

**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:	May 29, 2025
HEARING PANEL:	Patti Grier, Presiding Member Tongjie Zhang, Panel Member Wayne Drysdale, Panel Member
APPLICANT / REPRESENTATIVE:	Dale M. Knisely, Legal Counsel Cabdulahi Haji-Hersi, Owner/Operator (absent)
REGULATORY SERVICES DIVISION:	Toni Hazelwood, Hearing Officer Mitch Ferguson, Resource Officer
OBSERVERS:	Sean Abdool, AGLC Auditor Michelle Carter, AGLC Auditor

DECISION OF THE HEARING PANEL

The Panel finds that the Licensee contravened section 71(2) of the *Gaming, Liquor and Cannabis Act* (the Act), section 71(3) of the Act, section 68(1)(b) of the Act, section 5.3.33 of the Liquor Licensee Handbook (the Handbook) and section 5.3.7 a) of the Handbook.

For the contravention of section 71(2) of the Act, the Panel replaces the \$1,000 fine or two-day suspension of the Class A-Minors Prohibited Liquor Licence numbered 774217-2 (the Licence) with an eight-day suspension of the Licence in accordance with sections 91(2)(d) and 94(7)(b) of the Act.

For the contravention of section 71(3) of the Act, the Panel replaces the \$1,000 fine or two-day suspension of the Licence with an eight-day suspension of the Licence in accordance with sections 91(2)(d) and 94(7)(b) of the Act.

For the contravention of section 68(1)(b) of the Act, the Panel replaces the \$1,500 fine or three-day suspension of the Licence with a 12-day suspension of the Licence in accordance with sections 91(2)(d) and 94(7)(b) of the Act.

For the contravention of section 5.3.33 of the Handbook, the Panel replaces the \$1,000 fine or two-day suspension of the Licence with an eight-day suspension of the Licence in accordance with sections 91(2)(d) and 94(7)(b) of the Act.

For the contravention of section 5.3.7 a) of the Handbook, the Panel replaces the \$1,000 fine or two-day suspension of the Licence with a six-day suspension of the Licence in accordance with sections 91(2)(d) and 94(7)(b) of the Act.

The total 42-day suspension of the Licence is to run consecutively, effective the normal opening of business on June 19, 2025. The Licence will be reinstated effective the normal opening of business on July 31, 2025.

Further, the Panel confirms that the existing conditions on the Licence will remain in place.

I. Jurisdiction and Preliminary Matters

[1] By letter dated January 13, 2025, 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 Licensee contravened:

- section 71(2) of the Act: Except as provided in the regulations, no liquor licensee or employee or agent of a liquor licensee may permit any person to be in licensed premises when the sale and consumption of liquor in those premises are prohibited under the regulations or stadium bylaws;
- section 71(3) of the Act: No person may consume and no liquor licensee or employee or agent of a liquor licensee may permit a person to consume liquor on licensed premises when the sale and consumption of liquor in those premises are prohibited under the regulations or stadium bylaws;
- section 68(1)(b) of the Act: No liquor licensee or employee or agent of a liquor licensee whose licence authorizes the sale or provision of liquor at licensed premises may sell, offer to sell or provide liquor at the licensed premises (b) except during the hours and on the days when the liquor may be sold or provided under the regulations or stadium bylaws;
- section 5.3.33 of the Handbook: Licensee staff may not consume liquor or be under the influence of liquor or drugs while on duty. However, it is acceptable for staff to consume an alcoholic beverage after their shift ends and for the approved manager/owner of the licensed premises to consume an alcoholic beverage while entertaining a client; and
- section 5.3.7 a) of the Handbook: The following restrictions apply to Class A, B and C licensed premises, as well as at Commercial Public Special Events: a) A maximum of two (2) standard servings may be sold or served to a patron after 1 a.m. (see Subsection 5.3.8).

