

## REASONS FOR MOTION DECISION OF THE TORONTO LICENSING TRIBUNAL

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**Date of Hearing:** August 27, 2018 - Telephone Conference

**Panel:** Gary Yee, Hearing Panel Chair; Anu Bakshi, Member

**Re:** 2405490 Ontario Ltd., o/a Minx Spa (Report No. 7028)  
Elliott Maurice Stone, President  
Holder of Body Rub Parlour Owner/Operator's Licence No. B38-4418734

Counsel for Municipal Licensing and Standards: Ms. Brennagh Smith  
Counsel for Applicant: Mr. James Renihan

### INTRODUCTION

- [1] The Tribunal conducted a motion hearing by telephone conference call on August 27, 2018, to hear the Applicant's motion to adjourn the September 13, 2018 hearing date. The Tribunal notified the parties on August 28, 2018 that the motion was granted (see below), and these are the written reasons for this Order.
- [2] The Applicant, 2405490 Ontario Inc. (the "Vendor"), is the Holder of a Body Rub Parlour Owner/Operator Licence, operating as Minx Spa. The Vendor is selling this business to the Purchaser, 2623304 Ontario Inc. (the "Purchaser"). There is an Agreement of Sale and Purchase dated April 17, 2018.
- [3] There are two related MLS Reports that are before the Tribunal. The first is MLS Report 7028, dated May 3, 2018, which concerns the Vendor's licence. The second is MLS Report 7034, which concerns the sale of Minx Spa – that is, the possible cancellation of the Vendor's licence and the possible issuance of a new licence to the Purchaser.
- [4] The Vendor was before the Tribunal on October 27, 2016, when its licence was renewed under a proposed resolution on consent. This involved a suspension for 45 days, with conditions that followed during a three-year probation period. Since that time, there have been a few by-law convictions and many new charges. There are currently 59 pending charges. The charges involve matters such as unlicensed attendants, cameras on the premises, improper advertising, and opening after hours.
- [5] After the MLS Reports came to the Tribunal on May 16, 2018, the Tribunal Office unsuccessfully attempted to find mutually available hearing dates. The parties were then asked to attend at a regularly scheduled Tribunal hearing date on July 12, 2018. After hearing from both MLS counsel and Mr. Noel Gerry, counsel at that time for both the Vendor and Purchaser Applicants, the Tribunal hearing panel ordered that the hearing of at least the Vendor's matter be scheduled for September 12 and 13, 2018, with September 12 being contingent on the availability of Tribunal members for the hearing panel.

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- [6] On July 26, 2018, the Tribunal Office informed the counsel that September 12, 2018 had to be cancelled due to lack of Tribunal member availability, but September 13, 2018 would proceed.
- [7] The Vendor Applicant retained new counsel, Mr. Renihan of Lax O'Sullivan Lisus Gottlieb LLP on July 31, 2018. Mr. Renihan wrote to MLS counsel, David Gourlay, on August 2, 2018 to seek an adjournment of the September 13, 2018 hearing.
- [8] This motion for adjournment has been strenuously opposed by MLS and its counsel.
- [9] The Tribunal is concerned that the Applicant chose to switch counsel and retain a new law firm where one of the intended lawyers would not be available on the previously scheduled September 13, 2018 hearing date, and also where the law firm is indicating that they do not have enough time to prepare. Ms Smith cited the case of *Aseervatham v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15639 (FC), where the Federal Court dismissed a judicial review of the Immigration and Refugee Board's refusal to adjourn a refugee hearing when the claimant's chosen counsel was not available on that date.
- [10] The Tribunal agrees that the right to counsel of one's choosing does not mean that you can retain counsel who is not available on a previously scheduled hearing date and then expect that the hearing will be adjourned. This was a relevant factor against the Applicant, but that there were other factors favouring an adjournment.
- [11] Overall, the Tribunal finds that there are enough reasons to support an adjournment in this case. First, the length of delay is short, because November 7 and 8, 2018 are available for both counsel and the Tribunal, and the one hearing date of September 13, 2018 would likely not be enough to finish this hearing. As such, even if this hearing were to go ahead on September 13, 2018, it is likely that it would not be finished until October or even later, and this would mean splitting the hearing into two dates that may be far apart.
- [12] Another factor supporting the Applicant is that there does not appear to be any significant real prejudice caused by this adjournment to MLS. The hearing would not finish much later than it otherwise would if its first hearing date were on September 13, 2018. While there may be the risk of further by-law offences and charges, the time period for this risk is relatively short, and there is no evidence about a risk to public health or safety.
- [13] The Tribunal acknowledges MLS's concern about the many by-law violations and charges, and the possible impact of a delay on the integrity of the licensing system and the public confidence in this system. However, when considered in the context of the risks involved and the short delay, the Tribunal finds that an adjournment is justified in this case.
- [14] In addition to these factors, the Tribunal notes that the adjournment may open up some possibilities to further coordinate this case of MLS Report No. 7034, which concerns whether the licence should be transferred to the Purchaser Applicant. The Owner and

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Director of that Purchaser Corporation is out of the province for work until November. The Purchaser Applicant in MLS Report No. 7034 clearly has an interest in this case of MLS Report No. 7028. This case may result in a revocation of the Minx Spa licence, and therefore no licence would exist to be transferred from the Vendor to the Purchaser. This means that the Purchaser would have to apply for a new licence, which may be more onerous. The proper case management of both of these cases may require further consideration by the parties and the Tribunal, and possible procedural orders regarding both cases.

## **DECISION**

[15] The Tribunal ordered the following in a written communication to the parties on August 28, 2018:

1. The Tribunal grants the adjournment motion, and sets the hearing dates for this case to commence on Wednesday, November 7 and Thursday, November 8, 2018.
2. The Tribunal directs that if the Applicant chooses to change counsel again, the Applicant shall ensure that any new counsel is available to proceed on any previously scheduled hearing dates.
3. The Tribunal further directs (Mr. Noel Gerry) counsel for the Purchaser (2623304 Ontario Inc.) as per MLS Report No. 7034, be provided notice of this adjournment decision. The Tribunal will consider further scheduling arrangements for these two related cases.
4. Further written reasons and procedural orders may follow, with proper notice to the parties as needed.

Originally Signed

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Gary Yee, Hearing Panel Chair

Originally Signed

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Anu Bakshi, Panel Member, concurring

Reference: Minute No. 120/18

**Date Signed: September 11, 2018**