

**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**

**2093667 Alberta Ltd.  
o/a Star Nightclub  
10586 109 Street NW  
Edmonton, AB T5H 3B2**

<b>DATE OF HEARING:</b>	<b>February 3, 2021</b>
<b>HEARING PANEL:</b>	<b>Ms. P. Grier, Presiding Member Mr. W.K. Breedlove, Panel Member Mr. J. Fujino, Panel Member</b>
<b>LICENSEE REPRESENTATIVES:</b>	<b>Mr. M. Yohannes, Owner/Operator Mr. R. Haile, Owner/Operator</b>
<b>REGULATORY SERVICES DIVISION:</b>	<b>Ms. T. Hazelwood, Hearing Officer</b>

**DECISION OF THE HEARING PANEL**

The Panel finds that Star Nightclub (the "Licensee") contravened Section 68(1)(b), 91(1)(a) and 69(1)(a) of the *Gaming Liquor and Cannabis Act* AND Section 5.3.12(g) and 5.6.1 of the Liquor Licensee Handbook. The Panel dismisses the contravention of Section 69(1)(c) and 71(2) of the *Gaming, Liquor and Cannabis Act*. In accordance with Section 94(7) and 91(2)(d) of the *Gaming, Liquor and Cannabis Act*, the Panel replaces the indefinite licence suspension previously imposed by the Regulatory Services Division with an order cancelling Class A Liquor Licence numbered 777854-1, effective as of Tuesday, March 9, 2021. The Panel further orders that the Licensee, any company of which the Licensee is a director and/or shareholder, any of the Licensee's employees, or any other person with a connection to the Licensee are not eligible to apply for a liquor licence in the Province of Alberta until January 1, 2024.

## **I. JURISDICTION AND PRELIMINARY MATTERS**

[1] By letter dated September 14, 2020, the Regulatory Services Division of the Alberta Gaming, Liquor and Cannabis Commission (“AGLC”) advised 2093667 Alberta Ltd., operating as Star Nightclub (“the Licensee”), that the Licensee contravened:

1. Section 68(1)(b) of the *Gaming, Liquor and Cannabis Act* (the “Act”) – sell, offer to sell or provide liquor on an unauthorized day or during unauthorized hours (“Contravention #1”);
2. Section 5.3.12(g) of the Liquor Licensee Handbook – failure to use a locking device on a bottle of spirits (“Contravention #2”);
3. Section 91(1)(a) of the Act – failure to comply with an imposed condition (four contraventions) (“Contravention #3”);
4. Section 69(1)(c) of the Act – permit an activity that may be injurious to the health or safety to the people in the premises (“Contravention #4”);
5. Section 5.6.1 of the Liquor Licensee Handbook – failure to provide adequate staff and supervision of the premises (“Contravention #5”);
6. Section 71(2) of the Act – permit unauthorized persons in a Class A minors prohibited licensed premises during unauthorized hours (“Contravention #6”); and
7. Section 69(1)(a) of the Act – permit any activity in the licensed premises which is contrary to any municipal bylaw or any Act or Regulation of Alberta or Canada (“Contravention #7”).

[2] Pursuant to Section 91(2)(d) of the Act, the Regulatory Services Division, without a hearing, imposed an indefinite suspension of the Licensee’s Class A Liquor Licence numbered 777854-1.

[3] The Licensee subsequently applied for a hearing before a Panel of the Board of AGLC pursuant to Section 94(1) of the Act, with respect to the alleged contraventions. Prior to commencement of the hearing, the Panel members confirmed that they did not have any conflicts of interest relative to the parties or issues before the Panel.

[4] The Licensee and the Panel were provided with a Hearing Record containing various documents pertaining to the alleged contraventions, which occurred on July 5, 2020, including an incident report dated September 11, 2020. The Licensee confirmed receipt of the Hearing Record and Notice of Hearing dated January 12, 2021. The following documents were entered into evidence:

- Exhibit #1 - Hearing Record; and
- Exhibit #2 – Video surveillance footage taken inside Star Nightclub on July 5, 2020.

## **II. ISSUE**

[5] Did the Licensee contravene Section 68(1)(b), Section 91(1)(a), Section 69(1)(c), Section 71(2) or Section 69(1)(a) of the Act AND/OR Section 5.3.12(g) or Section 5.6.1 of the Licensee Handbook. If so, should the Panel confirm, replace or cancel the indefinite licence suspension previously imposed by the Regulatory Services Division?

### III. EVIDENCE

#### Regulatory Services Division

The Regulatory Services Division called two witnesses: Detective Braydon Lawrence, Edmonton Police Service ("EPS"), and Kim Bodson, AGLC Inspector. In addition to hearing the evidence provided by Detective Lawrence and Inspector Bodson, the Panel also reviewed four segments of the video surveillance footage taken inside Star Nightclub on July 5, 2020 (Exhibit #2).

The following is a summary of the evidence provided by Detective Lawrence and Inspector Bodson:

[6] Detective Lawrence advised the Panel that EPS conducted an investigation with respect to a shooting that occurred inside Star Nightclub on July 5, 2020. Although Detective Lawrence was not on duty at the time of the shooting, he was subsequently involved in the investigation and has knowledge of the EPS file in relation to the incident.

