

**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

**Zembaba 2 Shisha & Restaurant Ltd.
o/a Zembaba 2 Shisha & Restaurant (Applicant)
c/o Knisely Law
700-10050 112 St NW
Edmonton, AB T5K 2J1**

DATE OF HEARING:	February 26, 2025
HEARING PANEL:	Maureen Moneta, Presiding Member Len Rhodes, Panel Member Jack Fujino, Panel Member
APPLICANT / REPRESENTATIVE:	Dale M. Knisely, Legal Counsel Cabdulahji Haji-Hersi, Owner/Operator Adam Knisely, Paralegal
REGULATORY SERVICES DIVISION:	Toni Hazelwood, Hearing Officer Mitch Ferguson, Resource Officer

DECISION OF THE HEARING PANEL

The Panel imposes the following conditions on Zembaba 2 Shisha & Restaurant's Class A Minors Prohibited liquor licence #774217-2 (the Licence) in accordance with sections 61(3) and 94(7)(b) of the *Gaming, Liquor and Cannabis Act* (the Act) and effective as of April 23, 2025:

1. The premises must install and satisfactorily maintain a digital camera security system that is continually operational from 2:00 a.m. until 9:00 a.m. and covering the entirety of the premises, excluding washrooms. The digital camera security system must be of sufficient quality to clearly identify individuals in the premises. The monitor and recording system shall be in a locked, secure area within the premises that only staff members have access to.
2. The cameras and lighting must be positioned to clearly capture coverage of activity from 2:00 a.m. until 9:00 a.m. identifying all individuals entering/exiting the premises, including staff areas, and all individuals within the premises. The digital camera security system must

have on premises 28-day minimum recording retention in a common format that is easily accessible and contains an accurate time/date stamp not obscuring the image.

3. The digital camera security system must be tested weekly to ensure all cameras and recording equipment are functioning properly. When requested by an inspector, a log of the test results must be kept on the premises in an easily accessible format that contains an accurate time/date stamp.
4. When requested by an inspector, footage from the recording system must be provided in an easily accessible format that contains an accurate time/date stamp.
5. Both the log of the test results and any footage from the recording system must not be obscured by a date/timestamp or any other image on the recording.
6. The licensee, an employee of the licensee, or a contracted person must have the ability/skill to provide the digital camera recording or a log of test results to AGLC within a reasonable period of time.
7. Any malfunctions of the digital camera security system must be immediately reported to the AGLC, via the e-mail address inspections.mailbox@aglc.ca. A plan identifying system compliance must be submitted to AGLC for approval. Any changes made to the approved plan must be approved by AGLC.

I. Jurisdiction and Preliminary Matters

[1] By letter dated October 21, 2024, the Regulatory Services Division (Regulatory Services) of Alberta Gaming, Liquor and Cannabis Commission (AGLC) advised Zembaba 2 Shisha & Restaurant Ltd. (the Licensee), operating as Zembaba 2 Shisha & Restaurant (Zembaba Restaurant), that the following conditions were being imposed on the Licence:

1. The premises must install and satisfactorily maintain a digital camera security system that is continually operational and covering the entirety of the premises, excluding washrooms. The digital camera security system must be of sufficient quality to clearly identify individuals in the premises. The monitor and recording system shall be in a locked, secure area within the premises that only staff members have access to.
2. The cameras and lighting must be positioned to clearly capture 24-hour coverage of activity identifying all individuals entering/exiting the premises, including staff areas, and all individuals within the premises. The digital camera security system must have on premises 28-day minimum recording retention in a common format that is easily accessible and contains an accurate time/date stamp not obscuring the image.
3. The digital camera security system must be tested weekly to ensure all cameras and recording equipment are functioning properly. When requested by an inspector, a log of the test results must be kept on the premises in an easily accessible format that contains an accurate time/date stamp.

4. When requested by an inspector, footage from the recording system must be provided in an easily accessible format that contains an accurate time/date stamp.
5. Both the log of the test results and any footage from the recording system must not be obscured by a date/timestamp or any other image on the recording.
6. The licensee, an employee of the licensee, or a contracted person must have the ability/skill to provide the digital camera recording or a log of test results to AGLC within a reasonable period of time.
7. Any malfunctions of the digital camera security system must be immediately reported to the AGLC, via the e-mail address inspections.mailbox@aglc.ca. A plan identifying system compliance must be submitted to AGLC for approval. Any changes made to the approved plan must be approved by AGLC.

[2] The Licensee subsequently applied for a hearing before a Panel of the Board of AGLC pursuant to section 94(1) of the *Gaming, Liquor and Cannabis Act* (the Act).

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

[4] The hearing was scheduled for January 29, 2025, and a Notice of Hearing was emailed to the parties on December 5, 2024.

[5] On January 24, 2025, Dale M. Knisely emailed the Hearing Panel Office to advise that he had been retained as the Licensee's legal counsel and to request an adjournment. The Licensee and Mr. Knisely provided the Hearing Panel Office with an executed Authorization for Representation form appointing Mr. Knisely as the legal representative for the Licensee. Regulatory Services did not object to Mr. Knisely's request for an adjournment, and the Panel granted the adjournment on the condition that the hearing be held within the 120-day limitation period.

[6] The hearing was re-scheduled for February 26, 2025, and an Updated Notice of Hearing was emailed to the parties on January 28, 2025.

[7] The parties and the Hearing Panel were provided with a record containing various documents pertaining to the issues before the panel. Mr. Knisely confirmed receipt of the Updated Notice of Hearing dated January 28, 2025 and the attached hearing record. The following documents were entered into evidence:

- Exhibit 1 Hearing Record, including Tabs 1 to 3

[8] At the outset of the hearing, Mr. Knisely requested a brief adjournment. The parties and the Panel took a recess, and upon their return, Mr. Knisely advised that the Licensee was ready to proceed and had a witness who was on his way to the hearing.

II. Issues

[9] Should the conditions imposed on the Licence by Regulatory Services be confirmed, replaced, or cancelled?

III. Regulatory Services Submissions

[10] Regulatory Services called two witnesses:

- Constable Kevin Zylstra – Edmonton Police Service (EPS)
- Scott Gauthier – AGLC Supervisor, Inspections

[11] The following is a summary of the evidence provided by Constable Zylstra and Mr. Gauthier.

Constable Zylstra

[12] Constable Zylstra advised that he has been a patrol officer for three years, and Zembaba Restaurant falls within his patrol area. In his time patrolling this area, Constable Zylstra stated that:

- he has known Zembaba Restaurant to operate after-hours events as late as 7:00 a.m. and cause disruptions to the surrounding neighborhood; and
- EPS has received complaints regarding the disruptions, shisha smoking in the licensed premises and intoxicated patrons operating vehicles.

[13] Constable Zylstra said that he has personally talked with Zembaba Restaurant's manager and the owner/operator, Cabdulahi Haji-Hersi, about the community's complaints and told them that the issues need to stop. The Licensee acknowledged that after-hours events had taken place and stated that they would not hold further events. Constable Zylstra further stated that the conversations with Mr. Haji-Hersi have not resulted in any changes at Zembaba Restaurant, and EPS has received additional complaints from the community regarding after-hours activities.

[14] Constable Zylstra stated that there have been difficulties with identifying who is managing or supervising the licensed premises during proactive walkthroughs, and his understanding is that the Mr. Haji-Hersi often works at another licensed premises.

[15] Compared to other establishments within his patrol area, Constable Zylstra advised that Zembaba Restaurant is an outlier because other community bars do not have issues with after-hours incidents, they comply when asked for CCTV footage, and their managers are easily identifiable.

