



ISSN 1180-4386

**Legislative Assembly
of Ontario**

First Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Première session, 38^e législature

**Official Report
of Debates
(Hansard)**

Thursday 21 April 2005

**Journal
des débats
(Hansard)**

Jeudi 21 avril 2005

**Standing committee on
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**Loi de 2005 modifiant des lois
en ce qui a trait
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de l'usage du tabac**

Chair: Pat Hoy
Clerk: Trevor Day

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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS**

**COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES**

Thursday 21 April 2005

Jeudi 21 avril 2005

The committee met at 0902 in committee room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Pat Hoy): The standing committee on finance and economic affairs will please come to order. We are here today on Bill 164, An Act to rename and amend the Tobacco Control Act, 1994, repeal the Smoking in the Workplace Act and make complementary amendments to other Acts.

Our first order of business would be to have the subcommittee report read into the record. Mr. McNeely.

Mr. Phil McNeely (Ottawa–Orléans): I move the subcommittee report:

Your subcommittee met on Thursday, April 14, 2005, to consider the method of proceeding on Bill 164, An Act to rename and amend the Tobacco Control Act, 1994, repeal the Smoking in the Workplace Act and make complementary amendments to other Acts, and recommends the following:

(1) That the committee request authorization from the House leaders to meet on Friday, April 22, and Friday, April 29, 2005, for the purpose of considering this bill.

(2) That the committee hold public hearings in Toronto on April 21 and 28, in Oshawa on April 22 and in Tillsonburg on April 29, 2005.

(3) That the public hearings in Toronto be held from 9 a.m. to 12 noon and 3:30 p.m. to 6 p.m. and the public hearings in Oshawa and Tillsonburg be held from 9 a.m. to 4 p.m. with a break for lunch.

(4) That the committee clerk, with the authorization of the Chair, post information regarding Bill 164 on the Ontario parliamentary channel, the committee's Web site and on Canada NewsWire.

(5) That the committee clerk, with the authorization of the Chair, place an advertisement in the Globe and Mail and the Toronto Star on Tuesday, April 19, 2005, and in the Tillsonburg Independent on Wednesday, April 20, 2005.

(6) That interested people who wish to be considered to make an oral presentation in Toronto or Oshawa contact the committee clerk by 12 noon on Wednesday, April 20, 2005.

(7) That the committee clerk distribute to each of the three parties a list of all the potential witnesses who have requested to appear before the committee in Toronto and Oshawa by 1 p.m. on Wednesday, April 20, 2005.

(8) That if necessary, the members of the subcommittee prioritize the list of requests to appear in Toronto and Oshawa and return it to the committee clerk by 3 p.m. on Wednesday, April 20, 2005.

(9) That interested people who wish to be considered to make an oral presentation in Tillsonburg contact the committee clerk by 12 noon on Tuesday, April 26, 2005.

(10) That if necessary, the members of the subcommittee prioritize the list of requests to appear in Tillsonburg and return it to the committee clerk by 3 p.m. on Tuesday, April 26, 2005.

(11) That if all requests to appear can be scheduled in any location, the committee clerk can proceed to schedule all witnesses and no prioritized list will be required for that location.

(12) That the committee clerk, with the authorization of the Chair, be allowed to schedule witnesses who have made their request to appear after the appropriate deadline, provided there is space available in that location.

(13) That all witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members, if necessary.

(14) That the deadline for written submissions be Friday, April 29, 2005, at 5 p.m.

(15) That the research officer provide a summary of the presentations by Tuesday, May 3, 2005.

(16) That proposed amendments to Bill 164 be filed with the committee clerk by 5 p.m. on April 29, 2005.

(17) That the committee meet for the purpose of clause-by-clause consideration of Bill 164 on Thursday, May 5, 2005.

(18) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: I believe number 16 is incorrect and should be, "That proposed amendments to Bill 164 be filed with the committee clerk by 5 p.m. on May 3, 2005." May I have an amendment to that? Mr. McNeely has moved it.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): Seconded.

The Chair: Mr. Barrett seconds the motion. All in favour? Carried.

TOBACCO CONTROL STATUTE LAW
AMENDMENT ACT, 2005
LOI DE 2005 MODIFIANT DES LOIS
EN CE QUI A TRAIT
À LA RÉGLEMENTATION
DE L'USAGE DU TABAC

Consideration of Bill 164, An Act to rename and amend the Tobacco Control Act, 1994, repeal the Smoking in the Workplace Act and make complementary amendments to other Acts / Projet de loi 164, Loi visant à modifier le titre et la teneur de la Loi de 1994 sur la réglementation de l'usage du tabac, à abroger la Loi limitant l'usage du tabac dans les lieux de travail et à apporter des modifications complémentaires à d'autres lois.

TOBACCO FARMERS IN CRISIS

The Chair: Now we will have our first presenters of the morning. Would the Tobacco Farmers in Crisis please come forward? Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of our Hansard recording. You may begin.

Mr. Brian Edwards: Thank you, Mr Chairman and the committee, for inviting us here today. I am Brian Edwards. I'm the president of Tobacco Farmers in Crisis. We have Mark Bannister, our vice-chairman, to my left. To my right is Luc Martial, our consultant.

Tobacco Farmers in Crisis is a non-profit registered organization working for the benefit of tobacco farm families wishing to exit tobacco farming. This organization represents the vast majority of active producers who are currently facing unnecessary and debilitating economic duress as a result of conflicting government policies on tobacco and tobacco control.

Tobacco Farmers in Crisis recognizes the importance of tobacco control and the role that the government is called on to play in this very public and controversial issue. Our members are themselves mothers and fathers, aunts and uncles, sons and daughters, friends and colleagues. While our professional investments may be linked to a controversial product and issue, our personal commitment is nonetheless directed to accountable policies on tobacco control.

We grow tobacco to supply the consumer here in Ontario and in Canada under a very strict guidance of allowed chemical and variety controls. The chemical residues and internal makeup of our tobaccos is well known by the scientific community. Presently, at crop negotiations, multinational companies are planning to import significant other tobaccos from other countries. These other tobaccos may increase the risk to health of the consumer of the product, and the makeup of that smoke is about to change unless governments take more control of the content of the cigarette. Health groups and farmers in the US worked together to try to accomplish

this in the past. With the US buyout of tobacco quotas, all testing of imported leaf and increased protection under the USDA and Food and Drug Administration disappeared.

We are here today to warn of the same possibility happening here in Ontario if these same multinational companies buy out the tobacco quota rights right here, right now. With the World Health Organization Framework Convention on Tobacco Control and Canada's leading role in this becoming international law, we do not understand why we would want to allow or encourage this outsourcing of tobacco. It has been suggested that this is being discussed as we speak here today.

Because of the limited time that we have to present here today, I will turn things over to my colleague, Mr. Luc Martial.

0910

Mr. Luc Martial: Thank you, Brian. Again, I'd also like to thank committee members for providing this opportunity to address you today and to address issues that are very close to my heart personally. I am a tobacco control advocate. I think it's important to also let members know a little bit of my background and why I'm here.

I've been 13 years on the tobacco and health file in Canada. I've worked at the national and international levels. I've worked during that time, perhaps uniquely, with Canada's most successful anti-tobacco groups. I was a policy analyst with the Non-Smokers' Rights Association for many years. I went on to work as a data specialist and communications manager with the Canadian Council on Smoking and Health. I was director of the National Clearinghouse on Tobacco and Health, to which Ontario was a contributor, and still is. I went on to work as executive director of the Canadian Council for Tobacco Control and then spent two years at the federal government in the tobacco control program at Health Canada where, among other things, I coordinated the current or sunseting \$480 million to tobacco control. I'm very much committed professionally and personally to tobacco control. I think the government of Ontario should be praised for its initiative, for its leadership on tobacco control.

That being said, I would at this time simply suggest caution in certain areas. Over the last three years, after I left Health Canada, I decided to try to get a bigger picture of tobacco control—I'd worked for everybody else—and started involving myself more with legitimate private sector stakeholders, including tobacco producers. Interestingly enough, my vision back then of this bigger picture and the need to actually work co-operatively and productively with tobacco producers I've since found out was really not a precedent in itself. In the United States there was a US president's commission on tobacco that did bring together the health community, government officials and tobacco producers. Over the course of several years they discussed common-ground issues and even recognized that, as odd as it may seem, there was a need for producers and growers to work together in the

tobacco control framework. One of their key findings was that, again, as odd as it may seem, there are inextricable linkages between protecting tobacco farmers in that country and protecting the health of their constituency. I would suggest that the same applies here in Canada.

In terms of tobacco producers themselves, with regard to Bill 164, with regard to Ontario's overall tobacco control strategy, there has never been a more pressing and health-related need for government to start working more productively with tobacco producers. What we're seeing happening right now is not only the province of Ontario but the government of Canada forsaking tobacco production, tobacco producers, in search of or in a rush for what tends to be more popular tobacco control as opposed to accountable tobacco control.

What we're seeing in terms of an emerging threat to the health of Ontarians—and this is why I believe it is important to raise this issue now—is a tremendous shift in the use of foreign tobacco leaf in Canadian-style cigarettes. In terms of how this relates to health, while we can and do have the authority to control Canadian tobacco growers, we have less authority to control foreign producers of tobacco products. More than this, the increased use of foreign tobacco leaf—the fact that we're facilitating, if not encouraging, multinational companies to actually start using foreign tobacco leaf—is in a sense very much undermining Ontario's own tobacco tax policy. So we're actually allowing multinational companies to buy cheaper product and to start overwhelming the marketplace with what they call value brands—much cheaper products. Again, in no way is that good with health.

The issue with regard to protecting health and protecting farmers has much wider public health and social ramifications. Again, by abandoning tobacco producers—when I talk about abandoning, the fact that we do not allow either in Bill 164 or even in Ontario's overall tobacco control strategy any component that would look to work productively with these farmers to ensure that, as long as a market exists in Ontario, we will make sure that farmers that we can control will supply this market speaks to the wider social issues of deforestation in other countries, as well as child labour issues in countries such as Brazil that I believe the government has a duty if not an obligation to look into it at this point.

Again, what I've suggested is really not new. It may be new to Canada, but the precedent has since been set in the United States whereby they've since come to the conclusion—this is a US president's commission that has brought together the most aggressive anti-tobacco groups in the United States, government officials and tobacco producers. They have suggested that there is a need to protect domestic tobacco farmers from foreign markets. Again, I would suggest the same need is present here today.

I would suggest that there has never before been a more pressing or health-related need to start working with tobacco producers toward designing a more comprehensive, equitable and orderly exit strategy for tobacco

production. These farmers recognize that consumption rates are going down and that the government is committed to eradicating tobacco smoking and tobacco production in this country, but it needs to be done in an orderly fashion. Anything short of this will actually undermine everything that we're doing here today.

There has never before been a more pressing or health-related need, until such an exit strategy exists or is put into place, for government to help farmers protect the Canadian marketplace from foreign threat: the use of foreign tobacco leaf and its impact on lowering the retail selling price of tobacco products in Ontario.

The Chair: You have about a minute left in your presentation.

Mr. Martial: OK, then I'll just leave it to potential questions, because I can certainly recognize how it may be new for the committee to hear the concept that it's in keeping with their health strategy to actually start working with producers toward an exit strategy and, until such a time, protecting the marketplace. On that note, I'll leave it to members who may have questions.

The Chair: Thank you. This round of questioning will go to the official opposition.

Mr. Barrett: Thank you for testifying. Just to follow up, you made reference to increasing foreign imports of tobacco into Canada and the lack of government control. This may not be in your area, but we know much of the product is being brought in from tropical countries. Is there any testing of residue with respect to herbicides, insecticides or fungicides on tobacco that I assume is grown in tropical countries, grown in a different way than in Canada?

Mr. Martial: We did meet with a Health Canada official last Friday, Dr. Murray Kaiserman from the Health Canada tobacco control program. He's Canada's foremost authority on tobacco control and the director of the office of research, surveillance and evaluation. From what we got from that initial meeting, foreign tobacco leaf has never been a priority for government to look into, simply because, to a large extent, it's never been brought to the foreground by Canada's anti-tobacco lobby.

The reality is that the numbers are there. When you look currently at what domestic manufacturers are bringing into this country, the calculation's quite simple. You're looking this year at about 20 million pounds. Of the 70 million pounds it takes to produce the Canadian cigarettes that are being sold in this country every year, 20 million pounds of that will be foreign tobacco leaf. What that means is that at a time, perhaps a number of years ago, when the Canadian content in a cigarette was maybe 90% to 95%, this year we could look at a Canadian content of about 70%.

In terms of testing, that's exactly my concern. What I would like to see this committee do is to introduce or make recommendation that even Bill 164, Ontario's own tobacco control strategy, would provide government with the authority to actually undertake this research to find out if it makes a difference if we have foreign tobacco

leaf in Canadian-style cigarettes or not. What's the overall impact on pricing?

We know that Ontario's tax policy on tobacco is meant to lower consumption by keeping the final retail selling price relatively high. What this foreign tobacco leaf is doing is allowing these multinational companies to bring on the market these value brands. Over the last few years, value brands have increasingly taken over the marketplace from premium brands.

Mr. Barrett: You mentioned tax policy, and this is the finance committee. There have been three tobacco tax increases in the last year and a half. In my riding, millions of cigarettes are produced on the Six Nations Reserve. Do they pay any taxes to the Ontario government?

0920

Mr. Martial: Actually, that's very interesting because what we're seeing for the first time in Canada, which we never saw before, is the advent of microproducers. We're in a situation right now—a few years ago we could control the three major multinational companies, because of tobacco tax policy, to a certain extent—where we've actually allowed microproducers to mushroom. When we look at native production, probably the most prominent company is GRE and they currently produce, according to their own brochures, about four billion of the 35 billion cigarettes that will be sold this year. So they're taking over a tremendous marketplace. In terms of control, they do pay some taxes, federal taxes. They don't pay all taxes, of course. They're looking to expand overall in the Canadian marketplace.

My concern again is that as much as government would like to believe it has complete authority over native production, my experience in tobacco control has been that it will be very difficult, once the market shifts increasingly so to native reserves, for the government of Ontario, let alone the government of Canada, to regulate all aspects of tobacco control.

Mr. Barrett: This week, Ontario received a study from Dr. Evans: a \$1-billion cost predicted for this particular legislation, the impact on bar and pub revenue, and 50,000 jobs removed just in bars and pubs; it doesn't include doughnut shops and restaurants; it doesn't cover farm communities. Any estimates on the impact on farm communities, farmers, agribusiness; and secondly, what kind of assistance, what kind of help would people need as a result of government policy taking away this kind of economic revenue?

Mr. Edwards: Since 2001, there have been dramatic crop decreases in tobacco. We did a study in 2002, 2003 and 2004. The average revenue lost for an individual producer, just an average producer, out of his gross cash flow was close to \$150,000. This is on top of burner conversions to protect the consumer from nitrosamines. The average producer spent \$65,000 to put in burners that removed nitrosamines from the tobacco to protect the Canadian consumer. With upcoming crop sizes this year rumoured to be another 10 million pounds less, negotiations have been very difficult with the multi-

nationals. There is no crop agreement in place. People will be putting chemicals in the ground for the upcoming season in two weeks and there is no crop agreement or price available. It's been stated that a major company is looking at a long-term buyout solution and they want this addressed first before the crop size.

The Chair: Time has expired, Mr. Barrett. Thank you for your presentation this morning.

ONTARIO CAMPAIGN FOR ACTION ON TOBACCO

The Chair: I would call on the Ontario Campaign for Action on Tobacco to come forward, please. Good morning. You have 10 minutes for your presentation. There may be up to five minutes of questions following that. I would ask you to identify yourself for the purposes of Hansard. You may begin.

Mr. Michael Perley: Thank you, Mr. Chairman. My name is Michael Perley. I'm director of the Ontario Campaign for Action on Tobacco. On behalf of the campaign, whose members include the Canadian Cancer Society's Ontario division, the Ontario Medical Association, the Heart and Stroke Foundation of Ontario, the Lung Association and the Non-Smokers' Rights Association, thank you for the opportunity to appear before the committee in support of the government's tobacco control strategy, and Bill 164 in particular.

Since working on behalf of the Ontario Campaign's members to encourage passage of the 1994 Tobacco Control Act, which the present bill amends substantially, my colleagues and I have spent much of the last 10 years working in communities in all parts of the province to support passage of 100% smoke-free workplace and public place bylaws. We've participated in literally hundreds of community meetings and have heard every conceivable argument both for and against smoke-free policies from all sectors of society.

Before commenting on a few of the key themes which emerged during these meetings and which I'm sure you'll hear again this week and next, I want to point out that as a result of these campaigns, today over 90% of the Ontario population is covered by some form of smoke-free public place bylaw. I say "some form" because a few of these bylaws allow for the construction and use of designated smoking rooms, or DSRs, which we're very pleased to see Bill 164 will phase out entirely as of May 31, 2006.

Let me assure the committee that from our experience the government's initiative in making all Ontario workplaces and public places smoke-free as of 2006 will be very welcome in many municipalities. Many bylaws have small exceptions or exemptions, like those for DSRs, which means that there is no level playing field with respect either to worker or public protection from second-hand smoke across the province, nor is there a uniform set of requirements for all proprietors. Many have expressed frustration because they operate under

one bylaw, while their competitors nearby may have tighter or looser rules.

I cannot tell you the number of municipal councillors, hospitality proprietors, members of the general public and health community representatives who have repeatedly called on the provincial government to level the playing field and provide one set of rules for all exposure to second-hand smoke. Bill 164 accomplishes virtually all of this goal with the exception of unroofed patios and hotel and motel rooms, which in fact are a hybrid of residence and workplace.

Another argument that's emerged during the past 10 years is that there are certain groups which somehow deserve exemption or special status under smoke-free rules. The Legion is often mentioned, as are proprietors who have been allowed to construct DSRs. There is no question that our veterans are, and should be, among the most honoured members of our society. There's also no question that today the Canadian Legion is not the club for veterans and their families that it was 20 or 30 years ago. As the Ontario director for the Canadian Legion told CBC radio in an interview a little over two years ago, today, anyone can join the Legion. There's nothing at all wrong with this, but to portray the Legion as deserving special status under smoke-free rules just in order to allow our remaining veterans to be able to smoke does not accurately describe the makeup of the Legion today. That's in terms of not only membership, but in terms of the number of original members who smoke. It also ignores the many objections I've heard from bar and pub owners in various municipalities that to give special status to the Legion in effect benefits their direct competition.

On the matter of DSRs, the tobacco industry and some groups that it is funding have been demanding that existing DSRs be grandfathered under Bill 164 and that wider permission be given to all hospitality proprietors to construct DSRs.

A leading rationale behind the tobacco industry campaign in this regard is the fact that British Columbia allows DSRs under its Workers' Compensation Board rules and that workers cannot spend more than 20% of their shift in such DSRs. The impression is left that this is a wonderful system, widely endorsed in British Columbia, including by the Workers' Compensation Board.

You should be aware that the BC board's panel of administrators wrote a letter to the BC Minister of Labour on January 15, 2002, which it said in part, "The panel concluded that there is no known safe level of exposure to second-hand smoke and that workers in public entertainment facilities are at greater risk of exposure to second-hand smoke." The letter went on to say that "The panel has respectfully concluded that it cannot accede to your direction to repeal BC regulation 58/2001 and replace it with the proposed regulation." The proposed regulation the board referred to, which the minister was advocating, is the current regulation now in force in BC, which allows workers to work in DSRs. As you can see, although it was overruled by the minister, for reasons

having more to do with ideology than science, the WCB itself does not agree with the current rule and to pretend otherwise is to deliberately mislead.

Two more fundamental problems justify the government's plan to phase out DSRs. One is the fact that not all proprietors have either the space or the financial resources to build one. Allowing DSRs thus continues a fundamentally unlevel playing field for many proprietors.

An equally significant issue is the results obtained from tests conducted by an engineering firm retained by the region of York on that region's 102 DSRs built between 2001 and 2004. I should mention that this is the only such testing regimen that's been implemented in any municipality which allows DSRs. The region of York passed a smoke-free bylaw which took effect in 2001. Restaurants either had to be 100% smoke-free or build a DSR as of June 2001. The same requirement came into force for York region bars in June 2004. The tests, which began in 2002 and were completed last year, showed that 78% of York's DSRs had failed to meet operating specifications. In a November 2004 report, the region's health services department pointed out that most of the DSRs tested failed to meet bylaw requirements due to poor maintenance, insufficient air supply and exhaust, overcrowding or failure to keep their doors closed.

