THE FOLLOWING DECISIONS WERE RATIFIED BY THE HAMILTON LICENSING TRIBUNAL:

4.1 APPEAL HEARING: Hamilton Sewer and Water Services Inc., Application for a City of Hamilton Trade Licence, Contractor – Plumbing (File No. 13 284198 CL) and Master – Plumbing (File No. 13 284199 MA)

(Collins/Duvall)
(a) That the Trade, Contractor – Plumbing Licence, which was issued on March 12, 2013 to Hamilton Sewer and Water Services Inc. for a 60 day period, pursuant to Sub-section 21(3), Section 29 of the Hamilton Licensing By-law 07-170, as amended, be issued for the balance of a one year period to March 11, 2014, providing that the applicant satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended.

(b) That the Master – Plumbing Licence, which was issued on March 12, 2013 to Hamilton Sewer and Water Services Inc. for a 60 day period, pursuant to Sub-section 21(3), Section 29 of the Hamilton Licensing By-law 07-170, as amended, be issued for the balance of a one year period to March 11,
2014, providing that the applicant satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended.

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 April 29, 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) APPEAL HEARING: Hamilton Sewer and Water Services Inc., Application for a City of Hamilton Trade Licence, Contractor – Plumbing (File No. 13 284198 CL) and Master – Plumbing (File No. 13 284199 MA) (Item 4.1)

On March 20, 2013, the Director of Municipal Law Enforcement sent correspondence to Mr. Craig Rogers, Hamilton Sewer and Water Services Inc., advising that further to Mr. Rogers’ letter of March 12 2013, in accordance with the City of Hamilton Licensing By-Law 07-170, as amended, Schedule 29, Section 21(3) the application for the above-noted licenses have been issued for a maximum of 60 days from March 12, 2013 through May 11, 2013, but the licenses cannot be extended for a longer period without authorization by the Hamilton Licensing Tribunal. A Master Plumber can only work for more than one Plumbing Contractor for 60 days unless that period is extended for a longer period by the Tribunal.

Therefore, if you as a Master Plumber wish to work for more than one Plumbing Contractor and in particular, Hamilton Sewer and Water Services Inc., in addition to Hamilton Plumbing and Drain Services Inc., then you and Hamilton Sewer and Water Services Inc. must send a written request for such permission to the Office of the City Clerk.

April 29, 2013 Hearing:

Mr. Bishop provided his opening statement that included, but was not limited to, the following:
The matter before you involves an application for a Plumbing Master and a Plumbing Contractor licence for a company called Hamilton Sewer & Water Inc.

Hamilton Sewer and Water is a new company created by Mr. Craig Rogers.

Mr Rogers is a licensed plumber and currently has an active Master and Contractor Plumbing licence for a company called Hamilton Plumbing & Drain. That company performs both as a drain company and a plumbing company, which a licensed plumber can oversee.

The Licensee is intending to get a second plumbing licence for a new company; Hamilton Sewer and Water Inc. to operate mainly as a drain company, not as a full plumbing company.

The Licensing By-law (07-170) allows a plumber to be the drain installer master so no new Master Plumbing licence is necessary except this is his second company, and under the By-law, that requires a separate Master licence.

The By-law in these situations is clear. A Plumbing Master cannot operate two plumbing companies. The major concern is oversight to guarantee public safety, job quality and security. Another concern is that these separate companies could be used in bid rigging.

These companies, while both dealing with water and pipes, etc., are different. They are different for a reason and are viewed by the City as being different so that separate licences are required. The Plumbing licence is harder to obtain, as it requires Provincial designation.

I will be asking that the application for a business and Master licence for Hamilton Sewer and Water Services Inc., as a plumbing company, be denied until Mr. Rogers finds another Master to oversee that company.

