

**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**

**Red Cup Distillery Ltd.  
3675 – 44 Avenue East  
Edmonton International Airport, AB T9E 0V4**

<b>DATE OF HEARING:</b>	<b>October 22, 2020</b>
<b>HEARING PANEL:</b>	<b>Mr. W.K. Breedlove, Presiding Member Ms. E. Harper, Panel Member Mr. T. Zhang, Panel Member</b>
<b>LICENSEE REPRESENTATIVES:</b>	<b>Mr. S. Renouf, Legal Counsel Mr. R. de Groot, Owner/Operator Ms. B. de Groot, Owner/Operator</b>
<b>REGULATORY SERVICES DIVISION:</b>	<b>Mr. A. Paterson, Legal Counsel/Hearing Officer Ms. P. Nash, Resource Officer</b>

**DECISION OF THE HEARING PANEL**

The Panel finds that there were contraventions of Sections 50 and 77(b) the *Gaming, Liquor and Cannabis Act*. However, the Panel does not believe that a sanction is warranted for either contravention. The Panel also finds that there was no contravention of Section 100 of the *Gaming, Liquor and Cannabis Act*. Pursuant to Section 94(7)(d) of the *Gaming, Liquor and Cannabis Act*, the Panel orders that all goods seized by the Regulatory Services Division in association with this investigation be released and returned.

**I. JURISDICTION AND PRELIMINARY MATTERS**

[1] Pursuant to Section 11 of the *Gaming, Liquor and Cannabis Act* (the “Act”), the Chair of the Board of the Alberta Gaming, Liquor and Cannabis Commission (“AGLC”) designated a Panel of the Board to conduct a hearing for Red Cup Distillery Ltd. (“Red Cup”) with respect to the following alleged contraventions:

1. Section 50 of the *Act*: No person may, except in accordance with the *Act* or in accordance with a liquor licence, manufacture, import, purchase, sell, transport, give, possess, store, use or consume liquor;
2. Section 77(b) of the *Act*: No person may import liquor into Alberta unless the person is a manufacturer and the Board has authorized the manufacturer to import the liquor for the purposes of blending with and flavouring liquor made by the manufacturer; and
3. Section 100 of the *Act*: Every licensee or registrant must, when required in writing by the Commission, provide the Commission with reports and information specified by the Commission for the purposes of determining if the *Act* and the conditions imposed on the licensee's licence or registrant's registration are being complied with.

[2] A hearing was subsequently scheduled for October 6, 2020 by video conference and then adjourned to October 22, 2020. Red Cup confirmed receipt of the Notice of Hearing dated August 11, 2020. The following documents were entered into evidence:

- Exhibit #1 – Incident Report dated April 30, 2020 (the Hearing Record);
- Exhibit #2 – Written Submissions of the Regulatory Services Division ("Regulatory");
- Exhibit #3 – Additional Records of RSD, including six attachments; and
- Exhibit #4 – Written Submissions of Red Cup, including 15 attachments.

## **II. ISSUE**

[3] Did Red Cup contravene Sections 50, 77(b) and or 100 of the *Act*? If so, what is the appropriate sanction?

## **III. BACKGROUND**

[4] Red Cup's licensed manufacturing facility is located on the grounds of the Edmonton International Airport. Red Cup is licensed by AGLC as Class E manufacturer and also holds a Class D manufacturer's off-sales licence. The primary products manufactured by Red Cup are Alberta Ice Vodka and Red Cup signature flavoured vodka products.

[5] A Class E manufacturer's licence authorizes a licensee to manufacture liquor from raw materials. At the time of the incident in question, a policy was in place requiring manufacturers in Alberta to produce 80% of their products from raw materials (e.g. grain), with the other 20% being comprised of non-raw materials, generally a neutral grain spirits ("NGS") product.

[6] Contract manufacturing allows licensed manufacturers to contract with other licensed manufacturers to produce their liquor product(s). This generally occurs when a manufacturer no longer has the capacity to produce a product at its own facility and requires the assistance of another manufacturer to meet demand for the product.

