

**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. (Licensee)
c/o Simon Renouf Professional Corporation
1710 Phipps McKinnon Building
10020 101A Avenue
Edmonton AB, T5J 3G2**

DATE OF HEARING:	June 6, 2023
HEARING PANEL:	Len Rhodes, Presiding Member Patti Grier, Panel Member Jack Fujino, Panel Member
LICENSEE / REPRESENTATIVE:	Simon Renouf, K.C., Legal Counsel Robert De Groot, Owner/Operator
REGULATORY SERVICES DIVISION:	Rebecca Lee, Legal Counsel Toni Hazelwood, Resource Officer

DECISION OF THE HEARING PANEL

The Panel finds that Red Cup Distillery Ltd. (Red Cup / Licensee) contravened section 79(1) of the *Gaming, Liquor and Cannabis Act* (the Act).

In accordance with sections 91(2)(d) and 92(2)(a) of the Act, the Panel cancels Red Cup's licences and registration immediately upon issuance of this decision. The following licences and registration held by Red Cup are hereby cancelled:

- Class E small manufacturer liquor licence numbered 778318-1;
- Class D manufacturer off-sales liquor licence numbered 778318-2; and
- Liquor agency registration numbered 300909-1.

The Commission (AGLC) will need to make a determination with respect to the disposition of the liquor, in accordance with section 95 of the Act.

The Panel orders that Robert De Groot, Red Cup Distillery Ltd. and its employees and associates are ineligible to hold a liquor licence for a period of no less than five (5) years from the date of this

decision, in accordance with sections 11(a) and 12(2) of the Gaming, Liquor and Cannabis Regulation (the Regulation).

After June 29, 2028, Red Cup Distillery Ltd. or its associates are eligible to reapply to become a liquor licence holder in accordance with the licence application process set out in section 2 of the Liquor Licensee Handbook.

I. Jurisdiction and Preliminary Matters

[2] On April 4, 2023, Gary Peck, the Vice President of the Regulatory Services Division (Regulatory Services) of the Alberta Gaming, Liquor and Cannabis Commission (AGLC) contacted Len Rhodes, Board Chair, via email to request that the Board convene a hearing for Red Cup Distillery Ltd. as a result of an alleged contravention of:

- section 79(1) of the Act: No manufacturer may sell the liquor it makes to any person other than the Commission unless the manufacturer's liquor licence provides otherwise.

[3] Pursuant to section 11 of the Act, the Board Chair directed that a hearing before a Panel of the Board be convened and the Board Chair designated three members of the Board to sit as a Panel to conduct the hearing and make a decision – Len Rhodes (Presiding Member), Patti Grier and Jack Fujino.

[4] On April 12, 2023, the parties were provided with a Notice of Hearing and a record containing various documents pertaining to the issues before the panel. Counsel for the Licensee indicated that he was unavailable on the initially scheduled date and requested that the hearing be rescheduled. As such, an Updated Notice of Hearing was issued on April 14, 2023.

[5] At the hearing the Panel, counsel for Regulatory Services and counsel for the Licensee confirmed receipt of the Updated Notice of Hearing dated April 14, 2023 and the attached hearing record. The following documents were entered into evidence:

- Exhibit 1 Hearing Record, including Tabs A to C
- Exhibit 2 Cover letter and filed Court brief – Red Cup

[6] During the hearing, counsel for Regulatory Services produced an additional document in response to a question asked by the Panel of one of Regulatory Services' witnesses, Inspector Binny Sahota. The Licensee and the Panel were provided with copies of the document and an opportunity to review it. The Resource Officer spoke to the document in response to the Panel's question and the Licensee sought clarification on who the question was directed to.

[7] Ultimately, the document was admitted into evidence as:

- Exhibit 3 Spreadsheet – end of month outstanding

[8] During counsel for Red Cup's cross-examination of Regulatory Services' witness, Inspector Binny Sahota, counsel requested copies of the Inspector's notes he took as part of his investigation. Counsel for Regulatory Services, Ms. Lee, advised that she had reviewed the notes, that they were very brief and

that the information contained in the notes, apart from the name of the public source, was contained in the Incident Report that Inspector Sahota prepared and submitted as Tab A of Exhibit 1.

[9] Regulatory Services submitted that the public source expressed concerns around their safety so they have not been identified in the Incident Report but all other relevant information contained in Inspector Sahota's notes are included in the Incident Report which has been admitted as evidence.

[10] Counsel for Red Cup, Mr. Renouf, read from copies of email correspondence between himself and Ms. Lee and advised the Panel that he had made a request for a copy of the notes from her prior to the hearing but that Ms. Lee advised that all of the information captured in the notes was also captured in the email communications appended to the Incident Report. Mr. Renouf submitted that Inspector Sahota has a duty to provide all of his notes and that Red Cup is entitled to full disclosure. Red Cup requested that the Panel direct that the notes be provided.

[11] The Panel recessed to consider the request.

[12] The Panel reconvened and advised the parties that it is an administrative tribunal, not a Court of law, and that the Panel is not bound by formal rules of evidence. The request was not raised as a preliminary issue but rather, part way through Regulatory Services presenting its witness. The Panel advised the parties that it would not direct the production of evidence including Inspector Sahota's notes nor the email communications Mr. Renouf referred to in making his evidentiary application to the Panel.

[13] The Panel noted that the individual who provided the information to Inspector Sahota asked to remain anonymous out of fear for their safety, and that is their right.

[14] Mr. Renouf then made an application that the hearing be adjourned so that the Inspector could produce all of his notes to Regulatory Services' counsel for review.

[15] The Presiding Member denied the request on the basis that Ms. Lee had reviewed the notes and that the matter had been decided for the reasons previously stated.

[16] After the hearing, on June 8, 2023, Ms. Lee made a request to the Hearing Panel Office on behalf of Regulatory Services that the identifying information contained in Exhibit 3 be redacted for the purposes of the record. She also requested that the Panel direct the parties not to disclose the contents of Exhibit 3 to anyone and that copies of it are not to be retained.

[17] Ms. Lee stated that she was made aware after the hearing that disclosing the private identifying information regarding other manufacturers was problematic. Ms. Lee also clarified that the document indicates Regulatory Services is following up on reporting and remittance issues for several manufacturers but that it does not indicate pending incident reports or disciplinary action, and the numbers contained are only current as of June 6, 2023.

