

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: March 10, 2016

Panel: Aly N. Alibhai, Chair; Moira Calderwood and Lori Marzinotto, Members

Re: Anna Stepanova, o/a Health Centre
Applicant for Renewal of Holistic Centre Owner's Licence
No. B30-3958011 and Holistic Practitioner Licence No. T30-3955781

Counsel for Municipal Licensing and Standards: Mr. David Gourlay

Counsel for Applicant: Mr. Noel Gerry

INTRODUCTION

1. Ms. Anna Stepanova (“Stepanova”) has been requested to appear before the Toronto Licensing Tribunal (the “Tribunal”) to determine whether or not her Holistic Centre Owner and Holistic Practitioner licenses should be issued, suspended or have conditions imposed on them.
2. Ms. Stepanova was first licensed as a Holistic Centre Owner (Licence No. B30-3958011) on September 29, 2009 and as a Holistic Practitioner (Licence No. T30-3955781) on August 5, 2009.
3. The central issue is whether information retrieved by Municipal Licensing and Standards (“MLS”), from various Internet sites and the results of regulatory inspections conducted by MLS at Ms. Stepanova’s business located at 733A Bloor Street West, constitute reasonable grounds to believe that Ms. Stepanova has breached the *City of Toronto Act* and the *City of Toronto Municipal Code*, Chapter 545. Sections 545-4, C (1) (a) (b) and (e), as amended (the “Code”).
4. Specifically, the Tribunal must determine whether Ms. Stepanova, in her capacity as a Holistic Centre Owner and as a Holistic Practitioner, contravened the provisions of the Code concerning Holistic Services and, in particular, Sections 545-185 and 186¹ relating to the appearance and behaviour of Holistic Centre

¹ The relevant provisions of the Code read as follows:

§ 545-185. Appearance and behaviour of owners and practitioners.

A. Definitions.

For the purposes of this section and § 545-186, the following term shall have the meaning indicated:

SPECIFIED BODY AREAS:

- (1) The breasts in the case of an owner or practitioner;
- (2) The areolae in the case of a client; and
- (3) The genitals and the anus in the case of all people.

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Owners and Holistic Practitioners as well as prohibited activities on the part of Holistic Practitioners and Holistic Centre Owners.

5. The Tribunal held that Ms. Stepanova's Holistic Practitioner licence be renewed and that her Holistic Centre Owner's license be renewed subject to a one year term of probation effective March 10, 2016.

EVIDENCE

1. Ms. Olga Kuztelska, Supervisor, Bylaw Enforcement with MLS, Kevin Lurkhur, Municipal Standards Officer with MLS, Michael Rushton, Municipal Standards Officer with MLS and Andrew Hardisty, Municipal Standards Officer with MLS, all testified on behalf of MLS. Each witness was sworn or affirmed.
2. The witnesses testified that various internet website search results pertaining to Ms. Stepanova's Holistic Centre at 733A Bloor Street West as set out in *Appendix 4 to MLS Report No. 6471* demonstrate that Ms. Stepanova advertised services at her Holistic Centre that are in the nature of sexual and adult entertainment in breach of the *Code*.
3. MLS was concerned with images, information and reviews posted on the following websites which suggested that services of sexual and adult entertainment were being offered in breach of the *Code*: i) the website for Holistic Centre "Absolute Health Spa"; ii) "Backpage.com"; Toronto Escort Review Board "TREB"; iv) "Toronto Exotic Massage"; and v) "Rubmaps".
4. MLS witnesses Kevin Lurkhur, Michael Rushton and Andrew Hardisty also gave evidence, on the basis of notes made during and following their regulatory inspections of Ms. Stepanova's Holistic Centre as contained in *Appendix 3 to MLS Report No. 6471*, about various inspections they made at the Holistic Centre at 733A Bloor Street West.

B. Every owner and every holistic practitioner, while engaged in his or her trade, business or occupation, shall be:

- (1) Dressed in a professional manner, in opaque clothing that is conducive to the holistic services being provided and that completely covers his or her specified body areas;
- (2) Neat and clean in his or her person and dress; and
- (3) Civil and well-behaved to members of the public.

§ 545-186. Touching specified body areas prohibited; clients, owners and practitioners to cover specified body areas.

