

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: November 19, 2015

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

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

Counsel for Municipal Licensing and Standards: David Gourlay

Counsel for Anna Stepanova: Noel D. Gerry

INTRODUCTION:

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 Licences should be issued, suspended or have conditions imposed on them.

Prior to the commencement of the hearing, counsel for Stepanova raised a preliminary matter with respect to the jurisdiction of the Tribunal to hear the matter. In particular, counsel for Stepanova took the position that the Tribunal lacked jurisdiction to hear the matter on the basis that Municipal Licensing and Standards (MLS) has not met the statutory preconditions in respect of notice for refusing to renew the licenses under § 545-4(2)(a) of the *City of Toronto Municipal Code* (the "Code").

During the hearing, counsel and the Tribunal referred to the matter as a "motion." Upon subsequent reflection and consideration, however, the Tribunal reached the view that this in fact was not a motion; no witnesses were called and no motion record was filed. The Tribunal is of the view therefore that this was simply a preliminary issue raised by counsel for Stepanova.

For the reasons which follow, the Tribunal did not agree with the position of counsel for Stepanova, and held that it has the jurisdiction to hear this matter.

ISSUE:

Does the Tribunal have the jurisdiction to hear this matter?

ANALYSIS:

There are two ways that a matter can come before the Tribunal; either by way of §545-4 B (1) and (2) of the *Code* or by way of §545-6 B of the *Code*¹. § 545-4 of the *Code*, sets out a regime where applicants for licences may request a hearing before the Tribunal. § 545-6 of the *Code*, sets out a regime pursuant to which MLS may refer matters to the Tribunal. Counsel for Stepanova argued that there is a conflict between these two provisions of the *Code* because §. 545-4 employs the word "shall" whereas §. 545-6 uses the word "may". Counsel for Stepanova submitted therefore that because the notice provisions in §.545-4 are mandatory, the Tribunal did not have jurisdiction to hear the matter as the statutory preconditions pursuant to §. 545-4 had not been met in this case.

¹ The relevant provisions of the Code are as follows:

§ 545-4. Licences, applications and renewals. B. Issuance or denial of licence; hearing.

(1) The Municipal Licensing and Standards Division shall, upon receipt of an application for a licence, or the renewal thereof, make or cause to be made such investigations as may be necessary with respect to such application and shall:

(a) If the investigation or any other information available to the Municipal Licensing and Standards Division discloses reasonable grounds to believe that the applicant may not be entitled to the issuance or renewal of a licence on the grounds referred to in Subsections C and C.1, or by reason of any other provision of this chapter, forthwith cause notice of this fact to be sent by prepaid mail to the applicant at the address as shown on the application form; or [Amended 2004-01-29 by By-law No. 117-2004 46]

(b) Subject to the provisions of this chapter, direct that the licence be issued or renewed.

(2) A notice sent pursuant to Subsection B(1)(a) shall include:

(a) A statement that the applicant may request a hearing of the application by the Toronto Licensing Tribunal by delivering a written request for a hearing to the Municipal Licensing and Standards Division within 30 days of the date of the notice sent pursuant to Subsection B(1)(a); and

(b) A statement that if no request for a hearing is delivered by the applicant in accordance with Subsection B (2) (a) of this section, the application will not be granted.

(3) Where the Municipal Licensing and Standards Division receives a request for a hearing from an applicant for a licence in accordance with Subsection B (2) (a), the application for a licence shall be referred forthwith to the Toronto Licensing Tribunal for a hearing.

(4) Subject to § 545-4G(4), if the applicant has applied for renewal of the licence and has remitted the prescribed fee, the licence shall be deemed to continue: [Amended 2005-06-16 by By-law No. 513-2005]

(a) Until the renewal is granted; or

(b) If the licensee is served with a notice under Subsection B(1)(a), until the time for requesting a hearing has expired or, where a hearing has been requested, until the Toronto Licensing Tribunal has made a disposition of such application.

§ 545-6. Toronto Licensing Tribunal hearings.