[7] Section 77(b) of the *Act* allows for the importation of liquor by licensed manufacturers. Liquor is defined in Section 1(1)(q) of the *Act*, as well as Section 86 of the Gaming, Liquor and Cannabis Regulation.

[8] NGS is a commercially distilled ethyl-alcohol product with an alcohol by volume range of 92% to 96%. NGS is undenatured, which means it is consumable, and is defined as a liquor product in accordance with Section 1(1)(q) of the Act. NGS is purchased by licensed manufacturers and then diluted to a more appropriate alcohol level for consumption. Flavouring agents may also be added.

[9] A contract manufacturer must be registered with AGLC as a liquor agency. There are some liquor agencies that purely contract manufacture. If a manufacturer holds a Class E licence, the liquor agency registration is inextricably linked to the manufacturing licence, and in that case, a Class E licence would be required to contract manufacture.

[10] On December 5, 2019 a hearing for Red Cup was conducted in front of a different Panel of the Board of AGLC with respect to alleged contraventions of Section 68(1) of the Act and Sections 3.1.5, 3.1.9 and 3.1.11 of the Liquor Manufacturer Handbook. A decision from the December 5, 2019 hearing was issued on January 22, 2020 (the "January 2020 decision") and as a result, Red Cup's Class E manufacturer's licence was suspended from January 22, 2020 to March 5, 2020 (the "Suspension"). However, the January 2020 decision stated that any liquor under seizure at the time of the Suspension was to be forfeited to AGLC, with the exception of any uncut product that was eligible to be returned to [REDACTED] or any product that was suitable for export.

#### **IV. EVIDENCE**

##### **Regulatory Services Division**

Regulatory called three witnesses: Robin Carter, Binny Sahota and Mike Weiss. Mr. Carter is an Inspections Supervisor with Regulatory and Mr. Sahota and Mr. Weiss are each Inspectors with the Regulatory Special Projects Team. The following is a summary of the evidence provided by these witnesses.

[11] The January 2020 decision was distributed to the parties, including Red Cup, by email from the Hearing Panel Office on January 22, 2020. In addition, on January 23, 2020, Inspector Wade Tricker, who did not provide evidence at the hearing, contacted Mr. de Groot, who was in Saskatchewan at the time, by telephone to advise him of the Suspension and to make arrangements to meet him at the Red Cup facility at a later date.

[12] On February 10, 2020, the Inspections Division of AGLC in Edmonton received information that Red Cup was potentially manufacturing liquor at another manufacturing facility in the Calgary area during the Suspension. On February 12, 2020, Inspector Matt Whitley, who did not provide evidence at the hearing, attended [REDACTED] in Cochrane and allegedly discovered a number of Red Cup products on site.

[13] On February 13, 2020, Inspector Carter and Inspector Tory Manywounds, who did not provide evidence at the hearing, attended [REDACTED] to take a detailed inventory of the Red Cup products previously observed by Inspector Whitley. Inspector Carter noted three empty totes of NGS, as well as five relatively full totes. All the totes in question were labelled as Alberta Ice RTB, Ice RTB, Rob's Totes and/or Bob's Totes (Exhibit #1, Attachments A and B). Inspector Carter advised the Panel that he

believed that the totes labelled Rob/Bob was a reference to the principle owner of Red Cup, Robert de Groot.

[14] Inspector Carter indicated that, based on his observations, [REDACTED] was in the process of bottling the Alberta Ice product from the totes into labelled Alberta Ice Vodka bottles. With respect to the three empty totes, two of those totes contained the approximate volume of liquor needed to fill the 217 cases of Alberta Ice Vodka found bottled and labelled on site.

