

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

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

and

**Pazzo Pazzo Restaurant Inc.
o/a Pazzo Pazzo Italian Cuisine (Licensee)
10016 103 Avenue NW
Edmonton, AB T5J 0G7**

DATE OF HEARING:	January 19, 2024
HEARING PANEL:	Patti Grier, Presiding Member Elan Harper, Panel Member Maureen Moneta, Panel Member
LICENSEE / REPRESENTATIVE:	Robert Hladun, Legal Counsel James Burns, Owner/Operator
REGULATORY SERVICES DIVISION:	Petrina Nash, Hearing Officer Alisha Hurley, Field Law, Legal Counsel/Resource Officer

DECISION OF THE HEARING PANEL

The Panel finds that the Licensee contravened section 69(1)(a) of the *Gaming, Liquor and Cannabis Act* (the Act).

In accordance with section 91(2)(d) of the Act, the Panel suspends Pazzo Pazzo Italian Cuisine's Class A Minors Allowed liquor licence numbered 765516-1 for a period of one (1) year. The liquor licence suspension is effective starting on April 16, 2024.

Further, in accordance with section 91(2)(b) of the Act and effective as of the date of this decision, the Panel rescinds the first existing licence condition:

- Mr. James Burns must not have any contact, either directly or indirectly, with any of the other individuals facing criminal charges under the Project Capone operation;

and amends the second existing licence condition as follows:

- Mr. James Burns is prohibited from the liquor operations of the business, including ordering and acquiring liquor. This responsibility must be carried out by another agent or employee of the licensee. Further, Mr. James Burns must advise Regulatory Services of the individual who has been assigned the responsibility and any time these duties or individual changes.

I. Jurisdiction and Preliminary Matters

[1] On October 13, 2022, Gary Peck, the Vice President of the Regulatory Services Division (Regulatory Services) of the Alberta Gaming, Liquor and Cannabis Commission (AGLC) contacted Len Rhodes, Board Chair, via email to request that the Board convene a hearing for Pazzo Pazzo Restaurant Inc., operating as Pazzo Pazzo Italian Cuisine (the Licensee), as a result of an alleged contravention of:

- section 69(1)(a) of the Act: No liquor licensee or employee or agent of a liquor licensee may permit any activity in the licensed premises that is contrary to any municipal bylaw or any Act or regulation of Alberta or Canada.

[2] Pursuant to the Administrative Sanction Guideline for Violations and sections 91(1)(a) and 91(2) of the Act, the Board Chair directed that a hearing before a Panel of the Board be convened.

[3] In accordance with section 11 of the Act, the Chair of the Board designated three members of the Board to sit as a Panel to conduct the hearing and make a decision – Patti Grier (Presiding Member), Elan Harper, and Maureen Moneta.

[4] The Licensee was provided with a Notice of Hearing and hearing record via recorded mail and email on October 26, 2022, which provided details regarding the hearing and the alleged contravention. The hearing was subsequently rescheduled and an Updated Notice of Hearing dated November 17, 2022 was provided to the legal representative for the Licensee, Robert Hladun of Hladun & Company.

[5] On January 16, 2023, Mr. Hladun requested that the hearing be adjourned until conclusion of the criminal matters pertaining to Mr. James Burns and the Licensee that were before the Provincial Court of Alberta, in relation to the matter before the Panel.

[6] The Panel convened a preliminary issues hearing on January 20, 2023 with the parties to hear the request for adjournment. On January 25, 2023, the Panel granted an adjournment of the hearing with conditions, until on or before October 3, 2023, following the scheduled trial date regarding the criminal matters related to the issue before the Panel involving Mr. Burns and the Licensee. Further, both parties acknowledged that the hearing would be held outside of the 120-day timeframe required by section 94(6) of the Act and confirmed that this delay would not prejudice each party's respective right to make representations to the board within 120 days.

[7] The hearing was subsequently rescheduled, and an Updated Notice of Hearing and attached hearing record were sent to Mr. Hladun via email on August 1, 2023.

[8] On September 26, 2023, Mr. Hladun requested that the hearing be adjourned due to a family emergency. On September 28, 2023, the Panel granted the request to reschedule the hearing.

[9] The hearing was subsequently rescheduled, and an Updated Notice of Hearing and attached hearing record were sent to Mr. Hladun via email on December 1, 2023.

[10] On December 13, 2023, Mr. Hladun requested that the hearing be adjourned due to a medical procedure. On December 18, 2023, the Panel granted the request to reschedule the hearing and sent an Updated Noticed of Hearing and attached hearing record to Mr. Hladun via email on December 21, 2023.

[11] The parties and the Panel were provided with various documents pertaining to the issues before the panel. The Mr. Hladun confirmed receipt of the Updated Notice of Hearing dated December 21, 2023 and the attached hearing record. At the hearing, the following documents were entered into evidence:

- Exhibit 1 Hearing Record, including Tabs 1 to 3
- Exhibit 2 Edmonton Police Service files, including Tabs 1 to 17

II. Issues

[12] Did Pazzo Pazzo Italian Cuisine contravene section 69(1)(a) of the Act?

[13] If the Licensee contravened section 69(1)(a) of the Act, what sanction should the Panel impose in accordance with section 91(2) of the Act?

III. Regulatory Services Submissions

[14] The Regulatory Services Division called two witnesses:

- Constable Brys Francis, Edmonton Police Service
- Dennis Storey, Director, Investigations

[15] The following is a summary of the evidence provided by Constable Francis and Mr. Storey.

