



AGCO

Alcohol and Gaming
Commission of Ontario

Licence Line

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In This Issue



DAVID C. HAVSIE

From the Chair...

Our lead story in this edition of Licence Line focuses on the four-part regulatory model, developed by the AGCO in cooperation with our stakeholders, to enhance and encourage compliance with the province's liquor laws. New provisions include risk based licensing and enforcement, monetary penalties for liquor law violations, and heightened licensee and staff educational programs.

Continued on p. 2 See *Chair*

Liquor Enforcement: Compliance with Ontario's laws

Over the past several years, Ontario liquor laws have been amended to achieve a number of objectives, including enhancing public safety through legislative changes which would allow the AGCO to focus its efforts on high-risk licensees.

To support these changes, the AGCO has implemented a four-part regulatory model where decision-making is based on risk assessments, and greater focus is placed on helping licensees to achieve compliance with liquor laws. **Risk-based enforcement** is one part of this strategy, which also includes **risk-based licensing**, the introduction of **monetary penalties** as sanctions for violations, and a **public affairs program**. Together, this model encourages compliance with the law through education, training and a graduated sanction process, and is intended to enhance overall compliance by licensees and reduce the number of liquor infractions.

Focusing resources

Risk-based enforcement involves focusing AGCO resources on those establishments that pose the greatest risks to public safety, those that have a history of not complying with the law, and those that are located in districts that present unique regulatory challenges (such as Ottawa's ByWard Market, the Entertainment District in Toronto or Hess Village in Hamilton). This means some establishments will be visited more often than others.

Risk-based enforcement has been operating since November 2006 and data show this approach is improving compliance rates across the province.

Identifying specific risks

In terms of the other components of this regulatory model, risk-based licensing allows the AGCO to work with licensees early in the licensing process by identifying potential or specific risks, and by applying certain conditions on the liquor licence to deal with problems before they arise. The purpose of monetary penalties is to act as a bridge between a simple warning and a suspension of a licence. This compliance tool provides the AGCO with increased flexibility to take action without having to impose a liquor licence suspension or revoke a licence because of a violation of the *Liquor Licence Act* or regulations.

Public affairs

Through an expanded public affairs program, the AGCO has been steadily increasing its outreach and educational programming for stakeholders. These efforts include the preparation of new comprehensive publications specifically aimed at licensees and their staff, the development of licensee information kits and the presentation of liquor educational seminars for licensees.

Altogether, risk-based enforcement and licensing, monetary penalties and the expanded public affairs effort are focused on a responsive and fair application of the province's liquor regulatory regime. ■

Chair's message cont'd

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Continued from p.1 **Chair's column**
Board profiles

Also in this edition of *Licence Line*, we continue our short profiles of members of the Board of the AGCO. These brief bios help to illustrate the varied backgrounds and wide experience these individuals bring to their duties and help ensure that liquor licensing and regulatory matters are dealt with in a fair and knowledgeable manner.

ID cards

There is important information from the *Liquor Control Board of Ontario (LCBO)* in relation to its “*Bring Your Identification Card (BYID)*.” This new card is a prescribed form of proof-of-age identification under the *Liquor Licence Act*. It can be accepted by licensees as one form of proof-of-age when used by persons purchasing beverage alcohol in Ontario licensed bars and restaurants.

Tip sheets

We also bring to the attention of licensees updated and new *Responsible Service Tip Sheets*. We highlight why it is important for licensees to keep the AGCO informed about any changes regarding their operations. We also cover the responsibility of licensees to have in place “reasonable measures” to deter disorderly conduct outside their premises.

These tip sheets are provided to keep licensees up to date on liquor regulations and are part of the AGCO’s ongoing educational program.

We trust you will find all of this material useful in operating a licensed establishment.

David C. Gavrie
Chair

Court decision regarding permitting drunkenness in licensed establishments

The Court of Appeal (C.A.) for Ontario recently rendered a significant decision interpreting s. 45(1) of Ontario Regulation 719/90 made pursuant to the *Liquor Licence Act*, which states that “The licence holder shall not permit drunkenness ... to occur on the premises”. In its April 2009 *Sin City Bar and Eatery (Sin City)* decision, the C.A. noted that the prohibition in the regulation has two components:

- 1. **Drunkenness on the premises; and**
- 2. **Permitting that drunkenness.**

The C.A. went on to state that in its view, *permitting* drunkenness on the premises requires proof that the licensee *knew or ought to have known* of the drunkenness on the premises. The C.A. qualified its statement by adding that the determination must be made in all the circumstances and, in particular, in the context of the various obligations and duties placed on the licensee by the relevant legislation and regulations.

