

AUDITOR GENERAL'S REPORT

A Review of Municipal Licensing and Standards Division's Management of Business Licences

Part Two: Licensed Holistic Centres

October 24, 2017

Beverly Romeo-Beehler, CPA, CMA, B.B.A., JD, ICD.D, CFF
Auditor General



TABLE OF CONTENTS

EXECUTIVE SUMMARY 1

BACKGROUND 5

AUDIT RESULTS..... 8

A. SIGNIFICANT NUMBER OF HOLISTIC CENTRES POTENTIALLY OFFERING UNAUTHORIZED SERVICES 8

 A.1. Potential Health and Safety Impact When Holistic Centres Are Offering Unauthorized Services 8

 A.2. Significant Licence Fee Difference..... 10

 A.3. Internet Search Results by Audit..... 10

B. CHALLENGES TO ENFORCEMENT ACTIONS..... 11

 B.1. Municipal Licensing & Standards Inspections and Charges..... 11

 B.2. Challenges to Collecting Evidence..... 12

 B.3. Bylaw Charges and Tribunal Hearings..... 12

C. LACK OF ADEQUATE BY-LAW REQUIREMENTS FOR PROFESSIONAL HOLISTIC ASSOCIATIONS (PHAS)..... 16

 C.1. The Creation of PHA Requirements in the By-law 16

 C.2. The Legitimacy of the 10 Largest PHAs is Questionable 17

 C.3. Significant Limitations in the By-Law Requirements..... 20

 C.4. Large PHAs Can Gain Significant Revenue from Membership Fees 21

D. 2014 REVIEW AND INDUSTRY CONSULTATION BY MUNICIPAL LICENSING & STANDARDS..... 21

CONCLUSION 24

AUDIT OBJECTIVES, SCOPE AND METHODOLOGY 25

APPENDIX 1: Management’s Response to the Auditor General’s Report Entitled: “A Review of Municipal Licensing and Standards Division’s Management of Business Licences - Part Two: Licensed Holistic Centres” 26

EXECUTIVE SUMMARY

MLS issues and manages various licences in the City

The City of Toronto, through the Municipal Licensing & Standards Division (MLS), is responsible for regulating a myriad of businesses operating within its jurisdiction. Authority to regulate these businesses is inherent in the *City of Toronto Act, 2006*, and the City of Toronto Municipal Code Chapters 545 and 546.

The purpose of licensing is to ensure public health and safety, consumer protection and nuisance control.

This Part 2 report focuses on licensing of holistic centres

The objective of this audit was to assess the effectiveness and efficiency of business licensing as well as By-law enforcement operations. Our audit focused on the period from January 1, 2015, to December 31, 2016.

Our audit results are contained in three separate reports. This report, Part 2, focuses on MLS's licensing and enforcement activities regarding holistic centres.

Our key audit findings are summarized as follows:

A Significant Number of Holistic Centres Appeared to Be Offering Unauthorized Services

Our audit identified a number of issues in the City's licensing bylaw and enforcement regime relating to holistic centres. These issues undermine the City's ability to effectively regulate holistic centers to ensure they are not offering services outside the parameter of their licence.

410 licensed holistic centres in the city

As of December 2016, there were 410 licensed holistic centres in the City. Bylaw 545 limits the number of licensed body-rub parlours to 25.

Significant cost differences between holistic centre licences and body-rub parlour licences

There are significant differences in licence fees for holistic centres compared to body-rub parlours.

The cost of a new licence for a holistic centre is \$270, and the yearly renewal fee is \$148. New licences for body-rub parlours are more expensive at \$13,102, and the yearly renewal fees at \$12,660.

More stringent requirements for body-rub parlours than for holistic centres

Body-rub parlours and body-rubbers must meet several health and safety requirements in order to be licensed. For example, body-rubbers must undergo a medical examination, and a licensed body-rub parlour can only be located in a certain zone away from a residential zone.

Holistic centres are not subject to the same zoning restrictions as body-rub parlours. Holistic practitioners are not subject to the same medical examination requirements.

The majority of holistic centres were offering body-rub services, according to MLS

In a 2014 presentation about holistic centres, MLS indicated that ***"the majority of the individuals who were issued a holistic centre and/or a holistic practitioner's licence by the City are offering body rub services"***.

107 advertised unauthorized services

Through a simple internet search and matching the information with MLS's licensing database, we identified 107 licensed holistic centres that had the appearance of offering unauthorized services such as erotic massages and other services.

We reviewed the proactive inspection and complaint investigation history of the 107 aforementioned holistic centres to check whether MLS staff had made similar observations, or had taken any enforcement action.

117 charges laid against 37 holistic centres in 2015 and 2016

We noted that 37 out of the 107 centres were charged by MLS, for a total of 117 charges for various By-law violations, including locking the entry door to the centre without posting a notice, remaining open after hours, and permitting unlicensed practitioners. One of the 107 holistic centres was charged with operating as "body-rub parlour – no licence" over the past two years.