Background

[16] Constable Francis, who has been an EPS member for 17 years, investigated Mr. James Burns and Pazzo Pazzo Italian Cuisine as a result of an operation conducted by him and the EPS Focused Intervention and Apprehension Team (FIAT), called Project Capone.

[17] Project Capone began in 2020 as a result of the rapidly rising number of large quantity liquor thefts and associated violence in Edmonton since 2018.

[18] Constable Francis clarified that large quantity liquor thefts do not include thefts of single bottles for personal use but rather thefts of multiple bottles or cases of liquor. These thefts are often paired with violence towards employees, whether the employees attempt to intervene or not.

[19] Constable Francis stated that the reported violence associated with liquor thefts ranged from verbal threats to physical assault to assault with weapons such as knives, bear spray and firearms, resulting in significant injuries.

[20] In 2018, 3,300 liquor thefts were reported to EPS and in 2019 there were 9,600 reported. Constable Francis stated that early in 2020, EPS anticipated that the number of thefts would continue to rise and surpass each of the previous years, with more than 1,000 reported liquor thefts in each of January 2020 and February 2020 alone.

[21] When the government introduced the first pandemic restrictions in March 2020, liquor thefts plummeted. After the restrictions were lifted in May 2020, liquor thefts escalated.

[22] In November 2020, Constable Francis initiated Project Capone. The operation began with the observation of two street-level thieves who were known for stealing cases of liquor and stealing from multiple retail liquor stores per day. Constable Francis and his team determined that the liquor was being trafficked but were unable to identify the demand for the stolen liquor due to the COVID-19 pandemic and resulting restrictions.

[23] In 2021, EPS members commenced the undercover component of Project Capone to identify other individuals involved in the liquor thefts and subsequent trafficking. The goal was to determine the hierarchy of the group, identify peripheral members that EPS was not yet aware of, take enforcement action against businesses purchasing stolen liquor and prosecute the traffickers.

[24] Constable Francis advised the Panel that a large quantity of liquor was donated to the EPS to use as props in their investigations. All of the liquor bottles the officers sold that were purported to be stolen were given unique markings that could later be identified by EPS. Photos of the uniquely marked bottles were included as Exhibit 2, Tab 1.

[25] EPS members conducted surveillance and undercover scenarios and eventually identified three individuals named S.D., J.R. and J.C. (collectively, the Organizers) who appeared to be organizing criminal activities, including the trafficking of contraband tobacco, stolen liquor, stolen property and illicit substances. Their network was found to span throughout the Edmonton area, across Alberta and into British Columbia.

[26] During the first undercover operation on December 14, 2021, undercover EPS officers (UCOs) prepared to meet with an individual named D.H., but J.C. and J.R. were sent instead. They purchased 26 cases of the uniquely marked bottles of liquor that were held out to be stolen.

[27] During an undercover operation on January 11, 2022, UCOs communicated with the Organizers, and the UCOs sold them 300 cases of the uniquely marked bottles of liquor that were held out to be stolen.

[28] During an undercover operation on February 16, 2022, UCOs sold 1,028 cases of the uniquely marked bottles of purported stolen liquor to the Organizers.

[29] On the days following the February 16, 2022 sale of purported stolen liquor by UCOs to the Organizers, EPS conducted constant surveillance on the individuals and the distribution locations. Through surveillance, EPS learned that the group had an established distribution network and were able to distribute these cases of liquor within three weeks.

[30] EPS discovered that the liquor was being distributed out of personal residences as well as a flea market called Lifestyle Mega Market. During surveillance of the flea market, EPS identified multiple liquor licensees that attended the unlicensed warehouse to purchase liquor. The owner of the flea market was charged with liquor trafficking offences.

[31] Through Project Capone, Constable Francis stated that his team was able to gather enough evidence to obtain search warrants for the locations where the stolen liquor was either housed or trafficked from, including Lifestyle Mega Market, and the cell phones of the Organizers.

[32] As a result of the search warrants, the Organizers were arrested on June 2, 2022 and multiple criminal charges were laid against them, including charges related to the distribution of contraband tobacco, trafficking of stolen property, possession and trafficking of controlled substances, and more.

[33] The information extracted from the cell phones of the Organizers provided EPS with sufficient evidence to link the group to other individuals, including liquor licence holders, some of which were also criminally charged.

[34] In total, Project Capone resulted in over 146 criminal charges being laid against 17 individuals and three businesses.

[35] Through a Memorandum of Understanding between the Investigations branch of Regulatory Services and local law enforcement agencies, EPS advised the Investigations branch about Project Capone. At the conclusion of the operation, the EPS shared the results with the Investigations branch to allow Regulatory Services to follow up on any regulatory matters related to the licensed premises identified in the EPS operation.

[36] Pazzo Pazzo Italian Cuisine was one of 16 licensees that had illegally purchased or were believed to possess cases or bottles of liquor held out to be stolen.

[37] EPS shared a list of the licensees with the Senior Manager of the AGLC Investigations branch, as well as the document with descriptions and photos of the uniquely marked and identifiable liquor that was held out to be stolen when as part of Project Capone.