[16] Constable Zylstra explained that the proposed licence conditions are important to EPS because CCTV helps to identify persons of interest or suspects in the course of an investigation, and prosecutors are more inclined to go forward with a case when they have CCTV evidence. He further stated that:

- if the conditions are not imposed, he feels there will be a lack of accountability;
- if a licensed premises is operating properly, there is no reason to fear what occurs inside the establishment; and
- there should be a good relationship between licensees and EPS who are there to help keep the public safe.

[17] When asked by Mr. Knisely whether he personally received complaints from neighbours of Zembaba Restaurant, Constable Zylstra explained that complaints from the public were submitted to EPS and then forwarded to him by his chain of command.

[18] When Mr. Knisely asked whether complaints received by EPS are logged and provided to Regulatory Services, Constable Zylstra confirmed that complaints are logged, and he is not sure what has been disclosed to Regulatory Services.

[19] When asked by Mr. Knisely how many other similar bars are in the same neighborhood as Zembaba Restaurant, Constable Zylstra stated that there are three other establishments with the same operating hours in the area that his team communicates with and visits proactively.

[20] When Mr. Knisely asked whether the complaints received by EPS are for people being disruptive, drunk and noisy after hours, Constable Zylstra confirmed that was correct.

[21] When Mr. Knisely asked how he knows the disturbances were from Zembaba Restaurant, Constable Zylstra advised that EPS received CCTV footage from residents of the neighbourhood. He further stated that he collected the CCTV footage and submitted it to EPS's property exhibit unit.

[22] When Mr. Knisely asked if the objective is to have access to camera surveillance recordings of the activities in Zembaba Restaurant, Constable Zylstra said that is the recommendation from AGLC, and speaking for them, they want conditions in place in order to have access to camera footage if required.

[23] When Mr. Knisely asked if the point of having access to camera footage is to determine who is actually in the licensed premises when they are open, Constable Zylstra stated that he thinks the point is to determine if Zembaba Restaurant is operating properly and whether there is any illegal activity occurring. He further stated that it could be used for police investigations.

[24] When Mr. Knisely asked whether camera footage could be used to identify suspects and persons of interest, Constable Zylstra said that from a police standpoint, CCTV could be used for that purpose.

[25] When Mr. Knisely asked how the accountability for Zembaba Restaurant would be affected by 24-hour surveillance, Constable Zylstra said that what he meant by accountability is that mandated CCTV will help hold the Licensee accountable for ensuring that the rules are followed and that they are opening and closing at the proper times. He further stated that CCTV will provide evidence of offences.

[26] When asked by Mr. Knisely whether EPS would be accessing Zembaba Restaurant's digital camera system, Constable Zylstra said that he cannot speak for all of EPS, but if he were to request footage as part of an investigation, he hopes that the Licensee would be willing to provide it to him. He further stated that he has not personally requested camera footage from Mr. Haji-Hersi in the past.

[27] When Mr. Knisely asked Constable Zylstra when it was that he had difficulty with ascertaining who the manager of Zembaba Restaurant was, he stated that:

- there was an incident in October or November of 2024 during a proactive after-hours visit of the licensed premises with Regulatory Services where a number of patrons were in the licensed premises consuming alcohol;

- there was great difficulty in determining who the manager was; and
- after speaking with numerous individuals, he spoke with a female who he had never seen before and she self-identified as the manager.

[28] When Mr. Knisely asked whether AGLC or EPS or both agencies will have access to the digital camera system, Constable Zylstra said that he is certain that both agencies could have access but primarily AGLC. He further stated that the Public Safety Compliance Team (the PSCT), which includes members of AGLC, EPS, the fire department and the city bylaws department, may make requests for camera footage.

[29] When Mr. Knisely asked whether any of the camera footage collected by AGLC or the PSCT could find its way into a police investigation, Constable Zylstra said that it could if it was a criminal investigation, but he cannot speak for all of EPS and it would depend on what they are requesting it for.

[30] When Mr. Knisely asked how many times he has personally observed after-hours activity at Zembaba Restaurant, Constable Zylstra stated that there was the previously mentioned incident in the fall of 2024 with Regulatory Services, and he has made observations of after-hours when reviewing CCTV footage.

[31] When the Panel asked him to elaborate on what he saw occurring at Zembaba Restaurant during the after-hours visit in the fall of 2024, Constable Zylstra advised that:

- he visited Zembaba Restaurant sometime after 3:30 a.m.;
- the weather was cold and there was snow on the ground;
- when he approached the back door of the licensed premises, there were patrons exiting with red solo cups which he believes contained alcohol;
- one of the patrons said something when he noticed EPS and Regulatory Services, but the music was too loud to understand what he said;
- the patron ran back inside the licensed premises and slammed the door shut;
- the other patrons continued through the parking lot;
- upon entering Zembaba Restaurant, he observed 50 – 70 patrons;
- multiple patrons were holding alcohol;
- a staff member made contact with Constable Zylstra and started yelling at the patrons to exit;
- they attempted to determine who the manager was;
- their goal was to safely remove the remaining patrons from the licensed premises; and
- they spent approximately 30 to 40 minutes in the licensed premises.

[32] When asked by the Panel what his overall concerns are with the Licensee, Constable Zylstra said that he is concerned about the Licensee not abiding by AGLC's rules and the neighbours who have stated that they are concerned about their safety and want to move due to the disturbances caused by the Zembaba Restaurant.

[33] When the Panel asked what his opinion is regarding the adequacy of the existing digital camera system in Zembaba Restaurant and how many cameras are currently in position, Constable Zylstra

stated that he has not personally reviewed the current system so he cannot speak to the adequacy of it nor the number of cameras.

[34] When the Panel asked him to describe the entrances and exits of the licensed premises, Constable Zylstra explained that:

- the main door is on 118 Avenue;
- there is a rear door that leads into an L-shaped parking lot;
- east of the rear door is another door that leads into an underground area;
- he reviewed camera footage from the neighbourhood and saw people entering through the east door into the underground area; and
- the east door is always secured, and he has not been in the underground area.

[35] When Mr. Knisely asked Constable Zylstra what authority he has to enter into the underground/basement area, he stated that he never entered into that area and tried the door to see if it was secure. He further stated that he could not speak to what authority he has to check the door.

[36] When asked by the Panel whether digital camera systems deter inappropriate activity, Constable Zylstra advised that CCTV is a proven deterrent and can cause a person to reconsider their actions if they know their face is going to be captured.

[37] When the Panel asked Constable Zylstra if he believes that the proposed conditions will improve public safety, he stated that the conditions will help keep the public safe, and an adequate security system will make the public feel that there is a sense of ownership.

Mr. Gauthier

[38] Mr. Gauthier has been a supervisor in the inspections branch of Regulatory Services for seven years.

[39] Mr. Gauthier advised that at the direction of his manager, he submitted the Request for Decision (Exhibit 1, Tab 2) which outlines the need for a reliable digital camera system for Zembaba Restaurant to assist with the increasing number of issues and decrease in cooperation from the Licensee over the last couple of years. He further stated that:

- there are issues with bottle service and after-hours; and
- complaints have been received about use of the unlicensed basement, which is set up like a lounge with a service bar and bar lighting.

[40] Mr. Gauthier stated that past interactions with the Licensee were positive.

[41] On November 8, 2024, AGLC Inspector Taylor Cheshire reviewed the licence conditions with Mr. Haji-Hersi, and he said that he understood the conditions and why they were being imposed on the Licence but he disagreed with them, felt they were being imposed because he did not provide Regulatory Services with camera footage, believed that an AGLC inspector had a personal vendetta against him, and felt that he was being treated differently from other licensees in the area. Regulatory Services has made numerous attempts to connect with him since then but has not been able to make contact.

