CITATION: Toronto Distillery Company Ltd. v. Ontario (Alcohol and Gaming Commission of Ontario, 2016 ONSC 2202
COURT FILE NO.: CV-15-533046
DATE: 20160401

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
TORONTO DISTILLERY COMPANY LTD.	)	*Lauchlin H. MacEachern*, for the Applicant, 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	)	*Michael S. Dunn and Padraic Ryan*, for the *Jill Dougherty,* for the LCBO and *Scott C. Hutchison and Samuel Walker,* for the AGCO
Respondents	)	
	)	**HEARD:** January 21, 2016

<u>S.A.Q. AKHTAR J.</u>

FACTUAL BACKGROUND AND OVERVIEW

Introduction

[1] Toronto Distillery Company Ltd., applies for a declaration pursuant to s. 97 of the *Courts of Justices Act*, R.S.O. 1990, C.43, that a levy imposed by the Liquor Control Board of Ontario ("LCBO") and charged on the sale of spirits in the applicant's retail store, is *ultra vires* of existing legislation under sections 53 and 90 of the *Constitution Act*, 1867. The applicant argues that the LCBO levy is a tax which only Parliament or the Legislature of Ontario has the power to impose.

Background Facts

[2] The applicant is a small craft distillery licensed to distil and warehouse spirits. On 28 February 2013, it applied to the Alcohol and Gaming Commission of Ontario ("AGCO") for a Manufacturer's Licence and Retail Store Authorization seeking permission to sell its spirits at a store situated in the distillery. The AGCO granted the authorisation with the condition that the applicant enter into a contract with the LCBO that imposed various requirements in the sale process.

[3] The contract required the applicant to first sell the spirits to the LCBO and only then retain them for sale at its retail store. The LCBO also had the power to calculate "the mark-up and commission rates applicable to the products sold based on the combined cost and federal excise tax total."

[4] The contract meant that the applicant would sell to the consumer as the LCBO's agent. The price to be paid by the consumer was (a) the price paid by the LCBO when purchasing the product from the distiller ("the Supplier price") plus (b) the LCBO's standard mark-up calculated as a percentage of the Supplier price ("the Mark-up"). The Mark-up used by LCBO (139.7%) would be used as a way of ensuring that prices at retail distillery stores matched those at stores operated by the LCBO. The applicant would also receive a 13% commission for its role acting as the LCBO's agent.

[5] In practical terms, the applicant would remit the Mark-up (minus its commission) to the LCBO whilst keeping the Supplier price portion as the amount that it would have charged the LCBO for supplying the product.

[6] The applicant's Directors, Jesse Razaqpur and Charles Benoit, are both lawyers and it is not disputed that, when the applicant applied for a Retail Store Authorization, it was fully aware of the terms of the agreement, including the Mark-up.

[7] The applicant's Manufacturing Licence was issued on 8 May 2013 and the applicant entered into a Distillery Retail Store Agreement with the LCBO on 17 May 2013. The agreement specified that the applicant was to provide the LCBO with monthly sales reports for 2014 and 2015. To date, it has failed to do so. At the time of the hearing of this matter, the applicant had not paid any of the remittances required by the LCBO contract.

POSITION OF THE PARTIES

[8] The applicant argues that the Mark-Up is an unconstitutional tax and violates ss. 53 and 90 of the *Constitution Act*, 1867. The applicant submits that taxes can only be imposed by Parliament or the Ontario Legislature and not by regulatory bodies. In other words, the AGCO cannot empower the LCBO to regulate retail distillers in a manner that allows the LCBO to impose a tax on its products. That being the case, the Mark-up must be found to *ultra vires* of sections 53 and 59.

[9] All three respondents are united in one argument: the Mark-up imposed by the LCBO is not a tax but a proprietary charge on liquor owned by the LCBO. By signing the Distillery Retail

Store Sales Agreement and thereby obtaining permission for on-site sales of its products, the applicant knew of and agreed to the Mark-up. The fact that the Mark-up also raises revenue does not prohibit its use by the LCBO.