0930

This is exactly the kind of scenario we could expect across Ontario if DSRs were to continue in operation. We strongly applaud the government for its continuing determination to phase them out.

I would also like to focus on the issue of Bill 164's treatment of retail displays. As the committee will hear, new research, and many of our young people, strongly support eliminating what is the tobacco industry's last remaining direct-to-consumer retail advertising mechanism.

In 2002, the tobacco industry paid retailers across Canada \$77 million for the space to mount these displays in their stores. This amount rose to \$88 million the next year, the same year that tobacco sponsorship advertising was banned. The industry also paid millions more for the materials and construction of physical retail displays.

Again, as the committee will hear, there is no question that our young people perceive these displays as advertising and that they are influenced by them. It is because of this effect on our young people that we were particularly concerned to hear the minister distinguish between what he called "billboards" and what he referred to as "legitimate displays" when he introduced Bill 164 on December 15 of last year.

If we want our young people to get a clear and unequivocal message that tobacco is not a normal product like gum, candy and pop, we cannot have it displayed, stacked or otherwise visible next to these normal consumer products behind every retail counter in thousands of locations across the province.

The key question here is visibility. Bill 164 must make it absolutely clear that tobacco products must not be visible to any consumers except at the moment of pur-

chase at retail and except when the product is actually given to the purchaser.

We will continue to bring this message to the government and to the Ontario public, as will many of our young people. Those who have quit smoking, but who may think about starting again by seeing these displays in their communities, are also an important group to keep in mind and I believe the committee may be hearing from witnesses on that subject as well.

Thank you very much for the opportunity to present. I'd be pleased to answer any questions you might have.

The Chair: Thank you. This round of questioning will go to the NDP.

Ms. Shelley Martel (Nickel Belt): Thanks, Michael, for being here this morning. Let me deal first with the phase-out of the DSRs, which we support. But when I spoke on this bill, I also said very clearly that the government should be considering compensation for bar and restaurant owners who were affected, who, under bylaws that were legitimately in place, spent money in order to establish them and were operating and have been operating legally under the bylaws that are there. There is a precedent for the government to provide compensation. That was done by the former government when it cancelled the spring bear hunt and many tourist operators saw a significant financial loss. What is your view with respect to the government looking at compensation for those who made investments based on bylaws that were in place, which were the law in the municipality at the time?

Mr. Perley: I think in deciding that issue, whether to go in that route or not, you'd have to look at two or three factors. One is that a number of these DSRs—probably the majority—were built in the early years of 2000, 2001 and 2002 to meet the requirements of bylaws in the greater Toronto area. The majority of DSRs are located in Toronto, Peel and York region. We've probably got upwards of 400 in this area. The point there is that they have been built and in operation for several years. There is of course an issue of amortizing the cost of such a construction over a period of time.

I believe from what we know of where these DSRs are located and when they were built, that a large number by the time the bill comes into effect in 2006 will have been able to amortize what in many cases is a relatively modest cost over three, four or five years and, in many cases, will have been able to recoup that cost. That's one issue when evaluating whether compensation is appropriate.

The other issue is, I think we have, as I described from the York region data, a very serious issue here with the way these DSRs are operated. I'm speaking here as somebody who signed an agreement with the Ontario Restaurant Association and the Greater Toronto Hotel Association in 1999 to have a Toronto bylaw come forward which allowed for DSRs. At that time, they were more in theory than in practice, and if we'd known today what we know now, I never would have signed that agreement and we never would have supported that bylaw.

Because of the York region experience and other anecdotal information we have in other municipalities, it's very clear that while a DSR may be built to certain specifications and operate for the first month or two or three appropriately, it's quite clear that proprietors pay little, if any, attention to ongoing maintenance; they leave the doors open. You'll hear more about this at the hearing.

I just don't think that the way most of them have been operated, with complete disregard for proper maintenance and proper operating procedures, really justifies compensation. But if that issue were being considered it should be very carefully evaluated on a technical basis, because I think you'll find, based on the York experience and other anecdotal information, that most of the ones out there in the community don't operate well or aren't built properly. I could name a number I've seen here in Toronto that are not at all built to any proper specifications. I guess no one in Toronto and some of the other municipalities has the resources to do this ongoing testing.

So compensation is fraught with problems and in many cases, because of the amortization issue, I don't think it's warranted. I know we hear figures thrown around of \$250,000 or \$350,000 per DSR. That is very unusual. That's only in certain types of high-end establishments. The average DSR is nowhere near that cost. I believe that many of them will have paid off their costs by now.

Ms. Martel: I can see that if some were started in 2001. Hamilton's bylaw was much later; I think it's dated to 2008. So you've got proprietors who made decisions just in the last year or two, when that bylaw was passed, who are much more likely to have costs that are still outstanding than costs that have truly been covered.

Mr. Perley: That's possible in Hamilton, yes. Burlington's sunset date for DSRs built into its bylaw was 2006, which coincides with the government's plan. Hamilton's is 2008. Peel region has set a date of 2010. Toronto Board of Health has said that if the province doesn't set them, Toronto council will do it.

There's a large momentum toward recognizing that these were not a good idea in the first place. I recognize the issue you're raising, but I think the consensus I've heard from municipal councillors is, "Let's just level the playing field and get rid of them."

The Chair: Thank you for your presentation this morning.

I'll call on Shoeless Joe's Restaurants. Are they present?

TRACY MILLER

The Chair: Tracy Miller, please come forward.

Ms. Tracy Miller: I'm really nervous. I'm not used to doing this kind of thing.

The Chair: Good morning. You have 10 minutes for your presentation. There may be up to five minutes of

questioning following that. I would ask you to identify yourself for our recording.

Ms. Miller: My name is Tracy Miller. I'm a health care aide who works at a long-term-care facility. I want to speak to you about how important it is for Bill 164 to be passed.

This is a letter about my personal experience working in a long-term-care facility that allowed a smoking room. My experience was not a good one, needless to say.

First, I would like to explain about residents who reside in these facilities. More and more, we are admitting residents who are in very fragile states of health. Most of them need total assistance in all aspects of daily life. One example is total hygiene care. This includes washing and dressing in the a.m. as well as in the p.m. Most need total or some assistance with eating and drinking. Many cannot walk on their own and need wheelchairs or walkers. Many are confused as to time and place and have poor judgment when it comes to their own safety. All of this is due to progression of the disease process.

The reason I am getting into this aspect of long-term-care facilities is because many of the public still see these places as retirement homes. This is no longer the case. Our residents need constant supervision in regard to all aspects of daily life. More and more, we are becoming like mini-hospitals, providing many of the same services given at hospitals; for example, oxygen, G-tube feeds, IV and so on.

Our smoking room is supposedly well ventilated, and we offer smoke passes 11 times a day, basically every hour from 9 to 9, leaving out one hour for lunch and one at supper. After 9 p.m., there are no more smoke passes allowed. This duty is carried out by personal support workers at designated times. They take turns. We have upwards to about seven smokers who use this room. The door has to remain closed at all times. This is a ministry requirement. There is a window in the door of this room so you can stand outside the door while supervising the smoke pass, but you must go in to light the cigarettes for the residents and also to put them out when they are finished. You may also be in and out of this room several times while they are smoking, as some of the residents—probably all of them—are regarded as unsafe smokers. This means they may wander around the room while they are smoking, putting the other residents at risk for a burn, they may drop the cigarette, again putting everyone at risk for injury including themselves. We run into problems when they don't remember to butt out the cigarette when they are finished smoking it and they burn their fingers if you aren't in the room to remind them. So this means the staff member is inside the room more than they are outside looking in.

0940

This room may be ventilated, but there is still a haze that hangs over the room while they are smoking in there. When you are finished with the smoke pass, you smell like you have been smoking too. Your eyes burn, you are

totally congested nasally, and sometimes you get a terrible headache, especially if you're a non-smoker.

I personally ran into problems with this duty, as I am an asthmatic and have never smoked a day in my life. I am on a lot of medication to control it. Out of concern for my health, I went to my doctor. He couldn't believe I was performing this duty and immediately instructed me to refuse this duty because of my health. He also wrote me a note stating that due to my health problems I was not to perform this duty. When I presented my note to my supervisor, I was sent home without pay. They made a deal with me to put a window on the door so we could supervise from the hallway, and added a new ventilation system. This was how the room was renovated, which I talked about above. This made very little difference and I was told to try it again.

Well, to make a long story short, I ended up at the emergency room with a severe asthma attack that left me off work for about 10 days, all directly related to the smoking room. WSIB covered my claim and instructed my facility to never allow me to perform this duty again at risk of a fine. My claim was accepted and never questioned.

Now I have to listen to my co-workers complain about going into that disgusting, dirty room and be exposed to second-hand smoke that may make them sick. Even the staff that smoke don't want to go into that room. We all know the hazards that exist from second-hand smoke, and I don't think anyone should have to be exposed to these hazards, especially in the workplace. Many of my co-workers have not spoken out about this situation for fear of losing their jobs or being harassed by their supervisors. Many of them are single mothers and need their jobs and are under enough stress as it is. This is a very sad state of affairs, and in this day and age, knowing the health hazards from second-hand smoke, I don't understand why something is not being done to protect the health care workers in this situation. Isn't it ironic that these workers are in a health care facility and are not being protected from a health hazard?

I want to end this letter by drawing your attention back to the start of my letter. Most of these residents who smoke are unsafe, which is why they have to be monitored closely. In fact, 90% of them don't remember having had a cigarette five minutes after smoking it. We are expected to go and get them for the smoke passes because they won't remember to come at the set times that are being given out. I can promise you that if the smoke passes weren't there, 90% of our residents would forget about them within a few days.

I hope this gives you a picture of what it is like for us working within this system and how worried we are for our own health after being exposed to this in our workplace. Thank you.

The Chair: This round of questioning will go to the government.

Mr. Peter Fonseca (Mississauga East): Tracy, thank you for coming here today and presenting your story and your experiences in a long-term-care home. In this piece

of legislation, the Ontario smoke-free act, we have made sure that employees will not have to experience what you have experienced. No employee shall have to go into that room, work in that room, have anything to do with that room—when I say “room,” the controlled smoking room that would be available—in long-term-care homes that so desire to have one.

I have travelled around the province and I was up in Sudbury, and in all their long-term-care homes in that area, none have a controlled smoking room. So that’s not an issue there.

In regard to the residents of the home, residents would have to go into that controlled smoking room on their own, if they desire to smoke, light that cigarette on their own and do everything on their own without assistance from staff in the long-term-care home. That would address many of the concerns and issues that you just brought up.

Ms. Miller: Yes, that would very much improve it.

Mr. Fonseca: And that is all within this legislation. This legislation is about protecting Ontarians from the harmful effects of second-hand smoke, and we want to make sure that all Ontarians are protected.

Ms. Miller: It’s been a long time coming, but I’m glad to see it coming.

Mr. Fonseca: Thank you very much for your deposition.

The Chair: No further questions?

Thank you very much for your presentation.

Has Shoeless Joe’s Restaurants arrived? No. Spirits Bar and Grill? Ontario Association of Naturopathic Doctors?

We will recess until one of our next presenters appears. We are ahead of schedule. I would ask committee members to stand by the room.

The committee recessed from 0945 to 0954.

SHOELESS JOE’S RESTAURANTS

The Chair: The standing committee on finance and economic affairs will come to order once again. I call on Shoeless Joe’s Restaurants. It appears that you’re ready to roll. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of Hansard.

Mr. Andy Elder: Thank you for the opportunity to sit before you today to explain our position on the Smoke-Free Ontario Act. My name is Andy Elder. I am the senior vice-president of Shoeless Joe’s Ltd. For the record, as a Toronto resident, married with two kids, I love the fact that I can dine everywhere in the city of Toronto today with my family in a smoke-free environment. We as a company support smoke-free and share the long-term vision of that goal.

Shoeless Joe’s Ltd. is the franchisor of 35 sports-themed restaurants and bars all situated in southern Ontario, concentrated heavily around the greater Toronto area. You’ll find Shoeless Joe’s locations in regions and

cities such as Toronto, York, Peel, Durham, Barrie and Peterborough. Proudly, we are celebrating our 20th anniversary of business in 2005.

I did not come here today to talk to you in detail about the problems we have faced as a company under the patchwork quilt of varying municipal bylaws across the province. Some of the municipalities began to change those bylaws shortly after enacting them. As some municipalities joined the smoking bylaw game, they came in with stricter rules, much to the chagrin and frustration of the municipalities that took a lead position. One of our friendly competitors called it bylaw envy. One of the councillors we dealt with called it bylaw embarrassment. It has been like a shell game, until now. We welcome a provincial standard. It will be a very positive step in eliminating the patchwork quilt of municipal bylaws we currently trade under.

We have 15 designated smoking rooms built in our system. None of them—not one of them—was built on June 1, 2001, when the opportunity to build a DSR came into play. They were all built in a reactionary manner in response to declining sales. As a dual smoking family restaurant/sports bar, the bylaw that came into play on June 1, 2001, forced us to fragment our businesses. Our franchisees suffered tremendously and many felt no alternative, after trying to ride through the smoke-free wave, but to build a designated smoking room. After they were constructed, they quickly realized that it was a win-win situation: They were providing smoke-free dining, they were providing a smoking area for their smoking patrons, and everyone was given a choice.

The average cost of such a conversion was \$55,000. In our most extreme case—and I am not an extreme person, but I’m just going to share with you the most extreme case—one of our franchisees in Scarborough annexed the premises next to them, so they took on an extra \$4,000 in monthly rent and spent just over \$100,000 in constructing a designated smoking room. All of this was done in full compliance with the municipal bylaw that they were trading under.

Environmental tobacco smoke is effectively being eliminated by—and I emphasize—a compliant DSR. Ventilation works. Some 75% or more of the public space and 75% of the seating is smoke-free; 25% or less is separately ventilated for those who choose to smoke.

What is the next step? I understand the province’s intention and desire to be smoke-free, but we ask and urge you to please consider all of the designated smoking rooms that have been built in the province to be compliant with the municipal bylaws that exist today. There are still DSRs being built today. At this time, as they are being built, they are not under any kind of bylaw that says there is a cessation date or a sunset date, as some people like to refer them. Municipalities are still issuing DSR permits today. I’m looking at some surprised faces. Anyway, I’ll answer any questions.

1000

As a next step, I urge the province to allow operators with compliant—and I will continue to emphasize the

word “compliant”—designated smoking rooms that do effectively eliminate environmental tobacco smoke or second-hand smoke.

I can't see a reason why we need to set a date today on when those would expire. I understand the accountability the province has to a commitment. If a date is necessary, I think 2010 seems to be reasonable. Just so you know, that is an existing sunset date that has been put into place in a reactionary manner by the city of Mississauga.

That's my case. Again, compliance is so, so important.

Just as a personal sidebar here, I attended a big-box restaurant, one of the major chains in Canada, visited one of their locations and they have a designated smoking room. It was not one of ours. I walked into the premises last week and was disgusted that the ventilation was not removing the environmental tobacco smoke. You could cut it with a knife. That meant that the ventilation was not turned on, that enforcement was not in place.

As legitimate DSR operators—and I'm not speaking about 15; I'm speaking about any large number, up to the over 700 DSRs in the province—compliance and enforcement are the two major stumbling blocks that seem to be hitting people. They act almost as a barrier to the acceptance of a designated smoking room. I urge stronger enforcement and stronger tactics to shut down those DSRs that are giving the good ones a bad name, because ventilation truly works.

The province of British Columbia, under the guise of the Workers' Compensation Board, a provincial body to protect workers, adopted a ventilation solution for the province. The Workers' Compensation Board in British Columbia adopted ventilation as a solution to protect the workers from environmental tobacco smoke.

In conclusion, I thank you again for your time. I'd be glad to answer any questions you might have.

The Chair: This round of questioning will go to the official opposition.

Mr. Barrett: Thank you for the testimony. You indicate that right up to the present, municipalities are still issuing, I guess these would be building permits, for establishments to construct designated smoking rooms and install the ventilation system.

We heard a comment—I guess it was Mr. Perley who recently identified some of the designated rooms that maybe aren't being supervised appropriately. You feel there should be more government control of these facilities. Mr. Perley made mention of a door being left open. I understand the ventilation system obviously takes the air out of the room, takes the air from the non-smoking area, through the designated smoking room and out. I hear talk of a negative air pressure. Could you comment on that?

Mr. Elder: Mr. Barrett, I'm not going to sit here before you pretending to be a ventilation expert, but the rate at which the air is to be ventilated from a smoking room should not require windows or doors at all. In fact, the standard in British Columbia does not require doors and windows. I really feel that that is just for cosmetics. When you open the door into a designated smoking

room, the air should be flowing from the smoke-free area into the smoking area, and not the reverse. Again, if it is compliant and if it is being maintained properly, the airflow should be flowing into the designated smoking room and not out. Effectively, there should not be any particulates of environmental tobacco smoke in the air in the non-smoking area.

Mr. Barrett: You indicate that small business operators have operated in good faith to comply with their municipality or with customers, some who choose to smoke and some who do not want to smoke. Now through this legislation, the Ontario government will be telling them that their investment is worthless. You gave some figures, \$50,000 to \$100,000. I'm aware of one up to \$300,000 to construct a very large designated smoking room. The NDP made mention of the government cancelling the spring bear hunt. There was compensation for the outfitters in the north. Any idea what kind of help the industry would need, what kind of compensation?

Mr. Elder: It's very difficult to quantify, and there are so many variables that come into play. I would say again that these DSRs are still being built today, but most of ours were built in the 2002-and-on period, again, with no mention of a sunset date. Effectively, when the Premier ran for office in 2003, he said within three years. So anybody building a designated smoking room today is really, truly doing so knowing that there could be a 2006 sunset date. I would say that the rate of them opening right now is very low, based on and pending what the final decision will be. I would say that anywhere from six to eight years would be a reasonable time. Again, there are so many variables and there's no clear formula on how to do it.

But again, it's 25% of your space. A separate occupancy level is set. If your whole premises is licensed for 200, then the maximum occupancy in your DSR is 50. It's not like you can put 200 people in there. There really is truly a limit or an upside to how much gain you can possibly get.

Mr. Barrett: You mentioned that British Columbia initially brought in legislation somewhat similar to the McGuinty bill we're debating here and then within a matter of months reversed that decision and did allow designated smoking rooms on the understanding that, first of all, there's ventilation and there is no second-hand smoke there. Obviously people are not exposed to second-hand smoke in a room like that.

Mr. Elder: Right. I couldn't emphasize more how important enforcement and compliance are. Out of 700-plus, there is a percentage of them out there that are not being maintained properly and are giving the ones that are collectively a bad name.

Studies have been done on ventilation. I'm a non-smoker. I am not pro-smoking; I am pro-business. We want to be in business and we want to cater to our guests. Twenty-five per cent or whatever of the adult population smokes, and I can tell you that in smoke-free they are not going out as much. There are other businesses out there recognizing that. Taking home meal replacements from

grocery stores is on the rise. Packaged beer from the beer store is on the rise, whereas draft is on the decline. People are not dining out, or they're going out and spending less money. It's quite dramatic.

The Chair: Our time has expired. Thank you for your presentation this morning.

Spirits Bar and Grill, are they present? The Ontario Association of Naturopathic Doctors?

The committee will recess until 10:45. I'd ask committee members to be back promptly.

The committee recessed from 1008 to 1045.

The Chair: The standing committee on finance and economic affairs will come to order once again.

SPIRITS BAR AND GRILL

The Chair: I would call on Spirits Bar and Grill to come forward, please.

Ms. Heli Donaldson: Where do we sit or stand?

The Chair: Anywhere at all.

Ms. Donaldson: Anywhere? They're all on? OK, great. Thanks.

The Chair: Yes. We have a gentleman in the corner who controls the microphones.

Ms. Donaldson: OK. You're in charge?

The Chair: He does a very fine job.

Ms. Donaldson: Good. This is my first time—a little different from slinging beer behind a bar.

