

**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

**768183 Alberta Ltd.
o/a Uncle Glenn's Eatery & Sports Pub
7666 – 156 Street NW
Edmonton, AB T5R 4K7**

concerning alleged contraventions

DATE OF HEARING:	November 25, 2015
HEARING PANEL:	Mr. W.A. Clark, Panel Chair Ms. S.L. Green, Panel Member Mr. J.P. Hansen, Panel Member
LICENSEE REPRESENTATIVE:	Mr. J., Board Approved 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 September 10, 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 768183 Alberta Ltd. operating as Uncle Glenn's Eatery & Sports Pub, Edmonton.

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:

- 1. Section 68(5), *Gaming and Liquor Regulation*: Mixing liquor from one container with another brand of liquor from another container.**

The Licensee and the Hearing Panel were provided with a hearing file containing the incident report dated September 10, 2015 and various documents pertaining to alleged incidents occurring on March 25, 2015 and June 4, 2015. Mr. H. presented the case on behalf of the CSR Division. Mr. J. represented 768183 Alberta Ltd.

Mr. J. confirmed he received the Notice of Hearing dated October 29, 2015. The incident report and hearing file were entered into evidence by the CSR Division as Exhibit 1.

II. The Issue

Did the Licensee:

- Mix liquor from one container with another brand of liquor from another container?

III. Evidence

Inspector W. T. – evidence led by Mr. H.

Inspector T. has been an Inspector with the AGLC in the St. Albert office for approximately 18 months. Inspector T. conducted an assigned, follow-up maintenance inspection of the premises known as Uncle Glenn's Eatery & Sports Pub on June 4, 2015 with Inspector C.. There was a previous inspection conducted by Inspector W. on March 25, 2015 which was incomplete due to an incident that occurred between Inspector W. and Mr. J.. The maintenance inspection was re-assigned to Inspectors T. and C. to complete. There was an issue regarding an anonymous complaint regarding filling bottles with cheaper brands of liquor, and Inspectors T. and C. were told if the worn bottles were present, as part of the maintenance inspection they were to seize that liquor for analysis to confirm or nullify the complaint.

When Inspector T. entered the premises, a female staff member contacted Mr. J. who arrived shortly thereafter. The Inspectors identified themselves and advised of the purpose of their visit.

Upon inspection of the premises, four full bottles of liquor which appeared quite worn were located in the well behind the service bar in view of staff and customers. These included one bottle each of Smirnoff Vodka (1.14 litres), Captain Morgan's White Rum (1.14 litres), Royal Reserve Rye Whiskey (1.14 litres) and Lamb's Navy Rum. The fact those bottles appeared quite worn would be inconsistent with a bottle that should be full, so that liquor was seized for analysis. During that inspection, Inspector T. also followed up with other maintenance issues, including completion of a portion of the annual maintenance checklist.

Throughout the inspection, Mr. J. was very agitated, hostile and uncooperative with the Inspectors. Inspector T. advised he was seizing the liquor, and Mr. J. was very irate, telling Inspector T. to stand in the corner. Inspector T. continued to explain why they were there and what they were doing, and Mr. J. would not speak to him. Mr. J. chose only to speak with Inspector C. and, as a result, all conversation was required to go solely through Inspector C..

When the four bottles were seized, seal numbers were affixed, the bottles were taken into AGLC custody and secured in the AGLC office. On June 9, 2015 they were sent by courier from the AGLC mail room to the Liquor Control Board of Ontario (LCBO) Quality Assurance Laboratory for analysis. On August 24, 2015 the results were received from that laboratory confirming the bottle of Smirnoff Vodka and the bottle of Captain Morgan's White Rum were not the products they purported to be. The Certificates of Analysis together with graphs from the LCBO Quality Assurance Laboratory are included in the hearing package. The Certificates of Analysis do not describe the products tested; however, they do say they are not Smirnoff Vodka and Captain Morgan's White Rum. Based on the same analysis, the remaining two bottles seized, being Lamb's Navy Rum and Royal Reserve were what they were purported to be. The LCBO Quality Assurance Laboratory reports were given to Inspector W., who was the initial person to deal with the anonymous complaint, and he was advised by that laboratory the complaint was valid.

