

**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 June 12, 2013
and the Regulation**

and

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

concerning alleged contraventions

DATE OF HEARING:	November 30, 2017
HEARING PANEL:	Ms. P. Grier, Panel Chair Mr. B. Krizan, Panel Member
LICENSEE REPRESENTATIVE:	Mr. K. C., Director/Shareholder
REGULATORY SERVICES DIVISION:	Ms. P. N., Hearing Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an incident report dated August 30, 2017, the Regulatory Services 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 5.3.11 Licensee Handbook: It is prohibited to adulterate or alter liquor in any way. Nothing may be added (including ice, mixes or flavouring agents) until the liquor is used to prepare a drink requested by a patron;**
- 2. Section 1.6 Licensee Handbook: Contravention of the ProServe policy requirements; and**
- 3. Section 1.7 Licensee Handbook: Contravention of the ProTect policy requirements.**

The licensee and the hearing Panel were provided with a hearing file containing the incident report dated August 30, 2017, and various documents pertaining to an alleged incident occurring on August 3, 2017. Mr. C. confirmed he received the incident report and Notice of Hearing dated November 17, 2017. The incident report and hearing file were collectively entered into evidence by the Regulatory Services Division as Exhibit #1.

Ms. N. presented the case on behalf of the Regulatory Services Division. Mr. C. represented Cowboy's Taphouse Bar. Mr. C. confirmed he admitted the facts contained in the incident report but wished to present a defence of due diligence.

II. The Issue

Did the licensee adulterate or alter liquor in any way and/or did the licensee contravene ProServe/ProTect policy requirements?

III. Evidence

Regulatory Service Division – excerpted from the incident report dated August 30, 2017

As a result of a routine maintenance inspection conducted on August 3, 2017, the following was noted:

Section 5.3.11 License Handbook

Inspector A. entered the premises and identified himself to J. T., lead server. G. B., assistant manager, was also present for the inspection. As part of the routine inspection process, various open bottles of liquor located in the main service area were tested by way of refractometer.

Inspector A. tested a bottle of Absolut Vodka (1 litre – 40% alcohol by volume) and obtained a reading of 12.2, which is lower than the typical reading of approximately 14.2 for this item. Inspector A. dried the lens of the refractometer, wiped the lens with an isopropyl alcohol pad, calibrated the device to 0.0 with clean tap water, dried the lens and placed a sample of the Absolut Vodka onto the lens. A reading of 12.2 was again obtained.

Inspector A. asked Ms. T. if the premises held a sealed bottle of Absolut Vodka in lock up and Ms. T. replied they did not. Inspector A. asked if the premises held a sealed bottle of Smirnoff Vodka and Ms. T. provided one. The sealed bottle of Smirnoff Vodka was tested and a reading of 14.2 was obtained. Inspector A. asked Ms. B. if she had the receipt for the purchase of the Absolut Vodka and Ms. B. replied she did not.

On August 4, 2017 Inspector A. poured approximately 50ml of liquid from the bottle of Absolut Vodka into a sample container. The sample was sent to the Liquor Control Board of Ontario (LCBO) for analysis. On August 29, 2017, the Certificate of Analysis and Continuity was received from the LCBO indicating the sample was found to contain 33.2% alcohol by volume. As per the manufacturer's label, the sample should contain 40% alcohol by volume.

Section 1.6 Licensee Handbook

Inspector A. requested to review the premises' ProServe logbook. Ms. B. produced a paper folder of photocopied certifications for various staff members including herself and staff members on shift at the time of the inspection. As no certification was presented for K. C., the board approved manager, Inspector A. requested to review one. Ms. B. produced a photograph of a partial SMART Certification Letter with Mr. C.'s name on it, on her cell phone. Inspector A. explained that a copy of Mr. C.'s certification is required.

A current staff schedule was produced but did not indicate any of the security staff members. Ms. B. confirmed security staff members are employed at the premises and are managed by T. Ch.. ProServe certifications were not produced for J. R. and B. E.-B..

Section 1.7 Licensee Handbook

Inspector A. requested to review the premises' ProTect logbook. Ms. B. produced a photocopy of a Government of Alberta Security Services and Investigators Act Licence for B. E.-B. but no ProTect certification. No ProTect certification was produced for J. R..

Mr. C.

The bottle of Absolut Vodka was an old bottle of liquor. There were 60 to 80 bottles of liquor on the shelf at the time of the inspection and this was the only bottle that tested low. Mr. C. believes the Absolut Vodka may have been a bad bottle from the supplier or may have been exposed to evaporation.