[15] [REDACTED], the owner of [REDACTED], advised Inspector Carter that the remaining empty tote was used to fill 100 bottles of Alberta Ice Vodka, which were exported outside of Alberta by Red Cup for the purposes of sampling and flavour engineering. Inspector Carter placed seizure labels on all of the products located at [REDACTED] that he believed belonged to Red Cup and provided [REDACTED] with a seizure receipt; these products remain under seizure.

[16] Subsequent to the February 13, 2020 inspection, Inspector Carter was informed by [REDACTED] lawyer that there was a verbal contract with Red Cup whereby she was paid \$1.00 by Red Cup for every bottle she [REDACTED] filled from the totes allegedly belonging to Red Cup and found at [REDACTED].

[17] Following the February 13, 2020 inspection, [REDACTED] also provided Inspector Carter with documentation showing that four of the totes of product located at [REDACTED] came directly from [REDACTED] which is a large commercial distillery in Saskatchewan that produces NGS.

[18] In addition to the bottling of NGS on behalf of Red Cup, [REDACTED] also purchases NGS from [REDACTED], dilutes the NGS and distributes/sells its own drinkable liquor products. During the Suspension, [REDACTED] ordered two totes of NGS from [REDACTED] on February 10, 2020. [REDACTED] also provided documentation showing that it had ordered additional totes of NGS from [REDACTED] prior to the Suspension. The two totes ordered by [REDACTED] were present when Inspector Carter attended at [REDACTED] on February 13, 2020 and the contents of those totes was in the process of being bottled, but the inspectors determined that those totes and bottles were not pertinent to the investigation and consequentially were not seized.

[19] On February 18, 2020, Inspector Weiss and Inspector Wes Johnson, who did not provide evidence at the hearing, attended the Red Cup facility at the Edmonton International Airport to determine whether the items previously inspected and seized by Inspector Sahota on November 18, 2019 remained seized at the Red Cup facility. Inspector Weiss confirmed that the three totes listed on the seizure receipt were still under seizure. He also noted one additional tote with seal #2060, which was not included on the seizure receipt. Inspector Sahota admitted that he inadvertently failed to include the tote with the seal #2060 in his original report. While attending the Red Cup facility on February 18, 2020, Inspector Johnson reviewed with Mr. de Groot the licence conditions imposed through the January 2020 decision.

[20] Inspector Weiss returned to Red Cup's Edmonton facility on March 5, 2020 when the Suspension was lifted. He removed the seizure labels on the four seized totes without incident.

[21] On March 10, 2020, Inspector Carter received an email from [REDACTED], the Chief Engineer at [REDACTED] (Exhibit #1, Attachment J), advising that Red Cup ordered and received three different deliveries of NGS from [REDACTED]; one tote on January 22, 2020, four totes on January 23, 2020 and four totes on February 4, 2020. [REDACTED] email stated that these three orders all went directly to Red Cup. Regulatory was not aware of the orders relating to the January 22 and 23, 2020 deliveries until [REDACTED] advised Inspector Carter of the orders in his March 10, 2020 email.

[22] Regulatory made three requests for information from Red Cup pursuant to Section 100 of the Act. The first "Section 100 request" was made on February 21, 2020, the second on March 9, 2020 and the third on April 23, 2020.

### **Red Cup**

Red Cup called two witnesses: Barbara de Groot and Robert de Groot. The following is a summary of the evidence provided by these witnesses.

[23] Red Cup began operations in March of 2015. Red Cup currently has 31 employees and works with over 38 suppliers. Ms. de Groot advised the Panel that she was made aware of the January 2020 decision and the Suspension on or about January 23, 2020, following a call from an AGLC employee to Mr. de Groot.

[24] Ms. de Groot indicated that she understood that [REDACTED] had its own arrangement with [REDACTED] and purchased NGS product from [REDACTED] for diluting and bottling, similar to the process used by Red Cup; however, the NGS formula purchased by [REDACTED] was different from the NGS product Red Cup purchased from [REDACTED].

