

**HEARING BEFORE A PANEL  
OF THE BOARD OF THE  
ALBERTA GAMING, LIQUOR & CANNABIS COMMISSION**

**IN THE MATTER OF the *Gaming, Liquor and Cannabis Act*  
Revised Statutes of Alberta 2000, Chapter G-1  
current as of June 27, 2018  
and the Regulation**

**and**

**The Ethiopian Canadian Community Association in Edmonton  
10585 115 Street NW  
Edmonton, Alberta  
T5H 3K4**

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<b>DATE OF HEARING:</b>	<b>December 13, 2018</b>
<b>HEARING PANEL:</b>	<b>Ms. B. Ritzen, Panel Chair Mr. K. Knowles, Panel Member Mr. B. Wyatt, Panel Member</b>
<b>LICENSEE REPRESENTATIVES:</b>	<b>Ms. M. W., President Mr. H. L., Treasurer Mr. T. A., past President Mr. A. B., past President</b>
<b>REGULATORY SERVICES DIVISION:</b>	<b>Mr. G. Ar., Hearing Officer Ms. C. Wi., Resource Officer</b>

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**DECISION OF THE HEARING PANEL**

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**I. Jurisdiction and Preliminary Matters**

After reviewing an Incident Report dated October 4, 2018, concerning use of charitable gaming proceeds and retention of raffle records by the Ethiopian Canadian Community Association in Edmonton (“the Association”), the Regulatory Services Division of the Alberta Gaming, Liquor & Cannabis Commission (AGLC) made the following decision without a hearing (“the original decision”):

That the Association contravened Section 4.4 of the Charitable Gaming Policies Handbook (“CGPH”), “Gaming proceeds shall only be spent on charitable and religious purposes approved by AGLC”. A \$400 fine was imposed.

That the Association contravened Section P.2 of the Raffle Terms & Conditions (Total Ticket Value \$10,000 and Less): Failure to keep raffle records for two years after the last draw date. A \$50 fine was imposed.

Further, the Regulatory Services Division directed the Association to reimburse its gaming account \$63,191 from non-gaming funds and to provide evidence of repayment to the Director, Audit Services within 15 days of the payment due date.

The Association subsequently applied for a hearing under Section 94(1) of the *Act*. A Hearing Panel of the Board of AGLC met to hear the alleged contraventions.

The Association and Hearing Panel were provided with a hearing file containing various documents pertaining to the alleged contraventions, including the Incident Report and a binder of disclosure material (“the Binder”). The Association confirmed receipt of the hearing file and the Notice of Hearing. These documents were collectively entered into evidence by the Regulatory Services Division as Exhibit #1.

Some of the information related to this matter references the *Gaming and Liquor Act*. On June 27, 2018, the *Gaming and Liquor Act* was amended by Bills 6 and 26, changing, among other things, the name of the statute to the *Gaming, Liquor and Cannabis Act* and the name of the corporation to the Alberta Gaming, Liquor & Cannabis Commission (“AGLC”). Also effective June 27, 2018, the Gaming and Liquor Regulation was amended by Alberta Regulation 13/2018, changing the name to Gaming, Liquor and Cannabis Regulation (AR143/96) along with other amendments.

All relevant provisions, including section numbers, remain in effect under the new *Act* and Regulation. Accordingly, any reference to legislation in this decision will be to the *Act* and Regulation currently in effect (“the *Act*” and “the Regulation”).

## **II. The Issues**

1. Did the Association spend gaming proceeds in a manner that was not authorized or approved? Specifically, were gaming proceeds spent only on charitable and religious purposes approved by AGLC? (“The use of proceeds issue”)
2. Did the Association retain all raffle records for two years after the last draw? (“the raffle issue”)

## **III. Evidence**

## **Regulatory Services Division**

The Regulatory Services Division referred the Panel to the audit report at Tab 2 of the Binder. That report shows that an audit was conducted of the Association's gaming account for the period of May 1, 2014 to August 31, 2017. The audit highlighted four key issues (other issues were noted in the audit report but were not addressed at the hearing):

