

Smoke-Free By-laws: Protecting the Public's Health

BACKGROUND

Smoke-free by-laws are designed for a single purpose: to protect citizens from the known hazards of second-hand smoke. Creating smoke-free public places and workplaces is the single most important public health intervention available at the municipal level of government. This year, the City of Belleville, Quinte West and the Corporation of Prince Edward County can reduce the risk of exposure to second-hand smoke for approximately 112,000 citizens by implementing a 100% smoke-free by-law for indoor public places and workplaces. The Municipal Act, subsection 213 (1) gives authority to local municipalities to pass smoke-free by-laws in public places and workplaces.¹ The authority of the municipality to enact such a by-law has been challenged and upheld in both Kitchener-Waterloo and Ottawa.^{2,3,4} One strong harmonized by-law implemented in Belleville, Quinte West and Prince Edward County on a single date creates a level playing field for businesses, minimizes enforcement challenges, and protects the health of each and every citizen.

RATIONALE

Need to Protect the Health of All Citizens

The harmful health effects of environmental tobacco smoke (ETS) or second-hand smoke are well known and are substantiated by more than two decades of scientific research. ETS is the largest source of indoor air pollution and contains a mixture of nearly 4000 chemicals—more than 50 of which are carcinogens (cancer-causing agents).⁵ The U.S. Environmental Protection Agency lists ETS as a class A carcinogen, for which there is no safe level of exposure.⁶ The *Ontario Occupational Health and Safety Act* bans workplace exposure to 17 chemicals⁷ and 7 of these chemicals are present in the smoke emitted from 33 brands of Canadian cigarettes.⁵

Second-hand smoke exposure is the third leading preventable cause of death in Canada after smoking and alcohol use, killing an estimated 1100 to 7800 Canadians annually.⁵ At least one-third of these deaths occur in Ontario.⁵ That means that up to 53 non-smokers in Hastings and Prince Edward Counties die from breathing second-hand smoke every year and many more suffer from illness and disease. If even 5 people in Hastings and Prince Edward County were ill or dying from West Nile Virus, immediate action would be taken to prevent additional cases of illness or death. Even those who are opposed to smoke-free by-laws agree that second-hand smoke is a health hazard.

In adults, second-hand smoke has been found to cause heart disease, various cancers and respiratory diseases.⁵ Exposure to second-hand smoke has been associated with

miscarriages among pregnant women, as well as an increased rate of low birth weight babies.⁵ Exposure to second-hand smoke has been found to cause Sudden Infant Death Syndrome (SIDS), bronchitis, middle ear infections and respiratory symptoms, such as asthma, in children.⁵ A recent survey conducted for the Hastings and Prince Edward Counties Health Unit found that 86% of area residents felt that ETS was as harmful as smoking.⁸

In the service and hospitality industry, the prolonged exposure to ETS leads to increased risks. Scientific research shows that restaurant and bar staff who are non-smokers are three times more likely to develop lung cancer than other non-smokers.⁹ Bar and tavern employees have higher rates of lung cancer than almost all other occupations, including fire fighters and miners.¹⁰ The level of nicotine in the air of bars is up[to 15 times higher than in the home of a smoker.¹¹ A non-smoker in a smoky room, such as a bar, inhales the equivalent of 35 cigarettes an hour.¹² Workers would not be expected nor permitted to be routinely exposed to similar levels of chemicals in a manufacturing industry. Workers in federal, provincial and several municipal buildings are already protected from second-hand smoke under the *Non-Smokers Health Act* and the *Ontario Tobacco Control Act*. Bar, restaurant and entertainment industry workers should be offered the same protection. Establishment of smoke-free bars and taverns has been shown to be associated with rapid improvement of respiratory health in bar and tavern workers.¹³

DISCUSSION

Effect on Business

A common concern among businesses is that smoke-free by-laws will cause financial loss. However, all objective studies based on sales tax receipts confirm that the hospitality industry does not lose business over the long term when a smoke-free by-law is enacted.¹⁴ Since the early 1990's, over 60 studies have evaluated the impact of smoking bans on restaurants and bars throughout Canada and the United States. The vast majority of these studies compared sales tax revenue before a smoke-free by-law to after a by-law was passed. Studies based on sales tax revenue are the only valid studies because they are objective, complete, thorough, and are available over time so it is possible to adjust for underlying economic trends and seasonal variability.¹⁵ After going smoke-free: insurance costs are lower, cleaning costs are reduced, there is less damage to furniture and equipment and there is less risk of fire.

