

**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

**ERC Casinos Limited Partnership
Elbow River Casino (Applicant)
218 18 Avenue SE
Calgary, AB T2G 1L1**

DATE OF HEARING:	April 17, 2024
HEARING PANEL:	Tongjie Zhang, Presiding Member Vincent Vavrek, Panel Member Patti Grier, Panel Member(<i>withdrew</i>)
APPLICANT / REPRESENTATIVE:	David Ng, Managing Director Rob Armstrong, Manager
REGULATORY SERVICES DIVISION:	Todd Stearns, Hearing Officer Colin Lock, Resource Officer

DECISION OF THE HEARING PANEL

The Panel finds that Elbow River Casino contravened section 5.3.9 (previously section 5.5.10) of the Casino Terms & Conditions and Operating Guidelines (the CTCOG).

In accordance with section 94(7)(a) of the *Gaming, Liquor and Cannabis Act* (the Act), the Panel confirms the administrative sanction imposed by the Regulatory Services Division of a \$1,000 fine.

The \$1,000 fine is to be paid on or before June 3, 2024.

I. Jurisdiction and Preliminary Matters

[1] By letter dated January 2, 2024, the Regulatory Services Division (Regulatory Services) of Alberta Gaming, Liquor and Cannabis Commission (AGLC) advised ERC Casinos Limited Partnership, operating as Elbow River Casino (the Licensee), that the Licensee contravened:

- Section 5.5.10 of the CTCOG: Monitor room personnel must be in the monitor room at all times during operational hours of the casino. A senior security officer, trained in the use of camera surveillance, may be used to relieve monitor room personnel during breaks and for the monitoring of late night poker (3:00 am to 10:00 am).

[2] Regulatory Services imposed an administrative sanction of a fine of \$1,000.

[3] The Licensee subsequently applied for a hearing before a Panel of the Board of AGLC pursuant to section 94(1) of the Act.

[4] In accordance with section 11 of the Act, the Board Chair designated three members of the Board to sit as a Panel to conduct the hearing and make a decision – Tongjie Zhang (Presiding Member), Vincent Vavrek and Patti Grier.

[5] In February 2024, the CTCOG was amended and section 5.5.10 was changed to section 5.3.9. The wording of this section did not change.

[6] On the day of the hearing, Panel Member Grier advised the Hearing Panel Office that she was unable to attend the hearing for personal reasons and withdrew from the Panel.

[7] At the outset of the hearing, Presiding Member Zhang advised the parties that Panel Member Grier withdrew from the Panel, and that pursuant to sections 11(2) and 11(7) of the Act, Presiding Member Zhang and Panel Member Vavrek were prepared to proceed.

[8] The parties and the Hearing Panel were provided with a record containing various documents pertaining to the issues before the panel. The Licensee confirmed receipt of the Notice of Hearing dated February 9, 2024 and the attached hearing record. The following documents were entered into evidence:

- Exhibit 1 Hearing Record, including Tabs 1 to 4
- Exhibit 2 Additional document provided by Regulatory Services
- Exhibit 3 Additional documents provided by the Licensee, including Tabs 1 to 11

II. Issues

[9] Did the Licensee contravene section 5.3.9 (previously section 5.5.10) of the CTCOG? If so, should the administrative sanction of a \$1,000 fine imposed by Regulatory Services be confirmed, replaced, or cancelled?

III. Regulatory Services Submissions

[10] Regulatory Services called two witnesses: AGLC Inspectors Josh Rabey and Peter Snowdon. Inspector Rabey has been an inspector with AGLC for approximately five and a half years and Inspector Snowdon has been an inspector with AGLC for 16 years. Inspector Rabey authored an Incident Report, which details an incident that occurred at Elbow River Casino on November 29, 2023 (Exhibit 1, Tab 2).

[11] The following is a summary of the evidence provided by Inspectors Rabey and Snowdon.