The Chair: If I might, I'm compelled to tell you that you have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I'd ask you to identify yourself for the purposes of our recording Hansard. Now you may begin.

Ms. Donaldson: I'll just introduce myself. My name's Heli Donaldson. I own and operate Spirits Bar and Grill, 642 Church Street, just at Church and Bloor. It's a family-run business. We've had it for about 19 years. Is that good? Great pizza—967-0001.

I should really start off by saying the reason why I'm here is I'm extremely frustrated and bewildered by how this has been coming around.

First of all, Michael Perley, head of OCAT, who I understand spoke earlier, is essentially paid by taxpayers' dollars and his activities are tax-funded. He actively supported DSRs in 1999, not to mention that our city council had almost a unanimous vote in favour of the city of Toronto bylaw that allowed the use of DSRs. Oh, how the wind blows. What does this say for the consistency, honesty and integrity of our politicians? A deal's a deal.

I wrote a letter actually to just explain our company's position. I sent this off to a newspaper, and I thought it would be appropriate if I read it. I think it represents our and hundreds of other owners' position.

The Ontario Legislature is once more proceeding with undue arrogance to establish a law to restrict smoking almost everywhere without investigating the studies and scientific reports that are available from independent sources. Other provinces, namely, British Columbia, Quebec, Nova Scotia and Prince Edward Island, have

absolutely investigated the scientific data available and introduced legislation that addresses the requirements of protecting non-smokers from exposure to second-hand smoke, while giving the operators in the hospitality business an opportunity to serve smoking customers.

This compromise is possible by implementing DSRs which are constructed and engineered to very stringent requirements. Filtered fresh air is introduced into DSRs and then exhausted out of the building. A negative pressure is created by the exhaust air exceeding the quantity of supply air, thus preventing any air migrating into non-smoking areas.

British Columbia offers the ideal model for implementing and enforcing DSR regulations, with the hospitality industry working closely with the province's Workers' Compensation Board. Hospitality establishments are one of the most inspected businesses in Ontario by the Ministry of Labour, the Alcohol and Gaming Commission and local health departments. No new systems are required or necessary to monitor the operation of DSRs.

At present, there are thousands of DSRs in Canada and more than 700 in Ontario. The cost of engineering and constructing a DSR is very substantial. They were built to comply with existing local bylaws. Is it fair that a provincial law can now overrule a local bylaw without compensating the hundreds of individual operators? Is it fair to unnecessarily jeopardize our hospitality and tourism business?

Hopefully, the Ontario Legislature will compromise and amend Bill 164 to help a struggling industry and portray its political ideals to safeguard the liberty of freedom of choice and tolerance. That's it. Any questions?

1050

The Chair: This round of questioning will go to the NDP.

Ms. Martel: Thank you, Ms. Donaldson, for being here this morning. Let me in fairness put our position on the record: I'm a New Democrat and I spoke about this bill on behalf of our party and I spoke in favour of it. So that I don't mislead you, I made it clear that I support the provincial law because I think it has been ridiculous for municipalities and, frankly, business owners, to operate under a patchwork of different laws that are different from municipality to municipality. I also support ending the DSRs. What I did say is that we should recognize that in doing that, there is a cost. This change is not going to come without a cost to either business owners or, frankly, small convenience stores, and we should recognize that and deal with that.

In my remarks, I said very clearly that the government should look at a compensation package for those business owners, those restaurant and bar owners, who, operating under legitimate existing bylaws, established DSRs at the time because that was the bylaw that was in place. The previous government set a precedent for providing compensation when a provincial law or a provincial regulation affected owners. It was the case in the cancellation of the spring bear hunt. I remember that tourist operators

in my part of the world were affected by that, and we have suggested the government look at that as well. That's our position. I wanted to make it clear to you where we're coming from.

Ms. Donaldson: I'm not that clear. So you're supporting abolishing DSRs?

Ms. Martel: Yes, and I want to make that clear. What I have said, though, is that for those owners who established DSRs under the bylaws that were in place and made an investment and who are now facing a sunset clause, the government should look at some form of compensation for those. I think it would be unrealistic for us to say that there isn't a cost to people; there is, and there's going to be, and we should recognize that and we should deal fairly with that. I'm not sure what your own circumstance is. I'm assuming you have a DSR, but I'm not sure.

Ms. Donaldson: Yes, we do.

Ms. Martel: Can you give the committee some idea of what that cost was to you?

Ms. Donaldson: It was a fortune. The city said, "If you build a DSR by June 2004, we're going to grandfather it." So we said, "Absolutely." We built it. For the restaurant business, I think the ballpark is five to 12 cents on the dollar, not a lot of margin in the restaurant industry. So we took out a loan. It was \$100,000, and that's not money that we had in our pocket. So I've got a loan now with my bank because of it, but we just thought this was the right thing to do.

If you were to look at an equation, which would be kind of interesting, if you were to divide it, it allows 29 smokers. That means that per customer, we spent \$3,300, and yes, it's been stamped by the health board, the city; it's a kosher DSR, it works. If you were to divide that cost by the 320 square feet that it's located in, it cost us about \$300 a square foot.

Compensation is really not what I'm looking for. I know they're trying to extend it to 2010. There's absolutely no way we're going to get our money back by 2006; they're in la-la land. I just find it incredibly Orwellian. I've just stated that four other provinces—what is it? British Columbia, Quebec, Nova Scotia and PEI—can handle this and allow DSRs, and for some reason, Ontario doesn't. I just find Ontario—don't get me fired up about AGCO and all the other—it's just very Orwellian. Yes, for me, being compensated is the latter. But I'm still very for "a deal is a deal." You have about 700 operators who have built designated smoking rooms, and we did what you said, and now you're reneging on a deal.

I respect government. I respect when people say something. I go to my city councillor. I went to the mayor at the time. They said, "Absolutely. Do it, do it, do it," and they turn around. Once again, a deal is a deal. Compensated? Yes, absolutely. There will be a class action suit if not. How can 700 businesses afford something like this? It's crazy.

I myself was out a week ago. I went to one restaurant and two bars. None of them had DSRs, and people were smoking in them because it's been very lax. Nothing

against the health board, but they're not monitoring it as much. They only have 12 inspectors for—what?—7,000 establishments in downtown Toronto? It's nuts. And I'm not going to sit here and tell on people. People think, "Oh, you're benefiting now." Walk around, go into clubs, go into restaurants, go into bars that have not built DSRs and there is smoking going on. So I don't know.

Anyhow, sorry, I'm on a rant. I went on a good long run this morning, so I'm fired up. And I'm a huge non-smoker, but I respect the rights of people who choose to smoke. They're my life. They're my bread and butter. That's it?

The Chair: Thank you.

Ms. Donaldson: Thanks very much. Thanks for your time.

ONTARIO ASSOCIATION OF NATUROPATHIC DOCTORS

The Chair: I would now call on the Ontario Association of Naturopathic Doctors to come forward, please. Good morning.

Ms. Margaret Anne McHugh: Good morning.

The Chair: You have 10 minutes for your presentation. There may be up to five minutes of questioning after that. I would ask you to identify yourself for our recording Hansard. You may begin.

Ms. McHugh: I'm Margaret Anne McHugh. I'm the executive director of the Ontario Association of Naturopathic Doctors. We would have had a naturopathic doctor here this morning actually to speak to you, who could be more compelling in terms of the patients they see and the things that they do, but we were added at the last minute to the list, so I was the only person available on short notice. But I thank you very much for the opportunity to be here.

We are extremely supportive of Bill 164 and the government's overall tobacco strategy. I just can't tell you how much we want to see this bill go through, which will help people stop smoking and protect our children and, importantly, create that next generation 20 years from now where we won't be seeing people who are suffering from the incredible ravages of smoking and second-hand smoke, and to remove that very powerful message to children that smoking is just a normal consumer product; tobacco is not. I believe as adults and as health care providers we certainly feel a responsibility to the next generation to remove those normalizing standards and those walls creating that message that it's a normal thing.

Smoke-free public places are important to this goal, as well as removing the power walls. In fact, we really wonder if getting rid of tobacco use will ever be possible as long as cigarettes are still sold everywhere. So in fact we would support reducing even more where they can be sold.

I know that probably there is no one in the room, there is hardly anyone in the province, who has not had a colleague, a loved one, a family member suffer from the ravages of tobacco use. I myself can become quite

moving—I'll try and restrain myself—because I watched my own father basically drown in his own body. But I imagine you will hear quite a bit of that, so I will try to take as little of your time as possible.

As I said, it is personal for me—I'd like to see a tobacco-free society—but I'm here today to represent the Ontario Association of Naturopathic Doctors. While the NDs are always ready to treat the illnesses caused by smoking, we want to remind the committee of the real reason for deliberations today: this great work of creating a smoke-free generation that we won't have to treat 20 years from now.

Naturopathic medicine is really based on a view of prevention and certainly treating the cause. And, in this case, getting rid of smoking is treating the cause and eliminating those things in the population. The members of our association, the naturopathic doctors of Ontario, see people who have never smoked and yet suffer from the diseases of smoking.

One of the interesting things about a naturopathic medicine approach is that it uses some principles of Chinese medicine. In Western medicine generally, the skin is seen as the first line of defence in terms of keeping things out of your body, but in Chinese medicine, it's the lungs. So if you do anything to interfere with your lungs' ability to keep those toxins and things out of your body, you reduce the body's ability to heal itself.

Naturopathic medicine, as I said, is based on a kind of vitalism, on trying to initiate the body's own ability to heal. Tobacco, and even second-hand smoke, knocks out those supports; reduces the ability of the cilia to expel foreign matter; destroys antioxidants, like vitamin C, that help the body heal, especially wound healing and other kinds of preventive things in the body. For those reasons, second-hand smoke always contributes to illness, and our members see it too often, and they very much want to see tobacco de-normalized and eliminated.

1100

I didn't bring a lot of statistics and data with me today. I know there's lots of it in terms of health care costs. I think in terms of the economics of tobacco, you'll need to balance any loss of business with the extreme cost to the health care system that we could reduce and that all taxpayers are paying for. I want to leave that detail to others and just ask you to really add to your resolve to pass this legislation.

I have some really compelling stories. One is about a couple of sisters who were both teachers—the Wilson sisters. I don't know either of their first names because we just call them the Misses Wilson. The older sister always smoked and the younger sister never smoked. I found it interesting that, even today, when her sister, who had never smoked, got lung cancer and died, the older Miss Wilson gave it as an example, and continues to give it as an example, of how smoking doesn't really cause lung cancer, because her sister, who never smoked—she lived with her, so she was getting the second-hand smoke and died.

I collected a lot of stories from naturopathic doctors last night and this morning. I don't think I will take your

time to tell them to you. I'm sure you've heard them ad nauseam. I just wanted to strongly ask you to support the bill. I think people, and children especially, still have not got the message. My own grandson, who is four years old, mimics his other grandmother, who is the only smoker he has around. She is one smoker, out of all these hundreds of people he knows, and yet he will sometimes pretend to be smoking, and he's four next week. So we have to denormalize it, because it's normalized for him even though he lives in a mostly non-smoking world.

I thank you.

The Chair: Thank you for your presentation. This round of questioning will go to the government.

Mr. Fonseca: Margaret, thank you so much for your deposition to this committee today and for the great work you do in the Ontario Association of Naturopathic Doctors.

As we're hearing the different stories, we do know the statistics. We know it's the number one preventable cause of death in Ontario: 16,000 people dying of tobacco-related illness every year. The economic costs have been estimated to be anywhere from \$3 billion up to \$5 billion to the province of Ontario. The real costs are in terms of life. We're losing 44 people a day due to tobacco-related illness.

Your association does great work. One of our key pillars has been around prevention and making sure that those who have not started to smoke don't start smoking, especially our youth, but everybody here in Ontario.

I know you're talking within naturopathic. Much of your core delivery of health care comes, you were saying, from the lungs. How do you deliver some of your preventive messaging and what are some of the different tools you use to help stop somebody from starting smoking and also, for those who have started, to help them stop?

Ms. McHugh: Because I'm not a clinician and I'm not a naturopathic doctor—I can answer the question, but I think it's limited because I'm not actually skilled in offering clinical services myself.

Naturopathic doctors work closely with people who, for the most part, are committed at least to make small changes that make big differences, and some people are committed to large changes. So we're kind of lucky in one way, in that the people who choose to take a naturopathic approach have already made a commitment to want to do something. Primarily, they are people who want to quit smoking. Although there was a big debate in the association among members at one point about how much they wanted to spend time on smokers, they do see smokers and can help people quit. Acupuncture is extremely effective in helping people get over the cravings, and botanicals, for instance, fill the receptor that nicotine fills. So people can get help with the cravings from acupuncture and certain kinds of botanical or herbal medicines.

In terms of helping people quit, we're always working at it. We've worked with public health units, hospitals and other organizations to provide quit-smoking pro-

grams. A number of our members do it at no cost, or very low cost, and have a very high success rate with it, because it includes counselling but also supports for the craving and bringing people together in groups, which tends to help them when they're quitting.

In terms of prevention, I think preventing people from smoking in the first place, and children from smoking and taking up smoking, is the idea that your body is in balance, and you need as much as possible to keep that kind of homeostasis, that balance that the body has. All the things you do increase your toxic load, which we're all experiencing all the time because of ambient pollution basically, particularly if you're living in southern Ontario, and even the way that our foods are treated. Although there are allowable levels of pesticides, those things are still building up all the time in our bodies. So in general, there's an approach taken with people that they should reduce all of those loads, and I think when people do that work, they start to feel the bigger effect that tobacco has on their body, and have more interest in getting rid of it.

The Chair: Thank you for your presentation this morning.

KINGSTON, FRONTENAC AND LENNOX & ADDINGTON PUBLIC HEALTH

The Chair: I would ask Kingston, Frontenac and Lennox & Addington Public Health to come forward, please. Good morning.

Dr. Ian Gemmill: Good morning.

The Chair: You have 10 minutes for your presentation. There may be up to five minutes for questioning following that, and I would ask you to identify yourself for the purposes of our recording Hansard.

Dr. Gemmill: My name is Ian Gemmill. I am the medical officer of health for the Kingston, Frontenac and Lennox & Addington Public Health. I really want to thank you for the chance to talk to you today about probably the most important piece of health legislation that has been introduced in Ontario during my 23 years as a public health official. We spend a lot of time talking about treatment and the cost of treatment, but here's one very good example of how we can make huge advances in the health of Ontarians by passing this legislation that is highly preventive in nature.

The Ontario Legislature has the opportunity to act decisively to protect all Ontarians from second-hand smoke with the passage of Bill 164, and, by the way, I've done a handout for you, so you don't need to take notes.

It's time to ensure that all Ontarians have the same protection against second-hand smoke enjoyed by people in more than 250 communities in this province that have smoke-free public place bylaw protection. It's also time for Ontario to create a level playing field across the province for businesses.

I have some details there about the statistics on tobacco, but I think that you folks know this: the 16,000 deaths a year, the half a million hospital beds per year

devoted to looking after people with tobacco-related illnesses and the \$1.7 billion in health care costs that tobacco costs us. These are not in doubt; this is scientific knowledge.

These hearings are taking place on the eve of the second anniversary of Kingston's successful smoke-free bylaw. For almost two years now, both residents and visitors to Kingston have had the protection of a strong smoke-free bylaw, which has included two seasons of smoke-free patios. We presented over 16 pounds of documentation and solid scientific research papers outlining the benefits of smoke-free public places and the neutrality of its effect on the hospitality industry to our city council to aid them in their bylaw deliberations, along with public opinion surveys in which more than 80% supported having smoke-free public places.

For the most part, this bylaw has been a tremendous success, with very few infractions, complaints or even legal activity. It has simply become for us a community standard. Our community has been extremely positive about being smoke-free and people still actually, when I meet them, thank me and my team for being perseverant and making this bylaw come to fruition in our community.

Most importantly, both the public and employees are better protected from the dangers of second-hand smoke. Both businesses and governments have a responsibility to establish health and safety policies on their property and in their communities, including smoke-free policies. These policies should reflect societal norms, sending a message to our youth that smoking is not the norm, and when I talk about denormalization later on, that's what I'm talking about.

We applaud both Minister Smitherman and the government for introducing this bill and all the MPPs who are supporting it.

First, a bit about patios. Over a dozen other communities in Ontario have joined Kingston in requiring smoke-free patios. Recently, other Canadian cities, in particular four in Alberta—Banff, Jasper, Calgary and Edmonton—have made patios smoke-free.

It's really important to understand why our council did this. During the consultation process in 2002, hundreds of people did delegations, and many business owners waited up to two hours just to give them one message, and that message was, "Please make the bylaw fair and equal; no special arrangements for some businesses and not for others; no exceptions." This is because some businesses have the opportunity to have big patio spaces and others don't. Leaving out patios in our bylaw would have put the latter at a great disadvantage. So they actually asked for it.

1110

There are health effects. Mind you, of course, because smoke is diluted when it's in the outside air, it's less concentrated. Nonetheless, experts in the field of second-hand smoke maintain that there is still an increased health risk, especially for those people who spend all their time in these situations, i.e., the people who work there, the

waiters and the waitresses. These health consequences for employees can't be ignored.

Finally—and it's very important to understand this point—the definition of “patio” has caused confusion all across the province. Other jurisdictions that do not have patios designated as 100% smoke-free have seen these outdoor rooms pop up. If you've ever been to Ottawa, you have seen some of these places in pubs. They have flimsy roofs, flimsy walls and, in the winter, actually have heaters. So they actually become a designated smoking room. This practice goes against the original intent of the bylaws and creates an unlevel playing field again for businesses. The interpretation is much clearer when patios are designated as 100% smoke-free. Leaving them out is a pitfall that I strongly advise you to avoid. It will cause you no end of problems.

A word about designated smoking rooms: They are fundamentally unfair, as only larger premises with sufficient floor space and funding can afford to build them, making this again an unlevel playing field for other restaurants and, of course, leading to the detrimental health effects of the employees who are required to work in them.

Some people argue that ventilation works, and I would argue to the contrary that it does not. It is not an answer to preventing second-hand smoke exposure. There is no safe level of exposure to second-hand smoke. One researcher, Dr. Jim Repace in the US, estimated that there's no ventilation system in the world that can truly clear tobacco smoke from an enclosed space, no matter how strong or modern it is. So don't fall for that argument.

Saying that employees don't have to enter DSRs does not protect the employees who have to go in there for security purposes, those who have to do housekeeping. Nor does it protect the employee whose boss just asks them to go in, even though it's technically against the spirit of the law. It does not exclude community volunteers from feeling obliged to provide service during charity events. This is an issue that we've seen in Kingston in some of the bingos, where the volunteers just feel it's their duty to provide the service, and they go in to the detriment of their health. Ironically, these actually are young athletes and their parents primarily.

Finally—and I think this is an important point for you to understand—the administrative bureaucracy required to provide approvals, review the plans and oversee the operation of a DSR regime across Ontario would cost the government literally millions of dollars. Again, I advise you to avoid this costly pitfall.

A quick word about long-term-care facilities and DSRs: Rulings by the WSIB and the Ontario fire marshal's office regarding long-term care facilities with a DSR have left them in a liability dilemma. Do they provide a specified place for their residents to smoke, to the detriment of the health of their health care staff? Since 1994, when the Tobacco Control Act permitted long-term-care facilities to have DSRs, some facilities have already phased them out without incident, thus providing a healthier environment for residents, families, visitors

and the staff. We recommend this approach of phasing out.

Bill 164 will help to keep youth from starting smoking. I can't emphasize this point enough. Nine out of 10 people who begin to smoke do so before the age of 20. If we can stop youth from starting smoking, they will probably not smoke during their lives. So preventing the initiation of smoking behaviour in youth is critical to the success of preventing the next generation of smokers.

Progress in reducing youth smoking is now being seen. The prevalence of smoking among Ontario youth aged 15 to 19 is now at 14%, with the current kids smoking about 12.5 cigarettes a day, down from 19% in 2002. We need to sustain this trend, and Bill 164 will make a difference.

We need to build on the tax increases that have already been initiated. We know, due to recent research, that where there are strict controls on smoking there is a positive effect on reducing youth smoking rates. Therefore, Bill 164 needs to be kept in its current form or even enhanced.