[18] On June 12, 2023, the Hearing Panel Office notified Mr. Renouf of the request and asked him to provide his position on the request, for consideration by the Panel.

[19] On June 16, 2023, Mr. Renouf indicated via email that Red Cup opposes the application by Regulatory Services. He submitted that the history of Exhibit 3 is that it was tendered by Regulatory Services well beyond the deadline for exhibits, and in fact, after the hearing commenced. It was tendered from counsel table and not through a witness. He submitted that Exhibit 3 may become important in any future proceeding relating to the fairness of these proceedings, and Red Cup should be entitled to refer to it.

[20] On the same date, Ms. Lee provided a reply stating that the subject document was handed to the Panel in response to a question from the Panel. She stated that Regulatory Services is seeking redaction of all identifying information contained in Exhibit 3 and that the identity of corporations or persons referenced in the document would not in any way be relevant to future proceedings regarding the procedural fairness of the current proceedings.

[21] The Presiding Member was provided with the email correspondence from Ms. Lee and Mr. Renouf and the Panel made the following determination on the request: the Panel directs that the identifying information in Exhibit 3 will be redacted. The parties shall not disclose the information contained in the unredacted Exhibit 3 to anyone and shall destroy any copies of it.

[22] The reasons for that direction are contained in the Analysis (section VI) of this written decision.

II. Issues

[23] Did the Licensee contravene section 79(1) of the Act? If so, what should the Panel do in accordance with section 91(2) of the Act?

III. Regulatory Services Submissions

[24] Regulatory Services called two witnesses: AGLC Inspector Binny Sahota and Manager, Liquor Planning & Reporting, Rajeev Bastiampillai.

Inspector Binny Sahota

[25] Inspector Sahota has worked as an Inspector with AGLC since 2015. He works on a team of inspectors that deal with liquor and cannabis files relating to complaints or allegations of inducements and advertising and promotional violations. His team also specifically deals with small liquor manufacturers, registrants and agencies. Inspector Sahota often works on files that many not be dealt with by general duty inspectors.

[26] Inspector Sahota stated that investigations can be conducted as a result of self-initiated investigations on compliance issues, a public complaint or an internal AGLC referral regarding non-compliance.

[27] Inspector Sahota is the Inspector assigned to Red Cup and has attended the premises previously to conduct routine maintenance inspections, deliver correspondence and to investigate complaints. Inspector Sahota stated that he is familiar with the location, the licences held by Red Cup and its owner/operator, Robert De Groot.

[28] Inspector Sahota confirmed that Red Cup holds a Class E small manufacturer's liquor licence, a Class D off-sales liquor licence and a liquor agency registration.

[29] Inspector Sahota authored an Incident Report dated March 28, 2023 (Exhibit 1, Tab A) detailing events involving Red Cup and the manufacture and sale of one of its products, Alberta Ice Vodka. Inspector Sahota described an Incident Report as a formal report that details facts gathered as part of an investigation. He confirmed that he is responsible for preparing the Incident Report and can make suggestions on any alleged contraventions in accordance with the Administrative Sanction Guideline for Violations. However, the Incident Report is submitted to management for review and they have the authority to override or alter the recommended sanctions.

[30] On or around December 9, 2022, Regulatory Services received information from a member of the public that Alberta Ice Vodka was being sold in liquor stores operated by a large liquor retailer in Alberta (the Retailer). As a result of the nature of the information, Inspector Sahota stated that he was assigned to initiate a review of the sale of this product to confirm its compliance with the Act and AGLC's Board policies.

[31] When asked by counsel for Red Cup about the notes he made regarding the public source, Inspector Sahota clarified that he made notes regarding the source of the information, but that the information itself was not relied upon to establish facts and did not form part of the evidence in the Incident Report. He stated that the information triggered the investigation and that the name of the source was not included because Regulatory Services was of the opinion that it was not relevant to the facts.

[32] Inspector Sahota advised that he initiated his investigation on December 9, 2022 by contacting the Chief Financial Officer (CFO) of the Retailer via email (Exhibit 1, Tab A, Attachment 1). He requested a number of detailed records relating to the sale or purchase of Alberta Ice Vodka and Red Cup Vodka for the period of January 2020 to November 2022.

[33] The President, Liquor Division of the Retailer provided an email response, with a copy to the CFO, on December 16, 2022 confirming that the Retailer purchases Alberta Ice Vodka that is manufactured by Red Cup on behalf of a numbered company (the Supplier) for sale in its Alberta retail stores.

[34] The email attached spreadsheets (Exhibit 1, Tab A, Attachment 2) showing the Retailer's sales of Alberta Ice Vodka, the purchases of Alberta Ice Vodka from the Supplier, with invoice numbers, and an inventory of Alberta Ice Vodka held in the Retailer's stores for the requested period.

[35] When asked by counsel for Red Cup whether Inspector Sahota visited the Retailer's stores to confirm the quantities on hand as provided in the inventory listing, Inspector Sahota stated that he did not. Inspector Sahota asserted that the information provided, although not directly from the CFO, was provided under the Retailer's obligation to comply with the request for records per section 100 of the Act, which was referenced in Inspector Sahota's email. As a result, Regulatory Services takes the information provided by the Retailer to be truthful and verifiable.

[36] Inspector Sahota denied that section 100 of the Act was noted in his December 9, 2022 to give the Supplier the impression they were being investigated. Inspector Sahota contended that section 100 of the Act does not only apply to the licensee that is the subject of the investigation and further, the focus of the investigation, products manufactured by Red Cup, was clearly set out in the email.

[37] The records demonstrated that the Retailer purchased over 600,000 bottles of Alberta Ice Vodka from the Supplier and that the Retailer sold just over 500,000 bottles in its liquor stores in Alberta between January 2020 and October 2022.

[38] The Retailer also confirmed in follow up correspondence that Alberta Ice Vodka is only sold in one size, 750 mL bottles, and only in Alberta, so there is only one Stock Keeping Unit (SKU) associated with it and shown on the records.

[39] Inspector Sahota did not interview any representatives from the Retailer but was satisfied that the responses and reports provided were truthful and accurate and that they were representative of transactions relating to Alberta Ice Vodka because that is what was requested.

