

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: May 16, 2019

Panel: Melina Laverty, Hearing Panel Chair
Edgar-Andre Montigny, Panel Member

Re: 2405490 Ontario Ltd. [Vendor] (Report No. 7034)
o/a Minx Spa
Elliott Maurice Stone, President
Holder of Body Rub Parlour Owner/Operator's Licence No. B38-4418734

AND

2623304 Ontario Inc. [Purchaser]
o/a Minx Spa
Christopher Kavchak, Director
Applicant for a Body Rub Parlour Owner/Operator's Licence
(Application No. B826497)

| | |
|---|---------------|
| Counsel for Municipal Licensing and Standards: | David Gourlay |
| Counsel for 2623304 Ontario Inc. (the Purchaser): | Noel Gerry |
| Counsel for 2405490 Ontario Ltd. (the Vendor): | James Renihan |

SUMMARY

The Vendor and Purchaser requested the Toronto Licensing Tribunal (TLT or the Tribunal) cancel the Vendor's Body Rub Parlour Licence, and issue a new licence to the Purchaser, as part of a purchase and sale agreement.

The City argued that the Tribunal should not issue a licence to the Purchaser as it is not in the public interest.

After hearing the evidence and submissions of the parties, the Tribunal decided to issue a Body Rub Parlour Licence to the Purchaser with conditions.

INTRODUCTION

1. The Vendor has held a Body Rub Parlour Licence since June 19, 2014, and since that time operated "Minx Spa" at 3598 Dufferin Street. When the licence was issued in 2014 various conditions were imposed, including that prior owners, operators and managers of the spa at that location, Blue Pearl Spa, would have no involvement in the new Body Rub Parlour (e.g. Minx Spa).

May 16, 2019

2. During its first two years of operation, Minx Spa incurred numerous by-law charges and/or convictions. On October 27, 2016, the Tribunal endorsed a proposed resolution between MLS and Minx Spa to resolve MLS's concerns with how the business was being operated; conditions were imposed including a 45-day suspension and a three-year probation.
3. On November 7 and 8, and December 19, 2018, TLT held a hearing regarding the ongoing conduct of the Vendor in his operation of the Body Rub Parlour, Minx Spa. In its decision issued on January 29, 2019, the TLT suspended the licence for 180 days beginning February 12, 2019. During the suspension, the Vendor could sell the business, and if the business was not sold in that time frame, the revocation of the licence would take effect. (Hereafter this is referred to as "January 2019 decision." A copy of this decision can be found on the Tribunal website under the last hearing date, December 19, 2018.)
4. The Vendor is now before the Tribunal to consider the sale and transfer of its business to the Purchaser, and the issuing of a new licence to the Purchaser. The application for a sale was initially submitted in April 2018, and updated in July 2018.

RELEVANT LAW AND MAIN ISSUE

5. Section 545-340 of the Municipal Bylaw provides the Tribunal with the discretion to issue a licence to the purchaser, lessee or other person obtaining an interest in a body rub parlour, or the premises in which a body rub parlour has been operating, as well as to refuse to issue a licence if it is not in the public interest.
6. The main issue before the Tribunal is whether it is in the public interest to issue a Body Rub Parlour Licence to the Purchaser.

CITY'S EVIDENCE

Mr. Gourlay called two witnesses.

Ms Andrea DiMatteo, MLS Supervisor, was affirmed and testified as follows:

7. She is familiar with MLS Report No. 7034, which was entered as Exhibit 1 ("the report"), and contains documentation related to the sale of the Vendor's Body Rub Parlour licence.
8. The Purchaser (2623304 Ontario Inc.) was incorporated March 2, 2018, and Mr. Kavchak is listed as the Director on the articles of incorporation. The application submitted to MLS in April 2018 lists Mr. Arlindo Soares as the applicant and as Director, President, Treasurer, and Secretary on the Corporation Profile Report for the Purchaser. Also, filed as part of the application is the lease agreement with the Vendor, and the Vendor's Corporation Profile, which lists Mr. Elliott Stone as the sole Director. (p. 5-52 of the report)
9. The report includes information about various pre-sale inspections of the premises. (p. 53-72 of the report)

