

**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

**Capital City Casinos Ltd. (Applicant)
c/o Suite 125, 625 Parsons Road SW
Edmonton, AB T6X 0N9**

DATES OF HEARING:	May 10 and 29, 2023
HEARING PANEL:	Patti Grier, Presiding Member Angela Tu Weissenberger, Panel Member Elan Harper, Panel Member Jack Fujino, Panel Member Maureen Moneta, Panel Member Tongjie Zhang, Panel Member Vincent Vavrek, Panel Member
APPLICANT / REPRESENTATIVE:	Scott Mather, President, New Star Capital Inc. Jason Pechet, President, Camrose Resort & Casino
REGULATORY SERVICES DIVISION:	Celina Chan, Legal Counsel Glen Arnston, Resource Officer

DECISION OF THE HEARING PANEL

In accordance with sections 94(2) and 94(7)(a) of the <i>Gaming, Liquor and Cannabis Act</i> (the Act), the Panel confirms the original decision of the Board of the Alberta Gaming, Liquor and Cannabis Commission (AGLC) to end the approval process to relocate the existing Camrose Casino.

I. Jurisdiction and Preliminary Matters

[1] In September 2021, Capital City Casinos Ltd. (the Applicant) submitted a proposal to AGLC to relocate the existing Camrose Resort & Casino (Camrose Casino) to Edmonton as Capital City Casinos Ltd. Upon receipt of the proposal, the Compliance Audit branch of the Regulatory Services Division (Regulatory Services) of AGLC initiated an assessment of the application. The proposal was denied by AGLC Management, through Board delegation in accordance with sections 17(1) and 17(3) of the Act, on April 14, 2022.

[2] In May 2022, AGLC received a revised relocation application from Capital City Casinos Ltd. On July 11, 2022 the revised proposal was approved pursuant to section 15.3.11 of the Casino Terms & Conditions and Operating Guidelines (CTCOG), to move to Step Two of the three-step process - Community Support.

[3] The application moved through Step Two then, on October 13, 2022, the Applicant presented to the Business Development & Policy Committee of the AGLC Board. On the same date, AGLC Management provided a request for decision recommending the Board end the approval process. The Committee deferred the item to November 10, 2022 and requested further information from AGLC Management.

[4] On November 10, 2022, the Business Development & Policy Committee considered the request for decision alongside the supplemental information from AGLC Management. The Committee recommended that the Board conclude the approval process for the relocation of the casino facility.

[5] On the same date, a special Board meeting was held where the Board decided to end the approval process for the relocation.

[6] By letter dated November 15, 2022, Acting Board Chair, Vincent Vavrek, advised the Applicant of the Board's decision to end the approval process to relocate the existing Camrose Casino.

[7] The Applicant subsequently applied for a hearing before a Panel of the Board of the AGLC on December 8, 2022 pursuant to section 94(2) of the Act.

[8] The Board Chair, Len Rhodes, has recused himself from all matters relating to the Camrose Casino relocation application and hearing as a result of a conflict of interest involving one of the representatives for the Applicant. In accordance with section 11 of the Act, the following Panel was designated to conduct the hearing and make a decision – Patti Grier (Presiding Member), Angela Tu Weissenberger, Elan Harper, Jack Fujino, Maureen Moneta, Tongjie Zhang and Vincent Vavrek.

[9] The hearing was initially scheduled for March 13, 2023. On February 14, 2023, the Applicant made an application to the Panel to reschedule the hearing. The Panel granted the request, upon receipt of acknowledgment by both parties that the hearing would not be conducted within 120 days from the date of application, as required by section 94(6) of the Act, and their acceptance that the delay would not prejudice each party's respective right to make representations to the Board within 120 days.

[10] 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 March 15, 2023 and the attached hearing record.

[11] The hearing commenced on May 10, 2023. At the outset of the hearing, the Panel addressed the following preliminary issues raised by the Applicant:

Objection to Regulatory Services' Witnesses and Request for Sworn Testimony

[12] The Applicant objected to three of Regulatory Services' witnesses: Witness A, Witness B and Witness C on the basis that as casino operators and competitors of the Applicant, they are biased witnesses.

[13] The Applicant requested that if these witnesses were allowed, they be required to provide their evidence under oath.

[14] Pursuant to rules 1.10.2(f) and 1.10.2(g) of the Hearing Panel Rules & Procedures, the Panel directed that the witnesses would be allowed as the fact that they are competitors did not preclude them from giving evidence. The Presiding Member advised the parties that the Hearing Panel is an administrative tribunal, not a court of law. An administrative tribunal is not bound by formal rules of evidence and the Panel is given latitude under the rules to hear all testimony. The Panel will consider the weight to place on the evidence of all witnesses in its deliberations and can consider issues such as reliability and credibility, including issues of bias in determining the weight to place on the evidence presented to the Panel.

[15] Further, the Presiding Member advised the parties that it is not the practice of the Panel to swear witnesses, however, the Panel would grant the request if there were no objections to consider. Regulatory Services did not object to the request. In accordance with section 12(2) of the Act and rule 4.9 of the Hearing Panel Rules & Procedures, the Panel directed that witnesses would be asked to provide testimony under oath or affirmation.

Exclusion from Evidence

[16] Prior to the hearing, the Applicant made a request through the Hearing Panel Office to be excluded from a portion of oral evidence presented by one of its witnesses, Witness D. The Applicant claimed that some of the material Witness D would speak to contained proprietary information that Witness D came to know through previous engagements with AGLC. The Applicant directed Witness D to send two versions of the documentary evidence he would speak to at the hearing to the Hearing Panel Office: one redacted version that would be shared with the Applicant, Regulatory Services and the Panel and an unredacted version that would only be shared with Regulatory Services and the Panel. Witness D provided both versions of the document directly to the Hearing Panel Office via email on April 24, 2023. The Hearing Panel Office only included the redacted version of the document in the hearing record until the Panel could make a determination on the request.

[17] By letter dated May 8, 2023, the Presiding Member advised the parties that *"a party is entitled to be present for the entire hearing and documents presented to the Panel must be fully shared with*

both parties. The Board's hearing process is in keeping with the principles of natural justice which include that the parties have a right to know the case (including access to all exhibits) and have the right to be heard (including a right to be present for the entire hearing and make submissions on the evidence)."

[18] The letter also strongly urged the Applicant to seek legal advice on the issue prior to the hearing.

[19] At the hearing, the Presiding Member asked the representatives of the Applicant to confirm that they received the letter dated May 8, 2023 suggesting that they seek legal advice; the Applicant confirmed receipt. The Presiding Member reiterated the parties' rights to hear and know the case and asked the Applicant to acknowledge that they would be waiving such rights if they chose to exclude themselves from portions of their witness' testimony and documentary evidence. Both representatives of the Applicant acknowledged that they understood the implications of their request.

[20] The Panel asked both parties to make submissions on the preliminary issue of the Applicant's exclusion from portions of Witness D's evidence.

[21] The Applicant advised the Panel that Witness D's organization (the consultant) has worked with AGLC in the past and has intimate knowledge of the Alberta gaming market, including specific player data. The consultant and AGLC Management had an agreement that confidential information relating to specific player data may not be shared with other organizations.

[22] The Applicant took the position that such data would be helpful for the Panel to know. As such, the Applicant confirmed their intent to exit the hearing during portions of Witness D's testimony where he may point to specific player data and the Applicant reiterated their request for Witness D's unredacted evidence to be entered on the record and shared with the Panel and Regulatory Services.

[23] Celina Chan, legal counsel for Regulatory Services, submitted that Regulatory Services would not object to the Applicant stepping out of the hearing for portions of Witness D's testimony. However, she raised the concern that the proposed unredacted document had not been reviewed by Regulatory Services or its witnesses. As such, Regulatory Services requested that if the document be allowed, Regulatory Services and its witnesses be given adequate time to review the document prior to proceeding.

[24] The Panel recessed and considered the submissions of both parties on the preliminary issue.

[25] The hearing reconvened and the Panel advised the parties that the application would be granted. The Panel's reasons for granting the request are set out in the Analysis (section VI).

[26] The Presiding Member asked the representatives for the Applicant to acknowledge for the record that they were waiving their rights to hear and know the case in its entirety and the representatives for the Applicant confirmed this on the record.

[27] The Panel directed the parties to organize their questioning in such a way that the Applicant could be excluded only during questions relating to the confidential information provided by the consultant.

[28] The Hearing Panel Office provided the Panel and Regulatory Services with copies of the unredacted document from Witness D. The Panel and Regulatory Services took time to review the document before the hearing proceeded.

[29] When the hearing reconvened, the following documents were entered into evidence:

- Exhibit 1 Regulatory Services written submissions & index
- Exhibit 2 Hearing Record, including Attachments 1 to 30
- Exhibit 3 Camrose Casino written and documentary submissions, including Tabs 1 to 12
- Exhibit 4 May 8, 2023 letter to parties from Presiding Member
- Exhibit 5 The consultant's unredacted presentation (reviewed by Panel and Regulatory Services only)

[30] The Presiding Member advised the parties to ask questions if at any point they were unclear on the process and asked the parties to have respect for each other and the proceedings. The Presiding Member also asked the parties to be mindful of the time but assured the parties that they could take as much time as needed to present their respective case and witnesses.

[31] The hearing did not conclude on the first day so a second date was scheduled. A Notice of Hearing Continuation was issued on May 15, 2023.

[32] On May 29, 2023, the hearing continued. Regulatory Services and the Applicant confirmed receipt of the Notice of Hearing Continuation dated May 15, 2023. The notice was entered into evidence as Exhibit 6.

[33] Throughout the hearing, legal counsel for Regulatory Services made submissions and presented witnesses who made representations on behalf of the Regulatory Services Division, Customer & Market Insights and AGLC Management. As such, references to "Regulatory Services" in this decision may jointly refer to the Regulatory Services Division as well as the Customer & Market Insights group under Business Development at AGLC.

II. Issues

[34] Should the decision of the Board of AGLC to end the approval process for Capital City Casinos Ltd.'s application to relocate the existing Camrose Casino be confirmed, replaced, or cancelled?

III. Regulatory Services Submissions

[35] Ms. Chan advised that Regulatory Services would be relying on its written submissions (Exhibit 1) and calling witnesses from AGLC Management that would speak to the assessment, approvals,

recommendations and impacts of the original and revised proposals from the Applicant. Regulatory Services also called three casino operators to speak to the reasons for objections to the application.

[36] As such, Regulatory Services called seven witnesses:

- Stephen Kiss, Director, Audit Services, AGLC
- Dave Berry, Executive Vice President, Public Engagement & Chief Regulatory Officer, AGLC
- Jeffrey Konowalchuk, Senior Manager, Customer & Market Insights, AGLC
- Steve Lautischer, Executive Vice President, Business Development, AGLC
- Witness A, Casino A
- Witness B, Casino B
- Witness C, Casino C

Stephen Kiss and Dave Berry

[37] Mr. Kiss and Mr. Berry provided sworn testimony. Mr. Kiss has been the Director of Audit Services for 14 years. In his role, he supervises the compliance, due diligence and financial review branches under the Regulatory Services Division. Mr. Kiss stated the employees that report to him include Chartered Professional Accountants, due diligence investigators and administrative staff.

[38] Mr. Berry has been with AGLC for 10 years and has acted in a number of roles. In his current role as Executive Vice President, Public Engagement and Chief Regulatory Officer, he reports to the Chief Executive Officer (CEO). Mr. Berry is involved in making operational decisions and making recommendations to the Board.

