

**Licence  
Appeal  
Tribunal**

**Tribunal  
d'appel en  
matière de permis**



**DATE:** 2014-04-09  
**FILE:** 8323/LLA and 8345/LLA  
**CASE NAME:** 8323 and 8345 v. Registrar of Alcohol and Gaming

**Appeal from the Notice of Proposal of the Registrar of Alcohol and Gaming under the  
Liquor Licence Act, R.S.O. 1990, c. L. 19 to Review an Application for a Licence**

2270121 Ontario Ltd. o/a Church Aperitivo Bar

Applicant

-and-

Registrar of Alcohol and Gaming

Respondent

-and-

City of Toronto

Added Party

-and-

V.F. and R.K.

Added Parties/ Objectors

**ORDER**

**ADJUDICATOR:** Patricia McQuaid, Vice-Chair

**APPEARANCES:**

**For the Applicant:** Adam Vassos, Counsel

**For the Respondent:** Tamara Brooks, Counsel and Kate Varva,  
Paralegal

**For the City of Toronto:** Mark Crawford, Counsel

**For the Added  
Parties/Objectors:** Marc Kemerer, Counsel, for V.F and as Agent for  
R.K.

**Heard in Toronto** April 4, 2014

## ORDER

A second pre-hearing was held in this matter on April 4, 2014, before this Tribunal in the presence of Adam Vassos, Counsel for 2270121 Ontario Ltd., operating as Church Aperitivo Bar (the "Applicant" or the "Licensee"), Tamara Brooks, Counsel, and Kate Varva, Paralegal, representing the Registrar of Alcohol and Gaming (the "Registrar"), Mark Crawford, Counsel, representing the City of Toronto, and Marc Kemerer, Counsel for V.F., and as Agent for R.K. The appeal arises from the Registrar's Notices of Proposal to Refuse to Remove Conditions on liquor licence # 814329, in particular, conditions 2 and 10 on the licence.

At the outset, Mr Vassos advised the Tribunal that the Applicant, V.F. and R.K. (representing the Beaconsfield Village Residents' Association) had reached an agreement to resolve the public interest concerns regarding the removal of the conditions on the basis of executed Minutes of Settlement. By the terms of their agreement, the public interest concerns about removal of the two conditions can be resolved through imposition of modified conditions on the licence, or, alternatively, by appending the Minutes of Settlement to the Tribunal's order for removal of the conditions.

The parties have satisfied the Tribunal that there has, pursuant to s. 14(2) of the *Liquor Licence Act* (the "Act"), been a change of circumstances which supports removal of the conditions. Specifically, the Tribunal notes that the public interest objectors consent to the removal on the basis of, and relying upon, the Minutes of Settlement, filed with the Tribunal and attached hereto as Schedule "A". The Applicant has agreed to operate in accordance with the terms set out in Schedule A, an agreement negotiated in good faith by the Applicant, V.F and R.K. The Tribunal commends the parties for their significant efforts in resolving the issues between them, without the need for a hearing on this matter. The Tribunal also notes that the City of Toronto, in light of this specific agreement made between the Applicant, V.F and R.K. accepts that the requisite change of circumstances has been established. Ms. Brooks, on behalf of the Registrar, confirmed that the Registrar's position was in support of removal of the conditions.

Having heard the submissions of the parties and having reviewed the Minutes of Settlement, the Tribunal makes the following Order:

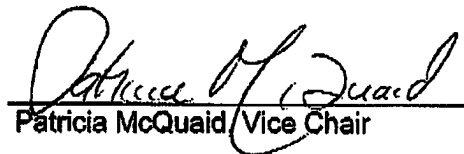
1. On consent of all parties, and in accordance with its authority set out in s.14(2) of the *Act*, and on the basis of the Minutes of Settlement, attached as Schedule "A", which is incorporated into and made part of this Order, the Tribunal orders the removal of the following conditions on liquor licence # 814329:
2. *The Licensee shall ensure that any sound resulting from the indoor operation of the business is not audible beyond the lot line of the property on which the premises is located. The facility must be constructed in such a manner that all sound waves are contained within the perimeter of the facility. Sound from inside*

