



Hamilton

**REPORT 11-004
HAMILTON LICENSING TRIBUNAL**

9:30 a.m.

Thursday, May 19, 2011

Rooms 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 - Illness

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

Other Attendees: Dean Paquette, Paquette & Associates, Legal Counsel (Item 4.1)
Armando Fazzari, Zucca Bar Inc., Appellant (Item 4.1)
Ronald Faria, Zucca Bar Inc., Appellant (Item 4.1)
R. Allan Dolmer, Appellant (Item 4.2)
Robert J. Hooper, Hooper Law Offices, Legal Counsel (Item 4.3)
Simon Ruzzier, Appellant (Item 4.3)
Amadeus Blazys, Appellant (Item 4.4)

**THE HAMILTON LICENSING TRIBUNAL PRESENTS REPORT 11-004 AND
RESPECTFULLY RECOMMENDS:**

- 1. CONTINUATION OF APPEAL HEARING: Respecting the Application for an Eating Establishment Licence for Zucca Bar Inc. operating as the Zucca Bar, located at 299 James Street North, Hamilton, Ontario (Mr. Armando Fazarri and Mr. Ron Faria) (Item 4.1)**

That the application for an Eating Establishment Restaurant Licence for Zucca Bar Inc. (Armando Fazzari and Ronald Faria) operating as the Zucca Bar, located at 299 James Street North, Hamilton, Ontario not be accepted and a licence be denied for the following reasons:

- (a) 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;
- (b) That, in accordance with Section 12(1)(d) of the City of Hamilton Licensing By-Law 07-170, as amended, the business is not or will not be carried on in compliance with the law or the conduct of the person, in the case of a partnership, the conduct of its partners, employees or agents or in the case of a corporation, the conduct of its officers, directors, employees or agents affords reasonable grounds for belief that they person will not carry on or engage in this business in accordance with the law or with honesty or integrity;
- (c) That, in accordance with Section 12(2), of the City of Hamilton Licensing By-law, as amended, there is indication of non-compliance with this By-law or other applicable law, or that there will be such non-compliance if the business is allowed to operate;
- (d) That, as there were conflicting statements, it is the Hamilton Licensing Tribunal's belief that the testimony provided by Mr. Armando Fazzari and Mr. Ronald Faria, are found to be self serving, without remorse and lack credibility and honesty;
- (e) That the negative behaviour and actions toward Police Officers and Officers of the Alcohol & Gaming Commission of Ontario when attending at the establishment, is an improper manner in which to conduct business by a Licensee; and,
- (f) The lack of awareness and responsibility taken by the Directors with regard to the day-to-day illegal activities that were occurring at the establishment; and, the behaviour and activities of patrons while at the establishment.

2. APPEAL HEARING: Respecting the Application for a Refreshment Vehicle Licence for Top Dog 5 (Mr. R. Allan Dolmer) (Item 4.2)

That the application for a Refreshment Vehicle Licence for Top Dog 5, submitted by R. Allan Dolmer, be accepted and a licence be issued without conditions, provided that Mr. Dolmer satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended.

3. APPEAL HEARING: Respecting the Renewal Application for an Eating Establishment Restaurant Licence for 2004431 Ontario Limited, operating as West End Restaurant and Sports Bar, located at 151 Emerson Street, Hamilton, Ontario (Mr. Simon Ruzzier) (Item 4.3)

That the renewal application for an Eating Establishment Restaurant Licence for 2004431 Ontario Limited, operating as West End Restaurant and Sports Bar, located at 151 Emerson Street, Hamilton, Ontario, submitted by Simon Ruzzier, be accepted and a licence be issued provided that Mr. Ruzzier satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended, contingent upon the following condition(s):

- (a) That 2004431 Ontario Limited, operating as West End Restaurant and Sports Bar, immediately implement a patron count system to ensure capacities are not exceeded;
- (b) That 2004431 Ontario Limited, operating as West End Restaurant and Sports Bar, use licensed security personnel on Friday's from 8:00pm until Saturday's at 3:00 a.m. and Saturday evenings from 8:00 p.m. until Sunday's at 3:00 a.m.;
- (c) That 2004431 Ontario Limited, operating as West End Restaurant and Sports Bar, use licensed security personnel during the full week of September for McMaster Frosh/Welcome Week and Homecoming events, Super Bowl, Grey Cup, St Patrick's Day and Pub Crawls as well as during all other events that the establishment hosts;
- (d) That, best efforts must be made by the Owner/Operator of 2004431 Ontario Limited, operating as West End Restaurant and Sports Bar, to notify the Issuer of Licences of any events or activities occurring at West End Restaurant and Sports Bar, located at 151 Emerson Street, Hamilton, Ontario;
- (e) That the patio for 2004431 Ontario Limited, operating as West End Restaurant and Sports Bar, located at 151 Emerson Street, Hamilton, Ontario, be closed at 10:00 p.m.
- (f) That Mr. Ruzzier request of the Alcohol & Gaming Commission of Ontario that the Liquor Licence for 2004431 Ontario Limited, operating as West End Restaurant and Sports Bar, located at 151 Emerson Street, Hamilton, Ontario, be amended to indicate the patio closing time of 10:00 p.m.
- (g) That the Owner/Operator of 2004431 Ontario Limited, operating as West End Restaurant and Sports Bar, immediately install the glass partitions onto the south side of the patio to assist in the mitigation of the noise issues;

- (h) That staff be directed to increase random inspections of West End Restaurant and Sports Bar, located at 151 Emerson Street, Hamilton, Ontario for a one year period; and,
- (i) That, after one (1) year, the Licensee may come forward to request modifications to the conditions; however, those conditions will continue and remain in place until such time as the Licensee requests modifications to those conditions and those modifications have been approved.

FOR THE INFORMATION OF THE TRIBUNAL:

(a) CHANGES TO THE AGENDA (Item 1)

There were no changes to the agenda, but the Tribunal was advised that there was added correspondence to Item 4.4 – Mr. Amadeus Blazys has submitted a request for adjournment, respecting the Show Cause Hearing regarding his Refreshment Vehicle Licence for Mister Twister Inc.

The May 6, 2011 Agenda for the Hamilton Licensing Tribunal was 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) May 6, 2011

The Minutes of the May 6, 2011 meeting of the Hamilton Licensing Tribunal be approved, as presented.

CARRIED

(d) APPEAL HEARING: Respecting the Application for an Eating Establishment Licence for Zucca Bar Inc., operating as the Zucca Bar, located at 299 James Street North, Hamilton, Ontario (Armando Fazzari) (Item 4.1)

May 6, 2011:

On January 18, 2011, the Director of Municipal Law Enforcement, sent correspondence to Armando Fazzari advising that, in accordance with the City of Hamilton Licensing By-Law 07-170, as amended, the application for the Eating Establishment Licence for Zucca Bar, located at 299 James St. North, Hamilton,

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Ontario was refused and a licence will 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; 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:

- (a) On April 3, 2006, a Hamilton Police Services Occurrence report was filed on Armando Fazzari, at Zucca Bar, respecting the removal of baseball bat from the premises, which was taped under the bar in plain view.
- (b) On August 18, 2007, a Hamilton Police Services Occurrence report was filed on a patron of Zucca Bar, Assault – With a Weapon/Cause Bodily Harm.
- (c) On March 29, 2008, a Hamilton Police Services Occurrence report was filed on a patron of Zucca Bar, Disputes/Disturbances.
- (d) On May 16, 2008, a Hamilton Police Services Occurrence report was filed on a patron of Zucca Bar, Bail Violations – Fail to Comply Undertaking.
- (e) On June 12, 2008, a Hamilton Police Services Occurrence report was filed on a patron of Zucca Bar, Street Disturbance.
- (f) On July 11, 2008, a Hamilton Police Services Occurrence was filed on Luigi Fazzari, Carlo Fazzari, and a patron of Zucca Bar, Disputes/Disturbances.
- (g) On October 17, 2008, a Hamilton Police Services Occurrence report was filed on a patron of Zucca Bar, Liquor License Act.
- (h) On November 18, 2008, a Hamilton Police Services Occurrence report was filed on a patron of Zucca Bar, Causing a Disturbance.
- (i) On April 25, 2009, a Hamilton Police Services Occurrence report was filed on an employee / agent of Zucca Bar, Liquor Licence Act.
- (j) On October 1, 2009, a Hamilton Police Services Occurrence report was filed on an owner / patron of Zucca Bar, Assault – Other
- (k) Carlo Fazzari has been charged under the Controlled Drugs and Substances Act with:

- Possession for the Purpose – Schedule 1 – Cocaine
 - Possession Schedule II Marihuana – under 30 grams
 - Trafficking Schedule I – Cocaine
 - Possession for the Purpose – Schedule II under 3 kg
 - Production Schedule II (Marihuana)
- (l) Carlo Fazzari was charged under the Criminal Code with Proceeds of Crime Over \$5,000.
- (m) On or about November 27 – 28, 2009, Carlo Fazzari was charged under the Criminal Code with:
- Possession of Prohibited or Restricted Firearm/Ammunition
 - Careless Use, Carry, Transport, Storage of Firearm, Weapon, Ammunition
 - Possession of Prohibited Weapon
 - Possession of Weapon for Dangerous Purpose
 - Possession of Firearm, etc. while Prohibited
- (n) Ronald Faria was charged under the Controlled Drugs and Substances Act with Possession for the Purpose Schedule 1 – Cocaine.
- (o) On or about November 27 – 28, 2009, Ronald Faria was charged under the Criminal Code with:
- Possession of Prohibited or Restricted Firearm/Ammunition
 - Careless Use, Carry, Transport, Storage of Firearm, Weapon, Ammunition
 - Possession of Prohibited Weapon
 - Possession of Weapon for Dangerous Purpose
- (p) Armando Fazzari was charged under the Controlled Drugs and Substances Act with Possession for the Purpose Schedule 1 – Cocaine.
- (q) On or about November 27 – 28, 2009, Armando Fazzari was charged under the Criminal Code with:
- Careless Use, Carry, Transport, Storage of Firearm, Weapon, Ammunition
 - Possession of Weapon for Dangerous Purpose
 - Possession of Prohibited Weapon
 - Possession of Prohibited or Restricted Firearm/Ammunition

- (r) On April 14, 2010, a complaint from the public was received expressing concern with the risk to public safety should the establishment be licensed; and,

In accordance with Section 12(1)(e) and Section 12(1)(f) of the City of Hamilton Licensing By-law 07-170, as amended, the Issuer of Licenses shall refuse to issue the licence where any provincial licence, including a permit, an approval, a registration or any other type of permission required for the applicant to carry on or engage in their business has been revoked, suspended, or has expired without renewal, and where the applicant has been prohibited from carrying on or engaging in their business under provincial authority.

Namely:

- (a) Alcohol and Gaming Commission of Ontario Decision of March 6, 2009, on Zucca Bar Inc. – Licensee contravened subsection 45(2) of Liquor Licence Act and subsections 34(1) and 45(1) of Ontario Regulation 719/90.
- (b) Alcohol and Gaming Commission of Ontario Decision on Sanction of Zucca Bar Inc. Liquor Sales Licence 809906, on April 3, 2009, Suspension of Liquor Sales Licence for a period of ten (10) days.
- (c) Alcohol and Gaming Commission of Ontario Order, April 17, 2009, on Zucca Bar Inc. Liquor Sales Licence 809906 – Suspended for ten (10) days to commence July 4, 2009.
- (d) Alcohol and Gaming Commission of Ontario Order, December 22, 2009, accepted the voluntary surrender of Zucca Bar Inc. Liquor Sales Licence 809906.

And in accordance with Section 6(1)(d) of the City of Hamilton Licensing By-law 07-170, as amended, where the application is for renewal of a licence, the applicant shall either supply completed and executed declarations to the effect that there is no change to the information as supplied in the previous application, or shall provide either a new application or a written and signed list of the changes in the required information from the previous application.

Namely:

- (a) On or about November 2004, there was a change in ownership of Zucca Bar from a Partnership to a Corporation. The City of Hamilton Licensing Authority was not notified.

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

- An application to renew the Establishment Restaurant Licence for Zucca Bar was received on September 27, 2010. Staff reviewed the licence application at that time and, due to the history of the establishment, determined continued operation of the establishment would put public safety at risk. Therefore, the renewal application was not accepted.

The applicant was provided the opportunity to request an appeal of staff's decision before the Hamilton Licensing Tribunal, which is why we are before the Tribunal today.

Mr. Dean Paquette, Legal Counsel for the Appellants, provided his Opening Statement. Mr. Paquette's comments included, but were not limited to, the following:

- Police were involved with a significant search warrant, and arrests were made at the time. Carlo Fazzari was charged for the sale of narcotics, including the sale of narcotics at the Zucca Bar. Carlo pleaded guilty to the possession and sale of narcotics as well as the possession of a firearm and has since been incarcerated.
- The current application is from Armando Fazzari, and Ronald Faria; Carlo would have no association with Zucca Bar in the future.
- The requested search warrants for Armando Fazzari's home and Ron Faria's home were not carried out, the narcotics charges against both parties have been stayed by the courts and the parties were released.
- There is only marginal evidence of Detective Constable Ross' undercover narcotics transactions where he states that both Armando and Ron were in the vicinity of the transactions, but there is no evidence that either had any part or knowledge of the transactions.
- Carlos would have no part in the business from this point forward, and control of the access/egress to the property would need to be established so individuals could not leave property with alcohol.
- The issue before you today is to determine whether or not these two gentlemen would be honest. They have a lot of money invested, as this is their only livelihood.
- At the end of the day, his respectful submission was that they would conduct their business properly.