[7] On July 6, 2020, EPS advised AGLC of a shooting that occurred inside Star Nightclub on July 5, 2020. Inspector Bodson subsequently conducted a review of the video surveillance footage taken inside the premises on July 5, 2020, which was provided to her by EPS. She then completed the incident report dated September 11, 2020, which forms part of Exhibit #1. Detective Lawrence advised AGLC that during the investigation into the shooting, EPS was able to determine that the time stamp on the video surveillance footage was 17 minutes faster than the correct time. Inspector Bodson took into consideration the time differential provided by EPS when she reviewed the video surveillance footage and prepared the incident report.

#### Evidence regarding Contravention #1

[8] Inspector Bodson advised the Panel that in accordance with Section 68(1)(b) of the *Act*, a Licensee may not serve liquor during unauthorized hours. The liquor licence for the premises, which forms part of Exhibit #1, indicates that the authorized hours for liquor service are from 10:00 a.m. to 2:00 a.m., Monday through Sunday, with consumption of liquor permitted until 3:00 a.m.

[9] The video surveillance footage Inspector Bodson reviewed of the service bar inside the premises shows that at 2:34 a.m. on July 5, 2020, the lone, female bartender places approximately six shot glasses on a tray and takes an unknown bottle of liquor from the well behind the bar. The bartender walks towards a table next to the bar and pours the liquor into the shot glasses. The bartender then returns to the service bar and enters the transaction into the point of sale system. A male patron hands the bartender cash, which she puts into the till.

[10] At 2:43 a.m., the video surveillance footage also shows the female bartender opening a bottle of Corona beer and placing the bottle on the counter in front of a male patron. The male uses the debit machine to pay for the beer, and then walks away with the beer.

### Evidence regarding Contravention #2

[11] Inspector Bodson advised the Panel that in accordance with Section 5.3.12(g) of the Licensee Handbook, the Licensee or the Licensee's employees may sell a bottle of spirits to a patron for on-premises consumption, provided that a locking device is used on the bottle and the bottle is only accessible by the Licensee or the Licensee's employees.

[12] The video surveillance footage Inspector Bodson reviewed of the service bar inside the premises shows that at 2:45 a.m. on July 5, 2020, a male patron hands the female bartender cash. The female bartender proceeds to take a bottle of liquor from the well behind the service bar that appears to be almost empty. The bartender then takes a new bottle of an unknown, dark liquor and pours from the new bottle into the old, almost empty bottle. The bartender subsequently gives the newly filled bottle to the male patron. The patron walks away from the service bar with the bottle of liquor and the bartender proceeds to put cash into the till. At no time does the bartender place a locking device on the bottle of spirits, prior to handing the bottle to the patron.

### Evidence regarding Contravention #3

[13] Inspector Bodson advised the Panel that based on public safety concerns with the operating history of Star Nightclub, several conditions were imposed by the Regulatory Services Division on the liquor licence for the premises on March 23, 2018. The Licensee is required to adhere to the conditions at all times while the premises is operating. Failure to do so is a contravention of Section 91(1)(a) of the Act. The imposed conditions in effect on July 5, 2020 required the Licensee to:

- Request and require (as a condition of entry) approved identification from all patrons entering the premises. All identification must be scanned by a scanning system and have the capability of retaining a name, age and picture;
- Check/store all patrons' coats;
- Search all bags/purses for weapons/drugs (anyone found in the possession of weapons or illegal drugs is to be refused entry); and
- Scan all patrons with a metal detector to prevent the entry of weapons (anyone found in the possession of weapons is to be refused entry).

[14] The video surveillance footage Inspector Bodson reviewed of the bottom of the west stairs inside the premises, and the pool table area that captures all entry coming from the back door, depicts that at 2:48 a.m. on July 5, 2020, 17 patrons entered the premises through the back door. At 2:49 a.m., 22 more patrons can be seen entering the premises through the back door, and at 2:51 a.m., four additional patrons enter the premises through the back door.

[15] Inspector Bodson also reviewed the video surveillance footage of the back door of the premises. At no point did Inspector Bodson observe any of the employees of the premises supervising the back door. In addition, the employees did not ask the patrons for identification or scan their identification into a scanning system, check or store patrons' coats, search bags/purses for weapons/drugs, or scan all patrons with a metal detector, all of which is required pursuant to the conditions imposed on the liquor licence for the premises. The video surveillance footage from the back door does not show a scanning

system, coat check area, or metal detector present at the back door; those security measures appear to only present at the front entrance of the premises.

#### Evidence regarding Contravention #4

[16] Detective Lawrence advised the Panel that at approximately 3:15 a.m. on July 5, 2020, an EPS patrol unit pulled over a vehicle travelling at high rate of speed on 104<sup>th</sup> Avenue in Edmonton. Police officers conducted a traffic stop and observed a male, who had been shot twice in the leg, in the backseat of the vehicle.

[17] At approximately the same time, EPS received a 911 call regarding a shooting in the vicinity of 109<sup>th</sup> Street and 105<sup>th</sup> Avenue. During the course of the traffic stop, the passengers in the vehicle advised the police that they had just come from Star Nightclub, which was the approximate location of the 911 call. However, the 911 call did not originate from directly inside Star Nightclub and it was not made by one of the employees of the premises.

[18] EPS attended Star Nightclub and located approximately 10 individuals in the back parking lot of the premises. None of the individuals were cooperative with the police and they refused to provide the police officers with any information regarding the shooting.

[19] When EPS arrived at Star Nightclub, the premises was in darkness and the doors were locked. Police officers found blood on the back door of Star Nightclub and at the front of the premises. They subsequently contacted the owner of the premises, Mr. Yohannes, at 3:56 a.m. Mr. Yohannes advised the police that he was not aware of an incident occurring inside the premises and therefore, he would not be attending the scene.

