



Hamilton

REPORT 11-006 HAMILTON LICENSING TRIBUNAL

9:30 a.m.

Thursday, November 10, 2011

Room 264, 2nd Floor

Hamilton City Hall

71 Main Street West, Hamilton

Present: Councillors T. Whitehead (Chair), C. Collins (Vice Chair), S. Duvall and R. Pasuta

**Absent with
Regrets:** Councillor B. Clark – Personal

Also Present: Vince Ormond, Manager, Licensing and Permits
Justyna Hidalgo, Solicitor
Lisa Pasternak, Senior Solicitor
Stephanie Paparella, Legislative Assistant, Office of the City Clerk

Other Attendees: **Items 4.1, 4.2 and 4.3:**
John Kranjc, Keesmaat Dixon Kranjc Lewis & Kovacs, Legal
Counsel
Diana Vranich, Appellant

Items 4.4 and 4.5:
Michael Stanton, Scarfone Hawkins, LLP, Legal Counsel
Derek Bryant, Appellant
Jeff Evans, Building Inspector, Witness

**THE HAMILTON LICENSING TRIBUNAL PRESENTS REPORT 11-006 AND
RESPECTFULLY RECOMMENDS:**

- 1. APPEAL HEARING:** John Kranjc, of Keesmaat Dixon Kranjc Lewis & Kovacs, representing Diana Vranich, respecting the Refusal of the Renewal Applications for the Eating Establishment Licences for Elixir Night Club

and Lounge, located at 18 and 20 Hess Street South, Hamilton, Ontario (Licence 10 278148 1J and Licence 10 278145 1J) (Item 4.1)

That the renewal applications for the Eating Establishment Licences (Food Premises) for 1389715 Ontario Inc. o/a the Elixir Night Club and Lounge, located at 18 and 20 Hess Street South, Hamilton, Ontario, to be submitted by Diana Vranich, be accepted and the licences be issued, contingent upon the following conditions; and, providing that the applicant satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended:

- (i) That the Licensee notify the Issuer of Licences of all All-Ages events 15 days in advance of the event being held;
- (ii) That the Licensee hire, for all All-Ages events, two Special Duty Hamilton Police Services Constables, unless Hamilton Police Services recommends otherwise;
- (iii) That the Constables be hired, for all All-Ages events, between the hours of 11:00 p.m. to 2:00 a.m., unless Hamilton Police Services recommends otherwise;
- (iv) That the Licensee implement a dress code requiring all clothing indicating gang colours or indicia of gang affiliation are to be removed, and if the patron does not remove the gang indicia, they are to be asked to leave the premises;
- (v) That the Licensee post signs at the entrance of the establishment indicating that there is a dress code and that no clothing, which would indicate gang colour or gang affiliation is permitted on the premises;
- (vi) That Eating Establishment Licences (Food Premises), for 1389715 Ontario Inc. o/a the Elixir Night Club and Lounge, located at 18 and 20 Hess Street South, Hamilton, Ontario, be suspended for a period of three (3) consecutive days; to be served from Friday 11:00 a.m. to the following Sunday 2:00 a.m. on dates to be chosen by the Issuer of Licences between January to March 2012.
- (vii) That the Licensee satisfies the requirement for Encroachment Agreements with the City of Hamilton, for both 18 and 20 Hess Street South, Hamilton, Ontario, and that the Agreements be registered on title by November 30, 2011.
- (viii) That should delays, respecting the Encroachment Agreements for both 18 and 20 Hess Street South, Hamilton, Ontario, result from actions on the part of the City of Hamilton, a reasonable extension will be provided by the Issuer of Licences.

- (ix) That all future invoices, issued to 1389715 Ontario Inc., operating as the Elixir Night Club and Lounge, located at 18 and 20 Hess Street South, Hamilton, Ontario, from Hamilton Police Services for Special Duty Officers, be paid in full within forty-five (45) days from the date of the invoice.
2. **APPEAL HEARING: John Kranjc, of Keesmaat Dixon Kranjc Lewis & Kovacs, representing Diana Vranich, respecting the Refusal of the Renewal Application for the Eating Establishment Licence for the Gown & Gavel Restaurant, located at 24 Hess Street South, Hamilton, Ontario (Licence 09 275609 IJ) (Item 4.3)**

That the renewal application for the Eating Establishment Licence (Food Premises) for the Gown & Gavel Restaurant, located at 24 Hess Street South, Hamilton, Ontario, to be submitted by Diana Vranich, be accepted and the licence be issued, contingent upon the following conditions; and, providing that the applicant satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended:

- (i) That the Licensee satisfies the requirement for an Encroachment Agreement with the City of Hamilton for 24 Hess Street South, Hamilton, Ontario, and that the Agreement be registered on title by November 30, 2011.
- (ii) That should delays, respecting the Encroachment Agreement for 24 Hess Street South, Hamilton, Ontario, result from actions on the part of the City of Hamilton, a reasonable extension will be provided by the Issuer of Licences.