For the record, Mr. Ormond submitted the following Exhibits:

1. Copy of Establishment Licence, Restaurant Establishment – 01 155485 1J, Date of Expiry May 22, 2009

- This licence was issued on May 22, 2008 and expired on May 22, 2009
2. Copy of Establishment Licence, Restaurant Establishment – 02 155485 1J, Date of Expiry May 22, 2010
- This licence was issued on October 15, 2009 and expired on May 22, 2010; illustrating that the establishment was operating without a licence between May 23, 2009 to October 15, 2009. The applicant paid an additional \$53 late/administration fee at that time.
3. Zucca Bar Inc. Corporate Profile, Incorporation Date January 28, 2003
- When the initial licence was issued in 2003, which was ongoing and in effect until May 2008, the City had the business listed as a General Partnership.
 - The City determined, while doing an incorporation search, that General Partnership for Zucca Bar had been changed to a Corporation; however, the City was never notified of this change. The incorporation document illustrates the incorporation date to be January 28, 2003 and the three Directors to be Ronnie Faria, Armando Junior Fazzari and Carlo Fazzari.
4. Hamilton Police Service Occurrence Report, dated February 6, 2005
- At approximately 0340 hours the witness heard a window smash outside on James Street North, Hamilton. He looked outside and observed a person 5'5", thin build, wearing a blue jacket with a hood over their head. The witness could not see if the person was male or female, or their race. The witness stated that he observed this person throw something, which was on fire, through the hole in the window. He said the thing being thrown left a trail of fire as the suspect wound up to throw it making it obvious the item contained a flammable liquid. He then stated that the suspect ran east down Barton Street East.
 - The Officer arrived on the scene and observed a white plastic shopping bag lying on the sidewalk in front of the hole in the window. A black glove was also found beside the bag. Located in the bag were yellow rags, which had a strong odour of gasoline emanating from them. The bag of rags and glove were moved out of the way while the Fire Department extinguished the fire.

- The Molotov cocktail mainly caused smoke damage to the inside of the restaurant. The bottle was located against the far west wall of the bar, on the floor.
- The Owner of the bar, Armando Junior Fazzari, arrived on scene and returned in the morning to assist with the investigation. The front of the bar was taped off and the scene was held for identification and fire investigators. The bag of rags was left at the scene while the glove was placed in Property.
1.

Mr. Paquette stated that it appears his clients, the two (2) applicants, are victims of crime for which no-one was arrested.

5. Hamilton Police Service Occurrence Report, dated February 10, 2005

- On Saturday, February 5, 2005, members of the Hamilton Police Vice Unit and members of the Alcohol & Gaming Commission conducted a sweep of area licensed premises, which were identified for inspection.
- At 0007 hours on February 6, 2005, Detective Khris Morine approached the front door of Zucca Bar, located at 299 James Street North, Hamilton. The front door was locked, however, through the mirrored windows human movement could be seen within the premises. The front door was unlocked and a male was observed running into the rear of the premises.
- Detective Morine of the Hamilton Vice Unit entered the rear room, which was in total darkness, and found two (2) males within.
- The lights were turned on and Detective Morine observed a package of ZigZag papers with two (2) marihuana roaches on a shelf in the room in plain view. One of the males in the room stated "I'll take it, its mine". He was then arrested and advised of his rights, cautioned and later released on an appearance notice. The marihuana roaches were later submitted to Property.

6. Hamilton Police Service Occurrence Report, dated March 28, 2006

- Officers B. Gent and A. Myra, Central A Squad, attended the establishment on March 28, 2006 for the purpose of conducting a licence check. Upon checking behind the bar, a large taped baseball bat was observed in plain view under the bar.

- The Officers questioned Armando Fazzari as to the purpose of the bat at which time he replied that it was for crack heads. The bat was voluntarily turned over to the officers. The Officers advised Armando to call police in the future for any problems regarding crack heads.
- The bat was submitted to Property.

Mr. Paquette stated that there is crack in the core, which is much more powerful than powder cocaine, and that his client kept the bat as he was trying to evict patrons who were using crack in bar.

7. Alcohol & Gaming Commission of Ontario (AGCO) List Assignment Detail, dated February 8, 2007
 - On February 8 2007 at approximately 1230 hours, AGCO Officers observed a car drop off two (2) boxes of alcohol. The Officers pulled behind the car to check the receipt and determined that the alcohol was purchased on licence. However, at that time Sergeant Renee Serianni issued a warning to Carlos and Armando to update the Smart Serve Certificate, which is required every two (2) years, under the Liquor Licence Act, which assists with recognizing the risks and symptoms of someone using too much alcohol.
8. AGCO List Assignment Detail, dated April 25, 2007
 - On April 25, 2007 at approximately 2230 hours AGCO Officers attended the establishment to conduct a Joint Forces spot inspection. At that time Ron Faria and Armando Fazzari made offensive remarks to Police and Inspector Swartz.
9. Hamilton Police Service, Occurrence Details Report, dated August 18, 2007
 - The Tribunal was advised that the redacted names contained in Exhibit 9 does not directly relate to the matters before the Tribunal.
 - On August 18, 2007 at approximately 1825 hours, Police were on general patrol in the area of James Street North and Barton Street East in the City of Hamilton. Police observed a Street Disturbance in Progress occurring directly in front of the Zucca Bar. When Police attended the scene, an off duty Toronto Police Service (TPS) Officer identified himself to Hamilton Police with his badge. The

TPS Officer indicated that he had witnessed the accused strike the victim repeatedly with his feet in the head while he was lying on the ground.

- Hamilton Police arrested the accused for assault causing bodily harm and placed him into custody while the tended to the victim's injuries. Subsequent to the arrest, Police conducted a cursory search of the accused and issued him is rights to counsel and caution.
- Hamilton Police had observed the victim lying on the ground, face down in the middle of James Street North bleeding from the front of his head and unconscious. EMS was dispatched and attended the scene. Police observed a large goose egg on the victim's forehead above his left eye and his nose was bleeding profusely. The victim was taken to Hamilton General Hospital by ambulance.
- Police transported the accused to Central Station Custody. Before lodging the accused into custody, Police conducted a thorough search of the accused. Subsequent to that search, Police found a white powder substance in his right front jean pocket in a small plastic "dime bag". Police believed the substance to be cocaine. Police informed the accused that he would also be charged with Possession of a controlled substance.

Mr. Paquette stated that his clients should not be held responsible or suffer the consequences, should a crime takes place in the vicinity of their establishment, or if someone else takes it upon themselves to fight on the street outside the Zucca Bar.

10. Copy Liquor Sales Licence Application, dated November 9, 2007
 - The Liquor Sales Licence Application for Zucca Bar Inc., submitted by Armando Fazzari on November 18, 2007, lists Armando Fazzari, President; Carlo Fazzari, Secretary; and Ronnie Faria, as Treasurer – all with 33.33% equal shares in Zucca Bar Inc.
11. Hamilton Police Service, Occurrence Details Report, dated June 12, 2008
 - On June 12, 2008 at approximately 2245 hours, core patrol officers were in the area of 299 James Street North, Hamilton when a male party yelled "what the fuck are you looking at. Keep riding." The male was standing in front of the Zucca Bar at the time. Police stopped and spoke to the male. At the time, a male was also

standing in front of the Zucca Bar and stated to police, "I own this city, fuck off." He then pulled a large amount of cash from his pocket that had been rolled in a bundle and stated, "How much do you want. I can pay any cop in the city off." Several other parties including the male's girlfriend began yelling at police to fuck off. The male went into the bar, followed by the officers. He insisted that Police had no right to be in the bar, but did identify himself. Another male also entered the bar and yelled at the Police to leave, saying that the Officers could not be in the bar without a warrant. Parties inside of the premise continued to yell at the Officers. After the Police exited the bar, one of the male's yelled that he owned the bar, shut the door and locked it.

- Police remained at the premise for approximately 30 minutes to ensure that no other disturbances occurred either inside or outside of the bar. While on scene, one of the parties was overhead to say on his cell phone, "We'll have to do it tomorrow night. There's too much heat around here."
- Carlo Fazzari was absent during the entire incident, approached officers, walking southbound on James Street North. He was again advised that he was responsible for the actions of his patrons and could be charged under the Liquor Licence Act.

Mr. Paquette stated that this individual had nothing to do with the Zucca Bar, despite his claim. Carlo Fazzari was absent during the incident.

12. Hamilton Police Service, Occurrence Details Report, dated July 11, 2008

- Police were called to 299 James Street North, Hamilton at the Zucca Bar, by Luigi Fazzari and Carlo Fazzari, with regard to a female causing problems in front of the property. Luigi and Carlo advised that the female walked by the store and confronted Luigi in regards to her son whom he'd had trouble with in the past.
- Luigi advised that the female threatened his children, who are 11 and 12 years old. Police took a statement from Luigi and Carlo in order to obtain independent facts about the complaint as the wanted the female to be charged.
- While waiting for the female to return to her residence, a vehicle pulled up and a male got out and spoke to police. He advised that someone had called him and told him police were at his ex-wife's door so he came to check on why police were there. The female

then returned to the residence, she was very animated and crying in regard to what had happened.

- She advised that she had been going to Shopper's Drug Mart to get her photos developed and Luigi and Carlo Fazzari approached her in a threatening manner and began berating her over her son for being in jail. The female then advised that Carlo had stated that a car was going to be blown up on the weekend. She became very upset at this and then the Fazzari's began threatening to beat her and her 14 year old son – stating "you're gonna get it."
- The allegations were almost identical from both sides except for the blowing up of the car. Police were advised that there has been a dispute between the Fazzari's and the other family for the last 3 or so years. This all began when her son began selling cocaine on James Street North and Barton Street and the Fazzari's got angry that he was invading their turf. Since that time, there have been numerous fights, threats and intimidation on both sides over the drug business in that area.
- Police attended the Zucca Bar again to speak to the Fazzari's and to see if any video footage was available outside of the bar for police to observe the disturbance to see who the aggressor was in the dispute. Both Luigi and Carlo were not on site and when staff was requested to call them there was no answer on their phones. Police then requested to see the footage from the morning (of December 17, 2008) and the staff member advised that he does not know how to work the video camera.
- Police were not able to establish an independent witness and thus no charges were sought due to lack of evidence.

Mr. Paquette commented that there is another brother, Luigi, and that it was the other party who was threatening Mr. Fazzari's children – who are only 11 and 12 years old. This occurrence did not involve either of the applicants and does not involve the establishment other than it was out front of the bar.

13. Hamilton Police Service, Occurrence Details Report, dated October 17, 2008
 - On October 17, 2008 at approximately 0138 hours Police attended at the Zucca Bar, located at 299 James Street North, Hamilton. There was an altercation outside of this location with bar staff and police. Subsequently, the female party was arrested under Section

31(4) of the Liquor Licence Act. The time of the arrest was 0030 hours and the party was transported to Central Custody and lodged.

Mr. Paquette stated that the value flows from relevance. A lot of the documents are probative, if anything. You could probably show criminal activity in the general vicinity of any establishment in the Hamilton area, but it may not have any relationship to the establishment.

14. Hamilton Police Service, Occurrence Details Report, dated November 18, 2008

- On November 18, 2008 at approximately 2151 hours, police observed a Chevrolet Silverado pick-up truck bearing Ontario plates parked in a No Stopping zone in front of the Zucca Bar, located at 299 James Street North, Hamilton. A male party exited the bar and was observed to enter the driver side of the vehicle. A traffic stop was initiated at the same location and the driver identified himself with a valid Ontario Drivers Licence and advised that he was driving his boss' truck, and was delivering broom handles.
- At the time of the traffic stop, bar owner/manager, Carlo Fazzari, exited the bar and began screaming at the Officer "See you in court." Carlo was warned to stop causing a disturbance and to return to the bar. He continued to scream "What a country this Canada. See you in court." Police issued Carlo a warning for parking in a No Stopping zone and departed. As police were leaving, he continued to yell, "See you in court."

When asked by the Tribunal about the relevance of Exhibit 14, Mr. Ormond stated that it speaks to conduct of an associate and former partner of the business, and establishes a pattern of disrespect to law enforcement officers, lack of control over patrons. Carlo was on the Incorporation documents and on an AGCO Liquor Licence application as an equal partner until April 2010.

Mr. Paquette responded that Carlo Fazzari is not an applicant in this matter. As well, there is a No Stopping zone in front of Zucca Bar, which was Carlo's reason for saying "see you in court" - it was to dispute the ticket.

15. AGCO List Assignment Detail, dated December 11, 2008
 - On December 11, 2008 AGCO Officers attended the Zucca Bar for a regular spot inspection. Everything seemed to be in order.
 - The Officers observed two (2) gaming machines inside. One of them displaying 7's and the other had a female on it. A report was forwarded to the Illegal Gaming Unit.

16. Alcohol and Gaming Commission of Ontario Order, dated January 08, 2009
 - Notification of a hearing before the Alcohol & Gaming Commission of Ontario Board commencing February 17, 2009.

17. Alcohol and Gaming Commission of Ontario Decision, dated March 06, 2009
 - Registrar, Alcohol & Gaming Commission of Ontario and Zucca Bar Inc. o/a Zucca Bar (The) – the hearing was called on the basis of alleged violations of sub-sections 45(1) and (2) of the Liquor Licence Act and sub-sections 34(1) and 45(1) of Ontario Regulation 719/30.
 - Sub-section 45(1), Liquor Licence Act provides that no person shall obstruct a person carrying out an inspection under the Act. Black's Law Dictionary defines "obstruct" as to hinder or prevent from progress, check, stop, also to retard the progress of, make accomplishment of difficult and slow, to impeded; to interpose impediments to the hinder or frustration of some act or service.
 - Sub-section 45(2) Liquor Licence Act provides that it is a condition of each licence that the Licensee "facilitate an inspection relative to the licence". Black's Law Dictionary defines "facilitate" as to make easier or less difficult. The standard under sub-section 45(2) places a higher onus on the Licensee that sub-section 45(1). Whereas, sub-section 45(1) provides that an inspection cannot be obstructed, sub-section 45(2) imposes a proactive duty on the Licensee to make the inspection easier.
 - Sub-section 34(1), O.Reg. provides that the licence holder shall not permit a patron to remove liquor from the premises to which the licence applies.