May 16, 2019

10. In July 2018, the Purchaser submitted a revised application. That application shows Mr. Kavchak as the sole director of 2623304 Ontario Inc. (the Purchaser). A police background check for Mr. Kavchak lists a charge for “unauthorized possession of a firearm” under section 91 of Criminal Code,” resulting in a \$100 fine and a five-year weapon prohibition. Ms DiMatteo understands based on the latest criminal record check that he has no pending or prior convictions (e.g. he received an absolute discharge). The Purchaser has registered the name of the Body Rub Parlour as “Minx Spa” (p. 81 of the report). The updated Corporation Profile Report for the Purchaser shows Mr. Kavchak as the Sole Director and Owner, as well as President, Treasurer, and Secretary.
11. Ms DiMatteo reviewed the business plan including that the price list for services must be filed, that the hours listed appear to meet the bylaw requirement, that on p. 94 of the report that there is a mention of “Sunshine Spa” and that on p. 95 of the report it mentions attendants are not to handle cash or currency in connection with services, and that was an issue with Minx Spa as operated by the Vendor.
12. The lease submitted for the updated application is missing a page (p. 100 to 110 of the report); the second page is missing when compared with the earlier application and lease submitted (p. 29 of the report). The lease allows the landlord (Mr. Stone) to enter the premises to conduct repairs (p. 102 of the report). It also shows the landlord’s address as 3298A Dufferin Street, which is the apartment above the Body Rub Parlour.
13. Ms DiMatteo noted that the Body Rub Parlour Licence issued to the Vendor included a condition that excluded the prior operators of the Body Rub Parlour at the same location (Blue Pearl Spa) from entering, and that those operators continued to serve as landlord for Minx Spa. [At some point Mr. Stone purchased the building from them.]
14. The sales agreement shows the price to be paid by the Purchaser for the business is \$100,000. (p. 111 to 118 of the report)
15. Ms DiMatteo reviewed an update beginning on p. 129 of the report which details an inspection completed on June 16, 2018, and where eight bylaw charges were laid for the following offences: body rub parlour open after hours; principal access locked; unauthorized advertising; fail to ensure receipt provided; hire unlicensed person (three charges); and permit services to be charged not on list.

Mr. Gerry cross-examined Ms DiMatteo and she testified as follows:

16. She recognized that MLS requires some documents but they are not necessarily required under the bylaw. She agreed a sales agreement is required under the bylaw, but a business plan is required by MLS but not under the bylaw. She agreed that even if a list of managers is provided that the Purchaser is not bound by that list.
17. Regarding the missing page, she agreed that MLS normally advises applicants when something is missing, and that this can be provided and corrected. Ms DiMatteo agreed that a usual condition is that “all fees, documents and/or any

May 16, 2019

outstanding requirements” must be submitted to MLS. She agreed that would allow for the Purchaser to provide items inadvertently missing, such as the missing page of the lease or similar updates, including if they were to update the name of the business. She agreed that the missing page of the lease was not a “fatal flaw” in the application.

18. Ms DiMatteo also agreed that when Mr. Stone purchased the Body Rub Parlour, a condition was placed on the licence stating that the prior owners not be involved in the business, and that there was no evidence to suggest that condition was ever breached.

Counsel for the Vendor did not cross examine Ms DiMatteo.

Ms Mary Sciarrino, MLS Officer, was affirmed and while referring to her notes, testified as follows:

19. Minx Spa is located in her ward, and she was asked to inspect it when there was a proposed sale of the business. On May 10, 2018, she attended to perform the clearance inspection with her partner. The premises did not pass inspection that day. The concerns included torn mats in two examination rooms and there were security cameras, which are not allowed (p. 55 of the report).
20. On May 16, she completed a re-inspection, the mats had been repaired but there were still cameras in the Body Rub Parlour (p. 63 of the report).
21. On May 17, Ms Sciarrino returned to inspect the premises again, and all cameras had been removed except one on the exterior of the building at the front entry. Mr. Stone removed the camera immediately (p. 72 of the report).

Counsel for the Purchaser and Vendor did not cross examine Ms Sciarrino.

APPLICANT'S EVIDENCE

Mr. Gerry called one witness.