[20] Given the concern for public safety and the need to confirm that there were no other injured individuals inside Star Nightclub, EPS made the decision to breach the front door of the premises. Once inside, the police determined that there were no individuals inside the premises and there did not appear to be any additional injuries.

[21] At 4:09 a.m., Mr. Yohannes called the police officers back and indicated that he had spoken with the employees who were on duty on July 5, 2020. Those employees confirmed that there was an incident inside the premises. However, Mr. Yohannes still refused to attend the scene, stating that he had to fly to Vancouver in the morning.

[22] Mr. Yohannes did provide the police with the password for the premises' video surveillance recording system, which allowed the police to review the footage taken on July 5, 2020. Upon reviewing the video surveillance footage, the police were able to confirm that a shooting did take place inside Star Nightclub on July 5, 2020.

[23] As part of the police investigation into the shooting, EPS conducted interviews with the individuals located inside the vehicle during the traffic stop, as well as the other complainants, and also put out media releases to the public asking for anyone who witnessed the shooting to come forward.

However, the police did not receive any additional information about the shooting as a result of those efforts. In addition, none of the employees on duty at the premises on July 5, 2020 contacted the police to be interviewed or to provide information.

[24] The video surveillance footage Inspector Bodson reviewed of the bottom of the west stairs inside the premises, and the pool table area that captures all entry coming from the back door, depicts that at 3:04 a.m. on July 5, 2020, an altercation occurs between two male patrons in front of the first booth by the service bar. Other male patrons join in on the altercation.

[25] At 3:06 a.m., a commotion is observed originating from the back stairwell; there are approximately 50 patrons inside the premises at the time of the altercation. Most of the patrons scatter and run toward the front entrance. A male patron is seen falling to the ground, rolling and holding his leg, suffering from what Detective Lawrence confirmed was two gunshot wounds to the leg.

[26] At 3:07 a.m., the video surveillance footage shows a male patron walking in front of the bathrooms holding a gun in his hand. At 3:08 a.m., a male staff member, later identified as Amanuel Hailu, is seen pushing a male patron in the back while the male patron is holding the gunshot victim by the arms, and another male patron is holding him by the feet. Mr. Hailu gestures for the patrons to get out of the premises. At 3:13 a.m., Mr. Hailu is observed on the video surveillance footage wiping what appears to be blood off the floor beside the pool table and at the bottom of the back stairs.

[27] Inspector Bodson advised the Panel that the Liquor Licensee Handbook provides licensees with direction on what licensees, and their employees, are expected to do in the case of an emergency. In this case, the Licensee's employees do not appear to have followed that direction, given that none of the employees called 911 or attempted to assist the victim after the shooting occurred. Furthermore, none of the employees came forward when the police put out a request for information about the shooting.

[28] Inspector Bodson is of the opinion that because the Licensee and the Licensee's employees failed to abide by the conditions imposed on the premises' liquor licence, which resulted in a shooting, the Licensee permitted an activity to occur that was injurious to the health and safety of the people inside the premises, contrary to Section 69(1)(c) of the Act.

#### Evidence regarding Contravention #5

[29] Inspector Bodson advised the Panel that the video surveillance footage she reviewed shows that there were three employees on duty at the time of the incidents in question. Neither the bartender nor Mr. Hailu are observed attempting to diffuse the altercation between the male patrons before the shooting occurs; the cook on duty appears to remain in the kitchen during the entirety of the incident.

[30] In Inspector Bodson's opinion, the premises did not have an adequate number of employees on duty to appropriately supervise the number of patrons that entered the premises. Inspector Bodson believes that the video surveillance footage clearly shows that the employees were not in control of the premises at the time the additional patrons entered and the shooting occurs.

#### Evidence regarding Contravention #6

[31] Inspector Bodson advised the Panel that in accordance with Section 71(2) of the *Act*, a licensee may not permit any person to be in a licensed premises when the sale and consumption of liquor in that premises is prohibited. The liquor licence for the premises indicates that the premises is to be vacated of all unauthorized people between 3:00 a.m. and 10:00 a.m.

[32] The video surveillance footage Inspector Bodson reviewed shows that between 2:48 a.m. and 2:51 a.m., approximately 40 patrons enter the premises through the back door. Most of the patrons stay inside the premises until after the shooting occurs at 3:06 a.m.

[33] The video surveillance footage also shows both the bartender and Mr. Hailu interacting with the patrons, serving them liquor and taking payments between 2:49 a.m. and 3:06 a.m. At 3:09 a.m., eight patrons can be seen on the video surveillance footage exiting the premises and at 3:18 a.m., one patron, together with the bartender, the cook and Mr. Hailu, are seen exiting the premises.

[34] Prior to the shooting, Inspector Bodson did not observe any of the employees conducting closing duties or encouraging the patrons to leave the premises.

#### Evidence regarding Contravention #7

[35] Inspector Bodson advised the Panel that in accordance with Section 69(1)(a) of the *Act*, a Licensee may not permit any activity in a licensed premises that is contrary to any municipal bylaw or any Act or Regulation of Alberta or Canada.

[36] Inspector Bodson further advised the Panel that on March 17, 2020, Alberta Premier Jason Kenney declared a public health emergency pursuant to the *Public Health Act*, in response to the COVID-19 pandemic. On June 12, 2020, Premier Kenney announced a phased re-opening for businesses affected by the public health emergency. At that time, Public Health Order 19-2020 was implemented.

