

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: March 20 and 21, 2019

Panel: Anu Bakshi, Hearing Panel Chair; Gary Yee, Victoria Romero, Panel Members

Re: 2557376 Ontario Inc. (Report No. 7068) o/a Pink Flower Spa
Thi Ngoc Thao Dang, President, Holder of Holistic Centre Owner Licence No. B30-4714223
And Thi Ngoc Thao Dang
Applicant for Renewal of Holistic Practitioner's Licence No. T30-4426740

Counsel for Municipal Licensing and Standards: Matthew Cornett

Counsel for Applicant: Noel Gerry

Vietnamese Interpreter: Christine Quach

INTRODUCTION

- [1] Ms. Dang is the Holder of Holistic Centre Owner Licence No B30-4714223, operating as Pink Flower Spa ("Pink Flower"). She is the owner, sole officer and president of Pink Flower since April 13, 2017. She is also the holder of Holistic Practitioner's Licence No. T30-4426740 ("Holistic Licence") since August 22, 2014
- [2] On July 18, 2018, Municipal Licensing and Standards ("MLS") sent a letter to Ms. Dang stating that both Pink Flower's licence and her Holistic Owner Licence was going to be the subject of a review by this Tribunal. On July 30, 2018, MLS sent a letter to Ms. Dang, outlining the grounds for denial of the licences. On August 7, 2018, Ms. Dang submitted a Request for Hearing.
- [3] The matter proceeded to a hearing on March 20 and 21, 2019. The Tribunal reserved its decision. These are the written reasons for the decision.
- [4] MLS Report 7068 was before the Tribunal. There were six by-law charges against Pink Flower included in this Report. There was also one conviction of failing to dress professionally against Ms. Dang dated January 30, 2018 (the "Conviction"). These charges and the Conviction were not the reason this matter was before the Tribunal.
- [5] In early 2018, the Toronto Police Service, in cooperation with Toronto Police Community Response Unit and MLS bylaw officers, set up a Project Holistic Approach (the "Project") to investigate human trafficking. As part of the Project, the Toronto Police investigated Pink Flower, which included conducting surveillance, interviewing customers and workers, searching the Internet for advertising and attending Pink Flower on April 5, 2018. There was insufficient evidence that human trafficking took place at Pink Flower, and no criminal charges of any kind were laid.

- [6] As a result of the Project, allegations arose that sexual services were offered and provided at Pink Flower in breach of the City of Toronto Municipal Code (the "Code"), Chapter 545.

ISSUES AND FINDING

- [7] The issue before the Tribunal is whether or not there are reasonable grounds to believe that Ms. Dang and Pink Flower have not carried on or will not carry on business in accordance with the law and with integrity and honesty, under section 545-4(C) of the Code. If so, what is the appropriate penalty?
- [8] In considering the totality of the evidence, the Tribunal finds that sexual services were regularly provided at Pink Flower. There should be a serious penalty to Ms. Dang as owner/operator as well as Pink Flower to ensure public confidence in the regulatory system, and also specific and general deterrence. At the same time, the penalty must be proportional and fair.

