

Court of King's Bench of Alberta

**Citation: Red Cup Distillery Ltd v Alberta Gaming, Liquor and Cannabis Commission,
2024 ABKB 205**

Date: 20240315
Docket: 2203 10384
Registry: Edmonton

Between:

Red Cup Distillery Ltd

Applicant

- and -

Alberta Gaming, Liquor and Cannabis Commission

Respondent

Corrected judgment: A corrigendum was issued on April 10, 2024; the corrections have been made to the text and the corrigendum is appended to this judgment.

**Memorandum of Decision
of the
Honourable Justice G.R. Fraser**

[1] The applicant in this matter, Red Cup Distillery Ltd (Red Cup), seeks Judicial Review of the Alberta Gaming, Liquor and Cannabis Commission's (AGLC) requirement to provide various documents in relation to conducting an audit of the company. The AGLC decided to conduct an audit of Red Cup from April 1, 2020 to December 31, 2022. AGLC requested various information from Red Cup in order to conduct the audit. AGLC cited s 100 of the *Gaming,*

Liquor and Cannabis Act as its authority to request the information and also referenced possible consequences for non-compliance.

[2] Red Cup now submits the AGLC erred in its interpretation of s 100 of the *Act*. Specifically, it submits that the AGLC's request for information was too broad and that it was trying to establish policies that went beyond its authority.

[3] The AGLC submits that Red Cup is premature in seeking judicial review, as the requests for information do not represent a final decision, and therefore should not be subject to judicial review. In the alternative, it submits that the requests were reasonable and within its authority under s 100 of the *Act*.

Facts

[4] Red Cup holds a Class D and Class E License to distill and sell alcohol in Alberta. The Class E License permits Red Cup to distill alcohol, and the Class D License permits it to sell alcohol for consumption away from Red Cup's premises.

[5] In 2019, Red Cup was found to be in non-compliance with the *Act*. This related to not properly selling liquor and properly documenting liquor sales. As a result, Red Cup received an administrative sanction. Part of the sanction included the requirement to submit on a biweekly basis any and all sales transactions, including transactions between Red Cup's Class E and Class D Licenses. Red Cup failed to submit the required reports for the period of February through April 2021.

[6] As a result of the improper reporting and other possible compliance issues, the AGLC decided on January 14, 2022 to conduct an audit of Red Cup. On March 23, 2022 an AGLC Inspector sent Red Cup a letter stating that an audit would be conducted on Red Cup for the period April 1, 2020 to December 31, 2021. The stated purpose of the audit was to determine if the liquor operations and reporting requirements were complete and in compliance with all policies. The letter required Red Cup to provide the following:

- Production reporting for the audit period;
- List of all liquor products/batches produced and sold;
- List of raw materials and volume used in the production of the liquor products;
- Original or electronic copy of bank statements from April 1, 2020 to December 31, 2021 inclusive and related original or electronic copy of deposit slips, cancelled/negotiated cheques and bank reconciliations;
- Original or electronic copy of invoices/receipts that support all payments made from the bank account (including invoices for raw materials and supplies related to production);
- Monthly inventory reporting;
- Sales Report and supporting documentation for total sales during the audit period;
- Annual Worldwide Production reporting for 2021 and 2021;
- CRA reporting: Excise Duty Returns filed during audit period;

- A list of collaborations with other manufacturers and include all collaboration manufacturing records including details on what was made, how much and how it was divided between collaborators during the audit period; and
- Any contracts/agreements in place with other manufacturers or agencies to make liquor products.

Class D - Manufacture's Off Sales:

- List of all liquor products sold as off-sales;
- Sales records for all liquor products sole from the licensed premises;
- Supporting documentation for all purchases of liquor products; and
- Inventory reporting for liquor products under Class D licence.

Overall Financial Information:

- Company/ related party ownership mapping;
- Organizational chart;
- Chart of Accounts;
- Detailed General Ledgers for last 2 fiscal years; and
- Financial Statements for last 2 fiscal years.

