THE FOLLOWING DECISIONS WERE RATIFIED BY THE HAMILTON LICENSING TRIBUNAL:

1. Show Cause Hearing: Residential Care Facility (Establishment) Licence for 2142472 Ontario Limited operating as Burris Lodge, located at 28 Burris Street, Hamilton, Ontario (File No. 11 276398 1Y) (Item 4.1)

(Collins/Pasuta)
That the request for an adjournment of the August 15, 2012 show cause hearing, respecting the Residential Care Facility (Establishment) Licence for 2142472
Ontario Limited operating as Burris Lodge, located at 28 Burris Street, Hamilton, Ontario, submitted by Peter Vita, legal counsel for Moheb Michael, be approved on a peremptory basis on the Appellant, and be contingent upon the following conditions:

(a) That City of Hamilton Public Health Inspectors be permitted enter the facility to perform weekly inspections in order to ensure compliance with the Hamilton Licensing By-law 07-170, as amended;

(b) That City of Hamilton Property Standards Inspectors be permitted to enter the facility to perform a follow-up inspection of any existing Orders and to ensure continued compliance with the Property Standards By-law 10-221;

(c) That Burris Lodge staff continue to use the Medical Administration Records Sheets (MARS) system for the administration of medication(s) to residents;

(d) That Burris Lodge staff complete and maintain all documentation required under the Hamilton Licensing By-law 07-170, as amended.

(e) That Burris Lodge staff ensure the cleanliness of the facility and residents' rooms at all times;

(f) That Burris Lodge maintain its contract with a pest control company and retain any additional pest control services on an as-needed basis.

(g) That Burris Lodge retain a licensed professional to immediately repair the ongoing water temperature issues so that the water temperature is maintained within the standards set by the Hamilton Licensing By-law 07-170, as amended, and the Property Standards By-law 10-221;

(h) That the Owner/Operator increase the direct line of supervision to all non-management staff;

(i) That, if at any time between now and the next Show Cause hearing date of November 8, 2012, the Facility breaches any of these conditions or is otherwise found to be in non-compliance with the Hamilton Licensing By-law 07-170, as amended, the Residential Care Facility Licence issued to 2142472 Ontario Limited operating as Burris Lodge, located at 28 Burris Street, Hamilton, Ontario, be immediately suspended until such time as the hearing has concluded and a decision has been rendered by the Hamilton Licensing Tribunal.

CARRIED
FOR THE INFORMATION OF THE TRIBUNAL:

(a) CHANGES TO THE AGENDA (Item 1)

There were no changes to the agenda.

(Collins/Pasuta)
That the August 15, 2012 agenda for the Hamilton Licensing Tribunal be approved, as presented.

CARRIED

(b) DECLARATIONS OF INTEREST (Item 2)

There were no declarations of interest.

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

(i) July 11, 2012 (Item 3.1)

(Collins/Pasuta)
That the Minutes of the July 11, 2012 meeting of the Hamilton Licensing Tribunal be approved, as presented.

CARRIED

(d) Show Cause Hearing: Residential Care Facility (Establishment) Licence for 2142472 Ontario Limited operating as Burris Lodge, located at 28 Burris Street, Hamilton, Ontario (File No. 11 276398 1Y)

On July 5, 2012, the Issuer of Licence sent correspondence to the Legislative Coordinator for the Hamilton Licensing Tribunal, requesting that a show cause hearing be held before the Licensing Tribunal to consider whether or not the above mentioned Licence should be revoked, suspended or have conditions imposed upon it.

The July 5, 2012 correspondence advised that, pursuant to Section 8 of the Statutory Powers Procedure Act, R.S.O., 1992, c.S22, the grounds for revocation or suspension or the imposition of conditions at the hearing are as follows:

(i) City of Hamilton Licensing By-law, General Provisions, Section 12(1)(c)(vi)1. In the opinion of the Issuer of Licenses, the operation of the licensee’s business would put the public safety at risk.

