

**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

**Cowboys Taphouse Ltd.
operating as Cowboys Taphouse
216 Edmonton Trail NE
Airdrie, AB T4B 1R9**

**Cowboys Tap House Pub Ltd.
operating as Cowboy's Taphouse Bar
168, 55 Castleridge Boulevard NE
Calgary, AB T3J 3J8**

DATES OF HEARING:	June 5, 6 and 27, 2019
HEARING PANEL:	Ms. B. Ritzen, Presiding Member Mr. B. Wyatt, Panel Member Ms. P. Grier, Panel Member
LICENSEES' REPRESENTATIVES:	Mr. T. Boyle, Counsel Mr. R. Henning, Student-at-Law Ms. P. Bedi, Owner Mr. K. Chopra, Owner
REGULATORY SERVICES DIVISION:	Ms. C. Chan, Counsel Mr. A. Paterson, Counsel Mr. B. Harrington, Resource Officer

DECISION OF THE HEARING PANEL

I. JURISDICTION AND PRELIMINARY MATTERS

[1] On May 1, 2019, the Regulatory Services Division of the Alberta Gaming, Liquor and Cannabis Commission ("AGLC") issued Notices of Administrative Sanction, pursuant to Section 92(1) of the *Gaming,*

Liquor and Cannabis Act (“the Act”), suspending indefinitely the liquor licences of Cowboys Taphouse Ltd. (“Airdrie”) and Cowboys Tap House Pub Ltd. (“Calgary”). The two establishments will be referred to collectively as “the Licensees”.

[2] Previously, on February 19, 2019, AGLC had issued a Notice of Administrative Sanction against Calgary, pursuant to Section 92(1) of the Act, for contraventions of Section 69(1)(a) of the Act which allegedly occurred on September 21, November 1 and November 2, 2018. A fine of \$4,000 or a 16-day suspension of the liquor licence was imposed.

[3] The Licensees requested hearings pursuant to Section 94(1) of the Act in respect of all three matters. By agreement of the parties, the three matters were heard together, on common evidence, by a Hearing Panel of the Board of AGLC (“the Panel”).

[4] By letters dated May 2, 2019 and May 7, 2019 and by application submitted on May 16, 2019, the Licensees requested a stay of the licence suspensions pending the hearing. The application was granted, subject to certain conditions, pending the outcome of the hearing.

[5] In advance of the hearing, the Licensees and the Panel were provided with a binder containing the record and additional documents pertaining to the alleged contraventions. The Licensees objected to the admission of three of these documents. After hearing arguments from both parties, the Panel offered two options for consideration: an adjournment to allow the Licensees an appropriate opportunity to review the materials and prepare a response, or the withdrawal of the documents. AGLC chose the latter option. Accordingly, with the agreement of all parties, the binder, minus Tabs 3, 15 and 16, was entered as Exhibit #1.

[6] In addition to the documents included in Exhibit #1, the Regulatory Services Division called six witnesses:

Petrina Nash (“Nash”) is a supervisor with AGLC, responsible for various projects. She works with members of other agencies, such as the Calgary Police Services (“CPS”), Alberta Health Services (“AHS”) and the fire department, as part of the Public Safety Compliance Team (“PSCT”). She is the author of the Incident Reports relating to these matters.

Constable M. is a member of CPS who, at the relevant times, worked with AGLC as part of the PSCT. At the time of the incidents, he was assigned to District 5, within which falls the Calgary premises. He explained that, as part of the Crime Reduction Strategy, analysts review statistics about police calls on a monthly basis with a view to developing and implementing enforcement measures to address areas of concern. In July of 2018, it came to his attention that 132 calls to the vicinity of the Calgary premises had been received in a six month period. This high volume of calls suggested an emerging crime trend requiring attention.

Constable F. is also a member of CPS who was assigned to the Drug Undercover Street Team in 2018. In his role as an undercover police officer, he was tasked with buying drugs out of the Calgary premises in the fall of 2018. As part of this operation, he visited the premises on three occasions

(September 21, November 1 and November 2) and bought cocaine from the same individual on two of those visits.

