REASONS FOR DECISION OF THE
TORONTO LICENSING TRIBUNAL

Date of Hearing: May 28, 2020 (Teleconference Hearing)

Panel: Edgar-Andre Montigny, Panel Chair;
Mary Lee and Melina Laverty, Members

Re: Mauro Nery Hernandez Rubio (Report No. 7354)
Applicant for Renewal of Personal Services Setting Licence No. B56-3952795

Counsel for Municipal Licensing and Standards: Lauren Elliott

Counsel for Applicant: Unrepresented

Spanish Interpreter: Ivan Roma

SUMMARY

Personal Services Setting Licence No. B56-3952795 was issued to Mr. Hernandez Rubio on August 21, 2009. The licence expired on August 21, 2019. A renewal payment was submitted on August 20, 2019. As part of the renewal process Mr. Hernandez Rubio submitted his criminal records and judicial matters check from Peel Regional Police to Municipal Licensing and Standards (MLS).

On August 28, 2019 MLS sent Mr. Hernandez Rubio a letter outlining the grounds for denial of the renewal of his licence. On September 13, 2019, MLS received from Mr. Hernandez Rubio a Request for a Hearing before the Toronto Licensing Tribunal (the Tribunal).

MLS sought two orders:

1) An Order adjourning this matter until after the disposition of the criminal charges against Mr. Hernandez Rubio.

2) An Order suspending Mr. Hernandez Rubio's licence, on an interim basis, until such time as the Tribunal can hold a full hearing on the matter.

After hearing the evidence and submissions of the parties, the Tribunal ordered that the matter of the renewal of Mr. Hernandez Rubio's licence be adjourned until after the disposition of the criminal charges against him. Rather than suspend the licence, the Tribunal ordered interim conditions be placed on the licence.

INTRODUCTION

MLS denied the renewal of Mr. Hernandez Rubio's Personal Services Setting Licence No. B56-3952795 as records of the Ministry of the Attorney General's Integrated Court Offences Network (ICON) revealed outstanding charges registered against Mr. Hernandez Rubio for sexual assault and sexual interference. These are serious charges.

Given there are outstanding criminal charges against Mr. Hernandez Rubio currently before the courts; and given the outcome of those proceedings may have a major impact on the Tribunal's decision concerning the renewal of Mr. Hernandez Rubio's licence, it is not possible for this Tribunal to have a hearing on the merits concerning whether or not Mr. Hernandez Rubio's licence should be renewed until the criminal proceedings against Mr. Hernandez Rubio have been completed.

The matter before the Tribunal is to determine whether Mr. Hernandez Rubio's licence should be suspended until the criminal charges against him have been resolved and the matter of his licence renewal can return before the Tribunal.

Ms Elliott reminded all present that the current hearing had no role to play in determining or judging the criminal allegations made against Mr. Hernandez Rubio. She also noted that the criminal proceedings are subject to a publication ban. For that reason she explained that MLS redacted all references to the complainant in the materials and that the name of the complainant would not be used in the hearing. Mr. Hernandez Rubio was asked to ensure that in his testimony or in his questions or in his responses to questions, he made no mention of any personal details related to the complainant.

ISSUE

The question before the Tribunal is whether the mere fact of the charges against Mr. Hernandez Rubio and the nature of the allegations made, in themselves, indicate that allowing Mr. Hernandez Rubio to operate his salon while he waits for the court to adjudicate the charges against him would pose a risk to public safety, thus justifying the suspension of Mr. Hernandez Rubio's licence until the court has adjudicated the criminal charges against him.

CITY'S EVIDENCE

Mr. Jamil Elannan, Supervisor MLS, was the only witness for the City. Mr. Elannan was affirmed and testified regarding Mr. Hernandez Rubio's licensing history and the nature of the charges against him as set out in MLS Report No. 7354 dated February 19 2020 and update of May 11, 2020 (Exhibit 1 or "the report"). Mr. Elannan provided details of the allegations made by the complainant, mainly by outlining the details provided in the synopsis for a guilty plea created by the Crown on December 10, 2018, and provided to Mr. Hernandez Rubio.

The allegations made against Mr. Hernandez Rubio were serious. They involved the inappropriate touching of a minor female customer in his salon late at night when he was alone with the complainant.

Mr. Elannan confirmed that a court date of June 23, 2020 has been set for Mr. Hernandez Rubio's criminal matter.