A 1997 study of hotel revenues and tourism found that smoke-free by-laws in three American states and six major cities had no adverse effect on hospitality businesses, and may have actually increased tourism.¹⁶ University of California researchers have found that 100% smoke-free restaurant ordinances had no effect on restaurant sales in 15 cities in California and Colorado.¹⁷ Just 2.5 years after bars went smoke-free in California, 91% of bar patrons were either going to bars more often or had not changed their bar-going behaviour.¹⁸

Some representatives of the hospitality industry claim that smoke-free by-laws have caused economic losses but no independently verifiable evidence to this effect has ever been produced in any municipality in Ontario. In Waterloo, where a group of proprietors sued the Region for compensation for alleged loss of business from that municipality's smoke-free by-law, not one of the plaintiffs was able to produce any independent evidence to show that they had actually suffered any financial losses.³ In fact, when one of the lead plaintiffs was ordered by the judge to produce his accounting statements, they showed that the proprietor had actually increased his sales after the by-law was implemented.³ Also in Waterloo, there were just over 2100 establishments serving food (includes restaurants and bars) in 2000, when the by-law was enacted. In 2001, this number increased to approximately 2700 establishments, showing the success of the smoke-free by-law.

Waterloo's experience with Oktoberfest is another example of their success with a smoke-free by-law. This annual fall celebration attracts tens of thousands of visitors to the Region, and includes the operation of a number of large festival halls where beer and German food are served. These establishments, which traditionally allowed smoking, were smoke-free for the first time in 2000. There was an increase in ticket sales that year. Only five charges related to smoking were laid throughout the entire event, which was completed with virtually no negative publicity and many compliments from both participants and hall operators.

KPMG, an independent consulting firm, has been hired by the City of Ottawa to study the economic impact of their smoke-free by-law which came into effect on August 1, 2001. The initial report from KPMG found that employment in the Ottawa accommodation and food service sector rose 6.5% from June to October 2001, despite the decline in total employment during the same period.¹⁹ Similarly, Employment Insurance claims in the accommodation and food industry actually declined by 5% in August 2001, compared to August 2000, and 9% in October 2001 over a year previous.¹⁹ Bankruptcy and insolvency statistics for restaurants were lower for the period August to November 2001 than they had been for the previous two years (7 in 2001 versus 12 in 2000 and 8 in 1999).¹⁹ Two "tavern, bar or nightclub" operations underwent insolvency procedures in 2001, compared with one in 2000 and two in 1999.¹⁹

In a public opinion poll commissioned by the Ottawa Sun and conducted by the Corporate Research Group, 29.5% of Ottawa residents stated that they were going out to bars and restaurants more often since the smoking ban was imposed, while only 16.9% reported going out less often.²⁰ Fifty three percent reported that the by-law had not impacted their social habits.²⁰ This poll was published in December 2001. The next economic report for the City of Ottawa will be released in June 2002.

Need for a Level Playing Field

A level playing field means that Belleville, Quinte West and Prince Edward County are under the same smoke-free by-law and that all establishments are treated equally (i.e. no exemptions). There are approximately 375 bars, restaurants, billiard halls, bowling alleys

and bingo halls in Quinte West, Belleville and Prince Edward County. All of these establishments require equal treatment.

Some smoke-free by-laws have created artificial distinctions between “bars” and “restaurants” based on the age of persons allowed onto the premises: “restaurants” allow all ages while “bars” do not allow persons under 19. These restrictions are artificial, since either type of establishment can provide essentially the same service. Increasingly, hospitality proprietors are complaining that creating such distinctions further makes the playing field more uneven.

Bingo halls and bowling alleys should be covered under the by-law because their non-smoking clients, volunteers from charitable organizations and employees must be protected from second-hand smoke. In the case of bowling alleys, children are often present. To create a truly level playing field, all public places should be following the same rules.

Exemptions for private clubs could create an un-level playing field where restaurants and bars are required to comply with the smoke-free by-law. Private clubs need to protect the health of their members.

