

**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 Cowboys Tap House Pub Ltd.
o/a Cowboy's Taphouse Bar
55 Castleridge Boulevard NE, Unit 168
Calgary, Alberta
T3J 3J8**

concerning alleged contraventions

DATE OF HEARING:	March 19, 2015
HEARING PANEL:	Mr. W.A. Clark, Panel Chair Ms. T.L. Lawrence, Panel Member
LICENSEE REPRESENTATIVES:	Mr. C., Director
COMPLIANCE AND SOCIAL RESPONSIBILITY:	Mr. H., Hearing Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an incident report dated October 14, 2014, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 91(2) of the *Gaming and Liquor Act*, without a hearing, on Cowboys Tap House Pub Ltd. operating as Cowboy's Taphouse Bar, Calgary.

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 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 October 14, 2014 and various documents pertaining to an alleged incident occurring on September 13, 2014. Mr. C. confirmed he received the incident report dated October 14, 2014 and Notices of Hearing dated December 2, 2014 and March 3, 2015. The incident report and hearing file were entered into evidence by the CSR Division as Exhibit #1.

Mr. H. presented the case on behalf of the CSR Division. Mr. C. represented Cowboys Tap House Pub Ltd.

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 A. – evidence lead by Mr. H.

Inspector A. is an Inspector with the AGLC in the Calgary office. She conducted an operating check of the premises on September 13, 2014 with Inspector S.. As they first entered the premises, Inspector S. indicated he observed an intoxicated male leaving the premises. The lighting inside the premises was sufficient to observe patron activities.

Inspector A.'s attention was drawn to a male patron. He was seated in his chair in an unnatural position, was wearing sunglasses and appeared to have difficulty remaining in an upright position. The Inspectors took a seat adjacent to the service bar, with a clear view of the male patron. Inspector S. initially had his back to the patron. The servers walked past the patron on a number of occasions. There was a half full jug of amber colored liquid on the table, consistent with draught beer. There was also a pint glass on the table and the patron was observed consuming from this glass on several occasions.

Inspector S. changed his position at the table so he could also observe the patron. At one point, a patron who joined the male patron in question filled the male patron's glass with the beer on the table. The male patron attempted to stand up from the table but he could not maintain his balance. Another patron had to assist the male patron. They got up, walked around the premises and returned to the table. The other patron assisted the male patron during this time and was further required to help him back into his chair. The server approached the table at one point and engaged in a conversation with the male patron. On another occasion, she attended the table to clear the empties. At no time did she attempt to remove the alcohol from the male patron's possession.

The male patron attempted to get up from the table again but required assistance. He could not maintain his balance. He stumbled and fell face first into another table surrounded by patrons, knocking over their drinks. The server attended the table to provide assistance. Inspector S. watched and followed the male patron as he exited the premises. The patron required the assistance of another patron and security staff to make his way to a waiting vehicle.

Inspector A. requested surveillance footage from the licensee. She reviewed the footage which showed the male patron arriving at the premises unassisted. The footage was quite grainy and did not show all the angles requested by Inspector A..

Door control was in effect upon arrival at the premises and the lighting was sufficient to observe patron activities. The premises was approximately three quarters full at the time and was quite busy. In the area the Inspectors were seated, it appeared to be adequately staffed. The Inspectors' attention was drawn to the male patron based on the way he was seated in his chair and the fact he was wearing sunglasses; no other patrons were wearing sunglasses. The male patron was observed by the Inspectors consuming from the pint glass on the table on several occasions.

The servers should have noticed the signs of intoxication exhibited by the male patron and removed the alcohol from his possession. The symptoms exhibited by this patron were consistent with an individual who was intoxicated and he should not have been sold or allowed to consume liquor.

Inspector A. – questioned by the Panel

The Inspectors could not hear anything the male patron was saying from where they were seated within the premises. From the time the Inspectors arrived, the patron consumed the remainder of the pint glass that was in front of him and a second full pint glass. Inspector A. is not certain how many people the alcohol purchased by the table was for.

Inspector S. – evidence lead by Mr. H.

Inspector S. is an Inspector with the AGLC out of the Calgary office. He conducted an operating check of the premises on September 13, 2014 with Inspector A.. He did not have any direct interaction with the male patron in question. He simply conducted observations of the patron. In Inspector S.'s opinion, the male patron was highly intoxicated and could barely function. He should not have been sold or allowed to consume liquor. He required the assistance of his friends and other patrons to move about the premises. He could not maintain his balance and required the assistance of a friend to put his coat on at the end of the evening.

Inspector S. followed the male patron out of the building and then re-entered the premises and spoke to Mr. C.. Inspector S. identified himself, interviewed the server and briefly spoke with Mr. C., who was bartending. He requested a copy of the receipt for what the individual had purchased and also requested surveillance footage.

Evidence of M. – evidence lead by Mr. C.

Ms. M. works at Cowboy's Taphouse Bar as a server. There were four people at the table with the male patron in question and they ordered food, in addition to three jugs of beer. The patrons at the table are regulars, who come in often. They did not seem intoxicated or any different than any other occasion when they were at the premises on September 13, 2014. It is not unusual for the male patron to wear his sunglasses while he is inside the premises. Ms. M. served three jugs of beer to the table, which were ordered for four patrons. She does not believe the patrons at the table were intoxicated in any way. Often they will drink seven to eight jugs of beer and not show any signs of intoxication. The patrons did not advise Ms. M. they were on any medications that could potentially interact with the alcohol they were consuming.

Ms. M. – cross-examined by Mr. H.