The C.A. concluded that the Board of the AGCO which conducted the initial hearing of *Sin City*, applied the wrong interpretation of “permits”, as it had not considered whether the licensee *knew or ought to have known* of the drunkenness on the premises. Evidence of the steps a licensee took to supervise and control its premises and patrons is relevant to whether the licensee ought to have known of the drunkenness on its premises. The C.A. therefore agreed with the Divisional Court, which heard the initial appeal of the Board’s decision of *Sin City* that the Board had erred in misinterpreting the word “permits” in the legislation.

Decisions of the C.A., including *Sin City*, are binding on both the Divisional Court (which hears appeals from decisions of the Board of the AGCO) and the Board of the AGCO.

AGCO now reports to the Ministry of Consumer Services



On July 9, 2009, the Ontario government announced responsibility for the Alcohol and Gaming Commission of Ontario was transferred from the Ministry of Government Services to the new Ministry of Consumer Services. The minister in charge of regulating liquor and gaming in the province is the **Honourable Ted McMeekin** (MPP Ancaster-Dundas-Flamborough-Westdale). Prior to his appointment to the Consumer ministry, Mr. McMeekin was Minister of Government Services and is well acquainted with liquor and gaming issues.

A handful of liquor stats

	2008/2009	2007/2008
Number of licensed establishments	16, 663	16, 652
Special Occasion Permits issued	56, 143	59, 426
Liquor Delivery Services licences	273	270
Liquor manufacturers	229	211
Liquor licence inspections	27, 924	24, 000
Visits to the AGCO website	(over) 500, 000	(over) 500, 000

KEEP THE AGCO INFORMED

As a liquor sales licensee, you are required to keep the Alcohol and Gaming Commission of Ontario informed of any changes that may affect your licence and your establishment's operations. This includes such items as change of address, change to the ownership of your business, or planned building alterations.

Physical address: Your liquor licence applies only to the establishment whose physical address appears on the licence. If you move your business, your current licence would no longer be valid, and you would need to apply for a new licence at this location, and either transfer the existing licence to another operator, or surrender your existing licence.

Mailing address: The AGCO must have your correct mailing address. Contact the AGCO immediately at 416.326.8700, or toll free at 1.800.522.2876, if you need us to change or correct your mailing address.

Phone number: Have you changed your phone number recently? Make sure the AGCO has the new number.

Establishment name: You must operate your business under the name of the establishment which appears on the licence. If you decide to change the name of the licensed establishment, you must file an application for change of name, along with the required fee of \$80.00. Ensure you also register the new name under the *Business Name Act*.

Licence holder's name: The licensee name that appears on the licence must be the legal name of the individual, partnership or corporation that operates the licensed establishment. If there has been any name change, you must notify the AGCO in writing and provide proof of the name change. You will then be advised whether this change requires an application for change of name or an application for a transfer/rollover of the licence.

Contact name: Some operators use a lawyer, agent or accountant as their contact for the AGCO. Others have staff who might take on the role of manager for a short time.

Let us know if the contact person for your establishment changes.

You must notify the AGCO if there is to be any change in ownership of the licensed establishment and apply for a transfer of the licence prior to the change of ownership so that the application can be processed prior to the completion of the change. Otherwise, the applicant has to enter into an agreement to contract out in order to legally keep for sale, offer for sale or sell liquor.

Contact the AGCO and inform us if:

- you sell your licensed establishment or the licensed business;
- there is a change in the share structure of the licensed corporation (for example, a new shareholder acquires 10 percent or more of the shares);
- you add or remove a business partner;
- a licensed corporation changes any of its officers or directors;
- a new person is entitled to profits;
- the establishment is temporarily taken over by a trustee in bankruptcy or court-appointed receiver;
- a mortgagee, landlord, franchiser, receiver, or trustee takes possession of the licensed establishment;
- a person is deceased (and provide the name of the executor or executrix); or
- a licence holder is deceased, and the executors or administrators of the estate take possession of the premises to which the licence applies.

