

## REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

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**Date of Hearing:** September 22, 2022 (Videoconference Hearing)

**Panel:** Anu Bakshi, Panel Chair

**Re:** HabibiQ Inc. (Report No. 7588)  
o/a HABIBIQ  
Ali Ballout, Director  
Holder of Eating Establishment Licence No. B71-4936014

**Counsel for Municipal Licensing and Standards:** Graham Thomson

**Counsel for Applicant:** Unrepresented

### INTRODUCTION

Municipal Licensing and Standards (MLS) issued an eating establishment licence No. B71-4936014 to Mr. Ali Ballout o/a HabibiQ on May 10, 2019. On May 10, 2021, Mr. Ballout's licence was due to expire; however, a renewal payment was submitted, and thus his licence continues to be valid.

As a result of numerous inspections, MLS concluded that Mr. Ballout operates a hookah lounge on the licensed premises (in contravention of hookah use prohibition in a licensed establishment under Chapter 545-8.4.C of the Toronto Municipal Code (Code). Further, between July 24, 2020 and March 20, 2021, MLS officers and Toronto Public Health inspectors determined that the premises operated in non-compliance with the COVID-19 rules mandated at the time by the provincial order, under *Emergency Management and Civil Protection Act*, the *Reopening Ontario (A Flexible Response to Covid-19) Act*, 2020, Rules for Areas in Step 2, O. Reg. 263/20 (the "COVID-19 Order"), and the COVID-19 measures in force under the Code. As a result, MLS referred this matter to the Tribunal to determine whether Mr. Ballout's licence should be renewed, suspended, revoked or have conditions placed on it.

This matter was originally scheduled for August 12, 2021, but the hearing was adjourned on multiple occasions to September 22, 2022. Mr. Ballout failed to attend on September 22, 2022, despite being properly served with the Notice of Hearing via regular mail and email on August 25, 2022, and Tribunal staff's efforts to email and telephone him on the day of the hearing. As a licensee, Mr. Ballout is obliged to update MLS and the Tribunal if he changes his contact information.

Rule 12.1 of the Tribunal's Rules of Procedure allows for a hearing to proceed if the licensee does not attend but has been properly notified of the hearing time and

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place. A similar provision is set out in section 7 of the *Statutory Powers Procedure Act*.

The Tribunal was satisfied that Mr. Ballout was properly served with the Notice of the Hearing. After waiting more than 15 minutes, the Tribunal decided to proceed with the hearing in his absence. This hearing was substantially completed on September 22, 2022. However, due to time constraints, the Tribunal gave MLS the opportunity to serve and file any records related to the September 2022 inspection of the premises and written closing submissions. The Tribunal received those documents on September 29, 2022.

## **ISSUE**

The issue before the Tribunal is whether Mr. Ballout's eating establishment licence should be renewed, suspended, revoked or have conditions placed on it.

## **MLS's EVIDENCE**

MLS entered MLS Report No. 7588 and updates as Exhibit 1 at the hearing. MLS also filed documents related to September 13, 2022 premises inspection. At the hearing, MLS Officer Fuentes briefly answered queries about the September 13, 2022 inspection under oath.

Mr. Ballout is the holder of an eating establishment licence operating as HabibiQ since May 10, 2019. According to numerous photos found in the Report, there are two storefront signs on the large licensed premises: HabibiQ, the licensed eating establishment and HabibiZ, a hookah lounge. It may seem like HabibiQ and HabibiZ are separate units and businesses to the public. A large wooden patio is also attached to HabibiZ erected in the parking lot. A back hallway connects HabibiQ and HabibiZ, according to MLS officers' notes found in the Report, pages 18 and 31. Mr. Ballout's eating establishment licence applies to the whole premises.

There are five outstanding charges for failing to comply with the COVID-19 Order and one for unlawfully permitting hookah use on the premises, according to the Charges registered against Mr. Ballout and on-site manager Mr. Bashkami found in the Report- September 21, 2020 update (Appendix 2).

On behalf of MLS, Mr. Thomson identified documents that are in basically five categories:

- a) Previous charges and convictions for unlawful permitting hookah of former eating establishment called Yala HabibiZ located the same premises as HabibiQ. Mr. Ballout was sole corporate director of the Yala HabibiZ;

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- b) Inspections carried out in the summer 2020;
- c) Unlawfully permitting hookah use on the premises;
- d) Non-compliance with COVID-19 Order and
- e) Building Code violations.