Mr. C. brought Ms. B. with him to the hearing but does not feel her evidence is necessary, as she will simply confirm his observations.

Mr. C. – cross-examined by Ms. N.

Mr. C. has a copy of the Licensee Handbook at the premises and is at the premises often. The Absolut Vodka was open and located at the main service bar on the shelf with other bottles of liquor being served to patrons. The premises conducts inventory of their liquor every night and weighs the bottles. Mr. C. presented the Panel with a chart showing the inventory comparing bottle weight with alcohol sales. There is a check and balance process in place. Liquor is weighed when it is initially received and if 10 drinks are sold out of the bottle, they check the 10 drinks sold against the weight of the bottle.

Following this incident, Mr. C. spoke to staff and increased camera presence, asking managers to be more diligent. A review of video surveillance footage did not reveal evidence of any wrongdoing, leading up to the maintenance inspection on August 3, 2017.

Mr. C. is unsure why the receipt for the Absolut Vodka was not provided to Inspector A.. It was an old bottle but he would be happy to look for the receipt. All liquor for the premises is purchased from Eastport or Liquorama liquor stores.

Mr. C. is aware all staff must be ProServe and/or ProTect certified, depending on their role at the premises. At the time of the incident, Mr. E.-B. was a new employee; he has since taken his ProServe and ProTect. Ms. R. was also a new employee; it was her first week on the job. Both employees had Alberta Security Licences at the time and were in training. On August 13, 2017 Ms. R. completed her ProServe certification; 10 days after the incident. Mr. C. provided Ms. N. with a copy of Ms. R.'s certification.

Mr. C. was certain Mr. E.-B. had taken ProServe, as he told Mr. C. he had. However, Mr. C. was not aware that as of November 29, 2017, the ProServe/ProTect databases did not show either certification for Mr. E.-B..

Mr. C. provides training to his staff on AGLC policies and customer service. The training is provided by the manager when new staff are hired and is reviewed from time to time. It is not a formalized training program. Mr. C. has not requested an AGLC staff training seminar in the past.

Mr. C. – questioned by the Panel

This is Mr. C.'s first contravention of Section 5.3.11 of the Licensee Handbook. The Absolut Vodka was an old bottle of liquor and had been open for a while. Inspector A. checked every bottle of liquor and every other bottle had the appropriate alcohol content.

When Mr. C. asked his staff about the incident, they could not provide any information. The cleaners do have access to the liquor at the premises after hours, because the liquor is left on the shelves. Mr. C. could not find anything on the security cameras, which are on all the time. He checked the cameras for the week before this incident.

Most employees hired by the premises already have their ProServe certification when they come on board. The premises creates a folder for each employee to keep track of their ProServe and follows up to ensure all employees have the required training. Mr. E.-B. advised Mr. C. he had both his ProServe and ProTect certifications. Mr. C. believes Mr. E.-B. completed

ProServe at the premises' computer, as observed by the manager, but no copy of the certification was provided to the Panel by Mr. C.. Mr. E.-B. no longer works at the premises, having left about two weeks ago.

IV. Summation

Ms. N.

The evidence contained in the incident report is clear. A routine inspection of the premises was conducted and Inspector A. found that a bottle of Absolut Vodka produced a refractometer reading well below the standard level. A sample of the bottle was taken and results of the LCBO analysis showed the contents of the bottle had a much lower alcohol content, 33.2% alcohol by volume, rather than the normal 40% alcohol by volume. It is the opinion of the Regulatory Services Division that a variance of this degree cannot be caused by evaporation, as suggested by Mr. C..

The licensee suggests he took all reasonable steps to prevent this breach of policy from occurring. The Regulatory Services Division respectfully disagrees with the licensee's assertion, as more could have been done to prevent this violation from occurring.

Patrons should have the confidence when they are in licensed premises that the liquor ordered has not been previously mixed, adulterated or tampered with in any way prior to that drink being ordered and provided to the patron. The onus is on the licensee and staff members to ensure this happens.

As part of Inspector A.'s maintenance inspection, copies of ProServe and ProTect certifications were requested for staff members of the premises. It was determined that two staff members were working without the required AGLC certifications. Despite Mr. C. being provided with this information, only one security member had obtained their ProTect on the date the incident report was submitted on August 30, 2017. Mr. C. still does not have all of his staff trained, as per AGLC policy. This training would not only benefit the staff and patrons in the premises but possibly may have prevented a policy breach of Section 5.3.11 of the Licensee Handbook.

