

**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 Amateur Artists Association of Alberta
3309 – 19 Street NE, Suite 208
Calgary, Alberta
T2E 6S8**

DATE OF HEARING:	November 5, 2014
HEARING PANEL:	Mr. B.C. Shervey, Panel Chair Ms. S.L. Green, Panel Member
LICENSEE REPRESENTATIVES:	Mr. M., President Mr. K., Secretary/Treasurer
COMPLIANCE AND SOCIAL RESPONSIBILITY:	Ms. D., Hearing Officer Ms. C., Resource Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of an Order to Hold Money or Property, regarding the Amateur Artists Association of Alberta (Association) gaming account #0856-5201061, being served on the TD Canada Trust located at 3012 – 17 Avenue SE, Calgary, Alberta on September 11, 2014, the Association requested a hearing before a Panel of the Board of the Alberta Gaming and Liquor Commission (AGLC).

The Panel and Association were provided with a hearing file containing the Notice of Hearing dated October 20, 2014 and documentation relating to the Order to Hold Money or Property being placed on the Association's gaming account. The Compliance and Social Responsibility (CSR) Division of the AGLC subsequently provided a disclosure binder containing additional documentation. Mr. M. and Mr. K. confirmed the Association received the Notice of Hearing dated October 20, 2014 and hearing file, together with the CSR Division's disclosure binder. The hearing file and disclosure binder were entered into evidence by the CSR Division as Exhibit #1. Ms. D. presented the case on behalf of the CSR Division and Mr. M. and Mr. K. represented the Association.

II. The Issue

Should the Order to Hold Money or Property, with respect to the Association's gaming account #0856-5201061, served on the TD Canada Trust located at 3012 – 17 Avenue SE, Calgary, Alberta be cancelled or replaced?

III. Evidence

L. G. – evidence led by Ms. D.

Ms. G. is a Senior Auditor with the Audit Services Division of the AGLC. The Association was referred for an audit from the Financial Review Division of the AGLC. There is an ongoing audit in progress therefore an Order to Hold Money or Property was placed on the Association's gaming account until the audit can be completed. The Financial Review Division noted approximately \$75,000 in gaming funds spent on unapproved uses. On February 13, 2012 the Financial Review Division requested that the Association reimburse the gaming account for the total misspent funds but no repayment has been made to date.

The audit period is from February 1, 2010 to June 30, 2014. This period was set to coincide with the financial review reporting period to address the unapproved use of proceeds and to determine if subsequent expenses were in line with AGLC policies. The Order to Hold Money or Property was placed on the Association's gaming account for the following reasons:

1. Gaming funds were deemed to have been spent on unapproved uses;
2. The Association has been unable to provide a membership list;
3. Programming, specifically lack of programming, was noted as a concern; and
4. Significant related party transactions were identified as being paid from the gaming account.

During the audit Ms. G. determined that approximately 95% of the gaming funds spent during the audit period were spent on unapproved uses. The expenses were not related to any charitable programming and totaled \$182,817.43. Over \$140,000 of those expenses were paid to related third parties. A full eligibility review was requested for the Association and that review is currently ongoing.

During Ms. G.'s initial interview with the Association, the Association stated it had over 300 members. However, the Association was unable to provide the AGLC with a membership list in order to establish a membership structure. The Association did provide a letter on October 27, 2014 advising that the AGLC could make an appointment to review the membership list/structure at the office of the Association. Four members were identified through AGLC internal records but all four of those members are part of the Association's executive. Those members have rotated through the executive positions of the Association since 2006; no new members have joined the executive.

Ms. G. met with Mr. S. K. and Mr. K. M. during an initial audit interview. They provided verbal information regarding the Association's programming but no supporting documentation was provided. Tab 2(b) of the CSR Division's disclosure binder contains a Corporate Search for the Association at the time the audit was initiated. Ms. G. attempted to contact several of the Directors listed on the Corporate Search but had difficulty making contact with many of them and was unable to obtain any information to verify membership from the others. The Association cited privacy concerns and was unwilling to provide the AGLC with a membership list. They also advised Ms. G. they held an annual general meeting and the executive/membership voted against providing the AGLC with a membership list. As part of the audit, Ms. G. is required to contact members of the Association in order to verify information and attending the Association's office to review the membership list is not sufficient for the purposes of the audit.

Tab 3 of the CSR Division's disclosure binder contains the documentation the Association provided to the AGLC with respect to programming. During the initial interview, the Association advised they have two levels of programming. The Association provided the AGLC with narrative notes only; supporting documentation was not provided. The first level of programming is providing amateur artists with access to the Association's facility space for practice. The Association has approximately 200 square feet of space which is used for programming. They were unable to provide any schedules, advertising or sign-in sheets for programs offered by the Association.