### **Previous Non-Compliance Yala HabibiZ**

In 2017, MLS issued an eating establishment licence to 10241318 Canada Inc., operating as Yala HabibiZ at the same premises as HabibiQ. According to the Licensing Inquiry Record found in the Report - September 21, 2020 update at pages 3-4, Mr. Ballout was the sole director of Yala HabibiZ.

Yala HabibiZ was charged six times for unlawfully permitting hookah use on the premises. Those charges resulted in four convictions and fines. Yala HabibiZ's licence lapsed on October 30, 2018. MLS records indicate that at least \$2,000 in fines remain outstanding.

On May 10, 2019, Mr. Ballout, in his personal capacity, applied for and was issued the current eating establishment licence operating as HabibiQ on the same premises. MLS issued the licence without conditions.

### **Summer 2020 inspections**

During the 2020 summer, MLS officers conducted four inspections of the premises. MLS officers laid no charges as a result of those inspections.

Toronto Public Health inspectors accompanied MLS officers to inspect the premises on July 24, 2020. Their notes reveal the following observations:

- patrons sitting at physically distanced outdoor patio tables
- customers lined up outside without maintaining recommended physical distance
- unmasked customers entered the premises to use the bathroom
- compliance with cleaning, hand hygiene and disinfecting

MLS officer Neal's notes read, "patio being used contra to building department." The same day photos show that HabibiQ was busy, and some patrons wore masks outside. Generally, these photos are dark and difficult to make out any substantial detail.

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Inspectors spoke to the on-site manager and telephoned Mr. Ballout to discuss the need for COVID19 Order compliance and provided recommendations. In addition, they emailed Mr. Ballout educational resources and a non-compliance notice.

MLS officers attended the premises three more times during the summer. During those inspections, the MLS inspectors noted the following:

- On August 18, 2020, the HabibiZ hookah lounge was open. Hand sanitizer was available. Physical distance was observed between patrons. The outdoor patio was present with an order requiring its removal. Same-day photos found in the Report at pages 77-90 reveal hookah equipment and signs requiring physical distance and masks and a sign listing hookah flavors and tea for sale.
- On August 27, 2020, both HabibiZ and HabibiQ were open. MLS Officer's notes reveal that the restaurant was connected to the hookah lounge by a rear hallway, and one door providing direct access to the two storefronts. MLS Officers told the on-site manager "to correct the restaurant address." The manager responded that a lawyer had been hired to correct the address but could not do so because the MLS's office was closed.
- The next day, MLS officers returned to find the hookah lounge open and patrons wearing masks. The wooden structure patio was removed, and patrons used a patio deck. The notes reveal that patrons were purchasing food at HabibiQ and consuming it in the hookah lounge. The same-day photos are dark and difficult to make out any detail.

### **Unlawfully Permitting Hookah Use on the Premises**

MLS officers re-attended the premises on October 13, 2020. The officers' notes reveal that MS officers observed two patrons smoking hookah inside (Report - Appendix 3). The officers told Mr. Ballout via phone that he had to stop operating the hookah lounge on the premises because it was contrary to the Code and his eating establishment licence. Mr. Ballout said that he would apply to Toronto Building for a PPR (a preliminary project review) to separate HabibiZ from HabibiQ. Mr. Ballout's lawyer attended and told the officers that all communications concerning either HabibiZ or HabibiQ were to go through her. The officers told the lawyer that the licence applied to the whole premises and that the hookah lounge was not permitted to operate within the licensed premises. The MLS officers issued a notice to comply. Same-day photos reveal hookah equipment on the premises.

### **Failure to comply with COVID-19 Order**

On October 24, 2020, Toronto Public Health inspected the premises and charged the on-site manager for failing to operate the licensed premises in compliance with the COVID-19 Order pursuant to s. 10(1)(a) of *the Reopening Ontario Act, 2020*. The notes indicate that the hookah lounge was open with customers smoking and

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drinking beverages inside in contravention of the COVID-19 Order. Inspectors told the on-sight manager and Mr. Ballout via phone that no indoor dining was permitted.

The inspectors noted loud music playing in non-compliance with Chapter 545-8.4.1 of the Code (in force at that time). The loud music would impede two people with 2 meters distance between them from carrying on a conversation without raising their voices to be heard by one another.

The inspectors told the on-site manager and Mr. Ballout over the phone that operating the hookah lounge was illegal and indoor dining was not permitted. Same-day photos show that the premises was busy with many inside patrons sitting around tables and hookah equipment (Report – September 13, 2022 update at pages 34-42).

