

**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

**2140349 Alberta Ltd.
operating as Riverside Liquor
2001 Mistassiniy Road
Wabasca, AB T0G 2K0**

DATE OF HEARING:

December 17, 2020

HEARING PANEL:

**Mr. T. Zhang, Presiding Member
Mr. W.K. Breedlove, Panel Member
Ms. A. Tu Weissenberger, Panel Member**

DECISION OF THE HEARING PANEL

The Panel finds that there was no contravention of Section 75.1(a) of the *Gaming, Liquor and Cannabis Act*. Pursuant to Section 94(7)(c) of the *Gaming, Liquor and Cannabis Act*, the Panel cancels the original administrative sanction of \$10,000 or a 40-day suspension previously imposed by the Regulatory Services Division.

I. JURISDICTION AND PRELIMINARY MATTERS

[1] By letter dated May 14, 2020, the Regulatory Services Division of the Alberta Gaming, Liquor and Cannabis Commission (“AGLC”) advised 2140349 Alberta Ltd., operating as Riverside Liquor (“Riverside Liquor”), that the licensee contravened Section 75.1(a) of the *Gaming, Liquor and Cannabis Act* (“the Act”), which reads:

No liquor licensee may sell or provide liquor in the licensed premises to a person apparently intoxicated by liquor or a drug.

[2] Pursuant to Section 91(2) of the Act, the Regulatory Services Division, without a hearing, imposed an administrative sanction of \$10,000 or, in the alternative, a 40-day suspension of the Riverside Liquor’s Class D Liquor Licence.

[3] Riverside Liquor subsequently applied for a hearing by way of written submissions before a Panel of the Board of AGLC pursuant to Section 94(1) of the *Act*.

[4] Riverside Liquor and the Panel were provided with a Hearing Record containing various documents pertaining to the alleged contravention, including an incident report dated May 8, 2020.

[5] Riverside Liquor and the Regulatory Services Division were instructed to provide the Panel with any and all evidence they wished to submit on the issue of the alleged contravention, which occurred on March 1, 2020. The Panel reviewed the following documents pertaining to the alleged contravention:

- Exhibit #1 - Hearing Record;
- Exhibit #2 - Riverside Liquor, Written Submissions, dated November 6, 2020;
- Exhibit #3 - Regulatory Services Division Written Submissions, dated November 27, 2020;
- Exhibit #4 - Riverside Liquor, Response to the Regulatory Services Division's Written Submissions, dated December 9, 2020;
- Exhibit #5 - RCMP Audio/Video Statement, dated March 1, 2020;
- Exhibit #6 - Riverside Liquor Surveillance Video Footage, Camera #4; and
- Exhibit #7 - Riverside Liquor Surveillance Video Footage, Camera #5.

II. ISSUES

[6] Did Riverside Liquor contravene Section 75.1(a) of the *Act* and if so, should the administrative sanction of \$10,000 (or a 40-day suspension) previously imposed by the Regulatory Services Division be confirmed, replaced or cancelled?

III. EVIDENCE

Regulatory Services Division

The following is a summary of the evidence provided by the Regulatory Services Division in its Written Submissions:

[7] The majority of the details surrounding the alleged contravention are contained in the incident report (Exhibit #1) dated May 8, 2020, which was prepared by Inspector Andrew Wiebe, following receipt of a Licensed Premises Check form dated April 20, 2020 from RCMP Constable Groulx.

[8] On March 1, 2020 at 3:40 p.m., while conducting surveillance in the parking lot of Riverside Liquor, Constable Groulx encountered a patron ("Mr. A"), who had just exited Riverside Liquor after purchasing a six pack of Lucky Beer. Mr. A was displaying noted signs of intoxication, including walking with small choppy steps.

[9] Constable Groulx had dealt with Mr. A earlier in the day at approximately 1:00 p.m. At that time, Mr. A appeared to Constable Groulx to be visibly intoxicated. His words were slurred, he took short choppy steps and he smelled of liquor.

[10] Mr. A agreed to be interviewed in the backseat of Constable Groulx's police vehicle. During the interview, Constable Groulx noted the odour of liquor emanating from Mr. A. During questioning, Mr. A slurred his speech and it took him several attempts to spell his own name. Mr. A could not articulate why he made a liquor purchase, and rated himself a four out of ten when asked about his level of intoxication. Mr. A also confirmed that he had been drinking earlier in the day. Mr. A advised Constable Groulx that the employee who served him at Riverside Liquor was Ms. R.

[11] Constable Groulx believes that on March 1, 2020, Mr. A's gait was consistent with someone who was intoxicated, not someone with an injury or physical disability. Mr. A's slurred speech was very noticeable.

[12] Constable Groulx reviewed the video surveillance footage from the premises from March 1, 2020. The footage shows Mr. A struggling to maintain coordination as he pays for his purchase with cash. He has difficulty separating bills and misses the handle when he tries to retrieve the plastic bag from the counter.

