

**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

**5 Vines Wine and Spirits Ltd.
o/a 5 Vines Wine Craft Beer & Spirits
218 - 12 Avenue SE
Calgary, Alberta
T2G 1G9**

concerning alleged contraventions

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| DATE OF HEARING: | November 30, 2017 |
| HEARING PANEL: | Mr. B. Krizan, Panel Chair Ms. P. Grier, Panel Member |
| LICENSEE REPRESENTATIVES: | Mr. J. P., Board Approved Manager |
| REGULATORY SERVICES DIVISION: | Ms. P. N., Hearing Officer |

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an incident report dated August 30, 2017, the Regulatory Services 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 5 Vines Wine and Spirits Ltd., operating as 5 Vines Wine Craft Beer & Spirits (the Licensee).

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 contravention:

Section 4.4.4 Retail Liquor Store 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 August 30, 2017 and various documents pertaining to alleged incidents occurring on July 14 and August 24, 2017. Mr. P.

confirmed he received the incident report and Amended Notice of Hearing dated November 17, 2017. The incident report and hearing file were collectively entered into evidence by the Regulatory Services Division as Exhibit #1. As well, photographs of the under 25 agents involved in the incidents were presented to the Panel for review.

Ms. N. presented the case on behalf of the Regulatory Services Division. Mr. P. represented the Licensee. At the outset of the hearing, Mr. P. confirmed the Licensee admitted the facts contained in the incident report but wished to speak to the penalty.

II. The Issue

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

III. Evidence

Regulatory Services Division – excerpted from the Incident Report dated August 30, 2017

On Friday, July 14, 2017 at 21:14 hours, Agent R. entered the premises and observed one other patron inside. Agent R. obtained a 750 ml bottle of Cinsault Pays D’oc and approached the service counter, where he observed a male staff member later identified as J. L.. Agent R. placed the bottle of wine on the counter and paid with a \$20.00 bill. At no time was Agent R. asked for proof of age. At 21:18 hours, Agent R. exited the premises.

At 21:21 hours, Agent R., along with Inspector C. B., re-entered the premises. Inspector B. identified himself to Mr. L., who confirmed the sale and stated he did not request identification from Agent R. as it was busy. Mr. L. said he perceived Agent R. to be around 20 years of age. Mr. L. stated he had been working for one month and showed proof of valid ProServe certification. Mr. L. confirmed he was aware of the requirement to request identification from persons appearing to be under 25 years of age.

J. P., the Board Approved Manager, was on site and informed of the incident. Inspector B. informed Mr. P. that as a result of the incident a Caution was being issued under Section 4.4.4 of the Retail Liquor Store Handbook, and follow up inspections would be conducted. Mr. P. stated that he understood, and at 21:26 hours Inspector B. and Agent R. exited the premises.

On Thursday, August 24, 2017 at 17:38 hours, Agent Pu. entered the premises and observed two other patrons inside. Agent Pu. obtained a 650 ml bottle of Old Jalopy Pale Ale and approached the service counter, where she observed a male staff member later identified as N. D.. Agent Pu. placed the bottle of beer on the counter and paid with a \$20.00 bill. Agent Pu. was asked for proof of age but stated she did not have identification. Mr. D. then stated to Agent Pu., “let’s just pretend I checked your ID”. At 17:41 hours, Agent Pu. exited the premises.

At 17:45 hours, Agent Pu., along with Inspector P. Ba., re-entered the premises. Inspector Ba. identified himself to Mr. D.. Mr. D. confirmed the sale and said he perceived Agent Pu. to be around 25 years of age. Mr. D. stated he had been working there for two years and showed proof of valid ProServe certification. Mr. D. confirmed he was aware of the requirement to request identification from persons appearing to be under 25 years of age. At 17:50 hours, Inspector Ba. and Agent Pu. exited the premises.

Inspector Ba. informed Mr. P. that as a result of the two failed audits, an incident report would be submitted.

Mr. P.

Mr. P. does not deny that the identification of the agents should have been requested; it was an honest mistake. Since this incident, the staff have been very diligent and implemented steps to ensure this does not happen again.

Mr. P. – questioned by Ms. N.

Mr. P. was at the store at the time of the first incident. It was busy, as it was during the Calgary Stampede. There may only have been one patron in the store at the time of the incident, but it had been busy. Mr. P. was not at the store during the second incident, but the store was being supervised by another employee. There is typically one senior staff member on duty at all times when a junior staff member is on duty. Mr. L. had been on staff for longer than a month, perhaps even a year.

The premises trains new staff when they are hired. They have a staff training manual, which includes the requirement to request identification and other AGLC policies. The training is ongoing and they hold regular staff meetings. After the first incident, there was a staff meeting regarding the requirement to request identification.

During the August incident, Mr. D. denies saying, “let’s just pretend I checked your ID”. Mr. D. believed the agent to be 25 years of age when she was in fact 19 years of age. Mr. D. did ask the agent for identification but made an error in serving the patron when identification could not be provided. Since August, Mr. D. has renewed his ProServe and the staff training has been reviewed with him again.

When he is not at the premises, Mr. P. has checks and balances in place to ensure policies are followed. There are checklists for staff to complete whenever Mr. P. is not there. The staff members in question were spoken to about the incidents and asked to recertify their ProServe. Mr. P. did not feel the need to reprimand the staff, as they are aware of their errors. Mr. P. has not requested an AGLC staff training seminar.