[42] Mr. Gauthier advised that the area around Zembaba Restaurant is busy and has other licensed premises, and an establishment similar to Zembaba Restaurant has conditions on its liquor licence requiring a digital camera system.

[43] Mr. Gauthier submitted that Zembaba Restaurant gets more complaints and issues arising from checks compared to other establishments in the area.

[44] Mr. Gauthier advised that between July 2022 and October 2024, Regulatory Services discussed best practices and AGLC's policies with Mr. Haji-Hersi on ten occasions (Exhibit 1, Tab 2) which includes a meeting between the Licensee and the PSCT in July 2022. He further stated that during this period, five cautions were issued to the Licensee for bottle service, after-hours and smoking.

[45] When asked by the Panel to describe the nature of the five cautions, Mr. Gauthier advised that they were regarding bottle service, after-hours, lack of supervision and smoking. He further stated that:

- an incident report was submitted which resulted in a warning and was discussed with Mr. Haji-Hersi; and
- Mr. Haji-Hersi was offered a staff training seminar and did not follow up with Regulatory Services on their offer.

[46] Mr. Gauthier said that the recommended conditions will allow the Licensee to review the camera footage and discuss best practices with his staff. Further, it will ensure that the Licensee:

- follows the Act and AGLC's policies;
- keeps the licensed premises safe; and
- assists Regulatory Services and EPS with their investigations.

[47] When asked by Mr. Knisely to elaborate on what best practices Regulatory Services discussed with the Licensee, Mr. Gauthier stated that Regulatory Services gives tips and strategies to licensees, which are in relation to what was observed at the time of an inspection. If the issue was after-hours, Regulatory Services would have discussed last call, when to turn on the lights, and when to ask patrons to leave the licensed premises.

[48] Mr. Gauthier submitted that the proposed conditions are achievable because Zembaba Restaurant currently has a digital camera system in place that appears to meet most of what the conditions require, although the system may need some adjustments. He further stated that camera footage has not been made available when Regulatory Services has requested it.

[49] When Mr. Knisely asked Mr. Gauthier if he agrees with Constable Zylstra that the digital camera system will be used to help identify suspects who commit offences, Mr. Gauthier stated that EPS would have different needs for the camera footage that are separate from Regulatory Services' needs, which are to use the footage to verify that the Act and AGLC's policies are being followed. He further stated that he would support EPS's request for footage.

[50] When Mr. Knisely asked if there are any circumstances where the use of information received from camera footage at Zembaba Restaurant will be restricted, Mr. Gauthier explained that any information requested will be for specific times based on violations that Regulatory Services observed

during operating checks or complaints received from the public, and the footage will be used only for those purposes.

[51] When Mr. Knisely asked if EPS can conduct their own use of the digital camera system independent of AGLC, Mr. Gauthier said that if EPS conducts an investigation, they would also have a right to request footage because EPS members are liquor inspectors under the Act.

[52] When Mr. Knisely asked if EPS would need to receive a complaint before initiating an inspection, Mr. Gauthier said he does not believe so.

[53] When the Panel asked Mr. Gauthier what happens when Regulatory Services asks for camera footage from a licensee and they do not provide it, he explained that:

- it depends on whether there are conditions on the licence;
- when Regulatory Services has requested camera footage from the Licensee, it has not been provided; and
- if there were conditions on the Licence and the Licensee refused to provide camera footage, the Licensee would be violating board-imposed conditions which would result in enforcement follow up.

[54] When the Panel asked Mr. Gauthier to describe which areas of Zembaba Restaurant are licensed, he stated that:

- he has not been inside of the licensed premises;
- upon entering Zembaba Restaurant, there is a bar area with video lottery terminals; and
- the basement area is only accessible through an entrance separate from the licensed premises.

[55] When asked by the Panel whether Zembaba Restaurant has any requirements or policies regarding scanning of identification, Mr. Gauthier advised that there are no conditions currently on the Licence. He further stated that the city will sometimes impose scanning conditions, but he is not aware of any such requirements for Zembaba Restaurant.

IV. Zembaba 2 Shisha & Restaurant Submissions

[56] The Representative for the Licensee, Dale M. Knisely, called two witnesses:

- Mohamed Jawara, Premises Manager
- Cabdulahi Haji-Hersi, Owner/Operator

[57] The following is a summary of the evidence provided by Mr. Jawara and Mr. Haji-Hersi.

Mr. Jawara

[58] Mr. Jawara stated that he has been the manager of Zembaba Restaurant for over two years, and his responsibilities include overseeing the staff and security, keeping patrons safe, helping security, and ensuring that the licensed premises is closed properly.

[59] When Regulatory Services asked Mr. Jawara how often he is at Zembaba Restaurant, he said that he is there during the day from 12:00 p.m. to 3:00 p.m. and at night from 11:00 p.m. until 3:00 a.m. or 4:00 a.m.

[60] With respect to closing procedures, Mr. Jawara advised that:

- Zembaba Restaurant stops serving alcohol at 2:00 a.m.;
- he starts turning the lights on at 2:00 a.m.;
- all lights are turned on by 2:10 a.m.;
- security begins to move patrons out of the licensed premises at 2:20 a.m.; and
- during the winter, patrons are allowed to stay at the front of the licensed premises until their transportation arrives.

[61] Mr. Jawara recounted events that occurred at Zembaba Restaurant on September 28, 2024:

- Everything was running normally until approximately 2:00 a.m. when the PSCT arrived.
- Mr. Jawara and members of the PSCT went into the kitchen where they told Mr. Jawara that they saw people going in and out of the basement, and they requested access to it.
- Mr. Jawara was confused because only himself, Mr. Haji-Hersi and the owner of the building have a key to the basement and the area is only used for storage, and he advised the PSCT members of this.
- When he exited the kitchen, Mr. Jawara noticed that one the bartenders had lost track of time because of the commotion.
- One of the inspectors took Mr. Jawara outside and told him nothing was in order, and Mr. Jawara responded that the PSCT's visit caused a commotion.
- Mr. Jawara started moving patrons out of the licensed premises and told an inspector that they can return when he has his key for the basement.

[62] After the incident on September 28, 2024, Mr. Jawara said that two AGLC inspectors visited Zembaba Restaurant and requested camera footage, but he was not able to provide it to them because he could not reach the person who was responsible for operating and maintaining the camera system. Mr. Jawara allowed one of the inspectors to attempt to retrieve the footage, but he was unsuccessful.

[63] Mr. Jawara said that he offered to show the inspectors the basement because he had nothing to hide, and they accepted the offer. He further stated that there was water all over the basement, it is a big open space used for storage, it used to be a bar, and the inspectors took pictures and departed.

[64] Mr. Jawara advised that sometime after the inspectors' visit, he arranged for a new digital camera system to be installed at Zembaba Restaurant for everyone's protection.

[65] When Regulatory Services asked Mr. Jawara why he did not have his key to the basement that night, he stated that he carries two sets of keys, the basement is totally separate from Zembaba Restaurant with its own front and back entrances, and he did not have the basement key that night because he did not think he would need it.

[66] When Regulatory Services asked Mr. Jawara to explain why members of the PSCT saw people going into the basement, he said that he does not know how that was possible since no one has access to it.

[67] When Regulatory Services asked if the basement is part of Zembaba Restaurant, Mr. Jawara explained that the licensed premises is upstairs, the basement is on a separate lease and separate from the licensed premises, Mr. Haji-Hersi rents the basement so that no other businesses rent that space, there used to be a business in the basement, and it is not part of his routine to check the basement when he is working at Zembaba Restaurant.

