

**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 Rylie's Cattle Barn Cookhouse & Saloon Ltd.
o/a Rylie's Cattle Barn Cookhouse & Saloon
263 – 200 Southridge Drive
Okotoks, Alberta
T1S 0B2**

concerning alleged contraventions

DATE OF HEARING:	June 26, 2015
HEARING PANEL:	Mr. B.C. Shervey, Panel Chair Mr. W.J. Anhorn, QC, Panel Member Mr. W.A. Clark, Panel Member
LICENSEE REPRESENTATIVES:	Mr. R. B., Director/Shareholder Ms. J. B., 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 April 14, 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 Rylie's Cattle Barn Cookhouse & Saloon Ltd. operating as Rylie's Cattle Barn Cookhouse & Saloon, 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 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 April 14, 2015 and various documents pertaining to alleged incidents occurring at the premises on March 13, 2015 and April 10, 2015. Mr. B.

confirmed he received the incident report dated April 14, 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. and Mrs. B. represented Rylie's Cattle Barn Cookhouse & Saloon 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 April 15, 2015

On Friday, March 13, 2015 Agents S. and Br. entered the premises and observed occupancy to be 90% of capacity. "Under 25" signage was not prominently posted within the premises and door control was not in effect. The Agents sat at a table where they were greeted by a female bartender. Agent Br. ordered two bottles of Kokanee. The bartender returned with both bottles of beer. Agent S. paid with a \$20.00 bill and received \$10.50 in change. At no time were the Agents asked for proof of age. The Agents then exited the premises.

On Friday, April 10, 2015 Agents R. and Br. entered the premises and observed occupancy to be 70% of capacity. "Under 25" signage was not prominently posted within the premises and door control was not in effect. The Agents sat down at the main service bar. A male server, later identified as Brett Judson, greeted the Agents. Agent Br. ordered two bottles of Kokanee. The server returned with both bottles of beer. Agent R. paid with a \$20.00 bill and received \$7.35 in change. At no time were the Agents asked for proof of age. The Agents then exited the premises.

Inspector Ba., together with Agents R. and Br., re-entered the premises. Inspector Ba. identified himself to owner, Mr. B. Inspector Ba. reviewed the incident with Mr. B. and the male server. The server confirmed he had sold liquor to the Agents without requesting their identification. Inspector Ba. asked the server why he did not request their identification and he replied "I thought they were over 18". The server stated he believed Agent Br. to be 18 years of age and Agent R. 19 years of age. The server advised he had been employed at the premises for 7 months and had received training from the licensee in regards to requesting identification weeks prior to the incident. B. stated that he believed Agent Br. appeared to be 18 or 19 years of age and Agent R. to be 18 or 19 years of age.

On Wednesday, April 15, 2015 Inspector Ba. spoke with Mr. B. and confirmed that M. B. was the server in the first audit. Mr. B. confirmed that M. B. is no longer employed at the premises. Mr. B. informed Inspector Ba. he had already addressed the issue with his staff and it will not be happening again in the future.

Mr. B.

Mr. B. acknowledges the incidents in question did occur, as outlined in the incident report. They understand the importance of the Under 25 Program. They wish they had been notified following the first audit, so they could have taken steps to avoid failing a second audit. Following the second audit, they were pleased with the attitude of Inspector Ba. and the information he was able to provide on the Under 25 Program and the changes they could implement to ensure compliance with the policy in the future. If they had been notified following failure of the first audit, they could have addressed the issue with their staff.

They are a small business owner and they stress the importance of requesting identification from all patrons with their staff. They have conducted three staff training sessions since the incidents in question and an AGLC Inspector also took the time to sit down with their staff to explain the U25 policy, in addition to other relevant AGLC policies. All servers are required to ask for identification from anyone who appears to be under 25, regardless of whether they know the patron personally.

Rylie's Cattle Barn Cookhouse & Saloon is a small business and the proposed fine of \$750 is substantial. They have been in operation for 6 years without any issues and have always cooperated with the AGLC. They respect AGLC policies and understand the importance of those policies.

Mr. B. – cross-examined by Mr. H.

They provide training to all staff members at the time they are hired. There are links on the AGLC website available through ProServe, which are reviewed by staff. Every staff member is advised they must request identification from anyone who appears to be under 25, no exceptions. There is also a PowerPoint slide show that each staff member is required to review at the time of hire. The presentation is reviewed in a group setting and there is a question and answer session at the end. Staff members are not required to sign-off after they complete the PowerPoint training.