Mr. Christopher Kavchak was affirmed and testified as follows:

22. He is qualified as a mining technician. For the last 10 years, he has worked in the mining industry with heavy equipment and in particular, mining shovels, most recently in mines in the Arctic. On the last five projects, he was the “Lead Hand” and responsible for equipment rebuilds, organizing staff, and delegating jobs.
23. If the sale is approved, he plans to take a six-month leave of absence to get the business up and running.
24. Mr. Kavchak is aware that Mr. Stone had his licence revoked, and attended the Tribunal hearing in which the Vendor’s licence was considered, and which led to the revocation.

May 16, 2019

25. Mr. Kavchak knows that he needs to follow the bylaws, or risk losing the licence. He is aware of the bylaws, including that he is required to close by 9 pm, Monday to Saturday; that there can be no unlicensed attendants, that cameras are not permitted, and the doors must be open.
26. Mr. Kavchak wants to reconstruct the premises. He will initially manage the Body Rub Parlour until he finds the right staff, who are competent. He plans to change the name to "Player's Spa" though he has not yet taken steps to change the name officially.
27. Mr. Kavchak would agree to conditions on his licence, including that Mr. Stone would not be involved in the operation of the business, and only enter premises after it is closed once a month to collect rent. He would also agree to a condition not to reopen until MLS has inspected the premises, and seen the changes he has made, and approve the signage.
28. If the Tribunal accepts the sale of the business and issues a new licence to the Purchaser, Mr. Kavchak intends to initially live in the apartment above the Body Rub Parlour, and eventually once he hires a new manager they would live there.

Mr. Gourlay cross-examined Mr. Kavchak and he testified as follows:

29. His usual schedule is to work on site for three weeks followed by three weeks off. After the six-months to set up the business, he would likely go back to mining.
30. He has no experience managing a body rub parlour.
31. Mr. Kavchak is in a common law relationship with Mr. Stone's sister.
32. He does not know Arlindo Soares and Mr. Soares is not involved in the current business. Mr. Kavchak initially stepped back as the purchaser as he was not sure if he wanted to buy the business and had other commitments, but then decided to do it.
33. Mr. Kavchak is not concerned about learning how to run the business. He has friends who manage night clubs and he knows someone (other than Mr. Stone) who runs a body rub parlour. He will learn how it works on the job as he plans to initially be there on a daily basis to get the business up and running.
34. If he has questions, he would call his lawyer Mr. Gerry, not his brother-in-law.
35. Mr. Stone still lives in the apartment above the Body Rub Parlour, and the entrance to that apartment is adjacent to the entrance of the Body Rub Parlour.
36. Mr. Kavchak did not calculate the price he paid for the business, Mr. Stone calculated it. There are no other investors, and Mr. Stone will not share in the profits. He agrees based on the price he will pay, he is likely to get a return on investment in nine months (assuming the yearly profit is \$200,000 with rent being \$70,000). He does not know why it is so cheap.

May 16, 2019

37. He realizes that the way Mr. Stone managed the fees was not appropriate (Mr. Stone was charging a room fee and allowing attendants to negotiate the fees for services directly with clients.) He can refile the fee list with the services.
38. Mr. Kavchak knows he is not allowed to have cameras. He is unaware if there are currently any cameras on the premises as he has not been there recently.
39. Regarding the firearm charge, Mr. Kavchak was hunting and left his rifle in his ATV unattended. He was charged with unsafe storage, but did not plead guilty to that offence. He also did not have the PAL (Possession and Acquisition Licence) with him either. He received an absolute discharge and is banned from having a firearm for five years.
40. He has not owned any other business himself, but he grew up on a family farm, and contributed to that business.
41. Mr. Kavchak understands if he were to operate the business as Mr. Stone did (that is staying open until 3:00 or 4:00 am), he would risk his licence, so he expects not to make the same profit as Mr. Stone did.

In response to questions from the Tribunal members, Mr. Kavchak testified that:

42. His motivation for entering this business and a career change is to allow him more time with his family. Currently his work requires him to travel for extended periods of time, his children are getting older, and he wants to spend more time with them.
43. It is true that the Body Rub Parlour is not located near where he lives in Oro-Medonte, but to run a successful business you need to be located in a populated area.
44. His wife runs her own company and he could ask her for advice.

