

**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 June 12, 2013
and the Regulation**

and

**IN THE MATTER OF
Leduc Rapid Bingo Association
102, 5910 – 50 Street
Leduc, Alberta
T9E 0R6**

concerning alleged contraventions

DATE OF HEARING:	May 21, 2015
HEARING PANEL:	Ms. S.L. Green, Panel Chair Mr. W.A. Clark, Panel Member
ORGANIZATION REPRESENTATIVES:	Mr. D., President Ms. W., Treasurer
COMPLIANCE AND SOCIAL RESPONSIBILITY:	Ms. F., Hearing Officer Mr. C., Resource Officer

DECISION OF THE HEARING PANEL

I. Jurisdiction and Preliminary Matters

As a result of receiving an incident report dated March 24, 2015 from the Director of Audit Services, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 91(2) of the *Gaming and Liquor Act*, without a hearing, on Leduc Rapid Bingo Association (LRBA).

The LRBA subsequently applied for a hearing under Section 94(1) of the *Gaming and Liquor Act*. A Hearing Panel of the Board of the AGLC met to hear the following alleged contraventions:

1. Fixed fees shall not include the costs of operating or providing non-gaming space, supplies or services, Section 12.1.1(c) Bingo Terms & Conditions and Operating Guidelines; and
2. A renovation or a series of renovations leading to completion of an entire project with a total value of \$25,000 or more must be approved by the Board of the AGLC. A renovation project or a series of projects with a total value of less than

\$25,000 may be approved by the Regulatory Division. The facility licensee shall not make any financial commitments or disbursements prior to the receiving the appropriate approval, Section 6.5.4 Bingo Terms & Conditions and Operating Guidelines.

The Panel further met to hear the application of two licence conditions:

1. In the event that the land and building are ever sold, all proceeds collected from the sale must be recognized as gaming funds; and
2. Any future mortgages or credit facilities secured against the land and building must have prior approval from the AGLC.

The Panel and the LRBA were provided with a hearing file containing the incident report dated March 24, 2015 and Notice of Hearing dated April 27, 2015. The CSR Division provided a further disclosure binder and the LRBA provided a document entitled "Presentation of Audit Appeal before the AGLC Board". The hearing file and disclosure binder were entered into evidence by the CSR Division as Exhibits 1 and 2 and the Presentation of Audit Appeal before the AGLC Board was entered into evidence by the LRBA as Exhibit 3.

Ms. F. presented the case on behalf of the CSR Division and Mr. D. and Ms. W. (the Association) represented the LRBA. Mr. D. confirmed the Association received the Notice of Hearing dated April 27, 2015.

II. The Issue

a) Did the LRBA:

1. Contravene Section 12.1.1(c) of the Bingo Terms & Conditions and Operating Guidelines?
2. Contravene Section 6.5.4 of the Bingo Terms & Conditions and Operating Guidelines?

b) Should the following conditions be placed on LRBA Licence No. 63656?

1. In the event that the land and building are ever sold, all proceeds collected from the sale must be recognized as gaming funds; and
2. Any future mortgages or credit facilities secured against the land and building must have prior approval from the AGLC.

c) Should the LRBA be directed to repay \$26,083 from non-gaming funds to its member clubs?

III. Evidence

Before calling her first witness, Ms. F. advised the Panel that the CSR Division and the Association agreed on a set of facts pertaining to the incident report dated March 24, 2015 and those facts were outlined in the Agreed Statement of Facts signed on May 11, 2015 and contained in section 1 of the disclosure binder. The Association acknowledged that they agree with the two contraventions and licence condition 1.

The Association originally had a reimbursement requirement of \$80,390 as a result of contravention 1. The Association submitted facility renovation costs paid for with non-gaming funds totaling \$76,609 for post-approval in order to reduce this repayment requirement. Of these funds, \$54,307 was approved as a gaming expense, resulting in a direction to reimburse of \$26,083. The claim for the concession counter and utility hook-ups for the concession, totaling \$22,302, was denied and that is the reason for this hearing. The Association is requesting that these concession costs be considered a gaming expense and be used to reduce the direction to reimburse to \$3,781. Additionally, the Association would like to request that a \$1,279 door relocation associated with the concession be approved and they wish to address the repayment plan that will be contingent on the final amount assessed, as to be repaid to the member charities.