Inspector T. maintains he remained completely professional throughout the inspection. He did not raise his voice, despite the fact he was being yelled at during the entire inspection. Inspector T. advised that Mr. J.'s initial advice that he takes 1.75 liter bottles and refills the used 1.14 liter bottles due to storage issues was reasonable at the time, given the size of the bar.

Inspector T. confirmed he is trained to deal with Board Approved Managers regarding issues in premises and, in this case, Mr. J. is the Board Approved Manager of Uncle Glenn's Eatery & Sports Pub.

Inspector T. – cross-examined by Mr. J.

It was agreed after the first inspection on March 25, 2015, there was a period of 10 weeks until the follow-up investigation on June 4, 2015. Discussion followed regarding the graphs provided by LCBO Quality Assurance Laboratory, which is an accredited laboratory under the Laboratory Accreditation Bureau. It was determined it is the Certificates of Analysis provided by that same lab that clearly confirm the liquor provided to them is not what it was purported to be.

Inspector T. – questioned by the Panel

The LCBO Quality Assurance Laboratory is the most recognized lab in Canada and it is utilized on a regular basis by the AGLC in similar situations.

The purpose of the inspection on June 4, 2015 was to conclude the March 25, 2015 maintenance inspection which was not previously completed due to the interaction between Inspector W. and Mr. J., as well as to seize any liquor which appeared to be questionable.

Inspector W. – evidence led by Mr. H.

Inspector W. has been an Inspector with the AGLC in the St. Albert office for approximately 9 years. On March 25, 2015 Inspector W. conducted an original maintenance inspection of Uncle Glenn's Eatery & Sports Pub. An anonymous complaint was received stating the Licensee routinely fills the premium brand liquor bottles in the service well with a cheaper brand of liquor. The supervisor for Inspector W. advised that since the Licensee was due for a yearly routine inspection at any rate, an inspection was scheduled.

When Inspector W. entered the premises, the Licensee, who is the Board Approved Manager, was seated at the north side of the bar. The Inspector identified himself with his badge and identification card and advised he was there to conduct a routine inspection, not wanting to compromise the inspection by advising of the anonymous complaint as directed by his supervisor. From the time he identified himself, the Inspector was not well received by the Licensee. Inspector W. attempted to complete his inspection checklist which included such things as licensing, smart training requirements and physical checks on the liquor. While trying to explain this to the Licensee, Inspector W. was sworn at several times and personally insulted. Inspector W. advised the Licensee on several occasions he was trying to be professional and just trying to get his job done, offering to show the Licensee the checklist and offering to let him make a copy. Each time the Inspector asked the Licensee a question, it was not well received and he was sworn at, and at one point the Licensee said he would make the Inspector leave. Inspector W. advised the Licensee several times that, because he had the routine checklist to complete, if the Licensee continued not to cooperate it could be seen as obstruction of the Inspector's duties.

Inspector W. then examined the bottles behind the liquor service bar. When the liquor was checked a refractometer test was done to check proper liquor content and ensure the liquor was not watered down or compromised. A refractometer test does not reveal a significant brand result. The test did not show that the liquor in the establishment had been watered down; however, the Inspector noticed a bottle of Captain Morgan's White Rum in the service well that was completely full yet in very poor condition; the label was worn and the bottle scratched. The Inspector picked up the bottle and asked the Licensee, "What's with this bottle?" The Licensee began to swear again and at that point said, "Maybe I should just make you leave." The Inspector emphasized once again his need to do the inspection and to complete his report. However, based on the reaction he was receiving, and in an attempt to avoid further conflict, the Inspector concluded the inspection prior to completion. Inspector W. advised that in his nine years of experience as an Inspector this was the worst interaction he had ever had with a licensee.