*the premises must not be audible beyond its perimeter, whether on the street or in nearby homes. Sound referred to in this clause includes sound that is generated by loudspeakers, conversation by patrons, and sound generated by equipment within the premises. Sound emanating from the Licensee's premises will be considered non-compliant if heard at any point in a public street, public or private laneway, or through a parting wall or ceiling.*

*10. The Licensee shall ensure that a designated employee is on duty at all times to make the best possible efforts to ensure that patrons and any other people in the areas surrounding any entrance/exit of the establishment, and in any outdoor area of the establishment, are not causing a disturbance that will affect nearby residents, until one hour after the closing of the establishment.*

2. The parties to the Minutes of Settlement acknowledge that each of them may reasonably rely on adherence to its terms and that the Registrar may consider proof of breach of the terms in the context of public interest considerations that may arise, pursuant to the Act, on a renewal of the licence or applications with respect to the licence.
3. On the basis of the foregoing, the Tribunal orders that the proceeding in these matters are concluded and disposed of without a hearing.

LICENCE APPEAL TRIBUNAL

  
Patricia McQuaid Vice Chair

*Released: April 9, 2014*

# SCHEDULE 'A'

**IN THE MATTER OF an Appeal from Notices of Proposal of the Registrar of Alcohol and Gaming under the *Liquor Licence Act*, R.S.O. 1990, c. L. 19 to Review an Application for a Licence**

LAT File Nos. 8323/LLA and 8345/LLASP04-045

## MINUTES OF SETTLEMENT

**BETWEEN:**

**2270121 ONTARIO LTD. o/a CHURCH APERTIVO BAR**

(the "Applicant")

- and -

**VERA FRENKEL**

("Vera")

- and -

**RANDY KERR**

*REPRESENTING THE BEACONSFIELD  
VILLAGE RESIDENTS  
ASSOCIATION "BVRA"*

*RK*  
("Randy")

**WHEREAS:**

1. The Applicant operates a restaurant and bar at 1090 Queen Street West, Toronto (the "Establishment").
2. The Applicant filed Applications (the "Applications") with the Alcohol and Gaming Commission of Ontario ("AGCO") on 31 May and 17 September 2013 to remove Conditions 10 and 2 (the "Subject Conditions") respectively from the Conditions dated 7 August 2011 (the "Conditions") attached to the Applicant's Liquor Licence (the "Licence"). A copy of the Conditions is attached to these Minutes as Schedule "A".
3. Vera lives and works in the building immediately adjacent to the Establishment.
4. Randy is President of the Beaconsfield Village Residents Association (the "BVRA").
5. Vera and Randy have concerns regarding the removal of the Subject Conditions. As a result of those concerns, they objected to the removal of the Subject Conditions from the Licence.
6. The AGCO issued Notices of Proposal to Refuse the Removal of the Conditions from the Licence (the "Notices").

*[Handwritten signature]*  
*Ric*  
*VA*

7. The Applicant appealed the decision of the AGCO (the "Appeal") to the Licence Appeal Tribunal ("LAT"). The LAT has scheduled a hearing of this appeal on 23, 24 and 25 April 2014 (the "Hearing") and made Vera and Randy parties to the Appeal.
8. The parties (the "Parties") to these Minutes of Settlement (the "Minutes") have agreed to resolve the above noted concerns on the terms set out in the Minutes and voluntarily enter into the Minutes.

