concerns with the new bartender's capabilities, based on his initial observations. The CSR Division is also concerned with the bartender's estimate of the Agents' ages, as there is a substantial disparity between the Agents' actual ages and those provided by the bartender. In addition, it would be difficult for Mr. C. to provide adequate supervision of the premises when he was in the kitchen preparing food.

Better and ongoing supervision and clear, consistent and written training of staff are reasonable steps that the licensee could employ, particularly when the staff member involved in these failures had only been working in the bar for a period of four days. Mr. G. did not present any reasonable explanation to the Panel as to why the bartender did not request identification from the Agents. Mr. G. has been a licensee for a number of years now, is ProServe certified and should be aware of his responsibilities as a licensee.

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

Mr. G.

If Mr. G. had been contacted by the AGLC after the first audit he could have addressed the issue with his staff and avoided the second incident. He does not feel a penalty is warranted. He believes a warning is appropriate given the circumstances surrounding the timing of the second audit.

V. Finding

The Panel makes a finding of a violation of Section 5.5.8 Licensee Handbook: Failure to request proof of age from a person who appears to be under 25.

On two separate occasions, the same staff member failed to request identification from the Agents. The premises was not busy at the time of either audit and the Panel believes the server should have taken the time to request identification. The Panel does not find due diligence was exercised by the licensee. While the licensee and Mr. C. presented evidence that staff are provided with verbal training at the time they are hired and they only hire staff with experience in the industry, the Panel finds the licensee did not take all reasonable steps necessary to prevent the incidents in question from occurring and it is clear the training provided was not effective.

The Panel suggests the licensee consider developing a formalized staff training manual and providing management supervision of employees at all times.

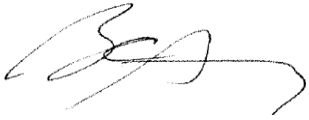
VI. Penalty

The Panel is of the opinion Mr. G. did not present any evidence which would warrant a reduction in the penalty. In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following penalty for a violation of Section 5.5.8 Licensee Handbook:

Penalty: A \$750 fine - **OR** - a 3 day suspension of Class A liquor licence 757703-9. The fine is to be paid within 2 months of the date of this decision or on or before Tuesday, July 7, 2015 or the suspension served commencing Wednesday, July 8, 2015 and continuing until the close of business on Friday, July 10, 2015.

In addition, Mr. G. must request an AGLC staff training seminar within four months of the date of this decision.

Signed at St. Albert this 7th day of May, 2015.

A handwritten signature in black ink, appearing to be 'B.C. Shervey', written over a horizontal line.

B.C. Shervey, Hearing Panel Chair