[37] Public Health Order 19-2020 permitted restaurants, cafes, pubs and bars to open for dine-in food service, delivery and takeout, provided those businesses ensured that all patrons practiced social distancing. In addition, the businesses were prohibited from allowing patrons to line up at a service bar to purchase drinks or participate in dancing. The Order also required nightclubs to remain closed to the public, in an effort to minimize the spread of COVID-19. Public Health Order 19-2020 was still in effect at the time of the shooting at Star Nightclub on July 5, 2020.

[38] Based on Inspector Bodson's review of the video surveillance footage, the majority of the patrons were not seated at tables and Inspector Bodson did not observe any food on the tables. Most of the patrons were congregating on what appeared to be a dance floor, and social distancing was not being practiced by the patrons. In Inspector Bodson's opinion, the premises was operating more as a nightclub than a restaurant at the time the shooting occurred on July 5, 2020.

[39] On July 10, 2020, AGLC advised Alberta Health Services (“AHS”) that the premises was operating and open to the public. On July 16, 2020, Mr. Yohannes advised Inspector Bodson that he had been contacted by AHS and was directed by AHS to close in order to comply with Public Health Order 19-2020.

### **Licensee**

Merhawi Yohannes and Rico Haile provided evidence on behalf of the Licensee. The following is a summary of Mr. Yohannes and Mr. Haile’s evidence:

#### Evidence regarding Contravention #1

[40] The Licensee admits that the bartender on duty on July 5, 2020 served alcohol to patrons inside the premises after 2:00 a.m., as evidenced by the video surveillance footage. The Licensee was advised by the employees that they failed to cease liquor service at 2:00 a.m. because the patrons demanded liquor service after that time.

#### Evidence regarding Contravention #2

[41] The Licensee admits that the bartender on duty on July 5, 2020 failed to put a locking device on a bottle of spirits she sold to a patron.

[42] The Licensee requires employees to use a locking device at all times when bottle service is provided to a patron. However, the bartender on duty on July 5, 2020 was a new employee, and she failed to place a locking device on the bottle of spirits. It was the bartender’s mistake, which the Licensee believes can be attributed to her lack of experience. The bartender had not yet completed her ProServe certification course.

#### Evidence regarding Contravention #3

[43] The Licensee advised the Panel that on July 5, 2020, the employees of the premises were abiding by the business control plans that the Licensee had previously filed with the City of Edmonton. However, at approximately 2:50 a.m., the back emergency exit of the premises was used by patrons to enter the premises; that never should have happened. All the security measures the premises has in place, including the patron scanning system, coat check and metal detector, are located at the front entrance of the premises. A patron that was already inside the premises opened the back emergency exit and allowed approximately 40 other patrons to enter between 2:48 a.m. and 2:51 a.m.

[44] The Licensee’s employees became frustrated and overwhelmed by the sudden influx of patrons, as the patrons essentially took over control of the premises. The Licensee believes the employees were distracted with trying to deal with the patrons, which is why they did not call the police for assistance when they were unable to regain control of the premises. The Licensee acknowledges that the employees did not handle the incident in an appropriate manner.



[45] Prior to July 5, 2020, the Licensee was complying with the conditions imposed on the premises' liquor licence related to security, but only on the weekends. Business was slow during the week, so the Licensee made a decision only to adhere to the security conditions on the weekends.

[46] Taking into considering the fact that business was slower on weekdays, Mr. Yohannes filed an updated business control plan with the City of Edmonton in 2019, which included updated security measures for the premises. The City of Edmonton subsequently approved the Licensee's updated business control plan.

[47] The Licensee did not contact AGLC to request that the conditions on the premises' liquor licence be amended to reflect the updated City of Edmonton business control plan, as the Licensee assumed that the City of Edmonton and AGLC would exchange information, and AGLC would automatically amend the conditions on the premises' liquor licence to reflect the updated business control plan. However, the Licensee has since been advised that AGLC and the City of Edmonton do not exchange information and he understands that the conditions on the premises' liquor licence were in effect on July 5, 2020 and currently remain in effect.

[48] The conditions imposed on the premises' liquor licence are very costly for the Licensee to comply with, particularly the security requirements. However, the Licensee has always been willing to abide by the security requirements and to make changes to the requirements when directed to do so by AGLC.

#### Evidence regarding Contravention #4

[49] The Licensee admits that a shooting occurred inside the premises on July 5, 2020. The Licensee believes that the shooting was the result of an incident that occurred at another licensed establishment in Edmonton the previous evening.

[50] When the police initially contacted Mr. Yohannes at 3:56 a.m. on July 5, 2020, he indicated there had not been an incident inside the premises because he thought the police were referring to July 4, 2020, not July 5, 2020. When Mr. Yohannes called the police back at 4:04 a.m., he advised that he was willing to attend the premises but the police told him that his attendance was no longer necessary because they had breached the door and gained access to the premises.

[51] Mr. Yohannes believes that the employees on duty at the time of the shooting on July 5, 2020 were not aware that the police were trying to get in touch with them. In addition, no one from EPS tried to get in touch with Mr. Yohannes nor Mr. Haile to obtain additional information.

#### Evidence regarding Contravention #5

[52] On July 5, 2020, both managers departed the premises at 1:00 a.m., as business was slow at that time; there were approximately seven patrons inside the premises when the managers left. The managers could not anticipate that approximately 40 patrons would enter the premises through the back emergency exit after they departed.