The next day, MLS officers inspected the premises and charged Mr. Ballout with unlawfully permitting hookah use and failure to comply with the COVID-19 Order.

MLS Officers observed the following according to the notes and same-day photos found in the Report at pages 25-27 and September 13, 2022 update at pages 43-61:

- customers purchasing and served food inside at HabibiQ
- customers seated at six tables inside consuming food and beverages in the hookah lounge
- patrons using hookahs to smoke
- an unidentified employee serving just arrived patrons in the hookah lounge.

On October 30, 2020, Toronto Public Health inspectors re-inspected the premises. Again, they observed customers inside smoking and drinking beverages. Furthermore, the inspectors told the on-site manager that no indoor dining was permitted. Same-day photographs show that the hookah lounge was busy with many unmasked patrons inside, hookah equipment and beverage containers. The inspectors charged the on-site manager for failing to operate the licensed premises in compliance with the COVID-19 Order.

Again, on November 6, 2020, Toronto Public Health inspectors returned and charged Mr. Ballout for failing to operate the licensed premises in compliance with the COVID-19 Order. The Toronto Health Inspectors' notes and same-day photos found in the Report –September 13, 2022 update reveal the following infractions:

- Customers purchased food from HabibiQ and ate the food in the hookah lounge
- A large gathering of customers stood outdoors in front of the hookah lounge without the required physical distance

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- Customers walked around on the patio and inside the premises without masks and the required physical distancing
- Inside the hookah lounge, about 40 -75 customers were consuming food and beverages and smoking hookah. Trays of tea and other food items were served and transported to customers
- A menu of food/beverages and hookah prices was posted near the counter, where one of the staff stood
- Staff did not collect customer contact information
- There was no staff screening protocol

On March 13, 2021, Toronto Public Health and MLS conducted a joint site inspection of the premises. As a result of the inspection, they issued a notice of non-compliance and a Temporary Closure Order to Mr. Ballot. A charge was laid against Mr. Ballout for failing to comply with the COVID-19 Order. According to the notes in the Report – May 30, 2022 update, patrons were dining and smoking hookah on the outdoor patio. Mr. Ballout was on site and insisted that patio dining was allowed. He called his lawyer to clarify, and the inspector explained that patio dining was prohibited.

On March 20, 2021, a TPH inspector returned to the premises and noted the following infractions (Report –May 30, 2022 update at pages 28-30):

- no employee screening
- no safety plan
- no mask policy

The inspector issued another notice of non-compliance and served it on Mr. Ballout, who was on-site.

On September 13, 2022, almost 18 months later, MLS officers re-inspected the premises. The notes reveal multiple patrons seated at tables inside and on the patio outside, smoking hookah and drinking beverages. The officers observed a menu posted advertising hookah products with associated prices. According to the MLS Officer Singh's notes on page 55, attached to the written submissions, the on-site manager confirmed that the hookah lounge did not sell food, only shisha and tea. The restaurant was open with a family seated at a table.

### **Building Code Violations**

On October 14 and 15, 2020, Toronto Building issued orders to comply with the Building Code Act, S.O. 1992, c. 23 against Mr. Ballout and others associated with the licensed premises, following an inspection that revealed that the fire suppression and exhaust systems installed in the licensed premises did not comply with the approved plans for the premises. The orders to comply required all cooking operations to cease until the deficiencies were resolved.

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## **SUBMISSIONS**

In written submissions, MLS sought revocation of Mr. Ballout's licence because there is undisputed evidence that Mr. Ballout has been unlawfully operating a hookah lounge on the premises in contravention of Chapter 545-8.4.C of the Code. This contravention persisted despite prior charges and convictions against his former corporate licensee, Yala HabibiZ; repeated inspections, warnings, and education efforts by MLS officers and Toronto Public Health inspectors; and an additional pending charge for permitting hookah use on the licensed premises.

In MLS's view, renewing his licence would be equivalent to condoning Mr. Ballout's persistent contravention of the hookah use prohibition found in the Code.

In addition to the hookah prohibition contravention, between July 24, 2020 and March 20, 2021 MLS officers and TPH inspectors repeatedly observed non-compliance with the COVID-19 rules mandated at the time by the COVID-19 Order and COVID-19 measures in force under Chapter 545-8.4.1 of these Code. These contraventions persisted despite multiple inspections, re-inspections, verbal warnings, written notices of non-compliance, pending charges, and a temporary closure order.