Contravention: Section 69(1)(a) of the Act

[38] The investigation into the Licensee commenced January 26, 2022. On that day, EPS members conducted surveillance (Exhibit 2, Tab 2) and observed the following:

- J.C. loaded cases of liquor from a storage unit into his vehicle and drove to Hermitage Dog Park.
- J.C. and S.D. met at Hermitage Dog Park, and the cases of liquor were unloaded from J.C.'s vehicle and loaded into S.D.'s vehicle.
- S.D. then drove directly to Pazzo Pazzo Italian Cuisine. Constable Francis presented video surveillance footage of S.D. and Mr. Burns unloading over 20 cases of liquor from

S.D.'s vehicle and loading them into Mr. Burns' vehicle in front of the restaurant (Exhibit 2, Tab 3).

[39] Constable Francis' team searched the licence plate of the vehicle that the cases of liquor were being loaded into to determine the registered owner and found that it was registered in Mr. Burns' name. A public social media search of Facebook for Mr. Burns was also conducted to confirm his identity, and photographs taken from Mr. Burns' Facebook page matched the surveilled individual (Exhibit 2, Tab 2).

[40] During the surveillance on January 26, 2022, EPS members contacted AGLC and learned that Mr. Burns was the manager, director and shareholder of Pazzo Pazzo Italian Restaurant Inc., which holds a Class A Minors Allowed liquor licence. It was also confirmed that S.D. did not have a liquor licence.

[41] Constable Francis presented an audio recording of a meeting between UCOs and the Organizers that took place at a Denny's restaurant on February 24, 2022. During their conversation, J.R. told the UCOs that the owner of Pazzo Pazzo Italian Cuisine was originally doing business with three street people and was grateful that he could now do business with one of the Organizers instead (Exhibit 2, Tab 9). Constable Francis stated that he investigated the three street people referenced in the conversation and found that all of them had purchased and/or distributed stolen liquor.

[42] On June 21, 2022, Constable Francis directed the arrest of Mr. Burns and the execution of search warrants on Mr. Burns' vehicle and Pazzo Pazzo Italian Cuisine. Mr. Burns was arrested for attempt to possess stolen property and attempt to traffic stolen property under \$5,000. The search warrants authorized the EPS to conduct a search for marked cases and bottles of liquor and liquor packaging distributed by EPS, Canadian currency, transaction receipts, and electronic devices capable of sending and receiving messages (Exhibit 2, Tab 5).

[43] The EPS members executing the search warrants seized multiple items from Pazzo Pazzo Italian Cuisine and Mr. Burns' vehicle, including 23 of the uniquely marked bottles of purported stolen liquor from the service bar and storage areas of the licensed premises, cell phones, invoices for proper liquor sales and cash (Exhibit 2, Tab 6).

[44] Constable Francis stated that an EPS member conducted a post-arrest interview with Mr. Burns. During the interview, Mr. Burns said that he:

- abides by AGLC purchasing requirements;
- only purchases liquor from retail liquor stores;
- did not have any knowledge of or communication with S.D.; and
- denied any knowledge of the events of January 26, 2022.

[45] Constable Francis advised that he reviewed chat logs on Mr. Burns' seized cell phone and located additional information regarding the relationship between Mr. Burns and S.D. The chat logs showed that their relationship began on January 25, 2022 when they met at the Lifestyle Mega Market, and the communications between them on Mr. Burns' cell phone are identical to those on S.D.'s cell phone.

[46] Constable Francis presented a chat log that was extracted from Mr. Burns' cell phone. On June 1, 2022, Mr. Burns messaged two individuals with a price list and an inventory of different liquor. One of the individuals asked whether the liquor was stolen, to which Mr. Burns responded "I don't know!!! 😊😊😊" (Exhibit 2, Tab 12). Constable Francis explained that he was unaware of what a winking face emoji meant, so he reviewed the Merriam-Webster Dictionary and according to Merriam-Webster it is meant to playfully joke or to silently let the reader in on a secret.

[47] Constable Francis presented chat logs that were extracted from S.D.'s cell phones that were seized as a result of Project Capone search warrants:

- On January 12, 2022, S.D. messaged O.H., a friend of Mr. Burns, and stated that he acquired ten pallets of liquor on January 11, 2022 in Saskatchewan and planned to do inventory and figure out pricing (Exhibit 2, Tab 10). Constable Francis reiterated that January 11, 2022 was the day that UCOs sold purported stolen liquor to the Organizers.
- On January 23, 2022, O.H. messaged S.D. and stated that "buddy from Pazzo Pazzo" is putting an order together (Exhibit 2, Tab 10).
- On January 25, 2022, O.H. messaged S.D. and stated that "James" wants more and asked S.D. to call his cell phone (Exhibit 2, Tab 10). Constable Francis stated that he conducted a police database search and found that the cell phone number listed in this text message was linked to Mr. Burns' driver's licence and motor vehicle registration.
- In a conversation from January 25 - 26, 2022, Mr. Burns sent S.D. a list of liquor that he wished to add to his existing order. S.D. confirmed Mr. Burns' liquor order, discussed delivery of the order with Mr. Burns, and asked whether he should come before noon or after the lunch rush. On January 26, 2022 at 11:41 a.m., S.D. messaged Mr. Burns to let him know he had arrived (Exhibit 2, Tab 17). Constable Francis noted that the surveillance he conducted on January 26, 2022 from 11:40 – 11:46 a.m. outside of Pazzo Pazzo Italian Cuisine aligns with this text message.
- On February 8, 2022, Mr. Burns messaged S.D. with a liquor order, and S.D. responded that a new load would be coming in a week (Exhibit 2, Tab 17).
- On February 22, 2022, S.D. messaged O.H. and said that he spoke with "Pazzo" and he is placing an order soon. O.H. asked S.D. if he sent James the prices (Exhibit 2, Tab 10).
- On February 24, 2022, S.D. messaged O.H. and said "Pazzo ordering 23 cases" (Exhibit 2, Tab 10).
- On February 27, 2022, S.D. messaged Mr. Burns regarding delivery of an order, and Mr. Burns provided an address (Exhibit 2, Tab 17). Constable Francis confirmed that this was the home address listed on Mr. Burns' driver's licence and motor vehicle registration.
- In a conversation on June 1, 2022 between O.H. and S.D., O.H. asked S.D. to contact "James" and send him a liquor price list. S.D. confirmed that he sent the list to "pazzo" and subsequently says "I give u 15\$ off pazzo NP" (Exhibit 2, Tab 4).
- On June 1, 2022, S.D. sent a message to Mr. Burns with a price list and an inventory of different liquor. Mr. Burns responded with a liquor order (Exhibit 2, Tab 17).

