

**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 November 1, 2010
and the Regulation**

and

**IN THE MATTER OF 1209094 Alberta Ltd.
o/a On the Rocks Restaurant, Bar & World Music
11740 Jasper Avenue NW
Edmonton, Alberta
T5K 0N3**

concerning alleged contraventions

DATE OF HEARING:	May 2, 2014
HEARING PANEL:	Hon. M.J. Trussler, Panel Chair Ms. S.L. Green, Panel Member Mr. J.P. Hansen, Panel Member
LICENSEE REPRESENTATIVES:	Mr. W., Legal Counsel Mr. J., Legal Counsel Assistant
COMPLIANCE AND SOCIAL RESPONSIBILITY:	Ms. B., Hearing Officer Mr. H., Resource Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an incident report dated March 5, 2014, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming & Liquor Commission (AGLC) imposed an administrative sanction under Section 91(2) of the *Gaming and Liquor Act*, without a hearing, on 1209094 Alberta Ltd. o/a On the Rocks Restaurant, Bar & World Music (On the Rocks), Edmonton.

The licensee subsequently applied for a hearing under Section 94(1) of the *Gaming and Liquor Act*. A Hearing Panel of the Board of the AGLC met to hear the following alleged violations:

- 1. Section 5.3.18 Licensee Handbook: Licensee and/or staff consuming liquor, or being under the influence of liquor or drugs, while on duty; and**

2. Section 5.3.6(a) Licensee Handbook: Licensee selling or serving more than two standard size drinks to one patron after 1:00 a.m.

The Licensee and the Hearing Panel were provided with a hearing file containing the incident report dated March 5, 2014 and various documents pertaining to alleged incidents occurring on the premises of On the Rocks on Saturday, February 1, 2014. Ms. B. presented the case on behalf of the CSR Division and Mr. W. and Mr. J. represented On the Rocks.

II. The Issue

Did the Licensee:

- and/or staff consume liquor, or were they under the influence of liquor or drugs, while on duty?
- sell or serve more than two standard size drinks to one patron after 1:00 a.m.?

If so, did the Licensee exercise due diligence in preventing these incidents?

III. Evidence

Cst. E. (Edmonton Police Service) – evidence led by Ms. B.

Cst. E. has been a police officer with the Edmonton Police Service (EPS) for the past five years. Cst. E. was working in a plain clothes capacity on February 1, 2014 on a project called “watch dog.” The project was motivated as a result of higher calls for service, regarding intoxication and other liquor related incidents. The purpose of the project was to target licensed premises to determine if any liquor violations were occurring.

There were approximately twelve EPS officers assigned to the project over three to four weekends. The establishments targeted were located in the west end and downtown areas of Edmonton. Two EPS officers and two AGLC Inspectors attended each premises throughout the project. The project was a collaboration between the EPS, AGLC and the Public Safety Compliance Team. Cst. E.’s role was to enter the licensed premises to determine if any infractions could be observed. The AGLC Inspectors were part of the project because they are the subject matter experts in the field of liquor and related violations.

Cst. E. arrived at On the Rocks at 11:56 p.m. on February 1, 2014 with one other EPS officer and two AGLC Inspectors. There was a line up to get into the premises. Cst. E. noted one main liquor service bar inside the premises. She observed a male bartender, who was standing behind the bar, pour what appeared to be Jack Daniels into a highball glass (one third full) and consume the contents of the glass in its entirety. The bartender appeared to be primarily working behind the bar during her observations and he was definitely an employee of On the Rocks, as he was behind the bar for the remainder of the evening and continued to serve liquor to patrons. Cst. E. was approximately six feet away from the bartender when she observed him consume the alcohol, with a clear and unobstructed line of sight.

Cst. E. also observed a female bartender serve a male patron three bottles of beer at approximately 1:33 a.m. The male patron did not appear to be with anyone when he ordered and was served the drinks. Cst. E. was standing approximately six feet away from the bartender when she observed her provide the three beer to the male patron, with a clear and unobstructed line of sight. Cst. E. then ordered and was served three shots of tequila from the same female bartender. She paid cash for the drinks and walked away from the bar with the drinks. Cst. E. was alone at the bar when she ordered the drinks and the bartender did not ask Cst. E. if all three shots were for her. Cst. E. observed the female bartender serve drinks to patrons throughout the evening, so she knew she was an employee of On the Rocks.