[40] As a result of the information provided by the Retailer, on December 22, 2022, Inspector Sahota visited the retail liquor store operated by the Supplier and spoke with the premises owner. The owner confirmed that Red Cup manufactures Alberta Ice Vodka on behalf of the Supplier, which in turn sells Alberta Ice Vodka exclusively to the Retailer.

[41] Inspector Sahota clarified for the Panel that Red Cup ships Alberta Ice Vodka directly to the Retailer who purchases the product through the Supplier. The Retailer pays the Supplier and the Supplier pays Red Cup. When asked by the Panel whether this is a typical model, Inspector Sahota advised that it is not and that this process has allowed Red Cup to bypass AGLC with the Supplier acting as an intermediary.

[42] Inspector Sahota advised the Supplier that AGLC was reviewing the sale of liquor products manufactured by Red Cup and requested detailed sales records from the Supplier for the period of October 2019 to November 2022. Inspector Sahota advised the Panel that he had requested identical records as were requested from the Retailer, but that he expanded the timeframe slightly to capture any information that may have been missed.

[43] Inspector Sahota advised that Regulatory Services did not receive all of the information requested, but that the accountant for the Supplier advised Inspector Sahota that the Retailer would be able to produce many of the records requested. The accountant for the Supplier advised Inspector

Sahota that the Supplier does not use a formalized accounts payable system so some of the information requested was not available, but would be tied to the Retailer's invoice listing.

[44] Inspector Sahota suggested that there is a sizeable number of small liquor licensees that do not utilize a formal accounts payable system.

[45] However, Inspector Sahota submitted that the information the accountant for the Supplier was able to provide (Exhibit 1, Tab A, Attachments 4 and 5) "more or less" corroborated the information provided by the Retailer.

[46] The accountant confirmed that no inventory of Alberta Ice Vodka is kept at the Supplier's premises and that the product is delivered directly from Red Cup to the Retailer's stores or their warehouses.

[47] Inspector Sahota reiterated that he accepted the information provided by the accountant for the Supplier to be accurate, truthful and representative of the sales of Alberta Ice Vodka, as the accountant under his CPA designation has a duty to conduct his practice with honesty and integrity and produce accurate records.

[48] Inspector Sahota submitted that the Excel spreadsheets and excerpts from spreadsheets provided in the email responses from the Retailer and the Supplier are in a typical format for the type of information requested. He stated that it is normal to receive reports in a basic table format and for questions to be answered directly in the original email request.

[49] When asked by counsel for Red Cup whether Inspector Sahota investigated other products sold from the Supplier to the Retailer, Inspector Sahota advised that he did not as the focus of his investigation was Alberta Ice Vodka. At the suggestion of counsel for Red Cup that Inspector Sahota did not take steps to verify the transactions of products other than those for Alberta Ice Vodka sold by the Supplier, Inspector Sahota agreed and suggested that the manufacture and sale of other potentially underreported Red Cup products warrant further investigation.

[50] Inspector Sahota submitted that, when comparing the records submitted by Red Cup through the Liquor Services Application portal (LSA) and the records from the Supplier and the Retailer, there were clear discrepancies. The Retailer had records of sales occurring to November 2022, the Supplier had records of sales to September 2022 and Red Cup last reported sales of Alberta Ice Vodka in September 2021.

[51] The records from the Supplier show that Red Cup has manufactured and sold just over 5,000 hectolitres (hL) (or 56,149 cases) of Alberta Ice Vodka from September 2019 to November 2022, but that it has only reported sales of 815.76 hL (9,064 cases) within that timeframe (Exhibit 1, Tab A, Attachment 6). Further, Inspector Sahota stated that no payments have been made by Red Cup to AGLC for the sales identified. He submitted that information reported by Red Cup through LSA was provided to him by the Liquor Services Division (Liquor Services) at AGLC.

[52] Inspector Sahota submitted that the lack of reporting represents a huge omission and that Red Cup is coming up on two years with no reporting of Alberta Ice Vodka.

[53] In the Incident Report, Inspector Sahota calculated the amount owing to AGLC based on the underreported sales. He explained that the wholesale price for Alberta Ice Vodka is \$144 per case. The wholesale price includes the price of the liquor (invoice price), the markup to be paid to AGLC, recycling fees, container deposits and GST.

[54] At \$144 per case, or \$12 per bottle, using the quantities provided by the Supplier, Inspector Sahota determined that the wholesale price owed by Red Cup is \$6,780,240 for the sales of Alberta Ice Vodka for September 2019 to November 2022.

[55] Inspector Sahota suggested that, in consideration of the extent of the omission on the part of Red Cup and that Red Cup continues to sell Alberta Ice Vodka without reporting to or paying AGLC, he is of the opinion that it can be deduced that Red Cup is potentially underreporting and not paying for other SKUs it manufactures.

[56] Inspector Sahota asserted that unless the Licensee and its records can be audited, Regulatory Services cannot obtain a fulsome understanding of what is being sold.

[57] Inspector Sahota suggested that the activities outlined are in contravention of section 79(1) of the Act. Further, as detailed in the Incident Report, Inspector Sahota suggested that Red Cup's conduct also violates the following supporting provisions:

- Section 80(3) of the Act: The Commission must not deliver liquor it has sold until the purchaser has paid for the liquor in the manner required by the board;
- Section 5.4.2 of the Liquor Manufacturer Handbook: Liquor cannot be distributed to a liquor licensee until the licensee buying the product has paid the AGLC for the liquor, in accordance with Section 80(3) of the Act; and
- Section 5.4.9 of the Liquor Manufacturer Handbook: When a Class E manufacturer sells to its Class A or D, AGLC must receive payment prior to the liquor product being moved physically, and/or on paper, from the Class E to its Class A or D.

[58] Inspector Sahota submitted that Regulatory Services has not received an explanation nor response from Red Cup regarding the investigation.

[59] Inspector Sahota reiterated that the remittance model is an honor-based system and the licensees are responsible for self-reporting and operating in accordance with the process outlined.

