

NOEL D. GERRY
BARRISTER & SOLICITOR

1120 Finch Avenue West
Suite #601
Toronto, Ontario
M3J 3H7

Telephone: 416-972-1161
Fax: 416-900-6077
Cell: 416-720-1492
Email: gerrylaw@rogers.com

June 24, 2015

Licensing and Standards Committee
City of Toronto, Council
10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON
M5H 2N2

Dear Sirs:

**Re: LS5.1 – Prohibiting Hookah (Waterpipe) Use in Licensed Establishments
Licensing and Standards Committee Consideration on June 25, 2015**

I have been retained by fourteen owners of hookah establishment owners to address the above referenced report on their behalf. A list of my clients is attached to this letter.

First, and foremost, my clients oppose the proposed ban on hookah use in licensed establishments. In every case, the primary source of income for these business establishments is derived from the use of hookah. The imposition of the proposed ban would cause each of my clients to lose their business and income resulting in financial hardship to the owners and their families. Imposing the ban would also result in lost employment for my clients' employees causing financial devastation to those employees and their families. My clients therefore request that you to reject the recommendation of the Executive Director as set in the Report.

Secondly, my clients are seeking a deferral of this agenda item to allow for the preparation of a fulsome and meaningful submission in response to the recommendations set out in the Report. I am unable to attend the meeting scheduled for June 25, 2015. The agenda for the meeting was only published on June 18, 2015 and I cannot rearrange my schedule on such short notice.

Seven days is clearly insufficient time to prepare and provide the necessary information and materials to the Committee so that its members can have a complete picture of the effect of the proposed ban. My clients want to ensure that the Committee is enabled to exercise its duty to consider the best available evidence, impartially and in good faith, before making its recommendations to Council.

Efforts are underway to:

- **Compile a petition;**

A petition has been started. I enclose results up to June 24, 2015. Clearly, more signatures can be obtained given a longer period of time than seven days. It is important to allow my clients sufficient time to compile a complete petition so that the members of the Committee can see the true number of citizens who oppose the ban.

- **Obtain an independent report from an impartial financial professional on the true economic impact of the ban;**

It is imperative that the Committee see a true, accurate, impartial and verifiable accounting of the economic impact of the ban. It is stated in the report from the Medical Officer of Health, which is attached as an addendum to the material provided for this meeting: *“However, it is difficult to predict the impact of prohibiting hookah use on places where the business model centres on offering hookah with limited food and alcohol sales.”* With respect to the staff members who authored that report, one might be a little incredulous at the cautious nature of that sentence. If the majority of income for a business is derived from the sale of any particular good or service, it seems pretty clear that one could predict with certainty that banning the sale of that good or service would destroy the business. We submit that it is crucial that complete and reliable information on the financial losses that shall be occasioned by businesses whose majority of revenue is derived from waterpipe use as well as the broader economic losses to the community and a tally of the loss of employment positions in the community that would follow from the ban, be put before the Committee so it can see the real economic impact of the ban when it properly weighs all interests before making its recommendation. At this stage only haphazard and unreliable information on economic impact has been presented.

One of my clients has provided me with a document entitled “Study on financial and cultural impact based on Hookah ban”. I understand that the author of the report has an accounting background. The author is however one of the business owners and not an independent accounting professional. This report, which also includes arguments in respect the cultural impact of the ban, is in principle what I am seeking to produce for the consideration of the Committee, but of course with the assistance of impartial, credentialed experts in each field. I do ask you to read this report and give it due consideration.

- **obtain an impartial report from an expert on the health effects of the smoke that emanates from the use of hookah pipes;**

My clients would like to have the opportunity to hire an independent expert to measure the impact of the emission of smoke from waterpipes on the environs of their businesses. Does the smoke from the smoking of non-tobacco products in waterpipes contain the same or less noxious chemicals as the smoke that emanates from charcoal grills in food

establishments? If so, why not a ban on indoor grills? Can ventilation systems mitigate the potential health risks. These questions have not been adequately addressed and deserve consideration by the Committee. An impartial expert retained by my clients could address these questions.

