

**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

**Andrew Peller Limited
218, 1750 75 Avenue West
Vancouver, BC V6P 6G2**

DATE OF HEARING:	January 15, 2024
HEARING PANEL:	Vincent Vavrek, Presiding Member Elan Harper, Panel Member (<i>Withdrew</i>) Tongjie Zhang, Panel Member
APPLICANT / REPRESENTATIVES:	Paul Holden, Legal Counsel Paul Lymer, Alberta Sales Manage, Applicant Patrick O'Brien, Chief Commercial Officer, Representative Travis Bell, Director of Sales, Western Canada, Representative
REGULATORY SERVICES DIVISION:	Julie Shepherd, Legal Counsel Petrina Nash, Resource Officer

DECISION OF THE HEARING PANEL

The Panel finds that Andrew Peller Limited (the Applicant) contravened section 81(e) of the Gaming, Liquor and Cannabis Regulation (the Regulation).

In accordance with section 94(7)(b) of the *Gaming, Liquor and Cannabis Act* (the Act), the Panel replaces the administrative sanctions imposed by the Regulatory Services Division (Regulatory Services) with a fine of \$35,786.29.

The \$35,786.29 fine is to be paid on or before April 1, 2024.

I. Jurisdiction and Preliminary Matters

[1] By letter dated October 2, 2023, Regulatory Services of Alberta Gaming, Liquor and Cannabis Commission (AGLC) advised Andrew Peller Limited, operating as Andrew Peller Limited, that the agency contravened:

- Section 81(e) of the Regulation: No liquor supplier or officer, director or employee of a liquor supplier and no liquor agency or representative of a liquor agency required to be registered under section 62 of the Act may directly or indirectly make or offer to make a loan or advance or give or offer to give money, a rebate, a concession or anything of value to a liquor licensee or to an employee or agent of that licensee; and
- Section 5.3.1 of the Liquor Agency Handbook (LAH): A liquor agency may provide a licensee with promotional items for its customers in exchange for the licensee promoting a specific brand(s) of liquor. Agencies and licensees must keep sufficient records of these activities in order to demonstrate compliance with legislation, regulation and policies. Records are not required for non-liquor items provided that are of an individual value of less than \$5.00 (e.g. bottle openers, corkscrews) and added value items for existing inventory.

[2] For the alleged contravention of section 81(e) of the Regulation, Regulatory Services imposed an administrative sanction of a fine of \$66,048.04.

[3] For the alleged contravention of section 5.3.1 of the LAH, Regulatory Services imposed an administrative sanction of a fine of \$250.

[4] Andrew Peller Limited subsequently applied for a hearing before a Panel of the Board of AGLC pursuant to section 94(1) of the Act.

[5] 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 – Vincent Vavrek (Presiding Member), Elan Harper, and Tongjie Zhang.

[6] However, after the hearing, Panel Member Harper withdrew from the Panel. The Hearing Panel Office contacted the parties on January 18, 2024 and provided them the option of a rehearing with a new Panel of the Board or for a quorum of the designated Panel, namely, Presiding Member Vavrek and Panel Member Zhang, to make the decision.

[7] Both Regulatory Services and the Applicant agreed that Presiding Member Vavrek and Panel Member Zhang, who heard the matter, could make the decision in accordance with sections 11(2) and 11(7) of the Act.

[8] 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 November 22, 2023 and the attached hearing record. The following documents were entered into evidence:

- Exhibit 1 Hearing Record, including Tabs 1 to 3
- Exhibit 2 Additional submissions – Email correspondence, provided by Regulatory Services
- Exhibit 3 Additional submissions – Excerpts from AGLC Handbooks, provided by the Applicant
- Exhibit 4 Additional submissions – Correspondence and Special Event Licences, provided by the Applicant

[9] At the outset of the hearing, legal counsel for Regulatory Services, Julie Shepherd, raised a preliminary matter. Ms. Shepherd advised the Panel that counsel for the Applicant, Paul Holden, contacted her in advance of the hearing to clarify that some of the violations and associated fines identified in the Incident Report (Exhibit 1, Tab 2) were not being contested by the Applicant, including the contravention of section 5.3.1 of the LAH.

[10] As such, Regulatory Services clarified that both parties would present evidence on the alleged contravention of section 81(e) of the Regulation, including violations relating to:

- payment of faulty, damaged and expired/stale-dated product;
- promotional agreements; and
- sponsorship – brands of liquor.

