

**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 Johnston Canyon Co. Ltd.
o/a Johnston Canyon Resort
Bow Valley Parkway
Banff National Park, Alberta**

concerning alleged contraventions

DATE OF HEARING:	October 16, 2014
HEARING PANEL:	Mr. B.C. Shervey, Panel Chair Mr. W.J. Anhorn, QC, Panel Member
LICENSEE REPRESENTATIVES:	Mr. N., Director
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 July 28, 2014, 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 Johnston Canyon Co. Ltd. operating as Johnston Canyon Resort, Banff National Park.

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 violation:

Section 1.6 Licensee Handbook: Contravention of the ProServe Liquor Staff Training policy.

The licensee and the Hearing Panel were provided with a hearing file containing the incident report dated July 28, 2014 and various documents pertaining to an alleged incident occurring on July 22, 2014. Mr. N. confirmed he received the incident report dated July 22, 2014 and Notice of Hearing dated September 29, 2014 and does not dispute the facts contained in the incident report but wishes to present a due diligence defence. The incident report was entered into evidence by the CSR Division as Exhibit #1.

Mr. H. presented the case on behalf of the CSR Division. Mr. N. represented Johnston Canyon Co. Ltd.

II. The Issue

Did the licensee contravene the ProServe Liquor Staff Training policy?

III. Evidence – excerpted from the incident report dated July 28, 2014

As a result of a routine maintenance inspection, Inspector M. entered the premises at 1:30 p.m. and identified himself to staff members as an AGLC Inspector. The premises was well lit and both food and liquor service were in effect. Inspector M. asked a staff member L. D. to speak with a manager and D. told the Inspector that there was no manager around. Inspector M. requested that all staff members working at the time present their ProServe certification.

K. R. told Inspector M. that she has her ProServe certification but did not have her card with her. Staff members L. D. and A. T. told Inspector M. that they did not have their ProServe certification. Inspector M. completed the maintenance inspection and exited the premises at 1:47 p.m.

Upon returning to the Calgary AGLC office, Inspector M. accessed the ProServe database and found that K. R. registered for ProServe on June 11, 2014 but was unsuccessful in four attempts at passing the course. L. D. does not have valid ProServe certification. A. T. does not have valid ProServe certification.

Inspector M. contacted Mr. N. regarding the ProServe violations. Mr. N. told the Inspector that both D. and T. had just recently switched over to the restaurant; previously they worked in the coffee shop, housekeeping or performing other staff tasks unrelated to liquor service. N. also advised the Inspector that R. had been working at the premises longer than 30 days but he was under the impression that she successfully completed her ProServe training.

Evidence of Mr. N.

Johnston Canyon Resort is a small resort in Banff National Park. They hire seasonal employees at the resort. Mr. N. was hoping to hire more employees this summer but that was not possible. There is a shortage of qualified workers in the Banff area and the economy also poses a challenge. The resort opens in May and closes at the end of October.

Mr. N. made notes in journal to remind him to remind staff to obtain their ProServe certification. He did remind the staff on a number of occasions to ensure their ProServe was valid. Mr. N. observed both K. R. and another employee taking their ProServe together online. The internet connection at the resort was not working well, which may have impeded the staff members from obtaining their ProServe certification. Mr. N. believes both Ms. R. and the other employee went into town to complete the online training, where the internet connection was better. Both employees advised Mr. N. they had completed their ProServe and were waiting for their certificates to arrive. Mr. N. was not aware Ms. R. did not have her ProServe until he was advised by Inspector M..

Mr. N. provided the Panel with a letter Ms. R. wrote and sent by email to Mr. N. advising she passed her ProServe. The letter was entered into evidence by Mr. N. as Exhibit #2. Ms. R. believes the ProServe system may have “timed out” while she was completing her training. Mr. N. keeps notes in a log book regarding the ProServe status of all his employees.

Mr. N. – cross-examined by Mr. H.

There was a staff member on duty at the time of the inspection who had valid ProServe certification. The staff member may not have been officially working but she was at the premises. Mr. N. is involved in the dining room and administration aspects of the resort. Typically Mr. N. supervises the employees, as he is at the resort every day. He has to leave the premises from time to time but is there as often as possible.

Mr. N. maintains a log book with information on each employee, including their ProServe number. Mr. N. is never sure how long an employee is going to be working in the dining room, as there is a large staff turnover rate. Mr. N. was waiting for Ms.

R. to advise him of her ProServe number so he could record it in his log book. Ms. R. advised Mr. N. she was just waiting for her certificate to arrive.

The CSR Division provided Mr. N. and the Panel with a copy of the ProServe Liquor Staff Training Completion Search for Ms. R.. The Completion Search was entered into evidence by the CSR Division as Exhibit #3. The Search shows that Ms. R. attempted ProServe four times but was unsuccessful. The pass rate is a minimum score of 80% and Ms. R. only received 65% on her final attempt.

