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

Absent with Regrets: Councillor T. Whitehead (Chair) – Personal

Also Present: Lisa Pasternak, Senior Solicitor
Karen Kelly, Solicitor
Dennis Perlin, Solicitor
Gary Bishop, Adjudicator
Stephanie Paparella, Legislative Coordinator, Office of the City Clerk

Other Attendees: John Bosanac, Sandwell Fuels Ltd., Appellant (Item 4.1)
Diana Vranich, Gown & Gavel, Appellant (Item 4.2)
John Kranjc, Legal Counsel, Keesmat, Dixon, Kranjc, Lewis & Kovacs (Item 4.2)
Robert Plouffe, R. J. Plouffe & Associates, Agent (Item 4.3)
Omid Noori, Appellant (Item 4.4)

1. APPEAL HEARING: John Bosanac, Sandwell Fuels Ltd., Request for Extension of City of Hamilton Trade Licence for Heating, Air Conditioning and Ventilation Contractor (File No. 13 158646 CL) (Item 4.1)

(Clark/Duvall)
(a) That John Bosanac, Master Warm Air Heating, Air Conditioning and Ventilation Installer, be authorized to be the Master Warm Air Heating, Air Conditioning and Ventilation Installer for both Bosanac Heating and Electric, a licensed Heating, Air Conditioning and Ventilation Contractor; and Sandwell Fuels Ltd., a second licensed Heating, Air Conditioning and Ventilation Contractor to April 18, 2014, and for that purpose, the Heating, Air Conditioning and Ventilation Contractor Trade Licence for John Bosanac, at Sandwell Fuels Ltd., be extended for the remainder of the one year period to April 18, 2014, pursuant to sub-section 28(3) of Schedule
29 of the Hamilton Licensing By-Law 07-170, as amended, providing that Licensee satisfies all other necessary requirements, as set out in Licensing By-law 07-170, as amended.

(b) That staff be directed to fully refund the $126.00 administration fee, paid by John Bosanac, Sandwell Fuels Ltd., to appear before the Licensing Tribunal on June 20, 2013.

CARRIED

2. **SHOW CAUSE HEARING: Diana Vranich, Eating Establishment – Restaurant Licence for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, ON** (File No. 11 275609 1J) (Item 4.2)

(Clark/Duvall)

(a) That the following conditions be immediately imposed upon the Eating Establishment - Restaurant Licence for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton:

(i) That Gown & Gavel Restaurant Inc. must pay, in full, any outstanding Special Duty Officer Charges to-date for the Gown & Gavel, located at 24 Hess Street South, Hamilton, Ontario within sixty (60) days of the Tribunal’s decision; with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the invoiced amount or the expiry date of the Licence, whichever is earlier;

(ii) That the Licensee for Gown & Gavel Inc. must pay, in full, all Special Duty Officer Charges that are outstanding for Elixir, located 105 George Street Hamilton, Ontario for the period April to October 2011, in the amount of $11,333; as Ms. Vranich was the Director of Elixir during that period of time, with the amount of $11,000 to be paid within sixty (60) days of the Tribunal’s decision, and the balance of $333 to be paid no later than October 30, 2013; with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the invoiced amount or the expiry date of the Licence, whichever is earlier;

(iii) That the Licensee for Gown & Gavel Inc. must pay, in full, 50% of the $29,021.13 for Special Duty Officer Charges that are outstanding for Rok Bar, located at 15 Hess Street South, Hamilton, Ontario, for the period of June 2011 to October 2011, in the amount of $14,510.56, no later than October 30, 2013; with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the invoiced amount or the expiry date of the Licence, whichever is earlier.
(iv) That the Licensee must pay, in full, its pro-rated share of the cost of the Special Duty Police Officer Charges, required under Schedule 21, Sections 10 and 11 of the Hamilton Licensing By-law 07-170, as amended, as invoiced by the City to the Licensee within 45 days of the date of the City of Hamilton's post mark, with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the invoiced amount or the expiry date of the Licence, whichever is earlier.

(b) That, subject to the Licensee continuing to abide by all other requirements, regulations, and conditions of the Hamilton Licensing By-law 07-170, as amended; including Schedule 21 thereof, the Licensee’s Eating Establishment Restaurant Licence shall remain in effect with the conditions attached and be renewed; with the 45 day payment of Special Duty Police Officer Charges condition, for so long as the Licensee is in compliance with the Licensing By-law, including Schedule 21; and, for so long as the Licence is owned and operated by Diana Vranich, for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, Ontario.

CARRIED

3. SHOW CAUSE HEARING: Elena Dyagileva, Eating Establishment – Restaurant Licence for 108249 Ontario Inc., operating as Ceilidh House Irish Bar, located at 107 George Street, Hamilton, ON (File No. 12 280628 1J) (Item 4.3)

(Clark/Duvall)
(a) That the following condition be immediately imposed upon the Eating Establishment - Restaurant Licence for 108249 Ontario Inc., operating as Ceilidh House Irish Bar, located at 107 George Street, Hamilton, Ontario, respecting Schedule 21, Sections 10 and 11 of the Hamilton Licensing By-law 07-170, as amended:

(i) The Licensee must pay, in full, its pro-rated share of the cost of the Special Duty Police Officer Charges, required under Schedule 21, Sections 10 and 11 of the Hamilton Licensing By-law 07-170, as amended, as invoiced by the City to the Licensee within 45 days of the date of the City of Hamilton's post mark, with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the invoiced amount or the expiry date of the Licence, whichever is earlier.