[39] Mr. Kiss advised that the Audit Services team does not make recommendations for approving applications but conducts assessments and provides the results to the executive team to make recommendations.

[40] Mr. Kiss explained that the executive members that would make recommendations include the Executive Vice President of Public Engagement and Executive Vice President of Business Development, the Vice President of Regulatory Services, and the CEO. Mr. Berry stated that the recommendations made with respect to the relocation application were a collaborative effort of AGLC Management made in consultation with Regulatory Services and the Business Development team.

[41] In September 2021, Mr. Berry and Mr. Kiss became aware of a joint application from Scott Mather, President of New Star Capital Inc. and the current licence holder for the Camrose Casino, Mayfield Investments (owned by Jason Pechet and his family) to relocate the existing Camrose Casino to Edmonton. Mr. Kiss stated that he has dealt with relocation applications before but that he had not seen a proposal to relocate a casino from a rural to an urban market area.

[42] Mr. Kiss clarified that the application was considered as a relocation and not a new application because the number of casino facilities in Alberta would not increase. As such, the casino relocation

application was considered in accordance with section 15.3 of the CTCOG that governs the process for the relocation of a casino facility.

[43] As part of the initial assessment, Mr. Kiss advised that Jeffery Konowalchuk, Senior Manager of Customer & Market Insights, and his team conducted financial calculations to determine predicted cannibalization and revenues. From those calculations, Mr. Kiss' team assessed the application from a compliance audit perspective (i.e. amortization and capital costs assessments).

[44] When asked by the Applicant whether those were the only calculations Regulatory Services relied on, Mr. Kiss submitted that his team relied on the calculations conducted by Customer & Market Insights but that they also reviewed the calculations performed by the consultant that were submitted by the Applicant. Mr. Kiss stated that the predictions for other casino facility licence applications made by AGLC's team have been extremely accurate; within a "few percentage points."

[45] Mr. Kiss brought the initial assessment findings forward to AGLC Management. A request for decision was made (Exhibit 2, Tab 2) recommending that AGLC Management deem the relocation not to have merit and to conclude the relocation process. Mr. Kiss reviewed the request for decision but was not required as a signatory. Mr. Berry approved the request for decision.

[46] Mr. Kiss explained that the recommendation was based on the following calculated predictions:

- Significant cannibalization of the existing market
- Negative impact on existing operators' share of revenues
- Loss in revenue for Edmonton charities
- Loss in share of gaming revenues for Horse Racing Alberta (HRA) and the First Nations Development Fund (FNDF) grant program

[47] However, Mr. Kiss advised that the relocation would have a positive impact on rural charities and an overall net increase for AGLC and the General Revenue Fund (GRF) in the first year

[48] In April 2022, AGLC Management deemed the application not to have merit. Mr. Berry signed off on the recommendation (Exhibit 2, Tab 2) and confirmed that at that time, the Applicant applied for a hearing before the Board.

[49] However, in May 2022, the Applicant submitted a revised proposal (Exhibit 2, Tab 3 and Exhibit 3, Tab 5).

[50] Mr. Kiss and Mr. Berry advised the Panel that the following had changed from the first proposal: an Edmonton casino that was previously closed had reopened its doors, the size of the facility had changed and the Applicant was proposing fewer electronic gaming machines and table games.

[51] Based on the revisions, the predictions were updated:

- Cannibalization of the existing market
- Impact on existing operators' share of revenues
- Loss in revenue for Edmonton charities
- Loss in share of gaming revenues for Horse Racing Alberta and the First Nations Development Fund grant program
- Gain of _____ each year for rural charities
- Overall net increase of almost _____ to AGLC and GRF's share of gaming revenue

[52] Mr. Kiss highlighted that the percentage of cannibalized income that the relocated casino would capture had not changed significantly and the Edmonton charities would still be negatively impacted. Mr. Kiss explained that the Applicant's proposal was that the Camrose Casino would relocate to Edmonton but would maintain its designation as a rural casino. He suggested that, based on the anticipated cannibalization, a large portion of the Applicant's revenue would come out of the Edmonton charity pool and go into the rural charity pool.

[53] Mr. Berry stated that in his consideration of the application, he paid particular attention to the anticipated cannibalization as an indicator for the level of harm to existing operators in the market area. He suggested that AGLC maintains a business relationship with the operators and so the impact to them was a key consideration. Mr. Berry explained that if 100 per cent of the _____ in potential revenue for the Southeast Edmonton area (found in AGLC's 2021 Market Assessment at Exhibit 2, Tab 26 and Exhibit 3, Tab 11) were captured by the relocated Camrose Casino, the revenue captured represents harm to existing operators. The captured revenue may result in harm to existing operators that exceeds the potential _____ gained.

[54] Mr. Kiss submitted that all calculations were performed under the assumption that the charity pooling boundaries in Alberta would remain the same if the Camrose Casino relocated.

[55] Mr. Kiss stated that he is of the opinion the revised proposal was deemed to have sufficient merit because of factors that had changed that resulted in a more positive impact. Mr. Kiss defined having merit as "having more positive impacts than negative."

[56] Mr. Berry stated that he is of the opinion the application did not have sufficient merit but that the revised proposal offered more revenue to AGLC and the GRF. However, the proposal did not satisfy the existing Edmonton market requirements and still had too significant a negative impact on existing casinos, racing entertainment centres and the HRA and FNDF.

[57] When asked by the Applicant what percentage of the FNDF would be lost as a result of the relocation, Mr. Kiss stated that he did not know. He suggested that AGLC Management would have greater insights on the negative impacts to the FNDF and host First Nations casinos as they made the decision.

[58] Mr. Berry admitted that AGLC Management considered denying the revised proposal again as only one of four issues had been partially satisfied. However, Mr. Berry stated that in the interest of

fairness and in carrying out AGLC's mandate to generate revenue for the Government of Alberta, AGLC Management agreed to move the application forward.

[59] As such, the application moved from Step One - Initial Assessment, to Step Two - Community Support, of the approval process for the relocation of a casino facility. On July 11, 2022, the Applicant withdrew their initial request for a hearing.

[60] Mr. Kiss advised that, just because the revised application was deemed to have merit, that did not mean that the concerns surrounding the negative impacts of the relocation "went away." Mr. Berry pointed to section 15.3.10 of the CTCOG, which states: an initial assessment that deems the relocation of an existing licensed casino facility to have merit does not assure the level of success or support of the casino relocation.

[61] During the community support stage, Mr. Berry advised that AGLC received an unprecedented number of letters (approximately 500) and emails from operators, charities, other stakeholders and residents of Alberta. Mr. Kiss stated that the call for community support was advertised on AGLC's website and in the Edmonton Journal and Edmonton Sun for three weeks (Exhibit 2, Tabs 8 and 9). The advertisements included contact information for anyone to share their support or objection. Further, Regulatory Services notified casino and racing entertainment centre operators (Exhibit 2, Tab 10) as well as the cities of Edmonton and Camrose (Exhibit 2, Tabs 6 and 7) advising them of the application and providing them with a deadline for response.

[62] The City of Camrose did not provide a letter. The City of Edmonton provided a letter that neither supported nor objected to the relocation but that highlighted concerns surrounding the negative financial impacts to Edmonton charities, AGLC's consultation process and transfer of licence restrictions.

[63] Mr. Kiss asserted that any communications received after the August 10, 2022 deadline were not considered.

[64] Mr. Kiss confirmed, however, that the City of Edmonton provided a letter of clarification on April 18, 2023. The letter was received outside the timeframe for community support but both parties included it as part of their submissions at the hearing (Exhibit 2, Tab 30 and Exhibit 3, Tab 8). The April 18, 2023 letter stated that "the City of Edmonton does not object to the Camrose Casino relocation itself. We neither support nor object to the Camrose Casino's relocation application." The clarification letter went on to highlight the concerns about the impact of the licence transfer on charitable organizations in Edmonton. The letter goes on to suggest that AGLC Management conduct a review of its gaming-funding model.

[65] When asked by the Applicant about the standard form letter that made up more than half of the letters received, both Mr. Kiss and Mr. Berry responded that it is common to receive letters that follow a standard form. Mr. Berry stated that he took note of the template used but found that the letters received in a standard form were still valid as they were received from bona fide groups and organizations.

[66] Mr. Kiss advised that a majority of the communications received were objections. The objectors cited concerns respecting the cannibalization of existing gaming revenue. Mr. Kiss stated that it is very uncommon for a casino operator to submit a letter in support of a relocation application or an application for a new casino facility licence. He suggested that operators typically object to such applications, if they are in relatively close proximity, or do not respond at all.

[67] Mr. Kiss advised that the Applicants were provided with a summary of the emails and letters received.

[68] Mr. Berry stated that if there was more support for the application from the community, that would have added significant weight to the application. Mr. Kiss suggested that if there were no objections the application would have been "a slam dunk."

[69] Mr. Berry disagreed with Mr. Kiss' assessment that the application would have been successful if there were no objectors.

[70] When asked by the Applicant whether relocating from a rural to an urban area was the main cause for concern, Mr. Kiss clarified that the anticipated cannibalization of revenue that would result from the relocation was the cause for concern in assessing the application.

[71] When asked by the Applicant about the considerations made when Northlands relocated to Century Mile Casino & Racetrack, Mr. Berry advised that HRA made the decision to relocate its racetrack and made an application to AGLC to "attach a racing entertainment centre" to it. Mr. Berry asserted that AGLC Management followed its policies in assessing the application and that AGLC received no objections. When the Applicant asserted that Camrose Casino objected to the application, Mr. Berry stated that he could not recall that but accepted the statement.

[72] When asked by the Applicant what the threshold for permissible cannibalization would be, Mr. Kiss and Mr. Berry responded that there is not a specific number. Mr. Berry referred to section 15.3.10(d) of the CTCOG which characterizes one of the qualifiers for having merit as "a significant proportion of the projected gross gaming revenue is expected to be new gaming revenue and not be drawn from other existing or approved gaming facilities." Mr. Kiss stated that each application comes with different hurdles and factors for consideration and each application is considered on its own merits, on a case-by-case basis.

[73] When asked by the Applicant how they could be successful in a proposal if there is not a specific number of VLTs or level of cannibalization that AGLC would deem acceptable, Mr. Berry responded that it is not AGLC Management's job to write the business case for applicants and doing so would put AGLC in a position of liability. The Applicant must exercise due diligence in ensuring they are aware of the financial implications of their application and Mr. Berry asserted that is the reason the CTCOG requires Applicants to submit projections on the feasibility of their proposal. This ensures the Applicant has a realistic understanding of the investment required and anticipated returns on that investment. Although Regulatory Services conducts its own calculations, Mr. Berry advised that AGLC also considers the revenue projections submitted by the Applicant.

[74] Mr. Kiss asserted that the Alberta charities raised concerns about wait times and payout portions but that there was not a general consensus among all charity groups. When asked by the Applicant whether there was a risk of rural casinos having no place to go if the Camrose Casino were to shut down, Mr. Kiss asserted that there is no risk and that AGLC Management is committed to ensuring charities have a designated casino and that no charity will be left behind.

[75] When asked by the Applicant about the disparity between revenues for urban versus rural charities, Mr. Kiss suggested that all charitable groups would prefer to have more money. Despite the uneven distribution of casinos throughout the province, AGLC Management does its best with the allocation of charities to each casino. Mr. Kiss suggested that the rural charities near Edmonton would find that the relocation would improve equality between urban and rural groups but he highlighted that rural charity groups that are further away, around Grande Prairie for example, would not necessarily find that the relocation would create fairness among groups.