(ii) City of Hamilton Licensing By-law, General Provisions, Section 12(1)(c)(vi)2. In the opinion of the Issuer of Licenses, the operation of the licensee’s business is not or will not be carried on in compliance with the law.
(iii) City of Hamilton Licensing By-law, General Provisions, Section 12(1)(c)(vi)3. In the opinion of the Issuer of Licenses, the conduct of the licensee, officers, directors, employees, or agents affords reasonable grounds for belief that the licensee will not carry on or engage in the business in accordance with the law or with honesty or integrity.

Namely:

City of Hamilton Licensing By-law 07-170, as amended:

Schedule 20, Section 31(d), the operator shall ensure that all food storage, preparation and service areas meet the requirements of the Food Premises Regulation under the Health Protection and Promotion Act, specifically:

(i) *Health Protection and Promotion Act, R.R.O. 1990, Reg. 562 Food Premises*

1. Section 11, Every food premise shall be operated and maintained such that the premises are free from every condition that may adversely affect the sanitary operation of the premises

   - An inspection on May 18, 2012 by Public Health Services revealed mouse droppings.

2. Section 18, any article or piece of equipment that is used for the manufacture, distributing, sale or offering for sale, preparation, processing, handling, transportation, store or display of food shall be kept in good repair.

   - Inspections on May 18, 2012 and June 1, 2012 by Public Health Services revealed that a chest freezer lid was cracked and the rubber seal was loose.

3. Section 23, all food shall be stored on racks, shelves or pallets, and no rack or shelf shall be placed less than 15cm above the floor.

   - An inspection on May 18, 2012 by Public Health Services revealed that food was being stored on the floor.

4. Section 81, utensils that have been cleaned and sanitized shall be transported and stored in such a manner as to prevent contamination.
- An inspection on May 18, 2012 by Public Health Services revealed the bins for holding cleaned utensils needed to be cleaned thoroughly and utensils needed to be stored in a manner preventing contamination.

(ii) City of Hamilton Licensing By-law 07-170, as amended:

1. Schedule 20, Section 12(a) and Section 12(c), the operator ensure that the Guidelines are complied with (concerning Section 5 – Single Facility Incident Plan); and, shall keep a copy of the Single Facility Incident Plan in the facility in a readily accessible location.

- An inspection on January 18, 2012 by Public Health Services, Health Protection Division, revealed that a copy of the single facility incident plan needed to be updated and reviewed with tenants and staff for January, 2012, and that a copy needed to be provided to the Medical Officer of Health.

2. Schedule 20, Section 15, the operator shall provide evidence satisfactory to the Issuer of Licences within thirty days of each six month period after the employee commences employment that the employee has successfully completed at least five hours of continuing education as described in the Guidelines.

- Inspections on September 12, 2011, January 18, 2012, and February 7, 2012 by Public Health Services, Health Protection Division, revealed that this was not met.

3. Schedule 20, Section 18(c), the operator shall ensure water serving all bath tubs, showers and hand basins used by tenants is of a temperature of not more than 49° Centigrade.


4. Schedule 20, Section 31(a), the operator shall ensure that the facility is kept in a clean and sanitary condition
including, but not limited to, providing for professional pest control, as needed.

- An inspection on August 15, 2011 by Public Health Services revealed that living and sleeping areas needed to be cleaned and maintained.

- An inspection on November 14, 2011 by Public Health Services revealed a bed bug infestation and that a shower stall and washroom needed to be cleaned / sanitized / repaired.

- Inspections on February 1, 2012 and February 16, 2012 by Public Health Services revealed that towel racks were required; windows could not be opened; windows, rooms, blinds, window ledges, and rooms needed to be cleaned; moldy baseboards; mattress covers and pillows needed to be replaced/cleaned; a hole in roof; drywall needed repair; cigarette butts on the roof; evidence of bed bugs; washrooms had inadequate supplies; and clutter.

- Inspections on March 19, 2012 and March 29, 2012 by Public Health Services revealed that the home was not maintained in a clean and sanitary manner, and that there was evidence of pest activity.

- Inspections on April 5, 2012 and April 13, 2012 by Public Health Services revealed that the home was not maintained in a clean and sanitary condition.

- An inspection on May 18, 2012 by Public Health Services revealed mouse droppings, bed bug infestation, living and sleeping areas needed to be cleaned and maintained, windows and doors were not properly screened, and a bathroom sink needed to be repaired.

