

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

**IN THE MATTER OF the Gaming and Liquor Act
Revised Statutes of Alberta 2000, Chapter G-1
current as of November 1, 2010
and the Regulation**

and

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

concerning alleged contraventions

DATE OF HEARING:	January 22, 2016
HEARING PANEL:	Mr. B.C. Shervey, Panel Chair Ms. T.L. Lawrence, Panel Member
LICENSEE REPRESENTATIVES:	Mr. C., Director/Manager
COMPLIANCE AND SOCIAL RESPONSIBILITY:	Mr. H., Hearing Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an incident report dated October 13, 2015, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 91(2) of the *Gaming and Liquor Act*, without a hearing, on Cowboys Tap House Pub Ltd. operating as Cowboy's Taphouse Bar, Calgary.

The licensee subsequently applied for a hearing under Section 94(1) of the *Gaming and Liquor Act*. A Hearing Panel of the Board of the AGLC met to hear the following alleged violations:

1. **Section 1.6 Licensee Handbook: Contravention of the ProServe policy requirements; and**
2. **Section 68(2)(a) Gaming and Liquor Regulation: Failure to dispense liquor from the original container used to hold the liquor purchased.**

The licensee and the Hearing Panel were provided with a hearing file containing the incident report dated October 13, 2015 and various documents pertaining to alleged incidents occurring on August 12, 2015. Mr. C. confirmed he received the incident report dated October 13, 2015 and Notice of Hearing dated January 6, 2016. The incident report and hearing file were entered into evidence by the CSR Division as Exhibit 1.

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

II. The Issue

Did the licensee:

- Contravene the ProServe policy requirements?
- Fail to dispense liquor from the original container used to hold the liquor purchased?

III. Evidence

Inspector D. – evidence led by Mr. H.

Inspector D. has been an Inspector with the AGLC in the Calgary office for approximately 10 years. She conducted a maintenance inspection of Cowboy's Taphouse Bar on August 12, 2015, as a result of an anonymous public complaint that most of the staff at Cowboy's Taphouse Bar did not have valid ProServe certification.

Inspector D. attended the premises during the day to conduct the inspection. Mr. C. was not at the premises, so Inspector D. spoke with J. M., who identified himself as the manager and supervisor. Inspector D. asked each of the employees on duty for their ProServe cards, including Mr. M., two servers and the bartender. None of the employees were able to produce ProServe cards, except for the bartender. Two of the employees were new and had not completed ProServe. Of the four staff members on duty, only the bartender was able to produce valid ProServe. Mr. M., who identified himself as the manager and supervisor, did not have valid ProServe.

Inspector D. asked Mr. M. for the ProServe log but he didn't seem to understand what she was referring to. She explained what she was looking for, in accordance with AGLC policies, but Mr. M. did not have any knowledge of the requirements to keep a log book.

Inspector D. proceeded to conduct her inspection, including an inspection of the coolers and back rooms, which is standard. Within the walk-in cooler down a hallway behind the service bar, Inspector D. observed two cardboard boxes with pill bottles inside containing liquid. The cooler is not directly connected to the liquor service bar. It's located in the back area of the house by the kitchen.

Inspector D. asked Mr. M. what was inside the bottles and he indicated he assumed it was liquor but was not sure what type of liquor or if it was mixed with anything. None of the other servers or the bartender was able to confirm what was inside the pill bottles. Mr. M. and the other staff members were further unable to produce any documentation to identify what was inside.

Mr. M. contacted Mr. C., who advised Inspector D. he prepared the pill bottles at the end of his shift at 4:00 a.m. the night previous. He was unable to identify exactly what liquor was inside the bottles or how many of each type of liquor had been poured.

At the end of the inspection, Mr. M. helped bring the boxes to the service counter to count the pill bottles. When Mr. M. and Inspector D. put the boxes onto the counter, a cockroach scurried out from under one of the boxes. Inspector D. counted 19 dark red pill bottles, 21 pink opaque, 45 clear red and 11 clear; 96 in total. It is not common practice to have 96 pre-poured pill bottle shooters for a neighbourhood bar, especially on a weekday. For typical shooter service, the liquor is pre-poured at the liquor service bar prior to the start of a shift or at the liquor service bar when they are order or are to be served. They would not be stored off site in a cooler. A seizure receipt was provided by Inspector D. and Mr. M. signed the receipt.

On August 14, 2015 Inspector D. contacted Mr. C. and he was then able to identify what was inside the pill bottles. He also advised he would ensure everyone working at the premises obtained valid ProServe certification as soon as possible.