We understand from staff that there are challenges in enforcement actions.

Over 100 licensed holistic centres are deemed to be problematic by MLS

When we discussed our finding with MLS management staff, they advised that "*The identification of problematic locations is not at issue. They were well identified and documented.*"

Subsequently, in response to our request, MLS provided us a list of more than 100 licensed holistic centres that they deemed to be problematic.

We recognize that there are many legitimate licensed holistic centres and practitioners. However, for those providing unauthorized services, aside from potentially being a violation to the City's licensing and zoning bylaws, these centres could potentially pose an array of health, safety and community issues, including the risk of human trafficking.

The workers and patrons of the centres providing unauthorized services can face significant health and safety risks as these centres are not subject to the same rigorous health requirements as legal body-rub parlours.

Lack of Adequate By-law Requirements for Professional Holistic Associations (PHAs)

37 City-approved PHAs

A key City requirement for becoming a licensed holistic practitioner is to be a member of a not-for-profit Professional Holistic Association (PHA). There are 37 in the City, approved by City Council based on staff recommendations. Most PHAs charge their members an initial and annual membership fees.

We reviewed top 10 PHAs

We reviewed the 10 PHAs with the largest memberships. These 10 PHAs represent 92 per cent of licensed holistic practitioners in Toronto.

Many had no physical address

We conducted site visits of these 10 PHAs and noted that many of them appear to only exist on paper. Many have all the required documentation in their applications, but they have questionable addresses such as residential addresses, one located in an abandoned building, another at a cottage, or a P.O. Box.

Several PHAs' directors were convicted for operating unlicensed body-rub parlours

More concerning is that one PHA's director, according to the College of Massage Therapists of Ontario, was convicted of one count of "assault" under the Criminal Code. This director was also convicted for operating an unlicensed body-rub parlour. Two other PHAs' directors were also convicted for operating without a body-rub parlour licence. Another PHA's director was being prosecuted by the College of Massage Therapists of Ontario under the *Massage Therapy Act, 1991*, and the *Regulated Health Professions Act, 1991*, for illegally practising massage therapy.

No By-law provisions to allow MLS to conduct inspections or undertake enforcement actions against an approved PHA

The By-law does not provide MLS with the necessary tools to regulate PHAs. The By-law focuses on document requirements during the initial application, but contains no provision to allow MLS to conduct inspections of PHAs.

Even when MLS determines a PHA is not fulfilling the By-law requirements, there is no By-law provision enabling MLS to revoke the approval of a PHA or to de-recognize PHA members.

The status of an approved PHA can bring significant annual revenue from charging holistic practitioners membership fees. For instance, one of the PHAs, with 312 members, can collect \$270,000 from initial membership fees, and \$109,000 from annual renewal fees, by our estimate.

We question City's reliance on PHAs to govern holistic centres

There are legitimate PHAs in the City. But our findings lead us to question the legitimacy of many. The City needs to reassess the concept of relying on PHAs to govern holistic practitioners.

The Division conducted a review into holistic centres and PHAs in 2013 and 2014, and came to conclusions similar to ours.

Conclusion

This report presents the results of our audit of MLS's licensing and enforcement program relating to holistic centres.

A comprehensive review of the legal framework is recommended

We recognize this is a complex, challenging issue to address. Much of the issue stems from the gaps in the existing By-law provisions. To address this, City staff need to undertake a comprehensive review of the existing legal framework and regulatory requirements, and re-assess the merits of relying on approved PHAs to govern licensed holistic practitioners.

BACKGROUND

MLS issues and manages licensing in the City

The City of Toronto, through the Municipal Licensing & Standards Division (MLS), is responsible for regulating a myriad of businesses operating within its jurisdiction. Authority to regulate these businesses is inherent in the *City of Toronto Act, 2006*, and the City of Toronto Municipal Code Chapters 545 and 546.

The purpose of licensing is to ensure public health and safety, consumer protection and nuisance control.

Audit objective

The objective of our audit was to assess the effectiveness and efficiency of MLS's functions in licensing businesses, and enforcement of the By-law.

Audit results are provided in 3 reports: MLS's licensing and enforcement, its regulation of holistic centres, and eating establishments offering nightclub-type services

Our audit results are provided in three audit reports:

Part One – provides an overall look at the effectiveness of MLS's licensing and enforcement practices.

Part Two – the subject of this report, focuses on MLS's licensing and enforcement activities regarding holistic centres.

Part Three – focuses on licensed eating establishments offering nightclub-type settings and services.