THE CONSITUTIONAL AND STATUTORY FRAMEWORK

The Constitution Act, 1867

[10] Canada's constitution mandates that only Parliament or the provincial Legislatures have the ability to impose taxes. Sections 53 and 90 of the *Constitution Act*, 1867 read as follows:

> 53. Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.
>
> [...]
> 90. The following Provisions of this Act respecting the Parliament of Canada, namely, — the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved, — shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

The Statutory and Administrative Framework for the Sale of Liquor

Powers and Mandate of the LCBO

[11] As a general rule, the sale of liquor is prohibited in Ontario by s. 5(1) of the *Liquor Licence Act*, R.S.O. 1990, c. L.19 ("the LLA"). At the federal level, Parliament has decreed a national prohibition on the importation and transportation of liquor unless it is owned by the government of Canada or a provincial governmental agency: s. 3(1) of the *Importation of Intoxicating Liquors Act*, R.S.C. 1985, c. I-3 ("the IILA").

[12] In Ontario, there is an exception to the general prohibition that permits the sale of liquor to the LCBO. This exclusion is found in s. 22 of the *LLA*, which provides that:

> Manufacturer's licence to sell to L.C.B.O.
> 22. (1) A manufacturer of spirits, beer or Ontario wine may apply to the Registrar for a licence to sell the spirits, beer or Ontario wine to the Liquor Control Board of Ontario under the *Liquor Control Act*.
>
> Issuance

(2) The Registrar may issue a manufacturer's licence to an applicant under this section.

Conditions
(3) A manufacturer's licence is subject to such conditions as may be imposed by the Registrar or prescribed.

[13] The *Liquor Control Act*, R.S.O. 1990, c. L.18 ("the *LCA*") establishes the authority of the LCBO and sets out its specific power in the following way:

3. (1) The purposes of the Board are, and it has power,

(a) to buy, import and have in its possession for sale, and to sell, liquor and other products containing alcohol and non-alcoholic beverages;

(b) to control the sale, transportation and delivery of liquor;

(c) to make provision for the maintenance of warehouses for liquor and to control the keeping in and delivery from any such warehouses;

(d) to establish government stores for the sale of liquor to the public;

(e) to authorize manufacturers of beer and spirits and wineries that manufacture Ontario wine to sell their beer, spirits or Ontario wine in stores owned and operated by the manufacturer or the winery and to authorize Brewers Retail Inc. to operate stores for the sale of beer to the public;

(e.1) to authorize persons to operate government stores for the sale of liquor to the public;

[…]

(1.1) The Board's purposes and powers also include, and are deemed always to have included, the purpose and power to fix the prices at which the various classes, varieties and brands of liquor are to be sold, and such prices shall be the same at all government stores except,

(a) liquor sold through an outlet designated by the Minister of National Revenue under the Excise Act (Canada) as a duty free sales outlet; and

> (b) liquor sold to holders of a licence under the Liquor Licence Act, which may be sold at a price that is different from the price at which it is sold to the general public.

The Creation of the AGCO

[14] Since the LCBO was in the dual position of both regulating retailers and selling liquor through its own stores, the statutory framework created the appearance of a conflict of interest in the LCBO's duties. That conflict was removed with the passage of the *Alcohol and Gaming Regulation and Public Protection Act, 1996*, S.O. 1996, c. 26, which, in July 2001, transferred the LCBO's regulatory and supervisory powers to the newly created AGCO through Ontario Regulation 141/01. Clause 3(1)(e) of the Regulation explicitly gave the AGCO the sole power of authorising manufacturers of "beer and spirits and wineries" to sell their product in their own stores.

[15] It is clear, however that the *LLA, LCA* and *IILA* continue to govern the sale, authorisation and regulation of liquor and, significant to this case, distillery businesses such as the applicant. In *Air Canada v. Ontario (Liquor Control Board)*, [1997] 2 S.C.R. 581, at para. 3, the Supreme Court of Canada observed that all three statutes operated to create and maintain the LCBO's monopoly over "the sale, transportation, delivery and storage of liquor in Ontario."

