FORM 4B

Courts of Justice Act

GENERAL HEADING OF DOCUMENTS — APPLICATIONS

CV-15-533046

COURT FILE NUMBER:

ONTARIO

SUPERIOR COURT OF JUSTICE (TORONTO REGION)

BETWEEN:

TORONTO DISTILLERY COMPANY LTD.

Applicant

and

THE ALCOHOL AND GAMING COMMISSION OF ONTARIO, THE LIQUOR CONTROL BOARD OF ONTARIO and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Respondent

APPLICATION UNDER R.R.O. 1990, Reg. 194, r. 14.05 (3)(h)

O. Reg. 396/91, s. 3.

RCP-E 4B (April 11, 2012)

Court File No.: CV-15-533046

Courts of Justice Act
NOTICE OF APPLICATION

B E T W E E N:

TORONTO DISTILLERY COMPANY LTD.

Applicant

and

THE ALCOHOL AND GAMING COMMISSION OF ONTARIO, THE LIQUOR CONTROL BOARD OF ONTARIO and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Respondent

(Court seal)

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on Aug 18, 2015, at 10:00 at the courthouse at ______

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Issue Date JUL 2 3 2015

Issued by ....
Local registrar

Address of court office ....

SUPERIOR COURT OF JUSTICE
393 UNIVERSITY AVE.
10TH FLOOR
TORONTO, ONTARIO
M5G 1E6

COUR SUPÉRIEURE DE JUSTICE
393 AVE. UNIVERSITY
10E ÉTAGE
TORONTO, ONTARIO
M5G 1E6

TO The Attorney General of Ontario
Constitutional Law Branch
4th floor
720 Bay Street
Toronto, Ontario M5G 2K1
fax: (416) 326-4015

APPLICATION

1. This Application is being made pursuant to R.R.O. 1990, Reg. 194, r. 14.05 (3)(h), O. Reg. 396/91, s. 3.

2. The Applicant seeks:

   (a) pursuant to Courts of Justice Act, R.S.O. 1990, C.43, s. 97, a declaratory order that the revenue collection mandated by the Respondent's Distillery Retail Store Sales Contract is a tax that is ultra vires of the *Liquor Control Act*, R.S.O. 1990, c. L.18, the *Alcohol and Gaming Regulation and Public Protection Act*, 1996, S.O. 1996, c. 26, Sched., or the *Liquor Licence Act*, R.S.O. 1990, c. L.19, pursuant to sections 53 and 90 of the *Constitution Act, 1867*; and

   (b) pursuant to R.R.O. 1990, Reg. 194, r. 40.01; an injunction prohibiting the Respondent from pursuing any collection action against the Applicant with respect to the amounts referred to in paragraph (a).

3. The following documentary evidence will be used at the hearing of the application:

   i. Affidavit of Charles Benoit on behalf of Toronto Distillery Company Ltd.

July 23rd, 2015

Applicant:
Toronto Distillery Company Ltd.
90 Cawthra Ave., Unit 100
Toronto, Ont. M6N 3C7
Tel: 416-558-5523

SERVICE OF A TRUE COPY
ADMITTED THIS 23 DAY OF July 2015
ATTORNEY GENERAL FOR ONTARIO
Per Lois Scott Time 4:30 pm
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, Ontario M5G 2K1

FORM 4D
Courts of Justice Act
AFFIDAVIT

SUPERIOR COURT OF JUSTICE
TORONTO REGION

BETWEEN: **TORONTO DISTILLERY COMPANY LTD.** Applicant **– and –** **THE ALCOHOL AND GAMING COMMISSION OF ONTARIO, THE LIQUOR CONTROL BOARD OF ONTARIO and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** Respondent	**AFFIDAVIT OF** **CHARLES BENOIT ON BEHALF OF** **TORONTO DISTILLERY COMPANY LTD.** Court File Number: CV-15-533046

I, **Charles Benoit**, of the City of Toronto, and in the City of Toronto, and on behalf of Toronto Distillery Company Ltd., the Applicant, AFFIRM:

1. I am the co-founder, and a director of the Toronto Distillery Company Ltd. (hereafter "the Applicant").

2. I am making this affidavit on behalf of the Applicant pursuant to R.R.O. 1990, REG. 194, R. 4.06 (5).

3. The Applicant was incorporated under the laws of the Province of Ontario on July 27th, 2012.

4. The Applicant's distillery – its sole place of business and distilling operations – is located at 90 Cawthra Avenue, Unit 100, Toronto, Ontario, M6N 3C7.

5. The Applicant holds a federal Spirits License and Excise Warehouse License issued by Canada Revenue Agency pursuant to Canada's *Excise Act, 2001*. These two federal licenses were most recently issued on February 1st, 2015, and are valid until January 31st, 2017. These licenses authorize the Applicant to produce and package distilled spirits at its distillery.

6. The Applicant holds both a Manufacturer's License ("Provincial License") as well as a Retail Store Authorization issued by the Alcohol and Gaming Commission of Ontario ("AGCO") pursuant to Ontario's *Liquor Control Act*. The Provincial License and Retail Store Authorization were most recently renewed on May 26th, 2015. The Retail Store Authorization is necessary if Ontario distillers are to sell on-site what they distill on-site.

7. The Applicant, like all distilleries, pays a biennial fee to the AGCO for the Provincial Licenses. Applicant most recently paid $2,520 on May 13th, 2015 to the Ontario Ministry of Finance for the most recent renewal of the Provincial License. Applicant cannot obtain the Retail Store Authorization without the Provincial License.

<u>Serious Issue to be Tried</u>

8. The Province of Ontario has both a wine and beer tax legislated in its *Alcohol and Gaming Regulation and Public Protection Act, 1996*, ss. 21, 27. These taxes are paid by winery and brewery retail stores and remitted directly to the Minister of Finance on a monthly basis.[1] The tax rates are graduated, with lower rates for smaller wineries and breweries.

9. Ontario does <u>not</u> have any spirits tax, despite the requirements of Sections 53 and 90 of The *Constitution Act, 1867*.

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[1] *See* Ontario Ministry of Finance, "Beer and Wine Tax", *available at* http://www.fin.gov.on.ca/en/tax/bwt/ (accessed July 20th, 2015)

10. Despite not having a spirits tax, the Government of Ontario collects revenues from distilleries stores that are quite a substantial tax burden for the distillery stores. This revenue is collected by way of the AGCO requiring as part of its Retail Store Authorization that distilleries agree to terms set by the Liquor Control Board of Ontario ("LCBO"), which the LCBO imposes by way of a standard-issue "Distillery Retail Stores Agreement" (hereinafter the "LCBO Agreement"). The LCBO Agreement is not a product of negotiation between the distillery and the LCBO; it is imposed by the LCBO as a fait-accompli.

11. An LCBO Agreement was executed with the Applicant on May 26th, 2013.

12. The LCBO Agreement imposes a revenue collection system, whereby nearly half of the retail price of every bottle sold by a distillery at its own retail store must be remitted to the LCBO for the LCBO's mandatory price markup, and ultimately to the Government of Ontario through the LCBO's dividend. For example, if a distillery distills, packages, and sells a bottle of gin to a member of the public for a retail price of $26.85, it must then remit a tax of $12.44 to the LCBO. The $12.44 remittance the distillery must make to the LCBO does not include an additional $3.07 in Harmonized Sales Tax and a federal excise tax of $3.50 (presuming 40% alcohol by volume) built into the $26.85 retail price.

13. The LCBO Agreement is attached as an Exhibit A.

14. The LCBO Markup for spirits such as whisky and gin is 139.7%.

15. The LCBO Markup is designed to cover the LCBO's warehousing and retailing costs, while also ensuring a profit for the Government of Ontario. The LCBO explicitly states its mandate to generate revenue for the province's treasury on its "About the LCBO" webpage: "Net income

from LCBO sales goes to the province in the form of an annual dividend."[2]

Irreparable Harm

16. The Applicant's business will be irreparably harmed if it is forced to pay the Respondent's prima facie unconstitutional tax.

