

**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 Northland Properties Corporation
o/a Sandman Hotel
421 Mayor Magrath Drive South
Lethbridge, Alberta
T1J 3L8**

concerning alleged contraventions

DATE OF HEARING:	June 25, 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. N., District Manager Mr. S., Regional Manager Mr. Y., Area Manager
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 January 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 Northland Properties Corporation operating as Sandman Hotel, Lethbridge.

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 January 30, 2015 and various documents pertaining to alleged incidents occurring at the premises on January 6 and 7, 2015. Mr. N. confirmed

the licensee received the incident report dated January 30, 2015 and Notice of Hearing dated April 27, 2015. 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. N., Mr. S. and Mr. Y. represented Northland Properties Corporation.

II. The Issue

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

III. Evidence

Agent G. – evidence led by Mr. H.

Agent G. is an Agent with the AGLC Under 25 Program in Lethbridge. He conducted an audit of the Sandman Hotel in Lethbridge on January 6, 2015. He was approached by a female staff member and ordered one bottle of Molson Canadian beer. The female staff member returned with the beer and he paid for the drink with \$10.00 and received \$4.00 in change. The premises was not busy at the time; Agent G. noticed two patrons, not including him, and one female staff member. The server did not appear busy or distracted at the time Agent G. ordered and was served the beer. The server did not provide Agent G. with a receipt for the beer. Agent G. departed the premises approximately 10 minutes after his arrival.

At no time was Agent G. asked for identification by the female server. Agent G. was 22 years of age at the time the audit was conducted. Prior to January 6, 2015, Agent G. had never attended the premises for personal or professional reasons.

Upon conclusion of the second audit on January 7, 2015, the bar manager identified the server from January 6, 2015 as Ms. C. O..

Agent G. – cross-examined by Mr. N.

Agent G. was clean shaven at the time he attended the premises on January 6, 2015; he shaves prior to the start of every shift. He did not ask the female server for a receipt. The purpose of the audit was to remain anonymous, so he paid for the beer and departed the premises without asking for a receipt.

Agent G. – questioned by the Panel

Agent G. was wearing blue jeans, a sweater and a jacket at the time of the audit. There was no garment or headwear covering his face or head.

Agent R. – evidence led by Mr. H.

Agent R. is an Agent with the AGLC Under 25 Program in Lethbridge. He conducted an audit of the Sandman Hotel in Lethbridge on January 7, 2015. He entered the premises and sat alone at the bar. He was approached by a female staff member and ordered one bottle of Molson Canadian beer. The female staff member returned with the beer and he paid for the drink with \$20.00 and received \$14.50 in change. The premises was not busy at the time; Agent R. noticed two patrons and one female staff member. The server did not appear busy or distracted at the time Agent R. ordered and was served the beer.

At no time was Agent R. asked for identification by the female server. Agent R. sent a message to Inspector W. via Blackberry Messenger advising that identification had not been requested. Agent W. attended the premises, together with Agent G.. The server advised Inspector W. that Agent R. appeared to be 20 years of age; which was his age at the time of the audit. She indicated normally she would have requested identification from him.

Prior to January 6, 2015, Agent G. had never attended the premises for personal or professional reasons.

Agent R. – cross-examined by Mr. N.

The female server stated to Inspector W. “I should have ID’d him...he looked old enough...normally I would have.”

Inspector W. – evidence led by Mr. H.

Inspector W. is an Inspector with the AGLC in the Lethbridge office. He is the supervisor of the Lethbridge Under 25 Program. There was no particular reason for attending the Sandman Hotel to conduct audits on January 6 and 7, 2015; it was a random audit. Photographs of Agents G. and R. were taken prior to commencement of their shifts. Copies of the photographs were provided the Panel and representatives of the licensee by the CSR Division for their review.

On January 7, 2015, after Agent R. notified him that a second audit had been failed, Inspector W. entered the premises and conducted an interview with the server on duty at the time, Ms. M. K.. The premises is a minors prohibited premises. Therefore, the Agents’ identification should have been requested upon entry to the premises. Ms. K. advised Inspector W. that Agent R. appeared to be 20 years of age. Inspector W. asked why she did not request his identification and she replied “I should have ID’d him...he looked old enough...normally I would have”.

The server advised Inspector W. she did not receive any training from her employer with respect to requesting identification. The server identified the server in question from the audit conducted on January 6, 2015 as Ms. O..

Inspector W. – cross-examined by Mr. N.

Inspector W. asked Ms. K. if she was aware of the Under 25 Program and she indicated she was. Ms. K. advised Inspector W. that Agent R. “looked old enough”. Agent R. identified himself as being 20 years of age following the second audit.

Sandman Hotel – evidence provided by Mr. N.

When the U25 policy was introduced by the AGLC, they made sure all the servers at all bar locations in the province were made aware of the policy. The letter from the Director of the CSR Division was originally signed by all the servers. Following the incidents in question, both servers were asked by management if they were aware of the U25 policy and the answer was “yes”.

The bar supervisor was unable to attend the hearing today and Ms. O. could not get the day off from her other job. Ms. K. is no longer employed at the premises. Mr. N. provided the Panel with written statements from both Ms. O. and Ms. K.. The statements were entered into evidence by Mr. N. as Exhibit 2. In their statements, both servers indicate they believed the Agents to be over 25 years of age. It could have been because the Agents were wearing winter clothing and looked bigger. Ms. K. mentioned at the time she was interviewed by Inspector W. that Agent R. told her he was 20 years of age. She again mentioned at the time of the interview that when she served Agent R. the beer, she did not believe he was under 25 and that is why she did not request identification from him.

