

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: April 21, 2016, August 4, 2016 and November 30, 2016

Panel: Aly N. Alibhai, Chair and Cezary Paluch, Member

Re: Jin Wen Zhou
Holder of Holistic Practitioner's Licence No. T30-3619045; and Suiki Health Beauty Centre Inc., Former Holder of Holistic Owner's Licence No. B30-4187982

Counsel for Municipal Licensing and Standards: Ms. Lauren Elliott

Counsel for Jin Wen Zhou: Sheila A. Cockburn
(Hearing of November 30, 2016)

Paralegal for Jin Wen Zhou: Jennifer Kaas
(Hearing of August 4, 2016)

INTRODUCTION

Jin Wen Zhou (“Zhou”) and Suiki Health Beauty Centre were requested to appear before the Toronto Licensing Tribunal (the “Tribunal”) to determine whether their respective Holistic Practitioner Licence and Holistic Owner’s Licence should be suspended, revoked or have conditions imposed on them in accordance with Chapter 545 of the Toronto Municipal Code (the “Code”) because of convictions registered against Zhou for two counts of sexual assault contrary to s. 271 of the Criminal Code.

At the commencement of the hearing on April 21, 2016, Zhou was advised of his right to retain legal counsel and to be represented before the Tribunal. Zhou advised the Tribunal that he wished to retain legal representation. Elliott advised that the City had no objection to adjourning the matter in order to allow Zhou to retain legal counsel. The Tribunal therefore adjourned the matter to August 4, 2016, on consent, peremptory to Zhou.

At the outset of the hearing on August 4, 2016, Counsel for the City of Toronto, Ms. Lauren Elliott (“Elliott”), indicated that the Holistic Owner’s Licence previously held by Suiki Health Beauty Centre, No. B30-4187982, was cancelled and therefore that the City would only be proceeding with respect to Zhou’s Holistic Practitioner Licence No. T30-3619045.

During the direct examination by Elliott of the City’s second witness at the hearing on August 4, 2016, Police Constable Shannon Warcop (“Warcop”), Elliott advised the Tribunal of an additional Toronto Police Services document that Warcop had in her possession which she would be relying on to give evidence at the hearing. The paralegal in attendance at the hearing for Zhou on August 4, 2016, Ms. Jennifer Kaas (“Kaas”) then requested an adjournment of the matter in order to have the opportunity to review the document. Elliott advised that the City had no objection to the adjournment request in order to allow Kaas to review the document.

April 21, 2016, August 4, 2016 and November 30, 2016

At the outset of the hearing on November 30, 2016, the Tribunal advised counsel for the City and Zhou that the third member of the panel, Dr. Hedy (Anna) Walsh was not able to be present for the hearing and therefore that there was a risk of a deadlocked decision in the event that the two members of the panel were not able to reach a unanimous decision. Both Counsel for the City, Elliott, and Counsel for Zhou, Sheila Cockburn (“Cockburn”) stated that they had no objection to proceeding with a two-panel hearing.

At the beginning of the hearing on November 30, 2016, the Tribunal also asked Cockburn if she had any concerns about proceeding with the hearing given that she had not represented Zhou at the hearing on August 4, 2016. Cockburn advised the Tribunal that Kaas is a paralegal at her law firm and that for all intents and purposes Zhou had been represented by the same law firm at the hearing on August 4, 2016 and further that Kaas had briefed Cockburn on what had happened at the hearing on August 4, 2016. Cockburn indicated that she was prepared to proceed with the hearing.

At the outset of both the hearings on August 4, 2016 and November 30, 2016, Elliott advised the Tribunal that the City had decided not to call any of the victims of the sexual assaults as witnesses and asked that Zhou and his legal representatives refrain from identifying any of the victims by name. At both hearings on August 4, 2016 and November 30, 2016, Elliott also advised the Tribunal of some missed redactions in the report and other documents given to the Tribunal and to Zhou and his legal representatives.

