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Clause embodied in Report No. 2 of the Planning and Transportation Committee, as adopted by the Council of the City of Toronto at its meeting held on March 1, 2 and 3, 2004.

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Ontario Restaurant Hotel and Motel Association v. City of Toronto and Board of Health for the City of Toronto Health Unit - Application to Quash Section 30.1(3) of By-law 574-2000 Requiring Eating and Drinking Establishments to Post Most Recent Food Safety Inspection Notice

(*City Council on March 1, 2 and 3, 2004, adopted this Clause, without amendment.*)

The Planning and Transportation Committee recommends that Council receive for information the following report (February 2, 2004) from the City Solicitor.

The Planning and Transportation Committee reports, for the information of Council, having forwarded a copy of the report (February 2, 2004) from the City Solicitor to the Board of Health for information.

The Planning and Transportation Committee submits the following report (February 2, 2004) from the City Solicitor:

Purpose:

The purpose of this report is to provide Council and the Board of Health with an update on the status of the court application brought by the Ontario Restaurant Hotel and Motel Association ("ORHMA") seeking to quash subsection 30.1(3) of by-law 574-2000.

Financial Implications and Impact Statement:

No financial implications arise from the adoption of the recommendations contained in this report.

Financial implications may arise if the Ontario Restaurant Hotel and Motel Association appeals the decision of the Ontario Divisional Court. The amount of these legal costs cannot be determined at this time.

The Chief Financial Officer has reviewed and concurs with the financial implications.

Recommendations:

It is recommended that:

- (1) the Planning and Transportation Committee forward a copy of this report to the Board of Health for its information; and
- (2) this report be forwarded to Council for its information.

Background:

The ORHMA commenced a legal proceeding on July 19, 2001 ("Application") asking the Court to quash subsection 30.1(3) of by-law 574-2000, the licensing by-law, which provides that

Every owner or keeper of an eating or drinking establishment shall keep posted, in a conspicuous place clearly visible to members of the public, at or near the entrance of such establishment, the most recent food safety inspection notice issued by the Medical Officer of Health.

Comments:

The ORMHA sought to quash subsection 30.1(3) of by-law 574-2000 on the following grounds:

- (a) the City of Toronto does not have the legislative authority to pass the by-law;
- (b) Council illegally delegated its discretion to issue a business licences to the Board of Health;
- (c) the by-law discriminates against certain restaurants;
- (d) the by-law is unreasonable;
- (e) the by-law violates the principles of fundamental justice found in section 7 of the *Charter of Rights and Freedoms* because of vagueness; and
- (f) the by-law violates the right to freedom of expression found in subsection 2(b) of the *Charter of Right and Freedoms.*

Subsequent to issuing its Application, OMRHA brought a motion which was heard on December 19, 2001, seeking an interim injunction to prevent the City and the Board of Health from forcing restaurant operators to post/display the food safety inspection notices issued by the Medical Officer of Health until the court heard the Application. On January 2, 2002, the Ontario Divisional Court released its decision denying the OMRHA the requested interim injunction because the OMRHA did not demonstrate that it would suffer irreparable harm if the program was not stopped and because the balance of convenience favoured the City. In the judge's reasons for decision the judge stated that "the public has an interest in the ongoing health and safety issues inherent in this matter".

On May 28 and 29, 2003, the Ontario Divisional Court, composed of three Superior Court Justices, namely Justices 0'Driscoll, Carnwath, and Somers, heard the Application and reserved their decision. On January 22, 2004, the Court released its unanimous decision dismissing the Application and awarding the City \$30,000.00 in costs.

In that decision, the Court affirmed the City's position that the purposes of the by-law included:

- (a) protection of the public from health hazards;
- (b) educating the public to make informed choices;
- (c) encouraging restaurant owners to attain and maintain high standards; and
- (d) reducing the cost of inspections by reducing the number of re-inspections caused by non-compliance with the Food Premises Regulations.

The Court also acknowledged evidence filed by the City of Toronto:

that Health Canada estimates there are 2.2 million cases of food poisoning annually with an economic cost of \$1 billion approximately. restaurants are the cause of the highest incidence of food poisoning outbreaks. Before the Disclosure Program was implemented, only thirty per cent of the restaurants in the former City of Toronto complied with the food premises regulation.

The Court concluded on the basis of the evidence filed by the City that the inspection and posting of the inspection results, for the above noted purposes, "to be pressing and substantial objectives".

A copy of the Court's decision is attached to this report for information.

According to the *Rules of Civil Procedure* governing court applications, the ORHMA has 15 days from the release of the Divisional Court's decision to serve a Notice of Motion seeking leave to appeal the decision of the Court. To date, no motion to do so, has been served on the City.

Contact:

Albert H. Cohen, Director of Litigation, Legal Services Division Telephone: (416) 392-8041; Fax: (416) 392-3848; e-mail: acohen0@toronto.ca

List of Attachments:

Ontario Restaurant Hotel and Motel Association v. City of Toronto and Board of Health for the City of Toronto Health Unit, Reasons for Judgment of the Divisional Court, Ontario Superior Court of Justice, released January 22, 2004

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Case Name: Ontario Restaurant Hotel and Motel Assn. v. Toronto (City)

Between Ontario Restaurant Hotel and Motel Association, applicant, and City of Toronto and Board of Health for the City of Toronto Health Unit, respondents

> [2004] O.J. No. 190 Court File No. 776/01

Ontario Superior Court of Justice Divisional Court O'Driscoll, Carnwath and Somers JJ.

Heard: May 28-29, 2003. Judgment: January 22, 2004. (59 paras.)

Counsel:

Timothy S.B. Danson and Peter T.J. Danson, for the applicant. Ansuya Pachai, for the respondents.

The following judgment was delivered by:

¶1 THE COURT:— The Ontario Restaurant Hotel and Motel Association ("ORHMA") challenges the jurisdictional and constitutional validity of a City of Toronto By-law No. 574-2000 as amended by By-law No. 788-2000. The by-law requires restaurant operators to publicly disclose the results of a food premises inspection (the "Disclosure Program"), by posting the results in a conspicuous location. ORHMA also challenges the jurisdictional and constitutional validity of the Disclosure Program instituted by the Board of Health (the "Board") for the City of Toronto Health Unit (the "Health Unit").

2 The issues to be decided are:

- (a) Is the by-law ultra vires or otherwise invalid for want of jurisdiction?
- (b) Is the by-law "unreasonable"?
- (c) Does the by-law breach s. 7 of the Canadian Charter of Rights and Freedoms ("the Charter") because of "vagueness and overbreadth"?
- (d) Does the by-law breach the freedom of expression provision s 2(b) of the Charter?
- (e) If the by-law breaches s. 2(b), is it saved by s. 1 of the Charter?