A. No holistic practitioner shall, while providing services as a holistic practitioner touch in any manner whatsoever the specified body areas of any person or allow his or her specified body areas to be touched.

B. No owner shall permit any holistic practitioner providing services as a holistic practitioner to touch in any manner whatsoever the specified body areas of any person or allow a practitioner's specified body areas to be touched.

C. No holistic practitioner shall provide or offer to provide holistic services upon any person unless such person's specified body areas are completely and opaquely covered.

D. No owner shall permit any holistic practitioner to provide or offer to provide any holistic services upon any person unless such person's specified body areas are completely and opaquely covered.

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5. Officer Lurkhur testified that when he attended on July 23, 2015, he encountered a woman (Ms. LM) in a disheveled state of dress. Officer Lurkhur charged her with failing to dress professionally. The charge was dismissed after a court hearing on March 3, 2016.
6. Officer Hardisty testified that when he attended on September 29, 2014, he encountered a woman in lingerie-type attire. Officer Hardisty stated that he issued the woman a summons on that occasion, but that, for reasons which are not entirely clear, the matter never proceeded to trial and may very well have been lost in the system.
7. None of the MLS officers who attended the Holistic Centre premises to conduct inspections on various occasions and who testified at the hearing could positively identify the images of the women on the websites as being images of the women with the same names that they had encountered when they attended at the Holistic Centre to conduct inspections. Ms. Stepanova, who was also sworn in, testified that she had made a “big mistake” in posting photographs and information on her Holistic Centre’s website that were inappropriate for a Holistic Centre. Ms. Stepanova testified that she posted the inappropriate pictures and information on her Centre’s website in order to compete with other Holistic Centres in the City and to attract customers.
8. Ms. Stepanova testified that she was responsible for the advertisement and content posted on the TREB website but pointed to a disclaimer on the website that “sexual or body rub services are not offered or otherwise implied”. Ms. Stepanova acknowledged, however, that the images and information on the TREB website and her Holistic Centre’s website were misleading and could reasonably lead the public to think that her Holistic Centre offered sexual and adult entertainment services. During cross-examination, Ms. Stepanova testified that sometimes when customers attended at her Holistic Centre they requested sexual services but she insisted that her Holistic Centre does not provide services that are sexual in nature.
9. Ms. Stepanova testified that her manager made the decision to advertise her Holistic Centre on the Backpage.com website when she was away in Russia for the funeral of a family member, and that her manager had paid the small fee for this advertising from her own funds and not from funds of the business.
10. Ms. Stepanova testified that she was not aware of the advertising on the “Toronto Exotic Massage” or “Rubmaps” websites until she received disclosure from MLS in the course of these proceedings. She stated that she does not know who was responsible for that advertising on these third party websites over which she has no control.
11. Ms. Stepanova acknowledged that she has employees who work under the names “Bunny” and “Jenna,” but stated that the women whose images appeared in the advertising for her Holistic Centre were professional models and not her employees, and that the women in her employ who use these same names would not engage in the conduct which is described on some of the third party

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- websites. She added that she had not directly asked “Jenna” about certain activities described on one website as she was too embarrassed to discuss the subject matter with Jenna.
12. Ms. Stepanova testified that upon receiving MLS Report No. 6471 and the related disclosure, she took steps to remove all of the misleading photographs and other information on her Holistic Centre’s website and that she has also since fired her manager who was responsible for placing the misleading advertising of her Holistic Centre on the Backpage.com website.
 13. Ms. Stepanova gave evidence that she has taken steps to communicate via electronic mail with the third party websites “rubmaps.ca” and “Backpage.com” for the purpose of requesting that they remove any photographs and other information about her Holistic Centre that appears on these websites over which she has no control.
 14. Ms. Stepanova acknowledged that a charge was laid against Ms. LM, one of the Holistic Practitioners in her employ, for being dressed in violation of Section 545-185 B (1) of the *Code*. Ms. Stepanova stated that she believed that the charge resulted from a miscommunication with her employee and noted that the charge was recently dismissed by the Courts. Ms. Stepanova stated that she has nonetheless implemented a mandatory uniform policy at her Holistic Centre for all Holistic Practitioners in her employ. She brought a sample uniform (similar to a white lab-coat) to the hearing and showed it to the Panel during the hearing.
 15. Ms. Stepanova also testified that she has instituted a policy at her Holistic Centre which gives her, as the owner of the Holistic Centre, sole control over all the advertising, marketing and promotion of the Centre.