Mr. P. was aware of the under 25 program, but did not fully understand the consequences of a contravention. AGLC signage regarding the requirement to provide identification is posted in the premises. He feels the Panel should consider a reduced penalty because it is a small store, \$750 is a lot of money and they are being diligent to ensure there are no further contraventions.

Mr. P. – questioned by the Panel

Mr. P. has been shadowing the staff at the premises every day and staff meetings are held each Friday. Mr. P. is not sure why staff did not ask for identification on July 14 and August 24, 2017. The store was busy during the July incident and staff felt the patron was over 18, so identification was not requested. During the August incident, a senior employee asked for identification but the agent did not have any. The employee should not have served her.

Mr. P. believes there was a lack of awareness by the staff regarding the possible penalties for a contravention of this policy and the impact on the business. Following the first incident, Mr. P. acknowledges he should have asked the Inspector more questions. He thought there was a three-strike policy, and he should have looked into the penalty process a bit better.

Mr. D. did not tell Mr. P. about the second incident until a week after it occurred, which does concern Mr. P..

IV. Summation

Regulatory Services Division

The AGLC takes the issue of minors trying to obtain liquor very seriously. It is often very difficult to tell if a person is of legal age just by looking at them, so licensees and their staff must ask for proof of age in order to eliminate any situation where the purchaser of liquor is possibly a minor. This is why the AGLC implemented this policy and why it is regulated.

During two separate audits conducted at the premises, the liquor agents, who were both 19 years of age at the time of the audits, were not asked for identification from two separate staff members. It is the opinion of the Regulatory Services Division the photographs of the agents shown to the Panel, which were taken at the time of the visits on July 14 and August 24, 2017, clearly show the agents were youthful in appearance and should have had their identification requested by the Licensee's staff.

Mr. P. advised the Panel he believes he took all reasonable steps to prevent the employees in question from contravening Section 4.4.4 of the Retail liquor Store Handbook. The Regulatory Services Division respectfully disagrees with this assertion, as more could have been done to prevent this policy from being contravened, not once, but on two separate occasions. Ongoing supervision, correct, clear and consistent training of staff are reasonable steps the Licensee could employ, particularly when one of the staff members involved in one of the incidents had only been employed at the premises for a short time, according to that staff member.

Mr. P. could also have implemented a policy after the July 14, 2017 failure that staff request identification from all customers, in order to eliminate the possibility of a minor purchasing liquor. The implementation of this in-house policy could have assisted staff in gauging the ages of customers more appropriately by reviewing all identification from a variety of different people. Mr. P. could have also requested a free AGLC staff training seminar to assist him with re-affirming with his staff their responsibilities and the importance of requesting identification from youthful looking individuals.

Mr. P. asked the Panel to consider a reduced penalty. The Regulatory Services Division does not believe the penalty should be reduced, as this Licensee and his staff members failed two separate audits and as such, the penalty previously offered is consistent with the administrative sanction guideline for a first offence violation. The Regulatory Services Division believes a reduction of penalty is not going to mitigate these circumstances, particularly considering the Licensee received an Inspector's Caution for the first audit failure on July 14, 2017. It could be argued that the August 24, 2017 audit failure was a second violation, therefore a reduced penalty seems particularly unwarranted.

The Regulatory Services Division respectfully submits that a breach of policy did, in fact, occur, on two separate occasions, and recommends the original administrative sanction of \$750 or a 3 day suspension be upheld.

Mr. P.

Mr. P. did not wish to provide a summation.

V. Finding

The Panel makes a finding of a contravention of Section 4.4.4, Retail Liquor Store Handbook: Failure to request proof of age from a person who appears to be under 25.

The Panel is of the opinion there were clear violations of Section 4.4.4 of the Retail Liquor Store Handbook, in close proximity to one another, on July 14 and August 24, 2017, as outlined in the incident report. The evidence in the incident report was uncontroverted and admitted by the Licensee.

While the Licensee presented evidence he provides on-going training, conducts regular staff meetings and reminds employees to check for identification, the Panel finds he did not take all reasonable steps necessary to prevent the incidents in question from occurring. It is apparent the training employees did receive may not have been effective. In addition, many of the steps taken by the Licensee to ensure compliance with this policy were taken after the incidents in question occurred.

The Panel believes the Licensee may have a lack of understanding regarding the seriousness of this issue. As the Regulatory Services Division noted, liquor licensees and their staff have a significant role to play in ensuring the responsible use of alcohol and to eliminate any situation where the purchaser of liquor is possibly a minor. Accordingly, the Panel recommends that the Licensee request an AGLC staff training seminar, if one has not already been scheduled.

VI. Penalty

For the reasons noted above, the Panel does not feel a reduced penalty is warranted. Accordingly, pursuant to Section 91(2) of the *Gaming and Liquor Act*, the Panel upholds the penalty previously offered by the Regulatory Services Division for a contravention of Section 4.4.4 of the Retail Liquor Store Handbook:

Penalty: A \$750 fine OR a 3 day suspension of Class D Liquor Licence 772711-1. The fine is to be paid within two months of the date of this decision, being on or before Monday, April 15, 2019 or the suspension served commencing Tuesday, April 16, 2019 and continuing until the close of business on Thursday, April 18, 2019.

Signed at St. Albert this 15th day of February, 2019.



B. Krizan, Hearing Panel Chair