17. The Applicant, like all distilleries in Ontario, can only make its spirits available for retail in LCBO stores or at the distillery – with authorization from the AGCO and an LCBO Agreement.

18. The Applicant, like all distilleries in Ontario, and unlike wineries or breweries in Ontario, cannot sell to bars and restaurants per the Retail Store Authorization. Bars and restaurants must purchase spirits directly from the LCBO.

19. The Applicant, like all distilleries in Ontario, has only its own retail store and LCBO Retail Stores available as retail outlets in the province.

20. The Applicant, like all distilleries in Ontario, is by no means guaranteed an LCBO listing for their distilled spirits offerings. Without an LCBO listing, the distillery can only sell in the province through its retail store. A new listing process generally takes at least half a year, and up to an entire year.

21. The LCBO imposes the same 139.7% markup on bottles sold by distilleries at their retail stores, minus a 13% "commission" to the distillery. The LCBO's 139.7% spirits markup is designed to cover the LCBO's costs of warehousing and retailing while also ensuring a profit for the Government of Ontario. As the LCBO has no warehousing, retail, or any functional or operational role whatsoever in distillery retail store sales, the LCBO earns a much greater profit

[2] *See* LCBO, "About the LCBO", *available at* http://www.lcbo.com/content/lcbo/en/corporate-pages/about.html (accessed July 20th, 2015)

from bottles sold by distilleries as compared to bottles sold in the LCBO's own stores.

22. The Applicant does not believe it can remain in business should the LCBO's existing distillery-retail store revenue generation practices continue. I have observed, through my capacity as an owner-operator of the Applicant and as President of the Ontario Craft Distillers Association, that the LCBO is rapidly limiting access to listings from the province's small distillers. I believe this is due to a concern at the LCBO that they cannot accommodate new spirits offerings from a potential rapid growth in new distilleries in the province. I sincerely believe that distilleries in Ontario will increasingly have to rely on their retail stores in the coming years, and that new distilleries may have to rely exclusively on their retail stores until they can demonstrate an existing customer base to the LCBO. I believe that the outcome of this litigation will play a determining role in whether those new distilleries enjoy the freedom to work with local agricultural inputs or whether they feel obliged to source whiskies and other spirits from the global bulk marketplace.

23. The Applicant distills a unique, earthy spirit titled simply "Organic Beet Spirit" (hereinafter "Beet Spirit") distilled from organic sugar beets. The Applicant commissioned the crop from Zephyr Organics, an organic farm in Zephyr, Ontario, one-hour north of the city. The farm grew 6,000 kilograms of organic sugar beets, harvested in late October, 2014, so that ground frost would increase the sugar content of the sugar beets. The sugar beets were then ground-up by Black River Juice in Mississauga, Ont., and then kept frozen at nearby Cantrina Freezer Warehouse Inc. pending biweekly deliveries to the Applicant. Upon receipt, the Applicant would thaw, mash, ferment, distill, and bottled the sugar beets. This transpired from November, 2014 through April, 2014.

24. The Applicant submitted a new offering – J.R.'s Dry Organic Canadian Gin (hereinafter, the

"Gin") – on October 1st, 2014, to the LCBO for consideration. As of July 22nd, 2015, the LCBO has not made any decision on a general listing or sending out a notice to purchase.

25. Due to the lengthy and limited new-listings development time, the fact that the LCBO withholds payment until ninety days after it takes receipt of an order, and because the LCBO would likely mis-categorize any spirit distilled from a root crop (it does not conform even closely to any LCBO shelf category such as "vodka" or "whisky"), and not wanting to overwhelm the LCBO as it considered Applicant's Gin listing, the Applicant opted to retail its Beet Spirit exclusively at its distillery. This would allow the Applicant to demonstrate market demand for such a new offering before attempting an LCBO general listing. The LCBO's only involvement in bringing the Beet Spirit to market was its regulatory functions – a lab analysis and label approval prior to sales – for which the Applicant paid $197.75 to the LCBO.

26. The Applicant sells at its own retail store a bottle of its Beet Spirit for $39.50, for which the LCBO demands $18.14 per bottle as part of its revenue collection for the Government of Ontario. This represents an extraordinary 45.9% of the retail price.

27. The Applicant has made it a central tenant of its business philosophy to only sell what it distills. However it is clear to me that small batch, grain-to-glass distilling is fundamentally impossible with the Respondent's revenue collection practices. I am aware of other businesses in the province that have opted to package and sell spirits they have not distilled, but rather sourced from the global spirits marketplace. By doing so, the business can enjoy far lower overhead and much improved margins, benefiting from large producers' greatly enhanced economies of scale. While a component of the Retail Store Authorization requires that a minimum of 50% of the volume of spirits sold at the retail store be made by the distillery, this element of the Retail Store Authorization is not enforced whatsoever.

28. Beginning May of 2015, the Applicant for the first time posted regular retail store hours to concentrate on retailing its Beet Spirit. In that month, the Applicant realized $7,508.70 in sales earned from selling 198 bottles at its distillery retail store. The LCBO expects a remittance of $3,912.98 for these bottles. While these amounts of largely inconsequential to the LCBO, they are vitally significant to a small distillery.

29. Applicant has a monthly rent of $2,400, payroll of $3,080.96, and has other ongoing overhead of about $2,500 per month. These amounts do not include any business activities such as purchasing necessary feedstock (grain, fruit, root vegetable, etc.) and the required $11.70 federal excise tax the distillery must pay on each litre of alcohol distilled from those feedstocks.

30. The Applicant is behind on its remittances to the LCBO in the amount of $14,703.48, representing unpaid remittances going back until January 2014. Throughout this time period, I was in regular contact with LCBO Corporate Affairs. On January 2nd, 2014, I emailed LCBO Corporate Affairs on behalf of the Applicant to note that the LCBO had still not paid for a large delivery the LCBO had received on October 2nd, 2013 (see Exhibit B). This order was for the Applicant's first offering, an unaged organic wheat whisky, which sold extremely well when it was first introduced. The whisky tied for the second highest score ever assigned a white whisky by Whisky Advocate magazine. As this was a "grain-to-glass" whisky and thus had an intensive manufacturing process, the Applicant struggled the entire second half of 2013 and the first half of 2014 distilling and bottling the unaged whisky to meet LCBO Purchase Orders. Admittedly, this was a good problem to have, although the incredible margin pressure imposed by Respondents meant that the Applicant was not profitable despite selling to the LCBO everything it distilled. Because the entire inventory was earmarked for the LCBO, there was never any inventory available to justify the overhead in opening a retail store.

31. In 2014, I worked with the LCBO for a new program that would at least allow distilleries to deliver cases directly to the Queens Quay LCBO at 2 Cooper St., Toronto (next to the LCBO warehouse at 43 Freeland St., Toronto) for bars and restaurants to pick up. Previously, a private order of even one case had to go through the LCBO warehousing system and took an average four to six weeks. However, making use of the privilege proved to be extraordinarily convoluted. Applicant first successfully delivered an order of four cases to the Queens Quay LCBO on September 20th, 2014, with accompanying required invoice, however Applicant did not receive payment for the invoice until April 25th, 2015. I e-mailed LCBO Corporate Affairs on October 30th, 2014 expressing our disappointment at the barriers LCBO Accounts Payable was imposing before making payment on the invoice. This was eventually rectified and now payments are timelier, but still require cumbersome LCBO spreadsheets and mailings via the postal system.