1. Eligibility Findings – The Regulatory Services Division confirmed that this matter was not addressed in the original decision and is not being pursued at this time.
2. Hold on Casino Pooling Proceeds – In November of 2017, AGLC placed a hold on the Association's share of the 2017 third quarter casino pooling proceeds amount of \$75,942.46. On September 18, 2018, a portion of those proceeds (\$38,000) was released to the Association. The balance is being held pending the outcome of the eligibility and other audit issues.
3. Unapproved Use of Proceeds – The audit report shows that \$78,730.84 was expended from the Association's gaming account on unapproved use of proceeds. The Regulatory Services Division explained that amount has since been reduced, as the Association made a repayment from non-gaming sources. The revised amount is \$63,191, which is the amount referenced in the original decision. The unapproved use of proceeds from the gaming account fall into these categories:
  - a. Wages – Taekwondo instructor (\$8400) and Program Coordinator (\$31,583.70). Based on additional information provided, the Regulatory Services Division agreed that the Taekwondo instructor wages would be approved as a one-time exception. The only amount at issue under this category is that associated with the wages of the Program Coordinator.
  - b. Facility/Equipment – The Association is only permitted to spend a maximum of 50% of its gaming proceeds for the capital and operating costs of its facilities (Section 3.9.2 of the CGPH). The Association received casino proceeds of \$79,978.27 in February of 2015, and therefore could use a maximum of \$39,989.14 (50%) for facility and equipment costs. The Association spent \$66,115.41 on facility costs and mortgage payments, which is an overage of \$26,126.27.
  - c. Unsupported Expenditures – Proper supporting documentation was not provided for certain expenditures made from the gaming account. After the audit, the Regulatory Services Division allowed, as a one-time exception only, certain expenditures, leaving the amount at issue under this category as \$10,023.13.
  - d. Cost Recovery – Heritage Days Festival – Any revenues collected by the Association at fundraising events must be used first to cover related expenses prior to using gaming funds (Section 5.12 of the CGPH). The expenses incurred in relation to the Festivals that were paid from the gaming account totaled \$16,369.03. These were offset by revenues of \$8,763.79 to calculate the amount to be repaid which is \$7,605.

- e. Non-charitable Expenditures – Expenditures totaling \$2,512.50 were not charitable in nature. At the outset of the hearing, the Association agreed that this amount should be repaid.
  - f. Accounting Fees – The sum of \$880 was used to pay for the preparation of financial statements other than those required by AGLC. At the outset of the hearing, the Association agreed that this amount should be repaid.
4. Failure to Retain Raffle Records – The Association failed to keep records as required for a period of two years after the draw. The Association agreed that this contravention had occurred.

The Regulatory Services Division called one witness:

**K. Y.**

Mr. Y. is an Auditor who has been employed by AGLC for 14 years. He did not conduct the audit in this case but has reviewed the file materials. He elaborated on some of the information set out in the audit report as follows:

Wages – The wages for the Program Coordinator were not allowed, as a review of the job description for that position suggested that the duties were administrative in nature. Under Section 5.24 of the CGPH:

*Gaming proceeds may be used to pay salaries, wages, and fees for service or honorariums only if the duties performed are essential to the group's program delivery, the duties are performed by a person with specialized qualifications, and the duties cannot reasonably be performed by a volunteer.*

- 1. The services provided must be essential to a group's charitable work in the community.*
- 2. Administrative duties are not eligible except for disabled groups who cannot perform an administrative duty due to the nature of the disability.*

The job description was not included in Exhibit #1 nor was it produced at the hearing. Mr. Y. was not aware whether other information had been considered by the Auditor. He noted that if there is no evidence of program delivery, it is assumed that the position is administrative in nature. The Program Coordinator position was deemed by the Auditor to be administrative.

Facility/Equipment – Ethno-cultural groups can only spend a maximum of 50% of gaming funds received on facilities and equipment. The Regulatory Services Division does not dispute that the expenses of \$66,115.41 related to the facility; the issue is that those expenses exceeded the 50% maximum. Gaming funds were received in February, 2015, and groups have 24 months to spend them. The Association was aware of the 50% limit from its 2014 audit report (Tab 4 of the Binder).

