

# MEMORANDUM

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**To:** Interested Parties

**From:** Michael Perley  
Director

**Date:** June 24, 2002 (updated October 2002)

**Re:** The hospitality industry, the tobacco industry and ventilation in Ontario

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## I. Introduction

During the past four years, hospitality representatives from across Ontario have increasingly advocated ventilation as an alternative to 100% smoke-free policies in hospitality and recreational premises. In presentations to municipal councils and public consultation meetings, proprietors often cite a ventilation demonstration project at the Black Dog pub in Scarborough, Ontario as proof that directional airflow ventilation can create the equivalent of air in smoke-free buildings. Ventilation technology companies have been employed to present to meetings across the province, and will no doubt continue to do so in the coming months. Representatives of “Courtesy of Choice”, a tobacco industry program promoting ventilation, are also increasingly in evidence in various Ontario municipalities as they try to convince local councils to adopt ventilation as an alternative to smoke-free policies.

The Ontario Campaign has reviewed the extensive documentation which demonstrates the inadequacy of ventilation as a solution to indoor tobacco smoke exposure, and has also reviewed evidence now available about the links between Canadian tobacco companies and those promoting ventilation at the national, regional and local levels. The purpose of this memorandum is to present this information for municipal councillors and their staff, health unit staff, interested hospitality proprietors and other interested parties, in order that they may judge for themselves whether ventilation is being promoted as a “good-faith” alternative which has proven to be effective, or as a strategy designed to prevent the adoption of smoke-free policies.

It has been clear for years that, based on analyses and decisions by, among others, Health Canada and the American Society of Heating, Refrigeration and Air-Conditioning Engineers, there are no safe levels of exposure to second-hand tobacco smoke, that ventilation cannot remove it from indoor premises, and that the promotion of ventilation instead of 100% smoke-free policies is a strategy designed and supported by the North American tobacco industry to prevent the adoption of such policies. It is also clear that the industry supports ventilation not because of any evidence that it eliminates health risks, but because it can avoid the impact of smoke-free policies upon the amount of tobacco consumed, and because ventilation helps maintain the fiction that smokers and non-smokers can be “accommodated” without eliminating smoking indoors.

The most recent technical analysis of why ventilation is not a solution to the second-hand smoke exposure problem has been provided in “Protection from Second-Hand Tobacco Smoke in Ontario: A Review of the Evidence Regarding Best Practices” in May 2001 by the Ontario Tobacco Research Unit at the University of Toronto. A copy of the chapter from this report dealing with the ventilation issue is attached for readers’ information (the report can be viewed online at: <http://www.camh.net/otru/>). The chapter reviews the history of ventilation and second-hand smoke, which began with an expert panel convened in 1981 by the US National Academy of Sciences to assess a number of indoor pollution and ventilation issues including tobacco smoke exposure. It continues through to an assessment of the most recent ventilation standards set by the American Society of Heating, Refrigeration and Air-Conditioning Engineers. A review of the reasons why no safe level of exposure to second-hand smoke has been established by any reputable scientific agency and why ventilation options (whatever their nature) cannot effectively address the exposure problem, are discussed.

## **II. The Tobacco Industry and Ventilation**

### *A. Canadian Tobacco Companies Develop a Ventilation Strategy*

Thanks to the recent release of Canadian tobacco industry documents, it is now possible to trace the activities of the Canadian Tobacco Manufacturers’ Council (CTMC) as it worked with the hospitality industry during the 1990s to develop a strategy to promote ventilation as a solution to smoking bans. The start-up of this strategy is described in two 1998 CTMC memoranda as follows:

“Approval was given CTMC by the member companies for funding to develop a ‘ventilation alternative’ to public place smoking ban initiatives in Mississauga and Toronto with, hopefully, the prospect of moving this to BC.” (CTMC memorandum, 29/03/98, PM 2065255097),

and,

“Adoption of (the indoor air) policy proposal guarantees that alternatives such as a smoking ban or separately enclosed or ventilated rooms will not be required now or in the future.” (Proposal for a credible and sustainable indoor air policy: the ventilation options, CTMC, 1998, PM 2065255098).