32. On behalf of the Applicant I hosted LCBO Corporate Affairs employees at the distillery for their Holiday party on December 12th, 2014, with a guided tasting and tour. This was one of those rare occasions up until this point where we made use of our Retail Store Authorization. As of December, 2014, Applicant had unpaid remittances due to the LCBO of $452.72 (reflecting the handful of sales that year, as the retail store had not opened). The unpaid Queens Quay LCBO invoice was for $443.86.

33. Around this time a tax lawyer friend suggested that the LCBO Agreement may be inconsistent with Sections 53 and 90 of the *Constitution Act, 1867*. I began studying Supreme Court of Canada holdings of those constitutional provisions and became likewise convinced.

34. On January 28th, 2015, I had a meeting with Ed Clark and his staff at the Premier's Advisory Council on Government Assets. Mr. Clark was already well aware and expressed shared frustration that the LCBO Markup for "spirits" had no underlying division representing a portion

needed to cover operational costs, and a portion earmarked as revenue for the province. I urged Mr. Clark to suggest to the Premier to introduce a spirits tax bill in the provincial legislature, and that this spirits tax be graduated similar to the province's wine and beer tax.

35. On Thursday, May 14th, 2015, I met with Nicholas Daub, Senior Policy Advisor to the Minister of Finance, at 7 Queen's Park Crescent. During this meeting, I reiterated the call for a new spirits tax, and raised the constitutionality concerns regarding the LCBO Agreement.

36. On May 28th, 2015, I received an email from Patricia Zhang from the LCBO's Corporate Accounting department stating the following: "We have not received your payment for a few months. Please advise if you have any distillery sales recently and if yes, please send us the reports and payment by month." See Exhibit C.

37. On May 29th, 2015, I received a voicemail from Cortney Oliver at LCBO Corporate Affairs, with whom I have always had a productive working relationship. Ms. Oliver informed me that the LCBO had decided to begin auditing distilleries for the first time. Ms. Oliver said she suggested to the LCBO Audit department that Applicant be the first to be audited, as Applicant prides itself on its transparency, and as I have always worked closely with regulators regarding the state of craft distilling in Ontario. Ms. Oliver went so far as to suggest that being selected first should be viewed "as an honour". I concurred and said thank you, welcoming this new development as it would hopefully lead to enforcement of the on-site production rule, and promised that the Audit department would have full and complete access to our records and production site, despite our lack of payment remittances.

38. I sent a response letter to the LCBO on behalf of the Applicant on June 1st, 2015 (herein after "June 1st Letter"), outlining the case that the remittances were unconstitutional as they had no basis in legislation, and expressing a desire to talk further. The June 1st letter is attached as

Exhibit D.

39. On June 8th, 2015, I obtained from LCBO Corporate Affairs the email address of LCBO in-house counsel, Penny Wyger, Senior Vice President, General Counsel and Corporate Secretary, Legal Services at the LCBO. I emailed Ms. Wyger on June 8th, 2015 expressing a desire to hear her view as to the merits of our June 1st Letter.

40. On June 9th, 2015, I was contacted by telephone by Jason Hackbush, Audit Project Manager at the LCBO to schedule the audit. Mr. Hackbush said he looked forward to working together as this would be the LCBO's first-ever distillery audit. I raised again our lack of remittances, but assured Mr. Hackbush that all records would be available. Mr. Hackbush offered that it was not the role of the Audit departments to enforce compliance, only to simply indicate compliance or non-compliance in various areas. Our conversation was quite amicable, Mr. Hackbush suggested the morning of June 19th, 2015, for the audit, and I said that was quite fine and that I looked forward to meeting him. Mr. Hackbush followed up to me by e-mail on June 11th, 2015, confirming the particulars of the audit for 10:00am, June 19th, 2015.

41. At 12:04pm on June 18th, 2015, the day before the scheduled audit, I was disappointed to receive an e-mail from Mr. Hackbush stating that "Due to unforeseen circumstances, the audit of your distillery will need to be rescheduled to a later date."

42. After still receiving no responses from the LCBO regarding the June 1st Letter, I followed up on June 19th, 2015, to both LCBO Corporate Affairs and Ms. Wyger stating that if the LCBO would not respond, we would feel obliged to seek judicial review of the LCBO Agreement. I then received an e-mail from Ms. Wyger, promising a response to the June 1st letter by June 26th, 2015, and thanking me for my "anticipated patience".

43. On June 26th, 2015, I received a letter from the LCBO (see Exhibit E) ignoring the request for a dialog, and insisting on full payment within one month's time or our Retail Store Authorization would be revoked.

44. I see no viable future for small batch grain-to-glass distilling in a system that demands a king's ransom percentage from every bottle a distillery distills, bottles, markets, and retails itself while simultaneously making obtaining distribution extraordinarily difficult with punishingly tight margins for small distilleries.

45. The Applicant simply does not have the funds available to pay the LCBO. Without immediate relief, the Respondents have indicated that our Retail Store Authorization will be withdrawn, thus denying the Applicant the ability to retail its Gin and Beet Spirit. After investing heavily in developing its Beet Spirit over the winter while anticipating a general listing for the Gin by the summer, Applicant cannot stay solvent while relying on its retail store and satisfying Respondent's extraordinary monetary demands.

Balance of Convenience

46. On its face, it is hard to conceive of a balance of convenience so wildly disproportionate between Applicant and Respondents. While injunctive relief pending judicial review means life or death for Applicant's business, and Applicant's employee's job, it will have no impact whatsoever on Respondents' operations.

47. The Applicant is a very small business, employing just one individual full time, who was the Applicant's first intern placed through George Brown college. The rest of the efforts come from the volunteer support of Applicant's directors and friends and family. The Applicant has never paid a dividend, and the owners have never drawn a salary or income of any kind.

48. The Applicant began operations with a $15,000 loan from Canada Youth Business Foundation and a $30,000 loan from Business Development Canada with an interest rate that fluctuates around 10% (the BDC Floating Base Rate + 5.65%).

49. All the amounts that are of great concern to the Applicant are utterly insignificant to Respondents pending judicial review of the LCBO Agreement's constitutionality under Sections 53 and 90 of the *Constitution Act, 1867*.

50. On behalf of the Applicant, I have always endeavored to have a productive and ongoing relationship with Respondents. I was an active member in the AGCO's Modernization Project, and have had regular discussions with LCBO Corporate Affairs since beginning the distillery. Unfortunately, given that Respondents are units of the Government of Ontario, settlement has proved elusive absent political direction from the very top.

Affirmed before me in the City of Toronto, on July 23rd, 2015.	
Commissioner for Taking Affidavits *(or as may be)*	(Signature of deponent)
DIANE PATRICIA RHODEN, a Commissioner, etc., City of Toronto, for the Government of Ontario, Ministry of the Attorney General.	

RCP-E 4D (July 1, 2007)

This is Exhibit A mentioned and referred to in the affidavit of Charles Benoit sworn before me this Thursday 23rd day of July 20 15.

A Commissioner, etc.

DIANE PATRICIA RHO, Commissioner, etc., City of Toronto, for the Government of Ontario, Ministry of the Attorney General.

