PKF LAWYERS
MANITOBA'S LAW FIRM

900 – 444 ST. MARY AVENUE
WINNIPEG, MANITOBA R3C 3T1
PHONE: 204-956-0490
FAX: 204-947-3747
TOLL FREE: 1-855-561-1807

KING'S COUNSEL:

GORDON M. PULLAN, K.C.
(retired 1951 – 2023)

JOSEPH J. WILDER, K.C.

SAMUEL I. WILDER, K.C.
(1965 – 2023)

THOMAS G. FROHLINGER, K.C.

OF COUNSEL:

BRANDON M. TRASK

Incorporated Professional Practices:

J. J. Wilder K.C.
Law Corporation

Israel A. Ludwig
Law Corporation

Paul E. Kammerloch
Law Corporation

Mona Brown
Law Corporation

Derksen Law
Corporation

Vincent J. Bueti
Law Corporation

Thomas G. Frohlinger
Law Corporation

Harvey J. Slobodzian
Law Corporation

Jamie L. Turner
Law Corporation

Yvonne Tavares
Law Corporation

Harwood-Jones
Law Corporation

Steven M. Meltzer
Law Corporation

J.D.H. King
Law Corporation

Michael Bellan
Law Corporation

Warnock Law
Corporation

**Legal services provided by the writer through the named law corporation above.*

Reply to: Troy Harwood-Jones
Email: troy@pkflawyers.com
File No. 44564-001

January 15, 2024

THE CITY OF WINNIPEG
EXECUTIVE POLICY COMMITTEE
510 Main Street
Winnipeg, Manitoba R3B 1B9

Via E-mail/
with Courier to follow

Attention: His Worship Mayor Gillingham, Chairperson
Councillors Browaty, Duncan, Lukes, Mayes, and Rollins

Dear Mayor and Councillors:

Re: Executive Policy Committee Meeting (January 16, 2024): Hookah Community Delegation

We represent a delegation of nine (9) members of the Middle Eastern and South Asian business community in the City of Winnipeg involved in the traditional cultural practice of hookah:

- Arabesque Café & Restaurant;
- Red Bar Sea;
- Habibiz Café Inc.;
- Karibu K Café & Hookah Lounge;
- 7 Arabian Dreams Hookah Lounge;
- Onexvii Ltd.;
- Rimyya Friendship Bar and Restaurant;
- Seven8nine Hookah Lounge;
- Kokeb Restaurant

(collectively, the "**Hookah Community Delegation**").

We understand that the Executive Policy Committee (the "**EPC**") of the City of Winnipeg (the "**City**") is scheduled to meet on January 16, 2024 at 9:30 a.m. and will be considering the report of the Standing Policy Committee on Community Services dated November 20, 2023 (the "**Report**"). The first item on the EPC's agenda is the "Regulation of Hookah Establishments". The Standing Policy Committee's recommendations to the EPC include that:

1. a by-law be developed to ban hookahs indoors and on patios; and
2. the City request Manitoba to amend legislation to ban hookahs indoors and on patios in Winnipeg.

This letter is being provided to express concerns regarding the Standing Policy Committee's recommendations to ban the traditional cultural practice of

hookah. Our respectful request is that any further step or steps in the EPC's process be suspended until an opportunity is provided for the Hookah Community Delegation to participate, be heard, and provide their input. To be clear, the members of the Hookah Community Delegation are open to planning, developing, and regulating the hookah industry in a way that respects their cultural practice. They only ask that the City make an informed, fair, and just decision.

Despite the potentially catastrophic impact of the proposed ban on the cultural practices, way of life, businesses, and ability to earn a living for members of Winnipeg's minority ethnic Middle Eastern and South Asian community, the City has not yet consulted, or even invited input into its process from any of the members of the Hookah Community Delegation (or, to our understanding, anyone within this ethnic or business community). The City appears to be scheduled to assess the Report and direct the drafting of a By-Law – all without any participation or voice from the people who stand to lose the ability to carry on their traditional cultural practice.

There are fundamental errors in the Report. Further, the recommendations of the Standing Policy Committee breach our clients' rights under *The Smoking and Vapour Products Control Act*, *The Canadian Charter of Rights and Freedoms,* and *The Human Rights Code*.

THE FACTS:

Traditional Cultural Practice of Hookah:

Hookah is a traditional cultural practice in the Middle East and South Asia that has been practiced for centuries. Hookah, as practiced in the Hookah Community Delegation businesses, involves heating herbs (**not** tobacco), which is filtered through a water basin. Tobacco hookah is prohibited in each of their establishments.

