March 24, 2011

Councillor Cesar Palacio  
Chair – Licensing & Standards Committee  
City of Toronto  
100 Queen Street West  
2nd Floor  
Toronto, ON M5H 2N2

Dear Councillor Palacio:

Re: Miscellaneous Amendments to Toronto Municipal Code Chapter 545, Licensing, Item LS 2.3  
Licensing Adult Entertainment Parlours Article XXXII

I have been retained as a Special Assignment lawyer by the Adult Entertainment Association of Canada. I request the opportunity to propose the following amendments to Toronto Municipal Code, Chapter 545, Article XXXII. The intent of the proposed amendments is to better define conduct within an Adult Entertainment Parlour that is intended to be prohibited and to address certain operational and legal inconsistencies in the regulations pertaining to Adult Entertainment Parlours.

1. Section 545-395. Owners and operators not to permit attendants to have physical contact with other persons.

Existing Provision

No owner or operator shall, in respect of any adult entertainment parlour owned or operated by him or her, knowingly permit any attendant, while providing services as an attendant, to touch, or be touched by, or have physical contact with, any other person in any manner whatsoever involving any part of that person's body.
Proposed Amendment

No owner or operator shall, in respect of any adult entertainment parlour owned or operated by him or her, knowingly permit any attendant, while providing services as an attendant, to perform or participate in any of the following acts:

actual or simulated sexual intercourse, masturbation, urination, defecation, ejaculation, sodomy including bestiality, anal intercourse, oral sexual intercourse, physical stimulation of the genital organs or flagellation, bondage or torture in the context of a sexual relationship or activity.

Reasons:

The wording of the existing regulation is intended to prohibit all forms of inappropriate conduct. However, a strict interpretation of the existing provisions would render an owner or operator in breach of the regulation if an attendant was inadvertently touched by an individual or had any physical contact whatsoever with an individual regardless of whether the physical contact was of a character intended to be considered inappropriate. For example, if the attendant, while performing a dance routine was inadvertently touched by a passerby, the owner and operator would be in violation of this regulation: the attendant was touched while performing a service. The proposed amendment would not render an owner or operator in breach of the regulation for inadvertent physical contact or physical contact of a character not considered otherwise inappropriate. I believe the proposed wording is in line with the manner in which Licensing Inspectors presently interpret this regulation. The proposed changes eliminate the need for interpretation because the prohibited services are specifically defined.

2. Section 545-396   Attendants not to have physical contact with other persons.

Existing Provisions

No attendant shall, while providing services as an attendant, touch or have physical contact with any other person in any manner whatsoever involving any part of that person’s body.
Proposed Amendment

No attendant shall, while providing services as an attendant, participate or perform the following acts:

actual or simulated sexual intercourse, masturbation, urination, defecation, ejaculation, sodomy including bestiality, anal intercourse, oral sexual intercourse, physical stimulation of the genital organs or flagellation, bondage or torture in the context of a sexual relationship or activity.

Reasons:

Same as above.

3. Section 545-397  Attendants to perform only within plain view of main stage.

Existing Provisions

A. No attendant shall provide or perform any services as an attendant in an adult entertainment parlour except while within the plain and unobstructed view of the main stage of any floor on which such services are being provided.

B. Every owner or operator shall ensure that no attendant provides or performs any services as an attendant in an adult entertainment parlour except in accordance with Subsection A of this section.
Proposed

A. No attendant shall provide or perform any services as an attendant in an adult entertainment parlour except while within an area that is within public view and to which the public has unhindered access.