Inspector W. was sent in by his supervisor to do a routine maintenance to see if there was any validity to the anonymous complaint and, based on the information he received and the response he received from the Licensee, he felt he had enough information to go back and discuss it with his supervisor. He did not see the point of remaining further to engage in conflict so he exited the premises.

Once the June 4, 2015 follow-up by the other two Inspectors was concluded, Inspector W. was tasked with contacting the Licensee by telephone to advise him that an Incident Report would be submitted. Inspector W. advised the Licensee that the results had come back and the analysis showed two of the bottles did not contain the product displayed on the bottle labels. The Licensee responded that, regarding the bottle of Smirnoff, one of the staff members would have filled it with a different bottle, not thinking it mattered. The Licensee further advised he may have filled the Captain Morgan's White Rum with a different brand, but he did not do it to mislead his customers. As far as any penalties, his exact quote was he "would have to bite the bullet" with whatever AGLC does regarding disciplinary action, and he had already advised his staff to no longer fill

the premium liquor bottles with cheaper brands of liquor. This conversation was documented by Inspector W. as the Licensee was speaking on the telephone.

Inspector W. advised he is always professional when dealing with licensees and takes pride in the relationship he has with them. He does inspections during the day as well as during the evening. If he is in a bar at night, he wants to know he has a good rapport with a licensee because if anything was to happen he would want to know they have each other's backs.

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

Inspector W. acknowledged his checklist was completed during his initial inspection.

Inspector W. – re-direct by Mr. H.

Inspector W. clarified that, while his checklist was completed, there were in fact follow-up issues following his inspection. For instance, during the March 25, 2015 inspection, the current licence was not posted on the wall. As well, on March 25, 2015 when the Licensee was questioned regarding Reel Facts Training, he was not able to produce his Reel Facts card and his response was, "I have been doing this for 28 years, I don't need f'ing Reel Facts." At that point he discussed the results with his supervisor who, because of the interaction that Inspector W. had with the Licensee, chose to assign another Inspector to conduct the follow-up. It should also be noted that at 8:00 a.m. following the first inspection, the Licensee called the AGLC to acknowledge his actions towards Inspector W. and to apologize.

Inspector W. – questioned by the Panel

Inspector W. was directed by his supervisor to conduct the inspection, gather information, see if there was any validity to the complaint of refilling bottles, and report back to the supervisor who would then decide further action. Based on the reaction and attitude of the Licensee, if the Inspector had seized the liquor at the point of the initial inspection, there would have been a confrontation and the Inspector wanted to avoid that.

During his initial inspection, Inspector W. did consider obstruction charges. The Inspector warned the Licensee several times throughout the inspection that hindering his inspection could be seen as obstruction. However, because Inspector W. was able to work through the checklist, his supervisor did not choose to proceed with an obstruction violation.

It is not a violation under AGLC policies to pour product from one bottle into another bottle, provided it is exactly the same product. Pouring a cheaper brand from a brand name bottle is misleading to the customer. The fact that a label was worn, indicating the bottle had been around for a while, doesn't necessarily imply anything untoward. However, because the bottle was extremely worn and completely full, it was eventually seized by the other Inspectors to be sent for analysis.

At the end of the March 25, 2015 incident, Mr. J. indicated to Inspector W. he had advised staff to no longer fill premium bottles with lower cost product.

Mr. J.

Mr. J. feels there was too much evidence by the CSR Division put on Mr. J.'s apparent demeanor as opposed to what actually happened. Based on the LCBO Quality Assurance Laboratory analysis, there is no way of proving what quantity of which liquor is contained in the bottles that were tested. Mr. J. insisted that in his 29 years of work in that bar, he has never poured a cheaper brand of alcohol in a more expensive bottle and tried to pass it off. It is not his practice and it is not right.