CITY'S SUBMISSIONS

Mr. Gourlay, on behalf of MLS, submitted that:

45. The Tribunal should not approve this sale as it is not in the public interest.
46. MLS's main concern is that Mr. Stone will have ongoing involvement in Mr. Kavchak's business. While operating Minx Spa, Mr. Stone had a significant history of ongoing noncompliance with 23 bylaw convictions and 58 bylaw charges, ultimately leading the Tribunal who heard about his conduct to revoke the licence.
47. Mr. Kavchak has not run any business (including a body rub parlour) before. He told us that he will turn to his spouse and best friend for advice. His wife is Mr. Stone's sister. It is almost inevitable Mr. Stone will advise him about the business.
48. Mr. Stone owns the building where the spa is located and the lease gives him a right of entry and to inspect the books. Any conditions the Tribunal puts in place

May 16, 2019

- does not change that right under the lease. Mr. Stone also currently lives above the Body Rub Parlour.
49. The Tribunal cannot consider the sale in a vacuum. The TLT hearing about Mr. Stone's conduct did say he could sell the Body Rub Parlour. But the sale here contemplates a significant level of involvement by Mr. Stone in the business. Blue Pearl Spa that operated at the same location should be a factor in the decision. It is not a "clean slate" as suggested by Mr. Gerry.
 50. The business plans submitted contemplate a significant level of involvement, as Mr. Stone is the landlord of the premises where the Body Rub Parlour will operate. Mr. Stone and Mr. Kavchak are brother-in-laws.
 51. Mr. Kavchak said he would follow the bylaw, remove cameras and have different operating hours, but the documents he filed with MLS are exactly the same as those filed by Mr. Stone, and suggests he would not operate the business any differently. For example, the rate sheet filed only shows the room fee and it should show the fees for services provided. Not only is this incomplete, but it is the exact same rate sheet as the former Minx Spa.
 52. In the January 2019 TLT decision (see paras. 48 and 49), one issue was that the front of house staff take a "room fee only" and the remainder of the services were negotiated between the body rubber and client.
 53. In MLS's view, there is reasonable cause for concern that Mr. Kavchak will operate the Body Rub Parlour in the same manner as Mr. Stone, in other words, not in compliance with the bylaw.
 54. There are other aspects of the deal that suggest it is not a classic arms-length deal. The price is a bargain, with a return on investment expected in less than nine months. While it might be less profitable than submitted in the previous hearing with changed operating hours, MLS still submits it is a remarkable bargain.
 55. Minx Spa was not like any other body rub parlour; it was previously suspended 45 days for noncompliance, and only two days later, when MLS attended, Mr. Stone was not complying with the bylaw again. There was significant ongoing noncompliance in its operation. Mr. Stone was unwilling to take down cameras and website.
 56. In its January 2019 decision (at paras. 22 and 23), the Tribunal left open the right to sell but that Tribunal did not consider this proposed sale, which contemplates a significant degree of involvement by Mr. Stone in the business.
 57. Conditions that restrict Mr. Stone's entry to the Body Rub Parlour are not enough; in MLS's view, the lease and Mr. Stone's powers as landlord will give him more access than that. Also, the Tribunal cannot restrict him from getting advice from Mr. Stone. While a similar condition was placed on the prior owner of Blue Pearl Spa and it was not breached, in the end that condition did not prevent ongoing noncompliance in the operation of Minx Spa.
 58. In MLS's view in assessing risk and the public interest, there are reasonable grounds for concern that Mr. Stone will continue to be involved in the business and

May 16, 2019

could guide its management. There is the concern, that if profits drop significantly Mr. Stone has an interest as landlord, and MLS questions what will happen then.