[68] When the Panel asked if he goes into the basement as part of his manager duties, Mr. Jawara said he does when he needs to.

[69] When the Panel asked if the basement is a storage space for Zembaba Restaurant, Mr. Jawara said that mostly contains Mr. Haji-Hersi's personal things and some things are for the licensed premises such as machinery, stools and non-alcoholic beverages.

[70] When Regulatory Services asked if he would be concerned if people were accessing the basement, Mr. Jawara said that he would be.

[71] When Regulatory Services asked if he investigated that concern, Mr. Jawara stated that he investigated by speaking with patrons of Zembaba Restaurant and found that:

- the back door had not been broken into and was accidentally left open;
- people were trying to get away from the police because they had alcohol; and
- they thought they could get to Zembaba Restaurant through the basement.

[72] When the Panel asked why people panic when they are drinking and see the police, Mr. Haji-Hersi stated that:

- it is a human reaction;
- some people panic when they have had too much to drink;
- Zembaba Restaurant has been getting a lot of random checks with at least six people conducting the checks; and
- it is mostly the police that cause panic and not AGLC inspectors.

[73] On or around November 28, 2024, Mr. Jawara stated that someone was covering his shift while he was celebrating his birthday at Zembaba Restaurant. The PSCT visited the licensed premises, and Mr. Jawara said that he was intoxicated. One of the PSCT members recognized Mr. Jawara, and he said that he told the person that he was not managing the licensed premises that night. The PSCT member proceeded to speak with the person in charge, but Mr. Jawara advised that he does not know what they discussed.

[74] Mr. Jawara said that he was subsequently contacted by a woman who conducted the inspection on or around November 28, 2024, and she asked him for camera footage. He offered her access to the camera system, and the next time he heard from her was when she delivered a ticket for what had occurred on or around November 28, 2024.

[75] When Regulatory Services asked Mr. Jawara whether he trains the staff at Zembaba Restaurant, he stated that he:

- trains the staff on closing procedures and when to cut off service to patrons;
- trained one staff member on how to use the new digital camera system; and
- is always available to provide camera footage.

[76] When Regulatory Services asked whether the new digital camera system would meet the proposed conditions, Mr. Jawara said that the camera system is running well, but he is still learning how to use it. He further stated that it may not work if there is a power outage or the electrical system is overloaded, but it runs in accordance with the conditions for now.

[77] When Regulatory Services asked whether the cameras cover all areas of the licensed premises, Mr. Jawara stated that most of the cameras are inside and cover the back, the front and the inside of the premises.

[78] When Regulatory Services asked if the footage is clear enough to make out people's faces, Mr. Jawara said that he tested it out with an AGLC inspector and she did not have any problems with it.

[79] When Regulatory Services asked if the digital camera system records 24 hours a day, Mr. Jawara said yes and he believes it can retain footage for 30 days.

[80] When Regulatory Services asked Mr. Jawara if he, Mr. Haji-Hersi or anyone else tests the digital camera system to ensure that it is running, he stated that he checks it most of the time.

[81] When Regulatory Services asked if the digital camera system has an accurate time and date stamp, Mr. Jawara said that it does for the most part.

[82] When Regulatory Services asked if he intends to train staff members to use the digital camera system, Mr. Jawara said that he thinks he will once he is fully trained on it.

[83] When Regulatory Services asked if there could ever be a time that EPS or Regulatory Services visits Zembaba Restaurant and would not find someone who could operate the digital camera system, Mr. Jawara said that he is around most of the time.

[84] When the Panel asked if there are other managers who supervise Zembaba Restaurant when he is not there, Mr. Jawara advised that there is another man identified as Mr. F who is experienced enough to fill in for him and has the authority to make decisions when he is not working.

[85] When asked by the Panel whether Mr. F has the same level of training and familiarity with AGLC policies and ProServe certification, Mr. Jawara said that Mr. F has ProServe certification and to the best of his knowledge, he has the same training and familiarity with AGLC's policies.

[86] When the Panel said that they heard testimony that there has been trouble at times with identifying who is in charge at Zembaba Restaurant and asked Mr. Jawara whether that was accurate or inaccurate, he stated that for the most part there are no problems with managing the licensed premises.

[87] When the Panel asked Mr. Jawara if there have been instances over the last two years where Zembaba Restaurant has served patrons after 2:00 a.m., he stated that there have been two occasions which he discussed at the hearing.

[88] When the Panel said that there are six occasions of after-hours service noted in the Request for Decision (Exhibit 1, Tab 2) and asked him to explain that, Mr. Jawara said he is only aware of two occasions.

[89] When the Panel asked if he is aware of the AGLC policies and operating requirements that are a part of the Licence, Mr. Jawara stated that he is aware of some.

[90] When asked by the Panel if it is accurate that the Licensee and the staff at Zembaba Restaurant were offered education by Regulatory Services, Mr. Jawara responded yes.

[91] When the Panel asked Mr. Jawara if he accepted education from Regulatory Services that was specific to the violations they noted, Mr. Jawara said that he did not get any training.

[92] When asked by the Panel if he took Regulatory Services up on their offer, Mr. Jawara stated he takes extra courses from AGLC's website and has most of the basics. He further stated that he does not know all of the rules but is aware of the ones that are required to operate the licensed premises.

[93] When asked by the Panel whether he has any hesitations or concerns with the proposed licence conditions, Mr. Jawara said that Mr. Haji-Hersi did not have an issue with providing camera footage for a long time and it was unfortunate that he was not able to provide it on one occasion. He further stated that that one incident is not enough to warrant licence conditions and is not fair, and after that incident he installed a new digital camera system and provided camera footage when it was requested by Regulatory Services.

Mr. Haji-Hersi

[94] Mr. Haji-Hersi is a co-owner of Zembaba Restaurant, his business partner is in Africa, and they started the business in 2014. Mr. Haji-Hersi also has a restaurant in Fort McMurray and spends most of his time there.

[95] Mr. Haji-Hersi advised that Zembaba Restaurant is not a nightclub; it is a restaurant and also a lounge in the evening. He further stated that the licensed premises used to allow shisha smoking until it was banned.

[96] Mr. Haji-Hersi submitted that other licensed premises started to operate after-hours during the COVID-19 pandemic and continue to do so. He further stated that:

- he provided the names of these establishments to AGLC Inspector Mitch Ferguson and the City of Edmonton;
- patrons visit Zembaba Restaurant at 1:00 a.m. and then attend after-hours events at other establishments, and this negatively impacts Zembaba Restaurant; and
- he would like for these businesses to be shut down.

[97] Mr. Haji-Hersi said that for the last 10 – 11 years, he has not had an issue with either the police or AGLC and they are permitted to enter Zembaba Restaurant any time. He further stated that there is no violence and no problems at the licensed premises.

[98] Mr. Haji-Hersi advised that he was not at Zembaba Restaurant during any of the incidents, he wants to be treated fairly, and it is not true that the licensed premises serves alcohol after hours or operates after 3:00 a.m. He further stated that sometimes patrons remain in Zembaba Restaurant just past 3:00 a.m. because:

- it can be difficult to get intoxicated patrons to depart from the licensed premises when it is very busy; and
- patrons do not want to wait outside for their transportation if it is cold and it is illegal to physically force them out.

[99] When Regulatory Services asked if he expects his staff to be able to eject patrons from Zembaba Restaurant, Mr. Haji-Hersi said that:

- the police told him that they cannot touch anyone;
- he does not call EPS because the patrons would be gone by the time EPS arrives
- sometimes he is nice to patrons and begs them to leave, and other times he gets mad at them.