CARRIED
4. **SHOW CAUSE HEARING: Omid Noori, Taxi Cab Driver Licence (File No. 12 275013 2M) (Item 4.4)**

*(Duvall/Pasuta)*
That the Taxi Cab Driver Licence, issued to Omid Noori, be revoked for the following reasons:

(i) It is opinion of the Hamilton Licensing Tribunal that the operation of the applicant’s business would put public safety at risk; and,

(ii) It is the opinion of the Hamilton Licensing Tribunal that the conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on or engage in the business in accordance with the law or with honesty or integrity.

**CARRIED**

5. **Hamilton Sewer and Water Services Inc. – Refund of Hearing Administration Fee**

*(Clark/Duvall)*
That staff be directed to fully refund the $126.00 administration fee, paid by Hamilton Sewer and Water Services Inc., to appear before the Licensing Tribunal on April 29, 2013.

**CARRIED**

**FOR THE INFORMATION OF THE TRIBUNAL:**

(a) **CHANGES TO THE AGENDA (Item 1)**

The Tribunal Clerk advised that there were no changes to the agenda.

*(Clark/Duvall)*
That the June 20, 2013 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 MINUTES OF PREVIOUS MEETINGS (Item 3)

(i) May 21, 2013 (Item 3.1)

(Clark/Duvall)
That the Minutes of the May 21, 2013 Hamilton Licensing Tribunal be approved, as presented.

CARRIED

(d) APPEAL HEARING: John Bosanac, Sandwell Fuels Ltd., Request for Extension of City of Hamilton Trade Licence for Heating, Air Conditioning and Ventilation Contractor (File No. 13 158646 CL) (Item 4.1)

On April 19, 2013, the Director of Municipal Law Enforcement, sent correspondence to Mr. John Bosanac of Sandwell Fuels Ltd. advising that in accordance with the City of Hamilton Licensing By-law 07-170, as amended, Schedule 29, Section 28(3) the Heating, Air Conditioning and Ventilation Contractor Trade Licence for Sandwell Fuels Ltd. would be renewed for a maximum of 60 days from April 18, 2013 to June 20, 2013, but the licence could not be extended for a longer period of time without authorization by the Hamilton Licensing Tribunal.

If Mr. Bosanac wishes to work as a Master – Heating, Air Conditioning and Ventilation for more than one contractor, he must submit a request to the Tribunal to do so.

On March 6, 2013, Mr. Bosanac submitted a request to appeal before the Licensing Tribunal to review his wish to work as a Master – Heating, Air Conditioning and Ventilation for more than one contractor.

Mr. Bosanac's letter advised that Mr. Bosanac has been the owner of both Bosanac Heating and Electrical and Sandwell Fuels Ltd. for eighteen years and has had Business and Master Licences, in favour or Mr. Bosanac, for that period of time.

June 20, 2013 Hearing:

Mr. Bishop provided his opening statement that included, but was not limited to, the following:

- The matter presently before you involves the business Trade licence for Sandwell Fuels. It is the matter of one Master overseeing two contracting companies, which is contrary to the provisions of By-law 07-170.

- Both of those companies are owned and operated by John Bosanac and have been operating that way since at least 2000.

- Mr. Bosanac has a Master Licence for Heating, Ventilation and Air Conditioning as well as a Contractor Licence for Heating, Ventilation and
Air Conditioning; both for Bosanac Heating and Electric. He has a second business Trade Licence for Sandwell Fuels a Heating, Ventilation and Air Conditioning company, whose licence states it is subject to the John Bosanac holding a Master Licence.

- Mr. Bosanac is here because he is compelled to appear before the Tribunal to request your permission to continue as Master for Sandwell Fuels, for longer than the 60 days the Issuer of Licences is permitted to provide the Licence for, or failing that be directed to obtain a new Master for Sandwell Fuels Ltd. or to cease operations of Sandwell Fuels Ltd.

- Failing that the City will be asking that he be required to hire a second Master for Sandwell Fuels.

Mr. John Bosanac was solemnly affirmed, prior to providing his testimony. Mr. Bosanac’s opening statement included, but was not limited to, the following:

- We have operated both businesses, as family businesses, within the city of Hamilton for a long time; Bosanac Heating and Electric for 80 years and Sandwell Fuels Ltd. for 60 years with no issues with the City of Hamilton

- There have been changes to the by-law that originally let us operate within the city.