- [2] For the alleged contravention of section 71(2) of the Act, Regulatory Services imposed an administrative sanction of a \$1,000 fine or, in the alternative, a two-day suspension of the Licence.
- [3] For the alleged contravention of section 71(3) of the Act, Regulatory Services imposed an administrative sanction of a \$1,000 fine or, in the alternative, a two-day suspension of the Licence.
- [4] For the alleged contravention of section 68(1)(b) of the Act, Regulatory Services imposed an administrative sanction of a \$1,500 fine or, in the alternative, a three-day suspension of the Licence.
- [5] For the alleged contravention of section 5.3.33 of the Handbook, Regulatory Services imposed an administrative sanction of a \$1,000 fine or, in the alternative, a two-day suspension of the Licence.
- [6] For the alleged contravention of section 5.3.7 a) of the Handbook, Regulatory Services imposed an administrative sanction of a \$1,000 fine or, in the alternative, a two-day suspension of the Licence.
- [7] The Licensee subsequently applied for a hearing before a Panel of the Board of AGLC pursuant to section 94(1) of the Act.
- [8] 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 – Patti Grier (Presiding Member), Tongjie Zhang and Wayne Drysdale.
- [9] On May 20, 2025, the Hearing Panel Office received an email from Dale M. Knisely, Legal Counsel for the Licensee, requesting an adjournment on the basis that he and the Licensee’s representatives did not have enough mutual availability to study the evidence submitted by Regulatory Services in detail in preparation for the hearing. Regulatory Services agreed to the adjournment request on the condition that their witnesses were available on any of the proposed alternate hearing dates.
- [10] By way of a letter dated May 20, 2025, Presiding Member Grier denied Mr. Knisely’s request for an adjournment for the following reasons:
- The video surveillance footage submitted by Regulatory Services to the Hearing Panel Office was obtained from the Licensee. The Licensee ought to have known that all or part of the footage may be presented at hearing and had ample time to review the footage with Mr. Knisely in advance of the hearing. The 14 photographs submitted by Regulatory Services depict the interior of Zembaba Restaurant, which the Licensee should already be familiar with.
 - The parties were advised on February 28, 2025 that:
 - the deadline for filing evidence with the Hearing Panel Office was 4:00 p.m. on May 15, 2025; and
 - the hearing file would be circulated one week in advance of the hearing.
 - There could be no expectation of receiving evidence ahead of the filing deadline, and the Hearing Panel Office provided Mr. Knisely with the evidence submitted by Regulatory Services on May 16, 2025 as a courtesy.
 - In accordance with section 94(6) of the Act, the Board must conduct a hearing within 120 days of receiving a hearing application. The 120-day limitation date in this matter is

June 5, 2025; scheduling the hearing within this timeframe would be extremely difficult given the number of participants involved.

[11] At the outset of the hearing, Mr. Knisely requested clarification on whether Regulatory Services would be seeking to impose the conditions set out in the Notice of Administrative Sanction dated January 13, 2025 (Exhibit 1, Tab 1), which were varied and imposed by a Panel of the Board of AGLC pursuant to a hearing decision dated March 24, 2025. Regulatory Services advised that they would be requesting an amendment to the Board-imposed condition that limits video surveillance recording of the licensed premises from 2:00 a.m. to 9:00 a.m. Mr. Knisely stated that he did not receive any notice of Regulatory Services' intention to request an amendment to the Board-imposed condition, and it is unfair because it would be a rehearing of the Board's previous decision.

[12] Presiding Member Grier advised Mr. Knisely that Regulatory Services can make any recommendations to the Panel as part of their summation, and he did not need to be given notice of every recommendation that Regulatory Services intends to submit. She further stated that the Panel is an administrative tribunal, not a court of law, and there are different rules in terms of what evidence and testimony can be brought forward.

[13] Mr. Knisely said that:

- if the conditions are still in dispute, then the hearing needs to be adjourned;
- the disclosure provided to the Licensee could have been made several months ago;
- the exhibits were disclosed to the Licensee on May 15, 2025, which did not leave an adequate amount of time to review and prepare for the hearing;
- he did not receive advance notice that Regulatory Services wants to overrule the Board's decision of March 24, 2025;
- Cabdulahaji Haji-Hersi, owner/operator of Zembaba Restaurant, is out of the country and has been unavailable to deal with this matter for the last few weeks;
- the Licensee is prepared to waive the 120-day limitation date; and
- an adjournment is required in order to have a procedurally fair hearing.

[14] Regulatory Services stated that:

- the Incident Report (Exhibit 1, Tab 2) was provided to the Licensee in January 2025;
- AGLC Inspector Hazel Lees will testify to the fact that she attempted to contact Mr. Haji-Hersi and a manager of Zembaba Restaurant identified as (Mr. J) on multiple occasions;
- the video surveillance footage (Exhibit 2, Tabs 1, 2, 3 and 20) was provided to Regulatory Services by the Licensee;
- Regulatory Services provided their evidence to the Hearing Panel Office prior to the filing deadline of May 15, 2025;
- the exhibits were circulated to the parties more than a week in advance of the hearing; and
- Regulatory Services will not make any submissions with respect to the conditions during the hearing in order to avoid an adjournment, but future incident reports could still result in requests for amended or additional licence conditions.

[15] The Panel took a recess to discuss whether the hearing should be adjourned. When the Panel returned, Presiding Member Grier advised that:

- the hearing would proceed on the condition that Regulatory Services will not make any submissions with respect to amending the current Board-imposed conditions;
- the details of the Board-imposed conditions were circulated to the Panel and the Licensee and will form part of the formal evidence;
- the Notice of Administrative Sanction (Exhibit 1, Tab 1) was issued to the Licensee on January 13, 2025, and the Licensee submitted an Application for Hearing to the Hearing Panel office on February 14, 2025;
- the Licensee provided the video surveillance footage to Regulatory Services sometime between December 7, 2024 and January 28, 2025;
- the Notice of Hearing was issued to the parties on February 28, 2025;
- the deadline for filing evidence with the Hearing Panel Office was May 15, 2025; and
- the Hearing Panel Office sent the exhibits to Mr. Knisely on May 16, 2025, which was almost a week in advance of the date that the Hearing Panel Office was required to send the hearing file to the parties.