[11] The Panel asked Mr. Holden to confirm on behalf of the Applicant. Mr. Holden agreed that the contravention of section 5.3.1 of the LAH and the balance of the violations and associated fines not specified by Ms. Shepherd were not contested by Andrew Peller Limited and were no longer issues at the hearing.

II. Issue

[12] Did the Applicant contravene section 81(e) of the Regulation? If so, should the administrative sanction imposed by Regulatory Services of a \$53,842.09 fine be confirmed, replaced, or cancelled?

III. Regulatory Services Submissions

[13] Regulatory Services called one witness to give evidence, Inspector Gwen Adrian. Inspector Adrian has been an Inspector with AGLC for approximately 18 years. As part of her role, she conducts inspections and operating checks of liquor and cannabis licensees, answers inquiries and provides education to licensees.

[14] Additionally, Inspector Adrian is assigned to focus on inducements between liquor agencies and liquor licensees. Inspector Adrian defined a liquor agency as an agent appointed by a liquor supplier to import and market liquor products. She defined a liquor supplier as a manufacturer or distributor of liquor products.

[15] Inspector Adrian explained that an inducement is something of value that is given to a liquor licensee by a supplier or agency. She described a liquor licensee as a licence holder in Alberta who is authorized by law to sell or provide liquor.

[16] Inspector Adrian explained that in Alberta, liquor can be brought into the province by liquor agencies who register that product with AGLC. Liquor licensees purchase that product through AGLC as the wholesaler of record at a price referred to as the wholesale price. Inspector Adrian explained that inducements from agencies or suppliers to licensees are prohibited as providing inducements would have ramifications on the liquor model. She stated that liquor agencies and suppliers benefit from inducements to licensees because the supplier/agency's products may be promoted over and above other supplier's products.

[17] AGLC has policies in place around inducements to ensure the relationship between licensees and suppliers remain competitive under the open market.

[18] Currently, there are over 31,000 liquor products available in Alberta and over 1,500 liquor retailers. Inspector Adrian suggested that if there is a liquor agency providing inducements, the amount of liquor products available may be threatened as the supplier that has "deeper pockets" may monopolize the industry and end up with a competitive advantage over other licensees. Those licensees operating in compliance with the Act, the Regulation and AGLC policies may be put out of business by other licensees choosing to accept prohibited inducements, which would drive down the market supply.

[19] In December 2021, Regulatory Services received information that several agencies registered in Alberta were allegedly providing inducements, one of which was Andrew Peller Limited.

[20] On March 8, 2022, Inspector Adrian emailed the Alberta Sales Manager for Andrew Peller Limited, Paul Lymer, advising him that a review of agency records and processes would be conducted. Inspector Adrian requested an organizational chart of all Alberta staff members and a description of how tasting and sampling activities had been conducted in Alberta for the previous year, from March 2021 to March 2022 (Exhibit 1, Tab 2, Attachment A).

[21] On March 17, 2022, the requested information was provided. Inspector Adrian reviewed the information and determined there were eleven staff members in Alberta. Mr. Lymer provided a description of how tastings and samplings are generally conducted but advised Inspector Adrian that tastings were limited during that timeframe and there were no sampling activities due to COVID-19 restrictions.

[22] As part of her review, Inspector Adrian then issued a written request for documents to Andrew Peller Limited, in accordance with section 100 of the Act (section 100 letter). The section 100 letter was dated May 20, 2022 and requested that Andrew Peller Limited provide information for a random sample of five of the eleven identified employees for a specified period, June 1 to December 31, 2021. Inspector Adrian noted that when the records were requested, one of the five employees was no longer employed with Andrew Peller Limited. The following records were requested for the specified period:

- All details of "sales calls/visits" to Alberta liquor licensees;

- All tasting records;
- All sampling records;
- All buy/sell agreements entered into;
- All purchase documentation (POS receipts and invoices) between each of the five employees and Alberta liquor licensees;
- Expense claims, including all supporting receipts/documentation for the claim and confirmation of payment for each claim; and
- All company-issued credit card statements used by the employee including all supporting receipts/documentation.

[23] Further, the letter made a request for all accounts payable details including negotiated cheques and e-transfers to all Alberta Retail Liquor Store licensees for the same period.

[24] Inspector Adrian noted that one of the employees identified in her initial review was not on the list of current Andrew Peller Limited staff. The section 100 letter requested information regarding the former employee's role during the review period, who she reported to and her last date of employment.