For the record, Mr. Bishop introduced the following exhibits and provided an overview of same:

**Exhibits**

1. Request for Contractor / Master Licence Review, March 6, 2013
4. 60 Day Contractor Licence 13 158646 CL and Renewal, Sandwell Fuels
5. Current Master Licence 13 143404 MA and Renewal, Bosanac Heating & Electric
6. Current Contractor Licence 13 143402 CL and Renewal, Bosanac Heating & Electric
7. Bosanac Heating & Electric Licenses and Renewals 2009 to 2013
8. Sandwell Fuels Licenses and Renewals 2010 to 2013
12. Sandwell Fuels Renewal 2002
13. Historical Application Forms Sandwell Fuels
14. Historical Application Forms Bosanac Heating & Electric

Also provided for the Tribunal’s reference were copies of Schedule 29, Section 28(3) of the Licensing By-law 07-170, as amended.

City’s First Witness:

Mr. John Lane, Manager of Building Inspections for the City of Hamilton was solemnly affirmed, prior to providing his testimony. Mr. Lane’s comments included, but were not limited to, the following:

- Mr. Lane is the Manager of Building Inspections and is in his in 25th year with the City of Hamilton. His primary duties are to oversee enforcement of the Ontario Building Code and other municipal by-laws. As well, Mr. Lane supervises approximately 40 staff.

- Mr. Lane requested that he be able to refer to his notes for the purposes of refreshing his memory, during his testimony. Those notes being made by him and that no changes, deletions or alterations have been made to those notes.

- There were no objections by the parties to Mr. Lane’s use of his notes during his testimony.

- Please explain to the Tribunal the theory behind the one Master for one Contractor Licence and why this rule is important. It is to ensure the contract is signed between the contractor and homeowner(s), that the work is fulfilled to the requirements of the contract, and that there is no price gouging.

- Would you be concerned if a Master was serving two or three companies? Yes, the Master could be spread too thin and may not be able to provide the proper oversight required.

- Could a Master serve three companies? My concern with that is that we recommended to homeowners that they get at least three different quotes.
So a homeowner, unknowingly, could be dealing with the same person for all three quotes. Therefore, collusion or price fixing may be an issue.

- There is a 60 day period, under the By-law, when a contracting company who may have a Master who has had to leave the job due to illness or death. The 60 day period allows the business to use the one Master for more than one company for that period of time until that Master may be replaced and to allow the contractor to finish the job for the client.

- There could be a circumstance when a Master is working with a roofing company who works full throttle all summer long, and then during the winter months that same Master could work for another company doing indoor work.

Mr. Bosanac cross-examined Mr. Lane. The questions and answers included, but were not limited to, the following:

- Have you ever been an employee or employer of a contracting business? No, my main involvement is in dealing with homeowners who have complained about poor work or non-compliance with contracts.

- To the best of your knowledge, have there been any complaints regarding either of these two companies? If there was ever a complaint, it never made it to my desk. I only get the complaints that cannot be resolved by the inspectors in the field.

- If two companies have six employees working, would it be reasonable to assume that one Master could supervise two companies that have only six employees? A Master can oversee several jobs at one time, but it’s never been quantified. If they have delegated those authorities to an assistant Master or an apprentice they are grooming for a Master, it may work.

- In your opinion, could one Master oversee 100,000 clients? It’s a hypothetical situation that I am not prepared to answer. It would be my hope that a responsible Master would designate other parties to oversee the jobs while the Master was at other sites.

- Is it possible that two contractors that are also Masters could also do the same kind of collusion? Yes.

As there were no further questions of Mr. Lane, the witness was excused.
City’s Second Witness:

Al Fletcher, Manager of Licensing and Permits was solemnly affirmed prior to providing his testimony. Mr. Fletcher’s comments included, but were not limited to, the following:

- Mr. Fletcher requested that he be able to refer to his notes for the purposes of refreshing his memory, during his testimony. Those notes being made by him and that no changes, deletions or alterations have been made to those notes.

  There were no objections by the parties to Mr. Fletcher’s use of his notes to refresh his memory during his testimony.

- You issued the licence – correct? Yes.

- It appears that the licence issued was not consistent with the By-law. The practice is being corrected for new licences that have been coming forward. In a case of a contractor, they are looked upon on a case-by-case basis. In this case, there were no complaints with either of the two Contractors or the Master.

- Is there any risk to the City allowing more than one company under one Master? From the way the By-law is written, it appears to be there for appropriate oversight. If an issue arises, as the Issuer of Licences, there is the ability to bring the contractor or master before the Tribunal. However, there have been no complaints.

Mr. Bosanac cross-examined Mr. Lane. The questions and answers included, but were not limited to, the following:

- Have there ever been issues with regard to our companies? Through discussions with the Building Department, there have been no complaints with either company or you as a Master.

- Are there any issues regarding complications of one master over two companies? I became aware a short while ago with two companies had asked to use one master. At that time, we noticed that the By-law was not being enforced.

- The By-law was always in place and it was a requirement, but was never enforced? That is correct.