Differences between a Licensed Holistic Centre and a Body-Rub Parlour

410 licensed holistic centres in the City	<p><u>Definition of holistic centre</u></p> <p>As of December 31, 2016, there were 410 licensed holistic centres in Toronto.</p> <p>Under the City By-law 545, holistic centres and holistic services are defined as:</p> <p>Holistic centre:</p> <p><i>“Any premises or part thereof in which holistic services are provided or offered.”</i></p>
Holistic centres are not body-rub parlours, or businesses offering registered massage therapy, traditional Chinese medicine, or acupuncture services	<p>Holistic services:</p> <p><i>“Any modality used as a tool for therapeutic and wellness purposes, but does not include:</i></p> <ul style="list-style-type: none"><i>A. Body-rubs as defined by this chapter;</i><i>B. Medical or therapeutic treatment performed or offered by persons otherwise duly qualified, licensed or registered to do so under the laws of the Province of Ontario;</i><i>C. Traditional Chinese medicine or acupuncture as defined by this chapter.”</i> <p>By definition, licensed holistic centres are not body-rub parlours, and do not include businesses that offer registered massage therapy, traditional Chinese medicine, or acupuncture services.</p>
City allows only 25 licensed body-rub parlours	<p><u>How body-rub parlours are different from holistic centres</u></p> <p>The number of licensed body-rub parlours is strictly capped at 25 under By-law 545. There is no cap for most other licences, including holistic centres. In addition, the City's Zoning By-law 569 also lays out specific separation distance for body-rub parlours to ensure they are located away from a lot in a residential zone, and schools or places of worship.</p>

By-law 545 defines body-rub parlours and body-rub services as:

Body-rub parlour:

“Includes any premises or part thereof where a body-rub is performed, offered or solicited in pursuance of a trade, business or occupation, but does not include any premises or part thereof where the body-rubs performed are for the purpose of medical or therapeutic treatment and are performed or offered by persons otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario.”

Body-rub:

“Includes the kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, of a person’s body or part thereof but does not include medical or therapeutic treatment given by a person otherwise duly qualified, licensed or registered so to do under the laws of the Province of Ontario.”

Under the *City of Toronto Act*:

92(2) Premises

"Any premises or any part of them is an adult entertainment establishment if, in the pursuance of a business,

(a) goods, entertainment or services that are designed to appeal to erotic or sexual appetites or inclinations are provided in the premises or part of the premises; or

(b) body-rubs, including the kneading, manipulating, rubbing, massaging, touching or stimulating by any means of a person's body, are performed, offered or solicited in the premises or part of the premises, ..."

92(4) Evidence rule

"For the purpose of a prosecution or proceeding under a by-law with respect to adult entertainment establishments, the holding out to the public that the entertainment or services described in subsection (2) are provided in the premises or any part of them is admissible in evidence as proof, in the absence of evidence to the contrary, that the premises or part of them is an adult entertainment establishment."

AUDIT RESULTS

This section of the report contains the findings from our audit work followed by specific recommendations.

A. SIGNIFICANT NUMBER OF HOLISTIC CENTRES POTENTIALLY OFFERING UNAUTHORIZED SERVICES

A.1. Potential Health and Safety Impact When Holistic Centres Are Offering Unauthorized Services

Due to the differences in their types of services, the laws governing legal body-rub parlours are much more rigorous than those for holistic centres.

There are many legal differences between holistic centres and body-rub parlours. Some of the key differences are:

Body-rubbers must get health check, holistic practitioners do not

- Workers at body-rub parlours (body rubbers) are subject to stringent health evaluations, while holistic practitioners are not required to undergo the same checks.

Prior to getting a licence, body rubbers must be certified by a medical practitioner that they are free from communicable diseases and are medically fit to perform body rubs. MLS can also require body rubbers to undergo a medical assessment if they have reasonable grounds to believe that they may endanger the health or safety of other people.

Holistic practitioners are not allowed to touch certain body areas

- A holistic practitioner is not allowed to touch “specified body areas” (breasts, genitals), and those body areas must be covered. There is no requirement for clients be covered at a body-rub parlour.

Treatment rooms can be locked in a holistic centre but not in a body-rub parlour

- The doors to treatment rooms at a holistic centre may be locked while a practitioner works with a client. Doors to any rooms at a body-rub parlour where body-rub services are provided are not allowed to be locked.

We recognize that there are many legitimate licensed holistic centres and practitioners. However, for those providing unauthorized services, aside from potentially being a violation to the City's licensing and zoning bylaws, these centres could potentially pose an array of health, safety and community issues, including the risk of human trafficking.

The workers and patrons of the centres providing unauthorized services can face significant health and safety risks as these centres are not subject to the same rigorous health requirements as legal body-rub parlours.

At its December 2013 meeting (Item EX36.13 "Initiatives to Address Human Trafficking"), City Council directed the City Manager, the City Solicitor, and the Deputy City Managers, Clusters A and B, to:

"report back to the Executive Committee on a strategy to more vigorously prosecute charges related to municipal by-law infractions by the adult entertainment, body rub, and holistic license classes."

No subsequent report was provided to the Executive Committee.