They received the letter dated November 4, 2013 from the Director of the CSR Division advising of the changes to the Under 25 Program. Mr. B. provides the training for staff members and the training is ongoing. Neither Mr. nor Mrs. B. has completed the required ProServe training, as identified in Section 1.6 of the Licensee Handbook. Mr. B. has SmartServe, which is the Ontario equivalent of ProServe.

The server involved in the March 13, 2015 incident had only been employed at the premises for two weeks; she no longer works at the premises. They must be able to rely on their staff. The other server, Mr. J., is retaking the ProServe course. They have many young staff members and they are required to conduct constant training to remind staff to request identification, regardless of whether the patron is known to them personally.

Mr. B. – questioned by the Panel

They have a total of 28 staff members, including full-time and part-time staff. Some employees only work one shift per week. They are a BBQ house and their food sales account for 55% of their overall business. They have won some great awards in the community for their food. They have 140 seats at the premises. Mr. B. feels they have a very young staff compliment and many lack a sense of responsibility. Following these incidents, requesting identification has become forefront in the minds of all staff.

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. That letter clearly indicated that licensees would not be notified following failure of a first audit and retesting would occur.

During two separate audits conducted at the premises, three Agents were not asked for identification from two different staff members when liquor service was requested and ultimately provided. The licensee's staff were not acting reasonably or within the required care and control on the dates in question. The changes to the Under 25 Program were an attempt to determine if there was a pattern of behavior, should a licensee and or their staff fail a first audit. Thus, retesting at a later date would occur. In view of these changes, the CSR Division believes this gives the licensee an opportunity to prove the systems they have in place work and to show that the failure of the first audit was not indicative or systemic of how that premises operates. Unfortunately, the licensee and his staff members failed two separate audits and the CSR Division would argue that a pattern of behavior has been established. The CSR Division acknowledges and appreciates the licensee has implement changes following these incidents to prevent future incidents from occurring.

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. In addition, the licensee could implement a house policy requiring staff to request identification from all patrons, if the licensee’s staff are having difficulty discerning a patron’s age just by looking at them.

Mr. and Mrs. B. are required to be ProServe certified pursuant to Section 1.6 of the Licensee Handbook and absolutely should have this training, particularly when they are responsible for the training and supervision of their staff. It is apparent to the CSR Division that the training and supervision the licensee had in place at the time of the audits was not functioning as intended or as required.

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

Mr. B.

These incidents have been a huge eye opener for them; they never want to be faced with a situation where they are required to attend another hearing. Mr. B. asked the Panel to consider a reduced penalty, given the circumstances surrounding the nature of their business. Mr. B. can assure the Panel an incident of this nature will never happen again; they have taken proactive steps in that regard.

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 occasions, two separate staff members failed to request identification from the Agents. The licensee acknowledged the incidents occurred and did not dispute the facts contained in the incident report. The Panel believes the servers should have taken the time to request identification.

The Panel does not find due diligence was exercised by the licensee. While the licensee presented evidence that staff is required to review a PowerPoint presentation at the time they are hired and training of staff is provided on an ongoing basis, 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.

However, the Panel was impressed with the sincerity expressed by Mr. B.. It is clear to the Panel the licensee has learned a valuable lesson from these incidents. The Panel commends the licensee on the action that has been taken to ensure incidents of a similar nature do not occur in the future.

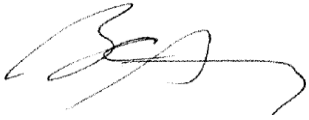
VI. Penalty

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following reduced penalty for a violation of Section 5.5.8 Licensee Handbook:

Penalty: A \$500 fine - **OR** - a 2 day suspension of Class A liquor licence 768721-1. The fine is to be paid within 90 days of the date of this decision or on or before Tuesday, October 6, 2015 or the suspension served commencing Friday, October 9, 2015 and continuing until the close of business on Saturday, October 10, 2015.

Mr. and Mrs. B. must obtain the ProServe certification required pursuant to Section 1.6 of the Licensee Handbook within 60 days of the date of this decision or on or before Tuesday, September 8, 2015.

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

A handwritten signature in black ink, appearing to be 'B.C. Shervey', written in a cursive style.

B.C. Shervey, Hearing Panel Chair