[100] With respect to the basement, Mr. Haji-Hersi stated that:

- there was insufficient parking for patrons of Zembaba Restaurant because a business was occupying the basement, so he rented the basement when it became available and has kept it vacant;
- he wanted to turn the basement into a convenience store, but the City of Edmonton would not allow it;
- it is not part of the licensed premises and is used for storage;
- it has never been used for illegal activities; and
- he is currently trying to start a café business in the basement.

[101] With respect to the proposed conditions, Mr. Haji-Hersi said that:

- the conditions are unfair and would not be good for his business because his clients are young black men who will not visit Zembaba Restaurant if they know the digital camera system is connected to the police;
- it is mostly the police who want camera footage;
- everything he does in his business is going to be public;
- if there is a concern or an incident that occurs, the police or Regulatory Services can ask for footage for that specific time period;
- he does not understand why they need 24-hours surveillance since his business is a restaurant;
- the cameras are an invasion of his privacy because his business is his home; and
- if the conditions are imposed, he might as well shut down Zembaba Restaurant.

[102] Mr. Haji-Hersi stated that he went to Fort McMurray in September 2024 to oversee renovations at his business, and Mr. Jawara has managed Zembaba Restaurant in his absence.

[103] When Regulatory Services asked if it is correct that he is not normally at Zembaba Restaurant, Mr. Haji-Hersi said that he has been staying outside of Edmonton since the summer of 2024 for family and business matters, but he plans to move back to Edmonton and run Zembaba Restaurant once Ramadan is over.

[104] Mr. Haji-Hersi submitted that Regulatory Services has Mr. Jawara's contact information because he has done training through AGLC. When Mr. Haji-Hersi gets emails from Regulatory Services, he forwards them to Mr. Jawara to deal with.

[105] With regard to smoking, Mr. Haji-Hersi said that:

- it is prohibited in Zembaba Restaurant, but he has seen friends smoking shisha in the licensed premises; and
- he does not allow the public to smoke shisha and does not sell it.

[106] When the Panel asked if he allows shisha smoking in Zembaba Restaurant, Mr. Haji-Hersi said that:

- when the licensed premises was initially opened, they allowed shisha smoking;
- they still have a ventilation system in place;
- it has happened a couple of times;
- Regulatory Services sanctioned them one time;
- he never uses shisha; and
- the licensed premises does not sell shisha.

[107] Mr. Haji-Hersi asserted that he would never run after-hours at Zembaba Restaurant and promptly closes at 3:00 a.m.

[108] When Regulatory Services asked Mr. Haji-Hersi if he was present for any of the incidents listed in the Request for Decision (Exhibit 1, Tab 2), he said that he was not present.

[109] When Regulatory Services asked Mr. Haji-Hersi to clarify what he meant when he said that he has never had any problems with AGLC, police, after-hours operations or other incidents, he explained that he has never had any issues in the ten years he has been operating Zembaba Restaurant, and he has received cautions but he always corrects the problem and follows the rules.

[110] When asked by Regulatory Services if he ever contacted Regulatory Services to let them know that he would like Mr. Jawara to be the approved contact for the Licensee, Mr. Haji-Hersi responded yes.

[111] When Regulatory Services stated that they have no record of Mr. Jawara as an approved contact and asked Mr. Haji-Hersi when he contacted Regulatory Services to add him as an approved contact, Mr. Haji-Hersi advised that:

- he did not make it a record; and

- when he installed video lottery terminals last year, he told the AGLC staff who provided training that Mr. Jawara was an approved contact.

[112] When Regulatory Services asked Mr. Haji-Hersi if he understands that AGLC needs to be able to get in contact with him when there is an issue because he is the owner of Zembaba Restaurant, he responded yes but if he has a manager who runs the business, does he need to be there and be contacted. Regulatory Services advised that he still needs to respond to them because he is the Licensee, and Mr. Haji-Hersi said he was not previously aware of that.

[113] When Regulatory Services asked Mr. Haji-Hersi if he is aware that when AGLC receives complaints, they do not shut down a business and cancel the licence as a first step and instead investigate and substantiate the complaint as a first step, Mr. Haji-Hersi said that he understands.

[114] When asked by Regulatory Services whether he has reviewed the proposed conditions, Mr. Haji-Hersi stated that he has not fully reviewed them.

[115] When Regulatory Services asked Mr. Haji-Hersi which condition or conditions he has an issue with, he stated that any restrictions are bad for business and Regulatory Services having 24-hour access to his business is not fair. Mr. Haji-Hersi further stated that he has never denied either AGLC or EPS requests for camera footage.

[116] When Regulatory Services asked Mr. Haji-Hersi what a reasonable time frame would be, he said that he will provide footage for specific time frames when there is an incident, but he does not want to provide 24-hour access to his privacy and his business. He further stated that:

- his patrons want privacy and may be engaging in activities that they do not want recorded; and
- patrons who are criminals will not come to Zembaba Restaurant if they know police have access to the camera system.

[117] When Regulatory Services asked Mr. Haji-Hersi if he is indicating that he can meet the proposed licence conditions, he said that he is not indicating that, and it is not fair to him and his customers to require 24-hour access to the camera footage and a 28-day retention period.

[118] Mr. Haji-Hersi stated that before the new digital camera system was installed at Zembaba Restaurant, he would have to pay the person who was managing their system each time he came to the licensed premises to retrieve camera footage and there was almost never an issue with providing footage to anyone who requested it.

[119] When Regulatory Services asked Mr. Haji-Hersi if he is familiar with the new digital camera system, he advised that he has not been trained to use it. He further stated that he believes there are six cameras inside and two cameras outside.

[120] When Regulatory Services asked how he monitors staff when he is not at Zembaba Restaurant, Mr. Haji-Hersi said that he is supposed to download an app on his phone so that he can access the cameras. Mr. Haji-Hersi further stated that he trusts the restaurant manager, but he does not have strong English skills and avoids talking to the police.

[121] When Regulatory Services asked Mr. Haji-Hersi how he monitors his staff and ensures they are following the Act, the Regulation and AGLC's policies and cooperating with AGLC inspectors and police, Mr. Haji-Hersi said he talks to his staff and they tell him if there have been problems most of the time.

[122] When Regulatory Services asked Mr. Haji-Hersi if he is aware that AGLC inspectors would not be requesting 24 hours of actual camera footage, he stated that he is worried about the police not about the inspectors. He further stated that he believes EPS is using AGLC to invade his privacy.

[123] When the Panel asked Mr. Haji-Hersi whether he has security staff, he stated that Zembaba Restaurant only has security staff on Fridays and Saturdays.

[124] When the Panel asked if the security staff have the authority to eject patrons from the licensed premises after 3:00 a.m., Mr. Haji-Hersi said they can eject patrons and he tries to help, but he always tries to avoid violence.

[125] When the Panel asked if his only concern about the conditions is that they are an invasion of his privacy, Mr. Haji-Hersi explained that that is his main problem with the conditions, but he is also concerned that it will push patrons away if they know EPS has access to the camera system.

[126] When the Panel asked if he would voluntarily provide Regulatory Services with camera footage, Mr. Haji-Hersi said yes but within reason and if they ask about a specific incident.

[127] When asked by the Panel whether he is confident that the new camera system is reliable, Mr. Haji-Hersi confirmed that it is.