- **Prepare a report on the cultural impact of the ban;**

My clients want the opportunity to have an expert on Middle Eastern customs address the cultural impact of the ban. You have anecdotal evidence that the majority of business owners and patrons of establishments that prominently feature hookah use are of Middle Eastern and North African descent. Hookah is recognized as a centuries old tradition among those communities. Gathering in public spaces, such as cafes and bars, to smoke hookah is a part of that tradition. My clients believe that the Committee should have a complete understanding of the cultural and historical significance of the activity that the Executive Director seeks to ban. Contextual insight into the activity would be informative and would assist the Committee in its duty to weigh all competing interests. At this point many members of these ethnic communities feel that the proposed ban is an assault on their culture and traditions.

- **Prepare a thorough review of relevant regulation in other jurisdictions;**

While not necessarily determinative of any issue, a review of the regulations imposed in other jurisdictions would be of assistance, particularly to examine other less intrusive solutions. The written deputation of the Smoking and Health Action Foundation, which was made to the Board of Health - not this Committee, examines regulation in other countries and contains a list of thirty-five jurisdictions in Canada that have some form of regulation. The actual regulations are not provided, so the list is not of much utility. My clients, having not had this material until last week, need the opportunity to review the regulations in other jurisdictions to see if there is a solution that would allow their businesses to survive, while protecting the public at large. The Board of Health report refers to American states that have exempted some form of hookah use from overall public indoor smoking prohibitions and provides Illinois as an example, having exempted businesses where eighty percent or more of total revenue is derived from Hookah use. It would be prudent, before imposing an overall ban, for the Committee to have more detail on the regulation of Hookah in other jurisdictions. Seven days is insufficient time to compile the regulations, study them and draft a report that outlines the various options and solutions.

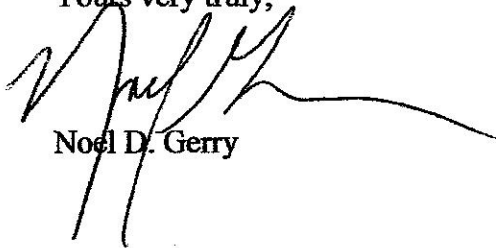
Also relevant to reviewing other jurisdictions is the paramount provincial power to regulate health and safety issues. I would like the time to research and review the materials and debates that led the Provincial Legislature to omit non-tobacco smoking products from the *Smoke Free Ontario Act*. My clients invested in their businesses believing that non-tobacco smoking products could be lawfully consumed in their business establishment. The existence of these products predates the SFOA and were specifically omitted from the legislation. My clients would ask the Committee to defer to the Legislature of Ontario, as it is clear that it has already put its mind to this issue.

None of these items can be completed by June 25, 2015. My clients are facing financial ruin and deserve more than seven days to present their case. Giving them the opportunity to attend and speak in a public forum, while not allowing them time to put their best case forward, makes their right to be heard illusory at best.

It is our position that the Committee is not being provided with complete information and evidence, particularly in respect of financial impact, to enable it to make the informed decision it is required to make. The matter should be deferred.

I sincerely thank you for taking the time to consider these comments. I apologize for not being able to personally attend but I hope that you give this written deputation, along with the fates of my clients' businesses and livelihoods, due consideration when deciding upon the proposed recommendation to ban the use of Hookah in licensed establishments.

Yours very truly,

A handwritten signature in black ink, appearing to read "Noel D. Gerry", with a long horizontal flourish extending to the right.

Noel D. Gerry

3 Kings Café & Lounge

Alexandria Café

Argileh Café
Rotana Café

Hot Pot Café

Nile Palace Café

Sequoia Lounge

Dreams Café

Arabian Palace

Layali Elshark

Um Kalthoum

Golden Restaurant

Mavi Café

Shishawarma Inc.

