

**HEARING BEFORE A PANEL  
OF THE BOARD OF  
ALBERTA GAMING, LIQUOR AND CANNABIS COMMISSION**

**IN THE MATTER OF the *Gaming, Liquor and Cannabis Act*  
Revised Statutes of Alberta 2000, Chapter G-1, as amended  
and the Regulation**

**and**

**2120749 Alberta Ltd.  
o/a Airdrie Liquor Store II (Applicant)  
301-960 Yankee Valley Boulevard SE  
Airdrie, AB T4A 2E4**

<b>DATE OF HEARING:</b>	<b>April 25, 2023</b>
<b>HEARING PANEL:</b>	<b>Tongjie (TJ) Zhang, Presiding Member Patti Grier, Panel Member Vincent Vavrek, Panel Member</b>
<b>APPLICANT / REPRESENTATIVE:</b>	<b>Sanjaykumar Patel, Owner Sejal Patel, Spouse/Employee</b>
<b>REGULATORY SERVICES DIVISION:</b>	<b>Brett Harrison, Hearing Officer Petrina Nash, Resource Officer</b>

**DECISION OF THE HEARING PANEL**

The Panel finds that the Applicant (Licensee) contravened section 4.4.5 of the Retail Liquor Store Handbook (the Handbook).

In accordance with section 94(7)(a) of the *Gaming, Liquor and Cannabis Act* (the Act), the Panel confirms the administrative sanction imposed by the Regulatory Services Division (Regulatory Services) of a fine of \$750 or a 3-day suspension of the Class D-Retail Liquor Store licence numbered 779295-1.

The fine is to be paid on or before June 12, 2023 or suspension served commencing with the normal opening of business on June 15, 2023 and continuing until the normal close of business on June 18, 2023.

Further, the Panel directs that the licensee and employees must participate in a staff training seminar conducted by Regulatory Services on or before August 9, 2023.

## **I. Jurisdiction and Preliminary Matters**

[1] By letter dated February 27, 2023, Regulatory Services of the Alberta Gaming, Liquor and Cannabis Commission (AGLC) advised 2120749 Alberta Ltd., operating as Airdrie Liquor Store II, (the Licensee) that the licensee contravened:

- Section 4.4.5 of the Handbook: Licensee staff are required to obtain valid identification and verify proof of age whenever a person who appears to be under 25 years of age attempts to buy liquor or to enter the Class D licensed premises unaccompanied by a parent, guardian or spouse who is an adult. If unsatisfied that a person is at least 18 years of age, licensee staff must refuse entry or ask the person to leave.

[2] Regulatory Services imposed an administrative sanction of a fine of \$750 or, in the alternative, a 3-day suspension of the Licensee's Class-D Retail Liquor Licence numbered 779295-1.

[3] The Licensee subsequently applied for a hearing before a Panel of the Board of AGLC pursuant to section 94(1) of the Act.

[4] In accordance with section 11 of the Act, the Board Chair designated three members of the Board to sit as a Panel to conduct the hearing and make a decision – TJ Zhang (Presiding Member), Patti Grier and Vincent Vavrek.

[5] The parties and the Hearing Panel were provided with a record containing various documents pertaining to the issues before the panel. The Applicant confirmed receipt of the Notice of Hearing dated March 24, 2023 and the attached hearing record. The following documents were entered into evidence:

- Exhibit 1           Hearing Record, including Tabs 1 to 4
- Exhibit 2           Operational Report dated November 25, 2022
- Exhibit 3           Agent photographs

## **II. Issues**

[6] Did Airdrie Liquor Store II contravene section 4.4.5 of the Handbook? If so, should the administrative sanction of a fine of \$750 or a 3-day suspension imposed by Regulatory Services be confirmed, replaced, or cancelled?

[7] If there was a contravention of section 4.4.5 of the Handbook, is there evidence that the Licensee took all reasonable steps to prevent its employees or agents from contravening the provision in accordance with section 121 of the Act?

## **III. Regulatory Services Submissions**

[8] Regulatory Services called three witnesses:

- Q.D., Casual Liquor Agent, formerly employed by AGLC

- J.D., Casual Liquor Agent, AGLC
- Ryan Silchmueller, Inspector, AGLC

[9] The following is a summary of the evidence provided by Agent Q.D., Agent J.D. and Inspector Silchmueller.

[10] On November 25, 2022, Inspector Ryan Silchmueller and former liquor agent Q.D. attended Airdrie Liquor Store II to conduct an operating check as part of Regulatory Services' Under 25 Program.

[11] Inspector Silchmueller described the Under 25 Program as it relates to a Class D retail liquor store licensees. The program was implemented as a method for ensuring and improving licensees' compliance with section 4.4.5 of the Handbook. Specifically, the requirement to request identification from persons who appear to be younger than 25 years of age when they attempt to buy liquor or enter the premises unaccompanied by a parent, guardian or adult spouse (Under 25 policy).

