

**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

**2297687 Alberta Ltd.
o/a Boss Liquor Chappelle (Applicant)
3158 141 Street SW
Edmonton, AB T6W 4B5**

DATE OF HEARING:	May 6, 2024
HEARING PANEL:	Maureen Moneta, Presiding Member Patti Grier, Panel Member Jack Fujino, Panel Member
APPLICANT / REPRESENTATIVE:	Hemang Chaudhary, Manager, Applicant (absent) Cheuk Yu Quentin Leung, Supervisor, Representative
REGULATORY SERVICES DIVISION:	Petrina Nash, Hearing Officer

DECISION OF THE HEARING PANEL

The Panel finds that Boss Liquor Chappelle contravened section 4.4.5 of the Retail Liquor Store Handbook.

In accordance with section 94(7)(b) of the *Gaming, Liquor and Cannabis Act*, the Panel replaces the administrative sanction imposed by the Regulatory Services Division with a fine of \$1,500 or a 6-day suspension of the Class D Retail Liquor Store Licence numbered 783007-1.

The \$1,500 fine is to be paid on or before July 2, 2024 or the suspension served commencing with the normal opening of business on July 4, 2024 until the normal close of business on July 9, 2024.

I. Jurisdiction and Preliminary Matters

[1] By letter dated February 2, 2024, the Regulatory Services Division (Regulatory Services) of Alberta Gaming, Liquor and Cannabis Commission (AGLC) advised 2297687 Alberta Ltd., operating as Boss Liquor Chappelle (the Licensee), that the Licensee contravened:

- section 4.4.5 of the Retail Liquor Store Handbook (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 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 Store Licence numbered 783007-1 (the Licence).

[3] The Licensee subsequently applied for a hearing before a Panel of the Board of AGLC pursuant to section 94(1) of the *Gaming, Liquor and Cannabis Act* (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 – Maureen Moneta (Presiding Member), Patti Grier and Jack Fujino.

[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 31, 2024 and the attached hearing record. The following documents were entered into evidence:

- Exhibit 1 Hearing Record, including Tabs 1 to 3
- Exhibit 2 Additional documents provided by Regulatory Services, including Tabs 1 to 4

II. Issues

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

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

III. Regulatory Services Submissions

[8] Regulatory Services called three witnesses:

- Kaitlyn Lima – AGLC Inspector
- M.J. – AGLC Agent
- E.C. – AGLC Agent

[9] Inspector Lima has been an inspector with AGLC for two years. As part of her role, she supervises the AGLC Under 25 Program and is responsible for hiring Under 25 agents. Inspector Lima

and Under 25 Agents M.J. and E.C. co-authored an Incident Report which details incidences that occurred at Boss Liquor Chappelle on October 9, 2023 and January 17, 2024 (Exhibit 1, Tab 2).

[10] The following is a summary of the evidence provided by Inspector Lima, Agent M.J. and Agent E.C.

[11] Inspector Lima explained that the purpose of the AGLC Under 25 Program is to ensure compliance with AGLC's Under 25 policy, which requires all licensees and their staff to request identification from any person who appears to be under the age of 25 when they attempt to purchase liquor or cannabis or enter a minors-prohibited licensed premises. Further, it ensures that all young people who appear older than they are get asked for identification.

[12] Regulatory Services informs licensees about the Under 25 Program in several ways:

- A letter is sent to licensees every year, which advises them that they will be subject to two Under 25 audits and explains the reasons why staff members tend to fail.
- Operating procedures are conducted with every licensee before they are issued a licence, which includes going over the Under 25 policy and how to properly check identification.
- The Under 25 policy is explained during ProServe training.

