

1st ANNUAL

O n t a r i o **TOBACCO CONTROL REPORT CARD**

April 2001

Canadian Cancer Society, Ontario Division

Heart and Stroke Foundation of Ontario

Ontario Lung Association

Ontario Medical Association

Ontario Campaign for Action on Tobacco
Campagne Ontarienne D'Action Contre le Tabac

EXECUTIVE SUMMARY

On the second anniversary of publication of former Ontario Health Minister Witmer's Expert Panel Report on the Ontario Tobacco Strategy (OTS), the Canadian Cancer Society (Ontario Division), the Heart and Stroke Foundation of Ontario, the Ontario Lung Association and the Ontario Medical Association provide an evaluation of the Ontario government's efforts in the area of tobacco control in the nine key areas addressed by the Expert Panel:

THE REPORT CARD

Program Area	The Government's Actions Are:
1. Smoke-Free Spaces	<i>Unacceptable</i>
2. Tobacco Taxation	<i>Below Expectations*</i>
3. Cost Recovery Litigation	<i>Unacceptable</i>
4. Finance and Infrastructure	<i>Below Expectations</i>
5. Retail Controls	<i>Unacceptable</i>
6. Support for Smoking Cessation	<i>Meeting Expectations</i>
7. Marketing Including Packaging/Labelling/Information Disclosure	<i>Unacceptable*</i>
8. Public Education	<i>Below Expectations</i>
9. Research, Monitoring and Evaluation	<i>Meeting Expectations</i>

* Due in part to inaction by the federal government.

In this report, in addition to acknowledging and evaluating work done to date, we make 8 major recommendations for 2001/2002. In order of priority, they are:

- 1.** The provincial government should enact province-wide legislation making workplaces and public places 100% smoke-free.
- 2.** As the Canadian province with the lowest tobacco prices, Ontario should lead national advocacy to increase tobacco taxes by a minimum of \$10 per carton. In light of continuing federal inaction, the Premier should publicly and forcefully call on the federal government to initiate action immediately.
- 3.** Following the failure of its U.S.-based litigation strategy, the provincial government should initiate legal action in Ontario take steps to recover health care costs from the tobacco industry.
- 4.** The Ministry of Health and Long-Term Care (MOHLTC) should significantly increase program funding under the Ontario Tobacco Strategy from the current \$10 million a year.
- 5.** Tobacco products should be placed out-of-sight behind retail counters, and all retail tobacco displays should be prohibited.
- 6.** In the absence of federal action, the government should require removal of misleading labels (“light”, “mild”), require better tax-paid package markings to combat smuggling, and require plain packaging.
- 7.** The government should ban the sale of chewing tobacco and snuff.
- 8.** The government should require the tobacco industry to disclose product ingredients, additives and smoke emissions by brand.

THE NEED FOR A REPORT CARD

▪ Why do we need a Report Card?

Tobacco use is the number one cause of preventable disease and death in Ontario, and the province's number one public health problem. It causes 12,000 annual premature deaths; over \$1 billion in cost to the provincial health care system, and nearly \$3 billion lost to the provincial economy from foregone income and lost productivity.

Each year, tobacco industry products kill more people in Ontario than will die from accidents, suicides, homicides, illicit drugs, AIDS, alcohol and alcohol-caused traffic fatalities *combined*.

This Report Card does not seek to review evidence that proves the preceding statements. That evidence is well documented in the report of the Minister of Health's Expert Panel on the Renewal of the Ontario Tobacco Strategy (the Expert Panel), published in February 1999, and by the Ontario Tobacco Research Unit's (OTRU) annual Monitoring Reports on the provincial tobacco strategy.

The Expert Panel provided a definitive blueprint for tobacco control in Ontario. The Report Card seeks to:

1. Evaluate progress made on its recommendations in the past two years.
2. Review the current Ontario government's approach to the tobacco problem dating back to its first election in 1995. (See Background.)

▪ The Current Impasse

We believe former Minister Witmer to have been sincere in her desire to move ahead with the reforms recommended by the Expert Panel. We also believe she tried to make these reforms a reality. Proposals to address these reforms were prepared by staff of the Ministry of Health and Long-Term Care (MOHLTC) in the latter half of 2000, and forwarded to the Premier's Office and Cabinet Office with a request for permission to conduct public consultation on their contents. Prior to the February 2001 Cabinet shuffle, they were resubmitted with a second request for action.

