

**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  
current as of June 27, 2018  
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**

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<b>DATE OF HEARING:</b>	<b>May 16, 2019</b>
<b>HEARING PANEL:</b>	<b>Ms. B. Ritzen, Presiding Member Mr. B. Wyatt, Panel Member Ms. P. Grier, Panel Member</b>
<b>LICENSEE REPRESENTATIVES:</b>	<b>Mr. T. Boyle, Counsel Ms. P. Bedi, Owner Mr. K. Chopra, Owner</b>
<b>REGULATORY SERVICES DIVISION:</b>	<b>Ms. C. Chan, Counsel Ms. P. Nash, Resource Officer</b>

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**INTERIM STAY APPLICATION  
REASONS FOR DECISION OF THE HEARING PANEL**

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At the conclusion of a hearing with respect to this matter, an order was issued verbally by the Hearing Panel. These are the reasons for that decision.

## **I. JURISDICTION AND 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. ("Cowboys Airdrie") and Cowboys Tap House Pub Ltd. ("Cowboys Calgary"). The two establishments will be referred to collectively as "the Licensees".

[2] The Licensees requested a hearing pursuant to Section 94(1) of the Act. 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 the hearing. A Hearing Panel met to hear the applications for an interim stay of the licence suspensions.

[3] The Licensees and the Hearing Panel were provided with a record containing various documents including the incident reports. The incident report with respect to Cowboys Airdrie was entered into evidence as Exhibit #1 and the report relating to Cowboys Calgary was entered as Exhibit #2. An Affidavit sworn by Priyambida Bedi was entered as Exhibit #3.

[4] Counsel for the Licensees argued that the powers given to the Board of the AGLC by Sections 12 and 15 of the Act include the jurisdiction to issue an interim stay. He noted that a stay was granted by a Hearing Panel in a case which was ultimately considered by the Alberta Court of Queen's Bench on an application for judicial review (see *Mo's Sports Parlour Ltd. v. Alberta (Gaming and Liquor Commission)*, 2006 ABQB 455, paragraph 35). Counsel for the AGLC did not make submissions with respect to the Panel's jurisdiction to issue an interim stay.

[5] The Panel is satisfied that the powers conferred by Sections 11, 12 and 15 of the Act include the jurisdiction to issue appropriate orders, directions or relief related to the matters raised in an Application for Hearing. While not explicitly set out in the legislation, such jurisdiction is essential to ensure the effective and fair discharge of a Hearing Panel's responsibilities. Accordingly, the Panel finds that it has the necessary jurisdiction to issue an interim stay of the licence suspensions.

## **II. ISSUES**

[6] Counsel for the parties agreed that the test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311 is applicable. That test sets out three requirements for the issuance of an interim or interlocutory stay:

- a) Is there a serious issue to be tried?
- b) Would the applicant (the Licensees in this case) suffer irreparable harm if the stay is not granted?
- c) Does the balance of convenience favour the granting of a stay?

### III. ANALYSIS

#### Serious Issue to be Tried

[7] With respect to whether there is a serious issue to be tried, both parties agreed that the threshold is very low. While the AGLC did not admit that there is a serious issue to be tried in this case, they did not make submissions on that aspect of the test.

[8] The circumstances giving rise to the licence suspensions are described in the incident reports. Many of the facts alleged in those reports are disputed by the Licensees. The Licensees also allege that much of the evidence set forth in the incident reports is hearsay, double or triple hearsay and challenge the probative value of that evidence. It is clear that there are many significant issues to be addressed in relation to the alleged contraventions. The Panel is therefore satisfied that there is a serious issue to be tried.

#### Irreparable Harm

[9] With respect to the irreparable harm aspect of the test, the relevant and undisputed evidence set out in the Affidavit of Ms. Bedi is that:

- the revenue for Cowboys Calgary has dropped by 90% since the licence suspension and that the owners had to close that location;
- the revenue for Cowboys Airdrie has dropped by 80%;
- if the licences are not immediately restored, both locations will have to be closed permanently, resulting in a loss of investment for the owners and their parents;
- closure of the locations will result in loss of employment for 50 employees; and
- in an effort to mitigate their losses, the Licensees have attempted to sell both locations and have identified arm's length purchasers who have experience and the necessary licences; however, AGLC advised the Licensees that the application process cannot be started "due to the suspension of the liquor licence..." (see Exhibit #J to the Affidavit).