### *B. Hospitality Groups Are Recruited to Promote the Strategy*

A common tobacco industry practice has been to recruit front groups to promote ventilation alternatives at the local level. Another 1998 memorandum describes the CTMC recruitment of Consumers’ Gas and the Ontario Restaurant Association to campaign on bans against smoking:

“Consumers’ Gas...has agreed to publicly support the ORA’s (Ontario Restaurant Association) call for a ventilation response to the issue of public smoking in

Toronto and environs...Consumers' Gas...seem to also understand what's involved in attending meetings with councillors, deputations before city councils, etc." (CTMC memorandum, March 30, 1998, PM 2065255103).

Further memoranda from 1998 describe tobacco industry employees' involvement in hospitality issues, consultants' work with the tobacco industry to fight smoking bans, and ventilation consultants' work on the issue directly with tobacco companies or through programs such as "Courtesy of Choice". (Notes and memoranda from the Philip Morris website, PM 2065254984/4993/4992/4993).

### C. *"Courtesy of Choice"*

The tobacco industry's main front group in promoting ventilation is the Hotel Association of Canada, which is funded by the Canadian Tobacco Manufacturers' Council to run "Courtesy of Choice", a program designed to promote ventilation solutions. A further CTMC memorandum describes this process:

"Courtesy of Choice/Hotel Association of Nova Scotia and the Canadian Restaurant and Food Services Association (CRFA) are continuing the effective lobbying campaign...This effort will include pushing for a ventilation solution in the long-term instead of a ban." (CTMC memorandum, July 15, 1998, PM 2065254948).

Tobacco company representatives have publicly revealed that the CTMC has been funding "Courtesy of Choice" by approximately \$800,000/year since 1995 (CBC Radio - Edition, June 2000).

The importance of the tobacco companies' links to "Courtesy of Choice" will become evident as we consider the Black Dog pub demonstration project organized at a Scarborough, Ontario pub by the Ontario Restaurant Association and the Greater Toronto Hotel Association in 1999.

### D. *The Black Dog Pub*

This ventilation demonstration project at a Toronto-area pub involved set-up of a directional air flow ventilation technology, promotion of the technology to Toronto City Council as an alternative to a complete smoking ban in hospitality premises in the city, publication of results from the demonstration, and subsequent advocacy of the technology elsewhere in Ontario.

Highlights of the Black Dog process, including links to the tobacco industry, are as follows:

- Just prior to Toronto City Council's June 1999 vote to adopt a new smoke-free bylaw, the ORA and GTHA held a news conference at the Black Dog Pub to release results of its demonstration project, and called on City of Toronto councillors to adopt ventilation as a compliance option.

- Faced with the Toronto council's resistance to adoption of ventilation without independent testing, the ORA and GTHA then agreed with representatives of Mayor Lastman's office and the Ontario Campaign for Action on Tobacco to ask Health Canada to test the technology. The parties agreed that if the technology was found to provide the equivalent of air in other smoke-free premises in the City of Toronto, it could be used as a compliance option in Toronto's new bylaw.
- In March 2000, the department's Assistant Deputy Minister Ian Potter turned down the request to test the technology. His March 17, 2000 briefing note on this matter reads in part as follows:

“When combusted, cigarettes produce both particulate and gaseous components. The premise behind ventilation is the replacement, at a constant level, of current air with “fresh” air, which both removes and dilutes smoke...The problem with ventilation as an exposure reduction strategy is that exposure, even if the system is operating at maximum efficiency, is never zero. In other words, in the best-case scenario, there is an explicit acceptance of some level of exposure to non-smokers. In the worst-case scenario, where the ventilation system is never maintained and becomes inoperative, exposure of non-smokers to tobacco smoke is maximized...Since no ventilation system will protect everybody, and might even delude non-smokers into a false sense of protection, it is concluded that such systems are not as good as a total ban...It is recommended that the City of Toronto be informed that Health Canada will not test the proposed system.”