[53] The employees who were on duty on July 5, 2020 did not have the experience to know how to handle the 40 patrons that entered the premises; the bartender had only been employed at the premises for one week. The other employee, Mr. Hailu, is primarily responsible for preparing shisha. Mr. Hailu had been employed at the premises for one year and was in charge of the premises at the time the shooting occurred.

[54] The employees advised the Licensee that they asked the patrons to leave the premises, but the patrons refused to leave. The Licensee acknowledges that the employees should have contacted the police; however, they were inexperienced and did not know what to do.

#### Evidence regarding Contravention #6

[55] The Licensee admits that between 2:48 a.m. and 2:51 a.m., approximately 40 patrons entered the premises through the back emergency exit. The Licensee further admits that the majority of those patrons were still inside the premises when the shooting occurred at 3:06 a.m., and further that all the patrons should have been cleared from the premises by 3:00 a.m. However, as previously stated, the employees asked the patrons to leave the premises, but the patrons refused to leave.

#### Evidence regarding Contravention #7

[56] The premises was open to the public on July 5, 2020. It was open for the purposes of serving food and beverages. There was a cook on duty on July 5, 2020; the cook can be seen behind the service bar in the video surveillance footage. The Licensee acknowledges that subsequent to July 5, 2020, the premises was ordered by AHS to close, in order to comply with Public Health Order 19-2020 which requires all nightclubs to remain closed to the public.

### **IV. SUMMATION**

#### **Regulatory Services Division**

[57] Although AGLC regularly liaises with AHS and other partner agencies, AGLC procedure does not involve waiting for the other agencies to take disciplinary action. Given that the incident in question impacted the immediate health and safety of Albertans, it was prudent to ensure that AGLC took timely action, and Section 69 of *Act* allows for that action to be taken.

[58] The Regulatory Services Division believes that the evidence provided by Detective Lawrence and Inspector Bodson is clear. That evidence was also corroborated by the video surveillance footage that was reviewed by both Inspector Bodson and the Panel. The premises was the scene of shooting, which seriously injured a male victim. Upon reviewing the video surveillance footage, Inspector Bodson found clear evidence of contraventions of both the *Act* and the Liquor Licensee Handbook. Those contraventions were detailed for the Panel by Inspector Bodson.

[59] Mr. Yohannes, the owner of the premises, advised Inspector Bodson over the phone that he was aware of the shooting and confirmed that the premises was not following the conditions imposed on the

premises' liquor licence. It should be noted that the conditions on the licence have not changed since they were initially imposed by the Regulatory Services Division on March 23, 2018. The conditions were in effect on July 5, 2020 and continue to remain in effect. AGLC never received an application from the Licensee requesting that the conditions be amended. In addition, City of Edmonton control plans are not required to match conditions that may be imposed on a liquor licence by AGLC.

[60] The Regulatory Services Division is of the opinion that Mr. Yohannes did not provide the Panel with a valid explanation as to why the premises stayed open past its permitted operating hours, nor why the premises was open at all, as the Public Health Order in effect at the time of the incident clearly states that this class of premises must be closed to the public, unless it was providing food service.

[61] Mr. Yohannes was also unable to explain to the Panel why the employees on duty at the time of the shooting did not call the police, an ambulance, or take any steps to ensure the security of the crime scene or the safety of the injured victim or the patrons.

[62] The Regulatory Services Division asserts that the video surveillance footage clearly shows that the employees were not in control of the premises and were not capable of adequately supervising the premises or the patrons. The Licensee also admitted that the employees were not in control of the premises.

[63] The video surveillance footage also demonstrates an egregious disregard for the safety of patrons. It is of grave concern to the Regulatory Services Division that the employees seemed to act as if having a patron writhing on the floor, bleeding from a gunshot wound, was of little or no concern. This appears to the Regulatory Services Division to be an obvious demonstration of an activity that is injurious to the health and/or safety of the patrons in the premises, and further demonstrates that the employees supervising the premises were inadequate.

[64] The video surveillance footage further shows that liquor was being served to patrons after 2:00 a.m. In addition, the footage shows that the bartender handed an unlocked bottle of spirits to a patron.

[65] Patrons remained inside the premises after 3:00 a.m., and there was no evidence of the employees even attempting to clear the premises of unauthorized patrons. It seems to the Regulatory Services Division that it was indeed the fired gunshots that successfully cleared the premises of unauthorized patrons.

[66] Even if the Public Health Order was not in effect at the time of this incident, taken as a whole, the other actions indicate that the premises was not under control, had no security measures in place and the Regulatory Services Division questions the Licensee's ability to ensure the health and safety of patrons overall, when his employees seem unable to take the most basic of necessary actions.

[67] The premises stayed open late despite not having sufficient employees to adequately supervise the patrons. The employees permitted an influx of patrons to enter the premises when the premises should have been closed. In addition, the employees ignored the conditions imposed on the liquor

licence, which, if followed, may have mitigated or prevented the patrons from taking over the premises, entering with weapons and eventually causing a patron to be shot.

[68] With respect to the contravention of Section 69(1)(a) of the *Act*, the global pandemic has put many lives in danger and killed over 1500 people in Alberta. The health and safety of Albertans is at stake and the Alberta Government has set out strict orders in an effort to save lives and lessen the burden on Alberta's healthcare system. This appears to be of little importance to the Licensee. The continued operation of the premises, contrary to the Public Health Order in effect at the time, placed patrons and staff, at risk.