- An inspection on June 1, 2012 by Public Health Services revealed that the home was not maintained in a clean and sanitary manner, a sink in a bathroom needed repair, and there was evidence of bed bugs.

5. Schedule 20, Section 37, the operator shall provide care services to each tenant in a facility in accordance with the Guidelines.

- Inspections on May 29, 2012 and May 31, 2012 by Public Health Services, Health Protection Division revealed that
employees had not contacted appropriate organizations when dealing with physical or mental emergencies and that there was not a daily written record of important information about individual tenants.

- An inspection on June 8, 2012 by Public Health Services, Health Protection Division, revealed that care services were not being provided in accordance with the Guidelines.

6. Schedule 20, Section 38, the operator shall ensure that all prescription drugs are kept in one or more locked drug cabinets, unless the drug requires refrigeration, or kept with the tenant for immediate use, and are made available only to those tenants for whom they have been prescribed, as directed by a physician, and in a unit-dose medication dispensing system as described in the Guidelines.

- An inspection on April 25, 2012 by Public Health Services, Health Protection Division revealed that prescription drugs were not kept locked, and that staff was not trained on a safe medication system.

- Inspections on May 29, 2012, May 31, 2012, and June 8, 2012 by Public Health Services, Health Protection Division revealed that staff were not using a safe medication system and had not been trained how to do so. Documentation of any instances in which a tenant did not take prescribed medication was required.

7. Schedule 20, Section 41, the operator shall ensure that the tenants of a facility are served daily sufficient food of good quality and adequate nutritional and caloric value, as described in the Guidelines.

- An inspection on September 12, 2011 by Public Health Services, Health Protection Division revealed that there was a lack of non-perishable food stock.

8. Schedule 20, Section 42, the operator shall ensure that all requirements for the control of infectious diseases that are set forth in Guidelines are complied with, including recommendations for tuberculosis screening, immunization programs, reporting requirements, and outbreak control measures.
• An inspection on September 12, 2011 by Public Health Services, Health Protection Division revealed that tuberculin skin testing had not been done for two tenants.

9. Schedule 20, Section 45, the operator shall ensure additional care / special needs services are available to tenants.

• An inspection on January 18, 2012 by Public Health Services, Health Protection Division revealed that a plan was needed for tenants requiring additional care services.

10. Schedule 20, Section 48, where a tenant is transferred from a residential care facility to another facility licensed under this By-law, or to a hospital, the operator shall complete a transfer in Form 2.

• Inspections on May 29, 2012, May 31, 2012, and June 8, 2012 by Public Health Services, Health Protection Division revealed that a Form 2 transfer form had not been completed.

(iii) **City of Hamilton Property Standards By-law 10-221:**

An inspection on May 16, 2012 revealed the following infractions under the City of Hamilton Property Standards By-law 10-221:

1. Section 8(1), all exterior surfaces of a building, structure, fence or retaining wall shall be of materials which resist deterioration by the weather or have resistant coatings applied to them.

   • There was exposed wood on an exterior window sill.

2. Section 8(3), the exterior of a building shall be maintained to prevent the entry of vermin and birds.

   • A dryer vent needed to be covered and siding was missing on the building.

3. Section 9(1)(a), an exterior door, window, hatch or other opening and its frame shall be maintained to property perform their intended functions.
• There were missing window screens, broken windows, and broken window handles.

4. Section 12(1), an exterior or interior stairway, landing, balcony, porch, ramp or other means of access or egress shall be maintained so as to be free of holes, cracks and other defects which may constitute a possible safety hazard.

• There was loose wire along a baseboard.

5. Section 13(4), a floor shall be smooth and level and maintained so as to be free of all loose, warped, protruding, broken or rotted boards that may create an unsafe condition or surface.

• A transition piece in a hall needed to be replaced or repaired.

6. Section 13(5), where a floor has been covered with a sheet or vinyl floor covering or other flooring that has become worn or torn so that it retains dirt or may create an unsafe condition, the sheet or vinyl floor covering or other flooring shall be repaired or replaced.

• Carpet on a stairwell needed to be replaced, removed or cleaned.

7. Section 13(7), a wall or ceiling shall be maintained in a condition free from holes, open cracks, loose coverings or other substantial defects.