[16] As holder of the monopoly, the LCBO has identified policy objectives that underlie the sale of liquor: revenue generation for the province and control of the sale of alcohol to protect and promote health and social benefits. Liquor pricing is, in the LCBO's view, a useful tool in influencing the amount of societal alcohol consumption, as raising the price of liquor has the twin effect of decreasing alcohol consumption to levels deemed acceptable while increasing revenue.

The Meaning of "Government Store"

[17] I pause at this juncture to consider the applicant's position that its store is not a "government store" as defined by s. 1 of the *LCA*, which states:

> "government store" means a store established or authorized under this Act by the Board for the sale of spirits, beer or wine

[18] The applicant advances this proposition on the foundation that s. 3(1)(d) of the *LCA* permits the LCBO to "establish" its own "government stores" whilst s. 3(1)(e.1) allows the LCBO to authorise persons to operate government stores. The applicant argues that since the AGCO was the body that authorised the applicant's store and not the LCBO, it cannot be said to be a government store.

[19] Section 3(1)(e) of the LCA contains the traditional power of the LCBO (referred to as "the Board" in this section and throughout the statute) to authorise liquor manufacturers to sell their product in their own stores. As noted above, this power was transferred to the AGCO to eliminate the potential of conflict. Section 2 of O. Reg. 141/01, the regulation that oversaw the

transfer of powers, stated that references to "the Board" found in the *LCA* "shall be read as references to the board of the [AGCO]" or the Registrar of Alcohol and Gaming.

[20] If the applicant's argument is that manufacturers' retail stores cannot be "government stores" because the LCBO no longer authorises them, I disagree. Section 2 of the regulation defines "the Board" as the AGCO and therefore any provisions in the *LCA* referring to "the Board" must refer to the AGCO where the AGCO is the authorising body. Since the AGCO must be the body referred to in s. 3(1)(e) of the *LCA*, it follows that it authorises "government stores" since any authorisations under that subsection are explicitly referred to as "government stores" in s. 3(2)(a) of the *LCA*.

[21] Whilst I reject the applicant's interpretation of "government stores", I take the view that, as inventive as the argument may be, it is of little moment in deciding the question before the court.

IS THE LCBO MARK-UP A TAX OR A PROPRIETARY CHARGE?

The Lawson Criteria

[22] As noted previously, the central question in this case is whether the Mark-up is a tax (as argued by the applicant) or a proprietary charge (as claimed by the respondents).

[23] The test in determining whether a charge is a tax emanates from *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction*, [1931] S.C.R. 357, where the court outlined the criteria for finding that an imposed fee constitutes a tax. The Supreme Court of Canada in *Eurig Estate (Re)*, [1998] 2 S.C.R. 565, explained the *Lawson* test as consisting of four criteria:

1. Is the levy enforceable by law?
2. Was the levy imposed under the authority of the legislature?
3. Was the charge levied by a public body?
4. Was the levy intended for a public purpose?

[24] In my view, there is no doubt that the Mark-up fits within the criteria set out in *Lawson* and *Eurig*. It is enforceable by law as a condition of the AGCO authorisation, an authorisation that the applicant needed to a sell its product on site. The power to impose the Mark-up emanates from the statutory power conferred by the Legislature in the *LCA* and Regulation 141/01. The LCBO, the entity imposing the Mark-up, is a public body. Finally, as noted above, the Mark-up is intended for a public purpose: revenue generation and curbing excessive alcohol consumption.

The Definition of a Proprietary Charge

[25] The respondents submit, however, that a finding that the Mark-up meets the Lawson criteria is not determinative. They assert that a levy that satisfies the Lawson test may still escape the classification of a tax: *Ontario Cancer Treatment and Research Foundation v. Ottawa (City)* (1998), 38 O.R. (3d) 224 (C.A.), at p. 251; *Labourers' International Union of North America v. Ontario Construction Secretariat* (1996), 31 O.R. (3d) 261 (Div. Ct.), at para. 16.

[26] In *620 Connaught Ltd v. Canada (Attorney General)*, 2008 SCC 7, [2008] 1 S.C.R. 131, the Supreme Court of Canada held that even those fees that fell within the *Lawson* definition would not be characterised as a tax if they were, in pith and substance, a regulatory or proprietary charge. Rothstein J., writing for a unanimous court, observed at para. 49:

> I agree that proprietary charges for goods and services supplied in a commercial context are distinct from either regulatory charges or taxes and may be determined by market forces.

