

**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 1586649 Alberta Ltd.
o/a Towerhill Wines
4 – 100 Milligan Drive
Okotoks, Alberta
T1S 1C5**

concerning alleged contraventions

DATE OF HEARING:	June 26, 2015
HEARING PANEL:	Mr. W.A. Clark, Panel Chair Mr. B.C. Shervey, Panel Member Mr. W.J. Anhorn, QC, Panel Member
LICENSEE REPRESENTATIVES:	Mr. W. S., Director/Shareholder Mr. D., Manager Mr. S. S., Employee
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 April 30, 2015, 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 1586649 Alberta Ltd. operating as Towerhill Wines, Okotoks.

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 75 *Gaming and Liquor Act*: Sell, give, or permit a person to sell or give, liquor to a minor in a licensed premises.

The licensee and the Hearing Panel were provided with a hearing file containing the incident report dated April 30, 2015 and various documents pertaining to an alleged incident occurring at the premises on March 27, 2015. Mr. W. S. confirmed he

received the incident report dated April 30, 2015 and Notice of Hearing dated June 11, 2015. 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. S. and Mr. D. represented 1586649 Alberta Ltd.

II. The Issue

Did the licensee sell, give, or permit a person to sell or give, liquor to a minor in a licensed premises ?

III. Evidence

CSR Division – excerpted from the incident report dated April 30, 2015

On Friday, March 27, 2015 Inspector K. entered Towerhill Wines to conduct a maintenance inspection. Inspector K. immediately observed a young looking female walking toward the cash register. There was a lone female cashier (later identified as J. P.) standing behind the counter. Inspector K. stood behind the counter with an unobstructed view of the young looking female and Ms. P..

The young looking female placed a bottle of Smirnoff Vodka (375 ml) on the counter. Ms. P. requested identification and the young looking female produced an operator's licence. Ms. P. looked at the operator's licence and glanced at the young looking female. She then returned the identification and completed the transaction. Inspector K. walked around the cash register towards the exit while the transaction was being completed.

As the young looking female proceeded toward the exit, Inspector K. displayed an AGLC badge and identified herself as an Inspector. Inspector K. requested proof of age from the young looking female. She provided the same operator's licence that she provided to Ms. P.. Inspector K. looked at the picture on the operator's licence and noticed that the picture did not match the facial features of the individual.

Inspector K. asked the female for her date of birth. She provided a date of May 4, 1996 and then corrected herself and said May 13, 1996 (the date of birth on the identification was May 13, 1996). Inspector K. asked whether she was the person in the picture and she responded that she was. Inspector K. requested a second piece of identification. She stated that she did not have any other identification on her. After further questioning, she admitted that it was not her identification and it belonged to a friend. The young looking female admitted she was 17 years old.

Inspector K. requested legitimate identification. She provided the bank card that she used to pay for the liquor and claimed to be the name on the card. After further questioning, the female stated that she is not the person on the bank card and that the bank card belonged to a friend. She admitted that she used her friend's bank card to make the liquor purchase. Inspector K. turned to Ms. P. and requested that she call the police and ask for an officer to attend the premises. The female provided a third name and insisted she was now being honest.

Once Inspector K. obtained all the particulars from the female, she was advised that Inspector K. did not have the authority to detain her and she could leave. She asked Inspector K. whether she could have the operator's licence and the bank card returned to her. Inspector K. advised that both items would be turned over to the police for verification purposes. In addition, Inspector K. advised her that there was still uncertainty as to her identity. She then asked whether she could go to her vehicle and obtain her operator's licence to prove her identity. She left the premises momentarily.

The female returned and provided her operator's licence which listed a date of birth of June 30, 1997 (17 years old). The female asked again for both cards. Inspector K. advised her again that the operator's licence and the bank card would be turned over to the police. An RCMP officer, Constable T., arrived at the premises. Constable T. requested that the female exit the premises with him and take a seat inside the marked police cruiser.

