

# Inter-Provincial Trade Barriers Update on Alberta

Al Hudec  
**FARRIS LLP**

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# AGLC Letter re DTC Shipping (Jan 22, 2024)

- Covert sting operation
- Asserted contravention of:
  - Section 3(1) of the federal *Importation of Intoxicating Liquors Act*
  - Sections 50 and 77 of the *AGLC Act*
  - Section 89 of the *AGLC Regulations*
- Immediately blocked inbound wholesale shipments through Alberta's central warehouse.
- Requiring BC wineries to agree not to ship DTC before reopening the wholesale channel.

# WGBC Response

- Section 3(1) of the *Importation of Intoxicating Liquor Act* updated in 2019 to eliminate any federal restrictions on inter-provincial wine trade.
- Sections 50 and 77 of Alberta's *Gaming, Liquor & Cannabis Act* (the “**AGLCA**”) regulate only consumers within the province importing, possessing and consuming wine from outside of the province, and do not create an offence for manufacturers in British Columbia exporting into Alberta.

# Alberta's restrictive importation for personal use policy

- **Section 89 - Importation from other provinces**

- An adult may import liquor purchased in another province for personal use in Alberta subject to the policies of the Board.

- **Section 3.27.1 – AGLC Liquor Policy Handbook Section 3.27.1**

- An adult may bring liquor into Alberta from another province in any quantity for personal use if the liquor is in the direct possession of the individual; or in accompanying baggage.
- This is an invalid use of the Board's policy making powers since it directly contradicts the regulation by restricting imports only to wine personally carried across the border and does not permit shipment which is clearly part of the ordinary meaning and dictionary definition of the word 'import'.
- The purpose of policies is to prescribe administrative matters such as registration, record-keeping, and fees, and not to totally neuter what is permitted or prescribed in the regulations.

# Strong case for judicial review

- Letters evidence a serious disregard for administrative law principles of due process and fair dealing.
- They reference ‘tangible evidence’ of a breach without providing factual particulars.
- Recipients of the letter were not provided a proper process to respond to allegations before imposing sanctions.
- Weren’t provided with an opportunity for a hearing or an adjudication of the allegations.
- Imposed an immediate penalty - barred from wholesale shipping through the government warehouse in a totally legally compliant manner.
- Immediate irrevocable harms – loss of market share, ceding of shelving space and menu listings to foreign non-Canadian product.

# No statutory authority to impose restriction

- There is no basis for AGLC imposing a penalty of prohibiting exports into the Province by BC manufacturers through registered agents in the Province that are done in a way that is fully compliant with all of the relevant Alberta requirements.
- Sanctions are prescribed and governed by Part 4 of the AGLC Act and do not include prohibiting a BC winery from using a Alberta licensed agent to distribute wholesale in the province through Connect Logic.

# Does the AGLC have a broad public interest jurisdiction?

- The AGLC is asserting a broad public interest jurisdiction to impose penalties in respect of actions that threatened “the integrity of the Alberta alcohol market”.
- Section 161 of the BC *Securities Act* provides the securities commission with a broad authority to impose a wide variety of sanctions, penalties and orders to protect the ‘integrity of capital markets’ where it considers it to be in the public interest to do so.

# Still hopeful of a negotiated solution

- Case lot shipments of high priced premium or super-premium BC wines will not negatively impact the integrity of the Alberta liquor market:
  - Cascadia Consultants have opined that it is unlikely to ever exceed 2-3% of total market at most;
  - US evidence that shipping to minors is not a problem – small fraction of one percent of shipments;
  - Revenue loss, easily mitigated through imposition of a simple regime to collect provincial liquor tax modelled after the regimes used successfully in 48 US states that permit shipping into the state by out of state manufacture;
  - BC wineries are reaching saturation in their local market within the price bands and packaging formats in which they choose to compete.
- Dale Nally's Mandate Letter - Reduce AGLC regulatory red tape and increase the liquor taxes collected and the revenue flowing from the AGLC to the Province.
- The current restrictions on consumers receiving direct deliveries from out of province are difficult or impossible to enforce without border controls.