[25] Ms. de Groot and Mr. de Groot both advised the Panel that Red Cup shipped four totes of NGS to [REDACTED] in October 2019, along with bottles and labels, and further indicated that this was the product being bottled by [REDACTED] when inspectors from AGLC visited [REDACTED] in February of 2020. Further, Ms. de Groot and Mr. de Groot agreed with [REDACTED] statement to AGLC that Red Cup paid [REDACTED] \$1.00 (per bottle) for bottling its NGS purchased from [REDACTED].

[26] Ms. de Groot and Mr. de Groot each provided evidence indicating that Red Cup did not ship any products to [REDACTED] during the Suspension.

[27] Mr. de Groot disputed Regulatory's position that the bill of lading with respect to the February 4, 2020 shipment from [REDACTED] to [REDACTED] (Exhibit #1, Attachment D) has been altered by Red Cup, or by someone on Red Cup's behalf. Mr. de Groot stated that the changes found on this document were not made by Red Cup, and since the bill of lading was a [REDACTED] generated document, Mr. de Groot also stated that he had no knowledge of what changes were made to the bill of lading or why. Mr. de Groot also advised that the [REDACTED] waybill (Exhibit #1, Attachment C) demonstrated that there was a February 4, 2020 shipment of four totes from [REDACTED] to [REDACTED].

[28] Ms. de Groot and Mr. de Groot both confirmed that during the Suspension, Red Cup purchased nine totes of its special NGS formula from [REDACTED]. Based on Ms. de Groot and Mr. de Groot's evidence, Red Cup purchased one tote on January 22, 2020, four totes on January 23, 2020 and four totes on February 4, 2020. Ms. de Groot and Mr. de Groot indicated that the single tote purchased on January 22, 2020 was picked up and driven to Alberta by a Red Cup employee, the four totes purchased on January 23, 2020 were picked up and driven to Alberta by [REDACTED], and the four totes purchased on February 4, 2020 were also picked up and driven to Alberta by [REDACTED]. Ms. de Groot and Mr. de Groot advised that all nine totes were held in [REDACTED] bonded warehouse during the Suspension.

[29] In addition to the evidence provided by Ms. de Groot and Mr. de Groot, Red Cup submitted a bill of lading from [REDACTED] (Exhibit #4, Tab #9). Ms. de Groot and Mr. de Groot confirmed that the bill of lading was related to the totes of NGS from [REDACTED] that were delivered to [REDACTED] to be held in [REDACTED] bonded warehouse during the Suspension. The date on the bill of lading appears to be January 25, 2020. No documentation was submitted by Red Cup with respect to the four totes purchased from [REDACTED] on February 4, 2020.

[30] A second invoice from [REDACTED] dated March 10, 2020, related to storage and delivery fees for nine totes in the amount of \$934.50 (Exhibit #4, Tab #15) was submitted by Ms. de Groot. As part of her evidence, Ms. de Groot stated that the nine totes described in the [REDACTED] invoice were related to the five totes imported into Alberta in January of 2020, together with four additional totes which had been imported into Alberta in 2019, prior to the Suspension.

[31] Ms. de Groot and Mr. de Groot indicated that Red Cup's rationale for importing the five totes of NGS into Alberta on January 22, January 23 and February 4, 2020 was based on a combination of the following factors: (a) Red Cup had committed to purchasing the totes before the Suspension was known to them (in particular the totes purchased on January 22 and 23, 2020); (b) the NGS was a unique formula prepared specifically for Red Cup and when it was ready for pick up at [REDACTED] it needed to be retrieved; and (c) Red Cup was preparing for March 5, 2020, being the expiration date of the Suspension, but took steps to ensure it did not have access to the totes during the Suspension by placing them at [REDACTED] bonded warehouse.

[32] Mr. de Groot's evidence was that the January 2020 decision was unclear with respect to Red Cup's ability to export Red Cup product during the Suspension. Mr. de Groot indicated that on several occasions he sought, but never received, clarification from AGLC regarding Red Cup's ability to export during the Suspension. He also sought clarification on this question by contacting the Government of Alberta directly.