Inspector K. asked Ms. P. whether she believed the female resembled the operator's licence. Ms. P. responded "sort of" and they both seemed "similar". Inspector K. indicated that Ms. P. appeared to hesitate when the female provided her with the

operator's licence. Ms. P. admitted that she had doubts about whether the picture on the operator's licence matched the female.

Inspector K. spoke by phone with the board approved manager, Mr. W. S., and informed him that a minor purchased liquor at his premises. She advised him that an incident report would be submitted. Inspector K. finished conducting the maintenance inspection and exited the premises.

Mr. W. S.

Mr. S. took over ownership of Towerhill Wines in 2011. He always stresses with his staff the importance of requesting identification from patrons. They have not had any violations in the past four years. The staff member in question, Ms. P., was a new employee; she had only been working at the premises for approximately one month. Mr. S. regrets leaving her alone to work in the store. Mr. S. personally trained Ms. P. at the time she was hired and worked with her during her shifts until he felt she was ready to work on her own.

At the start of each shift, Mr. S. reminds employees to check for identification. Mr. S. closes the store at 10:00 p.m. during the week and at 11:00 p.m. on Friday and Saturday to ensure he does not have any difficulty with problem patrons who come into the store late at night.

Ms. P. did request identification from the female patron but she did not check it carefully enough. Mr. S. is very concerned about ensuring alcohol is not sold to minors. Ms. P.'s only mistake was that she didn't realize the patron was carrying fake identification. Mr. S. requests that the Panel consider reducing the penalty, in light of the circumstances.

Mr. W. S. – cross-examined by Mr. H.

The identification presented by the female patron was legitimate identification but it did not belong to the customer in question. Mr. S. believes Ms. P. received enough training to work on her own. She was working a day shift, which is typically not as busy as an afternoon/evening shift. Mr. S. worked with her during several shifts prior to allowing her to work on her own. Mr. S. was due to arrive at the premises at approximately 4:00 p.m. on March 27, 2015. Ms. P. contacted Mr. S. at approximately 3:00 p.m. and asked him to come to the premises, as an AGLC Inspector wished to speak with him.

They provide verbal training to employees at the time of hire. Staff are instructed to request identification from patrons at the time they enter the premises. During the incident in question, Ms. P. did not request identification from the female patron until she came to the sales counter to purchase the product. The cashier did not intentionally sell liquor to a minor. She did not skip the step of asking for identification. Her only mistake was in not examining the identification carefully enough. Mr. S. now stresses the importance with staff of examining the identification once it is requested to ensure it is valid and belongs to the patron.

Mr. S. has a copy of the Retail Liquor Store Handbook at the premises, which is available for staff. Ms. P. did review the Handbook when she was hired. The applicable policy in the Licensee Handbook states identification must be examined in good lighting to ensure it is a true likeness of the patron. Ms. P. advised Mr. S. she took a quick look at the identification, compared it to the patron and thought it was the same person. Following this incident, Mr. S. advised Ms. P. if she is not 100% sure the identification belongs to the patron, she should request a second piece of identification. Mr. S. does not believe he can stress the importance of requesting identification any more than he already has. When Ms. P. first reviewed the patron's identification, she believed the photo was similar to the patron. Once the Inspector asked her to review the identification again, she became doubtful.

Mr. S. keeps track of the letters received from the AGLC advising of policy changes. The letters are posted in the office and updated as new letters are received. Mr. S. has not requested an AGLC staff training seminar. He only has three staff members and typically hires mature staff.

Mr. W. S. – questioned by the Panel

Mr. S. only owns Towerhill Wines in Okotoks. He works at the store full-time and Mr. D. works five days a week. They have five staff members in total, including Mr. S. and Mr. D.. Mr. D. is not responsible for hiring new staff but he does help with

the training. Mr. S. is primarily responsible for training but they both provide hands on training. Ms. P. is still an employee at the store. She will not be responsible for paying the fine; Mr. S. will pay any fine levied by the Panel. At the time the incident occurred, Ms. P. was upset and offered to pay the fine but it is not Mr. S.'s intention to make her pay any portion of the fine.

Mr. D.