The second level of programming consists of holding annual amateur artists competitions. The Association indicated approximately 300 people attend each of the Association's competition events. These events appear to be organized by a third party and hosted by the Association. The companies hired to organize the events are owned by Mr. K.'s family members. The Association did not keep any material or documentation for events hosted by the Association. All the documentation was retained by the event planner. The Association did provide Ms. G. with two DVDs, with narrative notes, as documentary support for two events hosted by the Association. Ms. G. viewed the DVDs and noted concerns regarding the date and contradictory information contained on the DVDs. There was no documentation provided to the AGLC to support the events recorded on the DVDs. The second DVD indicates the event was a grand finale but the Use of Proceeds form approved by the AGLC was for a semi-final.

Tab 4 of the CSR Division's disclosure binder provides a list of related party transactions. During the audit, the Association provided a binder containing all the documentation in their possession for the four year audit period. The binder contained Use of Proceeds printouts, lease agreements and a copy of the request to amend the use of gaming proceeds. They also provided copies and originals of their bank statements from September 2011 to June 2014. The audit period is from February 1, 2010 to June 30, 2014 and the Association did not provide complete documentation for the audit period. Ms. G. used the financial reports from the Financial Review Division for the analysis stage of the audit.

During the audit period the Association spent \$192,377.96 from the gaming account, of which \$182,817.43 could not be linked to any programming offered by the Association. The expenses were categorized as follows:

1. Unapproved use of proceeds	\$ 33,110.81 (18%)
2. Payments to related parties	\$125,792.20 (69%)
3. Payments to executives for personal expenses	<u>\$ 23,914.42</u> (13%)
	\$182,817.43

Tab 5 of the CSR Division's disclosure binder provides a list of unapproved use of proceeds, including casino event coverage expenses, taxi expenses, wages, salaries and fees for services and honorariums, equipment expenses, food and other items and telephone expenses. Tab 6 outlines the organizations that benefited from payments related to third parties from gaming funds. During the audit period the K. family received significant gaming funds for services allegedly provided to the Association. In addition, Universal Consulting Group Inc., owned by M. K., received \$51,324 in facility rent, paid from the gaming account.

Tab 7 provides a listing of payments made to executives for personal expenses, specifically the current and past President and Treasurer's personal expenses. The cheques for all the expenses/payments in question were signed only by the Treasurer/Secretary, Mr. K. M.. Some of the cheques were for payments to K. M. and were signed by K. M.. AGLC policy requires that any payments made from the gaming account must be signed by two executives of the Association.

On September 30, 2014 the Association wrote to the AGLC requesting a Variance Order to release gaming funds to pay for expenses however, no supporting documentation was provided so the AGLC was unable to release any funds from the gaming account. The Association stated that the money in their gaming account was earned by the Association by providing substantial volunteer hours and the money belongs to the Association. They do not have any other source of income.

Ms. G. – cross-examined by the Association

Ms. G. had a telephone conversation with Mr. K. about providing a membership list and Mr. K. became very upset. Ms. G. handed the phone to her manager, Ms. D., in effort to diffuse the situation. Ms. G. then went on three weeks of vacation so her manager took over the file in her absence.

Ms. G. – questioned by the Panel

The Financial Review Division initially identified \$72,000 in misspent gaming funds. When Ms. G. reviewed the file she identified additional funds which could not be linked to the Association's programming, bringing the total to \$182,817.43.

Evidence of the Association – evidence presented by Mr. M. and Mr. K.

The Association was established in 1994. In 2003 the Association was experiencing difficulty obtaining financial support so they applied for a gaming licence. The Association holds a board meeting every three months and an annual general meeting once a year. The Association admits they have not kept good records with respect to their programming and events; they were not advised by the AGLC they were required to keep records. They keep records of their annual general meetings but not board meetings. The Association does have programs and sometimes the programs are conducted in conjunction with another association.

The DVDs provided to the AGLC by the Association were recorded by a third party; the Association did not hire anyone to record the events. The DVDs were edited for a television program and the Association did not have any control over the editing process. The Association did not watch the DVDs before they provided them to the AGLC. The Association does provide programming but they have not been diligent in keeping a record of programs. The AGLC is not being truthful in stating the Association did not provide any programming.

The funds in the gaming account were generated by the Association and they would like to use those funds. The Association has decided not to participate in any more casino events but they require the money remaining in the gaming account during

the transition period. They are willing to cooperate with the AGLC but there is only so much the Association can do.

Mr. K. rented the facility to the Association free of charge from 1994 to 2003; the space was owned by Mr. K.. In 2003 the Association began paying rent to Mr. K. and the rent payment was approved by the AGLC. The AGLC did not provide the Association with information on what type of documentation was required and granted many approvals for expenses. The Association believed they could purchase food and supplies because the AGLC did not tell them it was not an allowable expense. They will not purchase any food or supplies in the future.

The equipment purchased by the Association is currently being used at the Association's office. A board member paid for the equipment using his Visa because Dell Computers would not take a cheque. The Association does not believe they spent any funds that were not approved by the AGLC. If the money should not have been spent, the AGLC did not advise the Association otherwise until now. They do not run a "dirty" organization.