[60] Counsel for Red Cup asked Inspector Sahota about the tables contained in Exhibit 1, Tab A, Attachment 6 and Inspector Sahota confirmed that Liquor Services prepared the table on the left, Historical Sales of Alberta Ice Vodka based on Red Cup self-reporting, and the table on the right showed sales from the Supplier to the Retailer of Alberta Ice Vodka, compiled from the information gathered as

part of his investigation. Inspector Sahota advised that no reports for Alberta Ice Vodka have been received since September 2021, as shown in the table.

[61] When asked by the Panel what percentage of Licensees are compliant with reporting and remittance, counsel for Regulatory Services produced a document showing nine delinquent licensees as at June 6, 2023 (Exhibit 3). The Resource Officer stated that over 90 per cent of Licensees report and remit regularly.

[62] When asked by the Panel what the obligation for reporting is, Inspector Sahota stated that Red Cup has a condition on its licence that requires it to report and remit to AGLC on a bi-weekly basis, any and all sales transactions and any balances owed to AGLC.

Rajeev Bastiampillai

[63] Mr. Bastiampillai has been employed with Liquor Services at AGLC for almost ten years. He previously worked as a liquor policy analyst and has been in his current role as Manager, Liquor Planning & Reporting, for approximately five years.

[64] He submitted that Liquor Services has several arms, one of which involves supporting small manufacturers by answering questions regarding operating in the province both during their onboarding and once they become operational.

[65] Mr. Bastiampillai advised that Liquor Services works in conjunction with Regulatory Services through the licensing process and throughout the term of the licence. Liquor Services monitors the sales activities of small manufacturers and notifies Regulatory Services of any issues of non-reporting or non-remittance. Liquor Services does not make recommendations for sanctions.

[66] Mr. Bastiampillai stated that that his team is the first point of contact for small manufacturers if they have questions or issues with their sales transactions. Mr. Bastiampillai stated that Red Cup has contacted his team numerous times in the past with questions about access to LSA, operational questions regarding credits to offset sales and other standard questions that his team has been able to assist with.

[67] Mr. Bastiampillai has worked directly with the Licensee in his capacity as manager to answer questions about remittance and reporting and is familiar with their licences.

[68] Mr. Bastiampillai explained that Red Cup has both a Class E licence and a Class D licence. A Class E licence allows a licensee to manufacture liquor and to sell the liquor it manufactures to other liquor licensees. A Class D off-sales liquor licence is required to sell to the general public.

[69] When asked by Counsel for Red Cup about the existing condition on Red Cup's Class E licence (Exhibit 1, Tab C) requiring that Red Cup "report and remit to AGLC on a bi-weekly basis" and whether other licensees are required to do the same, Mr. Bastiampillai suggested that a large majority of licensees do. He stated that his team is working with the small fraction of the 256 licensees that do not report and remit regularly.

[70] The condition reads as follows: Report and remit to AGLC on a bi-weekly basis, any and all sales transactions, including transactions between the premises Class E manufacturer's licence and the premises Class D manufacturer's off-sales licence, and any other sales channel and any balances owed to AGLC.

[71] When asked by counsel for Red Cup why the wording "any balances owed" on the licence condition is presumed to refer to the wholesale price, Mr. Bastiampillai advised that he could not speak to the wording of the licence condition but that, pursuant to AGLC's legislation and policies, the wholesale price is what is owed to AGLC.

[72] Mr. Bastiampillai clarified that whether a small liquor manufacturer is selling directly to another licensee, such as a liquor store, or to its own "front of house" for sales to the public through its Class D licence, the manufacturer is not paid directly. The manufacturer sells the liquor to AGLC as the wholesaler of record and the purchaser pays AGLC what is referred to as the wholesale price. Once payment is made to AGLC, the manufacturer can deliver its product to the licensee that purchased it. The manufacturer is required to report the sale to AGLC whether it is a sale from its Class E licence to its Class D licence or a sale from its Class E licence to another licensee. AGLC's Liquor Revenue team matches monies received with invoices reported by the manufacturer, then makes the appropriate deductions and remits the remainder to the manufacturer as payment for its product.

[73] The deductions made from the wholesale price include markup payable to AGLC, GST, recycling fees and container deposits. The balance, referred to as the invoice price, is returned to the manufacturer as long as they have provided an invoice for the sale so it can be matched with monies received.

[74] Mr. Bastiampillai submitted that not following this process threatens the small manufacturer model which is, to a certain extent, built on trust and relies on the transparency and truthfulness of the licensees.

[75] When asked by counsel for Red Cup to clarify what happens to monies when a sale is made directly from one licensee to another, Mr. Bastiampillai reiterated that any payment received by the manufacturer is deposited directly into an AGLC account.

[76] Mr. Bastiampillai suggested that if Red Cup followed the required process, they would have invoiced the Supplier and the Supplier would have paid AGLC that amount (registered as the wholesale price). Once AGLC received that payment, Red Cup could deliver the liquor. Upon delivery, Red Cup would submit the sales report to AGLC and that would be matched up with the funds paid by the Supplier. The appropriate deductions would be made and Red Cup would then be paid the invoice price.

[77] The invoice price is the cost of the product plus the built-in profit for the manufacturer.

[78] Mr. Bastiampillai clarified that the wholesale price is payable to AGLC prior to delivery and confirmed that \$6,780,240 for the sale of Alberta Ice Vodka to the Retailer via the Supplier would have been payable prior to the delivery of the product.

[79] Of that amount, Mr. Bastiampillai suggested that the markup payable to AGLC is approximately \$1 million.

[80] Markup is calculated as a flat fee, per litre. For spirits with 40 per cent alcohol by volume, such as Alberta Ice Vodka, markup would be \$13.76 per litre at the standard rate. However, if a manufacturer self-distributes by selling from their Class E directly, a reduced markup of \$2.46 is applied per litre.

[81] The last time AGLC received sales invoices from Red Cup in relation to the sale of Alberta Ice Vodka was September 2021 and Mr. Bastiampillai advised that, to date as far as he was aware, no payment has been made for the Alberta Ice Vodka found to be sold to the Retailer.

[82] When asked by Counsel for Red Cup whether any sales had been reported since December 2022, Mr. Bastiampillai advised that he was not aware of any sales reported, however, there is a one day delay between when reports are submitted in LSA and when they can be reviewed by his team so he suggested that if sales were reported the day before or the morning of the hearing, he would not have visibility on them. Mr. Bastiampillai was unable to speak to when the last payment from Red Cup for Alberta Ice Vodka was made.