[16] Mr. Knisely confirmed receipt of the Notice of Hearing dated February 28, 2025 and the attached hearing record. The following documents were entered into evidence:

- Exhibit 1 Hearing Record, including Tabs 1 to 3
- Exhibit 2 Regulatory Services' additional submissions, including Tabs 1 to 20

[17] When Mr. Knisely stated that the issue of any proposed amendments to the Board-imposed conditions would not be part of the hearing, Presiding Member Grier clarified that although Regulatory Services would not be proposing any amendments to the current Board-imposed conditions, the Panel is aware of the current Board-imposed conditions because they were included as evidence in the hearing file they received.

[18] Mr. Knisely submitted that the Licensee admits to the contraventions set out in the Notice of Administrative Sanction (Exhibit 1, Tab 1), stated that the fine in the total amount of \$5,500 is disproportionate, and asked the Panel to consider decreasing the total fine to \$2,500. Presiding Member Grier asked Mr. Knisely if he was asking the Panel to discontinue the proceedings, and he confirmed that was correct.

[19] The Panel took a recess to discuss whether the hearing should proceed. When the Panel returned, Presiding Member Grier advised that the hearing would proceed so that all parties would be afforded the opportunity to hear all evidence prior to the Panel rendering a decision in order to ensure a fair process.

II. Issues

[20] Did the Licensee contravene section 71(2) of the Act and/or section 71(3) of the Act and/or section 68(1)(b) of the Act and/or section 5.3.33 of the Handbook and/or section 5.3.7 a) of the Handbook?

[21] If the Licensee contravened section 71(2) of the Act, should the administrative sanction imposed by Regulatory Services of a \$1,000 fine or a two-day suspension of the Licence be confirmed, replaced, or cancelled?

[22] If the Licensee contravened section 71(3) of the Act, should the administrative sanction imposed by Regulatory Services of a \$1,000 fine or a two-day suspension of the Licence be confirmed, replaced, or cancelled?

[23] If the Licensee contravened section 68(1)(b) of the Act, should the administrative sanction imposed by Regulatory Services of a \$1,500 fine or a three-day suspension of the Licence be confirmed, replaced, or cancelled?

[24] If the Licensee contravened section 5.3.33 of the Handbook, should the administrative sanction imposed by Regulatory Services of a \$1,000 fine or a two-day suspension of the Licence be confirmed, replaced, or cancelled?

[25] If the Licensee contravened section 5.3.7 a) of the Handbook, should the administrative sanction imposed by Regulatory Services of a \$1,000 fine or a two-day suspension of the Licence be confirmed, replaced, or cancelled?

III. Regulatory Services Submissions

[26] Regulatory Services called three witnesses:

- Constable Kevin Zylstra – Edmonton Police Service (EPS)
- Hazel Lees – AGLC Inspector
- Carla Hamilton – AGLC Inspector

[27] The following is a summary of the evidence provided by Constable Zylstra, Inspector Lees and Inspector Hamilton.

Constable Zylstra

[28] Constable Zylstra has been a beat officer in the area where Zembaba Restaurant is located for over three years. During this time, there have been recurring issues at Zembaba Restaurant, including after-hours events, disturbances as late as 7:00 a.m., shisha smoking, intoxicated patrons flooding into the neighbourhood and violence.

[29] Constable Zylstra said that after receiving multiple complaints about after-hours events at Zembaba Restaurant, he spoke with Mr. Haji-Hersi and Mr. J in the summer of 2024 and provided them evidence of after-hours events being held in a basement area below Zembaba Restaurant. He further stated that Mr. Haji-Hersi and Mr. J gave their word that they would stop running after-hours events, but after approximately one week, EPS started to receive complaints again.

[30] Constable Zylstra explained that he asked Regulatory Services to conduct the operating check that occurred on November 30, 2024 at Zembaba Restaurant (the November Operating Check) after receiving multiple complaints from the neighbourhood regarding after-hours events.

[31] Constable Zylstra provided an overview of the November Operating Check:

- He attended Zembaba Restaurant with AGLC inspectors and four other EPS members at approximately 3:20 a.m.
- As they approached the rear of the licensed premises, four or five patrons exited the establishment with red solo cups.
- One of the patrons noticed the EPS members, quickly re-entered Zembaba Restaurant, shouted something and exited the licensed premises.
- Constable Zylstra directed the patrons to pour out their drinks, and they complied immediately.
- The EPS members and AGLC inspectors entered Zembaba Restaurant through the rear door, and Constable Zylstra observed that the lights were on and there were approximately 20 – 30 individuals present and in possession of what he believed to be liquor.
- Given that there were numerous patrons inside and no one was performing cleaning duties, it did not appear that Zembaba Restaurant was getting ready to close.
- After making eye contact with Constable Zylstra, one of the staff members said something and appeared to gesture to the patrons to leave.
- The EPS members walked through the licensed premises while an AGLC inspector attempted to identify the manager on duty.
- Constable Zylstra spoke with staff members, who were cooperative.
- Constable Zylstra also spoke with premises manager Mr. J, who appeared to be intoxicated and said that he was not working because it was his birthday.
- Constable Zylstra interacted with some patrons, and a couple of them were confrontational and commented that they were being targeted and could do whatever they want.
- Some of the patrons were very intoxicated, and Constable Zylstra helped them request safe transportation.

