

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

**IN THE MATTER OF the Gaming and Liquor Act  
Revised Statutes of Alberta 2000, Chapter G-1  
current as of June 12, 2013  
and the Regulation**

**and**

**IN THE MATTER OF 857045 Alberta Ltd.  
o/a T.B.'s Pub  
16212 Stony Plain Road NW  
Edmonton, Alberta  
T5P 4A4**

**concerning alleged contraventions**

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| <b>DATE OF HEARING:</b>                            | <b>May 21, 2014</b>   |
| <b>HEARING PANEL:</b>                              | <b>Ms. S. L. Green, Panel Chair<br/>Mr. William (Bill) A. Clark, Panel Member</b> |
| <b>LICENSEE REPRESENTATIVES:</b>                   | <b>Mr. B., Director/Shareholder</b>   |
| <b>COMPLIANCE AND SOCIAL RESPONSIBILITY (CSR):</b> | <b>Mr. J., Hearing Officer</b>  |

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**DECISION OF THE HEARING PANEL**

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**I. Jurisdiction and Preliminary Matters**

As a result of receiving an incident report dated March 18, 2014, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 75.1(b), *Gaming and Liquor Act* (GLA), without a hearing, on 857045 Alberta Ltd. o/a T.B.'s Pub, Edmonton.

The Licensee subsequently applied for a hearing under Section 94(1), GLA. A Hearing Panel of the Board met to hear the following alleged violation:

**Section 75.1(b), *Gaming and Liquor Act*: Permitting a person apparently intoxicated by liquor or a drug to consume liquor in the licensed premises.**

The Licensee and the Hearing Panel were provided with a hearing file containing the incident report dated March 18, 2014 and various documents pertaining to alleged incidents occurring on the premises of T.B.'s Pub, Edmonton, on February 1, 2014. Mr. J. presented the case on behalf of the CSR Division. Mr. B. represented T.B.'s Pub.

Mr. B. confirmed receipt of the incident report dated March 18, 2014, did not admit the facts in the incident report and wished to proceed with a Board hearing with AGLC witnesses available. The incident report was entered into evidence as Exhibit #1.

*Protected*

## **II. The Issue**

Did the Licensee permit a person apparently intoxicated by liquor or a drug to consume liquor in the licensed premises?

## **III. Evidence**

### **Inspector T. – evidence led by Mr. J.**

Inspector T. and two plain-clothed Edmonton Police Service (EPS) constables conducted an operating check of T.B.'s Pub on February 1, 2014 at approximately 11 p.m. At the request of the EPS, this team was conducting an undercover visit as part of a special joint project at a number of establishments that had been targeted by the EPS after complaints of over service and intoxication of patrons. Shortly after entering the premises, the inspector and the two constables identified one patron as being intoxicated. The patron was described as being a gentleman in his late 50's or early 60's, grey hair and denim shirt. He initially came to their attention because he was stumbling in front of the service bar. The patron appeared to be having trouble standing upright, swaying back and forth, his gestures being very slow and exaggerated. The patron additionally seemed to be having trouble walking and making his way from a table to the bar. While standing at the bar, the patron appeared to be leaning on the bar to keep himself upright and, while there, the bartender served the patron a Molson Canadian beer which the patron was permitted to consume. The patron then joined the constables and Inspector T. and sat down with them.

While the patron was at their table, the security person on duty came over and chatted with them, asking if the patron was bothering them. They said that he was not, and they had a discussion with security about the patron, asking if he belonged to anyone and how he had arrived at the bar. The security person advised that the patron was a regular and he was very friendly, and typically came into the bar after he had been kicked out of other bars in the area. Over the course of speaking with the inspector and the constables, the security person got the patron a glass of water from the service bar, brought it back to the patron, took away the patron's beer and encouraged him to drink the water. After the patron consumed some water, the security guard returned the beer to the patron. Security watched the patron consume the beer, gave him a pat on the back, made a comment that he will look after him and walked away. The inspector and the constables noted that the patron's eyes were very glassy and he was flushed. They also noted that the patron's language was very difficult to understand but, what they could understand, was very explicit and inappropriate.

Inspector T. was of the opinion that there was an opportunity for the bartender to refuse service, as it appeared that the bartender had observed the patron walking and, when the bartender spoke to the patron prior to serving him, the patron was having a hard time maintaining an upright position. There would have been another opportunity to refuse service when the security person approached them at the table and took the beer away from the patron, watched him consume water, and then returned the beer to the patron and watched him consume the same.