[33] Mr. de Groot indicated that Red Cup did not sell any liquor between January 22 and March 5, 2020 and no bottling took place at Red Cup's Edmonton facility during that period of time.

[34] In his evidence, Mr. de Groot stated that the Red Cup product bottled at [REDACTED] during the Suspension was the special NGS formula from [REDACTED] which Red Cup had previously delivered to [REDACTED] in November 2019, and the 100 cases of Red Cup Vodka bottled at [REDACTED] were

exported outside the province during the Suspension. Mr. de Groot confirmed that none of the 100 cases exported during the Suspension were sold and were exported solely for the purpose of sampling and flavour engineering.

[35] Mr. de Groot advised that, prior to the Suspension, Red Cup had received liquor orders from the USA and that Red Cup had shipped four totes of its special NGS formula (together with the bottles, caps and boxes) to [REDACTED] in November 2019. Mr. de Groot was frustrated that Red Cup's totes sat for so long at [REDACTED] prior to bottling; however, there was no rush to fill the USA orders.

#### **IV. SUMMATION**

##### **Regulatory Services Division**

Following the presentation of witnesses, Regulatory made the following arguments.

##### Alleged Contravention Section 50 and Section 77(b) of the Act

[36] Regulatory believes it proved that Red Cup contravened Sections 50 and 77(b) of the *Act*. During the Suspension, Red Cup did not have a licence to import or manufacture liquor and yet Red Cup proceeded to do both.

[37] Red Cup admitted to importing its special formula of NGS into Alberta from [REDACTED] on January 22, January 23, 2020, and February 4, 2020. Ms. de Groot and Mr. de Groot both acknowledged that they were aware of the January 2020 decision and the Suspension by January 23, 2020.

[38] Red Cup could have taken steps to prevent the importation of liquor from [REDACTED] during the Suspension. At the very least, Regulatory argued that Red Cup should have advised Regulatory that the shipments were being brought into Alberta.

[39] Red Cup also acknowledged that it had a verbal agreement with [REDACTED] to dilute Red Cup's special formula of NGS down to 40% alcohol by volume and to bottle it on Red Cup's behalf.

[40] Regulatory submitted that the four totes imported on February 4, 2020 were not placed into [REDACTED] bonded warehouse, as indicated by Red Cup, but rather those four totes were delivered to [REDACTED] and the liquor from those totes was being diluted and bottled into Red Cup bottles on February 12 and 13, 2020, at the time AGLC inspectors attended [REDACTED].

[41] Regulatory argued that Red Cup provided no written evidence to demonstrate that Red Cup had shipped any NGS totes to [REDACTED] in November 2019; nor any waybill showing that the four totes of NGS purchased from [REDACTED] on February 4, 2020 were picked up by [REDACTED] and put into [REDACTED] bonded warehouse.

[42] Regardless of the origin of the NGS being bottled by [REDACTED] on behalf of Red Cup on February 12 and 13, 2020, Regulatory argued that this bottling constituted manufacturing as defined by the Act and was a contravention by Red Cup during the Suspension.

[43] Regulatory rejected Red Cup's assertion that the January 2020 decision was ambiguous or uncertain in any respect. Regulatory argued that the wording found in paragraph 110 of the January 2020 decision was clear and unambiguous with respect to the suspension of Red Cup's Class E small manufacturer's licence. Furthermore, Regulatory argued that paragraph 113 of the January 2020 decision's reference to liquor products "eligible for export" were only those products which had been seized by Regulatory.

#### Alleged Contravention of Section 100 of the Act

[44] Regulatory argued that Red Cup contravened Section 100 of the Act because it failed to respond to the "Section 100 requests" (Exhibit #3, Document #6) from Inspections Supervisor Toni Hazelwood, who did not provide evidence at the hearing, when she requested information and documentation on April 23, 2020 and April 27, 2020 regarding the disposition of the five totes in January 2020.