Mr. Y. also referred to recent changes to the applicable AGLC policy about use of proceeds for facility costs. These changes, which came into effect on March 15, 2018, allow for an increase in the maximum allowed from 50% of gaming proceeds to 75% if, in addition to its own programming and activities, the group provides the facility free of rent for a minimum of 150 hours per calendar year to non-affiliated charitable organizations or not-for-profit community groups. This requirement must be demonstrated for one year prior to applying for the increase. Mr. Y. understands that the earliest any group could show the one-year demonstration is March of 2019 (one year after the policy came into effect).

Unsupported expenditures – These expenditures were not supported by appropriate documentation such as an invoice or receipt. The fact that an auditor could see a new door, for example, would be a visual verification, but that is not enough to prove there was a payment for this door – an invoice and receipt would be required.

### **The Association**

Ms. W. led the presentation of evidence of behalf of the Association. The evidence included a PowerPoint presentation which was printed and entered as Exhibit #5. Ms. W. made the following points:

- Many members of the Association and its Board of Directors are first generation Canadians. The Association is their home away from home. There are cultural differences which must be taken into account.
- The Association acknowledges that improvements were required with respect to internal controls, record keeping and documentation. Steps are being taken by the Association to rectify issues.
- Some of the unsupported expenditures relate to facility costs. At the hearing, the Regulatory Services Division agreed that \$5,867 of the unsupported expenditures could be classified as facility costs; however, those costs would still be disallowed because of the 50% maximum cap.
- In September of 2015, the Association's eligibility was suspended because of non-remittance of documents. It was reinstated in December of 2016. However, in the interim, the Association was removed from the casino wait list. In the usual course, the Association would have been assigned a casino in October of 2016; however, because of the suspension and removal from the wait list, they did not get assigned another casino until November of 2017. Thus, instead of a 22 month wait, the Association experienced a 33 month gap between casinos. At the request of the Association, the Regulatory Services Division prepared a document showing what the effect of a 2016 casino event would have been. This document, which was entered as Exhibit #2, suggests that if the Association had received revenue from a 2016 casino event, the facility-related expenses would have been within the 50% maximum.

- With respect to the wages of the Program Coordinator, the job description reviewed by the Auditor does not fully describe the duties performed by the incumbent. That position is the only paid staff position. The incumbent performs a wide range of duties, including organizing events (such as the Literature Night), sending invitations, creating flyers, doing presentations, teaching language skills, making phone calls and taking attendance at events. The incumbent supports the delivery of programs and services offered by the Association. The position was previously approved by AGLC.
- With respect to the Cost Recovery issue, the Association lost money on the Heritage Days Festival. However, they do not have receipts to support all of the expenditures made. They are trying to get the necessary documentation. At the Festival, they sell food but also share information about their culture. There are also dance performances.

Mr. L., who is the Treasurer of the Association, also asserted that the Association is improving its practices and assured the Panel that they will not make the same mistakes as in the past. They realize their financial obligations, and have a budget in place. Their only major source of income is rental of the facility.

Mr. A. emphasized that there are a number of programs in place, bringing people together and keeping children occupied. Their culture is very communal; it is important to have a place where people can come together and share stories. Members provide support to each other and especially to those in need. The Association has been in good standing with AGLC for many years.

#### **IV. Summation**

##### **Regulatory Services Division**

The Association is a fantastic cultural organization with passionate people. They are well intentioned and strive to do what is required. The work of the volunteers is appreciated. However, the Association has been granted gaming licences and given the privilege of earning gaming revenues. The rules and policies in effect relating to use of those funds must be followed.

The missed casino slot caused hardship by reducing the amount of money received by the Association in the audit period; however, this was a misfortune of their own making. They did not file the necessary reports, leading to a suspension of their eligibility. As well, groups should not be reliant only on gaming funds to pay key expenditures, as there is always a chance that these funds are not available or sufficient.

The evidence clearly shows that the expenditures of \$63,191 were an unapproved use of gaming funds. The fine imposed represents ½% of the unapproved amount.

With respect to the raffle records, the Association admits that they were not retained as required and agrees to pay the fine imposed.

The amount of \$22,014 remains owing from the findings of the 2014 audit; that amount should also be paid.