I want to talk about point-of-sale promotions and power walls that we believe should be in the bill. For Bill 164 to be effective in preventing tobacco use among youth, there must be a complete ban on point-of-sale promotions, including the behind-the-counter displays known as power walls. You may have heard about these already. I don't know if you've seen them or not.

A key component to a comprehensive tobacco control strategy includes the denormalization of the tobacco industry and its products. Retail display bans help to denormalize tobacco, as they remove tobacco from one of the industry's coveted advertising placements: point-of-sale displays that are in plain view of children. Although tobacco advertising has been banned in Canada for the last couple of years, the tobacco industry continues to spend millions of dollars on these power walls and other point-of-purchase incentives. This approach remains one of the last ways of advertising tobacco. In Kingston, these power walls often take up half the available space on the wall in small stores, with up to 150 packages in full view.

I'm sorry it's not bigger, but if you'd like to see this after, this is an example of what a power wall looks like. Some of you may have seen them in some of the small convenience stores.

When youth see these displays—

The Chair: You have about a minute left.

Dr. Gemmill: I'm about to quit.

When youth see these displays in more places than everyday items, such as bread and milk, many of them overestimate the use of tobacco and see it as acceptable and normal. With the Supreme Court validation of Saskatchewan's power wall legislation ban and the imminent ban in Manitoba, Ontario has an opportunity to join with them and encourage all of Canada to ban this practice. I strongly urge you to consider making such unsubtle assaults on youth vulnerability illegal.

I will just say this: Smoke-free public places and workplaces, combined with higher product prices through tobacco taxing, counselling for smokers, nicotine replacement therapy and other personal help have all been noted as factors that enable smokers to quit and stay quit. That's our goal, so that they don't end up being ill, they don't end up in hospital beds, they don't end up costing the system money, but primarily so that they have a better quality of life. Relapse often occurs when quitters find themselves in a smoke-filled environment, even, for example, in a covered outdoor patio.

In conclusion, our experience in Kingston with being smoke-free has been remarkable, I would say. Our smoke-free patios are full of patrons. Because our bylaw has all bars and restaurants as 100% smoke-free, there is no perceived business advantage and everyone is being treated equally.

All Ontario citizens deserve the protection that Kingston residents have against the negative health effects of second-hand smoke. Ontario has the opportunity to be a leader, nationally and internationally, and to inspire other provinces to enact smoke-free legislation. KFL&A Public Health wholeheartedly supports Bill 164 and a smoke-free Ontario, and strongly urges you to consider very seriously the recommendations we have made today. Again, thank you for your time.

The Chair: This round of questioning will go to the official opposition.

Mr. Barrett: Thank you, Dr. Gemmill, for presenting on behalf of the health unit on second-hand smoke. You mentioned there are 250 communities that are smoke-free in Ontario. I should know this: How many communities are not smoke-free or how many will be changed with this law?

Dr. Gemmill: How many municipalities do we have? Is it 900 or more? I don't know how many we have in Ontario. I think the point is—

Mr. Barrett: How many? I'm sorry?

Dr. Gemmill: I'm sorry, I don't have the answer to that question, but it goes back to Ms. Martel's point that we have a patchwork across Ontario. Even in our own area, one of the concerns that came up was, if people can't smoke in Kingston restaurants, are they going to go to Napanee or Gananoque? These were the kinds of arguments that came up. It hasn't happened, but these are the kinds of things that happen.

Mr. Barrett: You mentioned deaths. How many deaths are there from second-hand smoke? What evidence would that be based on? Death certificates or coroners' reports?

Dr. Gemmill: The people who are experts in this area estimate that—I'm going to say perhaps up to 10% of the deaths that occur due to tobacco are related to second-hand tobacco smoke exposure. In Ontario there are 16,000 deaths a year, so you might imagine over 1,000 deaths in Ontario each year due to second-hand smoke.

Mr. Barrett: Who are those experts? I just want the names.

Dr. Gemmill: Well, I think you saw Michael Perley earlier today. The people in the States are generally led by Jim Repace from the—

Mr. Barrett: He does research, does he?

Dr. Gemmill: Yes.

Mr. Barrett: What's his name? Sorry.

Dr. Gemmill: Jim Repace.

The example of Heather Crowe, whom you've seen on TV, who worked at the Newport grill, I think it was, in Ottawa for 40 years and is dying of lung cancer—these are not events that are uncommon when you get exposed to second-hand smoke. Of course, everything boils down to dose. If I'm only exposed when I go out to eat, that's one thing, but an employee who works there day after day, where the air is blue, they run a significantly increased risk of the negative health effects.

Mr. Barrett: Would there be coroners' reports that would indicate that?

Dr. Gemmill: I'd have to check that for you, Mr. Barrett.

Mr. Barrett: You mentioned second-hand smoke and the problem if people are smoking outside, that experts in the field of second-hand smoke maintain there's an increased health risk. What studies would those be and what experts would those be? I'm just trying to get to the bottom of this.

1120

Dr. Gemmill: Let's put it this way: Any exposure to second-hand smoke—and, again, it's dose-related—is not great. We all accept the fact that smoke is diluted when it's outside; it's mixed with fresh air. However, the whole thing revolves around dosages. Frankly, it depends on how the patio is organized. If it's got flimsy walls and so on, it really isn't outdoor air any more, it's actually quasi-indoor air.

This is based on extrapolation from the fact that we know there are at least 40 chemicals in tobacco that are not allowed in workplaces through the labour laws we have in Ontario, yet they are allowed in these workplaces because they're not created by the employers. This is not OK. These employees are exposed to them. We know that if you smoke, there are health effects. We know, for example, that if a spouse smokes and you're exposed to it all your life, there are health effects.

I agree with you that it's not huge compared to being in a household for 40 years with somebody who smokes, but it is dose-related, and every bit of exposure is not good for a person's health. That's absolutely clear. I don't think there is any doubt about that.

Mr. Barrett: You quote that a researcher estimated that ventilation systems cannot clear tobacco smoke from an enclosed space, but we know the technology is there to clear mines, airplanes, laboratories or computer manufacturers, where they do exchange the air and take the air out. I just wondered who this researcher was who said the fans and systems don't work.

Dr. Gemmill: Again, Dr. Repace from the US.

The Chair: Thank you for your presentation this morning.

Dr. Gemmill: Thank you for considering these recommendations. I appreciate it very much.

MARTIN AIR SYSTEMS

The Chair: I call on our next presenter, Martin Air Systems, to please come forward. Good morning. You have 10 minutes for your presentation. There may be up to five minutes for questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard. You may begin.

Mr. Jeff Martin: My name is Jeff Martin. I'm the president of Martin Air Systems. Between 2001 and 2004 we constructed somewhere between 100 and 150 designated smoking rooms throughout Ontario. I've been asked to come here and give you some insight on the York region health department study that has been and will continue to be presented as evidence of the failure of designated smoking rooms to operate effectively.

We built between 20 and 25 designated smoking rooms in York region. We haven't built any recently anywhere and we don't intend to build any more. The market has kind of come and gone for them, so I don't really have any vested interest one way or the other in whether you decide to allow them an extension or not.

The study that's presented, I believe, provides a distorted picture of the success of DSRs. I'd like to give you a little bit of history and a little bit of insight into how all of this came about.

Through the 1980s and 1990s, my company specialized in doughnut shop ventilation. In 1998, Tim Hortons decided to go non-smoking. They were a big customer of ours, as well as other doughnut chains—Country Style and Robin's Donuts. They have all used our equipment. What happened in 1998 was that the Tim Hortons smokers went to competing doughnut shops and the non-smokers from the other chains went to Tim Hortons. Although it has been represented that Tim Hortons went non-smoking successfully—which is true—there was this trade in customers that took place so that a disproportionate number of smokers ended up at the competing doughnut shops.

Those doughnut shops were aware, in 2000 and 2001, that they had a large smoking contingent in their customer base and knew that with the upcoming legislation, they either needed to install a smoking room or go non-smoking. Country Style was the first to face the prospect. They decided to take eight corporate stores non-smoking on January 1, 2001. They were doing that in an effort to show their franchisees that they could successfully go non-smoking and compete with Tim Hortons. Tim Hortons had been successful at it and they thought they could as well.

What happened was that in those eight stores, their sales went down approximately 60% immediately. The non-smokers literally said, "This is my last coffee and now I'm going to Joe's Doughnuts where I can still smoke." So Country Style asked us to install smoking rooms very shortly after that in those eight locations. As

a result, we were the first company to apply for smoking-room applications in many of the regions around Ontario.

With regard to York region, we had a Country Style in Richmond Hill that wanted to install a smoking room. I went into the building department in Richmond Hill and said, "I would like to apply for a building permit to install a designated smoking room," and they said, "That's fine, but you need the permission of the York region health department prior to doing that." I said, "OK. Where do I go to get that?" So they sent me off to the health department. At the health department, they said, "We don't really have anything to do with that. The building department is taking care of that." So I took the card of the person I spoke to back to the Richmond Hill building department and told them that I went there. I asked them to review my drawings, and they said, "That is your job. Here's her card, if you would like to call her. You can call her up and she'll confirm that." He had a conference with his manager, and they decided that the building department was responsible for administering the building code and that, as long as the drawings that we submitted met the Ontario building code, they were going to issue a building permit, and that's what happened.

During 2001, it was mostly doughnut shops that applied for designated smoking rooms. They knew that their customers were smokers and that if they didn't put them in, they were going to get hurt. Other companies that had patios or larger restaurants had been told by health departments and others that they could go non-smoking, and many of them chose, because the bylaw was implemented on June 1, to try going non-smoking for the summer, see how it went and then assess it in the fall. In April, May and June 2001, we were furiously building designated smoking rooms exclusively for doughnut shops. In York region, there was no oversight by the health department on these drawings and the construction of the rooms. So it came around to the fall of 2001 and they realized that the building department wasn't doing what they thought they were doing, and they hired a consulting engineer and started the process of administering the approval of drawings, issuing approvals and then forwarding them to the building department.

Unfortunately, that happened, I'm recollecting, in September or October 2001, and they were only allowed to hire the consulting engineer until December 31 because the contract was significant enough that they had to tender the contract. On December 31, all work in York region stopped because they had to tender the contract, and no drawings were approved in York region until the middle of March 2002, after they'd completed tendering the contract and hiring the new consultant. It was about the middle of 2002 when they finally got up to speed and, to their credit, I would say that from the middle of 2002 on they were by far the most consistent municipality to deal with, once they actually got their act together. As a result, all of those smoking rooms that got built primarily for doughnut shops went through the process before that.

So they decided to retroactively go back through the records of the building department, go to all those stores and say, “You have to submit to us those drawings that have been inspected, approved and signed off by the building department and we’re going to tell you whether or not they comply with the way we interpreted the bylaw. Then you have to make the changes that we deem necessary to meet our interpretation of what the bylaw says.” For example, it says that you can enclose up to 25% of the public space. Well, the building department didn’t necessarily count public space—the bathrooms, the vestibule—the same way that the health department did, and the health department could say, “Your room is too big.” Those kinds of things happened. That’s just a little bit of history of what happened.

I’m just catching up to my notes for a second.

The Chair: You have about two minutes left; just to remind you.

Mr. Martin: OK. I’ll skip to the study.

You’ll see on page 2, at the bottom, that 78% of the premises failed to meet the bylaw requirements. On page 3, at the top, you’ll see a breakdown of that. You’ll see that they retested 69. A little later on, you’ll see that 100 were actually constructed. I don’t know this for a fact, but what happened to ours was that we had constructed 25 that were tested by them after a year of operation, and they passed. I was there for the inspections. I made sure they passed. In the 2004 study, the ones I had constructed that had passed were not retested. I didn’t attend the testing as part of this study. They only tested 69, and I don’t know for a fact, but it would appear to me that they tested the ones that had failed previously, not all of them.

1130

Fifty per cent had to reduce their occupancy load. With this what happens is, in a doughnut shop they didn’t know how many people were going to use the room, so let’s say they were allowed to build a room for 20 people. It’s a group of tables of 4 but you get somebody in there reading a paper at a table of 4, and now the remaining tables only allow 15 or 16. You don’t tend to get 20 people in 20 seats in a doughnut shop smoking room. So the way the health department decided that they failed was if they didn’t ventilate for the number of seats they had, they failed. But they never had all the seats full, so given the choice to either retrofit or replace or improve their ventilation system or reduce the occupancy to how many people actually were using the room, they just said, “OK, I’ll reduce my occupancy from 20 to 17, and I’ll carry on, because it really doesn’t make any difference,” but it was counted as a fail in this study.

Twenty-four per cent resubmitted documentation and their DSR reopened with no change. For whatever reason, their paperwork wasn’t up-to-date, but it didn’t have anything to do with the actual performance of the system.

Thirteen per cent of the premises were closed. I would submit that those were some of the ones that went through the process early and constructed a room that wasn’t close enough to meeting the requirements of the bylaw, and the amount of money it would take to bring it

up to the standards was exorbitant and they chose to close the room.

Thirteen per cent of the premises are still being reviewed by the engineers.

So of the 100 that were built—if you would agree that even though 50% reduced their occupancy, they were ventilating for the number of people who were actually in the room, and 24% of them were paperwork violations or whatever. The health department will say that 78% of them failed but more than 80% of them were working for the number of people who were actually there.

I’d be happy to answer any questions you might have.

The Chair: This round of questioning will go to the NDP.

Ms. Martel: Thank you for being here today. I’m looking at the slides, and I have a question about the next slide that’s under the slide that you just referenced.

Mr. Martin: Which page are you on?

Ms. Martel: I’m on page 3. I think you were referencing the slide on the top, which says “Results of the DSR air flow.”

Mr. Martin: Yes.

Ms. Martel: If I look at the next slide, it says “Two major findings from the DSR air flow compliance checks.” The first issue is “malfunctioning of the ventilation system (includes failure to do monthly maintenance and systems not operating due to faulty parts).” That came even above occupancy load.

So as I read that slide, it says to me that a significant part of the problem was the ventilation system not working. Am I reading that slide correctly?

Mr. Martin: You’re reading the slide correctly. What happens when you install a smoking room and a ventilation system is that there are filters in it and, over the course of time, the filters get dirty and the air flow does slowly diminish. If the filters are never replaced, ultimately the ventilation system would stop working. At some point in between, it would work to a lower degree of efficiency than when it was brand new.

The problem that York region health had was that they had no enforcement or review of the ventilation systems. For example, other municipalities included in their bylaw—I’m in Burlington, and in the Burlington bylaw they had a \$250 fee included for annual re-inspection of the rooms and required an annual report from an air balancing contractor and a letter from the engineer who designed the room to state that the room was continuing to operate properly. That was done at the expense of the operator. York region chose to take on that expense themselves and not defer it back to the operators.

Ms. Martel: All right. If I follow from that, then here’s what I worry about: It sounds to me like a number of operators, unless the inspector was in and following up, were in fact not doing what one would reasonably expect them to do, which is to change filters and to make sure that their ventilation system was working properly.

Mr. Martin: I didn’t find that to be the case with the smoking rooms. They’re a very expensive investment for these people. York region says that even the smallest DSRs cost \$50,000, which is wildly exaggerated, by the

way. If it actually did cost \$50,000 for some poor little doughnut shop guy to build a smoking room, he expects it to work. It is in his best interests, from a business perspective, that the smoke isn't migrating to the other areas and that the customers are happy.

There may be a few; in any industry, that would be the case. All I'm saying is, in the same way that other aspects of the restaurant business are enforced—for example, the liquor board goes in and spot-checks to make sure people actually stop serving at 1 o'clock. If they didn't do that, some people would continue to serve beyond 1 o'clock, and the same thing with speeding or anything else. There is a level of enforcement that's required to keep people up to the intent of the bylaw.

Ms. Martel: I guess that's my concern. On the face of it—I've listened carefully to what you've had to say and I'm not trying to misconstrue anything you've said—it sounds to me that unless you have some regular inspection going on, you're going to have folks who are not going to uphold the bylaw. That may be OK with some bylaws, but we're talking about a situation where—I quite firmly believe that second-hand smoke does cause lung cancer and other cancers, and is a very good reason why we should be eliminating it and eliminating workers' risk from that second-hand smoke.

I guess I look at the results a little bit differently. As I read it, the malfunctioning of the system was a big problem, and maybe a part of that big problem was that unless there were inspectors in there making sure people were doing what they were supposed to do, then they didn't do that. I take from that that you could have that replicated in community after community, which says to me it's probably one good reason why you should just say, "Eliminate them altogether." I'd like to think that most people do what they should in respecting the bylaw, but I suspect that they don't. As a result of not doing what they're supposed to be doing, they are putting both workers and others patrons in the restaurant at risk.

Mr. Martin: In my experience, most of them do change. The changing of filters isn't expensive. It's \$100 for a couple of filters and a service call to come and do it. There are a few that won't, for whatever reason, but the vast majority of them do.

I don't think that you are ultimately going to enshrine designated smoking rooms indefinitely in Ontario. My perspective on it is that, in my experience, most of the operators of smoking rooms do comply with the bylaw on a regular basis and they would like you to give them enough time to recoup the money that they invested. From a business perspective, being a business person, I think that would be a fair thing to do, and that's why I'm here.

The Chair: Thank you for your presentation this morning.

ONTARIO RESTAURANT HOTEL
AND MOTEL ASSOCIATION

The Chair: I call on the Ontario Restaurant Hotel and Motel Association to come forward, please. Good morn-

ing. You have 10 minutes for your presentation. There may be five minutes of questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard.

Mr. Terry Mundell: Good morning. My name is Terry Mundell and I am the president and CEO of the Ontario Restaurant Hotel and Motel Association. It's my pleasure to have the opportunity to speak with you this morning regarding Bill 164, the Smoke-Free Ontario Act.

The Ontario Restaurant Hotel and Motel Association is a non-profit industry association that represents the food service and accommodation industries in Ontario. With over 4,100 members province-wide, representing more than 11,000 establishments, the ORHMA is the largest provincial hospitality industry association in Canada. Ontario's hospitality industry is comprised of more than 3,000 accommodation properties and 22,000 food service establishments, 17,000 of which are licensed to serve alcohol.

The hospitality industry continues to struggle to recover from the direct and indirect consequences of several factors outside the industry's control. You've heard me discuss them before: 9/11, SARS, BSE, the high Canadian dollar, the NHL strike. In fact, just this month Statistics Canada released its labour force report using 2004 data and indicated, "There were job losses for the second consecutive month in accommodation and food services, with losses of 18,000 in March and 20,000 in February. All of these declines occurred in food and beverage services. Compared to a year ago, employment and hours worked have declined in parts of this sector, notably in taverns and bars."

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Bill 164 will most directly and immediately impact the pub, bar and tavern segment of the hospitality industry. Independently owned small and medium-sized businesses dominate this segment. Having suffered four straight years of declining sales, with revenues down 20% for the average operator in the first quarter of 2004 compared to the same period in 2000, operators have seen pre-tax profit margins drop to only 3.7%, on average. Data also show us that alcohol sales in pubs, bars and taverns are declining but in-home consumption of alcohol is on the rise. Now the industry is faced with a provincial smoking ban. We know from experience, both municipally and in other jurisdictions, that this too will hurt the industry.

To be clear, the ORHMA supports provincial legislation to eliminate the current patchwork of municipal bylaws, which is unfair, uncompetitive and unworkable for the industry. We support a model that brings consistency throughout the province. There are, however, some general and specific concerns related to the impact and drafting of the legislation, respectively, that I would like to present to this committee.

Over the past years, the government has placed a tremendous effort in supporting the Ontario tobacco strategy. Recognizing that the Ontario tobacco strategy will negatively affect both tobacco growers and their communities by reducing demand for their product, the

government established a \$50-million tobacco community transition fund to assist tobacco farmers and their communities. Through the Ontario tobacco strategy, the government has also supported Ontarians to quit smoking through smoking cessation programs, public education campaigns, a telephone support line, school- and community-based smoking prevention programs, and television and print media advertising, yet the government has failed to support the hospitality industry as it prepares for a province-wide smoking ban. Unless given some relief, many operators will either go bankrupt or close their businesses and walk away. The impact will be felt on communities, jobs and government revenues.

