

# **Ontario Forum on Waterpipe Use**

## **Smoking and Health Action Foundation**

**19-20 October, 2011**

### **REPORT**

Described as a global epidemic, waterpipe smoking has arrived in Ontario. The widespread availability of shisha at retail and the emergence of hookah bars and cafés across the province are a serious cause for concern.

In November 2010 the Ontario Program Training and Consultation Centre (PTCC) partnered with the Non Smokers' Rights Association (NSRA) / Smoking and Health Action Foundation (SHAF), the Ontario Tobacco Research Unit (OTRU), Leave the Pack Behind (LTPB), Ottawa Public Health (OPH) and the Central West Tobacco Control Area Network (TCAN) to offer a webinar entitled "The Emerging Issue of Waterpipe/Hookah Use."

The webinar was well-received and participants identified a number of next steps, including an opportunity for a forum to share resources and information on awareness campaigns and the laws that affect waterpipe use. There was also interest expressed in how to address enforcement issues in hookah bars and lounges and how to enforce or try to limit the number of hookah establishments.

In October 2011 SHAF convened an Ontario-wide 1.5-day meeting that brought together stakeholders from across the province, including representatives from 6 of the 7 Tobacco Control Area Networks, tobacco enforcement officers (TEOs), Ministry of Health Promotion and Sport officials and representatives of the Ministry of Revenue (MOR), the Canadian Border Services Agency (CBSA), the Royal Canadian Mounted Police (RCMP) and health charities.

Presentations at the forum included:

- Problem Overview (Pippa Beck, SHAF)
- Waterpipe Smoking: Health Effects and Patterns of Use (Roberta Ferrence, OTRU)
- Sharing Information at the TCAN Level (representatives from SW, CW, Toronto, CE, E and NW)
- Enforcement Perspectives: RCMP (Amber Giblin, Customs and Excise Section, Hamilton/Niagara & Tanya DeJong, Customs and Excise Section, London detachment)
- Waterpipe Regulation in the U.S (Michael Freiberg, Tobacco Control Legal Consortium)
- Regulation of Smoking: The Vancouver Experience (Ellen Gerber, City of Vancouver)

After the formal presentations, participants had an opportunity to discuss the various challenges faced as well as to identify possible solutions. It was recognized and accepted by the group that ideal solutions might be politically unpalatable or slow to implement. Therefore, what follows is a list of the top 12 problems and concomitant solutions—the ideal listed first with interim solutions following it. All solutions were reached by consensus.

### **Problem 1**

The prohibition on smoking in the *Smoke-Free Ontario Act (SFOA)* is too narrow—it doesn't apply to other weeds or substances and currently specifies that the tobacco is “lighted.” Shisha is moist and not capable of self-sustained combustion hence it is technically not “lit.”

### **Solution**

Ideal: Amend the *SFOA* to cover the smoking, heating, or lighting of tobacco and other weeds or substances such that both “herbal” and tobacco shisha are included.

### **Problem 2**

There is no definition of pipe tobacco in either the federal *Tobacco Act* or its *Tobacco Products Information Regulations (TPIR)* and shisha tobacco is not explicitly identified. Health Canada is choosing a narrow interpretation of pipe tobacco that does not include shisha. As such, no graphic health warnings are required on packages of shisha tobacco—including in Ontario where the *SFOA* defers to the *Tobacco Act* and its regulations for packaging requirements. Therefore tobacco enforcement officers cannot lay charges under Section 5 of the *SFOA*.

### **Solutions**

Ideal: Health Canada could interpret the *Tobacco Act* more broadly to include tobacco shisha. This involves getting legal clarity and/or a directive from Health Canada.

Interim solutions: In absence of a written directive from Health Canada, an interpretation bulletin could be issued from Ontario stating that the *SFOA* covers tobacco shisha.

Amend the *Tobacco Act* to explicitly include shisha tobacco and hookah pipes.

Amend the *Tobacco Products Information Regulations* to include a definition of pipe and pipe tobacco that includes hookah and shisha. This would also require that the regulations be amended to specify shisha tobacco packaging requirements.

Amend the *SFOA* regulations such that Ontario's packing requirements do not defer to the federal requirements. This would likely involve establishing separate packaging requirements for Ontario.

### **Problem 3**

Ontario municipalities have not exercised their authority under the *Municipal Act, 2001* to prevent the opening of or to facilitate the closing of hookah establishments.

### **Solutions**

Ideal: Have municipal Boards of Health examine the issue and come up with solutions that might include:

- Enacting or amending municipal bylaws to prohibit the smoking of tobacco and/or “herbal” shisha in hookah pipes in public places and workplaces (evidence regarding the health effects of smoking “herbal” shisha needed).
- Amending the *Municipal Act, 2001* to give municipalities the authority to prohibit the smoking of herbal shisha in public places and workplaces.
- Regulating the sale of waterpipes and other smoking accessories.

### **Problem 4**

There is a lack of current data on:

- Prevalence of smoking and of hookah establishments in Ontario
- Hookah and shisha-related charges and convictions
- Scientific evidence regarding the health effects of herbal shisha

A lack of data reduces accuracy in pin-pointing the exact magnitude and nature of the problem and can impede political will.