- The Tribunal advised staff that it is an offence under the By-law so the by-law needs to be addressed.
Mr. Bosanac provided further comments and a written submission, which included, but was not limited to, the following:

- Tab 7 (of the City’s Exhibit package) – says that I am subject to being the Master for Sandwell Fuels since 2001. Prior to then, I was also licensed as an Electrical Contractor, until the City relinquished its authority to the Electrical Safety Authority (ESA).

- Tab 6 – There is no collusion. We show you a truck with two company names on the side, a pick up truck and the building with both company names. We have never hidden that we own both companies.

- The shirts, which all employees must wear, show both companies.

- In our specific case there should be no issues. We have been operating properly and with integrity. I would also hope that the Tribunal will not have me come back here every year.

- Our two companies have operated under one ownership for eighteen years; using the same locations, employees, vehicles, insurance tools and phone system, etc.

There were no further questions of Mr. Bosanac.

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

- The City of Hamilton has an issue with the way the licence is issued. We have operated for many years within the city of Hamilton without issues, and there is no real reason we have to be here today.

- I would appreciate, very much, an extension for a really long time. Fix the By-law. I would be happy to converse with anyone about a Master licence and how to fix the By-law. As I have had to spend a great deal of time in regard to this matter (20 hours), I would be appreciated a refund of the fee that we have had to pay because we should not have had to be here today.

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

- We have heard that these companies have been allowed to operate outside of the By-law.

- Evidence shows that there have not been any complaints or issues with the Building Department or through Licensing with these companies.
o We are going to suggest that he appoint someone as a Master to Sandwell Fuels.

o One of the ways of ensuring accountability was to stipulate that there be one Master to one contractor. Not an unreasonable request and I believe an easy one for Mr. Bosanac to comply with. Given a reasonable amount of time, I believe Mr. Bosanac can identify and licence a Master to Sandwell Fuels who would be able to oversee the day-to-day operations of that company; thereby, satisfying the requirements of the By-law.

o The size of his companies should allow for him to find a Master within one of them to act as the Master overseeing the work, perhaps he has a trainee in the works now that can fulfill that roll.

(Clark/Pasuta)
That the Tribunal move into Closed Session at 11:16 a.m. to deliberate upon the submissions of the parties, respecting John Bosanac, Sandwell Fuels Ltd., Request for Extension of City of Hamilton Trade Licence for Heating, Air Conditioning and Ventilation Contractor.

CARRIED

The Licensing Tribunal reconvened in Open Session, at 11:29 a.m.; and, having heard and deliberated upon the submissions of the parties, provided their decision that is shown as Item 1 above.

(Duvall/Clark)
That the Tribunal take a 15 minute recess, returning at 11:45 a.m.

CARRIED

(e) SHOW CAUSE HEARING: Diana Vranich, Eating Establishment – Restaurant Licence for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, ON (File No. 11 275609 1J) (Item 4.2)

On February 22, 2013, the Director of Municipal Law Enforcement sent correspondence to the Office of the City Clerk advising that, pursuant to Section 12(1) of the General Provisions of the City of Hamilton Licensing By-Law 07-170, as amended, it is my intention to request that a show cause hearing be scheduled and brought before the Hamilton Licensing Tribunal to consider whether the above referenced licence should be revoked or suspended or conditions imposed.

Pursuant to Section 8 of the Statutory Powers Procedure Act, R.S.O.1990, c. S22 the grounds for revocation or suspension or the imposition of conditions at this hearing are:

1. City of Hamilton Licensing By-Law 07-170, Section 12(1)(c)(i), as amended, the Issuer of Licences shall refuse to issue a licence or may recommend the suspension or revocation of a licence when
the applicant or the licensee has not met any of the requirements under this By-law including the applicable Schedule;

2. City of Hamilton Licensing By-Law 07-170, Section 12(1)(c)(iii), as amended, the Issuer of Licences shall refuse to issue a licence or may recommend the suspension or revocation of a licence when the applicant or the licensee has not paid any fee to be paid under this By-law including the applicable Schedule;

3. City of Hamilton Licensing By-Law 07-170, Schedule 21, Section 12, as amended, every Hess Village Entertainment District licence holder shall contribute a pro-rated share, based on the total capacity of their premises under their liquor licence, to the cost of the Special Duty Police Officers required under section 10, as may be changed under section 11, and their licence shall be conditional on such contribution being paid in full in a timely fashion; Namely:

(i) That the licence holder, Ms. Diana Vranich, Gown & Gavel Restaurant Inc. operating as Gown and Gavel Restaurant has not paid the applicable fees pertaining to the Food Premises, Bar/Nightclub Licence specifically Special Duty Police Officers for the period August to November, 2012.

(ii) The licence holder, Ms. Diana Vranich, 1389715 Ontario Inc. operating as Elixir Night Club & Lounge, has not paid the applicable fees pertaining to the Food Premises, Bar/Nightclub Licence specifically Special Duty Police Officers for the period April to October, 2011.

(iii) The licence holder, Ms. Diana Vranich, Rok Bar Hamilton Inc. operating as Rok Bar has not paid the applicable fees pertaining to the Food Premises, Bar/Nightclub Licence specifically Special Duty Police Officers for the period June to October 2011.