• There were holes in walls and around ceiling lights.

8. Section 14(1), the plumbing system and every plumbing fixture shall be maintained as to properly perform its intended function and free from leaks and defects.

• Hot and cold water handles needed to be repaired or replaced, drywall around a bathtub required paint, and a floor and shower stall required grout or caulk.
9. **Section 17(1), an electrical service shall comply with the Ontario Electrical Safety Code.**

   - Five electrical outlets/switch covers needed to be replaced or repaired.

In that correspondence, the Issuer of Licences also advised of the following:

   - The Operator applied for a Subsidy Agreement for Domiciliary Hostel Funding. The point schedule required for a successful application was completed on May 17, 2012. A passing mark is 28/35 and the home averaged 22/35; therefore, failing the point schedule. Numerous issues were documented including, but not limited to, the following:

   - The administrator was not familiar with the residential care facility and where items were kept although he had been the administrator since December 2011. When asked for the emergency procedure, copy of the licence, staff on call, copy of menus, house rules and posted activities, he was unaware of where they were kept.

   - A copy of menu was posted in the kitchen, which is usually closed and not accessible to tenants.

   - The residential care facility was in disrepair including three (3) broken windows that staff identified had been that way since October 2011. There was paint peeling from walls and torn wallpaper throughout the home. The residents "outside area" consisted of old kitchen chairs all in a line beside the garbage bins.

The licence expires on January 8, 2013. If the hearing has not been completed before the licence expires; and, the licence holder has not submitted a completed application for a renewal, the City will request that the hearing be cancelled. If this is the case and the licence holder keeps operating, they will be doing so contrary to the Licensing By-law without a licence.

If the licence holder has submitted a completed application for a renewal, then the City will request that the hearing proceed under Section 12(1) of the Licensing By-law 07-170, as amended, as a refusal of the licence rather than as a recommendation to revoke or suspend the licence.
On July 18, 2012, Mr. Moheb Michael, President and co-owner of Burris Lodge, sent correspondence to the Legislative Coordinator, Office of the City Clerk, advising that he would be unable to attend the August 15, 2012 show cause hearing, as he would be attending a previously scheduled family reunion out of the country at that time.

In that letter, Mr. Michael requested that the August 15, 2012 hearing date be adjourned for at least a one month period.

On July 20, 2012, the Legislative Coordinator polled both the City and the Licensing Tribunal to determine whether or not they would consider approving the adjournment request without hearing submissions of the parties. However, all parties were not in agreement with the adjournment request. The City responded with the following comments:

"While the City sympathizes with Mr. Michael's situation, the City must respectfully object to the granting of the requested adjournment for the following reasons:

1. The nature of the allegations, as set out in the Notice of Show Cause hearing, are serious and many relate to health and safety concerns that can affect the residents of Burris Lodge;

2. The City has not received any new information from Mr. Michael to indicate that the conditions at Burris Lodge are any different today than as set out in the Notice of Show Cause Hearing;

3. The residents of Burris Lodge are entitled to accommodation, care and services that are in compliance with the Health Protection and Promotion Act, and the City's Licensing By-law and Property Standards By-law;

4. A September 20th hearing date would mean that the residents of Burris Lodge are living in circumstances that the City believes are not in compliance with the applicable laws for an additional five (5) weeks; and,

5. There is a potential risk of harm to residents of Burris Lodge the longer the alleged deficiencies at the facility continue.

Therefore, the matter of the adjournment request must be considered before the Hamilton Licensing Tribunal on August 15, 2012.

On July 20, 2012, Mr. Moheb Michael was advised, via e-mail, that pre-approval of his adjournment request was not possible, as all parties are not in agreement with the adjournment request. Therefore, the matter of his adjournment would need to be considered at the August 15, 2012 Tribunal hearing. Mr. Michael was also advised that, while we do understand that he would not be present on
August 15, 2012, he may wish to send either legal counsel or an agent to represent Burris Lodge on August 15th.

