

**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

**Gateway Casinos & Entertainment Limited (Applicant)
o/a Grand Villa Casino Edmonton
c/o Lawson Lundell LLP
Brookfield Place
Suite 1100, 225 6 Avenue SW
Calgary AB, T2P 1N2**

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| DATE OF HEARING: | September 26, 2022 |
| HEARING PANEL: | Len Rhodes, Presiding Member Vincent Vavrek, Panel Member Jack Fujino, Panel Member |
| APPLICANT’S REPRESENTATIVE: | Laura Bevan, Legal Counsel Grace Kang, Legal Counsel |
| REGULATORY SERVICES DIVISION: | Rebecca Lee, Legal Counsel Russell Hildebrandt, Resource Officer |

DECISION OF THE HEARING PANEL

In accordance with sections 38(3) and 94(7)(c) of the *Gaming, Liquor and Cannabis Act* (the Act), the Panel cancels the decision of the Board to impose an operational condition (the condition) on the casino facility licence (CFL) for Gateway Casinos & Entertainment Limited, operating as Grand Villa Casino Edmonton. The Panel hereby removes the condition from the CFL numbered 449316, effective on October 28, 2022.

Should the hours of operation change, Grand Villa must provide a schedule of the new casino hours of operation to AGLC, advisors, and any charitable organizations scheduled for events at least two weeks in advance of the date the new hours of operation take effect, pursuant to section 1.13.3 of the Casino Terms & Conditions and Operating Guidelines (CTCOG).

I. Jurisdiction and Preliminary Matters

[1] By letter dated June 16, 2022 the Regulatory Services of AGLC advised Grand Villa that the Board of AGLC had conditionally approved the issuance of a new CFL for a two-year term effective September 1, 2022 and expiring August 31, 2024, with the following condition on the licence:

- The facility must operate both slot and table games seven days a week, for a minimum of fourteen hours per day for slots and ten hours per day for tables, and any change to this scheduled must be approved by AGLC in advance.

[2] Grand Villa subsequently applied for a hearing before a Panel of the Board of AGLC pursuant to section 94(1)(b) of the Act.

[3] The parties and the Hearing Panel were provided with a record containing various documents pertaining to the issues before the panel. The Applicant confirmed receipt of the Notice of Hearing dated August 10, 2022 and the attached hearing record. The following documents were entered into evidence:

- Exhibit 1 Hearing Record
- Exhibit 2 Regulatory Services' additional documents, including Tabs 1 to 7
- Exhibit 3 Applicant's written submissions and supporting documents, including Tabs 1 to 6

II. Issues

[4] Should the licence condition imposed by the Board on Grand Villa's CFL numbered 449316 be confirmed, replaced, or cancelled?

III. Regulatory Services Evidence

[5] Regulatory Services made written submissions and called two witnesses to give evidence:

- Steve Lautischer, Executive Vice President, Business Development
- Dave Berry, Executive Vice President, Public Engagement and Chief Regulatory Officer

[6] Mr. Lautischer has been a member of AGLC's Executive since 2021. Prior to that, he was the Senior Director of Gaming at AGLC for several years. His responsibilities, as they relate to gaming, include the management of AGLC's electronic assets, including gaming terminals.

[7] Mr. Berry has been with AGLC for over nine years. In his current role, he oversees social responsibility as it relates to all three lines of business at AGLC, policy development, communications and acts as the Chief Anti-Money Laundering Officer and Chief Regulatory Officer, providing regulatory oversight in all areas. Particularly, with respect to gaming, Mr. Berry is involved with the issuance of licences and advancing AGLC's objectives by generating revenue and providing opportunities for charities in Alberta's casinos.

[8] The following is a summary of Regulatory Services' documentary evidence and the evidence provided by Mr. Lautischer and Mr. Berry.

[9] Mr. Lautischer advised the Panel that on September 15, 2019, Grand Villa decreased its operations to Thursday through Sunday, closing for business from Monday to Wednesday each week unless there was an event taking place at Rogers Place arena on one of those days.

[10] The decreased operations continued until March 17, 2020 when all casinos in Alberta were directed to close as a result of the COVID-19 pandemic.

[11] Mr. Lautischer confirmed that AGLC followed the provincial health directives and all casinos were closed from March 17, 2020 to July 12, 2020. On July 12, 2020, casinos were permitted to reopen to operate slot terminals; however, table games were not permitted. At that time, Grand Villa remained closed. In September 2020, table games were allowed under specific requirements. Grand Villa continued to remain closed.

[12] Then, as a result of the ongoing pandemic, all casinos were forced to close again in December 2020 until June 10, 2021 when full operations were permitted. Despite that, Grand Villa remained closed and did not reopen until July 18, 2022.