Nothing more has been heard of these proposals. No public statements have been made about their status, although the former Minister repeatedly promised there would be consultations on the smoke-free spaces portion of the Panel's recommendations.

Today, despite repeated efforts, we have no way of knowing why the government has refused to give permission for the Health Minister to move these proposals forward for consultation and legislative action. No member of the government has publicly advocated for such action, nor has the government committed to specific next steps.

In short, major portions of the former Minister's tobacco control agenda – particularly those dealing with legislative reform – are in limbo.

In this Report Card, we wish to sound the alarm about lack of progress, and to point to areas needing action. We urge Minister Clement to carry his predecessor's agenda forward. We also wish to encourage the public to express its concern directly to the government about the lack of progress on the province's number one public health problem.

EVALUATION

The Expert Panel based its approach in 1999 on best practices in tobacco control, consistent with guidelines developed by the U.S. Centers for Disease Control and Prevention. These guidelines emphasize the need for a **comprehensive tobacco control program**, with funded elements including legislation and enforcement, media and other public education campaigns, school programs, community programs, cessation programs, administration and management, and research, monitoring and evaluation.

This section provides a detailed evaluation of the Government of Ontario's responses to each of the subject areas addressed by the Expert Panel.

Recommendations for fiscal year 2001/2002 are also provided. Our evaluation criteria are outlined in Appendix A.

1. Smoke-free Spaces

Rating of the Ontario Government

Unacceptable

Expert Panel's Recommendations

- All indoor public places should be 100% smoke-free; incremental bans in all indoor workplaces; implementation of media-based public education on the dangers of second-hand smoke.

Current Situation

- The Ontario *Municipal Act* was amended in 1994 to give municipalities the authority to pass smoke-free workplace and public place by-laws. The province retained the right to require public places to be smoke-free under the *Tobacco Control Act*. Workplaces must be at least 75% smoke-free under the *Smoking in the Workplace Act*, a requirement which guarantees exposure of many workers to second-hand smoke.
- Despite this provincial authority, the province has left the setting of smoke-free standards entirely to municipalities. The result is a patchwork of by-laws, ranging from very strong rules in the Region of Waterloo and a few other municipalities, to non-existent regulations in other communities.
- No additional enforcement resources have been provided for those municipalities with by-laws. Many municipalities do not have by-law enforcement officers.
- Medical Officers of Health, municipal councillors, the Association of Municipalities of Ontario, and health voluntaries have repeatedly called for provincial action, without success.

- Former Ontario Health Minister Witmer authored proposals to amend provincial legislation regarding smoke-free spaces, but was unable to obtain approval to consult the public about the amendments, or to begin drafting.

Our Recommendations for 2001/2002

- Provincial legislation should be amended to require 100% smoke-free public places and workplaces on a graduated timetable, beginning next year with office and industrial workplaces and reaching completion with bars and similar facilities in 2005.
- The *Smoking in the Workplace Act* should be rescinded, and responsibility for implementation of smoke-free policy consolidated under the *Tobacco Control Act* within MOHLTC.
- Additional enforcement resources for the provincial policy should be provided to Medical Officers of Health and health units across the province.
- The government should implement a province-wide, media-based public education program to ensure that every parent is informed of the risks of second-hand smoke exposure to children. Parents should be urged to eliminate children's exposure by making homes and vehicles smoke-free, and avoiding places where smoking may occur.

Resource Implications

- As mentioned in the previous section, additional public health inspectors would be required to enforce new smoke-free space provisions, although the very high levels of support for smoke-free workplaces indicate that enforcement in this area should not be onerous.
- As it is recommended that smoke-free provisions be implemented in stages, increasing funding for the OTS should easily offset increased inspection requirements and the need for more intensive mass media.

2. Tobacco Taxation

Rating of the Ontario Government:

* ***Below Expectations***

Expert Panel's Recommendations

- Raise prices to levels at least equal to surrounding jurisdictions; lobby federal and Quebec governments for a similar increase in Quebec; require tax-paid markings printed directly on packages to prevent smuggling.

