

**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

**Clubhouse Virtual Golf Ltd.
5025 – 51 Street
Camrose, AB T4V 1S6**

DATE OF HEARING:	January 29, 2021
HEARING PANEL:	Mr. W. Kent Breedlove, Presiding Member Ms. P. Grier, Panel Member Mr. J. Fujino, Panel Member
LICENSEE REPRESENTATIVE:	Mr. B. Campbell, Owner/Operator
REGULATORY SERVICES DIVISION:	Ms. T. Hazelwood, Hearing Officer

DECISION OF THE HEARING PANEL

The Panel finds that there was a contravention of Section 91(1)(c) of the *Gaming, Liquor and Cannabis Act*. In accordance with Sections 94(7)(b) and 91(2) of the *Gaming, Liquor and Cannabis Act*, the Panel replaces the indefinite suspension of Class B Recreational Facility Liquor Licence numbered 775172-1 previously imposed by the Regulatory Services Division, with an order requiring Clubhouse Virtual Golf Ltd. to pay a \$1500 fine.

I. JURISDICTION AND PRELIMINARY MATTERS

[1] By letter dated January 5, 2021, the Regulatory Services Division of the Alberta Gaming, Liquor and Cannabis Commission (“AGLC”) advised Clubhouse Virtual Golf Ltd. (the “Licensee”), that the Licensee contravened Section 91(1)(c) of the *Gaming, Liquor and Cannabis Act* (the “Act”), for failure to comply with orders under the *Public Health Act*.

[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 B Recreational Facility Liquor Licence numbered 775172-1.

[3] The Licensee subsequently applied for a hearing before a Panel of the Board of AGLC pursuant to Section 94(1) of the Act.

[4] The Licensee and the Panel were provided with a Hearing Record containing various documents pertaining to the alleged contravention, including an incident report dated December 21, 2020. The Licensee confirmed receipt of the Hearing Record and Notice of Hearing dated January 19, 2021. The following documents were entered into evidence:

- Exhibit #1 – Hearing Record (Tabs #1 to #3).

II. ISSUE

[5] Did the Licensee contravene Section 91(1)(c) of the Act and if so, should the indefinite licence suspension previously imposed by the Regulatory Services Division be confirmed, replaced or cancelled?

III. EVIDENCE

Regulatory Services Division

The Regulatory Services Division called two witnesses: Constable Matt Rolfe, Camrose Police Service, and Inspector Jennifer Treece, AGLC Inspections Supervisor. The following is a summary of the evidence provided by Constable Rolfe and Supervisor Treece:

[6] Ms. Treece advised the Panel that there were two Public Health Orders in effect at the time of the alleged contravention, which occurred on December 12 to 13, 2020:

- Public Health Order 39-2020 dated November 27, 2020 states that entities with a Class B Liquor Licence are prohibited from selling or serving liquor after 10:00 p.m. and food or beverages after 11:00 p.m.; and
- Public Health Order 42-2020 dated December 11, 2020 states that entities with a Class B Liquor Licence are prohibited from selling or serving liquor after 10:00 p.m. and food or beverages after 11:00 p.m., and Appendix A to that Order sets out the requirement for food serving businesses and entities, including indoor recreation and entertainment facilities, to be closed to the public effective December 13, 2020 at midnight.

[7] Ms. Treece confirmed that the Licensee holds a Class B Recreational Facility Liquor Licence and his premises operates to provide the public with food service and recreational/entertainment activities.

[8] Constable Rolfe indicated that on December 12, 2020 at approximately 11:30 p.m., members of the Camrose Police Service observed a number of vehicles parked in front of Clubhouse Virtual Golf and they could hear music coming from inside the premises. The officers attempted to gain entry to the premises, but the door to the premises was locked and no one inside answered the door when the officers knocked.

[9] Constable Rolfe advised that this information was broadcast across the police radio for all members of the Camrose Police Service, as the police deemed that the premises may be operating in contravention of the Public Health Orders.

[10] Upon hearing the information on the police radio, Constable Rolfe parked his patrol car across the street from the premises with a clear and unobstructed view. He remained there until

approximately 1:50 a.m. on December 13, 2020, at which time he observed a male and two females exit the premises. Constable Rolfe recognized the male as the owner of the premises, Byron Campbell. Mr. Campbell was holding a glass that appeared to contain liquor and he was not wearing a face mask; the two females were also not wearing masks.

[11] Constable Rolfe parked his patrol car in front of the premises and proceeded to engage in a discussion with Mr. Campbell. Mr. Campbell told Constable Rolfe that the glass he was holding contained gin. Constable Rolfe then entered the premises and observed three males sitting at the bar. The males were not wearing face masks and were sitting approximately four to five feet apart. Constable Rolfe observed cans of beer on the bar in front of the males that appeared to still contain liquor.