[25] Inspector Adrian advised the Panel that during a review of this kind, Regulatory Services would typically request information for a two-year period. In this case, Regulatory Services chose to audit the six-month period so as not to be overly punitive. Inspector Adrian suggested that this would allow Andrew Peller Limited to correct any issues uncovered by the review without facing more significant fines or disciplinary action.

[26] When the Applicant asked Inspector Adrian to clarify whether the role of Regulatory Services is primarily to provide education to registrants and licensees rather than enforcement, Inspector Adrian reiterated that Regulatory Services took a narrow approach with its review and investigation of Andrew Peller Limited in order to prevent further infractions that may have been discovered if a broader timeframe was reviewed. The review was meant to be educational and hold Andrew Peller Limited accountable for a shorter period.

[27] The random sample of employees selected for the review included a variety of positions within Andrew Peller Limited, including territory representatives and key account managers. Inspector Adrian submitted that this allowed Regulatory Services to have a good understanding of how Andrew Peller Limited was operating.

[28] As part of her investigation, Inspector Adrian conducted interviews with four out of five of the employees as one of the employees no longer worked at Andrew Peller Limited at the time the interviews took place. Each of the employees interviewed had either been named on the expense claim submitted to Regulatory Services as part of the review or had signed off on the expense claim.

[29] Upon review of all the records and upon conclusion of her interviews, Inspector Adrian authored an Incident Report (Exhibit 1, Tab 2) detailing her findings, including a number of perceived violations that resulted in an alleged contravention of section 81(e) of the Regulation.

Inducement 1: Faulty, Damaged and Expired/Stale-dated product

[30] Inspector Adrian advised the Panel that a licensee may request a refund through AGLC for products that are faulty, damaged, expired or stale-dated (faulty products). All faulty product claims must follow the process set out in AGLC's policies. If refunds are paid from an agency or supplier directly to a licensee outside of this process, at the wholesale price or otherwise, AGLC does not have the proper oversight over how much money is being paid to licensees.

[31] Inspector Adrian determined from her review of the expense reports and confirmed in her interviews that Andrew Peller Limited offered refunds to various licensees for faulty products. Inspector Adrian provided a list of faulty products (Exhibit 1, Tab 2, Attachment D) that showed that licensees were being refunded at a price dictated by the licensee, typically above wholesale price, for the products being refunded.

[32] Inspector Adrian explained that, per the process set out in section 5.9 of the Retail Liquor Store Handbook (RLSH) and the corresponding section 3.23 of the LAH, AGLC would not provide a refund for products that are damaged on site by the retailer or a customer or for product that has stale-dated or expired as a result of sitting on a shelf and not selling. However, if a product is damaged during delivery or becomes stale-dated within 30 days of delivery, the licensee may seek reimbursement through AGLC's Central Authorized Warehouse, Connect Logistics, to make a claim.

[33] When asked by the Applicant to speak to the optional wording in the policy and the use of the word "may" in section 3.23.1, Inspector Adrian confirmed that licensees are not required to request a refund if they do not want to, and the use of the word "may" in the policies signals the option for a licensee submit a faulty product claim. She stated, however, that this does not signal the option for an agency to pay a licensee directly for faulty products.

[34] Inspector Adrian highlighted that there is no policy in place for an agency to pay a licensee directly for any faulty, damaged, expired or stale-dated products. She learned from her interviews that Andrew Peller Limited was making payments directly to various licensees for all of the above scenarios. For the period reviewed, Inspector Adrian submitted that a total of \$12,730.34 was paid to various licensees.

[35] Each of the expense claims detailing these refunds are signed off by the employee submitting them as well as the person authorizing the payment.

Inducement 2: Promotional Agreements

[36] Promotional agreements, formerly referred to as buy/sell agreements, are agreements entered into by the licensee and an agency in order to allow the licensee to promote a particular brand of liquor. Inspector Adrian explained that these agreements are required any time an agency provides a licensee with an item of value (a prize) to promote a liquor product in their store.

[37] Andrew Peller Limited provided Inspector Adrian with copies of promotional agreements as part of the review (Exhibit 1, Tab 2, Attachment F), but Inspector Adrian advised that the agreements provided did not account for all the prizes reflected in the expense reports. Inspector Adrian summarized the promotional and sampling activities (and associated expenses and items) in

Attachments I and J to the Incident Report and found that \$23,055.95 worth of prizes were not captured in the promotional agreements provided.