Current Situation

- On average a carton of cigarettes costs \$31.68 in Ontario today. Other than Quebec, where a carton costs \$1 more, the cost of a carton varies from \$6 to \$27 more, in all other provinces and states bordering Canada.
- An agreement between the federal government, Ontario and Quebec states that the provinces will match federal tax increases if Ottawa initiates action. For the past year, the media has been reporting that the two levels of government are negotiating.
- Research has shown price is the number one factor affecting consumption, particularly among young people.
- The Addiction Research Foundation has calculated that tobacco-related illness costs Ontario at least \$1.1 billion per year. Last year, the provincial government collected less than half this amount in tobacco taxes.
- Premier Harris publicly supported increases in cigarette taxes in May 2000.

Our Recommendations for 2001/2002

- At a minimum, tobacco taxes need to be increased by \$10 per carton --split between the Ontario and federal governments
- The Government of Ontario should publicly advocate that Ottawa initiate tax increases. The Premier, and the Finance and Health Ministers, should publicly press Ottawa to move.
- The provincial government should work with other provincial governments and Ottawa to replace the cellophane wrapping on cigarette packages with more permanent tax markings that cannot be easily removed by smugglers.
- Together with the federal government, Ontario should increase enforcement measures that address any smuggling that may take place.

Resource Implications

- Increased tobacco taxes could provide the Ontario Tobacco Strategy with necessary funding to sustain it over many years.
- Increased tobacco taxes are an inexpensive way to reduce youth smoking.
- Increased tobacco taxes can help offset the financial burden of tobacco use to the health care system and to the larger economy.

*Due in part to inaction by the federal government.

3. Cost Recovery Litigation

Rating of the Provincial Government

Unacceptable

Expert Panel's Recommendations

- Initiate legal action, supported by necessary legislation to recover health care costs.

Current Situation

- Litigation launched by the Government of Ontario in the United States under the provisions of the *Racketeer-Influenced and Corrupt Organizations Act (RICO)* to recover costs from the integrated Canadian and American tobacco industry has been thrown out of a U.S. court. The province has appealed this decision.
- Ontario's appeal of the U.S. court decision is unlikely to succeed, since a similar case launched by Panama has been rejected by U.S. courts on the grounds that Panama should pursue the industry within its own jurisdiction.
- In British Columbia, the province launched litigation against the tobacco industry there under the authority of new provincial legislation permitting such a lawsuit.
- After initial rejection of the legislation by the courts, the BC government has revised the statute accordingly, implemented the amendments and has now relaunched its lawsuit.
- In April 1999, while announcing the province's lawsuit, former Ontario Health Minister Witmer referred to a potential recovery in the order of \$40 billion, and referred to possible criminal misconduct by the industry.

Our Recommendations for 2001/2002

- Ontario should pass a statute identical to the British Columbia *Tobacco Damages and Health Care Costs Recovery Act*, and initiate litigation immediately upon proclamation of the statute.

4. Finance and Infrastructure

Rating of the Ontario Government

Below Expectations

Expert Panel's Recommendations

- Fund the OTS at 5¢ cigarette sold in Ontario annually which would generate \$96.5 million annually; MOHLTC to be lead agency to implement OTS; Chief Medical Officer of Health to champion the OTS.

Current Situation

- The Expert Panel's recommended amount equals about \$8 per capita in Ontario, an amount required for an effective comprehensive tobacco control program as recommended by the U.S. Centers for Disease Control (CDC) guidelines.
- Further, the Panel's recommendation is based on proven best practices, on reductions in future government cost as the strategy succeeds, and on the need to provide predictable, stable funding for a successful strategy.
- In her April 1999 response to the Expert Panel, former Minister Witmer committed \$10 million for the first year. This amount was subsequently renewed for a second year. No announcement has been made concerning Year 3 or beyond.
- Most tobacco control staff appointments at the MOHLTC end on March 31 of this year.
- Despite being designated by the Minister to lead the Ontario Tobacco Strategy, the Chief Medical Officer of Health has not produced any reports nor recommendations for action, nor has he taken any public profile on the tobacco issue.

Recommendations for 2001/2002

- Funding for FY 2001-2 should be doubled to \$20 million, doubled again in FY 2002-3 to \$40 million, and reach the Panel's recommended maximum in FY 2003-4.