[13] Inspector Lima explained to the Panel how the Under 25 program is operated:

- Staff members can work for the first 30 days of their employment without ProServe certification, but a staff member who is ProServe certified must supervise them.
- Agents under 25 years of age who appear young looking are hired and work under the supervision of an inspector.
- During the first Under 25 audit, an agent attempts to purchase liquor or cannabis from a licensed premises.
- If the staff member fails to ask for identification and sells the liquor or cannabis, the licensee fails the audit.
- The agent re-enters the premises with the inspector and goes through a checklist of questions with the staff member.
- The licensee or approved manager is notified that the staff member failed to request identification, advised that a caution will be issued, offered a free staff training seminar, and told that a second audit will be conducted within three months.
- If a staff member fails the second Under 25 audit, an incident report is submitted and the licensee is sanctioned.

[14] With regard to the first Under 25 audit at Boss Liquor Chappelle on October 9, 2023, Inspector Lima stated that:

- she did not conduct the audit but confirmed that the Licensee failed it and received a caution;
- Agent M.J. was 19 years old at the time of the audit;
- the staff member working at the time of the audit had been employed for five days, was not ProServe certified, and was working alone; and

- the approved manager of the Licensee, Hemang Chaudhary, was contacted after the failed audit and offered a free staff training seminar, which was not subsequently requested.

[15] Agent M.J. confirmed that he and AGLC Inspector Ilia Lykov conducted the Under 25 audit at Boss Liquor Chappelle on October 9, 2023. He further confirmed that the photograph of him at Tab 2 of Exhibit 2 was taken on the day of the audit.

[16] During the Under 25 audit on October 9, 2023, Agent M.J. stated that he:

- was the only patron in the premises;
- selected a Smirnoff Ice and placed it on the counter;
- completed the purchase without being asked for identification by the staff member identified as R.S.;
- exited the premises;
- later re-entered the premises with Inspector Lykov; and
- advised R.S. that an Under 25 audit had been conducted.

[17] Agent M.J. advised that at the time of the Under 25 audit R.S. had been employed at Boss Liquor Chappelle for five days, was not ProServe certified and was working alone. Further, R.S. stated that he was aware of the Under 25 policy and that he thought Agent M.J. looked like he was 21 years old.

[18] On December 2, 2023, a maintenance inspection of Boss Liquor Chappelle was conducted by Inspector Lykov, and Inspector Lima explained that a caution was issued to the Licensee for having staff member Cheuk Yu Quentin Leung working alone when he was not yet ProServe certified. Mr. Leung had been employed with Boss Liquor Chappelle for two weeks at that time.

[19] When the Panel referred to Inspector Lykov's Operational Report (Exhibit 2, Tab 1) and asked what specific deficiencies he observed in relation to sections 4.4.8 and 3.3.8 of the Handbook, Inspector Lima explained that:

- Boss Liquor Chappelle was missing a "no minors" sign on the front door and a fetal alcohol spectrum disorder poster inside of the licensed premises; and
- no formal caution was issued for these two deficiencies.

[20] Inspector Lima conducted the second Under 25 audit with Agent E.C. on January 17, 2024.

[21] Agent E.C. confirmed that the photograph of him at Tab 3 of Exhibit 2 was taken on the day of the audit.

[22] During the second audit, Agent E.C. stated that he:

- was the only patron in the premises;
- did not observe any other staff members working;
- selected a can of Coors Original beer and brought it to the cashier;
- completed the purchase without being asked for identification;
- exited Boss Liquor Chappelle; and

- re-entered the premises with Inspector Lima and AGLC Inspector Heather Snodgrass, who identified themselves to Mr. Leung.

[23] Inspector Lima stated that when she saw Agent E.C. exit the premises with the beer, she knew that Boss Liquor Chappelle had failed the audit.

[24] When she entered the store with Agent E.C., Inspector Lima said that she spoke with Mr. Leung and confirmed that he was working alone.

[25] Agent E.C. and Inspector Lima stated that during their conversation with Mr. Leung, he said that he understood the Under 25 policy and did not ask for Agent E.C.'s identification because he thought he looked 25 years old. Inspector Lima advised Mr. Leung that Agent E.C. was 18 years old.