EXHIBIT A

DISTILLERY RETAIL STORE SALES AGREEMENT

THIS AGREEMENT made in triplicate as of the 17th day of May, 2013,

BETWEEN:

LIQUOR CONTROL BOARD OF ONTARIO,
a corporation continued under the *Liquor Control Act* (Ontario)
(hereinafter referred to as the "**LCBO**")

- and -

TORONTO DISTILLERY COMPANY LIMITED
(hereinafter referred to as the "**Operator**")

WHEREAS the Operator is a manufacturer of spirits and (i) has been licensed by the Alcohol and Gaming Commission of Ontario (the "**AGCO**") to sell spirits to the LCBO pursuant to s. 22 of the *Liquor Licence Act* (the "**Manufacturer's Licence**") and (ii) has applied to the AGCO for authorization to sell its spirits to the public in a store owned and operated by the Operator pursuant to ss.3(1)(e) and 3(2)(a) of the *Liquor Control Act* (the "**AGCO Authorization**");

AND WHEREAS it is a condition of the AGCO Authorization that all products made available for sale through the Operator's retail store must have been purchased by the LCBO from the Operator prior to being brought into the Operator's retail store,

NOW THEREFORE in consideration of the mutual covenants, agreements and conditions contained herein, the parties covenant and agree as follows:

1. DEFINITIONS

Wherever used in this agreement, the following capitalized terms have the meaning set forth below:

1.1. "**Basic Retail Price**" means, in respect of a Product, the Retail Price for such Product exclusive of Taxes, container deposit and, where applicable, the Special Occasion Permit Levy;

1.2. "**Commencement Date**" means the date on which the AGCO Authorization becomes effective;

1.3. "**LCBO Purchase Price**" means, in respect of a Product, the price at which such Product is sold by the Operator to the LCBO hereunder, such price to be agreed upon from time to time by the Operator and the LCBO;

1.4. "**Operator's Warehouse**" means an excise bonded warehouse operated by the Operator and regulated by the Canada Revenue Agency at which Products are stored prior to their sale to the LCBO hereunder;

1.5. "**Product**" means a beverage alcohol product that is authorized for sale in the Retail Store under the AGCO Authorization;

1.6. "**Retail Price**" means, in respect of a Product, the price determined by the LCBO at which such Product is to be sold to the public in the Retail Store, including Taxes, container deposit and, where applicable, the Special Occasion Permit Levy. Where a Product is also available for sale to the public in an LCBO-operated government store, the Retail Price is the same as the price of such product in an LCBO-operated government store;

1.7. **"Retail Store"** means the retail store authorized by the AGCO Authorization to be operated by the Operator for the retail sale of Products to the public;

1.8. **"Special Occasion Permit Levy"** means the fee payable by the holder of a special occasion permit upon the issuance of a purchase permit pursuant to the regulations made under the *Liquor Control Act*.

1.9. **"Taxes"** means Harmonized Sales Tax and all other applicable sales taxes.

2. TERM

2.1. It is a condition of this agreement that the Operator obtain the AGCO Authorization within ninety (90) days after the date set out at the beginning of this agreement. Notwithstanding the date set out at the beginning of this agreement, this agreement shall not come into effect unless and until such time as the AGCO issues the AGCO Authorization to the Operator; provided further, that this agreement shall not come into effect if the AGCO does not issue the AGCO Authorization to the Operator within ninety (90) days after the date set out at the beginning of this agreement. If the Operator is issued an AGCO Authorization within ninety (90) days after the date set out at the beginning of this agreement, then this agreement takes effect on the date that the AGCO Authorization becomes effective and continues in force for the same period of time as the AGCO Authorization remains in effect, unless this agreement is terminated earlier in accordance with the provisions of this agreement.

3. SALE AND TRANSFER OF PRODUCTS

3.1. The LCBO may issue to the Operator one or more standing purchase orders for Products in the form attached hereto as Schedule "A", as such form may be revised from time to time by the LCBO. On receipt of such purchase order, the Operator shall, after complying with the provisions hereof, transfer the affected Products from the Operator's Warehouse to the Retail Store in such quantities as are required to ensure a reasonable inventory of such Products at the Retail Store.

3.2. Prior to the transfer of Products to the Retail Store, the Operator shall take all steps necessary to comply with all applicable requirements of the Canada Revenue Agency in respect of removal of the Products from bond, including payment of all applicable duties and the filing of all necessary returns. The Operator shall ensure that all Products transferred to the Retail Store and sold to the LCBO hereunder are duty-paid.

3.3. The Operator shall ensure that all Products transferred to the Retail Store and sold to the LCBO hereunder comply with all applicable product standards and labelling requirements. The Operator shall comply with any product testing requirements reasonably imposed by the LCBO in respect of such Products.

3.4. On transfer of the Products to the Retail Store, the title to such Products shall thereupon vest in the LCBO. The Operator shall submit invoices to the LCBO for the LCBO Purchase Price in respect of such Products monthly. The Operator shall submit an invoice for each calendar month in respect of transfers made during such calendar month, by no later than the tenth (10th) business day of the following month. However, payment by the LCBO of such LCBO Purchase Price shall not be due until resale of the Products to the public in the Retail Store in accordance with the terms hereof (including disbursement of the proceeds of such resale), and any invoice rendered by the Operator shall reflect this fact.

3.5. Following the transfer of the Products to the Retail Store and the vesting of title thereto in the LCBO, the Operator shall accept such Products as consignee and shall hold such Products for sale to the public in the Retail Store. The Operator shall not sell Products to a person who holds a licence to sell liquor under the *Liquor Licence Act* (Ontario) other than (i) the holder of a special occasion permit, or (ii) itself, if the Operator holds a license to sell liquor under the *Liquor Licence Act* (Ontario). The Operator shall complete sales to the public only at the Retail Price of the Product, and only as consignee on the LCBO's behalf.

4. DISBURSEMENT OF PROCEEDS OF RETAIL SALE

4.1. The Operator shall collect, on the LCBO's behalf, the proceeds of each sale of Product from the Retail Store. The Operator is responsible for collecting the full Retail Price upon each sale of Product from the Retail Store. The Operator is solely responsible for any deficiency if the full Retail Price is not received. All proceeds collected on the LCBO's behalf are the property of the LCBO. The Operator shall hold such proceeds in trust for the LCBO until they are remitted to the LCBO or otherwise in accordance with this agreement.

4.2. Amounts collected in respect of such sales as taxes shall be collected by the Operator as required by applicable law and strictly within the times required by such law.

4.3. Subject to the provisions of Section 4.4, all amounts collected in respect of such sales (including amounts collected in respect of Taxes, container deposit and Special Occasion Permit Levies) shall be remitted by the Operator to the LCBO. The Operator shall make such remittances:

(a) by cheque payable to the LCBO and delivered to the attention of the Senior Vice President, Finance and Administration, of the LCBO;

(b) monthly, by no later than the tenth (10th) business day of each month in respect of retail sales occurring during the preceding calendar month; and

(c) accompanied by a sales summary report in respect of retail sales occurring during the preceding calendar month in a form, and with content, acceptable to the LCBO and certified by a senior officer of the Operator.

4.4. The Operator may deduct from each remittance referred to in Section 4.3:

(a) the amount of the LCBO Purchase Price applicable to the Products for which sales proceeds are being remitted, plus the Taxes on such amount; and

(b) the fees payable pursuant to Section 5.1 in respect of the sales for which sales proceeds are being remitted, plus the Taxes on such fees.

The Operator may pay such amounts to itself upon payment of the balance of the remittance to the LCBO.

4.5. Amounts due to the LCBO hereunder but not paid as aforesaid (i) may be set off against any amounts owing by the LCBO to the Operator hereunder or against any other amounts due by the LCBO to the Operator for any reason whatsoever and (ii) shall bear interest at a rate of 2% per month compounded monthly (26.8% per annum). For greater certainty but without limiting the foregoing, the amounts that bear interest hereunder include amounts due to the LCBO but not disclosed on the appropriate sales summary report and which are later discovered, on a subsequent audit or otherwise, to be due and unpaid.

5. REMUNERATION OF OPERATOR; PAYMENT FOR PRODUCT

5.1. In consideration of the Operator's actions as consignee, the LCBO agrees to pay to the Operator a fee equal to thirteen per cent (13%) of the Basic Retail Price of Products sold in the Retail Store on the LCBO's behalf. Such fee shall be paid in accordance with Section 4.4.