[27] In making this distinction, Rothstein J. approved of the definition used by Professor Hogg in *Constitutional Law of Canada*, 5th ed., vol. 1 (Scarborough, Ont.: Carswell, 2007), at pp. 870-71:

> . . . [proprietary] charges are those levied by a province in the exercise of proprietary rights over its public property. Thus, a province may levy charges in the form of licence fees, rents or royalties as the price for the private exploitation of provincially owned natural resources; and a province may charge for the sale of books, liquor, electricity, rail travel or other goods or services which it supplies in a commercial way.

Does the Mark-up Constitute a Proprietary Charge?

[28] The applicant does not quarrel with the principle that a levy may avoid being found a tax, under the *Lawson* principles, if it constitutes a proprietary charge. The applicant claims, however, that the respondents cannot avail themselves of this exception as spirits cannot be defined as public property, such as natural resources, or a product generated by public agencies, such as electricity. The applicant argues that the only way in which spirits could fall within the definition of proprietary charge is if the LCBO had set up a public tendering system, paying for the spirits itself, physically taking possession of them after purchase, and selling them through its own distribution network.

[29] I disagree: Professor Hogg's definition specifies that liquor may be subject to such a charge once it is supplied by the province commercially. It is unclear to me how the method of acquisition is relevant when determining whether the province or any of its delegated bodies can impose a charge over merchandise that it owns. The fact that the product remains on the applicant's premises after distillation does not change the fact that the spirits have become the property of the LCBO.

[30] The applicant, in its factum, states that "absent the LCBO Contract these spirits are solely the applicant's property" thereby denying the LCBO any proprietorial right. The problem with this argument is that the contract cannot be "absented". As set out in preceding paragraphs, the sale of liquor has long been the subject of regulations that prohibit its sale subject to a number of exceptions. One of those exceptions is the granting of a licence and authorisation on the condition that any spirits produced are sold on production to the LCBO. The applicant's ability to sell that product derives from the authorisation and its contractual terms. As a result, there is no doubt that the LCBO is the owner and commercial supplier of the spirits in question.

[31] Two cases support this conclusion. In *Air Canada v. Ontario (Liquor Control Board)*, the Supreme Court of Canada confirmed the necessity of requiring a licence to sell liquor in Ontario. Air Canada, as part of its customer service, offered liquor to its passengers during its domestic flights. The liquor, some of which was purchased abroad, was stored in a bonded warehouse and transferred to individual aircraft prior to its service to passengers. The LCBO asserted its exclusive right to ownership of this product by relying on the *IILA*, which prohibited the importation of alcohol unless it was purchased on behalf of and consigned to the provincial government. As owner, the LCBO imposed a mark-up on the liquor transferred to the aircraft for use on domestic flights in exchange for conveying it back into the airlines' possession. The airlines disputed that they were obliged to pay the mark-up.

[32] The Supreme Court of Canada held that the LCBO was entitled to impose the mark-up as the liquor placed on the aircraft had been "imported into Ontario". Iacobucci J. commented, at para. 2, that "it is entirely within a province's competence to charge a markup on liquor purchased within its boundaries." Any challenge to the ability of the LCBO to impose mark-ups was dispelled and the court held, at para. 69, that "any markups that the LCBO did actually collect were collected under authority of s. 3(1) *IILA* and s. 3(i) of the *Liquor Control Act*". Moreover, the court emphasised the significance of the parties' knowledge of the legal effects of the terms when they completed the application for approval to receive liquor from the bonded warehouses, which confirmed the applicability of these laws.

[33] The similarities to the case at bar are obvious. The liquor in *Air Canada* was not required to physically be in the hands of the LCBO for the court to determine that ownership had passed. As owner of the liquor, it could not be disputed that the LCBO had the right to impose the Mark-up.