The Gown and Gavel licence expires on September 20, 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 without a licence, they will be doing so contrary to the Licensing By-law; or,

The licence holder has submitted a completed application for a renewal, then we will request that the hearing proceed under Section 12(1) of the Licensing By-law as a refusal of the licence rather than as a recommendation to revoke or suspend the licence.
June 20, 2013 Hearing:

Mr. Bishop provided his opening statement that included, but was not limited to, the following:

- The case presently before you today involves the business licence of The Gown & Gavel. The business licence is in the name of Diana Vranich and this matter has been put over from April 18, 2013.

- This business is before the Tribunal today as a result of Ms. Vranich’s failure to comply with the City of Hamilton By-laws that direct how she is to conduct her business.

- Specifically the Licensing By-law 07-170, Schedule 21, Section 12 that stipulates that each Hess Village Entertainment District licence holder shall contribute a pro-rated share of Special Duty Police Officers.

- This is the second time, the last being in 2010, that this licence was before the Tribunal for being in arrears for the same fees and an order of payment in 45 days was issued.

- Since that appearance in 2010, the businesses ignored the order of the Tribunal to pay within 45 days, ran up a substantial bill then closed up shop or the business was sold.

- Just prior to the beginning of this hearing the parties have come to an agreement with respect to a Joint Submission. Mr. Bishop put forwards the Joint Submission, which reads as follows:

  “(a) That the Eating Establishment - Restaurant Licence for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, Ontario have the following conditions attached to its Licence until the following are complete:

  (i) That Gown & Gavel Restaurant Inc. immediately pay, in full, any outstanding Special Duty Officer Charges to-date for the Gown & Gavel, located at 24 Hess Street South, Hamilton, Ontario;

  (ii) That the Licensee for Gown & Gavel Inc. Diana Vranich, be required to pay, in full, within 60 days of the date of the Tribunal’s decision, all Special Duty Officer Charges that are outstanding for Elixir, which was located 105 George Street Hamilton, Ontario for the period April to October 2011, the amount of $11,333, as Ms. Vranich was the Director of Elixir during that period of time, with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the
invoiced amount or the expiry date of the Licence, whichever is earlier.

(iii) That the Licensee for Gown & Gavel Inc., Diana Vranich, be required to pay, within 60 days of the date of the Tribunal's decision, $1,000 toward the Special Duty Officer Charges that are outstanding for Rok Bar, which was located at 15 Hess Street South, Hamilton, Ontario, as Ms. Vranich was the Director of Rok Bar during a portion of the period for which those charges are outstanding, with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the invoiced amount or the expiry date of the Licence, whichever is earlier.

(b) That the following condition be immediately imposed upon the Eating Establishment - Restaurant Licence for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, respecting Schedule 21, Sections 10 and 11 of the Hamilton Licensing By-law 07-170, as amended:

(i) The Licensee must pay, in full, its pro-rated share of the cost of the Special Duty Police Officer Charges, required under Schedule 21, Sections 10 and 11 of the Hamilton Licensing By-law 07-170, as amended, as invoiced by the City to the Licensee within 45 days of the date of the City of Hamilton's post mark, with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the invoiced amount or the expiry date of the Licence, whichever is earlier.

(c) That, subject to the Licensee continuing to abide by all the other requirements, regulations, and conditions of Hamilton Licensing By-law 07-170, as amended; including Schedule 21 thereof, then the Licensee’s Eating Establishment Restaurant Licence shall remain in effect with the conditions attached and be renewed with the 45 day condition for so long as the Licensee is in compliance with the Licensing By-law, including Schedule 21; and, for so long as the Licence is owned and operated by Diana Vranich, for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, Ontario.”

Mr. Kranjc provided his opening statement that included, but was not limited to, the following:
Mr. Kranjc agreed with the Joint Submission that was put before the Tribunal.

This is a unique situation. Can a condition be imposed on a business for the arrears of a company where the company has been sold or is no longer operating? Ms. Vranich would like to ensure, as a good corporate citizen, she is willing to agree to this settlement, as being a reasonable settlement.

Rok Bar is no longer in existence. That company sold the Rok Bar itself in October 2011 and it hasn’t been operating since that time.

Elixir – that company was open for a period of time, but was closed for renovations on and off throughout the summer of 2011. Although there were times it was open, it was not open on a full time basis. We have agreed to pay the portion outlined during that time.

Gown and Gavel – at the present time the Gown and Gavel are not part of the litigation before the courts regarding the by-law.

For the record, Mr. Bishop introduced the following exhibits and provided an overview of same:

**Exhibit Package 1**

5. Financial Statement and Invoices #404308, #403513, and #402969.
6. Copy of By-Law 07-170, Schedule 21

**Exhibit Package 2**

9. Financial Statement and Invoices #389500, #390925, #391465, #392761, #393765.
10. Diana Vranich, 1389715 Ontario Inc. o/a Elixir Night Club & Lounge (18 Hess St. S.); Expired Establishment Licence 10 278148 1J Expiry March 27, 2011; and, Licence 11 278148 1J Expiry March 27, 2012.