5.2. The Operator's invoices in respect of the sale of Products by the Operator to the LCBO under the purchase orders referred to in section 3.1 hereof become payable by the LCBO after, but only after, the LCBO has received the remittance and sales summaries in respect of the retail sale of such Products required by section 4.3 hereof.

5.3. The LCBO has no liability to pay the fees provided for in section 5.1 or the Purchase Price in respect of any Product where the LCBO is not in receipt of all remittances and sales summaries due in respect of the sale of such Product in the Retail Store.

5.4. The percentage rate used in calculating the fee referred to in section 5.1 hereof may be adjusted by the LCBO on ten (10) days prior written notice to the Operator.

6. RECORDS RELATING TO CONSIGNMENT OF PRODUCT; AUDITS

6.1. The Operator shall maintain current records at the Retail Store (or, with the prior written consent of the LCBO, at another location in Ontario), during the term of this agreement and for a period of three (3) years thereafter, relating to:

(a) the transfers of all Products to the Retail Store, including particulars of the Products including (but not limited to) name, CSPC number, size, selling units and LCBO Purchase Price;

(b) documentation filed by the Operator with the Canada Revenue Agency with respect to Products transferred to the Retail Store and evidence of payment of applicable federal duties and taxes by the Operator. The Operator shall provide, at the request of the LCBO, consents or other documents required by the Canada Revenue Agency to allow the LCBO to request information from that agency in respect of such Products;

(c) the dates of sale or other removal of Products from the Retail Store together with sales receipts or other evidence of the receipt of the proceeds of sale;

(d) particulars regarding Products lost, stolen, damaged or destroyed after transfer to the Retail Store; and

(e) other records relating to the consignment sales provided for herein required from time to time by the LCBO, acting reasonably.

The LCBO, or its authorized representatives, may inspect or copy any of the records or documents described herein and shall be afforded free access to the Retail Store, or other location as applicable, by the Operator for such purpose at all reasonable times.

6.2. Upon the LCBO's request, the Operator shall submit a statement, certified by a senior officer of the Operator, calculating the total amounts payable to the LCBO under Article 4 hereof in respect of any specified period of time.

6.3. The Operator shall take inventory of all Products in the Retail Store not less frequently than once every six months and additionally at any time requested by the LCBO, acting reasonably. Records of all such inventories taken shall be made available for inspection and copying by the LCBO at its request.

6.4. In the event of loss, theft, damage or destruction of Product in the Retail Store, the Operator shall immediately notify the LCBO and provide details thereof, and shall not remove or disturb any evidence in relation thereto without affording the LCBO or its representatives a reasonable opportunity to inspect the same.

6.5. The Operator shall cooperate fully with the LCBO and its representatives in the conduct of any inspection or audit required or permitted hereunder. If such inspection or audit discloses a material understatement of amounts owing to the LCBO hereunder, the LCBO shall advise the Operator in writing as soon as practicable. If such inspection or audit is necessitated by the failure of the Operator to furnish reports or records required hereunder, the Operator shall promptly, on the LCBO's written demand, reimburse the LCBO for the costs of such inspection or audit including (but without limitation) the reasonable charges to the LCBO of outside auditors or accountants it may have engaged for the purpose and the travel expenses, including reasonable room and board, of any LCBO employees involved.

7. INSURANCE

7.1. The Operator shall, at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term of this agreement, insurance coverage in a form and with limits and insurers satisfactory to the LCBO, including policies of comprehensive general liability insurance, and property damage insurance insuring the Operator, its servants, its agents, contractors and persons for whom the Operator is in law responsible, for all amounts it may become obliged to pay as damages by reason of bodily injury to any person (including death), or damage to or destruction of any property with coverage for any one occurrence or claim of not less than **Five Million Dollars ($5,000,000.00)** provided, however, that the minimum amount of coverage shall be reduced to **Two Million Dollars ($2,000,000.00)** in the following circumstances:

(a) during the initial twelve-month period beginning on the Commencement Date;

(b) during any subsequent twelve-month period beginning upon an anniversary of the Commencement Date, if the total gross sales (exclusive of applicable Taxes) of Products from the Retail Store during the immediately preceding twelve-month period was less than Fifty Thousand Dollars ($50,000.00).

The general liability insurance will include coverage for products and completed operations, liquor law liability, blanket contractual liability, employers or contingent employers liability and non-owned automobile liability.

7.2. The insurance required pursuant to section 7.1 must:

(a) include the LCBO as an additional named insured but only in respect of and during the term of the obligations of the Operator under this agreement;

(b) contain a cross-liability and severability of interest clause in respect of the comprehensive general liability insurance;

(c) include a provision requiring the insurer to give at least thirty (30) days prior written notice to the LCBO in the event that the policy of insurance is to be adversely changed or cancelled; and

(d) provide that the LCBO will be insured notwithstanding any act, omission, negligence or misrepresentation of the Operator which might otherwise result in the avoidance of a claim made by the LCBO under the policies, and that the policies will not be affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the Operator and the LCBO or either of them.

7.3. The Operator shall arrange for the completion and submission to the LCBO of certificates of such insurance within thirty (30) days of the date of the Operator's execution of this agreement, and thereafter immediately following every renewal of such insurance policies. The Operator shall furnish the LCBO with a copy of the policies of such insurance upon request by the LCBO.

8. EVENTS OF DEFAULT, SUSPENSION AND TERMINATION

8.1. The LCBO may, at its option, suspend or terminate this agreement by written notice to the Operator on the occurrence of any of the following events (each termed herein an **"Event of Default"**):

(a) the Operator fails, neglects or refuses to observe any provision of this agreement or is otherwise in breach of this agreement, provided that if, in the LCBO's sole opinion, acting reasonably, such failure, neglect, refusal or breach is reasonably capable of cure, such termination shall become effective only if the failure, neglect, refusal or breach of which notice has been given by the LCBO is not cured to the LCBO's satisfaction within a reasonable cure period not, in any event, to exceed ten (10) days after notice of the initial failure, neglect, refusal or breach by the Operator is given; or

(b) the Manufacturer's Licence or the AGCO Authorization is terminated or suspended by the AGCO for any reason.

8.2. In addition to the foregoing, this agreement shall automatically terminate without any requirement of notice to the Operator where the Operator winds up, liquidates, ceases to carry on business in the ordinary course or to exist or where:

(a) the Operator makes an assignment for the general benefit of creditors, or any proceeding is commenced by or against the Operator under any laws relating to reorganization, winding up, bankruptcy, insolvency or protection from creditors,

(b) a trustee (including a trustee in bankruptcy), receiver or receiver and manager is appointed in respect of the Operator or any property of the Operator, or

(c) any material part of the Operator's property is subject to attachment, seizure, sequestration, distress or judicial or extrajudicial proceedings in respect of the exercise of any similar rights.

8.3. In addition to the foregoing, this agreement may be terminated by the LCBO in order to comply with any formal published policy of the Government of Ontario or of any government ministry or agency concerning the manufacture, storage, keeping, sale or delivery of spirits, or with any legislation, judgment, order or ruling of any kind affecting the LCBO, and such termination will be effective upon giving thirty (30) days written notice thereof to the Operator or such shorter period of notice as may be required in the circumstances, provided that the LCBO will provide as much notice as practicable if it is not practicable to provide such thirty (30) days' notice.

8.4. Notwithstanding termination of this agreement for any reason, the following provisions of this agreement survive any such termination: sections 4.2, 4.3, 4.4, 5.3 and article 6.

8.5. If the LCBO suspends this agreement, the Operator shall not sell Products in the Retail Store on behalf of the LCBO during the period of such suspension (which period may be indefinite). The LCBO may impose such conditions in respect of the reinstatement of this agreement following such suspension as it deems necessary and the Operator shall comply with them. The LCBO may, by written notice, modify or remove such conditions thereafter at any time when it is satisfied that the cause for such conditions no longer exists.