### **Solutions**

Ideal: Address the current lack of data:

- Investigate ways to obtain market research on waterpipe smoking (faster turn-around than more formal surveys)
- Get waterpipe use onto existing surveys including the Ontario Student Drug Use Health Survey, Youth Smoking Survey, Canadian Community Health Survey, School Health Action Planning and Evaluation System, etc.
- Create a “charges” database including ages, etc.
- Promote intelligence sharing between stakeholders
- Obtain local indoor air quality data from herbal shisha smoke (TSI Sidepaks for PM 2.5)

### **Problem 5**

Hookah bars/cafés/lounges are claiming their shisha is “herbal” and permitting people to smoke in public places and workplaces. Tobacco enforcement officers must be able to prove that the shisha contains tobacco before laying a charge but testing is costly and slow.

### **Solutions**

Ideal: Create a province-wide testing protocol and secure a single source (with reasonable prices) for testing shisha samples.

Institutionalize a court-approved field test for TEOs to determine the presence of tobacco in shisha. A sample sent for further testing would only be required if the charge was disputed.

Amend the *SFOA* to require cost recovery of sample testing upon conviction.

### **Problem 6**

There is great public misconception about the danger of waterpipe smoking and a lack of awareness among public health officials about it as well as how to address the issue.

**Solutions** (all of the solutions below were deemed ideal)

Have the issue raised at the Council of Medical Officers of Health (COMOH) either through the Chair and/or through a Medical Officer of Health who is knowledgeable and active on the issue.

After COMOH, get the issue raised at the Association of Local Public Health Agencies (ALPHA) and the Association of Municipalities of Ontario (AMO).

Medical Officers of Health (MoHs) can request hookah reports to go to Boards of Health and can also discuss the issue with individual city councilors.

Public Health staffs need to brief their MoHs on the importance of the issue in their jurisdiction.

The public at large also needs to be educated through the use of mass and social media as well as such things as public transit ads. Templates with key messaging can be developed.

Raise awareness among Members of Provincial Parliament (MPPs) and opinion leaders in problem areas. A two-page fact sheet emphasizing the need for a provincial solution is required.

Develop education pieces to reach target users including youth, young adults and cultural groups. For youth and young adults, focus on the use of social media.

Information about waterpipe smoking should be included in traditional tobacco education.

### **Problem 7**

Tobacco enforcement officers lack broad inspection and seizure powers under the *SFOA*.

### **Solutions**

Ideal: Amend Section 14 of the *SFOA* to broaden the inspection and seizure powers of TEOs.

Interim solutions: Add requirements for the cleaning and disinfection of waterpipes similar to requirements under the Food Premises Regulations.

### **Problem 8**

It is difficult to locate hookah establishments because they are typically using non-traditional advertising and some are in non-traditional locations such as the back of a laundromat or the basement of a convenience store.

### **Solutions**

Ideal: Use social media and aliases to locate and track the activities of hookah establishments.

Facilitate the flow of intelligence between TEOs in different jurisdictions.

### **Problem 9**

There are reports of inadequate information sharing among agencies, at least in some jurisdictions.

### **Solutions**

Ideal: Improve information sharing between agencies:

- Create an information board regarding the movement of vehicles, suppliers, etc.
- Establish a system for the MOR to inform TEOs of its enforcement activities. This could lead to better coordinated inspections
- Establish Joint Inspection Groups (JIGs) or Joint Agency Groups (JAGs) in each region with regular but informal meetings (at least quarterly).

### **Problem 10**

In response to increased enforcement efforts, hookah establishment proprietors are claiming the shisha is “herbal,” are hiding the product, and in one case, are charging the public health unit with harassment. In another high profile case from BC, two hookah café owners are citing waterpipe smoking as a *Charter* right to cultural freedom.

## **Solution**

Enforcement officers and public health advocates need to share intelligence about hookah proprietors' tactics, as well as to focus on public education.

## **Problem 11**

There exists a lack of capacity to properly address the issue coupled with competing priorities within enforcement agencies. Also, the fact that most tobacco shisha is contraband further complicates the issue.

## **Solution**

Emphasize cooperation/collaboration among agencies and advocate for some of the contraband funding to go to tobacco shisha.

## **Problem 12**

There exists a lack of political will to address the problem in some jurisdictions. Health Canada is currently focused on the renewal of the federal tobacco control strategy which represents a barrier to addressing this issue in the near future.

## **Solutions**

Ideal: There is a process underway in Ontario to implement other Tobacco Strategy Advisory Group (TSAG) recommendations and the government appears open to new initiatives. There may be opportunity for *SFOA* reform. Part of the new provincial strategy could be to seek an Interpretation Bulletin from Health Canada about pipe tobacco.

If there is a lack of political appetite to amend the *SFOA* to solve Problem 1, a ban on all flavoured tobacco via a regulatory amendment would partially solve the problem.

Consider filing a Competition Bureau complaint regarding the misleading labeling of shisha and lack of bilingual labeling required under the *Consumer Packaging and Labelling Act*.

## **Conclusion**

Participants at the Ontario Forum on Waterpipe Use agreed that striking a provincial working group to examine these identified problems and possible solutions is the next step required. As such, the Smoking and Health Action Foundation will distribute this report and convene a working group in the coming months.

Thank you to all stakeholders who attended the forum and gave their valuable input. Some promising policy options to address this emerging public health issue have been raised and we must now work together to halt the rapid spread of waterpipe smoking and thus to protect the health of Ontario's young people.