If you close permanently, you must inform the AGCO immediately. A voluntary surrender of the licence form should also be filed.

There are other requirements were a licensee must inform the AGCO of changes. These include building alterations, revisions to the legal capacity of the premises, catering endorsements etc.

Note: Full details of this Tip Sheet is available on the AGCO website at www.agco.on.ca.

ATTENTION ALL LICENSEES—We want to hear from you!

*Licence Line is a publication intended to provide practical and timely information to liquor licensees and interested parties in Ontario's beverage alcohol industry relating to licensing, regulation and enforcement under the **Liquor Licence Act** and its Regulations.*

The publication is free of charge and mailed to liquor licensees and others, generally on a quarterly schedule.

To ensure Licence Line continues to print helpful and useful material, the Editor is requesting licensees and other

interested parties to send along ideas for stories you feel would be beneficial in explaining the liquor laws of Ontario, and that may help you to better operate your licensed establishment.

*Please address all correspondence to:
The Editor, Licence Line
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90 Sheppard Avenue East, Suite 200
Toronto, Ontario M2N OA4
or by e-mail to: editor@agco.ca*

New Tip Sheet on taking “Reasonable Measures” outside a licensed establishment

Liquor sales licensees are always expected to operate with the public interest in mind. Licensees are expected to be good neighbours and address any potential disorderly conduct that may originate from their establishments and disperse into their local communities.

As of July 20, 2007, all liquor licence holders must have reasonable measures in place and make reasonable efforts to prevent or minimize the harm caused by their patrons outside their licensed premises.

Liquor regulations state the licence holder shall ensure that reasonable measures are in place and reasonable efforts are made to deter disorderly conduct on the property adjacent to and in the vicinity of the premises and to minimize damage, nuisance or other harm to such property arising out of disorderly conduct engaged in by patrons of the licence holder or persons attempting or waiting to enter the premises or leaving the premises.

Licensees are responsible not only for misconduct and resultant damage caused by their patrons on the street and sidewalk adjacent to the licensed premises, but also in the vicinity of the establishment after patrons leave the premises, such as indecent acts, drug use or fights in parking lots or damage or vandalism to property of adjacent residents or other businesses.

The licensee is responsible for the above even after the establishment has ceased service of alcohol.

Assess your establishment for risk

It is easier to prevent a problem than to fix it. Taking some proactive steps now will minimize the chances that an incident will occur.

Each establishment will have different risks based on its business model, location, clientele and compliance history. Licensees should review their operations to determine these risks and then devise a plan or house policies designed to reduce the likelihood they will occur.

Here are some suggestions:

- Contact an AGCO inspector to set up a meeting.
- Talk to neighbours to see if they have any concerns or complaints.
- Look at ways to minimize excessive noise (check positioning of speakers and volume levels, for example).
- Ban patrons who have been disorderly in the past.
- Ensure a sufficient staff-to-patron ratio and sufficient security when required.
- Carry out consensual searches of patrons in line-ups.
- Keep a log book of incidents and review these regularly with staff.
- Have a safety plan in place.

Take “reasonable measures”

Here are some examples of reasonable measures that can be taken to prevent problems outside a licensed establishment:

- A crowd of noisy patrons gathering outside an establishment after closing time should be politely dispersed.
- The police may need to be called if a dispute spills out from a licensed establishment and escalates, causing a public disturbance.
- Line-ups to get into licensed establishments must be properly monitored and secured.

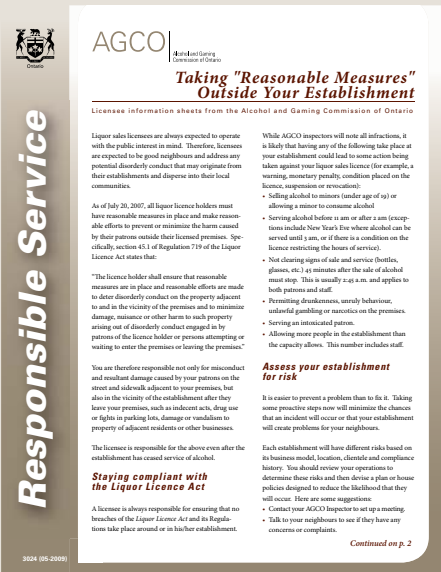
Licensees have a responsibility to deter people from getting into such a condition that they may cause problems when they leave the establishment. Reasonable efforts are required inside and outside to deter such misconduct. For example, fighting patrons should be separated and made to leave separately, and staff should be outside to monitor and deter misconduct such as fighting, noise, litter, etc. Prompt reporting of problems to police and cooperation with police is important.