[83] The last payment from Red Cup for any sales of liquor was received in November 2022.

[84] Mr. Bastiampillai referred to a page with two tables (Exhibit 1, Tab A, Attachment 6) showing Red Cup's self-reported historical sales of Alberta Ice Vodka on the left, from December 2019 to September 2021, and the reported historical sales of Alberta Ice Vodka from the Supplier to the Retailer from September 2019 to November 2022 on the right. The table on the left shows the reported sales of Alberta Ice Vodka by Red Cup through LSA, with September 2021 being the last reported sale, totaling 9,064 cases. The table on the right shows sales of Alberta Ice Vodka occurring from the Supplier to the Retailer totaling 56,149 cases sold.

[85] Mr. Bastiampillai asserted that the consequences of not reporting and remitting sales impacts AGLC's mandate to generate revenue for the Government of Alberta by way of the General Revenue Fund.

[86] Further, AGLC has financial obligations to its other partners as a result of these transactions, such as payment to the recycle deposit boards as well as remittance of GST to the federal government. While wholesale payments are outstanding, these outstanding fees and taxes become a liability for AGLC.

[87] Mr. Bastiampillai stated that there has been no indication that Red Cup is not operational and, as he understands it, there is no evidence that the sales reported by the Supplier and Retailer did not occur.

[88] Mr. Bastiampillai has not been provided with any explanation or communication from Red Cup regarding the unreported sales, however, Mr. Bastiampillai advised the Panel that his team ceased communications with Red Cup since Regulatory Services became involved in investigating the operations.

[89] When asked by counsel for Red Cup about other licensees in arrears, as identified in Exhibit 3, Mr. Bastiampillai confirmed that there are others that his team is working to bring into compliance. Mr. Bastiampillai agreed that Exhibit 3 showed that 9 out of 256 small manufacturers are in arrears, however, the identification of those licensees is based on self-reporting, so if they do not self-report, it is difficult to have visibility on any outstanding reports.

IV. Red Cup Submissions

[90] Counsel for the Licensee, Mr. Renouf, did not call any witnesses. He relied upon Red Cup's documentary submission; the Court of King's Bench brief filed May 18, 2023 (Exhibit 2) containing interpretation of section 79 of the Act and Mr. Renouf provided submissions on behalf of Red Cup as part of his closing summation.

V. Summation

Regulatory Services

[91] Regulatory Services submits that the Board Chair directed that this hearing be convened pursuant to section 11 of the Act in relation to the alleged contravention detailed in the Incident Report dated March 28, 2023. Regulatory Services confirms that no administrative sanction has been imposed on Red Cup in relation to the matters contained in the Incident Report.

[92] Section 79(1) of the Act, one of the relevant legislative provisions that governs the matter before the Panel, suggests that a manufacturer cannot sell to anyone other than AGLC unless a condition on their licence allows it. Consequently, AGLC is the wholesaler on record for all small liquor manufacturers in Alberta. Only when payment is made to AGLC, can the manufacturer deliver its product to the licensee that purchased it. In order to ensure compliance with this section, manufacturers are required to report sales to AGLC through the self-reporting process as detailed by Mr. Bastiampillai.

[93] Regulatory Services takes the position that the purpose of section 79(1) is to ensure that AGLC continues to have oversight over liquor sales, maintain integrity of the liquor system and to uphold a level playing field and transparency among licensees. If licensees do not report their sales, then AGLC has no other way to track or oversee the sale of liquor.

[94] The Incident Report also refers to the supporting provision, section 80(3) of the Act, which states that AGLC must not deliver liquor it has sold until the purchaser has paid for the liquor in the manner required by the board.

[95] As the sole regulator of liquor in Alberta, AGLC has the responsibility of administering the Act and regulating the sale and distribution of liquor with the objective of generating revenue for the province of Alberta and protecting the public interest.

[96] In that vein, the Incident Report cites two sections of AGLC policies that are codified in the Liquor Manufacturer Handbook: sections 5.4.2 and 5.4.9. Section 5.4.2 of the Liquor Manufacturer Handbook states that liquor cannot be distributed to a liquor licensee until the licensee buying the product has paid AGLC for the liquor, in accordance with section 80(3) of the Act. Section 5.4.9 of the Liquor Manufacturer Handbook clarifies that when a Class E manufacturer sells to its Class A or D, AGLC must receive payment prior to the liquor product being moved physically, and/or on paper, from the Class E to its Class A or D.

[97] Ms. Lee, on behalf of Regulatory Services, clarifies that a Class E licence allows a licensee to deliver liquor directly to other licensees, subject to payment first being made to AGLC. The sale of the liquor to other licensees is not direct, it occurs through payment to approved AGLC accounts.

[98] Inspector Sahota and Mr. Bastiampillai have provided evidence regarding the particulars of Red Cup's violations in terms of reporting its sales as well as remitting wholesale payments to AGLC. The Liquor Manufacturer Handbook policies referenced codify the process that licensees are expected to follow, which Mr. Bastiampillai also testified to.

[99] Regulatory Services' witnesses have detailed the established processes which Red Cup has failed to comply with. Regulatory Services takes the position that Red Cup's non-compliance with the Act and policies has undermined AGLC's ability to maintain oversight of its sales.

[100] The Panel has heard evidence from Regulatory Services' witnesses that an analysis of merely one of Red Cup's products being sold from one of its retailers leads to Regulatory Services' finding that Red Cup has been delinquent in reporting and remitting wholesale payments to the tune of over \$6.7 million, with \$1.4 million of that amount representing markup, GST, recycling fees and bottle deposits that AGLC would have retained or remitted to governmental agencies.

[101] Red Cup's non-compliance with sections 79(1) and 80(3) of the Act has impacted AGLC's ability to meet its obligations to these other agencies and has created liabilities in AGLC's books in this regard.

[102] Regulatory Services' witnesses have submitted that Red Cup is known to have additional products and affiliated retailers and, consequently, Regulatory Services submits that one can reasonably assume that the matters within the Incident Report dealing with sales of Alberta Ice Vodka to the Retailer may not represent the full scope of non-payment and non-reporting.