Cst. E. subsequently issued a Provincial Summons to the staff members in question. She was able to positively identify each of the staff involved in the incidents at On the Rocks on February 1, 2014, when she served them with the Summons.

Cst. E. – cross-examined by Mr. W.

Cst. E. started her shift on February 1, 2014 at 7:00 p.m. She attended one other premise and consumed one alcoholic beverage prior to arriving at On the Rocks. She may have consumed another alcoholic drink at On the Rocks. The EPS mandate is not to consume more than three drinks during an entire shift.

Cst. E. stood in line at On the Rocks with the other EPS officer and two AGLC Inspectors for approximately thirty minutes. They entered the premises as a group. The premises were busy and crowded and patrons were congregating throughout the area. Cst. E. would not describe the service bar as shoulder to shoulder. The group could not find a table, so they walked throughout the premises. At various times during the evening, they would be together as a group or alone. Cst. E. has attended On the Rocks personally on approximately three occasions and would have attended with friends. She was not known to the staff.

Cst. E. does not recall specifically where the male bartender retrieved the bottle of Jack Daniels from. The bottle definitely appeared to be a bottle of Jack Daniels from where she was standing. She cannot say for certain the liquid in the bottle was, in fact, Jack Daniels or alcohol of any type.

She recalls having a clear line of sight when she observed the female bartender serve the male patron three bottles of beer. The bar was not shoulder to shoulder at the time, although the bar was reasonably busy. Cst. E. did not follow the male patron after he left the service bar and she does not know where he took the beer or if he gave them to other patrons. Cst. E. is not aware if the female bartender observed her with other people before she was served the shots tequila. She did not consume any of the tequila shots.

Inspector N. (CSR Division) – evidence led by Ms. B.

Inspector N. has been an Inspector with the AGLC for the past ten years; four years as a Tobacco Inspector and six years as an Inspector with the CSR Division. He has been on numerous training courses and has conducted well over a hundred inspections. Project “watch dog” was an EPS initiative. The AGLC participated in the project because the EPS felt the Inspectors were the subject matter experts.

On the Rocks was shoulder to shoulder when the group entered the premises and appeared to be close to maximum capacity. He has attended On the Rocks on numerous occasions in the past to conduct inspections. There were three male bartenders and one female bartender working on February 1, 2014. There was also a gentleman who appeared to be a manager on the floor. All the bartenders were wearing black and performed duties behind the service bar. The Inspectors did not identify themselves when they entered the premises. The focus of the evening was to identify any liquor related issues or infractions.

While at the service bar, Inspector N. observed a male bartender pour four shots of Jack Daniels and consume one of the shots with the patrons who ordered the shots. The bartender had retrieved the bottle from behind the bar. He had been serving drinks to patrons all evening, so Inspector N. was able to identify him as an employee of On the Rocks. Inspector N. had a clear vantage point when he observed the bartender pour the shots and consume one of the shots. Inspector N. consumed one Coors Light beer while he was at the premises.

At 1:12 a.m., Inspector N. observed a female bartender serve a male patron three bottles of beer. The patron did not appear to be with anyone when he ordered and was served the beer. Inspector N. approached the same female bartender and ordered and was served three beer. He was not with anyone when he ordered and was served the beer. The female bartender had been working behind the bar for the duration of Inspector N.’s observations. The bar was very loud, so he could not hear the conversation between the bartender and the male patron who was served the three beer.

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

On the Rocks was shoulder to shoulder when they entered and certain pockets of the service bar itself were shoulder to shoulder. At times, there were patrons waiting in line near the bartenders to order drinks. Inspector N. was standing alone at the bar when the four shots of Jack Daniels were poured by the bartender and the bartender consumed one of the shots. He had a clear and unobstructed view at the time. Inspector N. did not follow the male patron after he was served the three bottles of beer and he does not know if he gave any of the beer to other patrons.

Inspector N. – questioned by the Panel

There are tables and chairs around the perimeter of the premises. The distance between the service bar and the tables is approximately twelve to fifteen feet. The majority of the patrons in the premises were standing throughout the evening. The female bartender was very busy and she did not watch where the male patron was going with the beer after he left the service bar.

Mr. D. W. (On the Rocks) – evidence led by Mr. W.

Mr. D. W. is the Director/Shareholder and Board Approved Manager of On the Rocks. He has been the Board Approved Manager for the past eight years. On the Rocks is open from 11:00 a.m. to 2:00 a.m. seven days a week. It is a restaurant and bar with VLT's and live music. It caters to an older crowd. Mr. D. W. started out in the hospitality business in 1985 and has worked his way up through the ranks.

