

Court of King's Bench of Alberta

Citation: R v Robertson Bros. Holdings Inc, 2026 ABKB 377

Date: 20260514
Docket: 250992229S1
Registry: Edmonton

Between:

His Majesty the King

Respondent

- and -

Robertson Bros. Holdings Inc.

Applicant

**Memorandum of Decision
of the
Honourable Justice N. Whitling**

Appeal from the Conviction by
Justice of the Peace M. Gallo
Filed on the 27th day of May, 2025

[1] The Appellant, Robertson Bros. Holding Inc., appeals its conviction of May 27, 2025, before Justice of the Peace M. Gallo of the Alberta Court of Justice for advertising vaping products contrary to s. 7.2(1)(b) of the *Tobacco, Smoking, and Vaping Reduction Act* of Alberta (the “Act”). The penalty associated with the conviction was a fine of \$900. The further practical effect of the conviction is that the Appellant is required to remove a significant quantity of exterior signage associated with its Edmonton vape shop.

[2] The signs found by the trial judge to offend s. 7.2(1)(b) did not identify any specific vape product. Instead, they were found to be offensive due to the presence of the word “vape”. Two of the signs for which the Appellant was convicted were marquee and pilon signs which simply state “Vape Shop”, and several other of the offensive signs set out the Appellant’s business name “VapouRevolution”.

[3] The applicable offence provision of the Act reads:

7.2(1) No person shall advertise or promote tobacco products or vaping products

(a) in any place where tobacco products or vaping products are sold or offered for sale, or

(b) in any manner if the advertisement or promotion is visible from outside a place in which tobacco products or vaping products are sold or offered for sale.

[4] The term “vape” for the purposes of the Act is defined in s. 1:

1(j.1) “vape” means to inhale or exhale the vapour produced by a vaping product;

[5] It bears emphasis that the above offence provision does not prohibit the advertisement or promotion of “vaping” in general or the use of the word “vape”. Instead, it prohibits the advertisement or promotion of “vaping products”, which are defined in s. 1(j.2):

1(j.2) “vaping product” means, subject to the regulations,

(i) a product or device that contains a power source and heating element intended for vaporizing a substance referred to in subclause (ii) for inhalation,

(ii) a solid, liquid or gas substance, whether or not the solid, liquid or gas substance contains nicotine, that is intended for use in a product or device referred to in subclause (i) and that, on being heated, produces a vapour, but does not include

(A) a controlled substance within the meaning of the *Controlled Drugs and Substances Act* (Canada),

(B) cannabis as defined in the *Cannabis Act* (Canada),

(C) compressed tobacco that is intended to be consumed by inhalation through a device that heats the compressed tobacco, or

(D) a drug as defined in the *Food and Drugs Act* (Canada),

or

(iii) a cartridge or component for a product or device referred to in subclause (i);

[6] Some of the other provisions of the Act which contain the words “vaping product” include the following:

1(h.1) “retailer” means a person engaged in a business that includes the sale of tobacco products or vaping products;

[...]

7.1 No person shall, in any place where tobacco products or vaping products are sold or offered for sale, display or permit the display of tobacco products or vaping products in any manner that would permit a consumer to view or handle a tobacco product or vaping product before purchasing it.

[...]

7.2(2) Despite subsection (1), a place described in subsection (1)(a) may have one or more signs that lists the tobacco products or vaping products offered for sale and their prices if the signs comply with the requirements prescribed by the regulations.

[7] Reading the Act as a whole, s. 7.2(1)(b) cannot be interpreted as prohibiting advertisements or promotions simply because they contain the word “vape”. Instead, that provision prohibits the advertisement or promotion of “vaping products”, which are “a product or device”, “a solid liquid or gas substance”, or “a cartridge or component for a product or device”. Although not comprising part of the legislation applicable to this appeal, Health Canada identifies some of the “vaping products” available on the market as “mods, pod-mods, vape pods, vapes, disposables, sub-ohms, vape pens, e-hookahs, tank systems, electronic cigarettes / e-cigarettes, electronic nicotine delivery systems (ENDS), electronic vaping device and nicotine vaping products (NVP)”.¹ These are examples of some of the items that fall within the Act’s definition of “vaping product”. As another example, s. 7.2(1)(b) would prohibit advertisements and promotions of the “JUUL” vaping product addressed in *Stephens v JUUL Labs Canada, Ltd.*, 2024 BCCA 99. But s. 7.2(1)(b) does not prohibit a sign that simply says “vape” or “Vape Shop”.