[38] Inspector Adrian advised that a majority of the missing promotional agreements belonged to one employee, M.R. In the interview with Inspector Adrian, M.R. told her that she had not been trained on completing promotional agreements. M.R. advised Inspector Adrian that she only completed one promotional agreement but that it was lost when she wiped all the information off her company computer before terminating her employment with Andrew Peller Limited.

[39] Inspector Adrian confirmed that M.R. reported to Alberta Sales Manager, Paul Lymer, and that Mr. Lymer, in his interview with Inspector Adrian, advised her that he did not request that M.R. submit copies of promotional agreements she prepared and that he assumed she had been completing them during her employment.

Inducement 3: Sponsorship – Brands of Liquor

[40] Inspector Adrian submitted that Andrew Peller Limited had entered into a sponsorship agreement with Calgary Shaw Charity Classic Foundation for a four-year sponsorship (the Shaw sponsorship) of an annual golf tournament known as the Shaw Charity Golf Championship.

[41] Inspector Adrian explained that a sponsorship agreement is an unconditional donation of cash or non-liquor merchandise directly to an event or team. All sponsorship agreements must be provided to AGLC in advance for approval to ensure the agreement is made in accordance with the legislation and policies.

[42] She advised the Panel that the Shaw sponsorship agreement was not unconditional; it granted several exclusivity rights to Andrew Peller Limited, which is not permitted at a Class A licensed premises (in this case, the golf course where the tournament was held).

[43] When asked by the Panel to clarify the advantage gained by Andrew Peller Limited as a result of the sponsorship agreement, Inspector Adrian stated that other agencies and suppliers' wine and cider products were not allowed at the event. She submitted that a Class A liquor licensee cannot have just one agency/supplier's products available as that provides a significant economic benefit to that agency or supplier.

[44] Inspector Adrian confirmed that the golf course where the Shaw Charity Golf Championship was held in 2021 has a Class A Minors Allowed Liquor Licence but that a Public Special Event Licence was not issued for the 2021 Shaw Charity Golf Championship. This type of event requires a Public Special Event Licence, and the sponsorship of all events on a Class A premises requires approval from AGLC.

[45] Inspector Adrian determined from the documentation provided by Mr. Lymer that Andrew Peller Limited was invoiced and paid \$18,055.80 for the 2021 Shaw sponsorship.

[46] Inspector Adrian gave an example of another violating sponsorship agreement entered into by Andrew Peller Limited that she discovered as a result of her investigation. She suggested that Regulatory Services could have sought additional fines for this alleged violation, but they chose not to pursue it.

[47] In April 2021, Mr. Lymer had a conversation with a Supervisor in AGLC Inspections. He was educated on sponsorship agreements and advised that they must be unconditional.

[48] Further, Inspector Adrian advised the Panel that Regulatory Services reviews operating procedures with all new liquor registrants, which includes an acknowledgment and undertaking stipulating what an inducement is and that the registrant will not offer inducements.

[49] Regulatory Services also offers ongoing staff training seminars pertaining to AGLC policies. Inspector Adrian submitted that the Applicant has been offered this training, but Andrew Peller Limited and its staff have not yet participated in a training seminar or liquor agencies training webinar.

IV. Andrew Peller Limited Submissions

[50] The legal representative for the Applicant, Mr. Holden, called Paul Lymer, Alberta Sales Manager, to give evidence on behalf of Andrew Peller Limited. Mr. Lymer has been employed with Andrew Peller Limited for four and a half years, and Andrew Peller Limited has been operating in Alberta for 60 years.

[51] In his role as Alberta Sales Manager, Mr. Lymer manages the sales team by directing them on priorities, strategies and regulatory issues regarding liquor and gaming. Mr. Lymer stated that he has been in various roles in the liquor industry across Canada and has had a lot of interactions with AGLC.

[52] Mr. Lymer submitted that all Andrew Peller Limited employees are seasoned in the industry and are familiar with AGLC's governing policies. He submitted that any changes to policies, specifically to the LAH, are discussed regularly in staff meetings. He asserted that Andrew Peller Limited takes compliance very seriously, which is why everything that was requested, including hundreds of pieces of documentation and correspondence, was provided to Inspector Adrian for her review.

[53] Mr. Lymer confirmed, when asked by Regulatory Services, that he is familiar with the LAH and that following the policies are a condition of Andrew Peller Limited's registration in Alberta. Mr. Lymer confirmed that he is aware of the option to reach out to AGLC with any questions relating to the legislation or policies or to request training.

