1
SMOKE-FREE ONTARIO ACT

The Health and Emergency Medical Services Committee recommends the adoption of the recommendation contained in the following report, April 28, 2006, from the Commissioner of Community Services, Housing and Health Services and the Regional Solicitor:

1. RECOMMENDATION

It is recommended that:
1. This report be received for information.

2. PURPOSE

The purpose of this report is to provide Council with an overview of the SFOA as it relates to the NSBL, and to outline the Public Health program implications of the Act.

3. BACKGROUND

In December 2004, the Ministry of Health and Long-Term Care (MOHLTC) announced an expanded Ontario Tobacco Strategy and the role public health units would undertake in its implementation. This strategy was presented to Council on June 23, 2005, in Reports No. 2, 3, and 4 of the Commissioner of Health Services. The goal of the Ontario Tobacco Strategy is to eliminate tobacco-related illness and death by eliminating involuntary exposure to environmental tobacco smoke, preventing smoking initiation and habitual use among children and young adults, and reducing smoking in Ontario.

In the summer of 2005, components of the Ontario Tobacco Strategy were absorbed by the newly articulated Smoke-Free Ontario Campaign and transferred to the newly-formed Ministry of Health Promotion (MHP).

3.1 Smoke-Free Ontario

The MOHLTC has undertaken a number of key initiatives in support of Ontario Tobacco Strategy goals, including new tobacco control legislation, the SFOA. An overview of the SFOA was presented to Council on June 23, 2005, in Clause No. 6 of Report No. 5 of the Health and Emergency Medical Services Committee. This legislation will come into force on May 31, 2006, replacing the current *Tobacco Control Act*, 1994 (TCA). It will prohibit smoking in all enclosed workplaces and enclosed public places in Ontario, will strengthen measures to ensure only those 19 years of age and older can buy cigarettes,

and will phase out the display of tobacco products, with a complete ban beginning May 31, 2008.

On March 1, 2006, *Ontario Regulation 48/06* under the SFOA was released. This Regulation further defines the requirements of the SFOA.

3.2 York Region No-Smoking By-Law

The Regional Municipality of York passed a by-law regulating the smoking of tobacco in public places and workplaces in York Region on October 26, 2000. The by-law was implemented using a phased-in approach, as reported to Council on September 20, 2001, in Clause No. 1 of Report No. 7 of the Health and Emergency Medical Services Committee, and on March 28, 2002, in Clause No. 1 of Report No. 3 of the Health and Emergency Medical Services Committee.

4. ANALYSIS

4.1 Smoke-Free Ontario Act

The SFOA, which will replace the current TCA, prohibits smoking in all enclosed workplaces and enclosed public places in Ontario, strengthens measures to ensure only those 19 years of age and older can buy cigarettes, and phases out the display of tobacco products, with a complete ban beginning May 31, 2008. The SFOA does not extend the ban on smoking to private dwellings, with the exception of private home day cares within the meaning of the *Day Nursery Act.* The total smoking ban is not required in residential care settings.

4.1.1 Workplaces

Under the SFOA, all enclosed workplaces, including vehicles in which employees work, will be 100% smoke-free. Employers will be required to:

- Prohibit smoking in the workplace.
- Ensure staff and visitors to the workplace are made aware smoking is prohibited.
- Post required no-smoking signs.
- Prohibit ashtrays and similar equipment.

These requirements are similar to those of the existing NSBL.

Protection will be provided for employees who act in accordance with, or seek enforcement of, the SFOA. Employers cannot dismiss, threaten to dismiss, discipline, penalize, intimidate or coerce an employee for their actions. If an employee experiences any of these actions by their employer, the employee may direct complaints to the Ontario Labour Relations Board.

Employers will have the option to provide outdoor smoking shelters for employees. These shelters will be restricted to a roof and two walls or less.