[26] Inspector Lima verified that Mr. Leung had become ProServe certified on January 9, 2024 and opined that the training should have been fresh in his mind at the time of the second Under 25 audit.

[27] Inspector Lima said that she advised Mr. Leung that an incident report would be submitted and that he would be required to take ProServe training again.

[28] On January 18, 2024, Inspector Lima advised the Licensee of the second failed Under 25 audit and that an incident report would be submitted, and she also encouraged the Licensee to schedule a free staff training seminar.

[29] Inspector Lima confirmed that the Licensee requested a free staff training seminar, which was held on January 26, 2024 with three staff members and one manager of Boss Liquor Chappelle (Exhibit 2, Tab 4). The Licensee did not attend the seminar.

IV. Boss Liquor Chappelle Submissions

[30] The Representative for the Licensee, Cheuk Yu Quentin Leung, gave evidence on behalf of Boss Liquor Chappelle.

[31] Mr. Leung confirmed that he:

- is a supervisor at Boss Liquor Chappelle;
- started working there in December 2023; and
- was asked by the Licensee to act as the Licensee's representative at the hearing.

[32] Mr. Leung admitted that not asking for Agent E.C.'s identification was wrong.

[33] Mr. Leung contended that he lacked awareness of the importance of checking identification in Alberta and asked the Panel to consider that he is from a foreign country where liquor is easily obtained by minors and the law regarding the sale of liquor to minors is not strictly enforced. He further stated that while traveling around numerous countries in Asia, he found that supermarkets and convenience stores sell liquor to minors.

[34] When asked by Regulatory Services whether he is able to answer questions regarding the first Under 25 audit on October 9, 2023, Mr. Leung stated that he spoke to his co-workers about it and “it’s all the facts” so there are no further comments to make about that incident.

[35] Mr. Leung said that there was another customer in Boss Liquor Chappelle at the time of the Under 25 audit on January 17, 2024, but he did not have video surveillance footage that could be presented at the hearing. He further stated that he was distracted and very busy dealing with an online order.

[36] When asked by Regulatory Services to explain what training he received when he started working at Boss Liquor Chappelle in December 2023, Mr. Leung said that he received weak training when he started working and was not taught about the regulations and rules regarding the liquor industry in Alberta.

[37] When asked by Regulatory Services whether the Licensee provided any training after the second Under 25 audit, Mr. Leung stated that other than the AGLC staff training seminar that was held, the Licensee reminds the staff at Boss Liquor Chappelle to check identification.

[38] Mr. Leung advised the Panel that he did not know why the Licensee was not present for the staff training seminar.

[39] When asked by Regulatory Services whether he still thought that Agent E.C. appeared to be 25 years old after seeing him at the hearing, Mr. Leung said that the agent looked much older than 25 years old. He further stated that he finds it challenging to determine the agent’s age.

[40] Mr. Leung said that he checks the identification of most customers, and when they cannot provide identification or provide identification that cannot be validated, he does not sell them liquor. He further noted that he denies the sale of liquor to about four or five customers per week.

[41] When asked by Regulatory Services what he has done differently since the Under 25 audit on January 9, 2024, Mr. Leung said that he and the staff at Boss Liquor Chappelle check the identification of most customers, unless the person is elderly. He further noted that the staff discuss their experiences and the situations that arise regarding young-looking customers, and they deny the sale of liquor to customers who present a copy of their identification on their cell phone or foreign passports that cannot be validated.

[42] When asked by the Panel how often the Licensee is present in the store, Mr. Leung said about twice per month.

[43] When asked by the Panel whether Agent E.C. was wearing a hat or a toque during the Under 25 audit, Mr. Leung said that he was quite sure the agent was not wearing anything on his head.

[44] When asked by the Panel whether he had experience working in a liquor store or in the liquor industry before he started working at Boss Liquor Chappelle, Mr. Leung stated that:

- he worked in a large department store in Hong Kong that sold liquor;
- he was not heavily involved with liquor sales in his role; and

- his duties mostly included managing the merchandise, marketing and business operations of the store.