The U25 policy is based on perception and perception can vary from person to person. Mr. N. wishes to emphasize that Sandman Hotel respects all AGLC policies and does everything they can to make sure that they are in compliance in each of their premises. In this case, it appears as though the servers’ perception of the Agents’ age was incorrect. However, at no point in time would Sandman Hotel condone any practices that were against the law or policy. All employees receive training at the time of hire and are expected to follow all policies and procedures.

Sandman Hotel – cross-examined by Mr. H.

Mr. N., Mr. S. nor Mr. Y. was at the premises at the time the audits were conducted; the restaurant manager was in charge. Ms. K. was the bar supervisor on January 7, 2015. Mr. N. is in the premises approximately one or two times per month. They have taken measures to ensure staff following their instructions when they are not at the premises. Any policy introduced by the AGLC is provided to all staff members in the province through the general manager at each location. The general manager ensures the policy is signed by each employee to indicate they understand the policy. If required, Sandman Hotel has copies of the U25 policies signed by Ms. O. and Ms. K..

They are aware of the letter from the Director of the CSR Division dated November 4, 2013. It would have been received at their head office in Vancouver. Any AGLC policies that are received at head office are then copied onto Sandman letterhead and forwarded to each location.

The general manager of each location is responsible for the training of staff. Staff meetings are held once per month at this premises. Sandman Hotel provides staff with online training and also has a supervisor provide hands on training at the time of hire. All servers are required to have valid ProServe certification. The servers complete the online training before they begin serving on their own. They review the training on their own and then it is discussed with the server by a manager or supervisor to ensure the training has been understood. Employees are not required to sign-off to indicate they have completed the online training. However, the training system will show if a server failed to complete the online training.

Both servers in question advised that they believed the Agents were over 25 years of age and they have to trust their employees. Ms. K. never said Agent R. appeared to be 20 years of age, she indicated he appeared to be "old enough". Only Agent R. advised of his age following conclusion of the audit. Ms. K. advised she would normally have requested identification, she did not say he appeared to be 20 years old.

They have not requested an AGLC staff training seminar at the premises. All employees are ProServe certified so they don't feel a staff training seminar is necessary. They revisited the Under 25 policy with all the servers at the premises following these incidents. They have again asked them to confirm they understand the policy. Both servers in question were appropriately disciplined to show the other employees how serious management took the incidents.

Sandman Hotel – questioned by the Panel

The online training is customized to reflect Sandman company policies. Any policies received from the AGLC are communicated separately from the online training. The online training does not specifically address the U25 requirements in Alberta, for example.

The portion of the premises in question is located in the lobby of the Sandman Hotel in Lethbridge. The employees who work in the bar are hired separately from the hotel staff. The bar manager reports to Mr. N..

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 the U25 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. This letter would have been mailed directly to the premises at 421 Mayor Magrath Drive South, Lethbridge, as that is the address indicated on the licensing records for this premises.

During two separate audits conducted at the premises, the Agents, who were 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. It is the opinion of the CSR Division, the photographs which were provided to the Panel and were taken at the time of the audits, clearly show that the Agents were youthful in appearance and should have had their identification requested by the licensee's staff members.

The licensee representatives have come before the Panel to argue that the staff felt the Agents appeared to be over 25 years of age and were therefore not in violation of the policy. The CSR Division respectfully disagrees with this assertion, as both

Agent R. and Inspector W. advised the Panel that Ms. K. indicated Agent R. appeared to be 20 years of age and that she should have requested his identification.

The licensee's staff was not acting reasonably or with the required care and control on the dates in question. Changes to the Under 25 Program, as noted in the letter November 4, 2013 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.

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". In the opinion of the CSR Division, the licensee has not provided any substantial evidence to show that they have taken all reasonable steps to prevent the violations from occurring. More could have been done to prevent the policy from being contravened, such as better and ongoing supervision and clear and consistent training of staff. The licensee could also employ house policy requiring staff to request identification of all patrons, if the licensee's staff members are having difficulty discerning a person's age just be looking at them.

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

Mr. N.

Mr. N. believes they took reasonable precautions and communicated the relevant policies to their staff members. At the time of the audit when the servers were asked if they were aware of the policy, they both indicated they were. Both servers perceived the Agents to be over 25 years of age and therefore did not request identification from them. At no time did Ms. K. state Agent R. appeared to be 20 years of age, she simply advised he looked old enough and normally she would have requested identification from him.

They have taken steps to correct the issue and prevent further incidents; they take the issue very seriously. They will consider implementing a policy that requires servers to request identification from all patrons.

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 premises was not busy at the time of either audit and the Panel believes the servers should have taken the time to request identification, particularly in light of the Agents' youthful appearance.

While the licensee presented evidence that staff are required to complete online training at the time they are hired and review AGLC policies as they are received from head office, 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/process which is specific to Alberta and taking advantage of an AGLC staff training seminar.

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 5.5.8 Licensee Handbook:

Penalty: A \$750 fine - **OR** - a 3 day suspension of Class A liquor licence 603022-4. The fine is to be paid within 60 days of the date of this decision or on or before Tuesday, September 8, 2015 or the suspension served commencing Friday, September 11, 2015 and continuing until the close of business on Sunday, September 13, 2015.

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

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

B.C. Shervey, Hearing Panel Chair