[48] Constable Francis submitted that the following evidence indicates that Mr. Burns was willfully blind and ought to have known that the liquor he was purchasing was stolen:

- Mr. Burns met S.D. at the Lifestyle Mega Market, which sells knockoff clothing, unstamped tobacco products and stolen liquor.
- Mr. Burns' first purchase of over 20 cases of liquor from S.D. on January 26, 2022.
- The delivery of 23 cases of liquor by S.D. to Mr. Burns' residence on February 27, 2022.
- Mr. Burns' order of 38 cases of liquor that he placed with S.D. on June 1, 2022, and his subsequent marketing of the liquor to his contacts.
- Mr. Burns' knowledge that S.D. was bringing in multiple loads of different types and quantities of liquor.
- J.R.'s disclosure to the UCOs that Mr. Burns used to purchase stolen liquor from street people, and a subsequent investigation that revealed the street people were selling this liquor to Mr. Burns for 35% less than AGLC's prices and 45% less than liquor store prices.

[49] Constable Francis stated that he directed UCOs to attend Pazzo Pazzo Italian Cuisine on December 9, 2022 and order single ounce alcoholic drinks. Based on the cost of the drinks and the price per ounce that Mr. Burns paid for the stolen liquor, Constable Francis determined that Mr. Burns' profit margin was 1,381% per ounce of liquor.

[50] Constable Francis confirmed the Licensee plead guilty to a lower offence under section 50 of the Act and received a fine in the amount of \$6,500, and as a result, all criminal charges against Mr. Burns and the Licensee were dropped.

[51] When asked by the Panel why the criminal charges against Mr. Burns and the Licensee were withdrawn, Constable Francis advised that the Crown prosecutor, J.S., was in the middle of a three-week murder trial and accepted a guilty plea under section 50 of the Act by the Licensee instead of proceeding with the criminal trial due to a significant workload at that time.

[52] Constable Francis opined that Mr. Burns directly and significantly contributed to the violent thefts occurring at retail liquor stores and the demand for stolen liquor given that he placed orders for a total of 81 cases of stolen liquor. Further, Constable Francis stated that Mr. Burns confirmed his investigative theory that the escalation in liquor thefts was in response to demand created by licensed premises and individuals associated with them purchasing and selling the stolen liquor for a profit.

[53] When asked by the Panel to clarify how Mr. Burns would have contributed to and been aware of the violence that accompanied thefts from retail liquor stores, Constable Francis advised that Mr. Burns might have been made aware by the frequent media outlet coverage of the high number of assaults on liquor store staff by thieves. Further, the street people who allegedly sold liquor to Mr. Burns were known to have committed acts of violence against liquor store staff.

[54] When asked by Mr. Hladun to clarify how many times he saw the Organizers provide liquor to Mr. Burns, Constable Francis confirmed that he observed S.D. transfer cases of liquor to Mr. Burns' vehicle once during the surveillance he conducted on January 26, 2022, but he also viewed the cell phone chat logs as direct evidence that S.D. delivered 23 cases of liquor to Mr. Burns on February 27, 2022.

[55] When asked by Mr. Hladun whether he saw J.R. transfer liquor to Mr. Burns, Constable Francis explained that J.R. was never seen touching a case of liquor during Project Capone given his hierarchy in the motorcycle gang that he was a member of.

[56] Constable Francis confirmed that he never observed O.H. and the street people transfer liquor to Mr. Burns.

[57] Constable Francis advised that Criminal charges against O.H. in connection with Project Capone were put forward but not approved by the Crown. O.H. has never been subpoenaed nor called as a witness in connection with any Project Capone proceedings.

[58] When asked by Mr. Hladun whether he was aware of a break in at Pazzo Pazzo Italian Cuisine on June 13, 2022, Constable Francis said that he was aware several break ins had occurred at the restaurant but was unaware of the specifics of the one that occurred on June 13, 2022.

[59] When asked by Mr. Hladun if he was aware of an attempt by UCOs to purchase liquor from the Pazzo Pazzo Italian Cuisine on June 14, 2022, Constable Francis advised that he was unaware of any such attempts. Constable Francis stated that he was aware of one scenario where UCOs attempted to sell purported stolen liquor to Mr. Burns, and he declined to purchase the liquor from the UCOs but asked for their phone number.

[60] Constable Francis advised the Panel that he did not know how Mr. Burns paid for the liquor he purchased and whether he was paid for any liquor he may have resold, as EPS management stopped the investigation before a financial investigation could occur.

[61] Mr. Storey is the Director of the Investigations branch of Regulatory Services and has worked for AGLC for five and a half years.