3. **APPEAL HEARING: Michael Stanton, Scarfone Hawkins, LLP, representing Shelley Bryant of Hamilton Home Improvements, respecting the Refusal of the Renewal Application for a Master Building Repair Licence (Licence 10 274644 MA) (Item 4.4)**

That the renewal application for a Master Building Repair Licence, to be submitted by Shelley Bryant, be accepted and the licence be issued, contingent upon the following conditions; and, providing that the applicant satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended:

- (i) All contracts are to comply with the requirements of the Consumer Protection Act, 2002;
- (ii) All extra work or modification to existing contracts be pre-authorized, by the client, in writing;

- (iii) That, on a monthly basis for a period of one year from the date of issuance of the Licence, by either the 1st of the month or within 7 days of signing a contract (whichever is later), Hamilton Home Improvements Inc. shall provide to the Building Services Division, Manager of Building Services, copies of all contracts entered into by the Company in the preceding month. The client's personal information and the agreed price may be redacted from the contracts that are forwarded to the City;
- (iv) That all contracts identify items that require or may require a permit or subcontractor; and,
- (v) That Hamilton Home Improvements Inc. ensure all required permits are obtained, prior to commencing work.

4. APPEAL HEARING: Michael Stanton, Scarfone Hawkins, LLP, representing Derek Bryant of Hamilton Home Improvements, respecting the Refusal of the Renewal Application for his Trade Licence – Contractor Building Repair (Licence 10 274643 CL) (Item 4.5)

That the renewal application for a Contractor Building Repair licence, to be submitted by Derek Bryant, be accepted and a licence be issued to Hamilton Home Improvements Inc., contingent upon the following conditions; and, providing that the applicant satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended:

- (i) All contracts are to comply with the requirements of the Consumer Protection Act, 2002;
- (ii) All extra work or modification to existing contracts be pre-authorized, by the client, in writing;
- (iii) That, on a monthly basis for a period of one year from the date of issuance of the Licence, by either the 1st of the month or within 7 days of signing a contract (whichever is later), Hamilton Home Improvements Inc. shall provide to the Building Services Division, Manager of Building Services, copies of all contracts entered into by the Company in the preceding month. The client's personal information and the agreed price may be redacted from the contracts that are forwarded to the City.
- (iv) That all contracts identify items that require or may require a permit or subcontractor;

- (v) That Hamilton Home Improvements Inc. ensure all required permits are obtained, prior to commencing work; and,
- (vi) That Derek Bryant complete the Building Repair Trade exam by December 31, 2012.

FOR THE INFORMATION OF COUNCIL:

(a) CHANGES TO THE AGENDA (Item 1)

There were no changes to the agenda.

The November 10, 2011 agenda for the Hamilton Licensing Tribunal were approved, as presented.

(b) DECLARATIONS OF INTEREST (Item 2)

There were no declarations of interest.

(c) APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING (Item 3)

(i) July 6, 2011 (Item 3.1)

The Minutes of the July 6, 2011 meeting of the Hamilton Licensing Tribunal were approved, as presented.

(d) APPEAL HEARINGS: John Kranjc, of Keesmaat Dixon Kranjc Lewis & Kovacs, representing Diana Vranich, respecting the Refusal of the Renewal Applications for the Eating Establishment Licences for the Elixir Night Club and Lounge, located at 18 and 20 Hess Street South, Hamilton, Ontario (Licence 10 278148 1J and Licence 10 278145 1J); Rok Bar, located at 15 Hess Street South, Hamilton, Ontario (Licence 10 278405 1J); and, the Gown & Gavel Restaurant, located at 24 Hess Street South, Hamilton, Ontario (Licence 09 275609 1J) (Items 4.1, 4.2 and 4.3)

As the matters, respecting the renewal applications for the Eating Establishment – Restaurant Licences for Elixir Night Club and Lounge, Rok Bar and the Gown and Gavel, all have the same appellant, staff requested that the matters be heard together.

Mr. Kranjc confirmed that he did not have any objection to the matters being heard together.

As the matters respecting the renewal applications for the Eating Establishment – Restaurant Licences (Food Premises) for Elixir Night Club and Lounge, Rok Bar and the Gown and Gavel all have the same appellant, the matters were heard together.

On August 9, 2011 and September 26, 2011, the Director of Municipal Law Enforcement sent correspondence to Diana Vranich advising that, in accordance with the City of Hamilton Licensing By-Law 07-170, as amended, the Renewal Applications for the Eating Establishment Licences for Rok Bar, Elixir Night Club & Lounge, and the Gown and Gavel were refused and licences would not be issued, based on the following grounds:

That in accordance with Section 12(1)(c) of the City of Hamilton Licensing By-Law 07-170, as amended, the business would put public safety at risk.

Namely:

November 14, 2009	Hamilton Police Service Occurrence Details, Rok Bar, Sexual Assault. That an employee was asked by the owner (Denis) to stay for an after hours party to bartend. The female employee was pulled into a washroom and an alleged assault occurred. Also over capacity as noted by the Hamilton Fire Department.
November 22, 2009	Hamilton Police Service Occurrence Details, Rok Bar, Assault Level 1. Police respond to disturbance call relating to service of drinks to patron and alleged assault by bar security.
January 29, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assault Level 1. During the hosting of a punk rock event a patron was ejected from the premises into the rear parking lot where three males assaulted the patron.
February 18, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assault With a Weapon / Causing Bodily Harm. Security staff assaulted during a brawl on the dance floor.
February 18, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assault With a Weapon / Causing Bodily Harm (2 nd occurrence). Police respond to a bar disturbance at Rok Bar. Intoxicated patrons and an assault allegation.