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the terms and conditions set forth below:

1. The Parties confirm that the forgoing recitals are true and correct.
  2. The Parties have agreed that the Subject Conditions, which are the subject matter of the Appeal, are to be removed and will be replaced with two new conditions to read as follows:
    2. The Licensee shall ensure that any sound system used for the indoor operation of the business:
      - a) is installed with a lockable and locked sound level limiter or lockable and locked speaker management system (the "Limiter"), the setting of which shall not permit a sound level greater than 85 A-weighted decibels (85 dBA) and 90 linear decibels (90 dB), due solely to the sound system, as measured with an ANSI Class 1 integrating sound level meter, on average (Leq) basis, within the venue when the venue is occupied. Only the managers and owners of the Applicant will be able to open the Limiter; and
      - b) does not locate any speakers closer than 2 meters from the common wall separating the establishment and the neighbouring building at 1088 Queen Street West.
    10. The Licensee shall ensure that a designated employee is on duty between 10:00 p.m. and the closure of the establishment on Thursday, Friday and Saturday nights to advise departing patrons of Church Aperitivo that there are residents living nearby and to request those patrons that they do not linger or cause a disturbance in the nearby area as they depart. The establishment shall not be considered to be closed until all patrons have departed for the night.
- (the "Modified Conditions")
3. At the Preliminary Hearing, which is to be scheduled in advance of the Hearing, the Parties shall request that the LAT remove the Subject Conditions and impose the Modified Conditions on the Licence as part of the Conditions on the consent of the Parties.
  4. If the LAT does not agree that the Modified Conditions should be imposed on the Licence as part of the Conditions, the Parties shall request that the LAT remove the Subject Conditions and attach the Minutes to the decision regarding the Applications.

  
RK  
VA

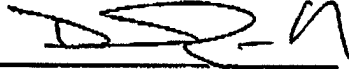
5. No matter which decision the LAT makes with respect to the Applications or the Modified Conditions, provided that the LAT removes the Subject Conditions from the Licence the Applicant shall implement the Modified Conditions as immediately as is reasonably practicable. With respect to the Limiter, the Applicant confirms that it has already ordered the Limiter and the Applicant shall install it within three (3) business days of receiving same.
6. The Applicant shall provide a copy of each of the Conditions and the Modified Conditions to (a) any transferee of the Licence (the "Transferee"), and (b) any persons or entity leasing or using the Establishment for any event (the "Licensee") so that the Transferee and the Licensee are aware of their obligations thereunder. The Applicant acknowledges and agrees that it is responsible for the conduct of the Licensee in complying with the Conditions and the Modified Conditions.
7. The Applicant acknowledges that Vera, Randy and the BVRA may reasonably rely on the Establishment's compliance with the Modified Conditions in respect of any Applications, including any licence renewal/removal or extension Applications, related to the operation of the Establishment. All parties agree to act reasonably at all times with respect to the implementation and enforcement of the Conditions.
8. Should Vera and Randy have any concerns with respect to such compliance:
  - a. with respect to noise, the Applicant shall permit Vera to attend at the Establishment following the provision of email notice of the concerns to inspect the Limiter as soon as is reasonably practicable for both Vera and the Applicant. Vera may bring with her an expert on noise to this attendance as soon as is reasonably practicable to confirm compliance with the Modified Conditions, such visit with that expert not to occur during the regular hours of operation of the Establishment;
  - b. with respect to the efficacy of the designated employee, the Applicant shall provide them with the number of the Establishment and the owners of the Applicant so that Vera or Randy may raise their concerns directly with the manager(s) and/or the owners about the conduct of the patrons.
9. The Minutes apply only in respect to the Applications.
10. The Minutes shall be governed by and construed in accordance with the laws of the Province of Ontario.
11. Time shall be of the essence for all matters contained within these Minutes.
12. The Parties shall take no action, either directly or indirectly, which is inconsistent with, or derogates from, the terms of the Minutes.
13. The Minutes may be executed in counterparts and shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, successors and assigns.

B  
RK  
VA

IN WITNESS WHEREOF the Parties have executed these Minutes of Settlement as of this day  
— ~~March~~ 2014.