[103] Further, as a result of Red Cup's non-cooperation with AGLC's attempts to conduct an audit, Regulatory Services has been unable to confirm the scope of any underreporting or underpayment in relation to Red Cup's other products.

[104] Regulatory Services submits that, at the time of licensing, Red Cup would have signed an acknowledgment and undertaking confirming its understanding of its legal obligations under the Act, the Regulation and AGLC policies.

[105] As such and further to the above, Regulatory Services is seeking that the Panel cancel Red Cup's licences, including its Class E and Class D liquor licences and its liquor agency registration effective as of the date of the Panel's decision, pursuant to section 92 of the Act.

[106] Regulatory Services further requests that the Panel direct Red Cup to ship its liquor to AGLC upon cancellation of its licences. If Red Cup fails to do so, Regulatory Services would take steps to seize the liquor in place until such time that the liquor can either be shipped to AGLC or seized from the premises.

[107] Regulatory Services points out that section 95 of the Act permits that AGLC may either purchase liquor from a licensee upon the licence being suspended or cancelled or that it may authorize that the liquor be sold to another licensee.

[108] Ms. Lee, on behalf of Regulatory Services, highlights that permissive language is used in section 95 of the Act and suggests that AGLC may do the things set out but that it is not required to do them. Therefore, Regulatory Services asks that the Panel apply section 95 to instead direct that the liquor be destroyed as opposed to sold to AGLC or another licensee.

[109] Finally, Regulatory Services requests that the Panel consider Red Cup and any of its employees or associates, as defined by section 1(6) of the Regulation, as ineligible for future licensing pursuant to section 13 of the Regulation.

[110] Section 13 of the Regulation states that the board may refuse to issue a licence to an applicant or to register an applicant if the board is satisfied that the applicant, any of the applicant's employees or associates or any other person with connections to the applicant: (a) is a person who has not acted or may not act in accordance with the law, with honesty and integrity or in the public interest, having regard to the past conduct of the person, or (d) would be a detriment to the lawful manufacture, import, purchase, sale, provision, transport, possession, storage use or consumption of liquor.

Red Cup

[111] Firstly, in response to the summation of Regulatory Services, Red Cup submits that the condition on its Class E licence would be meaningless unless Red Cup were collecting money. Red Cup submits there is no other possible interpretation regarding "balances owed to AGLC."

[112] Further, Mr. Renouf, on behalf of Red Cup, submits that he ought to have been provided advance notice of the harsh remedies sought by Regulatory Services.

[113] With respect to the nature of the evidence presented, it is well-known that the rules of evidence that would be applicable in Court do not apply to these proceedings. However, without any doubt, the duty of fairness the Board must extend to Red Cup does apply. The duty of fairness is a flexible concept

that applies on a scale dependent upon a number of factors, with the largest factor being how important the decision is to the respondent, in this case the Licensee.

[114] In this case, knowing now that Regulatory Services requests the cancellation of Red Cup's licences, the seizure of Red Cup's inventory and the prohibition on Red Cup's officers and employees from being able to hold a licence in the future, that puts the duty of fairness at the highest end of the scale.

[115] The Supreme Court of Canada has repeatedly said that when one's ability to practice their trade or profession is at stake, the duty of fairness is at the very highest end of the scale.

[116] Red Cup submits that Regulatory Services has presented uncorroborated hearsay from both its witnesses. Red Cup suggests that Inspector Sahota was operating with tunnel vision when conducting his investigation. Red Cup submits there is history with Red Cup and that Inspector Sahota was simply looking for confirmations on the allegations he received from the Retailer and the Supplier. Mr. Renouf highlights instances in the Incident Report where Inspector Sahota references receiving "confirmation" of sales, purchases and information.

[117] Red Cup submits that the hearing would have been straightforward if Regulatory Services called the representatives from the Retailer and from the Supplier as witnesses. Mr. Renouf respectfully submits that Regulatory Services was trying to avoid having the Retailer and the Supplier cross-examined and that Regulatory Services relied on Inspector Sahota's report and documents that Red Cup submits were created by Inspector Sahota.

[118] This is hearsay that affects the fairness of these proceedings, where again, Red Cup has the right to expect a very high degree of fairness based on the risk if the Panel were to agree with the licence cancellation.

[119] Next, Red Cup submits that the Incident Report was inadequate. At various points in the investigation, Inspector Sahota stopped pursuing information, did not follow up and accepted the reports and information received on faith. Inspector Sahota disagreed that he simply accepted the information without obtaining invoices, bills of lading or other documents.

[120] Red Cup does not accept the accuracy of the allegations made by the Retailer and the Supplier and, when the Incident Report is read objectively, Red Cup submits that it cannot be denied that Inspector Sahota just accepted the information on faith.

[121] Mr. Renouf, on behalf of Red Cup, addresses section 79 of the Act. Red Cup questions why Regulatory Services acts as though the word "unless" is not included in section 79(1) of the Act. That section says no manufacturer may sell the liquor it makes to any person other than the Commission unless the manufacturer's liquor licence provides otherwise.

[122] The legislation, as adopted by the Legislative Assembly of Alberta, uses the word unless to provide an express exception to the general rule. Red Cup takes the position that its licence "provides

otherwise” in that it can sell to person’s other than the Commission, based on its interpretation of the wording of the condition on the licence.

[123] Red Cup is of the opinion that section 79(1) of the Act has not been breached. In terms of what the claims being made by Regulatory Services against Red Cup are, Red Cup submits that the core of the claims is reporting and collections. Section 79 of the Act does not say anything about reporting or collections.

[124] Further, it is often said that ignorance of the law is no excuse. The flip side of that is that the law must be intelligible. Red Cup takes the position section 79 of the Act does not say anything about collections and reporting.

[125] Instead, the allegation against Red Cup could have been a breach of the conditions imposed on Red Cup’s licences or that they were late in making payments, like some other small manufacturers. There are no such allegations being made.

[126] With respect, the threat of cancelling a manufacturer’s Class E or Class D licences should not be available to Regulatory Services as a means of collecting a debt.

[127] Red Cup submits that AGLC has many ways of seeking to collect a debt. AGLC has to establish that there is a debt which, on this evidence, Red Cup submits they cannot do. If there is a debt established, AGLC can then bring an action to collect on the debt.