The Association did provide some of the executives with equipment to carry out work on behalf of the Association. The AGLC did not inform them they could not do that. They are a volunteer based organization and they need help because they are not familiar with all AGLC policies and procedures. The AGLC should have told them there were concerns sooner. They AGLC continued to grant approvals for expenses so the Association did not know they were doing anything wrong.

The membership voted at the annual general meeting not to release a membership list to the AGLC because the members did not want their personal information disclosed to the AGLC. There is a list of 40 volunteers available at the office of the Association, together with a membership list.

Association – cross-examined by Ms. D.

The Association received an engagement letter from the AGLC at the time the audit was commenced. The AGLC was provided with whatever information the Association had available. Some information requested was not provided but the Association provided an explanation for the missing information. The Association purges their records regularly because they have a very small office space.

The Association is not currently offering any programming because the AGLC froze the money in their gaming account and they cannot afford to offer a program at this time. The Association did provide Ms. G. with two DVDs in support of their programming. That is the only supporting documentation they have in their possession. The Association is not sure what else they can provide to prove they offer programming. Volunteers run the programs and the association provides the volunteers and artists with a facility and pays the rent for the facility. The Association opens the facility for the volunteers to run the programs. They do not keep any documentation on the program sessions conducted by the volunteers. The Association simply provides a venue for the artists to practice.

The Association's programming is advertised in the Pakistan Express newspaper and other forms of Punjabi advertising. The company owned by Mr. K. has records at his office which are available for viewing by the AGLC. The Association's knowledge of AGLC gaming policies is very limited. They do not visit the AGLC website and have not utilized the GAIN program offered by the AGLC. They only refer to the AGLC Use of Proceeds form for information.

Association – questioned by the Panel

Approximately 110 members attended the Association's annual general meeting this year. The Association shares volunteers with other organization and people join the organization through word of mouth. The Association does not charge a membership fee.

IV. Summation

Ms. D.

The CSR Division is of the opinion it is important the Order to Hold Money or Property remain in place until all issues identified in the audit have been addressed to the satisfaction of the CSR Division. There has been no supporting documentation provided to the AGLC, aside from narrative information, to substantiate the Association's programming. Written requests detailing the documentation that is required for the audit have been provided on numerous occasions to the Association. The Association has not provided any participant information so it is difficult to align use of proceeds when that information is not available. The Association has failed to supply a membership list, citing privacy concerns, even after information was provided to the Association with respect to the relevant FOIP legislation.

The Association does not keep any records of their board meetings or programming. The records the Association has provided to date have been limited and incomplete; only the front pages of invoices/statements have been provided. The Association is unfamiliar with relevant AGLC policies and has made no attempt to access training available through the AGLC since obtaining a gaming licence in 2003. The Association has placed the onus on the AGLC to ensure the Association is familiar with the policies under which the group operates. The AGLC relies on charities to provide complete information.

Over \$140,000 in gaming funds went to businesses and individuals of the K. family and none of those funds can be substantiated, even though numerous requests for supporting documentation have been made; only a narrative has been provided. According to AGLC records, only four or five members of the Association can be substantiated as being rotated throughout the executive of the organization. The AGLC has not received any minutes from board meetings or annual general meetings which would allow the AGLC to verify attendance at those meetings.

The CSR Division respectfully submitted that the Order to Hold Money or Property remain in place until the audit and an eligibility review can be completed and all issues identified in the audit have been addressed to the satisfaction of the CSR Division.

The Association

The Use of Proceeds form says the Association is only required to maintain records for a period of two years. If they do not have the requested documentation they cannot provide it to the AGLC. They have addressed all the AGLC's concerns to the best of their ability. The Association is learning what is required of them and they are prepared to change in the future; they cannot change anything they have done in the past. The audit has been a good learning opportunity for the Association.

The volunteers worked hard during the casino events to earn the funds and the Association requires the funds until they can secure an alternate form of funding. If the AGLC requires any additional information, the Association will provide it if they have it.

V. Finding

After carefully reviewing the relevant AGLC policies and considering the evidence presented at the hearing, the Panel is of the opinion the Association did not provide a compelling reason why the Order to Hold Money or Property should be cancelled. The Association advised the Panel they did not retain any documentation with respect to programming and related expenses because the AGLC did not advise them they were required to keep such documentation. It is the obligation of each charitable organization to ensure they are up to date on the AGLC policies and legislation under which they operate.

The Panel has concluded that the Order to Hold Money or Property, placed on the Association's gaming account #0856-5201061, shall remain in place until a full eligibility review can be conducted, the audit can be completed and all issues identified in the audit have been addressed to the satisfaction of the CSR Division, in order to ensure the appropriate use of revenue from gaming activities. In addition, all members of the Association's current executive must attend a Gaming Information of Charitable Groups (GAIN) session and thereafter, the president and treasurer of the Association must attend a GAIN session yearly in order to hold a position on the executive.

Dated at St. Albert this 23rd day of February, 2015.



B.C. Shervey, Hearing Panel Chair