B. Every owner or operator shall ensure that no attendant provide or perform any services as an attendant in an adult entertainment parlour except in accordance with Subsection A of this section

Reasons

The existing provisions of the regulation governing the private dance lounge area (V.I.P.) requires that the area be within the plain and unobstructed view of the main stage. The object of the regulation appears to be to discourage prohibited conduct in private viewing areas. However, the regulation creates a hardship on the owners or operators of some clubs since they operate on more than one floor or have public areas that are not within the site lines of the main stage. Further, a strict application of the wording of this regulation would render an owner, operator or attendant liable for providing an otherwise permitted service if the visibility of the attendant from the main stage, was obstructed by passing patrons or wait staff while the attendant performed a permitted service. The proposed wording eliminates the risk that one could be in violation of the provisions of the regulation even though providing a permitted service. The proposed wording honours the intent that prohibited acts will be easily detected since all services must be performed within areas within the view of the public and to which the public has open an unhindered access.

4. Section 545-2A.(56) Licence requirement.

Existing Provisions

(56) Every attendant at an adult entertainment parlour.

Proposed Revision

Registration of attendant
(1) every owner or operator shall require an attendant to complete a registration form prior to providing services as an attendant.

(2) A complete registration form shall include the following information pertaining to the attendant:

(a) legal name;
(b) current address;
(c) former address if changed within the previous 2 years; and
(d) proof of age of majority as evidence by production of at least of the following documents of which one must contain photographic identification of the attendant:
   i) Birth Certificate
   ii) Baptismal Certificate
   iii) Driver’s Licence
   iv) Passport
   v) Social Insurance Card

(3) Every owner or operator shall retain with the completed registration form a photocopy of the identification provided by the attendant.

(4) Every owner or operator shall, upon request of an Inspector or License Manager, provide forthwith to that individual the valid, completed registration form for any and all attendants, together with photocopies of the identification retained with the registration form.

(5) Every owner or operator shall retain all completed registration forms and photocopies of identification for a period of 3 years from the date of completion.

(6) A registration form is valid for 1 year from the date it is completed.

(7) Every owner or operator shall have the attendant complete a registration form at least once a year or where any change of information occurs.

Reasons

Some Municipalities’ Bylaws requiring adult entertainment attendants to be licensed have been declared invalid (i.e. the Court of Appeal struck down, as invalid, the provisions of the City of Windsor’s Licensing Bylaw that required adult entertainment attendants to be licensed).
In many other Municipalities throughout this Province, there is no licensing requirement for adult entertainment attendants. Consequently, attendants from other jurisdictions are discouraged from working in Toronto because they must pay a licensing fee that is not payable in other jurisdictions. The regulation requiring an attendant to secure a license is intended to provide the Municipality with some information in respect of individuals who provide services as attendants in adult entertainment parlours. This object can be attained by simply requiring attendants to be registered as adult entertainment attendants before being authorized to provide services in adult entertainment parlours.

The proposed registration regulation is derived from the Bylaw of the City of Mississauga. It has been found to permit the Municipality to be informed of the identity of adult entertainment attendants and to monitor, when necessary, their activity. By adopting a registration system, the owners and operators of adult entertainment parlours will be able to compete on a level playing field for the services of attendants.

Further, the object of a licensing requirement is to permit the Municipality to monitor the identity of individuals employed as attendants in adult entertainment parlours. However, it has unforeseen consequences. A public and permanent record is created by which an attendant can be identified as having been, in the past, employed in the adult entertainment industry. That public record could, in some instances, be the cause of embarrassment to an attendant in the future. For example, some attendants work in adult entertainment parlours to earn income to fund College and University tuition expenses. Once they have secured a Diploma or Degree they leave the industry and seek employment elsewhere. Nevertheless, they are at the risk of being embarrassed in the future since there now exists a public record that the individual was employed as an attendant. A registration system, as proposed above, provides a means for a municipality to continue to monitor the identity of individuals employed as attendants in adult entertainment parlours while protecting the privacy rights of individuals employed as attendants.

I will be in attendance before your Committee on Wednesday, March 30, 2011 to answer any questions or to address any concerns your members may have with respect to the proposed amendments.

I look forward to appearing before you.

Yours very truly,

SHULGAN MARTINI MARUSIC, LLP

"Myron W. Shulgan"/hm

Myron W. Shulgan, Q.C.
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