MLS'S EVIDENCE

- [9] MLS's evidence consisted of over 250 pages in MLS Report 7068 (Exhibit 1), testimony from seven witnesses and a condensed video interview of an unnamed male taken on April 3, 2018 (Exhibit 2). In addition to the Supervisor, Olga Kuztelska, who introduced the MLS Report, there were three Toronto Police Officers and four Municipal Standards Officers (MSOs), who testified about the surveillance, site inspections, interviews and the by-law charges laid. MSO Jaramillo's testimony was limited to his interaction with Ms. Dang at Blue Flower Spa on October 20, 2017 that resulted in a Conviction. MSO Gobio's testimony was limited to by-law charges arising from his attendance at Pink Flower on February 2, 2018. MLS counsel affirmed in its closing that it was not relying on the outstanding by-law charges against Pink Flower in pursuing this case. This means that MLS's case before this Tribunal depended only on the allegations of sexual services at Pink Flower Spa, and not the other outstanding by-law charges that dealt with more minor violations such as records.
- [10] The three Toronto Police Officers, PC Cheng, DC Bortoluss and DC Beatty, testified that the Project was set up in early 2018 to investigate whether the Pink Flower's workers were possible victims of human trafficking. The Project was in cooperation with the Toronto Police Service, Toronto Police Community Response Unit and MLS. As part of the Project, a team from Toronto Police investigated Pink Flower, which included conducting surveillance on March 27 and 28, 2018, interviewing customers and workers, searching the Internet for advertising and attending Pink Flower on April 5, 2018. The intention of the Project was to determine if human trafficking was occurring, and if so, to provide social services help to the workers. Because the focus was on human trafficking, the worker and customer interviews were for information gathering purposes, not to prosecute the workers and customers for any Criminal Code offences.
- [11] All three Toronto Police Officers indicated that they had an independent recollection of the events, and used their notes to refresh their memory on consent. There were a few minor inconsistencies in the oral evidence of the Toronto Police Officers, but nothing that affected their credibility in any substantial manner.

Interviews of Male Customers:

- [12] DC Bortoluss testified about her interviews with customers leaving Pink Flower. The customers were all male. The customers were not under arrest. The interviews were done for information gathering purposes. The customers were released unconditionally.
- [13] On March 27, 2018, during surveillance, a male left Pink Flower at 6:13 p.m. in his car (Male 1). DC Bortoluss followed Male 1 with DC Duggan in order to speak to him. When they pulled him over, PC Duggan spoke to him while DC Bortoluss took point form notes. DC Bortoluss testified that Male 1 told her as follows:
- [14] When Male 1 attended Pink Flower, a receptionist led him to a room. He took off all his clothes except his underwear, and a female named S massaged him. She offered sexual services. He paid \$140 for intercourse. Male 1 understood \$40 was the room fee and \$100 was for the sexual service.
- [15] Male 1 was released unconditionally. On April 2, 2018, Male 1 attended 42 Division to provide a video statement. DC Bortoluss and PC Duggan conducted an extensive interview. Due to an error, DC Bortoluss realized that the statement was not being recorded. Male 1 agreed to do a quick narrative statement on video ("Video") that basically summarized the previous interview (Exhibit 2). In the Video, one of the Officers reads over the summary of Male 1's statement just given and asks Male 1 to jump in or correct at any time. Male 1 looks relaxed in the Video. He nods his head and clarifies information. In the Video, Male 1 agrees that he first attended Pink Flower in January. A female worker offered and provided him sexual services including a "blow job" and intercourse with a condom for \$140. He again visited Pink Flower in February. He paid \$140 for and received the same sexual services with the same worker. On the third visit, he engaged in sexual intercourse with a different worker. He paid \$140. Male 1 confirmed in the Video that in all three occasions the receptionist is the same and the interaction was basically the same. The receptionist led him to a private room. The worker massaged him and he was naked. Then once the worker turned him over, the worker was naked and both oral sex and intercourse took place. The worker provided the condom.
- [16] On March 27, 2018, during surveillance, another male left Pink Flower at 7:53 p.m. in his vehicle (Male 2). DC Bortoluss followed Male 2 in order to speak to him. Officer Bortoluss testified that Male 2 told her as follows:
- [17] He had been to Pink Flower before. He received a massage. The worker offered sexual services, but he declined. He was charged \$40 for half an hour massage. He had never seen any male workers at the spa.
- [18] On March 28, 2018, during surveillance, a male left Pink Flower in his vehicle (Male 3). DC Bortoluss followed Male 3 in order to speak to him. Officer Bortoluss testified that Male 3 told her as follows:
- [19] It was his first time going to this spa. He was offered intercourse for \$140, but he negotiated with the receptionist and agreed on the price of \$125. He paid by credit card. The receptionist led him to a room. The worker came in her underwear. She was eventually naked. He had sexual intercourse with the worker.