Phil Bauer (“Bauer”) is an inspector with AGLC who, at the time of the incidents, was part of the PSCT. Over the course of his career, he conducted 17 inspections at Calgary and has visited Airdrie on a few occasions but not recently. He performed an operations check at Calgary on August 11, 2018.

Tony Evangelista (“Evangelista”) is also an inspector with AGLC who, at the relevant time, was responsible for inspections relating to possible inducements. He visited the Calgary location on December 18, 2018 to conduct a product and promotion inspection.

Robin Carter (“Carter”) is a supervisor with AGLC. Both Airdrie and Calgary have been under his purview as an inspector. He delivered the Notice of Administrative Sanction imposing the licence suspension to Airdrie on May 1, 2019.

[7] The Licensees presented a binder of documents entitled Respondents’ Statements. After an argument about admissibility, the Panel ruled that the binder would be entered as Exhibit #3 with weight to be assessed. A binder entitled Respondents’ Documents was entered as Exhibit #5. The Licensees called 6 witnesses:

Kushmanker Chopra (“Chopra”) is the sole shareholder, director and board approved manager for Calgary. He confirmed that his statement (Tab 3 of Exhibit #3) is accurate.

JS is the day time manager of Calgary. She confirmed that her statement (Tab 6 of Exhibit #3) is accurate. Her workday typically starts at 9:30 a.m. and ends at around 8 p.m. She is responsible for hiring, training and dismissal of staff as well as general management.

CM is the day time manager of Airdrie. She confirmed that her statement (Tab 5 of Exhibit #3) is accurate. Her workday starts at 9:00 a.m. and ends at 8 p.m. She is responsible for hiring, training, ordering supplies and general management.

Priyambia Bedi (“Pria”) is the majority shareholder (90%) of Airdrie and bookkeeper and manager of Calgary. She confirmed that her Affidavit and her statement (Tabs 1 and 2 respectively of Exhibit #3) are accurate. Chopra is her brother.

AJM is a private investigator who was retained to obtain statements from witnesses about an alleged assault by MB in 2015.

MB is the ex-husband of Pria. He confirmed that his statement (Tab 4 of Exhibit #3) is accurate.

II. ISSUES

- [8] Have the Licensees become ineligible to continue to hold a liquor licence? In particular:
- (a) Did the Licensees fail to provide necessary documentation for a background check (Section 9 of the Regulation)?
 - (b) Did the Licensees mislead AGLC, fail to provide information or provide inaccurate information to AGLC contrary to Section 1.4.5 of the Liquor Licensee Handbook (“the LLH”)?
 - (c) Did Calgary permit activities in the licensed premises contrary to Section 69(1) of the Act on September 21, November 1 and November 2, 2018?
 - (d) Did the Licensees take all reasonable steps to prevent their employees or agents from contravening provisions of the Act?
 - (e) Did the Licensees fail to act in accordance with the law, with honesty and integrity, or in the public interest, contrary to Section 13 of the Regulation?

III. ANALYSIS

Did the Licensees fail to provide necessary documentation for a background check (Section 9 of the Regulation)?

[9] Sections 9 and 9.1 allow AGLC to conduct background checks related to the honesty, integrity, financial history and competence of licensees and their employees and associates.

[10] The undisputed evidence of Nash was that she requested the Licensees to provide the information needed to conduct a background check of MB and that the necessary documentation was not provided.

[11] Nash testified that she requested the information for a background check because she believed that MB was an associate of the Licensees. He was involved in the operations of the premises, performed duties of staff and had access to areas within the premises that were not accessible to others. She, and other inspectors who testified, said that MB held himself out to inspectors as a manager of the premises. Documentation included in Exhibit #1 showed that MB was the contact person for AHS, the property manager for Calgary and the fire department.

[12] Nash testified that MB was not a board approved manager. A board approved manager is in charge of daily operations, the point of contact for AGLC and responsible for ensuring that there is a high level of supervision. Albertans have an expectation that licensed premises are safe. Managers are vetted by AGLC to ensure that premises are run in a safe and orderly manner and that staff and patrons are protected. The vetting process includes the conduct of a background check.