Inspector D. sent the seized items away for testing to the Liquor Control Board of Ontario (LCBO) lab to ensure there was liquor inside the pill bottles. The details came back on October 6, 2015 and the report indicated the dark red (black) sample was 34.9% alcohol by volume, the pink opaque (other) sample was 14.8%, the red clear (red) sample was 14.4% and the clear (white) sample was 41.4%.

Inspector D. – questioned by the Panel

The policies/regulations do not specifically allow for pre-pouring shooters but leeway is granted by Inspectors for high volume licensees to pre-pour prior to the start of a shift, directly at the service bar. Inspectors were provided with an e-mail directive advising that any pre-poured liquor should not be stored in a cooler and should be poured at the service bar.

Pill bottles are somewhat typical for use for shooters in pubs/nightclubs. If a large number of shooters are being poured in advance, the shooters are typically labeled so the servers and the patrons know what they are consuming. If shooters are poured in advance and then are not sold, the shooters are to be poured out at the end of the evening.

K. C.

Mr. C. advised his staff to obtain their ProServe certifications. Ms. O.'s certification had expired but she didn't inform him.

Another AGLC Inspector told Mr. C. he could pre-pour shooters as long as they were poured the day of service. On Wednesdays they pour shooters at the premises. He poured the shooters in question at 4:00 a.m. on August 12, 2015 and stored them in his beer cooler. They were to be sold that evening. He stored the shooters in the cooler to keep them cold for service that night. The previous Inspector advised him if there were any left over shooters, he was required to throw them in the garbage. Usually he is required to pour additional shooters at the end of the night.

Mr. C. – cross-examined by Mr. H.

Mr. C. takes a photocopy of an employee's ProServe card when they commence employment but he had no idea Ms. O.'s ProServe certification had expired. When he found out, he cancelled her shifts until she re-certified. He puts a copy of each employee's ProServe card in a file. He does not keep a log book, specifically, that sets out each employees' ProServe certification.

The day staff does not sell shooters. That's why they did not know what was inside the pill bottles. Only the night staff knows what's inside because they are the ones that serve them. Mr. C. typically pours the shooters the night before at the staff table for service the same day. The previous AGLC Inspector did not tell him the shooters had to be poured at the liquor service bar; he just said they had to be poured the same day.

Mr. C. was sleeping when Inspector D. called him on August 12, 2015 but he did tell her what was inside each bottle, he just couldn't remember how many of each he poured. The shooters were not labeled because the night staff knows what's inside each bottle. The day staff does not sell the shooters. Only the "shooter girl" sells the shooters in the evening.

The Sour Puss inside the pill bottles was strawberry flavored and he only stocks one type of Jagermeister. He doesn't remember what specific brand of tequila was in the pill bottles; it was white tequila. The full bottles of liquor Mr. C. used to pour the shooters are not stored in the cooler. They are stored on the shelf behind the service bar. Many patrons prefer cold shooters and that's why he stored the pill bottles in the walk-in cooler after they were poured.

Since the incidents in question, Mr. C. asked each employee for a new copy of their ProServe certification and put it into their files. He also asked the "shooter girl" to come an hour early to line up the shooters and make them for the night.

Mr. C. – questioned by the Panel

On a Wednesday night, approximately 100 shooters are sold at the premises and on Friday and Saturday night 175 shooters. Mr. C. always pours the shooters at the staff table, which is located in the patron area. The premises is closed when he pours the shooters; there are no patrons present.

Typically Mr. C. pours 100 shooters because that's an average of how many he sells a night. He takes the box out of the cooler and counts them before handing them to the "shooter girl" at the beginning of her shift. He writes down how many he gave her and she takes them on her tray and sells them to patrons of the premises. When Mr. C. gives the shooters to the "shooter girl", she usually marks the shooter on the white lid to indicate what type of liquor is in each container. He tells her which brand he has poured, so that's how the "shooter girl" knows what type of tequila, for example, is inside the pill bottle.

IV. Summation

Mr. H.

The evidence outlined by Inspector D. seems quite clear. As a result of a public complaint, Inspector D. conducted an inspection of the premises and found that three of the four staff members present did not have ProServe certification. The ProServe violation occurred when Inspector D. revealed that staff member Ms. O. did not have the required ProServe certification, as it expired eight months prior. When asked, the supervisor of the premises, Mr. M., advised the Inspector the premises did not have a ProServe log book, which is a requirement under the ProServe policy.