Prior to the introduction of Bill 164, the ORHMA recommended to the government that Ontario's provincial smoking legislation be modeled after the legislation in British Columbia, which permits the operation of separately ventilated designated smoking rooms. We recommended that this model be incorporated into Ontario's legislation, and we're disappointed that it was not. In fact, Bill 164 will result in the closure of more than 700 municipally approved designated smoking rooms on May 31, 2006. These operators have made significant investments in DSRs based on their ability to recoup their investment. That opportunity will now be lost. Hospitality operators who have made an investment in a DSR need a transition period so they can earn a payback on that investment while adjusting their business models to accommodate smoke-free operations. During that transition, we support separately ventilated designated smoking rooms and occupational exposure limits to protect workers. The ORHMA recommends that the expiry date for the operation of DSRs be extended to 2010. This date is recommended as it reflects several current municipal bylaws that included an end date when they were introduced.

However, we must remember that this bill affects more than just those 700 operators. Some 17,000 operators licensed to sell liquor will be affected by this bill in one way or another, specifically in reduced sales revenues. In order to assist licensees, the ORHMA recommends that the government eliminate the gallonage fee. The gallonage fee is a tax on alcohol paid only by Ontario liquor licensees. It's charged on top of all other provincial and federal taxes and levies at a rate of 12% for the purchase of wine and spirits, and \$2.64 per hectolitre on the purchase of beer. This is an unlegislated and unjust tax, and its elimination will save licensees approximately \$48 million annually. The elimination of the gallonage fee is the hospitality industry's equivalent to the farmers' transition fund. In fact, in its 2005 provincial budget, the government of Newfoundland and Labrador announced the elimination of its equivalent fee for licensees to support the industry, as it too faces a province-wide smoking ban.

I would like to now make a few points about the specifics of Bill 164.

It's now common practice within the accommodation sector to prohibit smoking in common areas of hotels and motels. The ORHMA recognizes and supports the ex-

emption contained in Bill 164 that permits registered guests and their invited guests to smoke in designated guest rooms.

Another specific concern with the Smoke-Free Ontario Act is related to the wording of the legislation. Bill 164 prohibits smoking in all enclosed public places. Upon introduction of the bill, the minister stated, "We are ... not proposing to ban smoking on outdoor patios. But ... an outdoor patio must be a true outdoor patio." The ORHMA was pleased to hear the minister's statement that he is not proposing to ban smoking on patios; however, the legislation itself does not mention patios specifically.

To avoid confusion, the ORHMA recommends a clearer definition of the term "enclosed public place." Taking the experiences within the city of Toronto as an example, we know that such definitions of "public place" without specific mention of patios led to confusion and inconsistent interpretation and enforcement. The ORHMA recommends that the legislation be amended to provide clarity around the definition of "enclosed public place," and ultimately to put to rest any potential confusion about smoking on patios.

As I said earlier, the ORHMA supports the elimination of the patchwork of municipal bylaws through the implementation of provincial legislation, but calls on the government to take immediate steps to provide targeted relief and assistance to Ontario's hospitality industry as part of the Ontario tobacco strategy.

Thank you for the time, Mr. Chair.

The Chair: This round of questioning will go to the government.

Mr. John Wilkinson (Perth–Middlesex): Hello, Terry. Good to see you.

Mr. Mundell: It's a pleasure, Mr. Wilkinson.

Mr. Wilkinson: Thank you for coming in. It's great that you've been able to come in here. We appreciate, on the broadest principle, of course, that you support what we're trying to do, which is to have one set of rules right across the province. I just want to talk about a couple of specific things.

One of the previous deputants—I don't know whether he's a member of yours—was from Shoeless Joe's, and he related to us that there are restaurants today getting approvals to build DSRs now, under the existing municipal framework, despite the fact that we've introduced Bill 164. Is it the position of your association that your members should be doing that right now? We're not talking about, you know, that it was 2001 and that we weren't around and that in opposition we hadn't made this promise—which we did. Are you aware that members of yours are actually building DSRs today?

Mr. Mundell: We recommend that our members take a look at the business case based on the legislation which is front of the House. Each individual payback and each individual business case is different, so we recommend that operators consider that.

Mr. Wilkinson: My understanding is that about 700 restaurants are involved with DSRs. How many do you represent in total?

Mr. Mundell: We represent about 11,000 establishments across Ontario.

Mr. Wilkinson: So 11,000, and there are 700 that have this already in force. Just from an economic point of view, they would have a tremendous competitive advantage if we were to allow DSRs to be extended beyond 2006, as you propose, to 2010. Those 700 would have one great big advantage. If Ontario is smoke-free, everybody's got a level playing field. If we don't move forward on this, you've got 700—I've had people who don't have DSRs say, "Listen, I've got a competitor next door"—who may belong to the same association—"who's going to have a huge advantage, because he flouted the law and maybe even built one." What do you say to your other members? You've got 700 who want to do this, but what about the other 10,300? Aren't they going to be unhappy with that position?

Mr. Mundell: I suggest that there are two things there.

Number one, we clearly look at the elimination of the gallonage fee to support all of our members across Ontario. Based on the profits in our sector of 3.6%—the bar, pub and tavern sector—we think that's a problem.

The other thing you have to look at is that those 700 members went out in good faith and borrowed money, borrowed capital dollars on a business case, with a repayment schedule. They followed all the rules of the municipal government of the day. In fact, you'll be putting them at a disadvantage, because now they don't have the revenue to fund that capital exposure and pay that loan they've already got. They may, in fact, be in worse shape than those others.

Mr. Wilkinson: I understand, and people who have come here have done a good job of presenting that case. Here, at the provincial level, we have to resolve that. Maybe it pays to be Solomon around here, but we have to deal with those issues.

Fundamentally, as far as we're concerned, this is all about public health. It goes to the issue of de-normalization of smoking. I go to a restaurant with my children, and in the restaurant there are people who don't smoke and then there's a place over here where they're smoking. Does that not send a signal to children that smoking is normal? We can't be "a little bit" on this issue, I think. You said, "Just grandfather it out to 2010," but do you agree with us that it is not in the public interest that we should be allowing a message that smoking is normal? Children see this, and that's who gets hooked—kids. People who are 45 don't take up smoking; teenagers take up smoking, pre-teens take up smoking. They're heavily influenced by advertising. They're heavily influenced by looking at what adults do. If they're out in public seeing adults smoking, is it not sending the message to our children that somehow this is normal, despite the fact that we're all paying the cost for this?

Mr. Mundell: I would suggest that if, as you say, the issue is about de-normalizing smoking, maybe the government should take the extreme step and eliminate it totally in Ontario, period. If you really and firmly

believe, as a government, that tobacco is the issue, then eliminate it totally. Don't take the bar, pub and tavern sector and make us pay the price for everybody in the province. Take the grand step: Eliminate the production of tobacco, eliminate smoking in Ontario, period. Take a stand and do that.

Our issue is not about de-normalizing tobacco. We're the hospitality industry. We're here to support people to come and have a good experience in Ontario, to drive revenue so you can spend money on the things that government spends money on: health care and education, all those good things. That's what we're about. We're not about tobacco; we're about profitability. We're about trying to drive our business.

We think DSRs are a reasonable compromise. We think it makes some sense. We also tend to think that elimination of the gallonage fee will give us an opportunity to transition it. Why are we different? Why are we different from farmers? They get a \$50-million transition fund. What makes the hospitality industry different? Why are smokers different? You've got transition programs and cessation programs, and significant money invested there. What makes the 400,000 people in our industry so different that the government won't support us? That's the question: Why don't we get transition funding?

The Chair: Thank you. The time has expired for questioning.

Mr. Norm Miller (Parry Sound–Muskoka): On a point of order, Mr. Chair: The process for being able to question deputants—I gather you're designating one party?

The Chair: In rotation, yes.

Mr. Miller: My point is that there are some presenters the opposition wants to ask a question of and some we don't want to ask a question of. Your random way of apportioning whether you get to ask a question doesn't allow us to have the opportunity—

The Chair: We only have five minutes for questions. Some questions take three minutes to be put and some answers take three minutes to be given, which alone takes the five minutes. Trying to divide five minutes between the three parties is very difficult. It was agreed in conversation at the subcommittee level that we would do it this way.

Thank you for your presentation this morning.

For the committee, there is a full agenda this afternoon that will take us through to 6 o'clock. Another agenda will be provided for you. We would ask you to take your personal belongings out of the room, although it will be secured.

We are recessed until 4 p.m.

The committee recessed from 1152 to 1601.

HEATHER CROWE

The Chair: The standing committee on finance and economic affairs will now come to order. I call forward Heather Crowe. Good afternoon.

Ms. Heather Crowe: Good afternoon.

The Chair: You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard, and you may begin.

Ms. Crowe: My name is Heather Crowe, and I'm a hospitality worker. I worked for 40 years in the restaurant industry. I'm a non-smoker. Three years ago, in 2002, I was diagnosed with lung cancer from second-hand smoke in the workplace. I've never smoked. I worked an average of 60 hours a week. This is why I'm here today, to ask for a complete ban in all workplaces and public spaces.

I am getting my workmen's compensation, and I had to get a lawyer to do that. Because we work below minimum wage, we have \$225 a week. Due to this, I'm asking for a complete ban so we can at least earn a living and go to work on a regular basis. I wouldn't be in this condition today if I had known that second-hand smoke kills. I'm asking for a complete ban in all workplaces.

Right now, we have what I consider first-class workers, who are provincial and federal workers, and then we have the second-class workers, who are hospitality and musicians. We have no protection whatsoever in this case. Health and safety doesn't cover us. It's such a hassle when you have to try to fight with a lawyer to get your workmen's comp and you're sick.

I'm at third stage B lung cancer. I've been through 10 chemos, 30 radiations and nine months of steroids. I'm in remission right now and I'm hoping that I will at least reach the five-year period. Eighty-five per cent of lung cancer patients die within the first three years, so I'm very fortunate to be in the 15% who maybe live five years.

I'm hoping that you will understand that I'm not asking smokers to give up smoking, I'm simply asking them to step outside to save a life and make a difference in our workplace so we can at least be living. Workers shouldn't go to work to die. This is the way I feel. I just feel that my career has been cut—I'm a career waitress—eight years. For me to go down and pick out my ashes box, I was thinking, "This is my freedom 55?" This is what I'm supposed to expect after 40 years of working, 60 hours a week? There's something wrong with this.

I'm looking forward to seeing a complete smoking ban in all workplaces and public spaces so that all of us can earn a decent living and manage to be good citizens and pay our way.

Thank you. Any questions?

The Chair: Thank you for your presentation this afternoon. This round of questioning will go to the official opposition.

Mr. Barrett: I'm certainly saddened by the situation you're describing and have described many, many times to people right across Canada. I'm trying to think, is it the CBC that runs the ads?

Ms. Crowe: I did an ad about second-hand smoking in the workplace, yes, and I've been right across Canada to see the Minister of Health and the Minister of Labour.

Mr. Barrett: Would that be the federal minister or provincial?

Ms. Crowe: Provincial.

Mr. Barrett: Earlier today Michael Perley testified before the committee and he made mention that British Columbia allows designated smoking rooms under its Workers' Compensation Board rules. Do you have any comment about that? I know your recommendation to this committee is for all of your customers to go outside to have a cigarette. Much of the discussion we've had for today was about ventilation systems. Was it 30 years that you—

Ms. Crowe: Forty years of working there.

Mr. Barrett: You weren't in ventilated systems.

Ms. Crowe: No. What I found with the ventilation is that the door is quite often propped open. The waitresses have to go in there to serve. You can say, "You can refuse," but if you refuse, you don't have a job. In small-town Canada, we don't have choices.

In Newfoundland, for instance, I met a group of workers in the bar. All the restaurants were smoke-free, so people would leave the restaurant and the banquet hall and go into the bar. All the workers were on anti-histamines and an older waitress there had holes drilled in her sinuses to keep the job that puts the bread and butter on her table. This is what I'm saying. Up in Prince George they had the door propped open in the ventilated room. In the airport in Halifax, the circulation was closed off because the roof was leaking. These are just some of the smoking rooms I've seen across Canada.

Mr. Barrett: You mentioned that you had to get a lawyer to get workers' comp on this case. In chatting with lawyers, have any of them indicated that there would be a case here for a lawsuit? Maybe not your case, but I know there are thousands of people who are in the hospitality industry, like yourself. Has anyone talked about a lawsuit against either the employer with an unsafe work environment—

Ms. Crowe: Yes, there's liability—a possibility that there is. The thing is, I was actually the first one to stand up and say something because of my condition. I felt that I needed a lawyer, because I was going through cancer treatment. With the radiation and the chemotherapy, you just can't try to fight workmen's comp on top of it, so I had to have someone fight it for me. I was in no condition to do so. After 40 years of working, I was entitled to 15 weeks of unemployment insurance and then told to go on welfare.

I'd worked 40 years and I had to pay for my drugs. When you get into the chemo chair, they give you one pill; that pill costs you \$23, and you have to bring your own pills next time. You have to pay for your pills and your chemo. When you don't have any medical or any kind of pension or anything—so here I am. How am I going to support myself? They gave me a community program to pay for my drugs. But I worked for 40 years. This is a compensation case, and this is why I worked for it.

I felt that maybe the government did not know for sure that second-hand smoke causes lung cancer. I had never

smoked, but just the exposure of being in there eight to 10 hours a day and breathing that made me—people would say to me, “Do you mind if I smoke?” and I’d say, “No, it doesn’t bother me.” I didn’t know. The thing was, I have an insurance policy, and my insurance policy is for a non-smoker. The insurance company certainly didn’t tell me either; they didn’t tell me that I was high-risk so therefore I should have a smoking policy.

Mr. Barrett: It sounded like you or your lawyer—it took a number of attempts to get workers’ comp?

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Ms. Crowe: No. Six weeks is what it took. I had three complete biopsies. The glands on the side of my neck—they took fluid out of that. Then they did a lung biopsy and then they actually took the gland out.

There are four stages of cancer, and they are able to stage you as they take the gland out and examine it. I was in the third stage B, which means it moved from the left to the right. They way they can tell is that they actually take a piece off the tumour and put it under the microscope. This way, they can actually tell, by the way the cells look in the tumour itself, whether it came from a fibreglass or a building material of some sort. But mine was just as if they’d taken that tumour from a smoker. Those were the types of cells that were in the tumour. This is why they called it a smoker’s tumour.

At that time, there was cancer in my lymph gland, so they closed me up and sent me home. They couldn’t operate. Then they sent me for the chemo and the radiation. My lung capacity went down to 25%. At that time, I couldn’t make my bed, I couldn’t walk, I couldn’t shower. I had to have my daughter count my pills. It’s just unbelievable. You spend no time in the hospital whatsoever, so your family has to take care of you. You don’t have any extended medical care of any kind when you’re in the industry. After all these years, I felt that welfare was not an option for me because I had been a worker. I had been contributing for 40 years and wanted to continue to contribute.

I was blown away. Why weren’t we protected from this kind of environment? If they knew, why didn’t they protect us? Are we the invisible worker or are we the disposable worker? Why do employers think they have the right to sacrifice our lives? The attitude is: It’s just a few lives; that’s the cost of doing business in Canada.

The Chair: We have no time for questions. Sorry. Thank you very much for your presentation this afternoon. The committee appreciates your being here.

ONTARIO KOREAN BUSINESSMEN’S ASSOCIATION

The Chair: I call on the Ontario Korean Businessmen’s Association to please come forward. Good afternoon. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. Please identify yourselves for the purpose of our recording Hansard, and you may begin.

Mr. John Huh: Thank you. My name is John Huh. I am a store owner at Queen and Bathurst. I have been a convenience store owner since 1981. Also, I am the president of the Ontario Korean Businessmen’s Association. I will just briefly introduce our association. I came here about the banning of tobacco displays, actually.

The Ontario Korean Businessmen’s Association was established in 1973 and is now serving over 3,200 small business owners in Ontario. It is registered as a non-profit organization and mainly provides membership services as well as group purchases. Its estimated annual volume is approximately \$2.5 billion, including the association’s own wholesale outlet. About 75% of its members—that is, 2,400 members—are convenience store owners. These establishments represent approximately 34% of all convenience stores in Ontario.

Our stores are open long hours and even seven days a week. Profit margins are small, and over 90% of our stores are operated by families for whom the store is their entire livelihood.

We Koreans are proud people who work hard and consider it shameful to ask for help from others. We started getting involved in convenience store operations in the late 1960s as we started to migrate to Ontario, Canada. Convenience stores have become the grassroots of the Korean community ever since, and the OKBA is symbolic within the Korean community. We have one or more store owners in every Korean family, and our entire Korean community in Ontario is knitted together on the basis of these convenience stores.

I will talk about the tobacco tax increases that impact our stores. The government’s continuous tax increases threaten the safety and livelihood of convenience store owners and employees. An analysis of the crime rate revealed that the incidence of robberies and break-and-enters at convenience stores has experienced a significant increase of 127% since 2001-02. Law enforcement officials commonly believe that cigarettes are attractive to criminals due to their price—that is, \$60 per carton—and the ease of disposal. Police officers have observed a rise in the number of robberies and break-and-enters at convenience stores. They believe cigarettes are among the top reasons why criminals target these types of establishments.

Theft and robbery involving cigarettes: Due to the high price of cigarettes, the crime rate and capital loss in convenience stores are increasing at an alarming rate. The incidence of crime in convenience stores was about one in four stores in 2003-04, but we believe the incidence of crime is higher than that, since a lot of store owners are not reporting, for various reasons. Actually, almost every store has experienced some form of robbery, break-in or holdup.

There was a significant increase, 96.6%, in the overall reported loss from 2001-02 to 2003-04 at convenience stores. The overall average increase was 80.9%. In 2003-04, the average loss was larger when cigarettes were involved—usually between \$3,000 and \$9,000—

than when cigarettes were not involved, which averaged from about \$1,400 to \$4,500.

One simple observation indicates that cigarette prices have increased in Ontario since 2001-02, and during this period there has been a significant increase in the incidences of crime and reported losses in convenience stores. Convenience stores have experienced a 127% increase in the incidences and a 164% increase in the average of the reported dollar losses. A high level of crime is associated with higher cigarette prices and is correlated. Another aspect of the problem is a slow response time when a robbery is reported and also the low success rate in catching thieves.

Tobacco retail display ban: We fully understand the Ontario government's Bill 164, the Tobacco Control Statute Law Amendment Act. OKBA understands the government's objective of reducing smoking among young people and ensuring that no person under age 19 purchases tobacco products from any OKBA convenience stores.

OKBA recognizes the importance of shopkeepers having tobacco products accessible to young consumers in a safe manner. We are committed to working with the government on age-restriction programs and agree to work with our members to remove all countertop displays of tobacco products by May 2006. Any person who looks 25 or under will be asked for photo ID, and we are implementing the "We expect ID if you are under 25" program in conjunction with the OCSA, the Ontario Convenience Stores Association, to ensure consistency throughout the province.

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Security concerns: Without the display area behind the counter, we will be forced to store tobacco under the counter or put a curtain in front of the tobacco display. This seems like a good solution to some, but it is not practical. Furthermore, it will create a huge security issue. Every time a customer asks for a pack of cigarettes, we have to turn around and open the curtain or bend down to retrieve a pack of cigarettes from under the counter. This will encourage thieves and robbers. We shopkeepers should have tobacco products accessible to us in a safe manner too. The government needs to keep in mind the importance of allowing us to have access to tobacco products in a safe manner that does not put us at risk of theft or armed robbery. And who is going to pay for the cost of modifying a counter or installing a new counter area?

Economic hardship: Sales decrease. Ontario policy-makers say that every 10% increase in cigarette prices will result in a 17% decrease in youth smoking and a 5% decrease among adult smokers. About 60% of convenience store customers shop at nearby stores to buy tobacco, and they pick up other items when they shop.

As you are all aware, sales of tobacco products are decreasing by 10% to 12% per year. The portion of tobacco sales of most convenience stores is 65% to 75%. This means that retail sales of the tobacco dollar in our convenience stores are decreasing by 15% to 20%. If we

consider other products a convenience store customer buys when they walk into the store, like chips, gum, candy bars or milk, our sales are decreasing by 25% to 35%.

With a behind-the-counter tobacco display ban, we are bound to lose display allowances. We estimate that this figure will be approximately \$5 million annually for our members and \$88 million in total for Ontario. If the price of a small pack of cigarettes becomes \$10, we predict that about 30% of corner stores will be closed down.

