

**HEARING BEFORE A PANEL  
OF THE BOARD OF THE  
ALBERTA GAMING AND LIQUOR COMMISSION**

**IN THE MATTER OF the Gaming and Liquor Act  
Revised Statutes of Alberta 2000, Chapter G-1  
current as of November 1, 2010  
and the Regulation**

and

**IN THE MATTER OF Hdmona Restaurant Corp.  
o/a Hdmona Restaurant  
2881 – 17 Avenue SE  
Calgary, Alberta  
T2A 0P7**

**concerning alleged contraventions**

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<b>DATE OF HEARING:</b>	May 15, 2014
<b>HEARING PANEL:</b>	Mr. W.J. Anhorn, Q.C., Panel Chair Ms. T.L. Lawrence, Panel Member Ms. S.L. Green, Panel Member
<b>LICENSEE REPRESENTATIVES:</b>	Mr. T., Director
<b>COMPLIANCE AND SOCIAL RESPONSIBILITY:</b>	Mr. H., Hearing Officer

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**DECISION OF THE HEARING PANEL**

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**I. Jurisdiction and Preliminary Matters**

As a result of receiving an incident report dated February 20, 2014, the Compliance and Social Responsibility (CSR) Division of the Alberta Gaming and Liquor Commission (AGLC) imposed an administrative sanction under Section 91(2) of the *Gaming and Liquor Act*, without a hearing, on Hdmona Restaurant Corp. operating as Hdmona Restaurant, Calgary.

The licensee subsequently applied for a hearing under Section 94(1) of the *Gaming and Liquor Act*. A Hearing Panel of the Board of the AGLC met to hear the following alleged violation:

**Section 71(3) *Gaming and Liquor Act*: permitting consumption of liquor during unauthorized hours.**

The licensee and the Hearing Panel were provided with a hearing file containing the incident report dated February 20, 2014 and various documents pertaining to an alleged incident occurring on the premises of Hdmona Restaurant, Calgary on February 9, 2014. Mr. T. confirmed he received the incident report and Notice of Hearing dated April 7, 2014. He advised the Panel he admitted the facts set out in the incident report, but wished to speak to penalty. The incident report was entered into evidence by the CSR Division as Exhibit #1.

Mr. H. presented the case on behalf of the CSR Division. Mr. T. represented Hdmona Restaurant Corp.

## **II. The Issue**

Did the licensee permit consumption of liquor during authorized hours?

## **III. Evidence – excerpted from the incident report dated February 20, 2014**

*As a result of a public complaint, Inspectors conducted an operating check of the premises. At 3:41 a.m., Inspectors observed the premises from the parking lot and noted some activity inside. Inspectors approached the front door and noted the door was locked and there were people inside. Inspectors did not knock on the front door and only stood there for approximately a minute before Mr. T. appeared at the door. Mr. T. opened the door and the Inspectors entered the premises.*

*Inspectors observed approximately seventeen patrons inside the premises. There were two patrons seated at the bar, approximately six patrons watching a pool game and three or four patrons playing pool. The lighting was bright and Inspectors had a clear view of the premises. Aside from Mr. T., Inspectors did not observe any other staff members.*

*Inspector K. asked Mr. T. if he knew what time it was and he responded that it was about 3:30 a.m. Inspector K. advised Mr. T. that he was not permitted to allow liquor consumption after 3:00 a.m. and he stated the patrons were just playing pool. Inspector K. observed a male take a sip from a dark colored beer bottle and noticed a Heineken branded pint glass of light colored liquid with what appeared to be draft beer in front of another male.*

*Inspector C. observed two full pint glasses containing an amber liquid with foam on top, indicating that the liquid had been poured recently. These glasses were on a counter in front of two males. One of the males was observed consuming from one of the glasses. Inspector C. also observed two males consuming from clear beer bottles labeled as Corona.*

*Inspector K. asked Mr. T. why he had so many patrons consuming liquor in the premises and he indicated they were just playing pool and would be leaving shortly.*

*On February 22, 2014 Inspector K. contact Mr. T.. Mr. T. reiterated that they were having a pool tournament and it went longer than expected. He stated he did not sell any liquor after 2:00 a.m. and was too busy in the back to clear away the liquor.*

### **Evidence of Mr. T.**

A pool tournament was being held at the premises at the time the incident in question occurred. The pool tournament started at 11:00 p.m. Mr. T.'s wife was helping him at the premises during the evening but she left at 12:30 a.m. Mr. T. was busy in the kitchen after his wife left, performing clean-up duties. There were seventeen patrons in the premises when the Inspectors arrived. Hdmona Restaurant is a new, small business and Mr. T. has three small children to raise. For these reasons, he cannot afford to pay the administrative sanction.