A.2. Significant Licence Fee Difference

There are significant cost differences in licences for body-rub parlours compared to licences for holistic centres, as illustrated the Table 1 below:

Table 1: Cost Differences in Licenses for Body-Rub Parlours vs Holistic Centres

	Body-rub Parlour	Holistic Centre	Cost Difference
New Application	\$13,102	\$270	\$12,832
Renewal	\$12,660	\$148	\$12,512

A.3. Internet Search Results by Audit

107 holistic centres are potentially offering unauthorized services

To assess whether some licensed holistic centres might be offering services outside the parameters and conditions of their licensing category, we conducted a simple internet search and matched the information with MLS's licensing database.

We identified 107 licensed holistic centres that had the appearance of offering services that were outside their licensing category.

Many holistic centres openly advertised services beyond their licensing parameters

We found this by searching various online sources including websites, blogs and classified advertisements where many of the licensed holistic centres advertised with sexually explicit photographs and had suggestive descriptions of services such as erotic massages. There were also customer reviews on these websites that contained graphic descriptions of sexual services received at those locations.

We then matched the advertised addresses with the addresses of the holistic centres in MLS's database to confirm that the advertised places were licensed as holistic centres.

There are probably more cases beyond the 107 centres we identified through a simple internet search as our search was limited and not exhaustive.

When we discussed our finding with MLS management staff, they advised that "*The identification of problematic locations is not at issue. They were well identified and documented.*" Management also advised that officers have the ability to access key websites and this is a component of their investigative techniques.

B. CHALLENGES TO ENFORCEMENT ACTIONS

B.1. Municipal Licensing & Standards Inspections and Charges

MLS regulates holistic centres through routine inspections (proactive inspections) and investigates complaints.

We reviewed the proactive inspection and complaint investigation history of the 107 aforementioned holistic centres to check whether MLS staff had made similar observations, or had taken any enforcement action.

In 2015 and 2016:

805 proactive inspections by MLS in 2015 and 2016

- MLS conducted 805 proactive inspections of those 107 holistic centres, averaging about three to four inspections per centre per year.

117 charges laid against 37 holistic centres in 2015 and 2016

- Thirty-seven (37) out of the 107 centres were charged by MLS, for a total of 117 charges for various By-law violations.
 - One holistic centre was charged with operating an unlicensed body-rub parlour.
 - Twelve (12) other holistic centres were charged with offences such as: permitting services to an uncovered customer, providing services that are not listed, and touching specified body areas.
 - The remaining 24 centres were charged with other violations including locking entry doors to the centre without posting a notice, remaining open after hours, and permitting unlicensed practitioners.

B.2. Challenges to Collecting Evidence

We understand from staff that there are challenges in enforcement actions.

According to a best practice guide for local governments, issued by the B.C. Office of the Ombudsperson, for any bylaw to be effective and enforceable, the provisions in the bylaw must be clear, specific and enforceable. If a bylaw is drafted in an unclear way that prevents its enforcement, or leads to inconsistent decision making, its administration will be problematic. Staff in charge of enforcement have to be able to define the test that must be met to confirm a bylaw infraction, and the evidence that must be gathered to meet that test.

In some cases, difficult to collect evidence to lay charge, according to MLS staff

According to MLS staff, in some cases, in order to successfully prosecute a holistic centre, multiple corroborating pieces of evidence may be required, and online advertisements alone are not considered sufficient.

According to the City of Toronto Act, 2006, any premises is an adult entertainment establishment if it provides goods, entertainment or services that are "*designed to appeal to erotic or sexual appetites or inclinations*".

We noted that in the Act, the "Evidence Rule" regarding adult entertainment establishments is stated as:

*"For the purpose of a prosecution or proceeding under a by-law with respect to adult entertainment establishments, **the holding out to the public** that the entertainment or services described in subsection (2) are provided in the premises or any part of them is admissible in evidence as proof, in the absence of evidence to the contrary, that the premises or part of them is an adult entertainment establishment."*

B.3. Bylaw Charges and Tribunal Hearings

Tribunal decides if licences should be denied, suspended or have conditions

The Toronto Licensing Tribunal can revoke, suspend, or place conditions on a business licence. The Tribunal, a quasi-judicial body, is made up of seven citizens chosen by City Council. The Tribunal's goal is to balance the public's interest with an individual's need to make a living.

Accumulation of demerit points can lead to Tribunal hearing

An individual or business that has had a licence denied can request a hearing at the Tribunal.

Convictions for some By-law offenses carry penalties such as one or two demerit points, depending on the seriousness of the offense.

MLS can recommend that the Tribunal suspend or revoke a business's licence if the business has been convicted of enough offences resulting in a certain number of demerit points within a given time period.

For example, if a business has accumulated seven demerit points over 12 months, MLS may request that the Tribunal suspend, revoke, or place conditions on its licence. The representation of the City's position on the hearing is presented by the City Solicitor.

