

**HEARING BEFORE A PANEL  
OF THE BOARD OF THE  
ALBERTA GAMING AND LIQUOR COMMISSION**

**IN THE MATTER OF the Gaming and Liquor Act  
Revised Statutes of Alberta 2000, Chapter G-1  
current as of November 1, 2010  
and the Regulation**

and

**IN THE MATTER OF 1665098 Alberta Ltd.  
o/a Black Betty Burger & Wine Bar  
606 – 1 Street SW  
Calgary, Alberta  
T2P 1M6**

**concerning alleged contraventions**

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<b>DATE OF HEARING:</b>	<b>December 17, 2014</b>
<b>HEARING PANEL:</b>	<b>Mr. W.J. Anhorn, QC, Panel Chair Mr. B.C. Shervey, Panel Member Ms. T.L. Lawrence, Panel Member</b>
<b>LICENSEE REPRESENTATIVES:</b>	<b>Mr. L., Legal Counsel Mr. F., Director</b>
<b>COMPLIANCE AND SOCIAL RESPONSIBILITY:</b>	<b>Mr. M., Hearing Officer Mr. O., Resource Officer</b>

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**DECISION OF THE HEARING PANEL**

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**I. Jurisdiction and Preliminary Matters**

As a result of receiving a Request for Decision, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed five mandatory conditions on Class A Liquor Licence 771990-1 issued to 1665098 Alberta Ltd. operating as Black Betty Burger & Wine Bar, Calgary (Black Betty), by letter dated September 23, 2014.

The licensee subsequently applied for a hearing under Section 94(1) of the *Gaming and Liquor Act*, requesting that condition number five be set aside. A Hearing Panel of the Board of the AGLC met to consider whether the mandatory conditions imposed on the licence were reasonable, in particular condition number five, which states:

*"N. N. may not be employed by the premises as a Manager/Supervisor; person responsible for making decisions with respect to the licensed premises".*

Mr. M. presented the case on behalf of the CSR Division and Mr. L. and Mr. F. represented Black Betty. The licensee and the Hearing Panel were provided with a hearing file containing various documents pertaining to the imposition of the mandatory

conditions and the licensee's request for a hearing. The hearing file was entered into evidence by the CSR Division as Exhibit #1.

The essence of the allegations and the justification for the imposition of the mandatory condition as it relates to Mr. N. is that it is alleged that he "associated" with known gang members or has been in the company of known gang members at other places or establishments other than Black Betty. Further, that Mr. N. harbored or allowed known gang members or "persons of interest" to elude members of the Calgary Police Service Gang Suppression Team (GST) during their walkthroughs of the licensed premises by having them exit through the rear of the premises.

Section 69.1(2) of the *Gaming and Liquor Act* states that "for the purposes of this section, a person is associated with a gang if the person (a) is a member of the gang, (b) supports, facilitates or participates in the gang's activities, or (c) is in the company of a person described in clause (a) or (b)".

There was no evidence presented which leads the Panel to believe that Mr. N. is a member of a gang or supports, facilitates or participates in any gang activities, but rather the allegations appear to relate solely to section 69.1(2)(c) of the *Gaming and Liquor Act*, as noted above.

The enactment of Section 69.1 of the *Gaming and Liquor Act* was intended to provide police authorities with a useful tool to combat gang or gang related activities within licensed premises by giving them authority to exclude or remove gang members from licensed premises. It has been demonstrated that this ability to exclude or remove is a useful mechanism to curb violence and unlawful behavior in and near licensed premises. As Mr. L. pointed out to the Panel, the legislation does not make it illegal for gang members or their associates to be in licensed premises nor does the *Gaming and Liquor Act*, regulations or AGLC policy create any positive obligation on the part of the licensee to do anything when faced with this situation.

It goes without saying that bars, drinking establishments and night clubs have a tendency to attract undesirables of varying descriptions, including gang members and their associates. The dilemma for many licensees, managers and employees is to be able to firstly, effectively identify gang members and secondly, to exclude or remove them without putting themselves at risk. As a result, licensees and their employees are encouraged when that situation presents itself to call the GST and leave it to the police to exercise their authority under the *Gaming and Liquor Act*.

As a manager or a host of a licensed premises, which appears to be the role of Mr. N. at Black Betty, one may come in contact with or socialize with a gang member unwittingly or by necessity given the role or responsibility. This is not being in the "company" of a gang member as contemplated by the *Gaming and Liquor Act*.

Numerous incidents were recited in the Request for Decision which purport to provide support for the conclusion that Mr. N. was knowingly in the "company" of known gang members, in the context of being a friend or sympathizer. Most of the evidence presented to the Panel in this regard was second and third hand information based upon police incident reports or internal memos with nothing more than a bare recital, without there being any detail which would give it credence or credibility. Where there was direct evidence in this regard from Constable M., Mr. N. either denied the allegation or gave a credible explanation, neither of which was seriously challenged on cross-examination.

Condition number five, which is the subject matter of this hearing, appears somewhat draconian and punitive in nature and if upheld would have the effect of seriously limiting or eliminating Mr. N.'s ability to be employed in the food and beverage industry. In order for such a condition to be upheld, there must be clear and convincing evidence that the condition is both necessary and required in order to maintain public order and safety in the licensed premises. Although Mr. N.'s conduct is not completely beyond suspicion, the evidence as a whole, taking all matters into account, is neither clear nor convincing and in the Panel's view falls far short of what is required in these circumstances.

As a result, condition number five is hereby struck immediately as a condition on Class A Liquor License #771990-1. Mandatory conditions one through four imposed on the Licence on September 23, 2014 remain in effect.

Signed at St. Albert this 18<sup>th</sup> day of February, 2015.

A handwritten signature in black ink, appearing to be 'W. S. A.', written over a horizontal line.