5. Retail Controls

Rating of the Ontario Government

Unacceptable

Expert Panel's Recommendations

- Require larger and stronger retail warning signs; ban all retail tobacco advertising; increase enforcement resources and penalties for illegal sales to minors; place tobacco products out-of-sight behind retail counters; ban chewing tobacco and snuff; require disclosure of industry marketing and financial information.

Current Situation

- While sales to minors charges jumped from just over 200 in 1995-96 to a high of about 1000 in 1997-98, the number of charges began to decline in 1998-99 and continued downward to about 800 in 1999-2000.
- Inspections and other surveillance actions declined from 28,029 in 1997-98 to 7,261 in 1999-2000.
- Compliance checks declined from 14,083 in 1998-99 to 10,188 in 1999-2000.
- Educational visits to retailers went from 7,261 in 1997-98 to 12,367 in 1998-99, but then declined to 6,962 in 1999-2000.
- The percentage of vendors who do not comply with restrictions on sales to minors has remained essentially static from 1995/96 to 1999/2000.
- With the downloading of public health responsibilities to municipalities, provincial financial support for *Tobacco Control Act* enforcement has virtually disappeared.
- Through displays paid for by the tobacco industry, tobacco products occupy prominent display positions in thousands of retail outlets across the province.
- Despite documented evidence that tobacco companies use a graduated strategy to introduce young people to nicotine through use of chewing tobacco and snuff, and then move them along to more addictive tobacco products, no action has been taken to ban such products in Ontario. These products are manufactured outside Canada and have a small market in Ontario. Their use has been banned by a number of other jurisdictions, including Australia, Hong Kong, Ireland, Israel, New Zealand, Norway, Saudi Arabia, Singapore and the United Kingdom.
- Former Ontario Health Minister Witmer authored proposals to amend the *Tobacco Control Act* to strengthen sales to minors restrictions and enforcement, and other parts of the *Act*, but has been unable to obtain approval to consult the public about the amendments, or to begin drafting.

Our Recommendations for 2001/2002

- Prosecution of vendors should be made easier under the *Tobacco Control Act*.
- Resources dedicated to enforcing the *Tobacco Control Act* should be increased, as should fines for non-compliance. A prominent sign should be posted at convicted retail premises after first convictions, together with a prescribed notice in local newspapers paid for by the retailer. An additional non-compliance penalty should be the removal of a retailer's right to sell lottery tickets.
- Tobacco products should be placed out-of-sight of customers behind counters at point-of-sale, and all retail displays of any kind should be prohibited.
- The government should ban the sale of chewing tobacco and snuff.
- Much greater disclosure of company marketing and research information should be required by the Ministry of Health.

Resource Implications

- Provision of additional public health inspectors to better enforce the *Tobacco Control Act* will have financial implications, although it is difficult to estimate these requirements exactly. Compensation and support for a typical public health inspector at a health unit costs \$100,000 - \$125,000. Given the serious decline in inspections, compliance checks and educational visits, additional personnel are urgently needed. The provision of higher fines would help offset the costs of these personnel, and an allocation from increased OTS funding should provide the balance of funding required.

6. Support for Smoking Cessation

Rating of the Ontario Government

Meeting Expectations

Expert Panel's Recommendation

- Develop, fund and implement a comprehensive province-wide smoking cessation program.

Current Situation

- Through MOHLTC funding, the Canadian Cancer Society (CCS) established the Smokers' Helpline, a province-wide toll-free telephone counseling. Services are equally available to smokers actively attempting to quit, considering quitting, not considering quitting but may be concerned about their habit, or to their families, friends and employers.
- The advertising budget is limited, with resulting limitations and market penetration throughout the province.
- There is no requirement that the CCS toll-free Smokers' Helpline number be printed on all tobacco packaging sold in Ontario.
- While some insurance plans offer reimbursement for nicotine-based stop-smoking medications and bupropion hydrochloride (Zyban), others do not.
- The province has not taken the step of placing either nicotine-based stop-smoking medications or bupropion hydrochloride (Zyban) on the Ontario Drug Benefit Plan.
- A compendium of all available smoking cessation programs in every health unit area is being completed later this year by the Ontario Medical Association, and will be distributed to health units, physicians, pharmacists and dentists.
- The restriction of sale of nicotine-based stop-smoking medications to pharmacies has been eliminated, thus permitting their sale in any retail outlet where cigarettes are sold.
- While some communities feature active stop-smoking cessation counseling and group therapy sessions, others do not.