Serious Criminal Code offences, such as sexual assault, using weapons or firearms, or theft, do not carry demerit points. Depending on the crime, a conviction could automatically require MLS to not issue a new licence, as opposed to an accumulation of demerit points. The licensee is still entitled to apply for a Tribunal hearing.

The vast majority of businesses that MLS refers to the Tribunal are taxicab drivers.

MLS has general power to deny a licence or bring a licensee to the Tribunal based on the discretionary grounds as set out in sections 545-4 and 545-6 of the Municipal Code. Those grounds include concerns about honesty, integrity, and the operation of a business within the law.

Number of charges for all licensed holistic centres

Of the total 410 licensed holistic centres, MLS charged 191 centres with 541 By-law violations:

13 centres were charged with operating an unlicensed body-rub parlour over the past 2 years

- Thirteen (13) were charged with operating as unlicensed body-rub parlours.
- Twenty-three (23) were charged with offences such as: permitting services to an uncovered customer, providing services that are not on list, and touching specified body areas.
- The remaining 155 centres were charged with other violations including locking entry doors to the centre without posting a notice, remaining open after hours, and permitting unlicensed practitioners.

There are 12 charges in MLS's database with insufficient information to identify the specific holistic centres involved.

Number of Tribunal hearings for all licensed holistic centres

Tribunal held hearings on 13 holistic centre owners or practitioners over the past 5.5 years

We reviewed the Tribunal's decision documents involving holistic centres from January, 2012, to September 21, 2017, (over five and a half years).

Since 2012, the Tribunal held hearings on 13 holistic centre owners (note: one owned two centres) or practitioners. These cases span over several years and involve complex details.

Of the 13 Tribunal hearings:

In 1 case, the Tribunal revoked the holistic practitioner licence due to sexual assault convictions

- One holistic practitioner's licence was revoked by the Tribunal on the basis that the individual was convicted of two counts of sexual assault while practicing as a holistic practitioner.
- One was granted a holistic practitioner's licence with fines.

- In 11 cases, the owners were allowed to continue to operate their holistic centres with conditions imposed by the Tribunal, such as probation ranging from one to four years. Among these 11 cases, two were brought to the Tribunal for operating as unlicensed body-rub parlours or for providing services prohibited for a holistic centre. In both cases, the Tribunal allowed the licensees to continue to operate the holistic centres with probation.

A more detailed illustration of one case is provided below to highlight the challenges faced by the MLS and the Tribunal.

Details of a case before the Tribunal

This case involves one owner with a holistic practitioner's licence, and this owner has licences for two holistic centres.

1 owner with 2 licences, convicted multiple times of By-law offences, has had licence briefly suspended on 2 occasions

- In 2011, MLS records indicate that the owner was previously convicted of multiple offences related to operating illegally as a body-rub parlour. The note on the file indicated that the licence status was to be reviewed at the time of renewal.
- In 2012, MLS refused to renew the licence because of the prior convictions.
- The matter was referred to the Tribunal for non-renewal because of various other By-law charges. During this time, the holistic centre was allowed to operate.
- The case made it to the Tribunal in 2013. The Tribunal suspended the owner's holistic practitioner's licence and the holistic centre's licence for five days, and added a three-year probationary period. Among the requirements in the probation was for the licensee to inform MLS of any new By-law or other convictions.

- In 2015, MLS referred the owner to the Tribunal for breaching its probation – the owner did not inform MLS of new By-law convictions. Once again, the Tribunal suspended the owner’s holistic practitioner’s licence as well as the centre’s licence, this time for 21 days, with another three-year probation period.
- As of September 2017, both centres were in operation.

C. LACK OF ADEQUATE BY-LAW REQUIREMENTS FOR PROFESSIONAL HOLISTIC ASSOCIATIONS (PHAS)

C.1. The Creation of PHA Requirements in the By-law

37 City-approved PHAs

Under the By-law, licensed holistic practitioners must be a member of one of the City-approved Professional Holistic Associations (PHAs). There are 37 approved PHAs in Toronto, regulated by By-law 545. These PHAs were approved by City Council based on staff reports and recommendations.

As of June 30, 2017, there were 2,294 licensed holistic practitioners.

The requirements for PHAs were added to the By-law in 2005 following a MLS staff report recommending the creation of PHAs. According to the staff report, instead of the City governing the holistic practitioners directly, the City should rely on the accredited PHAs to govern their members to ensure integrity and honesty of their services.

The staff recommendations were adopted by City Council in 2005 and embedded in the By-law.

A PHA should be not-for-profit and governs the ethics and practices of its members

According to the By-law:

- A PHA should be a not-for-profit association, with a board of directors elected by the organization's membership. The organization must have governing By-laws and an explicit and documented disciplinary process.