11. Financial Statement and Invoices #388340, #388377, #389496, #390922, #391462, #392758, #393763.


14. Financial Statement and Invoices #389500, #390925, #391465, #392761, and #393765.


(Clark/Duvall)
That the Tribunal move into Closed Session, at 11:57 a.m., to deliberate upon the submissions of the parties, respecting Diana Vranich, Eating Establishment – Restaurant Licence for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, Ontario.

CARRIED

The Tribunal reconvened in Open Session and put forward a counter proposal to the parties, which reads as follows:

“(a) That the Eating Establishment - Restaurant Licence for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, Ontario have the following conditions attached to its Licence until the following are complete:

(i) That Gown & Gavel Restaurant Inc. immediately pay, in full, any outstanding Special Duty Officer Charges to-date for the Gown & Gavel, located at 24 Hess Street South, Hamilton, Ontario;

(ii) That the Licensee for Gown & Gavel Inc. Diana Vranich, be required to pay, in full, within 60 days of the date of the Tribunal’s decision, all Special Duty Officer Charges that are outstanding for Elixir, which was located 105 George Street Hamilton, Ontario for the period April to October 2011, the amount of $11,333, as Ms. Vranich was the Director of Elixir during that period of time, with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the
invoiced amount or the expiry date of the Licence, whichever is earlier.

(iii) That the Licensee for Gown & Gavel Inc. must pay, in full, 50% of the $29,021.13 for Special Duty Officer Charges that are outstanding for Rok Bar, located at 15 Hess Street South, Hamilton, Ontario, for the period of June 2011 to October 2011, in the amount of $14,510.56, within 60 days of the date of the Tribunal's decision; with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the invoiced amount or the expiry date of the Licence, whichever is earlier.

(b) That the following condition be immediately imposed upon the Eating Establishment - Restaurant Licence for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, respecting Schedule 21, Sections 10 and 11 of the Hamilton Licensing By-law 07-170, as amended:

(i) The Licensee must pay, in full, its pro-rated share of the cost of the Special Duty Police Officer Charges, required under Schedule 21, Sections 10 and 11 of the Hamilton Licensing By-law 07-170, as amended, as invoiced by the City to the Licensee within 45 days of the date of the City of Hamilton's post mark, with the failure to do so resulting in the automatic suspension of the Licence; without recourse to the Tribunal, until the earlier of the date of payment of the invoiced amount or the expiry date of the Licence, whichever is earlier.

(c) That, subject to the Licensee continuing to abide by all the other requirements, regulations, and conditions of Hamilton Licensing By-law 07-170, as amended; including Schedule 21 thereof, then the Licensee's Eating Establishment Restaurant Licence shall remain in effect with the conditions attached and be renewed with the 45 day condition for so long as the Licensee is in compliance with the Licensing By-law, including Schedule 21; and, for so long as the Licence is owned and operated by Diana Vranich, for Gown & Gavel Restaurant Inc., located at 24 Hess Street South, Hamilton, Ontario."

The Tribunal suggested to Mr. Kranjc that he take five minutes to discuss the proposed change with his client.

(Pasuta/Clark)
That the Tribunal recess for 5 minutes, returning at 12:40 p.m.

CARRIED
Mr. Kranjc advised the Tribunal that his client has agreed to pay the amended amount, but asked for an extension of time to pay for all outstanding charges until the end of October 2013.

After further discussion, the Tribunal provided its decision, which is shown as Item 2 above.

(f) SHOW CAUSE HEARING: Elena Dyagileva, Eating Establishment – Restaurant Licence for 108249 Ontario Inc., operating as Ceilidh House Irish Bar, located at 107 George Street, Hamilton, ON (File No. 12 280628 1J) (Item 4.3)

On February 22, 2013, the Director of Municipal Law Enforcement sent correspondence to the Legislative Coordinator for the Licensing Tribunal advising that, pursuant to Section 12(1) of the General Provisions of the City of Hamilton Licensing By-Law 07-170, as amended, it was the City’s request that a show cause hearing be scheduled and brought before the Hamilton Licensing Tribunal to consider whether the above referenced licence should be revoked or suspended or have conditions imposed upon it.

Pursuant to Section 8 of the Statutory Powers Procedure Act, R.S.O.1990, c. S22 the grounds for revocation or suspension or the imposition of conditions at this hearing are:

1. City of Hamilton Licensing By-Law 07-170 Section 12(1)(c)(i) as amended, the Issuer of Licences shall refuse to issue a licence or may recommend the suspension or revocation of a licence when the applicant or the licensee has not met any of the requirements under this By-law including the applicable Schedule;

2. City of Hamilton Licensing By-Law 07-170 Section 12(1)(c)(iii) as amended, the Issuer of Licences shall refuse to issue a licence or may recommend the suspension or revocation of a licence when the applicant or the licensee has not paid any fee to be paid under this By-law including the applicable Schedule;

3. City of Hamilton Licensing By-Law 07-170 Section 12(1)(vi)(3) as amended, the Issuer of Licences shall refuse to issue a licence or may recommend the suspension or revocation of a licence when in the opinion of the Issuer of Licences the conduct of the applicant or licensee (in the case of 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 the applicant or licensee will not carry on or engage in the business in accordance with the law or with honesty or integrity.