At the hearing on April 21, 2016, Zhou was assisted by Ms. Wei Zhang, Mandarin interpreter. At the hearing on August 4, 2016, Zhou was assisted by Ms. Chang Zhang, Mandarin interpreter. At the hearing on November 30, 2016, Zhou was assisted by Ms. Yuan (Lily) Han, Mandarin interpreter. All the Mandarin interpreters were duly sworn or affirmed and all the witnesses who gave evidence at the hearings were sworn or affirmed.

FACTS & EVIDENCE

1. Zhou was first issued a Holistic Practitioner’s Licence, Number T30-3619045 (the licence”) on December 28, 2006.
2. On March 21, 2013, Zhou’s licence was suspended by the Tribunal and had conditions placed on it pending the outcome of several criminal charges for sexual assault.
3. On August 12, 2014, after a trial, Zhou was convicted of two counts of sexual assault contrary to s. 271 of the Criminal Code for offences which occurred on January 27, 2011 and February 19, 2012, roughly one year apart.
4. While the Crown had sought a two-year sentence, Zhou was given a conditional sentence of twenty-three months with a strict house arrest term for the full duration and there was no exception permitted for work or education purposes.
5. Zhou did not appeal his convictions.

April 21, 2016, August 4, 2016 and November 30, 2016

6. Zhou appealed his sentence. His appeal from the sentence was dismissed and the Court, in dismissing his appeal, stated as follows:

The appellant was convicted after a trial of two sexual assaults involving a serious breach of trust. The victims have suffered long standing and prospective negative impacts. This offender was one small step away from a jail cell when he received a conditional sentence. (Emphasis added)

7. At the hearing, Zhou readily acknowledged his criminal convictions and the fact that the offences leading to his convictions were committed during the scope of his duties as a licensed Holistic Practitioner by the City of Toronto.
8. Police Constable Warcop (“Warcop”) testified on behalf of the City. She testified that, in addition to the victims who came forward with complaints about Zhou, there were additional complaints and that at least one victim did not wish to pursue criminal charges.
9. Warcop testified that she interviewed the two victims whose complaints resulted in convictions being registered against Zhou. She testified that both victims were traumatized by the sexual assaults they suffered at the hands of Zhou; that they had contacted her on multiple occasions to discuss the events; that they underwent therapy as a result of the sexual assaults; that the events had resulted in emotional and other health related issues for the victims including weight loss; that the sexual assaults had detrimental effects on their relationships with others and that the events had caused them considerable emotional stress and upset.
10. Mr. Gil Manzano (“Manzano”), Acting Supervisor, Bylaw Enforcement, with MLS, testified on behalf of City. Through Manzano, the City submitted into evidence, without objection, MLS Report Number 5861, dated July 3, 2012 and consisting of fifty-seven (57) pages (**Exhibit 1**). Manzano’s testimony at the hearing served to establish the facts as set out in both **Exhibit 1** and, in particular, the facts set out above at numbers 1 through to 3 inclusive (i.e., the convictions registered against Zhou on two counts of sexual assault on August 12, 2014 for offences which occurred on January 27, 2011 and February 19, 2012).
11. Warcop testified to the specific facts of unwanted sexual touching by Zhou which led to the criminal convictions being registered against him. In particular, through Warcop the City submitted into evidence, without objection, the Supplementary Records of Arrest prepared by Warcop (**Exhibit 2**) and consisting of a total of five (5) pages.
12. The City also submitted into evidence, without objection, pages 58 to 65 of MLS Report 5861 – UPDATE dated October 18, 2106 (**Exhibit 3**). Of particular note, as part of this portion of **Exhibit 3** are pages 61 to 63 inclusive which are an Adult Probation Order of the Ontario Court of Justice dated August 12, 2014 which, among other things, sets out the various conditions imposed on Zhou in the probation order which was made against him as part of his twenty-three month conditional sentence for his convictions on two separate counts of sexual assault contrary to section 271 of the Criminal Code.