February 18, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Street Disturbance. Police were required to use O/C spray to disperse crowd in front of the establishment.
February 18, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Possession of Cannabis Marijuana. Patron arrested for possession of a controlled substance after the substance was detected by Officers in a private room.
February 20, 2010	Alcohol and Gaming Commission of Ontario and Hamilton Police Service Joint Forces Inspection of Rok Bar revealed over capacity and possible permitted drunkenness.
April 11, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assault With a Weapon / Causing Bodily Harm. Patron arrested for assault with a weapon, required medical attention.
April 17, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assault Level 1. Patron assaulted at establishment.
May 1, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assault Level 1. Patron assaulted at establishment on dance floor.
May 13, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Street Disturbance. Fight on dance floor and possible over capacity.
May 21, 2010	Attendance by Hamilton Police Service at Rok Bar revealed over service and capacity count. Bar Manager and Owner charged with over crowding.
May 22, 2010	Alcohol and Gaming Commission of Ontario and Hamilton Police Service Joint Forces Inspection of Rok Bar revealed over capacity on main floor.
May 29, 2010	Alcohol and Gaming Commission of Ontario attended Rok Bar with Hamilton Police Service for Spot Inspection. No security staff were keeping a capacity count at entrance to 3 rd floor patio.
July 8, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assist Person to Hospital. All Ages event hosted by Rok Bar and underage attendee found outside entrance.

August 9, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assault With a Weapon / Causing Bodily Harm involving patrons exiting the establishment.
August 26, 2010	Hamilton Police Service Occurrence Details, Mr. Denis Vranich, <u>Liquor License Act</u> . Provincial Offences Notice issued for public intoxication.
September 6, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assist Person to Hospital. Patron required assistance for intoxication, bottle service at the Rok Bar.
September 12, 2010	Alcohol and Gaming Commission of Ontario Spot Inspection revealed cocaine residue in Rok Bar men's washroom.
October 18, 2010	Hamilton Police Service Occurrence Details, Rok Bar. Security staff placing intoxicated female into taxicab. Over service of patron – Bottle service for group birthday party.
November 14, 2010	Multi Agency Task Force Inspection revealed Rok Bar to be over capacity.
January 19, 2011	Alcohol and Gaming Commission of Ontario Suspended Rok Bar Liquor Licence.
January 28, 2011	Ontario Superior Court of Justice found Denis Vranich liable and Elixir Night Club & Lounge vicariously liable for tortuous conduct of female staff member.
January 31, 2011	Attendance by a Multi Agency Task Force at Rok Bar and Elixir Night Club & Lounge revealed both to be over capacity and in non-compliance with City of Hamilton Noise By-law 03-020. All ages event occurring on evening.
2009 - 2011	Staff at a neighbouring establishment documented numerous incidents of items being thrown and spitting from Rok Bar overhead patio, as well as concerns with crowds from Rok Bar and Elixir Night Club & Lounge.

And in accordance with Section 12(1)(d) of the City of Hamilton Licensing By-Law 07-170, as amended, the conduct of the licence holder, partners, employees, or

agents affords reasonable grounds for belief that the business is not or will not be carried on in compliance with the law or with honesty or integrity.

Namely:

November 14, 2009	Hamilton Police Service Occurrence Details, Rok Bar, Sexual Assault. That an employee was asked by the owner (Denis) to stay for an after hours party to bartend. The female employee was pulled into a washroom and an alleged assaulted occurred. Also over capacity as noted by Hamilton Fire Department.
November 22, 2009	Hamilton Police Service Occurrence Details, Rok Bar, Assault Level 1. Police respond to disturbance call relating to service of drinks to patron and alleged assault by bar security.
January 29, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assault Level 1. During the hosting of a punk rock event a patron was ejected from the premises into the rear parking lot where three males assaulted the patron.
February 18, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Possession of Cannabis Marijuana. Patron arrested for possession of a controlled substance after the substance was detected by Officers in a private room.
February 20, 2010	Alcohol and Gaming Commission of Ontario and Hamilton Police Service Joint Forces Inspection of Rok Bar revealed over capacity and possible permitted drunkenness.
May 13, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Street Disturbance. Fight on dance floor and possible over capacity.
May 21, 2010	Attendance by Hamilton Police Service at Rok Bar revealed over service and capacity count. Bar Manager and Owner charged with over crowding.
May 22, 2010	Alcohol and Gaming Commission of Ontario and Hamilton Police Service Joint Forces Inspection of Rok Bar revealed over capacity on main floor.