4.1.2 Public Places

All enclosed public places will be 100% smoke-free. There will be no exemptions for Designated Smoking Rooms (DSR) or Private Clubs, including Legions, which are currently found in the NSBL. Proprietors will not be required to remove DSRs, but are to prohibit smoking in these rooms after May 31, 2006. As under the existing NSBL, proprietors will be required to:

- Give notice to patrons and employees that smoking is prohibited.
- Prohibit ashtrays and similar equipment.
- Post required no-smoking signs.
- Ensure compliance with the Act.

4.1.3 Patios

The Regulation under the SFOA introduces a provision restricting smoking on patios. On patios covered by a roof and where food or drink is sold or offered for consumption, smoking will be prohibited. For the purposes of the Act a roof is defined as "a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or place, and that is capable of excluding rain or impeding airflow, or both." This includes awnings, tarps, canvas sheeting or other permanent or temporary coverings. In the case of a movable covering such as an awning, the patio would be smoke-free only while the awning is open. A stand-alone umbrella covering a single table would not be considered a roof; however, many umbrellas grouped together may be considered a roof.

4.1.4 Day Care and Private Day Care

Under the current TCA, smoking is prohibited in licensed day nurseries. The SFOA will also prohibit smoking in licensed private home day care premises. These premises are required to be smoke-free whether children are present or not. Private home day care refers to premises that looks after five children or less under the age of 10 and are associated with a day care agency.

While the Community Services and Housing Department of York Region does not directly deliver any child care services, including Private Home Day Care, they do contract with agencies who provide these services. Therefore, the Community Services and Housing Department and the Health Services Department will jointly host a session for the relevant agencies to ensure they understand the implications for them and the need to comply.

4.1.5 Residential Care Facilities

Residential care facilities include:

- Nursing homes.
- Charitable homes for the aged.
- Supportive housing residences, including homes for special care.
- Retirement homes that provide care.

Long-term care facilities operated by York Region fall under the definition of residential care facilities.

Operators of residential care facilities have the option of permitting smoking, but only in a controlled smoking area. Currently, the NSBL exempts these types of premises, and the TCA has different requirements for various types of residential care facilities. The SFOA will standardize the requirement for these premises.

An approved controlled smoking area will:

- Restrict smoking only to residents of the facility.
- Not require employees to enter against their will.
- Be fully enclosed.
- Meet very stringent ventilation and maintenance criteria.

Operators must make applications to the MHP by June 30, 2006 to operate a controlled smoking area and will have until December 31, 2006 to meet requirements for these areas. The MHP is responsible for reviewing and approving the plans and technical documentation for a controlled smoking area application.

4.1.6 Other Prohibited Places

The SFOA prohibits smoking in any enclosed public place or enclosed workplace. Without limiting the generality of that requirement, the SFOA and the Regulations further list specific places and areas where smoking is prohibited. These include:

- The buildings and grounds of school and private schools.
- Any common area in condominiums, apartment buildings, or university or college residences, including without being limited to elevators, hallways, parking garages, party or entertainment rooms, laundry facilities, lobbies and exercise areas.
- The reserved seating area of sports arenas or entertainment venues.
- The area within a nine-metre radius surrounding any entrance or exit of public or private hospitals, psychiatric facilities or residential care facilities.
- The common areas of hotels, motels and inns; however, management has the option to permit smoking in guest rooms which have been designated for smoking.

4.1.7 Home Health Care Workers

The SFOA gives home health care workers the right to ask any person in the home not to smoke in their presence while they are providing health care services. If anyone refuses the request, workers can leave without providing further service, unless doing so would present an immediate, serious danger to the health of any person. The SFOA and Regulation set out requirements for workers to follow should anyone refuse the request. In particular, workers must contact their employer within 30 minutes of leaving the premise and advise their employer of information with respect to the person receiving health services and that person’s care.

A home health care worker is defined as a person who provides health care services in private homes, arranged by a community care access corporation or an entity that receives funding from the MOHLTC or a Local Health Integration Network (LHIN).