[54] When asked by Regulatory Services why Andrew Peller Limited has not taken the offer for a staff training seminar, Mr. Lymer made the correction that Andrew Peller Limited accepted the offer for training in early fall 2023; however, the training seminar has not yet been scheduled as the end of the year is the busiest time for them.

Inducement 1: Faulty, Damaged and Expired/Stale-dated product

[55] Mr. Lymer admitted that the provisions guiding the process for refunds for faulty product, section 3.23.1 of the LAH and section 5.9.1 of the RLSH, are ambiguous. Andrew Peller Limited took the position that the wording "may request a refund from AGLC for faulty products" meant that licensees have the option to go through AGLC for their refund.

[56] As such, Mr. Lymer submitted that Andrew Peller Limited assisted licensees with refunds for faulty products in the spirit of being good business partners. He stated that many licensees were not even aware of the faulty claim process or form required by AGLC.

[57] Further, Mr. Lymer asserted that there is no avenue in the legislation for licensees to satisfy stale-dated products. Andrew Peller Limited wants their customers to have the best experience with their product, so they offered refunds for stale-dated products directly, which they believed was an option. Mr. Lymer stated that Andrew Peller Limited refunded at the wholesale price when possible.

[58] Mr. Lymer submitted that other agencies and suppliers have agreed with him that the wording in the handbooks is ambiguous, and they feel “stronger” language could be used to clarify the policy. Mr. Lymer stated that the word “must” rather than “may” is used in several other provisions under those sections and throughout AGLC policies.

[59] When asked by Regulatory Services whether the Applicant had ever reached out to AGLC to clarify their understanding of the policy, Mr. Lymer stated that he did not as the Applicant, and its clients and customers believed the process was optional.

Inducement 2: Promotional Agreements

[60] Mr. Lymer submitted that he was the primary point of contact with Inspector Adrian during her investigation, and he was the one who gathered and distributed the documents requested, including the promotional agreements.

[61] Andrew Peller Limited produced all requested documents from the five employees identified by Inspector Adrian, with the exception of the promotional agreements from M.R. who resigned in September 2021. Mr. Lymer submitted that M.R. removed all data from her company laptop before leaving to provide the next employee with “a fresh start.”

[62] Mr. Lymer stated that this incident was an anomaly and that Andrew Peller Limited was in the process of moving to a cloud-based system for storage of its electronic documents. He said it came as a surprise to Andrew Peller Limited that M.R.’s files had not been uploaded to the cloud prior to her departure.

[63] Mr. Lymer confirmed that all other promotional agreements for the four remaining employees were provided to Inspector Adrian.

[64] When asked by Regulatory Services about the process for reviewing employee expense claims, Mr. Lymer stated that expense claims are submitted for his review at least monthly. He confirmed that he was aware, based on his review of expense claims, that employees were providing promotional products to licensees. He stated that Andrew Peller Limited provides training to its employees on promotional agreements as part of regular meetings but confirmed he did not provide any records of training.

Inducement 3: Sponsorship – Brands of Liquor

[65] Mr. Lymer confirmed that Andrew Peller Limited entered into a multi-year sponsorship agreement for the annual Shaw Charity Golf Championship for the “wine category” starting in 2018. The

Applicant submitted copies of the Public Special Event Licences issued for the event for the years 2018, 2019, 2022 and 2023 (Exhibit 4).

[66] The event was not held in 2020 due to COVID-19 restrictions.

[67] In 2021, the regular caterer for the event was unable to travel due to COVID-19 travel restrictions, so the Calgary Shaw Charity Classic Foundation had to hire a different caterer than was used for the 2018 and 2019 events. Mr. Lymer submitted that it was later determined the new caterer did not apply for the correct licensing for the event; they applied for a catering licence but not a Public Special Event Liquor Licence.

[68] Mr. Lymer submitted that the host of the event took carriage of the licensing for 2018 and 2019, so Andrew Peller Limited had no visibility or awareness of the process for 2021 and believed it was the obligation of the event organizer to acquire the proper licensing for the event. They were made aware that a local caterer had been employed, but they were not involved with the organization of the tournament.

[69] Mr. Lymer submitted that AGLC issued Public Special Event Licences in the previous years, so Andrew Peller Limited had reason to believe their involvement in and sponsorship of the event was compliant.