### **Inspector T. – cross-examined by Mr. B.**

Inspector T. advised that the patron was staggering back and forth when he walked. At one point he appeared to step forward and then backward. The name of the patron was unknown to the inspector as his speech was slurred and he was very difficult to understand.

### **Inspector T. – questioned by Mr. Clarke**

When they concluded that the patron was inebriated, the inspector asked the security person how the patron gets home, and security indicated that the patron did not live far from the bar. The inspector expressed concern as to whether the patron would be okay, and the security commented that he looks after the patron.

### **Constable L.- evidence led by Mr. J.**

Constable L. has been a police officer with the EPS for the past seven years and, together with Inspector T. and another constable, conducted an operating check of T.B.'s Pub on February 1, 2014 at approximately 11 p.m. to see if any gaming or liquor infractions were being made. Constable L. observed one gentleman in his late 50's or early 60's who seemed significantly intoxicated to the point where he was stumbling, slurring and interrupting other patrons. At one point, that patron was served a bottle of beer and then approached their table without being invited. The patron smelled strongly of liquor, was stumbling, and

mumbling his words making his speech difficult to understand. The language that they could understand was explicit and descriptive. At one point the patron began touching everyone's hands at the table and it was quite evident that he was grossly intoxicated. The security staff explained that the patron frequents the location and typically shows up there after he gets kicked out of everywhere else. At one point, the security staff took away the patron's beer, giving him a glass of water, and then he returned the beer which the patron consumed. Constable L. felt that there were definitely opportunities for staff to intervene because they are familiar with the patron and they have dealt with him in the past.

Constable L. could not recall seeing Mr. B. in the premises on the night in question.

**Constable L. – cross-examined by Mr. B.**

The beer served to the patron at the bar was described by Constable L. as being a previously unopened beer. While the patron appeared to be leaning on tables and utilizing the furniture to maintain his balance, it was the patron's movement through the open space at the different tables that was the actual concern to the constable.

**Constable L. – questioned by Mr. Clarke**

When the patron joined the table of constables and the inspector, he did so on his own accord, without being invited or asking to join the table.

**Constable L. – questioned by Ms. Greene**

On the evening in question, the premises contained about 20 customers who appeared to be a group of regulars enjoying the karaoke.

**Evidence of Mr. B. (including surveillance video footage presentation)**

Mr. B. did not wish to present any witnesses, but requested permission to show the Panel a video of surveillance footage taken on the evening of February 1, 2014. The purpose of the video was to show the patron in question, G. D., a regular customer who had a stroke approximately two years ago. Mr. B. described Mr. D. as a very friendly person who is approximately 47 or 48 years old, has difficulty speaking, walks hunched over and likes to get into everyone's face. When Mr. D. talks, he leans onto people and can get so annoying that sometimes the Licensee has to send him home. Mr. B. described the premises as a friendly little pub, where people are always saying hello and joining others.

Surveillance Video Footage

The surveillance footage showed the patron standing at the corner of the bar. The patron was shown trying to hustle a female customer that he is familiar with, talking to her and leaning in to her. The video also showed the patron being served a beer at the bar, which Mr. B. maintained was an open beer which was previously started by the patron. The footage further showed the constables and the inspector sitting at the table with the patron joining them and having his picture taken by the constables with their cell phone.

Mr. B. admitted that the patron was not 100% sober, but maintained that he was not falling down as earlier described. Mr. B.'s plan was to show the patron walking around and not swaying sideways nor touching the furniture to hold himself up. However, Mr. B. was unable to locate this footage on the video. The video was blurry and Mr. B. admitted that he had not marked the timing on the footage as to exactly what he wished to show.

**Evidence of Mr. B.**

Mr. B. questioned the purpose of ProServe. His understanding was that ProServe was originally introduced to protect the bar owners. He spoke of a letter that the AGLC had previously sent to bar owners stating that if customers were over-served, employees would lose their ProServe card and they would get fined, yet he does not see this happening. He stated that the employees are trained by AGLC in order to be ProServe tested and they are hired to do their job properly, yet it is the owners who are continually fined. As an owner, Mr. B. said he needs to trust his staff to do their job properly.

Mr. B. was not at the premises on the night of the incident. Because he cannot always be there, he has hired Security who has ProTect and has additionally installed security cameras. Mr. B. explained that he looks after his patrons – he drives customers

home, he walks customers home, he makes sure customers are safe and that no-one follows them home. Mr. B. has owned this bar for 14 years and feels he does a good job. He does not think the bar owners should be fined, but rather feels that it should be the waitresses who over-served who should be fined.