- Sub-section 45(1), O.Reg. provides that the licence holder shall not permit, among other things, drunkenness to occur on the premises or in the adjacent washrooms, liquor and food preparation areas and storage areas under the exclusive control of the licence holder. Therefore, for a finding under sub-section 45(1), there is a two part test. First, it must be established that the drunkenness occurred on the premises or any of the other specified areas under the exclusive control of the licence holder. Second, it must be established that the Licensee permitted the drunkenness. “Permit” means to allow, to acquiesce, by failure to prevent, or to expressly assent or agree to the doing of an act.
 - Decision: The Board found the Licensee contravened sub-section 45(2) of the Liquor Licence Act and Sub-sections 34(1) and 45(1) of the O.Reg. The Board dismissed the allegations under sub-section 45(1) of the Liquor Licence Act.
 - Full details of the AGCO hearing are contained in Exhibit 17.
18. Alcohol and Gaming Commission of Ontario Decision of Sanction, dated April 03, 2009
- Registrar, Alcohol & Gaming Commission of Ontario and Zucca Bar Inc. o/a Zucca Bar (The) – the hearing was called on the basis of alleged violations of sub-sections 45(1) and (2) of the Liquor Licence Act and sub-sections 34(1) and 45(1) of Ontario Regulation 719/30.
 - The Board ordered that the Liquor Licence issued to Zucca Bar Inc., operating as the Zucca Bar, at 299 James Street North, Hamilton, Ontario, be suspended for a period of ten (10) days. The Board dismissed the allegation under sub-section 45(1) of the Liquor Licence Act.
19. Alcohol and Gaming Commission of Ontario Order, dated April 17, 2009
- The Order confirms that the Liquor Licence issued to Zucca Bar Inc., operating as the Zucca Bar, at 299 James Street North, Hamilton, Ontario, be suspended for a period of ten (10) days to commence at 11:00 a.m. on July 4, 2009 and continue until 2:00 a.m. on July 14, 2009.

It was noted that Exhibits 16, 17, 18 and 19 are all related to the same incident and that three (3) findings were made by the AGCO.

20. Alcohol & Gaming Commission of Ontario Decision, dated April 17, 2009
 - This exhibit was removed from the Exhibit package, prior to the hearing.

21. Hamilton Police Service, Occurrence Details Report, dated October 1, 2009
 - At approximately 1:45 p.m. on April 25, 2009 Police Constable Rizzo observed three males enter the Zucca Bar located at James Street North carrying two 28-bottle beer cases of Budweiser into the bar. Carlo immediately exited the bar as the two males shut the door and locked themselves inside.
 - Police Constables Rizzo, Vernon and Miller knocked on the front doors of Zucca Bar to inquire regarding the two cases of beer. A male opened the door slightly and told the Officers that they were closed then slammed the door shut.
 - After knocking again several times, Police Constable Rizzo shouted for the people inside to open the door in order for Police to conduct a bar inspection. Shortly after, a male opened the door, but he was argumentative towards the Officers and positioned himself in the doorway to prevent Officers to view inside the bar. The male was cautioned in regard to obstructing the bar inspection. Eventually, he stepped away from the doorway and allowed Officers to enter.
 - Police Constable Rizzo asked the male where they got the two (2) cases of Budweiser, his response was that they just bought it from the beer “place” using the licence. The male was unable to say which beer “place” it was they bought it from. When asked for receipts, the male stated that Carlo had the paper work.
 - Inside the back room of the bar, Police Constable Rizzo observed a male in the process of emptying one of the 28-bottle cases of Budweiser by removing each bottle individually and placing them into the fridge. The male was asked where the bottles of beer came from and he responded that the bar was short on Bud so he and another male went to the beer store on Barton to get some, as he pointed in the direction of the Beer Store, located at 150 Barton Street East, Hamilton.

- As soon as Carlo entered the bar, he was questioned in regard to the beer cases. His response was that they were not his; however, he then responded that they were his and that he just wanted to keep them cold instead of having them all sit in his vehicle. He was cautioned regarding potential repercussions for purchasing unlicensed alcohol stored on the premise. Carlo pretended to be angry at the males stating that he had no idea what they were doing with the beer and that it was not his fault.
- Carlo did not provide any proof of purchase or receipts for the two (2) cases of beer to the Officers. One of the males removed the two 28-bottle cases of Budweiser from the bar and placed them back into his vehicle.

22. AGCO List Assignment Detail, dated November 28, 2009

- On Thursday, October 1, 2009 at approximately 2220 hours police responded to Mission Services at 325 James Street North, Hamilton, regarding an assault.
- Police were met by four (4) males just south of Mission Services. One of the Zucca Bar owners and his friends told police that one of the males had come outside the bar and yelled at a female with a muzzled German Sheppard. Police were informed that the male was angry because she had an open beer bottle and he didn't want to have problems with his liquor licence. The male alleged that he went inside when the female sprayed a substance, possibly pepper spray, inside the bar. The male's three friends supported the story. The Officers were told that the male and his three (3) friends ran after the woman who went inside Mission Services.
- Police spoke with the woman inside Mission Services, she identified herself and told police she was walking her dog and drinking a beer, passing by the Zucca Bar, when a male came outside of the bar and started yelling at her. She said the male told her "I don't need any more heat on me" when he sprayed something on her dog. Fearing for her safety, as the male was yelling and becoming agitated she ran North on James Street. The four (4) males chased her from the bar. When the female went inside Mission Services where staff inside corroborated her story of the males chasing her.
- While speaking to the male and his friends, Police could smell what was believed to be Raid insecticide. Neither the female nor the dog smelled of Raid.

- The Police informed the male that, at this time, no charges would be laid, as there were no independent witnesses. He became confrontational with Police and stated that she better not walk down the street, as he will have to take matters into his own hands. Police advised the male that his comment will be in the Police report. At that time, the male alleged that he had video of the incident and would provide a copy to police. An incident number was provided to the male.
- The female told police that she did nothing wrong and that the video would show this. The Officer had contacted Carlo Fazzari on numerous attempts to obtain the video that he promised to deliver the following day in regard to this incident. Since that time, the Officer has requested the incident be closed as Carlo Fazzari had no intention to deliver the video to Police.

23. AGCO List Assignment Detail, dated November 28, 2009

- On November 28, 2009 at approximately 1707 hours, AGCO Officers attended the Zucca Bar with three (3) Officers from Hamilton Police Service, regarding Interim Suspension correspondence. The Officers met with Licensee Armando Fazzari and read him the AGCO Board Order in regard to the issuance of an Interim Suspension and explained and read his right to a hearing. Mr. Fazzari was advised that no one is permitted to sell, serve or consume any alcoholic beverages while in the premises of Zucca Bar, at any time while under suspension.
- The Officer gave Mr. Fazzari the placard with posting instructions and requested that Mr. Fazzari and observed Mr. Fazzari post the suspension placard upon request. Six photos of the posted were taken with the blackberry camera. Mr. Fazzari was asked if he understood everything that was said and explained in regard to the Interim Suspension. Armando Fazzari replied that he understood and had no further questions.

24. AGCO List Assignment Detail, dated December 14, 2009

- On December 14, 2009 at approximately 1630 hours a spot inspection was carried out to confirm the AGCO Placard was still posted for the interim suspension of Zucca Bar's liquor licence. The Placard was posted and the premises were closed to the public at the time of the inspection.

25. Hand Written Correspondence on the letterhead of R.J. (Bob) Plouffe, Liquor Licence & Gambling Consulting, Paralegal Services, dated December 21, 2009
 - Hand Written Correspondence on the letterhead of R.J. (Bob) Plouffe, Liquor Licence & Gambling Consulting, Paralegal Services, dated December 21, 2009, advising of the voluntary surrender of the Liquor Licence for Zucca Bar. The correspondence was signed by both Armando Fazzari and Ronny Faria.

26. Alcohol and Gaming Commission of Ontario Order, dated December 22, 2009
 - Registrar, Alcohol & Gaming Commission of Ontario and Zucca Bar Inc., Licensee - the hearing was called on the basis of alleged violations of Section 6 of the Liquor Licence Act and sub-section 45(2), O.Reg.719/90.
 - The Board having considered the submissions of the parties, accepted the surrender of the liquor licence issued to Zucca Bar Inc., operating as Zucca Bar, located at 299 James Street North, Hamilton, Ontario.
 - The Board ordered, given the public interest concerns articulated in the Order of Interim Suspension currently in place on the liquor licence issued to Zucca Bar Inc., remain in effect, until receipt of the formal surrender of the Licence by the Registrar.

27. AGCO List Assignment Detail, dated February 10, 2010
 - On February 10, 2010 at approximately 1810 hours an AGCO Officer delivered a request for documents at the residence of one of the owners of Zucca Bar.

28. AGCO List Assignment Detail, dated March 19, 2010
 - On March 19, 2010 at approximately 2040 hours an AGCO Officer attended the establishment (Zucca Bar) regarding the public notice placard that was to be posted from March 17, 2010 to April 15, 2010. The public notice placard was not posted at the time of inspection. The establishment was closed at the time of the inspection.

- On March 23, 2010 the phone number listed on the AS400 for Armando Fazzari is not a current number. There was no answer for the phone number listed on the AS400 for Ronny Faria. The Officer called the contact individual, Robert Plouffe, and left a message.
29. Correspondence from Mr. Robert Keleti, Hamilton Jewellers, dated February 28, 2011
- Correspondence from a local business objecting to the reinstatement of the Zucca Bar at 299 James Street North, Hamilton, Ontario. The gentleman does not want criminal activity in the neighbourhood.
30. Floor Plan of the Zucca Bar, 299 James Street North, Hamilton, Ontario
31. Establishment Licence Application, dated May 30, 2003, showing the Zucca Bar to be registered as a General Partnership between Ron Faria and Armando Fazzari.

Witnesses:

All witnesses were asked to be seated outside of the hearing room until such time as they were called upon to testify. The witnesses were ordered not to discuss the matter amongst one another or anyone else until the proceedings were complete.

First Witness for the City: Mr. Ormond called upon Detective Constable Gregory Philip Slack, Hamilton Police Services. Detective Slack was sworn under Oath, prior to providing his testimony.

Detective Constable Slack requested to refer to his notes during his testimony; confirming that those notes were made by himself in ink at time of the offence, and that there had not been any additions or deletions made to those notes. He also stated that he has an independent recollection from the information in his notebook. The information used in his notes was used to obtain the search warrants.

Mr. Paquette confirmed that he had seen those notes as part of the criminal trial documents, as he represented Carlo Fazzari at the criminal trial.

Neither the City nor Legal Counsel for the appellant had any objection to Detective Slack referring to his notes to refresh his memory during his testimony.

Detective Slack's comments included, but were not limited to, the following:

- Detective Gregory Slack is an Officer with the Hamilton Police Service and has been so employed since April 25, 2001. He is currently assigned to the Vice and Drug Branch as a Detective Constable and operates in a plain clothes capacity.
- He works in conjunction with the AGCO and has been with vice and drugs since 2006.
- Detective Slack is trained in drug investigation, asset forfeiture, clandestine labs, annual block training, investigative interviewing and interrogation and an expert witness seminar.
- He was in HEAT Unit before the Vice and Drug Unit, and worked specifically in problematic areas of the city on pot projects. The HEAT Unit was developed approximately 12-15 years ago. Officers Slack was seconded to the Drug Unit and was awarded a full time position in 2007.
-
- Detective Slack is familiar with the Zucca Bar at 299 James Street North, Hamilton, Ontario.
- During the summer of 2007, Detective Slack began using a registered confidential informant and did so until 2009. The informant was familiar with drug culture and was able to provide information regarding drug sales and could confirm the identification of Carlo Fazzari, Luigi Fazzari and Armando Fazzari; all of whom were implicated of being involved in drug sales.
- Information was provided over a period of 2 years. Some of the information provide during that time had to be vetted in order to protect the identity of the informant.
- During the day Luigi and Armando would open the Bar sometime between 11:00 a.m. to 12:00 p.m. for lunch and would stay until approximately 5:00 p.m. If people wanted to purchase cocaine during the day, Luigi and Armando would be working at the Bar. In the evenings, Carlo Fazzari ran the Bar.
- As information spilled out over a 2 years period, there were other informants, but there was one that was most accurate who compiled the information over the 2 years.
- Detectives Slack and Mellor needed the assistance of an under cover operative to gain trust of the Zucca Bar operators.

- Drug use and drug sales are hard charges to prove, but also are hard to deny. Project Birdie was adopted and was based on university frosh weeks. The officers went in as university students during frosh week, whooping it up and partying at the bar.
- The Officer was able to purchase cocaine from Carlo on a number of occasions and stated that Ron Faria was present on at least two (2) of those occasions.
- Throughout the two years, the informant was also able to point out where Carlo Fazzari, Luigi Fazzari and Armando Fazzari lived and it was believed that drugs were being sold from the one of the residences. The house that was searched was heavily fortified and police were required to torch cut both gates to gain access to property, and also needed to torch cut through interior doors to gain entry.
- During that search, a large sum of cash and about half a brick of cocaine was found. Carlo Fazzari was located in basement. The Fazzari brothers (Carlo, Luigi and Armando) were believed to be bringing cocaine into bar; generally in dime bags. Carlo usually brought the dime bags (filled with powder cocaine) on his person and at the time of arrest, Carlo had large number of dime bags down his pants in his underwear, and had keys that opened lock box where additional cocaine was kept.
- Organized crime and known criminals were hanging out at the Zucca Bar, and all three brothers (Carlo, Luigi and Armando) had formed a friendship with the North End Crew (NEC), which is an extension of the Hells Angels, the NEC members had bonded very well to the Fazzari brothers. It is believed that the cocaine was funded through that affiliation. There were occurrences of assault, beatings, guns and a natural hate for the police.
- At the time of the raid at Zucca Bar, there was powder cocaine found on Carlo's person as well as in the lock box, there was a firearm located in the pocket of a small black leather jacket; Carlo is small man, the firearm was a small silver handgun with brownish metal on the handle – it was a small caliber weapon.
- The night before the raid, there was still a full undercover operation in place to prove that criminal behaviour was occurring and being permitted. The undercover officers could not just do it once (purchase powder cocaine), but had to do it several times to prove that it was the bar operators responsible and not just a one time offence. The officer safety aspect, regarding who was inside the bar, prompted the investigation to changed a bit. Officers were able to identify a fourth person, Ron Faria on the night before final buy (of powder cocaine) and takedown, and had learned that the night before Carlo Fazzari was leaving the Bar at 2 a.m., and someone shot up his car. He (Carlo) got into the vehicle and

someone shot 3 or 4 large caliber bullet holes in side of his SUV. For reasons of public safety, the Officers wanted to execute the search warrant, but did not want to put undercover officers in danger. The search warrant was executed, but for officer safety, use of the undercover officers within the establishment was discontinued.