Mr. D. has been involved in the liquor business since 1969 and employed with Towerhill Wines for over 10 years. As long as he has been involved with the store, they have always stressed the importance of requesting identification from patrons. It is one of their number one priorities. They are not disputing the violation occurred, just that the cashier did not catch that the identification was fake. Ms. P. was a new employee and had never worked in a liquor store prior to working for Towerhill Wines. She did the best she could at the time.

IV. Summation

Mr. H.

The AGLC takes the issue of minors having access to liquor very seriously. It is often difficult to tell if a person is of legal age just by looking at them and 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 not in compliance with the legislation and policies are held accountable. Licensees and their staff are required to ask for, receive and examine proof of identification to eliminate a situation where a minor may be sold liquor or permitted to be in a licensed premises that prohibits them.

In this case, the minor, who was 17 years of age, was sold liquor by the licensee's staff member, even though the staff member later admitted to the Inspector that she had doubts whether or not the person providing the identification was indeed the person depicted on that identification. Further, the evidence contained in the incident report clearly indicates that when questioned, the minor could not properly identify the date of birth depicted on the identification. The Inspector asked the minor to provide her date of birth and with one question was able to determine that the patron was a minor. The licensee's staff member could also have asked the patron to provide her date of birth.

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". The CSR Division does not believe the licensee took all reasonable steps, as more could have been done to prevent the contraventions from occurring. Better and ongoing supervision and clear and consistent training of staff are reasonable steps that the licensee could employ.

Ms. P. had only been employed in the liquor industry for a short period of time and was permitted to work on her own unsupervised. The premises was clearly not busy at the time of the inspection and the staff member had more than enough opportunity to properly scrutinize the identification that was presented. The CSR Division believes Ms. P. did not have the proper training or tools provided by the licensee to examine the identification presented by the minor.

It is the opinion of the CSR Division that the licensee was not operating with the due diligence required of a liquor licensee in the Province of Alberta.

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

Mr. S.

Mr. S. only owns one store and it is a small store. The fine is substantial to a small business owner. Mr. S. is unable to offer the same type of training as larger liquor retail stores. He does the best he can to train his staff and following all AGLC rules and policies. This situation has caused him a great deal of frustration. He has improved and increased his training following this incident. He hopes the Panel will understand his situation and consider reducing the penalty. He appreciates the importance of requesting identification and ensuring minors are not sold liquor. Only one new staff member did not catch that the identification presented did not belong to the patron in question; it was one mistake. They did not intentionally provide liquor to a minor.

V. Finding

The Panel makes a finding of a violation of Section 75 *Gaming and Liquor Act*: Sell, give, or permit a person to sell or give, liquor to a minor in a licensed premises.

The licensee acknowledged the incident occurred and did not dispute the facts contained in the incident report. The Panel does find some due diligence was exercised by the licensee. The licensee presented evidence that staff are provided with training and are reminded repeatedly to request identification from any patron who appears to be under 25 years of age. However, the Panel finds the licensee did not take all reasonable steps necessary to prevent the incident in question from occurring. The Panel is of the opinion the licensee's training should be improved to ensure staff not only request identification from patrons but examine the identification closely to ensure it is valid identification which belongs to the patron.

Although the Panel finds there was a violation of Section 75 of the *Gaming and Liquor Act*, the Panel understands that the employee in question was a new employee and she did request identification from the patron, although she did not carefully compare the picture on the identification to the patron. The patron was not only deceitful with the employee about her identity but she also initially attempted to deceive the AGLC Inspector.

VI. Penalty

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following reduced penalty for a violation of Section 75 *Gaming and Liquor Act*:

Penalty: A \$1000 fine - **OR** - a 4 day suspension of Class D liquor licence 771197-1. The fine is to be paid within 4 months of the date of this decision or on or before Monday, November 9, 2015 or the suspension served commencing Friday, November 13, 2015 and continuing until the close of business on Monday, November 16, 2015.

The Panel encourages the licensee to request an AGLC staff training seminar.

Signed at St. Albert this 8th day of July, 2015.



W.A. Clark, Hearing Panel Chair