4.1.8 Tobacco Retailers

Currently the TCA prohibits the sale or supply of tobacco to anyone under the age of 19, and requires tobacco retailers to ask for proof of age from anyone who appears to be under the age of 19. The SFOA keeps the existing restriction on sales to persons under the age of 19, but now requires retailers to request identification from anyone who appears to be under the age of 25.

The SFOA introduces new provisions restricting the display of cigarettes and other tobacco products, and prohibiting customers from handling tobacco products prior to purchase. Between May 31, 2006 and May 31, 2008, cigarettes can only be displayed in individually-wrapped packages. No other tobacco products can be displayed. After May 31, 2008, no cigarette packages may be displayed.

There are further restrictions on the number and type of tobacco promotional signs permitted.

A retailer convicted of tobacco sales offences on two or more occasions is prohibited from selling, storing or accepting delivery of tobacco. This is referred to as an "automatic prohibition." The prohibition period ranges from six to 12 months, depending on the number of prior convictions. A significant change in the Act is the concept of vicarious liability. An owner shall be deemed liable for any contravention of the Act by an employee unless the owner can demonstrate they exercised due diligence to prevent the contravention. Further, an owner will face an automatic prohibition if a conviction is received at the same address on two or more occasions. The offence does not have to be committed by the same person.

Recognizing that some businesses primarily sell specialty tobacco products that are not generally attractive to youth, an exemption to the display ban for tobacco products other than cigarettes has been created for tobacconists. Tobacconists are tobacco retailers whose sales of specialty tobacco products exceed 50% of total sales. Retailers can register as tobacconists with the MHP by showing proof of their tobacco product sales for the past 12 months. Tobacconists would have to restrict access to their premises to anyone over the age of 19 unless accompanied by a person over the age of 19, and would not be permitted to sell tobacco products to anyone under the age of 19.

4.1.9 Traditional use of Tobacco by Aboriginal Persons

The SFOA acknowledges the traditional use of tobacco that forms part of the Aboriginal culture and spirituality. The Act permits a person to smoke tobacco if the activity is carried out for traditional Aboriginal cultural or spiritual purposes. There is a new provision that requires the operator of a hospital or a residential care facility to set aside an indoor area, separate from any area where smoking is otherwise permitted, for the use

of tobacco for traditional Aboriginal cultural or spiritual purposes, if requested by an Aboriginal person.

4.2 Impact of SFOA on York Region Health Services Public Health Programs

Local public health units are responsible for carrying out inspections and investigations of complaints in relation to the SFOA, and for education at the local level.

4.2.1 Enforcement

Under the SFOA, the Minister of Health and Long-Term Care may appoint inspectors for the purpose of the Act. York Region Health Services (YRHS) Public Health staff, who already have ministerial appointments as inspectors under the TCA, will enforce the SFOA following protocols mandated by the MHP. These protocols will address requirements for the number of inspections to be completed, complaint response, use of test shoppers, laying of charges, data collection, and required reports to the MHP. As of March 2006, these protocols had not been shared with health units.

4.2.2 Education and Awareness

An important component of the successful implementation of a new piece of legislation is ensuring that those affected by it have the information necessary to understand and comply with its requirements. York Region residents, workers, employers and tobacco vendors will receive this information through a variety of sources. The MHP will undertake a media campaign to advise all Ontario residents of SFOA requirements and duties. In addition, the MHP web site provides copies of the Act and the Regulation, as well as fact sheets with other information related to the legislation.

YRHS has enhanced this work with an information campaign specific to York Region. The campaign, begun in February 2006, includes:

- Monthly public service announcements from February through June 2006.
- Education segments on two Rogers television shows: “Daytime” and “Insights.”
- Community presentations.
- Letters sent to owners of premises that were not previously affected by smoking legislation or that had new restrictions imposed.
- Information and SFOA links on the York Region web site.
- Poster campaign.