V. Summation

Regulatory Services

[70] Regulatory Services submits that the issue before the Panel relates to section 81(e) of the Regulation which says that no liquor agency may directly or indirectly give anything of value to a licensee or employee of that licensee.

[71] The Panel heard evidence from Inspector Adrian that inducements are of concern in the liquor industry, and licensees have come forward with concerns about inducements. Liquor agencies are prohibited from providing inducements to licensees because they create an unfair playing field. They disadvantage suppliers who are represented by liquor agencies and do not or cannot give inducements, and they disadvantage licensees who do not receive or will not accept prohibited inducements.

[72] Regulatory Services submits that the prohibition of inducements also creates more product choice in the market, which is something Alberta prides itself on.

[73] Regulatory Services takes the position that it is seeking compliance and does not wish to be more punitive than necessary. Regulatory Services could have requested up to two years' worth of records rather than the six month "snapshot" of documents and could have requested employee expense claims from all eleven employees.

[74] Given the ongoing practices of Andrew Peller Limited as reflected in those records, Regulatory Services suggests it is reasonable to infer that if it had taken a broader approach to its review and audit, the Applicant could be facing more alleged violations and significantly higher fines.

[75] Regulatory Services takes the position that with respect to the payment for faulty, damaged, expired and stale-dated products, the issue is not simply a misunderstanding of policy. It is clear in the LAH and the RLSH that licensees must go through AGLC for refunds. There are no AGLC policies that state that a liquor agency is permitted to pay a licensee wholesale price, or any other amount, to a licensee for damaged, faulty broken or stale-dated products. On the contrary, the LAH states that any activity not specifically permitted under the LAH is prohibited.

[76] Regulatory Services disputes that there is any uncertainty with the faulty product policy. If there were, the Applicant has admitted they knew they could have reached out to AGCL with questions or concerns about any of the policies.

[77] Andrew Peller Limited was provided with training regarding inducements at the time of their registration. Further, Regulatory Services offers ongoing training opportunities for licensees and agents with respect to inducements. After the issuance of the September 27, 2023 Incident Report, Andrew Peller Limited was offered a training seminar. Regulatory Services acknowledges that the Applicant has accepted the offer for training but that it has been several months, and the training has not yet occurred. Regulatory Services is of the opinion that the training does not appear to be a priority for Andrew Peller Limited.

[78] With respect to the promotional agreements, Regulatory Services submits that these agreements are important to document and ensure that prizes provided to the retailer go to the consumer. Without the proper promotional agreements in place, prizes and funds could be improperly funneled to a licensee and provide them with an unfair advantage.

[79] Inspector Adrian gave evidence that during her employee interviews, employees stated they did not receive training on how to complete promotional agreements and that Mr. Lymer confirmed he did not require employees to provide copies to him. Therefore, Regulatory Services is of the opinion that the reasoning provided by the Applicant is not a valid excuse as Andrew Peller Limited is required to maintain copies of these agreements.

[80] Lastly, with respect to the sponsorship of the golf tournament, Regulatory Services takes the position there were numerous issues with the sponsorship. Inspector Adrian testified that the sponsorship was not permitted to be conditional and therefore the sponsorship agreement was not valid. She confirmed that the sponsorship agreement was not reviewed by AGLC prior to being entered into and that it would not have been approved by AGLC because of the licensing that was in place.

[81] As Andrew Peller Limited essentially agreed to provide money for an event, Regulatory Services submits it is their responsibility to ensure that the correct process is being followed and to take steps to confirm what liquor licensing is in place. Without proper sponsorship agreements in place, funds provided by an agency may not be properly tracked or distributed to a licensee.

[82] Inspector Adrian submitted that Andrew Peller Limited was previously provided a warning regarding the requirement for the sponsorship agreement to be unconditional, yet the Applicant continued to hold the golf tournament on a conditional basis.

[83] The Panel heard evidence of another problematic sponsorship agreement discovered through Inspector Adrian's investigation which Regulatory Services chose not to pursue a fine for. Further, Regulatory Services asserts there were other findings related to improper samplings, which the Applicant did not dispute, that could have received significantly higher fines than what was imposed.

[84] Regulatory Services requests that the Panel confirm the administrative sanctions imposed in order to have the Applicant take responsibility and follow the policies which are to the benefit of the entire liquor industry.

[85] Section 17(1) of the Regulation and section 1.1.4 of the LAH state that the Board's policies are conditions of the registration; they are not optional. A liquor agency does not get to ignore the policies or interpret the policies however they want.