- Faced with Health Canada's refusal to test, the ORA/GTHA did not abandon their efforts to promote ventilation. In a series of steps which placed them in a clear alliance with the tobacco industry, the organizations retained an American scientist, Roger Jenkins of the Oak Ridge National Laboratory, to conduct further analysis at the Black Dog Pub and to locate a journal in which his results could be published. A journal, “Regulatory Toxicology and Pharmacology”, agreed to publish Mr. Jenkin's results. Publication took place in June 2001.
- Connections between the ORA/GTHA, Roger Jenkins, the journal in question and the tobacco industry are as follows:
  - Roger Jenkins is a well-known consultant to the American tobacco industry, who has testified on its behalf as an expert witness in court proceedings. In one case, a judge barred Mr. Jenkin's testimony on the grounds that U.S. tobacco giant R.J. Reynold's assistance with his research made it suspect.
  - The journal, “Regulatory Toxicology and Pharmacology”, is funded in part by the US tobacco company, R.J. Reynolds. One of its associate editors, Gio Gori, is another well-known US tobacco industry consultant. In addition to his position as Associate Editor of the journal, Mr. Gori has co-authored a book attacking the scientific basis for the regulation of second-hand smoke with a discredited tobacco industry consultant, John Luik, on behalf of Canada's Fraser Institute.

- The Jenkins study was funded by the Hotel Association of Canada, which as noted above has received at least \$3.2 million from the Canadian Tobacco Manufacturers' Council to promote ventilation as an alternative to smoke-free policies.
- The above is sufficient to seriously question the research, if not discredit it entirely. There are also a number of points to be made about the demonstration results which highlight its unreliability:
  - The study was a demonstration project and not a review of a representative sample of ventilation installations, which would take account of variations in premises' set-up, differing numbers of patrons, different physical configurations, movement of staff and patrons, variable installation space, variations in maintenance, etc.
  - The non-smoking "control" area chosen for comparison with the Black Dog site was contaminated with smoke drawn from outside smoking areas, and this "control" space was seriously under-ventilated, with high carbon dioxide readings.
  - In spite of the choice of a bad "control" space, readings of several of the tobacco-related contaminants tested were higher in the non-smoking area of the pub than in the smoking area.

Despite the above, the Ontario Restaurant, Hotel and Motel Association and the Canadian Restaurant and Food Services Association continue to promote ventilation. On April 29, 2002, ORHMA Executive Director Terry Mundell appeared before the City of Toronto's Economic Development Committee to demand that ventilation once again be considered as a compliance option under the city's smoke-free bylaw. In mid-June, Mundell and Canadian Restaurant and Food Services Association president Douglas Needham appeared before York Region's Health and Emergency Medical Services Committee calling for development of a pilot project in York Region to test an "energy recovery ventilation system" in a local restaurant. On June 20, York Regional Council approved this resolution, and ordered that all information received from Mundell and Needham should be presented to regional staff for a "complete report on the feasibility of a pilot project to study the proponents' ventilation technology". This report will be presented to the September 5, 2002 meeting of the York Region Health and Emergency Services Committee, and should:

- “a) Outline the York Region's Health Services requirements
- b) Define the Terms of Reference of the pilot project
- c) Include a mechanism to ensure that the study is reliable and reproducible in settings other than the test pilot site.”

This is typical of the joint tobacco industry-hospitality industry ventilation promotion strategy, which is based on the premise that no matter how firmly ventilation is rejected by health authorities, municipal councils or any other relevant agency, the industries will continue to search for a jurisdiction which will at least accept the possibility that ventilation will work, and will permit further testing. It is guaranteed that Mundell, Needham and other associates will

approach Toronto City Council and probably Peel Region Council in the near future, to promote the same strategy.