### **Mr. T. – cross-examined by Mr. H.**

Mr. T. thought he had collected all the alcohol at 2:00 a.m. He entered the kitchen to begin performing clean-up duties at 2:30 a.m. and did not come out of the kitchen again until the Inspectors arrived. A pool tournament is held at the premises once a month. An unexpected number of people arrived at the premises for the tournament on February 8/9, 2014.

Mr. T. did not serve the patrons any alcohol after 2:00 a.m. It is possible the patrons may have poured their own beer while he was in the kitchen. He came out of the kitchen to throw out the garbage; that is why he was at the front door when the Inspectors arrived. He opened the door right away for the Inspectors because he did not believe there was anything to hide.

### **Mr. T. – questioned by the Panel**

Hdmona Restaurant has been open for two years. This is Mr. T.'s first business in the industry. The pool table at the premises is used as a buffet table until 11:00 p.m. The pool tournament begins with ten players and continues until there is a winner. The other seven patrons in the premises the night of the incident were watching the pool tournament.

Mr. T. was busy in the kitchen, so he was not aware of the time. He did stop liquor service at 2:00 a.m. He is aware of AGLC legislation and policies with respect to liquor service after 2:00 a.m.

#### **IV. Summation**

##### **Mr. H.**

The evidence contained in the incident report is clear. As a result of a public complaint, Inspectors entered the premises at 3:41 a.m. and found seventeen patrons inside. In the course of their inspection, the Inspectors observed four patrons consuming liquor. The evidence in the incident report suggests that some of that liquor had been recently served to patrons.

On February 11, 2014 the licensee advised the Inspectors there had been a pool tournament and it went longer than expected. It is the opinion of the CSR Division that the premises was not busy, with only seventeen patrons inside, and should have been adequately supervised by the licensee to ensure compliance with the legislation. The licensee maintains he was too busy in the kitchen to clear away all the liquor, yet he was in the front of the premises and opened the door for the Inspectors upon their arrival.

The CSR Division maintains that pool tournaments are generally pre-planned. The licensee provided evidence that a pool tournament occurs once a month at the premises. As such, the licensee should have been able to ensure adequate staff was scheduled to work on the night in question. The licensee has been in operation for over two years, is ProServe certified and should be fully aware of his responsibilities with respect to liquor service and consumption.

The CSR Division respectfully submitted that the original administrative sanction previously offered be upheld.

##### **Mr. T.**

Mr. T. cannot afford to pay the fine because he has three small children to raise and it is a significant amount of money.

#### **V. Finding**

##### **The Panel makes a finding of a violation of Section 71(3) of the *Gaming and Liquor Act*:**

The Panel is of the view there was an obvious violation of Section 71(3) of the *Gaming and Liquor Act*, resulting from inadequate supervision. Licensees have a responsibility to know the legislation under which they operate. Mr. T. failed to supervise the patrons within the premises to ensure there was no liquor consumption after 3:00 a.m.

Mr. T. agreed with the facts outlined in the incident report. Inspector K. and Inspector C. both observed patrons within the premises consuming liquor after 3:00 a.m. Whether or not Mr. T. served liquor after 2:00 a.m. is not relevant. Section 71(3) of the *Gaming and Liquor Act* states no liquor licensee may permit any person to consume liquor when the sale of liquor is prohibited.

#### **VI. Penalty**

The original administrative sanction offered by the CSR Division was \$1500, which is a significant penalty. The Panel wants to ensure the penalty amount is sufficient to act as a deterrent to the licensee. Given the nature of the business in question and taking into account Mr. T.'s personal circumstances, a \$1000 fine should be a sufficient deterrent.

In accordance with Section 91(2) of the *Gaming and Liquor Act*, the Hearing Panel imposes the following penalty for a violation of Section 71(3) of the *Gaming and Liquor Act*:

**Penalty:** A \$1000 fine - **OR** - a 5 day suspension of Class Aliquor licence 771834-1. The fine is to be paid within 6 months of the date of this decision or on or before Sunday, February 1, 2015 or the suspension served commencing Monday, February 2, 2015 and continuing until the close of business on Friday, February 6, 2015.

Signed at St. Albert this 1<sup>st</sup> day of August, 2014.



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W.A. Anhorn, Q.C., Hearing Panel Chair