[32] Constable Zylstra advised that the Licensee knows his beat team's shift schedule, which makes it easy to conduct after-hours events.

[33] Constable Zylstra stated that EPS patrol members of the West Division have routinely contacted him to advise that multiple vehicles were still parked outside of Zembaba Restaurant at around 5:00 a.m. He further stated that he believes the presence of the vehicles was an indication that the licensed premises was still operating.

[34] Constable Zylstra said that there are other bars on his beat that have previously had issues like those at Zembaba Restaurant. The issues were addressed with the licensees of those establishments, and they complied for the most part. He further stated that currently there are still issues with shisha smoking at other licensed premises.

[35] When Mr. Knisely asked if he knew what was in the patrons' red solo cups outside of Zembaba Restaurant, Constable Zylstra explained that:

- he did not know for certain, but he believes it was alcohol because of how quickly they dumped out the contents without any opposition;
- this is the typical reaction of individuals who are found to be in possession of alcohol in public places; and
- individuals will push back when they are told to dump out beverages that are in fact non-alcoholic.

[36] When Mr. Knisely asked Constable Zylstra if he observed patrons holding cups inside of Zembaba Restaurant, he stated that he saw patrons holding bottles and cups.

[37] When Mr. Knisely asked if any of the patrons dumped out their beverages inside of the licensed premises, Constable Zylstra said that he did not direct anyone to dump out their beverage and does not recall seeing anyone do that.

[38] When Mr. Knisely asked if the fact that nobody dumped out their beverage indicates that the beverages were non-alcoholic, Constable Zylstra stated that dumping out a drink in a parking lot is very different from dumping out a drink inside of a business.

[39] When Mr. Knisely asked Constable Zylstra if he had ever visited Zembaba Restaurant when they were conducting their closing procedures prior to the November Operating Check, Constable Zylstra stated that he has never been in the licensed premises when they are closing down.

[40] When Mr. Knisely asked if the vehicles parked outside of Zembaba Restaurant during early morning hours could have belonged to patrons who were intoxicated and chose not to drive home, Constable Zylstra said that was possible.

[41] When the Panel asked Constable Zylstra if he observed any patrons drinking from the cups or bottles in their possession, he said that he could not say for certain that he observed any consumption from the cups or bottles because his focus was on the safety of the EPS members and the AGLC inspectors.

Inspector Lees

[42] Inspector Lees has been an inspector with AGLC for just over two years.

[43] Inspector Lees advised that she conducted the November Operating Check with two other AGLC inspectors and five EPS members.

[44] Inspector Lees took photos of the interior of Zembaba Restaurant when she visited the licensed premises to collect video surveillance footage on December 7, 2024. She presented some of the photos to the Panel during the hearing and described what they depicted:

- Exhibit 2, Tab 6: A dedicated liquor shelf with bottles of liquor and labels marking the types of liquor.
- Exhibit 2, Tab 7: Coolers filled with bottles of Budweiser beer and Smirnoff Ice, cans of soda and cartons of juice.

- Exhibit 2, Tab 8: Coolers filled with bottles of beer, including Stella Artois, Guinness, Heineken and Corona.
- Exhibit 2, Tab 9: A dedicated liquor shelf with bottles of liquor.
- Exhibit 2, Tab 10: A cabinet below the service bar containing sealed bottles of liquor. Inspector Lees advised that this is the cupboard where staff members can be seen in the video surveillance footage retrieving sealed bottles of liquor for the provision of bottle service.
- Exhibit 2, Tab 18: A page of a notebook with a date of November 29, 2024, a time of 5:03 p.m., and a list of liquor bottles with a number beside each one.
- Exhibit 2, Tab 19: A bottle lock. Inspector Lees said that during her visit, she looked around the service bar and found a bucket of bottle locks in a bottom drawer.

[45] As part of her investigation, Inspector Lees obtained video surveillance footage (Exhibit 2, Tab 20) of the morning of November 30, 2024. Inspector Lees advised that she took clips of footage from Exhibit 2, Tab 20 showing the instances where violations occurred and compiled them into three separate videos (Exhibit 2, Tabs 1 to 3). She walked the Panel through the footage and highlighted the incidents set out in paragraphs [46], [47] and [48].