- As a result of the execution of search warrant, charges were laid and Carlo Fazzari, Ron Faria and Armando Fazzari were charged. There was another individual that was hanging around the bar who was charged with trafficking cocaine and possession for the purpose. Carlo was charged with 1 or 2 counts of trafficking, possession for the purpose, and possession of a firearm. Carlo had the keys to the lock box that contained the cocaine, but they (Armando Junior Fazzari, Carlo Fazzari and Ron Faria) all share management there.
- The Identification Unit had already gone through the Carlo Fazzari's vehicle so the officers were not able to obtain DNA. Results were inconclusive as to who shot at Carlo and when he was interviewed, he did not provide any information respecting the shooting.

Mr. Ormond entered Exhibit 31, which was the floor plan of the main level of the Zucca Bar, noting that the door on right hand side is main entrance and that the stairs shown lead to basement.

Officer Slack's testimony continued:

- Carlo was arrested at the bottom of stairs and dime bags of powder cocaine were found down his pants, he was holding keys that opened the lock box in the storage room near where he was arrested. You could buy a half a gram or a full gram, known as a "g" or "half g".
- There is some common area used for patrons or staff, but the storage room in the basement is accessed only by authorized persons. The coat hook behind the bar, at minimum, is an area in controlled only by employees. The coat (that the firearm was found in) was hanging a hook against the back wall. The firearm was a loaded 32 calibre, which was actually cocked – ready to go – you would have just had to squeeze the trigger and it would be ready to go.
- When Officers went downstairs (during the raid), the storage room was directly ahead and Carlo was likely in the middle of a (drug) transaction, as he had the keys (to the lock box) in his hands and drugs (bags of powder cocaine) in his pants.
- The operation was run in conjunction with the AGCO, as they were aware it was a problematic bar and wanted to shut it down. As a result of the execution of the search warrant, Officer Serianni applied for a, Interim

Suspension of the Liquor Licence and was able to have it signed and was ready to close the Bar that evening. After the arrests, the sticker went on window and Bar was shut down that night.

- Criminal charges proceeded with Carlo Fazzari, as the Officers had intelligence, regarding all three (3) brothers (Carlo, Armando and Luigi Fazzari) that had been compiled over a 2 years period, but mostly on Carlos, which is why the search warrant was done for him. Based on the grounds that the Officers had, the only warrants granted were for the Zucca Bar, the Picton street residence and Carlo Fazzari's vehicle. The best case was put forward was for Carlo and the charges against Armando Fazzari and Ron Faria have been stayed by the Courts.

Mr. Paquette asked Officer Slack the following:

- Hearsay is relevant at a tribunal hearing, but it comes from sources that you try to check – correct? The Officer responded: Yes.
- However you do not reveal who the informants are – correct? The Officer responded: Officers are able to retain warrants based on hearsay, as long as the Officer can verify/back up the information provided.
- The Informant only bought drugs from Carlo? The Officer responded: Correct
- Carlo was named on the warrant? The Officer responded: Correct.
- Officers present grounds to a judicial officer to obtain warrants? The Officer responded: Correct.
- Warrants were granted for the residence at Picton, the Zucca Bar and Carlo's vehicle? The Officer responded: Correct.
- We would read the same reports and draw our own conclusions? The Officer responded: Correct.
- Did you ever go into bar? The Officer responded: Twice for Multi Agency Task Force (MATF) investigations. These investigations were standard bar checks that were done with Hamilton Police, health issues, sale of illegal cigarettes, by-law, etc. The bar wasn't packed or overly busy. MATF inspections would have been at night; usually around 10-11 at night.
- You did not know about Ron (Faria) until after the informant advised you – correct? The Officer responded: It was also known from other sources that Officer Ross made purchases (of powder cocaine) from Carlo.

- Mr. Paquette stated to Officer Slack: When you attended the premises, you found a gun in the pocket of coat – you had to look for it – you had to put your hand in pocket.
- Officer Slack stated that Carlo was arrested in basement in possession of the of the keys (to the lock box that contained cocaine), which were in his hand, a marihuana bud, \$500 cash and zip locked bags of powder cocaine in his pants.
- Armando Fazzari was searched, but nothing illegal was found. Ron Faria was searched and arrested – nothing illegal found during the search. You needed key to get into box; only the one key was found.
- Officers lacked grounds for a search warrant for Armando Fazzari's home, and they didn't apply for a warrant for Ron Faria's home.
- Drugs were found in the storage room and under the bar. They were all managing the bar and they all have access.
- Officer Slack was asked if the North End Crew/gang hung out at a couple of bars in town. Officer Slack responded: Not many.
- Officer Slack was asked why they were all charged with possession of a firearm. Officer Slack's response. Because the gun was found in coat behind bar – all Managers had access to the gun. Mr. Paquette stated it could have been anyone's (gun).
- Mr. Paquette asked Officer Slack if either Ron Faria or Armando Fazzari have admitted to involvement. The Officer responded: No, he hasn't had discussions with them.
- Mr. Paquette asked if Armando Fazzari or Ron Faria have criminal records. The Officer responded: I don't believe so, I would have to check.
- Luigi had nothing to do with bar as far as management – his involvement was strictly from an informants point of view.

Mr. Ormond Officer Slack the following Questions:

- When you applied for the warrant, did you identify the parties of interest within body of the request? The Officer responded: Only Carlo was listed – his home, his vehicle and Zucca Bar. It did depict activities of Luigi Fazzari, Armando Fazzari, Ron Faria as well as Carlo Fazzari.
- There were a lot of public resources invested into this case for over a 2 year period. The Officer responded: Police Services did not incur a large

expense, mostly the time and planning at the end of summer of 2009 (July and August) to put Project Birdie together.

They have undercover operatives in play that were brought in approximately three separate times – it was information gaining and repetitiveness of the actions at the bar. Only about a two solid weeks to a month plus an additional 2 weeks were used to pull reports together. The source information gathered from over the 2 years period would be put together day by day. Regular hours at work were used to obtain source information, pull reports of violent crime – assaults, shootings and organized crime. It would take time to brief undercover officers, risk management to ensure officers are safe – yes, there's definitely time involved – gathering of evidence, preparing for the raid – any investigations that were done were done on a regular day; working a 10 hour shift.

- When asked if the calls to police regarding the beatings and shooting assaults were directly connected to Zucca Bar, the Officer responded, no, over the two years citizens were calling about fights and shootings on street; however, there were some direct occurrences. Directly tied to the bar, on September 6, 2006, a known cocaine trafficker was at the bar a disturbance occurred outside the bar.
- The registered Informant who was working with Hamilton Police Services, and the another officer that was involved advised that Ron Faria was present at one of the purchases.
- The Officer was asked if there is any reason to believe that either Ron Faria or Armando Fazzari would know about what was going on in the bar. The Officer responded that he firmly believes so – there would be no way of them not to know.
- Hamilton Police worked hand-in-hand with the Alcohol & Gaming Commission of Ontario, crime stopper tips, sex workers, informants – it falls under mandate of the Vice and Drug Unit. The Toronto Officer was brought in to go the extra mile to implement an undercover operator to ensure that no-one would recognize him. If a Hamilton Officer was used, someone in bar could mention that he's a cop and put him into harms way. An outside officer added another layer of officer safety.
- The Officer was asked if the informant ever mentioned any association to drugs or guns with respect to Armando or Ron. The Officer responded: Mostly drugs – no mention of either being in position of firearms.
- The Officer was asked if the informant identified anyone in the involvement of the sale of drugs. The Officer responded: Carlo, Luigi and Armando were noted as selling large quantities of cocaine from the Zucca

bar, dealing during day before 5 p.m. with Armando and Luigi and Carlo in the evening. Carlo pleaded guilty so there was no trial.

- Mr. Paquette stated that Carlo took responsibility for the drugs and the weapon and, as the Crown had a guilty plea and no evidence to pursue, the charges against Armando Fazzari and Ron Faria were stayed
- Mr. Paquette stated that in a Tribunal setting, like this one, the Issuer of Licenses and the Tribunal must rely on reasonable grounds that they persons may have been involved and determine if, in the future, they would operate the business with honesty and integrity.
- The Officer was asked to describe his concerns regarding the continued operation of the Zucca Bar. The Officer responded: It would send a horrible message to the James Street community if they were to open bar – the contacts that they have made over last few years would remain the same and it would continue as the same business. The two individuals will not do a 360 and change – they will operate in the same fashion and it is my firm belief that nothing will change – all three were noted in the reports.
- There is a Liquor Licence application before Alcohol & Gaming Commission of Ontario, at this time. The hearing date has been set for May 16th and 17th (2011) to review the application.
- “Staying” the charges means they are still before courts, pursuant Section 579 of Code; it allows the prosecution to enter a stay and provides them with the right to revisit the case for a period of 12 months. After the 12 months, it’s done. The matter would not be reinitiated unless new evidence is brought forward. The choices of the Crown were to stay or convict and the crown chose to stay.
- Mr. Paquette asked the Officer what else he knew about Ron Faria. The Officer responded: Although he has no direct knowledge of Mr. Faria, he’s still a problem at that bar, and he was present while undercover Officer Ross made a purchase of cocaine from Carlo.

Second Witness for the City: Mr. Ormond called upon Detective Constable Jeffrey Ross, Badge #7681, Toronto Police Services. Detective Ross was sworn under Oath, prior to providing his testimony.

Detective Constable Ross stated that, although he does not intend to depend on them, but as they may assist in providing clarity to his testimony, he requested to refer to his notes during his testimony; confirming that those notes were made by himself at time of the offence or directly afterward, and that there had not been any additions or deletions made to those notes.

Neither the City nor Legal Counsel for the appellant had any objection to Detective Ross referring to his notes during his testimony.

Detective Ross' comments included, but were not limited to, the following:

- Detective Jeffrey Ross is a member of the Toronto Police Services and has been so employed since June 1999. He presently holds the rank of Detective Constable and has been attached to the Drug Squad since January 2005.
- Officer Ross stated that he began as undercover officer with the task of purchasing cocaine since 2001. He has done undercover work purchasing crack cocaine in Toronto. Officer Ross attended the Ontario Police College to receive training in drug trafficking investigations, clandestine lab investigations. During the course, he was instructed to purchase of cocaine in undercover operations, the lab technician portion of the course is where he learned how to convert crack into powder cocaine. He has also attended numerous conferences, which teach officers how to identify drugs as well as clandestine lab investigation - methamphetamines and other clandestine drugs. Officer Ross was also a prospect officer for the Criminal Intelligence Service of Ontario (CISO). He has been successfully trained as part of an undercover pool of officers who can work across Ontario. Officer Ross has successfully obtained level 5 of the program, which is the highest level achievable in Ontario and makes him qualified to assist outside agencies and jurisdictions in investigations.
- Officer Ross is familiar with 299 James Street North, Hamilton (Zucca Bar) and was involved in the investigation from September 2009 to November 2009.
- His involvement in the investigation started before September 11, 2009 when he was contacted by a member of CISO regarding a project commencing in Hamilton. On September 11, 2009 he attended a briefing with the members of the Hamilton Drug Squad where he received information drugs were being dealt out of bar known as the Zucca Bar. There was information received that there were three (3) brothers dealing drugs from that bar. Officer Ross was provided with photo of Carlo Fazzari at that time.
- Officer Ross was issued \$250 in police funds to act as undercover operator who would attend the Zucca Bar and purchase drugs, if opportunity presented itself. While attending the bar known as the Zucca Bar, at 299 James Street North, Hamilton at approximately 9:01 p.m., Officer Ross observed a person out front who was the same male in the photo. The male was white, wearing a short sleeved, blue soccer shirt

with the word Italy across the front, the male was approximately 5'4' in height, weighing approximately 145-150 lbs.

- When Officer Ross entered the Bar he observed two gentlemen who were also seated in the Tribunal room – he described one of the men as the man sitting in the dark suit - pointing to Ron Faria; and, the man – wearing the white shirt – pointing to Armando Fazzari. He also saw Carlos enter behind bar area directing people to the washroom and into the kitchen – Carlo was wearing Kappa Kappa shirt (brand name) and gold chain with a cross.
- Officer Ross (while undercover) said to Carlo “Hey man do you think you could direct me to where I could find some blow”. Ronnie was the bartender situated behind the bar. Upon making the statement to Carlo, Carlo replied “For you?” Officer Ross replied: “No, there’s this ripper type chick I would like to hook up with later, it would help me with my cause”. Officer Ross explained to the Tribunal that “hooking up” was the term used to suggest he would gain some sexual benefit for giving her drugs. Carlo responded: “how much do you want” to which the Officer said “about a “g” or “half a g” (gram or a ½ gram). Carlo told the Officer that a ½ g would be \$30 and the Officer replied “I can do that”. At that time, the Officer observed Carlo enter the kitchen area at back of where bar was, while retrieving \$30 of the police investigation money from his pocket, he folded it twice and handed to Carlo from his right hand to Carlo’s right hand.
- Carlo went by the bar area next to the kitchen on the right. The Officer observed Carlo stop by the stairs, look toward the front of the bar and then over toward the opposite corner of bar at a white male, wearing earrings, blue jeans, a white shirt, Airwalks (shoes) and a baseball cap worn backwards. Carlo motioned to the white male to come over. Once the male met with Carlo they then entered the downstairs portion of bar. Upon returning (approximately 2 minutes later), Carlo provided the Officer with a ½ gram of powder cocaine in a 1”x1” square baggie that had yellow VW beetles, as markers on the bag. Carlo handed right the bag to the Officer right hand to right hand and said “her you go”. The Officer responded: “thanks man” and motioned to the other undercover officers that the transaction had been completed. Based on what the Officer saw, he believes that other person (later identified as “Jason”), was assisting Carlo with the trafficking of cocaine. The Officer had further general conversation with Carlo and then said “thanks again – I’m “using undercover name”. Carlo replied “I’m Carlo, nice to meet you”. Shortly thereafter, the officers left and were picked up by bar.
- Officer Ross then turned the drugs over to another Officer with Hamilton Police Services.