- [20] In cross-examination, DC Bortoluss testified that her notes were not considered an official statement. The notes were in point form. She did not write down verbatim what was said in a question and answer format. DC Bortoluss acknowledged that the customers were told that there was no intention to prosecute them under the Criminal Code for any offences. They were told that they did not have to cooperate. All the customers interviewed lived in the Greater Toronto Area, and they could have been summoned to testify in front of this Tribunal. She acknowledged that the Video and her testimony are hearsay.
- [21] On April 5, 2018, Toronto Police Officers and MSOs attended Pink Flower. PC Cheng testified that when he entered Room 1, he observed a male pulling up his pants. This man then put his underwear in his pocket (Male 4). PC Cheng saw an unrolled condom on the floor. PC Cheng detained Male 4 and cautioned him. PC Cheng testified that Male 4 told him as follows:
- [22] Male 4 was at Pink Flower for a massage. The worker offered him a “hand job.” The worker put her hand on his penis. He thought sexual services were standard at spas.
- [23] In cross-examination, PC Cheng testified that he explained to Male 4 that this was an investigation into human trafficking. Male 4 was very forthcoming in providing information. Male 4 was released unconditionally.

Interview of Workers

- [24] Toronto Police Officers and MSOs attended Pink Flower in April 5, 2018. PC Cheng attended in plain clothes. A receptionist led him to a room. The other officers followed behind him. The officers split up to approach individual treatment rooms. PC Cheng, DC Bortoluss and PC Beatty testified about their observations and interviews during that visit.

Worker 1 Interview

- [25] DC Bortoluss testified that she knocked on Room 2 because it was locked. When a female opened the door, PC Bortoluss observed a male without clothes and a female in the process of getting dressed and wearing no underwear. DC Bortoluss spoke to a female (Worker 1), and told her she was not in any trouble. She wanted to talk to her about what was going on at Pink Flower. PC Bortoluss testified that Worker 1 told her as follows:
- [26] Worker 1 found the ad to work at Pink Flower in a Vietnamese newspaper. She had an interview with the owner and providing sexual services was a requirement to get the job. She provided sexual services at the spa because she needed the money. No one was forcing her to work. The fee was \$40 for the room and \$100 was for the sex (tip). The tip was shared 50-50 with the receptionist, who in turn, gave the money to the boss.
- [27] DC Bortoluss testified that another officer later told her that Worker 1 was changing her story about the tip. Worker 1 was then stating that she kept all the tips for herself. Worker 1 did not want to come to the station to complete a video statement.

[28] On cross-examination, DC Bortoluss testified the Project ended in May. The information that the workers told them during the Project (interview/investigation) did not add up. The workers would not cooperate with the investigation. She felt that the workers were afraid. It was difficult at times to know what was true. DC Bortoluss testified that Worker 1 could have been served with a subpoena to testify in front of the Tribunal.

Receptionist Interview

[29] DC Bortoluss testified that she spoke to the receptionist. The receptionist appeared to be very scared and intimidated. DC Bortoluss tried to reassure the receptionist that she was not in any trouble and they were conducting an investigation. DC Bortoluss testified that the receptionist told her as follows:

[30] She was related to Ms. Dang. Ms. Dang told her that if the police ever came, she should tell the police that she was there to clean. The receptionist came to Pink Flower after school. She worked in reception and did not provide any sexual services. She overheard Ms. Dang telling workers that if they do not provide sexual services, they will not get a job at Pink Flower. The receptionist collected \$40 room fee per client. At the end of the night, she takes the money to Ms. Dang. Ms. Dang watched the cameras and monitored Pink Flower from home.