Our Recommendations for 2001/2002

- The advertising budget for the CCS Smokers' Helpline should be significantly increased, and the toll-free number required on all tobacco packaging in Ontario.
- Funding should be provided to health units for set-up of smoking cessation programs in municipalities in which such programs do not currently exist.
- The Minister of Health should make every effort to encourage manufacturers of stop-smoking medications to place their products for sale in retail outlets where cigarettes are sold.
- The Minister of Health should ensure that stop-smoking medications are placed on the Ontario Drug Benefit Plan, and should encourage private insurers to reimburse patients for the cost of these medications.

7. Marketing Including Packaging/Labelling/Information Disclosure

Rating of the Ontario Government:

* **Unacceptable**

Expert Panel's Recommendations

- Require plain packaging, additional health and ingredient warnings on packages; eliminate deceptive package labelling; require industry to disclose information.

Current Situation

- The federal government has recently enacted visual and informational package warnings, but has not required plain packaging and has not eliminated deceptive labelling.
- Under Section 5 of the *Tobacco Control Act*, the Minister of Health has authority to regulate any aspect of packaging up to and including plain packaging, health warnings, health warning inserts, and deceptive labelling such as "light" and "mild". This authority has never been used.
- British Columbia requires the tobacco industry to disclose product ingredients, additives and smoke emissions by brand. Ontario does not.
- As previously discussed, the Canadian Cancer Society has set up a "Smokers' Helpline" which offers telephone counseling on all aspects of smoking cessation province-wide through a toll-free number, but the service needs to be more widely advertised.

Our Recommendations for 2001/2002

- In the absence of federal government action, Ontario should require plain packaging of all tobacco products here, and should also require elimination of deceptive labeling like "light" and "mild".
- The provincial government should require that the Smokers' Helpline toll-free telephone number be printed on all cigarette packages sold in Ontario.
- The provincial government should implement British Columbia's requirements that the tobacco industry disclose product ingredients, additives and smoke emissions by brand.

Resource Implications

- Apart from staff needed to process tobacco industry product information, these requirements can be implemented at no cost to the provincial government.

*Due in part to inaction by the federal government.

8. Public Education

Rating of the Ontario Government:

Below Expectations

Expert Panel's Recommendations

- Mount intensive mass media-based and community-based public education programs, and comprehensive school-based prevention programs.

Current Situation

- Of the \$10 million in annual additional funding announced in April 1999, \$6.8 million is being spent on public education campaigns, with the largest amount (\$3.2 million) being spent on a television and print public education campaign directed by the Heart and Stroke Foundation of Ontario.
- The Expert Panel recommended that a fully funded provincial tobacco strategy should receive 5¢ a cigarette a year. Since 19.3 billion cigarettes were sold in Ontario in 1999, full funding would represent \$96.5 million.
- If the strategy were fully funded, and the same proportion of full funding spent on education that is being spent currently, public education including mass media would receive \$65.6 million annually.
- The above calculations are based on funding models used effectively in other jurisdictions, such as Massachusetts and California, and are consistent with guidelines developed by the U.S. Centers for Disease Control and Prevention.
- School program funding levels are far below those recommended by the CDC.

Our Recommendations for 2001/2002

- The current annual allocation of \$10 million in OTS funding should be doubled next year, and increased thereafter by an annual amount sufficient to fully fund the OTS by 2005.

Resource Implications

- Increasing funding to \$20 million for 2001/2002 will permit more intensive mass media public education, including preparation of original commercials, greater market penetration and longer campaign periods.

9. Research, Monitoring and Evaluation

Rating of the Ontario Government

Meeting Expectations

Expert Panel's Recommendations

- Fund a comprehensive armslength research monitoring and evaluation system to measure implementation and results of OTS.

Current Situation

- Of former Ontario Health Minister Witmer's \$10 million allocation, \$1 million is provided to the Ontario Tobacco Research Unit (OTRU) to continue province-wide research and to evaluate all other programs funded under the Minister's allocation.
- This evaluation is in addition to the annual OTRU Monitoring Report which reviews the status of tobacco use and tobacco control policies in Ontario.
- Funding to the OTRU also provides for province-wide surveys which, over time, will provide trend data on smoking prevalence and rates of consumption among all ages of the Ontario population.