APPLICANT'S EVIDENCE

In testimony, in cross-examination, and in response to questions from the Panel, Mr. Hernandez Rubio provided, through the interpreter, information about his professional history, his personal circumstances and the outstanding charges against him, including the following:

- Mr. Hernandez Rubio has worked as a stylist for more than 30 years in Colombia, the United States and Canada. He has not had any problems with the law before.

- Hairstyling is his main source of income to support his family.

- Hairstyling is his passion. Being prevented from working as a stylist would have a serious emotional impact upon him as well as a financial one.

- He outlined that for several years now he has operated Mauro's Beauty Salon on Finch Avenue West. He is the owner of the salon and he rents out space to other stylists, usually no more than one or two at a time.

- Mr. Hernandez Rubio has a wife and a daughter living at home. His wife works. Mr. Hernandez Rubio acknowledged that his wife's income helps support the family, but without his income from the salon they cannot pay the mortgage and he would be unable to send his daughter to school in the Fall. Currently Mr. Hernandez Rubio is claiming the COVID-19 Emergency Benefit while his salon is closed.

- Mr. Hernandez Rubio denies the charges against him and asserted that the plea synopsis was not accurate. He explained that he did not have to correct a mistake he made styling the customer's hair. He outlined that he provided a complex hair treatment to the complainant and the treatment took a long time to complete. He asserted that no assault occurred. He did not offer an explanation as to why the customer would make false allegations of assault against him.

- Mr. Rubio submitted a letter from his counsel, Vladimir Semyonov, dated May 18, 2020 (entered as Exhibit 2), outlining that Mr. Hernandez Rubio's position that he is innocent of the charges against him.

CITY'S SUBMISSIONS

In her closing submissions, Ms Elliott on behalf of MLS, submitted that:

The Tribunal should adjourn this matter until a date after the criminal charges against Mr. Hernandez Rubio have been resolved. In the meantime, his licence should be suspended as there are reasonable grounds to believe that Mr. Hernandez Rubio's operation of his business would offend Chapter 545 of the Toronto Municipal Code in that it has infringed or would infringe the rights of the public and has or would endanger the health and safety of public.

Ms Elliott noted that an interim suspension pending the resolution of charges is an extraordinary remedy to be used sparingly only where appropriate or necessary to protect the public. She

argued that such a remedy was appropriate and necessary in this instance because the allegations made against Mr. Hernandez Rubio are serious and of a nature to justify taking action to eliminate the risk to the public.

Ms Elliott reviewed a number of cases setting out the standard to meet to justify granting the interim remedy sought. She explained the case law confirmed that in such instances, the standard is low. There is no need to prove the incident alleged actually occurred. The Tribunal, she argued, need only find that the allegations themselves provide reasonable grounds to believe that the provision of personal services to the public by Mr. Hernandez Rubio could create a risk to the public.

While Mr. Hernandez Rubio has had bail conditions placed upon him, Ms Elliott reminded the Tribunal that it could not rely on the bail conditions to protect the public, since those conditions could be changed or removed at any time by the court without any notice to the Tribunal.

Ms Elliott outlined that the alleged offence took place at Mr. Hernandez Rubio's place of business after hours. Mr. Hernandez Rubio had sent another worker home ensuring he was alone with a customer after hours.

Initially Ms Elliott argued that while a suspension would prevent Mr. Hernandez Rubio from working as a stylist himself, it would not prevent Mr. Hernandez Rubio from earning a living, since he would still be able to rent out space to other stylists. It was later clarified that the suspension of his licence would mean that Mr. Hernandez Rubio could no longer operate his salon, therefore, a suspension would prevent him from earning any income from his salon. While this meant that a suspension would have a more serious impact upon Mr. Hernandez Rubio than first anticipated, Ms Elliot confirmed that in the view of MLS, a suspension was still justified in the circumstances given the nature of the potential risk to the public.

APPLICANT'S SUBMISSIONS

Mr. Hernandez Rubio asked for clarification as to exactly how the suspension of his licence would impact his ability to run his salon or earn a living. He also asked if he would be able to work as a stylist for another salon if his licence was suspended. Mr. Elannan clarified that MLS was concerned only with the operation of his salon.

ANALYSIS

Section 546 (8.1) C of the Toronto Municipal Code sets out the powers of the Tribunal to renew, deny, suspend or impose conditions upon a licence.

In this instance, Mr. Hernandez Rubio is entitled to a renewal of his Personal Services Setting Licence unless MLS can demonstrate that there are reasonable grounds to believe that Mr. Hernandez Rubio will not operate his business in accordance with the law; that the carrying on of his business has resulted, or will result in a breach of this chapter or any other law; and that Mr. Hernandez Rubio's operation of his business has infringed or would infringe the rights of the public, and has or would endanger the health and safety of public.