Over the past several decades, as immigrants from the Middle East and South Asia have arrived in Winnipeg, they have brought with them the traditional cultural practices as parts of their cultural identity, including the traditional cultural practice of hookah.

Business leaders within Winnipeg's Middle Eastern and South Asian community have set up cafés, restaurants, and other businesses where members of their community, and others, can carry on their traditional cultural practice of hookah. In addition to the protection and continuation of these traditional cultural practice, such establishments provide significant benefits to the community, including serving as a cultural, linguistic, and social hub for newcomers, immigrants, and minority ethnic groups; employment opportunities; and revenue and economic benefits.

THE LAW:

Manitoba's Smoking and Vapour Products Control Act:

Pursuant to Section 6(1-2) of *The Smoking and Vapour Products Control Act, C.C.S.M. c. S150* (the "**Smoking Act**"), a municipality may only pass a by-law if it is not in conflict with the Smoking Act. If a conflict exists, the by-law is of no force or effect.

Pursuant to Section 5.1 of the Smoking Act, any person can use tobacco and/or supply or offer to supply a tobacco-related product regarding an aboriginal spiritual or cultural practice or ceremony. The Smoking Act does not limit the limit the definition of "aboriginal", "spiritual", "cultural practice", "ceremony".

The recommendations in the Report seek to ban anyone (aboriginal and non-aboriginal people) from using or supplying hookah for religious cultural practices or ceremonies. This itself is a breach of the Smoking Act.

Further, hookah is a cultural practice of people aboriginal to the Middle East and South Asia. As the Smoking Act does not restrict the definition of "aboriginal", were the City to pass a by-law which declared (expressly or impliedly) that people aboriginal to the Middle East and South Asia are not sufficiently "aboriginal", and not entitled to the protection provided by the Smoking Act, the City's by-law would be in conflict with the Smoking Act. Not only would such a by-law breach our clients' rights, under the Smoking Act, it would be of no force or effect.

The Human Rights Code and ***The Canadian Charter of Rights and Freedoms*:**

Pursuant to Section 9(1-2) of *The Human Rights Code*, C.C.S.M. c. H175 (the "**Code**"), an individual or group cannot be treated differently based on their nationality or ethnic background. Pursuant to Section 15(1) of *The Canadian Charter of Rights and Freedoms* (the "**Charter**"), every individual is equal and has the right to be protected without discrimination, including based on race, national or ethnic origin, and colour.

The members of the Hookah Community Delegation represent a minority and marginalized ethnic community in the Winnipeg. Their traditional cultural practices are not the norm in Canadian society and are often misunderstood. They are subject to linguistic and economic barriers, and are often marginalized due to their race, national or ethnic origin, and colour. They are clearly entitled to protection from discrimination under the Code, the Charter, and in decent Canadian society.

The recommendations of the Standing Policy Committee and the Report specifically target our members, as well as the traditional cultural practice of Middle Eastern and South Asian people. The Report only addresses hookah -- a traditional cultural practice of those of Middle Eastern and South Asian race, nationality, ethnic origin, and colour.

Regarding discrimination, it is significant to note the several exceptions enumerated in the Smoking Act that provide differential (and better) treatment than proposed in the Report for members of the Hookah Community Delegation and those who share their racial, national, or ethnic origin. These exceptions include group living facilities, hotels, tobacconists, vapour product shops, and aboriginals. It is offensive to the Charter for the City (or any person) to pass a by-law specifically targeting people of Middle East and South Asian descent for differential treatment or to deny them fair and equal treatment by law.

In addition to the danger of discrimination, our Courts have made clear that limits on Charter rights can only be considered when the decision-maker has all "relevant facts" and has considered all "scientific, social, economic, and political aspects" (*Flette et al v The Government of Manitoba et al*, 2022 MBQB 104, at para 9) and "should not be decided in a vacuum" (*Jhanji v The Law Society of Manitoba*, 2022 MBCA 78, at para 23). As the City has not yet consulted, or even invited input

into its process from any of the members of the Hookah Community Delegation (or, to our understanding, anyone within this ethnic or business community), we respectfully submit that the City lacks relevant facts regarding the scientific, social, economic, and political aspects of the traditional cultural practice of hookah on the Middle Eastern and South Asian community. Proceeding with a ban without this information is misguided and wrong.

Please feel free to contact the writer at (204) 924-4074 should you wish to discuss this matter.

Regards,

PKF LAWYERS
Per:

TROY HARWOOD-JONES*
*services provided by the Harwood-Jones Law Corporation

(Copies to Hookah Community Delegation)