May 29, 2010	Alcohol and Gaming Commission of Ontario attended Rok Bar with Hamilton Police Service for Spot Inspection. No security staff were keeping a capacity count at entrance to 3 rd floor patio.
August 26, 2010	Hamilton Police Service Occurrence Details, Mr. Denis Vranich, <u>Liquor License Act</u> . Provincial Offences Notice issued for public intoxication.
September 6, 2010	Hamilton Police Service Occurrence Details, Rok Bar, Assist Person to Hospital. Patron required assistance for intoxication, bottle service at the Rok Bar.
September 12, 2010	Alcohol and Gaming Commission of Ontario Spot Inspection revealed cocaine residue in Rok Bar men's washroom.
October 18, 2010	Hamilton Police Service Occurrence Details, Rok Bar. Security staff placing intoxicated female into taxicab. Over service of patron – Bottle service for group birthday party.
November 14, 2010	Multi Agency Task Force Inspection revealed Rok Bar to be over capacity.
January 19, 2011	Alcohol and Gaming Commission of Ontario Suspended Rok Bar Liquor Licence.
January 28, 2011	Ontario Superior Court of Justice found Denis Vranich liable and Elixir Night Club & Lounge vicariously liable for tortuous conduct of female staff member.
January 31, 2011	Attendance by a Multi Agency Task Force at Rok Bar and Elixir Night Club & Lounge revealed both to be over capacity and in noncompliance with City of Hamilton Noise By-law 03-020. All ages event occurring on evening.
2009 - 2011	Staff at a neighbouring establishment documented numerous incidents of items being thrown and spitting from Rok Bar overhead patio, as well as concerns with crowds from Rok Bar and Elixir Night Club & Lounge. Including bottles and glass used on rooftop patio in violation of Liquor Licence condition.

June 14, 2011	Rok Bar in arrears for paying Special Duty Officer Police Fees from January 2011, amount owed \$9,034.43. Condition on licence that Police Fees be paid with 45 days of invoice notice, as per Licensing Tribunal July 8, 2010.
June 14, 2011	Gown & Gavel Restaurant in arrears for paying Special Duty Officer Police Fees from January 2011, amount owed \$8,474.79.

Mr. Ormond provided his Opening Statement. Mr. Ormond's comments included, but were not limited to, the following:

- The matters before the Tribunal today are for four (4) Food Premises (Eating Establishment – Restaurant) licences. Those licences are for:
 - (i) Rok Bar, located at 15 Hess Street South, Hamilton, Ontario – Licence No. 10-278405;
 - (ii) 1389715 Ontario Inc. o/a the Elixir Night Club and Lounge, located at 18 and 20 Hess Street South, Hamilton, Ontario – Licences Nos. 10-278148 and 10-278145, respectively; and,
 - (iii) The Gown and Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, Ontario.
- The renewal applications were refused for the above establishments out of concern that the businesses would put public safety at risk; and, that the conduct of the licence holder, partners, employees or agents affords reasonable grounds for belief that the businesses are not or will not be carried on in compliance with the law or with honesty or integrity.
- The Appellant's legal counsel and staff have met, prior to the hearing, and will be submitting an Agreed Statement of Facts for the Tribunal's consideration.
- For the record, Mr. Ormond provided the Agreed Statement of Facts. The Tribunal was provided a chance to review the Statement and, subsequently, Mr. Ormond provided an overview of same.

For the record, Mr. Ormond submitted an Agreed Statement of Facts. The Agreed Statement of Facts, as amended, reads as follows:

AGREED STATEMENT OF FACTS

Gown & Gavel Restaurant Inc., Eating Establishment Licence No. 09-275609; 1389715 Ontario Inc., o/a Elixir Night Club and Lounge, Eating Establishment Licences No. 10-278148 and 10-278145; and, Rok Bar Hamilton Inc., Eating Establishment Licence 10-278405

1. That Gown & Gavel Restaurant Inc. holds an Eating Establishment Licence 09-275609 with an expiry date of September 19, 2011, and operates an establishment known as the Gown and Gavel, located at 24 Hess Street South, Hamilton, Ontario.
2. That 1389715 Ontario Inc. holds an Eating Establishment Licence 10-278148 with an expiry date of March 27, 2011, and operates an establishment known as the Elixir Night Club and Lounge, located at 18 Hess Street South, Hamilton, Ontario.
3. That 1389715 Ontario Inc. holds an Eating Establishment Licence 10-278145 with an expiry date of March 27, 2011, and operates an establishment known as the Elixir Night Club and Lounge, located at 20 Hess Street South, Hamilton, Ontario.
4. That Rok Bar Hamilton Inc. holds an Eating Establishment Licence 10-278405 with an expiry date of May 28, 2011, and operated an establishment known as Rok Bar, located at 15 Hess Street South, Hamilton, Ontario.
5. That Diana Vranich is the sole Director of 1389715 Ontario Inc.
6. That Diana Vranich is the sole Director of Rok Bar Hamilton Inc.
7. That Diana Vranich is the sole Director of Gown & Gavel Restaurant Inc.

Overcrowding Incidents:

8. On November 14, 2010, as part of a Multi Agency Task Force (MATF) inspection, Rok Bar was found to be over capacity on the main floor by approximately 100 people.
9. On February 20, 2010, an inspection of the Rok Bar premises by Hamilton Police Services (HPS) and the Alcohol & Gaming Commission of Ontario (AGCO) found the main floor to be over capacity by 88 people and the patio to be over capacity by 15 people.

10. On May 22, 2010, an inspection of Rok Bar by HPS found the main floor to be over capacity by 21 people.
11. The AGCO issued a Decision and Suspension for overcrowding February 20, 2010 and May 22, 2010.

Over Service Incidents:

12. On October 18, 2010, HPS observed an apparently intoxicated female being carried out of Rok Bar to a cab by "Big Gill", Rok Bar's Manager of Security. HPS intervened and the female was transported to hospital by Hamilton Emergency Medical Services (EMS).