[12] Constable Rolfe does not believe that any of the individuals, other than Mr. Campbell, were employees of the premises. Constable Rolfe did not observe the individuals conducting any cleaning or maintenance duties that would suggest they were employees. However, Constable Rolfe testified that he did not ask Mr. Campbell about his relationship with the individuals, nor why the individuals were inside the premises.

[13] Constable Rolfe concluded that the Licensee was in contravention of the Public Health Orders in effect at the time, as the Licensee was required to ensure that liquor service ceased at 10:00 p.m., all patrons departed the premises by 11:00 p.m. and further, that the business remained closed to the public effective December 13, 2020 at midnight. Constable Rolfe advised Mr. Campbell that he would be receiving a ticket and the incident would be reported to AGLC.

[14] Constable Rolfe asked the individuals to leave the premises. Constable Rolfe called taxis to pick up the individuals; the males subsequently departed in a taxi and the two females and Mr. Campbell went back inside the premises.

[15] Constable Rolfe continued to monitor the premises from his patrol car until 2:45 a.m., at which time he was required to attend to other duties. At the time Constable Rolfe departed at 2:45 a.m., Mr. Campbell and the two females remained inside the premises.

[16] A few days following the incident at Clubhouse Virtual Golf, Constable Rolfe completed a Licensed Premises Check form (which forms part of Exhibit #1), detailing a contravention of Section 91(1)(c) of the Act, for failing to comply with a Public Health Order(s). Constable Rolfe sent the form to AGLC on December 17, 2020 and also advised Alberta Health Services of the incident. Constable Rolfe believes that Alberta Health Services issued the Licensee a warning as a result.

[17] Upon receiving the Licensed Premises Check form from Constable Rolfe, Ms. Treece reviewed the information and then contacted Constable Rolfe to discuss the contents of the report with him; this is common practice when AGLC receives reports from partner law enforcement agencies.

[18] After speaking with Constable Rolfe, Ms. Treece proceeded to contact the Licensee by phone to advise him that an incident report would be submitted for non-compliance with both Public Health Orders (39-2020 and 42-2020). During the call, the Licensee stated that no patrons had been served liquor after 10:00 p.m. on December 12, 2020, but that he did pour himself a drink after that time.

[19] The Licensee further advised Ms. Treece that the five people who remained behind after the premises closed to the public were there to help him with repairs to a door. Mr. Campbell also indicated that he was unable to provide Ms. Treece with any video surveillance footage for December 12 and 13, 2020, because the cameras inside the premises do not function. He was also unable to provide Ms. Treece with any documentation that confirmed that repairs had been made to a door inside the premises on December 12 or 13, 2020.

Licensee

Byron Campbell provided evidence on behalf of the Licensee. The following is a summary of Mr. Campbell's evidence:

[20] The premises operates out of an old fire hall, and the front doors are in no way connected to the main area of the premises. Mr. Campbell did not hear the police knocking on the front doors on December 12, 2020.

[21] Mr. Campbell believes that the Camrose Police Service should have attempted to contact him by telephone when they did not receive an answer when they knocked on the door at 11:30 p.m. on December 12, 2020. The police know both Mr. Campbell and his wife personally and they have his phone number on record. If the police had contacted him by phone, he would have opened the door, and the police would have been able to see that there were individuals inside the premises cleaning and conducting repairs.

[22] Mr. Campbell acknowledges that he was not in the best mood when Constable Rolfe arrived at the premises on December 13, 2020. Mr. Campbell had consumed a few alcoholic beverages prior to Constable Rolfe's arrival, but he does not believe he was intoxicated.

[23] Mr. Campbell was holding a glass containing gin when Constable Rolfe arrived at the premises at 1:50 a.m. Mr. Campbell poured himself the drink at 1:00 a.m. on December 13, 2020. Mr. Campbell testified that although there were two beer cans sitting on the bar when Constable Rolfe entered the premises, these were empty cans which only contained swill and had been served prior to 10:00 p.m. on December 12, 2020. Mr. Campbell further testified that no liquor was served to any patron after 10:00 p.m. on December 12, 2020 and that he was the only one who consumed liquor after 11:00 p.m.

[24] Mr. Campbell confirmed that there was one employee and four other individuals who remained inside the premises after it closed to the public on December 12, 2020. The individuals were not wearing masks or social distancing at the time Constable Rolfe arrived because they were all close contacts. They had been golfing in a private room at the premises earlier in the evening on December 12, 2020 and had been wearing masks up until the time the premises closed to the public.

