

SUSPENSION OF LICENSE
1409044 ONTARIO INC. (MARVELLOUS SPA)

Council, at its meeting of June 23, 2003, adopted the following:

That this matter be deferred in accordance with the request contained in the written submission of Mr. Morris Manning, 390 Bay Street, Suite 3000, Toronto, M3H 2Y2, dated June 9, 2003, attached to the memorandum from the City Clerk, dated June 10, 2003.

Report of the City Clerk dated June 16, 2003

Recommendation

The City Clerk in consultation with the Manager of Special Projects, Licensing and Permits recommends:

That the Body Rub Parlour License issued to 1409044 Ontario Inc o/a Marvellous Spa be suspended for a period of 15 days.

Purpose

To consider the suspension of the Body Rub Parlour License.

Background - Analysis and Options

On May 3, 2003 at approximately 12:33 a.m. the Licensing Section of the Clerks Department conducted an investigation of the Body Rub Parlour located at 435 Bowes Rd (Marvellous Spa). The investigation was carried out with York Regional Police as part of "Project Closure"; a 2 week enforcement of Body Rub Parlours operating in contravention of By-law 2-2001. During the investigation, undercover officers ascertained that the Body Rub Parlour was open for business outside the prescribed hours, that there were no windows installed on the doors for rooms that are designated for massage and that the Owner or Operator of the Body Rub Parlour was not present. Officers from York Regional Police laid charges on site against the two Body Rub Attendants for "carrying on the business of a Body Rub Attendant outside the prescribed hours and carrying on the business of a Body Rub Attendant without an Owner/Operator present". In addition, charges are also presently being processed against the owner for the above infractions.

Section 13.0 (3) o) of By-law 2-2001 as amended, states that no services shall be provided in a Body Rub Parlour unless a licensed owner or operator is present; and,

Section 13.03 (1) k) of By-law 2-2001 as amended, states that every door on the room designated as a massage room shall be equipped with a window of a size not less than 36cm x 36cm; and,

Section 13.04 of By-law 2-2001 as amended, prescribes the hours of operation of Body Rub Parlours as follows:

Monday to Friday	9:00 a.m to 10:00 p.m
Saturday	9:00 a.m to 6:00 p.m
Sunday	10:00 a.m to 5:00 p.m

Pursuant to Section 7.0 (1), outlined hereafter, the Licensing Officer informed the Licensee that their Body Rub Parlour License was suspended for a period of 15 days. Attached is a copy of the said letter.

Section 7.0 (1) of By-law 2-2001 as amended, states:

- “(1) Upon reviewing a license application, including an application for renewal of a license, or upon receiving information or a complaint against a license holder, the Licensing Officer may, in his or her sole discretion refer the application to Council, or refuse to grant, or revoke or suspend a license upon the following grounds:
- a) where the conduct of the applicant or licensee affords reasonable grounds for belief that such applicant or licensee will not carry on or engage in the business in accordance with the law, or integrity and honesty;
 - b) where the conduct of the applicant or licensee, or other circumstances, afford reasonable grounds for belief that the carrying on by the applicant or licensee of the business in respect of which the license is sought or held, would infringe the rights, or endanger the health or safety of, members of the public;
 - c) where there are reasonable grounds for belief that the carrying on of the business by the applicant or licensee will result in non-compliance with this by-law or any other requirement or prohibition imposed by any other law;”

Section 7.0 of By-law 2-2001 further provides that the Licensee may appeal to Council where the Licensing Officer suspends a license. Attached is a copy of a letter from the licensee’s solicitor requesting an appeal of the Licensing Officer’s decision.

Conclusion

Based on the information resulting from the investigation by the Licensing Section and York Regional Police, it is recommended that the Body Rub Parlour license issued to 1409044 Ontario Inc. o/a Marvellous Spa be suspended for 15 days.

Attachments

1. Letter to Body Rub Parlour Owner
2. Letter from Body Rub Parlour Solicitor
3. Memorandum from City Clerk with attached letter from Body Rub Parlour Owner

Report prepared by:

Joseph A.V. Chiarelli
Manager Special Projects Licensing and Permits

Geoff Gelfand
Licensing Officer

May 13, 2003

1409044 Ontario Inc
o/a Marvellous Spa
1A-435 Bowes Rd
Concord, Ontario
L4K 1K1

ATTENTION: KRYSZYNA KRAWIEC

At approximately 12:30 a.m. on May 3, 2003 the Licensing Enforcement Officer and York Regional Police inspected the above noted body rub parlour. The following observations were made:

The body rub parlour was open for business outside the prescribed hours contrary to Section 13.04 (1) of By-law 2-2001 as amended:

The doors on the rooms designated as massage rooms were not equipped with windows as prescribed by Section 13.03 (1) k) of By-law 2-2001 as amended:

There was no owner or operator present while the body rub parlour was open for business as prescribed by Section 13.0 (3) g) of By-law 2-2001 as amended.