[76] Mr. Kiss asserted that although the issue of Camrose Casino closing down without relocating is not the issue before the Panel, he confirmed that AGLC Management has various options it can consider for casinos facing financial difficulty and that Regulatory Services and AGLC Management are willing to assess those options and work with the casino if necessary.

[77] When asked by the Applicant what the impacts to Edmonton charities would be if Camrose Casino were to close rather than relocate, Mr. Kiss stated Edmonton charities would see an 11 per cent decline if the Camrose Casino closed. He stated that annualized revenue would decrease overall but the payout amounts would not decrease.

[78] The Applicant asked Mr. Kiss to review a map (Exhibit 3, Tab 6) illustrating the wait times and proceeds from casino events for charities by region. Mr. Kiss agreed that in the graphic, contained in the Applicant's presentation slides made to the Business Development & Policy Committee on October 13, 2022, Camrose appears to have the lowest revenue and longest wait time. Mr. Kiss agreed that due to the wait times, on an annualized basis, Camrose would generate less revenue. Mr. Kiss also highlighted that the Camrose and St. Albert regions are pooled and that St. Albert generates 80 per cent of the revenue.

[79] When asked by the Applicant why Edmonton does not have a casino designated for rural charities, as Calgary and Red Deer do, Mr. Kiss and Mr. Berry advised that the pooling regions pre-date them but that is an issue that has been raised. Mr. Berry highlighted, however, there are no rural casinos within 150 kilometers of the city boundary for Calgary, other than the designated rural casino within city limits, whereas St. Albert has a "rural" casino that is just 50 meters outside of Edmonton.

[80] In October 2022, AGLC Management provided the Board, through the Business Development & Policy Committee, a request for decision that appended all of the community support letters and emails received and recommending that the Board end the approval process. Redacted versions of those emails and letters were included as Tabs 14 to 20 in the hearing record (Exhibit 2). The Applicant was also invited to present its application to the Board. Mr. Berry advised that this had not been done previously

but that, in the interest of a fair and open process, AGLC Management wanted the Applicant to have an opportunity to present their own application to the Board.

[81] In November 2022, the Board decided to end the approval process.

[82] When asked by the Panel to speak to the ratio of charity groups to population in the Camrose region compared to Southeast Edmonton, Mr. Berry estimated that there are approximately 100,000 people in the Camrose catchment area and there are approximately 600 charities assigned to the Camrose Casino. Mr. Berry advised that he did not know the populations off-hand but estimated Southeast Edmonton would represent a population of about one fifth the total population of Edmonton (250,000). Edmonton casinos each have approximately 400 to 500 charity groups assigned to them.

[83] When asked by the Panel what the process would be if the Applicant provided a further, scaled-down proposal, Mr. Berry advised that AGLC's relocation process is currently under review and there is a "pause" on any relocation applications at this time. Outside of that, AGLC Management would need to decide whether a further revised proposal would be accepted. If it were, Mr. Berry assured the Panel and the parties that it would be moved through the process as quickly as possible.

Jeffrey Konowalchuk

[84] Mr. Konowalchuk affirmed his testimony. He has been with AGLC for ten years and has acted in roles such as data analyst and manager of advanced analytics as well as his current role, Senior Manager, Customer & Market Insights. Mr. Konowalchuk has a Master of Science degree from the University of Alberta and has published numerous works in academic journals.

[85] The Customer & Market Insights team consists of data scientists that report to Mr. Konowalchuk who are responsible for forecasting revenue for gaming and cannabis as well as completing analyses to establish the annual budget that is approved by the Ministry of Treasury Board and Finance of Alberta. Mr. Konowalchuk's team utilizes the approved budget values, which have been historically extremely accurate, in their analyses of applications.

[86] Mr. Konowalchuk reports to Steve Lautischer, Executive Vice President of Business Development. Mr. Konowalchuk confirmed that his team operates under Business Development at AGLC but that they work in conjunction with Regulatory Services. Specifically, Mr. Konowalchuk stated that Regulatory Services performs downstream calculations using his team's forecasting to determine operator and charity impacts of an application.

[87] Mr. Konowalchuk stated that neither he nor his team provide recommendations on applications. They complete their analyses and then pass along the findings to AGLC Management and Regulatory Services. Mr. Konowalchuk submitted that his team's analysis should stand on its own and "speak for itself" when it is provided for holistic consideration by AGLC Management.

[88] In September 2021 the Customer & Market Insights team was provided with the Applicant's proposal and directed by Mr. Lautischer to conduct an analysis of the proposal.

[89] Mr. Konowalchuk explained the methodology utilized by his team, known as the Huff Gravity Model (the Huff model). Mr. Konowalchuk advised the Panel that the Huff model was invented in the 1960's and that it is a simple yet highly effective model for determining market areas and where consumers will choose to go when a new business is erected or if a business relocates.

[90] Mr. Konowalchuk explained that the Huff model looks at the attractiveness of a business and the distance of the population from that business as well as the distance and attractiveness of competing sites. In the context of casinos, he provided the analogy of a large paper map floating in the air and each casino representing a bowling ball which is dropped onto the map. The heavier the ball (i.e. greater attractiveness or offerings of the casino) the more "gravitational pull" or draw it will have. He suggested that if the bowling balls are moved, or if an additional bowling ball is dropped onto the map, the direction of population drawn to each casino will shift. He explained that the gravitational change caused by a new casino represents cannibalization.

[91] Attractiveness of a casino is determined using metrics, including population and population trends, household income and Albertans historic propensity to participate in gaming activities.

[92] Mr. Konowalchuk submitted that the Huff model was successfully used to assess and forecast revenue of two recent casino applications in Calgary. He stated that when his team compares its predictions with actual results, they are found to be incredibly accurate.

[93] From a statistical standpoint, Mr. Konowalchuk asserts that the Huff model is very accurate and was the best choice for assessing the Applicant's proposal. He stated that information on the Huff model and how to use it is public and readily available on Google. He advised the Panel that there is software available that has the model built in that anyone could utilize.

[94] Mr. Konowalchuk stated that the software used by AGLC had historical and proprietary data programmed into it that could not be shared with the Applicant. Mr. Konowalchuk advised the Panel that the Applicant was made aware of that previously and refuted the Applicant's position that they do not have access to the Huff model.

[95] When asked by the Applicant whether it would be realistic for them to run their own scenarios using the Huff model without access to historical information and player data, Mr. Konowalchuk suggested the Applicant could engage the consultant or hire an analytical team to conduct the analyses, as some applicants have done in the past.

[96] Mr. Konowalchuk highlighted that, despite his confidence in the Huff model, his team also applied a second economic model in the assessment of the revised Camrose Casino relocation application to substantiate the results. The average forecasted cannibalization of existing revenue using the two models was

[97] Further, Mr. Konowalchuk submitted that the new revenue for the Province of Alberta generated by Capital City Casinos Ltd., factoring in lost revenue resulting from the closure of the existing

Camrose Casino, was estimated by AGLC to be _____ Mr. Konowalchuk stated that amount represents less than _____ of total gaming revenue generated for the Province of Alberta.

[98] Mr. Konowalchuk advised that the data utilized by his team were built on assumptions, including but not limited to:

- Size of the facility
- Table and gaming machine offerings
- Status quo for existing casino operations (i.e. closed casino remaining closed)
- Attractiveness of casino facilities on certain days

[99] The Applicant's proposal contained calculations performed by Witness D's advisory group, the consultant. Mr. Konowalchuk is familiar with the methodology used by the consultant for conducting forecasting and confirmed that the consultant was engaged by AGLC to provide a market assessment concurrently with AGLC's market assessment in early 2021. Mr. Konowalchuk advised that the consultant is one of the better gaming consultants in Canada and they are excellent from a data coalition standpoint but that AGLC has not engaged the consultant in an analytic capacity.

[100] Mr. Konowalchuk advised that the consultant utilized AGLC's Winner's Edge data in its calculations. Mr. Konowalchuk and his team have access to Winner's Edge data as well as decades of historical data. As a result, Mr. Konowalchuk was of the opinion his team has greater insights on gaming in Alberta as it relates to AGLC's business development.

[101] Winner's Edge is an Alberta casinos rewards program offered by AGLC. Players are issued a "player card" that allows them to earn points for playing in Alberta's casinos. Mr. Konowalchuk advised that each time a player inserts their card in a slot machine or plays an electronic table game, player data is collected which helps AGLC understand where people are playing and for how long. Mr. Konowalchuk confirmed that the data is helpful, however, the program is still fairly new in Alberta compared to other regions and the Winner's Edge data only captures a small percentage of primarily "low value" players who joined the program for the promotions and awards.

[102] Mr. Konowalchuk submitted that the Winner's Edge data utilized by the consultant was player data captured in January and February 2020. Mr. Konowalchuk suggested that the consultant's calculations were based off of two months of data that were extrapolated over ten years. Mr. Konowalchuk asserted that January and February are not representative of the rest of the months of the year in terms of casino operations (they are low performing months) and only 23-24 per cent of play was "carded play" captured by Winner's Edge in January and February 2020.

[103] When asked by the Panel whether a data scientist would consider two months of player data extrapolated over one year sufficient, Mr. Konowalchuk responded with "an emphatic no" and stated that he would never use two months, specifically January and February which immediately follow the Christmas holidays and are extremely cold in Edmonton.

[104] Mr. Konowalchuk highlighted that the Applicant's revised proposal did not include a value for calculated cannibalized revenue. With respect to the impact to existing operators, Mr. Konowalchuk

stated that the consultant was “more optimistic” in its projections for existing operators to return to their pre-COVID-19 revenues after the proposed relocation. The consultant estimated that existing operators would return to normal within four to ten years of the proposed relocation. Regulatory Services estimated that it would take at least five years for most operators and that two operators would see the impacts for “well beyond ten years.”

[105] Mr. Konowalchuk highlighted that his team’s calculated slot revenue and the consultant’s differed by Mr. Konowalchuk likened this to the extrapolated Winner’s Edge data utilized by the consultant and numerous assumptions made by the consultant in their assessment.

[106] Further, Mr. Konowalchuk asserted the importance of considering demographic data when conducting a market assessment, which he stated the Applicant did not do. Mr. Konowalchuk stated that he takes issue with the model utilized by the consultant as they relied upon their expertise and a non-reproducible, subjective, method.

[The representatives for the Applicant excused themselves for the discussion of the confidential material for which they waived their rights to hear under paragraph 26.]

[107] In the Applicant’s absence, Mr. Konowalchuk referred to Exhibit 5, the consultant’s presentation, and suggested that the consultant’s 2025 Slot Market Share Estimates for Capital City Casinos Ltd. were estimates as a result of “eyeballing” distances as the projections listed were all whole or half per cent numbers. Mr. Konowalchuk walked the Panel through some basic calculations using the Exhibit 5 data (2020 Slot Market Share values versus the consultant’s 2025 estimates) to demonstrate what the rate of cannibalization found by the consultant would be if it were stated in the document.

[108] Mr. Konowalchuk submitted that the consultant compared trends and player data from the Lower Mainland region in British Columbia in its predictions for how the Edmonton market would behave if the Camrose Casino relocated. Mr. Konowalchuk stated that the region is not indicative of the Edmonton market because it differs greatly in population, infrastructure and highway access, and in spend, specifically on table games.

[The representatives for the Applicant rejoined the hearing.]