9. GENERAL

9.1. **Notice**. Any notice required or permitted to be given under this agreement shall be in writing and shall be forwarded to the respective party at the addresses designated as follows or at such revised address as such party may, from time to time, designate by notice in writing in the prescribed manner:

To the Operator:
TORONTO DISTILLERY COMPANY LIMITED
90 Cawthra Ave., Unit 100
Toronto, ON
M6N 3C7

Attn: Charles Benoit
Fax No.: n/a

To the LCBO:
55 Lake Shore Blvd. East
Toronto, ON M5E 1A4
Attn: Senior Vice President and General Counsel
Fax No.: 416-864-2504

Notice may be given by any of the methods prescribed as follows:

(i) by delivery, which will be effective at the time of actual delivery;

(ii) by facsimile transmission, which will be effective on the business day next following the day on which the notice is transmitted and the transmitting party obtains a confirmation of successful transmission; or

(iii) by registered mail, which will be effective on the third business day following the deposit of a properly addressed form of notice in the mail, provided, however, that in the event of actual or reasonably anticipated disruption of regular postal service, notice shall not be given by mail.

For the purposes of this section, a "business day" is a day on which the head office of the LCBO is open for the ordinary transaction of business.

9.2. **Time of Essence**. Time is of the essence of this agreement.

9.3. **Number and Gender; Headings**. Where required by the context, references to the masculine gender shall be read as feminine and *vice versa* and references to the singular shall be read as plural and *vice versa*. Headings are inserted in this agreement for convenience only and do not form part of this agreement, and shall not be used as an aid in the interpretation of this agreement or any part thereof.

9.4. **Entire Agreement**. This agreement constitutes the entire understanding between the parties with respect to the subject-matter hereof and supersedes any and all prior agreements, negotiations, proposals and representations, oral or written, with respect to such subject-matter.

9.5. **Amendments**. Amendments to this agreement are not effective unless expressed in writing and signed on behalf of each of the parties hereto.

9.6. **Governing Law**. This agreement is exclusively governed by, and shall be construed in accordance with, the laws of the Province of Ontario including the federal laws of Canada applicable therein.

9.7. **Severability**. Any provision of this agreement that is held to be contrary to or rendered unenforceable by the law held to be applicable thereto is deemed to be modified to the extent necessary to comply with such law without affecting the remaining provisions of this agreement.

9.8. **Waiver**. No waiver of any breach of any provision of this agreement is effective unless expressed in writing and signed by the party granting such waiver. Unless otherwise expressly provided therein, the extent of any waiver granted is restricted to the specific breach waived and does not extend to any further occurrence of such breach.

9.9. **No Assignment**. Neither this agreement nor any right thereunder (including, without limitation, any right to payment) may be assigned by the Operator. No such purported assignment by the Operator is binding on the LCBO.

9.10. **Compliance with LCBO and AGCO Directives**. The Operator shall abide by all rules, directives, guidelines, and policy statements issued by the LCBO or by the AGCO from time to time with respect to the sale on behalf of the LCBO of Products in the Retail Store.

IN WITNESS WHEREOF the parties have signed this agreement as of the day and year first above mentioned.

TORONTO DISTILLERY COMPANY LIMITED

By: ______________________
Name: CHARLES BENOIT
Title: Director
I have authority to bind the corporation.

LIQUOR CONTROL BOARD OF ONTARIO

By: ______________________
Name: N. Robert Peter
Title: President & Chief Executive Officer

SCHEDULE "A"

LCBO

55 Lake Shore Blvd. E.
Toronto, Canada
M5E 1A4
Fax (416) 365-5755

Distillery Retail Store Purchase Order

Please Acknowledge

Purchase Order No.

Date	Customer Order Number	Currency of Quoted Price	

Payment Terms (standard or as negotiated / agreed to) / Information:

TO (Vendor):

Shipping Address:

VIA:

Please acknowledge receipt of Purchase Order within 72 hours. You must also notify us by separate communication, of the exact date that the goods will leave your warehouse. When sending telex/fax messages, acknowledgements and documents, please quote our purchase order number. Note carefully the Conditions of Purchase on the reverse side hereof, which form part of this Purchase Order. We hereby request delivery of the products listed below in satisfactory condition.

CSPC No.	Total Quantity	Product Name	Unit Size (mL) (if applicable)	Units per Case or litres/cask (bulk product)	Quoted Price per Case or price per litre of absolute alcohol (if bulk product)	Extended Price
					TOTAL	

Important Information / Instructions:

"Subject to the conditions of purchase on the reverse side hereof, at any time during the period ________________ to ________________, inclusive, the vendor shall be entitled to require the LCBO to purchase liquor of such type and in such quantity as the vendor is able to sell to the public on the LCBO's behalf pursuant to the vendor's authorization from the AGCO to operate an on-site Retail Store. The purchase price for all such liquor will be the same quoted purchase price at which the LCBO purchases the identical liquor from the vendor during the same time period, for sale in LCBO operated Retail Stores, save and except that applicable excise duty will be included in the purchase price. Title to all such liquor shall pass to the LCBO immediately upon transfer of the liquor into the on-site retail store."

LCBO ________________________
Authorized Signature

LCB 1983 (06-03)