[45] At the time the incident report was completed on April 30, 2020, Regulatory argued that the requested records had not been provided to Regulatory and ultimately were not provided by Red Cup until August 5, 2020. Regulatory further argued that Red Cup had information and documentation available, which it failed to readily disclose to Regulatory, despite numerous requests.

[46] In addition, Regulatory highlighted that many of the requested records remained outstanding, particularly with respect to the tote picked up at [REDACTED] on January 22, 2020; as there are no documents to confirm that the tote was delivered to the [REDACTED] warehouse for storage.

#### Recommendation(s) on Appropriate Sanction

[47] Regulatory believes that Red Cup contravened Sections 50, 77(b) and 100 of the Act and argued there needs to be serious consequences for Red Cup's actions.

[48] Regulatory requested that the Panel cancel Red Cup's Class E licence as a result of the alleged contraventions. Regulatory argued that this course of action was warranted because of Red Cup's dishonesty, circumvention of the January 2020 decision and disregard for the role that AGLC plays in the regulation of liquor in Alberta.

[49] In the event the Panel found that cancellation of Red Cup's licence was not an appropriate sanction, but found that the contraventions were made out, Regulatory submitted that a fine of \$243,000 should be imposed by the Panel. This quantum is, by Regulatory's calculation, an amount equal to the net sales which Regulatory alleges were imported into Alberta during the Suspension.

[50] Finally, Regulatory requested that if the Panel found there was a contravention(s), the Panel order that the four totes of liquor that are currently under seizure at [REDACTED] and the totes placed into storage at [REDACTED] be forfeited to AGLC for destruction.

### **Red Cup**

[51] Red Cup argued that paragraph 113 of the January 2020 decision was ambiguous. Mr. de Groot made frequent attempts to contact AGLC about what activities Red Cup was permitted to undertake during the Suspension. Red Cup highlighted that paragraph 113 of the January 2020 decision was confusing because it seemed to allow, during the Suspension, for Red Cup to continue exporting liquor.

[52] The uncontradicted evidence of Ms. de Groot and Mr. de Groot is that Red Cup entered into an arrangement with [REDACTED] in the fall of 2019 to bottle Red Cup liquor at [REDACTED] because Red Cup's Edmonton facility was operating at full capacity. Red Cup stated that all of the Red Cup liquor being bottled at [REDACTED] during the Suspension was liquor which Red Cup had delivered in November of 2019 and Red Cup believed that because of the wording in paragraph 113 of the January 2020 decision, [REDACTED], on behalf of Red Cup, was allowed to continue to bottle this product for export outside of Alberta. Red Cup highlighted that none of the product bottled at [REDACTED] during the Suspension was sold and the product which was exported was only for sampling and flavour engineering.

[53] Red Cup asserted that Regulatory did not call witnesses from [REDACTED] [REDACTED] or [REDACTED] to contradict any of the evidence that Ms. de Groot or Mr. de Groot provided during the hearing. Red Cup argued that the evidence submitted by Regulatory was hearsay, or circumstantial, and did not provide proof that Red Cup delivered any NGS to [REDACTED] during the Suspension, or that the product being bottled in February 2020 by [REDACTED] was anything other than the NGS which Red Cup had delivered to [REDACTED] in November 2019.

[54] Red Cup also argued that despite the ambiguity found in paragraph 113 of the January 2020 decision, Red Cup stopped production at its Edmonton facility and did not sell any Red Cup product during the Suspension.

[55] Red Cup acknowledged that the January 23, 2020 and/or February 4, 2020 shipments could potentially have been cancelled or alternatively, Red Cup could have asked [REDACTED] to hold the shipments scheduled for January 23, 2020 and February 4, 2020 until a later date. Red Cup argued that both of those options would have penalized Red Cup financially and therefore, Red Cup decided to import the NGS into Alberta and store it in [REDACTED] warehouse during the Suspension. Red Cup argued it was not attempting to contravene the Suspension, as the totes remained in storage; however, by importing the totes as scheduled, Red Cup avoided additional costs and delays which would have resulted had Red Cup not put the totes into storage during the Suspension.