[62] Mr. Storey stated that if Mr. Burns or the Licensee applied for a liquor licence today, they would not clear a background check and therefore would be ineligible for a licence with AGLC pursuant to sections 9 and 13 of the Act.

[63] Mr. Storey explained that a Class A liquor licence permits the licensee to obtain liquor from:

- a liquor licensee that has the authority to sell off sales in Alberta;
- a Class D liquor store; and
- AGLC via Connect Logistics.

[64] Mr. Storey asserted that Mr. Burns was knowingly in possession of liquor that was not obtained by any legitimate means and fully aware that the liquor he purchased was stolen. Further, the liquor that Mr. Burns illegitimately purchased is not unique in any way and is readily available for purchase from an approved source.

[65] Mr. Storey stated that property crime is fueled through supply and demand, and if you create demand then someone will fill the supply. Mr. Burns' willingness to purchase illegal liquor created a demand which resulted in continued criminal activity and harm to the community.

[66] When asked by Mr. Hladun whether the Licensee has had any prior violations, Mr. Storey stated that he would not know if there had been any since most violations fall under the Inspections branch of Regulatory Services. Further, Mr. Storey said that he assumed the Licensee has operated within the policies and regulations and should know that he cannot purchase liquor from the trunk of a vehicle.

[67] Mr. Storey confirmed he is aware that the Licensee has been operating for over a year with conditions on its licence, but he did not know whether any inspections of Pazzo Pazzo Italian Cuisine had been conducted by Regulatory Services during this time.

[68] When asked by Mr. Hladun where EPS obtained the uniquely marked liquor bottles from that were used in Project Capone, Mr. Storey confirmed they did not come from AGLC or Connect Logistics. He believed they may have been obtained from a large liquor distributor in Alberta and confirmed that the liquor was legally obtained and was only held out to be stolen.

[69] When asked by Mr. Hladun how a restaurant deals with its liquor inventory when it permanently closes, Mr. Storey explained that it is his understanding that if the licensee's licence is still active, it can sell the liquor to another licensee. He further stated that he did not know how the liquor inventory would be priced.

[70] Mr. Storey advised the Panel that although Mr. Burns would have been allowed to purchase liquor from another liquor licensee who was permitted to sell their liquor inventory, it is the responsibility of the licensee purchasing the liquor to obtain documents showing where the liquor was purchased from and be able to provide those documents to AGLC.

[71] Mr. Storey contended that in this case, it is clear Mr. Burns did not purchase liquor from another licensed establishment since he was observed to have purchased the uniquely marked bottles of liquor from the Organizers who obtained the liquor illegitimately.

IV. Pazzo Pazzo Italian Cuisine Submissions

[72] The representatives for the Licensee, Mr. Hladun and Mr. Burns, gave evidence on behalf of Pazzo Pazzo Italian Cuisine.

[73] Mr. Burns submitted that he knew S.D. by an assumed name. He does not know J.R., J.C. or any of the street people, and he never purchased liquor from them.

[74] Mr. Burns explained that O.H. was his longtime friend, and O.H. told Mr. Burns that an acquaintance was shutting down his bar due to the COVID-19 pandemic and liquidating the bar's liquor inventory. After expressing an interest in purchasing some of the liquor inventory, Mr. Burns was introduced to S.D. by O.H.

[75] Mr. Burns confirmed that O.H. is not a licensee.

[76] Mr. Burns stated that he placed an order with S.D. and agreed to have him deliver the cases to Pazzo Pazzo Italian Cuisine on January 26, 2022. He paid approximately \$3,600 for 20 cases of liquor, and they were transferred to his vehicle from S.D.'s vehicle on the delivery date. Mr. Burns asserted that he did not purchase liquor from S.D. on any other occasions.

[77] Mr. Burns said that he believed he was helping someone who lost their business and would never have purchased liquor from S.D. had he known it was stolen.

[78] On June 14, 2022, Mr. Burns explained that two UCOs came to Pazzo Pazzo Italian Cuisine and claimed to have stolen liquor for sale. Mr. Burns said that he turned down the offer to purchase the stolen liquor. After being pushed to take the phone number of one of the UCOs, Mr. Burns agreed to take it but did not write it down.

[79] Mr. Burns submitted that one of the UCOs returned to Pazzo Pazzo Italian Cuisine on June 16, 2022 and offered to sell stolen liquor to Mr. Burns. He declined the offer.

[80] Mr. Burns stated that the 23 uniquely marked bottles that were seized from Pazzo Pazzo Italian Cuisine on June 21, 2022 were originally purchased from S.D. on January 26, 2022.

[81] On July 6, 2023, Mr. Burns attended Alberta provincial court for criminal charges that were laid against him and the Licensee. Mr. Burns confirmed that the criminal charges were dropped, and the Licensee plead guilty to a violation of section 50 of the Act.

[82] When asked by the Panel to clarify the circumstances around the reduction of charges against Mr. Burns and the Licensee by Crown prosecutor J.S., Mr. Hladun stated the following:

- Had the criminal charges been valid, Crown prosecutor J.S. would have asked for an adjournment of the court proceedings until the murder trial he was working on concluded.
- There are many other Crown prosecutors in Edmonton who could have moved forward with the criminal charges against Mr. Burns and the Licensee.
- Mr. Hladun reviewed the facts that Crown prosecutor J.S. intended to put before the court with Mr. Burns. They agreed to put forward a joint submission on penalty before the court, and it was accepted.