____

CONDITIONS OF PURCHASE

1. **Agreement To Purchase.**
Upon signing and returning the acknowledgement copy of this Purchase Order or upon supplying the product(s) ordered herein, the Vendor will be deemed to have entered into a binding agreement ("this agreement") with the Liquor Control Board of Ontario (the "LCBO") which is subject to all the terms and conditions contained in this document. Such terms and conditions will supersede and take precedence over any conflicting provisions of any invoice or other document submitted by the Vendor.
2. **Price / Quantity.**
The Purchase price payable by the LCBO shall be determined in accordance with the Distillery Retail Store Agreement between the parties. The Vendor shall provide the LCBO with the benefit of any reduction in the price of any product ordered that is in effect prior to delivery to the LCBO. Unless otherwise specified on the face of this Agreement, all references to monetary amounts shall be in Canadian Dollars. The Vendor shall not change the specific quantity or unit size ordered nor make any substitutions without the prior written consent of the LCBO.
3. **Payment.**
Payment will be made to the Vendor in accordance with the Distillery Retail Store Agreement between the parties.
4. **Assignment.**
This Agreement and the rights and obligations hereunder may not be assigned, subcontracted, transferred or ceded by operation of law or otherwise without the consent of the LCBO which may be withheld in its sole discretion.
5. **Inspection Of Product.**
All product(s) ordered shall be subject to inspection and acceptance by the LCBO.
6. **Unsatisfactory Product.**
If, at any time before or after paying for the product(s), the LCBO determines that all or any part of a shipment of any product(s) is unsatisfactory in that it (a) is not of merchantable quality or is defective in any manner; (b) does not satisfy the provisions of any applicable law of Ontario or Canada; (c) does not match the sample of the same product(s) previously submitted to and approved by the LCBO; (d) does not match the quality of the same product(s) previously supplied by the Vendor to the LCBO; (e) is delivered after the date specified for delivery on the face hereof; or (f) does not otherwise comply with the requirements of this Agreement, then the LCBO may, in addition to any other remedies available at law or in equity, upon written notification to the Vendor: (i) refuse and return to the Vendor, at the Vendor's risk and expense, all or any portion of the shipment that is unsatisfactory; or (ii) refuse any portion of the shipment which is unsatisfactory and, with the Vendor's approval, dispose of same at the Vendor's expense, provided that where the LCBO exercises any of such remedies, the Vendor shall fully indemnify the LCBO for all costs including, without limitation, the purchase price of the product(s) and the freight expenses incurred in acquiring and returning the product(s) or any portion thereof.
7. **Cancellation Of Purchase Order.**
The LCBO reserves the right to cancel this Agreement in whole or in part at any time without liability and at the Vendor's expense and risk (a) upon written notice to the Vendor, where the shipment or any part thereof is unsatisfactory within the meaning of Section 6; (b) by giving fifteen days (15) written notice to the Vendor, where, for any reason beyond the control of the LCBO, including, without limitation, any reason relating to the marketing of the product(s) the LCBO is unable to complete the purchase of the product; (c) upon written notice to the Vendor where the Vendor has failed to comply with any provisions of the Agreement including failure to adhere to the provisions of the Distillery Retail Store Agreement between the parties and (d) upon written notice to the Vendor where any product(s) has been ordered but has not yet been delivered to the on-site Retail Store. Notice may be given by telex, fax, mail or personal delivery.
8. **LCBO's Product Management Procedures.**
The Vendor must at all times comply with the provisions of the LCBO's Product Management Procedures as amended from time to time relating to listed product(s) which shall form part of this Agreement, but such Management Procedures shall not limit the rights and remedies of the LCBO contained herein. A copy of such Management Procedures may be obtained from the LCBO upon request in writing.
9. **No Price Discrimination.**
The Vendor shall not sell any product(s) shown on the face of this agreement to the LCBO at a price (exclusive of taxes, duties and freight) which is higher than the price at which the product, in the same quantity, is being sold by the Vendor to any other government liquor board or government liquor purchasing body in Canada; nor shall it sell any product(s) to the LCBO upon terms and conditions respecting sale or delivery to the LCBO which are less advantageous than those offered to other government liquor board or government liquor purchasing body in Canada; nor shall it in any other way discriminate against the LCBO with respect to the sale of the product(s) or any portion thereof. Should the Vendor breach this provision, it shall pay to the LCBO on demand an amount equal to the difference between any amount(s) paid by the LCBO to acquire the product(s) which is in excess of the amount(s) paid by any other government liquor board or government liquor purchasing body in Canada to acquire such product(s).
10. **Title.**
Title to and the risk of the product(s) shall pass to the LCBO upon delivery of the products to the on-site Retail Store but this provision shall not limit the LCBO's rights and remedies under this Agreement. The Vendor will procure all necessary export permits or licenses.
11. **Indemnity.**
The Vendor shall indemnify the LCBO, its customers, agents and other persons it authorizes to sell the product(s) against all liability, loss, damages, including consequential damages, and expense of every kind (including, without limitation, legal fees) arising in any manner from its breach of any provision of this Agreement or from any defect with respect to the product(s), irrespective of the time when same is discovered.
12. **Set-off.**
Should the Vendor fail to pay or refund to the LCBO any amounts owing by it pursuant to or in connection with this Agreement, when demanded by the LCBO, the LCBO may set-off such amounts against monies owed by the LCBO to the Vendor for other orders for product(s) which it may place with the Vendor.
13. **Time Of Essence.**
Time shall be of the essence with respect to this Agreement.
14. **Trademark, Etc. Infringement.**
The Vendor will be responsible for any infringement of any trademark, patent, industrial design or copyright arising out of the purchase of the products by the LCBO hereunder, and agrees to indemnify and save harmless the LCBO, its customers, agents and other persons it authorizes to sell the product(s) from and against all damages and expenses arising therefrom.
15. **Applicable Law.**
This Agreement shall be governed by the laws of Ontario and Canada. Any legal proceeding relating to this Agreement shall be submitted to the exclusive jurisdiction of the Courts of the Province of Ontario, Canada.
16. **Remedies Not Cumulative.**
The provisions of this Agreement, and the rights and remedies of the parties under this Agreement are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity; no exercise by a party of any one right or remedy under this Agreement, or at law or in equity, shall operate so as to hinder or prevent the exercise by it of any other right or remedy. No waiver of a breach of any provision herein shall constitute a waiver of any other breach of such provision.

SHIPPING / DOCUMENTATION INSTRUCTIONS

1. **Packing (For Bottled Products).**
The following information must be shown on each end of the case or carton: (a) Canadian Standard Product Code (CSPC) Number (lettering must be a minimum height of 2.54 cm. or one (1") inch); (b) Unit size (in litres or millilitres); (c) Number of units per case; (d) Product name and Vintage date (if applicable); (e) Product type (e.g. White Table Wine); and (f) LCBO Purchase Order Number and/or approved date coding (lettering must be a minimum height of 2.54 cm. or one (1") inch). Cases must be sealed in a manner that will plainly show any evidence of tampering. No hay, straw or other loose packing may be used in a shipment to Ontario. Cartons must be of sufficient strength to withstand reasonable storage periods in a palletized warehouse and no head space is allowed between the unit and the cardboard. All products must conform to the packaging requirements outlined in the LCBO's Product Management Procedures as published from time to time.
2. **Bulk Alcohol.**
Shipments must be accompanied by a gauge sheet showing the contents of each cask or shipping container (tanker) and litres of absolute alcohol, the net tare and gross weights and the percentage absolute alcohol by volume. Percentage of obscuration is also to be shown for liquors only.
3. **Invoices.**
Immediately upon delivery of the product(s) to the on-site Retail Store, the Vendor must send one (1) original invoice and three (3) copies to the following address:
LCBO, 55 Lake Shore Boulevard East, Toronto, Ontario, Canada, M5E 1A4, Attention: Finance Division, Corporate Accounting, Dept. 845.
A separate invoice must be sent for each LCBO Purchase Order and, if the product(s) referred to in the Purchase Order is/are shipped in more than one container, a separate invoice must be sent for each such container. For bottled product(s), the invoice must accurately describe: (a) each product by name; (b) the percentage of alcohol by volume for each product; (c) the average weight (in kilograms) of each case or carton and the number of units per case; (d) the size (in millilitres) of each unit in each case; (e) the LCBO Purchase Order Number; (f) Canadian Standard Product Code ("CSPC") Number(s); (g) the cost per case (in the relevant currency) assigned to each product; and (h) Canadian Goods and Services Tax ("GST"), if applicable. For shipments of bulk alcohol, each invoice must contain the information referred to in paragraph 2. above, as well as the information referred to in subsections (a), (e), and (f) and the cost per litre of absolute alcohol (in the relevant currency) assigned to each product. For all products, the Vendor shall inform carriers of the actual weight and cubic measurements of the products being shipped.
Where the Vendor has appointed an agent to represent its interest in the Province of Ontario, the Vendor should forward a duplicate of its invoices and related documentation to its Ontario agent.
4. **Advertising Matter, Etc.**
Advertising matter or novelties of any sort must not be enclosed in cases or attached to bottles (excluding approved neck tags) or shipped in LCBO containers. Unsolicited shipment of non-stocked items in LCBO containers is prohibited.
5. **Certificates Of Origin.**
Vendor should provide Certificate(s) of Origin, when appropriate, and forward same to the attention of the LCBO's Customs Department (No. 935).

Gmail by Google

EXHIBIT B

Charles Benoit <charles@torontodistillery.ca>

Payment time?

Charles Benoit <charles@torontodistillery.ca> Thu, Jan 2, 2014 at 10:26 AM
To: "Loadman, Ian" <ian.loadman@lcbo.com>, "Oliver, Cortney" <cortney.oliver@lcbo.com>
Cc: Jesse Razaqpur <jesse@torontodistillery.ca>

Hi Ian, Cortney,

Hope you both had a restful holiday with continuous electricity. Things are going well here, am excited for 2014.

This is just an FYI, but it seems to us that accounts payable isn't delivering by the LCBO's purchasing terms. Our PO set payment for 90 days upon receipt, and our PO (attached) says that receipt was Oct. 2nd (it left our distillery on 9/26).