### **The Association**

The Association accepts that they previously had careless practices but asserts that they have already made significant changes and improvements. Ms. W. requested the Panel keep in mind the important services provided by the Association, examples of which are described in the PowerPoint presentation: Assistance to a homeless member of the community; assistance to a family who lost a son abroad; assistance to families struggling with family violence; helping young people who are in jail. The Association is a home away from home for its members.

The Association is working on fundraising and membership, as well as rental of the facility, so it is not as dependent on casino funds.

The Association had been in good standing for many years.

The Association requests that the \$31,583.70 paid to the Program Coordinator be accepted as an approved expense.

With regard to the facility expenses, if they had submitted the necessary documentation, everything would have been fine and they would have been assigned to a casino in the fall of 2016. They did not submit the necessary documentation because of their previous careless practices. Information was going to people's homes instead of to the facility, and as a result the right people did not know what needed to be done.

The Association may be able to provide an invoice or receipt for the Heritage Days money and would like this to be considered an approved expense as well. The Association asserts there were more expenses than income, but there is no receipt proving this as yet.

Moving forward, the Association is committed to never being in this position again. They are already starting to make changes and promise that they will do the work properly and address the issues.

## **V. Analysis**

### **The Use of Proceeds Issue**

The Regulatory Services Division alleges that the Association used gaming proceeds for unapproved purposes. The unapproved expenditures were divided into various categories which will be addressed separately:

#### Wages – \$31,583.70

The evidence related to this matter is that wages in the amount of \$31,583.70 were paid to a Program Coordinator. These wages were disallowed as the Auditor considered that the job duties were administrative in nature and thus not approved. The evidence in relation to the duties of the Program Coordinator was conflicting. The Association provided details of various program-related duties performed by the incumbent, including teaching, making presentations, providing services to members, and supporting program delivery. The position had been previously approved by AGLC. The evidence presented by the Regulatory Services Division was that the job description had been reviewed by the Auditor, who deemed the duties to be administrative in nature. The job description was not included in the evidence.

The burden of proving that the duties were administrative in nature rests with the Regulatory Services. In this case, evidence about the conclusion reached by the Auditor and statements that the duties were “deemed” to be administrative is not sufficient to establish, on a balance of probabilities, that the duties were administrative.

The Panel is not persuaded that the duties performed by the Program Coordinator were administrative in nature. The duties, as described by the Association, were program-related. Accordingly, the wages will be considered approved expenditures.

#### Facility/Equipment – \$26,126.27

The evidence before the Panel, which was not disputed by the Association, was that the Association received casino proceeds of \$79,978.27 in February of 2015, and that it spent \$66,115.41 on facility costs and mortgage payments (subject to the argument made in relation to the unsupported expenditures, described below).

Pursuant to Section 3.9.2 of the CGPH, the Association is only permitted to spend a maximum of 50% of its gaming proceeds for the capital and operating costs of its facilities. The Association asked about the possibility of increasing that maximum to 75% as allowed by amendments to the policy which took effect in March of 2018. Those amendments require evidence that the facility was used by other organizations rent-free for a period of one year. Mr. Y. suggested that the earliest this increase could be allowed would be in March of 2019 (one year after the effective date). The Panel disagrees with that interpretation. If the facility had been used rent free by other organizations for one year prior to the policy changes, it appears that the increase could be allowed. However, in this case, there was no evidence before the Panel that the facility had been used by other organizations rent free. Accordingly, the Panel finds that the 50% maximum is applicable.



The Association's expenditures related to facility costs and mortgage payments exceeded the 50% maximum (of the February 2015 proceeds) by \$26,126.27.

The Association advanced a novel argument that the 50% maximum should be calculated on the basis that, in addition to the February 2015 proceeds, the Association would have received proceeds from a casino in 2016 had its eligibility not been temporarily suspended. The Panel does not accept this novel argument. The maximum is calculated on the proceeds actually received, not on hypothetical payments.

Accordingly, the Panel finds that the amount of \$26,126.27 was an unapproved use of proceeds.

#### Unsupported Expenditures – \$10,023.13

The evidence before the Panel, which was not disputed by the Association, is that expenditures totaling \$10,023.13 were not supported by appropriate documentation. Without such documentation, the Auditor was unable to verify how the funds were used. The Association argued that a portion of the expenditures related to facility improvements and should have been included in the category related to those expenditures, rather than to this category. The Regulatory Services Division was prepared to agree that expenses totaling \$5,867.50 appeared to relate to facility costs. However, given that the expenditures for facility costs already exceed the 50% maximum, these expenses remain an unapproved use of proceeds.

