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GTA

## Hookah bar owners battle Toronto, Peel in court for right to let customers smoke

Bylaws forbidding practice will force businesses to close, proprietors say.

By **Megan Dolski** Staff Reporter

 Tue., Dec. 27, 2016 |  5 min. read

### READ THE CONVERSATION

Luther Fatoos doesn't have a Plan B. Magdy Mehany doesn't either.

Fatoos owns Al-Omda Lounge in Mississauga, and Mehany runs the Nile Palace Café in Scarborough. Both say the fate of their businesses hinge on the outcome of a bylaw being contested in Ontario courts.

Fatoos and Mehany are part of two separate groups of hookah bar owners fighting bylaws in Toronto and Peel Region that forbid hookah smoking. The Toronto bylaw applies to licensed businesses, and Peel's covers enclosed public places as well.

A hookah, or water pipe, is a device used to smoke shisha, a product that can contain tobacco but doesn't always.

If the bylaws are deemed legal and jurisdictions start enforcing them, the business owners say they'll struggle to remain open. Some owners fear their staff, some who don't speak much English, won't be able to find employment anywhere else.

Both Toronto and Peel argue the ban aims to protect residents from the health repercussions of hookah smoking. But some neighbouring jurisdictions don't have similar bylaws in place — so hookah venues on the north side of Steeles Ave., for example, don't face an impending threat of closure.

Joe Chawla, a health educator in York Region, said the Smoke-Free Ontario Act, which has made it illegal to smoke tobacco in public places, doesn't prohibit herbal shisha. He said that York doesn't ban hookah or non-tobacco shisha, but does inspect hookah lounges if complaints are filed. If these places are found to be selling tobacco products, he said, charges might be laid.

Ryan Zigler is the lawyer for both groups of business owners pushing for the bylaws to be revoked in Toronto and Peel. He said that while the Toronto bylaw only impacts businesses, and Peel's covers enclosed public places, the legal arguments he's making in both cases are much the same.

His two court challenges are at different stages; while the group from Peel recently filed its first challenge to the Ontario Superior Court, the group in Toronto is appealing an October decision when Justice Robert Goldstein [upheld](#) the bylaw as legally valid.

Goldstein expressed “a great deal of sympathy” for the business owners and pointed out the “important contribution” they make to Toronto’s diversity and cultural life. Goldstein wrote that he found it “unfortunate” that the city opted to prohibit rather than regulate hookah use, but said ruling on good or bad policy was not a part of his job.

That doesn’t help Mehany, who said he moved from Egypt in 1996 and has tried to make the business he opened almost eight years ago feel like home. It cost him around \$100,000 to renovate, he said. While his café sells Egyptian tea and snacks, Mehany said his main attraction — worth about 80 per cent of his revenue — is hookah. He doesn’t think his business can survive without it.

Mehany and other Toronto hookah bar owners, represented by Zigler, argue that the bylaw essentially forces them to shut their “lawful businesses” — something they think the city should not have the power to do.

Herbal shisha smoke contains carbon monoxide, tar and cancer-causing chemicals, according to the city of Toronto website. What’s more, when using a hookah, smokers often share a mouthpiece — an act puts users at a heightened risk of sharing diseases like herpes and hepatitis.

In a 2014 report from the city of Toronto, its medical officer of health recommended prohibiting smoking hookah pipes. This report said that the smoking non-tobacco products with a hookah “undermines” the success of Ontario’s smoke-free legislation, because “it contributes to the social acceptability of smoking in public places.” It cited “emerging” research that even non-tobacco smoke had a negative impact on air quality inside.

In a statement last spring, Peel flagged concerns that an increasing number of students there were smoking hookah. A survey from last year found that 11 per cent of students from Grade 7 to Grade 12 had used a hookah in 2015, more than double the percentage who had smoked cigarettes. Almost a quarter of students surveyed said they weren’t aware of the health risks of smoking hookah.

Peel’s associate medical officer of health Lawrence Loh said in the statement that the bylaw aims to protect residents from second-hand smoke and also “support ongoing efforts to de-normalize smoking by discouraging youth from experimenting with novel forms of smoking, such as waterpipes.”

Zigler said the arguments he’s making have implications beyond this case. “How far can cities go in trying to achieve objectives?” he said. “Can cities put businesses out of business?”

The appeal also argues that Goldstein was wrong in ruling that the city’s bylaw was neither in bad faith, nor in conflict with the province’s Occupational Health and Safety Act. Zigler expects that appeal to be heard this spring.

In Peel, Zigler is representing Fatoos and other owners in challenging the hookah ban there on similar grounds. The hookah bar owners fighting to nix the Peel ban say most of their revenue comes from hookah sales and if they are no longer able to sell this product, customers might stop showing up. The majority of owners say they invested their life savings into their business.

Fatoos noted that he offers a non-tobacco product to his customers and adds that he doesn’t understand why hookah is being banned when alcohol is legal, and the province is trying to figure out how to handle recreational marijuana. He said most of his clientele are older, don’t drink and come mostly to enjoy each other’s company.

For now, Peel is holding off on enforcing its bylaw until a decision is made by the court. Zigler said the case is set to be heard in February.

Toronto Public Health hasn’t started inspections, spokesperson Melissa Simone confirmed. She said that while the bylaw is before the courts, city will keep educating businesses about the bylaw until a decision has been made.

### **Hookah regulations in other cities**

*Some cities and regions are cracking down on hookah smoking harder than others across the province and the country.*

- Windsor has a bylaw that forbids smoking and explicitly puts hookah in its list of “prohibited products.”
- In Ottawa, a ban on hookahs came into effect on Dec. 1.
- In British Columbia, two hookah bar owners took their case to the province’s Supreme Court, after being charged for violating a 2007 city bylaw when they allowed their customers to smoke hookah pipes. That appeal was dismissed in 2015.

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