4. City of Hamilton Licensing By-Law 07-170 Schedule 21 Section 12 as amended, every Hess Village Entertainment District licence holder
shall contribute a pro rated share, based on the total capacity of their premises under their liquor licence, to the cost of the Special Duty Police Officers required under section 10, as may be changed under section 11, and their licence shall be conditional on such contribution being paid in full in a timely fashion;

Namely:

(a) That the licence holder, Ms. Elena Dyagileva, 1804249 Ontario Inc. operating as Ceilidh House Irish Bar has not paid the applicable fees pertaining to the Eating Establishment, Restaurant Licence specifically Special Duty Police Officers for the period April to October 2012.

(b) That the licence holder, Ms. Elena Dyagileva, 1804249 Ontario Inc. operating as Ceilidh House Irish Bar has failed to adhere to the City of Hamilton By-Law 07-170, as amended, as required in the conditions of his licence issued November 16, 2012.

The licence expires on December 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 without a licence, they will be doing so contrary to the Licensing By-law; or,

• The licence holder has submitted a completed application for a renewal, the City will request that the hearing proceed under Section 12(1) of the Licensing By-law as a refusal of the licence rather than as a recommendation to revoke or suspend the licence.

At the April 18, 2013 hearing, Mr. Robert Plouffe, agent for the Appellant requested an adjournment so that he could attend a medical appointment. The adjournment was granted to the June 20, 2013 hearing date.

June 20, 2013 Hearing:

Mr. Bishop provided his opening statement that included, but was not limited to, the following:

• We are before the Tribunal today as a result of a Ms. Dyagileva’s failure to pay Ceilidh House’s fair share of the Hess Village Entertainment District Special Duty Police Costs in a timely fashion.
Specifically the Licensing By-law 07-170, Schedule 21, Section 12 that stipulates that each Hess Village Entertainment District licence holder shall contribute a pro rated share of special duty police officers.

As of the March 1, 2013, the licence holder owed in excess $9,500. It was only after receiving notice of this Tribunal hearing that the bill got paid on the March 7, 2013.

The purpose of these fees is to pay for police protection, which comes from a concern for public safety. Failing to contribute places the financial burden directly on public.

Additionally, the Licensee is demonstrating a failure to operate within the law and with integrity and honesty, as required under the By-law.

There are other businesses required to abide by the law in Hess Village who do pay their fair share.

In this case, I will be asking for the suspension of this licence unless rules of payment are tightened up to prevent this business from failing to pay their fair share. I will also be asking for provisions for immediate suspensions without recourse to the tribunal in the event of further non compliance.

Mr. Plouffe provided his opening statement that included, but was not limited to, the following:

I’m here on behalf of my client to present the Tribunal a simple request; that they get to go to the finish of their current contract with the City and police services – sometime in December.

They do operate with honesty and integrity; they are very honest, good people.

For the record, Mr. Bishop entered the following exhibits and provided an overview of same:

**Exhibits**


5. Financial Statement and Invoices #399255, #400492, #401137, #401789, #402976, #403520, #404315.

6. Copy of Licensing By-Law 07-170, Schedule 21

7. Witness Statement of Michael Hawrylyshyn Financial Coordinator, City of Hamilton (removed from package)

City’s First Witness:

Ms. Georgette Bryson was solemnly affirmed, prior to providing her testimony. Ms. Bryson’s comments included, but were not limited to, the following:

- Ms. Bryson is the Paid Duty Officer Coordinator and has been with Hamilton Police Service for 24 years.
- Some of her duties are to organize officers for events and handle the invoicing and payments for Special Duty Officers.
- Ms. Bryson requested that she be able to refer to her notes for the purposes of refreshing her memory, during her testimony. Those notes being made by her and that no changes, deletions or alterations have been made to those notes.
- There were no objections by the parties to Ms. Bryson’s use of her notes to refresh her memory during her testimony.
- I receive direction from Hess Village Coordinator who asks me to arrange for Paid Duty Officers in Hess Village on any given night, and I bill accordingly when business are open.
- I receive a nightly log as to what bars are open and closed, and base the billings on that information.

Mr. Bishop entered into the record, Exhibit 8 – 2011 Paid Duty Hess Village Log. Ms. Bryson continued her testimony, as shown below:

- The Paid Duty Log is prepared by one of the Sergeants that worked that night. Where it is indicating “mobile units”, those hours are not billed to establishment they are paid through Hamilton Police Service.
- Officers noted as “staff” would be the Paid Duty Officers covered under the By-law, anything else paid by Hamilton Police Service.
The log indicates what bars are open. The Sergeant has a working list of active establishments, and makes a log of any other tickets or anything given out.