The Statutory Scheme:

¶3 The Health Protection and Promotion Act, R.S.O. 1990, c. H.7 and amendments ("HPPA") provides for the organization and delivery of public health programs and services in the province. Ontario is divided into forty-two health units, each with its own Board of Health. The Board of Health is responsible for its own health unit and for the appointment of its Medical Officer of Health ("MOH"). The MOH is responsible for the management of the public health programs under HPPA. Section 56(1) of HPPA grants by-law-making power to the Board of Health, limited to the management of the internal affairs of the Board of Health.

¶4 Regulation 562 of HPPA regulates the condition of premises where food is prepared and served. It provides that every food premise shall be operated and maintained such that the premises are free from every condition that may:

- (i) be a health hazard; and
- (ii) adversely affect the sanitary operation of the premises; or
- (iii) adversely affect the wholesomeness of the food therein.

The eighty-two sections of the regulation set out in minute detail the requirements for the safe operation of food premises. Inspection of premises is carried out under the direction of the MOH.

¶5 The Mandatory Health Programs and Services Guidelines (the "Guidelines") are issued by the Ministry and speak to the promotion of food safety by reducing the incidence of food-borne illness. The Guidelines require the Board of Health to assess all food premises annually to determine their risk status (high, medium or low) and set inspection frequencies for those premises.

¶6 Finally, the Ministry of Health developed the Health Hazard Analysis Critical Control Point Protocol ("HACCPP"). HACCPP creates a system of monitoring food preparation that emphasizes the critical factors known to be implicated in food-borne illness, such as:

- (a) inadequate holding temperatures of food;
- (b) inadequate cooking or hot-holding;
- (c) inadequate cooling;
- (d) inadequate re-heating;
- (e) contamination by infected workers; and,
- (f) cross-contamination.

¶7 Under the statutory scheme, restaurants are inspected to determine their compliance with the Food Premises Regulation and the results of those inspections are recorded in Toronto's Food Safety Inspection Reports ("Inspection Reports"). The infractions listed in the Inspection Reports are those prescribed by the Food Premises Regulation. Toronto's Inspection Reports are modeled on forms contained in HACCPP and were fully field-tested before the Disclosure

Program was implemented. These provincial forms are described in HACCPP as "suggested model formats and boards of health can develop similar information collection forms for this purpose".

¶8 Toronto's Inspection Reports were developed for the dual purpose of providing standards for use by the Public Health Inspectors and to communicate such standards to the owners and operators of food premises. The Inspection Reports, which only list infractions prescribed by the Food Premises Regulation, categorize the infractions according to the severity and imminence of the health risk. "Minor" infractions are those which present a minimal health risk and must be corrected at the next routine inspection. "Significant" infractions are those which present a high risk of developing into an immediate health hazard if left uncorrected. "Crucial" infractions are those which present an order to close the premises.

The Disclosure Program:

¶9 The Food Safety Inspection Notices issued by the Medical Officer of Health and required to be posted under By-law No. 574-2000, the business licensing by-law, state the extent to which the restaurant is in compliance with the Food Premises Regulation. If no significant or crucial infractions are found, a pass notice is issued which states that:

"This establishment was inspected by Toronto Public Health in accordance with the Ontario Food Premises Regulation, and passed the inspection on: [date]".

If significant infractions are found, a conditional pass notice is issued. The conditional pass notice lists the contraventions of the Food Premises Regulation required to be corrected and states that:

"This establishment was inspected by Toronto Public Health in accordance with the Ontario Food Premises Regulation on [date]. At the time of this inspection, this establishment was directed to correct the following infractions. A re-inspection will be made within 24 to 48 hours."

If crucial infractions are found, a closed notice is issued. The closed notice states that:

"This food premises is closed."

 $\P 10$ The three categories of infractions - minor, significant, and crucial - are based on risk assessment. As described by the Medical Officer of Health under cross-examination:

... HACCP does not have terms such as crucial, significant and minor in the same way that the Toronto system does, but what it does have is the concept of risk which is a gradient in the sense that there is no black and white, it's dangerous, it's safe.

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In our conceptualization of the DineSafe program, we felt that we would have great difficulty providing accurate and reasonable and understandable information to the public and the operators if we had an on/off switch, dangerous/safe, green/red, opened/closed which is what the minimum required by law is. It's not necessarily as informative as it might be. So in order to provide for a more middle ground of assessed risk, we took the critical and non-critical infractions as defined in the HACCP Protocol and provided a more refined distinction between those that are more immediately likely to cause foodborne illness and those that are less likely and those that are unlikely.

¶11 Following an inspection, By-law No. 574-2000 requires the restaurant owner or proprietor to publish the result of the inspection in a prominent place where the public can see it. The notices are coloured green, yellow and red for a "pass", a "conditional pass" and a "fail". The conditional pass contains information about the significant infraction(s), including such matters as inadequate food temperature control, failure to protect food from contamination, inadequate pest control, etc. All the notices indicate the results of the previous inspection of the premises whether pass, conditional pass or fail, i.e., closed.

Is the By-law Ultra Vires or Otherwise Invalid for Want of Jurisdiction?

¶12 By-law 574-2000 was amended by by-law 778-2000, effective January 1, 2001. The amendment became s. 30.1 of By-law 574-2000 and is attached as Schedule "A" to these reasons. Section 30.1(3), which is the specific subject of ORHMA's attack, reads as follows:

(3) Every owner or keeper of an eating or drinking establishment shall keep posted, in a conspicuous place clearly visible to members of the public, at or near the entrance of such establishment, the most recent food safety inspection notice issued by the Medical Officer of Health.

The Occupied Field Argument:

¶13 On the question of the jurisdiction of the city to pass By-law 574-2000, ORHMA takes the position that the City has no such power because the by-law deals with matters of public health. All such matters, it argues, are reserved to the exclusive jurisdiction of the Board of Health. The Board was established under HPPA, whereby the province created local boards of health empowering them to issue regulations and guidelines prescribing certain enumerated mandatory health services in the province. Under the same Act, a board of health may provide other health programs or services, but only under certain circumstances. Section 9 reads as follows:

- (9) A board of health may provide any other health program or service in any area in the health unit served by the board of health if;
- (a) The board of health is of the opinion that the health program or service is necessary or desirable, having regard to the needs of the persons in the area;
- (b) The councils of the municipalities of the area approve the provision of the health program or service.

Section 10(1) of the same Act directs medical officers of health to inspect "food premises and any food and equipment thereon or therein". ORHMA argues that the type of regulation sought in the impugned by-law is, in fact, already provided for by the local Board of Health and therefore the field is occupied. Indeed, section 16 of HPPA requires any person operating a food premises to maintain and operate it in accordance with the regulations.