Assaults/ Disturbances:

13. Denis Vranich, the brother of Diana Vranich, was charged with sexually assaulting an employee of Elixir Night Club and Lounge on July 20, 2006, and pled guilty to those charges on September 26, 2007.
14. AGCO Liquor Licence conditions subsequently require that Denis Vranich have no involvement in the business operations of any establishments owned and operated by Diana Vranich; including as an officer, director, shareholder or owner, and is to have no beneficial or financial interest in the businesses or ongoing operations of the licences.
15. On November 24, 2009, HPS responded to an assault complaint. The incident was alleged to have occurred on November 22, 2009 at the Rok Bar establishment. The allegation was that a drink was mixed without alcohol and a patron refused to pay. After an argument, security staff detained the patrons, but soon after let them leave. After review of the electronic systems in place for delivery of drinks, no charges were laid.
16. On January 29, 2010, HPS responded to a complaint of assault behind at the Rok Bar establishment. A patron who had jumped on the stage during a punk rock event was physically removed by security staff. In the back lot behind the bar, the patron was approached by at least three males who beat him. Security was unable to assist with additional information and, since the surveillance system was not working, was unable to produce relevant images. Security was unable to identify who exited the bar at the same time as the patron was evicted.
17. On February 18, 2010, HPS attended Rok Bar in respect to a disturbance report. Security staff had been struck in head by a bottle when attempting to break up a fight on the dance floor.

18. On February 18, 2010, HPS, while conducting a check at the Rok Bar establishment, arrested a male patron for possession of marijuana.
19. On April 17, 2010, HPS responded to a complaint at the Rok Bar establishment and made an arrest in connection to an assault of a Rok Bar employee. The individual arrested is known to police as having gang affiliation.
20. On May 13, 2010, HPS responded to a disturbance call at the Rok Bar establishment. A second fight broke out and parties were removed.
21. On August 9, 2010, HPS responded to an assault outside the Rok Bar involving a group of males that were leaving the Rok Bar establishment.
22. On September 8, 2011, during a joint force inspection in Hess Village, Rok Bar security expelled two patrons who had fought in the bar. The patrons then began to fight again on the street in front of the bar.

Other

23. Numerous complaints were received in 2010 and 2011, respecting bar patrons throwing or dropping objects and spitting from the Rok Bar rooftop patio onto the adjoining businesses.
24. The Licence for the Elixir Night Club and Lounge had expired on March 27, 2011 and a renewal application was not submitted until May 27, 2011.
25. The Licence for Rok Bar had expired on May 28, 2011 and a renewal application was not submitted until July 28, 2011.

Decisions

26. By a decision, dated January 19, 2011, the AGCO suspended Rok Bar Hamilton Inc.'s Liquor Licence for 9 days, due to the overcrowding occurrences of February 20 and May 22, 2010.
27. The Superior Court of Justice Judgment, dated September 16, 2010, found Denis Vranich and Elixir Night Club and Lounge (1389715 Ontario Inc.) liable for damages in connection to a 2006 sexual assault of an employee.
28. On October 28, 2011, 1389715 Ontario Inc. o/a Elixir Night Club and Lounge plead guilty and was convicted of a charge of allowing the total

number of persons occupying the first floor level to exceed the maximum occupant load allowed for the intended use, contrary to Section 2.7.1.4.(1) of the Ontario Fire Code, O. Reg. 213/07.

29. On October 28, 2011, Rok Bar Hamilton Inc. plead guilty and was convicted of a charge of allowing the total number of persons occupying the first floor level to exceed the maximum occupant load allowed for the intended use, contrary to Section 2.7.1.4.(1) of the Ontario Fire Code, O. Reg. 213/07.

Gown & Gavel Restaurant Inc.:

30. The Gown & Gavel Restaurant has not had an overcrowding complaints or over service incidents.
31. The Gown & Gavel Restaurant and Patio location is essentially one floor and affords easy access to the exits.

JOINT SUBMISSIONS

32. That the facts, as outlined in the Agreed Statement of Facts, establish that in accordance with Section 12(1)(c) of the Licensing By-law 07-170, the business operating as Elixir Night Club and Lounge, by 1389715 Ontario Inc., put public safety at risk by allowing the total number of persons occupying the premises to exceed the maximum allowed occupant load under the Ontario Fire Code. The business also put public safety at risk by allowing and/or failing to prevent an assault involving Denis Vranich on an employee, for which Denis Vranich was criminally convicted in connection with which the business was found civilly liable.
33. That the facts, as outlined in the Agreed Statement of Facts, establish that in accordance with Section 12(1)(d) of the Licensing By-law 07-170, the business operating as Elixir Night Club and Lounge, by 1389715 Ontario Inc., did not carry on in compliance with the law or with honesty or integrity by not complying with the provisions of the Ontario Fire Code, O.Reg. 213/07 and the Liquor Licence Act O.Reg 719/90 s.43 and ss.45(1), and by allowing and/or failing to take steps to prevent an assault involving Denis Vranich on an employee.
34. That the facts, as outlined in the Agreed Statement of Facts, establish that in accordance with Sections 12(1)(c) and 12(1)(d) of the Licensing By-law 07-170, the business operating as Rok Bar, by Rok Bar Hamilton Inc., put public safety at risk and did not carry on in compliance with the law or with honesty or integrity allowing the total number of persons occupying the

premises to exceed the maximum allowed occupant load under the Ontario Fire Code.