[128] Red Cup takes the position that AGLC should not be utilizing its regulatory processes to seek a cancellation of Red Cup’s licences for the purposes of debt collection. The provision of the Act is intended to crack down and punish improprieties of the manufacturer and is not about collecting money.

[129] Lastly, the condition on Red Cup’s licence recognizes that Red Cup, like other licensees, is entitled to sell their product on the condition that they remit and report on a bi-weekly basis. Red Cup submits that there is certainly an argument that it has failed to do that but that the volume is unknown because it cannot rely on the amounts in Inspector Sahota’s Incident Report. Red Cup reiterates that this hearing is not the proper procedure for dealing with a collections issue.

[130] Red Cup reiterates that there would be an argument that Red Cup has not complied with the licence conditions but that, on the statutory wording of section 79, Red Cup has not contravened section 79(1) of the Act.

VI. Analysis

[131] The Panel carefully considered the evidence of the witnesses and the submissions of the parties.

[132] With respect to the application made during the hearing for the production of Inspector Sahota’s notes, the Panel finds that rule 1.10.2(f) of the Hearing Panel Rules & Procedures allows the Panel to determine an issue relating to the evidence of witnesses. Further, the Panel finds that both

parties are entitled to submit evidence that they believe to be truthful and relevant and that it would be improper to direct that the Inspector produce portions of his notes that were determined to be irrelevant. Regulatory Services submitted that the relevant information from the notes was contained in the Incident Report entered as part of Exhibit 1.

[133] If the Panel were to direct that such evidence be produced, in fairness to both parties, the Panel would also direct that Red Cup produce any notes or documents pertaining to the production and sale of Alberta Ice Vodka. The Panel agrees that Red Cup, as the Licensee, is owed a high degree of duty of fairness and the Panel finds that such duty was satisfied in the Panel's finding that it would not direct the production of any evidence not already entered on the record from either party.

[134] The Panel next considered the evidence admitted and the weight to place on it in consideration of the issues of reliability and relevance.

[135] The Panel contemplated the interpretation of section 79 presented by Red Cup in Exhibit 2, but finds that the submission contained argument rather than evidence and weighed Exhibit 2 accordingly.

[136] Further, in response to the Panel's inquiry about how many licensees were delinquent in remittance or reporting, the Panel finds that the detailed third-party information produced by Regulatory Services as Exhibit 3, was erroneous. The Panel finds that the identity of the licensees is not relevant nor appropriate for the Panel to consider. The Panel only considered the number of licensees listed.

[137] As such, the Panel finds the names of other delinquent Alberta manufacturers not involved in the investigation of the sales of Alberta Ice Vodka to be irrelevant. The Panel finds that the number of licensees and even the amounts owing can be relied on without the need for identifying the manufacturers themselves. The Panel finds that the potential harm to identifying those unrelated licensees is significant and outweighs the fact that the exhibit inadvertently disclosed confidential third-party information that was not requested.

[138] Therefore, the Panel grants the request from Regulatory Services that the identifying information in Exhibit 3 be redacted for the purposes of the hearing record and directs that the information contained in the previously unredacted evidence not be disclosed by the parties to anyone and that copies of it are destroyed.

[139] With respect to the alleged contravention, section 79(1) of the Act deals with manufacturer sales to the Commission. Based on Mr. Bastiampillai's explanation of the payment process and the respective roles of AGLC and the licensee in the process, the Panel finds that AGLC is the wholesaler on record for all small manufacturers in Alberta and that all sales transactions must flow through AGLC.

[140] Red Cup's Class E licence explicitly states that Red Cup "is authorized to manufacture liquor specified below and to sell and deliver that liquor to the AGLC in accordance with the *Gaming, Liquor and Cannabis Act*, the Gaming, Liquor and Cannabis Regulation, AGLC policies and all other conditions prescribed by the Board." As clarified by Regulatory Services, Red Cup's Class E licence provides a special

authorization that Red Cup is “authorized to deliver the specified product direct to licensees.” There is no such special authorization that Red Cup may sell liquor direct to other licensees.

[141] Further, the condition on Red Cup’s Class E licence requires Red Cup to report and remit any and all sales transactions and any balances owed to AGLC on a bi-weekly basis. The “balances owed” describe the wholesale price that must be paid from the purchaser to AGLC to be matched with the sales transactions reported by the manufacturer. If Red Cup is aware that the purchasing licensee, in this case the Supplier, has not made payments owing directly to AGLC, Red Cup is responsible for ensuring the payments for its liquor product are made to AGLC in accordance with its licence and condition.

[142] The Panel finds that the licence condition does not provide Red Cup latitude to operate outside of the prescribed remittance model which, as shown by Exhibit 3, all but nine other manufacturers in the province are aware of and are able to follow. On the contrary, the condition requires Red Cup to report transactions and ensure payments owing are made to AGLC more frequently than other licensees in Alberta that do not have such a condition on their licence.

[143] Mr. Bastiampillai provided evidence that he interacted with Red Cup during their onboarding and throughout the term of their licences to answer questions related to LSA, credit payments and other questions related to the remittance process. The Panel finds that Red Cup is well aware of the expectations for remittance of the wholesale price by the purchaser, whether that is Red Cup’s Class D off-sales licence or another licensee. The Panel is not satisfied that Red Cup verily believes the wording of the licence condition allows it to evade the description on the licence and the process explained to it by Regulatory Services at the time of licensing and by Liquor Services numerous times since.

[144] Regulatory Services has presented evidence from both the Retailer and the Supplier that Red Cup sold 56,149 cases of Alberta Ice Vodka to the Retailer via the Supplier between September 2019 and November 2022, whereas Red Cup only reported sales of 9,064 cases between during that timeframe. Further, as Red Cup has neither denied the claim nor produced reports or evidence providing otherwise, the Panel finds that Red Cup has produced and sold Alberta Ice Vodka without reporting or paying the required markup on the sales of at least 47,085 cases.

[145] The absence of reported transactions is not in and of itself a contravention of section 79(1) of the Act, but the sales made in violation of the licence and the authorities it provides for, are in direct contravention of the provision. The Panel finds that both section 79(1) of the Act and the first sentence on Red Cup’s Class E licence prohibit Red Cup from selling the liquor it makes to any person other than the Commission (AGLC).