[69] Being issued a liquor licence is a privilege and not a right. The Regulatory Services Division asserts that if the Licensee is not capable of providing basic security measures, upholding procedures that maintain the health and safety of employees and the public, or abiding by AGLC policies and legislation, then the Panel should cancel the Licensee's liquor licence.

[70] Should the Panel elect to permit the continued operation of the premises, the Regulatory Services Division's position is that this incident requires significant sanctions, to serve as a meaningful deterrent to future non-compliance.

[71] One of AGLC's greatest responsibilities is public safety and it must take that responsibility seriously. The Regulatory Services Division must be assured that the Licensee, and the Licensee's staff, will act appropriately when faced with incidents of violence and contact the police when necessary. For these reasons, the Regulatory Services Division respectfully recommends that the Panel impose the following monetary sanctions, if the Panel determines that cancellation of the Licensee's liquor licence is not an appropriate sanction:

- Contravention #1: Section 68(1)(b) of the *Act* - \$1500;
- Contravention #2: Section 5.3.12(g) of the Liquor Licensee Handbook - \$250;
- Contravention #3: Section 91(1)(a) of the *Act* - \$2000 (\$500 x four contraventions);
- Contravention #4: Section 69(1)(c) of the *Act* - \$5000;
- Contravention #5: Section 5.6.1 of the Liquor Licensee Handbook - \$5000;
- Contravention #6: Section 71(2) of the *Act* - \$1000; and
- Contravention #7: Section 69(1)(a) of the *Act* - \$5000.

[72] In addition to the monetary sanctions, the Regulatory Services Division respectfully recommends that the Panel impose the following conditions on Class A Liquor Licence numbered 777854-1, which are in addition to the conditions that are currently imposed on the licence:

- Condition #1 - At least 2 staff members must be on duty for the sole purpose of supervising the patrons, staff and activities within the premises:
  - These staff members must be easily identifiable by a bright colored shirt, jacket, vest, or other suitable garment with the word safety, staff or security written across the front and back of the garment in clearly visible letters;
  - These staff members must be ProTect and ProServe certified; and

- There must be a minimum of one security staff member stations at each of the patron entrances and exits on Thursday to Sunday evenings from 9:00 p.m. to closing.
- Condition #2 - The premises must have video surveillance approved by the AGLC, as follows:
  - Video surveillance recording devices and lighting at each entrance to the premises, of sufficient quality to identify facial features of patrons entering the premises and door staff working at the entrances;
  - Video surveillance recording devices and lighting to provide complete camera and surveillance coverage of patron areas (excluding washrooms) of sufficient quality to identify facial features of patrons and staff;
  - Video surveillance recording devices must display the date (including day, month, and year) and time, accurately and constantly on the frames of the recordings;
  - The video surveillance recordings must be retained for a minimum of 28 days and shall be made available to AGLC on request. Recordings must be accurately dated and labeled for ease of reference;
  - Clearly printed signs must be prominently displayed to advise the public of video surveillance equipment locations. Signage must be in places such that the public has reasonable and adequate warning that surveillance is, or may be in operation, before entering any area under video surveillance; and
  - Video surveillance and recordings must be administered in accordance with the Office of the Privacy Commissioner of Canada and any other municipal, provincial or federal laws.

### **Licensee**

[73] On July 5, 2020, the Licensee's employees did not intentionally fail to comply with the conditions imposed on the premises' liquor licence, nor did the Licensee intend for a shooting to occur inside the premises.

[74] The Licensee agrees with imposing additional conditions on the premises' liquor licence, as recommended by the Regulatory Services Division.

[75] Going forward, the Licensee intends to have security staff on duty from 9:00 a.m. to 3:00 a.m., seven days a week. The Licensee would like another chance to run the premises the right way, while adhering to all application policies and legislation. The Licensee has invested a great deal of money into the business and COVID-19 has challenged the business financially. The Licensee cannot afford to pay \$20,000 in sanctions.

## **V. ANALYSIS AND FINDING**

### **Contravention #1 - Section 68(1)(b) of the Act**

[76] The Licensee admitted to contravening Section 68(1)(b) of the Act. This admission was substantiated by the evidence provided by Inspector Bodson, as well as through the video surveillance footage the Panel reviewed.

[77] On July 5, 2020, the bartender on duty sold liquor to patrons at 2:34 a.m. (6 shots of liquor), 2:43 a.m. (Corona beer) and 2:45 a.m. (bottle of spirits). This was contrary to the maximum liquor service hours listed on the premises' liquor licence (which forms part of Exhibit #1). The liquor licence for the premises indicates that liquor may be served from 10:00 a.m. to 2:00 a.m. Monday through Sunday, with consumption until 3:00 a.m.

[78] Accordingly, the Panel finds that the Licensee contravened Section 68(1)(b) of the Act.

### **Contravention #2 - Section 5.3.12(g) of the Liquor Licensee Handbook**

[79] The Licensee admitted to contravening Section 5.3.12(g) of the Liquor Licensee Handbook. This admission was substantiated by the evidence provided by Inspector Bodson, as well as through the video surveillance footage the Panel reviewed.

[80] On July 5, 2020 at 2:45 a.m., the bartender sold a bottle of spirits to a male patron for on-premises consumption. The bartender allowed the patron to take the bottle of spirits to a table, without placing a locking device on the bottle of spirits. Section 5.3.12(g) of the Liquor Licensee Handbook requires licensees and their employees to place a locking device on a bottle of spirits that is sold to a patron for on-premises consumption, to ensure that the bottle is only accessible by the licensee or the licensee's employees.