Interview with Ms. Nguyen

[31] On April 5, 2018, PC Cheng testified that he went to Room 3 and found Ms. Nguyen. Ms. Nguyen was wearing a short black lingerie type dress, showing cleavage. He spoke to Ms. Nguyen in a friendly tone. He testified that Ms. Nguyen told him as follows:

She came to Canada on a student visa. She was enrolled in culinary school. She saw the job ad in a Vietnamese newspaper. She interviewed with Ms. Dang for the job. Ms. Dang told her that she would make less money than the other attendants because Ms. Nguyen did not want to provide full sexual services. Ms. Nguyen agreed to only provide massages, "hand jobs" and "blow jobs" for money. The \$40 room fee went to Pink Flower.

[32] In cross-examination, PC Cheng testified he took notes as he was speaking. It would be a surprise to him if Ms. Nguyen felt intimidated.

[33] DC Beatty was also in the room during the interview with Ms. Nguyen. DC Beatty's testimony basically corroborated the testimony of PC Cheng with very few differences. DC Beatty testified that he was not there for Ms. Nguyen's full interview.

[34] In cross-examination, DC Beatty did not recall putting handcuffs on any of the male customers. He testified that DC Duggan came and spoke to Ms. Nguyen as well.

Garbage Bags

[35] DC Beatty and PC Cheng testified to the retrieval of three garbage bags during surveillance on March 28, 2018. Both officers were on surveillance in separate locations in the parking lot. They testified that they saw the Pink Flower's receptionist holding these garbage bags.

- [36] DC Beatty and PC Cheng both testified that they saw the receptionist walking in the parking lot holding a small white garbage bag. While they did not see the receptionist leaving the spa, and they also lost sight of her when she walked on McNicoll Avenue, they observed her returning from McNicoll Avenue without the white bag and walking into the spa.
- [37] DC Beatty testified that DC Duggan retrieved a white bag from a garbage can near the bus shelter on McNicoll Avenue, about 45 minutes after they observed the receptionist holding a similar bag. In cross-examination, DC Beatty admitted that no one saw the receptionist place the small white bag in any garbage. No one was in view of the garbage bin during that time. When retrieved, it was the only bag in that garbage.
- [38] DC Beatty and PC Cheng then observed the same Pink Flower receptionist leaving the spa, again, holding a white kitchen bag and black garbage bag. DC Beatty watched the receptionist walk across the parking lot and throw the white kitchen bag into the back corner of the dumpster and the black garbage bag over the dumpster, landing on the ground. She then returned to the Pink Flower, turned the sign off and left. DC Beatty retrieved these two garbage bags.
- [39] All three garbage bags were taken to the police station, and the next day DC Cheng took pictures of the content. In the first small white bag, there were used condoms and tissues. In the two other bags, the only item of significance is an empty box of condoms. The photos of the contents of all the bags were at page 188-199 of the Report.

Advertising

- [40] At pages 200-204 of the Report, there were Internet pages with advertising for Pink Flower Spa and Blue Flower Spa. Some of the advertising was explicit and appeared to be advertising sexual services. They appeared to be obtained or printed from the webpages on November 30, 2017 and January 22, 2018 (the "Ads"). PC Bortoluss testified that the Project team used a police program to search and collect Ads from Internet sites such as backpages.com. In cross-examination, she testified that she is not sure who on the team pulled and printed these Ads. She looked at the Ads, but she does not have any notes. She cannot confirm the date she conducted her searches.

Ms. Dang's Conduct

- [41] MSO Jaramillo testified that he attended Blue Flower Spa on October 20, 2017 in a non-uniformed capacity. When he knocked on the door, Ms. Dang opened the door wearing only a towel and black underwear. She offered him a massage and sexual services and they agreed on a price. Ms. Dang was charged for failing to dress professionally, which resulted in the Conviction.

