

## REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

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**Date of**

**Hearing:** April 6, 2017

**Panel:** Daphne Simon, Chair: Aly N. Alibhai and (Hedy) Anna Walsh, Members

**Re:** 1893916 Ontario Inc. O/a Sunny Convenience  
Z. R., President  
Holder of Retail Store (Food) Licence No B50-4307782

**Counsel for Municipal Licensing and Standards (MLS):** Mr. Mathew Cornett

**Counsel for Z. R.:** Mr. Allen P. Welman

### INTRODUCTION

Mr. Z. R., President of 1893916 Ontario Inc. operating as Sunny Convenience, has been requested to appear before the Toronto Licensing Tribunal ("Tribunal") to determine whether, or not, the corporation's Retail Store Food Licence should be revoked, suspended, or have conditions imposed on it. The hearing proceeded on April 6, 2017.

### ISSUE

Should an interim condition be placed on the licence that prevents Mr. Habibullah Prodhan, an employee of the store who has been charged with Sexual Assault and Sexual Interference under the *Criminal Code of Canada*, from interacting with customers and patrons who enter the store?

The answer is yes. The Tribunal decided to place an interim condition on the licence until the outcome of Mr. Prodhan's criminal charges have been determined.

### CITY'S EVIDENCE

The basic facts were not in dispute in this case. The parties agreed to the facts as set out in MLS Report No. 6771. A summary of the relevant facts follows:

On November 22, 2016, Mr. Habibullah Prodhan, who operates Sunny Convenience in his capacity as an employee, was charged with Sexual Assault and Sexual Interference under the *Criminal Code of Canada*. It is alleged that Mr. Prodhan (the accused) befriended a thirteen (13) year old boy and sexually assaulted him while he was at the store. The complainant first met the accused in May or June of 2016 when he would frequent the store to buy candy and supplies. The complainant would come to the store a couple of times a week. Between August 1 and 31, 2016, it is alleged that the complainant entered the store as he needed to use the fax machine operated by the accused out of the store. The accused assisted the complainant, invited him behind the counter and showed him how to operate the fax machine.

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When the complainant began to leave the store, it is alleged that the accused began to tell him not to leave and to spend some more time at the store. The accused is alleged to have asked him to sit on his lap behind the counter. When the complainant refused, the accused allegedly began to tug on his clothes to pull him closer. It is alleged that the accused then groped the complainant by putting his hand on his buttocks.

The accused, Mr. Habibullah Prodhan, was the signing authority for 1893916 Ontario Inc. o/a Sunny Convenience. Mr. R. subsequently requested that the accused be removed as a signing authority for the business, by letter dated February 2, 2017.

## **APPLICANT'S EVIDENCE**

### **Testimony of Mr. Z. R.**

Mr. R. was sworn or affirmed before presenting his evidence.

Mr. R. testified that Sunny Convenience is a family owned and operated neighbourhood store. It is a small space, maybe six hundred (600) square feet, at 170 Royal York Road that has been in operation since April 2013. Mr. Prodhan is Mr. R. stepfather and the sole employee of the store. Mr. Prodhan manages the store, working full time, from 9:00am to 10:00pm, seven (7) days a week.

Mr. R. works full time as a Financial Services Representative at Meridian Credit Union. He has worked there since March 2016. His mother works at Tim Horton's part time and his two sisters, aged twenty-one (21) and sixteen (16), are students in college and high school, respectively. The income from the store supplements income for his entire family.

Mr. R. testified that if Mr. Prodhan is not allowed to operate the store, they would have to hire someone to take over his duties. This would eat into the profit margin of the business and the financial burden on the business would be so great that they would be forced to close the store. Mr. R. did not provide any details as to what the financial burden would be. He did not have information at his disposal with respect to how much income is derived from the store or what the expenses of operating the store are. Nor could he provide information about how much Mr. Prodhan was paid to work at the store. Mr. R. testified that they considered hiring someone to take over for Mr. Prodhan. He stated that they asked around but couldn't find anyone willing to take over Mr. Prodhan's duties at the store. He stated, when asked by Mr. Cornett, that no formal job advertisement was placed seeking a replacement for Mr. Prodhan.