[86] Further, section 1.1.10 of the LAH says that "any activity that is not specifically permitted under these guidelines is prohibited."

[87] Therefore, given that Regulatory Services is of the opinion Andrew Peller Limited has not complied with the conditions of their registration, Regulatory Services suggests that the alleged contravention related to the violations of payment for faulty product, promotional agreements and sponsorship agreements is reasonable and proper as it follows the administrative sanction guideline for violations.

Andrew Peller Limited

[88] Andrew Peller Limited submits that both the LAH and RLSH make use of imperative language, and there are many provisions where the word "must" is used. The use of the term "may" in sections 3.23.1 of the LAH and 5.9.1 in the RLSH instead of "may only" has caused confusion in the industry regarding faulty product claims.

[89] Other licensees have acknowledged the ambiguity of the provision but are unwilling to come forward out of concern of getting sanctioned by AGLC.

[90] Based on the ambiguity of the wording, for the alleged violation of refunds for faulty products, Andrew Peller Limited requests that the Panel withdraw the administrative sanction imposed by Regulatory Services or that the quantum of the fine be reduced to a nominal amount.

[91] With respect to the sponsorship of the 2021 Shaw Charity Golf Championship, the Applicant reiterates that an experienced catering company managed the event in previous years and that, due to COVID-19 restrictions, the established caterer for the event could not travel to conduct the event.

[92] Andrew Peller Limited submits that AGLC approved the incorrect licence for the 2021 iteration of the event and that year was a clear anomaly given that it was inconsistent with the clear compliance record of Andrew Peller Limited's sponsorship of the event for previous years.

[93] As such, Andrew Peller Limited requests that the administrative sanction be withdrawn without penalty, or the associated fine be reduced to a nominal amount.

[94] Lastly, with respect to record keeping of promotional agreements, Andrew Peller Limited submits that sufficient documentation was kept demonstrating compliance with legislation, regulation and policies, as required by section 5.3.1 of the LAH.

[95] Andrew Peller Limited produced 17 copies of promotional agreements which represented 100 per cent of the agreements prepared by four out of five of the audited employees. The missing agreements were as a result of the error of one employee. Andrew Peller Limited takes the position that the Applicant satisfied the requirement to maintain sufficient records to demonstrate compliance as set out in section 5.3.1 of the LAH.

[96] Further, Mr. Lymer provided evidence that in light of the inability to access copies of agreements from a previous employee, Andrew Peller Limited has implemented a cloud-based system where copies of all promotional agreements are saved to a shared location.

[97] Alternatively, given that it is not disputed by Regulatory Services that the missing promotional agreements were a result of a systems error and was not consistent with the Applicant's retention and production practices, Andrew Peller Limited requests that the Panel reduce the administrative sanction for the missing promotional agreements to a nominal amount.

[98] Andrew Peller Limited takes the aforementioned matters very seriously and submits that the Applicant has made changes to address the issues.

VI. Analysis

[99] As set out in paragraphs 6 and 7 of this decision, Presiding Member Vavrek and Panel Member Zhang deliberated privately as a quorum of the Panel on January 23, 2024, to make the decision.

[100] The Panel carefully considered the oral and documentary evidence submitted by Regulatory Services and Andrew Peller Limited in making its finding of fact. The Panel considered the documentary evidence admitted and the weight to place on it given that a number of the violations contained within the hearing record were no longer at issue at the hearing.

[101] With respect to the payment for faulty, damaged and expired/stale-dated liquor, Inspector Adrian provided evidence summarizing the expense reports provided to her from five Andrew Peller Limited employees. The Panel finds that Inspector Adrian's summary showed that for the period and reports reviewed, Andrew Peller Limited paid a total of \$12,730.34 to various licensees for faulty, damaged or defective liquor products.

[102] The Applicant did not deny that the refunds were paid but argued that the wording of the policies for faulty product claims is confusing.

[103] As a registered liquor agency, Andrew Peller Limited is bound by the LAH. There are no provisions in the LAH that permit a liquor agency to refund a licensee for faulty products. Section 3.23.1 of the LAH states: "Licensees that purchase products directly from AGLC through the Central AGLC Authorized Warehouse may request a refund from AGLC for faulty product." The Panel finds that the use of the permissive word "may" indicates that licensees may request a refund but are not required to.