At the August 15, 2012 hearing, Mr. Burtis provided his opening statement. Mr. Burtis' comments included, but were not limited to, the following:

- It is my understanding that Mr. Vita will be asking for adjournment of this matter.
- Based on new information received yesterday advising that the Owner has rectified most of the City's concerns, we will not be objecting to the request for adjournment.
- However, staff would like to advise the Tribunal that the remedies are very recent and have action has only been taken since notification of the show cause hearing was received.
- Mr. Michael failed to provide the documentation at previous meeting, but provided it yesterday (August 14, 2012).
- The City is no longer opposed to an adjournment until next available hearing date, contingent on the following conditions:
  
  (a) That City of Hamilton Public Health Inspectors be permitted enter the facility to perform weekly inspections in order to ensure compliance with the Hamilton Licensing By-law 07-170, as amended;

  (b) That City of Hamilton Property Standards Inspectors be permitted to enter the facility to perform a follow-up inspection of any existing Orders and to ensure continued compliance with the Property Standards By-law 10-221;

  (c) That Burris Lodge staff continue to use the Medical Administration Records Sheets (MARS) system for the administration of medication(s) to residents;

  (d) That Burris Lodge staff complete and maintain all documentation required under the Hamilton Licensing By-law 07-170, as amended.

  (e) That Burris Lodge staff ensure the cleanliness of the facility and residents' rooms at all times;

  (f) That Burris Lodge maintain its contract with a pest control company and retain any additional pest control services on an as-needed basis.

  (g) That Burris Lodge retain a licensed professional to immediately repair the ongoing water temperature issues so that the water temperature
is maintained within the standards set by the Hamilton Licensing By-law 07-170, as amended, and the Property Standards By-law 10-221;

(h) That the Owner/Operator increase the direct line of supervision to all non-management staff;

(i) That, if at any time between now and the next Show Cause hearing date of November 8, 2012, the Facility breaches any of these conditions or is otherwise found to be in non-compliance with the Hamilton Licensing By-law 07-170, as amended, the Residential Care Facility Licence issued to 2142472 Ontario Limited operating as Burris Lodge, located at 28 Burris Street, Hamilton, Ontario, be immediately suspended until such time as the hearing has concluded and a decision has been rendered by the Hamilton Licensing Tribunal.

Mr. Vita, legal counsel for Mr. Moheb Michael, provided his opening statement. Mr. Vita’s comments included, but were not limited to, the following:

- The adjournment is primarily because Mr. Michael is not available today, and it would be inappropriate to conduct such a hearing without his presence. Mr. Michael is on a pre-planned family vacation/reunion.

- As well, as I was only recently retained by Mr. Michael, I require additional time to prepare for the hearing.

- My client has satisfied most, if not all, outstanding issues. Some of the areas that were not fully compliant, were not outlined in the City’s position outlined in their July 26, 2012 correspondence

- My client has put in place adequate supervision to ensure matters are being addressed appropriately.

- The owners have retained a licensed contractor to do a complete review of the building to properly address the water temperature issues.

- There are currently seventeen (17) residents within facility,

(Pasuta/Collins)

That the Hamilton Licensing Tribunal move into Closed Session, at 1:24 p.m., to deliberate upon the submissions of the parties, regarding the adjournment request for the August 15, 2012 show cause hearing, respecting the Residential Care Facility (Establishment) Licence for 2142472 Ontario Limited operating as Burris Lodge, located at 28 Burris Street, Hamilton, Ontario.  

CARRIED
Members of the Public were invited to return to hear any further deliberations upon the Tribunal reconvening in Open Session.

The Tribunal reconvened in Open Session at 1:29 p.m.

Having heard the submissions of the parties, the Tribunal provided their decision, which is shown as Item 1 above.

(e) Closed Session Minutes – July 11, 2012 (Item 5.1)

(Collins/Pasuta)
That the Closed Session Minutes of the July 11, 2012 meeting of the Hamilton Licensing Tribunal be approved, as presented.

CARRIED

(f) ADJOURNMENT (Item 7)

(Pasuta/Collins)
That, there being no further business, the Hamilton Licensing Tribunal be adjourned at 1:40 p.m.

CARRIED

Respectfully submitted,

Councillor T. Whitehead, Chair
Hamilton Licensing Tribunal

Stephanie Paparella
Legislative Coordinator
Hamilton Licensing Tribunal
August 15, 2012