B. The Municipal Licensing and Standards Division may refer to the Toronto Licensing Tribunal for a hearing any matter in respect of which a licence may be refused, suspended, revoked or have conditions imposed on it pursuant to this chapter, which shall include the failure by a licensee, or where the licensee is a corporation or partnership, any officer, director, employee or agent of the corporation or partner in the partnership, to comply with the business licensing thresholds as set out in Appendix K to this chapter.⁶⁷ [Amended 2004-01-29 by By-law No. 117-200468; 2004-06-24 by By-law No. 483-200469]

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In the opinion of the Tribunal, however, there is no conflict between these two provisions of the *Code* pertaining to the manner in which matters may come before the Tribunal.

On the basis of the information which was before the Tribunal on this preliminary matter, the Tribunal made the following findings.

MLS sent a Licence Renewal Notice to Stepanova in respect of licence number B30-3958011 for a Holistic Centre Licence (**Exhibit 3**) which indicated, among other things, the amount that Stepanova had to pay for the licence renewal by September 29, 2015.

That Stepanova paid the licence renewal fee on September 29, 2015 was not in dispute.

Although it is not clear to the Tribunal how or when Stepanova received two (2) letters from MLS dated September 29, 2015 (**Exhibit 1**), it is clear that MLS generated and sent them, and that Stepanova did in fact receive these letters, both of which specifically make reference to Chapter 545, Article I, §. 545-4B (4) of the *Code* and indicated that the licence is deemed to continue. As such, **Exhibit 1** appears to suggest that the process contemplated was that this matter was brought before the Tribunal for a hearing upon the request of Stepanova. However, it is not disputed that Stepanova did not have notice of her right to make such a request for a hearing and, in fact, she did not make such a request.

One day later, on September 30, 2015, MLS generated Report number 6471 (the "Report") which suggests that MLS referred this matter to the Tribunal for a hearing pursuant to the process set out under §. 545-6B of the *Code*. The Report begins with the statement, "Anna Stepanova has been requested to appear before the Toronto Licensing Tribunal..." (rather than wording to the effect that "Ms. Stepanova requested a hearing."). Further, on October 2, 2015, MLS issued a letter to Stepanova (**Exhibit 2**) which refers to Chapter 545 and the specific sections of Chapter 545 (545-4, C (1) (a) (b) and (e)) upon which MLS based its position that there were reasonable grounds to believe that Stepanova had breached both the *City of Toronto Act* and the *Code*. The letter of October 2, 2015 was therefore the basis of a §. 545-6B hearing because §.545-6B refers to "a hearing of any matter in respect of which a licence may be suspended or revoked..... pursuant to this chapter". Put differently, §.545-6B is sufficiently broad and anything within the Chapter, including §. 545-4, C (1) (a) (b) and (e), are captured by the wording that is set out in §. 545-6 B of the *Code*.

As previously noted, the Tribunal is of the opinion that there is no conflict or inconsistency between the two distinct ways by which a matter can be brought before it as set out in §545-4 and §545-6 of the *Code*.

The Tribunal notes the somewhat unusual fact pattern in this case where the renewal of the licence applications appears to have coincided with the conclusion of the investigation undertaken by MLS into Stepanova's conduct as a Holistic Centre Owner and Holistic Practitioner Licence holder, and the issuance by MLS of their Report and their letter dated October 2, 2015 (**Exhibit 2**) which clearly indicates that Stepanova's licences would be the subject of a hearing before the Tribunal.

Having carefully considered the information which was before the Tribunal on this preliminary matter, including the aforementioned unusual fact pattern in this case, the

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Tribunal is satisfied that this matter was before the Tribunal by way of the process pursuant to §. 545-6 B of the *Code*.

Accordingly, the statutory preconditions in respect of notice for refusing to renew licenses under §. 545-4 B of the *Code* are not pertinent in this case and, in any event, it is not disputed that Stepanova received the letter dated October 2, 2015 advising her that her licences would be the subject of a hearing before the Tribunal. Therefore, the Tribunal has jurisdiction to hear this matter.

CONCLUSION:

For the foregoing reasons, the Tribunal disagrees with the position of counsel for Stepanova that the Tribunal does not have jurisdiction. On consent, both parties agreed to adjourn the hearing of this matter to December 10, 2015. In view of the fact, however, that these Reasons for Decision were not issued by December 10, 2015, the parties received notice that the matter would be adjourned to a mutually agreeable date in 2016.

Aly N. Alibhai, Chair
Panel Members, Moira Calderwood and Lori Marzinotto concurring
Reference: Minute No. 179
Date Signed: January 6, 2016