PURCHASER'S SUBMISSIONS

Mr. Gerry, on behalf of the Purchaser submitted that:

59. Mr. Gourlay is attempting to re-litigate the conduct hearing regarding Mr. Stone. In its January 2019 decision, the TLT suspended the Vendor's licence for six months, and indicated a transfer cannot occur until the suspension is over. This suspension clears the slate, and arguments about Mr. Stone's conduct in the past are not relevant. The panel who heard about the conduct clearly allowed the Vendor to sell the business. They also rejected MLS's argument about specific and general deterrence (see para. 96 and 97 of the January 2019 decision).
60. In our interpretation of section 545:340D of the bylaw, the onus falls on MLS to show that it is not in the public interest for the Tribunal to approve the sale.
61. The evidence relied on cannot be that Blue Pearl Spa or Minx Spa did not comply, rather MLS has to show that Mr. Kavchak should not run a body rub parlour at that location.
62. Any concerns about Mr. Stone could be handled by a condition that prevents him from being involved in the operation or management of the Body Rub Parlour, and that he only be allowed to enter once a month when the Body Rub Parlour is closed to collect rent and view the state of repair.
63. The lease for the premises has standard lease provisions. Conditions could be removed or amended to comply with any conditions placed by the Tribunal on the Body Rub Parlour if required.
64. If the sale is approved with conditions on the new licence and those conditions are breached, then MLS can come back to the Tribunal and request the licence be revoked. There is a strong motivation not to break any conditions.
65. There is no requirement of direct experience running a body rub parlour. It is not rocket science. Mr. Kavchak told the TLT he would visit other establishments, and talk to people in the industry. Mr. Kavchak does have experience managing and supervising teams of people in the Arctic in mining, which is arguably rocket science or certainly more complex than what is involved in managing a body rub parlour.
66. As to whether this is an arms-length deal, \$100,000 is not a bargain. It is a significant sum of money, that he, and most people, do not have lying around. No concrete evidence was submitted as to how much profit there would be, and so the return on investment is not clear. The profit relied on the business operating hours outside of the bylaw. This place has problems. It will have been closed for six months and so there is no goodwill. There are no staff.
67. Even if this is a sweetheart deal, they are related and one would expect a better deal than if the business was being sold to a stranger.

May 16, 2019

68. Yes, there is a family connection and what if Mr. Kavchak asks Mr. Stone about how he should run the business. Mr. Kavchak also knows the consequences of not following the bylaw. If Mr. Stone says stay open to 4:00 am, Mr. Kavchak is not going to follow that advice.
69. A condition that prevents Mr. Stone from being involved in the business's operation is sufficient to protect the public interest.
70. There are still three months until the business could open because of the suspension. They are willing to refile the list of services, amend the lease, resubmit the business name, and have MLS re-inspect the business. Given the suspension, it is not possible to hire people now and expect them to wait three months, instead they would file the names of attendants prior to opening.
71. Mr. Kavchak is a family man but has to travel a lot with his current work. He was offered a good opportunity to earn income that will allow him to spend more time with his family. We have heard that he is responsible, and has been employed many years successfully as a mining technician.

VENDOR'S SUBMISSIONS

Mr. Renihan, on behalf of the Vendor submitted that:

72. There is no question that Mr. Stone cannot be involved in the operation of the Body Rub Parlour, that was clear in the TLT January 2019 decision, as well as the fact of the six-month suspension. What is also evident from that decision is that the panel did not take away the Vendor's right to sell the business. MLS sought immediate revocation as the penalty with no right to sell the business, but they were not successful. Instead of losing everything, he was given the chance to sell the business. A suspension was imposed and once completed the new buyer would be issued a licence and start operating the business.
73. MLS and the Tribunal are able to take away his licence to operate a body rub parlour, they cannot take away the building he owns as well. The Tribunal could not have decided that he would have to sell the building as well. The Vendor should be able to own the building and collect rent.
74. Mr. Stone acquired the Body Rub Parlour business from a company that continued to serve as his landlord, and eventually Mr. Stone was able to buy the building.
75. As to the fact Mr. Kavchak has no experience, there are only 24 other body rub parlours here in the City. If experience was required it would make it difficult to sell a body rub parlour business. It cannot be a requirement that a buyer have experience in the business, this would be an unreasonable limitation.
76. The focus of today's hearing is on the buyer and not the past operations and operators. We have heard a lot of speculation that Mr. Stone will be involved in the business. There have been inferences but no direct evidence.