[25] Mr. Campbell testified that the four individuals had volunteered to assist Mr. Campbell with cleaning grease traps and repairing the furnace after the premises closed. Mr. Campbell wanted to ensure that the premises was properly maintained and secured, given that the Public Health Order required the premises to be closed for an indefinite period of time beginning on December 13, 2020.

IV. SUMMATION

Regulatory Services Division

[26] Section 91 of the *Act* stipulates that if the Board is of the opinion that the Licensee contravened a Public Health Order, then the Board may proceed with any of the disciplinary actions listed under that section of the *Act*.

[27] Although AGLC regularly liaises with Alberta Health Services and other partner agencies, AGLC procedure does not involve waiting for the other agencies to take disciplinary action, as this is not by the *Act*. When a licensee contravenes a Public Health Order(s), it impacts the immediate health and safety of Albertans. Accordingly, it is prudent to ensure that AGLC takes timely action, and the *Act* allows for that action to be taken.

[28] During an operating check of the premises on December 13, 2020, Constable Rolfe observed Mr. Campbell holding a glass containing liquor, outside of the premises, with two other individuals. Upon proceeding inside, Constable Rolfe observed three additional individuals inside the premises, two of which appeared to be in possession of liquor. The service of liquor was contrary to Public Health Order 39-2020 which states that liquor service for a Class B premises must cease at 10:00 p.m. and is also contrary to the subsequent amendment to the Public Health Order, which states that the premises must be closed to in person service, effective December 13, 2020 at midnight.

[29] Although the police and AGLC would generally provide some flexibility on the first day of an ordered closure, the Licensee was deemed to be in contravention of both the November 27, 2020 Public Health Order as well as December 13, 2020 Order.

[30] Constable Rolfe noted that the patrons and Mr. Campbell were under the influence of alcohol, and found they were somewhat uncooperative to deal with.

[31] The Regulatory Services Division is of the opinion that on December 12 and 13, 2020 the Licensee should have been fully aware of the restrictions in place.

[32] The Regulatory Services Division does not believe that the Licensee provided the Panel with any tangible evidence to support the claim that the people inside the premises on December 13, 2020 were conducting cleaning and/or repairs. Furthermore, Constable Rolfe did not observe any repairs, maintenance or other staff duties being conducted when he entered the premises.

[33] Albertans have made many sacrifices to reduce the transmission of COVID-19, and for the most part, other licensees are diligently following the Public Health Orders, and implementing measures to protect their staff and patrons. Accordingly, the Licensee's disregard for the health and safety of patrons and staff must be addressed.

[34] Although AGLC appreciates that times are difficult for the Licensee, this is the same situation many other licensees across the province are facing. The Regulatory Services Division's position is that this incident requires a significant sanction, to serve as a meaningful deterrent to future non-compliance. For this reason, the Regulatory Services Division requests that should the Panel find that the Licensee contravened Section 91(1)(c) of the *Act*, that the Panel impose a fine of \$5000.

[35] The Regulatory Services Division does not recommend that the Panel permit the Licensee to serve a further licence suspension in lieu of paying a fine, as the current Public Health Order requires the premises to remain closed to in-person service, and a suspension at a time when the premises has been directed to remain closed would fail to serve as a meaningful deterrent to future non-compliance.

Licensee

[36] The Regulatory Services Division previously offered Mr. Campbell a monetary fine of \$2500 in an effort to settle this matter. However, Mr. Campbell wanted to proceed to a hearing so he could tell the Panel his side of the story.

[37] Mr. Campbell has made significant sacrifices at his business to help prevent the spread of COVID-19. The premises was following all the guidelines and Public Health Orders that were put in place. This incident is the first time the Licensee has ever been found in contravention of the applicable legislation, Public Health Orders and/or AGLC policy.

[38] Mr. Campbell is frustrated that no one seems to be holding the Government of Alberta to account. Many government employees travelled over the Christmas holidays, while Mr. Campbell was trying his best to comply with the COVID-19 restrictions and making sacrifices. The government is not being asked to pay a real price, like the Regulatory Services Division is asking Mr. Campbell to pay.

[39] Mr. Campbell's business is struggling and he is not sure whether his business will be able to survive after the most recent closure order. Mr. Campbell may consider offering take-out food service during the closure in order to generate some revenue. He cannot afford to pay a \$5000 fine, as has been recommended by the Regulatory Services Division; the fine seems highly excessive, given the circumstances.

V. ANALYSIS

[40] 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.

[41] The Panel recognizes that all Albertans are making sacrifices during this unprecedented time, particularly business owners. However, Section 91(1)(c) of the *Act* requires that all liquor licensee's in Alberta comply with orders under the *Public Health Act*, as a condition of their licence. This is to ensure that the health and safety of Albertans is protected, which is one of AGLC's top priorities.