YRHS staff will also visit owners of premises affected by the SFOA to answer questions and provide additional material or required signs. Premises visited will include:

- Tobacco vendors.
- Public places with DSRs or patios.
- Private clubs, including Legions.
- Residential care facilities.
- Licensed private home day care premises.
- Private schools.

YRHS staff will receive training on the SFOA from the MHP through teleconferences, web-based seminars and classroom sessions. Staff will be provided with interpretation of the legislation, application protocols, and education strategies for workplaces and tobacco retailers. In addition, resources and support materials will be made available to assist in enforcement efforts.

4.3 Impact of SFOA on the NSBL

The SFOA is more restrictive than the Region's NSBL. The NSBL, which was passed on October 26, 2000, currently does not prohibit smoking in DSRs and smoking in private clubs, which includes local Legions. Once the SFOA comes into force, smoking in enclosed workplaces and enclosed public places will be prohibited. As a result, neither smoking in DSRs nor smoking in private clubs will be permitted. At present, there are approximately 125 DSRs in York Region. There are seven Legions in the Region, six of which have already opted to be smoke-free. There is an exemption in the SFOA, however, for residential care facilities to maintain a smoking room provided the room is properly ventilated and certain other conditions are met.
The following table is a comparison summary between the SFOA and the NSBL.

Table 1

SFOA vs. NSBL

Type of Activity	SFOA	NSBL
Maintaining DSRs	Prohibited	Permitted
Smoking in Legions	Prohibited	Permitted
Smoking in other Private Clubs	Prohibited	Permitted
DSRs in Residential Care Facilities	Permitted	Not applicable
Smoking in workplaces	Prohibited	Prohibited
Smoking in public places	Prohibited	Prohibited (exception: DSRs)

Offences-Penalties	Creates distinction between an individual and a corporation for determining amount of fines. There are different fine amounts depending on the statutory provisions breached. In addition, the number of prior convictions of an individual or corporation is taken into account in determining the fine amount.	Liable to a fine up to $5,000 or such higher amount as may be prescribed by the *Provincial Offences Act*.

Although the SFOA shall prevail over the NSBL, it is recommended that the NSBL not be repealed when the new legislation comes into force as:

- The new legislation may be subject to constitutional challenges. If a legislative provision is struck down by the Courts, the Regional By-Law will still be in place and can be enforced.

- The Region may wish to amend its by-law in the future rather than enact a new one. In accordance with section 115(1) of the *Municipal Act*, a municipality has the power to prohibit or regulate the smoking of tobacco in public places and workplaces. The Region may, therefore, amend its by-law to pass stricter laws that those contained in the SFOA. The *Municipal Act* states that if there is a conflict between the provision of any Act or regulation and a provision of a municipal by-law with respect to smoking tobacco, the most restrictive provision prevails.

4.4 Relationship to Vision 2026

The new SFOA supports the Vision 2026 goal of Responding to the Needs of Our Residents.

5. FINANCIAL IMPLICATIONS

The MOHLTC is in the process of developing a funding model for Tobacco Inspection and Enforcement. Once a funding model has been established for YRHS, staff will bring forward a further report to address any impacts to the Region. All current program activities have been included in the approved 2006 Public Health budget.

6. LOCAL MUNICIPAL IMPACT

All York Region area municipalities will benefit from the implementation of the strategies outlined in the SFOA.

7. CONCLUSION

The SFOA, which comes into effect on May 31, 2006, is intended to protect workers and the public from exposure to second-hand smoke, and help prevent young people from starting to smoke. Local public health units are responsible for carrying out inspections and investigations of complaints in relation to the SFOA, and for education at the local level.

The SFOA will prevail over the Region's NSBL, as it is more restrictive than the NSBL. However, it is recommended that the NSBL not be repealed when the new legislation comes into force, as the new legislation may be subject to constitutional challenges, and as the Region may wish to amend its by-law in the future rather than enact a new one.

The Senior Management Group has reviewed this report.