 $\P14$ The city, on the other hand, takes the position that its power to pass the Disclosure Program by-law arises firstly, in XVII.I, section 257.2(1) and (2) of the Municipal Act, which read as follows:

- (1) Subject to the Theatres Act and the Retail Business Holidays Act, a council of a local municipality may pass by-laws for licensing, regulating and governing any business carried on within the municipality.
- (2) Without limiting subsection (1), the power to licence, regulate and govern a business under subsection (1) includes ...
- (i) The power to licence, regulate or govern the place or premises used in carrying on the business and the persons carrying it on or engaged in it;

 $\P15$ Additionally, it derives power under the omnibus section 102 of the Municipal Act, which reads:

102. Every council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by this Act and for governing the conduct of its members as may be deemed expeditious and are not contrary to law.

 $\P16$ It would not be surprising to find that authorities operating at two levels of government should co-operate to produce a desirable common end. This is confirmed by the provisions of paragraph 9 of HPPA, which confers upon the local Board of Health the authority to provide any other health program or service it deems necessary, provided the councils of the municipalities approve their introduction. This wording requires a degree of co-operation between the provincial body and the municipality.

¶17 An example of co-operation between two levels of government is the case of Re: Agricultural Products Marketing Act and Two Other Acts (1978), 84 D.L.R. (3d) 257 (S.C.C.). These Acts required co-operation between the federal government and provincial governments. The Farm Products Marketing Agencies Act, 1970-71-72 (Can) c. 65. established a nationwide comprehensive egg marketing scheme. It purported to establish agreed-upon quotas for intra-provincial, inter-provincial and export trade in eggs. The Supreme Court of Canada held that it was open to Parliament to delegate to provincial marketing boards' administrative authority to exercise similar regulatory authorities in the federal area of inter-provincial trade, notwithstanding that that was an exclusive federal field. At page 326, Pigeon J. said:

In the instant case, the provincial regulation is not aimed at controlling the extra-provincial trade. Insofar as it affects the trade, it is only complementary to the Regulations established under federal authority. In my view, this is perfectly legitimate, otherwise it would mean our constitution makes it impossible by federal/provincial co-operative action to arrive at any practical scheme for the orderly and efficient production and marketing of a commodity, which all Governments concerned agree requires regulation in both intra-provincial and extra-provincial trade ... While I adhere to the view that provinces may not make use of their control over local undertakings to affect extra-provincial marketing, this does not, in my view, prevent the use of provincial control to complement federal regulation of extra-provincial trade.

¶18 In the earlier case of Acme Farmers Dairy Limited v. The Corporation of the City of Hamilton et al, [1957] O.R. 614, the Ontario Court of Appeal recognized the same principle of inter-governmental co-operation. In that case, the City of Hamilton passed a by-law under the Milk Industry Act, 1954 (Ont.) c. 52; s. 45 which provided for the passing of by-laws for "licensing, regulating and governing vendors and for revoking any such licence". In this instance, the City of Hamilton asked the medical officer of health to report on the fitness of an applicant to have a distributors licence. The milk was being brought in to Hamilton from Toronto. The medical officer of health indicated that the distance between the two cities made it impossible for him to report on the fitness or otherwise of the applicant's facilities in Toronto, and made no recommendation. The Court of Appeal reversed the order of the judge of first instance, who had issued a mandamus order directing the city to issue a milk distributors licence. The Court of Appeal held that the by-law was passed for the protection of the public and that the medical officer of health, working in co-operation with the city, was acting within the scope of his duty in recommending that no licence be granted.

¶19 A more recent case dealing with the question of alleged provincial/municipal conflicts is the case of 114957 Canada Ltée et al. v. Hudson (Town) (2001), 200 D.L.R. (4th) 419 (S.C.C.). Here, the apparent conflict was between a town by-law purporting to prohibit the use of pesticides within its boundaries and a provincial act which governed the import/export, sale, manufacturing and packaging of such products. The municipality was authorized to pass by-laws providing for the licensing and regulation of vendors and commercial application of pesticides. The by-law in question was passed pursuant to its licensing and regulatory powers. Madam Justice L'Heureux-Dubé commenced her analysis of the case with this comment:

The case arises in an era in which matters of governance are often examined through the lens of the principle of subsidiarity. This is the proposition that lawmaking and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs to local distinctiveness and to population diversity.

Later at para. [38], she said:

Some courts have already made use of the Multiple Access test to examine alleged provincial-municipal conflicts. For example, in British Columbia Lottery Corp. v. City of Vancouver (1999), 169 D.L.R. (4th) 141 at pp. 147-148, the

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British Columbia Court of Appeal stated that cases predating Multiple Access including the Ontario Court of Appeal decision in Mississauga [supra] must be read in the light of that decision:

Is it no longer the key to this kind of problem to look at one comprehensive scheme, and then to look at the other comprehensive scheme, and to decide which scheme entirely occupies the field to the exclusion of the other. Instead the correct course is to look at the precise provisions and the way they operate in the precise case and ask: Can they co-exist in this particular case in their operation? If so, they should be allowed to co-exist, and each should do its own parallel regulation of one aspect of the same activity or two different aspects of the same activity. [Emphasis added.]

The courts summarize the applicable standard as follows: `A true and outright conflict can only be said to arise when one enactment compels what the other forbids.'

¶20 The mention of "Multiple Access" refers to the case of Multiple Access Ltd. v. McCutcheon, [1982] 2 S.C.R. 161. At page 187, Dickson J. (as he then was) speaking for the majority of the Court, reviewed what was referred to as "the express contradiction test" of apparent legislative conflicts between federal and provincial legislation. At page 191, he explained:

There would seem to be no good reason to speak of paramountcy and preclusion, except where there is actual conflict in operation, as when one enactment says `yes' and the other says `no'; the same citizens are being told to do inconsistent things; compliance with one is defiance of the other.

In the case at bar, the provisions of the municipal by-law and of HPPA were designed to mesh with one another, not clash. This is amply demonstrated by the number of memoranda from the Board of Health directed to the city council, annexed as exhibits to the affidavit of Dr. Sheela Basrur, the MOH for the City of Toronto Health Unit. The suggestion that the city amend its by-law to incorporate the food Disclosure Program came from the Board of Health as a recommendation to city council. That recommendation was approved by council on April 11-13, 2000. Further recommendations from the Board of Health to City Council and accepted by it were made on August 1-4, 2000, October 3-6 and October 10-12, 2000, all dealing with the food Disclosure Program.

 $\P21$ In our view in passing this by-law, the city has not committed any transgression or usurpation of a legislative field restricted to any higher authority. It was properly passed to give effect to the suggestions made to it by the Board of Health and not in any way to infringe upon the province's jurisdiction. Section 9 of HPPA, coupled with the general licensing powers under section 257.2(1) of the Municipal Act, provided the municipality with complete authority to pass By-law 574-2000, as amended. Accordingly, we reject the arguments advanced by ORHMA to set aside the impugned by-law on this basis.