[128] When the Panel asked what caused the breakdown of the relationship between the Licensee, EPS and Regulatory Services, Mr. Haji-Hersi said he does not know. He further stated that:

- it is not fair that he received a \$6,500 ticket when his manager was celebrating his birthday;
- the main problem is that he is not at the licensed premises, and if he was there, he would never allow such things to happen; and
- when he is at Zembaba Restaurant, he ensures that the manager and staff are doing their jobs.

[129] The Panel noted that patrons are currently being recorded at Zembaba Restaurant and do not seem to be concerned. When asked by the Panel to explain why patrons would be concerned if there were conditions on the Licence since they are already being recorded, Mr. Haji-Hersi said that he is not concerned about AGLC accessing the camera system, but he is concerned about EPS accessing it and customers may stop coming once they find that out.

[130] When the Panel asked Mr. Haji-Hersi whether EPS can currently access the camera system, he explained that they can only request footage when there is an incident.

[131] When the Panel asked Mr. Haji-Hersi if his concern is that EPS would no longer need a reason to access the camera system if the conditions were in place, he confirmed that was correct and said they would have 24-hour access.

[132] When the Panel asked Mr. Haji-Hersi what he is doing to ensure that Mr. Jawara is familiar with all of AGLC's policy requirements, Mr. Haji-Hersi stated that he has to sit down with Mr. Jawara and his staff, and he has to move back because everyone does their job when he is there.

[133] When the Panel asked if patrons are consuming alcohol from Zembaba Restaurant in the basement, Mr. Haji-Hersi responded no.

[134] When the Panel asked why patrons were observed going in and out of the basement, Mr. Haji-Hersi said that initially he did not believe that happened because he has never used the basement for parties or after-hours, but he needs to investigate this matter. He further stated that there is a dishwashing machine obstructing the entrance which prevents people from properly going downstairs.

[135] When the Panel asked if the basement is currently set up as a bar, Mr. Haji-Hersi responded no and explained that there is a counter in the basement from the time that he tried to open a convenience store.

[136] When the Panel asked if Zembaba Restaurant has experienced a decline in business since the new digital camera system was installed, Mr. Haji-Hersi stated that:

- business declines when he is not there;
- the camera system is good for business and the safety of his employees and the public; but
- the conditions that Regulatory Services are trying to enforce are bad for business.

[137] When the Panel asked Mr. Haji-Hersi if he is aware that Regulatory Services issued multiple warnings before they imposed the conditions on the Licence, he stated that:

- when he receives emails from Regulatory Services, he forwards them to Mr. Jawara;
- when his business in Fort McMurray was undergoing renovations, he did not pick up his phone;
- he was not aware that there were serious issues at Zembaba Restaurant; and
- when he asked Mr. Jawara why he did not tell him about the issues, Mr. Jawara said that he did tell him (Mr. Haji-Hersi) but he never listens.

V. Summation

Regulatory Services

[138] Regulatory Services submits that the matter before the Panel is the imposition of the conditions on the Licence.

[139] Constable Zylstra and Mr. Gauthier submitted that there are numerous operational concerns, issues and conditions with Zembaba Restaurant. As a result, Regulatory Services recommends adding the conditions set out in the Hearing Record (Exhibit 1, Tab 1) to the Licence.

[140] Regulatory Services submits that the Licensee suggested or inferred during the hearing that condition #1 is currently being met, and Mr. Jawara and Mr. Haji-Hersi suggested that the new camera system will likely meet condition #2. Mr. Jawara stated that he tests the licensed premises' digital camera system on an infrequent basis but could certainly meet condition #3.

[141] Regulatory Services takes the position that Mr. Haji-Hersi stated multiple times that the Licensee could meet condition #4 by providing footage in easily accessible format with an accurate time/date stamp when there is a complaint or an investigation. Mr. Jawara and Mr. Haji-Hersi also indicated that the new digital camera system could meet condition #5 by providing test results and any footage unobscured by the time-date stamp.

[142] With respect to the Licensee, an employee of the Licensee or contracted person having the ability to provide the digital camera recording or a log of test results to AGLC within a reasonable period of time in accordance with condition #6, Mr. Jawara and Mr. Haji-Hersi stated that there is a training deficit that has to be remedied, but it is completely achievable.

[143] Regulatory Services submits that they are not asking that the camera system work through catastrophe; there are allowances for malfunctions in accordance with condition #7, and the Licensee can make provisions to get back into compliance.

[144] The incidents and the information provided by Mr. Gauthier and Constable Zylstra indicate that Zembaba Restaurant has numerous problems. Mr. Haji-Hersi also advised that it is difficult to control the patrons at times, and he is not at the licensed premises to supervise patrons and may have a training deficit that he needs address with his staff. All these things have been pointed out not only by Regulatory Services and EPS, but also by Mr. Haji-Hersi.

[145] Regulatory Services is of the opinion that no compelling reasons have been provided as to why Mr. Haji-Hersi cannot meet the conditions. As such, Regulatory Services' assumption is that the conditions are reasonable and can be met by the Licensee.

[146] The conditions are a reasonable step to be applied prior to escalating to disciplinary action. Regulatory Services asserts that they do not want to wait until a shooting or a fight causes injuries; they want the conditions put on the Licence now as a proactive step.

[147] Regulatory Services and EPS cited that it is difficult at times to identify staff or to get in contact with Mr. Haji-Hersi. It seems that it would be a prudent measure to have a functioning camera system during the times that the Licensee is not available to monitor the premises himself.

[148] Regulatory Services does not expect Mr. Haji-Hersi to be at the licensed premises 100% of the time as that would be unreasonable; however, a camera system as described in the conditions is a reasonable step to making sure that Zembaba Restaurant is being monitored. Regulatory Services submits that the presentations at the hearing indicate that the conditions might already be met.

[149] With regard to Mr. Haji-Hersi's statement that it is an issue of privacy, Regulatory Services reminds the Panel that a liquor licence is a privilege and not a right. Contrary to what Mr. Haji-Hersi has indicated, there is no reasonable expectation of privacy inside a license premises because it is expected that AGLC inspectors and police are able to walk into a premises, conduct inspections and potentially identify people in the premises. As such, Regulatory Services takes the position that privacy should not be a concern when applying these conditions to the licence.

[150] Section 61 of the Act states that the Board's policies respecting the activities authorized by a liquor licence are conditions of licence, including policies that are made or amended after the licence is issued. When issuing a liquor licence or at any time during the term of the licence, the board may with or without a hearing, impose conditions on a licence that are in addition to the conditions referred to in subsection one. When the Board imposes the conditions under subsection 3 without a hearing, the Board must give the licensee information about an application for a hearing.

[151] Regulatory Services requests that the conditions be confirmed by the Panel and placed on the Licence for the reasons that have been presented. Regulatory Services asserts that the conditions are necessary to ensure that the licensed premises meets operational requirements and that AGLC inspectors will be able to review video footage in response to complaints and investigations.

[152] Regulatory Services submits that the Licensee is capable of meeting the conditions and their imposition will not result in undue hardship or financial burdens. There is already a new, state-of-the-art camera system in place, and the only issues remaining here are that it must have reliable storage and the staff must be trained on how to use the system and retrieve footage. These items are all achievable.

Zembaba 2 Shisha & Restaurant

[153] Mr. Knisely submits that just because a camera system is already in place, it does not mean that it is appropriate to make it compulsory to operate.

[154] The Licensee opposes the proposed conditions on four different grounds.

[155] First, the conditions are being requested for an improper purpose.