[83] With regard to the emojis in Mr. Burns' text message of June 1, 2022, he asserted that he never used any winking face emojis and they only appeared after an EPS member handled his cell phone. Mr. Burns stated that if he saw a winking face emoji in a text message, he would take that to mean that something was fishy.

[84] When asked by Regulatory Services whether he has a good understanding of how a licensed premises must legally source liquor in Alberta, Mr. Burns confirmed that he did and stated that it must be purchased from an AGLC-approved retailer who holds a licence to sell liquor.

[85] When asked by Regulatory Services whether licensees must obtain invoices and receipts for all liquor products to prove how they were purchased, Mr. Burns said that traditionally they would. He further explained that he assumed S.D. had purchased the liquor from an AGLC-approved retailer and

did not know how to obtain a receipt from him. S.D. asked to be paid in cash and Mr. Burns did not find this odd since he believed that S.D. just lost his business and people want cash when they're experiencing financial difficulties.

[86] When asked by Regulatory Services whether he made any inquiries into what bar was closing, Mr. Burns stated that he did not ask anyone what the name of the bar was. Given his longstanding friendship with O.H., Mr. Burns explained that he did not feel the need to get any additional information about the sale of liquor by S.D.

[87] Regulatory Services referred to a chat log from January 25, 2022 to June 2022 between Mr. Burns and S.D. (Exhibit 2, Tab 17), and Mr. Burns contended that he had conversations with S.D. during that period of time but only met with him once on January 26, 2022. Mr. Burns further submitted that S.D. did not deliver liquor to his home on February 27, 2022.

[88] When asked by Regulatory Services why Pazzo Pazzo Italian Cuisine was talked about by J.R. during the meeting between the Organizers and the UCOs on February 24, 2022, Mr. Burns responded that he did not know why and asserted that he does not know J.R.

[89] Regulatory Services referred to a chat log from June 1, 2022 between Mr. Burns and his friend R.D. (Exhibit 2, Tab 12). When asked by Regulatory Services whether the liquor that Mr. Burns offered for sale to R.D. was obtained from S.D., Mr. Burns confirmed that it was.

[90] When asked by the Panel whether he was reselling liquor outside of his restaurant, Mr. Burns stated that he was not.

[91] When asked by the Panel to elaborate on the significance of the break in at Pazzo Pazzo Italian Cuisine on June 13, 2022, Mr. Burns stated the following:

- The attending EPS officers stated there was one bottle of liquor left in the premises, which was false.
- Three people entered the premises, yet none of the motion sensors caused the alarm to go off. The alarm company called Mr. Burns and advised him that the alarm went off, and Mr. Burns asked them to call the police. They said the police are already at the restaurant and are wondering when you'll be there, and Mr. Burns did not understand how they could have arrived at the restaurant so quickly.
- When Mr. Burns arrived at the scene, he said that EPS told him they set off the alarm when they entered the premises.

[92] As required by the conditions on the Licensee's liquor licence, Mr. Burns confirmed that one of his employees is responsible for ordering and purchasing liquor for Pazzo Pazzo Italian Cuisine. Since the conditions were imposed, Mr. Burns said that AGLC inspectors have not visited his restaurant.

[93] Mr. Burns contended that Pazzo Pazzo Italian Cuisine has not had any prior infractions or problems with AGLC.

[94] Mr. Burns stated that despite closures and reduced operating hours throughout the COVID-19 pandemic, Pazzo Pazzo Italian Cuisine was able to remain viable. From May – November 2022, the restaurant experienced a significant loss of business due to road construction.

[95] Two weeks prior to the hearing, Mr. Burns said that Pazzo Pazzo Italian Cuisine suffered significant smoke damage due to a nearby fire and will be closed for several months for repairs.

[96] Mr. Burns submitted that he has worked hard to run a legitimate business for over 20 years, and his arrest and the court proceedings have caused him pain and embarrassment. He further stated that he made a mistake, but he has never done anything against the law and never would.

V. Summation

Regulatory Services

[97] Regulatory Services submits that as result of the Licensee's contravention of section 69(1)(a) of the Act, the Licensee is no longer eligible to hold a liquor licence in accordance with section 92(1) of the Act and section 13.1 of the Gaming, Liquor and Cannabis Regulation (the Regulation).

[98] Regulatory Services is of the opinion that the evidence provided by Constable Francis is clear; Project Capone was initiated to address the prevalence of liquor thefts, particularly the increasing violence committed during these thefts. As a result of this undercover investigation, information was obtained by Constable Francis indicating that the Licensee had purchased multiple orders of liquor from an organized crime group that was held out to be stolen.

[99] Regulatory Services contends that the Licensee had numerous direct telephone text conversations with the individuals in the theft ring to facilitate the purchase of the purported stolen liquor, and it is apparent that this communication ceased once several of the criminal organizers were arrested.

[100] Regulatory Services submits that UCOs conducted observations and obtained video footage of the marked liquor being transferred from a vehicle belonging to one of the members of the theft ring to Mr. Burns' vehicle directly in front of Pazzo Pazzo Italian Cuisine.

[101] When the search warrant was executed on June 21, 2022, Regulatory Services contends that numerous bottles of purported stolen liquor were seized from the service bar and storage areas of the licensed premises. They were clearly serving as part of the regular liquor inventory of the premises, positioned for sale to customers.

[102] Regulatory Services submits that AGLC investigators and inspectors did not uncover additional bottles when they entered the licensed premises, as a search warrant executed was successful in retrieving the purported stolen liquor.

