

**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

**Cowboys Taphouse Ltd.
operating as Cowboys Taphouse
216 Edmonton Trail NE
Airdrie, AB T4B 1R9**

**Cowboys Tap House Pub Ltd.
operating as Cowboy's Taphouse Bar
168, 55 Castleridge Boulevard NE
Calgary, AB T3J 3J8**

DATE OF HEARING (by Written Submissions):	September 21, 2020
HEARING PANEL:	Mr. V. Vavrek, Presiding Member Ms. P. Grier, Panel Member Mr. W.K. Breedlove, Panel Member
LICENSEES' REPRESENTATIVE:	Mr. T. Boyle, Counsel
REGULATORY SERVICES DIVISION:	Ms. C. Chan, Counsel

DECISION OF THE HEARING PANEL

I. PRELIMINARY MATTERS

[1] On May 1, 2019, the Regulatory Services Division of the Alberta Gaming, Liquor and Cannabis Commission ("AGLC") issued Notices of Administrative Sanction pursuant to Section 92(1) of the *Gaming, Liquor and Cannabis Act* ("the Act"), suspending indefinitely the liquor licences of Cowboys Taphouse Ltd. ("Airdrie") and Cowboys Tap House Pub Ltd. ("Calgary"). The two establishments will be referred to collectively as "the Licensees".

[2] On February 19, 2019, AGLC issued a Notice of Administrative Sanction against Calgary, pursuant to Section 92(1) of the *Act*, for contraventions of Section 69(1)(a) of the *Act* which allegedly occurred on September 21, November 1 and November 2, 2018. A fine of \$4,000 or a 16-day suspension of the liquor licence was imposed.

[3] By letters dated May 2, 2019 and May 7, 2019 and by application submitted on May 16, 2019, the Licensees requested a stay of the licence suspensions pending a hearing before a Panel of the Board of AGLC. The application was granted, subject to certain conditions.

[4] The Licensees requested hearings pursuant to Section 94(1) of the *Act* in respect of all three matters. By agreement of the parties, the three matters were heard together, on common evidence, by a Panel ("the Original Panel") on June 5, 6 and 27, 2019.

[5] A written decision was subsequently rendered by the Original Panel on August 2, 2019. In that decision, the Original Panel found:

- There was no contravention of Section 69(1) of the *Act*. Accordingly, pursuant to Section 94(7) of the *Act*, the February 19, 2019 Notice of Administrative Sanction was cancelled;
- The Licensees failed to provide the information required for a background check contrary to Section 9 of the Gaming, Liquor and Cannabis Regulation ("the Regulation");
- The Licensees misled AGLC, failed to provide information or provided inaccurate information to AGLC contrary to Section 1.4.5 of the Liquor Licensee Handbook; and
- The Licensees failed to act in accordance with the law, with honesty and integrity, and in the public interest contrary to Section 13 of the Regulation.

[6] With respect to the issue of the appropriate sanction for the three contraventions, the Original Panel directed that a hearing be reconvened for the sole purpose of addressing the issue of sanction. A sanction hearing was scheduled for September 3, 2019 before the Original Panel. However, prior to September 3, 2019, the Board appointments of two of the three members of the Original Panel were rescinded by the Government of Alberta, necessitating an adjournment of the hearing.

[7] A hearing before this Panel ("the New Panel") was then convened, by way of written submissions, to determine the appropriate sanction in relation to the findings made by the Original Panel. The parties were instructed to provide the New Panel with any and all evidence they wished to submit on the issue of sanction.

[8] The New Panel was provided with the following documentation:

- Written Submissions of the Licensees Regarding Penalty (Exhibit #1);
- Written Submissions on Appropriate Sanction of the Regulatory Services Division (Exhibit #2); and
- Response of the Licensees to the Written Submissions of the Regulatory Services Division (Exhibit #3).

II. JURISDICTION

[9] In the submissions filed by the Licensees, the issue of the New Panel's jurisdiction was raised. The Licensees' assertion is that the Board, and by extension the New Panel, lost jurisdiction when the appointments of two of the members of the Original Panel were rescinded. The following is a summary of the Licensees' submissions related to the New Panel's lack of jurisdiction (Exhibit #1, Tab #2):

- He who hears the matter must decide the matter;
- Only the Panel members who personally heard all the evidence and argument in a matter are permitted after a hearing to decide on the final ruling;
- The Licensees had the right to an oral hearing and to have a final decision made by the Panel members who were present for the oral hearing;
- The right to be heard would be illusory if the decision could be made by someone to whom the case was never made;
- It is not sufficient for the decision maker to hear only some of the evidence, or read a transcript of the proceedings;
- A Panel member who was not in attendance throughout a hearing and did not hear all of the evidence and argument cannot participate in the final decision without violating the rights of procedural fairness; and
- Termination or the unavailability of Panel members is not sufficient to override the requirement(s) of procedural fairness.

[10] The Regulatory Services Division did not address the issue of the New Panel's jurisdiction in its written submissions.

[11] The New Panel found the Licensees' submissions regarding jurisdiction compelling. Based on a review of the Original Panel's decision dated August 2, 2019, it appears evident that the Original Panel did not feel it had enough evidence to render a decision on sanction; and the New Panel is being asked to make a decision on sanction based on evidence it has not been able to hear or weigh.

[12] Given that the New Panel did not hear the original evidence on the issues, it is the New Panel's opinion that it does not have jurisdiction to impose a final sanction or penalty in this matter.

III. CONCLUSION

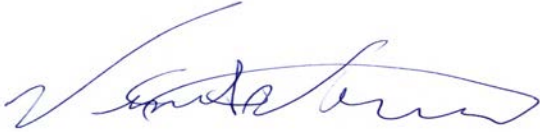
[13] The New Panel orders that this matter be dismissed in its entirety and Class A liquor licence number 772441 (Calgary) be reinstated immediately, with the following condition:

- Mandeep Bedi is banned from the premises for a period of one year from the date of this decision, being Tuesday, November 2, 2021.

[14] If the Licensees do not agree with the imposed condition, a hearing on that issue may be applied for pursuant to Section 94(b) of the Act, within 30 days of receipt of this decision.

[15] In their written submissions, the Licensees indicated that the Airdrie property has been sold. Class A liquor licence number 777454 (Airdrie) would have been cancelled by AGLC at the time the Airdrie property was sold. Therefore, it is not necessary for the New Panel to make an order regarding that licence.

Signed at St. Albert, this 2nd day of November, 2020.



Vince Vavrek, Presiding Member, Hearing Panel