2061 Lawrence
Avenue East,

1940 Lawrence Avenue
East, Scarborough

361 Yonge Street,
1530 Danforth Ave,
Toronto, ON

1336 Danforth Ave,
Toronto, ON

1950 Lawrence Avenue
East, Unit 3, Scarborough

2034 Lawrence Avenue
East, Scarborough

2088 Lawrence Avenue
East, Scarborough

1331 Warden Avenue, Unit
3, Scarborough, ON

1883 Lawrence Avenue
East, Scarborough, ON,
M1R 2Y3

2175 Lawrence Avenue
East, Scarborough

1375 Danforth Road, Units
11-12, Scarborough, ON,
M1J 1GJ

960 Danforth Avenue,
Toronto, ON, M4J 2Z9

599 Yonge Street, Toronto,
ON, M4Y 1L1

Study on financial and cultural impact based on Hookah ban

2015

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1. Executive Summary

1.1 Facts on Hookah establishments in Toronto

- There is more than 60 hookah bar in GTA provide the nontobacco herbal substance in water pipe
- Since Smoke free Ontario act (SFOA) was out on 2006, all shisha bars use nontobacco in their shisha served to customers
- Most of these establishment serve food, beverages, refreshment, beside the shisha
- Hookah sales represent 70-90% of overall sales
- Statistically 70% of the patrons visit hookah bars are Middle Eastern, South Asians and African background
- Yes there is concern about teen ager smoking hookah , but regulations so far did not prohibit nontobacco even for under 19 years (*see our recommendation in chapter 5*)
- Hookah is a part of Middle Eastern, Asian, and African culture.
- Most of the families prefer hookah bars for their children rather than bars and nightclubs due to culture, religion, and safety reasons
- Most of hookah bars licensed for sales of tobacco (retailers)
- The ban on tobacco indoor was a practice since SFOA came in effect in 2006

1.2 What are our concerns?

- Most of hookah bars owners invested their money in hookah service as a core business, then food and beverages sales were added on
- This practice was implicitly approved by the city with no complaints for years
- All entrepreneurs who intended to buy or setup new business mitigate the risk involved in the targeted business before injecting huge amount of capital. Hookah business to many business owners was measured with low risk in terms of bylaws and litigation due to the following facts
 - Hookah bars serve nontobacco product which does not break the tobacco smoke act
 - Burning charcoal in restaurants using hookah is similar to BBQ charcoal which is allowed , so CO level remain the same

- Most of hookah bars owners serve their culture people which is privilege given in Canada
- Most of hookah bars owners are immigrants who invested their own money in Canada. And to many of them it was their life saving and the only source of income
- The financial impact on business will be significant as it is estimated in *chapter 4*

2. Debates on HL4.1 Report

2.1 Background:

- As it was mentioned in TPH report (HL4.1), in page 3 (first paragraph), MLS recommended to license the hookah in October 2012, which in later stage was referred to Toronto public health for opinion.
- If this discussion was initiated long time ago, why the decision of ban should only take 4 month to pass through?

2.2 International Hookah Regulation

- In this chapter of TPH (page 6, second paragraph) there is no confirmation of banning hookah in other jurisdiction in North America, especially in USA. Here is cut and paste of the original report: **(In the United States (US), the states of Illinois, New Mexico, Michigan and Maine, and the City of Chicago, specifically address hookah use in their smoke-free regulations. New York City's smoke-free air law prohibits smoking tobacco shisha in restaurants and bars, however the law does not specifically address the use of hookah.²³ In 2006, and the New Jersey Smoke-Free Air Act prohibited the use of hookahs for smoking tobacco or non-tobacco products. ²⁴ Some US jurisdictions exempt hookah establishments from smoking prohibitions under specific circumstances. For example, Illinois exempts hookah establishments from smoke-free regulations if more than 80% of total revenue comes from tobacco shisha sales. The states of Michigan and Maine, and the City of Chicago also require a special permit for hookah establishments.²⁵**
- If we are treated with the same concept, city of Toronto should consider the volume of more than 80% of revenues as it is the case in Illinois, USA.