- Mr. Ormond asked Officer Ross if he went into the bar alone. The Officer responded that he was with a few other officers (one from Hamilton and the others were from various other areas of Toronto). There was a gentleman out front (of the Bar), it was Carlo Fazzari, but he didn't have his last name at time. He (Carlo) was identified as a target at that time.
- Inside the Bar, Officer Ross purchased a bottle of beer from Ronnie (Faria). Mr. Paquette asked Officer Ross to look at diagram of bar (Exhibit 31) – can you tell me where Ronnie was when you purchased the beer. The Officer responded: On the 4th stool in, on the side near the stairs. Ronnie was on the opposite side of the bar, directly across from the Officer.
- When the Officer had the conversation with Carlo, Carlo had moved two stools over near the end of bar near opening, but he did not have specific recollection of where Ronnie was at that time – he couldn't recall. Carlos moved to the entrance to the downstairs and motioned to the male known as Jason at the corner of bar. Jason travelled to Carlo and they went downstairs together. Carlo immediately returned and gave Officer Ross the cocaine.
- On September 16, 2009, Detective Ross attended a briefing with members of the Hamilton Drug Squad to discuss the goal of the Operation. He was to attend the Zucca Bar to attempt to purchase cocaine or gather intelligence.
- When the Officer attending the Zucca Bar he was greeted by Carlo Fazzari, Ronnie Faria was behind the bar. Ronnie was observed to be wearing an affliction style t-shirt, which is a style that is know to the Officer. Carlo was wearing a black UFC t-shirt, blue jeans and a gold chain and cross. There was also a very large male wearing a shirt with "666 "BRM Kitchener. BRM stands for the "Big Red Machine", which is known as Hells Angels), he was also wearing a teamsters necklace and ring.
- Carlo called out "hey guys, do you remember these guys - they were the group from Mac. The Officers then said to Carlo "thanks again for hooking me up." Carlo replied: "No problem", then asked "hey you – you guys have Mac i.d.? The officer determined that Carlos was thinking about previously selling them cocaine and was questioning whether officer had student i.d., as this is what the officers were pretending to be. Officer Ross stated "ya – still waiting for it, the lines at the office are so long – they give you two weeks grace then the start giving you a hard time".
- Officer Ross then asked Carlo: "Do you think you could hook me up again?" Carlo replied: "How much? The same? The Officer replied: "Maybe a ½ quarter (half of a quarter of an ounce or 3.45g of cocaine).

Carlo responded: “my guy’s not around, hold on.” Carlos then exited the bar where he spoke to another white male. After returning into the bar, Carlo told the Officer “Sorry, I’ve got nothing right now”. The Officer asked Carlo: “If I left my number and your guy comes in, could you give me a call?” Carlo said “sure, ya.” Then they continued non related conversation in bar – with the others.

- Mr. Paquette asked Officer Ross if there were other individuals in the bar that he recognized today or could identify (in the Tribunal room). Officer Ross pointed out the gentlemen wearing the white shirt, black dress pants and black shoes; who was Armando Fazzari, as the party sitting on bar stool at the Zucca Bar. The Officer stated that Carlo and Ronnie were directly behind bar. Ronnie was the same distance away from the Officer as Carlo during the drug interaction. Mr. Paquette as about the approximate distance was between the Officer and the others at the time of the drug buy. The Officer replied that he would have been able to touch Carlo, but not Ronnie and Armando and Ernie would have been closer. When Carlo made his initial statement about “Look who’s back” it was to engage everybody to hear and to Ronnie to see he recollected the Officer’s first attendance. Mr. Paquette asked the Officer if when he said “thanks for hooking me up” to Carlo, if the others could have heard. The Officer advised that following that statement, when Carlo was asking about the Mac i.d., he had come around from bar to stand very close (to the Officer).
- During the Officers third visit on October 16, 2009, he attended Hamilton for a briefing at approximately 9:40 p.m. Members of other police services and other undercover officers that had been with him on other dates. The target was to attend again at Zucca Bar to attempt another drug purchase of cocaine. At approximately 11:20 p.m., the Officer observed Carlo, who was wearing blue jeans and a long black shirt was over by Ronnie behind the bar. The Officer observed Jason, who he believes to be a participant his purchase of cocaine on first day – the Officer noted that Jason had very poor teeth.
- The Officers were greeted by Armando and Carlo. At the time, there were about 20 patrons in the bar. It was the busiest night of 3 nights that were attended, and there was music and a music video playing. Officer Ross sat with a group of undercover officers. The Officer engaged Jason in a conversation to ascertain what Jason’s involvement was in the first drug transaction. The Officer said to Jason “Thanks again for hooking me up last week.” Jason stated: when? The Officer replied: “Frosh week – you hooked me up with that half a “g” of cocaine from Carlo. Jason stated “hey, anytime” and shook the Officers hand for second time. The Officer stated that it was clear that he (Jason) remembered doing this and confirmed that he did participate in the transaction.

- Jason stated to the Officer: “I remember that girl that was with you – do you still talk to her? The Officer replied “ya, do want to give me your number for her. Jason replied: “I gave it to that other girl.” The Officer responded: “Do you want to trust that or a bro?” At that time, Jason requested to use the Officer’s cellular phone. The Officer provided Jason with the phone. While on the Officer’s cell phone, Jason said: “Hey Dad, just checking my number. As Jason used the Officers phone, he was able to save Jason’s phone number on his cell. The Officer then said to Jason: “Hey, leave it with me, I’ll pass it on.”
- About 40-50 minutes after the conversation with Jason, the Officer approached Jason to see if he could directly purchase cocaine from him. The Officer asked Jason: “Hey, do you think you could hook me up with another half “g”?” Jason replied: “Ya, no problem?” The Officer gave Jason \$30 of the police funds, handing it to Jason with right hand. Jason went over to Carlo and Carlo came out from behind bar and they both walked into stairway area and closed door. About 10 seconds passed and Carlo reappeared and returned behind bar area. Jason immediately following Carlo, shakes the Officer’s hand; providing him with powder cocaine. The Cocaine was in a clear bag that was orange in colour and had black teddy bear logos printed on one side. The Officer placed the cocaine into his pocket and motioned to other officers to let them know he had purchased the cocaine.
- There was a white male sitting at the bar who was approximately 5’ 8” in height, weight approximately 160 lbs, scruffy, wearing a heavy jacket and looked like a street person and drug user. The Officer stated that he had been engaged in over 200 drug buys in various areas of Toronto. Carlo came from behind bar, the man whispered into Carlo’s ear even though it wasn’t very loud in bar. They appeared to be in a guarded conversation. Carlo retrieved an object near the cash register, and then the scruffy male walked in area of stair case. The man did not go down to the bathroom, but turned around. Carlo entered same platform (landing) area of the stairway and closed door behind them. After about 10 seconds, the door opened and the scruffy male exited with Carlo, the man said good bye and immediately exited the bar. At no time did the scruffy man speak to anyone else in bar or get a drink from the bar – he only whispered in Carlo’s ear, went with Carlo’s and then left the bar.
- After this person walked out of bar, the Officer observed Carlo put item by cash register behind bar. The Officer could see that it was a large bag, approximately 4” long and 2” wide. It was a long, rectangular bag that had an apple logo on the front. The Officer had seen this before in Toronto. In the bag next to the cash register, the Officer saw that there were other small bags inside that were filled with powder cocaine; similar to the one he received.

- When the Officer left the Zucca Bar, he turned cocaine he had purchased over to Detective Mellor and advised Detective Mellor of the quantity of cocaine in Carlo's and where he kept it in the bar. That concluded the Officer's involvement.
- Mr. Ormond asked the Officer where the others were in the Bar. The Officer stated that Carlo and Ronnie were behind bar and Armando was situated in bar. All the individuals known to be owners were in bar at time of the purchase.
- The Officer was asked if this area (where the larger bag of cocaine was placed) is this accessible from stool side of the bar or if it could only be accessed from the restricted area. The Officer replied that it (the cocaine) was on the working side of the bar not on the patron side. It was visible to the Officer while standing by the end of the bar by the kitchen, and that Jason was the person who the Officer received the cocaine from, but Jason obtained it from Carlo.
- The Officer was asked if he participated in any other investigation or attended at the raid (of the Zucca Bar). The Officer responded that he was supposed to attend that night, but received information the night before that there was some sort of gunfire at the bar and they did not want any Officer at the Bar during that tumultuous time. For reasons beyond the Officer's control, the Officers in charge concluded the undercover investigation.
- Mr. Paquette asked the Officer how many of undercover officers entered the Bar as part of his team. The Officer responded: Five or six – we all entered together and all acted as though they were Mac students. The Officer was asked when he had purchased a beverage from Ronnie was the interaction just between himself. The Officer replied that there may have been other officers around and that there were other patrons in bar.
- The Officer was asked to provide some understanding as it relates to other investigations he's participated in; traditionally, have are Officers finding that we're dealing with groups of people rather than individuals when in comes to drug trafficking. The Officer replied that with drugs, especially cocaine, there are many levels. As they can't make in the country, it has to be brought in and the drugs undergo many transaction between top to the time it reaches the public. Street level traffickers, like Carlo, have many transactions with public. Mostly, half gram and gram size baggies. Carlo would have situated himself at a mid level, but must get assistance from other people – he got people like Jason to help him with the transactions.
- The Zucca Bar is a confined space. If it is happening on daily basis, there is reason to believe that customers would be coming in at all hours of the

day. They would buy small amounts use it and return. There would be many patrons coming at all hours of the day who would attempt to purchase, as well as runners and participants, it would be hard to believe that the owners of the bar would be unaware of what was going on.

- The Officer stated that proof and the truth of the matter are often two different things – there is no doubt in the Officer’s mind that everyone in the bar is aware of what was going on.
- Officer Ross indicated that on October 16, 2009, he saw Carlo grab something from behind the bar, but couldn’t identify what it was. The Officer was probably 7 or 8 feet away and at that point couldn’t see it was a bag of cocaine, but when they returned to the bar area the Officer could clearly see and believes without a doubt that it was a bag of cocaine.
- The baggie was approximately 4” long by 2” wide with a red apple emblem on it. The Officer has commonly seen bags like this in head shops – usually they will have smaller bags inside. Smaller bags would have been 1” x 1” – the Officer could not determine how many bags were within the larger bag.
- The Officer stated that he had a clear view from his vantage point that bags were filled with cocaine – yes, without a doubt.
- The Officer was asked if it is possible that Ronnie may have some ignorance that he didn’t recognize what it was. The Officer responded: If Ronnie is not in the drug trade, but he saw small bags filled with white powder. These bags are specifically used for the drug trade and the Officer has only ever seen used for one purpose – it’s a small bag filled with white powder, it’s a bar, its not salt for tequila – could he have not known what was in the bar. The only person who could have the benefit of the doubt is Armando because he never saw him behind the bar. If you work in a bar and run a bar, chances are you would have a bit more knowledge (about drugs) than someone’s grandmother, but anyone whole watches T.V. would know that.
- The Bartender would have been inside bar area itself, which is a very tiny space, so he should have that noticed disheveled people were meeting at the top of the stairway. There is only a 10 foot space from bar to the stairway, and people were not going downstairs, but would make very quick transactions at the top (on the landing area). Operators at bar would have known what was going on.

There were no further questions of the witness; therefore, the Officer Ross was excused.

The following were summonsed by the City, but not called upon to testify:

- (i) Detective Constable Derek Mellor, Hamilton Police Service; and,
- (ii) Sergeant Renee Serianni, Ontario Provincial Police / Alcohol & Gaming Commission of Ontario

Armando Fazzari was called as a witness by his legal counsel. Mr. Armando Junior Fazzari was sworn under Oath, prior to providing his testimony. Mr. Fazzari's comments included, but were not limited to, the following:

- Mr. Fazzari stated his home address, that he is 42 years old, owns the Zucca Bar and has no other employment. He used to do heating and cooling (HVAC) from 1990 to 2000. In 2000, they bought the bar and he did work around the bar until it opened in 2003. At first it was owned by himself (Armando), and Ronnie Faria. Carlo Fazzari became involved at the Bar in 2003-04. Armando grew up in neighborhood all life, and described the neighbourhood as blue collar, construction working, mostly Portuguese and Italian. The patrons were mostly between the ages of 25 to 40 years old and Armando stated that he knows most of them.
- On a typical day, Armando's duties for the bar were to pick up supplies in morning, open the bar at about 1:00 p.m. He would work most days from 1:00 p.m. to 8:00 p.m., as a bartender. Armando advised that the Bar gets busy around 5:00 or 6:00 p.m., as they get all the workers coming in for a couple of hours. Then the Bar would get the night crowd.
- Carlo would work at night and Armando would work once in a while at night with Ronnie when Carlo wasn't working so that Ronnie wouldn't be alone in the Bar. It would be just them – no other employees.
- Mr. Paquette advised his client, Armando Fazzari that the reason why City is opposed to application for Zucca Bar, is that it's alleged that you (Armando) participated in the sale of drugs at the bar or knew that your brother (Carlo) was selling drugs at the bar.
- Armando replied that he is upset that it happened, and that he is no longer on talking terms with his brother. He knows now that his brother did sell drugs at the bar, but didn't know before. He (Carlo) hid things from him (Armando). Armando stated he didn't see activity like that – if he had seen it he would have got rid of him – fired him right away. It was there dream (Armando and Ronnie) and they had \$60,000 invested the bar. He has no fallback position.