The Alleged Requirement of the Board of Health to Pass a By-law:

¶22 Implicit in the submissions of ORHMA is the proposition that, somehow, the discretionary health services and programs undertaken by the Board of Health, pursuant to s. 9 of HPPA, be established by by-law. The only legislative authority delegated to the Board of Health is the authority to pass by-laws related to the management of its affairs. The Board of Health has no authority to pass by-laws to establish programs and services. In any event, since the standards used by the Board of Health in the Disclosure Program are standards prescribed by the food premises regulation, those standards are already prescribed by regulation; any further legislative enactment would be merely duplicative and unnecessary.

The Alleged Delegation to the Board of Health by the City:

 $\P23$ ORHMA submits that the discretion to issue a business licence lies with the city and cannot be delegated; therefore, any scheme which delegates discretion to an individual such as an inspector or to another provincially-created body, such as the Board of Health, constitutes illegal delegation. We reject this submission. All the by-law does is require the posting of food safety inspection notices issued by the MOH.

The Alleged Discriminatory Effect of the By-law:

¶24 ORHMA submits that the application of the by-law discriminates against certain restaurants. We reject this submission. The purposes of the Disclosure Program, we find, are wholly in conformity with the principles and purposes of HPPA. The regulations and Guidelines issued thereunder are focused on the goal of promoting and protecting public health. Discrimination implies differential treatment. We find all food premises are treated equally under the Disclosure Program. The fact that some food premises may not pass the inspections does not amount to discrimination, in our view.

Is the By-law "Unreasonable"?

¶25 Traditionally, courts took an interventionist approach in their review of municipal by-law powers, limiting them to a narrow interpretation of the statutory provisions which created them when applied to the wording and intentions of the by-law in question. Thus, in Morrison v. Kingston, [1937] 4 D.L.R. 740 (Ont. C.A.), the city passed a by-law purporting to licence coin-operated amusement machines such as "cranes, slot machines and other devices". Its stated purpose was that these amusement devices were not to be located in restaurants, tobacco shops, pool rooms, bowling alleys and the like, and it prohibited anyone under the age of 16 from keeping or playing them. The Court of Appeal held that the municipality had no "universal power of legislation" and that gambling, health and morality were matters already governed by other legislation. On the subject of the general provision of [then] section 233, the wording of which is identical to that found in section 102 of the present Act, Latchford C.J.A. said at page 7 for the court:

Very few subjects falling within the ambit of local government are left to the general provisions of section 259. Almost every conceivable subject proper to be dealt with by a municipal council is specifically enumerated in the detailed

provisions in the Act and in some instances, there are distinct limitations imposed on the powers of the municipal council. These expressed powers are, I think, taken out of any power included in the general grant of power by section 259.

The court specifically rejected the city's suggestion that its by-law was valid under the city's general licensing power because it was aimed specifically at matters of health, safety or morality. The court held that health matters were already regulated by the Public Health Act and matters of morality by the Criminal Code.

¶26 This case was cited with approval in the case of Regina ex rel. Cox v. Thomson (1957), 117 C.C.C. 269 (Ont. C.A.). That case dealt with a local by-law purporting to regulate the preparation by cooking, within the municipality, of garbage for feeding to swine otherwise properly kept there. The Court of Appeal rejected the argument that [then] section 388(1) of the Municipal Act which authorized the local municipalities to pass by-laws regulating the keeping of animals including swine, justified the regulation of cooking garbage for their consumption, and was thus passed for their protection or benefit. In holding the by-law ultra vires, LeBel J.A., speaking for the court, approved the earlier statement of Hogg J. in Brampton Enterprises v. Milk Board, [1956] O.R. 1 (Ont. H.C.J.) at page 8:

A power conferred upon a wholly statutory body to interfere with or prohibit by regulation or licence the common law right of persons to carry on a lawful business in a lawful matter, and to engage in competition with other persons also carrying on the same business is strictly construed by the Courts.

¶27 More recently, courts have moved towards a greater deference to the elected municipal body. Municipal by-laws are presumed to be validly enacted and are not subject to review on the basis of alleged unreasonableness. This position was taken by McLachlin J. (as she then was) in dissent, in the case of Shell Canada Products v. Vancouver (City), [1994] 1 S.C.R. 231. The Supreme Court of Canada considered a resolution passed by the Vancouver City Council that the city would no longer do business with Shell Canada "until Royal Dutch/Shell completely withdraws from South Africa". A majority of the Court quashed the resolution on the ground that a municipality is authorized to act only for municipal purposes. The general wording of the city charter permitting the city to do all things that were incidental or conducive to the exercise of their allotted powers was held to be subject to construction in accordance with the limitations imposed by the purpose of the statute as a whole. McLachlin J., speaking in dissent for herself and three other members of the Court, commented on the non-interventionist trend and said at page 244:

The weight of current commentary tends to be critical of a narrow pro-interventionist approach to the review of municipal powers, supporting instead a more generous deferential approach.

She went on to say:

Rather than confining themselves to rectification of clear excesses of authority, courts under the guise of vague doctrinal terms such as "irrelevant considerations", "improper purpose", "reasonableness" or "bad faith" have not

infrequently arrogated to themselves a wide and sweeping power to substitute their views for those of the elected representatives of municipalities. To the same effect, they have `read in' principles of statutory construction such as the one which states that a by-law cannot affect "common law" rights unless the statute confers authority to do so "in plain language or by necessary implication"; City of Prince George v. Payne, [1978] 1 S.C.R. 458 at page 463. The result is, to quote MacDonald (at page 79), `despite the court's protestations to the contrary, they do in fact interfere with the wisdom which the municipal councils exercise'.

Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those in municipal councils. Barring clear demonstration that a municipal decision was beyond its powers, courts should not so hold in cases where powers are not expressly conferred, but may be implied, courts must be prepared to adopt the `benevolent construction' which this court referred to in Greenbaum and confer the powers by reasonable implications. Whatever rules of construction are applied, they must not be used to usurp the legitimate role of municipal bodies as community representatives.

¶28 This analysis was quoted with approval by Major J., on behalf of the entire Court, in the case of Nanaimo (City) v. Rascal Trucking Ltd., [2000] 1 S.C.R. 342. In that case, the city had granted a permit to Rascal to deposit 15,000 cubic yards of soil on a parcel of land within the city-limits. Neighbours complained about dust and noise emissions. The city, in response to a recommendation from its inspector, passed a resolution under the British Columbia Municipal Act declaring the pile of soil a nuisance and ordered it removed. The company sought to have the resolution quashed, but was unsuccessful in the first instance. The British Columbia Court of Appeal allowed the company's appeal and quashed the resolution. The appeal from this decision to the Supreme Court of Canada was granted unanimously. In referring to the comments of McLachlin J. in Shell Canada Products [supra], Major J. said at paragraph 37:

I find these comments equally persuasive in the scrutiny of municipal resolutions. The conclusion is apparent. The standard upon which courts may entertain a review of intra vires municipal actions should be one of patent unreasonableness.