[13] Mr. Lautischer and Mr. Berry confirmed that they were aware that Grand Villa was involved with a labour dispute with the union representing its employees beginning in 2021 and that they were aware the dispute was resolved in May 2022.

[14] As a result of the reduced operations and then the continued closure, Regulatory Services prepared a Summary of Losses Incurred (Exhibit 2, Tab 7) which showed that during the six months of reduced operations, Grand Villa was closed for approximately one third of the time (60 days) and that 60 days of lost gaming revenue equated to a loss of \$1.2 to \$1.4 million to AGLC.

[15] Regulatory Services also showed in Exhibit 2 at Tab 7 that the change in hours also increased the wait times for charities by six weeks. Instead of waiting 23 months to hold a charitable event at a casino, charities were waiting 24.5 months. For 15 of the 1,750 total charities in the Edmonton area pool, their event was pushed into a later quarter. Mr. Berry affirmed that such a delay significantly impacts charities as they rely on the revenue from casino events. The closure and delays weaken the charity pool payout overall and could result in charitable groups being unable to address expenses if they are forced to rely on the unpredictable scheduling of events and, in turn, unpredictable funding.

[16] Mr. Berry explained that licensed charities that conduct and manage table games retain 50% of the net revenue from table games. Charities also receive 15% of slot revenues from the charitable casino events.

[17] As a result of the extended closure, the AGLC market assessment done in 2021 predicted losses of annual net slot sales at \$5.4 to \$6.4 million to AGLC (Exhibit 2, Tab 2). Mr. Lautischer clarified that

these figures represent total revenue, before the allocation to charities, Grand Villa and the derivatives that flow to AGLC and the General Revenue Fund (GRF).

[18] Mr. Lautischer advised the Panel that some of the business lost as a result of Grand Villa's closure would be captured by other operators, but not at a ratio of 1:1; such losses are never wholly captured by other operators.

[19] The impact to Edmonton area charities and expected losses resulting from the continued closure of Grand Villa was calculated to be \$1,100 to \$1,300 per every two-day charity event and lost revenues to AGLC, and the GRF, calculated as approximately \$3.8 to \$4.5 million annually.

[20] Regulatory Services submitted that Grand Villa was a weak contributor to the charity pool before their closure so the financial impact to charities is small. However, Mr. Berry clarified that although the impact to charities is small when compared to total net losses, \$1,200 can be significant for some charities. Examples of charities that are supported by Alberta's casinos are: emergency shelters, seniors' groups, sports programming, youth groups, animal shelters and religious organizations.

[21] When Grand Villa was closed in 2021, despite the COVID-19 restrictions being lifted, the wait times for charitable events increased by 20%, from 23 months to 28 months. The reduced number of days available for charitable events resulted in a loss of \$8,000 to the charity pool.

[22] Mr. Berry is of the opinion that Grand Villa and licensees alike have an inherent responsibility to operate as much as possible to generate revenue and support charities. Regulatory Services and AGLC have demonstrated flexibility to operators in the past during temporary changes in operations as a result of renovation, expansion or other unforeseen circumstances. AGLC is willing to work with casino operators in such instances.

[23] In response to the ongoing closure, on November 2, 2021, Mr. Lautischer and Mr. Berry wrote to Grand Villa (Exhibit 2, Tab 2) to advise of the millions of dollars in lost revenue to the province and charities. The letter advised Grand Villa that AGLC intended to remove all of its capital assets from Grand Villa on January 10, 2022 unless the facility resumed full gaming activities, seven days per week.

[24] On February 2, 2022, Mr. Lautischer and Mr. Berry provided follow up notice to Grand Villa (Exhibit 2, Tab 2) that AGLC had received no notice regarding Grand Villa's return to full operation and that AGLC would be removing its gaming terminals from Grand Villa commencing on February 28, 2022.

[25] Mr. Lautischer confirmed that on February 28, 2022, Regulatory Services removed 57 slot terminals, reducing Grand Villa's slot offering of AGLC-owned terminals to 193.

[26] Mr. Lautischer advised that the depreciation of slot and video lottery terminals (VLTs) owned by AGLC is calculated based on an eight-year lifespan of the terminals, which AGLC has a \$5.3 million investment in. The depreciation of the 193 terminals results in a non-cash expense of approximately \$660,000 per year for AGLC (Exhibit 2, Tab 2).