[13] Chopra testified that MB is an employee, helping him out as a manager at Calgary. He acknowledged that staff consider MB to be a manager. However, Chopra makes all business decisions.

[14] Pria testified that MB helps out at Airdrie. He watches the floor and deals with health and fire as a favor to her. He doesn't have access to places that only staff can access and he is not on the contact list. He schedules inspections but is not an employee or associate. He just helps her out. He can't make any decisions.

[15] MB testified that he is not the controlling mind of the Licensees. They own the premises. He helps them out. He doesn't hire or fire staff and has nothing to do with money. He doesn't serve food, doesn't clean tables and doesn't handle alcohol. He attends each location two to three times per week. He refers to himself as an assistant manager of both premises. He is paid a salary of \$1500 per month for his work at Calgary and \$1000 per month for his Airdrie work. He handles legal matters (filing of annual returns for the Licensees), regulatory and health matters (fire and AHS), complaints from patrons and performs duties within the premises.

[16] The preponderance of evidence is that MB is employed by the Licensees and that he performs the duties of a manager in both premises. He holds himself out to be a manager of both premises. He is paid a salary and is identified as the contact person for the Licensees with various agencies. The Panel is satisfied that MB is an employee of the premises. As such, Nash's request that the Licensees provide the necessary documentation for a background check of MB falls within the purview of Sections 9 and 9.1 of the Regulation.

[17] The Licensees argue that AGLC had been provided with information about MB's criminal record and, as such, that it is "disingenuous" to suspend their licences on the basis that they failed to provide the background check documentation. The Panel does not accept that argument. A background check pursuant to Section 9 of the Regulation may include an inquiry or investigation into several matters including honesty and integrity, financial history and competence of an individual. A criminal record check is thus potentially only one aspect of the inquiry. Moreover, the Licensees cannot absolve themselves of their responsibility to provide the necessary documentation by suggesting that AGLC may have obtained some of it from other sources.

[18] The Licensees also argue that they could not have provided the information which only MB had the power to produce. MB contacted Nash after the request for the information was made but she did not return his calls. However, as Nash noted in her testimony, the point of contact for AGLC is the Licensee or the board approved manager. MB was neither.

[19] The documentation requested by Nash was admittedly not provided. Accordingly, the Licensees failed to provide the necessary documentation for a background check contrary to the Regulation. The Panel notes that the failure to provide the information is also contrary to Section 1.4.5 of the LLH.

[20] A considerable amount of evidence was presented during the hearing about the details of MB's criminal record and other allegations against him. This evidence, and the arguments made by both parties about it, may be relevant to the question of whether MB should pass a background check; however, that question is not before this Panel. No background check has been done because the necessary documentation was not provided to AGLC. As such, that evidence is not germane to this matter.

Did the Licensees mislead AGLC, fail to provide information or provide inaccurate information to AGLC contrary to Section 1.4.5 of the LLH?

[21] Section 1.4.5 of the LLH provides that if a licensee misleads AGLC, fails to provide information or provides inaccurate information, disciplinary action may be taken.

[22] The Licensees argue that the issue of whether they had been truthful in their dealings with AGLC had not been highlighted as a ground for suspension, although allegations of untruthfulness were contained in the body of the Incident Reports (paragraph 178 of the Licensees' argument). Given that the Licensees were thus admittedly aware of the allegations and had the opportunity to address them at the hearing, the Panel is of the view that it has the necessary jurisdiction to consider the issue relating to Section 1.4.5 of the LLH.

[23] Nash testified that, as part of her investigation, she interviewed Chopra on March 29, 2019. During that interview, he told her that MB was not and never has been an employee of Calgary. He said that MB goes to Calgary two or three times a week to drink as a patron. He said that MB has nothing to do with business related matters, has never introduced himself as a manager for Calgary and has no say in how the premises are operated.