Maintaining control

Whether inside or outside, licensees and/or their management must always maintain control over their establishments, including patron entry and activities.

Even if house policies are in place to prevent incidents, situations may arise that require intervention. Contingency plans should always be in place.

To view or download complete information on this Tip Sheet, please refer to the AGCO website at www.agco.on.ca or contact AGCO Customer Service at 416.326.8700 or 1.800.522.2876.



Tip Sheets are part of a wide range of information available to licensees on understanding the requirements under the LLA and Regulations. Tip sheets on other liquor subjects are also available on the AGCO website.

Decision Summary

The following establishments were recently brought before the Board of the AGCO for disciplinary action. The list represents only those licensees that received suspensions of 14 days or more and revocations for the period beginning **June 1, 2009** ending **September 17, 2009**. Sanctions for similar infractions may vary in length according to the specifics of each case. Details about all Board decisions are now available on **QUICKLAW**.

ESTABLISHMENT	INFRACTION	SANCTION
Blue Martini, Hamilton	Overcrowding; permitted drunkenness, violent and disorderly conduct; obstructing an inspection	53 days
Island Jerk Restaurant, Ottawa	Failure to clear signs of service	81 days ¹
Kumai Sushi, Mississauga	Not financially responsible in conducting its business due to <i>Retail Sales Tax Act</i>	Revoked
Little Ochie Restaurant & Bar, Scarborough	Past conduct; permitted violent, quarrelsome and disorderly conduct; licensee failed to ensure reasonable measures taken to deter disorderly-conduct, or minimize the harm caused from it,in the vicinity of the licensed establishment	28 days
Little Texas Bar & Grill, Belleville	Permitted drunkenness, violent and disorderly conduct; licensee failed to ensure reasonable measures taken to deter disorderly conduct, or minimize the harm caused from it, in the vicinity of the licensed establishment	25 days
Seawall Lounge Inc., Toronto	Service outside prescribed hours; failure to clear signs of service	15 days
The Loft Bar and Grill, North York	Liquor not purchased under licence; failure to clear signs of service; permitted drunkenness	14 days
Tropix Restaurant & Lounge, Pickering	Permitted quarrelsome, violent and disorderly conduct; licensee failed to ensure reasonable measures taken to deter disorderly conduct, or minimize the harm caused from it, in the vicinity of the licensed establishment; liquor not purchased under licence	25 days
Turkey Point Hotel, Turkey Point	Permitted drunkenness	30 days
Ulster Arms Tavern, Toronto	Liquor sold to person who appears to be intoxicated; permitted drunkenness; failure to facilitate inspection	21 days

La liste suivante renferme les sanctions imposées aux titulaires de permis n’ayant pas demandé la tenue d’une audience et dont le permis a été suspendu pendant au moins 14 jours ou a été révoqué. La durée des sanctions imposées pour des infractions similaires peut varier en fonction de chaque cas.

1001 Nights, Thornhill	Permitted drunkenness; failure to facilitate inspection; failure to clear signs of service—did not contest	14 days
Big Echo Karaoke & Lounge, Toronto	Permitted drunkenness; service outside prescribed hours; failure to clear signs of service; permitted removal of liquor from premises; obstructing an inspection; failure to facilitate inspection; failure to retain records of sales and purchases of liquor—did not contest	14 days
Borrelli Wines U-Vin, Windsor	Provided services contrary to the regulations; produced on the licensed premises liquor for sale or exchange; kept for sale or exchange, offered for sale or exchange, sold or exchanged beer or wine on the licensed premises; failed to retain copies of invoices; failed to provide and prepare an invoice setting out the required information; failed to ensure that each carboybeing used for making beer or wine had attached to it the required tag; failure to post Fetal Alcohol Spectrum Disorder warning sign—did not contest	14 days

¹ Decision released June 17, 2009 ordering the suspension already served from July 21, 2008 to October 10, 2008 under an interim suspension.