- To be an approved PHA, the applicant must submit to MLS information on the origin, objective(s), diagnostic methodology and treatment methodology for each modality (form of treatment) represented by the PHA, and the manner in which the membership is managed. The PHA must also have internal By-laws for governance, ethics, and disciplinary matters.
- A PHA must have a comprehensive membership application review process prior to granting membership. This is intended to ensure that only legitimate holistic practitioners become members.

C.2. The Legitimacy of the 10 Largest PHAs is Questionable

92% of holistic practitioners are members of 10 PHAs

Although there are 37 approved PHAs, 92 per cent (or 2,114) of all licensed holistic practitioners are members of 10 largest PHAs (by membership).

Nearly all of the 107 questionable holistic centres are owned and operated by members of one of the 10 PHAs

As well, of the 107 licensed holistic centres that appear to offer unauthorized services (discussed in earlier Section), 105 of them are owned and operated by licensed holistic practitioners who are affiliated with one of the 10 largest PHAs.

We undertook a review of 10 largest PHAs (by membership)

We undertook a review of these 10 PHAs. We visited each to try to confirm their locations. We also reviewed their By-law conviction history as documented in MLS's database, and other related records including those that are publicly available. In addition, we reviewed the PHA files at MLS that contain the original approval documents and MLS's assessment of those documents in approving the PHAs.

What we found in MLS's initial application files are very different from what we found from our site visits and reviews of investigation history.

1 PHA file could not be located

We selected 5 PHAs to review their initial application file. MLS was unable to locate the application file for one of them.

4 of the 5 selected PHA files were reviewed and found to be complete

For the remaining four PHAs, all of the By-law-required documents are contained in the files, such as proof of being a not-for-profit organization, names of board members, descriptions of holistic services which are the subject matter or interest of the PHA, a short history summarizing the organization's activities and achievements to date, the organization's governing bylaws, procedures and code of ethics, complaints and disciplinary processes, and membership criteria.

PHAs with residential addresses, located in an abandoned building, cottage, or at a P.O. Box

We conducted site visits of these 10 PHAs and noted that many of them appear to only exist on paper. Many have all the required documentation in their applications, but they have questionable addresses such as residential addresses, one located in an abandoned building, another at a cottage, or a P.O. Box.

More concerning is that one PHA's director, according to the College of Massage Therapists of Ontario, was convicted of one count of "assault" under the Criminal Code. This director was also convicted for operating an unlicensed body-rub parlour. Two other PHA directors were also convicted for operating an unlicensed body-rub parlour. Another PHA's director was being prosecuted by the College of Massage Therapists of Ontario under the *Massage Therapy Act, 1991*, and the *Regulated Health Professions Act, 1991*, for illegally practicing massage therapy.

Our site visit and additional search results are provided in the Table 2:

Table 2: List of Audit Findings Regarding the 10 Largest PHAs

PHA	No. of Members	Description of Issues
1	685	<ul style="list-style-type: none"> • MLS's database lists a different address than what is on this PHA's website. • One of the two directors was convicted in the past for operating an unlicensed body-rub parlour. • In 2012, the same director was convicted of one count of "assault" according to the College of Massage Therapists of Ontario. The director's holistic practitioner licence and holistic centre licence were not renewed, but MLS could not rescind the PHA's approval under the By-law. • In 2014, the College of Massage Therapists of Ontario revoked the PHA director's Registered Massage Therapist certification for professional misconduct.
2	452	<ul style="list-style-type: none"> • One of the three directors is affiliated with PHA #3. • Appears to sell malpractice insurance. This PHA is currently being prosecuted under the <i>Massage Therapy Act, 1991</i>, and the <i>Regulated Health Professions Act, 1991</i>, in a matter related to illegally practicing massage therapists. The College of Massage Therapists of Ontario has posted this information on its website.
3	312	<ul style="list-style-type: none"> • The only address listed on its website is a residential address. MLS's database lists a different address. • One director is affiliated with PHA #2.
4	208	<ul style="list-style-type: none"> • The address in MLS's database was for an abandoned building. • One of the three directors was convicted in the past for operating an unlicensed body-rub parlour. • No website, no active phone number.
5	167	<ul style="list-style-type: none"> • The address in MLS's database was for a cottage which was recently listed for sale. • No website, no active phone number.
6	93	<ul style="list-style-type: none"> • The address listed in MLS's database was for a massage parlour. • One of the three directors was convicted in the past for operating an unlicensed body-rub parlour. • This PHA also operates as an unlicensed holistic centre.
7	69	<ul style="list-style-type: none"> • The only address listed on its website and in MLS's database is a residential address. • Sells malpractice insurance.
8	34	<ul style="list-style-type: none"> • The only address listed on the website was a P.O. Box, and that is different from what is listed in MLS's database.
9	28	<ul style="list-style-type: none"> • It has the same address as PHA #10 in MLS's database, which is different from the address listed on their website.
10	66	<ul style="list-style-type: none"> • It has the same address as PHA #9, which is different from the address listed on their website.