[109] The Applicant asked Mr. Konowalchuk detailed questions about the Huff model and about the assumptions made in his team’s calculations, specifically referencing the Customer & Market Insights “Analysis of proposal for a new South Edmonton casino” included as Exhibit 2, Tab 22b. Mr. Konowalchuk clarified the following assumptions and details about the model:

- That attractiveness is based on slot machines and table games and distance of a player to a casino
- The size of the market is determined using the approved budget figures and is an assumption that is built into the methodology
- The Huff model was only applied to the area within the defined “boundary box” of the Edmonton market. Casino facilities outside the market were not factored into the model nor were visits of players coming from outside the Edmonton boundary

- Dissemination areas were used to organize population groups within the market area
- Only the dissemination areas with players who visited at least three casinos were considered
- Player locations determined from Winner’s Edge data were compared with dissemination areas to corroborate the findings of the Huff model
- That every person in a dissemination area has the same probability of attending all casino facilities within an 80 kilometre radius, with the likeliness of visits decreasing as distance from a particular facility increases; this is an assumption made in the absence of having fulsome player card data
- Amenities such as smoking, hotels, restaurants and parking are not specifically taken into account; instead the Huff model uses net sales per terminal per day or Net Sales per Terminal Day (NSPTD)
- That the closer a population is to a casino facility, the higher the spend is likely to be
- If a player made a trip to a casino, it is assumed that they spent money at the casino
- Winner’s Edge data captures low-value players so it was used as a “litmus” test against the Huff model findings

[110] Mr. Konowalchuk explained that dissemination areas are based on federal government survey areas for Statistics Canada. AGLC has purchased an external service that has access to the population data and can further determine specific details, such as number of individuals over the age of 18 years in a particular dissemination area.

[111] When asked by the Applicant why only dissemination areas with populations that visited at least three casinos were factored into the calculations, Mr. Konowalchuk stated that the probability of a player to attend a casino must be considered by the Huff model and if they only attend one casino, their proportion is calculated as 100 per cent and cannot be correlated with probability predictions made by the Huff model. Mr. Konowalchuk suggested that the data set collected was statistically relevant.

[112] Mr. Konowalchuk explained that determining NSPTD acts as a proxy for factoring in each amenity that a casino offers and that it can be assumed that the more amenities a facility has, the higher the NSPTD would be.

Steve Lautischer

[113] Mr. Lautischer provided sworn testimony. Mr. Lautischer has been with AGLC for 17 years and has held various roles, largely within gaming, and currently he holds the position of Executive Vice President, Business Development.

[114] Mr. Lautischer explained that Business Development is distinct from Regulatory Services but echoed Mr. Berry’s statements that Business Development works in collaboration with Regulatory Services when making recommendations on licensing decisions.

[115] Mr. Lautischer provides the Customer & Market Insights team with direction on its work on applications and business cases and relies on the team’s expertise to determine the methodology to conduct calculations that best suit the problem at hand.

[116] In 2021, Mr. Lautischer asked the team to conduct a gaming market assessment in order to determine any uncaptured gaming revenue in Alberta. Mr. Lautischer stated that the assessment does not muse about how to capture the revenue or delve into impacts to charities or other operators if a casino facility licence were to be issued but simply highlights where the “available dollars are.” Both Mr. Lautischer and Mr. Konowalchuk highlighted that the “available dollars” determined by the assessment are not necessarily representative of what would be captured.

[117] A redacted version of the market assessment was included as Exhibit 2, Tab 26 and Exhibit 3, Tab 11. The assessment, published in March 2021, illustrated uncaptured revenue of [REDACTED] in Southeast Edmonton. Mr. Lautischer stated that the market assessment includes commentary that explores some options to capture the available spend, such as: relocate an existing casino, increase south side casino’s operating ability or open a casino or enhanced gaming entertainment centre in the Sherwood Park region. Mr. Lautischer stated that relocating a rural casino into the area was not considered in the assessment.

[118] Mr. Lautischer was involved in the April 2022 request for decision that deemed the application not to have merit. From a business perspective, Mr. Lautischer stated that the relocation would create more challenges than the reciprocal benefit for the area in question.

[119] When asked by the Applicant whether the estimated impact to the FNDF is excessive, Mr. Lautischer stated that the Business Development team looks at “top level” sales without assessing the downstream implications of cannibalized revenue, such as impacts to the FNDF or HRA.

[120] With respect to the revised application received in May 2022, Mr. Lautischer submitted that the improvements were very slight. He reiterated that the revised proposal demonstrated that the casino would capture some incremental (new) gaming revenue but that the incremental revenue was marginal compared to the anticipated cannibalization of revenue already captured by other operators.

[121] Mr. Lautischer confirmed that AGLC has engaged the consultant in the past and that they are a leading firm in the gaming industry. Mr. Lautischer confirmed that through that engagement, the consultant was provided Winner’s Edge player data under agreement that specific player data would not be shared by the consultant in other engagements, only outcomes.

[122] Mr. Lautischer stated that AGLC relied on its own calculations but took the consultant’s analysis under advisement during the review of the relocation application. He confirmed that the consultant’s calculations anticipated a lower rate of cannibalization.

[123] When asked by the Applicant how they can be expected to provide calculations without access to the methodologies used by Regulatory Services, Mr. Lautischer suggested that he could not speak to the tools that the Applicant could employ.

[124] At the suggestion of the Applicant that the cannabis industry is operated under a free-market model and the gaming, liquor and cannabis industries should be operated under the same business

strategy, Mr. Lautischer disagreed and asserted that the lines of business are not equal. AGLC's capital investment required in the gaming market is vast and requires a good return on investment as that capital investment delivers a direct return to all stakeholders, including the Government of Alberta.

Witness A

[125] Witness A affirmed his testimony. He is the _____ with Casino A _____. He has 29 years of experience in gaming operations across various models and jurisdictions. Witness A provided evidence on behalf of Casino A and its related casinos.

[126] Witness A became aware of the relocation application through AGLC's email to operators (Exhibit 2, Tab 10) on July 21, 2022. Witness A provided a letter of objection dated August 10, 2022 (Exhibit 2, Tab 16) on behalf of Casino A.

[127] Witness A outlined the following concerns addressed in the letter of objection:

- Significant cannibalization of gaming revenues
- Impacts to HRA and the agriculture industry
- The conflicts with existing policies that the application creates
- Lack of community support reflected in the abundance of objections received from the community of the proposed site

[128] Casino A relied on the projected cannibalization rate that AGLC determined in its calculations but it also relied on internal historical data to assess the implications of the proposal. More specifically, the financial impact the cannibalization would have on horse racing, the Alberta agriculture sector and Casino A.

[129] When asked by the Applicant whether Witness A understood the Huff model that Regulatory Services used to determine the cannibalization rate, he confirmed that he has knowledge of the key determinants and how the model works.

[130] Casino A was licensed as a racing entertainment centre as a result of the relocation of a casino facility. Witness A described the multi-step process that Casino A had to go through, including submitting an RFP, licensing and approvals and the HRA funding requirements.

[131] Witness A stated that the projected losses of Casino A are compounded by the anticipated negative impacts to HRA which Casino A relies upon for funding. Witness A asserted that the overhead and operating costs for upkeep and management of a racetrack are significant and Casino A relies heavily upon the HRA funding.

[132] Witness A stated that the combined impact would represent _____ of Casino A's earnings before interest, taxes, depreciation and amortization (EBITDA).

[133] When asked by the Applicant what an admissible threshold of cannibalization is from his perspective, Witness A responded that it would depend on the individual circumstances but that is “well above” any level that would be accepted by Casino A.

[134] Witness A highlighted the resulting impacts to agriculture stakeholders and employment in agriculture that stems from the operations of horse racing. Witness A cited a 2019 report publicized by HRA that suggests horse racing directly employs 1,500 Albertans and that any money earned by HRA or its stakeholders has nine times the effect within agriculture communities.

[135] Witness A emphasized the oversaturation of the Edmonton gaming market and stated that there is a lack of new revenue to be captured. He suggested that, with focused efforts, the existing casino operators could capture the limited net revenue available.

[136] When asked by the Applicant how Casino A planned to satisfy the uncaptured revenue, Witness A reiterated that any of the Edmonton operators could fulfill that but Casino A’s current focus is on its existing facilities.

[137] Witness A confirmed he is aware that Camrose Casino and Century Casino St. Albert are combined into the same charity pool and that the relocation of the Camrose Casino to the Edmonton market would result in an increase to rural charities supported by Century Casino St. Albert.

Witness B

[138] Witness B provided sworn testimony. Witness B has been the of Casino B since and provided evidence on behalf of Casino B.

[139] Casino B operates casinos in Alberta and employs over 1,000 Albertans. Witness B stated that Casino B generates to Alberta’s charities annually.

[140] When Witness B became aware of the relocation application, Casino B engaged a third-party advisor that utilizes modeling and analytic techniques to conduct economic predictions. Witness B has worked with this advisor on numerous occasions and found his historical projections to be accurate when compared against actual results.

[141] Witness B’s consultant utilized general population data as well as player data collected through Casino B’s player rewards program which provides Casino B with contact information and where their players are located. Witness B showed the Panel a map contained in his objection letter (Exhibit 2, Tab 15) which demonstrated that many of Casino B’s existing players fall within the prospective capture zone of Capital City Casinos Ltd.

[142] When asked by the Applicant whether it would be helpful to utilize AGLC’s Winner’s Edge data, Witness B stated that the Winner’s Edge data only represents a small percentage of play. Witness B confirmed that the Casino B rewards program captures a greater percentage but only from Casino B players.

[143] Witness B's advisor determined that _____ of net revenue for Casino B would be cannibalized by Capital City Casinos Ltd and the advisor found that the relocated casino would not generate material market growth.

[144] The same advisor provided an analysis for Casino B when Casino A applied for a licence and the advisor found that "the impact would be minimal" so Witness B advised that Casino B did not object to that application.

[145] Witness B suggested that lost players would also cause food and beverage and ancillary sales to suffer. He suggested that Casino B would be forced to reduce its workforce as a result of rising wages, rising marketing costs and lost revenue.

[146] Casino B also took steps to educate its designated charities about the impacts of the application and advised them of the three-week period in which AGLC was accepting community support or objections. Witness B stated that Casino B casinos work closely with their charities and wanted to ensure the group leaders were aware and had the opportunity to state their position. Casino B engaged legal counsel to draft a communication to the Edmonton charities. Witness B did not follow up with any of the charities to confirm if they utilized the letter or not.

[147] Witness B asserted that he was not aware of any letter being created and emailed by the Chief Financial Officer of Casino B.

[148] Witness B also provided a letter of objection on behalf of Casino B dated August 10, 2022 (Exhibit 2, Tab 15). Witness B provided a general overview of the letter.

[149] Witness B advised the Panel that the proposed relocation site is only 15 to 20 minutes from Casino B's facility in Edmonton. He argued that when casinos are located that close to each other, the result is a significant amount of customer overlap and disruption in market shares. Witness B submitted that the Edmonton area has much greater "supply than demand" in that it has eight licensed facilities serving a population of just over one million.

[150] Witness B's letter included case studies showing the impacts of other recent casino relocations in Alberta. He stated that the demonstrated impacts to revenue set a precedent for what occurs in a market when casinos operate within a similar distance as is being contemplated in the relocation application.

[151] Witness B submitted that Casino B and other operators had a meeting with AGLC Management in early 2022 where they were advised there was "no intention to add licences to Calgary or Edmonton." Witness B shared his concern about how decisions are made, who is making them and why the application was moved from Step One to Step Two in the application process if there was no intention to add a licence to the Edmonton market.