Decision Summary continued from page 5

ESTABLISHMENT	INFRACTION	SANCTION
Canadian Lounge, Sault Ste Marie	Serving minors; permitted drunkenness; liquor sold to person who appears to be intoxicated; permitted removal of liquor from premises—did not contest	17 days
Club Vegas, Newmarket	Serving minors; failure to inspect identification; permitted free liquor; permitted drunkenness, violent, quarrelsome and disorderly conduct; overcrowding; non-compliance with <i>Fire Protection and Prevention Act</i> ; permitted removal of liquor from premises; licensee permitted removal of person(s) from licensed premises with unnecessary force; failure to clear signs of service; obstructing an inspection—did not contest	60 days
Flip Flop's, St Catharines	Not financially responsible in conducting its business due to <i>Retail Sales Tax Act</i> —did not contest	Revoked
Golden Brothers Sports Bar & Tapps, Welland	Permitted drunkenness and disorderly conduct; permitted narcotics on premises; permitted removal of liquor from premises; obstructing an inspection; failure to facilitate inspection—did not contest	14 days
Hangar Restaurant, Downsview	Failure to inspect identification; permitted drunkenness; offered liquor free of charge—did not contest	15 days
Mink Nightclub, Toronto	Serving minors; permitted drunkenness; failure to inspect identification—did not contest	16 days
Moe's Bar and Eatery, Port Colborne	Liquor sold to person who appears to be intoxicated; permitted drunkenness; permitted removal of liquor from premises; non compliance with <i>Fire Protection and Prevention Act</i> —did not contest	21 days
Mulligan's Sports Grill, Cambridge	Permitted drunkenness—did not contest	14 days
On 81, St. Catharines	Not financially responsible in conducting its business due to <i>Retail Sales Tax Act</i> —did not contest	Revoked
Oxford Pub & Restaurant, Toronto	Permitted drunkenness, violent and disorderly conduct; no light meals available; failure to provide or post liquor menu in accordance with regulations; failure to post licence in a conspicuous place—did not contest	14 days
Pho King Noodle, Brampton	Failure to post Fetal Alcohol Spectrum Disorder warning sign; liquor not purchased under licence; failure to ensure required persons successfully completed approved server training within 60 days of employment start date; failure to provide or post liquor menu in accordance with regulations—did not contest	14 days
Promise Piano Bar, Toronto	Serving minors; failure to inspect identification—did not contest	14 days
Woody's Outhouse, Windsor	Serving minors; failure to inspect identification; permitted drunkenness—did not contest	14 days
Yorkland Station Pub, Toronto	Liquor sold to person who appears to be intoxicated permitted drunkenness; permitted narcotics on premises; failed to have a defined partition making the premises readily distinguishable from adjacent premises; liquor not purchased under licence; permitted removal of liquor from premises; overcrowding; licensee failed to ensure reasonable measures taken to deter disorderly conduct, or minimize the harm caused from it, in the vicinity of the licensed establishment—did not contest	14 days

WHAT'S CHANGED WITH THE LCBO *BYID CARD?

In LCBO's ongoing effort to make the BYID (*bring your ID) Card a secure form of photo ID, all newly issued BYID Cards now carry a coded magnetic stripe (magstripe).

When a customer who has been challenged for reasons of age presents the new BYID Card at an LCBO checkout, the card is swiped on the LCBO point of sale system to verify that it has been issued by the LCBO. When swiped the card will either be deemed valid or invalid.

The magstripe **does not hold any personal information** or any information that can be collected and stored. The code contained on the magstripe is a unique LCBO verifier that cannot be traced back to the customer when swiped at an LCBO store.

Currently, validation of the new BYID card via the magstripe can only be done at LCBO stores. However, just like earlier BYID Cards, the new card is a prescribed form of proof-of-age identification under Ontario's *Liquor Licence Act*. Card holders may use the LCBO BYID Card when making beverage alcohol purchases at LCBO stores, other

Ontario beverage alcohol retailers, licensed bars and restaurants. As a prescribed form of ID, the BYID Card is one of the five optimal forms of ID on which beverage alcohol sellers and servers may rely when challenging a customer for reasons of age.

Earlier (non-magstriped) versions of the LCBO BYID Card continue to be valid until April 15, 2011. LCBO is informing card holders, licensees and other retailers that earlier cards are being phased out, and has introduced a simple, low-cost upgrade process for individuals who wish to obtain a new card.

What does the new card look like?
To accommodate the new magstripe, the back format of the BYID card has changed slightly. The front format of the card remains the same.