April 21, 2016, August 4, 2016 and November 30, 2016

13. The Probation Order, **Exhibit 3**, among other conditions, includes a condition that Zhou is not to provide any form of treatment or advice including, but not limited to Traditional Chinese Medicine, to any female person unless he is a member of the Ontario College of Traditional Chinese Medicine Practitioners and Acupuncturists.
14. Zhou testified that prior to his criminal convictions for two counts of sexual assault, he treated five patients a day.
15. Zhou testified that since the imposition of his conditional sentence in August 2014, he has not provided any Holistic Practitioner services and that he has complied with his probation order.
16. Zhou testified that he is still undergoing counselling as required by the conditions of his probation order.
17. Zhou testified that he is rendering volunteer services as the CCN Centre as part of the requirement in his probation order that he perform fifty hours of community service work.
18. Zhou testified that he only completed high school and that he is currently employed part-time as a garbage collector with a construction contracting company and that it is “possible” that his employment could become full-time.
19. Zhou testified that he has previously worked for a period of seven months as a busboy in a restaurant and that he also worked in the past in retail sales as a salesperson at a store in the Chinatown area of Toronto.
20. Zhou testified that he is the primary breadwinner for his family, but that his wife currently works once a week as part of her ongoing education and training to become a Registered Massage Therapist. He testified that his wife will be undertaking her examinations to become a Registered Massage Therapist in February of 2017 and that it is anticipated that, if she is successful, she will be licensed as a Registered Massage Therapist in May of 2017.
21. Zhou testified that once his wife becomes a Registered Massage Therapist, in time, he expects that with his wife’s income as a Registered Massage Therapist, they could make ends meet.
22. Zhou testified that he is not a member of the Ontario College of Traditional Chinese Medicine Practitioners and Acupuncturists and that in order to become a member of this College he would need to improve his command of the English language (something that would require considerable time and expense) and would also have to pay a registration fee of some one thousand dollars. Zhou testified therefore that the expenditure of money and time required for him to become a member of the Ontario College of Traditional Chinese Medicine Practitioners and Acupuncturists would make it difficult for him to gain this membership.
23. Zhou testified that he wanted the Tribunal to grant him a Holistic Practitioner Licence so that he could earn a living and support his family and that, if granted a

April 21, 2016, August 4, 2016 and November 30, 2016

licence, he would not treat any female patients; that he would disclose the fact of his two criminal convictions for sexual assault to any female patients that requested his services; and that he would ask either his wife or another female practitioner to render services to any female patients. He further testified that he would focus on treating male patients and the management of licensed holistic owner establishment.

24. Zhou testified that he would disclose his criminal convictions to a prospective employer.

25. Zhou expressed regret for the things that he had done which were inappropriate.

ISSUES

The issue before the Tribunal is whether, pursuant to Chapter 545-4 of the Toronto Municipal Code, there are reasonable grounds to believe that Zhou has not carried on his trade or occupation in accordance with law and with integrity and honesty, or that there are reasonable grounds for belief that the carrying of his trade or occupation will result in a breach of Chapter 545-4 of the Toronto Municipal Code or that the conduct of Zhou afford reasonable grounds for the belief that the carrying on of the business by Zhou has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, the health and safety of other members of the public

LAW

The relevant provisions of the Toronto Municipal Code, as set out in Chapter 545-4 in respect of licences, applications and renewals, provide as follows:

§ 545-4. Licences, applications and renewals.

C. 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; or
 - (b) There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
 - (e) The conduct of the applicant or other circumstances afford reasonable grounds for belief that the carrying on of the business by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, the health or safety of other members of the public.

The law is also clear that the standard of proof required for “reasonable grounds for belief” is far lower than that required for proof “beyond a reasonable doubt” in the

criminal context and indeed, also lower than the standard of proof in civil matters of proof on a “balance of probabilities”.

ANALYSIS

The evidence of the two Criminal Code of Canada convictions against Zhou for sexual assault are not in question. Further, all the facts giving rise to the offences and the subsequent convictions as set out in the evidence entered into the record at the hearing as **Exhibit 2** (Supplementary Records of Arrest) were entirely unchallenged and left no doubt that the conduct of Zhou amounted to a very serious breach of trust. The evidence of the City therefore established, to the Tribunal’s satisfaction, that the conduct of Zhou affords reasonable grounds to believe that he has not carried on the business of operating as a City of Toronto Licensed Holistic Practitioner in accordance with law and with integrity and honesty, and further, that there are reasonable grounds to believe that the carrying on of the Holistic Practitioner business by Zhou has infringed or would infringe the rights of members of the public or has endangered or would endanger the health or safety of other members of the public.