As such, we expected deposit on the 31st at the latest. When that didn't happen, I inquired to accounts payable and they said the direct deposit would happen on Jan. 6th. We'd planned quite carefully around the 90 day term, and our rent comes out on the 1st (and many other outlays the first week of the month), so this is a problem for us. It's also a tax headache as we counted on that income for 2013.

Incidentally, the LCBO's PO T&C document says that payment is 30 days unless otherwise specified, so 90 days was already a blow in the first place. Any insight on this disparity would be appreciated.

Best,

Charles

--
Charles Benoit
Toronto Distillery Co.
90 Cawthra Ave., Unit 100
Toronto, ON M6N 3C7
T: 416-558-5523
torontodistillery.ca

LCBO PO_Order 102-00181976 (80 cases Org. Wheat Spirit).pdf
12K

This is Exhibit B mentioned and referred
to in the affidavit of Charles Benoit
sworn before me this Thursday
23rd day of July 20 15

A Commissioner, etc.

DIANE PATRICIA RHODEN, a
Commissioner, etc., City of Toronto,
for the Government of Ontario,
Ministry of the Attorney General.

Gmail by Google

EXHIBIT C

Charles Benoit <charles@torontodistillery.ca>

Distillery Sales Report to LCBO

Zhang, Patricia <patricia.zhang@lcbo.com> Thu, May 28, 2015 at 2:41 PM
To: "charles@torontodistillery.ca" <charles@torontodistillery.ca>

Hi Charles,

We have not received your payment for a few months. Please advise if you have any distillery sales recently and if yes, please send us the reports and payment by month.

Thank you,

This is Exhibit C mentioned and referred to in the affidavit of Charles Benoit sworn before me this Thursday 23rd day of July 20 15

A Commissioner, etc.

DIANE PATRICIA RHODEN, a Commissioner, etc., City of Toronto, for the Government of Ontario, Ministry of the Attorney General.

Patricia Zhang
Financial Analyst, Corporate Accounting, LCBO
1 Yonge Street, 13th Floor, Toronto, Ontario M5E 1E5
T: 416-365-5798 E: patricia.zhang@lcbo.com

www.lcbo.com
www.vintages.com

Please discover and serve our products responsibly.

EXHIBIT D

TORONTO
DISTILLERY C$^{O.}$
LIMITED

Toronto Distillery Co.
90 Cawthra Ave., Unit 100
Toronto, ON M6N 3C7
T: (416) 558-5523

June 2nd, 2015

Patricia Zhang
Financial Analyst, Corporate Accounting, LCBO
1 Yonge Street, 13th Floor, Toronto, Ontario M5E 1E5

Re: Distillery Retail Store Sales Reports

Dear Ms. Zhang,

It is the view of Toronto Distillery Company Ltd. ("TDC") that the revenue collection imposed by the Distillery Retail Store Sales Agreement constitutes a tax *ultra vires* of the Liquor Control Act (Ontario) and any authority that legislation grants the Minister. The *Constitution Act, 1867*, s. 53, requires that "Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House". While Ontario does have wine and beer taxes that originated in the legislature by way of the *Alcohol and Gaming Regulation and Public Protection Act, 1996*, ss. 21, 27, Ontario does not have any spirits tax properly legislated in accordance with Section 53 of The *Constitution Act, 1867*.

We urge the LCBO to consider the framework established by the Supreme Court of Canada *in 620 Connaught Ltd v. Canada (Attorney General)* [2008] SCC 7, which sets out an analytical test to distinguish a tax that must originate by legislation from a regulatory charge that may be done by regulation. As the revenue collected by the LCBO from distilleries has no connection to the cost of maintaining the regulatory framework for distilleries, it clearly represents a tax and not a fee or levy. We have expressed this view point directly to LCBO staff, staff to the Ontario Minister of Finance, as well as to those on the Premier's Advisory Council on Government Assets. We also urge you to consider *Kingstreet Investment Ltd. v. New Brunswick* [2007] 1 S.C.R. 3, which provides that, subject to limitation periods and remedial legislation, the Crown is required to return money to the person from whom it was improperly collected.

We are happy to discuss this issue further.

Sincerely,

Charles Benoit

Charles Benoit,
Director, Toronto Distillery Co.

This is Exhibit D mentioned and referred
to in the affidavit of Charles Benoit
sworn before me this Thursday
23rd day of July 20 15

A Commissioner, etc.

DIANE PATRICIA RHODEN, a
Commissioner, etc., City of Toronto,
for the Government of Ontario,
Ministry of the Attorney General.

LCBO

EXHIBIT E

Charles Benoit
Director, Toronto Distillery Co. Ltd.
90 Cawthra Avenue, Unit 100
Toronto, Ontario
M6N 3C7

Ian Loadman
Acting Director
Corporate Affairs

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Toronto, ON, M5E 1A4

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Dear Mr. ~~Benoit~~, Charles

As we discussed last week, Ontario distillers operating a Retail Store at their manufacturing facility make sales of spirits products on behalf of the LCBO and distillers receive a commission on sales.

When your company entered into its Distillery Retail Store Agreement with the LCBO you agreed to comply with all of its requirements. As detailed in Section 4.3 your company is required to report all beverage alcohol retail sales from the preceding month to the LCBO no later than the 10th business day of each month along with payment. The last report and payment your company submitted to LCBO Corporate Accounting was for sales made for the fourth quarter of 2013. Quarterly reporting and payment is not in compliance with the requirements of the agreement. That your company has not submitted sales reports and payment for 2014 to the present is a serious breach of requirements.

As you are aware under the AGCO's Terms and Conditions for an on-site distillery retail store distillers must enter into an agreement with the LCBO and must be in compliance with all requirements set out in the agreement. Breaching any provision of the agreement with the LCBO can result in suspension or revocation of AGCO authorization to operate an on-site distillery retail store.

Within two weeks from the date of this letter Toronto Distillery Co. Ltd. must provide LCBO Corporate Accounting with all outstanding sales reports. Outstanding payment must be made within one month from the date of this letter.

Thank you for your prompt attention and action to return to compliance with your company's agreement with the LCBO and the terms and conditions of AGCO's authorization of your on-site store.

Yours sincerely,

Ian Loadman

Ian Loadman
Acting Director, Corporate Affairs

cc. Patricia Zhang, Corporate Accounting
Cortney Oliver, Corporate Affairs

This is Exhibit E mentioned and referred to in the affidavit of Charles Benoit sworn before me this Thursday 23rd day of July 2015

A Commissioner, etc.

DIANE PATRICIA R[illegible]
Commissioner, etc., City of Toronto,
for the Government of Ontario,
Ministry of the Attorney General

FORM 4C
Courts of Justice Act
BACKSHEET

Court File Number: CV-15-533046

TORONTO DISTILLERY COMPANY LTD. V.

THE ALCOHOL AND GAMING COMMISSION OF ONTARIO, THE LIQUOR CONTROL BOARD OF ONTARIO and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

SERVICE OF A TRUE COPY
ADMITTED THIS 23 DAY OF July 2015
ATTORNEY GENERAL FOR ONTARIO
Per Lois Scott Time 4:30pm
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, Ontario M5G 2K1

SUPERIOR COURT OF JUSTICE
TORONTO REGION

PROCEEDING COMMENCED AT CIVIL TRIAL OFFICE,
330 UNIVERSITY AVENUE, 7TH FLOOR

AFFIDAVIT OF CHARLES BENOIT ON BEHALF OF TORONTO DISTILLERY COMPANY

Applicant:
Toronto Distillery Company Ltd.
90 Cawthra Ave., Unit 100
Toronto, Ont. M6N 3C7
Tel: 416-558-5523

RCP-E 4C (July 1, 2007)