[8] In reaching this conclusion, I have considered the purpose of the Act and s. 7.2(1)(b) in accordance with the modern principle of statutory interpretation examined in such cases as *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, and most recently in *R v Nguyen*, 2026 SCC 10. This principle requires consideration of, among other things, the purpose underlying the Act, which is to protect people in Alberta - particularly children - from the harmful effects of tobacco products. In my view, an application of this principle to the legislation now at issue does not render the use of a “Vape Shop” sign a quasi-criminal act.

[9] I have also considered that s. 7.2(1)(b) constitutes penal legislation which must be construed strictly: *Marcotte v Deputy Attorney General (Canada) et al*, [1976] 1 SCR 108 at p. 115. Although this interpretive principle may not apply with the same rigor to ‘quasi-criminal’ or regulatory offences (*Merk v International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, [2005] 3 SCR 425 at para.33), the Supreme Court of Canada has also stated in relation to such offences that “[i]t cannot be argued that an enactment can and must provide enough guidance to predict the legal consequences of any given course of conduct in advance” (*R v Nova Scotia Pharmaceutical Society*, [1992] 2 SCR 606 at p.639). In

¹ Government of Canada, “About Vaping” (<https://www.canada.ca/en/health-canada/services/smoking-tobacco/vaping.html>).

my view, the language s. 7.2(1)(b) does not notify business-owners like the Appellant that the use of words like “vape” or “Vape Shop” in their signage will constitute an offence.

[10] For these reasons, I find that the learned trial judge erred in finding that s. 7.2(1)(b) prohibits the use of signs containing generic language like “Vape Shop”. Rather, it prohibits the advertisement or promotion of any of the “vaping products” that are sold within vape shops.

[11] Turning to the second issue in this appeal, the trial judge held that the Appellant is permitted to maintain one – and only one – of the signs outside its vape store. This conclusion was based upon s. 10(3) of the *Tobacco, Smoking and Vaping Reduction Regulation*, A.R. 240/2007 (the “regulations”):

10(3) Despite section 7.2(1)(b) of the Act, a tobacconist or specialty vape store retailer may display a sign visible outside the retail premises of the tobacconist or the specialty vape store, as the case may be, that indicates the name of the retailer’s business.

[Emphasis added]

[12] In the trial judge’s view, the effect of the words “a sign” in s. 10(3) of the regulations is to place a cap upon the number of permissible signs indicating the name of the retailer’s business. In reaching this conclusion, the trial judge compared the language of s. 10(3) of the regulations with s. 7.2(2) of the Act which states:

7.2(2) Despite subsection (1), a place described in subsection (1)(a) may have one or more signs that lists the tobacco products or vaping products offered for sale and their prices if the signs comply with the requirements prescribed by the regulations.

[Emphasis added]

[13] Comparing these two provisions the trial judge held: “This contrast reveals that when the Legislature intended to allow more than one sign, it did so in specific language and accompanying controls.”

[14] With respect, and setting aside the fact that s. 10(3) of the regulations was not enacted by the Legislature, this reading of s. 10(3) of the regulations fails to give effect to s. 26(3) of the *Interpretation Act*, RSA 2000 c. I-8:

26(3) In an enactment, words in the singular include the plural, and words in the plural include the singular.

[Emphasis added]

[15] Further, where the Lieutenant-Governor-in-Council intended to create a cap on the number of signs to be permitted in a particular circumstance, such as in s. 5(a) and 5(b) of the regulations, the words “a maximum of one sign” were adopted as opposed to the words “a sign”. As Professor Ruth Sullivan writes in *Sullivan on the Construction of Statutes*, 5th ed. (LexisNexis Canada Inc: Markham, 2008) at 216: “Given the presumption of consistent expression, it is possible to infer from the use of different words or a different form of expression that a different meaning was intended.” These words were quoted with approval in *Envision Edmonton Opportunities Society v. Edmonton (City)*, 2012 ABCA 188 at para. 28. Applying this principle, s. 10(3) does not limit the number of permissible signs at a maximum of one.

Rather, it states that a sign indicating the name of the retailer's business and otherwise falling within s. 10(3) of the regulations will not be contrary to s. 7.2(1)(b).

[16] In summary, I conclude that the learned trial judge convicted the Appellant based upon incorrect interpretations of s. 7.2(1)(b) of the Act and s. 10(3) of the regulations. In my view, these are pure errors of law reviewable for correctness.

[17] For these reasons, the appeal is allowed, the Appellant's conviction is set aside, and an acquittal is entered.

Heard on the 12th day of May, 2026.

Dated at the City of Edmonton, Alberta this 14th day of May, 2026.

N. Whitling
J.C.K.B.A.

Appearances:

Teresa Magee
for the Crown

Austin Robertson
Agent for Robertson Bros. Holdings Inc.