[12] Inspectors Rabey and Snowdon attended Elbow River Casino in January 2023 to conduct an operating check and observed security personnel in the monitor room covering entire shifts for monitor room personnel who were on vacation.

[13] Inspectors Rabey and Snowdon discussed the AGLC policy that limits security personnel to coverage for breaks for monitor room personnel with M.C.D. in person in early March 2023 when he returned from vacation and with David Ng over the phone. They also advised Mr. Ng and M.C.D. to contact the Investigations Branch of Regulatory Services when they become aware that they will be in breach of policy and submit a request for an exemption, which can be made when a licensed premises does not have sufficient staff to cover shifts. Inspector Rabey also advised Mr. Ng and M.C.D. that Regulatory Services works with licensees to prevent sanctions and fines.

[14] When asked by the Panel whether a caution was issued or a report was prepared in connection with the January 2023 incident, Inspector Rabey stated that he:

- completed an operational report;
- provided verbal education to the management of Elbow River Casino; and
- advised management that they should contact him and the Investigations Branch to request an exemption when they become aware that they cannot comply with AGLC policies.

[15] When asked by Mr. Ng whether he specifically advised that an email should be sent to AGLC when Elbow River Casino needs security staff to cover monitor room personnel, Inspector Snowdon contended that Inspector Rabey took the lead on the phone call, but he recalls that Mr. Ng was advised to contact the Investigations Branch.

[16] Inspector Rabey advised the Panel that he did not receive any exemption requests from Elbow River Casino between November 29, 2023 and the date of the Incident Report, being January 2, 2024.

[17] On November 29, 2023, Inspector Rabey visited Elbow River Casino to conduct an investigation and was permitted access to the monitor room by Security Supervisor V.C., who was alone in the monitor room at the time.

[18] Inspector Rabey explained that it is not unusual for a security supervisor to be alone in the monitor room because they are allowed to relieve monitor room personnel for short breaks and watch overnight poker from 3:00 a.m. to 10:00 a.m.

[19] Inspector Rabey stated that V.C.'s shift was from 1:00 p.m. to 5:00 p.m. in the monitor room on November 29, 2023, which is a contravention of AGLC policy. V.C. stated that he was covering the shift of a monitor room staff member named T.T., who was on vacation.

[20] Inspector Rabey reviewed the schedule posted on the cork board in the surveillance room, which showed that T.T. was scheduled for that day and nothing indicated that she was going to be absent.

[21] When Inspector Rabey asked who would be covering the rest of T.T.'s shifts while she was on vacation, V.C. said that security personnel would be working some of the shifts. Inspector Rabey later found out that all of T.T.'s remaining shifts were covered by security personnel.

[22] When asked by the Panel whether Elbow River Casino had the ability to ask for an exemption ahead of the incident on November 29, 2023, and if so, what the likelihood would have been of Regulatory Services granting an exemption, Inspector Rabey said that to his knowledge T.T.'s vacation was planned far in advance and therefore an exemption could have been requested and would likely have been granted.

[23] Inspector Rabey requested surveillance footage from V.C., but he was not able to provide the footage as he needed help to use the system. V.C. called Security Manager M.C.D., and once he arrived at the monitor room, he was able to provide Inspector Rabey with the surveillance footage.

[24] Inspector Rabey explained that senior security personnel who are covering breaks for monitor room personnel or monitoring late-night poker in the monitor room must know how to operate the CCTV equipment, as required by AGLC policy.

[25] When asked by Mr. Ng how long it took to get the surveillance footage, Inspector Rabey stated that it took approximately five minutes, however, there are specific staff members who are registered to work in the monitor room and they are supposed to be capable of providing surveillance footage.

[26] Prior to submitting the Incident Report, Inspector Rabey said that he confirmed with the Investigations Branch that Elbow River Casino had not requested an exemption allowing a security staff member to cover a full shift in the monitor room and no attempts were made by the Licensee to contact Inspector Rabey and the Investigations Branch.