[156] Second, there is insufficient proof of a pattern of after-hours operation. There may have been incidents and there may even be things that can be addressed at the time they happen, but cameras are not necessary for that. Mr. Knisely respectfully submits that the evidence presented at the hearing was kind of sketchy as to whether the Licensee is actually responsible for some of the nefarious behavior that has taken place. Not everything can be attributed to Zembaba Restaurant, as some incidents may have occurred at one or more of the other nearby licensed premises. Although there have been some concerns about contraventions, Mr. Knisely takes the position that there have not been enough to warrant what Regulatory Services is seeking.

[157] Third, the implementation of the conditions would constitute an over collection of personal information that would contravene the *Personal Information Protection Act*, SA 2003, c P-6.5 (the PIPA), as well as section 8 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (the Charter).

[158] Finally, the scope of the proposed conditions is overly broad. If a surveillance system is required, it is not required to operate except between 2:00 a.m. and 9:00 a.m. if the concern is after-hours consumption of alcohol or that kind of behavior in the neighborhood.

[159] Dealing with the actual purpose of this compulsion, the stated purpose of the conditions according to the Request for Decision (Exhibit 1, Tab 2) is "concerns regarding after hours operations at the premises." Mr. Knisely takes the position that the Panel should reject that. The real purpose here is

to enable EPS and AGLC to conduct surveillance on the Licensee's patrons for general criminal investigations and police intelligence purposes that are wholly unrelated to the regulatory objectives of the Act. Further, evidence provided by Constable Zylstra supports this interpretation..

[160] The after-hours operation is either not a purpose at all or it is a secondary purpose, and there are three reasons to substantiate this. Constable Zylstra told us that in condition #1, the security system must be of sufficient quality to clearly identify individuals in the premises. Identification of an individual depicted in a video recording who has been served liquor after 2:00 a.m. would never be required. The video recording would show whether or not the individual appears to be acting as a patron, and that would be enough to yield evidence of non-compliance. The identification of that individual would not enhance the regulatory inspection of this issue. On the other hand, the clear identification of individuals would be useful to a police officer trying to develop intelligence for general criminal investigation purposes by identifying patrons and mapping out which patrons are associated with each other.

[161] In condition #2, the system is supposed to operate 24 hours a day. Mr. Knisely asserts that it is unnecessary for the surveillance system to operate between the hours of 9:00 a.m. and 2:00 a.m. because there is no allegation of non-compliance during those hours, and after-hours operations can only start after 2:00 a.m. This condition is consistent with AGLC's intention to use the surveillance recordings to identify patrons who are not involved in any alleged after-hours operation. The only conceivable reason would be to keep tabs on those patrons for purposes unrelated to the legitimate regulatory purpose of the Act.

[162] By requesting conditions that are clearly not required for the stated purpose, AGLC's real intention becomes rather transparent, and the Panel should reject any request for conditions that are made for improper purposes or where there is serious doubt about what the real purposes of the conditions are.

[163] In dealing with the facts proposed to justify the imposition of these conditions, the Handbook prescribes the default licence conditions. To ensure a fair and level playing field in the Licensee's industry, the Licensee should not be arbitrarily singled out for more onerous conditions. More onerous conditions than the default should be based on unique circumstances of the Licensee or the licensed premises. The stated impetus of the proposed conditions is to respond to alleged non-compliance with rules related to operating hours. The relevant rules are alcohol, alcoholic beverage service cessation at 2:00 a.m., and closure of the licensed premises to the public at 3:00 a.m. Assuming that the Licensee actually has violated the operating hours rules, the proposed conditions would enable inspectors to prove any of the non-compliance for each day of operation without having to actually perform daily inspections. This in turn would encourage the Licensee to eliminate the non-compliance, but it would be unfair for the Panel to merely assume that the Licensee has a pattern of noncompliance.

[164] Mr. Knisely submits that the Panel should analyze the evidence that was presented at the hearing. There is insufficient evidence that the Licensee has been non-compliant, except in isolated circumstances, and the most recent of those have been explained in evidence from the witnesses that testified for the Licensee. The complaints received on July 25, 2024 and September 2, 2024 should not be relied upon because neither the source nor details of the complaint were disclosed.

[165] Mr. Knisely asserts that the incident on September 7, 2024 is consistent with the Licensee's compliance with the Handbook, and the September 28, 2024 incident was occasioned because the inspectors arrived at the time when the manager was supposed to be starting his closing procedures and they interrupted him in that process.

[166] Regarding the issue of over collection of personal information, Mr. Knisely submits that the Licensee is an organization as defined in the PIPA. Personal information is defined in the PIPA as information about an identifiable individual, and licensees, patrons and employees are identifiable individuals. The images of the Licensee's patrons that would be recorded on the Licensee's surveillance system constitute personal information as defined in the PIPA; therefore, the Licensee has duties about how it collects, uses and discloses the personal information of patrons. Section 4(6) of the PIPA provides that the PIPA takes precedence over the Act. Therefore, any conditions that are imposed on the Licensee pursuant to the Act must be consistent with the PIPA, and any licence conditions that force the Licensee to contravene the PIPA are unenforceable and subject to investigation by the Information and Privacy Commissioner (the Commissioner). The Commissioner would have the jurisdiction to order the Licensee to stop collecting surveillance recordings required by the licence conditions if the Commissioner were to find a contravention. The Licensee's implementation of any contravening conditions would constitute an offence under the PIPA, whether the Commissioner has made an order to that effect or not.

[167] Sections 11(1) and 11(2) of the PIPA prohibit the Licensee from collecting personal information other than for purposes that are reasonable and beyond the extent reasonable for meeting the purpose for which the information is collected. This applies to all collection, whether consensual, notified or non-consensual collection.

[168] Section 7(2) of the PIPA prohibits the Licensee from requiring patrons, as a condition of supplying services to patrons, to consent to the collection of personal information beyond what is necessary to provide its services. As such, surveillance of patrons in excess of what is reasonably required to provide the food, beverage and entertainment services at the licensed premises seems to be prohibited.

[169] Section 34 of the PIPA requires the Licensee to use reasonable security arrangements to protect patrons' personal information while it is in the Licensee's custody.

[170] Section 35 of the PIPA prohibits over-retention of personal information records and requires the licensee to destroy personal information records when they are no longer required.

[171] Mr. Knisely submits that with respect to section 8 of the Charter, which is the right to be secure against unreasonable search and seizure, licence conditions that infringe the Charter are unlawful, and the Panel should endeavor to refrain from imposing conditions that are unlawful. The Panel does not have the jurisdiction to impose a remedy for a Charter infringement; however, there has been no infringement yet because the conditions have not yet been imposed and thus there is no need for the Licensee to seek a remedy under the Charter. Any infringement would have to be dealt with in a court of competent jurisdiction, in the context of judicial review or a prosecution for contravening a condition that is actually imposed.

[172] Mr. Knisely proceeded to distribute a recent court decision to the Panel. Presiding Member Moneta advised Mr. Knisely that the Panel cannot receive new evidence during summation, but he could reference the court decision. The Panel and Regulatory Services did not receive the decision.