35. On October 17, 2011, the property municipally known as 15 Hess St South, Hamilton, Ontario where Rok Bar operates was sold to Raghunan Development Group Inc. Rok Bar Hamilton Inc., under the directorship of Diana Vranich, will no longer be involved in the operation of Rok Bar, and it is the understanding of Diana Vranich that the purchaser is taking steps to transfer the liquor licence and to obtain a new business licence for the establishment. **Accordingly, the appeal for Rok Bar Hamilton Inc. was withdrawn.**

Joint Submission respecting the Disposition and Conditions:

36. That the Gown & Gavel Restaurant Inc.'s Eating Establishment Licence, for the establishment known as the Gown & Gavel Restaurant, located at 24 Hess Street South, Hamilton, Ontario be issued subject to the following condition:

Provided Licensee satisfies the requirement for the Encroachment Agreement with the City of Hamilton and the Agreement is registered on title by November 30, 2011.

However, should delays result from actions on the part of the City of Hamilton, a reasonable extension will be provided by the Issuer of Licences.

37. That 1389715 Ontario Inc.'s Eating Establishment Licences for an establishment known as the Elixir Night Club and Lounge, located at 18 and 20 Hess Street South, Hamilton, Ontario, be issued subject to the following conditions:
- (a) That the Licensee notify the Issuer of Licences of all All-Ages events 15 days in advance of the event being held;
 - (b) That the Licensee hire, for all All-Ages events, two Special Duty Hamilton Police Services Constables, unless the Hamilton Police Services recommend otherwise;
 - (c) That the Constables be hired for the hours of 11:00 p.m. to 2:00 a.m., unless Hamilton Police Services recommend otherwise;
 - (d) That the Licensee implement a Dress Code requiring all clothing indicating gang colours or indicia of gang affiliation to be removed.

If the patron does not remove the gang indicia, they be asked to leave the premises;

- (e) The Licensee agrees to post signs at the entrance of the establishment indicating that there is a dress code and that no clothing, which would indicate gang colour or gang affiliation is allowed;
- (f) The Licensee agrees to a suspension of its Eating Establishment Licences for a period of three (3) consecutive days to be served from Friday 11:00 a.m. to the following Sunday 2:00 a.m. on a dates to be chosen by the Issuer of Licences between January to March 2012;
- (g) Provided that the Licensee satisfies all necessary requirements as set out in the Licensing By-law 01-170, as amended;
- (h) Provided that the Licensee satisfies the requirement for the Encroachment Agreements with the City of Hamilton and that the Agreement is registered on title by November 30, 2011. However, should delays result from actions on the part of the City of Hamilton, a reasonable extension will be provided by the Issuer of Licences; and,
- (i) That all future invoices issued to 1389715 Ontario Inc., operating as the Elixir Night Club and Lounge, located at 18 Hess Street South and 20 Hess Street South, Hamilton, Ontario, from Hamilton Police Services for Special Duty Officers, be paid in full within forty-five (45) days from the date of invoice.

Mr. Kranjc provided his Opening Statement. Mr. Kranjc's comments included, but were not limited to, the following:

- Mr. Kranjc confirmed that he, on behalf of his client, was in agreement with Agreed Statement of Facts.

In closing, Mr. Kranjc's comments included, but were not limited to, the following:

- The Encroachment Agreement has been signed for the Gown & Gavel Restaurant and it has been registered on title.
- He believes the Agreement for the Elixir Night Club and Lounge has been signed and is awaiting the City's approval. Once approved, it will be listed on title.

- Mr. Kranjc was in agreement to the amendment that stated “that should delays result from actions on the part of the City of Hamilton, a reasonable extension will be provided by the Issuer of Licences.”

In closing, Mr. Ormond’s comments included, but were not limited to, the following:

- He believes that the site plans have been approved and the documents are now in the hands of the Appellant.
- The Encroachment Agreements had expired in 2009 and had not been updated. The City has and will continue to work diligently with Appellant to put the Agreements into place.

The Hamilton Licensing Tribunal had moved into Closed Session, at 10:15 a.m., to deliberate upon the submissions of the parties, respecting the renewal applications for the Eating Establishment Licences (Food Premises) for the Elixir Night Club and Lounge, located at 18 and 20 Hess Street South, Hamilton, Ontario (Licence 10 278148 1J and Licence 10 278145 1J); and, the Gown & Gavel Restaurant, located at 24 Hess Street South, Hamilton, Ontario (Licence 09 275609 1J).

The Tribunal reconvened in Open Session at 10:22 a.m.

Having heard the submissions of the parties, the Tribunal provided their recommendations, which are shown as Items 1 and 2 of the Hamilton Licensing Tribunal Report 11-006.

(e) APPEAL HEARINGS: Michael Stanton, Scarfone Hawkins, LLP, representing Shelley and Derek Bryant of Hamilton Home Improvements, respecting the Refusal of the Renewal Applications for a Trade Licence - Master Building Repair and a Trade Licence – Contractor Building Repair (Items 4.4 and 4.5)

As the matters respecting the renewal applications for Shelley Bryant’s Trade Licence – Master Building Repair and Derek Bryant’s Trade Licence – Contractor Building Repair are both for Hamilton Home Improvements, staff requested that the matters be heard together.

As the matters respecting the renewal applications for Shelley Bryant’s Trade Licence – Master Building Repair and Derek Bryant’s Trade Licence – Contractor Building Repair are both for Hamilton Home Improvements, the matters were heard together.