[34] The second case that supports this conclusion is *DFS Ventures Inc. v. Manitoba (Liquor Control Commission)*, 2001 MBQB 245,159 Man. R. (2d) 55, aff'd 2003 MBCA 33, 173 Man. R. (2d), leave to appeal to SCC refused, (2003) 190 Man. R. (2d) 319 (note) (S.C.C.), where a company challenged the ability of the provincial regulator to impose a mark-up on liquor sold in the duty free store that it owned and operated. Through legislation similar to the case at bar, Manitoba's *Liquor Control Act* specified that DFS could only sell liquor bought from Manitoba's regulatory body, the Manitoba Liquor Control Commission ("MLCC"). Relying on *Air Canada*, the application judge held that the mark-up was a proprietary charge imposed on liquor owned by the MLCC and sold to DFS for re-sale on its behalf. The Manitoba Court of Appeal upheld the decision concluding that the province's right to force DFS to sell only liquor purchased from the MLCC and to charge a mark-up on that price was constitutionally *intra vires* the Manitoba legislation and consistent with the federal customs regime.

[35] The applicant argues that neither *Air Canada* nor *DFS* dealt with the central issue in this case: whether the Mark-up violates s. 53 of the *Constitution Act*. As such, there is an absence of any meaningful s. 53 analysis. The applicant also points to the fact that both cases dealt with statutory and regulatory schemes different from those in the case at bar. In *DFS*, for example, the Manitoba framework did not contain a separate regulator in the form of the AGCO and the liquor was purchased from the MLCC rather than self-produced.

[36] I disagree with this submission. Although the statutory regimes under attack in those cases were different to the case at bar, the principles are apposite. It should also be noted that, in *DFS*, the court recognised that the applicant company was not only able to sell liquor purchased directly from the MLCC, but also liquor purchased from external sources as agent of the MLCC. Finally, I fail to understand how the separation of responsibilities between the AGCO and the LCBO affects the status of a levy as a proprietary charge.

[37] The applicant relies on *Canadian Industrial Gas & Oil Ltd v. Government of Saskatchewan et al.,* [1978] 2 S.C.R. 545 ("*CIGOL*"), where the provincial government imposed a royalty surcharge on petroleum revenue generated in the province. In this case the Supreme Court of Canada found that the royalty surcharge was indeed a tax.

[38] The *CIGOL* decision, however, is distinguishable from the case at bar. First, the legislation in Saskatchewan forbade producers from ceasing oil production. As a result, the surcharge was compulsive in that petroleum companies could not exit the market if they found the surcharge to be excessive. In contrast, there is no such compulsive element in the Ontario legislation or the Mark-up scheme: the applicant has the option of abandoning its operation at any time. Secondly, the *CIGOL* legislation affected both Crown and privately-owned land. The Supreme Court of Canada concluded that, by touching "persons who are not in any contractual relationship with the Crown", the surcharge could not be described as a royalty. In the case at bar, the Mark-up exists only because of the contract signed by the applicant in order to obtain authorisation to sell its product at the distillery store.

[39] I conclude therefore that the Mark-up is a proprietary charge and not a tax.

The Contractual Relationship

[40] Although my finding that the Mark-up is a proprietary charge resolves the question before the court, I would observe that there is an alternative method of determining whether, in the circumstances of this case, the Mark-up constitutes a tax.

[41] The LCBO submits that payments agreed by contract with a public body are not taxes. I agree with this submission.

[42] In my view, the contractual relationship between the parties as defined by the Distillery Store Retail Agreement demonstrates that the Mark-up was a contractual charge rather than a tax.

[43] As noted earlier, in *CIGOL*, the Supreme Court of Canada placed great emphasis on the contractual/compulsory aspect of the royalty surcharge when determining it to be a tax. Martland J., writing for the court, explained the reasoning at pages 36 and 37:

> In general terms, a royalty as applied to an oil and gas lease is a share, <u>as provided in the lease</u>, of the oil or gas produced, or the proceeds thereof, for the privilege of exploring for and recovering oil and gas. The conventional royalty is a flat percentage, frequently twelve and one-half per cent, of oil and gas produced.