- Mr. Paquette asked Armando, should he be offered an Establishment Licence, is it his intent to open without a liquor licence. Armando responded: No.
- Mr. Paquette asked Armando, if he and Ronnie were granted both licences what are they going to do to ensure that this type of situation won't happen again. Armando responded that they would hire a doorman, and do random checks of the washrooms. Armando also commented that his brother (Carlo) is barred for life (from the Bar) and he doesn't want anything to do with him anymore. This has cost him (Armando) everything since he was charged 16 months ago. He (Carlo) ruined our dream – and Armando hopes he can get it back.
- Mr. Paquette asked Armando, with respect to his brother Carlo - In terms of facility, will he (Carlo) be assisting at the Bar in anyway. Armando responded: He didn't really assist before anyway – no. Mr. Paquette asked when Carlo as due to get out (of prison). Armando responded: Not sure. He's still my brother, but don't want him around the business anymore. Mr. Paquette asked Armando: Did you see the transaction to street person or the undercover officer. Armando responded – no sir.
- The Bar has a social atmosphere – like having ten guys in your basement, its seats 30 people and has a video that shows music videos – there are 5 speakers surrounding the bar. During the day the music isn't too loud, but at night it's a little louder because kids control the music – they put money in the juke box.
- Mr. Paquette explained to Armando that the City can refuse his licence if they believe that the business will not be operating with honesty and integrity. Armando responded that he and Ronnie have worked all their lives for their dream and his brother (Carlo) ruined it for them. They're embarrassed by it.
- Mr. Paquette commented to Armando that the Tribunal will expect him to be compliant. Armando responded that they will comply with everything – all the by-laws – willing to do anything required.
- Mr. Ormond stated to Armando that the Zucca Bar opened in 2003 as a General Partnership between Armando and Ronnie. When it changed in 2005 by adding Carlo did you notify the City? Armando responded that they did the incorporation on the computer. Someone helped him out. When asked if he had to update the liquor licence at that time, Armando responded – I think so.
- Mr. Ormond referred to Exhibit 10, which is the Liquor Licence Application, dated November 18, 2007, noting that it lists Armando, Carlo and Ronnie as all owning 33% shares each. Mr. Ormond asked Armando if the Liquor

Licence that was issued had any conditions. Armando responded: No, I don't think so – I can't remember.

- Mr. Ormond asked Armando if he knew if his brother (Carlo) had a criminal record, prior to him joining Armando and Ronnie in the business, and if so did any it involve drugs or weapons. Armando responded that he didn't remember.
- Armando stated that he lives alone, that Luigi lives with their mother (on same street). He also noted that he (Armando) was previously a gas fitter. However, his Gas Fitter requirements weren't kept up to-date since he opened bar. When asked how he has been surviving, Armando stated that his family has been helping him out.
- Armando advised that he is the only one at the Bar during the day and that he typically works from 1:00 p.m. to 8:00 p.m. There are two of them that work at the Bar in the evening – usually Ronnie and Carlo.
- When asked if he knew why a Molotov cocktail (Exhibit 4) was thrown through the window (of the Zucca Bar) on February 6, 2009. Armando responded that he didn't know why – maybe other bars were jealous because people from their bars were coming to Zucca Bar instead.
- Mr. Ormond asked Armando if he new about the marihuana roaches that were found at the Bar on March 6, 2005. Armando responded that he was not there when AGCO attended and found to marihuana roaches – he wasn't aware until he was told afterward.
- When Armando was asked about the baseball bat statement (that the bat was used for crack heads). Armando responded that the statement in the Police report was false (Exhibit 6). Armando noted that the baseball bat must have been left there by the team they sponsor and that the bottom of bat by handle was taped to give the players better grip. He also stated that there were two baseball gloves there (under the bar) too. There is a large storage space at the bottom of the bar area.
- Mr. Ormond asked Armando what the name of the baseball team is that they sponsor. Armando responded that he forgets the name of team.
- Armando stated that he is not into violence and has never had a criminal record at all.
- Mr. Ormond referred to Exhibit 8, AGCO Spot Inspection Report, dated April 25, 2007, which states that "Armando Fazzari made offensive remarks to Police and Inspector Swartz", and asked Armando if he recalls what those remarks were. Armando replied that he didn't remember –

usually when they come in I'm obligated to let them do what they want to do.

- Mr. Ormond referred to Exhibit 17, AGCO Hearing documents, dated March 6, 2008, and asked if there were any conditions added to the Liquor Licence after that hearing. Armando responded that he does not recall if any conditions were added to the liquor licence at that time or prior to that time. He wasn't there when it happened, but he had a meeting with the guys and discussed not allowing drunkenness and got a door guy so it wouldn't happen again. Mr. Ormond asked Armando if the security/door man was a licensed security guard. Armando replied - no. Mr. Ormond then asked if he knew that there is a requirement to have a licensed security guard. Armando responded: Now I am – he did a very good job though – it didn't happen again.
- Armando stated that when the drug bust happened and the weapon was seized – he was shocked. Armando was there and in kitchen. It was time for the shift change and he was in the kitchen checking to see if there was enough beer, change, etc. before he left. He stated that they have the coat check in the kitchen – patrons not allowed in the back. One of them (the owners) takes the coats from the patrons and puts them on a table in the kitchen.
- Mr. Ormond asked if when the Police executed the search warrant and found drugs in area of basement, where the supplies are kept, was he aware they were there as he is the one maintains the Bar's supplies. Mr. Ormond asked if he would not have been curious as to what was in the box. Armando stated that when he goes in the storage room he's not in the room very long. Mr. Ormond asked if the box was on a shelf or on the floor. Armando replied he thinks they found it in file cabinet.
- When asked how he and Ronnie bought out Carlo's portion (33%) of the Bar ownership. Armando stated the he (Carlo) just released us – they cut him off since what happened to them.
- One of the Tribunal members asked Armando if he knew Jason, as he previously stated that he grew up in the neighbourhood and knows everyone. Also, Jason was there on more than one occasion - the Tribunal was under the impression that Jason was a regular. Armando was asked to reconcile comments as he seemed to know everyone, admitted that he did, but stated that he doesn't know Jason who's there all the time and knows his brother (Carlo). Armando responded: Maybe Jason is there at night – maybe he comes at night. Armando stated he works 1-8, 5 days a week and when his shift is done he goes home. Except on Friday nights he might be there for another hour to make sure everything is okay. If he was there later it wouldn't have been there for very long after 8:00 p.m.

- Armando was advised that the raid that was executed (at the Zucca Bar) in October occurred at approximately 11:20 p.m. and he was there. Armando stated that he may stay late sometimes on Fridays and Saturdays – not long though.
- It was noted in the Officer's testimony that there was a baggie left by the register with cocaine in it and Armando was asked if he had seen anything like this. As well, the box downstairs where police found the brick of cocaine – did he see that? Armando replied that he didn't see box with the cocaine – it was in the cabinet, not in plain site. He found out through disclosure afterward. Armando was asked what else was in the filing cabinet to which he responded that they didn't use, it was just put it down there.
- Armando was asked if he was aware his brother had a criminal record with the police prior to 2005. Armando responded: Ya, he had a record, but not sure how long before or what year it was.
- Armando was asked again about the Molotov cocktail that was thrown through the window - what he made of that and did he talk to his brothers about why someone would do that. Armando responded: A lot of patrons from other bars would come to the Bar – it was nice bar – maybe they (other bar owners) were jealous.
- Armando was asked if he was aware of any gunshots outside your bar or that a vehicle was shot up. Armando responded: No sir. He was then asked if he read the Spectator to which he replied: No sir.

There were no further questions of the witness; therefore, Armando Fazzari was excused.

Ronald Faria was called as a witness by his legal counsel. Mr. Ronald Faria was sworn under Oath, prior to providing his testimony. Mr. Faria's comments included, but were not limited to, the following:

- Carlo couldn't find job, they needed another person so they let him join with them. They (Ronnie and Armando) had no experience (operating a business) it was just Ronnie and Armando in their first business. Later they found out that that they would be better as a corporation rather than as partners.
- At first, Carlo was just a janitor and would go get beer and then as he (Ronnie) was there less and less he started doing more. Ronnie would be there once or twice a week – mostly stayed home to care for his parents.

- Sometimes when Carlo was supposed to be working he would call to say he wasn't coming in so Ronnie would go in (to work at the Bar) and Armando would stay. On the day of the raid, Ronnie said he wasn't aware that Carlo was there (at the Bar) until when police came in they found him in basement.
- It was stated that on a few of the occasions when Carlo was there, Ronnie was there as well. Carlo was clearly selling drugs and Ronnie was asked if he knew. Ronnie responded: No I did not. It was stated that the emphasis was that if Ronnie didn't know he should have known.
- Carlo had placed bag of cocaine behind the bar where Ronnie could have seen. Ronnie was asked if he saw the bag or if he ever saw him deal drugs. Ronnie responded: No, I did not.
- Ronnie was also asked if he did drugs. Ronnie responded: No, I do not.
- Do you have a criminal record? Ronnie Responded: No, I do not.
- Ronnie was asked why Carlo would do this to him and his brother. Ronnie responded: Maybe he got caught up in drugs and took advantage of the situation – maybe he got caught up in the drug culture.
- Ronnie was asked if he knew Jason. Ronnie's responded: I know lots of Jasons - not sure which one he is.
- Ronnie was asked if they were granted the licence what would they do different? Ronnie replied. We would run a good business, Carlo and his friends would be allowed in, we would get extra help; installing cameras inside – we would not let it happen again.
- Exhibit 35 - Letters from patrons supporting the Zucca Bar.
- Ronnie stated that the Zucca Bar had food drives for the Good Shepherd every Christmas, got along with everyone on street and never had any trouble with patrons.
- Exhibit 36 is a placard showing pictures of the Euro 2004 World Cup from the front page of the Hamilton Spectator that shows they have friends from every nationality and that there were women and children there that day. They have never had a problem, never called police – everyone enjoyed it and it was a great place. It ended up being tarnished because of what Carlo did.
- Question: Do you recall some of the Board's decision at that time? Ronnie: I don't recollect about the self serving answers. There were about 40 people at the bar once that day – I had to get drinks and was

calculating and giving people the right change back and didn't want to short change the business. I did not see the officers at door. I can only concentrate on one or two things at a time.

- When asked if he recalled seeing the baggie full of smaller bags of cocaine at the bar Ronnie replied that he didn't recall seeing the baggie at the cash register.
- Question: Do you recall a disheveled man who came in or when he came in. Ronnie replied: We have a lot of people that come in that are not well dressed, we have people who take out our trash and who clean our windows.
- Question: Do you recall the day of raid and do you recall the police finding drugs and a loaded handgun meters from where you were working. Ronnie's response: When it's cold people leave their coats with us to be put in kitchen. I did not know there was a gun in the jacket pocket – no I did not. I was shocked about the drugs. The old filing cabinet is never used – it has been there since we bought the place.
- When asked if he had ever called the police. Ronnie replied that he had never called police himself.
- When asked about Carlo and what happened when he (Ronnie) found out about what happened, Ronnie replied that they just told him you're out and he surrendered his shares. After what he cost us – he just surrendered his share.
- Question: The Liquor Licence was posted behind bar, were there any conditions on the Licence. Ronnie: When you first apply there is a thick book. I don't think there were additional conditions listed – just the ones from when we first got the licence.
- Question: When you found out what was going on why didn't you take any steps to stop it? Ronnie: I didn't take any steps because he (Carlo) was older and I thought he had matured and didn't think he would do things like this. I have only seen cocaine on T.V .and in movies.
- Ronnie was asked about his education and skills. Ronnie responded: I finished high school and have no special skills.
- It was commented that there was a suggestion that there was connection to Hells Angels and the North End Crew (with the Zucca Bar). Ronnie was asked if he had any fear with respect to these organizations. Ronnie responded: No, there are people that have come in that he does not know, but he hasn't had any problems and has no affiliation with NEC or Hells Angels.

- Ronnie was asked if he is familiar with what has been going on. Ronnie replied: I'm not aware of what happens down the street. When asked about the Molotov cocktail he replied that he does not know why (it was thrown into Zucca Bar – jealous, maybe the Bar had to ask someone to leave. When asked about the shooting of the vehicle, Ronnie responded that he was not sure why Carlo's car was shot at.
- Question: Were you there when patron left the bar with a bottle of beer? Ronnie's reply: Yes, I was there, but didn't see him leave. When asked what could have been done to let the officers in (who were trying to enter the Bar, but the patron was holding the door closed), Ronnie replied: I can only do one or two things at a time. Needs to be sure he gives patrons proper money. The music was very loud and he was busy serving patrons and did not know officers were trying to get in. Had he known that police were trying to get in he would have helped him for sure.
- Ronnie was asked how he could have not of known that Carlo was dealing drugs from the Bar. Ronnie replied: He pulled it over my eyes – I did not know.
- It was stated to Ronnie: You've heard the testimony of the others and I assume you have read the exhibits, and other business owners in the downtown are saying that they want to see more police presence, and that its not very clean – they say police are very important. However when they respond to your place of work (Zucca Bar), why aren't they welcome at your establishment and why are they treated badly the by owner/operators?

Ronnie replied: I like police – they need to be around – I never had an issue with police – if I'm not there and it happens on the street I can't help it.

There were no further questions of the witness; therefore, Ronald Faria was excused.

The hearing, respecting the Eating Establishment Restaurant Licence for the Zucca Bar, located at 299 James Street North, Hamilton, Ontario was recessed to a future date.