[56] Red Cup highlighted that it was eager to get back into business on March 5, 2020 and accordingly took what it believed to be proper precautions and acted in good faith by ensuring the product was kept in bonded storage throughout the Suspension. Red Cup suggested that if there was a

contravention by Red Cup with respect to importation, it was a technical contravention which does not warrant anything beyond a warning.

[57] Red Cup strongly disputed Regulatory's theory regarding who altered the February 4, 2020 bill of lading and stated that only [REDACTED] could properly speak to this matter. Further, Red Cup argued that notwithstanding Regulatory's theory regarding the February 4, 2020 bill of lading, the [REDACTED] waybill (Exhibit #1, Attachment C) demonstrated conclusively that there was a February 4, 2020 shipment of four totes from [REDACTED] to [REDACTED] and that this shipment did not involve Red Cup.

[58] Red Cup was attempting to locate documentation and respond to requests for information from Regulatory until two days prior to the incident report being finalized on April 30, 2020. Regulatory was asking for information but was not willing to wait for the information to be provided, despite Red Cup advising that it was attempting to gather the information.

[59] In summary, Red Cup was shocked by the extreme position taken by Regulatory with respect to the alleged contraventions and proposed penalties. Red Cup argued that even if the Panel finds Red Cup to be in contravention of some or all of the contraventions, the penalties seem to be out of proportion in comparison to any possible benefit to the industry.

## **VI. ANALYSIS**

### Sections 50 and 77(b) of the Act

[60] Red Cup admitted to importing liquor from [REDACTED] on January 22, 23 and February 4, 2020 during the Suspension. However, the Panel found that there were mitigating circumstances that lead to Red Cup importing the nine totes of its special formula NGS from [REDACTED].

[61] Red Cup advised the Panel that it pre-ordered its special formula NGS from [REDACTED] in advance of the January 2020 decision and argued that it would have been cost prohibitive for Red Cup to cancel those orders. Further, Red Cup indicated that it is on an ordering list with [REDACTED] and that Red Cup's special formula NGS is only produced by [REDACTED] at certain times. Red Cup indicated that it needed to be ready to begin operations again at its Edmonton facility when the suspension expired on March 5, 2020. In order to do so, the Panel is of the opinion that it was reasonable for Red Cup to have product from [REDACTED] on hand (in storage) that could be readily accessed by Red Cup after March 5, 2020.

[62] With respect to the alleged manufacturing that was taking place on behalf of Red Cup at [REDACTED] while Red Cup's licence was suspended, the Panel determined that Regulatory did not discharge the burden of proving its case with respect to this contravention. Regulatory's position differed sharply from Red Cup's evidence as to the origin of the NGS being bottled for Red Cup during the Suspension. The investigation at [REDACTED] and the evidence provided by [REDACTED] following a February 19, 2020 "Section 100 request" (Exhibit #1, Attachment C) informed much of the evidence and arguments

presented by Regulatory. And, since [REDACTED] was not present as a witness, the evidence gathered in this investigation must be weighted accordingly.

[63] The absence of [REDACTED] direct evidence meant that Red Cup was not afforded an opportunity to cross examine one of the key sources of Regulatory's investigation. For example, Regulatory argued that the product being bottled by [REDACTED] during the Suspension was product delivered to [REDACTED] during the Suspension; however, both Ms. de Groot and Mr. de Groot indicated that the product [REDACTED] was bottling during the Suspension was product which Red Cup delivered in November 2019.