Witness C

[152] Witness C affirmed his testimony. Witness C has several years' experience in the gaming industry. He provided testimony on behalf of Casino C, its designated charity, as well as on behalf of Host and Non-Host First Nations and the FNDF.

[153] Casino C is fully owned and operated by a First Nation and was the first casino designated as a First Nations casino. The gaming funds generated by Casino C impact all 48 First Nations in Alberta, 40 of which are Non-Host First Nations. Witness C described a Host First Nation (HFN) as a First Nation on whose land there is a licensed casino facility. There are six approved HFN operators in Alberta; five existing and one to be built. Witness C clarified that Stoney Nakoda Resort & Casino is on the lands of three nations.

[154] Witness C explained that 75 per cent of slot revenue is allocated to the HFNs and 25 per cent is distributed to the other 40 nations. These funds are overseen by the provincial government and their use is restricted to things such as social infrastructure and economic development to assist nations to reach their goal of being self-reliant. The slot revenue funds cannot go back into the gaming market.

[155] In July 2022, Witness C became aware of the Applicant's relocation application. Witness C provided a letter of objection on behalf of Casino C dated August 10, 2022 (Exhibit 2, Tab 20). Witness C confirmed that the HFN and Casino C's designated charity also provided letters of objection to AGLC during Step Two of the application process. Witness C submitted that the relocation would negatively impact Casino C, its nation and its designated charity and that each was "alarmed" when they saw the application.

[156] Witness C highlighted that the Edmonton gaming market is "very saturated" and he is of the opinion that it would be "devastating" to have another casino come into the Edmonton market. He cited the financial struggles of an Edmonton casino that was shut down for a period of time and likened this to the over-saturated market.

[157] Witness C is of the opinion that AGLC has underestimated the level of cannibalization the proposed relocation would elicit. He stated that the erection of Casino A, which is further away from Casino C than the proposed Capital City Casinos Ltd. site, resulted in a much larger impact to the FNDF and to charity dollars than AGLC has projected for the Camrose Casino relocation.

[158] Witness C stated that when estimating the expected cannibalization of revenue by Capital City Casinos Ltd., Casino C relied on its historical financial data and reviewed the losses that occurred with the opening of Casino A.

[159] When asked by the Applicant what an acceptable threshold for cannibalization would be, Witness C said "0 per cent." Witness C reiterated that the negative impacts, although seemingly small percentages, result in millions of dollars lost for the FNDF and Casino C.

[160] When asked by the Applicant whether his analyses were quantitative and how Witness C made his projections, Witness C reiterated that Casino C utilized historical player data. He stated that he knows his business and has a good sense of the market. Witness C did not feel that access to AGLC's Winner's Edge data would be beneficial because it only represents 20 per cent of play.

[161] Witness C submitted that the HFN greatly depends on the FNDF to support social programming, policing, housing and the salaries of the individuals who oversee these programs. He stated that the projected loss of _____ is an underestimate but that even _____ less in funding would have significant detrimental impacts.

[162] In terms of the impact to Casino C, Witness C stated that the operator's 15 per cent of slot revenue is utilized to service debts and for capital improvements to the property. Witness C submitted that cannibalized revenue would result in cuts to Casino C's workforce, 35 per cent of which is comprised of First Nations peoples.

[163] If the application were approved, Witness C admitted that it will have an effect on the relationship between AGLC and HFNs.

[164] With respect to the purported uncaptured revenue in Southeast Edmonton, Witness C submitted that he does not think there is any incremental revenue available. He suggested that Capital City Casinos Ltd. revenue would be 100 per cent cannibalized. Witness C asserted that even if there is uncaptured revenue, it is not worth "shaking up the whole market" for one operator to capture potential revenue of _____

IV. Capital City Casinos Ltd.'s Submissions

[165] The representatives for the Applicant, Scott Mather and Jason Pechet, called three witnesses:

- Witness D, Consultant
- Witness E, Association
- Witness F, Charity service groups

Witness D

[166] Witness D provided sworn testimony. He has 30 years of experience providing gaming advisory services in all jurisdictions across Canada. He suggested that of the approximately 300 market assessments he has completed, his predictions have only been substantially wrong twice.

[167] Witness D has various contracts with seven provinces for market-related services. He is not aware of any other jurisdiction in Canada that uses a gravity model to assess applications for new or relocating casinos. He stated that the Huff model relies on the principles of a supply and demand-based system. Witness D suggested that up until ten years ago, the gaming market in Canada was in a demand state.

[168] Further, he suggested that the Huff model was developed for a retail market and is not concerned about "spend" because it operates on the assumption of necessity as opposed to discretionary spending.

[169] In 2012, the consultant changed how it looks at the market. It looks at the potential for incremental revenue from either a visitation perspective or from a spend perspective by assessing the number of visits of players, how often they visit and how much they will spend.

[170] The key to the consultant's methodology is player spend data and its focus on player spending and demographics. Witness D stated that the consultant's methodology has been presented publicly and relied upon by large organizations in the gaming industry without any disagreement.

[171] He stated that the gaming market is dynamic and that a majority of casinos in Canada are in competitive markets where revenue and market shares fluctuate.

[172] Witness D suggested that the gaming market is not based on supply because players cannot discern when entering a gaming facility whether it has 500, 600 or 700 slot machines so supply is not the issue. He suggested that attractiveness to players is the total package; table games and slot offerings, restaurants and the facility itself. He suggested that market shares change as facilities expand or change each year.

[173] Witness D suggested that attractiveness increases with unique offerings, such as casinos that allow smoking, like Casino C, or enhanced marketing. Witness D suggested that Casino C has a competitor advantage and you cannot necessarily put that into an economic model.

[174] As such, Witness D stated that the consultant conducts its assessments from a market perspective rather than geographical location.

[175] Witness D suggested that the model relied upon and further developed by AGLC is based on sound theory but that it has not evolved since 2007. He asserted that reality changes and casinos expand and evolve and increase their offerings which is difficult to incorporate into a model. He stated that making the model more complicated does not imply it will better predict reality.

[176] Witness D spoke to the disparity between the consultant's findings and Regulatory Services' findings in terms of estimated cannibalization. He equated this to the fact that the Huff model starts with an assumption that all revenue will come from cannibalization and then it is "tweaked" to find incremental revenue.

[177] Witness D asserted that the consultant does not use the term cannibalization and it is not found in his presented materials (Exhibit 3, Tab 12 and Exhibit 5) because it "is silly." He suggested that the appropriate way to describe revenue drawn from other operators is "change in market shares."

[178] Witness D referred to a diagram describing the methodology used by the consultant (Exhibit 3, Tab 12). This methodology has been applied by the consultant on previous assessments conducted for AGLC.

[179] Witness D stated that Edmonton and the Lower Mainland (Vancouver) in British Columbia are comparable markets based on spending patterns; they are the two highest spend areas in Canada. He clarified for the Panel, though, that they are not comparable in terms of population density and table games, only on slot revenues.

[180] When looking at the Edmonton area, Witness D provided a map that was divided into smaller areas. Witness D assessed the social and demographic data for those areas. He suggested that, for example, certain ethnic groups have a higher propensity to spend and certain immigrant classes may not have disposable income. He suggested that relying on income reported by postal code area is not reliable.

[181] The maps presented by Witness D also demonstrated population distribution within the proposed relocation area as well as drive times and level of access to facility areas. Witness D suggested that the South side of Edmonton has the poorest access to a gaming facility when compared with all other areas in the marketplace.

[182] With respect to the Winner's Edge player data provided to the consultant in its previous engagement with AGLC, Witness D suggested that the data ought to be released to casino operators so that they can incorporate the data into their own revenue projections and business plans.

[183] The consultant also has access to player card data for numerous jurisdictions across Canada which it can utilize to draw comparisons between similar markets. When asked by Regulatory Services, Witness D advised that the player card data from British Columbia represented 55 per cent of carded play and that British Columbia has several years of data.

[184] Witness D confirmed that players in Alberta signed up for Winner's Edge throughout 2019 and in early 2020. The consultant wanted to rely on the most recent period where all cards had been activated, so it relied on the player card data provided by AGLC from January and February 2020.

[185] Witness D suggested that his analysis was conducted using this 3.7 per cent sample base, as the data only represented approximately 20 per cent of play that occurred in those two months. Witness D was confident he could use two months based on the similar patterns shown when compared with player card data across Canada.

[186] When asked by the Panel Witness D agreed that it would have been better to use 12 months of data or even numerous years but that "two months of data is better than a theory."

[187] Witness D asserted that Regulatory Services' assessment assumes that all revenue generated comes from within a defined boundary and makes the assumption that every area spends equally.

[188] The consultant did not project a significant increase in the market as it cannot project what each facility will do with the extra two per cent of revenue generated.

[The representatives for the Applicant excused themselves for the discussion of the confidential material for which they waived their rights to hear under paragraph 26.]

[189] In the Applicant's absence, Witness D reviewed his findings, specifically estimated slot market shares for each operator, change in market shares for the year 2025 as a result of the relocation and slot win potential and captured win estimates by facility until 2030.

[190] Witness D estimated that existing operators would return to their current revenue levels within five years of the proposed relocation.

[191] The projections presented were based upon the January and February 2020 confidential player card data outcomes and relied upon a base year of 2020 (adjusted).

[192] To illustrate these findings, Witness D stated that he determined the average adult spend in Edmonton was \$379. In reviewing the sectioned map of Edmonton, he pointed to areas where adults are spending less than that. Witness D suggested that all of the areas in Edmonton where the population is spending less than \$350 are East or South of the North Saskatchewan River. Further, all of the lower spend populations, Witness D suggested, are in the area around the proposed relocation site.

[193] Witness D highlighted that Regulatory Services' analyses assumed equal spending and did not adjust its assumptions based on geographical location. He suggested that the Huff model does not point to the size of the market and that is an assumption that has to be made when applying it.

[194] Witness D stated that the Customer & Market Insights team bases their calculations on approved budget figures and that although the figures are correct, it is "silly" to base analyses on them because they cannot anticipate how private operators are operating and do not take into account location (or relocations) or changes in the market.

[195] Further, Witness D asserted that based on his review of the reports, Mr. Konowalchuk's team used two or three different ways to calculate incremental revenue.

[196] When asked by Regulatory Services to clarify patterns indicated on the sectioned map of Edmonton, Witness D confirmed the depiction that a specific population in the East is expected to be captured by Capital City Casinos Ltd., despite that it is located closer to Casino B. He stated that this is anticipated based on the Winner's Edge data and the assigned market share estimates for each facility.

[197] When asked by Regulatory Services why table games were not included in the estimates contained in Exhibit 5, Witness D stated that the analysis including table games was in the original report he provided to the Applicant.

[198] When asked by Regulatory Services whether the rate of cannibalization could be determined using the change in market shares values contained in his presentation, Witness D stated that the rate of cannibalization was not calculated as a percentage because the consultant does not look at cannibalization but rather focuses on incremental revenue.

[199] However, Witness D demonstrated that the cannibalization rate could be determined by subtracting total captured slot wins from revenue captured by Capital City Casinos Ltd. and then dividing that by Capital City Casinos Ltd. captured revenue. This resulted in a rate of approximately 42 per cent. Witness D highlighted that the revenue from table games would still need to be factored in.

[200] When asked by the Panel why all of the 2025 Slot Market Shares Estimates were in increments of 0.35 per cent for Capital City Casinos Ltd., Witness D explained that, when dealing with small market areas, he deals in “thirds.” So 0.35 per cent is assigned to Capital City Casinos Ltd. as it is representative of “less than 0.5 per cent” or “a third.”