[173] Mr. Knisely referred to *R v Khairullah*, 2025 ABCJ 14 and *R v Khairullah*, 2023 ABCJ 235 and submits that the accused in this case was a scrap metal dealer who was required to collect information on customers who sell scrap metal to the dealer and enter it into a database maintained by the provincial government and utilized by law enforcement to investigate crimes. The accused was charged with failing to collect the information and enter it into the database. Mr. Knisely submits that in this case, the statutory requirement was declared to be of no force or effect for infringing section 8 of the Charter. The Alberta Court of Justice found the following factors to be of particular significance:

- the proportion of illegitimate scrap metal sales was significant, and the Crown failed to produce any studies to show the proportion;
- the distinction between regulatory purposes and criminal investigation purposes is artificial with respect to the analysis of privacy rights;
- search powers authorized by statute must be reviewed to determine if they are ineffective, unnecessary, or overbroad;
- search powers giving access to commercial financial records have been upheld because they are modestly intrusive at low risk of discriminatory use in securities regulation and tax evasion cases;
- there is a low expectation of privacy in corporate commercial records, which are produced in the ordinary course of activities which are subject to state regulation;
- customer personal information and scrap metal dealing is distinguished from commercial financial information;
- the sale of scrap metal is not voluntary and informed because there is no alternative to dispose of scrap metal other than by what is regulated by the Scrap Metal Dealers and Recyclers Identification Act, SA 2013 C S-3.5 (the Scrap Metal Act);
- there was no requirement to have reasonable probable grounds to access information in the database, which the Court thinks should be required;
- scrap metal sales are distinguishable from self-reporting and self-assessment for income tax purposes;
- the Scrap Metal Act did not achieve a reasonable balance between privacy and the state's interests; and
- there were no procedural safeguards to ensure a meaningful review of the state's exercise of power to gather and keep data or mitigate the potential for indiscriminate and discriminatory use of the database.

[174] Mr. Knisely takes the position that most of these factors apply to the proposed conditions. In particular, the alleged non-compliant operation, even if proven, is such a small proportion of the overall operation. The proposed conditions allow the surveillance recordings to be reviewed by all liquor inspectors, which includes all peace officers in Alberta, without reasonable and probable grounds of regulatory, non-compliance or any offences and without a warrant.

[175] Mr. Knisely is of the opinion that there are no procedural safeguards to ensure a meaningful review of AGLC's exercise of power to gather and keep data or mitigate the potential for indiscriminate and discriminatory use of the database.

[176] Mr. Knisely asserts that the Panel should conclude that the proposed licence conditions would precipitate an infringement of the Licensee's and the Licensee's patrons' section 8 Charter rights. Mr. Knisely submits that the conditions should be rejected. If they are approved, they should be significantly reduced in scope of collection and permissible use by the authorities.

VI. Analysis

[177] The Panel carefully considered the oral and documentary evidence submitted by Regulatory Services and the oral evidence provided by Zembaba 2 Shisha & Restaurant in making its finding of fact.

[178] Mr. Knisely submitted that there is insufficient evidence showing a pattern of non-compliance by the Licensee.

[179] Mr. Haji-Hersi submitted that he has not had any issues at Zembaba Restaurant; however, by Mr. Haji-Hersi's own admission, he has allowed shisha smoking in Zembaba Restaurant after it became prohibited under a municipal bylaw and has difficulty with removing patrons from the licensed premises by closing time. Mr. Jawara also admitted that after-hours operations have occurred on two occasions.

[180] Although Regulatory Services did not provide any documentary evidence in the form of police reports, photos or video surveillance to substantiate their claims of after-hours operations inside or around Zembaba Restaurant and/or the adjacent basement and complaints from the neighbourhood, the Panel finds that based on the incidents and resultant discussions, cautions and education detailed in the Request for Decision (Exhibit 1, Tab 2), the testimony provided by Constable Zylstra and Mr. Gauthier, and the admissions by Mr. Haji-Hersi and Mr. Jawara, there is a pattern of non-compliance with the Act and AGLC's policies at Zembaba Restaurant.

[181] Mr. Jawara initially stated that it was not possible that patrons were seen entering and exiting the basement. Upon further questioning, Mr. Jawara advised that he investigated the incident and found that the basement was accidentally left open and patrons who were in possession of alcohol entered the basement to evade the police. The Panel finds that in certain areas of his testimony, Mr. Jawara's credibility was in question.

[182] The Panel notes that the Request for Decision specifically identifies after-hours operations at the licensed premises as the issue warranting the imposition of conditions on the Licence.

[183] As such, the Panel finds that licence conditions requiring a digital camera system and surveillance of Zembaba Restaurant during the time that after-hours operations would typically be held are reasonable and necessary in order to ensure that the Licensee and the Licensee's staff are operating in accordance with the Act, the Regulation and AGLC policies. Zembaba Restaurant already has a new digital camera system in place and Mr. Jawara and Mr. Haji-Hersi have expressed their willingness to provide camera footage to Regulatory Services upon request. Ensuring the licensed premises is in alignment with the Licence conditions should not be onerous for the Licensee.

[184] The Panel agrees with Mr. Knisely's position on limiting the camera surveillance hours to capture footage from 2:00 a.m. until 9:00 a.m. given that after-hours operations are the salient issue at Zembaba Restaurant.

[185] Mr. Haji-Hersi submitted that he wants to be treated fairly and equally with other licensees. Given the documented history of non-compliance at Zembaba Restaurant, the Panel does not find that the Licensee has been treated unfairly by Regulatory Services. The expectation is that all licensees abide by the Act, the Regulation, AGLC's policies and all licence conditions.

[186] Holding a liquor licence and operating a licensed premises is a privilege, not a right. The responsibilities associated with being a licensee must be taken seriously. While Mr. Haji-Hersi was before the Panel disputing the conditions, he admitted that he had not fully read the conditions imposed by Regulatory Services. Mr. Haji-Hersi also admitted to shirking his responsibilities as a Licensee by ignoring Regulatory Services' phone calls and forwarding Regulatory Services' emails to Mr. Jawara to deal with. As a long-standing licensee, Mr. Haji-Hersi should be well aware that it is the Licensee's responsibility to ensure that the licensed premises operates in accordance with the Act and AGLC's policies without exception. The Panel strongly recommends that Mr. Haji-Hersi take an active role in the management of Zembaba Restaurant and his staff and respond directly and promptly to communications from Regulatory Services.

VII. Finding

[187] For the reasons stated above, the Panel imposes the following conditions on Zembaba Restaurant's Licence in accordance with sections 61(3) and 94(7)(b) of the *Gaming, Liquor and Cannabis Act* (the Act) and effective as of April 23, 2025:

1. The premises must install and satisfactorily maintain a digital camera security system that is continually operational from 2:00 a.m. until 9:00 a.m. and covering the entirety of the premises, excluding washrooms. The digital camera security system must be of sufficient quality to clearly identify individuals in the premises. The monitor and recording system shall be in a locked, secure area within the premises that only staff members have access to.
2. The cameras and lighting must be positioned to clearly capture coverage of activity from 2:00 a.m. until 9:00 a.m. identifying all individuals entering/exiting the premises, including staff areas, and all individuals within the premises. The digital camera security system must have on premises 28-day minimum recording retention in a common format that is easily accessible and contains an accurate time/date stamp not obscuring the image.
3. The digital camera security system must be tested weekly to ensure all cameras and recording equipment are functioning properly. When requested by an inspector, a log of the test results must be kept on the premises in an easily accessible format that contains an accurate time/date stamp.
4. When requested by an inspector, footage from the recording system must be provided in an easily accessible format that contains an accurate time/date stamp.
5. Both the log of the test results and any footage from the recording system must not be obscured by a date/timestamp or any other image on the recording.

6. The licensee, an employee of the licensee, or a contracted person must have the ability/skill to provide the digital camera recording or a log of test results to AGLC within a reasonable period of time.
7. Any malfunctions of the digital camera security system must be immediately reported to the AGLC, via the e-mail address inspections.mailbox@aglc.ca. A plan identifying system compliance must be submitted to AGLC for approval. Any changes made to the approved plan must be approved by AGLC.

Signed at St. Albert, this 24th day of March, 2025



Maureen Moneta, Presiding Member, Hearing Panel