APPLICANT'S EVIDENCE

- [42] Ms. Nguyen was a worker present on April 5, 2018. She testified that she has never offered or provided sexual services at Pink Flower. She testified that she spoke to the officers on April 5, 2018. She lied to the police when they questioned her about providing sexual services and the cost of those services because she was scared and threatened. She did tell the police the truth regarding some facts, namely she had a student visa, attended culinary school and found the job in a paper. She denied that she or her customer were inappropriately dressed on April 5, 2018. She was adamant that it was DC Bortoluss who interviewed her. She testified that the police kicked the door down, threatened to arrest her, and showed her handcuffs. She wrote a letter to complain about the police's behavior about one week after she spoke to police (Exhibit 3). She said that no one made her write the letter. This letter is undated.
- [43] Ms. Dang stated that she is the owner of Pink Flower. Pink Flower is equipped with cameras and she monitors these cameras from home. When the Police attended Pink Flower in April 2018, she testified that she was not there due to medical issues. The receptionist, who is related to her, was present. Now, she is attending and managing Pink Flower every day. She has never allowed sexual services to be offered at Pink Flower. She has corrected any problems at Pink Flower.
- [44] Ms. Dang stated that it was her intention to dispute the Conviction for not dressing professionally, but she hired a paralegal who did not attend Court. She opted to just pay the fine. She has never had any criminal charges.
- [45] When questioned by the Tribunal about the Ads, Ms. Dang testified that the owner of Blue Flower Spa tried to help her and posted the Ads on the backpage website. She used to work at Blue Flower Spa. She allowed him to place the Ads for her for a few months. She never monitored the Ads. The Ads were taken down.
- [46] Counsel played a short video from Pink Flower's security cameras (Exhibit 4) that depicted a female officer kicking a door multiple times, and the door eventually opening. A male officer partially closes and stands by the door, and eventually a female worker steps out of the treatment room. Ms. Dang confirmed in her testimony that this door is Room 1. The video did not show the entire time that the officers attended Pink Flower.

SUBMISSIONS

MLS Submissions

- [47] Three police officers, and three by-law officers. MLS counsel submitted that they were all professionals who were not contradicted for the most part. They had interview notes involving five customers and several staff, as well as one interview video. MLS counsel argued that the hearsay evidence should be given considerable weight because it is highly corroborative, consistent and reliable.

- [48] The evidence from the customers was that every Pink Flower attendant offered full sexual services, and the attendants were either naked or dressed just in bras or panties. The price of \$140 for full sex was repeated separately by several customers.
- [49] MLS counsel submitted that the garbage bags are reliable evidence, with contents that indicated Pink Flower was being used for sexual services.
- [50] MLS counsel also pointed to the Ads that clearly offered services of a sexual nature at Pink Flower Spa and Blue Flower Spa. Ms. Dang's explanation was that she was unaware of these Ads was implausible; she did not once check the content of these ads that she said the owner of Blue Flower Spa placed for her. Furthermore, the content of the Ads is entirely consistent with the MLS's other evidence about sexual services.
- [51] In terms of the Tribunal's duty to balance the protection of the public interest with the Applicant's need to make a livelihood (section 545-3(B)(3)(c)), MLS pointed out that there is no evidence before this Tribunal regarding the Applicants' need to have these licences to make a living.
- [52] MLS requested that both the Pink Flower's licence and the Holistic Licence be revoked. Offering and providing sexual services is in breach of the Code. Revocation is the only appropriate penalty, and there would be no other reasonable option, due to the seriousness of the breach.

Applicants' Submissions

- [53] The Applicants claimed that when one discards the hearsay evidence, there is simply insufficient credible evidence to conclude that sexual services were offered and performed at Pink Flower.
- [54] The Applicants submitted that the only direct evidence that MLS is relying on in making its case is the contents of some of the garbage bags. The first small white garbage bag is the only one that has anything significant – used condoms. Under no standard of proof can it be found that white garbage bag came from Pink Flower because no one saw the worker leave the spa with the bag. No one saw the worker throw the bag into the garbage bin. No one was watching the garbage bin between the time that the receptionist allegedly disposed of the bag and the time the bag was retrieved from the garbage. The other white bag had an empty condom box.
- [55] The Applicants submitted that the Tribunal should put more weight on Ms. Dang and Ms. Nguyen evidence because their testimony was direct and reliable evidence. Ms. Nguyen testified voluntarily. She was threatened by the police officer with being handcuffed, after seeing her customer cuffed. She wrote a complaint against the police one week after the incident and not in response to any charges or this Tribunal hearing.
- [56] The Applicants' counsel noted in the evidence that the treatment room doors have peepholes to look inside, which is not required by law, and this is a good deterrent.
- [57] The Applicants submitted that there are no convictions against Pink Flower and Ms. Dang. There is only the one minor Conviction. If anything, the Applicants argued, Ms. Dang may have lost control of her business when she was not attending regularly due to health reasons. She is now managing Pink Flower daily. There are no further