[27] Mr. Lautischer explained that slot terminals are allocated based on a supply and demand formula developed by AGLC. If more slot terminals were placed in Grand Villa to offset reduced operations, it may result in further losses to AGLC and is not in the best interests of Albertans. He shared that the overall utilization rate of the approximately 14,500 terminals in Alberta is 35 to 40%. An operator would need to demonstrate a slot utilization rate of 50% or greater during peak hours to justify the requirement for more slot terminals.

[28] Mr. Lautischer shared that since July 18, 2022, Grand Villa has been operating seven days per week. Based on the sustained operation of slot terminals during peak hours that Grand Villa has displayed since they reopened, AGLC was in a position to return some slot terminals to Grand Villa and had initiated this process at the time of the hearing.

[29] When asked about the condition imposed on Grand Villa's CFL, Mr. Lautischer explained that his team, in collaboration with Regulatory Services, determined that the operating hours set out in the condition were realistic and would garner a reasonable return on investment.

[30] Mr. Lautischer stated that he is not aware of any casino in Alberta with a similar condition on its licence nor has there been one in the past six years. He also stated emphatically that all other casinos operate seven days per week, operating slots anywhere from 14 hours per day in rural areas to 17-24 in urban centres. Mr. Lautischer advised that the reduced operations of Grand Villa from September 2019 to March 2020 was not something he had seen before.

[31] Mr. Lautischer advised the Panel that Albertans have high demand for access to slot terminals, as most facilities offer 17 hours or greater and that is what Albertans have come to expect. Regulatory Services suggested that gaming terminals should be operated as many hours as possible to maximize their earning capability in their lifespan.

[32] A team of data scientists at AGLC, using past average sales and other techniques, calculated the financial losses as a result of Grand Villa's closure. These losses were later reviewed by Mr. Lautischer and presented by Mr. Berry in a Request for Decision to the Board dated June 9, 2022 (Exhibit 1).

[33] Consequently, Mr. Berry advised that the condition on the CFL was recommended to the Board (Exhibit 1) to ensure Grand Villa was conducting gaming activities in line with other operators and to mitigate the negative impacts of their previous reduced operations and closure.

IV. Grand Villa Evidence

[34] The representatives for Grand Villa, Laura Bevan and Grace Kang, made written submissions and called one witness to give evidence on behalf of Grand Villa: Stephen Rowbotham, Regional General Manager, Alberta Operations. Mr. Rowbotham has been in this position for four months and has previously worked in various casino management positions in Alberta and Ontario.

[35] Mr. Rowbotham spoke to the reduced operations of Grand Villa between September 2019 and March 2020. He explained that the intent was to "right size" the business by closing on Mondays

through Wednesdays when volumes were typically lower, unless there was a major event occurring at Rogers Place arena on one of those days.

[36] Grand Villa's business is tied to major hockey games (NHL and WHL) and Tier 1 events, such as major concerts, at Rogers Place arena. Grand Villa and Rogers Place are located downtown in an area known as the Ice District. Grand Villa and Rogers Place share a building envelope: they are inherently connected. The financial analytics team at Grand Villa prepared an assessment demonstrating the significant increase in business volumes on days where there was a hockey game or major event at Rogers Place (Exhibit 3). Grand Villa wanted to close its doors on days where it saw lower activity while still being able to capitalize on events at Rogers Place arena.

[37] However, Mr. Rowbotham admitted that the inconsistent schedule confused Grand Villa's patrons and had more of a negative financial impact than intended. Patrons were never sure when Grand Villa was open and stopped going as a result. Mr. Rowbotham stated that Grand Villa does not intend to go back to that model.

[38] That said, Mr. Rowbotham suggested that if Grand Villa was not constrained by the condition, it would be able to compress the table game hours down in order to utilize the staff and dealers that they have and expand offerings during peak volume hours. Grand Villa defines its peak hours as between 4:00 p.m. and 2:00 a.m. when 75% of patrons visit. Mr. Rowbotham advised the Panel that Grand Villa would continue its open dialogue with AGLC and would act in accordance with policies and consult with AGLC if it were to change its hours of operation.

[39] In its written submissions, Grand Villa provided correspondence to demonstrate the consistent and open communications it has had with AGLC in the past in discussing shifting hours (Exhibit 3, Tabs 3 and 4).

[40] Mr. Rowbotham confirmed that Grand Villa was involved in a labor dispute starting in July 2021. There were ongoing contractual negotiations and a strike throughout 2021 and early 2022 until the union ratified a new collective bargaining agreement on May 17, 2022.

[41] On May 30, 2022, Grand Villa advised AGLC that it had entered into a Return-to-Work Agreement with its unionized employees (Exhibit 3). Grand Villa was ready to recall its employees by May 31, 2022. While many had moved on to other positions, 45% of employees indicated they would return. Grand Villa hoped to reopen during the first week of July 2022, however, delays with criminal record checks left Grand Villa without enough security personnel to open until later in July 2022.