[64] An additional concern is that without [REDACTED] direct evidence, the Panel was unable to hear specifically what [REDACTED] may have meant in her February 13, 2020 email to Inspector Carter whereby [REDACTED] wrote that "not all totes which had Rob's name on them were from Rob". This email raises potential questions. The onsite investigation of [REDACTED] was the genesis of the incident report and Regulatory drew many conclusions about what was occurring at [REDACTED] when it wrote the incident report and presented evidence to the Panel.

[65] Regulatory also chose not to call a representative from [REDACTED] as a witness, which had issued the February 4, 2020 bill of lading, which Regulatory argued was altered to conceal a shipment from [REDACTED] related to Red Cup.

[66] The simple fact that the delivery address on the February 4, 2020 bill of lading was changed, in the Panel's opinion, does not support Regulatory's theory that the product was originally intended for Red Cup but redirected by Red Cup to [REDACTED]. Furthermore, the [REDACTED] waybill that supports the February 4, 2020 shipment makes it clear that there was product going from [REDACTED] to [REDACTED]. Therefore, based on the evidence presented, the Panel accepts Red Cup's argument that the February 4, 2020 shipment was for product ordered by [REDACTED] that was destined for [REDACTED] and was never intended for Red Cup.

[67] The Panel accepts the evidence provided by Inspector Carter that [REDACTED] was in the process of bottling Alberta Ice Vodka on behalf of Red Cup at the time he attended [REDACTED] on February 13, 2020. However, the Panel also accepts the evidence provided by Red Cup that the product being bottled on February 13, 2020 was delivered to [REDACTED] in November 2019, and that the Red Cup product being bottled by [REDACTED] was for export. Regulatory was unable to provide any evidence to refute Red Cup's assertion in that regard.

[68] The Panel also accepts Mr. de Groot's evidence that he found Paragraph 113 of the January 2020 decision confusing, and that he made numerous attempts to contact AGLC and government in an effort to clarify the decision, with no success. Regulatory did not deny that Mr. de Groot made attempts to contact AGLC regarding the January 2020 decision, nor did it deny that Mr. de Groot had genuine confusion about the effect of the decision on Red Cup's manufacturing activities.

[69] The Panel also took into consideration the fact that one of the primary reasons for imposing the Suspension was with respect to contraventions of certain manufacturing policies which were changed by the Board of AGLC shortly following the end of the Suspension.

#### Section 100 of the Act

[70] Section 100 of the Act provides AGLC with a broad power to request reports and information from a licensee to determine if the Act or conditions imposed on a licence are being complied with. In this case, Regulatory, by email, issued "Section 100 requests" to Red Cup on February 21, March 9 and April 23, 2020.

[71] Red Cup, through its counsel, responded to the requests within the timelines set forth in each "Section 100 request". Furthermore, with respect to "the Section 100 request" originally made on April 23, 2020 by Ms. Hazelwood, Red Cup's counsel replied on April 27, 2020. Later that same day on April 27, 2020, Ms. Hazelwood requested several clarifications. The next day on April 28, 2020, Red Cup's counsel acknowledged receipt of Ms. Hazelwood's April 27, 2020 email and informed her that it would take some time to locate the documents being requested.

[72] The incident report, which included the allegation of a contravention of Section 100 of the Act, was issued two days later on April 30, 2020. The Panel believes Regulatory failed to provide Red Cup with reasonable time to respond before issuing the incident report, particularly when Red Cup had sought the advice of legal counsel.

#### **VII. FINDING**

[73] The Panel finds that there were contraventions of Sections 50 and 77(b) the Act. However, the Panel does not believe that a sanction is warranted for either contravention, due to the mitigating circumstances previously stated.

[74] The Panel finds that there was no contravention of Section 100 of the Act.

[75] Pursuant to Section 94(7)(d) of the Act, the Panel orders that all goods seized by Regulatory in association with this investigation be released and returned.

Signed at St. Albert, this 1<sup>st</sup> day of December, 2020.

*\* W. Kent Breedlove*

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W. Kent Breedlove, Presiding Member, Hearing Panel

\*signed electronically to avoid delay