In addition, the Association does not agree with licence condition 2 which states:

“Any future mortgages or credit facilities secured against the land and building must have the prior approval of the AGLC”.

Mr. C. – evidence led by Ms. F.

Mr. C. is a chartered accountant and has worked for the Audit Services Division of the AGLC since November 2012.

Mr. C. presented evidence on behalf of Audit Services which spoke of the impact that the renovations would have on gaming expenses. He advised that a change in space either reduces or increases the common costs to gaming operations.

The audit included a review of the financial documents for both gaming operations and non-gaming operations, primarily as it pertained to the facility costs. It also included a review of the leases for the Tenancy Association, all of the renovation costs conducted by the Association, fixed-fee rent calculations, as well as a historical look at the building purchased by the Association.

Disclosure binder, tab 5, page T5-1 was referenced. It shows that the renovations have decreased the facility space occupied by the bingo hall to 41% of the overall building, meaning that 41% of all common costs would be paid by gaming funds and the remainder should be paid with non-gaming funds.

There were two contraventions identified in the audit. The first contravention was that during the audit period (January 2010 to December 2013) the Association spent a total of \$80,390 on unapproved operating costs which were: i) \$59,948 collected in facility rent through fixed fees exceeding the operating costs of gaming space; as well as ii) \$20,442 spent in common costs for non-gaming space including power, water, heat, telephone, property taxes and condo fees. The second contravention was that the Association spent gaming funds totaling \$29,202 from its contingency reserve for renovations of the bingo hall without the prior approval of the AGLC. For the period of the audit, the Association member groups were overcharged for facility costs in the amount of \$80,390. This amount was directed to be reimbursed by the Association to the member charities.

Disclosure binder, tab 2, page T2-4 was referenced to show how the amount was reduced from \$80,390 to \$26,083.

Disclosure binder, tab 3, page T3-2 was referenced, showing that Section 6.5.4 of the Bingo Terms & Conditions and Operating Guidelines, that were in effect at the time the renovations were conducted, confirms that the Association was required to obtain AGLC approval prior to spending or committing any funds for renovations.

The reason for this hearing pertains to concession expenses resulting from the renovation that were submitted during and after the audit for approval and which were denied by the AGLC. Disclosure binder, tab 6, page T6-1 was referenced to show a summary of the unapproved concession expenses which totaled \$23,581.71. Disclosure binder, tab 7, Page T7-3 was further referenced, being a letter from the Association to the Inspections Division of the AGLC dated March 14, 2013, providing a further explanation about the renovations to the Bingo Hall. The AGLC did not approve the concession expenses due to Policy 12.1.2(a)(vi) of the Bingo Terms & Conditions and Operating Guidelines that were in effect at the time of the renovations (disclosure binder, tab 4, page T4-3), which policy states that gaming funds can only be used for gaming costs. Even if the Commercial Bingo Handbook had been used, the decision would not be any different and disclosure binder, tab 4, pages T4-7 and T4-8 were referenced in this regard.

Mr. C. advised the Panel of the steps he took to gain an understanding of the expenses, as well as identify the policies that would relate to those expenses. He prepared a recommendation about those costs and the interpretation of policy and, after going through the required channels of the AGLC, the concession expenses were denied.

The rental revenue is considered non-gaming revenue and therefore is not subject to the AGLC rules and regulations. Revenue earned in concession space is treated as non-gaming revenue.

Licence condition 2 imposed:

“Any future mortgages or credit facilities secured against the land and building must have prior approval from the AGLC”.

This condition was imposed due to the fact that the property was paid for with gaming funds. When an asset owned by an association (that was paid for with gaming funds) is sold, the proceeds from the disposition are returned to the member charities

and are regulated by the AGLC policy. When loans for non-gaming purposes are acquired and secured against such a property, then gaming funds are distributed to those non-gaming loans as an indirect way for an organization to pay for non-gaming items with gaming funds. Disclosure binder, tab 6, page T6-3, was referenced to show a source of funds identifying how the Association paid for the renovation costs via loans.