He has a staff training manual and policies in place that all staff of On the Rocks must follow. When staff is hired, they are required to "sign off" on a sheet to indicate they have read and understand the policies. All staff must have a valid ProServe Certification. Senior staff members of On the Rocks provide on-the-job training to staff. There is also a general manager, shift managers and bar managers.

Mr. D. W. can only assume which of his staff were involved in the incidents on February 1, 2014. He does not have proof and cannot specifically identify the staff. He believes he knows the identity of the male bartender in question. The bartender has been in the hospitality business for over twenty years and is a senior staff member at On the Rocks. He was a former owner/operator himself and is very well versed in the Licensee Handbook.

The key management positions at the premises are staffed with employees who have experience in the hospitality business and have knowledge of the Licensee Handbook. Mr. D. W. trains the managers, who then conduct direct training with the other staff. He sets the policies and advises the managers on how to train the employees. There is a zero tolerance policy for staff consumption of liquor while on duty. There can be up to thirty three staff members on duty on a busy Saturday night. Staff caught drinking on duty are dealt with on a case by case basis and may be terminated. The staff training manual indicates there is to be no drinking on the job. The manual is reviewed by employees one to two times per year. Mr. D. W. conducts staff meetings and reviews AGLC policies with his staff.

The employees of On the Rocks wear a uniform. Security staff wear red shirts, male bartenders wear a black button up shirt with a company logo on the front and female bartenders wear black logoed shirts or a black tank top or shirt that fits their body type. The servers wear jeans and a black or grey logoed shirt. All door staff and managers are ProTect trained. On the Rocks has participated in Best Bar None since the inception of the program and was an accredited establishment last year in its category.

Behind the bar at the premises there is liquor, bottled water, Red Bull, various non-alcoholic beverages, lemons/limes and other related supplies. The staff also stores their personal items behind the bar while they are working. Juice and milk would be stored in bottles behind the bar, sometimes in recycled liquor bottles. The practice of storing non-alcoholic beverages in recycled liquor bottles is standard in the bar industry. Mr. D. W. has known the male bartender in question for many years and he likes to drink both coke and iced tea out of high ball glasses while he is on shift.

Mr. D. W. – cross-examined by Ms. B.

There is a copy of the Licensee Handbook at the premises. Mr. D. W. advised it is difficult to keep the Handbook up to date and current. Mr. D. W. requests updates from the AGLC yearly or orders a new Licensee Handbook when required. He often refers to the current version of the Handbook on the AGLC website. Mr. D. W. does not currently hold a valid ProServe certification, as it was his understanding he was only required to be ProServe trained if he was directly serving liquor to patrons. He did not realize AGLC policy requires that a Licensee have a valid ProServe certification at all times. Mr. D. W. has talked to AGLC about providing a staff training seminar.

On the Rocks has approximately thirty staff working on a busy night; two managers, seven bartenders, three bar porters, three servers, seven security staff, two buss people, a DJ, a sound technician, a cover charge operator and a coat check operator. The premises is approximately five thousand square feet with a capacity of four hundred and three persons .

Mr. D. W. spoke to Inspector F. on February 25, 2014 and received the incident report approximately a week later. Prior to receiving the incident report, Mr. D. W.'s manager made him aware that something was going on because a local EPS beat officer came in to the premises to ask some questions. The questions were not specific to the incident in question. A verbal warning was given to all staff as a result of the incidents on February 1, 2014 but not to specific staff. Mr. D. W. was not at the premises when the incidents occurred.

Mr. D. W. and/or his staff strip the label off recycled liquor bottles before they are filled with non-alcoholic liquids. Pop is served from a pop gun behind the bar and would very rarely be served from a bottle.

Mr. D. W. – questioned by the Panel

Management meetings are held every two weeks and Mr. D. W. is at those meetings ninety five percent of the time. The meetings are held with management staff and other key individuals. Full department meetings are held one or two times per year. New policies and procedures are reviewed with staff as soon as possible but standing policies are generally reviewed at the department meetings.

There is an incident log book at the premises and Mr. D. W. does fairly regular spot checks of the premises. He observed the male bartender in question consume iced tea from a highball glass during a shift following the incident on February 1, 2014. When Mr. D. W. first observed him consuming from the glass, he thought it might be alcohol. When he challenged the bartender, he determined it was, in fact, iced tea.