Mr. Rogers was solemnly affirmed, prior to providing his testimony. Mr. Rogers’ comments included, but were not limited to, the following:

Mr. Rogers provided his belief and interpretation of Part I: General, subsection 1(b), Schedule 29 – Trades, of the Licensing By-law 07-170, as amended, which reads as follows:

“(b) “contractor” means any person who agrees with a member of the public or another contractor to carry out any work in a trade regulated under this Schedule.”
For the record, Mr. Bishop introduced the following exhibits and provided an overview of same:

**Exhibits**

1. Correspondence to Mr. Al Fletcher, March 12, 2013 – Request for Contractor's Licence for Hamilton Sewer and Water Services Inc.

2. Trade Licence Application Contractor and Master – Plumbing, March 12, 2013, Hamilton Sewer and Water Services Inc., Mr. Craig Rogers

3. Certificate of Liability Insurance, Hamilton Sewer and Water Services Inc., Intact Insurance Company

4. Articles of Incorporation Hamilton Sewer and Water Services Inc.

5. Ministry of Training, Colleges and Universities, Certificate of Qualification, Mr. Craig Rogers


7. Trade Licence Master – Plumbing, Issued to Mr. Craig Rogers March 12, 2013, Licence No. 13 284199 MA

8. Correspondence to Hamilton Sewer and Water Services Inc., March 20, 2013 – Confirmation of Licence Issuance for 60 days and Appeal Process

9. Appeal Received April 2, 2013

10. Correspondence to Mr. Craig Rogers April 11, 2013 – Notice of Hearing

11. Trade Licence Contractor – Plumbing, Issued to Hamilton Plumbing and Drain Services August 30, 2012, Licence No. 12 282114 CL

12. Trade Licence Master – Plumbing, Issued to Mr. Craig Rogers August 30, 2012, Licence No. 12 282115 MA

13. City of Hamilton Licensing By-law 07-170, Schedule 29, Section 21(3), as amended

City’s Witness - Al Fletcher, Acting Manager of Licensing and Permits. Mr. Fletcher 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 to the use of Mr. Fletcher’s notes.

You issued the licence – correct? Yes.

Have there been problems with these issues in the past? Is each case treated individually? We contact the Building Department to see if there are any issues involving the company submitting the application. In this case, there were no issues raised whatsoever respecting the individuals of this company. Therefore, we provided the 60 day licence.

If there are issues with any licence we issue, pursuant to the Licensing By-law, we have the ability to request though the Tribunal Clerk that a hearing be set regarding that licence.

Both Craig Rogers and Tom Tuite were solemnly Affirmed prior to providing their testimony. Mr. Rogers and Mr. Tuite’s comments included, but were not limited to, the following:

- Tom has a Master Trade licence as well.
- We bought relining equipment together, as it's very expensive, and are trying to split the cost of that equipment.
- We are trying to comply with the Licensing By-law. We can get a Drain Repair Licence, but it doesn't say anything about doing water lines.
- We want to ensure we have the right licence for the work we want to do.
- If we don't have the plumbing licences on this company we would have to sub-contract back and forth between jobs for work we could do ourselves, it's very costly.
- We are new and want to keep our costs down to provide a good service and be competitive.
- A contractor by definition (in the Licensing By-law) is a person; not a number of companies.
- If we ever get big enough to hire employees, we could hire a second Master.
Mr. Bishop asked questions of Mr. Rogers and Mr. Tuite. Those questions and answers included, but were not limited to, the following:

- How many businesses do you own? We each solely own one business and one together.

- The main reason for Hamilton Sewer and Water Services (the business we own together) is once we bring services into the building we cannot legally touch the connections inside the building. We would have to sub-contract that work out to another company. Having the licence would allow us to do both the work to the building and inside the building.

- Your plumbing company can do it all? Yes.

- Are you combining forces to save money? No to offer to a lot more service. The new business is looking at doing excavating, relining, etc. We want to be able to do internal as well as external work. Water meters, water service, etc.

- Do you have any employees? One employee – an apprentice for the plumbing company.

- Are you planning on hiring any other employees at this time? No, not at this time.