[27] When asked by Mr. Ng whether he feels that Elbow River Casino is purposely not working with Regulatory Services, Inspector Snowdon stated that he would normally expect an email or a discrepancy report advising Regulatory Services that the Licensee requires security staff to cover monitor room personnel on an extended basis.

[28] Inspector Snowdon contended that AGLC inspectors and investigators visit casinos on a regular basis, and licensees have ample opportunity to advise Regulatory Services either in person, by email or by phone when challenges arise. If unforeseen issues arise, he would expect to see a discrepancy report on the day of the incident or the following day.

[29] When asked by Mr. Ng whether he thought it was strange that Elbow River Casino did not notify Regulatory Services that they did not have coverage for a monitor room staff member who was going on holidays, Inspector Snowdon stated that he is unaware of the internal communication at Elbow River Casino and how responsibility is assigned with regard to advising Regulatory Services of issues that arise.

[30] When asked by Rob Armstrong whether the procedures for making requests to Regulatory Services and notifying them of issues were ever provided to Elbow River Casino in writing, Inspector Snowdon advised that he could not recall whether an email was sent to Mr. Ng after their discussion, but the policy for submitting a discrepancy report is set out in the CTCOG.

[31] When asked by the Panel what would have been a reasonable amount of time to request an exemption in advance of the incident on November 29, 2023, Inspector Snowden stated that:

- it was a scheduled vacation that required coverage, so there was ample opportunity for the Licensee to request an exemption from Regulatory Services; and
- five business days would have been enough time to request an exemption in advance of the monitor room personnel's absence.

[32] When asked by the Panel what licensees do in circumstances where there is an unforeseen absence of a staff member and no appropriate staff members are available to cover, Inspector Snowden advised that licensees can call AGLC Custom Care and ask to speak to a gaming inspector or investigator.

[33] Inspector Snowden advised the Panel that Regulatory Services expects a discrepancy report to be submitted when an irregularity occurs and prior approval of an exemption has not been granted. Further, he could not recall seeing a discrepancy report regarding section 5.3.9 (previously section 5.5.10) of the CTCOG over the last few years.

[34] Investigator Lock advised the Panel that he has worked in the Investigations Branch for six years, and he has received only three exemption requests regarding section 5.3.9 (previously section 5.5.10) of the CTCOG.

IV. Elbow River Casino Submissions

[35] The Representative for the Licensee, David Ng, gave evidence and called one witness to give evidence on behalf of Elbow River Casino:

- S.S., Surveillance Supervisor

[36] The following is a summary of the evidence provided by Mr. Ng and S.S.

[37] S.S. has worked for Elbow River Casino for 25 years. She reports to M.C.D. and Rob Armstrong, and as part of her position, she arranges the staff scheduling for the monitor room and assists with hiring new staff.

[38] S.S. stated that Elbow River Casino requires five monitor room staff members to adequately staff the monitor room. They currently have four monitor room staff members and are using the security supervisor for coverage.

[39] With respect to the incident that occurred in January 2023, S.S. stated the following:

- M.C.D. told her that Inspectors Snowden and Rabey required a solution for the monitor room personnel coverage issues and asked that Elbow River Casino email a list of staff coverage to them; and
- Elbow River Casino had staffing issues at that time and did not have any other solution than to hire someone to work in the monitor room.

[40] When asked by Regulatory Services whether she was aware of the details of the Incident Report, S.S. confirmed that she was not.

[41] When asked by Regulatory Services why there were staffing issues at Elbow River Casino in November 2023, S.S. explained that:

- a surveillance operator resigned on September 26, 2023 and gave two weeks' notice;
- the vacant surveillance operator position was very difficult to cover since it was an overnight shift;
- a new surveillance operator was hired, but it took approximately five weeks to get his police information check results; and
- the new surveillance operator started training at Elbow River Casino on November 30, 2023.