May 19, 2011 – Continuation of May 6, 2011 Hearing:

Mr. Paquette stated that he had concluded the presentation of the matter and had no further witnesses. In closing, Mr. Paquette's comments included, but were not limited to, the following:

- Mr. Paquette quoted Section 16, subsections (3) and (4) of the Hamilton Licensing By-law 07-17, as amended, which outlines what the Tribunal must have regard to when deliberating upon their decision respecting this matter.
- The Tribunal's recommendation to Council should be forward looking of what will be the behaviour of the applicants. The applicants are different than in the past. (Past applicants were Carlo Fazzari, Armando Fazzari and Ronald Faria). When Carlo Fazzari was involved - Carlo was the problem. Past occurrences with Carlo should not affect how Armando Fazzari and Ron Faria operate their business in the future.
- One matter that went to adjudication before the AGCO related to the conduct of Carlo and a patron outside. Ron was at bar at time and testified to what he saw before the AGCO. Criticism lay broadly at the feet of Carlo and JW. Ron was not a major player in the event other than he should have been more proactive in assisting the police to enter the Zucca Bar.
- The Tribunal must be mindful of what is before you. Events that are in the occurrence reports do not reflect upon Armando (Fazzari) and Ron (Faria) and how they would operate their business, but rather on Carlo Fazzari.
- Carlo was in possession of the drugs in the box that were kept in a concealed cabinet downstairs. Carlo was found guilty of possession of cocaine for purpose of trafficking, trafficking cocaine, possession of a firearm, and possession of firearm while prohibited from having a firearm. The drug charges against Armando and Ron have been stayed by the courts.
- The case, at its highest, is that they (Carlo and Ron) knew or should have known what was going on at the Zucca Bar. Both have large commitments (to the business), it is their livelihood, they don't have other work, and Ron Faria supporting his elderly parents. You need to subtract Carlo from the picture and leave Armando and Ron to operate this business.
- If you look at evidence, Carlo was clearly in possession of drugs and selling drugs and out of Zucca Bar. However, Armando and Ron stated that they were not aware (of Carlo's drug activities). Carlo did not bring them money or give them the drugs.
- The police did not have sufficient evidence to show that they (Ron and Armando) were involved in that activity (possession or trafficking cocaine).

- Carlo and Armando have assured that they will ban Carlo from the Zucca Bar and that the Tribunal can impose conditions on the licence: such as a doorman at all times.
- Mr. Paquette stated that the Tribunal granting this licence does not guarantee that the Zucca Bar will open. However, the Tribunal not providing the licence will guarantee that it won't open.
- Mr. Paquette's submission is that his clients have been victimized by Carlo Fazzari, and that his clients want to re-open the business and operate with honesty and integrity.
- Conditions would be perfectly appropriate and his clients have indicated that they would have no objection, as they want to operate lawfully and properly. The problems that existed before will not be problems in the future. When Carlo is released from prison he will not be permitted into the bar.
- At end of day when you consider section 16(3) – the concerns related to the “cancer” if you will (Carlo) have been excised. These two (Armando and Ron) can now operate with honesty and integrity. If they are not operating the business lawfully, they will be charged. They were charged by their association with Carlo. They have testified that they were not involved and had no knowledge of Carlo's activities.
- Mr. Paquette asked that the Tribunal grant the licence with conditions, which must be appropriate. His clients must be aware of the comings and goings of patrons (at Zucca Bar) and drunkenness are not to be permitted and the business must operate lawfully.

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

- It is the City's position that sufficient evidence has been submitted illustrating that the past conduct of the Directors (Armando Fazzari and Ron Faria) supports they would not operate the business with honesty and integrity and would put public safety at risk.
- There is evidence of police attending and not being let in (to the Zucca Bar); that individuals inside can see outside, but police cannot see in; evidence of marijuana; that these two individuals (Armando and Ron) were involved in the day-to-day operation of the business; that a taped baseball bat was found behind bar that Armando stated to police was “for crack heads”. However, when Ron Faria testified before the Tribunal, he stated it was for sponsorship of baseball team, but could not remember the name of the team.

- There is evidence, from the AGCO, that the applicants did not facilitate an AGCO inspector and the AGCO Board agreed that the “licensee was not remorseful and that the testimony was self serving and lacking credibility”.
- Mr. Ormond’s submission is that the City believes that again the testimony provided (before the Licensing Tribunal) by Armando Fazzari and Ronald Faria was self serving and lacking credibility. The three (3) individuals on initial application were Carlo Fazzari, Ron Faria and Armando Fazzari; all with equal shares of 33%. It was not until April 20, 2011, when Corporation profile was updated, that Carlo was removed. When the applicants were asked how Carlo was removed – they advised that there was no paperwork to show his removal; they just told him he was removed him because he caused problems. That is not the proper way to conduct business.
- There was a registered informant and the police, through great expense and risk of safety, implemented Project Birdie and purchased drugs from the Zucca Bar.
- The informant advised that drugs were being sold from Zucca Bar by all three (3) brothers. Undercover officers had purchased drugs on the stairwell landing opposite the bar, and that conversations regarding the sale of drugs took place at the bar. Ronnie was at the bar and working behind the bar when the cocaine was left in the baggie behind the bar.
- Testimony of the police officers, who has conducted over 200 undercover operations, should be taken as more credible than that of the appellants. They (Armando and Ron) have stated that they don’t recall and were not aware of the drug related activities occurring at the Bar.
- With regard to public safety, consumer protection and nuisance control, the evidence shown by staff shows that there is no regard to nuisance controls and customer safety for patrons; who were going into a bar where a gun was located and drugs were being sold. There was also evidence of gang involvement at the Bar. Ronnie testified under oath that “If it happens outside the bar and I don’t see it, then I don’t know about it, but if it’s in the bar – I know about it 100%.” The gun was in the bar, drugs were being sold in the bar and the activities had been occurring for a few years.
- The Tribunal should consider the probability that they (Armando and Ron) would have known or should have known about the criminal activity occurring at the Bar.
- There was also evidence that individuals carrying large amounts of money, waving it at police saying that they could buy off any officer in the city. Armando and Ron admitted to knowing of Carlo’s criminal activity and that they did not consider that when allowing Carlo into the business.

- The action of voluntarily surrendering their liquor licence to the AGCO Board was to avoid having a hearing before that Board; it was self serving to prevent evidence and other findings from coming forward at a Board hearing, allowing them time to put themselves in a better position.
- Ronnie and Armando were Directors of the business who had control over the premises, over the storage rooms and the over the activities of the Bar. They should have done something to prevent and/or stop the illegal activities of patrons and the third Director from occurring at the bar over the past few years.

Staff's Recommendation:

That the application for an Eating Establishment Restaurant Licence for Zucca Bar Inc. (Armando Fazzari and Ronald Faria), for 299 James Street North, Hamilton, Ontario operating as the Zucca Bar, not be accepted and the licence be denied, for the following reasons:

- (i) 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; and,
- (ii) 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.

The Hamilton Licensing Tribunal moved into Closed Session, at 11:15 a.m., to deliberate upon the submissions of the parties, respecting the application for an Eating Establishment Restaurant Licence for Zucca Bar Inc., (Armando Fazzari and Ronald Faria) for 299 James Street North, Hamilton, Ontario, operating as the Zucca Bar.

The Tribunal reconvened in Open Session at 11:35 a.m., and having heard the submissions of the parties, the Tribunal provided their decision; shown as Item 1 of the Hamilton Licensing Tribunal Report 11-004.

(e) APPEAL HEARING: Respecting the Application for a Refreshment Vehicle Licence for Top Dog 5 (Mr. R. Allan Dolmer) (Item 4.2)

On May 9, 2011, the Issuer of Licences sent correspondence to Mr. Allan Dolmer advising that in accordance with City of Hamilton Licensing By-Law 07-170, as amended, the application for the above-noted licence was refused and a licence will not be issued based on the following grounds:

- (a) That in accordance with Section 12(1)(b) of the City of Hamilton Licensing By-Law 07-170, as amended, the Issuer of Licences shall refuse to issue the licence where the requirements for the applicant and applicable licence under this By-law, including those imposed by any Schedule or condition to be met, are not met.
- (b) That in accordance with Section 6(3)(c) of Schedule 19 of the City of Hamilton Licensing By-law 07-170, as amended, no person shall carry on or engage in the business of selling refreshments for public consumption from a refreshment vehicle being operated within 100 meters of an eating establishment without the prior written approval of the owner of the eating establishment.

Namely;

The applicant has failed to obtain the written approval of an eating establishment within 100 meters of the proposed location of the refreshment vehicle.

Mr. Ormond opened by advising the Tribunal of the requirement of applicant to provide verification of permission from establishment within 100 meters in order for the Issuer of Licences to provide a licence.

Mr. Allan Dolmer was sworn under oath before providing his testimony.

Mr. Dolmer's comments included, but were not limited to, the following:

- The Appellant believes that he is not interfering, in any way, with the eating establishment known as the Old Magill House (Fine Dining, Steak and Seafood). Top Dog 5 would be selling sausages from the parking lot of the Canadian Tire across the streets; while the Old Magill House is a fine dining restaurant.
- Mr. Dolmer was investigating different positions on the Canadian tire parking lot and the owner was happy for him to be anywhere. Best location for him would be at the front of the store.

- Mr. Dolmer stated that he had tried to compromise with the owner of The Old Magill House by agreeing to shut down the refreshment vehicle by 5:00 p.m. each day, which is the time that the Old Magill House (fine dining) opened.

Mr. Ormond advised the Tribunal that the applicant requires permission of an eating establishment within 100 meters of the location of the cart. However, the Old Magill House, located at 309 Main Street East, Hamilton, Ontario had expired on March 17, 2011 and was just renewed on May 17, 2011; therefore, was expired at the time of Mr. Dolmer's application.

Mr. Ormond submitted the following Exhibits:

1. Licence Application for a City of Hamilton Refreshment Vehicle Licence – Class A, received April 29, 2011
2. Master Business Licence for Top Dog 5
3. Correspondence from Dave Fraser, Associate Dealer of Canadian Tire, located at 304 Main Street East, Hamilton, Ontario granting permission to Allan Dolmer to place and operate the refreshment vehicle for Top Dog 5 on that property.
4. Map of the area illustrating the location of The Old Magill House, Fine Dining, Steak and Seafood Restaurant, the location of the Top Dog 5 cart at 304 Main Street East; across the street at on the Canadian Tire lot (at the corner of Victoria and Main Streets.

Mr. Ormond advised that he did take the opportunity to contact the establishment, but was not able to get any cooperation from the operators. Mr. Ormond had also provided the operators of The Old Magill House an opportunity to speak to the matter and the hearing, but had not received a reply. Mr. Ormond also advised that the voice mail message on the phone at The Old Magill House states that they open daily at 5:00 p.m.

Mr. Dolmer provided Exhibit 5, correspondence to Mr. Ormond, dated May 18, 2011, which stated the following points:

- That The Old Magill House, located at 309 Main Street East, Hamilton, Ontario, is the restaurant represented by Tom Theos who has declined to sign a permission letter, which would enable Mr. Dolmer to operate his hot dog / refreshment cart within 100 meters of The Old Magill House.
- Mr. Dolmer's correspondence states the following reasons for his appeal before the Hamilton Licensing Tribunal:

1. The Old Magill House advertises “Fine Dining, Steak and Seafood. Therefore, Mr. Dolmer does not believe that the two businesses would have the same clientele.
 2. The Old Magill House does not open until 5:00 p.m. daily, and Mr. Dolmer assured Tom Theos that he would not operate (the hot dog / refreshment vehicle) past 5:00 p.m.
 3. In September 2010, Mr. Dolmer asked Tom Theos if he would sign a permission letter. Mr. Dolmer’s correspondence states that Mr. Theos said yes, but “it will cost you”. Mr. Dolmer advised that he tried to negotiate (an amount) with Mr. Theos, however, his demands were too high.
 4. On April 12, 2011, Mr. Dolmer again tried to negotiate (an amount with Mr. Theos), but his demands were even higher.
 5. The prospect of, hopefully, generating extra income would surely help in terms of his family’s responsibilities.
- Mr. Dolmer does not believe that the operation of his hot dog / refreshment vehicle would negatively impact the operations of The Old Magill House.
 - The Old Magill House is an AGOC licensed steak and seafood restaurant (maybe Greek food too) with indoor seating only (no patio).
 - Mr. Dolmer stated that he had “assured Tom during face-to-face conversations that he would not operate past 5:00 p.m., and that he tried to negotiate cost, but his (Tom’s) demands were too high.
 - Mr. Dolmer commented that he really doesn’t believe that his cart would interfere with business of the restaurant. It’s a good location for him (Canadian Tire lot), it is near his home, reasonably accessible, and Canadian Tire believes that it may attract some business to that location (Canadian tire).
 - The cart is stainless steel, 9’ long x 2.5’ wide, and has a cooler and running water. It is an outdoor BBQ and would probably be removed from location every night.
 - As there is limited room in front of the business, Mr. Dolmer is hoping to put his cart at the left side of the store (as you are leaving store) where there is an area there that could be utilized as it has no parking. Currently, there is a stand selling propane tanks stored there; however, the owner said he would move them to a different location to create more space for the hot dog cart.

- Mr. Dolmer stated that as he has never done run a refreshment vehicle before, he couldn't say for certain how many days of the week he would operate, but that it would be there on a Saturdays.
- The cart would serve sausages, hotdogs, pop water and perhaps coffee.
- In Closing, Mr. Dolmer stated that he wants to get along with people (operators of The Old Magill House) and has tried to do. He believes and is requesting that the Tribunal consider providing him with the opportunity to operate the Top Dog 5 cart on the Canadian Tire lot.

In Closing, Mr. Ormond that the City had received Mr. Dolmer's application; however, the Licensing By-law (07-170, as amended) requires prior written approval of any eat establishment within 100 meters. The Old Magill House did not have license at time of application, and that the City did not feel that there is any public safety, nuisance control or consumer safety issues. Therefore, there is no evidence that there would be any problems with application before the Tribunal today. Mr. Ormond reiterated that he had tried to contact the owner of The Old Magill House determine if there were specific reasons/comments, but had been unsuccessful.

The Hamilton Licensing Tribunal moved into Closed Session, at 11:55 a.m., to deliberate upon the submissions of the parties, respecting the application for Refreshment Vehicle Licence for Top Dog 5 for Mr. R. Allan Dolmer.

The Tribunal reconvened in Open Session at 12:00 p.m., and having heard the submissions of the parties, the Tribunal provided their decision; shown as Item 2 of the Hamilton Licensing Tribunal Report 11-004.