[12] The Under 25 Program involves youthful liquor agents entering into liquor licensed premises to attempt to buy liquor in order to audit employee compliance with the Under 25 policy. If a licensee, employee or agent of a licensee fails to request identification on the first instance, an Inspector's Caution is issued rather than an administrative sanction. To help educate licensees and allow for corrective action, Inspectors will also notify licensees of future Under 25 audits. Inspector Silchmueller advised that a second failure under the program results in an incident report being submitted and an administrative sanction.

[13] Inspector Silchmueller submitted that a letter providing information regarding the Under 25 Program and impending audits (Exhibit 1, Tab 2, Attachment 1) was provided to Airdrie Liquor Store II and other liquor licensees on November 1, 2022.

[14] Agent Q.D. advised the Panel that on November 25, 2022, when the first audit was conducted, she was 20 years old. She was photographed at the start of her shift that day (Exhibit 3).

[15] Agent Q.D. entered Airdrie Liquor Store II and noted that there appeared to be one employee on duty at the sales counter and one other patron on the premises.

[16] Agent Q.D. selected one can of lime Whiteclaw, a ready-to-drink alcoholic beverage, and approached the female employee at the sales counter. Agent Q.D. provided \$10 in cash and was given \$6 in change. Agent Q.D. was not provided with a receipt and she stated that she did not believe the employee asked her if she wanted one. Agent Q.D. clarified that she did not request a receipt and did not find it odd that she was not provided with one.

[17] Agent Q.D. advised the Panel that she was not asked to provide identification at any point during the transaction.

[18] Agent Q.D. exited the premises and reentered shortly after with Inspector Silchmueller. Inspector Silchmueller spoke with the employee who confirmed she sold the liquor to Agent Q.D.

[19] The employee suggested that she was aware of the Under 25 policy and that she thought Agent Q.D. looked “about 25” but that she “probably should have ID’d her.”

[20] On November 28, 2022, Inspector Silchmueller spoke with the owner/premises manager of Airdrie Liquor Store II, Sanjaykumar Patel. Inspector Silchmueller stated that during their conversation he:

- Issued a verbal Inspector’s caution for the failure of the first Under 25 program audit;
- Confirmed that Mr. Patel had received the November 1, 2022 Under 25 program information letter;
- Advised Mr. Patel that he would be conducting another audit in the near future; and
- Offered a staff training seminar to Mr. Patel

[21] Inspector Silchmueller explained to the Panel that the staff training seminar offered is free for licensees and involves an inspector attending the premises to conduct a general review on identification requirements or any other provisions that the licensee may be having issues with.

[22] Mr. Patel indicated to Inspector Silchmueller that he was aware of the incident and declined the staff training seminar.

[23] On January 19, 2023, Inspector Silchmueller and casual liquor agent J.D. attended Airdrie Liquor Store II to conduct a second operating check as part of the Under 25 Program.

[24] Agent J.D. advised the Panel that on January 19, 2023, when the second audit was conducted, she was 18 years old. She was photographed at the start of her shift that day (Exhibit 3).

[25] Agent J.D. entered Airdrie Liquor Store II and noted that there appeared to be two employees on duty and no other patrons in the premises.

[26] Agent J.D. selected one can of watermelon Whiteclaw and approached the employee at the sales counter. Agent J.D. provided \$10 in cash and was given \$6 in change. Agent J.D. did not request and receipt and she was not provided with one. She clarified for the Panel that if she is offered a receipt, she will take it and note it on her file but that agents do not usually request receipts.

[27] Agent J.D. advised the Panel that she was not asked to provide identification at any point during the transaction.

[28] Agent J.D. exited the premises and reentered shortly after with Inspector Silchmueller. Inspector Silchmueller spoke with the employee who confirmed he had sold the liquor to Agent J.D.

[29] The employee advised Inspector Silchmueller that he was familiar with the Under 25 program, had been provided with a copy of the Under 25 program information letter by Mr. Patel and he was aware of the first audit that occurred in November 2022.

[30] The employee suggested to Inspector Silchmueller that Agent J.D. appeared to be 20 years old.

[31] Inspector Silchmueller stated that both employees from the first and second audits had valid ProServe certification. However, as the second audit resulted in an administrative sanction, the male employee who failed to request identification was required to recertify his ProServe. A copy of the ProServe recertification letter sent to the employee was included as Exhibit 1, Tab 3.

[32] On January 23, 2023, Inspector Silchmueller contacted Mr. Patel to inform him of the second audit failure and advise him that an incident report would be submitted. Inspector Silchmueller told the Panel that he offered the free staff training seminar to Mr. Patel again but that, as of the date of the hearing, no request for training had been made.