Mr. C. – questioned by the Panel

The \$146,000 bank loan would not be reduced in any way, notwithstanding any decision by the Panel with respect to the \$26,000. It is due to the \$146,000 loan that condition 2 has been applied. If the Association sells the building, the \$146,000 (payable to the Alberta Treasury Branch) would have to be paid from the proceeds of the sale of the building which is currently a gaming asset.

Ms. K. – evidence led by Ms. F.

Ms. K. is the Manager of Policy Development with the AGLC. From 1996 until August of 2014 she was directly responsible for the development of bingo policy, originally in the Bingo Terms & Conditions and Operating Guidelines, which was subsequently renamed the Commercial Bingo Handbook.

At the time of the renovations during March and April of 2013, the Bingo Terms & Conditions and Operating Guidelines were in effect. Disclosure binder, tab 4, page T4-1 was referenced to explain what bingo expenses were eligible to be paid under those guidelines. Page T4-1, section 12.1.2(a)(ii) specifies the expenses that are eligible to be included in the fixed fee and at point eight it specifically refers to “Facility Contingency Fund”. Disclosure binder, tab 4, page T4-2 refers to additional conditions which apply to the Facility Contingency Fund.

Disclosure binder, tab 4, page T4-3, 12.1.2(a)(vi) and page T4-4 were referenced and specifically speak to items that are not considered bingo expenses and specify that they shall not be included in the fixed fee or be paid for with gaming funds. Based on the provisions of the sections referenced, the concession expense for a new counter, utility hook-ups, plumbing and the door would not be considered an eligible bingo expense.

The Commercial Bingo Handbook came into effect on November 1, 2013. At that time, Bingo Alberta and the industry felt that even though concessions were a non-gaming operation, they were considered an essential service to bingo players and assisted the charities in generating their gaming proceeds. Policies were drafted that exist today in the Commercial Bingo Handbook to allow a certain expense contribution and very specific expenses are provided for. However, the concession counter and/or utility hook-ups in question still could not be approved under any section of the Commercial Bingo Handbook.

The AGLC does not allow gaming funds to be used for non-gaming expenses because charities are licensed to run bingo events to raise proceeds for charitable or religious purposes. Gaming proceeds are considered restricted funds and the Board has policies that relate to how gaming proceeds can be spent. A concession is considered a non-gaming activity and any profit from that type of operation is unrestricted and not subject to the Board’s use of proceeds or bingo expense policies. The AGLC does not licence or regulate non-gaming operations that exist in a bingo hall.

Ms. K. – cross-examined by the Association

Disclosure binder, tab 4, page T4-4 refers to the operation of a concession. The Association reiterated that they are not claiming operation expenses they are claiming construction expenses, which is a capital cost and not an operating cost.

Discussion followed regarding disclosure binder, tab 4, page T4-2 where it specifically refers to the Facility Contingency Fund. It is very specific about what is allowed and not allowed as it relates to gaming-related expenses. There is no category in the fixed fee that states “concession” capital expenditures. It is addressed in the Commercial Bingo Handbook. Disclosure binder, tab 4, page T4-6(v) is a repeat of what was in the former Bingo Terms & Conditions and Operating Guidelines. However, at page T4-7(vi) there are allowances that may be approved for a concession facility expense. A counter, for example, is interpreted as a fixture not as equipment.

Mr. D.

Mr. D. read Exhibit 3 entitled "Presentation of Audit Appeal before the AGLC Board". He provided the history of Rapid Bingo, starting with how the Association began, how it has progressed and their hopes for the future. His presentation also included the reason for leasing out surplus space which resulted in the bank loans and construction costs in question, as well as a request for consideration of a scheduled repayment plan.

Mr. D. – cross-examined by Ms. F.

The matter of rent was addressed. It was explained to the Association that under the new policy they can maintain a contingency reserve and utilize gaming funds to pay for expenses that are integral to their building. Discussion followed regarding the rent that will be charged on two of the building rentals over the next four years and the potential profit that would be made in the non-gaming account by charging this rent.

The CSR Division reiterated to the Association that gaming funds can be used to pay for any improvements to the building within the gaming area.