[81] Accordingly, the Panel finds that the Licensee contravened Section 5.3.12(g) of the Liquor Licensee Handbook.

### **Contravention #3 - Section 91(1)(a) of the Act**

[82] The Licensee admitted that at the time the shooting occurred inside the premises on July 5, 2020, the employees were not adhering to the conditions imposed on the premises' liquor licence. This admission was substantiated by the evidence provided by Inspector Bodson, as well as through the video surveillance footage the Panel reviewed.

[83] Inspector Bodson advised the Panel that the Regulatory Services Division initially imposed conditions on the premises' liquor licence on March 23, 2018 to address public safety concerns based on the operating history of the premises. The conditions are in effect at all times the premises is operating and require the Licensee to ask all patrons for identification, scan their identification into a scanning

system, check or store patrons' coats, search bags/purses for weapons/drugs, and scan all patrons with a metal detector.

[84] The Licensee's evidence is that Mr. Yohannes filed an updated business control plan for the premises with the City of Edmonton in 2019. At that time, Mr. Yohannes assumed that AGLC would automatically update the conditions on the premises' liquor licence to reflect the new business control plan. However, Mr. Yohannes admitted that the Licensee did not specifically make application with AGLC to have the conditions on the premises' liquor licence amended.

[85] The Panel is of the opinion that it was the Licensee's responsibility to contact AGLC to request that the licence conditions be amended. Given that this did not occur, the Panel finds that the licence conditions imposed on March 23, 2018 were still in effect on July 5, 2020, and currently remain in effect.

[86] The Licensee advised the Panel that prior to July 5, 2020, the premises was only adhering to the licence conditions on the weekends, which in and of itself demonstrates a failure on the part of the Licensee to abide by the conditions, as the Licensee is required to abide by the conditions at all times the premises is open for business.

[87] The Panel determined that the video surveillance footage clearly shows that on July 5, 2020 when the 40 patrons entered the premises through the back door, the Licensee's employees did not adhere to the conditions imposed on the premises' liquor licence. The patrons who entered were not asked for identification, which meant that their identification was not scanned into a scanning system. In addition, the employees did not check or store the patrons' coats, search their bags for weapons or scan the patrons with a metal detector.

[88] The Licensee indicated that all the premises' security measures (scanning system, coat check and metal detector) are located at the front entrance of the premises, which is one of the reasons why the employee's failed to comply with the licence conditions. However, as previously stated, the Licensee is required to abide by the conditions imposed on the liquor licence at all times.

[89] If the Licensee's employees were unable to comply with the conditions imposed on the liquor licence as a result of the unforeseen circumstances involving 40 patrons entering the premises through the back door, then the Panel's expectation is that the employees should have immediately contacted the police for assistance, but that did not occur.

[90] Accordingly, the Panel finds that the Licensee contravened Section 91(1)(a) of the Act.

#### **Contravention #4 - Section 69(1)(c) of the Act**

[91] The Licensee admitted that a shooting occurred inside the premises on July 5, 2020. However, the issue before the Panel is whether the Licensee "permitted" an activity to occur that was injurious to the health or safety of the people inside the premises.

[92] The Licensee's evidence is that between 2:48 a.m. and 2:51 a.m. on July 5, 2020, approximately 40 patrons unexpectedly entered the premises through the back emergency exit. The employees did not specifically grant the patrons access to the premises through the back door but rather, another patron from inside the premises opened the back door without permission, which allowed the patrons to gain entry to the premises. The evidence provided by Inspector Bodson, as well as the video surveillance footage the Panel reviewed, supports the Licensee's argument in this regard.

[93] The video surveillance footage clearly shows that one of the patrons who gained entry to the premises through the back door used a weapon he was carrying to shoot another patron in the leg. In the Panel's opinion, a shooting inside a licensed premises is clearly an activity that may be injurious to the health and safety of the people inside the premises. However, the question that remains is whether the Licensee permitted the shooting to occur.

[94] The Panel determined that "permit" means to allow by acceptance or agreement a thing to happen. The Panel concluded that the Regulatory Services Division did not prove that the Licensee permitted the shooting to occur, as the evidence conclusively shows that the patrons entered the premises through the back entrance unannounced. The Licensee could not reasonably have anticipated that this was going to occur.

[95] While the failure on the part of the Licensee's employees to call 911 and/or to adhere to the conditions imposed on the premises' liquor licence undoubtedly contributed to the shooting, the Panel is not convinced that the Licensee permitted the shooting to occur; the shooting was not intentional on the part of the Licensee.

[96] Accordingly, the Panel dismisses the contravention of Section 69(1)(c) of the *Act*.

#### **Contravention #5 - Section 5.6.1 of the Liquor Licensee Handbook**

[97] The Licensee admitted that the employees on duty at the time of the incident on July 5, 2020 did not have the experience or training required to adequately supervise the premises; the bartender had only been employed at the premises for one week and had not yet obtained her ProServe certification. By the Licensee's own admission, the employees did not have control over the patrons or the premises; the employees asked the patrons to leave, but the patrons refused.

[98] The Panel can appreciate that the Licensee did not anticipate that 40 patrons would unexpectedly enter the premises between 2:48 a.m. and 2:51 a.m. on July 5, 2020. However, the Panel believes that had the Licensee ensured the employees were properly trained and educated prior to leaving them in charge of the premises, the employees could have taken action to remediate the situation.

[99] The employees could have contacted Mr. Yohannes, Mr. Haile or the police for assistance, when the patrons refused to leave the premises. Instead, the evidence shows that the employees allowed the patrons to take over control of the premises, which the Panel believes was a major factor in the shooting that subsequently occurred. In addition, the employees failed to call 911 after the shooting.