In arguing for licence revocation, MLS also relied on the fact that Toronto Building issued several orders to comply under the Building Code Act, 1992, S.O. 1992, c. 23 concerning non-compliant fire suppression and exhaust systems and a wooden patio structure installed on the premises.

Taken together, MLS argued that Mr. Ballout's conduct affords reasonable grounds to believe that he has breached Chapter 545-4 A of the Code. Accordingly, MLS submitted that the Tribunal should revoke Mr. Ballout's eating establishment licence.

## **DECISION:**

The Tribunal may renew, suspend, revoke or place conditions upon a licence for any grounds set out in Chapter 545-4 of the Code. Chapter 545-4 states in part that a licensee is entitled to licence renewal, "except where" there are reasonable grounds to believe that:

- (1) the licensee has not carried on, or will not carry on, the business in accordance with law and with integrity and honesty;
- (2) the licensee's carrying on of the business has resulted, or will result, in a breach of this chapter or any law;

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(3) the premises, equipment, or facilities in respect of which the licence is required have not complied, or will not comply, with the provisions of this chapter or any other law; or

(4) the licensee's carrying on of the business has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, their health or safety.

The list in Chapter 545-4 stresses the importance of compliance with the law and public safety. In considering appropriate penalty, promoting future compliance is one of the important factors to weigh.

In considering the totality of the evidence, the Tribunal finds that Mr. Ballout has unlawfully operated a hookah lounge on the same municipal address as the licensed eating establishment HabibiQ. MLS officers and/or Toronto Public Health Inspectors observed the hookah lounge open and customers smoking shisha on numerous occasions, including multiple dates between summer 2020 to March 2021 and September 13, 2022. There are also numerous persuasive photos taken over multiple dates showing hookah equipment, hookah price lists, and customers sitting around tables with hookah. These reliable and credible photos show that the hookah lounge was operating on the licensed premises over multiple dates between summer 2020 to March 2021, and recently on September 13, 2022.

Operating a hookah lounge on the premises is in direct violation of Chapter 545-8.4 C of the Code, which reads "No person licensed, or required to be licensed, under this chapter shall permit any person, including him or herself, to use a hookah or smoke, which shall include the carrying of a lit cigar, cigarette, pipe, or any other lit smoking equipment, in or upon any premises, vehicle, or thing to which the licence relates."

Even after repeated inspections, receiving a notice to comply on October 13, 2020, a verbal warning on October 24, 2020, and the charge registered against Mr. Ballout for unlawfully permitting hookah use on the premises on October 25, 2020, Mr. Ballout continues to operate the hookah lounge unlawfully. MLS officers inspected the premises on September 13, 2022. MLS officers' notes reveal multiple patrons seated at tables inside and on the patio outside, smoking hookah and drinking beverages. In addition, the MLS officers observed an employee setting up hookahs for customers, and the manager confirmed that they do not sell food, only shisha on the hookah lounge side of the premises.

While Mr. Ballout may have attempted to separate the hookah lounge from the licensed eating establishment by having two different storefronts and units, the businesses are on the licensed premises' municipal address and connected by a rear public hallway. MLS officers' notes document the connecting rear hallway during August 27, 2020, and October 13, 2020 inspections found in the Report on pages 18 and 31.



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In Report No. 7588, there is some evidence suggesting that Mr. Ballout intended to separate the hookah lounge from HabibiQ, so his current licence would only apply to the eating establishment unit. For example, during the August 27, 2020 inspection, the onsite manager indicated that Mr. Ballout retained a lawyer to correct the licensing issues but could not because the licensing office was closed. During the October 13, 2020, inspection, Mr. Ballout indicated he would apply to Toronto Building for a preliminary project review, or PPR, to separate HabibiZ from HabibiQ. That same day, Mr. Ballout's lawyer arrived onsite to discuss the licensing issues with MLS officers. However, there is no evidence about whether Mr. Ballout actually made any efforts to separate the municipal address and address the licensing issues. Mr. Ballout may have tried to separate the eating establishment from the hookah lounge. He may be in the process of changing HabibiQ's municipal address. The Tribunal simply does not know.

In addition, the Tribunal puts little weight on the previous non-compliance of 10241318 Canada Inc. o/a Yala HabibiZ. There is no evidence before the Tribunal about Mr. Ballout's role in this previous non-compliance as the corporation's director. Certainly, MLS did not flag the previous corporate non-compliance when Mr. Ballout applied for his current eating licence at the same municipal premises. Instead, MLS issued Mr. Ballout's licence without conditions. If 10241318 Canada Inc.'s prior non-compliance was relevant and of concern to his current licence, why did MLS issue Mr. Ballout the licence without conditions?