[42] When asked by Regulatory Services whether she informed anyone at AGLC about Elbow River Casino's staffing issues, S.S. stated that:

- she was unaware of the requirement to contact Regulatory Services about staffing issues;
- coverage is posted on a white board, and she assumed everybody knew that security staff members were being used to cover monitor room staff members;
- no one from Regulatory Services raised any issues in September and October 2023.

[43] When asked by Regulatory Services why Elbow River Casino is not looking to increase their monitor room staff to ensure that there are no policy violations, S.S. explained that hiring an extra person does not mean they will be available when they are called to cover a shift.

[44] Mr. Ng explained that because of the nature of the monitor room and the need for secrecy in regard to camera positioning, they maintain a small staff of monitor room personnel to mitigate any leakage. Further, they cannot hire additional monitor room staff because they need to provide their staff with a meaningful living, and staff who are not given full-time hours resign.

[45] Mr. Ng stated that he is aware that the downside of having a small number of monitor room staff is that absences cannot easily be covered at times, but Elbow River Casino is:

- willing to take that risk;
- able to maintain the functionality of the monitor room when there are absences; and
- able to provide information to AGLC inspectors in a timely manner.

[46] Mr. Ng said that Elbow River Casino was unable to hire new staff for some time because certain existing staff at Elbow River Casino were going through the unionization process.

[47] When asked by Regulatory Services how far in advance T.T. requested her November 2023 vacation, S.S. said that T.T. provided four or five months' notice.

[48] S.S. explained to the Panel that although she knew well in advance that T.T. would be on vacation from November 29 to December 2, 2023, she thought that the newly hired surveillance operator was going to start training before T.T.'s vacation. She further confirmed that she and M.C.D. are responsible for ensuring that absences are covered, and they approved T.T.'s vacation request.

[49] When asked by Regulatory Services why it did not occur to her to email a list of staff coverage to Regulatory Services in November 2023 given that they had previously requested that information, S.S. said that M.C.D. did not explain to her that Elbow River Casino was required by policy to do that. She further stated that Investigator Lock explained the requirements for staff coverage to her after the November 2023 incident, and she emails him every Monday with regular updates.

[50] S.S. explained that because security staff could be used to cover monitor room staff during their breaks, she did not think it would be a violation of policy to use security staff for coverage for a couple of hours.

[51] When asked by the Panel whether she considers three days to be a break and what her interpretation of a break is, S.S. said that:

- V.C. did not provide coverage for three consecutive days during T.T.'s vacation;
- the policy does not say that security supervisors and security managers cannot provide coverage for full shifts; and
- a break is a 30-minute break during a shift.

[52] When asked by the Panel why T.T.'s name was still on the board if her vacation was known far in advance, S.S. explained that:

- T.T. was not on the board;
- the cork board has the staff's regular schedule; and
- the white board has changes to the regular schedule.

[53] When the Panel referred to the Incident Report (Exhibit 1, Tab 2) and asked Mr. Ng to explain Inspector Rabey's observation that no security supervisor coverage was listed on the cork board and T.T. appeared to be scheduled for work on November 29, 2023, Mr. Ng said that he did not have knowledge of that and stated that S.S. and M.C.D. are responsible to covering staff absences.

[54] S.S. stated that neither Inspector Rabey nor Inspector Snowdon explicitly advised her that she could ask for an exemption for coverage in the monitor room by emailing or calling the Investigations Branch.

[55] S.S. explained to the Panel that she had a conversation with an AGLC inspector after the November 2023 incident and asked what Elbow River Casino needed to do to in order to be in compliance with the CTCOG, and the inspector explained the exemption request process. She further stated that prior to the November 2023 incident, she had always used security supervisors and security managers to cover monitor room staff absences and has never been told by anyone in Regulatory Services that she could not do that.

[56] S.S. said that she requested an exemption for coverage in the monitor room from Investigator Lock in March 2024.