Uncle Glenn's Eatery & Sports Pub is a small bar. Because of the storage issues, Mr. J. bought the 60 oz. bottles which do not fit in the well. The employees wipe the bottles to keep them clean as per the health inspectors' requests. The bartender fills the bottle at the end or beginning of every shift so the bottles are full. If a 60 oz. bottle of a certain brand that he normally buys is not available, Mr. J. purchases the same product but in a different brand. It has always been his practice, and his employees have always been instructed, not to mix the alcohol with another brand. If a bottle ran out on a busy night and the employees needed to refill and took the next bar brand, they would not be conscious that they are mixing a brand. They are mixing a bar brand with a bar brand. There are no cheaper brands than the bar brands, and anything that is in the well is a bar brand. Anything that gets poured out of that well is charged as a bar brand.

Mr. J. advised he has run his business for 29 years without being in any trouble and he follows the rules. It is a struggle running a little bar and he works hard doing all of the jobs without another manager. He fails to see the problem with filling bottles. He is now buying just the 40 oz. bottles that fit in the well. This creates a storage issue but he does not want this problem again. He tries to control what is happening in his bar by watching the video cameras from home when he is not there, and he tries to do the best job that he can.

Mr. J. – cross-examined by Mr. H.

Mr. J. provided four signed Statutory Declarations from all the staff that were employed at the time and are still employed at Uncle Glenn's, which are self-explanatory. He also provided a sworn statement with respect to how he feels about the situation.

The four signed Statutory Declarations were entered into evidence by Mr. J. as Exhibit 2. The signed statement of Glenn J. was entered into evidence by Mr. J. as Exhibit 3.

Mr. J. has a copy of the Licensee Handbook which he keeps at the premises behind the bar. He advised all of his staff have reviewed it and, upon hire, each employee sits with Mr. J. and goes through the rules. They are shown where all the handbooks are; they are shown the files for alcohol-related incidents according to the insurance company's rules, etc. Included in that incident handbook are all the copies of the Pro Serve and Reel Facts information for every staff member hired. Each employee's name is listed with when their Reel Facts and Pro Serves expire, when they received them, etc. It is all on file behind the bar and all of the licenses are all on the wall where they always have been.

Discussion ensued regarding Mr. J.'s position that it has always been his policy to instruct staff never to mix brands vs. Mr. H.'s position that Mr. J.'s testimony today revealed he was not aware of mixing brands until he actually read the policy himself.

Mr. J. stated the testimony of Inspector W., wherein the Inspector indicated Mr. J. said he may have put a different brand of rum into a bottle, is false because he has not worked behind the bar in years and he does not fill bottles. On March 25, 2015 the employee working behind the bar was either I. or L. It is Mr. J.'s position that a bar brand is a bar brand, but he does not purposely mix bar brands. Further, a Smirnoff bottle should not have been in the well in the first place, because it belongs on the back bar because it is sold at a higher price. If it was one of the employees who placed that bottle in the well, the only explanation is they saw a bottle was wearing out from washing and they thought it looked better to have a proper bottle that did not have a worn label. Mr. J. also advised that that bottle would never have been poured as a Smirnoff, it would have been poured as a bar vodka because he assuming that is what was in there.

Discussion arose regarding the matter of the anonymous public complaint that the Licensee was routinely having staff fill empty bottles of liquor with cheaper brands, and how someone from the public could have observed this if it was a one-time occurrence. Mr. J. stated it is his position that it may have been the result of a dissatisfied former employee.

An AGLC staff training seminar has never been requested because all of the staff works more than one job and it is difficult to schedule a mutually convenient training session.

Mr. J. – questioned by Panel

Mr. J. is unaware of how many times a year the AGLC conducts inspections in his premises. He is confident he is never purposefully doing anything wrong and, if someone does find something wrong, he corrects it.

Mr. H. – questioned by Panel

There is no evidence the bar brands were sold at a premium price. The focus of the issue is that the bottle indicates a particular type of brand and the policy is very clear it must contain the identical brand and type of liquor. The bottle itself is advertising the brand. The price point is irrelevant in this issue.

Mr. J.

Mr. J. discussed the fact his premium bottles from the back bar were not checked to see if cheaper alcohol was mixed in to those, and the Panel reiterated that you want to make sure that the right kind of liquor is in the right kind of bottle.