[24] In his testimony, Chopra admitted that he lied to Nash in the interview and apologized for doing so. He said that he had been scared that he would lose everything.

[25] With respect to Airdrie, Nash provided the name of the board approved manager; however, Pria testified that she was the board approved manager. Pria acknowledged that the person named by Nash no longer worked at the premises and that that information had not been provided to AGLC.

[26] As noted above (paragraph 14), Pria asserted that MB was neither an employee nor an associate of Airdrie and that he was not paid a salary, although he did help out occasionally.

[27] Pria's evidence that MB was not employed by Airdrie was contradicted by the testimony of MB (who said he was the assistant manager and that he was paid a monthly salary). Moreover, it is inconsistent with her own evidence about the duties he performed and the evidence given by CM about his role at Airdrie.

[28] The Panel is satisfied that the Licensees failed to provide information to AGLC about MB's role in the management of the premises and that Chopra provided false information to Nash in the interview. Pria's assertion that MB is not an employee is patently false. Moreover, she failed to provide information

to AGLC about the departure of the board approved manager from Airdrie, which is contrary to Section 5.6.1 of the LLH.

[29] Accordingly, the Licensees contravened Section 1.4.5 of the LLH.

Did Calgary permit activities in the licensed premises contrary to Section 69(1) of the Act on September 21, November 1 and November 2, 2018?

[30] Section 69(1) of the Act prohibits licensees or their employees or agents from permitting certain activities in the licensed premises including those that are contrary to municipal by-laws or any provincial or federal Act or regulation.

[31] Consideration of whether that subsection was breached by Calgary involves determination of three sub-issues:

Did an activity occur that was contrary to municipal by-laws or any provincial or federal Act or regulation?

[32] The uncontroverted evidence of Constable F. was that, during an undercover police operation at Calgary, he purchased cocaine from the same individual (“Sammy”) on two occasions. Selling cocaine is clearly an activity that is contrary to the federal *Controlled Drugs and Substances Act*.

Did the activity occur on the premises?

[33] The uncontroverted evidence of Constable F. was that on September 21, 2018, the negotiation with Sammy for the purchase of the controlled substance took place inside the Calgary premises. The transaction occurred just outside of the front entrance of the premises.

[34] On November 2, 2018, the negotiation and the transaction occurred inside the Calgary premises, near the washrooms and the VLT machines.

[35] The Panel is satisfied that the two transactions took place in the Calgary premises.

Did the Licensee, its employees or agents permit the activity to occur?

[36] AGLC alleges that Sammy was an employee of Calgary and, as the person who sold the controlled substance, clearly permitted the illegal activity to occur. Calgary disputes the allegation that Sammy was an employee.

[37] The evidence of several witnesses was that Sammy was often at Calgary. Constable F. testified that he had visited Calgary several times and that Sammy was there every time. He is on a first name basis with staff who know what he drinks. He wanders around and appears to have free rein of the premises, including the back room which Constable F. thinks might be an office. He saw him in the kitchen and behind the service bar and has seen him checking identification at the entrance.

[38] Nash also saw Sammy at the premises and observed him clearing tables, talking to and sitting with the doorman. Bauer testified that Sammy has been at Calgary for a long time. He believed him to be an employee of Calgary as he was clearing dishes, standing at the front door area and acting like a manager (e.g. asking if the inspectors needed anything). Evangelista had thought that Sammy was an employee but when he visited Calgary in December of 2018, was told that Sammy doesn't work there but just helps out by clearing tables. Carter recalled a time in 2013 when inspectors visited Calgary and Sammy produced a key to open the office for them. Sammy regularly held himself out as being in charge.

[39] Chopra denied that Sammy was an employee of Calgary. He is merely a long-time patron who helps out. He said that Sammy did not have keys to the premises. JS said that, as far as she knows, Sammy was not an employee of the premises but that he helped out by doing janitorial duties. She explained that although Sammy had a ProServe certification, showing a connection with Calgary, that was because her daughter signed it for him and paid using her credit card. Sammy had access to the kitchen area so that he could empty buckets in the sink. She acknowledged that regular patrons do not have access to the kitchen. Sammy was not an employee in 2013 and did not have keys to the premises at any time. He was not invited to staff meetings or training sessions.