The letter also stated that additional documents may be required later in the audit process.

[7] On April 4, 2022 Red Cup received a letter from an AGLC Inspector indicating that it still needed to provide sales data for the period November 2021 through February 2022. A deadline of April 22, 2022 was given to provide the information. A follow-up letter requesting the same information was sent on April 26, 2022. Both letters cited s 100 of the *Act* as the authority for the requested information.

[8] On May 17, 2022, Red Cup, through its counsel, sent a letter to the AGLC asking for its authority to make its request. The letter indicated Red Cup's belief that the request went beyond the "reports and information" required to show compliance with its licenses.

[9] On June 27, 2022 Red Cup received another letter citing s 100 of the *Act*, again requesting that all of the items detailed in the March 23, 2022 letter be submitted by July 11, 2022. The letter warned that failure to submit all the items would result in an application to have Red Cup's License suspended.

[10] Rob De Groot, manager of Red Cup, in his Affidavit estimated that it would take approximately 400 hours to locate and copy the requested information.

Standard of Review

[11] The parties agree that the standard of review is reasonableness.

Analysis

[12] Section 100 of the *Act* reads as follows:

Every licensee or registrant must, when required in writing by the AGLC, provide the AGLC with reports and information specified by the AGLC for the purposes of determining if this Act and the conditions imposed on the licensee's licence or registrant's registration are being complied with.

[13] It is clear from the wording of this *Act* that any request must be related to determining whether a party is in compliance with the conditions of its license and in compliance with the *Act*. Red Cup submits that the requested information goes far beyond what is required to determine compliance.

[14] Conditions were placed on Red Cup's License in 2019. It was required to submit biweekly liquor sales reports. It also has to maintain general compliance with the *Act* and its *Regulations*. There is no doubt that Red Cup is required to submit information related to the distilling of alcohol and the sale of alcohol products. It is difficult to understand how some of the requested items are related to the distilling of alcohol and the sale of alcohol products.

[15] The AGLC requested that Red Cup supply its detailed general ledger and its financial statements. Certainly, the general ledger would contain entries related to the production and sale of alcohol. It is also very likely to contain entries not related to the production and sale of alcohol. Red Cup's expenses related to clearing snow from its parking lot or repainting the office would seem to have little relevance to showing compliance with the *Act* or conditions imposed upon Red Cup. Still, the AGLC required those entries be provided.

[16] The general ledger would likely also contain payroll information. This information would seem not to be relevant to demonstrating Red Cup's compliance, but could have significant negative consequences if disclosed to third parties. A competitor might be able to hire away a valuable employee by offering more money. Nevertheless, the AGLC required the information to be provided.

[17] The disclosure of financial statements might also have little relevance and possible significant negative consequences. The statements would likely show profit and loss related to alcohol production and sales. However, this information would also be contained in other items requested by the AGLC. The actual amount of profit or loss earned by Red Cup could be of significant value to its competitors. The information could make the company vulnerable to a takeover, or perhaps subject to restricted credit. Although there is some protection of the disclosed information, it is not completely immune to a request under the *Freedom of Information and Privacy Act*. This presents a significant risk to Red Cup. Regardless, AGLC required the information to be provided.

[18] The AGLC agrees that request made under s 100 must be for the purposes of determining if the *Act* and the conditions imposed upon the licensee are being complied with. The May 17, 2022 letter from Red Cup specifically states that Red Cup is concerned that the AGLC has "requested a great deal of information unrelated to sales reporting". It expressed Red Cup's position that the requested items represented a "substantial overreach".

[19] The AGLC's response on June 27, 2022 did not address Red Cup's concern about overreach. It did acknowledge Red Cup's concern that many of the items requested represented "substantial overreach". The letter then again reference s 100 and stated that the AGLC could

request reports and information to determine if the *Act* is being complied with. There was nothing explaining how the requested information related to making a determination. The letter also indicated that a failure to provide all the information would result in an application to the Vice President Regulatory Services for a license and registration suspension.