[57] When S.S. was asked by Regulatory Services to explain how Elbow River Casino deals with unforeseen absences of monitor room staff, S.S. said that they are either able to cover the absence with another monitor room staff member or have the security supervisor or security manager cover.

[58] When asked by Regulatory Services whether she thinks it is concerning that Elbow River Casino must seek an exemption for regular and foreseeable monitor room staff absences, S.S. explained that monitor room staff only take a week of vacation each year and therefore it is not necessary to hire an extra person to help with vacation coverage. Further, that individual could not be utilized for anything else.

[59] When Regulatory Services asked S.S. who at Elbow River Casino is responsible for ensuring that AGLC policies are followed and whether she is aware of the requirement to submit a discrepancy report when a policy violation occurs, S.S. stated that:

- she, monitor room staff and managers have that responsibility; and
- she is aware of the requirement to submit a discrepancy report.

[60] Mr. Ng stated that he is ultimately responsible for ensuring that AGLC policies are followed.

[61] When asked by Regulatory Services whether she considers the absence of monitor room staff from the monitor room to be a violation of policy, S.S. stated that she was unaware of section 5.3.9 (previously section 5.5.10) of the CTCOG.

[62] When asked by Regulatory Services whether section 5.3.9 (previously section 5.5.10) of the CTCOG specifies what times security staff can cover monitor room staff, Mr. Ng acknowledged that it does. He further stated that if you look at the policy word-by-word, Elbow River Casino was not in compliance with it. However, if you look at the spirit of the policy, they were in compliance with it.

[63] When Regulatory Services referenced section 5.6.1 of the CTCOG and asked Mr. Ng whether his staff are trained on the policies set out in the CTCOG, Mr. Ng contended that S.S. has been working for Elbow River Casino for 25 years and knows what she is doing.

[64] When Regulatory Services referred Mr. Ng to a note on page three of the Registration Application for Gaming Worker (Exhibit 2) that states "Monitor Room Personnel may not hold any other gaming registration" and asked him how that implies that a security supervisor can take the position of a monitor room staff member, Mr. Ng stated that because they are allowed to use security supervisors to relieve monitor room staff for breaks, he thought they could expand on that policy and use security supervisors to cover full shifts.

[65] Mr. Ng asserted that although there were no monitor room personnel in the monitor room when Inspector Rabey visited Elbow River Casino on November 29, 2023, the functionality of the monitor room was not compromised.

[66] Mr. Ng said that he feels targeted because the process for requesting an exemption was never explicitly relayed to the Licensee, and had they known they would have complied with the process.

V. Summation

Regulatory Services

[67] Regulatory Services is of the opinion that Elbow River Casino violated section 5.3.9 (previously section 5.5.10) of the CTCOG by not reporting the deficiency in relation to staffing their monitor room with personnel who are not permitted to perform this task.

[68] Regulatory Services takes the position that they are receptive to working with Elbow River Casino on the deficiencies that have been identified before another policy violation occurs.

[69] Regulatory Services contends that it has provided Elbow River Casino with the opportunity to come back into compliance with the most recent issue seen in the email chain between Investigator Lock and S.S. (Exhibit 3, Tab 11); however, this allowance is temporary and clear expectations on meeting policy requirements are promptly provided to Elbow River Casino.

[70] Inspectors Rabey and Snowdon provided testimony that Elbow River Casino was notified in March of 2023 of this specific policy requirement due to a similar issue that occurred in January 2023, and the inspectors confirmed that they advised M.C.D. and Mr. Ng to contact AGLC when they have issues with meeting policy requirements.

[71] Regulatory Services submits that in September 2023, Elbow River Casino was provided with an employee's two-week notice of resignation and advanced notice of T.T.'s vacation request. In both instances, Elbow River Casino failed to notify AGLC of the potential issues with adhering to policy and instead scheduled staff who were not permitted by policy to perform these duties for a prolonged period of time.