The Chair: You have about one minute left in your presentation.

Mr. Huh: OK, sir. I will just give you the suggestions and the conclusion, then.

Instead of making a law to fine our retailers, we suggest that government make a law to fine the minors who smoke. Instead of making legislation to ban retail displays, we suggest that the government create a program for schools, parents and the public. We also suggest cutting down the count of cigarette brands to half.

Conclusion: The convenience store is the centre of a community geographically, politically, socially and economically in every region. Our OKBA members have diligently served the community for the last 40 years. We employ more than 10,000 people across Ontario and we are also responsible for the well-being of more than 30,000 Ontarians when we count our employees' family members. We also contribute to the community by selling lottery tickets, TTC tickets and stamps, with minimal returns.

We request that the government not ban all tobacco displays. We need our behind-the-counter display, since it is our storage place and a safe place for all shopkeepers and minors alike. We store our cigarettes on the shelf behind the counter as we store groceries, bread and dairy items on the store shelves. We have about 250 different brands of cigarettes, and we need enough space to display all of them.

Tobacco is a sunset category, but our stores need time to adjust the dependency on tobacco sales for our livelihood. This legislation, with a ban, is forcing us to move too fast and puts us, our employees and family members at great risk. It will cost us jobs and lead to greater criminal activity, and eventually it will put us out of business.

I want to remind all of you today that we need an evolution, not a revolution, and that we work together. Thank you.

The Chair: Thank you very much. This round of questioning will go to the NDP.

Ms. Martel: Thank you for being here today and for bringing this perspective. Some of us, when we think about retail businesses that are going to be affected by the legislation, think about Mac's milk, which is kind of faceless. We don't think so specifically about the many family-owned businesses and so many that you represent, which, by your own admission, are not making any significant profit and are essentially just hanging on.

On page 6, you say about the behind-the-counter display ban, "We are bound to lose display allowances."

Is this money that the companies provide to you for displaying their products? Is that what you're referring to?

Mr. Huh: That's right. It's not only the cigarettes; it's other items too. When we put items in a better spot, they pay us an allowance. As an example, in my store, two companies pay us. One pays \$13,000 a year and the other company pays \$5,500. Immediately, that is almost \$20,000 a year. If we ban it completely, then we lose that.

What I'm trying to say is this. I understand a smoke-free Ontario. That's a wonderful idea. But we've been selling cigarettes for years and years, and every year, especially recently, the price of cigarettes has gone up several times a year. The price is so high that my customers turn away from the store. We are suffering so much. Right now, 30% of independent convenience stores don't make money. They have no other job. That's why they're just hanging on there.

The other thing is that with cigarette prices going up, there's so much smuggling and counterfeiting, especially in the Indian reserve areas like Peterborough and Brantford. You can find trucks sitting there. There's a small hole, and if somebody puts money into the hole, a carton of cigarettes comes out. The stores nearby can't even sell any cigarettes. As you know, in convenience stores, at least 50%—but mostly the average is 65% to 75%—of the total sales is cigarette sales. Consumers come in to buy cigarettes, and then they also buy gum and chocolate bars and drinks and things like that. The traffic in convenience stores has dramatically slowed down in the last two years.

Ms Martel: New Democrats have supported this legislation, but we're conscious of people who've made an investment in designated smoking rooms; we've talked about compensation for those who put those in when the bylaw clearly let them. My colleague Peter Kormos has also talked to me about what we should do for small convenience stores. As much as we want to make sure that we don't start young people smoking—it's very much an attraction for young people when they come in and cigarettes are displayed in the same way that gum and chocolate and everything else is displayed—we have to recognize that there is an impact. You've very clearly talked about the financial impact on you and your members today.

Whatever you get back from the government in terms of sales of lottery tickets, for example, is not something that would bring in enough revenue to balance out what you might lose. Is that a possibility? I don't know how much you get in terms of a commission from lottery sales or if that's an avenue the government could consider in terms of trying to make up some of the lost revenue.

Mr. Hung Sik Moon: My name is Hung Sik Moon. I'm a member of the board of directors. I really appreciate everybody here, and I deeply respect all the health regulations in Canada. We're really proud to have the best health program in the world in Canada. We have good regulations, but efficiently, it doesn't deliver right

to the bottom. We have the regulations, but depending on the regulations, we have to fix the environment too. We have a really good environment to smoke, because the school doesn't enforce not carrying cigarettes. We have a regulation, but it doesn't affect down there. Mostly, the concern is about the students. At school, they can smoke anywhere. Even if it appears to the teacher that the student is smoking, they can do nothing about it.

1630

We used to have student officers when I was in high school, which is what I recommend; Canadian schools don't seem to have them. We enforced it, student to student. We visited every class and checked out the students doing the wrong things, and then we discussed it with them. Where it created a problem, we reported it to the teacher and the principal and they decided what to do. But here, we don't have that kind of system at all. We recommend that the schools should have student officers, and then they can solve the problem.

We have good regulations, but when we see what other countries do—as soon as you turn on the TV, there are smoke-free songs, singing with a little kindergarten voice to the kids, and then, in turn, to the parents. The singing is coming from all over the place, and then the little kids say, "Hey, Daddy, don't smoke," and they're going to say that all the time. That's why we put in the brief about a program for families and the public.

We have a regulation, but there's no backup, and then we suffer from that regulation in the store. We're already losing a lot of income because of that regulation. Canadians had the experience a few years ago, with a cigarette price hike like this time, that there's the influence to go to the black market, which is our competitor. I've been in that store for 20 years. I've never done a wrong thing. I did 21 years in one spot. We're trying to follow the regulations and the rules, but we're always innocent. Who's the winner out there? The black market. The black market is our biggest competitor.

This regulation you're creating now is what we really wanted to talk to everybody about today. Thank you.

The Chair: Your time has expired. Thank you for your presentation.

LIANA NOLAN

The Chair: Now I would ask Liana Nolan to come forward. Good afternoon. You have 10 minutes for your presentation, and there may be up to five minutes of questions following that. I would ask you to identify yourself for the purposes of our recording Hansard, and you may begin.

Dr. Liana Nolan: I'd like to say that I will be providing a written copy of my statement, but after today, because I don't have it with me right now. I apologize for that.

Thank you very much for the opportunity to speak to you today. My name is Dr. Liana Nolan. I'm the medical officer of health for the region of Waterloo public health. I reside in Waterloo, Ontario.

I'm appearing in support of Bill 164 because second-hand smoke exposure is a health issue. I want to ensure that the bill is as clear and as strong as possible so it can achieve its goal of protecting all Ontarians from second-hand smoke. I respectfully wish to make a few salient points.

First, with regard to workplaces, I strongly support and applaud the inclusion of workplaces in the bill. This is a gap in our particular municipality. In the region of Waterloo, we were the first to pass a 100% smoke-free public places bylaw. We did not include workplaces; subsequent municipalities have. This has been demanded at the local level, so because of local demands for action, we performed a workplace consultation in 2004. Interviews were conducted in 100 workplaces across Waterloo region, in the manufacturing, food processing, residential care and private club sectors. What we discovered was that, voluntarily, 78% of manufacturing and food processing places, 33% of private clubs and 42% of residential care facilities are smoke-free. Those that didn't voluntarily go smoke-free stated that they were in support of this type of legislation because it would relieve them of the responsibility of being the person who makes the decision to go smoke-free and that they could point to the legislation as it gets implemented. This is particularly an issue in a unionized environment. The private clubs that voluntarily went smoke-free reported that they did not see a decline in their membership, a concern that has often been stated by private clubs.

The second point I want to speak to you about specifically is private clubs and Legions. Proprietors of bars locally in our region have called for a level playing field. They feel that they are disadvantaged by private clubs that allow smoking. Bar owners are in compliance with the bylaw but want to see it fairly and evenly applied to include Legions. We anticipate that it's your intention to be inclusive of private clubs via the workplace provision but are concerned that unless private clubs are specifically mentioned, there may be room for legal games or challenges to the definition. We have certainly experienced that in the region of Waterloo, as private clubs have challenged our definition of "public places" and creatively have determined a number of ways to avoid being captured by the bylaw. Because my interest is in a strong and successful bylaw, I urge clarity of definition.

The next point is patios. Again, I'm hoping for you to benefit from our experience. In our bylaw, we did not clearly define "patio," and I applaud that you have. In our jurisdiction, it has led to enforcement challenges and detailed work that was required after the fact in order to determine what is or is not a patio. The definition of "no roof" is very clear and will be easy to enforce. Lack of clear definitions opens the legislation to challenge.

The next point I want to address is designated smoking rooms. I strongly support the absence of an exemption allowing designated smoking rooms in public places and workplaces. Workers have the right to be protected, just as all members of the public do. Designated smoking rooms create an unlevel playing field because they are expensive and not equally affordable or feasible for all.

They are also difficult to enforce, and they don't work. In my own experience as the medical officer of health in Saskatoon, where such a bylaw existed, I found that smokers didn't like the designated smoking rooms. They complained that they were too smoky, and the doors were always propped open and were therefore not effective, exposing others through the open door to second-hand smoke.

In terms of enforcement, I just wanted to comment that a key learning from the region of Waterloo was that well-written, clear definitions greatly assist enforceability. We expect the majority of individuals to easily comply with the legislation. However, I would expect focal trouble spots requiring intense enforcement efforts for at least six months. Perhaps those focal trouble spots will be geographic; perhaps they will be sector-based. We certainly experienced a small number of focal trouble spots that required a great deal of resources for us to address.

We found that firm, fair enforcement protocols enforced consistently were helpful and that having staff and legal resources available to be moved and deployed where enforcement challenges existed was very necessary, because the entire population was watching. Even though there was a small number of focal challenges, everybody watches it unfold and waits to see the outcome. The first few challenges and charges are critical in order to get a success, as others may be undecided or, while not openly challenging the law, want to wait and see what happens. They will pay close attention in those first few critical months.

In summary, I applaud Bill 164. I support the inclusion of workplaces. I urge explicit inclusion of private clubs. I support your clear definition of patios. I urge no exemption to allow for designated smoking rooms. I ask that you be prepared for a requirement for intense but short-term enhanced enforcement strategies.

Lastly, just a message to leave you with: I respectfully request that you remove the exemption clause on retail display bans that state "except in accordance with the regulations," as this leaves the door open for advertising. We know that advertising works, and therefore, there should be no advertising.

Thank you very much for your good work on this bill.

The Chair: Thank you. This round of questioning goes to the government.

Mr. Fonseca: Thank you, Dr. Nolan, for your presentation and for taking us through your mighty battles down in Kitchener. We've learned a lot from the experiences from all the different municipalities that have taken on this cause and have brought us to this point, where we want an end to this patchwork quilt and to ensure that we have a smoke-free Ontario to protect all 12 million Ontarians.

You bring up a number of points. First, about different exemptions, this is not a piece of legislation that is to be characterized by exemptions; it is one to protect all.

1640

In Kitchener, the example of not bringing in the workplace as a smoke-free environment—it's a critical part of

this bill. We are making sure that all workplaces will be smoke-free and that employees and those who enter into that place will not be harmed by the ill effects of second-hand smoke or any other smoke that would happen in that place.

You also brought up the Legions. I want to ask you a little about your experience. We have met with the Legions. They've met in my office at the Ministry of Health. We have spoken to them and consulted with them. To my understanding, only about 10% of veterans smoke. We've also heard stories from many vets who may have asthma or another disease or health concern, or who may not but who don't want to be exposed to second-hand smoke. They feel that sometimes those clubs are not open to them, because they cannot or do not want to go into a place where they feel they would be harmed. Can you tell us a little bit about your experience down in Kitchener?

Dr. Nolan: Sure. As I said before, I would expect sort of focal trouble spots. I've heard from some of my colleagues that Legions have not been an issue in other jurisdictions, but perhaps because we were first and because of how we made various definitions, we certainly have had resistance from that group. We have had a few clubs go voluntarily smoke-free.

Of course, the survey we did was with the promise that we wouldn't speak specifically about what each of them said, because some of them feel uncomfortable about coming out publicly with an view opposite to that of a colleague, especially in such a heated and heartfelt debate. But certainly we have heard from individuals who have said, "This is my club, and I don't go, because it's smoky."

To deal with private clubs, what we attempted to do was say, "If you're truly private, the public should not have access. But if it is a place where the public can go, then we expect that the same protection should be available." In most private clubs there are public events. There have been creative ways to try to circumvent that, by creating phony membership lists etc., trying to find a way to circumvent what we truly mean by the definition of "public." That's one issue.

The other is that we're hearing from individuals that they're the ones who are not able to use their club because they don't want to be exposed to the smoke. It can be hard for those individuals to come forward in the face of very acrimonious debate, in a council forum, for example. Our council debates were extremely acrimonious.

Mr. Fonseca: Dr. Nolan, what we want to do here is really—the stories have been heartfelt. I'm sure Heather Crowe's story, just prior to your presentation, drew a lot of emotion from everybody here in this room.

We also have other jurisdictions, like the city of Ottawa. Today, in their Metro paper, the headline is—and this is from a pub after Ottawa went smoke-free—"Ban Hurting Bars? Nah," which might dispel some of those rumours and fearmongering around bars. Actually, what some of the bar owners have said is that if they

were to allow smoking again—these are Toronto figures—they feel that about 80% of their employees would never come back because they would not want to work in that type of environment and that 25% to 30% of their customers also would not come back.

We actually know that in Ottawa, after their smoking ban, they had an increase of 181 new or expanded establishments. That's just to dispel some of the comments that have been made around banning smoking in the workplace. This is really about the protection of those employees.

Dr. Nolan: Do you want me to comment?

The Chair: If you'd like.

Dr. Nolan: Sure. I can just say that in Kitchener-Waterloo there were unsubstantiated claims of a decline in business. It was one of the claims in the lawsuit that the businesses launched against the region of Waterloo. When they were asked to substantiate those claims, they were either unwilling or unable to do so.

The Chair: Thank you for your presentation.

MYCHOICE.CA

The Chair: I would now ask mychoice.ca to come forward. Good afternoon. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to state your name for the purposes of our recording Hansard, and you may begin.

Ms. Nancy Daigneault: My name is Nancy Daigneault. I'm the president of mychoice.ca, and I'd like to thank you for this opportunity to speak to you on behalf of the members of mychoice.ca. Mychoice is a non-profit online association that offers Canada's adult smokers a voice on government policies that affect them and a means to become involved in the decision-making process.

As we have clearly stated from the moment our association was launched last September, we are funded by the Canadian Tobacco Manufacturers' Council, but we operate independently of this group. Our members are not companies; they are the more than 18,000 individual people, 13,000 of whom are in Ontario, who have signed up since our launch.

We do not promote smoking. We have no desire to turn back the clock to the smoke-anywhere days. Our guiding principles include respect for the non-smoking public, and we seek to work with others to achieve fairness, civility and mutual accommodation. More than 10% of our members have never smoked or are, like myself, former smokers who share our goals.

We believe that all sides of the issues should be heard. Our Web site offers direct access to all sides of the debate, including government and health Web sites. A third of our members are interested in quitting smoking. We provide links to cessation help groups and a message board for members to discuss the topic. Indeed, my first request to the committee today is to ask that you press the government to live up to its promise to pay for cessation

products for smokers. This can be done, as the government says it collects \$1.5 billion in direct tobacco taxes. When tobacco taxes to the federal government are included, Ontario smokers pay a total of \$2.5 billion to the two levels of government that fund health care in this province. That is more than double the amount the OMA estimated as the cost of smoking to health care in this province. The provincial health minister now says the cost is \$1.7 billion, but even that figure leaves a net surplus of \$800 million. So where is the promised assistance for those who wish to quit?

Our members want the ability to have their own places where they can go without bothering others. Here are examples of the feedback we have received from our members through our surveys: 98% say that businesses should have the option to provide separately enclosed and ventilated DSRs; 95% say that Legions, bingo halls, private clubs, hotels, motels and long-term-care facilities should be allowed to have designated smoking rooms; 86% say they go out less often to restaurants and bars where smoking is prohibited; and 98% say smoking should not be banned in private vehicles.

Bill 164 goes far beyond protecting the public and into the realm of punishing smokers. There are viable alternatives to total bans, like designated smoking rooms. In British Columbia, for example, DSRs are allowed, but those who choose to work in them can only do so for a maximum of 20% of their shift.

The arguments for eliminating all alternatives are two-fold. First, there is the claim that smoking bans elsewhere have not created economic problems but have improved business receipts. The second is the claim that second-hand smoke is such a risk that no worker should be exposed to any level whatsoever. However, documents obtained from the Ministry of Economic Development and Trade through the FOI process indicate that it isn't this cut-and-dried.

I should add that I am also trying to get information from several other ministries, but so far, the MEDT documents represent the only response to our freedom-of-information request. Those documents reveal the following:

—A December 12, 2004, information note to the Minister of Economic Development and Trade stating, “MOHLTC proposed legislation will affect bars, restaurants and gaming establishments, particularly gaming establishments in Ontario border communities.” This note also states that analysis of the economic impacts in other jurisdictions “is either not available or inconclusive.”

—An October 12 minister's note stating that “Studies by health groups which claim positive impacts are likely flawed ... in cases where bar and entertainment data is lumped together with restaurants and fast-food businesses to show overall positive growth.” This note also states, “There will be some initial impacts on gaming and entertainment-based nightclubs. There will be shifts in the hospitality industry as some businesses close and new ones open.”

1650

The MEDT documents demonstrate particular interest in the province's gambling revenues. A March 31, 2004, briefing note to the minister warns that casinos will lose revenues if smoking is banned, particularly those in border communities. These reports note the following: Winnipeg's casinos experienced a 20% drop after going non-smoking; Reno, Nevada, casinos reversed a non-smoking policy after experiencing a 25% loss; Ottawa-Carleton Raceway slots lost 20% after complying with Ottawa's smoking ban; and Brantford's charity casino lost 18% after going non-smoking. Smokers will stay away from casinos, seek other options or spend less time playing. Gambling revenue losses would hurt the Ministry of Health's problem gambling strategy, host municipalities and the horse racing industry, and the province might be pressured to cover these losses.

Information notes to the minister last October and December also recognized there are other hospitality sector businesses that will suffer, and looked at several options to total bans. The list included the BC option; extending implementation of the total ban to 2007 or 2010; allowing restaurants and bars to have adult-only DSRs; permitting smoking periods in restaurants and bars after 9 p.m.; and granting waivers to establishments that suffer a 15%-plus drop in business.

The benefits listed for these options included fairness, demonstrating government understanding of business realities and recognition of businesses that rely primarily on a smoking clientele. The arguments against were that they would not be well received by the health community or the health ministry, that a key element of the tobacco control strategy is to de-normalize smoking, and that there are no scientifically defined occupational exposure limits to second-hand smoke.

What do these documents tell us? The government is aware of the economic impacts but is not admitting to it publicly.

There are viable options. The main reason for not even considering them is the health minister's position that workers are to be kept away from second-hand smoke even though there is not a scientific definition of what constitutes a risk. No one would argue that smoking does not carry serious health risks, but if we are now to go to the extreme step of denying smokers their own separate venues by using second-hand smoke as a justification, then it is fair to ask if such an infringement is really an appropriate response to the risk. This is used to justify not only banning clubs and DSRs, but to ban smoking in underground garages and outdoor winterized patios. The city of Toronto says an estimated 1,700 people die every year just from breathing the city's air and another 6,000 are hospitalized, but is the response to the air pollution risk enough to warrant a ban on cars or even industry and factories?

There are studies on both sides of the argument, including a long-term study conducted by the World Health Organization's cancer research centre that found no statistically significant increases in health risks.

What is more, Dr. Fenton Howell, the spokesperson for ASH Ireland, made some interesting observations in Toronto when he spoke to last year's tobacco control conference. Dr. Howell stated that the ban in Ireland was finally won by a report that said 150 workers died each year from second-hand smoke. He then went on to admit that this was a guesstimate arrived at by a consultant, and that it was not properly verified. "I'm the dean of public health medicine and I threw my eye over his statistics and sort of said, 'Oh, if James said it, it must be true.' And I didn't look too close, you know." That is the transcript of what he said at the conference.