Mr. N. believes Ms. R. must have thought she passed her ProServe. Due to the poor internet connection, Mr. N. was unable to verify the ProServe certification for Ms. R. and had no reason not to believe Ms. R. when she advised him she had passed. Ms. R. left the resort in August, before the end of the season. She worked in various departments at the resort until she left. Mr. D. never completed his ProServe certification but he also left early from his employment. The employees live at the resort while they are employed there and the staff turnover rate is constant.

Mr. N. – questioned by the Panel

One section of the resort is a licensed dining room with a patio. The dining room has a capacity of 50 persons and the patio 30 persons. There are 15-30 employees working at the resort at any given time. Mr. N. has been the manager of the resort for over five years.

The payroll department has a file for each employee. Mr. N. has a resume file he keeps for each employee but the payroll department in Banff maintains more comprehensive employee files. Mr. N. gives his employees the benefit of the doubt when they say they have completed ProServe. It is difficult to check the ProServe database with limited internet access. The resort was issued a warning for ProServe violations last year. Mr. N. was not aware he could take courses through ProServe which would allow him to ProServe train his own staff. Mr. N. was lead to believe the internet connection at the resort was going to be improved with the installation of new cellular towers, so he never thought to look into other options regarding ProServe.

IV. Summation

Mr. H.

This violation is not representative of what the legislation and AGLC policy demands of a licensee. Operating under the authority of a liquor licence comes with significant responsibilities and those responsibilities are expected by Albertans and required by the AGLC. ProServe was created to provide responsible liquor service training to licensees and their staff working in licensed premises.

With respect to the evidence contained in the incident report from Inspector M., he conducted a routine maintenance inspection and found the premises to be operating with three staff members, none of whom had their ProServe certification, which is a clear violation of Section 1.6 of the Licensee Handbook. When questioned by Inspector M., Mr. N. advised that two of three staff members had been employed in the licensed premises less than 30 days, as permitted under Section 1.6 of the Licensee Handbook. However, he believed that one of the staff members, Ms. R., had successfully completed the training. Mr. N. has not provided any information to the Panel that he exercised his responsibility by ensuring Ms. R. did, in fact, have her ProServe certification and at least one staff member working on the date in question was ProServe certified. It was also noted that Mr. N. was cautioned the year prior to this incident by the AGLC Inspections Branch for a similar issue.

The policies under the legislation and Licensee Handbook are directly related to responsible liquor service in Alberta. Based on this, the staff in question were not operating within the legislation or AGLC policies on the date in question. Section 1.21 of the *Gaming and Liquor Act* states "if an employee or an agent of a licensee contravenes a provision of this Act, the licensee is deemed also to have contravened the provision unless the licensee establishes on a balance of probabilities that the licensee took all reasonable steps to prevent the employee or agent from contravening the provision".

Mr. N. has indicated to the Panel that he should not be held responsible for his employees' actions as he took all reasonable steps to prevent the employees in question from contravening AGLC policies. Simply advising staff to ensure they complete

their ProServe certification and not following through to ensure staff actually complete the required training seems unreasonable, particularly when an Inspector had cautioned Mr. N. the year before. The CSR Division respectfully disagrees with Mr. N.'s assertions, as more could have been done to prevent the incident from occurring.

The CSR Division respectfully submitted that the original administrative sanction previously offered by upheld.

Mr. N.

As a result of a similar incident last year, Mr. N. believed he had done everything possible to ensure his employees were ProServe certified. Mr. N. continually reminds his employees of the requirement for ProServe. He needs to retain as many employees as possible, so he needs to be careful how he interacts with his staff. Mr. N. feels the actions he has taken are more than reasonable and he cannot force his employees to take the ProServe training. He's not sure what else he could have done. There is only so much he can do as the employer. Mr. N. had conversations with the AGLC Inspectors following the incident last year and he has done what the Inspectors suggested to ensure he has exercised proper due diligence.

V. Finding

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

Upon considering the evidence in its totality, the Panel finds there was a clear violation of Section 1.6 of the Licensee Handbook. The Panel is of the opinion due diligence was not exercised by the licensee. While the licensee presented evidence he maintains a log book of all his employees' ProServe certification numbers, the Panel finds he did not take all reasonable steps necessary to prevent the incident in question from occurring. Mr. N. could have contacted the AGLC to ensure his employees had valid ProServe certification or gone into town where the internet connection was better to conduct a search of the ProServe database. Given the seasonal nature of the resort and the staff turnover rate, the Panel recommends Mr. N. consider obtaining the required training which would allow him to ProServe train his own staff, to avoid similar incidents in the future.

VI. Penalty

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following penalty for a violation of Section 1.6 Licensee Handbook:

Penalty: A \$250 fine - **OR** - a 1 day suspension of Class Aliquor licence 772287-1. The fine is to be paid within 3 months of the date of this decision or on or before Sunday, May 17, 2015 or the suspension served commencing Monday, May 18, 2015 and continuing until the close of business on Monday, May 18, 2015.

Signed at St. Albert this 17th day of February, 2015.



B.C. Shervey, Hearing Panel Chair