May 16, 2019

77. The lease granting access is to the landlord or a person authorized by the landlord. The landlord may send in an agent if required, it does not have to be Mr. Stone personally. The lease can be amended to mirror any conditions placed on the Body Rub Parlour Licence.
78. The fact of the low purchase price does not lead to the inference that Mr. Stone will necessarily be involved in the business. In fact the low purchase price could just as easily lead to the inference that if the business is run properly and within the confines of the bylaw, it will not be as profitable. Also, this was a forced sale within a specific time limit of 180 days and finding a suitable buyer at a good price is difficult with those constraints.
79. The Vendor will get a revenue source as there are obligations to pay rent, even if the business fails.
80. MLS provided hypothetical numbers and timelines as to when the Purchaser will get his money back. It is unclear if those numbers are real, and what facts support them. It is hard to know if the business will be successful. The Purchaser might be lucky and getting it at a good price, but the fact that it may be a sweetheart deal has limited relevance.
81. The mere fact of a familial relationship does not support that they are close, or even that Mr. Kavchak would necessarily accept the advice just because Mr. Stone is his brother-in-law. It is not inevitable that advice from a family member will be followed. We did not hear how close the family is. We know they are brothers-in-law but do not know how often they see or talk to one another.

ANALYSIS

82. In its January 2019 decision, the Tribunal concluded that the Vendor's Body Rub Parlour licence should be immediately suspended for 180 days and the revocation stayed, during that time Mr. Stone may sell the business, and if a sale was not completed and approved by the TLT during that time, the licence would be revoked. The revocation was based on Mr. Stone's ongoing noncompliance.
83. All the parties agreed that Mr. Stone should have no involvement in the operation or management of the Body Rub Parlour should the Tribunal issue a new licence to the Purchaser.
84. With regard to Mr. Kavchak, we agree that it cannot be a requirement that to obtain a body rub parlour licence for the applicant to have experience in the business, particularly given that there are currently only 25 such licences available in the City of Toronto. The Tribunal accepts that some of the skills required to manage a business are transferable. We found Mr. Kavchak testified in a straightforward manner, and clearly has been effective in his current work in mining where he has taken on progressive responsibility. He expressed knowledge of the relevant bylaws, and having attending the hearing regarding the conduct issues and Mr. Stone's operation of Minx Spa, appeared to be well aware of the risks and consequences of noncompliance, including the risk of losing the licence. He told the

May 16, 2019

Tribunal he would consult his lawyer about the business operation and bylaw should he have questions. He also mentioned he would contact his spouse.

85. The main issue appears to be Mr. Stone's ongoing noncompliance with bylaws in his operation of the Body Rub Parlour, and the risk that he may continue to participate in business decisions, by virtue of being the landlord, living above the business, and because he is Mr. Kavchak's brother-in-law. The TLT did not hear any concerns raised by the community where the business operates, for example, nor was that an issue in the hearing leading to the revocation of the Vendor's licence, and we had no particular concerns with Mr. Kavchak's testimony.
86. As landlord, Mr. Stone will have a vested interest in ensuring the business is profitable, but arguably his interest will be no different than that of any landlord with a commercial tenant.
87. Mr. Stone currently occupies the apartment above it. Though that apartment does have a separate entrance and has no door/hall connecting it to the business, it does mean that Mr. Stone will be in close proximity to the Body Rub Parlour, and raises a risk he may wish to continue to make business decisions or have input into its operation. Though the Tribunal also heard that Mr. Kavchak may assume the lease and live in that apartment, and eventually lease it to whoever he hires to manage the Body Rub Parlour, at this stage, Mr. Stone still occupies that space and the documented information before us shows this.
88. Mr. Stone is also Mr. Kavchak's brother-in-law, and while we do not know the extent or closeness of their relationship, Mr. Kavchak did say he is likely to consult his spouse (Mr. Stone's sister) about the business, and it is not difficult to image he may well consult Mr. Stone, who at least at the moment is living above the business. That said, Mr. Kavchak is well aware of the position Mr. Stone has been put in by his decision to continue to operate without following the law.
89. The Tribunal further noted that not long after the clearance inspections were completed by MLS in May 2018. MLS officers attended in June 2018 only to find the Body Rub Parlour not in compliance and laid eight bylaw charges. While Mr. Kavchak had not assumed ownership yet, this raises cause for concern as Mr. Stone knew a sale was in process, and should have considered this might impact the sale.
90. With regard to whether or not the business was sold at a bargain price, or at what point it would turn a profit, the TLT did not have enough information from either party to come to any conclusion as to how much profit the business would make if it operates within the law, and closes at 9:00 pm Monday to Saturday and 5:00 pm on Sunday, for example.
91. Under s. 546-9 (C)(2), the Tribunal may impose such conditions upon a licence as it considers appropriate and as are authorized by law. In the Tribunal's view, any concern that this sale may not be in the public interest could be satisfied with conditions on the licence.
92. The findings made by the TLT and set out in its January 2019 TLT decision clearly supports that there is a public interest in ensuring Mr. Stone is no longer involved in