The documents obtained under FOI show there are valid concerns about Bill 164. There are options to a total ban. There needs to be more study. Instead, though, the government is de-normalizing the smoker. It funds TV ads that show a woman rolling around in dog feces, implying that smokers smell.

On behalf of the members of mychoice.ca, I ask you to look carefully at all of the information, assess impartially, and recommend changes that will make Bill 164 fair, balanced and respectful to all. Thank you.

The Chair: Your timing was very good there. This round of questioning goes to the official opposition.

Mr. Barrett: Thank you to your organization for your presentation. How many members do you represent?

Ms. Daigneault: We have 18,000 people across Canada, 13,000 of whom are in Ontario.

Mr. Barrett: I don't know whether I have a copy of your brief or not. You mention the Ontario government's position through the Ministry of Economic Development and Trade. Did I hear you properly? You indicated that the government indicates that health group studies are flawed. Is that what I heard?

Ms. Daigneault: It did say that health group studies could be considered to be flawed because they lump in bars, pubs and the fast-food industry, like the Quiznos Subs and the Tim Hortons, to come up with their data. Mr. Fonseca mentioned earlier this afternoon that Ottawa has 181 new establishments, but if you look at the actual list, that does include Quiznos Subs, Tim Hortons and other types of establishments that aren't really like a pub or a bar.

Mr. Barrett: You made reference as well to the December 12, 2004, indication—I guess it's from the Ministry of Economic Development and Trade—where they have studies indicating an 18% to 25% drop in business for the gaming industry. That would be if the smoke-free Ontario legislation goes through. I'm curious. Does that relate at all to the \$400 million that has just been allocated to the Windsor casino? Is that connected?

Ms. Daigneault: I don't know, but I do want to clarify that that briefing note doesn't give a statistic on how much they think revenue will drop. They did indicate that if it's compared to other casinos and other gambling industries elsewhere, Winnipeg's casinos had a 20% drop after going non-smoking; Reno, Nevada, with a 25% loss, had to reverse its policy; Ottawa-Carleton Raceway

slots lost 20% after complying with Ottawa's smoking ban; and Brantford's charity casino lost 18%.

Mr. Barrett: You title your organization mychoice. I think we recognize that many people do feel that other people do foolish things on occasion or do unhealthy things. Where your thousands of members are coming from, is there an assumption that because people do make the wrong choices on occasion, government should be doing the choosing for people or for adults?

Ms. Daigneault: No. The choice should be up to the adult of whether or not the adult wants to quit. They don't need the government trying to shame them or punish them into quitting. A more appropriate response, if they really want people to quit, is to pay for their smoking cessation products, which is something this government had promised to do. I think that would be a more logical approach to encouraging people to quit. There's nothing wrong with the government encouraging or advocating a healthy lifestyle, putting all the information out there so that people know the risks associated with smoking, because there are serious risks associated with it. But when you start punishing them, forcing them, basically telling them they can't, that there are no establishments they can go to, and shaming them the way they do in the commercial of the woman rolling around in dog feces to say that they smell, I don't think that's the appropriate approach to try and encourage someone to give up smoking.

Mr. Barrett: Your analysis of the Ministry of Economic Development and Trade's documents—that minister is the minister for business, or small business. When the documents recognize the impact that government legislation would have on the revenue of the various businesses you mention, does the government also recognize any responsibility, or do they give any indication of a program of assistance, any help for these industries that would be losing revenue as a result?

Ms. Daigneault: Yes, there was an option put forth that there could be some sort of granting of waivers to establishments that suffer a drop in business. I think that option was indeed rejected. But there is that option in there, to talk about fairness. They talk about the BC option, about extending implementation of the ban to allow the bars to recoup the money they've put into DSRs. They talk about permitting smoking periods after 9 o'clock and they also talk about granting waivers to establishments that suffer.

The Chair: Thank you for your presentation this afternoon.

1700

WORLD TOBACCO MERCHANTS INC.

The Chair: I would ask World Tobacco Merchants Inc. to come forward, please. Good afternoon. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard, and you may begin.

Mr. Elliot Gilbert: I'd like to thank the committee for letting me appear at this hearing. My name is Elliot Gilbert and I'm the president of World Tobacco Merchants Inc. in Toronto. I've been a cigar and tobacco importer for four years and have made my living in the tobacco industry for the past eight years. Prior to this, I had different positions within the hospitality industry for 17 years. I'm here to speak to you today not only on behalf of the industry I represent but also for others who are affected by this bill.

To begin, I'd like to state that I agree with most of the provisions of this bill. The banning of tobacco displays in variety and local convenience stores is understandable. This is the line in the sand that separates the market of cigarettes from cigars and pipes. There must be a differentiation to preserve a market that is rightfully geared toward adults. The Ministry of Finance does separate this in its application of the taxes, where they have cigarette taxes, cut and loose tobacco taxes and cigar taxes. A teenager will not go into a tobacconist and purchase a \$10 cigar, or a \$5 cigar, for that matter. They will, however, purchase a package of cigarettes for that money and get 20 to 25 cigarettes, instead of one. In fact, most tobacconists do not allow anyone under the age of 19 to enter their premises, and most sell only the more expensive boutique cigarettes, if any.

To wit, the banning of tobacco displays and smoking in tobacconists is not justifiable. First, as mentioned, no one under the age of 19 is allowed in a tobacconist's. Second, no one under the age of 19 is allowed in a tobacconist's humidor. Further, no consumer is allowed to touch any tobacco product, nor are the retailers allowed to recommend any tobacco product. Next, anyone working in a retail tobacconist is either a smoker or understands that this is an establishment devoted to smokers and smoking and, as such, should not accept employment unless they accept this as well as any health consequences that may follow, perhaps by signing a waiver.

As adults, we have the right to freedom of choice. Therefore, only people wishing to purchase tobacco products would enter these types of establishments. Prohibiting people from smoking in these establishments would not stop people from smoking. This will simply move them to their own homes or illegal establishments and summarily put legitimate businesses into bankruptcy. Finally, all that would be needed to satisfy the legislation would be to have an opaque background to any window display a tobacconist may have.

Next, let me address the issue of private clubs, such as Legion halls, tobacconists' smoking lounges, and restaurants with separate ventilation for smoking, or DSRs. These establishments cater to specific groups of people, many of whom are smokers. They frequent these establishments mostly due to the fact that they allow their clientele to smoke. Again, this is a choice for those adults who look for such establishments. Many tobacconists have smoking lounges for their clients to enjoy their products. Most do not allow smoking cigarettes. Within

the confines of Bill 164, these retailers would lose their investments, their livelihood, and perhaps more. I recommend that they be granted an exemption to this bill for the duration of their existence. I further recommend that tobacconists be legally required to affix appropriate signage indicating restricted access for persons under the age of 19. Additionally, affixing signage that indicates "This establishment allows smoking" would deter any conflicts with persons who choose not to smoke.

Restaurants, bars and their patrons are the next ones to be unjustly penalized. Laws have eliminated the right to smoke in all establishments, thereby taking the position that the majority of Canadians—the 78.4% who do not smoke—would impose their will on the 21.6% who do. To be just, a compromise can easily be reached, based on the Manitoba legislation. Not to allow bars and restaurants to have designated smoking areas with separate ventilation systems is unjust and prejudicial. It has been proven that HVAC systems exist that would provide exceptional results to satisfy reasonable governmental requirements. I recommend that these steps be taken, along with the legal requirement to affix appropriate signage indicating restricted access of persons under the age of 19. Additionally, affixing signage that indicates "This establishment allows smoking" deters any conflicts with persons who choose not to smoke. As for their employees, one would understand that, working in this area devoted to smokers, one should not accept employment unless they accept this as well as any health consequences that may follow, again perhaps by signing a waiver.

A simple solution for this Legislature would be to follow in the footsteps of the Manitoba Legislature. They have provided us with an opportunity to witness the benefits of economical compromises with portions of the tobacco industry. I will now quote from that piece of legislation regarding the exemption for tobacconists, private clubs and parts of the hospitality industry:

"The proprietor of a tobacconist shop and his or her employees and customers may smoke in a tobacconist shop to test or sample a product of the shop if it

"(a) is fully enclosed by floor-to-ceiling walls, a ceiling and doors that separate it physically from any adjacent area in which smoking is prohibited by this act; and

"(b) has a separate ventilation system if the shop is first opened for business after this section comes into force."

I recommend that any tobacconist be required to install a separate ventilation system regardless of their time of opening, and I further recommend that both points be applicable to all tobacconists, private clubs and hospitality establishments.

I want to thank you for your time, your ear and your ability to understand a situation while finding a compromise that will suit and satisfy all those concerned.

With me is one of our retailers, to whom I'm giving the floor.

Mr. Robert Bortlitz: Thank you, ladies and gentlemen. My name is Robert Bortlitz. I am a tobacconist; I

am a client of Elliot's. I'm going to keep it real short and sweet. I'm just going to read a brief letter, a copy of which is attached to Elliot's presentation.

I am a retail tobacconist in Toronto. In the last three years my business has suffered detrimental effects that can be directly attributed to various city and provincial bylaw, tax and legislation changes.

My colleagues, other independent tobacconists, have all reported the same effects. Some of our most respected retailers have lost their business and much of their life savings. I personally have drawn from our retirement savings twice to offset our losses and meet my tax obligations. I will most likely end up working as a Wal-Mart greeter in my declining years.

The Toronto bylaws on designated smoking lounges have done little more than to teach my clients that it's cheaper and easier to smoke at home. Many hold cigar socials in their basement or garage. This has cut deeply into my sales.

The last three rounds of provincial tobacco tax increases have convinced my clients that they are justified in bending the rules and have every member of their family carry in two boxes of cigars each on the return from holidays in Cuba, Mexico, the Dominican Republic and the southern USA. The federal government has worsened the situation by turning a blind eye to this 'grey market' and letting this slip through the border.

Further, to prevent some unscrupulous retailers from running an open till and pocketing PST revenues, the motor fuels and tobacco branch saw fit to roll the PST into the tobacco tax. The result has been that honest retailers now have a larger upfront capital outlay and a greatly reduced gross profit margin.

Now you are proposing to have yet another tax increase and shut down our cigar clubs and smoking lounges that we fought so hard for with the city of Toronto. I am not "big tobacco." I'm just a humble citizen trying to earn a meagre, honest living.

What various levels of government have done and are now proposing to do is a form of expropriation without compensation. Tobacco farmers have received compensation a number of times over the last 20 years. But what about us? The farmers will still have their land and tools, but all we independent ma and pa businesses will have is debt.

If you do not see fit to recommend a smoking lounge exemption for tobacconists similar to Manitoba's, then you must see fit to recommend financial compensation, as you will put us out of business.

Thank you.

The Chair: Thank you. This round of questioning will go to the NDP.

Ms. Martel: Thank you for being here today. Elliot, how many people do you sell to?

Mr. Gilbert: What's our market? There are approximately 700 tobacconists in Ontario alone. Out of that, 50% to 60% have smoking lounges. When I say a true tobacconist, I don't mean a convenience store or a grocery store that sells cigarettes. These are people who sell

cigars, pipes, accessories, pipe tobacco and boutique cigarettes, which are imported cigarettes, not mainstream Canadian manufactured cigarettes.

Ms. Martel: That's it in terms of their products? That's what they're selling?

Mr. Gilbert: Yes. Well, they do have accessory products—humidors and such—but the main part of their sales mix is tobacco products.

1710

Ms. Martel: And there are 700 in Ontario?

Mr. Gilbert: In Ontario alone, yes.

Ms. Martel: You said no one under the age of 19 is allowed in a tobacconist's. Is this provincial law, that you have to ask for ID?

Mr. Bortlitz: I'm the one who's actually involved in that. Between federal legislation, provincial legislation and various municipal bylaws, no one under the age of 19 is allowed in a sales area where tobacco is available, and they are not allowed in a smoking lounge.

Second to that, I myself do not even sell cigarettes. I have signs posted four times before they enter the main part of the store saying that I do not want anyone under 19 in my store. They are nothing but a nuisance, and they're a big problem with shoplifting. Most of the other tobacconists are the same. The few that do sell cigarettes, as Elliot pointed out, sell boutique brands that sell for \$15 or \$20 a package. This is not a children's market. We do not want or need any business from anyone under the age of 21, let alone 19. It just does not work for us.

Ms. Martel: Do you normally ask for ID?

Mr. Bortlitz: Yes. We are obligated to ask for ID. We are obligated to put up all the things that Elliot mentioned. We are obligated, under various legislation, to post signs all over the place warning that anybody under 25 will be asked, and has to be asked, for ID. I have personally gone further than that, posting signs at the entrance of the store saying that I do not allow anyone under 19 in the store.

Ms. Martel: How does your smoking lounge work?

Mr. Bortlitz: We actually run a private club within our enterprise. We have a separately devised smoking lounge—I installed that long before there was even talk of legislation—with separate ventilation to the outside, a separate air conditioning system. It's enclosed behind two doors. It's at the back of the store. The washrooms are at the front of the store. So this smoking lounge that I installed 10 years ago meets or exceeds any legislation currently out there regarding smoking lounges.

Ms. Martel: I apologize if this is a silly question, but are people using the smoking lounge to test the product they want to buy?

Mr. Bortlitz: Well, they have to buy the product first. Generally speaking, cigars are sold in singles, but on occasion, a person may want a sample.

Cigars are different from cigarette products in that you do not inhale. It is equated more along the lines of red wines and ports. It is more of a hobby thing. It is for pleasure. I would say the majority of my clients come specifically for relaxation. It's their one hour a week that

they can come out and get away from the world, relax, unwind and meet with similar people in the same circumstances. Most are business people in their 40s and 50s, and a lot are retirees in their 60s.

Ms. Martel: I appreciate the difference between cigarette smoking and cigar smoking, but I'm going to assume there's still a risk around second-hand smoke, regardless.

Mr. Bortlitz: To another smoker. There's absolutely zero risk to anyone else, because non-smokers are not even allowed on the premises anyway.

One of the ways in which my members feel I actually provide a service is that they do not want to smoke at home. They do not want to smoke in front of their spouse or children or grandchildren. Therefore, because most cigar smokers are only smoking from one cigar a week to one cigar a day, this is their little respite away from their family. If they did not have that, the majority have told me that they would not quit smoking; they would just find someplace else to go and smoke.

The Chair: Thank you. We appreciate your presentation this afternoon.

GREY BRUCE COUNCIL ON SMOKING AND HEALTH

The Chair: I now call the Grey Bruce Council on Smoking and Health to come forward, please. Good afternoon. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard.

Ms. Helen Risteen: I'm Helen Risteen. Hello, and thank you so much for the opportunity to speak. I represent the Grey Bruce Council on Smoking and Health, which is a coalition of agencies and volunteers. The Grey Bruce Council on Smoking and Health was instrumental in getting the smoke-free bylaws on the public agenda in Grey and Bruce and then getting them enacted in 2002.

As I was writing this, I realized how confusing our title is when one is talking about municipal bylaws, because there are so many different councils involved. However, when I say "council" here, I am referring to our own council, the Grey Bruce Council on Smoking and Health. I'll try to label the others with a more complete descriptor when I refer to them. I apologize in advance if there is any confusion over the names and my poor speaking.

We in Grey and Bruce have been following with great interest the introduction of the smoke-free Ontario bill, with all the ensuing debate both in support of it and against it. Watching all the back-and-forth articles in the paper and in the news, there's been a feeling of déjà vu. We in Grey-Bruce have been through this process before on a local level, and it's amazing how much of it is similar, just on a much larger scale.

As we've been following the debates, we have been alternating between two very different reactions. On the one hand, we're feeling smug. After all, we already have a bylaw, so people in Grey-Bruce are ahead of the game compared to those who don't have a bylaw at all. On the

other hand, there's been a very real sense of frustration. How long must we debate this before we do the right thing? Research after research, for more than a decade, has shown time and time again that second-hand smoke is extremely dangerous. How much more scientific evidence needs to pile up that shows the irrefutable harm that second-hand smoke does before we, as a province, move to protect people exposed to second-hand smoke in their workplaces?

Another source of supreme frustration for us is caused by some of the inaccuracies that have been put forward by the groups like Pubco and mychoice and their ilk. We see that the same part-truths and fearmongering are still as much part and parcel of their shtick as they were when we were trying to get our bylaws passed. If you believe half of what the tobacco-funded lobby groups want you to believe, you'd think that two thirds of the bars and restaurants in the province will be at risk of financial doom and will be forced to immediately close if the smoke-free Ontario bill passes. To use a quaint Bruce county term, what a crock.

If I might use Grey and Bruce as examples, I can reassure you that a good solid bylaw does not in any way translate into a loss of revenue for restaurants and bars. In fact, our experience is quite the opposite. Grey and Bruce counties also ably illustrate that a good gold-standard bylaw, as they call it, is so much easier to implement and much easier to enforce. For those of you who are interested in the financial side, our experience also demonstrates that gold-standard bylaws are also much more economical to implement and enforce.

To set the stage a little bit for you, I'll give you some background information. Grey and Bruce both passed bylaws that went into existence in September 2002, although the two bylaws differed in two key areas, which I'll touch on later. During the pre-bylaw stage, there were some interesting phenomena noted, the first being that this was an issue that really galvanized an amazing number of people. It's one of those issues where an awful lot of people had an interest and were willing to participate in the process in one way or another. There was a remarkable groundswell of people who came forth to assist with the distribution of pamphlets and to attend municipal council meetings, as well as to write letters in support of the bylaw etc.

The other phenomenon that surprised some people, and it is very important to note, is that we also had high levels of support from smokers, who said that they themselves would prefer to eat in a smoke-free restaurant or go out to a smoke-free bar or bingo hall or whatever.

By the time the September 2002 enactment date rolled around, there had been thousands of hours of volunteer time put into the effort, as well as hours and hours of time from the staff at the Heart and Stroke Foundation, the Lung Association, the Cancer Society and health units, among others. When the big day came, the big story was really that there wasn't a big deal being made about it. Many businesses had already gone smoke-free in the months leading up to the September enactment date, and the majority of the others were compliant.

The continuing story on the bylaws has really been one of very high compliance from bar and restaurant owners, for the most part. The Grey Bruce Health Unit was tasked with the enforcement of the bylaws, which they do with only two part-time tobacco bylaw enforcement officers, who do bylaw compliance for both counties. Together, Grey and Bruce is roughly 3,000 square kilometres larger than Prince Edward Island. It's a lot of territory to cover for two essentially half-time officers, but it's been workable because most places are compliant with the bylaws.

Of the two counties, Bruce's bylaw, with the class A exemptions, has caused more problems because of errors in interpretations etc. Of course there's been some acrimony from bar and restaurant owners in towns that are geographically situated close together but yet are in different counties, which brings me to the differences in the bylaws that I mentioned earlier.

Grey county enacted what is known as a gold-standard bylaw and included a smoking ban in residential nursing homes, whereas Bruce county did not include nursing homes and homes for the aged in their bylaw. Both counties banned smoking in workplaces, including bars and restaurants, but Bruce county allowed one exemption: Bars or restaurants with a liquor licence could apply for what is known as a class A licence. The successful applicants became known as class A establishments. When Bruce county's bylaw was written, the intent was that a class A licence would apply to the entire establishment; in other words, the entire restaurant and/or bar would have to comply with the special class A regulations. These class A establishments would then only have two requirements to maintain their class A licence: (1) they must possess a valid liquor licence, and (2) they are not to allow anyone under 19 years of age to enter their establishment, and there has to be signage to this effect on the doors.

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This type of bylaw, although not perfect because it does nothing to protect the health of those working in these class A establishments, would have at least had the benefit of being very easy and economical both to implement and to enforce. Either the entire bar or restaurant was to be a class A establishment or it was not. It also would have been easy for the public to identify which was which and therefore self-select, and enforcement would have been much more cut-and-dried.

Unfortunately, what ended up happening is that the bylaw was interpreted quite differently from what the authors thought they were saying with their wording. What we ended up with is a situation where owners are able to get a class A licence for a part of their establishment while still having the rest designated smoke-free. This has been a much more costly avenue than that of the original intent, because it then became necessary to inspect these establishments prior to granting the licence to ensure that there was separate ventilation for these designated smoking areas and that the washroom facilities were such that the patrons from the non-smoking

areas did not have to pass through the smoking section to get to the washrooms.