[33] When the Licensee disputed that Inspector Silchmueller offered the staff training seminar again after the second audit, Inspector Silchmueller advised that he has a set script that he follows when communicating with licensees about an audit failure to ensure they have all the information they need about the incident. Inspector Silchmueller stated that includes offering the staff training seminar.

[34] When asked by the Panel whether Mr. Patel provided a reason for declining the staff training seminar twice, Inspector Silchmueller stated that he did not recall any reason being provided.

[35] Inspector Silchmueller, when asked by the Licensee, confirmed that Airdrie Liquor Store II had the appropriate "No Minors" and Under 25 policy signage posted throughout the licensed premises and that was not an issue at the hearing.

#### **IV. Airdrie Liquor Store II Submissions**

[36] The representative and owner of Airdrie Liquor Store II, Sanjaykumar Patel, gave evidence on behalf of the Licensee.

[37] Airdrie Liquor Store II has been in business since 2018. Mr. Patel attends the premises from Monday to Friday, every other week. His wife works in the office at the premises most weekdays. However, Mr. Patel has access to the surveillance camera feed on his phone so he is able to check the cameras and have oversight of employees at any time.

[38] After the first audit in November 2022, Mr. Patel issued the employee a verbal warning and reviewed the Under 25 program information letter and Under 25 policy with her again. He felt that she understood. Mr. Patel asked the employees whether they felt they needed the training seminar and they indicated that they did not.

[39] Mr. Patel admitted, when asked by the Panel, that he should have taken the opportunity for the staff training seminar. However, he disputed that Inspector Silchmueller offered him the staff training seminar after the second audit. Mr. Patel submitted that the training seminar was only offered after the first audit in November 2022.

[40] Mr. Patel disagreed that there were two employees working on January 19, 2023. He stated there is usually only one employee on duty, other than he or his wife, in the store. He advised the Panel that he checked the surveillance footage from that day and confirmed there was only one employee on duty when Agent J.D. entered the premises.

[41] Mr. Patel stated that he is in agreement with the Under 25 program. He has spoken with his staff many times, has reviewed the November 1, 2022 Under 25 program information letter with them and has since posted it on the staff notice board.

[42] He stated that his staff always ask for identification in accordance with the Under 25 policy, however, he claimed that every community has a different view on how people look and that determining a person's age is subjective depending on one's own cultural perspective. Mr. Patel felt that Agent J.D. looked much older than 18 years.

[43] Mr. Patel reiterated that his employees have their ProServe certification and that he has provided them with the necessary training to work on the licensed premises.

[44] Therefore, Mr. Patel submitted that he should not be responsible for violations that occur when he or his wife are not at the licensed premises. Mr. Patel asserted that he has taken all reasonable steps to train his employees and that, similar to other industries, the owner or trainer should not be punished if a trained employee violates policy.

[45] Mr. Patel asserted that he has all of the required signage in the licensed premises and that he is well aware of and complies with AGLC policies.

[46] When asked by Regulatory Services whether Airdrie Liquor Store II has implemented any changes since the audits, Mr. Patel advised that he always reminds employees of the Under 25 policy, he conducts surprise visits to the premises on weekends and he checks his cameras regularly to monitor employees.

[47] Mr. Patel stated that people make mistakes and he feels that his employees have learned their lesson.

## **V. Summation**

### **Regulatory Services**

[48] Operating a licensed premises is a privilege and not an automatic right. The Licensee has significant responsibilities under the Act, the Gaming, Liquor and Cannabis Regulation and AGLC's policies, which the licensee and employees are required to follow.

[49] The issue of minors having access to liquor is one that AGLC takes very seriously. The onus is on the Licensee to ensure that any person who appears to be under 25 years of age is required to provide proof of age, unless they are accompanied by a parent, guardian or spouse who is an adult.

[50] Regulatory Services takes reasonable steps to ensure licensees are aware of the Under 25 policy and the program. The policy is discussed with every licensee during the operating procedures review at the time of licensing and the program is well-publicized. Licensees are not penalized after a first failure in order to educate them and allow them the opportunity to improve.

[51] Agents Q.D. and J.D. testified that they were 20 and 18, respectively, at the time of the audits. Both agents are youthful looking and neither of them were asked to provide identification.

[52] Inspector Silchmueller gave evidence that both employees were aware of the program and that the employees thought the agents appeared young enough that they should have been asked for identification, in accordance with the Under 25 policy.

[53] Regulatory Services is of the opinion that Mr. Patel has provided no evidence that he has exercised due diligence in the training of his staff. Regulatory Services takes the position that employees receive minimal training aside from signage posted in the store, their ProServe certification and monitoring by Mr. Patel.