[13] Riverside Liquor is known to Constable Groulx. He has personally spent a significant amount of time on the property of the premises dealing with intoxicated patrons.

Riverside Liquor

The following is a summary of the evidence provided by Riverside Liquor in its Written Submissions and Response to the Written Submissions of the Regulatory Services Division:

[14] Riverside Liquor denies the allegation that its employee, Ms. R sold liquor to an apparently intoxicated individual, Mr. A, on March 1, 2020.

[15] Ms. R has worked at Riverside Liquor since 2007, and lived in Wabasca for many years. She is familiar with the individuals living in the community.

[16] Ms. R has known Mr. A since he was a child. Mr. A has a disability which makes him speak as though he has marbles in his mouth; Mr. A has always spoken this way. For approximately six years, Mr. A has walked as if he is taking short choppy steps and shuffling.

[17] Ms. R confirms that she sold liquor to Mr. A on March 1, 2020. She observed him enter Riverside Liquor. He had no difficulty using the turnstile. Mr. A's gait on March 1, 2020 was consistent with how he presents on a day-to-day basis. His gait did not indicate to Ms. R that he was intoxicated in any way.

[18] Ms. R uses a number of steps to determine if a patron is intoxicated when they enter Riverside Liquor. However, her sense of smell is quite poor due to her prior work in a chicken farm. As a result, she does not rely on smell to identify intoxicated patrons.

[19] When customers enter Riverside Liquor, Ms. R engages in conversation with them in order to hear them speak and assess if they may be intoxicated. She spoke with Mr. A on March 1, 2020 and his speech was normal for him.

[20] Ms. R also looks at a customer's eyes when they approach the service counter to see if their eyes are red or sleepy looking to assess if they may be intoxicated. On March 1, 2020, Mr. A did not have red or sleepy looking eyes that would indicate he may be intoxicated. In addition, Mr. A did not show any signs of facial dropping, which may also indicate intoxication.

[21] Constable Groulx asks Mr. A a number of questions. Understandably, Mr. A appears nervous in answering Constable Groulx's questions but he is able to answer all the questions.

[22] Constable Groulx does not address Mr. A's disability. Constable Groulx indicated that he has only interacted with Mr. A when liquor is a factor. Accordingly, Constable Groulx may be mistaking Mr. A's normal behaviour for indications of intoxication. Constable Groulx has been posted in Wabasca for less than a year, and he appears to have no knowledge of Mr. A's state when he is sober.

[23] Ms. R reviewed the audio video statement and was surprised that Mr. A rated himself as a four out of ten in drunkenness, as he did not seem intoxicated when she sold him liquor on March 20, 2020.

[24] A review of the video surveillance footage from Riverside Liquor shows that Mr. A enters Riverside Liquor and does not experience any difficulty with the turnstile.

[25] Mr. A does not appear to struggle with paying for his purchase. He reaches into the pocket of his jacket and extracts his bills and change. He has no difficulty with this movement. He does not appear to be unaware of how much he owes for his purchase and, in fact, looks directly at the cash register to see the price. He places his change back into his pocket with no difficulty.

[26] Mr. A does not have any difficulty picking up the plastic bag containing his purchase prior to departing the premises.

IV. SUMMATION

Regulatory Services Division

[27] The Regulatory Services Division asserts that the evidence provided by Constable Groulx is credible and sufficient to make a finding that on a balance of probabilities, Mr. A was intoxicated and Ms. R should not have sold him liquor on March 1, 2020.

[28] The claim that Ms. R was familiar with Mr. A does not dismiss or diminish the evidence provided by Constable Groulx. The reason Constable Groulx did not mention Mr. A's alleged disability was not due to him being unfamiliar with Mr. A, but rather because the alleged disability does not explain Mr. A's intoxication, and is therefore irrelevant to Constable Groulx's conclusion.

[29] A reasonable person would draw the conclusion that the physical traits displayed by Mr. A, and observed by Constable Groulx, demonstrate that Mr. A was intoxicated and should not have been sold liquor.

[30] Riverside Liquor does not have a formalized employee training program. Employees receive verbal training and there is no focus on ensuring staff are able to assess patrons for intoxication, despite the fact this has been identified as an issue at the premises by the local RCMP. Some positive measures do appear to have been implemented, but only after this incident occurred.

[31] The Regulatory Services Division respectfully submits that a contravention of Section 75.1(a) of the Act did, in fact, occur and recommends that the Panel uphold the original administrative sanction of \$10,000 (or a 40-day suspension) previously offered by the Regulatory Services Division. Should this amount be reduced, it would likely not serve as a meaningful deterrent for future contraventions.

[32] Riverside Liquor has not provided any evidence that suggests operations will improve and Constable Groulx has noted that the local RCMP detachment devotes time and resources to this premises to combat the issues that stem from serving intoxicated patrons.