### **III. British Columbia**

Increasingly, hospitality representatives in Ontario are making statements at by-law consultation meetings which leave the impression that the Government of British Columbia has allowed ventilation as a compliance option in its Workman's Compensation Board ETS regulations, which came into effect on May 1<sup>st</sup> of this year.

This impression is not accurate, and requires correction.

On May 1<sup>st</sup>, the BC WCB ETS regulations required employers in public entertainment facilities (including restaurants, bars, pubs, lounges, night clubs, bingo halls, bowling alleys, and gambling casinos) to control workers' exposure to second-hand smoke by either prohibiting smoking in the workplace, or restricting smoking to separately-enclosed, separately-ventilated designated smoking rooms (DSRs).

Workers in the BC hospitality industry have the right to choose whether to enter a DSR, and may not be discriminated against for choosing not to enter a DSR. The regulation also requires that there be only intermittent exposure to second-hand smoke, and workers who choose to work in a DSR must not exceed 20% of their work shift in the DSR.

Workers in all other BC workplaces will be provided with 100% smoke-free protection as outlined elsewhere in the regulations. Only workers in the hospitality industry have to make a choice as to whether to enter a DSR.

These regulations will not override municipal by-laws which prohibit smoking and DSRs in various BC municipalities.

### **THERE IS NO PROVISION IN THESE REGULATIONS FOR UNENCLOSED VENTILATION.**

It is important to understand that this decision was purely a political one, with no scientific or technical basis to it. The Liberal government which came into office in BC in 2001, directed the provincial Workman's Compensation Board to delay implementation of the ETS regulation until April 2002 due to concerns raised by the hospitality industry. The government established a committee of MPPs to review the issue. The committee met with representatives of the WCB and the hospitality industry, but did not conduct any broader public consultation.

In August 2001, the WCB Panel of Administrators advised the government that it could not exceed to the government's request to delay the effective date of the ETS regulations. When the government further directed the Panel to repeal the proposed regulation and replace it with a government proposal which allowed DSRs, the Panel again refused to exceed to this request.

In January 2002, despite WCB opposition, the government overrode the WCB's opposition and unilaterally revised the ETS regulations to allow DSRs as described above. **Since the BC WCB was established in 1918, the government has never before overturned a WCB health and safety regulation.**

The January 15, 2002 letter from the WCB Panel of Administrators to the BC Labour Minister is attached as background. The Panel's letter states in part that "there is no known safe level of exposure to second-hand smoke and... workers in public entertainment facilities are at greater risk of exposure to second-hand smoke... no new evidence has been presented that would compel the Panel to reconsider the original decision (to make all BC workplaces 100% smoke-free)".

A detailed review of the process under which the BC government weakened the WCB ETS regulation, together with access to relevant documents, can be found on the Clean Air Coalition of BC's website ([www.cleanaircoalitionbc.com](http://www.cleanaircoalitionbc.com)).

#### **IV. Conclusion**

It is clear that Canada's tobacco companies, national and Ontario hospitality associations, and individual proprietors, are continuing to collectively promote ventilation, despite technical evidence that it cannot work and documentary proof that ventilation is a tobacco industry strategy to avoid implementation of smoke-free policies.

The industries have no doubt learned from their experience with the Black Dog Pub demonstration project, where links between the hospitality industry and the tobacco industry were clearly evident and where study results were clearly flawed. During the next round of ventilation advocacy, whether in York Region or elsewhere in Ontario, interested parties can anticipate that the link between the two industries will not be so obvious, and that they will take other measures to create new credibility for their efforts where little or none previously existed.

For those interested in accessing additional tobacco industry documents describing links between the industry and various hospitality interests, the excellent analysis by Physicians for a Smoke-Free Canada is a must, and can be accessed at [www.smoke-free.ca/documents/ventilation.htm](http://www.smoke-free.ca/documents/ventilation.htm). Further technical analyses of the Black Dog Pub demo and ventilation can be obtained on request to the OCAT office.