Mr. H. – questioned by Panel

The anonymous complaint suggested that more expensive brands were being replaced by cheaper brands. The evidence showed the product in two of the bottles after analysis did not match their labels, but not whether it was in fact a cheaper brand.

IV. Summation

Mr. H.

The matter in question is a contravention of Section 68.5 of the *Gaming and Liquor Regulation*, mixing liquor from one container with liquor from another container. The evidence as outlined by Inspectors T. and W. is clear, as a result of a public complaint that this premises was pouring cheaper brands of liquor into the containers to make the appearance that more expensive liquor was being used. The premises was inspected and it was noted there were four liquor bottles in the liquor service area, specifically the well area, as the public complainant indicated. These bottles were full of liquor yet the bottles seemed very worn and old. These bottles were seized and sent to the LCBO Quality Assurance Laboratory for analysis. The analysis later received from that lab indicated the specific brands of Smirnoff Vodka and Captain Morgan's White Rum were not what they purported to be, and they did not match the reference samples on file with their lab. In other words, the liquor contained in those two bottles was not Smirnoff Vodka or Captain Morgan's White Rum as the bottles themselves were indicating.

Based on the Inspectors' evidence, during these two inspections of the premises the Board Approved Manager's attitude towards the Inspectors was quite telling as far as the CSR Division is concerned. The comments made by Mr. J. during these two inspections seemed to show that Mr. J. did not want the Inspectors present in his premises, particularly when these four bottles became the focus of the Inspectors' attention. Even though the demeanor towards the Inspectors was less than what would be considered required of a Board Approved Manager, the Inspectors were able to identify these bottles and confirm they were being mixed with other liquor, other than what was indicated on these bottles, which is exactly as the public complainant advised the CSR Division.

The Licensee has come before the Panel, and initially stated this incident had never happened and the Inspectors are wrong, and by the same token he is saying this was a simple error and he just learned of this one particular policy that he could not refill the bottle as an identical product. He was not aware he had to replace a specific brand with identical same brand and product. If this was a staffing error, as the Inspectors advised the Panel that Mr. J. had stated, even advising Inspector W. he may have filled the Captain Morgan's himself but he did not do it to mislead customers, it is the opinion of the CSR Division that this appears contrary compared to the fact the public complainant stated exactly this, and it was later confirmed by the Inspectors.

Mr. J. has not provided any evidence to suggest he has taken all reasonable steps as he is required to do to ensure that this did not happen. A proper understanding of the policies themselves would have helped to alleviate this issue.

Mr. J. has provided Statutory Declarations from his staff which seem to contradict the evidence he provided. They specifically state they were instructed, yet he later stated he didn't even know about the policy. The CSR Division questions how he instructed them if he was not aware of the policy. Mr. J. did not bring any of his staff members before the Panel today to properly question and cross-examine them, and to get a better understanding of their training in these matters and what the Licensee has provided them with as guidance with respect to these conditions and requirements. The CSR Division would suggest to the Panel these documents have no weight for that reason.

If this was a simple staffing error as Mr. J. previously indicated to the Inspectors, and as they have testified to, he would not himself have mixed Captain Morgan's White Rum and this public complainant would never have known this to have taken place. It appears more prevalent that this was a common practice, either by design or by ignorance, as the Licensee is purporting it to be.

This section of the legislation and the AGLC policies that support it are of the utmost importance in having liquor activities conducted in this province with integrity. A patron should be able to have the confidence when they are in a licensed premises, that the liquor advertised and provided to them is a product they have ordered and ultimately paid for. It is

apparent this Licensee and his staff did not exercise the due diligence required, or take the time to properly review the legislation and policies with respect to these matters. Based on this, the CSR Division believes that the breach of the legislation did occur and recommends at a minimum the original administrative sanction previously offered by the CSR Division be upheld.

Mr. J.