[146] Once the liquor is manufactured, Red Cup can transfer the liquor to its Class D licence for off-sales by conducting a sale through AGLC via the payment process highlighted. The Class D licence authorizes Red Cup to sell from its Class E licence to its Class D licence, via the same process, with sales reported and payments owing remitted to AGLC.

[147] The Panel finds that Inspector Sahota presented evidence in Exhibit 1 that the reported sales produced by the Supplier (Tab A, Attachment 5) corroborated the reported sales of the Retailer (Tab A,

Attachment 3) and that the email communications from the representatives from both the Supplier and the Retailer are evidence that Alberta Ice Vodka is being manufactured by Red Cup, delivered to the Retailer and sold in the market.

[148] The Panel finds that Red Cup has sold Alberta Ice Vodka directly to persons other than the Commission in violation of section 79(1) of the Act. If Red Cup had sold the liquor from its Class E small manufacturer's licence to its Class D off sales licence first, as the manufacturer's licence provides for, the Commission would have a record of those sales. If Red Cup delivered the liquor directly to the Supplier, as the manufacturer's licence provides for, AGLC would have received payment directly from the Supplier or through Red Cup's approved AGLC accounts and would have record of such transaction. As testified by Inspector Sahota and Mr. Bastiampillai, neither occurred as AGLC does not have records of either type of transaction after September 2021.

[149] The Panel finds that the format of the reports contained in Exhibit 1 appear to be printed versions of Excel spreadsheets. Inspector Sahota submitted that it is common to receive sales transaction reports in this format. The Panel finds that the reports came from bona fide email addresses for the President, Liquor Division of the Retailer and the accountant for the Supplier, individuals whose roles require truthful and accurate reporting and whose careers would be at stake if they provided falsified records. The Panel finds, based on the presentation of the email communications attaching the reports (Exhibit 1, Tab A, Attachments 2 and 7) that the reports produced are, on a balance of probabilities, true representations of the email attachments they purport to be.

[150] The witnesses for Regulatory Services have provided evidence that clarifies the payment process for liquor sales. The Panel finds that for any purchases, including Class D off-sales licence purchasing directly from the Class E small manufacturer's licence, the wholesale price is paid to AGLC. The wholesale price has been defined as the amount paid for the product plus recycling fee, excise duty (if applicable), provincial markup, GST and container deposit. AGLC collects the wholesale price, matches the payment to the sales submission reported through LSA and deducts markup, GST, recycling fees and container deposit from the wholesale price paid. AGLC then pays the Class E licensee the invoice price.

[151] The Panel finds as a fact that, in accordance with the payment process outlined by the witnesses, Red Cup has withheld the wholesale price of \$6,780,240 from AGLC for the Alberta Ice Vodka sold through the Supplier to the Retailer for the defined period. The Panel finds that, after appropriate deductions are made from the wholesale payment, AGLC is owed the markup amount of \$1,471,877. Although AGLC does not retain the full \$6,780,240, the Panel finds that all liquor licensees should be held to the same standard and Red Cup is expected to adhere to the payment process as is expected of all licensees. For that reason, the Panel finds that Red Cup has payments owing to AGLC totaling \$6,780,240.

[152] If Red Cup were to continue operating and evading the remittance process that 247 of the 256 total small manufacturers in Alberta are able to adhere to, AGLC as the sole regulator of liquor in Alberta, would not be carrying out its legislated objective of controlling, in accordance with the Act, the import, purchase, giving, possession, storage, transportation, use and consumption of liquor. The Panel finds that Red Cup's non-compliance with the legislation and AGLC's policies and lack of

acknowledgment for resolving the same illustrates that the Licensee is a detriment to the lawful manufacture, import, purchase, sale, provision, transport, possession storage and use of liquor.

[153] The ability to manufacture and deliver liquor directly to other licensees, as allowed by the Class E licence, is a privilege awarded to small manufacturer's and is not a right. Red Cup has taken advantage of its licence and registration privileges by evading AGLC's remittance policies.

[154] Further, Red Cup is withholding net operating income (i.e. markup) that Albertans are entitled to through AGLC's contribution to the General Revenue Fund. Red Cup is not operating in good faith by evading payment of other government and federal taxes and fees.

[155] As a result of these unlawful activities, and pursuant to section 92(1) of the Act, the Panel finds that Red Cup is no longer eligible to hold a liquor licence.

[156] The Panel finds that a determination will need to be made by the Commission (AGLC) about the disposition of the liquor, in accordance with section 95 of the Act.

[157] The Panel disagrees with Regulatory Services' assessment that the provisions under section 95 of the Act allow the Panel to order that all liquor be destroyed without knowing the suitability of the liquor.

[158] In response to the concern flagged by counsel for Red Cup that he ought to have been provided advanced warning of the remedies Regulatory Services was seeking, the Panel notes that page 4 of the Incident Report (Exhibit 1, Tab A) includes Regulatory Services' position that Red Cup should no longer be eligible to hold a liquor licence.

VII. Finding

[159] For the reasons stated above, the Panel finds that the Licensee contravened section 79(1) of the Act.

[160] In accordance with sections 91(2)(d) and 92(2)(a) of the Act, the Panel cancels Red Cup's licences and registration immediately upon issuance of this decision. The following licences and registration held by Red Cup are hereby cancelled:

- Class E small manufacturer liquor licence numbered 778318-1;
- Class D manufacturer off-sales liquor licence numbered 778318-2; and
- Liquor agency registration numbered 300909-1.

[161] The Commission (AGLC) will need to make a determination with respect to the disposition of the liquor, in accordance with section 95 of the Act.

[162] The Panel orders that Robert De Groot, Red Cup Distillery Ltd. and its employees and associates are ineligible to hold a liquor licence for a period of no less than five (5) years from the date of this decision, in accordance with sections 11(a) and 12(2) of the Regulation.

[163] After June 29, 2028, Red Cup Distillery Ltd. or its associates are eligible to reapply to become a liquor licence holder in accordance with the licence application process set out in section 2 of the Liquor Licensee Handbook.

Signed at St. Albert, this 29th day of June, 2023

A handwritten signature in black ink, appearing to read "Len Rhodes". The signature is written in a cursive, flowing style with some loops and flourishes.

Len Rhodes, Presiding Member, Hearing Panel