## **SUBMISSIONS**

### **Mr. Cornett for the City**

Mr. Cornett submitted that the City has grave concerns about allowing Mr. Prodhan to continue to operate the store in light of the outstanding criminal charges which are very serious in nature, especially as they involve a minor. Mr. Cornett submitted that the Tribunal's mandate to protect public safety outweighs the need of the licensee to earn a

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livelihood. In fact, Mr. Cornett submitted that Mr. Prodhan is not a licensee in this matter. He is a family member of the licensee and the sole employee of the store. Mr. Cornett submitted that no financial details were provided to show a diminished profit to Mr. R. or his ability to support his family, in the event that he should be required to hire a replacement for Mr. Prodhan. He noted that Mr. R. currently works full time in the financial sector.

He submitted that the Tribunal should place an interim condition on the licence such that Mr. Prodhan not be allowed to work at the store in a capacity that would have him interacting with customers. Mr. Cornett submitted that this was a reasonable condition in the circumstances, in his view, in order to protect the public safety and especially given the gravity of the charges involving, as they do, a minor.

### **Mr. Welman for Z. R.**

Mr. Welman submitted that the criminal matter is still pending before the courts and that Mr. Prodhan should be presumed innocent until proven guilty of the charges. He submitted that the condition that the City is recommending is unduly harsh and unfairly punishes Mr. Prodhan and his right to earn a livelihood.

Mr. Welman asked the Tribunal to consider the bail conditions that were imposed on Mr. Prodhan. He referred to the fact that there was no bail condition that imposed a restriction on Mr. Prodhan from working at the store and that, in his submission, this points to the strength of the criminal allegations levelled against Mr. Prodhan. Mr. Welman submitted that if the criminal allegations were on the more serious end of the spectrum and the evidence in respect of the charges was sound, the bail court judge would have inevitably imposed a restriction on Mr. Prodhan from working at the store and interacting with customers. He noted, however, that no such condition was included in the Bail Recognizance.

He further submitted that Mr. Prodhan has been working at the store since the charges were laid with no further incident during the past eight (8) months.

### **DECISION**

The Tribunal considered the evidence as presented in MLS Report No 6771, Mr. R. testimony and the submissions from counsel for the City and Mr. R. The Tribunal accepts the City's submissions.

In reaching our decision, we applied the Tribunal's mandate, as set out in the *Toronto Municipal Code*, § 546-8.A (3) (c) which requires that the Tribunal:

Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.

The Tribunal decided that, in all the circumstances of this matter, the protection of the public interest clearly outweighs the need for the licensee to earn a livelihood. The Tribunal noted that Mr. R. is working full time and therefore, that he is able to earn a livelihood. Mr. R. stated that he would have to shut the store down if Mr. Prodhan could

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not work there. However, he was unable to provide the Tribunal with any evidence in respect of the impact on the store's revenues in the event that he were to hire a replacement for Mr. Prodhan. He was unable to provide any particulars with respect to how, exactly, the revenues from the store support him and his other family members.

On the other hand, and notwithstanding the conditions set out in the bail recognizance, the Tribunal considered that the allegations themselves are serious; that they involve a minor, and that they are alleged to have occurred at the store while Mr. Prodhan was working there. In all the circumstances, these factors tipped the scale in favour of the need to protect the public interest.

As such, the Tribunal imposed an interim condition on Retail Store Food Licence No B50-4307782 until such time as Mr. Prodhan's criminal matters have been resolved.

The interim condition imposed is as follows:

Mr. Prodhan may continue to work at Sunny Convenience at 170 Royal York Road but may not, at any time, have any contact or interaction with customers, patrons and others entering the store.

This matter is adjourned *sine die*.

Originally Signed

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Daphne Simon, Panel Chair  
Panel Members, Aly N. Alibhai and (Hedy) Anna Walsh concurring

*[Reference: Minute No. 111/17]*

**Date Signed: June 8, 2017**