[46] Inspector Lees explained that section 5.3.7 a) of the Handbook states that a single patron should not be served more than two standard drinks after 1:00 a.m., section 5.1.1 of the Handbook states that liquor service is permitted between 9:00 a.m. and 2:00 a.m. each day, section 68(1)(b) of the Act states that licensees must abide by the authorized hours of liquor service, section 5.3.33 of the Handbook states that staff cannot consume liquor or drugs while on duty, section 71(2) states that patrons must be out of a licensed premises by 3:00 a.m., and section 71(3) of the Act states that patrons must not be in possession of liquor products after 3:00 a.m.

[47] Exhibit 2, Tab 1 (1:15 a.m. to 1:59 a.m.):

- Female bartender #2 pours a shot into a shot glass and two shots into a solo cup, and she serves them to a female patron.
- Female bartender #1 retrieves two bottles of Budweiser beer and a bottle of Smirnoff Ice and sells them to a male patron. Two patrons remove the drinks from the service bar.
- Male bartender #1 serves six unopened bottles of Corona beer to a male patron who already had a beer in his possession. Section 5.3.15 of the Handbook requires all liquor containers to be opened prior to serving them to patrons.
- Female bartender #1 serves two shots and a bottle of Corona beer to a patron.
- Male bartender #1 serves four bottles of beer to a male patron.
- A female bartender identified as (Ms. L) pours a shot from a Patron tequila bottle into a solo cup and is seen drinking from that cup throughout the footage.
- Male bartender #1 takes a sealed bottle of liquor from the cabinet that was depicted in Exhibit 2, Tab 10 and gives the unsealed bottle to a male patron without a bottle lock.
- Female bartender #2 places a sealed bottle of liquor into a sign used for advertising bottle service, and female bartender #1 takes the bottle and sign to a table without a

bottle lock. This occurs at approximately 1:43 a.m., which is less than 20 minutes before the 2:00 a.m. cut off for liquor service.

- Ms. L serves three shots of liquor in a solo cup to a female patron.
- Female bartender #1 unlocks her cell phone. Inspector Lees noted that most smartphones display the time on the home screen, which suggests female bartender #1 was fully aware of the time.

[48] Exhibit 2, Tab 2 (2:10 a.m. to 3:00 a.m.):

- Ms. L serves two bottles of Budweiser beer to a patron.
- Male bartender #1 serves a bottle of Budweiser beer and a bottle of Smirnoff Ice to a patron.
- Female bartender #1 pours two shots from a spouted liquor bottle.
- Ms. L retrieves two shot glasses, female bartender #1 fills the glasses from a spouted liquor bottle and a male patron pays for the shots.
- Ms. L consumes a shot of liquor.
- Female bartender #2 pours three shots from a spouted liquor bottle for a female patron.
- Female bartender #2 serves a bottle of Corona beer to a male patron.
- Female bartender #2 serves a shot to a female patron.
- Female bartender #1 opens her cell phone.
- Female bartender #2 pours two shots from two liquor bottles for a male patron.
- Ms. L pours a shot.
- Female bartender #2 writes in the notebook that is depicted in Exhibit 2, Tab 18.
- Female bartender #1 pours two shots into a solo cup for the DJ.
- Male bartender #1 pours two shots from a liquor bottle for a female patron who was later identified as a part-time employee named (Ms. F). Ms. F insisted she was not on duty that night.
- Ms. L pours a shot for a female patron.
- Male bartender #1 serves two bottles of beer to a male patron.
- Ms. L pours four shots from a bottle of Bumbu rum and consumes one of the shots.
- Male bartender #1 pours a shot.
- Ms. L serves two patrons with a shot and a bottle of Corona beer.
- Male bartender #1 pours two shots for a male patron.
- Female bartender #1 serves two bottles of beer to a male patron.
- Ms. L serves two bottles of Heineken to a male patron.
- Ms. L pours two shots of Hennessy cognac for a male patron.
- Female bartender #1 pours a shot from a bottle of Ciroc vodka for a male patron and a shot from a bottle of Hennessy vodka for a different male patron.
- Female bartender #1 pours five shots into three solo cups.
- Ms. L pours a shot for a male patron.
- Female bartender #1 pours three shots into a solo cup and serves it to a female patron.

[49] Exhibit 2, Tab 2 (3:02 a.m. to 3:22 a.m.):

- Female bartender #2 looks at her cell phone.

- Male bartender #1 takes payment from a male patron and pours two Heineken beers into two solo cups.
- At 3:11 a.m., the patrons appear relaxed and in no hurry to leave.
- An EPS member enters Zembaba Restaurant from the rear entrance, and patrons then appear to be in a hurry to leave.
- Ms. F and some patrons either hurriedly push their drinks toward the service bar or lean over the service bar to conceal their partially consumed drinks. Inspector Lees said that this indicates they were aware that they should not be in the licensed premises at that time and should not be in possession of alcohol.
- A staff member identified as (Mr. H) notices the AGLC inspectors and EPS members, and he yells instructions at the staff.
- Inspector Lees asks female bartender #1 to confirm who is in charge of the licensed premises, and female bartender #1 looks around, says she cannot see him, and starts cleaning.
- A male patron hands his drink to male bartender #1.
- Two male patrons continue to consume their drinks.
- Ms. F approaches Inspector Lees and says that they were not running after hours, no one had done anything wrong, and the patrons were just waiting to leave.
- Inspector Lees takes notes as she interviews Ms. F and Ms. L.