In this regard, the Tribunal noted the evidence of Police Constable Warcop that in addition to the victims who came forward with complaints that resulted in convictions being registered against Zhou, there were additional complaints made about Zhou’s conduct as a Holistic Practitioner. The Tribunal was also mindful of the evidence of Warcop of the impact of the sexual assaults on the victims which, as the decision on the appeal from the sentence noted, suffered long standing and prospective negative impacts.

The Tribunal also considered the need of Zhou to earn a livelihood and its mandate as set out in the Chapter 545-3 of the Toronto Municipal Code to “[H]ave regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood”¹. The Tribunal noted that although Zhou’s prospects for employment outside the field of Holistic Practitioner service provision appear to be somewhat limited, the fact is that he is currently employed in a part-time capacity with a contracting company and testified that there is a possibility of his employment becoming full-time. Furthermore, the Tribunal noted that Zhou has previous employment experience as a busboy in a restaurant and also as a salesperson in retail sales.

¹ § 545-3 of the Toronto Municipal Code provides in part as follows:

B. Mandate of the Toronto Licensing Tribunal.

(3) Chapter 545 of the Municipal Code sets out City Council's objectives with respect to licensing matters, and the Toronto Licensing Tribunal, through its independent adjudicative powers, shall:

- (a) Uphold the spirit and intent of the Municipal Code;
- (b) Determine the extent to which an applicant's or licensee's individual circumstances and qualifications meet the requirements of the Municipal Code;
- (c) Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood;**
- (d) Ensure the hearing process is accessible and transparent and that hearings are conducted in a timely manner with due process;..... (Emphasis added)

April 21, 2016, August 4, 2016 and November 30, 2016

The Tribunal observed that Zhou has embarked on the road to recovery and rehabilitation as a sexual offender and, in this regard, that he has successfully completed a Sexual Offending Relapse Prevention Program, that he is, as required by the conditions of his probation order, undergoing counselling and performing community service. At the same time, however, the Tribunal noted that it has been only a little more than two years since Zhou was convicted of two counts of sexual assault and that, as was observed on the appeal from the sentence, Zhou's convictions followed a trial of two distinct sexual assaults involving serious breaches of trust and occurring slightly more than a year apart. The Tribunal therefore took into account the evidence of a pattern of grave offences involving as they did a very serious infringement of trust and the placing of the health and safety of members of the public at great danger.

While Zhou expressed regret for his inappropriate actions, the Tribunal agreed with the position of counsel for the City that Zhou had not shown sufficient remorse for his serious criminal convictions.

DECISION

On the basis of the facts and the law as set out in these reasons and taking into account the mandate of the Tribunal to protect the public interest, the Tribunal unanimously decided to revoke Zhou's Holistic Practitioner Licence. The Tribunal therefore ordered that City of Toronto Holistic Practitioner Licence No. T30-3619045 be revoked forthwith.

In rendering its decision, the Tribunal remarked that should, in the future, Zhou decide to make application for a Holistic Practitioner Licence, he would be well advised to come forward with evidence that he has successfully complied with all the conditions of his probation order dated August 12, 2014, that he has conducted himself with integrity and in accordance with the law, that he is genuinely remorseful for his previous conduct which resulted in convictions for sexual assault and that he fully understands the gravity of the offences which resulted in convictions. The Tribunal indicated that the passage of time would ensure to the benefit of Zhou and, in particular, that it would give him the opportunity, through his deeds and conduct, to demonstrate to the Tribunal and MLS that the grounds for denial of a licence as set out above are no longer relevant.

Originally Signed

Aly N. Alibhai, Chair
Panel Member, Cezary Paluch concurring

[Reference: Minute No. 197/16]

Date Signed: December 8, 2016