[201] When asked by the Panel what kind of player behavior was compared across jurisdictions, Witness D stated that he looked at spending and visits by age and ethnicity.

[202] Witness D stated that seasonality can impact player spend and that right after Christmas (January) and May/June are slower months. He stated that because the player card data from January and February 2020 are based on rate of win, the data would not be impacted by this seasonality.

[203] Witness D estimated that by the end of the year, Winner’s Edge data will represent about 40 per cent of carded play and that it will align with the data collected from the two months in 2020.

[The representatives for the Applicant rejoined the hearing.]

[204] Witness D suggested that there is no spending potential in Sherwood Park and the only incremental revenue potential is in Southeast Edmonton. Witness D stated that, in order to grow incremental revenue, some market shares have to be redistributed.

[205] Witness D stated that when no player card data is available, he relies on comparisons with other markets as a method of benchmarking to make predictions.

[206] Witness D did not look at the impact to charities. He stated that they are profit stakeholders so they will benefit from revenue but that charity affiliation has nothing to do with the facility performance from a market perspective.

[207] When asked how the consultant calculated the impacts to other casinos, Witness D explained that he assigns market shares to each facility. He stated that if he thinks the facility is in a saturated market area, 100 per cent of the shares get assigned to that facility. In under-served areas, a facility could capture incremental revenue but it could also capture shares of existing operators. He stated that if you add up all the shares, it equates to the impact. Assumptions are made off a base year which, in this case, was 2020 (adjusted) just before the COVID-19 pandemic.

[208] When asked by Regulatory Services how the consultant assigns market shares, Witness D stated that he looks at the distinct patterns in the market and assigns the market shares arbitrarily. He suggested that it is “not really mathematical.” He asserted, however, that his staff could reproduce the

results by applying the principles and patterns from an existing facility to the new (or relocated) facility. He asserted that he has 30 years of experience and a large collection of market share data to base his assignments off of.

[209] When asked to compare his model to the Huff model, Witness D advised the Panel that he does not use a model and prefers to use the term methodological framework. He confirmed that he utilizes his framework and knowledge of the existing market shares for 77 gaming facilities across Canada to assign market shares and conduct his analyses. He stated that he is of the opinion it would not make sense to use a mathematical model to analyze behavioral patterns and a changing market. He asserted that AGLC Management would not have engaged him previously if they felt he was not doing a good job.

[210] When asked by Regulatory Services what percentage of loss in market shares Witness D would be comfortable recommending to his client, he suggested that he focuses on incremental revenue but that he would suggest relying on whether there is enough incremental revenue in the market to support baseline operations. Essentially, any level of cannibalization that does not “put anyone out of business.”

[211] Witness D suggested that introducing “something new” into the market will encourage existing operators to improve their performance.

[212] When asked by the Panel whether the Edmonton market could bear another facility, Witness D stated that the market is “well penetrated” but that within the market there are pockets of unique populations which lead the consultant to believe there is uncaptured revenue.

[213] When asked by the Panel what the significance of using the term “penetrated” instead of “saturated” is, Witness D stated that penetrated is more appropriate because no one knows the upper limit of available revenue, especially within the unpenetrated areas identified.

[214] Witness D, when asked by the Panel, clarified that the incremental revenue he identified as uncaptured represents the incremental wins rather than incremental profit. The incremental win number is what is then allocated between charities, AGLC, the General Revenue Fund and other organizations and the incremental profit is the share to the operator after that.

Witness E

[215] Witness E affirmed her testimony. Witness E is a member of the Board of Directors of an association which represents rural municipalities in Alberta. Witness E has served on the Board and is the for District which represents municipalities.

[216] The association has long advocated for changes to the charitable gaming model to support equitable distribution between urban and rural charity groups.

[217] The association initiated extensive research in 2018 and organized a stakeholder committee which made several recommendations to the provincial government advocating for changes to the model to rectify the inequities.

[218] When asked by the Panel what information-gathering methods were used and whether the association's members were the only groups surveyed, Witness E advised that she did not serve on the committee but assured the Panel that any data reported is substantiated, reliable and verifiable.

[219] The association proposed a regular review of the charitable gaming model. Witness E submitted that the association proposes small, incremental steps to improve the model and that the association wants what is best for all of Alberta. Witness E asserted that the association does not want to see any instant or immediate impacts to any charity in Alberta but takes the position that a review of the charitable gaming model is very important.

[220] Witness E stated that the proposed relocation would "absolutely benefit" rural charities. Based on the research conducted in 2018, the association has identified significant disparity in both the gaming revenue generated in casinos for rural charitable organizations as well as in their opportunity to access that funding (i.e. wait times).

[221] Witness E stated that the proposed relocation is a method to incrementally improve the inequities. She stated that the relocation is not a solution but it mitigates some of the impacts rural charitable organizations are currently experiencing.

[222] Witness E submitted that charitable organizations are crucial in the province and it is unfair that rural charities are at a significant disadvantage in terms of funding from gaming compared to their urban counterparts.

[223] Witness E highlighted that, compared to all other pooling regions in Alberta, the Camrose and St. Albert charity pool is among the lowest in per event revenues and has the longest wait times for charities to hold their event. Conversely, the Edmonton region contains casinos with the highest revenues and shortest wait times.

[224] Witness E suggested the Calgary casino that is designated as a rural casino sets a good precedent as a mechanism to address the inequities and she suggested that a similar approach in Edmonton would do the same.

[225] Witness E shared the following data collected by the association's stakeholder committee in 2018:

- Total proceeds per event for St. Albert/Camrose:
- Total proceeds per event for Edmonton:
- Wait times: shortest in Fort McMurray (16.5 months), 19.9 months in Calgary, 22.8 months in Edmonton, 31.3 months in St. Albert and 39.8 months in Camrose
- Rural charity groups are waiting almost twice as long as urban groups

[226] Witness E stated that the cumulative impacts of the lower revenue and longer wait times are significant. She submitted that the greater expectation for number of volunteers at each casino, combined with the decreased funding and timeliness to access the funding, only amplifies the disparities.

[227] When asked by the Applicant whether there is strong support from rural communities for the relocation, Witness E stated that there is strong support across the association's membership for both the relocation and for changes to the charitable gaming model.

[228] When asked by the Panel whether Witness E would support the relocation application if the inequities between urban and rural groups were addressed, Witness E responded that the relocation is "one tool in the toolbox" to address the inequities. She further stated that the proposed relocation would partially address the association's established principles upon which they have based their recommendations for change to the model.

[229] Witness E highlighted that while rural Alberta only has approximately 15 per cent of the population, it contributes 28 per cent of the GDP. There is foundational work done in rural Alberta that can only continue if rural charitable organizations are thriving.

[230] Witness E stated that the funding from charitable gaming supports access to services and resources relied upon by civil societies of rural Alberta. Further to the limited resources, rural charities have higher expectations in terms of services they provide and number of charities allocated to each casino.

Witness F

[231] Witness F provided sworn testimony on behalf of a charitable club in Camrose as well as an association of seven service groups.

[232] Witness F stated that he is also speaking on behalf of the 650 charity groups that use the Camrose Casino as a fundraising mechanism and, by extension as a result of pooling boundaries, the 450 charity groups from St. Albert.

[233] Witness F has acted as _____ at the Camrose regional exhibition, _____ for the Camrose "Chase the Ace" progressive raffle and was involved with the automation of ticket sales at Big Valley Jamboree. He stated that, as a result, he has a good working knowledge of the charitable gaming model.

[234] In 2018, Witness F became aware that not all charities in Alberta received the same gaming proceeds and waited different lengths of time to conduct their events. As a result, Witness F participated in a letter writing campaign that alerted approximately 650 charities to the disparity.

[235] Witness F stated that letters were also sent to local officials and provincial representatives highlighting that Camrose charities waited one and a half times longer for events, made 25 per cent of the proceeds and, when calculated on an annualized basis, made six times less than Edmonton groups.

[236] The letters also presented options to make the model more equitable such as taking a small portion of revenue from Edmonton charities and shifting it to Camrose which, Witness F stated, would result in a minimal impact to Edmonton groups and a significant improvement for Camrose charities.

[237] In 2021, AGLC conducted a virtual session with approximately 100 charitable groups from across the province who represented many different services and goals. Witness F submitted that the goals of the session were to:

- gather creative and innovative ideas to inform improvements to charitable gaming from engaged Albertans; and
- ensure charitable gaming in Alberta continues to enable participating charitable organizations to deliver programs and services that reflect Albertans' values and ultimately benefit Albertans and their communities.

[238] Witness F was excited to participate and shared that many of the Edmonton groups were unaware that not all charities had the same wait times and received the same proceeds. Witness F stated that the representatives of Edmonton groups acknowledged that they would be willing to share some of the revenue to help the rural groups.

[239] Witness F submitted that in the two years following the meeting, there have only been minor changes made to the policies that do not satisfy the inequities.

[240] Witness F stated that the financial assessments conducted as part of the relocation application disregard the issue of the financial viability of the Camrose Casino. He shared that he is concerned about whether the Camrose Casino will continue operating if it does not relocate and whether the business could be sold.

[241] Witness F stated that 650 charities would have to be reallocated, likely to St. Albert and to two casinos in Red Deer. Adding 650 groups to these casinos would extend wait times and decrease overall revenue which would impact many communities, including Fort McMurray and St. Paul.

[242] Witness F suggested that if the Camrose Casino relocated, the vacated facility in Camrose would be repurposed. He stated that although wait times would not change, the revenue for charities on an annualized basis would increase. He suggested that wait times could be improved if Camrose charity groups chose to share events as Capital City Casinos Ltd. would require many more volunteers than the Camrose Casino does for events.

[243] When asked by the Applicant about his understanding of the projected rate of cannibalization, Witness F stated that he understands it to mean revenue that is "stolen" from an existing operator. Witness F stated that he is of the opinion that Regulatory Services' calculations fail to consider how much revenue Edmonton is already taking from Camrose by drawing its residents into Edmonton casinos and the revenue that comes from Camrose residents.

[244] Witness F suggested that the approved HFN casino that has not been built yet will capture some of the available revenue in Edmonton but reiterated that it is not yet built and it is unknown how much revenue it will capture.

[245] Further, Witness F stated that HRA and the FNDF get a larger share of the gaming funds than the charity groups actually participating in charitable gaming: he asserted that this is unfair.

[246] Regarding the period for community support during Step Two of the application process, Witness F suggested that three weeks, over the August long weekend, was not an appropriate timeframe. Camrose hosts Big Valley Jamboree over the August long weekend which, he admitted, attracts a lot of visitors but sends a lot of people away.

[247] Witness F stated that, by the time he was able to respond, the deadline had passed. Further, the notice was advertised in two Edmonton newspapers but was not advertised in the Camrose newspaper.

[248] When asked by Regulatory Services when the Applicant advised Witness F or his club of the relocation application, he stated that he learned of the application in the middle of the community support period. He could not recall exactly when.

[249] When asked by Regulatory Services whether the Applicant reached out to Witness F or the club to discuss submitting a letter of support, Witness F stated that he was heavily involved with Big Valley Jamboree at that time.

[250] Witness F advised the Panel that Camrose city council took a neutral position on the relocation application but that was a “knee jerk” reaction. He suggested that many city councillors had since reviewed the application and realized the deployment of the Camrose gaming floor would result in replacement jobs and opportunities in Camrose.

[251] When the Applicant suggested to Witness F that it did not seem like there was a consultation process with Camrose, Witness F agreed and suggested that it was “stacked” against them. When asked by the Applicant whether the groups would have written letters of support if they were consulted, Witness F confirmed.