> [...]
>
> A tax, on the other hand, is a compulsory contribution, imposed by the sovereign authority for public purposes or objects.
>
> Section 63(1) of the Regulations imposes the royalty surcharge on "oil produced or deemed to be produced from Crown lands". That imposition touches persons who are not in any contractual relationship with the Crown such as those who assigned Crown leases but retained a gross override, or those persons who purchased royalty trust certificates under the terms of a royalty trust. It is hard to see that these people stand in a contractual relationship with the Crown. The obligation arises by legislative command, not by a process of negotiation between free wills, resulting in a meeting of minds.
>
> [...]
>
> In my view, although in name a royalty, the royalty surcharge is, in substance, a tax. Except as affecting lessees under pre-existing Crown leases, it is a levy compulsorily imposed on previously existing contractual rights by a public authority for public purposes. It is patent that the consensual agreement and mutuality ordinarily found in a lessor-lessee relationship is entirely absent in the relationship between the Crown and persons subjected to the royalty surcharge. Royalty surcharge is the same one hundred per cent levy as is imposed in other terms as mineral income tax. [Emphasis added.]

[44] The absence of compulsion and presence of agreement has been acknowledged as evidence that certain governmental levies and fees are not taxes: *Abernethy-Lougheed Logging Co. (Trustee of) v. British Columbia,* [1938] 2 D.L.R. 790 (B.C.S.C.), at paras. 4-5, aff'd on this point 53 B.C.R. 338 (B.C.C.A.), at paras. 54-55. One example is *QCTV Ltd. v. Edmonton (City)* (1983), 48 AR 255 (Alta. Q.B.), rev'd on other grounds (1984) 58 A.R. 182 (Alta. C.A.), where QCTV had authorisation to broadcast programming under federal laws but required an agreement with the City of Edmonton to implement that authority. The City agreement stipulated that QCTV make a "special franchise charge" payment based on a percentage of its net monthly revenue.

[45] In rejecting QCTV's claim that the charge was a tax, Stratton J. made the following observations, at para. 59:

> [...] a tax must have, as an essential feature, the element of compulsion and it must be imposed by statute. On our present facts the only compulsion involved was that if QCTV wished to take advantage of its federal license, and in so doing use the City's roads and its telephone facilities, it had to negotiate an agreement with the City for that purpose. In my view these facts fall far short of the element of compulsion necessary to categorize the charge as a tax. Although, as I have held above, the Municipal Government Act and the Municipal Telephone Act, by implication, have allowed the City to levy a franchise charge, this charge was not

> imposed by statute but was freely and voluntarily negotiated between the City and QCTV within the context of willing participants involved in a commercial project which was expected to be of mutual benefit. Thus, I have concluded that the Special Franchise Charge is not a tax and can be validly claimed by the City against QCTV under the Agreement. [Emphasis added.]

[46] Here, the applicant entered into a contract with the LCBO for a commercial advantage: the ability to sell its own products through its stores. Although it argues that it was "under a practical compulsion to obtain a licence to sell" its spirits, it is clear that the applicant was not compelled to sell its products through its own store. Like others, it could sell its spirits through stores operated by the LCBO or, alternatively, to markets outside Canada.

[47] The applicant voluntarily decided to sign an agreement with full knowledge of the Mark-up. The applicant's decision was the result of a choice made to pursue a business plan: setting up its own in-house liquor store. Once that option was taken, the applicant had to comply with terms and conditions set out by the LCBO. The situation is no different from that faced by QCTV or other commercial enterprises seeking to participate in regulated commercial ventures. Having done so, it behoved the applicant to comply with the conditions rather than ignore them by refusing to pay the remittances owed.

Conclusion

[48] The Mark-up imposed by the LCBO was not a tax but a proprietary charge. In the alternative, it was a contractual term agreed to without any compulsion by the applicant.

[49] The application is accordingly dismissed.

Costs

[50] The parties have come to an agreement on the issue of costs.

[51] The applicant will pay to each respondent the sum of $7,500 for a total costs award of $22,500 (all inclusive). These costs are to be paid forthwith.

[52] I thank all counsel for their helpful submissions.

Akhtar J.

S.A.Q. Akhtar J.

Released: 1 April 2016

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Applicant

– and –

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

Respondents

REASONS FOR JUDGMENT

S.A.Q. Akhtar J.