[10] Counsel for the AGLC directed the Hearing Panel to certain jurisprudence which suggests that that financial loss in and of itself is insufficient to meet the test of irreparable harm (see *Yazdanfar v. College of Physicians and Surgeons of Ontario* 2012 ONSC 2422, paragraph 64). In cases involving motor vehicle licence suspensions, courts have determined that irreparable harm may exist if the suspensions compromise the ability of the individual to work (see *Wallace v. British Columbia (Superintendent of Motor Vehicles)* 2017 BCSC 1903, paragraphs 8 to 10 and *Sahaluk v. Alberta (Transportation Safety Board)* 2013 ABQB 107, paragraph 34).

[11] In this case, the Panel finds, based on the undisputed evidence noted above, that the licence suspensions have caused and will continue to cause financial loss to the Licensees and their employees, compromising their ability to earn a livelihood. Moreover, the suspensions are preventing consideration by the AGLC of the applications for sale of the two operations. In these unique circumstances, the Licensees have established that they will suffer irreparable harm if the stay is not granted.



### **Balance of Convenience**

[12] Counsel for the AGLC submitted that, in the circumstances of this case, the balance of convenience must take into account the public interest addressed by the legislative regime (see paragraphs 35 to 38 of *Sahaluk, supra*). She argued that the *Act*, the Regulation and the policies of the AGLC are intended to advance the interests of public safety. Licensees must be qualified and must meet all of the requirements set out in the legislative and policy regime. It is a high priority to ensure that licensed premises are safe and that the responsible and safe sale and consumption of alcohol is promoted. She argued that the public interest in this cases favours the continuation of the licence suspensions.

[13] Counsel for the Licensees argued that there is no safety issue in this case, no one is dying, and the floodgates will not be opened if a stay were to be granted. He submitted that the public interest cannot trump the damage caused to the Licensees by the licence suspensions.

[14] The Panel accepts that the *Act*, Regulation and relevant policies are focussed on protecting the public interest including safety. Through a variety of measures, the legislative scheme seeks to ensure the safe, responsible sale and consumption of alcohol. In assessing the balance of convenience, this legislative purpose must be given a high priority.

[15] The circumstances giving rise to the licence suspensions in this case are, as noted above, set out in the incident reports. The reports focus on the conduct of two individuals, one of whom is alleged to be in *de facto* control of the operations of both premises. This individual (Mandeep Bedi) and his possible role in the operations of the premises are of particular concern to the AGLC.

[16] Counsel for the Licensees advised the Panel that the Licensees are willing to terminate the employment of Mandeep Bedi, ban him from the premises and report to the AGLC if any of those circumstances change.

[17] Given this undertaking, the Panel is of the view that the public interest advanced by the legislative scheme can, in the unique circumstances of this case, be protected through the imposition of conditions on an interim stay of the licence suspensions. As such, the Panel is satisfied that the balance of convenience favours the granting of an interim stay.

### **IV. FINDING**


[18] Based on the foregoing, the Panel finds that the Licensees have successfully established all three requirements of the tri-partite test and that an interim stay of the licence suspensions, subject to conditions, should be granted.

[19] In accordance with the order issued verbally at the conclusion of the hearing and pursuant to Section 94(7) of the *Act*, the Panel cancels the licence suspensions effective at 4:00 p.m. on Friday, May 17, 2019 on an interim basis, pending the conclusion of the hearings. The interim stay is subject to the following conditions:

- a) the Licensees will immediately terminate the employment of Mandeep Bedi and ban him from both premises;

- b) the Licensees will immediately advise AGLC if, for any reason, that condition is not met;
- c) the hearings will take place in Calgary on June 5 and 6, 2019;
- d) the question of whether the interim stay should be extended beyond June 6, 2019 will be a matter for consideration by the Hearing Panel convened for the hearings; and
- e) if it comes to the attention of the AGLC that the condition set out in (a) above is not being met by the Licensees, an affidavit may be submitted to the Hearing Panel Office; upon receipt of such evidence, the Hearing Panel may terminate the interim stay immediately, without a hearing.

Signed at St. Albert, this 21<sup>st</sup> day of May, 2019.



Barbara Ritzen, Presiding Member, Hearing Panel