May 16, 2019

any management or operating decisions, given his past history of noncompliance with the bylaws. Thus, a specific condition preventing Mr. Stone from being involved in the operation and management of the Body Rub Parlour is appropriate. The Purchaser's counsel proposed such a condition, Mr. Kavchak expressed his willingness to comply with such a condition and the Vendor's counsel also agreed it was appropriate.

93. To the extent Mr. Stone, as landlord, needs to enter the premises to collect rent or inspect the premises, he may do so once a month outside operating hours, or alternatively he may have an agent handle that transaction on his behalf. The Vendor's and Purchaser's counsel agreed that the lease submitted was a standard one and if the Tribunal imposes conditions, they would consider if any amendments were required to ensure the lease is not in conflict with the conditions imposed on the Body Rub Parlour Licence.
94. The Tribunal further notes that a condition of the licence is that "all fees, documents and/or any outstanding requirements" must be submitted to MLS prior to August 12, 2019. As noted during the course of the hearing, this allows for any minor defects in the application, such as a missing page of the lease, or other updates to be provided to MLS.
95. Given the risk that Mr. Stone may continue to be involved and/or influence the operation of the business and of ongoing noncompliance at the premises, the TLT felt probation was also appropriate and in the public interest. Mr. Kavchak and Mr. Stone should be alert to the risk that should they not follow the conditions on the licence or the bylaw, that MLS can bring any concerns back to the Tribunal for consideration.
96. The Tribunal also agreed as Mr. Gerry proposed in his closing submissions that MLS should inspect the premises prior to its re-opening. Mr. Kavchak testified that while the business is suspended he intends to do some renovations, and the TLT noted that the preclearance inspections for this sale and purchase were completed about a year ago. Given these factors, it is appropriate in our view for MLS to inspect the premises and ensure compliance with the bylaw (such as that there are no security cameras, etc.) prior to the re-opening of the Body Rub Parlour.

DECISION

For the reasons set out above:

The application is granted and a Body Rub Parlour Licence will be issued, subject to the following conditions:

- (1) All fees, documents and/or any outstanding requirements must also be submitted to the satisfaction of MLS before or by August 12, 2019, failing which the application may be cancelled;
- (2) Immediately upon being issued, the licence will be suspended until August 12, 2019;

May 16, 2019

- (3) MLS will conduct a clearance inspection of the premises, and the premises must pass inspection, prior to the re-opening of the Body Rub Parlour on August 12, 2019 or thereafter;
- (4) Elliott Stone shall not be involved in the operation or management of the Body Rub Parlour owned and operated by 2623304 Ontario Inc. at 3598 Dufferin Street, Toronto, Ontario and shall only be permitted to enter the said Body Rub Parlour one time during each calendar month when it is closed for business to collect rent and view the state of repair of the premises in his capacity as landlord.
- (5) Beginning on August 12, 2019, the licence will be placed on probation for a period of two (2) years. Mr. Kavchak is advised that during the probationary period, MLS may make additional checks of any criminal and by-law charges and convictions against Mr. Kavchak and 2623304 Ontario Inc. and conduct other investigations as appropriate, to assess the compliance with the requirements of Chapter 545 of the Municipal Code and other applicable laws;
- (6) During the probationary period, if MLS has concerns with any new charges or convictions against Mr. Kavchak or 2623304 Ontario Inc., those matters and Report No. 7034, and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Melina Laverty, Hearing Panel Chair
Panel Member, Edgar-Andre Montigny concurring

Reference: Minute No. 89/19

Date Signed: June 17, 2019