Discussion followed regarding the matter of Bingo Association members being charged "rent" and the audit that followed. The Association collected and kept rent from gaming operations in the non-gaming account to pay for facility renovations. Expenses paid from the non-gaming account are not reported to the AGLC. During the audit period, the Association paid renovation costs from its non-gaming account while waiting for approval from the AGLC. When approval was granted, the Association reimbursed their non-gaming account from the gaming Facility Contingency Fund. The Association collects a gaming Facility Contingency Fund to pay for renovation expenses and upkeep of the facility gaming portion of the building. The Association is in contravention of policy which states they are not allowed to commit gaming funds, or pay from gaming funds, prior to approval by the Board.

Mr. D. – questioned by the Panel

The owners of Leduc Rapid Bingo Association are the 31 member clubs. These member clubs are charitable organizations that have their name associated with an individual bingo that is held in the facility and all of the bingos that are run within this facility are run on behalf of one or more of those organizations. The building was purchased by Leduc Rapid Bingo Association and while there were no specific clubs mentioned on the purchase of that building, the bylaws of the Association would confirm the member groups that make up the Association. The number of shares that each group holds in the Association is based on the number of events held by each group in the period that the groups voted on, as well as however many events each group held in that period.

The Association explained how a breakdown in communication with the bowling alley resulted in the need for reconstruction of the concession.

Mr. D. commented that he was not advised of an AGLC audit until August 2013.

Ms. F. – questioned by the Panel

Any refunded monies go to member clubs, who are the same people that own the Association. The bylaws state when the building is sold the funds are distributed to the active member clubs at the time it was sold, based on the number of events that each club has worked in the last year. That is the incentive for the clubs to remain members of the Association. Discussion followed regarding the bylaws and Corporate Registry and the timing of dissolution of the Association.

If funds are going to a charity and they are deemed to be gaming funds, the charity needs to put those funds into their gaming account and report on it. If funds are deemed non-gaming funds, those funds go in their non-gaming account and they do not need to report on it to AGLC. That is why it is important to the CSR Division to determine gaming and non-gaming portions. If the Association is obtaining rent on the non-gaming side from leasing out the space, they can choose to do whatever they want with those funds. If the Association chooses to pay it back to the member clubs, those funds go into their non-gaming account to be spent however they wish. If the funds are deemed gaming funds, they go into their gaming account.

As a result, each charity reports to AGLC annually as to how they have spent their funds. As well, the Association does exactly the same thing. The CSR Division receives two reports and they should coincide.

IV. Summation

Ms. F.

The CSR Division has established that the member clubs were overcharged \$80,390 for facility expenses for the fiscal years 2010 to 2013. The Association has agreed to this in the Agreed Statement of Fact. A repayment of this overcharge was due to the gaming account to be distributed to member clubs.

The CSR Division also established that the Association paid for the March and April 2013 renovation expenses with non-gaming funds primarily by securing a bank loan totaling \$146,000. The Auditor worked with the Association to obtain post-approval for the renovation costs in the amount of \$54,307 on eligible gaming renovation expenses.

The renovations exclusive to the concession totaling \$22,302 were not approved for several reasons. At the time the renovation occurred, they were subject to the Bingo Terms & Conditions and Operating Guidelines of which there was no provision for concession expenses to be paid for with gaming funds. Even if the AGLC takes into account the Commercial Bingo Handbook which came into effect on November 1, 2013 and provided an allowance for some concession expenses, the concession counter, utility hook-ups, and installation of the door still would not be approved.

It is necessary for the CSR Division to be consistent in applying policy to all bingo halls and to make a decision based on financial need of the Association would not be in the spirit of policy. The Association has multiple areas which they are renting out for a potential of substantial profit to the non-gaming account. When using gaming funds for a facility and those areas that are designated as non-gaming, the CSR Division needs to ensure that the non-gaming portion is paying their share of the expenses. The concession is deemed a non-gaming portion of the building.

The Association agrees with licence condition 1 and the CSR Division requests that the Panel uphold licence condition 2, that any future mortgages or credit facilities secured against the land and building must have the prior approval of the AGLC. As condition 1 states, the sale of the building is 100% gaming proceeds when it is sold and that was agreed to by the Association, so to secure a non-gaming loan against the building would mean, that if sold, the gaming funds would be used to pay off a non-gaming expense.

The CSR Division respectfully requests that the Panel add a third condition, requesting that the Association be required to inform the membership of the true financial picture, both from the gaming and the non-gaming side, at their next Annual General Meeting. This is due to the significance of the non-gaming loans and the fact that the Association does not have non-gaming funds to reimburse the amount owed to the member clubs. As well, there is an indication in the letter that the Association has overcharged the member clubs for facility costs in 2014.