[50] During her interview with Ms. F and Ms. L, Inspector Lees advised that:

- Ms. F said that she was not working that evening but helped clear glassware because it was busy;
- Ms. F and Ms. L tried to convince her that the patrons remaining in the licensed premises were friends and family of staff;
- she explained to Ms. F. and Ms. L that it did not matter who the patrons were and that they should not be inside the licensed premises at that time;
- Ms. F and Ms. L said that Mr. J had been at the licensed premises that evening, but he was not in charge because he was celebrating his birthday; and
- Ms. F and Ms. L stated that liquor service had stopped at 1:35 a.m., and they had been trying to remove patrons since then.

[51] Inspector Lees said that the video surveillance footage did not show any evidence of Ms. F clearing glassware, nor did it show Ms. F and Ms. L attempting to remove patrons.

[52] Inspector Lees said that while she was reviewing the full video surveillance footage file (Exhibit 2, Tab 20), she observed Ms. F's beer being poured into a solo cup and Ms. F putting on her jacket and going outside. She further stated that it is regular practice for Zembaba Restaurant to use solo cups for liquor, solo cups are key for removing liquor from Zembaba Restaurant, and she observed patrons leaving the licensed premises with solo cups when she conducted the November Operating Check.

[53] Inspector Lees stated that staff members were talkative, but it was very clear that what they were saying was inaccurate and untruthful. Despite her discussions with the staff, she could not determine who was managing Zembaba Restaurant that night. She further stated that she usually does

not have any difficulty with determining who is managing a licensed premises, and Zembaba Restaurant should have delegated someone to be responsible.

[54] Inspector Lees stated that the number of patrons observed in the video surveillance footage just before 3:00 a.m. is atypical for a licensed premises, and she would not expect to see patrons requesting and being served liquor at that time. She further stated that patrons should be finishing the drinks they purchased prior to 2:00 a.m. by 3:00 a.m.

[55] Inspector Lees stated that she did not find any non-alcoholic beverages in beer-style bottles during the November Operating Check.

[56] Inspector Lees said that the final sale of liquor occurred approximately five minutes before she arrived at the licensed premises for the November Operating Check.

[57] Given that she has attended Zembaba Restaurant numerous times and witnessed people inside of the licensed premises after 3:00 a.m. during those visits, Inspector Lees opined that the after-hours proceedings of November 30, 2024 would have continued had Regulatory Services and EPS not attended the establishment.

[58] Inspector Lees advised that she did not have an opportunity to fully review the November Operating Check with Mr. Haji-Hersi. She contacted him by phone on December 5, 2024 to request a site visit and collect the video surveillance footage, and her subsequent emails, text messages and calls to Mr. Haji-Hersi and Mr. J were unanswered.

[59] When the Panel asked what the requirements were for the bottle lock, Inspector Lees explained that any time bottle service is provided to a table, a staff member must stay at the table and supervise the provision of the liquor or the bottle lock has to be placed on the liquor bottle and a staff member returns to the table to serve the liquor to the patrons. She further stated that she found the bottle locks inside of a dusty container in a bottom drawer, which indicated that they had not been used for quite some time.

[60] When the Panel asked if it was normal to have five police officers attend a licensed premises for an operating check, Inspector Lees said that it was not normal. She further stated that Regulatory Services attended Zembaba Restaurant and two other licensed premises in the same area at the request of EPS because they had received complaints about after-hours events and public disorder from the general public.

[61] When the Panel asked how many police officers would normally accompany AGLC inspectors during operating checks, Inspector Lees said that AGLC inspectors do not typically require police presence. She further stated that the only times she has attended a licensed premises with police officers aside from the November Operating Check was when she was a member of the Public Safety Compliance Team.

Inspector Hamilton

[62] Inspector Hamilton has been an AGLC inspector for approximately ten and a half years.