[42] Grand Villa has been operating seven days per week since July 18, 2022. Mr. Rowbotham advised that they are still hiring and hope to acquire approximately 30 more employees so that they can continue operating seven days a week, with table games from 2:00 p.m. to 3:00 a.m. and slots operating from 12:00 p.m. to 3:00 a.m.

[43] Mr. Rowbotham also advised that since its reopening, Grand Villa has been in discussions with Regulatory Services and the Gaming division at AGLC to acquire more gaming terminals. He stated that

he would like to see Grand Villa back up to 300 gaming terminals as a result of customer feedback asking for more product and variety. Mr. Rowbotham confirmed that AGLC had recently deployed more terminals to Grand Villa and that they currently have approximately 225.

[44] Mr. Rowbotham spoke to the challenges of operating in the Ice District. As a result of constant and future development and construction, there are often traffic disruptions and access issues. Grand Villa provided evidence of these limitations in their written submissions in Exhibit 3, Tabs 5 and 6. Mr. Rowbotham also cited the limited parking available to patrons and casino staff.

[45] Mr. Rowbotham admitted that Grand Villa has been able to operate under the existing condition, however, that the flexibility to operate in response to on-the-ground conditions is important. Mr. Rowbotham asserted that although Grand Villa and AGLC assess business impacts from different points of view, it is important to be able to shift operations in response to business flow and in the interest of generating revenue for all.

V. Summation

Regulatory Services

[46] Ms. Lee, on behalf of Regulatory Services, states that AGLC has a duty to Albertans to advance the initiatives of the Commission as set out section 3 of the Act. Specifically, to “carry out the functions respecting gaming delegated to it” and “to generate revenue for the Government of Alberta,” pursuant to sections 3(c) and 3(e) of the Act. Regulatory Services is of the opinion that the condition is necessary to achieve these objectives.

[47] Without the condition as imposed, Grand Villa will have full control over how many hours and which days they operate. Any reduced operations will have negative impacts to Albertans and to Alberta’s charities. Specifically, as testified to by Mr. Berry, longer wait times for charity events and decreased revenue for all charities.

[48] Although Grand Villa was cited in Regulatory Services’ submissions as a “weak contributor to the charity pool,” they are a contributor, nonetheless. The increases in wait times for charity events affects all Alberta charities, not just the charities holding events at Grand Villa, as testified to by Mr. Berry. It is Regulatory Services’ view that the impacts to wait times and decreased revenue are significant.

[49] Additionally, if Grand Villa were operating less than seven days per week, the GRF is negatively impacted. Any scenario where Grand Villa has complete control is unacceptable to Regulatory Services.

[50] When Grand Villa is closed, AGLC’s gaming terminals are not generating revenue. These assets are more valuable when they are in a casino facility that operates seven days per week.

[51] When asked, Grand Villa suggested that they intend to operate seven days per week moving forward, however, representatives for Grand Villa did not put forward a concrete proposed number of days. As such, it is difficult for Regulatory Services to forecast any future impacts to charities or to the GRF. Regulatory Services submits that the losses resulting from previous closures are indicative of

potential losses should Grand Villa operate on a reduced schedule or close its doors for an extended period in the future.

[52] Regulatory Services requests the Panel confirm the decision of the Board to impose the condition on the CFL, and that the conditions should remain on the CFL for the two-year term from September 1, 2022 to August 31, 2024.

Grand Villa

[53] Ms. Bevan, on behalf of Grand Villa, highlights the position of Grand Villa as stated in its written submissions (Exhibit 3). Grand Villa asserts that the condition unduly constrains Grand Villa's ability to operate in alignment with business volumes.

[54] Grand Villa has expressed its desire to maintain flexibility and its need for the ability to adjust its operations based on the events, continuing development, and unique business flow in the Ice District. It is the position of Grand Villa that the existing condition is not reflective of the specific market conditions faced by Grand Villa and its close tie to Rogers Place and the events therein.

[55] Grand Villa does not intend to deviate from the seven-day operating schedule but it cannot predict unforeseen circumstances and seeks to have the ability to adjust its operations accordingly.

[56] Ms. Bevan highlights that there is no provision of the legislation, regulation or AGLC's policies that speaks to a minimum number of operating hours. Operators have the flexibility to determine their operating hours in accordance with the maximums contained in policy. Grand Villa is of the opinion that the imposed condition is not supported by policy and unduly restricts Grand Villa as compared to other operators.