For the PHAs that sell malpractice insurance, we could not confirm whether they act as a liaison between members and insurance companies, or whether they are commissioned agents. The website of PHA #7, in our view, suggests that providing malpractice insurance is its primary purpose.

C.3. Significant Limitations in the By-Law Requirements

The By-law does not provide MLS with the necessary tools to regulate PHAs.

By-law focuses on initial document requirements

During the initial PHA application approval process, MLS staff check to confirm all By-law-required documents are provided by the applicants. But MLS has no authority under the By-law to conduct any further verification such as background checks or verification of the professional credentials of the PHA applicants.

No By-law provisions to allow MLS to conduct inspections or undertake enforcement actions

Furthermore, the By-law provides no power to MLS to conduct inspections or to bring enforcement action against PHAs that may not meet the By-law requirements. As a result, after the initial application approval, MLS does not undertake any ongoing monitoring steps to confirm the PHAs are functioning according to the By-law.

Due to the lack of a By-law provision, MLS is unable to inspect the training and qualification records of a PHA after its licence has been approved. MLS and the Tribunal do not have access to the disciplinary records of PHAs when assessing professional holistic practitioner licence applications because there is no provision for that in the By-law.

No By-law provisions to allow the City to revoke the approval of a PHA

Even when MLS determines a PHA is not fulfilling the By-law requirements, there is no By-law provision enabling MLS to revoke the approval of a PHA or to de-recognize PHA members. Since PHAs are not licensees, they don't fall under the jurisdiction of the Licensing Tribunal.

In essence, under the By-law, MLS can recommend the approval of a PHA but once approved, but there is no legal mechanism for the City to revoke the approval of a PHA.

C.4. Large PHAs Can Gain Significant Revenue from Membership Fees

Membership fees are a source of revenue for PHAs

Since the City has approved all 37 PHAs and requires holistic practitioners to be members of one of them, the status of an approved PHA can bring significant annual revenue from charging holistic practitioners membership fees.

Among the 10 PHAs we examined, they charge membership fees ranging from \$60 to \$1,145, and annual renewal fees which can cost up to \$500 per member. This represents a significant source of revenue for a PHA that has no formal operating or business location. For instance, for the PHA with 312 members, it can collect \$270,000 from initial membership fees, and \$109,000 from annual renewal fees, by our estimate.

The concept of relying on approved PHAs to govern the holistic practitioners needs to be re-assessed

While we recognize that there are legitimate PHAs in operation in Toronto, our findings lead us to question whether certain City-approved PHAs are legitimate organizations that operate with honesty and integrity, and whether they are in a position to govern or discipline their members in accordance with the intent and spirit of the By-law.

It is imperative that MLS, in conjunction with City Legal Services, re-assess the concept of relying on approved PHAs to govern holistic practitioners.

D. 2014 REVIEW AND INDUSTRY CONSULTATION BY MUNICIPAL LICENSING & STANDARDS

In 2013-2014, MLS conducted a review and consultation with PHA operators and holistic centre operators. Following the consultation, MLS published a presentation, dated April 28, 2014, called "Review of Professional Holistic Associations Regulations".

MLS was aware that the majority of people with holistic practitioner or holistic centre licences were offering unlicensed body-rub services

In the presentation, MLS staff pointed out that:

“A review of MLS records indicate that the majority of the individuals who were issued a holistic centre and/or a holistic practitioner’s licence by the City are offering body rub services.”

“And while the majority of holistic practitioners and centres are offering body-rub services, they are only affiliated with a small number of PHAs.”

Staff also stated in the presentation that MLS has no way to revoke a PHA’s licence.

According to the presentation, at the time MLS proposed the following changes:

- Grant MLS the authority to conduct audits/inspection of PHAs
- Grant MLS the authority to conduct an inquiry into the conduct of a PHA or any of its directors, officers or employees

A final report has not been provided to Council to date

Following the 2014 presentation, staff were going to review the information and feedback from the consultation, and draft a report that has recommendations on how to better manage PHAs.

The report was to be submitted to the Licensing and Standards Committee.

To date, this report has not been submitted to the Committee. MLS staff indicated that they are currently working on the report.

MLS provided their Committee Work Plan for 2017 and 2018 to the Licensing and Standards Committee in December 2016. Included in the Work Plan was a review and modernization of Chapter 545, Licensing relating to eating establishments, nightclubs and public halls.

At the Committee's January 2017 meeting, a motion was added to request the Executive Director, MLS, to include holistic and body rub parlours in her forthcoming report on the review and modernization of Chapter 545, Licensing.

In our discussions with MLS frontline and management staff, they said that they are aware of the issue of holistic centres illegally offering unauthorized services.