With respect to the reimbursement, the CSR Division understands that the Association does not have the funds to reimburse the member clubs at this time and would like to work with the Association to distribute whatever funds are deemed returnable to the Association as they become available to them to reimburse the member clubs.

Mr. D.

Mr. D. thanked the CSR Division for their hard work and for finding information on behalf of the Association.

The feeling of the Association is that the concession is an integral part of bingo and that is why they felt it was important to incur the expense of building a concession counter. The Association is trying to ensure that the building is leased out to its full potential. The money from those leases would eventually go back as a dividend to the clubs once the bills and the loans were repaid and it would be an investment in the future for the clubs. The clubs voted for this on that premise. The Association is certain that if they had not proceeded with the construction, they would now be closed.

The Association has an issue with condition 2. They feel that if the hall required repairs, the membership may decide to get a loan and they would be restricted in that sense because they would require AGLC approval and they have no idea what the guidelines of the approval would be.

Regarding condition 3, the Association has no problem disclosing the financial situation to the members and agrees with that condition.

Ms. F.

In answer to Mr. D.'s query regarding the approval of condition 2, it depends on what information is provided. Generally, if the Association has the funds to pay for it and it is a gaming-related expense, it is approved with gaming funds. It is the payment of non-gaming expenses using a gaming asset that is the intent of that condition. The condition is not meant to restrict the approved use of gaming funds. It would be assessed under the Bingo Terms & Conditions and whether it is an approvable expense from the gaming side.

Mr. D.

The Association agrees with condition 2.

V. Finding

Prior to the hearing, the Association admitted the evidence as set out in the incident report regarding contraventions 1 and 2 and agreed to license condition 1. During the hearing, the Association also agreed to the two additional conditions.

As such, the Panel makes a finding of the following contraventions:

Contravention 1: Section 12.1.1(c) of the Bingo Terms & Conditions and Operating Guidelines:

Fixed fees shall not include the costs of operating or providing non gaming space, supplies or services.

Contravention 2: Section 6.5.4 of the Bingo Terms & Conditions and Operating Guidelines:

A renovation or a series of renovations leading to completion of an entire project with a total value of \$25,000 or more must be approved by the Board of the AGLC. A renovation project or a series of projects with a total value of less than \$25,000 may be approved by the Regulatory Division. The facility licensee shall not make any financial commitments or disbursements prior to receiving the appropriate approval.

In addition, the Panel adds the following licence conditions:

Condition 1: In the event that the land and buildings are ever sold, all proceeds collected from the sale must be recognized as gaming funds.

Condition 2: Any future mortgages or credit facilities secured against the land and building must have prior approval from the AGLC.

Condition 3: The Association is required to inform the membership of the true financial picture, both from gaming and non-gaming, at their next Annual General Meeting.

Direction to reimburse:

Regarding the money in question on the construction of the concession, the Panel recognizes that a concession is a requisite in order to serve bingo players and while in this case it is a loss leader, it is a required service. Under the new Commercial Bingo Handbook (Section 8.1.2(a)(vii)(c)), the Panel would suggest that, in this situation, this concession could not run without a counter-top, electrical and plumbing, just as it could not run without major concession equipment such as a refrigerator.

The Panel directs LRBA repay 50% of the \$26,083 from non-gaming funds to its members by no later than one year from the date of this decision. A payment plan may be arranged with the CSR Division. The Panel noted that the monies owing are, in fact, going back to the people who own the assets.

The Panel commends the LRBA for being good stewards on behalf of its members and they applaud the Association for taking a business-like approach with all of the challenges involved. The Panel also acknowledges the good working relations between the CSR Division and the Association and the Panel appreciates the work of the dedicated volunteers to the Association.

VI. Penalty

1. In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following penalty for a violation of Section 12.1.1(c) of the Bingo Terms & Conditions and Operating Guidelines :

A warning.

2. In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Panel imposes the following penalty for a violation of Section 6.5.4 of the Bingo Terms & Conditions and Operating Guidelines:

A warning.

Signed at St. Albert this 10th day of June, 2015.



S. L. Green, Hearing Panel Chair