 $\P 29$ The standard of review is patent unreasonableness. ORHMA has not satisfied us that the by-law is anything other than reasonable.

Does the By-law Breach s. 7 of the Charter Because of "Vagueness and Overbreadth"?

- ¶30 Section 7 of the Charter reads as follows:
 - (7) Everyone has the right to life, liberty and the security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

 $\P{31}$ The applicant's factum developed a submission that "the vagueness and overbreadth of, and lack of due process guarantees in the Disclosure Program are violations of the principles of fundamental justice written into s. 7 of the Charter, which must inform the common law".

 $\P{32}$ Counsel for the applicant made no submissions in oral argument on this point, perhaps for good reason. The applicant is an incorporated Association, a non-human legal creation and cannot invoke the protection of s. 7.

Irwin Toy Ltd. v. Quebec (1989), 58 D.L.R. (4th) 577 S.C.C. p. 633. Dywidag Systems International Canada Ltd. v. Zutphen Brothers Construction Ltd. (1990), 68 D.L.R. (4th) 147 (S.C.C.), p. 149.

We find no merit in the applicant's argument based on s. 7 of the Charter.

Does the By-law Breach the Freedom of Expression Provision s. 2(B) of the Charter?

¶33 Section 2(b) of the Charter reads as follows:

- . Everyone has the following fundamental freedoms:
 - •••
 - (b) Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

 $\P{34}$ The applicant submits the operation of a restaurant includes commercial expression for the purpose of generating revenues. An important aspect of this commercial expression is the appearance of the restaurant exterior and that part of the interior visible from the exterior. Name branding, signage, graphic design, clean windows, interior décor, the posting of menus, reviews and awards - all, it is submitted, are part of a campaign to persuade members of the public to enter the premises.

¶35 The respondent does not seriously contest these submissions, other than to argue that no evidence was led to support the submission as to the expressive conduct of signage, etc. The respondent says no proper factual base has been established, thus requiring the Court to proceed on the basis of suppositions, inferences, or judicial notice. We reject this submission of the respondent. Common sense and ordinary life experience convince us that, absent information previously acquired, one chooses or rejects a restaurant based on one's reaction to the information conveyed by its exterior. We accept the applicant's submission that the name branding, signage, graphic design, interior décor, posted menus, reviews and awards constitute commercial expression.

¶36 The applicant further submits that this commercial expression described above is protected by s. 2(b). We agree. In Rocket v. Royal College of Dental Surgeons of Ontario, [1990] 2 S.C.R. 232, McLachlin J., writing for the Court, is reported as follows at p. 241-42:

Although it has been clearly held that commercial expression does not fall outside of the ambit of s. 2(b), the fact that expression is commercial is not necessarily without constitutional significance. Regulation of advertising may offend the guarantee of free expression in s. 2(b) of the Charter, but this does not end the inquiry. The further question of whether the infringement can be justified under s. 1 of the Charter must be considered. It is at this stage that the competing values - the value of the limitation and the value of free expression - are weighed in the context of the case. Part of the context, in the case of regulation of advertising, is the fact that the expression at issue is wholly within the commercial sphere.

¶37 The applicant further submits the Disclosure Program constitutes forced expression in that a restaurant owner is compelled to convey the City's message, a message which in the case of the yellow and red notices, the owner would not have chosen to convey. In order to respond to this submission, we must conduct an analysis of the Supreme Court of Canada's decision in Lavigne v. Ontario Public Service Employees Union, [1991] 2 S.C.R. 211.

 $\P38$ Mr. Lavigne was required to pay dues to OPSEU under a mandatory check-off clause in the collective agreement, pursuant to the Rand formula. He objected to certain expenditures made by the Union, such as contributions to the NDP, and sought declaratory relief, alleging among other things, an infringement of his s. 2(b) right.

¶39 Four of the justices, La Forest, Sopinka, Gonthier and McLachlin JJ., found that Mr. Lavigne's contribution to OPSEU was not an attempt to convey meaning and, therefore, his s. 2(b) right had not been infringed.

¶40 Wilson J., L'Heureux-Dubé and Cory JJ. concurring, found that Mr. Lavigne was denied the right to boycott the Union's causes which prevented him from conveying a meaning he wished to convey. She noted that the Court had examined the nature and purpose of s. 2(b) in Irwin Toy. The majority in Irwin Toy set out at pp. 978-79 the steps to be carried out in any s. 2(b) analysis:

When faced with an alleged violation of the guarantee of freedom of expression, the first step in the analysis is to determine whether the plaintiff's activity falls within the sphere of conduct protected by the guarantee. Activity which (1) does not convey or attempt to convey a meaning, and thus has no content of expression or (2) which conveys a meaning but through a violent form of expression, is not within the protected sphere of conduct. If the activity falls within the protected sphere of conduct, the second step in the analysis is to determine whether the purpose or effect of the government action in issue was to restrict freedom of expression. If the government has aimed to control attempts to convey a meaning either by directly restricting the content of expression or by restricting a form of expression tied to content, its purpose trenches upon the guarantee. Where, on the other hand, it aims only to control the physical consequences of particular conduct, its purpose does not trench upon the guarantee. In determining whether the government's purpose aims simply at harmful physical consequences, the question becomes: does the mischief consist in the meaning of the activity or the purported influence that meaning has on the behaviour of others, or does it consist, rather, only in the direct physical result of the activity. If the government's purpose was not to restrict free expression, the plaintiff can still claim that the effect of the government's action was to restrict her expression. To make this claim, the plaintiff must at least identify the meaning being conveyed and how it relates to the pursuit of truth, participation in the community, or individual self-fulfillment and human flourishing. [Emphasis in original.]

¶41 Wilson J. then notes (p. 266) that the Irwin Toy test was framed in the context of government restrictions on expression and not, as in the Lavigne case, in the context of "forced expression". She then addressed the issue of whether the Irwin Toy test was appropriate in the context of forced expression at p. 266:

In my view, the approach to s. 2(b) developed in Irwin Toy is sound. It begins by asking whether it is "expression" in which a plaintiff wishes to engage, and, if the answer to that question is yes, it then turns to the issue of how government has impeded that desire. Thus, the first branch of the test focuses on the plaintiff and questions whether the activity in which he or she wishes to participate is expression. The second branch logically concerns the impact of the impugned law. If the "purpose" of the law is aimed at controlling expression, a violation of s. 2(b) is automatic. On the other hand, if the aim of the legislature was not directed at controlling expression, then the plaintiff must cross a further hurdle in order to establish an infringement of his or her Charter right. In such cases, it is not sufficient that the law has some "effect" on expression. The plaintiff must demonstrate that the meaning which he or she wishes to convey relates to the purposes underlying the guarantee of free expression. And there is a clear foundation for the addition of this extra step. Because the word "expression" in s. 2(b) has been broadly construed, most laws will have some impact on expression, intended or otherwise. Given this, it makes very good sense to ensure that unintended effects do not receive constitutional protection, unless they strike at the heart of s. 2(b).