I'm sure you're able to see the other pitfalls that ensued as a result of this interpretation of the bylaw. This kind of bylaw clearly favours the larger establishments that are big enough to have that separate smoking room. And since the original intent was so different from the interpretation, there is no wording in the bylaw that stipulates the levels of ventilation nor any requirements that the ventilation needs to be tested at set intervals etc. In other words, we ended up with what are essentially designated smoking rooms, with no wording about what is considered adequate ventilation. It has also been difficult to enforce, because the doors to these rooms get left open, underage patrons drift over to the class A side etc.

All that being said, there has been an interesting evolution of the class A situation. One of the most telling developments is that originally there were something like 23 class A establishments when the bylaw was first enacted in September 2002, but since then, eight of these establishments have voluntarily given up their class A licence because they found they were not able to compete with the smoke-free places. They found that the majority of their customers didn't want the smoke, so they converted to smoke-free themselves. Again, in some cases the complaints came from patrons who were smokers themselves. Also of interest to many of you perhaps is that six of our Legions in the two counties have also voluntarily gone smoke-free.

Our experience is that bars and restaurants have not faced negative economic impact from the smoke-free bylaws, and certainly informal anecdotal evidence from bar and restaurant owners backs that up.

We've also had much anecdotal feedback from restaurant and bar employees who are very grateful to no longer have to work in second-hand smoke. Unfortunately, as I pointed out, Bruce county is still allowing some of its workers to be exposed to the dangers of second-hand smoke if they happen to be employed in a class A establishment.

I personally think that perhaps the most significant benefit of the bylaws in Grey and Bruce is that of its effect on young children. Now that smoking is not allowed in almost all indoor public places, it reinforces to children that smoking is not the norm. This denormalization of tobacco by restricting its use in public places is getting the message across to children and youth that these restrictions apply because smoking is not safe, nor is second-hand smoke safe.

Grey-Bruce is ready for the next step and is looking to the province for leadership. Not only do we need a province-wide gold standard bylaw, but the so-called power walls need to be banned so that this form of tobacco advertising is removed from view of our children and youth. We all know by now that the tobacco companies pay enormous amounts of money to convenience store owners to display inordinately large numbers of cigarettes. The sheer number of cigarettes displayed is meant to give children and youth the mistaken im-

pression that many more people smoke than really do. Let's label these displays what they really are: advertising, pure and simple. And we all know that the tobacco companies are expressly forbidden to advertise their products in Canada.

The Chair: You have about a minute left.

Ms. Risteen: I speak for many of the people in Grey and Bruce when I say that we applaud the government for developing the Smoke-Free Ontario Act, and I would implore the two other parties to support this bill in its entirety and to not water it down. I would like to think that the health of all workers in this province is highly esteemed by all three parties and that you would all strive to see that every worker in Ontario is equally protected from the dangers of second-hand smoke. Those folks who work in the hospitality industry deserve the same consideration as, say, government workers, who already enjoy smoke-free workplaces. Many, many municipalities have proven that smoke-free bylaws do work and that granting exemptions is not only inherently unfair to those workers and to many owners but is much more costly to implement and enforce than a gold-standard bylaw.

I thank you for your time.

The Chair: Thank you very much. This round of questioning will go to the government.

Mrs. Carol Mitchell (Huron-Bruce): Just so we have a sense of it, what is the difference in what we are proposing in our legislation versus what you've referred to as the gold standard that was implemented in Grey county?

Ms. Risteen: The gold standard in Grey county had only one exemption, and that was for Legions. And as I say, many of them have voluntarily gone smoke-free.

Mrs. Mitchell: Do you know the actual numbers, Helen, of who came forward voluntarily among the Legions?

Ms. Risteen: There were six, and there are 21 Legions altogether. Apparently, several others are considering it as well.

Mrs. Mitchell: You mentioned establishments that chose to go to the classification within Bruce county and then opted out. Would you please give us some details?

Ms. Risteen: Many of them just found they were losing business. In fact, one bar in Kincardine, my hometown, actually sold cigars prior to—they had their class A, sold cigars, and they were losing business. It's simple economics for them. We're a tourist spot. People were trying to come in, but you can't have anybody under 19. And they had complaints from many of their smoking patrons about the smoke.

Mrs. Mitchell: That's quite a change, and it was a voluntary change.

Ms. Risteen: It was a voluntary change; they had no complaints against them. Every year, class A establishments have to reapply for a licence. It's \$150. As long as they can show a valid liquor licence and comply with the rest, they get it. They just never reapplied.

The Chair: Further questions? Thank you for your presentation this afternoon.

ASSOCIATION OF LOCAL PUBLIC HEALTH AGENCIES

The Chair: I would now ask the Association of Local Public Health Agencies to come forward. Good afternoon. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I would ask you to identify yourself for the purposes of our recording Hansard.

Mr. Larry O'Connor: My name is Larry O'Connor. I'm the president of ALPHA, the Association of Local Public Health Agencies, and I'm joined by Linda Stewart, the executive director of the association.

We are a non-profit organization that provides leadership to boards of health and public health units in Ontario. Our members include boards of health members, members of health units, medical and associate medical officers of health and senior public health managers. ALPHA advises and lends expertise to members on the governance, administration and management of health units. The association also collaborates with governments and other health organizations, advocating for a strong, effective and efficient public health system in the province.

On behalf of member medical officers of health, boards of health and the affiliate members associated with the Association of Local Public Health Agencies, we want to congratulate the government for introducing this long-awaited legislation to ban smoking in public places and workplaces in Ontario as part of a comprehensive anti-smoking strategy. Our members are very pleased to see a detailed and well-presented strategy that includes increased taxation, retail display restrictions, peer education and this smoke-free legislation. Each is a critical component of tobacco control, and each has been a subject of ALPHA's extensive tobacco control advocacy over many years.

ALPHA's position has been for strong province-wide legislation to eliminate the differences in public health protection from one part of Ontario to the next. ALPHA's members have committed an enormous amount of resources to enact local bylaws to protect people from involuntary exposure to smoke. They have laid the groundwork for the success of the province's legislation, which, if passed, will achieve what many of them were unable to do and offer exemption-free protection from second-hand smoke in enclosed public spaces. This will level the playing field. The food and beverage industry agrees with us that a level playing field is good for everyone.

Ontario currently has an unacceptable patchwork of local bylaws, with differing levels of protection of citizens from a known health hazard, depending on where they live. The long history of local boards of health and medical officers of health struggling to convince their municipalities to pass effective bylaws to limit public and workplace exposures to tobacco smoke is hopefully over.

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The tobacco industry and its fronts consistently counter health arguments by misleading assertions about

economic losses and rights and freedoms, which have led to exemptions and incomplete protection from second-hand smoke. Passage of Bill 164 will provincially legislate a standard to put an end to the inequalities in protection from this significant health hazard. Levelling the playing field will also remove an important economic lever from the tobacco interests. If DSRs are permitted in any way, shape or form, the playing field will not be level. These rooms are not effective; they do not protect workers or non-smoking patrons from exposure to second-hand smoke. Only larger premises with sufficient funds would be able to build them. Why should we allow these premises to buy their way out of laws that protect public health? Why are food and beverage industry associations pretending to represent their smaller members while still advocating a solution that is obviously so unfair to them?

The debate is not going to disappear, but the focus of this issue is and must always be health. This strong and comprehensive provincial legislation will return that focus to where it belongs.

While much of our most recent advocacy efforts have focused on 100% smoke-free public places and workplaces without exception, we are also very appreciative of the inclusion of a retail display ban component, especially given the challenges to similar regulations in Saskatchewan. We do not doubt that such displays are a powerful influence on purchasing habits, including those of youth, occasional smokers and smokers who are trying to quit. We believe that restricting these power walls will lead to decreases in use as well as changes in perception about the social acceptability and prevalence of smoking. We are strongly in support of a total retail display ban. This is the last means of direct marketing by tobacco companies, and it is difficult to accept that it's not aimed at children. A total ban would go a long way to correct perceptions about tobacco industry products being just like any other commodity. Huge power walls have misled the public, especially kids, about the acceptability and consumption of tobacco industry products. The tobacco industry always finds ways around limitations.

ALPHA members are community leaders in tobacco control, and as such we are looking forward to accepting our responsibility for implementing various components of the smoke-free Ontario strategy. Our combined efforts will certainly begin to reduce the enormous health toll that is taken by tobacco on tens of thousands of Ontarians every year.

We want to close by giving our thanks to the government and to all members of the Legislature for their support of this bill. With its passage and with all of ALPHA's years and years of work, the resolutions and the petitioning of the government, we'll finally be able to close the book on some of our advocacy efforts. So we certainly are very strongly supportive of the legislation.

With that, I'll open it to questions.

The Chair: Thank you. This round of questioning will go to the official opposition.

Mr. Barrett: Thank you, ALPHA, for presenting. At the beginning you state that you wish for "exemption-

free protection from second-hand smoke in all enclosed public places." Do you have a problem with second-hand smoke in outside public places?

Mr. O'Connor: We have focused on indoor exposure as opposed to outdoor exposure. Certainly limitation around entranceways can be problematic, but the intention is that all indoor public spaces would be totally smoke-free.

Mr. Barrett: As you say in the next paragraph, you've been fighting for bylaws to "limit public and workplace exposures to tobacco smoke." In British Columbia, they achieved that goal through ventilation systems that do eliminate second-hand smoke from rooms. Do you see any merit in that at all? We know that initially British Columbia passed a law very similar to the Ontario law and then within two months changed it so that you have the option of designated smoking rooms with proper ventilation. As Mr. Perley presented earlier, employees are only allowed to work in there 20% of the time.

Ms. Linda Stewart: I'd like to bring your attention to the fact that we've recently been studying the specifications for DSRs that BC has recommended. I'm afraid I don't have the results with me today, but we'll certainly get them to you shortly. Those results suggest that if all restaurants followed their specifications—they simply don't work. They leak; they allow for apertures for smoke to come out. So even where people feel they are achieving goals that have been set in terms of guidelines for building DSRs, there's still a lot of work to be done to make sure those DSRs are truly effective.

Mr. Barrett: We know the technology is there, say in mines or laboratories, where you have to have clean air, and airplanes replace the air every few minutes. So the technology is there, but your study indicates that they're not using the proper technology?

Ms. Stewart: That using the recommended technology is not as effective as we're often led to believe.

Mr. Barrett: That was a research study?

Ms. Stewart: It's a research study done at the University of Western Ontario using wind tunnel analysis.

Mr. Barrett: Wind tunnels? Some of the fans are very powerful, but I don't know about wind tunnels. They don't want customers plastered to the ceiling or anything like that.

Ms. Stewart: In the study, they can slow it down to replicate the environment in a restaurant.

Mr. O'Connor: One point I don't want you to overlook is the fact that even though the industry will say that you can do it at a safe level, it doesn't create a level playing field. A lot of places would like to have a DSR, but when you have a small one and you have a large chain with a good bank account, you're being unfair. From a business point of view, there's an unfairness to it. From a public health point of view, there is no safe level of second-hand exposure.

Mr. Barrett: We certainly have heard from business about unfairness. I guess there are 700 or 900 constructed in Ontario, and still being constructed, as we understand.

If the government were to take that away from them, they talk about a loss of 50,000 jobs. They talk about a loss of \$1 billion just in pubs and taverns.

Mr. O'Connor: When we've had the discussion with our members—and our members are boards of health from right across the province—some areas in the province have gone totally smoke-free, no DSRs allowed, within their health unit. That's what the municipal bylaw says. Some have gone with an approach that would phase them out. In our discussions at our board of health section meetings, where we get together and share information from other boards of health—an example is the Peterborough board of health. They introduced DSRs and they wish they hadn't, because all they did was create an unlevel playing field. When we've had that dialogue, they've said that if they had a chance to do it over again, they would never have put that in, even though they had a sunset clause.

Ideally, there would be no DSRs allowed at all. For the current ones, I guess it's up to the Legislature and this committee to make recommendations about sunsetting all existing ones. But there should be no more created in the province of Ontario.

Mr. Barrett: I didn't get my question in, though, about compensation if this was taken away from these establishments, given the bankruptcies that are predicted.

Mr. O'Connor: Clearly, the government will have to decide whether it's something they should do. The handwriting has been on the wall for an extremely long time about where the government would be going and where health units have been going across the province. Most health units have been trying to achieve a level of smoke-free that didn't include DSRs. Most don't have DSRs. For those areas that have pushed their municipal politicians into bringing in a DSR component, they've done it at their own peril, because the handwriting has been on the wall. People certainly want zero exposure to second-hand smoke. They know there's a health cost to having a minimal amount of exposure.

The Chair: Thank you for your presentation before the committee.

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WIDE AWAKE: GENERATION AGAINST TOBACCO

The Chair: I now call on Wide Awake: Generation Against Tobacco to please come forward. Good afternoon. You have 10 minutes for your presentation. There may be up to five minutes of questioning following that. I'd ask you to identify yourself for the purposes of our recording Hansard.

Mr. Brian Dallaway: My name is Brian Dallaway, and I'm here as a representative of Wide Awake: Generation Against Tobacco. We're located at 1615 Dundas Street East in Whitby, Ontario, L1N 2L1.

Mr. Chairman and members of the committee, I'd like to thank you for letting me address you today. I was told

I'm the last deputation of the day, so I'm going to try my best to be brief but to the point.

We're a community coalition comprising the Youth Centre, which is in Ajax; the Oshawa Community Health Centre; YWCA, which is in Oshawa; Durham region health department; and Brock Youth Centre. As a coalition, we've combined our resources to assist youth in Durham region to fight back against the tobacco industry. To support this youth group, we provide yearly education sessions to raise awareness amongst youth about the predatory marketing practices of the tobacco industry, and then we assist the youth in implementing awareness campaigns in their own communities.

Today, we'd like to thank the province for introducing the Smoke-Free Ontario Act to update the Tobacco Control Act, 1994. Not only will children and youth be protected from second-hand smoke when in public places and workplaces, but this new legislation will protect them from tobacco advertising in retail stores by banning countertop displays. The banning of tobacco advertising is a significant step to ensuring that the next generation will live in a smoke-free Ontario.

Tobacco product displays in retail stores include everything from displays of packages on a counter to huge displays reaching the ceiling. These huge displays of tobacco products seen behind the counter in stores are commonly called power walls. While we applaud the proposed legislation for reducing advertising in retail stores, the language of the act does not prohibit power walls. We would like to see the province capitalize on this opportunity to eliminate this form of advertising, which is targeted at children and youth.

Canada has been a world leader in tobacco control and preventing youth from smoking. We've banned cigarette advertising and sponsorship nationwide. But still the tobacco industry is targeting our kids through product placement in movies and advertising in retail stores. The aim of these marketing techniques is not only to build brand awareness but also to normalize tobacco use, making it look like cigarettes are normal and commonplace. The truth, of course, is that only 25% of Durham region residents smoke, and those who do are exposed to a product that will kill a third of them.

The tobacco industry denies that they market their product to kids, but it's quite simply unbelievable that Canada's tobacco companies would spend over \$88 million each year on advertising in retail stores if they didn't believe it would increase youth smoking. Youth who attended the annual Wide Awake youth tobacco summit reviewed some previously confidential documents from tobacco companies, which allowed them to come to their own conclusions about the tobacco industry. Here's a sample of some of the quotes from the documents that have been uncovered, which we share with the youth.

One of them reads, "Is it morally permissible to develop a safe method for administering a habit-forming drug, when, in so doing, the number of addicts will increase?" It's from a document from 1978 in which

Lorillard Tobacco was looking into making a less hazardous cigarette. It was scandalous at the time, for the tobacco industry had not yet conceded that cigarettes were hazardous. By the way, ultimately they felt that it was morally permissible. The Wide Awake coalition doesn't agree, and we also don't believe it is morally permissible to market to kids in retail stores using power walls.

Another 1978 document from Lorillard reads, "The base of our business is the high school student." This is a quote from a document that looked at sales figures from their Newport brand. When youth see documents like this, they feel targeted by the tobacco industry. This isn't paranoia; they are targeted by the tobacco industry, because they are the base of the business. This is why it's so important to introduce legislation to protect them.

It's important that regulations be set in legislation rather than industry self-imposed restrictions. When faced with pressure, the tobacco companies often offer to implement half-measures and voluntary codes. An example of this: Philip Morris in 1992 stated, "[C]omplete the removal of roadside cigarette hoardings [billboards] on the Dubai-Abu Dhabi road and capitalize on this minimum concession as an example of voluntary self-regulation by the industry."

When working with youth, the question we hear most is, "Why does the government allow tobacco advertising?" I'm now proud to say that the government is ready to do something about it. I can understand that there are people who object to these proposed regulations, but ultimately, we have to ask ourselves if we think it's a good idea to promote smoking. Of course the answer is no, which makes the answer to banning power walls a resounding yes.

Thank you.

The Chair: Thank you for your presentation. This round of questioning will go to the NDP.

Ms. Martel: Thank you, Brian, for being here today and for making the presentation. Tell me, of the youth you work with—because you said you've combined your resources to assist youth in Durham region to fight back against the tobacco industry—how big is the issue of youth who are smoking and trying to quit getting access to programs that would help them stop smoking?

Mr. Dallaway: To help them quit? In Durham region, it's not as much of an issue, because recently the health department launched a "quit and win" program to help teenagers quit smoking. It was evaluated quite well, and it helped a lot of kids quit smoking. Despite that, as with most quit-smoking programs, it's often harder to quit smoking than it is to prevent someone from starting smoking, so a lot of the time the emphasis is put on prevention.

Ms. Martel: Were those youth involved in the project able to access—

Mr. Dallaway: The cessation?

Ms. Martel: Yes. Was this provided to them at some point in time, for a period of time?

Mr. Dallaway: Yes, it was provided in the communities. I'm thinking particularly of the Brock Youth Centre. They had about 12 people from their council attend a quit-smoking program.

Ms. Martel: What about in terms of the actual purchase of products that would help them quit, or access to methods to quit smoking such as acupuncture—

Mr. Dallaway: Nicotine replacement therapy and stuff like that? The issue of nicotine replacement therapy amongst youth is a bit of a controversial one. It's not one that's advocated by the coalition right now. The specifics are that oftentimes youth smoke at a much lower rate. They're not necessarily pack-a-day smokers. Often they're pack-a-week smokers, in which case they're not necessarily going to need the nicotine replacement.

Ms. Martel: I'm aware, in your presentation, of some of the recommendations you're making about power walls. One of the things that I regret the government hasn't done yet, in terms of its commitments on tobacco control, is to get some of the money out the door that was promised for smoking cessation programs. It was a significant amount that was promised, about \$46 million a year. Certainly that much money has come in through three increases in tobacco tax in the last two years. I think it is an addiction, and one of the things the government should be doing at the same time it brings forward this legislation is getting that money out the door, saying very clearly to people who are smoking, "We're going to make it easier for you; we're going to assist you. We're going to pay for some of the costs of these products to help you quit."

When I spoke in favour of the bill, I made it really clear that I don't know why the government doesn't do that at this time. The money's certainly available. Let's make good on that commitment and make good on it now, so you're saying to people very clearly, "We recognize that this is an addiction, and we're going to do everything we can to help you stop smoking."

Mr. Dallaway: I can appreciate that for the adult population, smoking cessation, aside from exposure to second-hand smoke, is going to be a really critical issue. As a youth advocate working with youth, the critical issue is prevention. We can't stress that enough. The coalition's name is Wide Awake. It was strategically picked by the students who attended, because they felt that previous to attending it, they were asleep to the truth. Being wide awake means not just that they're awake but that they're actively awake. They use this as an opportunity to spread the information they found out, which they previously had no clue about, to their friends and colleagues throughout their schools.

The Chair: Thank you for your presentation this afternoon. That concludes the number of presenters.

Committee, we will be leaving at 7:30 a.m. at the east doors tomorrow morning. Try to be prompt, please. For those who are driving, the clerk has maps of the location.

This committee is adjourned.

The committee adjourned at 1749.

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

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Also taking part / Autres participants et participantes

Mr. Norm Miller (Parry Sound–Muskoka PC)

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Mr. Trevor Day

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Ms. Anne Marzalik, research officer
Research and Information Services

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Mr. Brian Dallaway	