[252] Witness F stated that the rural groups that are assigned to the casino within Calgary that is designated as a rural casino have decent wait times and proceeds. He suggested that the rurally designated casino serves the rural groups very well and has for a number of years.

[253] Based on the projected impacts, Witness F stated that Edmonton charities would lose less than 10 per cent of revenue. He argued that giving up _____ per year so that Camrose charities could more than double their revenue “just makes sense.”

[254] Witness F suggested that reallocating even 150 Camrose charity groups to Edmonton, 30 groups to each of the five Edmonton casinos, would result in wait times in Camrose decreasing by 10 months and wait times in Edmonton increasing by only two months. Further, the same scenario would result in a 30 per cent revenue increase for Camrose charities and 8 per cent lost for Edmonton.

[255] When asked by Regulatory Services whether he was aware that urban charities pay more expenses than rural charities, Witness F stated that he is aware there is an imbalance in what is paid, however, that there is also an imbalance in what is received.

[256] When asked by the Panel what the ratio of Camrose charities is compared to its population, Witness F stated that the City of Camrose has a population of 20,000, not including Strathcona County, Beaumont and other surrounding regions, and approximately 650 charities. When asked how that compared to Edmonton, Witness F estimated that Edmonton has 1,600 charities. He agreed that the Camrose region has more charities per capita than Edmonton but that the Camrose groups “have needs just the same.”

[257] Witness F suggested that the City of Edmonton is silent on the relocation application and it is only the existing operators and charities in Edmonton that “do not want to share.”

[258] When asked by the Applicant whether the Camrose Casino could relocate to another region outside the City of Edmonton, Witness F explained that relocating to Strathcona County is not an option.

[259] As such, Witness F explained that the relocation application should be approved as it aligns with the model used in Calgary, it improves funding for over 1,000 Camrose and St. Albert charity groups and has a minimal impact on Edmonton charities and casinos.

[260] When asked by the Panel whether Witness F surveyed the 1,100 groups he stated he was speaking on behalf of, he advised that he contacted various groups through his raffle and Camrose service groups contacts who agreed that he should represent them. Witness F asked the groups whether they agreed that Camrose Casino would close if it did not relocate and asked for general feedback.

[261] When asked by the Panel whether Witness F would support the relocation application if the inequities between urban and rural groups were addressed, Witness F asserted that he has not seen discernable action or change to the charitable gaming model and that he is disappointed that no steps have been taken since 2021 so he cannot imagine any change.

[262] However, he stated that he is supportive of the relocation application either way. Witness F acknowledged there would be issues in terms of staffing the casino events but that the relocation is a valuable opportunity.

V. Summation

Regulatory Services

[263] Ms. Chan, on behalf of Regulatory Services, relied on her written submissions (Exhibit 1) but provided a summation of Regulatory Services’ position.

[264] In its assessment of the proposals from the Applicant, Regulatory Services and AGLC Management relied on section 15.3 of the CTCOG.

[265] An application that is deemed to have merit in Step One is not guaranteed to be successful in other steps of the process. The steps outlined in section 15.3.2 of the CTCOG do not need to be followed in a closed-gate, sequential nature or considered in a vacuum.

[266] Regulatory Services must consider the financial impacts of an application as well as the impacts on the community at large.

[267] AGLC has the ability to create policies to govern how gaming is conducted in the province of Alberta. AGLC is the sole regulator and has a duty to uphold the integrity of the gaming system. AGLC has to assess the value of each application on a case-by-case basis and on its own merits.

[268] No licensee has an inherent right to a casino facility licensee nor the automatic right to relocate an existing casino facility licence.

[269] The Panel heard from Regulatory Services' witnesses on the significant cannibalization and the detrimental impacts the relocation would have on Edmonton charities, HRA and the FNDF.

[270] Mr. Berry described the criteria an application must satisfy to be deemed to have merit, as outlined in section 15.3.10 of the CTCOG.

[271] Specifically, that a significant proportion of the projected gross gaming revenue is expected to be new gaming revenue. The Panel heard that, based on Mr. Konowalchuk's analysis, only two per cent of the overall market will be attributed to new revenue generated by Capital City Casinos Ltd.

[272] Regulatory Services takes the position that the Huff model is a good indicator for how the market area will respond to a "new" casino. Further, the market assessment completed in 2021 has not been reviewed or updated since it was conducted. It is not in AGLC's practice to continually update previous assessments as population and other metrics change.

[273] Regulatory Services submits that the consultant utilized existing player data from only January and February 2020 and that two months, with lower spending trends after Christmas, were not sufficient for the Applicant to base its proposal on.

[274] Both Witness B and Witness C agreed that relying on player card data that is representative of approximately 20 per cent of carded play would not be sufficient for conducting feasibility analyses.

[275] These statements bring into question the accuracy of the consultant's calculations. Witness D provided evidence that he uses a theoretical methodological framework and not a mathematical model. Further, Regulatory Services takes the position that the consultant is a consultation group and the Applicant is their client; it is not unlikely that the consultant would seek to deliver favorable outcomes for its client.

[276] On the other hand, the Customer & Market Insights team at AGLC is unbiased and are solely tasked with “crunching numbers.” Mr. Konowalchuk and his team have no stake in the outcome and they do not make recommendations to AGLC Management or to the Board.

[277] In conducting analyses for Mr. Mather’s other projects, the Huff model was used and the Applicant took no issue. The Huff model is not in a “black box” and Regulatory Services submits that it is standard, public and well-known.

[278] Regulatory Services agrees there is no hard threshold for cannibalization that can be provided. Regulatory Services must rely on a number of factors and must assess each application on a case-by-case basis considering that analyses at different points in time may produce different results.

[279] The gaming market is competitive and the application process is applicant-driven. It is not AGLC’s role to make the application and AGLC must take a holistic approach when considering each application.

[280] Regulatory Services takes the position that the Applicant’s financial projections only looked at incremental revenue, as confirmed by Witness D. Despite the consultant’s estimates that existing operators’ revenue would be restored within five years of the proposed relocation, Regulatory Services estimated that it could take up to ten years for some operators and that the impacts of cannibalization were not accurately represented by the Applicant.

[281] The issue before the Panel is about the relocation application and not about the potential closure or impacts of a closure of the Camrose Casino. The Applicant made a specific proposal to relocate the Camrose Casino to a very specific location and that is the issue that was considered.

[282] However, if the Camrose Casino were to close, Mr. Kiss stated that no charity would be left behind and charities would be redistributed.

[283] A review of the charitable gaming model was not before Regulatory Services, AGLC Management or the Board as part of the application process and it is not before the Panel to consider. Considerations for equity among urban and rural charitable groups needs to be addressed through policy change mechanisms and not through a casino relocation.

[284] Witness F stated that the consultation period was too short and that the notice was not advertised in the City of Camrose newspaper. Section 15.3.19 of the CTCOG states that the Applicant is responsible for advertising in the area where it proposes to relocate and the adjacent areas; not AGLC.

[285] Regulatory Services requests that the Panel uphold the prior decision of the Board to end the approval process and submits that the relocation application should not proceed.

[286] In response to the alternative suggestion contained in the Applicant’s written submissions (Exhibit 3, Tab 1) that Regulatory Services utilize AGLC’s Winner’s Edge player data instead of the Huff model, Regulatory Services submits that the Winner’s Edge program is not yet mature. The program was

fully implemented starting in December 2019. The program was then heavily impacted by the COVID-19 pandemic and, to date, only represents less than 30 per cent of play. As such, Regulatory Services takes the position there is not enough data to rely upon and the Huff model remains the correct methodology.

[287] Further, in response to the Applicant's written request that "the Board will need to define to the Applicant the specific thresholds of acceptable cannibalization/financial impact," Regulatory Services takes the position that, as evidenced by Mr. Berry, Mr. Kiss and Mr. Lautischer, there is no specific threshold amount. Regulatory Services takes the position that the application was appropriately assessed against the criteria in section 15.3 of the CTCOG.

Capital City Casinos Ltd.

[288] Mr. Pechet, on behalf of the Applicant, thanked the Panel for allowing the Applicant to present its case at the hearing. Mr. Pechet outlined each of the four issues cited in the Board's denial letter dated November 15, 2022 and spoke to each issue in his summation.

Lack of community support from the general public, local government and existing operators

[289] The Applicant suggests that almost all of the letters of objection came in a template letter and the Applicant takes the position that the letter was created by the CFO of Casino B, Capital City Casinos Ltd.'s potential competitor.

[290] The Applicant suggests that operators embarked on a campaign to scare Edmonton charities into objecting to the application by advising them their revenue would decrease
. Conversely, the Applicant submits that Camrose charities' revenue would more than double.

[291] The crux of the objections from the community is perceived cannibalization of revenue and, the Applicant submits, there were very few objections from actual residents of the area surrounding the proposed site.

[292] The Applicant submits that the City of Edmonton has publicly communicated an agnostic position but that they have provided the Applicant with a permit for the site and approved the building. Further, the City of Edmonton stated in its April 18, 2023 letter that it did not oppose the relocation.

[293] Edmonton is the only large city that does not have a rural designated casino and the Applicant is of the opinion that Edmonton wishes to remain the only jurisdiction that does not contribute to rural organizations.

[294] Witness D testified that, in order to have market growth, there needs to be redistribution. The Applicant submits that the Panel has heard evidence from Witness D that he does not believe existing operators will be significantly impacted and all Edmonton operators would return to "pre-relocation" levels within five years.

[295] The Applicant submits that competition is healthy and it may encourage operators to invest capital back into their properties, marketing and customer services in order to generate revenue for the province.

Significant cannibalization

[296] The Panel has heard a lot of evidence on market shares and cannibalization. The Applicant is of the opinion that Mr. Berry, Mr. Kiss and Mr. Lautischer each stated that their analyses and recommendations were based on Mr. Konowalchuk's calculations using the Huff model and that there was no consideration given to Witness D's results.

[297] The Applicant takes the position that the Huff model is flawed. Every business in North America relies on forecasting studies and market service studies and, the Applicant submits, do not use the Huff model. While the Huff model is scientific, the Applicant suggests it cannot be seen by the "outside population" and has never been used to fund a project.

[298] AGLC's policies required the Applicant to engage the consultant but the Applicant takes the position that none of their analyses were considered.

[299] The Applicant submits that AGLC Management did not review or understand the Huff model and that Alberta is the only jurisdiction that utilizes it. If the model were incorrect, all analyses and the numbers relied upon would also be incorrect.

[300] Witness D testified that the operators and AGLC capture player data for the purposes of forecasting rather than relying on theoretical models.

[301] The Applicant submits that existing operators will not be financially impaired and that they have objected to the application because they are being "told a story" about significant cannibalization. The Applicant suggests that the Huff model focuses on revenue generated from cannibalization as opposed to incremental revenue.

Limited new gaming revenues generated by the relocation

[302] The Applicant submits that the Market Assessment conducted in 2021 ought to be considered. The potential uncaptured revenue far outweighs the projected impacts of the relocation and the uncaptured revenue can only be serviced by a new or relocated casino.

[303] Further, the Applicant suggests that none of the existing operators in Edmonton have the ability to capture the purported revenue in Southeast Edmonton. The Applicant submits that some of the existing operators have recently sold their real estate assets and entered into 15-to-20-year leases, preventing them from relocating or expanding to capture the available revenue.

Negative impact to HRA and FNDF

[304] The Applicant submits that it only just learned that the negative impact to the FNDF is less than one per cent and that information was not previously provided. Further, the Applicant submits that the impact on HRA would be less than four per cent.