- How long has have you had the plumbing business? About a year and a half.

- Have you thought of merging? It wouldn’t work, it doesn’t make sense. I already have contracts with others that he doesn’t have, and he has his own business as well. We want to keep those contracts separate.

- He does one type of work and I do the other so the work will still be performed by him. There isn’t going to be anyone else.

- Do you have one company or two? I (Tom) have one company (A Team General Contracting) and am 50% owner in another. I have a Master Drain layer Licence and a Master Building Repair licence.

- Craig has a Master Plumbing licence and his other company is Hamilton Plumbing and Drain.

- If something was to go wrong who takes the blame? The Owner – both the owner and the master, ultimately the owner who is the master would be more conscientious. We are both owners of the company so we would be ultimately responsible.

- They would come after both of us. We are both 50% stakeholders. The public would have to deal with both of us – we would try to resolve any issues that our clients may have.
o Hamilton Sewer and Water Services is a corporation; the insurance is for Hamilton Water and Sewer Services. We have insurance and licences for other companies – they are separate entities.

o Customers would know before hand, which company would be carrying on the work, as it would be indicated on their contract.

o Would there ever be an occasion where all three of your companies would be bidding on the same job? No.

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

o The Licensing By-law (07-170) is clear in that a Master Plumber cannot oversee two plumbing contractor companies.

o A Master Drain Repair person cannot oversee two drain repair companies.

o The By-law was implemented because of a concern of over site. There needs to be someone accountable, someone on sight.

o The By-law does not say that a Plumbing Master over a plumbing company cannot be a Drain Repair Master over a drain repair company.

o This new company Hamilton Sewer and Water Inc. is a drain repair company formed specifically to do drain work not plumbing work. That is the reason it was formed, yet Mr. Rogers; who could easily have applied for a Drain Repair licence, chose to apply for another Plumbing licence even though the requirements of this new company do not meet the requirements of a plumber.

o The City is recommending that the application for a business and Master licence for Hamilton Sewer and Water Services Inc., as a plumbing company, be denied until Mr. Rogers finds another Master to oversee that company.

In closing, Mr. Rogers and Mr. Tuite provided comments that included, but were not limited to, the following:

o The By-law says that there should be a plumbing contractor so technically we are not in contravention.

o I can put a Drain Licence on the company.
o It is very expensive to put insurance on all companies, the reline equipment is sitting in storage and it's only the two of us. If anything goes wrong, it's ultimately our responsibility. Just the two of us.

o The outline of a drain layers licence says nothing about water lines. It is our opinion that we are not in contravention of the By-law.

At this time, the Tribunal asked questions of Mr. Bishop that included, but were not limited to, the following:

o You mention that the By-law is there for a reason; yet for periods over 60 days the By-law contemplates for the allowance of an extension beyond that period by the Tribunal. Why? The By-law is up for interpretation as to why. There was some flexibility written into the By-law and to whether or not it is a temporary or permanent fix. I'm not sure myself.

o Staff's position is that there no concerns with way the company has currently been operating. We are talking about a plumbing licence that is provincially authorized at a higher standard opposed to a drain licence, which is municipally issued.

(Collins/Duvall)
That the Tribunal move into Closed Session at 2:28 p.m. to deliberate upon the submissions of the parties, respecting Hamilton Sewer and Water Services Inc., Application for a City of Hamilton Trade Licence, Contractor – Plumbing (File No. 13 284198 CL) and Master – Plumbing (File No. 13 284199 MA).

CARRIED

For final disposition of this matter, please refer to Item 1 above.

(d) ADJOURNMENT (Item 7)

(Clark/Duvall)
That, there being no further business, the Hamilton Licensing Tribunal be adjourned at 2:45 p.m.

CARRIED

Respectfully submitted,

Councillor T. Whitehead, Chair
Hamilton Licensing Tribunal

Stephanie Paparella
Legislative Coordinator
Office of the City Clerk