

March 5, 2012

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File 06766.00277

The Corporation of the City of London
Licensing and Municipal Law Enforcement Services
P.O. Box 5035
London, ON N6A 4L9

Attention: Orest Katolyk
Manager, By-law Enforcement

Dear Mr. Katolyk:

Re: Public Safety Committee Meeting March 6, 2012
Licensing of Methadone Pharmacies and Clinics

We are counsel and agents for Shoppers Drug Mart Inc. ("**Shoppers**"), which licenses the operation of 24 Shoppers Drug Mart retail drug stores in the City of London (the "**City**"). The stores are owned and operated under licence by individual pharmacist-owners (the "**Pharmacist-Owners**").

We are in receipt of the Report which was jointly prepared by the Director of Building Controls, the Chief Building Official and the Licence Manager regarding the proposed licensing of methadone clinics and methadone pharmacies across the City, as well as the proposed Licensing By-law.

Shoppers and its Pharmacist-Owners in the City have significant concerns with respect to the proposed Licensing By-law. Those concerns are summarized below.

1. The Definition of Methadone Pharmacy is Overbroad

Shoppers' main concern relates to the definition of "Methadone Pharmacy". While Shoppers appreciates that the definitions in the Licensing By-law have been revised since the initial proposal in October 2011, in Shoppers' view the definition remains far too overbroad. This is because the threshold for determining whether dispensing methadone is an ancillary activity is simply too low.

There is currently one Shoppers' pharmacy in London (Wharnccliffe Plaza) which dispenses methadone, to just over 30 patients. By any reasonable measure, these 30 patients represent a very small percentage of the pharmacy's overall business. To put it in perspective, if the number of customers per day is used as the relevant basis for determination (as the City has chosen to do), 30 customers per day represent about 7% of the Wharnccliffe Plaza store's average daily prescription business.

In our respectful submission, it would be unprecedented, unreasonable and an unwarranted interference with a lawful business operation, to treat a mere 7% not only as exceeding the threshold for what constitutes "ancillary", but to then use that 7% as the defining characteristic of the business for licensing and regulatory purposes. There is simply no discernible difference from the business of the Wharnccliffe Plaza pharmacy and a general pharmacy that does not dispense methadone. If the definition of "Methadone Pharmacy" in the proposed Licensing By-law is adopted, however, it could well apply to that pharmacy, which would then make the full panoply of proposed regulations applicable to it as well.

In our respectful submission, for Council to enact a Licensing By-law which contains a threshold of as little as 7% as the trigger for general pharmacies to require being licensed thereunder – and to be regulated in the same manner and to the same extent as if the dispensing of methadone were the primary aspect of the business – would be arbitrary and unlawfully discriminatory. In addition, we believe that any Licensing By-law based on such a broad definition would exceed the City's jurisdiction to license businesses under the *Municipal Act* and would intrude into areas of health care and pharmaceutical dispensing that are within the sole purview of Provincial and Federal regulatory authorities.

Shoppers appreciates that the proposed new definition in the Licensing By-law tracks the same definition in the proposed Zoning By-law Amendment which will soon be considered by Council. Shoppers has the same concerns with the definition in the proposed Zoning By-law Amendment and has already expressed those concerns to the Planning and Environment Committee.

As a reasonable and supportable alternative, Shoppers proposes the following definition for use in the proposed Licensing By-law, which closely tracks the wording that City Staff recommended and Council adopted in the Interim Control By-law:

"Methadone Pharmacy" means a business selling or filling methadone prescriptions for customers as the primary activity of the business, but excludes a pharmacy (as defined in the Zoning By-law) or a pharmacy that is ancillary and accessory to a hospital.

For the purposes of this definition, the selling or filling of methadone descriptions shall be deemed to be the primary activity of a business if the methadone prescriptions represent at least 50% plus one of the pharmacy's prescriptions.

Shoppers' other concerns with the Licensing By-law, which are described below, all flow from the definition which renders the Licensing By-law applicable to general purpose drug stores. Should the City amend the definition as Shoppers suggests, we expect all of its other objections would likely be satisfied as a result.

2. The Licensing Regulations are Excessive and Unwarranted

In Shoppers' respectful submission, the requirement to maintain a log of customers, to devise a security plan and to meet regularly with the neighbouring community, are excessive and unwarranted in the case of general pharmacies of which methadone dispensing is not the primary activity of the pharmacy business. Such regulations are more appropriately directed at primary-purpose methadone pharmacies. In our view, the inclusion of such regulations in the proposed Licensing By-law underscores the inappropriateness of the definition in the proposed By-law.

In addition, Shoppers has certain mandatory obligations which require that it scrupulously respect its customers' privacy and maintain the confidentiality of their health records, including prescription drug records. These include statutory and regulatory requirements that may arise under various Provincial statutes such as the *Personal Health Information Protection Act, 2004*; the *Drug and Pharmacies Regulation Act*; the *Pharmacy Act, 1991*; as well as the *Federal Personal Information Protection and Electronic Documents Act*. None of these statutes or the regulations thereunder contemplates the maintenance of a register of prescription drug customers, identifiable or not, for municipal licensing purposes.

In our respectful submission, the requirement to maintain a customer log is inconsistent and irreconcilable with those statutory obligations and constitutes an unjustified intrusion into customer privacy. While Shoppers appreciates that the By-law as drafted does not require that customer names be used, it is inevitable that some type of indentifying information will need to be provided if the accuracy of the log is to be verifiable and assured. Such information could in turn lead to disclosure of the identity of methadone customers.

We trust this sufficiently conveys our client's concerns and appreciate the opportunity to provide these submissions. Please ensure they are provided to the Committee prior to its March 6th

meeting. We also reserve the right to appear before the Committee to further articulate our client's concerns and will keep you apprised in that regard.

In addition, kindly accept this correspondence as our written request on behalf of Shoppers that we be kept informed and provided with any further notice of this matter, including any Notice of Enactment of the proposed Licensing By-law.

Thank you for your attention to this matter. Should you have any questions or wish to discuss this further, please do not hesitate to contact us.

Yours truly,

WeirFoulds LLP


Barnet H. Kussner

BHK/KAM/td

c: Shoppers Drug Mart

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