ANALYSIS AND CONCLUSION

1. The Tribunal heard no evidence whatsoever to suggest that Ms. Stepanova had, in any way, conducted herself inappropriately under her Holistic Practitioner Licence No. T30-3955781. The Tribunal was therefore satisfied that the Holistic Practitioner licence be renewed, without probation or the imposition of any conditions.
2. Sections 545-185 and 186 of the *Code* prohibit certain activities from taking place at Holistic Centres.
3. The Tribunal did not hear evidence that any of the prohibited activities outlined in Sections 545-185 and 186 of the *Code* took place at the Holistic Centre owned and operated by Ms. Stepanova pursuant to her Holistic Centre Owner's Licence No. B30-3958011.
4. The Tribunal is of the opinion that the advertising for which Ms. Stepanova was responsible, in her capacity as the owner and operator of a Holistic Centre at 733A Bloor Street West, suggested that services which are clearly prohibited under the *Code* were being offered at her Holistic Centre. Indeed, Ms. Stepanova herself admitted and acknowledged that the advertising for which she

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- was responsible was inappropriate, misleading and could reasonably lead the public to believe that services prohibited under the *Code* were being offered at her Holistic Centre. In the Tribunal's view, the existence of a small-print disclaimer on certain webpages, to the effect that "sexual services are not offered or otherwise implied" was not sufficient to lessen the overall effect of the larger images and the extensive text which either implicitly or explicitly described acts of a sexual nature.
5. The Tribunal therefore concludes that there are reasonable grounds to believe that the applicant, Ms. Stepanova, in her capacity as an owner of a Holistic Centre at 733A Bloor Street West, did not carry on business with honesty and integrity, consistent with Sections 545-4 and 545-5 of the *Code*².
 6. The Tribunal took into account, as mitigating factors, the fact that we did not hear evidence that any of the prohibited activities outlined in Sections 545-185 and 186 of the *Code* actually took place at the Holistic Centre owned and operated by Ms. Stepanova, her remorse, her actions in removing the offensive material from the websites that she controlled and her attempts to have the material removed from third-party websites, her action in firing the manager who was responsible for one of the postings and her action in instituting a uniform policy intended to ensure that all those in her employ are dressed in a manner that does not run afoul Section 545-185 of the *Code*.
 7. The Tribunal was satisfied that the public could be adequately protected from the possibility of a recurrence of conduct on Ms. Stepanova's part that lacked honesty and integrity through the imposition of a period of probation with the associated reporting requirement.

The Tribunal therefore ordered that:

- (i) the Holistic Practitioner Licence No. T30-3955781 be renewed;
- (ii) the Holistic Centre Owner's Licence No. B30-3958011 will be placed on probation for a period of one (1) year to commence on March 10, 2016;
- (iii) during the probationary period, if Anna Ms. Stepanova incurs any new charges or convictions under the *Code* she must notify Municipal Licensing and Standards, in writing, within three (3) business days. The notification shall include her ML&S licence number and the ticket number(s). Anna Ms. Stepanova can notify Municipal Licensing and Standards in one of the following ways:

² **§ 545-4C. Grounds for denial of licence.**

(1) An applicant for a licence, or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to be issued the licence or renewal, except where:

- (a) The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty. (emphasis added)

§ 545-5. General provisions.

A. Every person applying for or holding a licence under this chapter shall, in such application or in carrying on or engaging in the trade, business or occupation in respect of which the licence is issued, observe, comply with, and be governed by the regulations set out in the respective

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- in person at 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
 - via regular mail to: 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
 - via email to mlsconditionreporting@toronto.ca; or
 - via fax at 416-392-3102
- (iv) during the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions, those matters and report No. 6471 and any updating material, shall be brought back before the Tribunal for a full hearing.

Originally Signed

Aly N. Alibhai, Chair

Panel Members, Moira Calderwood and Lori Marzinotto concurring

[Reference: Minute No. 34/16]

Date Signed: April 14, 2016