[103] Regulatory Services submits that the Licensee plead guilty in court under section 50 of the Act for unlawful possession of liquor.

[104] Director Dennis Storey has further confirmed that the Licensee's actions constitute a detriment to liquor activities pursuant to section 13 of the Regulation. As such, Regulatory Services contends that the Licensee cannot continue under the circumstances and would not be granted a licence if he were to apply for one today.

[105] Regulatory Services asks that the Panel consider sections 13.1(1) and 13.1(2) of the Regulation.

[106] Regulatory Services conducted an investigation as required by the Act and Regulation and has identified the Licensee's willingness to support illegal activity by possession of property obtained by crime for the purpose of trafficking; this behaviour contravenes section 13 of the Regulation.

[107] Regulatory Services takes the position that it is incumbent on AGLC to ensure that the Licensee does not continue to hold a liquor licence.

[108] If the Licensee is allowed to continue to hold a liquor licence, Regulatory Services is of the opinion that the violent theft ring that supplies stolen liquor and contraband products to organized crime groups, and in turn to licensees and businesses, will continue to flourish unabated. Furthermore, the violence faced by retail liquor stores, which was the motivating force behind the initiation of Project Capone, will continue and likely escalate as the sale of stolen liquor to organized crime groups and complicit licensees continues to be profitable.

[109] Regulatory Services contends that the safety of Albertans and the integrity of liquor activities is at stake, and AGLC must mitigate this risk; failure to do so will permit the operators of organized crime to continue to put Albertans' lives at risk.

[110] Regulatory Services submits that as long as there is a demand for stolen liquor, the criminal element will continue to commit acts of violence to supply the illicit market further.

[111] Regulatory Services takes the position that the Licensee did not present any evidence to support his claim that the liquor he purchased may have come from another licensed premises; therefore, inference should be drawn that as a longstanding licensee, Mr. Burns knew or ought to have known the product he purchased was illegally sourced.

[112] Regulatory Services submits that just because the police did not see the additional liquor deliveries to Mr. Burns, it does not mean that they did not occur.

[113] For these reasons, Regulatory Services requests that the Panel proceed in accordance with section 92(1) of the Act and cancel the Licensee's liquor licence.

[114] Additionally, Regulatory Services also asks that the Licensee be deemed ineligible for future licensing for a prescribed period of time to prevent their continued participation in the industry.

[115] Regulatory Services recommends that at minimum, the Licensee and any of their associates be deemed ineligible for licensing for a period of five years.

Pazzo Pazzo Italian Cuisine

[116] Mr. Hladun, on behalf of Pazzo Pazzo Italian Cuisine, submits that with the exception of S.D., Mr. Burns does not know any of the individuals that Constable Francis named during the hearing and no evidence was produced to show that Mr. Burns knew them.

[117] Mr. Hladun contends that Mr. Burns' explanation that he was introduced to S.D. by his longtime friend, O.H., is plausible and believable.

[118] Mr. Hladun submits that O.H. was neither charged nor subpoenaed in connection with any Project Capone matters.

[119] Mr. Hladun is of the opinion that Constable Francis presented theories, speculation, conjecture and hyperbole to the Panel without evidence.

[120] Mr. Hladun takes the position that Regulatory Services' contention that organized crime violence has arisen as a result of Mr. Burns' purchase of liquor is hyperbole. Further, Mr. Burns is not a part of any organized crime group.

[121] Mr. Burns acknowledges that he purchased the cases of liquor from S.D. with cash on January 26, 2022. During Project Capone, Mr. Burns was never observed bringing any liquor into Pazzo Pazzo Italian Cuisine; however, against his own self-interest, he admits to bringing the liquor into Pazzo Pazzo Italian Cuisine.

[122] Mr. Hladun submits that Mr. Burns accepts responsibility for his actions and acknowledges that he crossed the line.

[123] Mr. Hladun takes the position that Mr. Burns believed he was obtaining the liquor from a bar that had gone out of business, and Mr. Storey confirmed that a licensee may purchase liquor from another licensee who is permitted to sell their liquor inventory. Therefore, liquor sold by these means is not contraband.

[124] Mr. Hladun contends that UCOs tried to sell Mr. Burns purported stolen liquor and he repeatedly turned them down. Further, there is no evidence showing that he purchased liquor from them.

[125] Mr. Hladun is of the opinion that Mr. Burns and Pazzo Pazzo Italian Cuisine are not the criminals in this scenario; the criminals are the numerous nefarious characters who were looking for liquor, drugs and other contraband items. Further, the suggestion that Mr. Burns is somehow furthering or participating in criminal activity is not supported with evidence.

[126] Mr. Hladun submits that the nefarious characters who met with UCOs have no credibility, and therefore no weight should be given to the audio recording of their discussion.

[127] Mr. Hladun submits that Pazzo Pazzo Italian Cuisine has faced numerous challenges:

- The restaurant is located in a difficult area of Edmonton with a high rate of homelessness; as a result, the restaurant has been broken into numerous times.

- The restaurant has been impacted by the COVID-19 pandemic.

[128] Mr. Hladun submits that Mr. Burns would not jeopardize his livelihood by purchasing stolen liquor from people he doesn't know.

[129] Mr. Hladun is of the opinion that the criminal charges for attempt to possess stolen property laid against Mr. Burns and Pazzo Pazzo Italian Cuisine were very tough to prove.

[130] Mr. Hladun submits that a senior prosecutor on behalf of AGLC accepted Pazzo Pazzo Italian Cuisine's guilty plea under section 50 of the Act and was fined \$5,000 plus a \$1,500 victims services charge.