Recommendations:

- 1. City Council request the Executive Director, Municipal Licensing and Standards, in consultation with the City Solicitor, to re-assess the merits and practicality of relying upon Professional Holistic Associations as governing and accreditation bodies for holistic licensees and practitioners.**
- 2. City Council request the Executive Director, Municipal Licensing and Standards, in consultation with the City Solicitor, to conduct a detailed and thorough review of the existing By-laws and legislative framework governing the licensing of body rub parlours and holistic centres, with a view to ensuring the City can exercise effective oversight and enforcement actions to stop licensed holistic centres from offering services outside of the parameters and conditions of the licensing category.**

CONCLUSION

	<p>This report presents the results of our audit of MLS's licensing and enforcement program relating to holistic centres.</p>
<p>Effectiveness of MLS's enforcement is undermined by gaps in the By-law</p>	<p>Our audit identified a number of issues in the City's licensing bylaw and enforcement regime relating to holistic centres. These issues undermine the City's ability to effectively regulate holistic centers to ensure they are not offering services outside the parameter of their licence.</p>
<p>Legitimacy of the 10 largest PHAs is questionable</p>	<p>Our audit also found that the legitimacy of the 10 largest PHAs can be questioned. Our findings lead us to question whether it is feasible and practical for the City to rely on these associations to govern the conduct of holistic centre operators or practitioners.</p>
<p>A comprehensive review of the legal framework is recommended</p>	<p>We understand that municipal bylaws do not regulate sexual services, which is the purview of the Criminal Code. However, MLS has the jurisdiction to ensure licensed businesses do not provide services outside the parameters and conditions of their licence.</p> <p>MLS is also responsible for identifying businesses that are potentially violating the By-law, and undertake appropriate enforcement action to ensure compliance.</p> <p>We recognize this is a complex, challenging issue to address. Much of the issue stems from the gaps in the existing By-law provisions. To address this, City staff need to undertake a comprehensive review of the existing legal framework and regulatory requirements, and re-assess the merits of relying on approved PHAs to govern the holistic practitioners.</p>

AUDIT OBJECTIVES, SCOPE AND METHODOLOGY

The Auditor General's 2016 Audit Work Plan included a review of the City's licensing and enforcement operations administered by the Municipal Licensing & Standards Division.

The objective of this audit was to assess the effectiveness and efficiency of MLS's functions in licensing businesses, and enforcement of the By-law.

This audit covered the period from January 1, 2015, to December 31, 2016.

Our audit methodology included the following:

- A review of relevant legislation and bylaws
- Interviews with key personnel to obtain their perspectives
- A review of available written policies and procedures
- A review of prior audit reports
- Testing of administrative controls to determine if they are in accordance with the division's regulations
- A review of relevant Committee and Council minutes and reports
- Site visits
- An examination of documents and records
- An evaluation of management controls and practices

Other matters have arisen from this audit and are being followed up by the Auditor General's Office. Upon the conclusion of reviewing these matters, the Auditor General will decide whether it is necessary to report these matters to the Audit Committee.

Compliance with generally accepted government auditing standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX 1: Management’s Response to the Auditor General’s Report Entitled: “A Review of Municipal Licensing and Standards Division's Management of Business Licences - Part Two: Licensed Holistic Centres”

Recommendation 1: City Council request the Executive Director, Municipal Licensing and Standards, in consultation with the City Solicitor, to re-assess the merits and practicality of relying upon Professional Holistic Associations as governing and accreditation bodies for holistic licensees and practitioners.

Management Response: Agree Disagree

Comments/Action Plan/Time Frame:

Comments:

ML&S concurs that the current bylaw provisions related to Professional Holistic Associations are problematic.

Actions:

This aspect of the bylaw will be included in the fulsome review of the bylaw that is to be undertaken, as is indicated below in Recommendation #2.

Recommendation 2: City Council request the Executive Director, Municipal Licensing and Standards in consultation with the City Solicitor, to conduct a detailed and thorough review of the existing By-laws and legislative framework governing the licensing of body rub parlours and holistic centres, with a view to ensuring the City can exercise effective oversight and enforcement actions to stop licensed holistic centres from offering services outside of the parameters and conditions of the licensing category.

Management Response: Agree Disagree

Comments/Action Plan/Time Frame:

Comments:

ML&S concurs with a review of the Article of TMC Chapter 545, Licensing which provides the regulations for Body-Rub Parlours, as has been identified on its' work plan. The Article governing Holistic Centres is a separate bylaw review, as holistic centres are licensed to provide holistic services.

The issue of businesses offering services beyond what they are permitted/regulated to provide can be applicable to all business types, therefore the review of Chapter 545, Licensing in the context of the general provisions will include identifying any additional mechanism, such as higher penalties for non-compliance with the bylaw.

Actions:

ML&S with the City Solicitor will be undertaking a review of the applicable articles of Chapter 545, Licensing, as have been discussed in this report, and will report to the Licensing and Standards Committee once completed.

Timeline: Q2 - 2019