Our Recommendations for 2001/2002

- The \$1 million OTRU allocation should be continued in its present form, and OTRU's advice sought as to any additional financial, research or evaluation needs which will provide additional useful data.

BACKGROUND

- **Ontario's Approach from 1995 -February 1999**

In his response to a pre-1995 election questionnaire, then-Progressive Conservative (PC) Leader Michael Harris promised to:

- work with other jurisdictions to develop a harmonized tobacco tax policy, and follow through on the previous government's promise to raise taxes;
- work with all stakeholders to control second-hand smoke and reduce its negative effects;
- work with labour and industry to amend the *Smoking in the Workplace Act* to provide province-wide standards;
- move quickly via regulatory power under the *Tobacco Control Act* to expand the number of public places that are smoke-free on a province-wide basis, including shopping malls, arenas, billiard halls and bowling alleys;
- work with the industry to encourage the banning of smoking in Ontario restaurants with more than 35 seats;
- negotiate vigorously with the federal government for action on plain packaging;
- develop provincial package health warnings in the form suggested by the Ontario Campaign for Action on Tobacco.

From its election in June 1995 until the fall of 1998, the government took no action on any of these commitments. Funding for the OTS fell to less than 25% of the 1994 amount, and a media campaign implemented by the previous government was cancelled.

This situation began to change with the appointment of Elizabeth Witmer as Health Minister. Then-Minister Witmer met with representatives of the provincial health community in the fall of 1998, and committed to review a series of legislative reform proposals and other recommendations dealing with funding, smoking cessation and public education. Late in 1998, Mrs. Witmer appointed an Expert Panel, which included representatives from the Ontario Medical Association and the Canadian Cancer Society, which heard presentations from a variety of other health agencies and expert witnesses.

▪ **The Minister's Expert Panel Report (February 1999)**

The Expert Panel Report, published in February 1999, is the first produced under the direction of a provincial Health Minister to advocate a comprehensive program of tobacco control measures based on best practices and experience from other jurisdictions. Based on extensive research and in-depth interviews with officials from several U.S. jurisdictions that have implemented comprehensive programs, the Expert Panel Report was welcomed by the health community on its publication in February 1999. Expectations were high that Ontario would provide leadership among all Canadian provinces in addressing the number one cause of preventable disease and death in Canada.

The Expert Panel Report addressed nine major areas of concern:

- tobacco pricing
- public education
- marketing including packaging, labelling and information disclosure
- retail controls
- smoke-free spaces
- supports for smoking cessation
- finance and infrastructure
- research, monitoring and evaluation
- cost recovery litigation

Twenty-nine recommendations unanimously endorsed by the entire Expert Panel included a broad range of actions in all nine areas. If implemented, they would constitute the strongest tobacco control program in North America. (The Report can be accessed at www.camh.net/otru/final26a.pdf.)

In her April 1999 response to the Panel's recommendations, the Minister committed the government to action in all nine areas.

The most tangible of the Minister's responses came in the form of an additional \$10 million/year in tobacco control funding, which became available to health agencies working on mass media campaigns, smoking cessation, by-law implementation, school-based education programs and a number of other community initiatives. U.S. litigation against the industry was also initiated. However, no action was taken on legislative review or tobacco prices, and there was indication that annual funding for the provincial tobacco strategy would increase to close to the amount recommended.

APPENDIX A -	EVALUATION CRITERIA
---------------------	----------------------------

EVALUATION	DESCRIPTION
Exceeding Expectations	<ul style="list-style-type: none"> ▪ Surpasses Expert Panel recommendations ▪ Funding levels lead the country ▪ Are causing dramatic decreases in tobacco use
Meeting Expectations	<ul style="list-style-type: none"> ▪ Minister's initial response to Expert Panel recommendation was appropriate ▪ Funding level and program/policy development have continued past the first year
Below Expectations	<ul style="list-style-type: none"> ▪ Current funding or policy does not meet tobacco control objectives, but government has expressed some degree of support for recommendation ▪ Current policy leaves initiation of action on recommendation to another level of government
Unacceptable	<ul style="list-style-type: none"> ▪ Government has legislative or other authority to act on recommendation, but has not ▪ Health Minister or other government officials have stated there will be action, but there has been none