How do these principles fit in cases where, instead of restricting expression, government is compelling expression? It seems to me that as long as the activity in which a plaintiff wishes to engage falls within the protected sphere of activity, the first step will be satisfied. If the government's purpose was to put a particular message into the mouth of the plaintiff, as is metaphorically alleged to be the case here, the action giving effect to that purpose will run afoul of s. 2(b). If, on the other hand, the government's purpose was otherwise but the effect of its action was to infringe the plaintiff's right of free expression, then the plaintiff must take the further step and demonstrate that such effect warrants constitutional disapprobation. It seems to me therefore that the interpretive approach established in Irwin Toy readily lends itself to the analysis of claims based on compelled expression and I will follow it in my approach to s. 2(b) in this case.

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¶42 Was the government's purpose "to put a particular message into the mouth of the [applicant]"? We find it was not. We find the purposes of the by-law requiring the posting of the notices included:

- (a) protection of the public from health hazards;
- (b) educating the public to make informed choices;
- (c) encouraging restaurant owners to attain and maintain high standards; and
- (d) reducing the cost of inspections by reducing the number of re-inspections caused by non-compliance with the Food Premises Regulations.

 $\P43$ That being the case, we turn to consider the second step as framed by Wilson J. If the government's purpose was not to restrict freedom of expression but if the effect of its action was to infringe the right of free expression, then the applicant "must take the further step and demonstrate that such effect warrants constitutional disapprobation". This is the position the applicant finds itself in. Restaurant owners are forced to express information with which they disagree.

¶44 After reviewing National Bank of Canada v. Retail Retail Clerks' International Union, [1984] 1 S.C.R. 269 and Slaight Communications Inc. v. Davidson, [1989] 1 S.C.R. 1038, two cases of forced expression or compelled speech, Wilson J. concluded, as follows:

On the basis of the foregoing authorities, it seems to me that this Court has already accepted that public identification and opportunity to disavow are relevant to the determination of whether s. 2(b) has been violated.

And further:

... it would be my view that as a matter of principle concerns over public identification and opportunity to disavow should form part of the s. 2(b) calculus. I have only one reservation and that is that care should be exercised in considering whether or not one truly has the opportunity to disavow. Opportunity must be meaningful and we should not be too quick to ascribe to persons opportunities and abilities which they do not really possess. That aside, I favour the inclusion of these factors because both are directed to preserving and promoting the fundamental purpose of the s. 2(b) guarantee, namely to ensure that everyone has a meaningful opportunity to speak one's mind or does not effectively associate one with a message with which one disagrees, it is difficult to see how one's right to pursue truth, participate in the community, or fulfill oneself is denied.

¶45 A similar analysis may be found in the judgment of McLachlin J. in R.J.R. MacDonald Inc. v. Canada (1995), 127 D.L.R. (4th) 1 (S.C.C.). At issue was the requirement that tobacco companies print unattributed health warnings on the packages of all tobacco products with no opportunity to disavow the message conveyed by the warning. McLachlin J., at p. 87, stated:

The combination of the unattributed health warnings and the prohibition against displaying any other information which would allow tobacco manufacturers to express their own views, constitutes an infringement of the right to free expression guaranteed by s. 2(b) of the Charter.

¶46 The food safety inspection notices are clearly attributed to the City of Toronto and not to the individual restaurant owner. At the top of all notices appear the words "Toronto Public Health". In the body of the notices appear the words "This establishment was inspected by Toronto Public Health ...". At the bottom of the notices appear the words "Toronto Public Health" followed by the signature 'Sheela V. Basrur". Dr. Basrur is identified as the Medical Officer of Health for the City of Toronto. A cursory examination of the notices would lead a member of the public to conclude that it was attributable to no other person or body than Toronto Public Health.

¶47 Further, s. 30.1 of by-law 574-2000 does not in any way prohibit a restaurant owner from disavowing whatever message the notices contain. An owner is free to post any message the owner chooses in response to the inspection notice.

 $\P48$ We find the effect of the by-law does not effectively associate a restaurant owner with a message with which the owner disagrees, nor does it deprive an owner of the right to disavow the message contained in the notice and express a contrary opinion. We find no infringement of the applicant's s. 2(b) right.

If The By-law Breaches s. 2(B), Is It Saved by s. 1 Of The Charter?

¶49 Should we be wrong in our analysis of the applicant's s. 2(b) right, we must consider whether, in any event, the impugned law is saved by s. 1 of the Charter:

(1) The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

 $\P50$ A s. 1 analysis should be based on the factual, legal and social context of the case. A court must examine the law in issue, the circumstances of its enactment and the nature and scope of the infringement.

 $\P51$ On the assumption that there is an infringement of s. 2(b) (we have found to the contrary), the onus lies on the City to prove on the balance of probabilities, that the infringement is saved under s. 1. The applicable analysis is set out in R. v. Oakes, [1986] 1 S.C.R. 103 at 137:

- (a) The court must first ask whether the objective the statutory restrictions seek to promote responds to pressing and substantial concerns in a democratic society.
- (b) The court must then determine whether the means chosen by the government are proportional to that objective, which involves a three-step test:

the restrictive measures must be rationally connected to the objective;

- (ii) the measure must constitute a minimal impairment of the violated right or freedom;
- (iii) there must be proportionality both between the objective and harmful effects of the statutory restrictions and also between the harmful and salutary effects of the restrictions themselves.

Prescribed By law:

¶52 The applicant submits the requirement to post the results of the inspection is not prescribed by law. We reject this submission. By-law No. 574-2000, s. 30.1(3) requires every owner or keeper of an eating or drinking establishment to keep posted in a conspicuous place clearly visible to members of the public at or near the entrance of such establishment the most recent food safety inspection notice issued by the Medical Officer of Health. Under the Health Protection and Promotion Act, R.S.O. 1990, chap. H.7, s. 10(2) requires every Medical Officer of Health to inspect or cause the inspection of food premises and any food and equipment thereon or therein. Regulation 562, made under the Health Protection and Promotion Act, sets out in considerable detail the standards to be met in food handling, food preparation and food storage. The by-law, the Act and the Regulation all combine to set out a legislative framework designed to ensure the inspections. We find no merit in the applicant's submission that the posting of the results of the inspections is not prescribed by law.