# Arguments (continued)

- Distribution of high value low volume B.C. premium wines through the AGLC distribution system is costly and inefficient; and prohibition on DTC limits choice of Alberta consumers and denies them the opportunity to purchasing premium B.C. wines not otherwise readily available in the Province.
- Polling shows that 84% of Alberta residents favour the removal of restrictions on interprovincial wine trade.
- Furthers the objectives of the *Canada Free Trade Agreement* and the *North West Partnership Trade Agreement* (B.C., Saskatchewan and Manitoba already allow DTC shipment of BC wines).
- Federal Budget 2024 – Initiative to require justification or elimination of remaining CFTA exceptions.
- Alignment with the views of the current Alberta government respecting trade, economic growth and business development.
- Potentially a significant step towards development of a Canadian market for our domestic wines.

# Proposed Regulatory Template for DTC

- **DIRECT SHIPPER PERMIT:** Any winery licensed in British Columbia as a wine manufacturer may apply for a direct shipper permit. The applicant must submit a copy of a valid BC manufacturer's license and must agree to submit to the legal and regulatory jurisdiction of Alberta. The permit fee is \$100 per year.
- **DIRECT TO CONSUMER SHIPPING:** Any BC winery holding a valid direct shipper permit from Alberta may ship 100% BC wine via the post office or another common carrier to an adult person in Alberta for personal use and consumption.
- **LIQUOR TAX COLLECTION AND REMITTANCE:** The direct shipper winery must pay the Alberta liquor tax (\$2.75 per 750ml bottle or other applicable liquor tax) on the total dollar amount charged for the wine, plus any applicable bottle fee or environmental deposit (if any) and must do so at regularly designated intervals.
- **SHIPPING CONTAINER LABELING:** All containers of wine shipped directly to a resident Alberta must be conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 19 OR OLDER REQUIRED FOR DELIVERY."
- **DESTINATION OF SHIPMENTS:** The direct shipper may ship to the ultimate consumer's home address or to another address designated by the customer. Shipping to 'dry' communities will be prohibited.
- **AGE VERIFICATION:** The direct shipper must cause the carrier to verify that the buyer is at least 19 years of age through obtaining a copy of a government issued photo identification. The recipient at the time of delivery is required to provide photo identification verifying their age along with a signature.
- **REPORTING:** The direct shipper must report all shipments into Alberta on a quarterly basis and must fully comply with all audit requests. The reports must include order number, litres shipped, and carrier tracking numbers. For privacy purposes individual consumer details should not be on the reports, but would be kept by the seller for 3 years.

# What is different from *Comeau* about the current Alberta situation?

- The federal *IILA* has been amended since *Comeau*.
- Alberta permits its small craft manufacturers to ship DTC (*Steamwhistle*).
- Clear evidence that removal of the trade restriction has minimal, if any, impact on the integrity of Alberta alcohol market.

# What constitutional arguments can be made in favour of permitting inter-provincial DTC shipping?

- *Comeau approach* - Alcohol is a 'controlled substance' and the restrictions on DTC from out of province is part of an integrated set of laws designed to comprehensively regulate manufacture, distribution, sale and consumption of liquor in the province; impact on trade is not the primary purpose but is incidental.
- Can it be established that the primary purpose of the restrictions is to restrict trade and protect the local Alberta industry?
- Do the 2019 amendments to the *ILLA* give rise to a paramountcy argument?
- Is there a Canadian equivalent of the *Granholm v. Heald* case in the US Supreme Court? i.e prohibition on discriminating between in-province and out-of-province producers.
- Will a court hear the empirical evidence to the effect that eliminating the current restrictions on inter-provincial DTC will not negatively impact the integrity of the Alberta alcohol market.

# THANK YOU!



Al Hudec

Email: [ahudec@farris.com](mailto:ahudec@farris.com)

Tel: 778 886 9356