[131] Mr. Hladun contends that the evidence should be weighed on a balance of probabilities.

[132] Mr. Hladun contends that Pazzo Pazzo Italian Cuisine has not received any infractions, citations or done anything contrary to the Act in the last 20 years.

[133] Pazzo Pazzo Italian Cuisine has abided by the conditions that were placed on the liquor licence.

[134] Mr. Hladun is of the opinion that sanctioning Pazzo Pazzo Italian Cuisine twice for the same set of circumstances is akin to double jeopardy.

[135] Mr. Hladun takes the position that canceling Pazzo Pazzo Italian Cuisine's liquor licence would be unwarranted and unfair, and it would be unnecessary in terms of protecting the public.

[136] Mr. Hladun is of the opinion that a fine would be sufficient if Pazzo Pazzo Italian Cuisine is found to have contravened section 69(1)(a) of the Act.

Rebuttal

[137] Ms. Alisha Hurley submits that Mr. Hladun's comments with regard to double jeopardy do not apply to the circumstances of this matter. It has been well established in law that the same conduct can have different consequences and different types of hearings.

[138] Further, Ms. Hurley submits that the prosecution that was conducted by the Crown prosecutor was not done on behalf of AGLC; it was in relation to a separate section of the Act in which individuals who are not regulated by AGLC can be prosecuted. The matter before the Panel is separate, and the penalties that are available are different from the penalties that are available in a criminal prosecution.

[139] Mr. Hladun submits that Mr. Hurley is correct; it's not double jeopardy and Regulatory Services is not statute barred. Further, Mr. Hladun submits that the concept of double jeopardy, legally, is something that might not be appropriate here but is a matter of common sense and practicality.

VI. Analysis

[140] The Panel carefully considered the oral evidence of the witnesses and the submissions of Regulatory Services and the Licensee.

[141] With respect to the contravention of section 69(1)(a) of the Act, the Panel finds that Mr. Burns admittedly purchased approximately 20 cases of liquor from an individual who was not licensed to sell liquor and did not obtain a record of the purchase.

[142] Pursuant to section 6.1.1 of the Liquor Licensee Handbook (the Handbook), Class A licensees are able to purchase liquor directly from AGLC, from a liquor supplier or liquor agency authorized by AGLC to warehouse and distribute its products, or from Class D licensees.

[143] Pursuant to section 6.1.2 of the Handbook, Class A licensees are required to keep a record of all liquor purchases to prove the source of all liquor in the licensed premises.

[144] The Panel finds that the onus is on the Licensee to purchase liquor in accordance with AGLC's policies. As a long-standing Licensee, Mr. Burns is aware of the requirements and failed to purchase liquor from an approved source.

[145] The Panel finds that operating a licensed premises is a privilege and not a right. That privilege entails the responsibility to strictly abide by the Act, the Regulation and AGLC's policies.

[146] The Panel finds as fact that the evidence provided by Constable Francis confirms that the 23 bottles seized by EPS members from Pazzo Pazzo Italian Cuisine had unique identifiers applied to them by Constable Francis and his team as part of Project Capone. The Panel further finds that the evidence provided by Constable Francis confirms that the specially marked bottles were held out to be stolen and could not have been legally acquired by the Licensee.

[147] As such, the Panel finds that the Licensee contravened section 69(1)(a) of the Act.

[148] Based on the evidence, the Panel concludes the onus is on the Licensee and the Licensee knew or should have known that the liquor in question was not purchased from an AGLC-approved source and that such purchase contravened the Act and AGLC's policies. By purchasing liquor from illegitimate sources, the Licensee has contributed to liquor store thefts and organized criminal activity and has not exercised the level of due diligence required to operate a licensed premises.

[149] The Panel finds that Mr. Burns willingly communicated with a member of organized crime (Exhibit 2, Tab 17). Public safety is of utmost importance, and obtaining liquor in accordance with AGLC's policies helps to mitigate the criminal activities and associated violence that arise from the demand for contraband liquor.

[150] As such, the Panel finds that the second existing condition remains reasonable and necessary.

VII. Finding

[151] For the reasons noted above, the Panel finds that the Licensee contravened section 69(1)(a) of the Act.

[152] In accordance with section 91(2)(d) of the Act, the Panel suspends Pazzo Pazzo Italian Cuisine's Class A Minors Allowed liquor licence numbered 765516-1 for a period of one (1) year. The liquor licence suspension is effective starting on April 16, 2024.

[153] The liquor licence numbered 765516-1 will be reinstated effective April 16, 2025, contingent upon the Licensee's compliance with the second existing condition (as amended by this decision) on the liquor licence.

[154] Further, in accordance with section 91(2)(b) of the Act and effective as of the date of this decision, the Panel rescinds the first existing licence condition:

- Mr. James Burns must not have any contact, either directly or indirectly, with any of the other individuals facing criminal charges under the Project Capone operation;

and amends the second existing licence condition as follows:

- Mr. James Burns is prohibited from the liquor operations of the business, including ordering and acquiring liquor. This responsibility must be carried out by another agent or employee of the licensee. Further, Mr. James Burns must advise Regulatory Services of the individual who has been assigned the responsibility and any time these duties or individual changes.

Signed at Calgary, this 16th day of February, 2024

A handwritten signature in black ink, appearing to be 'Patti Grier', written in a cursive style.

Patti Grier, Presiding Member, Hearing Panel