The Regulatory Services Division respectfully submits that contraventions of Section 5.3.11, Section 1.6 and Section 1.7 of the Licensee Handbook did in fact occur and recommends the original administrative sanctions be upheld (\$1000 or a 4 day suspension, \$500 or a 2 day suspension and a warning respectively).

Mr. C.

Mr. C. tries his best to improve the service he provides to his customers. He maintains his employees' certifications and is fairly certain all the certifications are now up to date. He will ensure they remain up to date going forward.

V. Finding

The Panel makes a finding of a contravention of Section 5.3.11 Licensee Handbook: It is prohibited to adulterate or alter liquor in any way; nothing may be added (including ice, mixes or flavouring agents) until the liquor is used to prepare a drink requested by a patron.

The licensee admitted the facts contained in the incident report, which details the results of a routine maintenance inspection conducted by Inspector A. at the premises on August 3, 2017. Inspector A. tested a bottle of Absolut Vodka from the liquor service area on his refractometer and obtained a reading of 12.2, which is lower than the typical reading of approximately 14.2 for that item. In addition, the results of the LCBO analysis confirmed the Absolut Vodka sample contained 33.2% alcohol by volume, when the normal alcohol by volume for that product is 40%.

Mr. C. advised the Panel the premises conducts inventory of the liquor every night and weighs each bottle. Mr. C.'s evidence in this regard was not accepted by the Panel. The Panel is of the opinion Mr. C. did not take all reasonable steps necessary as a licensee to prevent this incident from occurring, and has not taken steps to ensure the same type of incident does not occur again in the future. Mr. C. indicated he installed additional cameras in the liquor service area following this incident to prevent future incidents from occurring. However, Mr. C. did not provide the Panel with documented proof with respect to

the additional cameras. Going forward, Mr. C. may wish to consider implementing a formalized staff training program, to ensure all employees fully understand their responsibilities in adhering to AGLC legislation and policies.

The Panel makes a finding of a contravention of Section 1.6, Licensee Handbook: Contravention of the ProServe policy requirements AND Section 1.7 Licensee Handbook: Contravention of the ProTect policy requirements.

The licensee admitted the facts contained in the incident report. During a routine maintenance inspection conducted at the premises on August 3, 2017, Inspector A. determined the premises' ProServe logbook did not contain a certification for Mr. C., the board approved manager of the premises. In addition, ProServe and ProTect certifications were not provided for Ms. R. or Mr. E.-B..

As a licensee, it is Mr. C.'s responsibility to ensure he is in compliance with Sections 1.6 and 1.7 of the Licensee Handbook and that all staff working at the premises have the required ProServe and/or ProTect certifications. Mr. C. was unable to satisfy the Panel that he has a formal system in place for tracking employee certifications. In addition, no documentary evidence was provided to the Panel to show that Mr. E.-B. ever completed the required ProServe or ProTect training, as asserted by Mr. C..

VI. Penalty

Pursuant to Section 91(2) of the *Gaming and Liquor Act*, the Panel upholds the penalty previously offered by the Regulatory Services Division for a contravention of Section 5.3.11 of the Licensee Handbook:

Penalty: A \$1000 fine OR a 4-day suspension of Class A Liquor Licence 772441-1. The fine is to be paid within two months of the date of this decision or on or before Monday, July 16, 2018, or the suspension served commencing Friday, July 20, 2018 continuing until the close of business on Monday, July 23, 2018.

Pursuant to Section 91(2) of the *Gaming and Liquor Act*, the Panel upholds the penalty previously offered by the Regulatory Services Division for a contravention of Section 1.6 of the Licensee Handbook:

Penalty: A \$500 fine OR a 2-day suspension of Class A Liquor Licence 772441-1. The fine is to be paid within two months of the date of this decision or on or before Monday, July 16, 2018, or the suspension served commencing Tuesday, July 24, 2018, continuing until the close of business on Wednesday, July 25, 2018.

Pursuant to Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following increased penalty for a contravention of Section 1.7 of the Licensee Handbook:

Penalty: A \$250 fine OR a 1-day suspension of Class A Liquor Licence 772441-1. The fine is to be paid within two months of the date of this decision or on or before Monday, July 16, 2018, or the suspension served commencing Thursday, July 26, 2018, continuing until the close of business on Thursday, July 26, 2018.

Signed at St. Albert this 16th day of May, 2018.



P. Grier, Hearing Panel Chair