2.3 Educating the Patrons of the risk of smoking

- We support 100% TPH in educating the customers when it comes to risk factors , giving some examples
 - there is sign of age restriction everywhere in the hookah bar
 - we communicate the teen ager that we only provide herbal stuff with no nicotine and no tobacco
- if the same principle applied fairly, then cigarettes should be banned

3. Culture impact

- People used to have a bit of break after a long day of work and for them the choice after hours is either a bar, nightclub or hookah bar.
- Many of immigrants do not drink and do not enjoy the nightclub as it is not in their culture
- Hookah bars provide afterhours service including hookah, food and soft beverages
- For most of immigrants hookah bars as a low spending venues (averaging 7\$ per person) are the best place since their budget is low
- In hookah bars patrons listen to music, play cards, bagmen , chess and other games that similar to where they came from
- I request you kindly to see the comments on hookah ban petition online in the following link

<http://www.passmethehookah.ca>

4. Financial impact

- Our main concern when it comes to financial impact is the long term liabilities that we incur including
 - a- Lease
 - b- Long term loans , credit cards, bonds, and other liabilities
 - c- Staff indemnity
 - d- Demobilization cost
 - e- Deferred tax, expenses like insurance etc.;
- The following table shows consolidated long term financial impact (estimated for 60 hookah bar)

CONOLIDATED FOR 60 BUSINESS		
LONG TERM LIABILITIES	PER PROJECT	TOTAL FOR 60 BUSINESS
<i>Lease Period (years)</i>		
Remaining lease in \$	\$ 267,953	\$ 16,077,176
Long tem Loan in \$		\$ -
Total investment	\$ 109,333	\$ 6,560,000
less Amortized value	\$ 58,400	\$ 3,504,000
Net investment as of 31/12/2015	\$ 50,933	\$ 3,056,000
	\$ -	\$ -
current liabilities as of 31/12/2015	\$ 20,167	\$ 1,210,000
	\$ -	\$ -
Deferred expenses	\$ 1,799	\$ 107,920
deferred taxes	\$ -	\$ -
demobilization cost	\$ 8,333	\$ 500,000
staff indemnties	\$ 20,000	\$ 1,200,000
Property recovering cost	\$ 5,000	\$ 300,000
TOTAL LONG TERM LIABILITIES	\$ 541,918	\$ 32,515,096

- The financial impact on the economy is estimated to be significant too as it is shown in the following table:

ESTIMATED FOR 60 HOOKAH BAR		
	DETAILS	AMOUNT IN \$
1	<u>TAX</u>	
1.1	HST TAX	\$ 2,000,000
1.2	PROPERTY TAX	\$ 1,200,000
1.3	INCOME TAX	\$ 1,000,000
	TOTAL TAX PAID	\$ 4,200,000
2	<u>PURCHASES</u>	
2.1	GOODS AND COMMIDITIES PURCHASED	\$ 6,000,000
	UTLITIES, ELECTRIC, GAS	\$ 1,200,000
	OTHERS	\$ 300,000
	TOTAL PURCHASE FROM THE MARKET	\$ 7,500,000
3	<u>STAFF SALARIES</u>	\$ 3,600,000
	GRAND TOTAL	\$ 15,300,000

- Impact on economy will include but not limited to:
 - Loss of jobs
 - Loss of tax paid
 - Loss of purchases
 - Loss of electric and other utilities consumed monthly

5. Our recommendation and request:

- Hookah bars to be licensed and legally operated
- Restricted age (only 19 years and above) are allowed to dine in
- Ventilation system to be available in all hookah bars
- Seating capacity to be inline with the city rules
- Increase the annual license fees by 100%
- Staff should be 19 years and above and willing to write consent agreeing to work in such kind of environment