[20] If the AGLC had explained how the required information related to evaluating Red Cup's compliance, it would be in a much better position. Instead, it required almost all of the corporation's business and financial information for a 33-month period. Providing all of the required documents would take a considerable amount of time. I do not find Mr. De Goot's estimate of 400 hours to be unreasonable. I find that making a corporation expend that much effort, without an explanation as to its relevance, is too broad a request, and therefore unreasonable.

[21] Although I have found the request to be unreasonable, the AGLC submits that Red Cup's application for judicial review is premature. This is because the June 27, 2022 letter states that a failure to provide the requested information would result in an application to have Red Cup's liquor licenses and registration suspended. No actual action occurred. Instead, Red Cup launched this judicial review.

[22] On this issue, I find the AGLC to be correct. The letter from Mr. Dhanda, the AGLC's Manager, Compliance Audit, only indicates that Red Cup's failure to provide the documents would result in an application for suspension. The decision regarding suspension would ultimately be up to the Vice President Regulatory Services.

[23] If the Vice President decided to issue a suspension, and can properly do so¹, Red Cup would then have the opportunity to request a hearing before a Panel of the board.

[24] Red Cup is essentially seeking judicial review of Mr. Dhanda's interpretation of s 100 of the *Act* regarding the production of documents. I agree with the AGLC's position that the letter represents an interlocutory decision.

[25] Red Cup raises serious concerns regarding possible negative consequences if it were to provide the material and it subsequently became available to third parties. Consequently, it did not provide the requested information. Red Cup then brought this application for judicial review before any decision was made regarding a possible suspension.

[26] Red Cup's concerns are understandable. If the information is provided and it then subsequently becomes known to third parties, there can be no remedy. A panel or a court cannot make an order for someone to "unsee" a document. It would be impossible for Red Cup to recover its proprietary information.

[27] This concern, however, does not allow Red Cup to bypass the AGLC's process. Red Cup has advised the AGLC that it will not provide the information unless it can be connected to the AGLC's authority under s 100 of the *Act*. It seems from Mr. Dhanda's letter that the AGLC is not prepared to justify any of its requests. If sanctions were imposed by the Vice President Regulatory Services, which is unknown, Red Cup would then be able to request a board hearing. It would be able to raise these issues at the hearing, and the board would have to make a decision. That decision would then be subject to judicial review.

¹ *Red Cup Distillery Ltd v Alberta Gaming, Liquor and Cannabis Commission*, 2024 ABKB 737

[28] Although going through all of the steps may be time-consuming and expensive for Red Cup, that is the administrative process that has been created. To pursue judicial review before exhausting the administrative regime has been found to be an abuse of process.² It is only in cases of exceptional circumstances that a court should intervene on an interlocutory decision.

[29] Red Cup submits that this case represents one of exceptional circumstances. I disagree. In *689799 Alberta Ltd v Edmonton (City)*, 2018 ABCA 212, the majority found at para 7 that decisions relating to the disclosure of information raise factual issues reviewable on a reasonableness standard. They do not constitute exceptional circumstances. I do not find that the issues raised by Red Cup meet the test for exceptional circumstances.

[30] I find that this matter must proceed through the AGLC's administrative procedure before an application for judicial review can be brought.

Heard on the 23rd day of June, 2023.

Dated at the City of Edmonton, Alberta this 15th day of March, 2024.

G.R. Fraser
J.C.K.B.A.

Appearances:

Simon Renouf, K.C. and Ms. L. Anaka
Renouf Law
for the Applicant

Julie Gagnon,
Reynolds Mirth Richards & Farmer LLP
for the Respondent, AGLC

Celina Chan and Rebecca S. Lee
DDC Lawyers LLP
for the Respondent, AGLC Regulatory Services Division

² See *Dugandzic v Law Society of Alberta*, 2022 ABQB 49 at para 8.

**Corrigendum of the Memorandum of Decision
of
The Honourable Justice G.R. Fraser**

The Citation number was changed from 2024 ABKB 738 to 2024 ABKB 205.