charges or convictions. The appropriate penalty is not revocation. The Applicants' counsel submitted that the Tribunal should not shut down a business on unreliable hearsay, or on the basis of an empty condom box, ads posted by someone else and one conviction for not dressing professionally. If the Tribunal wishes to send a message in this case, a suspension would be enough, with the possibility of a longer suspension or revocation if there is a next time.

ANALYSIS AND FINDINGS

- [58] Sections 545-185 and 186 of the Code prohibit certain activities from taking place at Holistic Centres. Owners and practitioners must dress appropriately. Private body areas are prohibited from being touched. Holistic services are a tool for therapeutic and wellness purposes, not for sexual purposes.
- [59] The Code requires MLS to show that there are reasonable grounds for belief that Pink Flower and Ms. Dang have not been operating in accordance with the law and with integrity and honesty – see section 4(C) of Chapter 545 of the Code. Reasonable grounds for belief is a lower standard of proof than “balance of probabilities.”
- [60] The Tribunal can admit hearsay evidence pursuant to section 15(1) of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22. The Tribunal must still assess the reliability and determine the appropriate weight to be attached to this evidence in making findings of fact.
- [61] Chapter 545-3 B(3) of the Code requires the Tribunal to uphold the spirit and intent of the Code and balance the protection of the public interest with the need for licensees to make a livelihood. In this case, there is no evidence before this Tribunal of the Applicants' need to make a living.
- [62] The evidence before this Tribunal is largely confined between January to May 2018. There is more than enough evidence in this case to find that sexual services were regularly offered and provided at Pink Flower during this period. The evidence supports this finding on a balance of probability, and therefore, there were certainly reasonable grounds for belief that Pink Flower Spa was not carrying on business in accordance with the law or with integrity and honesty.
- [63] The Video of the interview with one of the customers was compelling evidence. The “KGB waiver” and the testimony of DC Bortoluss is satisfactory evidence that the interview was under oath and voluntary. Male 1 was informed about the consequences of making a false statement. Although the Video has the officer summarizing the previous unrecorded statement to Male 1, the circumstances surrounding or that surround the Video offered sufficient guarantees of trustworthiness. The Video was made right after the unrecorded statement. Male 1 confirmed that his previous statement was unintentionally not recorded, and to save time, the Video was completed.
- [64] DC Bortoluss's testimony and her notes of her previous interview with Male 1 on March 27, 2018 corroborated the evidence in the Video. Male 1 looked relaxed in the Video and freely clarified information on more than one occasion. In the Video, Male 1 confirmed that Pink Flower workers offered and provided him sexual services on three

different occasions. He paid \$140 on all three occasions. DC Bortoluss's testimony regarding the other customer interviews is also accepted as reliable. The customers confirmed that sexual services were offered and provided at Pink Flower. DC Bortoluss's testimony was not challenged in any significant way. She testified that the interviews of the customers were for the purposes of investigation. She informed the customers that they were not required to speak to her.