[63] Inspector Hamilton conducted the November Operating Check at Zembaba Restaurant with Inspector Lees, Inspector Ilia Lykov and five EPS members. She provided a summary of her visit:

- The reason for the November Operating Check was to investigate ongoing complaints that EPS had been receiving about after-hours service.
- They attended the licensed premises at approximately 3:15 a.m.
- She observed one male patron exit Zembaba Restaurant with a red solo cup that was foamy at the top and smelled like beer.
- Upon entering the licensed premises through the back entrance, she observed approximately 30 patrons inside, including a male patron with a full bottle of Corona beer and a male patron with a full bottle of Heineken beer.
- Zembaba Restaurant did not appear to be in the process of closing because music was playing, drinks were still being served and patrons still had alcohol in their possession.
- Patrons started to exit Zembaba Restaurant after the inspectors and EPS members entered the establishment.
- The inspectors and EPS members tried to figure out who was in charge and which individuals were staff members; however, they could not get a clear answer from anyone, and no one identified themselves as the manager or person in charge.
- The inspectors and EPS members were told by staff members that a private function was being held.
- She spoke with a staff member who was mopping the floor, and he said that Mr. J was the manager on duty and left when the inspectors and EPS members entered Zembaba Restaurant.
- When she left Zembaba Restaurant, she saw a male patron with a bottle of Smirnoff Ice.

[64] Inspector Hamilton advised that it is unusual to attend a licensed premises and not be able to determine who the manager is.

IV. Zembaba 2 Shisha & Restaurant Submissions

[65] The Representative for the Licensee, Dale M. Knisely, did not call any witnesses nor provide any evidence on behalf of the Licensee.

V. Summation

Regulatory Services

[66] Regulatory Services submits that the matters before the Panel are violations of sections 71(2), 71(3) and 68(1)(b) of the Act and sections 5.3.33 and 5.3.7 a) of the Handbook.

[67] Regulatory Services is of the opinion that the evidence provided by Constable Zylstra, Inspector Lees and Inspector Hamilton, as well as the video surveillance footage that was presented, was quite clear. During the November Operating Check, Zembaba Restaurant was found to be operating and full of patrons after 3:00 a.m. This was after the time where patrons should have been cleared out of the licensed premises, and only staff conducting their duties should have been in the licensed premises.

[68] Although the patrons, as evidenced by the inspectors' testimony and the video surveillance footage, departed very shortly and hurriedly after the inspectors and police arrived, there did not

appear to be any effort by staff to cease liquor sales at 2:00 a.m. or to clear the licensed premises of patrons by 3:00 a.m. Regulatory Services takes the position that the only thing that stopped the after-hours proceedings at Zembaba Restaurant was the arrival of the regulatory agencies.

[69] In addition to allowing patrons to remain in the licensed premises after hours, it was also found that there were numerous instances of staff providing multiple drinks after 1:00 a.m., liquor service after 2:00 a.m., and permitting patrons to consume and be in possession of liquor after 3:00 a.m. Additionally, there were several instances of staff members consuming liquor while on duty. Regulatory Services asserts that these are all serious issues, and it is clear that the after-hours operations at Zembaba Restaurant are generating complaints, impacting the peace and enjoyment of the surrounding community and draining EPS resources.

[70] Regulatory Services submits that the policies in the Handbook were developed to prevent intoxication, assist with the timely departure of patrons from an establishment, and cease the provision of large quantities of liquor and/or multiple drinks being served at a time when the premises operations need to start winding down.

[71] Regulatory Services takes the position that it is very important for staff to not be under the influence of liquor while on duty so that they are able to effectively deal with patrons and conduct their duties in compliance with the Act and the Regulation.

[72] It was very strange and concerning to inspectors and police that no one admitted to being in charge of Zembaba Restaurant. Constable Zylstra submitted that the regular operating manager was celebrating his birthday and was not able to be responsible for the licensed premises that evening. Regulatory Services did not expect Mr. J or the other off-duty staff member identified as Ms. F to be responsible for staff duties when they were not working; however, Regulatory Services expects staff who are on duty to not consume or be under the influence of liquor and to cooperate with AGLC inspectors and police when being interviewed. If no one was in charge, then Regulatory Services suggests that the licensed premises was not adequately supervised.

[73] Regulatory Services asserts that nothing was submitted that would indicate that Mr. Haji-Hersi has exercised any type of due diligence, and it is clear that many things could have been done to address a lot of these issues prior to the incident of November 30, 2024.

[74] The Licensee did not submit anything regarding the adequate training of staff, how they conduct last call, how they cease liquor sales or how they supervise patrons and ensure they leave the licensed premises at the appropriate time.

[75] Regulatory Services submits that sanctions set out in the Notice of Administrative Sanction dated January 13, 2025 are in line with the Administrative Sanction Guideline for Violations. Given that this is not the first time that Regulatory Services has dealt with the Licensee for these particular issues, Regulatory Services requests that at a minimum, the original sanctions should be upheld.

Zembaba 2 Shisha & Restaurant

[76] Mr. Knisely submits that the Licensee does not take issue with the quality of evidence submitted by Regulatory Services.

[77] Mr. Knisely takes the position that a sanction is in order because of the allegations proven on the video surveillance footage and otherwise.

[78] It appears that Mr. J had a birthday and was celebrating, and it can be inferred that he left Zembaba Restaurant without nominating a replacement. As such, the problem here was some absence of supervision.