Please be advised that Section 7.0 (1) a), b) and c) state the following:

- 7.0 (1) Upon reviewing a license application, including an application for renewal of a license, or upon receiving information or a complaint as against a license holder, the Licensing Officer may, in his or her sole discretion refer the application to Council, or refuse to grant, or revoke or suspend a license upon the following grounds:
- a) where the conduct of the applicant or licensee affords reasonable grounds for belief that such applicant or licensee will not carry on or engage in the business in accordance with the law, or integrity and honesty;
 - b) where the conduct of the applicant or licensee, or other circumstances, afford reasonable grounds for belief that the carrying on by the applicant or licensee of the business in respect of which the license is sought or held, would infringe the rights, or endanger the health or safety of, members of the public;

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- c) where there are reasonable grounds for belief that the carrying on of the business by the applicant or licensee will result in non-compliance with this By-law or any other requirement or prohibition imposed by any other law;

Therefore, this is to advise you that pursuant to Section 7.0 of By-law 2-2001 as amended, your Body Rub Parlour license is suspended for a period of 15 days. The suspension shall take effect upon service of this notice.

Please note that you may appeal this decision to Council for the City of Vaughan by notifying the City Clerk in writing within 20 days of receipt of this letter.

Should you have further questions in this regard, please contact me at (905) 832-8504 extension 8691.



Geoff Gelfand
Licensing Officer
CITY OF VAUGHAN

Copy: John D. Leach, City Clerk
Joseph Chiarelli, Manager of Licensing
Licensing Enforcement Officer
File
York Regional Police

RECEIVED
CITY OF VAUGHAN
LICENSING
MAY 15 2003
INITIAL: CP

MORRIS-MANNING Q.C. 500 St. Laurent
www.morris-manning.com
mml@morris-manning.com

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FACSIMILE TRANSMITTAL FORM

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Please deliver the following pages to:

Name: Office of Mr. John D. Leach
City Clerk
The City of Vaughn
2141 Major MacKenzie Drive
Vaughn, Ontario
L6A 1T1

Fax: 905-832-8555

FROM: Morris Manning, Q.C.

Total number of pages (including this cover page) 2

Transmission Date: May 15, 2003

ATTN: JOSEPH CHIARELLI

NOTE: If there are any problems with transmission, please contact Eileen Anture at (416) 304-0841

RECEIVED
MAY 15 2003
MORRIS-MANNING
Q.C. LICENSING

FROM: [REDACTED]

MORRIS MANNING Q.C. 400 Bloor Street West, Suite 4000
Toronto, Ontario M5W 1A5
Tel: (416) 593-8888 Fax: (416) 593-8889
www.manningmcclellan.com

Attachment 2

DELIVERED BY FACSIMILE: 905-832-8535

May 15, 2003

Office of Mr. John D. Leach
City Clerk
The City of Vaughn
2141 Major MacKenzie Drive
Vaughn, Ontario
L6A 1T1

Attn: Joseph Chiarelli

Dear Mr. Chiarelli,

Re: 1409044 Ontario Inc. o/a Marvellous Spa - Notice of Suspension in letter dated May 13, 2003

Further to our conversation of yesterday afternoon with Mr. Gelfand, I write to advise you that we intend on appealing the decision to suspend the body-rub parlour license of the above-noted licensee.

It is our understanding from Mr. Gelfand that the suspension of the license will be held in abeyance pending the appeal of the decision to the Council for the City of Vaughn.

Yours very truly,



Morris Manning, Q.C., J.D.

Attachment 3

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June 10, 2003

To: Members of Council

Re: **Committee of the Whole- June 16, 2003**
Marvellous Spa

Attached hereto is a copy of a letter from the solicitor acting for Marvellous Spa indicating he is unavailable to attend on June 16, 2003 to address the issue before Council. In addition, the solicitor has requested disclosure of documents related to the proposed suspension of the body rub parlours license. Accordingly, he is requesting this matter be set to a future date. Staff has no objection to the request and respectfully request that this matter be deferred to the Committee of the Whole meeting of August 18, 2003.

Respectfully Submitted


John D. Leach
City Clerk

16-B

MORRIS MANNING Q.C.
Barristers at Law
407 King Street West
Toronto, Ontario M5G 1K4
Tel: 416 593-8888
Fax: 416 593-8889

DELIVERED BY FACSIMILE: 905-832-8535

June 9, 2003

Joseph A.V. Chiarelli
Manager - Special Projects, Licensing and Permits
The City of Vaughn
2141 Major MacKenzie Drive
Vaughn, Ontario
L6A 1T1

Dear Mr. Chiarelli,

Re: 1409044 Ontario Inc. o/a Marvellous Spa

Thank you for your letter of June 3, 2003, advising that the above-noted matter has been scheduled for June 16, 2003, at 1:00 pm.

Unfortunately, I am not available to attend at the time and date set.

I further note that until seeing your recent correspondence I was unaware of any charges being processed against the owner of the above-noted establishment. These matters are clearly relevant to the suspension proposed and have not been disclosed. We are unable to proceed with this appeal without an opportunity to review any and all charges outstanding against our client, as well as all material related to those charges.

For the foregoing reasons, I suggest that the matter be set for hearing at another date. Please contact me so that we may discuss a mutually convenient time for the hearing.

Yours very truly,


Morris Manning Q.C., J.D.