The outcome of Mr. Hernandez Rubio's criminal matter may play a major role in the determination of whether he is entitled to a renewal of his licence. In the meantime it is

necessary for the Tribunal to determine whether an interim suspension of Mr. Hernandez's Rubio's personal services licence is required to protect the public.

In this case, MLS has argued that the fact that serious allegations have been made against Mr. Hernandez Rubio and that criminal charges have been laid against him on the basis of those charges, indicates that there are reasonable grounds to believe Mr. Hernandez Rubio's continued operation of his business while the criminal charges are before the courts would pose a risk to the public. The risk to the public justifies taking the extraordinary step of suspending his licence, despite the fact that the allegations against Mr. Hernandez Rubio have not been properly adjudicated and he has not yet been found guilty of any wrongdoing.

Having weighed the evidence, the Tribunal is satisfied that the situation does not justify the imposition of the extraordinary remedy of an interim suspension. The Tribunal concluded that it was possible to balance protection of the public with Mr. Hernandez Rubio's need to earn a living by imposing interim conditions upon his licence.

The charges against Mr. Hernandez Rubio are serious and concerning to the Tribunal. The fact that the allegations outline highly inappropriate conduct with a customer who was a minor in his place of business only adds to these concerns. The Tribunal considered that allowing Mr. Hernandez Rubio to return to his place of work where he could work closely with customers would potentially allow Mr. Hernandez Rubio to engage in similar activity.

At the same time the Tribunal also considered Mr. Hernandez Rubio's record. He has a long history of providing styling services. Mr. Hernandez Rubio's professional history spans some 30 years in three countries. He has been licensed by MLS for a decade. The current charges against Mr. Hernandez Rubio are the only charges against him on record. Since the alleged incident in February 2017 and before COVID-19 forced the closure of his salon on March 26, 2020, Mr. Hernandez Rubio continued to operate his salon without any further charges. Aside from the current allegations there are no other charges or allegations of improper behaviour on Mr. Hernandez Rubio's record.

The Tribunal considered the impact of an interim suspension of Mr. Hernandez Rubio's licence until the resolution of his criminal charges. Under current circumstances, it could be at least one year or more before Mr. Hernandez Rubio's criminal charges can be resolved. An interim suspension would prevent Mr. Hernandez Rubio from operating his business and gaining an income for some time, perhaps years.

While the Tribunal has to consider the potential risk to the public should Mr. Hernandez Rubio have actually committed the crimes he is currently alleged to have, we must also consider that Mr. Hernandez Rubio may be acquitted.

The Tribunal concluded that conditions placed upon Mr. Hernandez Rubio's licence would allow Mr. Hernandez Rubio to operate his business and earn an income while he waits for his criminal charges to proceed through the court without creating any undue risk to the public.

DECISION

For the reasons above, the Tribunal Orders the following:

1) This matter concerning the renewal of Mr. Hernandez Rubio's licence No. B56-3952795, is hereby adjourned until such time as the criminal charges against Mr. Hernandez Rubio have been resolved and the matter can be returned to the Tribunal for a full hearing.

2) Mr. Hernandez Rubio's licence No. B56-3952795 will remain in effect during the period of adjournment. However, the following conditions will attach to the licence on an interim basis, pending the return of the matter to the Tribunal.

i) Mr. Hernandez Rubio will attend at his salon during business hours only, no later than 7:00 pm.

ii) Mr. Hernandez Rubio cannot be in the salon alone at any time.

iii) Mr. Hernandez Rubio shall not be left alone (**or out of sight of others**) * when he is with a customer/client.

iv) MLS **may** * perform random inspections of Mr. Hernandez Rubio's salon to ensure that he is adhering to the conditions above, as well as all usual rules and regulations.

v) During the probationary period, if MLS has concerns with any new charges or convictions against Mr. Hernandez Rubio, or any other concerns with respect to the conduct of the licensee, those matters and Report No. 7354, and any updating material, may be brought back before the Tribunal for a full hearing.

* Please note that bolded passages are clarifications that were not presented in the oral decision delivered on May 28, 2020.

Once the criminal charges against Mr. Hernandez Rubio are resolved, he can seek to have this matter returned to the Tribunal for a final resolution of the matter.

Originally Signed

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Edgar-André Montigny, Chair
Panel Members: Melina Laverty and Mary Lee concurring

Reference: Minute No. 45/20

Date Signed: <u>July 17, 2020</u>