The EPS has attended the premises to handle issues regarding patrons but there have been no AGLC violations to date. Mr. D. W. does a variety of his own inspections, including routine inspection of the coolers. He would notice if a label from a recycled bottle was not removed.

The policy of On the Rocks is to only serve two standard size drinks to one patron after 1:00 a.m. If more than two drinks are ordered, there is a policy in place which requires the bartender to ask the patron who the drinks are for. If there are AGLC policy issues which are of concern, they are discussed with staff regularly. Since the incidents in question, he has not made any specific changes to staff policies or procedures but there has been heightened discussion with staff.

IV. Summation

Ms. B.

There were two examples of each infraction (Section 5.3.18 and Section 5.3.6(a) of the Licensee Handbook) noted by Cst. E. and Inspector N. on February 1, 2014. Cst. E. and Inspector N. were at On the Rocks on February 1, 2014 specifically to look for infractions and they are both trained investigators.

The Licensee did not provide any evidence to suggest that the staff members deny drinking alcohol while on duty. Cst. E. and Inspector N. were both clear in their evidence that they observed a label on the bottles in question, specifically, a Jack Daniels label. It is reasonable to expect that the liquid poured into the shot glasses and consumed by the male bartender was alcohol, as the patrons were presumably charged for alcohol.

Cst. E. and Inspector N. not only observed a female bartender sell and serve a male patron three beer after 1:00 a.m., they were both served more than two standard size drinks after 1:00 a.m. themselves by the same bartender. They were not questioned by the bartender as to who the drinks were for. The AGLC policy is clear that patrons are not to be sold or served more than two standard size drinks after 1:00 a.m. A bartender is not permitted to serve more than two drinks after 1:00 a.m., even if they engage in a discussion with the patron as to whom the drinks are for.

The policy limiting the maximum number of drinks sold, served or allowed to be in the possession of a patron after 1:00 a.m. was implemented in response to concerns expressed by Albertans regarding violence and criminal behavior associated with excessive drinking in licensed premises. When the liquor service policy was implemented in 2008, a letter was sent out to all licensees from the Executive Director of the Regulatory Division, Mr. Gill Hermanns, outlining and detailing the updates to the Licensee Handbook. This letter was mailed out to all Licensees on July 23, 2008. This policy has been in effect for almost seven years now.

A Panel of the Board of the AGLC issued a decision with respect to Tropicana 2000 Bar & Grill on March 3, 2014, which dealt with the same issue. The Panel determined that “if a patron orders drinks for himself or herself and for another patron not present at the table, the other patron must be present at the table when the drinks are served.” The Panel went on to say that “a patron cannot go up to a bar after 1:00 a.m. and order drinks for multiple patrons, unless they are present with the patron when the order is made and served.” It is almost impossible for a bartender to supervise who is going to be receiving the drinks after they leave the service bar, especially when the premises are crowded and busy.

For a defence of due diligence, the Licensee must show he has taken all reasonable steps to prevent any incidents or infractions from occurring. Mr. D. W. did provide some evidence regarding steps the premises has taken to prevent incidents. There is a staff training manual and sign off sheets, although the Panel was not provided with a copy of the manual or the sign off sheets. There was no direct evidence that the staff members involved in the incidents in question signed off on the sheets or that they recently reviewed the training manual and/or applicable policies. The specific staff in question have not been addressed by the Licensee regarding the incidents on February 1, 2014. The Licensee did not establish that he took all reasonable steps to prevent incidents from occurring. The Licensee must show he took steps through training and supervision to prevent employees from drinking on duty or violating any other policies.

The CSR Division submitted that the administrative sanctions previously offered be upheld.

Mr. W.

Mr. W. provided the Panel with a written summation he prepared on behalf of the Licensee. The Licensee is primarily asserting a defence of due diligence. Due diligence does not have to be perfect. The Licensee must show he took all reasonable steps to prevent any incidents from occurring.

Mr. D. W. cannot control the individual actions of all of his employees at all times. Mr. D. W. has implemented a variety of mechanisms in order to prevent occurrences from happening. He has a zero tolerance policy for drinking on the job. The policies are provided to staff in his training manual and are provided from a top down management structure starting with Mr. D. W., down to the general manager, down to the bar manager and then the staff. Mr. D. W. has hired individuals that have been in the industry and are familiar with AGLC policies. He maintains senior employees to train other employees and guide them.