A. Relevant Agreed Facts

[42] The Panel determined that the following facts were admitted by the parties and are not in dispute:

- Public Health Order 39-2020 dated November 27, 2020 states that entities with a Class B Liquor Licence are prohibited from selling or serving liquor after 10:00 p.m. and food or beverages after 11:00 p.m.;
- Public Health Order 42-2020 dated December 11, 2020 states that entities with a Class B Liquor Licence are prohibited from selling or serving liquor after 10:00 p.m. and food or beverages after 11:00 p.m. and Appendix A to that Order sets out the requirement for food serving businesses and entities, including indoor recreation and entertainment facilities, to be closed to the public effective December 13, 2020 at midnight;
- There were six people, including Mr. Campbell, inside the premises on December 13, 2020 at 1:50 a.m. when Constable Rolfe attended;
- Mr. Campbell was not wearing a mask when Constable Rolfe arrived at the premises, nor were the other five individuals; and
- Mr. Campbell was in possession of an alcoholic beverage when Constable Rolfe attended the premises on December 13, 2020 at 1:50 a.m.

B. Relevant Disputed Facts

[43] The Panel determined that the following facts are in dispute:

- The purpose for the five individuals being inside the premises after it closed to the public at 11:00 p.m. on December 12, 2020;
 - Constable Rolfe attended the premises at 1:50 a.m. on December 13, 2020 and made a determination that the Licensee was in contravention of the Public Health Orders for allowing five patrons to remain inside the premises after 11:00 p.m. on December 12, 2020. Constable Rolfe did not observe the individuals conducting any cleaning duties or repairs; and
 - Mr. Campbell advised the Panel that the five individuals stayed behind after the premises closed and volunteered to help him clean grease traps and repair the furnace.
- Whether the five individuals had been served liquor after 10:00 p.m. on December 12, 2020;
 - Constable Rolfe gave evidence that he deemed that both Mr. Campbell and the majority of the other five individuals were intoxicated when he arrived at the premises on December 13, 2020 at 1:50 a.m.;
 - Constable Rolfe indicated that upon entry to the premises, he observed three males standing in front of the bar with two beer cans in front of them; and
 - Mr. Campbell's evidence was that none of the individuals has been served liquor after 10:00 p.m. on December 12, 2020 and all the liquor had been consumed prior to 11:00 p.m. Mr. Campbell acknowledged that the individuals had been drinking earlier in the evening and may still have been intoxicated when Constable Rolfe arrived, but they finished their last drink prior to 11:00 p.m.

[44] After hearing the evidence presented by the Regulatory Services Division the Panel concludes that there is no dispute that at least four non-employees were inside the premises, after 11:00 p.m. on December 12, 2020 and two of the non-employees remained at the premises until at least 2:45 a.m. on December 13, 2020.

[45] Although Mr. Campbell testified that the non-employees who remained on the premises after 11:00 p.m. on December 12, 2020 remained to assist Mr. Campbell with cleaning grease traps and repairing the furnace, he did not provide any documentary evidence to substantiate his testimony. Nor did Mr. Campbell call upon any of the individuals who remained at premises, allegedly to assist Mr. Campbell, to testify at the hearing.

[46] It is difficult to understand how, without additional evidence from the Licensee, the Panel could reasonably conclude that the non-employees who remained at the premises of the Licensee, after 11:00 p.m. on December 12, 2020, were there to clean a grease trap or repair a furnace after 1:50 a.m. on December 13, 2020, when Mr. Campbell was approached by Constable Rolfe.

[47] Accordingly, the Panel does not find it necessary to determine whether having non-employees inside the premises after 11:00 p.m. on December 12, 2020 and the morning of December 13, 2020 would be have been permissible, notwithstanding the general restrictions imposed by Public Health Order 39-2020 Public Health Order 42-2020.

VI. FINDING

[48] The Panel finds that the Licensee contravened Section 91(1)(c) of the *Act*.

[49] In accordance with Sections 94(7)(b) and 91(2) of the *Act*, the Panel replaces the indefinite suspension of Class B Recreational Facility Liquor Licence numbered 775172-1 previously imposed by the Regulatory Services Division, with an order requiring the Licensee to pay a \$1500 fine. The fine is to be paid on or before Thursday, August 5, 2021, being six months from the date of this decision.

[50] The Panel directs the Regulatory Services Division to lift the suspension on Class B Recreational Facility Liquor Licence numbered 775172-1 effective Saturday, March 6, 2021.

Signed at Calgary, this 5th day of March, 2021

W. Kent Breedlove

W. Kent Breedlove, Presiding Member, Hearing Panel
(signed electronically to avoid delay)