[305] The Applicant suggests that AGLC Management did not communicate these impacts to the Board when the request for decision was presented and neither Mr. Kiss nor Mr. Lautischer took these impacts into account in their assessment of the relocation application.

[306] The Applicant submits that the impacts to HRA and the FNDF are not significant. The Applicant takes the position that what is more material is that the Camrose and St. Albert charities generate less revenue per event than HRA and the FNDF collect through slot revenue allocation.

Summary

[307] The Applicant clarified that Camrose services a combined population of 230,000 to 260,000 in its catchment area and that the Camrose casino services more charities than any one casino in Edmonton.

[308] Rural charities are in greater, not lesser, need of help. They rely on charitable gaming funds as they have less access to government funded programs and have no other mechanism for generating funds like some urban charities do.

[309] The Applicant reiterates evidence from Mr. Kiss where he suggested the application would have been a “slam dunk” if there were not so many objections.

[310] The Applicant submits that both Witness E’s association and Witness F’s club are highly supportive of the relocation because they have been working to get a policy change or a review of the charitable gaming model for 15 years. The Applicant submits the relocation is a viable, tangible option to create equity among charitable groups in the near future.

[311] The Applicant wishes to work collaboratively with AGLC Management in the future and submits that it was surprised by the adversarial nature of the hearing process.

[312] The Applicant requests to meet with Regulatory Services to go through the analysis and the model to work through what needs to be changed to make the application successful.

VI. Analysis

[313] The Panel carefully considered the written and oral submissions of Regulatory Services and the Applicant and relied solely upon the evidence before it at the hearing in making its findings of fact.

[314] With respect to the preliminary application brought by the Applicant to be excluded from certain portions of oral testimony and to provide evidence to the Panel that would not be available to the Applicant, the Panel finds that although the requested process raised questions from the Panel regarding the principles of natural justice, the representatives for the Applicant were well aware of the implications of their request. The Panel, in its May 8, 2023 letter (Exhibit 4) and at the outset of the hearing, urged the Applicant to seek legal advice on the issue. Further, the Panel finds that both parties were agreeable to the application and that the representatives for the Applicant waived their rights to hear and respond to portions of the case (see paragraphs 16-28).

[315] The Panel finds as fact that the parties were advised in the May 8, 2023 letter and at the hearing that the reasons for decision may contain analysis of the excluded evidence and that any information included in the decision is exclusively for the Panel to decide.

[316] As such, in consideration of the submissions on preliminary issues and the reasons above, the Panel finds that the process outlined was fair to the parties and reasonable in the circumstances.

[317] Section 3(c) of the Act states that one of the objects of the Commission is to carry out the functions respecting gaming delegated to it by the Lieutenant Governor in Council under the *Criminal Code* (Canada) or conferred on it by the Act. Section 12(1) of the Act sets out the Board's responsibility of ensuring that the powers and duties of the Commission are appropriately carried out and allows the Board the power to establish policies of the Commission. As reflected in these sections and throughout the Act, the Board of AGLC has the ultimate discretion to create policies and carry out functions respecting gaming as the sole regulator of gaming activities in Alberta. The Board has established policies relating to gaming and facility licences, namely the CTCOG. The legislation also grants the Board the authority to issue a casino facility licence or to refuse to issue a casino facility licence based on criteria as highlighted in Section 37(1) of the Act, including whether the Board considers it appropriate to do so (Section 37(1)(a)).

[318] The Panel finds that the relocation application was appropriately assessed under AGLC's policies, namely section 15.3 of the CTCOG which governs the process for a casino relocation. Approval at Step One of the process signifies that the application has merit and will move to Step Two but, as testified by Mr. Berry and Mr. Kiss and as outlined in section 15.3.10 of the CTCOG, it does not assure the level of success of the application.

[319] The Board of AGLC must assess opportunities with the interests of Albertans in mind and must consider all views from the gaming community across the province. As such, notice of applications must be provided to any existing operators in Alberta that may be deemed to be impacted. Such notice is necessary to fulfill AGLC's mandate and maintain the integrity of gaming activities by creating an equal platform among operators.

[320] With respect to the Applicant's position that notice was not publicized in the City of Camrose, the Panel finds that the Applicant is required to issue a public notice in the community where the proposed licensed casino facility will be located and could have advertised in adjacent communities that may be directly affected by the proposed casino relocation, as provided for in section 15.3.19 of the CTCOG.

[321] Further, the Panel finds that over 500 individuals and groups were able to provide their objection in writing within the defined community support period at Step Two of the application process. The Panel finds that supporters of the application would decidedly have been able to do the same. The Panel finds that the lack of community support for the application was substantial and does not find that the notice or timeframe for response was inadequate.

[322] The Panel heard evidence from Mr. Berry that it is not uncommon for AGLC to receive letters of objection in a standard form. The Panel does not find the format of the letters to be relevant and finds them legitimate. The Panel found that the letters of response provided by the community overwhelmingly objected to the relocation application. The Panel considered this public response in deciding the matter.

[323] The Panel considered the letter provided from the City of Edmonton and found that the local government took a neutral position on the relocation application.

[324] The Panel also considered the letters of objection from existing operators and the testimony from Witnesses A, B and C. The Panel finds that the letters from Casinos A, B and C and other operators in Alberta highlighted significant cannibalization of revenue for the operators and concerns about the current oversaturation of the Edmonton market. Further, the operators each cited the loss of revenue for their associated charities and the impacts the proposed relocation would have on the existing operators' relationship with AGLC. As such, the Panel finds a significant lack of support from existing casino operators in the Edmonton market.

[325] The Panel next considered the evidence presented by witnesses for the Applicant and Regulatory Services regarding the economic impact of the relocation application on existing casinos. Mr. Konowalchuk provided evidence that the Huff model has been proven as a standard, accurate economic model and that it is publicly available. The Panel finds that Mr. Konowalchuk utilizes exact figures from AGLC's internal data and the budget approved by the Government of Alberta. Further, the Panel heard evidence that the Huff model was utilized by Mr. Konowalchuk's team in assessments of two recently successful applications pertaining to casino facility licences with which Mr. Mather was involved and that he did not object to its use.

[326] Witness B provided evidence that Casino B used a third party to conduct analyses using their player data and the Huff model. The Panel finds that casino facility licence applicants have the ability to employ third parties who have access to mathematical models to conduct financial analyses without AGLC Management advising them of financial or operational targets they should meet.

[327] The consultant is a well-established consultant group in the gaming industry and the Panel finds Witness D to be a credible witness. However, Witness D provided evidence that he utilizes a theoretical methodological framework rather than a mathematical model which involves the subjective assignment of market shares. Witness D relied on two months of AGLC's Winner's Edge player card data which Mr. Konowalchuk and Witness D both testified was only representative of approximately 24 per cent of play in Alberta. The Panel finds that, based on the testimony by both Mr. Konowalchuk and agreement by Witness D that 12 months or more "would have been better," the player card data from the two, low spend months were not sufficient to rely upon. The Panel finds that the consultant's calculations relied upon an extrapolation of the insufficient data.

[328] The Panel finds that Exhibit 5 presented by Witness D did not contain a full comparison of gaming activity as table games were not included in the calculations presented therefore the information was incomplete.

[329] Further, the Panel finds that the forecasted growth presented by the consultant in Exhibit 5 (page 24) was not substantiated with a repeatable mathematical methodology. As such, the Panel was not convinced that the assumptions used in the confidential calculations provided by Witness D supported the Applicant's position.

[330] And further, based on statements from Witness D, the Panel finds that the analysis conducted for the Applicant was largely based on historical player data from other regions in Canada and did not take into consideration player behaviors, only demographic information such as age and ethnicity.

[331] The Panel finds that both the Applicant, using the consultant's methodology, and Regulatory Services, using the Huff Model, provided evidence that a significant proportion of the projected gross gaming revenue is expected to be drawn from existing gaming facilities and that existing operators may not return to pre-COVID-19 baseline revenue for up to ten years. The Panel finds that the figures provided by the consultant represent projected loss in market shares for existing operators (cannibalization) of approximately [REDACTED] and the figures presented by Regulatory Services represent project cannibalization of [REDACTED]. The Panel considers both projected percentages to represent a significant proportion of income generated as a result of cannibalization. Therefore, the Panel finds that neither the Applicant's nor Regulatory Services' assessment results demonstrate projected gross gaming revenue that is significantly incremental.

[332] Further, the Panel finds that based on evidence from Mr. Konowalchuk and Witness D, Capital City Casinos Ltd. would only generate incremental revenue equivalent to [REDACTED] of the overall gaming revenue generated for the Province of Alberta.

[333] The Panel finds that the 2021 Market Assessment did not consider impacts to charities or other operators nor other criteria found in section 15.3.9 of the CTCOG. The Panel finds that the 2021 Market Assessment does not guarantee that estimated available dollars will be captured as revenue.

[334] The Panel considered the evidence from witnesses regarding the impact on charitable groups. The Panel finds that Witness E and Witness F acted as representatives for rural charitable groups and that they each provided compelling statements focusing on changes to the charitable gaming model. However, the Panel found no strong evidence that the support of the groups for a review of the charitable gaming model inherently indicates their support for the relocation application. The Panel accordingly weighed the evidence provided by Witness E and Witness F as it applied to the issue before the Panel, the relocation application. The Panel finds that Witness E and Witness F's support for the relocation was strongly tied to their support for changes to the charitable gaming model. It is not within the purview of the hearing Panel to consider proposed changes to existing policies.

[335] The Panel heard evidence from Witness C that 48 host and non-host First Nations would be detrimentally impacted by losses incurred by the FNDF. Further, Witness A provided testimony that the impacts to HRA would result in losses to racing entertainment centres and the agriculture sector which largely supports and employs rural Albertans.

[336] Witness B provided evidence that charities in the Edmonton area would be significantly and negatively impacted as a result of revenue drawn from Casino B and other existing operators from a rural-designate casino which was also supported by Mr. Konowalchuk's projected cannibalized revenue for each existing Edmonton casino.

[337] The Panel finds that both rural and urban charities would be impacted by the proposed relocation. However, evidence provided by Mr. Kiss stated that if the existing Camrose Casino were to close, its designated charities would be allocated to a new casino and that no charity would be left behind. The Panel finds that balance among charities is an issue that would need to be addressed by way of policy reform and not by way of a casino relocation. Further, the Panel finds that the proposed relocation negatively impacts the agriculture sector, HRA and First Nations peoples.

[338] Further, the Panel finds that the Calgary casino designated as a rural casino is unique and was approved under unusual circumstances. The Panel finds no strong evidence that the Calgary rural casino ought to set a precedent for the Edmonton market which, as testified by Witness D, is a unique market.

[339] As such, the Panel agrees with the Board's original decision of November 10, 2022 and the reasons for the decision. Specifically, the Panel finds the following:

- Lack of community support from the general public, local government and existing casino operators in the Edmonton market;
- Significant cannibalization of the proposed gaming revenues and the resulting negative impacts to existing casino operators in the Edmonton market;
- Limited new gaming revenues generated by the relocation; and
- Negative impact to the agricultural sector, HRA and FNDF.

VII. Finding

[340] For the reasons noted in the analysis above and in accordance with sections 94(2) and 94(7)(a) of the Act, the Panel confirms the original decision of the Board of AGLC to end the approval process to relocate the existing Camrose Casino.

Signed at Calgary, this 22nd day of June, 2023



Patti Grier, Presiding Member, Hearing Panel