On August 11, 2011 and September 26, 2011, the Director of Municipal Law Enforcement sent correspondence to Shelley Bryant and Derek Bryant, of Hamilton Home Improvements, advising that the renewal applications for Ms. Bryant's Trade Licence – Master Building Repair and Mr. Bryant's Trade Licence – Contractor Building Repair were refused and licences would not be issued, based on the following grounds:

That in accordance with Section 12(1)(c) of the City of Hamilton Licensing By-Law 07-170, as amended, the business would put public safety at risk.

Namely:

1. Work was conducted by an unqualified contractor at 154 Locke Street North, Hamilton, Ontario:
 - (a) Plumbing was completed by an unqualified contractor;
 - (b) There was no building permit; and,
 - (c) Electrical work was completed by an unqualified contractor.

2. Work was conducted by an unqualified contractor at 51 West 1st Street, Hamilton, Ontario:
 - (a) Installation of weeping tiles was done without a building permit; and,
 - (b) Installation of weeping tiles was done by an unqualified contractor.

And in accordance with Section 12(1)(d) of the City of Hamilton Licensing By-Law 07-170, as amended, the conduct of the licence holder, partners, employees, or agents affords reasonable grounds for belief that the business is not or will not be carried on in compliance with the law or with honesty or integrity.

Namely:

At both 154 Locke Street North, Hamilton, Ontario and 51 West 1st Street, Hamilton, Ontario:

1. The contract does not comply with the Consumer Protection Act:
 - (a) Lump sum pricing;
 - (b) No place of business; and,
 - (c) No cancellation clause.

2. The contractor was not appropriately licensed to perform plumbing and electrical upgrades.
3. The contractor failed to obtain the necessary permits.
4. There was gross overcharging for work performed.

For the record, Mr. Ormond submitted the Agreed Statement of Facts. The Agreed Statement of Facts, as amended, reads as follows:

AGREED STATEMENT OF FACTS

Hamilton Home Improvements Derek Bryant – Contractor Building Repair Licence No. 10-274642 and Shelley Bryant Master Building Repair Licence No. 10-274644

1. That Hamilton Home Improvements, a sole proprietorship, is a licensed Contractor, Building Repair Licence number 10-274643, with an expiry date of June 14, 2011. The sole proprietor is Derek Bryant.
2. That the Master - Building Repair Licence for Hamilton Home Improvements is Shelley Bryant. Licence number 10-274644 with an expiry date of June 14, 2011.
3. That Derek Bryant and Shelley Bryant operate the business together out of 16 Myrtle Avenue, Hamilton, Ontario.
4. On or about May 20, 2010, Hamilton Home Improvements entered into a contract with [REDACTED], 51 West 1st Street, Hamilton, Ontario; Contract number 10020502.
5. The form used for the Contract did not meet the requirements of the Consumer Protection Act, 2002 s. 42 and O.Reg. 17/05 s. 34 and s 35; and, specifically, did not comply with the following requirements:
 - (i) Current name and contact information are to be set out in the contract;
 - (ii) A fair and accurate description of the goods and services is to be supplied to the consumer, including technical requirements and performance expectations detailed, as required;

- (iii) An itemized list of the prices at which the goods and services are to be supplied to the customer;
 - (iv) Date or dates of commencement and completion of work; and,
 - (v) Consumer Information Statement, in accordance with the Consumer Protection Act, 2002.
6. That a component of the Contract was to “install interior weeper at the bottom of the stairs”. As this work was not completed, there was no required building permit applied for or issued.
7. Derek Bryant indicated that a permit would have been obtained and a qualified and licensed Drain Layer would have been sub-contracted.
8. On or about August 24, 2010, the homeowner advised in writing to Shelley Bryant that the contract was cancelled. The homeowner has also filed a complaint with the Ministry of Government and Consumer Services, Consumer Protection Branch relating, in part, to poor workmanship and unprofessional conduct.
9. On or about July 5, 2010, Hamilton Home Improvements entered into a contract with [REDACTED], 154 Locke Street North, Hamilton, Ontario; Contract number 10020007.
10. The form used for the Contract did not meet the requirements of the Consumer Protection Act, 2002 s. 42 and O.Reg. 17/05 s. 34 and s 35; and, specifically, did not comply with the following requirements:
- (i) Current name and contact information are to be set out in the contract;
 - (ii) A fair and accurate description of the goods and services is to be supplied to the consumer, including technical requirements and performance expectations detailed, as required;
 - (iii) An itemized list of the prices at which the goods and services are to be supplied to the customer;
 - (iv) Date or dates of commencement and completion of work; and,