Riverside Liquor

[33] The penultimate issue in this case is if Mr. A was apparently intoxicated to Ms. R.

[34] Ms. R has 13 years' experience selling liquor. On March 20, 2020, Ms. R took steps to assess if Mr. A was intoxicated before she served him liquor. Ms. R took into consideration a number of factors and concluded that on March 20, 2020, Mr. A was not intoxicated.

[35] Ms. R's evidence is that she has known Mr. A almost his whole life. Mr. A has walked with a limp for six years, and it appears as if he is taking short choppy steps and is shuffling. Further, Mr. A has a speech impediment which causes him to speak as if he has marbles in his mouth.

[36] Mr. A appears to be nervous while in the backseat of Constable Groulx's vehicle, believing that Constable Groulx may be detaining him in respect of an incident from the previous night. This, along with his disability, may have attributed to Mr. A's slight confusion in answering Constable Groulx's questions. Despite this, Mr. A answered all of Constable Groulx's questions accurately.

[37] A review of the surveillance video footage shows that Mr. A was not apparently intoxicated. Mr. A approaches the counter walking with a slight limp which is consistent with his normal gait. From approaching the counter to paying for his purchase and exiting the store, Mr. A takes 35 seconds. This does not indicate a man who is apparently intoxicated, fumbling and unable to pay for his purchase correctly. Rather, it was a normal transaction.

[38] Mr. R assessed Mr. A and determined that he was not intoxicated. Mr. A did not exhibit signs of intoxication, such as having a messy appearance or acting in an overly bold or disruptive manner. Ms. R's interaction with Mr. A on March 20, 2020 was normal and consistent with their previous interactions.

[39] Riverside Liquor has a verbal training program for its employees that includes how to spot intoxicated patrons. Employees are instructed that they are not to serve intoxicated patrons. Prior to this incident, Riverside Liquor did not have a formalized employee training program, but that does not diminish that Riverside Liquor takes its responsibilities as a licensee seriously. Riverside Liquor is currently making substantial efforts to formalize its employee training program and is taking all necessary steps to ensure employees comply with the *Act*.

[40] Riverside Liquor respectfully requests that the Panel dismiss the contravention against it without penalty. In the alternative, if the Panel determines that there was a contravention of Section 75.1(a) of the *Act*, Riverside Liquor requests a reduction in the penalty due to the challenging environment and specific clientele in the Wabasca area.

V. ANALYSIS

[41] The central or key issue in this case is whether or not Mr. A was apparently intoxicated inside Riverside Liquor on March 1, 2020, such that he should not have been served liquor by Ms. R, an employee of Riverside Liquor.

[42] The evidence of the Constable Groulx, based upon his observations and the interview he conducted with Mr. A in the backseat of his police vehicle, was that Mr. A exhibited the usual or typical signs of intoxication; short choppy steps, slurred speech and there was an odor of liquor coming from Mr. A. In addition, Constable Groulx dealt with Mr. A earlier in the day and determined he was intoxicated at that time.

[43] Ms. R's evidence was that she had known Mr. A for many years and had served him on a number of occasions in the past. She was aware that Mr. A suffered from a disability which caused him to limp and speak as though he had marbles in his mouth. Ms. R conducted an assessment of Mr. A when he attended Riverside Liquor on March 1, 2020 and determined that he was not intoxicated. Ms. R's interaction with Mr. A on March 1, 2020 was normal and consistent with their previous interactions.

[44] The Panel concludes that Ms. R took appropriate measures to assess whether Mr. A was intoxicated prior to serving him on March 1, 2020. She had served Mr. A before and had known him for a number of years. His eyes did not appear to be glassy and his walk and speech were normal given the disability that was known to Ms. R. As such, the Panel finds that it was reasonable for Ms. R to determine that the patron was not apparently intoxicated.

[45] In addition to the evidence provided by Ms. R, the Panel took into consideration the video surveillance footage from inside Riverside Liquor. In the Panel's opinion, the footage does not support the conclusion reached by the Regulatory Services Division that Mr. A was apparently intoxicated and should not have been sold liquor. The Panel did not identify any issues with Mr. A entering Riverside Liquor through the turnstile, nor did he appear to have difficulty paying for or retrieving his purchase.

VI. FINDING

[46] The Panel finds that there was no contravention of Section 75.1(a) of the *Act*. Accordingly, pursuant to Section 94(7)(c) of the *Act*, the Panel cancels the original administrative sanction of \$10,000 or a 40-day suspension previously imposed by the Regulatory Services Division.

Signed at Calgary, this 13th day of January, 2021.

A handwritten signature in blue ink, appearing to read 'Tongjie Zhang', is written above a horizontal line.

Tongjie Zhang, Presiding Member, Hearing Panel