Questions about the BYID Card can be directed to:
Sherry Smith LCBO BYID Program Administrator at 416.864.6632 or sherry.smith@lcbo.com

1

2

3

1. Check 25 Logo displayed in Ultra Violet ink (only visible under black light)

2. "Issued by the LCBO" text displayed in Ultra Violet ink (only visible under black light) and is located over top of "Issued for the purpose of purchasing beverage alcohol in Ontario."

3. New magstripe.

AGCO website has lots of information

If you are looking for general information on beverage alcohol, how to apply for a liquor sales licence or other liquor licensing matters, please visit our website at www.agco.on.ca. You can download and fill out on screen, liquor-related forms such as liquor licence applications, renewals, transfers, etc.

Alcohol and Gaming Commission of Ontario

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	Publications	Fees	Hearings & Appeals	

Welcome to Alcohol and Gaming Commission of Ontario web site

AGCO

Policy on medical marijuana

Licence Line has recently received inquiries from liquor licensees about obligations of a liquor licence holder with respect to the consumption of medical marijuana in licensed premises.

The Regulations under the *Liquor Licence Act* (LLA) state that a liquor licence holder may not permit a person to “have, use, distribute or sell controlled substances in his or her establishment.” The *Controlled Drugs and Substances Act* regulates certain drugs and narcotics (now known as “controlled substances”) such as marijuana.

As a liquor licence holder, therefore, you cannot permit illegal drug use or drug dealing on your premises. This applies during the operating hours of your establishment and also when the establishment is closed. Even if you and your staff are not personally involved, you can be held accountable for illegal activities in your establishment and must take reasonable steps to prevent illegal drug use and dealing anywhere in your establishment.

The LLA does not include any provisions or exemptions allowing the use of medicinal marijuana in a licensed establishment by patrons who hold a federal permit allowing them to possess marijuana for medical purposes. Therefore, if a customer uses marijuana in your establishment, you are in breach of the LLA and therefore may be subject to a suspension or revocation of your licence. However, whether or not a sanction is appropriate against a licence holder for this or any breach of the LLA is always at the discretion of the Registrar of Alcohol and Gaming, who looks at all aspects of a case before recommending any type of administrative sanction.

Note: There are cases before the Human Rights Tribunal of Ontario regarding the use of medical marijuana in licensed premises. The cases have not yet been heard.

We are closely monitoring developments and will be sure to communicate any material updates to licensees.

Until such time, licensees must continue to act in accordance with their obligations under the LLA.

Board Profiles

This continues the series of short profiles on members of the Board of the AGCO. These members are appointed to the Board of the AGCO by the Ontario government. They can be appointed as full-time or part time members. The Board has a quasi-judicial function. It holds hearing and conducts appeals when necessary on certain matters that arise relating to liquor and gaming legislation, regulation licensing and registration. There are currently fourteen members of the Board, including the Chair.



Allan Higdon
Allan Higdon was born in Dublin, Ireland and immigrated with his family to Kingston, Ontario. Upon graduation from Queen’s University, he studied in London, England. He attended the University of Toronto (B. Ed.), followed by work at the Ontario Institute for Studies in Education. He worked on Parliament Hill for several years and joined the Department of Communications as a Senior Analyst in 1988. Elected to Ottawa

City Council in 1994, Mr. Higdon was re-elected in 1997, and served as Deputy Mayor from 1997 to 2000. In 2001, Mr. Higdon was appointed to the Board of the Social Benefits Tribunal and in 2005 became a full-time member of the Board of the Alcohol and Gaming Commission of Ontario where he is Chair of the Finance and Audit Committee.



Eleanor Meslin
Eleanor Meslin, a law school graduate and former Executive Director of the Canadian Civil Liberties Association and consultant to the Ontario Human Rights Commission, retired from the Ontario public service in 2000 after more than 25 years experience.
Ms. Meslin held several senior level positions such as acting Ombudsman, Executive Director of the Ontario Women’s Directorate and Assistant Deputy Minister in the Ministry of Consumer and Commercial Relations. She is a part-time member of the Board.

Licence Line is published by the Alcohol and Gaming Commission of Ontario to provide licensees and interested parties with information regarding alcohol legislation and related issues. Reader comments are welcome. This newsletter is available free of charge to all holders of a liquor sales licence in Ontario.

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