There are no cheaper brands than bar brands, and bar brands are all the same price. A bar brand is a bar brand. Mr. J. has done the training for his staff and he can only do so much. He has spoken to each of his employees again individually and as a group. He assures that nothing was done to deceive anyone. He asks that the decision of the Panel be reasonable and compassionate. He feels there was too much evidence by the CSR Division put on his apparent demeanor at the time. Mr. J. explained the first situation and why he was in that state, and he apologized at 8:00 a.m. the next day. Mr. J. believed he could have handled the situation a lot better, and he made a point of making sure he apologized. The reason why the second visit took 10 weeks to happen, and why the CSR Division didn't seize the liquor immediately during the first inspection, is unknown to him.

Mr. J. also believes, in speaking with his staff member that was present the night when they came back for the second visit, that the Inspectors came in with one thing in mind because they didn't do any other inspections. All they were interested in was the liquor storage and those four bottles of alcohol. Mr. J. has called to ask if he can get the liquor back and he cannot, and he views that as a loss.

He did not bring any staff members in order to save the Panel some time. He recognizes the seriousness of the matter; however, he didn't want to ask his staff to take time off because he would have had to pay them and he cannot afford that.

Mr. J. appealed to Panel that, once a decision is made and due to the personality conflict he had with the two Inspectors, those Inspectors not be allowed to return to his premises. He does not want any repercussions or personality conflicts happening again.

Mr. J. also inquired as to the proposed fine. It is a first offence and the AGLC sent him two pages of fines and first occurrences, etc., but not one of them pertains to what happened in this incident, so he is unsure as to how the CSR Division arrived at the proposed penalty. He suggested a caution to ensure it does not happen again. As well, in the penalty, it states the proposed four-day penalty would commence on a Friday and Saturday. Because he would lose more than \$1000, he would prefer to pay the fine. He can guarantee he has taken all precautions and has always abided by the AGLC policies. At no time would he jeopardize his liquor licence on purpose, nor would he keep a staff member employed that would do anything on purpose to jeopardize his liquor licence. All he can do is keep doing what he is doing and he feels he has done a pretty good job for 29 years.

V. Finding

The Panel makes a finding of a violation of Section 68(5), *Gaming and Liquor Regulation*: Mixing liquor from one container with another brand of liquor from another container.

The Panel found nothing to refute the Inspectors' evidence and the Panel accepts the information contained in the Certificates of Analysis provided by the LCBO Quality Assurance Laboratory, as that lab is accredited and has been used on several occasions by the AGLC.

The complaint was that of changing liquor from a bottle in the well behind the service bar. The Licensee admitted to refilling the bottles and having the bottles refilled by staff, and it was proven by the LCBO Quality Assurance Laboratory that two bottles were refilled with a different brand of liquor than indicated on the labels. Further, the Licensee commented that "a bar brand is a bar brand"; however, a Smirnoff bottle, such as the one used in the well, is not typically considered a bar brand. The results of the LCBO Quality Assurance Laboratory testing did not indicate whether the brands were in fact cheaper than those advertised on the labels of the bottles.

The Panel's reading of evidence of the inspection was that the Inspectors handled their jobs professionally. The Panel cannot say the same thing about the Licensee, in that he was uncooperative and his interaction with two different Inspectors led to controversy during two separate inspections. Each time, the behavior of the Licensee could easily be construed as

obstructing an investigation. This entire incident would likely have been resolved simply and without citation if Mr. J. had not been obstructionist with the Inspectors.

VI. Penalty

In accordance with Section 91(2), *Gaming and Liquor Act*, the Panel imposes the following penalty for a violation of Section 68(5), *Gaming and Liquor Regulation*:

Penalty: A \$1000 fine - **OR** - a 4 day suspension of Class A liquor licence 685410-3. The fine is to be paid within 3 months of the date of this decision or on or before Thursday, March 10, 2016 or the suspension served commencing Friday, March 11, 2016 and continuing until the close of business on Monday, March 14, 2016.

The Panel recommends the Licensee arrange for an AGLC staff training seminar and conduct a regular review of the Licensee Handbook.

Signed at St. Albert this 10th day of December, 2015.



W.A. Clark, Hearing Panel Chair