The Panel is satisfied that the amount of \$10,023.13 was an unapproved use of proceeds.

#### Heritage Days Festival Cost Recovery – \$7,605.24

The Regulatory Services Division asserts that the Heritage Days Festival is a fundraising activity, and as such gaming proceeds can only be used to cover losses incurred by the Association in relation to the Festival (Section 5.12 CGPH, paragraph 4). No evidence was called to support this assertion. The Association gave evidence, which was not disputed, that food was sold at the event, information was shared about their culture, and dances were performed. These activities appear to be related to the Association's program activities, not to fundraising. Accordingly, the Panel is not persuaded that the Festival is a fundraising activity and as such, the policy relied on by the Regulatory Services Division is not applicable.

The expenditures of \$7,605.24 are approved use of proceeds.

#### Non-charitable Expenditures – \$2,512.50

The Association agreed that these expenditures were not charitable in nature. Accordingly, the Panel finds that this amount is an unapproved use of proceeds.

#### Accounting Fees - \$880.00

The Association agreed that this amount was used to pay for the preparation of financial statements beyond those required by AGLC. Accordingly, the Panel finds that this amount is an unapproved use of proceeds.

Based on the foregoing, the Panel finds that the following expenditures were unapproved use of proceeds and that Section 4.4 of the CGPH was contravened:

Facility/Equipment	\$26,126.27
Unsupported Expenditures	\$10,023.13
Non-charitable purposes	\$ 2,512.50
Accounting fees	\$ 880.00
Total:	\$39,541.90

### **The Raffle Issue**

The Association admitted this contravention. The Panel finds that Section P.2 of the Raffle Terms & Conditions (Total Ticket Value \$10,000 and Less) was contravened.

### **Penalty**

Sanctions were imposed by the original decision as follows:

\$400 fine relating to the unapproved use of proceeds issue;  
\$50 fine relating to the raffle issue

In determining whether the sanctions were appropriate, the Panel took into account that the Association acknowledged the deficiencies in their past practices and asserted that they are committed to making improvements and to following the rules and policies. The Panel also considered the onerous obligation that rests with the Association to repay the amounts owing pursuant to this decision and to the 2014 audit. In the circumstances, the Panel considers that the issuance of a warning is the appropriate sanction in this matter.

### **Other matters**

#### **Hold on Casino Pooling Proceeds**

A portion of the Association's share of the casino pooling proceeds for the 2017 third quarter in the amount of \$37,942.46 has been withheld until all of the eligibility and audit issues have been addressed. The Regulatory Services Division did not pursue the eligibility issues and the audit issues have now been addressed by this decision. Accordingly the amount being withheld should be released and paid to the Association.

### **Balance owing from 2014 audit**

The Association agreed that it has an outstanding balance of \$22,201 owed to its gaming account from a repayment plan resulting from the 2014 audit. That balance will be added to the amounts which must be repaid by virtue of this decision.

### **VI. Finding**

The Panel finds that the Association contravened Section 4.4 of the CGPH and Section P.2 of the Raffle Terms & Conditions (Total Ticket Value \$10,000 and Less). However, pursuant to Section 94(7)(b) of the *Act*, the Panel replaces the original direction to reimburse with the following:

The Association is directed to reimburse its gaming account the sum of \$39,541.90. This amount will be offset by the previous repayment of \$15,540 from a non-gaming deposit. The Association must also reimburse its gaming account the balance owing from the 2014 audit (\$22,201) from non-gaming funds. The reimbursement may be made through periodic installments with evidence of total repayment provided to the Director, Audit Services by December 31 2023. The specific terms of the repayment are to be arranged with Regulatory Services.

The fines imposed by the original decision are cancelled and replaced with a warning.

The Regulatory Services Division is directed to release the balance of the Association's share of the 2017 third quarter casino proceeds in the amount of \$37, 942.46.

Signed at St. Albert this 7<sup>th</sup> day of January, 2019.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke.

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B. Ritzen, Hearing Panel Chair