Mr. D. W. not only follows the AGLC minimum, mandatory requirements but he also voluntarily participates in other programs to maintain high standards. His “system” has worked fairly well to date, as there have been no previous violations. Verbal warnings were provided by Mr. D. W. to all staff following the incidents. He has never observed the male bartender consume alcohol behind the bar while on duty and he has known him for approximately twenty five years.

There is nothing more the Licensee could have done to prevent the incidents from occurring. He trains his staff, hires experienced staff, monitors his staff, has managers monitoring his staff, does spot inspections and corrects any problems he sees as quickly as possible. He has fired individuals for drinking on the job. The managers did not witness any of the incidents in question, so Mr. D. W. was not able to deal with the specific staff involved.

Mr. W. submitted that no fines are appropriate in this matter. The individual employees in question have been served with a Provincial Summons and will be punished appropriately.

V. Finding

The Panel makes a finding of Section 5.3.18 and Section 5.3.6(a) of the Licensee Handbook.

Cst. E. had a clear and unobstructed view of the service bar when she observed a male bartender pour what appeared to be Jack Daniels into a highball glass and consume the contents. The Panel is of the view, on the balance of probabilities, the bottle in question contained alcohol, as Cst. E. observed a label on the bottle and the liquid in the bottle was the color of Jack Daniels.

Similarly, Inspector N. had a clear and unobstructed view of the service bar when he observed a male bartender pour four shots of Jack Daniels and consume one of the shots with the patrons. It is unlikely the bartender poured a non-alcoholic beverage into the shot glasses, as the patrons were standing at the bar watching him pour the shots.

Cst. E. and Inspector N. had clear and unobstructed views of the service bar when they observed a female bartender sell and serve three beer to one patron after 1:00 a.m. There were no additional patrons at the bar with the male patron when he ordered and was served three beer. Cst. E. was also sold and served three shots of tequila by the same female bartender after 1:00 a.m. and Inspector N. was sold and served three beer. There were no additional patrons at the bar with Cst. E. or Inspector N. when they were sold and served the drinks.

The Panel wishes to reiterate the decision rendered in *Tropicana 2000 Bar & Grill* on March 3, 2014:

If a patron orders drinks for himself or herself and for another patron not present at the table, the other patron must be present at the table when the drinks are served. Likewise, a patron cannot go up to a bar after 1:00 a.m. and order drinks for multiple patrons, unless they are present with the patron when the order is made and served.

The onus is on the Licensee to prove that all reasonable steps were taken to prevent the incidents in question from occurring. While the Licensee took some steps to train his staff, through the use of a training manual and on-the-job training, there was not adequate supervision of the staff to ensure the training they received was properly implemented.

The Licensee conducts meetings with his managers twice a month but only has full staff meetings once or twice per year. He does not appear to be constantly reviewing the policies or changes to the policies with all staff on a regular basis. He could not confirm the Licensee Handbook at the premises was up to date and Mr. D. W. does not hold a valid ProServe certification himself. The Panel recommends the Licensee holds all staff meetings once per month to go over policies and operational issues. The Licensee may also wish to request an AGLC staff training seminar and must obtain a valid ProServe certification.

It may have been helpful if the Licensee had provided the Panel with a copy of his training manual and sign off sheets, or if evidence from the bartenders in question had been provided.

VI. Penalty

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Hearing Panel imposes the following penalty for a violation of Section 5.3.18 of the Licensee Handbook:

Penalty: A \$500.00 fine - **OR** - a 2 day suspension of Class A liquor licence 766077-2. The fine is to be paid within 14 days of the date of this decision or on or before Thursday, June 12, 2014 or the suspension served commencing Friday, June 13, 2014 and continuing until the close of business on Saturday, June 14, 2014.

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Hearing Panel imposes the following penalty for a violation of Section 5.3.6(a) of the Licensee Handbook:

Penalty: A \$750.00 fine - **OR** - a 2 day suspension of Class A liquor licence 766077-2. The fine is to be paid within 14 days of the date of this decision or on or before Thursday, June 12, 2014 or the suspension served commencing Sunday, June 15, 2014 and continuing until the close of business on Monday, June 16, 2014.

Signed at St. Albert this 29th day of May, 2014.

A handwritten signature in black ink, appearing to read 'M.J. Trussler', written in a cursive style.

Hon. M.J. Trussler, QC, Hearing Panel Chair