The Object of the Statutory Requirements:

 $\P53$ The applicant submits that the real object of the Disclosure Program was to cover up the inability of the Toronto Board of Health to properly exercise its delegated power under the Health Protection and Promotion Act. We reject this submission. The evidence before us establishes that the Board of Health was considering some kind of program to better inform the public about the results of inspections carried out by the Board before a series of articles appeared in the Toronto Star, which articles the applicant says, galvanized the Board of Health to action. Earlier in these reasons, we found the purposes of the by-law requiring the posting of the notices included:

- (a) Protection of the public from health hazards;
- (b) Educating the public to make informed choices;
- (c) Encouraging restaurant owners to attain and maintain high standards; and
- (d) Reducing the cost of inspections by reducing the number of re-inspections caused by non-compliance with the Food Premises Regulations.

The respondents filed evidence that Health Canada estimates there are 2.2 million cases of food poisoning annually with an economic cost of \$1 billion approximately. Evidence filed establishes that restaurants are the cause of the highest incidence of food poisoning outbreaks.

Before the Disclosure Program was implemented, only thirty per cent of the restaurants in the former City of Toronto complied with the food premises regulation. We find the inspection and posting of the inspection results for the purposes outlined above to be pressing and substantial objectives.

Rational Connection:

¶54 The applicant submits that even if the objective of the Disclosure Program is pressing and substantial (which ORHMA denies), the operation of the Program is not rationally connected to the objective because it does not reliably and in truth further the objective. The applicant further submits that the notices mislead rather than inform the public. The applicant finds no causal connection between the infringement and the green and yellow notices. We reject this submission. We find the posting of the notices to be rationally connected to the objectives outlined above. The notices inform the public of the results of the most recent inspection thereby permitting the public to make an informed choice about whether to choose the restaurant or not. The posting also encourages restaurant owners to attain and maintain high standards; after the introduction of the Disclosure Program, compliance with the Food Premises Regulation rose from thirty per cent to the high seventies. As compliance rises, the number of re-inspections caused by non-compliance reduces.

Minimal Impairment:

¶55 The applicant submits that the yellow and green notices impair the applicant's freedom of expression more than minimally. The applicant submits that the respondents must establish, on reliable and compelling evidence, that protecting public safety cannot be achieved without the green and yellow notice system. We reject this submission because there are other objectives of the legislative scheme than the protection of the public. These objectives have been noted above in these reasons. All restaurants in Ontario are required to comply with the food premises regulation. The Disclosure Program reveals those infractions which are either an immediate health hazard or which present a high risk of developing into an immediate health hazard if left uncorrected. Those restaurants which do not pass the inspection are re-inspected within 24-48 hours. Once the standards of the food premises regulation have been met upon re-inspection, a pass notice is issued. We find the statutory restrictions constitute a minimal impairment of the applicant's s. 2(b) right.

Proportionality:

¶56 The applicant's submission on proportionality as between the objectives of the Disclosure Program and the harmful effect of the restrictions is based upon its submission that the purpose of the Disclosure Program is to lull the public into a false sense of security that provincially-mandated inspections are being carried out. We reject this submission. We do not find the salutary effects of the Program to be illusory, as the applicant states. We find, rather, that the salutary effects of the legislation far outweigh any perceived compelled expression protected by s. 2(b).

 $\P57$ The applicant submits that the harmful effects of the Disclosure Program outweigh any benefits that might flow from it. In paragraph 56 of the applicant's factum, the following submission is found:

Particularly with respect to the yellow 'conditional passes, the salutary effects may be that the fear of receiving a yellow signal will force restaurant operators to be very careful to dot every 'I' and cross every 't'.

Were that to result from receiving a yellow notice, we fail to see how this can be other than highly salutary.

¶58 The only evidence led regarding the harmful effect of the Disclosure Program was that related to the alleged economic impact of the Program. On cross-examination of the deponent speaking to the question of economic harm, it was clear the deponent had based his opinion on suppositions and assumptions. We find no evidence of any actual harm occasioned to any restaurant operator. We find the impugned law to be proportional when considering its harmful and its salutary effects.

¶59 Prior to reserving judgment, we asked counsel for their submissions as to costs. If successful, counsel for the applicant asked for costs. If unsuccessful, counsel for the applicant took the position that the applicant should not have to pay costs because this is "public interest litigation". In our view, the circumstances of this case do not fit into that category. Both counsel agreed that if costs were awarded, the quantum should be \$30,000. Costs are fixed in the amount of \$30,000 payable forthwith by the applicant to the respondents.

O'Driscoll, J. Carnwath, J. Somers, J.

> Schedule "A" V General Provisions

30.(1) In this section and in section 31:

- (a) "Eating or drinking establishment" means:
 - (i) every place for the lodging, reception, refreshment or entertainment of the public;
 - (ii) every place where food stuffs intended for human consumption are made for sale, offered for sale, stored or sold;
 - (iii) every victualling house, ordinary, and house where fruit, fish, oysters, clams, or victuals are sold to be eaten therein; and

 (iv) any other place or premises or part thereof, named or described in section 2 of this By-law, where food or drink is served in pursuance of a trade, business or occupation;

Whether or not any person is licensed or required to be licensed under this By-law for the carrying on of or engaging in any trade, business or occupation in respect of such eating or drinking establishment;

- (b) "Food or drink" includes any kind of victuals, refreshments, alcoholic and non-alcoholic beverages, and any other commodity intended for human consumption;
- (c) "To operate" includes to manage, supervise or otherwise be responsible for the control, management or supervision of an eating or drinking establishment or of any serving person employed or performing services therein, whether or not the person so operating such establishment is licensed or required to be licensed under this By-law;
- (d) "Serving person" includes a waiter, waitress, host, hostess, bartender, cook and every other person serving or making available food or drink in pursuance of a trade, business or occupation in an eating or drinking establishment, and every person involved in providing such services, whether or not any such person is licensed or required to be licensed under this By-law;
- (e) "Specified body areas" means:
 - (i) in the case of a female person, her breasts; and
 - (ii) in the case of all persons, the pubic, perineal and perianal areas and the buttocks;
- (2) No serving person shall in any eating or drinking establishment in the City of Toronto serve or make available food or drink in pursuance of a trade, business or occupation or be involved in providing such services, except while wearing clean opaque clothing fully covering such person's specified body areas.
- (3) No person who operates an eating or drinking establishment shall permit any serving person in such establishment to serve or make available food or drink in pursuance of a trade, business or occupation or to be involved in providing such services unless such serving person is clothed in accordance with the provisions of subsection (2).
- 30.1(1) In this section:
 - (a) "Eating or drinking establishment" means
 - (i) every place for the lodging, reception, refreshment or entertainment of the public;

- (ii) every place where foodstuffs intended for human consumption are made for sale, offered for sale, stored or sold;
- (iii) every victualling house, ordinary, and house where fruit, fish, oysters, clams or victuals are sold to be eaten therein; and any other place or premises or part thereof, named or described in section 2 of this By-law, where food or drink is sold or served in pursuance of a trade, business or occupation; or [amended by By-law 440-2001 effective January 1, 2001]
- (iv) any other place or premises or part thereof, named or described in section 2 of the By-law, where food or drink is served in pursuance of a trade, business or occupation,