V. Summation

Regulatory Services

[45] Regulatory Services asserts that it is a concern that the Licensee did not attend the hearing, as Mr. Leung wasn't employed at Boss Liquor Chappelle during the first Under 25 audit and cannot speak to it. Further, it was not fair to put Mr. Leung in a position to have to speak to it.

[46] The matter before the Panel is a contravention of section 4.4.5 of the Handbook.

[47] Regulatory Services contends that operating a liquor licensed premises in the province of Alberta is a privilege and not an automatic right, and it comes with significant responsibilities, including complying with the Act, the Regulation and AGLC policies.

[48] Regulatory Services takes the position that licensees and their staff are required to ensure they follow all legislation and policies governed by operating a licensed premises.

[49] AGLC takes the issue of minors trying to obtain liquor very seriously.

[50] Regulatory Services submits that it is often very difficult to tell if a person is of legal age just by looking at them, so licensees must ask for proof of age in order to eliminate any situation where the purchaser of liquor is possibly a minor. This is why AGLC implemented section 4.4.5 of the Handbook.

[51] To ensure compliance with this policy, Regulatory Services conducts Under 25 audits. This program was designed to ensure compliance by taking a reasonable approach through graduated enforcement.

[52] Regulatory Services contends that the Under 25 program is well publicized by AGLC and addressed with each licensee at the time of licensing.

[53] If a licensee fails the first audit, they are educated instead of sanctioned, offered a staff training seminar, and advised that a second audit will occur.

[54] Regulatory Services submits that the goal is to provide education to ensure that licensees and their staff understand what is required of them.

[55] During the two separate audits conducted at Boss Liquor Chappelle, the young-looking liquor agents, one who was 19 years of age and one who was 18 years of age at the time of their visits, were not asked for their identification before they were sold liquor.

[56] Section 121 of the Act states if an employee or agent of a licensee contravenes a provision of this Act, the licensee is deemed to also have contravened the provision unless the licensee establishes on a balance of probabilities that the licensee took all reasonable steps to prevent the employer or agent from contravening the provision.

[57] Regulatory Services takes the position that Mr. Leung has not provided any evidence that he exercised due diligence in these matters by taking all reasonable steps, and staff at Boss Liquor Chappelle clearly received little to no training from the Licensee and are permitted to work in the premises unsupervised prior to completing their required ProServe certification.

[58] After the first failed Under 25 audit, the Licensee was contacted and advised that staff could not work unsupervised without ProServe certification. A few months later, the Licensee allowed the same violation to occur.

[59] Regulatory Services is of the opinion that improved, ongoing supervision and consistent training of staff are reasonable steps that the Licensee could have employed, particularly when the staff members involved in these failures had only been employed at the premises for a short period of time.

[60] Regulatory Services submits that the administrative penalty guideline for the violation of section 4.4.5 of the Handbook is \$750 for the first occurrence and \$1,500 for the second occurrence.

[61] The Under 25 program is structured to give the licensee the opportunity to be educated if they failed the first visit to ensure that they have a chance to speak to their staff and to correct future occurrences.

[62] As such, Regulatory Services respectfully submits that a breach of policy occurred and recommend that at a minimum, the original administrative sanction of \$750 or a three-day suspension of the liquor licence be upheld.

Boss Liquor Chappelle

[63] Mr. Leung submits that he was not well informed of the regulations and admits that the Licensee failed both Under 25 audits.

[64] Mr. Leung contends that Boss Liquor Chappelle has corrected the issues with regard to requesting identification from customers.

[65] Mr. Leung asks that the Panel consider that he is from a foreign country and requests that the Panel replace the fine imposed by Regulatory Services with a \$375 fine.

VI. Analysis

[66] The Panel carefully considered the oral and documentary evidence submitted by Regulatory Services and the oral evidence provided by the representative of the Licensee in making its finding of fact.