[40] There was no evidence that Sammy was paid a salary from Calgary although waitresses apparently shared their tips with him on occasion.

[41] The evidence is clear that Sammy acted in a manner consistent with being an employee of the premises. However, given the outright denial of such a relationship by Chopra and JS (who should know the employees of the premises), and the lack of evidence about payment of wages, the Panel is not satisfied that Sammy was in fact employed by Calgary.

[42] However, even if Sammy was merely a patron, the Licensee had a responsibility to ensure that illegal activities were not occurring on the premises. "Permitting" illegal activities may involve active steps ...misfeasance (e.g. wilfully allowing or participating in the sale of illegal drugs), but it may also involve passive inaction...nonfeasance (e.g. not taking steps to prevent the sale of drugs). Moreover, a licensee cannot avoid responsibility by turning a blind eye to what is happening in the licensed premises. The question of whether a licensee "permitted" something to occur, in the case of nonfeasance, is similar to the test of due diligence provided for in Section 121 of the *Act* – i.e. did the licensee take reasonable steps to prevent the activity from occurring?

[43] In this case, Chopra insisted that he did not know about the illegal drug activity in which Sammy was engaged. Nor did MB or JS have any such knowledge. There was no evidence that Chopra or the employees of Calgary were in proximity to the areas of the premises where the drug transactions occurred nor any direct evidence that they witnessed any inappropriate behaviour.

[44] The evidence before the Panel about the practices of the Licensees, the adequacy of steps taken by them to ensure the safe and secure operation of their premises and the overall management of the premises will be addressed in the context of the issue relating to Section 13 of the Regulation. No direct connection was made between those practices/steps/management and the drug transactions involving Sammy. The AGLC has the burden of proving on a balance of probabilities that the Licensee permitted

the illegal activities to occur. The Panel is not satisfied that the evidence meets that probative standard. Accordingly, the Panel is not prepared to find that the Licensee permitted these specific activities to occur.

[45] The Panel finds that there was no contravention of Section 69(1) of the *Act* in relation to the illegal drug transactions involving Sammy.

Did the Licensees take all reasonable steps to prevent their employees or agents from contravening provisions of the Act?

[46] AGLC argued that, as Sammy was an employee of Calgary, the Licensee would be responsible for his actions unless the defence of due diligence provided for in Section 121 of the *Act* was established. Given the Panel's finding that Sammy was not an employee, this argument is not applicable.

Did the Licensees fail (or may fail) to act in accordance with the law, with honesty and integrity or in the public interest?

[47] Section 13 of the Regulation sets out the overall expectations of licensees or applicants – to demonstrate that they do, or are likely to, obey the law and that they can be relied upon to act at all times with honesty, integrity and in the public interest. As AGLC notes in its argument (paragraph 57), the overriding consideration is that of public safety. A liquor licence is a privilege and with that privilege come certain duties and responsibilities that must be discharged by a licensee.

[48] Some of those duties and responsibilities are set out in legislation (the *Act*, the Regulation and other relevant federal, provincial or municipal legislation). Others are set out in the policies of AGLC to which all licensees and the general public have access. It is the duty of a licensee to review and understand the applicable policy requirements, to be aware of amendments and updates to those policies and to comply with them at all times.

[49] In this case, the evidence before the Panel was that the Licensees were unaware of the applicable policies and that they failed to comply with many of them.

[50] Section 5.6 of the LLH deals with supervision of patrons. Subsections 5.6.1 and 5.6.2 speak to the need for a high level of supervision to protect the health and safety of patrons. Staff must be trained and capable and under the supervision of competent, approved management.

[51] With respect to Calgary, the evidence before the Panel was that the board approved manager was Chopra and that JS was the day time manager. Chopra admittedly only attended the premises on occasion. In his absence, MB, who was not a board approved manager, was in charge. Chopra said that there is a night time manager but JS said that she, Pria and Chopra are the managers.