- (v) Consumer Information Statement, in accordance with the Consumer Protection Act, 2002.
11. That a component of the contract was to “gut and install a new bathroom upstairs” at the premises. This work was completed by the Contractor without being duly qualified and without the required permits:
- (i) Electrical upgrades were performed without an Electrical Safety Association (“ESA”) permit;
 - (ii) Electrical work was completed by Derek Bryant or Shelley Bryant who are not licensed electricians. The ESA has subsequently inspected the work and it was found to meet minimum standards. The Licensee paid the ESA inspection fee; and,
 - (iii) Plumbing work completed during the renovation required a building permit and a qualified plumber. Derek Bryant and Shelley Bryant are not qualified or licensed plumbers. A building permit was not applied for nor issued for this work involving the installation of a new bathroom.
12. The homeowner disputed additional charges for work completed by Hamilton Home Improvements that were not contemplated within the initial written agreement. Hamilton Home Improvements has waived its claim for additional charges against the homeowner.
13. On or about May 5, 2011, the homeowner filed a complaint with the Ministry of Government and Consumer Services, Consumer Protection Branch.
14. That the above facts apply to both the Contractor – Building Repair Licence for Hamilton Home Improvements, operated by Derek Bryant; and, the Master Building Repair Licence, issued to Shelley Bryant and that the facts are jointly submitted.
15. On November 9, 2011, Hamilton Home Improvements Inc. through its Directors, Derek Bryant and Shelley Bryant, filed an application for the Contractor – Building Repair Licence in the name of the corporate entity. Derek Bryant no longer wishes to operate the Hamilton Home Improvements business as a sole proprietorship and instead requests for the Contractor – Building Repair Licence to be issued in the name of the corporation, Hamilton Home Improvements Inc.

JOINT SUBMISSION:

1. That the facts, as outlined in the Agreed Statement of Facts, are accurate and establish that, in accordance with Section 12(1)(c) of the Licensing By-law 07-170, the Licensees put public safety at risk by not obtaining the required permits for the work performed and by completing work that they are not duly qualified to perform.
2. That the facts, as outlined in the Agreed Statement of Facts, are accurate and establish that in accordance with Section 12(1)(d) of the Licensing By-law 07-170, the Licensees did not carry on the business in compliance with the law or with honesty or integrity by issuing contracts that did not comply with the requirements of the Consumer Protection Act, 2002, by not obtaining the required permits for the work and by completing work that they were not duly qualified to perform.
3. That the Master – Building Repair Licence be issued to Shelley Bryant, and that the Contractor – Building Repair licence be issued to Hamilton Home Improvements Inc. subject to the following conditions; provided that the applicant satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended:
 - (i) All contracts are to comply with the requirements of the Consumer Protection Act, 2002;
 - (ii) All extra work or modification to existing contracts be pre-authorized, be the client, in writing;
 - (iii) That on a monthly basis, by either the 1st of the month or within 7 days of signing a contract (whichever is later), Hamilton Home Improvements Inc. shall provide to the Building Services Division, Manager of Building Services, copies of all contracts entered into by the company in the preceding month. The client personal information and the agreed price may be redacted from the contracts forwarded to the City. This requirement expires one year from date of issuance;
 - (iv) That all contracts identify items that require or may require a permit or subcontractor;
 - (v) That Hamilton Home Improvements Inc. ensure all required permits are obtained, prior to commencing work; and,
 - (vi) That Derek Bryant complete the Building Repair Trade exam by December 31, 2012.

Mr. Jeff Evans, Building Inspector, City of Hamilton, was solemnly Affirmed, prior to answering any questions. Mr. Evans' comments included, but were not limited to, the following:

- There was no fee charged for the inspection, as there was no permit issued for the work. The work was completed, prior to the inspection being done.
- A fee would have been included in the permit application fee, had the appellant submitted an application.
- The minimum fee for a building permit is \$204. Additional fees are determined, based on the value of the construction.
- It is not traditional for an inspection to be completed after the work is complete; however, after a certain period of time, we don't ask because we don't know when the construction has taken place.

The witness was excused.

Mr. Derek Bryant was sworn under Oath, prior to answering any questions. Mr. Bryant's comments included, but were not limited to, the following:

- When asked if the claim against the client was withdrawn before or after the client's complaint, Mr. Bryant advised that he was unsure.
- When first asked if all the work for the contract was complete, Mr. Bryant responded yes. However, when it was noted that the client had asked Hamilton Home Improvements to cease work – Mr. Bryant stated that he was unsure (if the work was completed).
- When asked about the address of 550 Upper Gage, Suite 2, Hamilton being listed for Hamilton Home Improvements, Mr. Bryant stated that it was a previous mailing address.

The Appellant was excused.

Mr. Stanton's commented that he was agreeable to the joint submission of the Agreed Statement of Facts.

The Hamilton Licensing Tribunal had moved into Closed Session, at 11:03 a.m., to deliberate upon the submissions of the parties, respecting the renewal applications, submitted by Shelley Bryant for a Trade Licence - Master Building Repair and Derek Bryant for a Trade Licence – Contractor Building Repair (Hamilton Home Improvements Inc.).

The Tribunal reconvened in Open Session at 11:20 a.m.

Having heard the submissions of the parties, the Tribunal provided their recommendations, which are shown as Items 3 and 4 of the Hamilton Licensing Tribunal Report 11-006.

(f) PRIVATE & CONFIDENTIAL (Item 5)

(i) Closed Session Minutes – July 6, 2011 (Item 5.1)

The Closed Session Minutes of the July 6, 2011 meeting of the Hamilton Licensing Tribunal were approved, as presented.

(g) ADJOURNMENT (Item 6)

There being no further business, the Hamilton Licensing Tribunal adjourned at 11:27 a.m.

Respectfully submitted,

Councillor T. Whitehead, Chair
Hamilton Licensing Tribunal

Stephanie Paparella
Legislative Assistant,
Hamilton Licensing Tribunal
November 10, 2011