[104] Moreover, the use of the word “may” authorizes discretion to take an action or not. A licensee may choose to request a refund or not, but the use of the word “may” in the provision does not provide a licensee unfettered discretion on where a refund can be requested from. The discretion to request a refund is limited by the constraint of the words “from AGLC.”

[105] The Panel disagrees with the Applicant’s interpretation that the use of the word “may” suggests that the Licensee may request a refund from AGLC or that they could request a refund from a channel other than what is written in the policy, such as a request for a refund from a supplier or agency.

[106] Further, section 1.1.10 of the LAH states that an activity not specifically permitted under the LAH is prohibited. The Panel finds that the policy must be read in its entire context and the intent and spirit of the “Faulty Product Claims” section of the LAH, and the corresponding section 5.9 in the Retail Liquor Store Handbook, is clear: the return of faulty products purchased directly from AGLC through its authorized warehouse are processed by AGLC. Licensees may request a refund from AGLC for faulty products, but they do not have to request a refund.

[107] If the word “must” were used in the provision, Licensees would be required to submit a faulty product claim for every single faulty, damaged, expired or stale-dated product which the Panel finds would result in a provision that is not harmonious with the intent of the policy.

[108] As such, the Panel finds that Andrew Peller Limited contravened section 81(e) of the Regulation by providing payment to licensees in the form of refunds totaling \$12,730.34.

[109] With respect to promotional agreements, Inspector Adrian provided oral and documentary evidence that Andrew Peller Limited was unable to provide copies of promotional agreements for several prizes and liquor provided to licensees as promotional items or samples for added value promotions.

[110] Inspector Adrian submitted that through interviews conducted with M.R. and Mr. Lymer as part of her investigation, M.R. stated that she did not receive training for drafting promotional agreements. However, the Panel finds that the list of promotional and sampling activities prepared by Inspector Adrian (Exhibit 1, Tab 2, Attachment I) reflects numerous promotional expenses taken from expense reports prepared by M.R.

[111] Further, Mr. Lymer confirmed that employees were not required to provide copies of the agreements they prepared. The Panel finds that agency copies of promotional agreements were not being retained, as evidenced by the Applicant’s inability to access or produce promotional agreements prepared by M.R. after she left Andrew Peller Limited. The Panel acknowledges the Applicant’s position that the agreements existed but that they were inaccessible due to data loss when M.R. terminated her employment; however, it is the responsibility of the agency to maintain records of promotional agreements in accordance with section 5.3.2 of the LAH.

[112] As such, the Panel finds that, Andrew Peller Limited was unable to produce agreements for promotional items representing a total of \$23,055.95 in contravention of section 81(e) of the Act.

[113] Further, it is the responsibility of the Applicant to ensure its employees are trained. The Panel finds that Andrew Peller Limited has accepted an offer to participate in inducements training provided by Regulatory Services but that the training has not yet been scheduled.

[114] With respect to the sponsorship agreement for the 2021 Shaw Charity Golf Championship, the Panel heard evidence the required Special Event Licence for the event was not in place. However, the Applicant provided evidence that the appropriate licences had been in place for the event for all other years under the four-year sponsorship agreement (Exhibit 4).

[115] The Panel finds that it is unreasonable for the Applicant to believe a change in caterer would result in improper licensing for an event they had successfully sponsored, in compliance with AGLC policies, for two years prior. The Panel finds that community public resale special event licences issued for 2018, 2019, 2022 and 2023 were issued to the Calgary Shaw Charity Classic Foundation and not to Andrew Peller Limited.

[116] As such, although the Panel agrees that the Applicant should verify the appropriate licensing is in place for any events it sponsors, the Panel does not find that an administrative sanction should be imposed against the Applicant for the sponsorship.

[117] Therefore, for the violations of section 81(e) noted above, the Panel imposes fines equivalent to 100 per cent of the value of the inducements, totaling \$35,786.29, specifically:

- \$12,730.34 for the payment of faulty, damaged and expired/stale-dated product; and
- \$23,055.95 for the missing promotional agreements.

VII. Finding

[118] For the reasons stated above, the Panel finds that Andrew Peller Limited contravened section 81(e) of the Regulation.

[119] In accordance with section 94(7)(b) of the Act, the Panel replaces the administrative sanctions imposed by Regulatory Services with a fine of \$35,786.29.

[120] The \$35,786.29 fine is to be paid on or before April 1, 2024.

Signed at Calgary, this 30th day of January, 2024



Vincent Vavrek, Presiding Member, Hearing Panel