[100] Accordingly, the Panel finds that the Licensee contravened Section 5.6.1 of the Liquor Licensee Handbook.

#### **Contravention #6 - Section 71(2) of the Act**

[101] The issue before the Panel is whether the Licensee “permitted” patrons to be inside the licensed premises during unauthorized hours. The premises’ liquor licence (which forms part of Exhibit #1) requires the premises to be vacated of all patrons between 3:00 a.m. and 10:00 a.m.

[102] As previously stated, the Panel determined that “permit” means to allow by acceptance or agreement a thing to happen. The Panel concluded that the Regulatory Services Division did not prove that the Licensee permitted 40 patrons to enter the premises between 2:48 a.m. and 2:51 a.m., as the evidence conclusively shows that the patrons entered the premises through the back entrance unannounced. The Licensee’s employees did not specifically permit the patrons to enter the premises.

[103] The shooting occurred at 3:06 a.m., resulting in the majority of the patrons departing the premises at that time. This was only a few minutes after the 3:00 a.m. requirement stipulated on the premises’ liquor licence.

[104] Accordingly, the Panel dismisses the contravention of Section 71(2) of the Act.

#### **Contravention #7 - Section 69(1)(a) of the Act**

[105] The Government of Alberta declared a public health emergency due to the COVID-19 pandemic on March 17, 2020. At that time, AGLC was tasked with working with other government agencies to ensure that licensees comply with the guidelines set forth by the public health agencies and the direction of Alberta’s Chief Medical Officer of Health, including orders made under the *Public Health Act*. AGLC’s responsibility in that regard continues today, and will continue until the Public Health Orders are amended or rescinded.

[106] Inspector Bodson advised the Panel that on July 5, 2020, Public Health Order 19-2020 was in effect. The Order permitted restaurants, cafes, pubs and bars to be open for dine-in food service, delivery and takeout, provided those businesses ensured that all patrons practiced social distancing. In addition, the businesses were prohibited from allowing patrons to line up at a service bar to purchase drinks or participate in dancing. The Order also required nightclubs to remain closed to the public.

[107] The video surveillance footage the Panel reviewed clearly shows that prior to the shooting on July 5, 2020, the patrons inside the premises were standing very close together and were not practicing social distancing. The majority of the patrons were not seated at tables but instead were largely congregated around a pool table and what appeared to be a dance floor. The Licensee did not provide the Panel with clear evidence to support the assertion that the premises was operating on July 5, 2020 for the primary purpose of providing dine-in food service, delivery and/or takeout.

[108] The Panel recognizes that all Albertans are making sacrifices during this unprecedented time, particularly business owners. However, Section 69(1)(a) of the *Act* requires all liquor licensee's in Alberta to comply with all municipal bylaws, Acts and/or Regulations of Alberta or Canada, as a condition of their licence.

[109] Accordingly, the Panel finds that the Licensee contravened Section 69(1)(a) of the *Act*.

## **VI. PENALTY**

[110] AGLC regulates liquor service in bars and restaurants in Alberta through the issuance of various forms and types of liquor licenses. The governing statute is the *Act* and its regulations. The authority under the *Act* is broad and comprehensive. It includes the assessment of applicants for licenses, the continuation of licenses, the issuing of licenses, and the monitoring and investigation of licensees and activities conducted in a licensed premises. AGLC's overriding consideration is to ensure that the safety of employees and patrons is maintained at all times in licensed premises throughout Alberta.

[111] Section 91(1) and 91(2) of the *Act* provides that if the Board of AGLC is of the opinion that a licensee has failed to comply with the *Act*, an order of the Board or a condition imposed on a licence the Board may, by order, cancel the licence. The cancellation of a liquor licence is a serious matter and should be reserved for only serious cases, as the social, financial and economic implications of a cancellation are significant. That being said, it is important that licensees understand that a liquor licence is a privilege and that no one has a right to a licence. Furthermore, the privilege of being granted a licence comes with certain responsibilities, not the least of which is to abide strictly by the applicable legislation, policies and licence conditions.

[112] The Panel determined that the Licensee's failure to abide by the conditions imposed on the premises' liquor licence on July 5, 2020, contrary to Section 91(1)(a) of the *Act*, created an environment that caused a shooting to occur. This seriously endangered the health and safety of the employees and patrons inside the premises.

[113] Furthermore, the Licensee was unable to satisfactorily assure the Panel that the Licensee understands the importance of complying with the licence conditions at all times, and the Panel has significant concerns that the Licensee will continue to disregard the conditions in the future. This has the effect of continuing to put the safety of employees and patrons at risk. Therefore, the Panel finds that the only way to adequately address the ongoing public safety concerns is to cancel the liquor licence for the premises.

[114] Accordingly, pursuant to Section 94(7) and 91(2)(d) of the *Act*, the Panel replaces the indefinite licence suspension previously imposed by the Regulatory Services Division with an order cancelling Class A Liquor Licence numbered 777854-1, effective as of Tuesday, March 9, 2021.

[115] The Panel further orders that the Licensee, any company of which the Licensee is a director and/or shareholder, any of the Licensee's employees, or any other person with a connection to the Licensee are not eligible to apply for a liquor licence in the Province of Alberta until January 1, 2024.

Signed at Calgary, this 9<sup>th</sup> day of March, 2021



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Patti Grier, Presiding Member, Hearing Panel