Ms. M. is ProServe certified and has been employed at the premises for approximately a year. She is familiar with the section of the Licensee Handbook which outlines the signs of intoxication to look for. She is aware of those signs. She knows when patrons are intoxicated and she never serves a patron who exhibits signs of intoxication. She is a single mom so she would never do anything that would cause her to have to pay a fine for a breach of AGLC policies or legislation. She knows the patron in question from serving him on a regular basis. He was not acting any differently than he usually does.

The licensee advises the servers to alert the door staff if they believe a patron is intoxicated so they can help deal with the patron. The male patron did not seem disoriented. He did require assistance leaving the venue but it could have been because he sustained an injury when he fell into the table.

Ms. M. – questioned by the Panel

Ms. M. is unsure why the male patron crashed into the table. She did not observe him fall. She went over to the area to provide assistance after the crash occurred. The male patron was able to engage in a conversation with Ms. M. and there did not appear to be a change from his regular behaviour.

Mr. C.

Mr. C. provided the Panel with a written statement from Mr. O., the male patron in question, and Mr. C., one of the other patrons at the table with Mr. O.. The statement was entered into evidence by Mr. C. as Exhibit #2. Ms. M. is an experience server. Mr. C. tries his best to work with the AGLC and follow all AGLC policies and procedures. They are always cooperative when the Inspectors attend the premises.

IV. Summation

Mr. H.

The AGLC takes the matter of intoxication very seriously and the topic is forefront in the media with respect to violence in and around licensed premises. The purpose of Section 75.1 of the *Gaming and Liquor Act* is to require licensees and their

staff to act responsibly in deciding whether or not to sell, provide or allow consumption of liquor to a person in a licensed premises. An employee of the licensee should base their decision on obvious signs of impairment.

The Inspectors' testimony as to the heightened level of intoxication displayed by the male patron in question was quite clear. When a patron has difficulty remaining seated in an upright position, appears to be having difficulty holding his head in a stationary position and appears to be sleeping, when he knocks over chairs and uses tables to maintain his balance or has to use another patron to walk and maintain balance, these are certainly signs that would indicate the patron is not worthy of being provided liquor service.

The intoxicated male patron was observed on three occasions to be consuming liquor and different staff members were in the area of the intoxicated male on at least two occasions. At one point, Ms. M. was observed having direct interaction with the male patron and she made no attempt to remove the alcohol from the patron's possession. Ms. M.'s testimony before the Panel indicates that she did not notice any issues with the male patron walking about the premises, even when an individual was required to walk the patron across the floor. When the male patron knocked over the table, he was literally carried out of the premises by another patron. Ms. M. advised the Inspectors she did not notice how intoxicated the male was, even though he is a regular customer. Ms. M. should be familiar with the male patron's "normal behavior". Given, the obvious signs of impairment the male patron was displaying, any reasonable person should come to the conclusion that the patron was intoxicated.

The CSR Division believes the elements of Section 75.1(b) of the *Gaming and Liquor Act* have been satisfied and sufficiently proven to confirm the administrative sanction. Section 5.8 of the Licensee Handbook provides clear direction that intoxicated patrons are prohibited from being provided liquor service and includes the signs to look for such as staggering, unsteady walk, having poor coordination, slurred speech, bloodshot eyes and being messy in appearance. Many of these signs were present with the male patron and should have been observed by the licensee's staff. It is the opinion of the CSR Division that the evidence provided to the Panel by the Inspectors properly conveys the incidents of the evening in question.

Section 121 of the *Gaming and Liquor Act* states "if an employee or an agent of a licensee contravenes a provision of this Act, the licensee is deemed also to have contravened the provision unless the licensee establishes on a balance of probabilities that the licensee took all reasonable steps to prevent the employee or agent from contravening the provision". The licensee and his staff did not act reasonably or do everything within their power to control or prevent the provision of the Act from being contravened. It is the opinion of the CSR Division that the premises was not being operated with the care, control or due diligence required of a licensee in the province of Alberta.

The CSR Division respectfully submitted that the original administrative sanction previously offered be upheld.

Mr. C.

Mr. C. tries to run the premises as best as he can. He was bartending when the Inspectors attended the premises so he did not see everything that occurred. He believes his server when she says the male patron was not intoxicated. He reminds his staff not to serve any patrons who appear to be intoxicated and he reviews AGLC policies and legislation with his staff on a regular basis.

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 is of the opinion that the evidence of the Inspectors and the evidence presented by the licensee are very different. Similarly, the evidence provided by Ms. M. and the evidence contained in the statement from Mr. O. are very different from the evidence of the Inspectors.

Ms. M. advised the Panel she served three jugs of beer to the male patron's table and that those jugs of beer were for four patrons. The evidence presented by the Inspectors indicating the patron had difficulty sitting in an upright

position, knocked over chairs and used tables to maintain his balance, suggests to the Panel that the patron either consumed more than his share of the beer or was drinking prior to arriving at the premises.

The Panel chose to believe the evidence of the Inspectors since they were watching the situation closely and the Panel has determined that a violation of Section 75.1(b) of the *Gaming and Liquor Act* did, in fact, occur.

VI. Penalty

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

Penalty: A \$1000 fine - **OR** - a 3 day suspension of Class A liquor licence 772441-1. The fine is to be paid within 2 months of the date of this decision or on or before Monday, July 13, 2015 or the suspension served commencing Friday, July 17, 2015 and continuing until the close of business on Sunday, July 19, 2015.

Signed at St. Albert this 13th day of May, 2015.



W.A. Clark, Hearing Panel Chair