Licensed or required to be licensed under this By-law for the carrying on of or engaging in any trade, business or occupation in respect of such eating or drinking establishment;

[amended by By-law 440-2001 effective January 1, 2001]

- (b) "Food or drink" means that term as defined in clause 30(1)(b);
- (c) "To operate" means that term as defined in clause 30(1)(c);
- (d) "Food safety inspection report" means a report issued by the Medical Officer of Health to an eating or drinking establishment as a result of any inspection of such eating or drinking establishment conducted pursuant to the Health Protection and Promotion Act, or the Regulations thereunder, as amended;
- (e) "Food safety inspection notice" means a notice issued by the Medical Officer of Health to an eating or drinking establishment as a result of any inspection of such eating or drinking establishment conducted pursuant to the Health Protection and Promotion Act, or the Regulations enacted thereunder, as amended;
- (f) "Owner or keeper" means the person or persons who operate or direct the activities carried on within the eating or drinking establishment and includes the person or persons actually in charge of the premises;
- (g) "Hazardous food" means any food that is capable of supporting the growth of pathogenic organisms or the production of the toxins of such organisms;
- (h) "Low risk premises" means any eating or drinking establishment which,
 - (i) serves hazardous food neither prepared nor packaged on the premises; or

- (ii) prepares or serves food other than hazardous food, as defined in clause (1)(g);
- (i) "Medium risk premises" means any eating or drinking establishment wherein hazardous food, other than hazardous food as described in subclause (1)(j)(ii) or (iii), is prepared;
- (j) "High risk premises" means any eating or drinking establishment which prepares hazardous food, and
 - (i) Serves a person or persons who are at high risk of experiencing an adverse effect on their health in consuming hazardous food;
 - (ii) Uses a process or processes to prepare food that involves many preparation steps;
 - (iii) serves food frequently implicated as the cause of food-borne illness; or
 - (iv) the establishment has been implicated or confirmed as a source of a food-borne illness or outbreak.
- (2) Every application for a licence as an owner or keeper of an eating or drinking establishment shall be submitted by the Municipal Licensing and Standards Division to the Medical Officer of Health, and any report received by the Municipal Licensing and Standards Division in response thereto shall be considered in the determination of whether or not the licence should be issued or refused in accordance with this By-law.
- (3) Every owner or keeper of an eating or drinking establishment shall keep posted, in a conspicuous place clearly visible to members of the public, at or near the entrance of such establishment, the most recent food safety inspection notice issued by the Medical Officer of Health.
- (4) Notwithstanding subsection 20(1) of this By-law, every owner or keeper of an eating or drinking establishment shall post the eating or drinking establishment licence, issued in accordance with this By-law, adjacent to the food safety inspection notice.
- (5) Every owner or keeper of an eating or drinking establishment shall, when so requested by any person, produce the food safety inspection report or reports relating to the currently posted food safety inspection notice for such establishment.
- (6) Every owner or keeper of an eating or drinking establishment shall notify the Municipal Licensing and Standards Division in writing of any change or changes to the operations of the business which may result in a change as to the applicability of clause (1)(h), (I), or (j) to such establishment, at least thirty days prior to the implementation of such change or changes.

- (7) Every limited liability company applying for a licence or licences as an owner or keeper of an eating or drinking establishment shall file an Annual Return with the Municipal Licensing and Standards Division on or before the time at which it applies for its licence.
- (8) Where the shares in a corporate owner are held in whole or in part by another corporation, such other corporation shall file with the Municipal Licensing and Standards Division at the same time as set out in subsection (7) an Annual Return and if the Return discloses that shares in such corporation are owned in whole or in part by a third corporation, then such third corporation shall likewise file an Annual Return in accordance with subsection (7) and so on until the names of living persons not being corporations are shown and identified as the shareholders of any and all corporations having an interest, direct or indirect, in any licence or licences as an owner or keeper of an eating and drinking establishment.
- (9) Every owner or keeper of an eating or drinking establishment shall forthwith notify the Municipal Licensing and Standards Division in writing of any change in the management or control of such establishment.
- (10) (a) Where a corporation is a holder of a licence or licences as an owner or keeper of an eating or drinking establishment, the corporation shall forthwith notify the Municipal Licensing and Standards Division in writing of all transfers of existing shares and of the issue of all new shares of the capital stock of the corporation.
 - (b) Where, as a result of the transfer of existing shares or by the issue of new shares of a corporation, the Municipal Licensing and Standards Division has reasonable grounds to believe that the corporation may not be entitled to the continuation of its licence in accordance with this by-law, the Toronto Licensing Tribunal may determine whether the licence or licences shall be revoked or have conditions placed on it.
- (11) Where by the transfer or sale of issued shares in, or by the issuance of new shares of, a corporation holding one or more licences as an owner or keeper of an eating or drinking establishment, the controlling interest in such corporation is sold, transferred or acquired, such licence or licences shall be terminated forthwith, and the Municipal Licensing and Standards Division may issue a new licence or new licences upon payment of the prescribed fee.
 - (b) The Toronto Licensing Tribunal may, in its discretion, refuse to issue a new licence or licences to a purchaser in a transaction under this section if it determines that it is not in the public interest so to do or for any other reason which it is authorized by law to consider upon such application.

- (12) For the purpose of this section, "shareholder" and any words referring to the holding of shares includes all persons having a beneficial interest of any kind in the shares of the corporation.
- (13) Persons associated in a partnership applying for a licence or licenses as an owner or keeper of an eating or drinking establishment shall file with their application to the Municipal Licensing and Standards Division a declaration in writing signed by all the members of the partnership, which declaration shall state:
 - (a) The full name of every partner and the address of his or her ordinary residence;
 - (b) The name or names under which they carry on or intend to carry on business;
 - (c) That the persons therein named are the only members of the partnership; and
 - (d) The mailing address for the partnership.
- (14) If any member of a partnership applying for a licence as an owner or keeper of an eating or drinking establishment is a corporation, such corporation shall, for the purposes of this Schedule, be deemed to be a corporation applying for an owner's licence and if such licence is issued to the partnership such corporation shall, for the purposes of this schedule, be deemed to be a corporation which holds an owner's licence.
- (15) Every member of a partnership shall advise the Municipal Licensing and Standards Division immediately in writing of any change in the membership of the partnership and of any other change in any of the particulars relating to the partnership or its business which are required to be filed with the Municipal Licensing and Standards Division.
- (16) Where, by reason of any change in the membership of a partnership, the Municipal Licensing and Standards Division has reasonable grounds to believe that the partnership is not entitled to the continuation of its licence in accordance with this by-law, the Toronto Licensing Tribunal may, in its discretion, determine whether the licence or licences shall be revoked or terminated and whether or not a new licence should issue to the partnership as presently constituted.