[57] Ms. Bevan points out that much of Regulatory Services' analysis found in the Request for Decision (Exhibit 1) rely on past figures and losses incurred when Grand Villa was not operating at all. The figures and losses presented were not reflective of Grand Villa's present operating conditions.

[58] Grand Villa acknowledges AGLC's need to protect the interests of Albertans and, specifically, Alberta's charities. However, Ms. Bevan suggests that the increased wait times for charities are premised on Grand Villa being closed and are not based on the seven-day operations at present. To impose the condition based on the past and not the present is punitive and is not supported by policy.

[59] Mr. Lautischer, Mr. Berry and Mr. Rowbotham have each provided evidence that supports the ongoing and open dialogue between Grand Villa and the Regulatory Services Division of AGLC. The condition is unnecessary to ensure that Grand Villa and AGLC continue to collaborate on mutually agreeable hours.

[60] Grand Villa is of the position that the condition should be removed. Alternatively, if the Panel chooses to replace the condition, Grand Villa proposes the condition on the CFL effective September 1, 2022 to August 31, 2024 be amended as follows:

- Grand Villa must operate slot games for a minimum of ten hours per day and table games for a minimum of eight hours per day during operating days. Any changes to

minimum gaming hours are to be approved by AGLC in advance. Operating days are to be determined by Grand Villa, acting reasonably and in advance consultation with AGLC.

[61] The alternative proposed condition in the written submissions was premised on an increased slot offering at Grand Villa. However, Mr. Lautischer and Mr. Rowbotham confirmed that as of the date of hearing, more slot terminals had been allocated and dispatched to Grand Villa and the discussion between AGLC and Grand Villa remains open and ongoing.

VI. Analysis

[62] The Panel acknowledges that the policies found in section 1.13 and 9.2.1 deal with the general hours of operation and table game operations, respectively. There are no provisions that indicate minimum operating hours, only maximums.

[63] The Panel is of the opinion that the policies, as written, allow operators vast latitude to govern their operations in alignment with their business objectives and are not unduly prescriptive.

[64] That said, operating a casino facility licence in Alberta is a privilege and operators are encouraged to operate as much as possible to fulfill their role in generating revenue for Alberta and its charities.

[65] The Panel finds that Grand Villa's current operations exceed the requirements of the condition and that Grand Villa should have the ability to decide when to operate, within reason, and in alignment with legislation, regulations and policies. The Panel acknowledges that lost business as a result of reduced operations may be captured by other operators and Grand Villa will suffer the greater harm.

[66] The Panel acknowledges that Grand Villa aims to continue operating seven days per week on a consistent basis and the Panel encourages Grand Villa to do so. This will ensure that the charities holding their events at Grand Villa can predict and rely on the certainty of funds from the charitable pool following their scheduled charitable event and will avoid any increases to wait times for these and other charities.

[67] AGLC's gaming terminals within Grand Villa represent significant assets that have been allocated to Grand Villa for the purpose of generating revenue for Albertans. In accordance with section 3(b) of the Act and pursuant to the "Electronic Games – Casino Retailer Agreement" between AGLC and Gateway Casinos & Entertainment Limited (Exhibit 2, Tab 4), AGLC has the authority to terminate the agreement and remove, relocate or reduce the number of units at its discretion.

[68] The Panel finds that Regulatory Services has demonstrated significant flexibility and has demonstrated its willingness to work with Grand Villa on multiple occasions. Specifically, in September 2019 when the four-day operating schedule was approved and throughout 2021 during the ongoing closure of Grand Villa amidst its labor dispute. Further, Grand Villa has demonstrated collaborative and open discussions with Regulatory Services and an ongoing understanding of the notice requirements for any changes in operational hours. The Panel expects that Grand Villa will continue to act reasonably, with any operational changes to be determined in advance consultation with AGLC.

[69] The decision of the Panel does not impact the term of the licence.

VII. Finding

[70] For the reasons in the analysis above, the Panel finds that the condition on the licence should be removed.

[71] In accordance with sections 38(3) and 94(7)(c) of the Act, the Panel cancels the decision of the Board to impose the condition on the CFL for Grand Villa. The Panel hereby removes the condition from the CFL numbered 449316, effective on October 28, 2022.

[72] Should the hours of operation change, Grand Villa must provide a schedule of the new casino hours of operation to AGLC, advisors, and charitable organizations scheduled for events at least two weeks in advance of the date the new hours of operation take effect, pursuant to section 1.13.3 of the CTCOG.

Signed at St. Albert, this 14th day of October, 2022

A handwritten signature in blue ink, appearing to read "Len Rhodes", is positioned above the printed name.

Len Rhodes, Presiding Member, Hearing Panel