- [65] In addition, the observations of the Toronto Police Officers during the April 5, 2018 visit are reliable. PC Cheng testified that when he entered Room 1, he observed a male pulling up his pants and that same male had his underwear in his pocket (Male 4). PC Cheng saw an unrolled condom on the floor. PC Bortoluss stated that when she knocked on Room 2, a female opened the door. PC Bortoluss observed a male without clothes and a female in the process of getting dressed and wearing no underwear.
- [66] In addition, MSO Jaramillo observed Ms. Dang wearing only a towel and black underwear on October 20, 2017 at Blue Flower Spa. The MSO testified that Ms. Dang offered sexual services to him and they agreed on a price. This encounter resulted in the Conviction, although the by-law charge was only for not dressing professionally. MSO Jaramillo's testimony was straight forward and reliable, and it was unchallenged.
- [67] In addition, the Ads lend credibility to the factual finding that sexual services were offered and provided by Pink Spa workers.
- [68] With respect to the interview and the testimony of Ms. Nguyen, there were too many inconsistencies in her account. Her interviews with police and her testimony at the Tribunal hearing were both not inherently trustworthy. We placed little weight on her testimony, and it was not useful in assessing the evidence and making any findings one way or another. Similarly, it was not necessary for the Tribunal to rely on the interviews of the other workers and the contents of the garbage bags that the Police officers retrieved. There was already enough other clear evidence that sexual services were being provided regularly at Pink Flower.
- [69] The Tribunal finds that Ms. Dang's testimony was vague and inadequate, and that she appeared to know more than she stated. Although she was entitled to defend her case by claiming lack of knowledge, this was simply not credible in face of all the evidence of sexual services. It is hard to believe that her medical-related absence from the premises for less than a month led to sexual services suddenly being regularly provided at Pink Flower during this time and only this time. This was a time period when she put her 19 year-old niece in charge of the reception. Ms. Dang was able to view the cameras from her home, to monitor who was coming in and out (there were no cameras in the rooms).
- [70] The Tribunal finds that the evidence from the police and MLS witnesses, including their notes about interviews with workers and customers (even if this was hearsay), support a finding that sexual services were being regularly offered and provided at Pink Flower. In these circumstances, Ms. Dang's denial of any knowledge of this is simply not believable.
- [71] Furthermore, at every opportunity, Ms. Dang placed blame on others. With respect to the Conviction, she testified that it was the paralegal's fault for not showing up at court to dispute the Conviction. She testified that the receptionist was keeping an eye on Pink Flower Spa in April 2018 because she was bedridden at home every day. She testified that someone else posted the Ads without her knowledge of the content.

- [72] In the end, Ms. Dang is responsible for her staff and the operation of Pink Flower. She did testify that she is now attending and managing Pink Flower daily. However, the Tribunal did not hear about any plan/steps taken to ensure that sexual services are not being offered and provided at Pink Flower. Ms. Dang provided only her simple denial and her claim of shock about sexual services being allowed at Pink Flower.
- [73] Based on the evidence, the Tribunal concludes that there are more than enough reasonable grounds to believe that Pink Flower did not and will not carry on business in accordance with the law and with integrity and honesty, as required by sections 545-4(C) of the Code. Since Ms. Dang is the sole owner of this Spa, the Tribunal makes a similar finding against her as an individual, because the inappropriate manner in which she has operated Pink Flower provides reasonable grounds for belief that she cannot act as a holistic practitioner herself with the required integrity and honesty.
- [74] Sections 6(C) and (D) set out the penalty decisions that the Tribunal can make when finding that an Applicant is not entitled to its licence. In deciding the appropriate penalty, we may consider the factors of the seriousness of non-compliance, the enforcement history, public confidence in the regulatory system, specific and general deterrence, likelihood of future compliance, fairness, proportionality, and so forth. The Tribunal adopts these factors from its recent decision in the body-rub parlour case of Minx Spa (TLT, January 29, 2019).
- [75] Pink Flower and Ms. Dang basically have a clean record in terms of convictions, with just the one conviction against Ms. Dang for not being professionally dressed when she was working in a different Holistic Centre. While there are five pending by-law charges from June 27, 2017 and one open liquor bottle charge from April 5, 2018, there have been no new charges or convictions for over a year.
- [76] The penalty should be proportionate to the misconduct. Part of being proportionate involves the approach of progressive discipline, which is consistent with both the public interest in compliance and fairness to the licensee. But serious misconduct can sometimes lead to a revocation, even if there is no history or pattern of worsening misconduct that has not improved. This would especially be the case where public safety may be involved.
- [77] There was no evidence from the Applicants regarding Ms. Dang's need to make a living and her personal circumstances. Where a serious penalty may be the outcome, it would help the Tribunal to have this kind of evidence to assess proportionality and to weigh the impact of a suspension or revocation on the Applicants.
- [78] In considering all these factors, this Tribunal finds that there has to be serious consequences for non-compliance of the serious nature proven in this case. It would have been better for MLS to provide more direct evidence when it is available, and not rely so much on the hearsay evidence of Police or MSO Officers' interviews. This is especially the case when MLS is seeking revocation and the Applicant is denying the factual basis of the allegations. Despite this concern, the evidence in this case was enough to support a finding that sexual services were occurring regularly at Pink Flower Spa in early 2018, and that the owner knew about this.