[72] In addition to the infraction cited in the Incident Report, Elbow River Casino revealed that the security supervisor who was covering the monitor room was unable to retrieve the video requested by Inspector Rabey and had to call the security manager to attend the monitor room to fulfill the request.

[73] Regulatory Services contends that it is Elbow River Casino's responsibility to ensure policies are being met, which includes ensuring adequate staffing, accounting for foreseeable absences such as vacations, and providing coverage when emerging issues occur.

[74] Regulatory Services submits that a contravention of section 5.3.9 (previously section 5.5.10) of the CTCOG occurred and requests that the Panel uphold the administrative sanction of a \$1,000 fine.

Elbow River Casino

[75] Elbow River Casino submits that although they did not have the correct personnel in the monitor room during the incident on November 29, 2023, they were still able to provide Regulatory Services with the requested surveillance footage in a timely manner, and five minutes is not an unreasonable amount of time.

[76] Elbow River Casino takes the position that they have always tried to maintain the functionality and integrity of the monitor room, but occasionally they get caught due to tight labour market conditions and the number of personnel they are able to employ.

[77] Elbow River Casino contends that in order to preserve the secrecy and unique information contained in the monitor room, they must have a small number of monitor room personnel.

VI. Analysis

[78] The Panel carefully considered the oral and documentary evidence submitted by Regulatory Services and Elbow River Casino in making its finding of fact.

[79] Inspectors Snowdon and Rabey provided evidence that they advised M.C.D. and Mr. Ng in early 2023 that security staff cannot cover full shifts in the monitor room.

[80] S.S. and Mr. Ng submitted that before the incident on November 29, 2023, they were never explicitly advised that they could request an exemption from Regulatory Services. S.S. further submitted that the CTCOG does not say that security staff cannot be used to cover full shifts in the monitor room.

[81] Inspector Rabey provided evidence that on November 29, 2023, he found Security Supervisor V.C. in the monitor room of Elbow River Casino covering a four-hour shift for a monitor room staff member. Further, V.C. was unable to provide Inspector Rabey with the video surveillance he requested.

[82] Mr. Ng did not deny that security supervisor V.C. was covering a shift for a monitor room staff member and did not dispute that this was a violation of section 5.3.9 (previously section 5.5.10) of the CTCOG.

[83] The Panel finds that the wording of section 5.3.9 (previously section 5.5.10) of the CTCOG clearly restricts the use of senior security officers in the monitor room to coverage for monitor personnel breaks and for the monitoring of late-night poker. Further, this policy stipulates that senior security officers used for coverage must be trained in the use of camera surveillance.

[84] As such, the Panel finds that by permitting a security supervisor who was not trained in the use of camera surveillance to cover a full shift in the monitor room, Elbow River Casino contravened section 5.3.9 (previously section 5.5.10) of the CTCOG.

[85] The Panel finds that the onus is on the Licensee and the management team of Elbow River Casino to know the policies set out in the CTCOG, ensure they are being adhered to and carried out appropriately, and request exemptions or complete discrepancy reports when policies will be or have been violated. Further, S.S.'s and Mr. Ng's purported ignorance of AGLC policies is not an excuse to contravene them and does not absolve the Licensee from liability. The rules and policies need to be followed in order to uphold the integrity required to hold a casino facility licence and to ensure the safety of patrons and the public.

VII. Finding

[86] For the reasons stated above, the Panel finds that Elbow River Casino contravened section 5.3.9 (previously section 5.5.10) of the CTCOG.

[87] In accordance with section 94(7)(a) of the Act, the Panel confirms the administrative sanction imposed by Regulatory Services of a \$1,000 fine.

[88] The \$1,000 fine is to be paid on or before June 3, 2024.

Signed at Calgary, this 3rd day of May, 2024

A handwritten signature in blue ink, appearing to read 'Tongjie Zhang', written in a cursive style.

Tongjie Zhang, Presiding Member, Hearing Panel