[52] In Airdrie, the board approved manager no longer works there. CM is the day time manager and another individual is there at night. Pria is there at times and can be reached if needed. MB, who is not a board approved manager, is involved.

[53] It is unclear from the evidence who is, in fact, responsible for the management of Calgary or Airdrie. There appears to be no board approved manager in Airdrie and in Calgary, the board approved manager has a full time job elsewhere and only attends the premises infrequently. These arrangements are not sufficient to meet the requirement for supervision by competent, approved management as required by the policy.

[54] The guidelines set out in Section 5.6 of the LLH recommend that staff be trained about how to deal with potentially unruly patrons and that management and staff be required to constantly monitor the activities of patrons. There was no evidence that these recommendations were incorporated by the Licensees. None of the witnesses called by the Licensees, including themselves, appeared to be aware of the importance of monitoring the activities of patrons.

[55] Section 5.9 of the LLH deals with illegal drug activity. Some of the recommended practices set out in the guidelines are to be aware of the type of clientele and of the character of staff members, to have a security check done on all employees, to develop training to assist staff in becoming “drug-wise”, to observe and record suspicious behaviour, to be knowledgeable about illegal drug activities and to be constantly on the lookout for problems.

[56] There was no evidence that these recommended practices were adopted by the Licensees. The Licensees appeared to be unaware of their clientele and of the character of their employees. No security checks were done on employees; had they been done, Chopra and Pria would have been aware of MB’s criminal record.

[57] JS and CM, the day time managers, provide in-house training to staff, reminding them of the rules particularly those related to overserving and getting patrons home safely. There is zero tolerance for the use or sale of illegal drugs. Staff are required to sign a declaration when hired (Tabs 5 and 6 of Exhibit #5) confirming their understanding of the rules. However, there is no training manual. No requests have been made to AGLC to provide training. The in-house training does not include anything about recognition of illegal drugs and drug activities.

[58] The Licensees argue that they have a history of dealing with known issues (paragraphs 209 and 210 of the Licensees’ argument). While that may be true, the Panel notes that the actions taken by the Licensees in the past are, at best, reactionary only. There is little to no evidence of proactive steps being taken by the Licensees to ensure the safety and security of patrons.

[59] Overall, the Licensees have not demonstrated that they can be relied upon to obey the laws or follow the applicable policies. They have not shown that they have acted or will act at all times with honesty and integrity or in the public interest. Their response to the allegations made against them by AGLC was to plead ignorance of the requirements, to assert that they didn’t know what was happening in their premises and to deflect the inquiry. Although the Licensees claim to be doing their best and trying very hard to meet the requirements placed upon licensees, their actions do not reflect that commitment.

[60] Accordingly, the Panel finds that the Licensees do not meet the requirements of Section 13 of the Regulation.

IV. CONCLUSION

[61] Based on the foregoing, the Panel finds that:

- There was no contravention of Section 69(1) of the *Act*. Accordingly, pursuant to Section 94(7) of the *Act*, the February 19, 2019 Notice of Administrative Sanction is cancelled.
- The Licensees failed to provide the information required for a background check contrary to Section 9 of the Regulation.
- The Licensees misled AGLC, failed to provide information or provided inaccurate information to AGLC contrary to Section 1.4.5 of the LLH.
- The Licensees failed to act in accordance with the law, with honesty and integrity, and in the public interest contrary to Section 13 of the Regulation.

V. SANCTION

[62] Given the above findings, the remaining issue for determination by the Panel is whether to uphold the indefinite suspension of the licences or to impose a different sanction. Although the parties addressed the issue of remedy/relief in their written arguments, they of course did not know the Panel's findings in relation to the contraventions. Now that they have that information and given the seriousness of the matter, the Panel considers it appropriate to reconvene a hearing, at a date to be scheduled as soon as possible, for the sole purpose of addressing the issue of sanction.

Signed at St. Albert, this 2nd day of August, 2019.



Barbara Ritzen, Presiding Member, Hearing Panel