~~4 BURA~~

2270121 ONTARIO LTD.



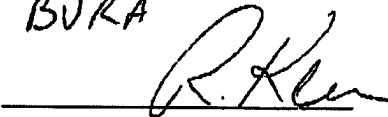
"I have the authority to bind the Corporation"

VERA FRENKEL



RANDY KERR

BURA



"Schedule A to the Minutes of Settlement"  
PROPOSED CONDITIONS FOR 1090 QUEEN WEST (Aug 7, 2011)

1. The establishment will at all times adhere to the City of Toronto noise bylaw.
2. The Licensee shall ensure that any sound resulting from the indoor operation of the business is not audible beyond the lot line of the property on which the premises is located. The facility must be constructed in such a manner that all sound waves are contained within the perimeter of the facility. Sound from inside the premises must not be audible beyond its perimeter, whether on the street or in nearby homes. Sound referred to in this clause includes sound that is generated by loudspeakers, conversation by patrons, and sound generated by equipment within the premises. Sound emanating from the Licensee's premises will be considered non-compliant if heard at any point in a public street, public or private laneway, or through a parting wall or ceiling.
3. The licensee shall provide a telephone number which will be answered by a staff member during hours of operation, and equipped with an answering machine when the establishment is closed, which neighbours may phone to register complaints or concerns, as well as an email address. Residents with concerns shall be able to quickly reach a manager or responsible staff member, when the establishment is open.
4. There shall be no dance floor.
5. There will not regularly be a cover charge or fee to enter the establishment. There may occasionally be a cover charge a fee, for special events, no more than three times in any given month. Neighbor(s) at 1088 Queen St West shall receive notice of any such events at least 1 week in advance of the event.
6. Doors and windows of the establishment shall not be left open or propped open while there is music or amplified sound in the interior.
7. Food service, with a full menu, shall be available from the time of opening until closing or until 11:00 p.m., whichever occurs first, on all days that the establishment is open for business.
8. The applicant shall hold a valid business license, issued by the City of Toronto, to operate a business of the class "Restaurant". The business licence and the liquor licence will be displayed in a place that permits both to be easily read by patrons.
9. The Licensee shall ensure that a sufficient seating is available for a majority (greater than 50%) of the approved occupancy, as specified on the liquor license, during all hours of operation.
10. The Licensee shall ensure that a designated employee is on duty at all times to make the best possible efforts to ensure that that patrons and any other people in the areas surrounding any entrance/exit of the establishment, and in any outdoor area of the establishment, are not causing a disturbance that will affect nearby residents, until one hour after the closing of the establishment.
11. Clearly visible signs will be posted, at least 11" x 17" in dimension, near each exit of the establishment, as well as in direct sight of any queuing area or smoking area, requesting that patrons respect neighbours by keeping outdoor noise to a minimum. The language of this sign shall be provided by residents.
12. A sign shall be placed, at least 11" x 17", in a highly visible location, providing neighbours with information on who to contact if they have concerns about the establishment. There shall be language indicating that there is a web site that neighbours can visit to find the phone number of the establishment, and providing the address of that site. There will also be contact information for the Councillor's Office, the appropriate contact information for noise and licensing concerns, and the contact information for the residents' association. Language for this sign shall be provided by neighbours.
13. The Licensee shall use best efforts to ensure that all areas immediately adjacent to the establishment over which it has control are clean and free of litter, cigarette butts, refuse and other debris.
14. Any garbage or recycling pick-up shall be scheduled strictly between 7:30 a.m. and 11:00 p.m. Monday to Friday (9:00 am to 11:00 pm weekends and statutory holidays). There will be no loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, products or materials between 11:00 p.m. and 7:30 a.m. (9:00 a.m. on weekends and statutory holidays.)
15. All garbage and recycling shall be stored in a location on the Dovercourt side of the building, so as not to obstruct the laneway. Garbage and recycling containers shall be fenced in and enclosed, so as not to be visible.
16. Any outdoor area shall be closed and cleared of signs of service no later than 11:00 pm. There shall be no music or amplified sound of any kind in outdoor areas. It is understood that more restrictive municipal regulations may also apply to this area.
17. None of the conditions listed here shall be removed or modified without public consultation with neighbours.