

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: April 6, 2017

Panel: Daphne Simon, Chair: Aly N. Alibhai and (Hedy) Anna Walsh, Members

Re: 2504845 Ontario Inc. O/a Nature's Touch Dispensary
Daniel Daher Montlouis, President
Applicant for Retail Store (Food) Licence (Application No. B648884)

Counsel for Municipal Licensing and Standards: Mr. Mathew Cornett

INTRODUCTION

Mr. Daniel Daher Montlouis, President of 2504845 Ontario Inc. operating as Nature's Touch Dispensary, applied for a Retail Store Food Licence on April 26, 2016, to sell medical marijuana in the form of lollipops and pop through his storefront dispensary. The Municipal Licensing and Standards (MLS) division of the City of Toronto denied his application. Mr. Montlouis requested a hearing before the Toronto Licensing Tribunal. That hearing proceeded on April 6, 2017. Mr. Montlouis chose to represent himself.

ISSUE

Should the Toronto Licensing Tribunal grant a retail store food licence to Daniel Daher Montlouis who intends to sell food products containing marijuana out of his marijuana dispensary storefront?

The answer is no. The Tribunal should not issue a licence for this purpose.

CITY'S EVIDENCE

The City presented their evidence through four (4) witnesses.

The City called Ms. Kuztelska, Supervisor, Licensing Enforcement, with MLS who submitted into evidence Report No. 6653 and an update to Mr. Montlouis' charges which was marked as Exhibit 1 and Exhibit 2, respectively. The Report contained handwritten notes of the three (3) MLS officers who attended at Nature's Touch Dispensary; Integrated Court Offences Network (ICON) printouts of the charges against Mr. Montlouis; a copy of the application for a Retail Food Store Licence, dated April 26, 2016; a copy of the letter dated July 13, 2016 denying the Retail Food Store Licence; and a chart and information regarding the charges against Mr. Montlouis. The City presented the evidence of three (3) MLS officers. The MLS officers used their notes while testifying to refresh their memories, with no objection from Mr. Montlouis.

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The summary of their collective evidence is as follows:

MLS officers attended Mr. Montlouis' dispensary on May 16, May 26 and August 2 2016. Their testimony confirmed that Mr. Montlouis was selling medical marijuana in various forms, including edibles, through a storefront dispensary.

MLS officers confirmed that Mr. Montlouis was charged with operating his storefront dispensary in contravention of the zoning by-laws under the *Planning Act*, the provisions of the *Toronto Municipal Code* and provisions of the *Criminal Code of Canada*.

MLS officers confirmed that the Toronto Police Service raided Mr. Montlouis' dispensary on May 26, 2016.

None of the officers who testified indicated that they instructed Mr. Montlouis that he should apply for a Retail Food Store Licence in order to remain in operation.

APPLICANT'S EVIDENCE

All witnesses who gave evidence at the hearing were sworn or affirmed.

Testimony of Mr. Daniel Montlouis

Mr. Montlouis opened his medical marijuana dispensary on April 1, 2016. He stated that he wanted to sell medical marijuana to patients who are suffering from pain so that they had another alternative to opioids. He described himself as a 'health nut', who doesn't drink or do drugs. He said that he has researched the uses of medical cannabis and wants to help others. Shortly after he opened his dispensary, there was a fire in the building in which his storefront operated. This is when his legal troubles began.

When two City of Toronto inspectors appeared at his dispensary after the fire, he asked them if he was allowed to operate his dispensary. He said that they advised him to obtain a retail food store licence from the MLS offices at 850 Coxwell Avenue for the edibles. He didn't know which of the two inspectors told him to apply for a licence, but he obtained both of their business cards (a copy of which was entered as Exhibit 5). It is on this basis that he applied for a retail food store licence and now asserts that one should be granted.

He had previously worked as a manager at a friend's dispensary on 56 Church Street for 1-2 years. He testified that he never had any legal problems when working at his friend's dispensary. He recalls the police coming to his friend's dispensary on Church Street but stated that there were no charges laid when he worked there. He understood that the current state of the law was still in a grey area regarding the sale of medical marijuana through a storefront dispensary and that the City is cracking down on storefront dispensaries.

Since opening his dispensary, Mr. Montlouis faces several charges under the *Criminal Code of Canada*, the *Toronto Municipal Code* and the *Planning Act* with court dates pending for all matters. His dispensary was raided by the police on May 26, 2016 as a

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part of a city-wide crackdown on storefront marijuana dispensaries called 'Project Claudia'. He no longer operates Nature's Touch Dispensary.

When asked why, then, he is before the Tribunal seeking a retail food store licence, his answer was that he wants to be ready for July 2018 when the federal government will be legalizing marijuana. He also stated that he wants to understand why he was instructed by the City to apply for a retail food store licence.

SUBMISSIONS

Mr. Montlouis

Mr. Montlouis acknowledged that the purpose for which he is seeking a licence is in contravention of the current law. His submission was that he wants to be ready for July 2018 when the federal government legalizes recreational marijuana.

In short, he is seeking a retail food store licence for the future, when he hopes to re-open his storefront medical marijuana dispensary. In the meantime, he is working 3 to 4 days a week as an actor.

Mr. Cornett for the City

Mr. Cornett submitted that the Tribunal should not grant a licence to Mr. Montlouis for an activity in which he wishes to engage which is clearly illegal. Even if and when the federal government legalizes marijuana, there is simply no way of knowing what the regulatory framework will be at that time.

In any event, the current state of the law in 2017 is that it remains illegal to sell medical marijuana through storefront distribution.

DECISION

The Tribunal agreed with the City's submissions.

It relies on the *Toronto Municipal Code*, § 545-4.C (1) (a):

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 the belief that the applicant has not carried on, or will carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty;

Mr. Montlouis readily acknowledged that the only purpose for which he wishes to obtain a retail store food licence is to sell medical cannabis in edible form. Mr. Montlouis described the legality of his activities as a 'grey area'. This is due, in part, to the fact that he said he never encountered any legal issues when he ran his friend's dispensary several years ago.

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The Tribunal did not accept Mr. Montlouis' position that there is a 'grey area' in the law as far as the sale of marijuana for medical purposes is concerned. Given the fact that Mr. Montlouis has closed his storefront dispensary, it is highly questionable what use a retail food store licence will be to him at this time.

The Tribunal's decision to deny the licence is based on the fact that while the federal government has pledged to introduce legislation legalizing and regulating marijuana's recreational use in 2018, at present it is clearly illegal to sell marijuana through storefront distribution.

A retail store food licence cannot be used for a purpose that is in clear violation of the law.

Therefore, the application for a licence is denied.

Originally Signed

Daphne Simon, Panel Chair
Panel Members, Aly N. Alibhai and (Hedy) Anna Walsh concurring

[Reference: Minute No.110/17]

Date Signed: June 8, 2017