

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: May 28, 2015

Panel: Ted Yao, Chair; David Peacock and (Hedy) Anna Walsh, Members

Re: 2332980 Ontario Inc., o/a Perla Spa
Newie Do, President
Holder of Body Rub Parlour Owner Licence No. B38-4201082

Counsel for Municipal Licensing and Standards: Mr. David Tortell

Counsel for Applicant: Mr. Noel Gerry
Mr. Alan Young

INTRODUCTION

The only issues on this motion for adjournment are the new hearing date and timing of Perla Spa's notice of constitutional question to the Attorney Generals of Canada and Ontario. The City wishes this notice to be given approximately 135 days before the licensing hearing and Perla wishes to give 60 days' notice. We order that notice be given by July 31, 2015 and the hearing date to be Thursday, November 19, 2015.

This motion, if it can be called that, is brought without any written materials at all. As far as we can determine, Perla holds a body-rub parlour licence issued January 24 2013. The City commenced proceedings to revoke Perla's licence, and the hearing was set for February 2015, and thence adjourned to June 4, 2015. By mutual agreement, the Perla case was plucked from this schedule to come before this panel (May 28, 2015) to cancel the June 4 date and settle the conditions of adjournment.

In late April, Mr. Gerry, solicitor for Perla, determined that the constitutional validity of two sections of the Toronto Municipal Code, relating to body-rub parlours, should be raised before this Tribunal. Neither side questions the jurisdiction of this Tribunal to deal with the constitutional issues to be raised.

In a separate proceeding in the Ontario Court of Justice, Mr. Gerry has questioned the constitutional validity of the City of Vaughan's by-law regulating body-rub parlours, successfully, according to him. In addition, his client met Professor Alan Young on May 14 and formally retained him on May 27 (yesterday) to assist Mr. Gerry. Professor Young is busy with other matters and cannot turn his attention to this matter "until the fall"; however, Mr. Gerry and the Mr. Tortell (lawyer for the City of Toronto) are confident that all written materials and other procedural steps can be completed by November 19, 2015.

Timing of Notice of Constitutional Question

Mr. Gerry advised that because of the Vaughan case he could write a "boilerplate" notice of constitutional question "tomorrow". However he wishes to delay filing the notice to Sept 19, 2015, or thereabouts, in order to permit Professor Young to review the notice

and add his special expertise. Mr. Tortell advises that because of the complex nature of this motion he wishes as much time as possible to prepare the City's response, and suggests that Perla file its notice by June 30, a month from today.

Perla will raise the validity of the following two sections of the Code:

Article 545-355 Hours of operation; schedule of hours of operation to be filed; means of access to remain unobstructed.

- A. No owner or operator shall, in respect of a body-rub parlour owned or operated by him or her, open such body-rub parlour for business or permit the same to be or to remain open for business or permit any body-rub or services or any kind to be performed, offered or solicited in the said body-rub parlour except between the hours of 9:00 a.m. and 9:00 p.m. and on Monday to Saturday, inclusive, and between the hours of 12:00 p.m. and 5:00 p.m. on Sundays and holidays.

Article 545-358 Use of cameras or other photographic or recording devices.

No owner, operator or body-rubber shall use or permit to be used any camera or other photographic or recording device in, upon or at a body-rub parlour by any person other than a peace officer, Medical Officer of Health or a public health inspector acting under his or her direction, the Municipal Licensing and Standards Division, or any person designated by the Commissioner.

Perla intends to argue the constitutional validity of these sections is in question under s. 7 of the Charter of Rights and Freedoms:

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Perla will further argue that article 545-358 of the Toronto Municipal Code is invalid based on the distribution of legislative powers between provincial and federal governments in sections 91 and 92 of the British North America Act, 1867.

The Courts of Justice Act require a minimum of 15 days' notice to the Attorney Generals. The Attorneys General receive many notices and this is a consideration. To our minds reasonable and early notice should be given as a condition of adjournment, as any response or no response to the notice of constitutional question will have an important influence on the next steps the parties must take to bring this matter to a conclusion. Accordingly, we decide that Notice should be given by Friday, July 31, 2015.

May 28, 2015

DECISION

Since the Tribunal's rules require only 7 days' notice for a motion and a written response from the City two days before the hearing, it may be that the current parties and any additional interveners or persons with standing will wish to schedule a pre-hearing conference to arrange a more realistic timetable for any steps to be taken before the various deadlines in the November hearing.

Originally Signed

Ted Yao, Chair

Panel Members, David Peacock and (Hedy) Anna Walsh concurring

[Reference: Minute No. 73/15]

Date Signed: June 16, 2015