(f) APPEAL HEARING: Respecting the Renewal Application for an Eating Establishment Restaurant Licence for West End Restaurant and Sports Bar, located at 151 Emerson Street, Hamilton, Ontario (Mr. Simon Ruzzier) (Item 4.3)

On February 28, 2011, the Issuer of Licences corresponded with Mr. Simon Ruzzier, advising that his renewal application for an Eating Establishment Restaurant Licence for 2004431 Ontario Limited, operating as the West End Restaurant and Sports Bar, located at 151 Emerson Street, Hamilton Ontario, had been refused and a licence would not be issued, based on the following Grounds:

1. 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:

Attendance by Municipal Law Enforcement staff on September 12, 2010, revealed that the number of people inside the establishment exceeded the legal capacity.

2. That in accordance with Section 12(1)(d) of City of Hamilton Licensing By-law 07-170, as amended, the conduct of the officers, directors, employees or agents affords reasonable grounds for belief that the person will not carry on or engage in this business in accordance with the law.

Namely:

- (a) There are repeated complaints regarding excessive noise requiring attendance by Hamilton Police and/or Municipal Law Enforcement;
- (b) The licence holder operated an unlicensed barbeque on the premises in October 2010; and,
- (c) The licence holder operated an unlicensed business in 2009 and 2005 by failing to renew his Eating Establishment Restaurant Licence before the expiry date.

On May 6, 2011, the Issuer of Licences corresponded with Mr. Robert J. Hooper, Hooper Law Offices, Mr. Ruzzier's legal counsel, advising that in addition to the grounds letter of February 28, 2011, we intend on also including the following grounds for refusal:

1. 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; and,
2. That in accordance with Section 12(1)(d) of City of Hamilton Licensing By-law 07-170, as amended, the conduct of the officers, directors, employees or agents affords reasonable grounds for belief that the person will not carry on or engage in this business in accordance with the law.

Namely:

- (a) Attendance by Hamilton Police Services on September 8, 2010 in response to a Noise Complaint revealed:
 - Intoxicated people yelling at passersby.

- (b) Attendance by Hamilton Police Services on September 10, 2010 revealed that:
- The number of people on the patio exceeded the legal capacity;
 - The number of people inside the establishment exceeded the legal capacity; and,
 - There were no door staff working.
- (c) Attendance by Hamilton Police Services on January 9, 2011 revealed that:
- The number of people inside the establishment exceeded the legal capacity;
 - There was only one employee working; and,
 - There was no security at the bar.
- (d) Attendance by Hamilton Police Services on March 17, 2011 in response to a noise complaint revealed that:
- The number of people on the patio exceeded the legal capacity;
 - The number of people inside the establishment exceeded the legal capacity; and,
 - No staff on site had any training or background in security.
- (e) Attendance by Hamilton Police Services on March 25, 2011 revealed that:
- The number of people on the patio exceeded the legal capacity; and,
 - The number of people inside the establishment exceeded the legal capacity.

Mr. Ormond opened by advising the Tribunal that there was an agreed upon Statement of Facts between the City and the Appellant, and deferred to Mr. Hooper, Legal Counsel for Mr. Simon Ruzzier.

Mr. Hooper, Legal Counsel for Mr. Simon Ruzzier, provided his Opening Statement. Mr. Hooper's comments included, but were not limited to, the following:

- Mr. Hooper described restaurant's (West End Sports Restaurant and Sports Bar) location and stated that it was owned and operated by his client, Simon Ruzzier.
- The issues are related to capacity and noise complaints, and that they (Mr. Hooper and Mr. Ruzzier) are here to have the licence reviewed and possibly have conditions imposed to allow this business to operate.
- Mr. Hooper agreed that the Statement of Facts is correct, and that he does not believe these are large issues. On some occasions there seems to have been a capacity issue; and, with respect to the noise complaints – it is

primarily one person who is making those complaints. Mr. Hooper stated that Mr. Ruzzier does not make light of the noise complaints and noted that the complainant lives about 4 houses to south of the restaurant, has owned property for years, and has recently moved back to house from Caledonia.

- The Homeowner has been seen out front of the business taking notes. Mr. Ruzzier understands that he works in an area where people live, and is prepared to work on a resolution with resident. He has purchased glass to install a glass wall on the patio, and would advise the resident of frosh week and homecoming and other events so that the homeowner would be aware.
- With respect to capacity, as of April 1, 2011, Mr. Ruzzier has employed a security person who works weekends. However, Mr. Ruzzier is now aware that the security person does not meet with provincial standards, but there is an agent, who is a retired AGCO Officer who is able to assist Mr. Ruzzier in obtaining a proper security company.

Mr. Ormond submitted the following Exhibits:

1. Establishment Licence Application dated September 7, 2001
2. Departmental Inspections
3. Building Department Inspection dated September 7, 2001 - Inside Capacity
4. Zoning Verification dated September 7, 2001 – 34 Seat Restaurant Not Permitted
5. Establishment Licence issued October 6, 2001
6. Establishment Licence Application Tobacco Sales dated November 20, 2001
7. Licence Renewal 2002
8. Licence Renewal 2003
9. Licence Renewal 2004
10. Action Request, February 21, 2006, Expired Licence
11. Licence Renewal 2006
12. Licence Renewal 2007
13. Action Request, February 23, 2009, Expired Licence

14. Licence Renewal 2009
15. Licence Renewal 2010
16. Action Request, April 22, 2010, Noise Complaint
17. Excessive Noise Evidence Sheet April 24, 2010 to June 3, 2010
18. Excessive Noise Evidence Sheet June 5, 2010 to June 12, 2010
19. Excessive Noise Evidence Sheet June 16, 2010
20. Excessive Noise Evidence Sheet July 30, 2010 to September 26, 2010
21. MLE Incident Tracking and Recording, September 8, 2010 to September 20, 2010
22. Action Request September 12, 2010 – Noise
23. Action Request October 5, 2010 – Barbecue on Patio
24. Photograph of 151 Emerson Street, taken by Mike DiSanza, MLEO, October 2, 2010
25. Notice of Non-Compliance, dated October 5, 2010, No Refreshment Vehicle Licence
26. Photograph of 151 Emerson Street, taken by Mike DiSanza, MLEO, October 6, 2010
27. Notice of Non-Compliance, dated October 27, 2010, No Eating Establishment Licence
28. Licence Renewal for 2011 Licence, dated November 3, 2010
29. Occurrence Details, Hamilton Police Services, F. Devuono, January 9, 2011, Liquor Licence Bar Check, Over Capacity
30. Licence Renewal Refusal Letter, dated February 28, 2011
31. General Occurrence Report, P.C. Young, March 17, 2011, Over Capacity
32. Occurrence Details, P.C. Young, March 25, 2011, Liquor Licence Bar Check – Over Capacity
33. Correspondence from Mr. Robert J. Hooper, dated March 25, 2011
34. Notice of Hearing Letter, dated April 28, 2011

35. Additional Grounds Letter, May 6, 2011
36. Establishment Licence 03 168203 1J, date of expiry October 6, 2004
37. Establishment Licence 05 168203 1J, date of expiry October 6, 2006
38. Establishment Licence 06 168203 1J, date of expiry October 6, 2007
39. Establishment Licence 07 168203 1J, date of expiry October 6, 2008
40. Establishment Licence 08 168203 1J, date of expiry October 6, 2009
41. Establishment Licence 09 168203 1J, date of expiry October 6, 2010
42. Spreadsheet of Licenses 2003 to 2010
43. Agreed Statement of Facts
44. Letter of Support from Doug Anderson, Resident/Landlord
45. Letter of Support from Terry Morgan, Resident

Mr. Simon Ruzzier was sworn under Oath, prior to providing his testimony. Mr. Ruzzier's comments included, but were not limited to, the following:

- Has been the Owner/Operator of the West End Restaurant and Sports Bar for about 10 years at that location. The Restaurant employs 15 staff; many of who have been with him for the whole 10 years.
- He also lives in the area.
- Many of the patrons are area residents and local students.
- The Restaurant serves food and they have brought in a chef that cooks with a Caribbean flavour.
- The Restaurant is open 7 days a week; operating weekends from 10:00 a.m. for breakfast until 2:00 a.m. in the evening; and, week days from 11:00 a.m. to 2 a.m. that evening.
- It has been a challenging time over last year, as the Appellant has been recently separated and has 3 small children of whom he shares custody. These changes have taken them away from the bar over the last year.
- There is another establishment (The Hub) close by that has recently closed. The West End Restaurant and Sports Bar used to deal with over flow from The Hub. There is a likelihood that The Hub will re-open shortly. Mr. Ruzzier had noticed that, as a result of incidents over the past 9 months, it is clear that there is a demand for more seats so he has purchased The Hub

down the street, in order to alleviate the capacity issues at the West End Restaurant and Sports Bar.

- Mr. Ruzzier advised that he has taken steps regarding the capacity and will be vigilant in the future. He has hired someone for Fridays and Saturdays to regulate the amount of people on the patio.
- Mr. Ruzzier stated that there was a problem when a keg party was dispersed down street. Many kids were ushered up the street by police and then police sandwiched hundreds of kids between street and establishment; some of the kids went onto the patio. As Mr. Ruzzier was ushering the kids off the patio, the officer was counting them.
- Has good relationship with all the abutting neighbours. The one complainant regarding the noise is a new resident to the neighbourhood (recently moved back from Caledonia). Mr. Ruzzier stated that he found out in February from Councillor McHattie that there was going to be a meeting with resident, and enforcement officers to work the concerns. Unfortunately, the meeting was cancelled due to a scheduling issue with Councillor McHattie. Mr. Ruzzier commented that when he tried to reschedule, Councillor McHattie had advised that the meeting could no longer take place, as the matter was now before the Tribunal.
- The house is question 4 houses down to the south of the establishment and there is one area of patio that does not have glass, which may be the issue. Mr. Ruzzier has since purchased the glass wall for the patio and will work with resident to resolve matters, if she will speak with him.
- Safe Bars Inc. Security is assisting to help resolve the issues. They have never had issues in the past, as they are a small pub. Not a high risk area like Hess Village and Mr. Ruzzier ensured that a proper door man, that will meet provincial requirements, will be put into place on weekends and special occasions.
- 12:15 a.m. this past Friday (May 13, 2011) there was a noise complaint. However, it was pouring rain outside and there were no patrons on the patio or outside. Mr. Ruzzier walked down the street to see if he could hear noise from his restaurant in the area of the complainant's house. He could not; however, there is a bus stop near the woman's house and you can hear kids really well. The complainant's house is also abutted by two student residences – there were kids playing beer pong inside one house and kids drinking beer outside at the other. There were only 14 to 15 patrons inside Mr. Ruzzier's establishment at that time.
- The inside capacity for the establishment is 30 and 14 for the patio.

- Patrons are permitted to finish their drinks and leave by 2:45 a.m. There could have been people who were getting out of a cab, people who left house party – or patrons coming from bar making noise on those occasions.
- In Closing, Mr. Hooper advised that Mr. Ruzzier has demonstrated as evidence that for various reasons there were some lapses and – on day of noise complaints – there were never capacity issues, as there were only 8 or 9 patrons in the establishment.
- Referring to Exhibits 17 and 18 – Mr. Hooper brought to the Tribunal's attention that complaints weren't from the complainant's home. She was taking a walk and there were people at bus stop, there were two guys and a shopping cart and people on the street. The complaint noted that her husband was out for walk to check for noise. There were 20 people in middle of the road.

Mr. Ormond provided copies of Exhibit 43 – Agreed Statement of Facts.

Staffs recommendation:

That the West End Restaurant and Sports Bar be provided an Eating Establishment Licence with the following conditions:

1. That 2004431 Ontario Limited immediately implement a patron count system to ensure capacities are not exceeded.
2. That 2004431 Ontario Limited use licensed security personal on Friday's from 8:00pm until Saturday's at 3:00am and Saturday evenings from 8:00pm until Sunday's at 3:00am.
3. That 2004431 Ontario Limited use licensed security personal during the full week of September - McMaster Frosh/Welcome week, October Homecoming events, and during all other events that the establishment hosts.
4. That Mr Ruzzier notifies the Issuer of Licences in writing of 7 days prior to events or activities occurring at West End Restaurant and Sports Bar.
5. That the patio close at 10:00 p.m. each night.
6. That Mr Ruzzier request that his Liquor Licence be amended to indicate the patio closing time of 10:00 p.m.

The Hamilton Licensing Tribunal moved into Closed Session, at 1:19 p.m., to deliberate upon the submissions of the parties, respecting the renewal application for an Eating Establishment Restaurant Licence for West End Restaurant and Sports Bar, located at 151 Emerson Street, Hamilton, Ontario, for Mr. Simon Ruzzier.

The Tribunal reconvened in Open Session at 1:32 p.m., and having heard the submissions of the parties, the Tribunal provided their decision; shown as Item 3 of the Hamilton Licensing Tribunal Report 11-004.

(g) SHOW CAUSE HEARING: Respecting the Refreshment Vehicle Licence for Mister Twister Inc. (Mr. Amadeus Blazys)

Mr. Amadeus Blazys put forward a request for adjournment to a future hearing date for the following reasons:

- (a) He had only received the disclosure package a week ago for the May 19, 2011 hearing.
- (b) He was not aware of the correspondence that had been sent regarding the hearings, as he was out of town over the winter.
- (c) He would like time to prepare for the hearing.

Staff had no objection to the adjournment request.

The request for adjournment, submitted by Mr. Amadeus Blazys, respecting the Refreshment Vehicle Licence for Mister Twister Inc., in order to have the appropriate time to prepare for a hearing, was approved on a peremptory basis to the July 6, 2011 Licensing Tribunal hearing date.

(h) ADJOURNMENT (Item 5)

There being no further business, the Hamilton Licensing Tribunal adjourned at 1:47 p.m.

Respectfully submitted,

Councillor T. Whitehead, Chair
Hamilton Licensing Tribunal

Stephanie Paparella
Legislative Assistant,
Hamilton Licensing Tribunal
May 19, 2011