[67] The Panel finds as fact that Regulatory Services conducted an Under 25 audit on October 9, 2023 and that an employee of Boss Liquor Chappelle failed to request identification from and verify proof of age of Agent M.J.

[68] Agent M.J. stated that he was 19 years of age on October 9, 2023, and the Panel finds that Agent M.J. appeared to be under 25 years of age in the photograph taken of him in October 2023 (Exhibit 2, Tab 2).

[69] Based on the evidence of Inspector Lima and Agent M.J., the Panel finds that the employee on duty at Boss Liquor Chappelle on October 9, 2023 was aware of the Under 25 policy.

[70] The Panel finds that Regulatory Services advised the Licensee of the first failed Under 25 audit and that a second Under 25 audit would occur at a later date (Exhibit 1, Tab 2). Further, Regulatory Services offered the Licensee and the Licensee's employees the opportunity to participate in a staff training seminar, which was declined.

[71] The Panel finds as fact that Regulatory Services conducted a second Under 25 audit at Boss Liquor Chappelle on January 17, 2024 and that Mr. Leung failed to request identification from and verify proof of age of Agent E.C.

[72] Agent E.C. advised the Panel that he was 18 years of age on January 17, 2024, and the Panel finds that Agent E.C. appeared to be under 25 years of age in the photo taken of him in January 2024 (Exhibit 2, Tab 3).

[73] The Panel finds that liquor licensees and their staff must abide by the requirement to obtain valid identification and verify proof of age from any person who appears to be under 25 years old when they attempt to purchase liquor or enter a retail liquor store without exception.

[74] As such, the Panel finds that the Licensee contravened section 4.4.5 of the Handbook on October 9, 2023 and January 17, 2024.

[75] 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.

[76] Mr. Leung acknowledged that the sale of liquor to Agents M.J. and E.C. was wrong and asked the Panel to consider that he is from a foreign country that does not strictly enforce laws regarding the sale of liquor to minors.

[77] Although the Panel accepts Mr. Leung's claim that he was not fully aware of how seriously the sale of liquor to minors is taken in Alberta, ignorance of AGLC policies is not an excuse to contravene them and does not absolve the Licensee from liability. The Licensee is responsible for ensuring that the employees of Boss Liquor Chappelle receive adequate training and education regarding AGLC's Under 25 policy.

[78] The Under 25 program provides licensees with an education opportunity, as they receive a caution rather than an administrative sanction for the first failed Under 25 audit and the opportunity to attend a staff training seminar.

[79] The Panel finds that by neglecting to provide oversight and internal training and education for the employees of Boss Liquor Chappelle, and by declining the offer to schedule a staff training seminar after the first failed Under 25 audit, the Licensee did not take all reasonable steps to prevent his employees from contravening section 4.4.5 of the Handbook.

[80] The Panel finds it deeply concerning and disappointing that the Licensee only visits Boss Liquor Chappelle twice a month and that Mr. Chaudhary, as the approved manager of the Licensee, did not attend the hearing. Given that Mr. Leung was not an employee of Boss Liquor Chappelle during the first Under 25 audit, the Panels finds that it was unreasonable of the Licensee to have Mr. Leung act as the representative at the hearing.

[81] 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.

VII. Finding

[82] For the reasons stated above, the Panel finds that Boss Liquor Chappelle contravened section 4.4.5 of the Handbook.

[83] In accordance with section 94(7)(b) of the Act, the Panel replaces the administrative sanction imposed by Regulatory Services with a fine of \$1,500 or a 6-day suspension of the Licence.

[84] The \$1,500 fine is to be paid on or before July 2, 2024 or the suspension served commencing with the normal opening of business on July 4, 2024 until the normal close of business on July 9, 2024.

Signed at St. Albert, this 31st day of May, 2024



Maureen Moneta, Presiding Member, Hearing Panel