- [79] At the same time, the Tribunal does not agree with MLS counsel's submission that essentially suggests any finding of the existence of sexual services in a Holistic Centre must result in a revocation. Assessing an appropriate penalty is not that simple. It is an exercise of discretion that should consider the factors set out earlier. For example, there was little evidence of whether there was a pervasive and persistent pattern of Holistic Centres providing sexual services that might support the argument for a serious penalty for the reasons of general deterrence. There was also little evidence of a pattern of past misconduct or non-compliance for the specific Applicants in this case.
- [80] In this case, the Tribunal finds that a lengthy suspension and probation are sufficient to serve the aims of specific deterrence, general deterrence and proportionality. The Tribunal unfortunately did not have the benefit of either counsel being able to provide us with any similar cases of enforcement action against Holistic Centres that provided sexual services. Indeed, there may be no such examples, but that would also have been helpful to know. Given the circumstances of this case, there is not enough evidence to suggest that Ms. Dang should not be given a chance to show that she can comply with the requirements of her licence – namely, by operating her business without allowing or encouraging her staff to offer sexual services. The Tribunal notes that it has no information about any attempts by MLS to gather evidence that the sexual services at Pink Flower continued after May 2018. If MLS had provided the Tribunal with adequate evidence that Pink Flower continued to provide sexual services even after MLS had taken enforcement action against it that would have been a compelling point to support an even more serious penalty, which might include revocation.
- [81] In the circumstances of this case, a lengthy suspension of 120 days will demonstrate to the Applicants and to other licensees that providing sexual services at Holistic Centres is a serious misconduct that will lead to the business being closed down for a period of months, not weeks. While we have no evidence of financial impact, this will presumably be significant. Furthermore, it is clear from such a lengthy suspension that if there is further serious misconduct, that could easily lead to a revocation, although that will of course be for a future Tribunal panel to decide, if the Applicants do not operate their business in accordance to the Code.

DECISION

[82] The Tribunal therefore orders that:

1. Holistic Centre Owner Licence No B30-4714223 and Holistic Practitioner's Licence No. T30-4426740 shall be suspended immediately for a period of 120 days from the date of this Order;
2. Holistic Centre Owner Licence No B30-4714223 and Holistic Practitioner's Licence No. T30-4426740 will be placed on probation for a period of three years to commence after the last day of the suspension;
3. During the probationary period, if either Applicant incurs any new charges or convictions under the Code or any other law or by-law, the Applicant must notify Municipal Licensing and Standards, in writing, within five business days;

The notification shall include the MLS licence number and the ticket number(s).
Municipal Licensing and Standards can be notified in one of the following ways:

- in person at 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
- via regular mail to: 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
- via email to mlsconditionreporting@toronto.ca; or
- via fax at 416-392-3102

4. During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions, those matters and report No. 7068 and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Anu Bakshi, Hearing Panel Chair
[Gary Yee and Victoria Romero, Panel Members concurring]

[Reference: Minute No. 51/19]

Date Signed: May 7, 2019