Once my work is complete, the information goes on Excel spreadsheet and then they are billed, and in turn it is sent to City.

City’s Second Witness: Sergeant Oliver Mann, Hamilton Police Service

Sergeant Oliver Mann was solemnly affirmed, prior to providing his testimony. Sergeant Mann’s comments included, but were not limited to, the following:

- I have worked with Hamilton Police Service for 16 years.
- Sergeant Mann requested that he be able to refer to his notes for the purposes of refreshing his memory, during his testimony. Those notes being made by him and that no changes, deletions or alterations have been made to those notes.
- There were no objections by the parties to Sergeant Mann’s use of his notes during his testimony.
- Have you worked at Hess Village? Yes.
- How many times did you work as a Special Duty Officer in 2011? Ten (10).
- Did you make rounds, while at Hess Village, noting in the log the establishments that were open and closed? Yes, we do it at the beginning of the shift; making note of those (establishments) that are not open.
- Do you have any knowledge about Ceilidh House, were they open while you were there? Yes, they were regularly open the ten times that I was there.

Mr. Plouffe asked Sergeant Mann questions that included, but were not limited to, the following:

- How many auxiliary officers would you use in any given night? It depends on how many volunteered to work.
- How many auxiliary officers would you have available. It varies depending on what was happening in the community; sometimes we have zero. If there is a festival happening, they might all be there.
- On July 9, 2011 what would have been accurate policing in the Village that night? It would depend on the night.
There were no further questions of Sergeant Mann; therefore, the witness was excused.

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

- The only relevant thing is that they get to go with the term of this agreement. There is nothing outstanding that I know of at this point in time.
- I would like you to let them finish their agreement and then they can renegotiate with the City.
- Mr. Bishop’s position that there be a 45 day clause that the licence be automatically suspended. It’s the bullying tactic that I really don’t appreciate.
- I don’t care about the number of other offences – I only care about my client.
- I still consider it a bully tactic on behalf of the police and the City. There is already an interest penalty involved.

Mr. Bishop provided his closing statement that included, but was not limited to, the following:

- Ms. Dyagileva didn’t comply with the By-law and failed to pay the fees she owed.
- She received a notice in April 2012 advising regarding the outstanding fees, and it wasn’t until she received a Notice of Hearing that the fees were paid.
- The officers are being paid on time, but the City is not being paid.
- A final notice was sent on August 22, 2012 advising of an outstanding amount of $13,021.54.
- The City is requesting that a condition be added to the licence of an automatic suspension if the Paid Duty Officer invoices are not paid within 45 days.

Mr. Plouffe provided additional comments to the Tribunal that included, but were not limited to, the following:

- All I know is that the City is not paying the Special Duty Officers – the licence holders are doing that.
It’s really the way it’s done that my client objects to. If someone put a finger to my head, I would break it! I’m not speaking for my client – that’s just me.

I don’t know if they received a letter or not, but they paid it.

The Tribunal asked staff where in the By-law Mr. Plouffe would have read that his client could “negotiate” her licence when it expires. Staff advised that there is no provision in the Licensing By-law that allows for negotiation of a business licence.

(Clark/Pasuta)
That the Tribunal move into Closed Session at 1:42 p.m. to deliberate upon the submissions of the parties, respecting Elena Dyagileva, Eating Establishment – Restaurant Licence for 108249 Ontario Inc., operating as Ceilidh House Irish Bar, located at 107 George Street, Hamilton, Ontario.

CARRIED

The Tribunal moved into Open Session at 1:46 p.m. and provided its recommendation, shown as Item 3 above.

(g) SHOW CAUSE HEARING: Omid Noori, Taxi Cab Driver Licence (File No. 12 275013 2M) (Item 4.4)

(Duvall/Pasuta)
That the Tribunal move into Closed Session at 1:56 p.m. to hear the matter, respecting Omid Noori, Taxi Cab Driver Licence, pursuant to Section 8.1, Sub-section (b) of the City’s Procedural By-law 10-053, and Section 239, Sub-section (b) of the Ontario Municipal Act, 2001, as amended, as the subject matter pertains to personal matters about an identifiable individual, including municipal or local board employees.

CARRIED

(h) PRIVATE & CONFIDENTIAL (Item 5)

(i) May 21, 2013 (Item 5.1)

(Duvall/Pasuta)
(a) That the Closed Session Minutes of the May 21, 2013, meeting of the Hamilton Licensing Tribunal be approved, as presented.

(b) That the Closed Session Minutes of the May 21, 2013 meeting of the Hamilton Licensing Tribunal, remain confidential and restricted from public disclosure.

CARRIED
(i) ADJOURNMENT (Item 6)

(Duvall/Pasuta)
That, there being no further business, the Hamilton Licensing Tribunal be adjourned at 3:45 p.m.

CARRIED

Respectfully submitted,

Councillor C. Collins, Vice Chair
Hamilton Licensing Tribunal

Stephanie Paparella
Legislative Coordinator
Office of the City Clerk