While continuing her maintenance inspection, Inspector D. found 96 pre-poured liquor pill bottles, which were being stored in a walk-in cooler located away from the liquor service area. Inspector D. questioned three of the staff members, including the supervisor and bartender, and none of the staff members had any idea of what type or brand of liquor was inside the pill bottles.

Based on the Inspector's evidence, when Mr. C. was initially questioned with respect to the pill bottles, he was unable to identify three of the four types of liquor being stored in the bottles, even though he had just filled them at 4:30 a.m.; nine hours prior to the inspection. Two days later, Mr. C. was able to advise Inspector D. the maroon pill bottles were Jagermeister, the pink ones were Baja Rosa, the red ones were Sour Puss and the remaining clear bottles were some type of tequila, without specifying the brand of tequila. A sample of each bottles was forwarded to the LCBO for analysis and confirmed they were indeed liquor, with a variety of alcohol by volume depending on the color of the liquid tested.

Mr. C. advised the Panel he poured the pill bottles himself at 4:30 a.m. The CSR Division believes this is contrary to the evidence provided by the Inspector. It seems highly improbable the bottles were poured for service that evening, as there were 96 bottles being stored away from the liquor service bar and none of the staff members could identify the product inside the bottles. Mr. C. couldn't initially identify what was inside the bottles but was able to identify the product two days after the inspection. The fact a cockroach departed one of the boxes also suggests the boxes had been in the walk-in cooler for some time, contrary to what Mr. C. advised the Panel.

Mr. C. also advised he pre-pours shooters to help the "shooter girl" and pours 15 of each brand. However, the quantity of pre-poured shooters observed by Inspector D. was inconsistent. There were 19 Jagermeister, 21 Baja Rosa, 45 Sour Puss and 11 of some type of tequila.

AGLC policies and legislation are of utmost importance in having liquor activities conducted with integrity in the province of Alberta. A patron should have the confidence when they are in a licensed premises that the liquor provided to them is the product they have ordered and ultimately paid for. This would be very difficult to ensure when the staff members themselves in this premises had no idea what was inside the pill bottles. In the CSR Division's opinion, it certainly appears the licensee did not exercise the due diligence required or take time to properly review the legislation and AGLC policies with respect to these matters.

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

Mr. C.

Mr. C. did not say he pre-pours 15 of each shooter. His comment was he gives 15 of each type of shooter to the "shooter girl", for example.

Should the Panel find he contravened Section 68(2)(a) of the Gaming and Liquor Regulation, he would like the Panel to consider a reduction of the \$1000 fine, as it is a substantial amount. He was advised by a previous Inspector he could pour the shooters on the same day and that's what he did.

Mr. C. admits he contravened Section 1.6 of the Licensee Handbook. It was his fault; he didn't realize Ms. O.'s ProServe had expired.

V. Finding

The Panel makes a finding of a violation of Section 1.6 Licensee Handbook: Contravention of the ProServe policy requirements.

The evidence clearly established that Mr. C. did not comply with Section 1.6 of the Licensee Handbook. He admitted he was not aware of the expiry of Ms. O.'s ProServe certification and other employees of the premises did not have the required certification.

The Panel finds there was no violation of Section 68(2)(a) Gaming and Liquor Regulation: Failure to dispense liquor from the original container used to hold the liquor purchased.

The CSR Division issued the licensee an administrative sanction for a contravention of Section 68(2)(a) of the Gaming and Liquor Regulation. Accordingly, the only issue before the Panel is whether the licensee dispensed the shooters in question from a container that was not the original container. Pre-pouring shooters does not contravene Section 68(2)(a) of the Gaming and Liquor Regulation, unless there is evidence to suggest the shooters were dispensed from a container other than the original container. The Panel is of the opinion the CSR Division did not present any evidence to suggest the licensee failed to dispense the liquor in the pill bottles from the original container. As a result, the Panel has determined there was no violation of the regulation and a penalty is, therefore, not appropriate.

VI. Penalty

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel upholds the penalty previously offered by the CSR Division for a violation of Section 1.6 of the Licensee Handbook:

Penalty: A warning.

The Panel directs Mr. C. to improve his process for tracking employees' ProServe certification, including maintaining an up to date ProServe log book, as required in accordance with Section 1.6.10 of the Licensee Handbook.

Signed at St. Albert this 1st day of March, 2016.



B.C. Shervey, Hearing Panel Chair