Further, the fact that Toronto Building issued several orders to comply under the Building Code Act concerning non-compliant fire suppression and exhaust systems and a wooden patio is not compelling because these matters were resolved.

There is more than enough evidence in this case to find that there are reasonable grounds to believe that Mr. Ballout's carrying on of the business has resulted, or will result, in a breach of Chapter 545 based on his previous and continued operation HabibiZ hookah lounge in contravention of Chapter 545-8.4.C. Reasonable grounds for belief is lower than balance of probabilities. It requires something more than mere suspicion and an objective basis for the belief, which is based on compelling and credible information.

Further, there is compelling evidence to find that there are reasonable grounds to believe that Mr. Ballout's carrying on of the business resulted in a breach of COVID-19 Order between July 2020 and March 2021.

This finding is based on the five outstanding charges for failing to comply with the COVID-19 Order issued on October 24, 2020, October 25, 2020, October 30, 2020, November 6, 2020 and March 13, 2021 and the inspection records. In the 2020 summer, the MLS inspection noted the need for physical distancing and masking indoors. The MLS officers focused on educating Mr. Ballout about the

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need for COVID19 Order compliance and provided recommendations and educational resources.

However, in October/November 2020, Mr. Ballout's non-compliance with the COVID-19 Order was persistent and serious. At that time, no indoor dining was permitted under the COVID-19 Order. Yet, on October 24, 2020, October 25, 2020, October 30, 2020, and November 6, 2020, there is persuasive evidence to find that Mr. Ballout breached the COVID-19 Order. Toronto Public Health inspectors and/or MLS officers observed and took pictures of customers smoking shisha and drinking beverages inside the premises and other violations of the COVID-19 Order. In particular, Toronto Public Health inspectors' noted on October 30, 2020, customers were inside smoking shisha and drinking beverages. The same-day photo showing that the hookah lounge was busy with many unmasked customers seated at tables and standing indoors close together is compelling (Report - September 13, 2022 update at page 73). On November 6, 2020, Toronto Public Health inspectors observed about 40 -75 customers inside the hookah lounge, consuming food and beverages and smoking hookah along with other COVID-19 Order infractions. Then in March 2021, Toronto Public Health issued a temporary closure order and a notice of non-compliance.

In addition, MLS has shown that by breaching the COVID-19 Order on multiple occasions, there are reasonable grounds to believe that Mr. Ballout's carrying on of the business has infringed the rights of members of the public and endangered their health or safety. The Tribunal takes judicial notice that the global pandemic resulted in significant deaths and severe illness throughout Ontario, and the virus was considered highly contagious. The measures put in place under the COVID-19 Order at the time, such as social distancing, indoor masking and indoor activities limitations, were to protect the public and "flatten the curve" of infection. By disregarding the COVID-19 Order, Mr. Ballout's non-compliance was extremely serious and put the public at risk. This serious misconduct was confined to July 2020 to March 2021.

There should be a serious penalty for Mr. Ballout to ensure public confidence in the regulatory system and also specific and general deterrence. But, at the same time, the penalty must be proportional and fair.

Chapter 545-8 A (3) of the Code requires the Tribunal to uphold the spirit and intent of the Code and balance the protection of the public interest with the need for licensees to make a livelihood. There was no evidence from Mr. Ballout regarding his need to make a living, any explanations for his misconduct and his personal circumstances. Where a serious penalty may be the outcome, it would help the Tribunal to have this kind of evidence to assess proportionality and to weigh the impact of a suspension or revocation on the licensee.

The findings against Mr. Ballout are serious and show a pattern of non-compliant behavior despite multiple inspections, educational efforts, verbal warnings, written

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notices of non-compliance, pending charges, and a temporary closure order. There is insufficient evidence before the Tribunal that would suggest appropriate conditions. Conditions would not sufficiently protect the public if future public health orders are required for the public's safety. In addition, Mr. Ballout illegally continues to operate a hookah lounge at the same municipal address as the licensed eating establishment HabibiQ. There is no evidence before the Tribunal that conditions or progressive discipline will improve Mr. Ballout's misconduct.

Considering all these factors, the Tribunal finds that protecting the public interest outweighs Mr. Ballout's need for an eating establishment licence.

Mr. Ballout's Eating Establishment Licence No. B71-4936014 is revoked.

Originally Signed

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Anu Bakshi, Panel Chair

Reference: Minute No. 130/22

**Date Signed: November 24, 2022**