[54] Section 121 of the Act states: if an employee of a licensee contravenes a provision of the Act, the licensee is deemed also to have contravened the provision unless the licensee can establish on a balance of probabilities that the licensee took all reasonable steps to prevent the employee from contravening the provision. Regulatory Services is of the opinion that Mr. Patel has not taken reasonable steps to prevent his employees from contravening the Under 25 policy.

[55] Further, if the first audit failure were considered as a policy violation and an incident report submitted, the second audit failure would be considered a second violation. In accordance with the Administrative Sanction Guideline for Violations, a second violation of section 4.4.5 of the Handbook would result in a \$1,500 fine or a 6-day suspension.

[56] However, as stated by Inspector Silchmueller, the first failure only resulted in a caution to give the Licensee the opportunity to take steps to prevent future contraventions.

[57] As such, Regulatory Services requests that the Panel confirm the original administrative sanction of a \$750 fine or a 3-day licence suspension.

#### **Airdrie Liquor Store II**

[58] Mr. Patel suggests that he is agreeable with whatever sanction the Panel decides. However, he is of the opinion that he has trained his employees and given them the necessary tools to comply with AGLC policies. Mr. Patel does not know why he, as the Licensee, is being punished.

#### **VI. Analysis**

[59] The Panel carefully considered the submissions of both parties.

[60] The Panel finds as fact that on November 25, 2022, Regulatory Services conducted an audit as part of the Under 25 program and an employee of Airdrie Liquor Store II failed to request identification and verify proof of age from Under 25 agent, Q.D.

[61] Agent Q.D. stated that she was 20 years of age on November 25, 2022 and the Panel finds that Agent Q.D. appeared youthful in the photograph taken of her in November 2022 (Exhibit 3).

[62] Based on the evidence of Inspector Silchmueller and Agent Q.D., the Panel finds that the premises were not busy at the time of the incident and that the employee on duty was aware of the Under 25 policy.

[63] The Panel finds that Mr. Patel received the letter (Exhibit 1, Tab 2) from Regulatory Services explaining the Under 25 program and expected audits. Further, Inspector Silchmueller advised Mr. Patel at the time of the first audit that a second audit would be conducted and offered Mr. Patel the opportunity for the licensee and employees to participate in a staff training seminar, which he declined.

[64] The Panel finds as fact that on January 19, 2023 Regulatory Services conducted a second audit and an employee of Airdrie Liquor Store II failed to request identification and verify proof of age from Under 25 agent, J.D.

[65] Agent J.D. advised the Panel that she was 18 years of age on January 19, 2023 and the Panel finds that Agent J.D. appeared youthful in the photo taken of her in January 2023 (Exhibit 3).

[66] As such, the Panel finds that the Licensee contravened section 4.4.5 of the Handbook on November 25, 2022 and January 19, 2023.

[67] Operating a liquor licensed premises is a privilege and not a right. It comes with significant responsibilities including the requirement for both licensees and their employees to comply with all relevant legislation, regulations and AGLC Policies.

[68] As set out in section 121 of the Act, if an employee of a licensee contravenes a provision of the Act, the licensee is deemed also to have contravened the provision unless the licensee can establish on a balance of probabilities that the licensee took all reasonable steps to prevent the employee from contravening the provision.

[69] Mr. Patel, as the owner of the licensed premises, is responsible for the actions of his employees and Airdrie Liquor Store II is the appropriate recipient of the administrative sanction, rather than individual employees of the licensee, as Mr. Patel suggests.

[70] The Panel finds that Mr. Patel did not take reasonable steps to prevent his employees from contravening the provisions in the Handbook and Mr. Patel did not present any evidence of formal training offered to employees. The Panel finds that a reasonable step Mr. Patel could have taken would be to accept the staff training seminar offered by Inspector Silchmueller.



[71] The audit program allows licensees an opportunity for education as they receive a caution rather than an administrative sanction for a first failure. The Panel finds that Mr. Patel ought to have taken the learning opportunity to provide more oversight for his employees after the first incident occurred.

**VII. Finding**

[72] For the reasons stated above, the Panel finds that Airdrie Liquor Store II contravened section 4.4.5 of the Handbook.

[73] As such, in accordance with section 94(7)(a) of the Act, the Panel confirms the administrative sanction imposed by Regulatory Services of a fine of \$750 or a 3-day suspension of the Class D-Retail Liquor Store licence numbered 779295-1.

[74] The fine is to be paid on or before June 12, 2023 or suspension served commencing with the normal opening of business on June 15, 2023 and continuing until the normal close of business on June 18, 2023.

[75] Further, the Panel directs that the licensee and employees must participate in a staff training seminar conducted by Regulatory Services on or before August 9, 2023.

Signed at Calgary, this 11<sup>th</sup> day of May, 2023

A handwritten signature in blue ink, appearing to read 'Tongjie Zhang', written in a cursive style.

Tongjie (TJ) Zhang, Presiding Member, Hearing Panel