**Mr. B. – questioned by Mr. Clarke**

The bartender working on the night in question has been employed at the premises for approximately a year and half. Mr. B. advised that the bartender has Pro-Serve and usually cuts people off. When Mr. B. is there he also cuts people off regularly—choosing to keep his business rather than losing it for an extra dollar.

**Mr. B. – questioned by Ms. Greene**

Regarding training, the employees do ProServe and Mr. B. makes sure they understand it and enforce it. All new rules provided by the AGLC are read by the employees and then filed in a book. Mr. B. reiterated his feelings that ProServe does not protect the owners when the employee can just quit, go to work in another place, and do the same thing.

On the evening in question, Mr. B. had one bartender and one security person on staff, with less than 20 people in his establishment that allows 93.

The security person on staff on February 1, 2014 had worked for him for a few months.

**IV. Summation**

**Mr. J.**

Permitting consumption of liquor by an intoxicated patron in a licensed premises is a serious violation of the GLA. Licensees have a duty of care to patrons, especially intoxicated patrons, to ensure they are not served to the point where they are a danger to themselves or a bother to other patrons. In this case, staff members had ample opportunity not to serve the intoxicated patron and to not permit the intoxicated patron to continue consuming liquor. CSR views this as a violation of Section 75.1(b) of the GLA which could have easily been prevented by the Licensee staff.

For this reason, the CSR Division submits that, should the Panel find that there has in fact been a violation as alleged, the specified penalty of a fine of \$2,500.00 or a 10-day suspension of the Class A Liquor Licence be upheld.

**Mr. B.**

Mr. B. does not believe the owner of the business should be fined. He feels it should be the waitress or the bartender who over-served that should be fined and his or her ProServe revoked. The employee is hired and trusted to do a job. It was not Mr. B. who over-served. Further, Mr. B. is not sure that the patron was in fact over-served and maintained that the patron was not falling down when walking. Mr. B. reiterated that his bar is a friendly place where people talk to each other all of the time. The patron was not harassing others, was not causing trouble to the people sitting at the table, and was not fighting with them.

**V. Finding**

**The Panel makes a finding of a violation of Section 75.1(b), *Gaming and Liquor Act*: Permitting a person apparently intoxicated by liquor or a drug to consume liquor in the licensed premises.**

The Panel understands that Mr. B. runs a friendly bar and goes out of his way to ensure the safety of clientele. Notwithstanding this, owners have ultimate responsibility for staff and what happens in their establishment. Evidence supported that, on the balance of probabilities, the patron was intoxicated and was served and permitted to consume liquor. The inspector and the two constables were experienced and their testimony was credible. They had ample opportunity not only to observe the patron in question, but also to interact with him. It is our view that security also recognized the patron was intoxicated yet allowed him to continue to consume alcohol. The security person took away the patron's beer, returning it and allowing him to resume consuming it, only after the patron had consumed a glass of water.

The Licensee did not provide clear evidence that the staff of T.B.'s Pub have been provided with proper training, particularly with respect to selling or providing liquor to intoxicated patrons. As such, the Panel recommends the Licensee increase staff training, and regularly review and reinforce the importance with staff of the rules regarding intoxication, service of under-aged persons, and selling or providing liquor to intoxicated patrons.

**VI. Penalty**

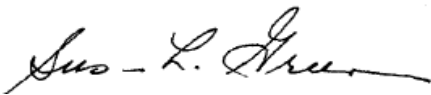
The Panel understands that the Licensee has a clean record and has been in business for 14 years.

The Panel has heard the Licensee's comments regarding ProServe. Because the staff member was not identified, there will be no ProServe violation in this instance.

In accordance with Section 91(2) GLA, the Hearing Panel imposes the following penalty for a violation of Section 75.1(b), *Gaming and Liquor Act*:

**Penalty:** A fine of \$2,500.00 **OR** a 10-day suspension of Class A Liquor Licence Number 771869-1. The fine is to be paid within 3 months of the date of this decision or on or before Wednesday, March 11, 2015 or the suspension served commencing Thursday, March 12, 2015 and continuing until the close of business on Saturday, March 21, 2015.

Signed at St. Albert this 11<sup>th</sup> day of December, 2014.



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Susan L. Green, Hearing Panel Chair