[79] Mr. Knisely submits that although there were multiple violations, the cumulative penalties for this one night should be reduced to \$2,500. This would bring home the point to Zembaba Restaurant that such lapses cannot be allowed.

VI. Analysis

[80] The Panel carefully considered the oral and documentary evidence submitted by Regulatory Services and the admissions provided by Mr. Knisely on behalf of the Licensee in making its finding of fact.

[81] Based on the testimony provided by Constable Zylstra, Inspector Lees and Inspector Hamilton, the video surveillance footage, and Mr. Knisely's admissions, the Panel finds as fact that the Licensee's employees:

- permitted numerous patrons to occupy Zembaba Restaurant when the sale and consumption of liquor in the licensed premises was prohibited;
- permitted numerous patrons to consume liquor in Zembaba Restaurant when the sale and consumption of liquor in the licensed premises was prohibited;
- sold and/or provided liquor to patrons in Zembaba Restaurant when the sale and consumption of liquor in the licensed premises was prohibited;
- consumed liquor while on duty at Zembaba Restaurant; and
- sold more than two standard servings of liquor to multiple patrons after 1:00 a.m.

[82] As such, the Panel finds that the Licensee contravened section 71(2) of the Act, section 71(3) of the Act, section 68(1)(b) of the Act, section 5.3.33 of the Handbook and section 5.3.7 a) of the Handbook.

[83] The question for determination turns to whether the sanctions imposed by Regulatory Services are reasonable.

[84] Mr. Knisely submitted that the fines should be reduced because there was some absence of supervision at Zembaba Restaurant. The Panel disagrees with Mr. Knisely's rationale and finds that it minimizes the seriousness of the violations. Further, the Panel questions why Mr. Haji-Hersi failed to respond to Regulatory Services' numerous emails, texts, phone calls and visits with no explanation. There was no acknowledgement of the egregiousness of the pattern of violations, and the Panel did not hear any evidence that the Licensee took reasonable steps to prevent their employees from contravening the provisions or made significant changes to prevent future violations from occurring.

[85] The Licensee and the Licensee's employees have shown a complete lack of regard for the surrounding community, the Act, the Regulation and the relevant AGLC policies. Further, the operating checks conducted by Regulatory Services and EPS members have been a drain on their resources.

[86] Due to the multiple verbal warnings and cautions issued to the Licensee on February 11, 2023, December 9, 2023 and September 29, 2024, the Panel finds that the contraventions of section 71(2) of the Act, section 71(3) of the Act, section 68(1)(b) of the Act, section 5.3.33 of the Handbook and section 5.3.7 a) of the Handbook should not be considered first violations; the administrative sanctions imposed should reflect the suggested suspension periods for third violations.

[87] The Panel finds it concerning and disappointing that the Licensee did not attend the hearing given the serious nature of the violations. Operating a licensed premises is a privilege and not a right. It comes with significant responsibilities, including the requirement for both licensees and their employees to comply with all relevant legislation, the Regulation, relevant AGLC policies and any licence conditions.

[88] Although there was an agreement during the preliminary matters that no amendments to the conditions would be submitted or considered, the Panel finds that the existing Board-imposed conditions provided in the hearing materials will remain on the Licence.

VII. Finding

[89] For the reasons stated above, the Panel finds that the Licensee contravened section 71(2) of the Act, section 71(3) of the Act, section 68(1)(b) of the Act, section 5.3.33 of the Handbook and section 5.3.7 a) of the Handbook.

[90] For the contravention of section 71(2) of the Act, the Panel replaces the \$1,000 fine or two-day suspension of the Licence with an eight-day suspension of the Licence in accordance with sections 91(2)(d) and 94(7)(b) of the Act.

[91] For the contravention of section 71(3) of the Act, the Panel replaces the \$1,000 fine or two-day suspension of the Licence with an eight-day suspension of the Licence in accordance with sections 91(2)(d) and 94(7)(b) of the Act.

[92] For the contravention of section 68(1)(b) of the Act, the Panel replaces the \$1,500 fine or three-day suspension of the Licence with a 12-day suspension of the Licence in accordance with sections 91(2)(d) and 94(7)(b) of the Act.

[93] For the contravention of section 5.3.33 of the Handbook, the Panel replaces the \$1,000 fine or two-day suspension of the Licence with an eight-day suspension of the Licence in accordance with sections 91(2)(d) and 94(7)(b) of the Act.

[94] For the contravention of section 5.3.7 a) of the Handbook, the Panel replaces the \$1,000 fine or two-day suspension of the Licence with a six-day suspension of the Licence in accordance with sections 91(2)(d) and 94(7)(b) of the Act.

[95] The total 42-day suspension of the Licence is to run consecutively, effective the normal opening of business on June 19, 2025. The Licence will be reinstated effective the normal opening of business on July 31, 2025.

[96] Further, the Panel confirms that the existing conditions on the Licence will remain in place.

Signed at Calgary, this 18th day of June, 2025

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

Patti Grier, Presiding Member, Hearing Panel