Effects on Charities

Bingo charities fear significant revenue losses because of high smoking rates among their patrons. Charity groups send volunteers to bingo halls for fundraising purposes and depend on the money they raise there to sustain their activities. The returns produced by charity bingos have been cut by more than half province-wide in the last fifteen years.¹⁹ A study conducted in 2000 by the Registered Gaming Suppliers of Ontario Association and the Ontario Charitable Gaming Association concluded that competition from a variety of new gaming activities such as casinos, slots, internet gambling, instant win and lotteries has led to reduced profits for charities.²¹ Casinos are known for their effective marketing to attract patrons, providing transportation, meals and other discounts. As a result, there has been a significant reduction in the number of players, and hence revenue.²¹ Charity bingos across the province have seen a significant decline in revenue well before the smoke-free by-laws became an issue.

Bingo players are drawn to bingo halls by prizes and not by smoking. Smokers go to movies and travel on trains and planes for the length of time or longer than a bingo session without smoking. Breaks allow players to go outside and smoke. It is important to remember that workers and charity volunteers need protection from the harmful effects of second-hand smoke.

Ventilation

Electronic air cleaners are not an effective means of protecting the public or workers from the risks of second-hand smoke. Such ventilation systems collect only a portion of the most visible substances found in tobacco smoke while leaving behind the gases and volatiles and carcinogenic chemicals in the air.²² The machines lose effectiveness if they are not cleaned regularly (at least weekly in smoky places). In fact, if not cleaned

properly, they may be over-exposing workers and patrons to the very substances they were meant to remove.

Health Canada has refused to analyze ventilation technology as a possible solution to tobacco smoke as it is unable to reduce the exposure level to what they deem to be an acceptable level-zero.²³ Health Canada stated that “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.”²³ In a report for the Windsor-Essex County Health Unit, internationally recognized health physicist James Repace wrote that “only the smoke-free option protects both patrons and staff.” The U.S. Environmental Protection Agency stated “research indicates that total removal of tobacco smoke through ventilation is both technically and economically impractical.”²²

In Canada and the United States the standard-setting organization for indoor air quality is The American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE).²⁴ They had a set standard for ventilation of buildings which allowed smoking based on comfort level, not health effects, until 1999, but now have concluded that no ventilation technology currently exists to effectively reduce tobacco smoke to levels that would provide adequate public health protection.⁵ Therefore, they do not currently provide ventilation standard for air which contains tobacco smoke.

Separately ventilated and completely enclosed designated smoking rooms (DSRs) do not protect workers or patrons from second-hand smoke either. Individuals in a DSR increase the health risks associated with ETS exposure by confining themselves to a smaller area where the concentration of chemicals and carcinogens is greater. DSRs are expensive to build and maintain. DSR's would need to be inspected regularly. It should be noted that while federally regulated workplaces allow for separately ventilated smoking rooms, Treasury Board policy was not to provide them given the costs associated with construction. The construction of a DSR, which is separately and negatively ventilated to the outside-large and small-requires a complex set-up.

Physical separation of smokers and non-smokers within the same airspace may reduce, but will not eliminate, the exposure of non-smokers to second-hand smoke. There is no national, state or provincial agency which has specified either a safe level of exposure to second-hand smoke, or a ventilation technology which is capable of creating smoke-free air where smoking is permitted indoors. There are many reasons why ventilation is ineffective. First, second-hand smoke contains both invisible gases (like carbon monoxide) and fine particles. Some ventilation systems can remove some of the fine particles, but not the gases. Second, there are literally thousands of different hospitality premise designs (differing numbers of rooms, doors, floors, partitions, furniture arrangements), and the movement of staff and the number of smokers varies constantly. These variables ensure that an already ineffective technology becomes even less effective in many premises.

Enforcement

Enforcement is key to the successful implementation of a smoke-free by-law. Several issues will facilitate the enforcement of the by-law. For example, ensuring that the duties of the proprietor are clearly stated. Secondly, implementing a period of education and warning prior to starting enforcement. Thirdly, a by-law that provides no exemptions for various establishments makes it easier to enforce and puts all establishments on a level playing field. Fourth, the first six months of enforcement are crucial. The Health Unit is committed to enforcing a **100% smoke-free by-law** in Belleville, Quinte West and Prince Edward County. We are confident that with the co-operation of the municipalities we will be successful in enforcing the smoke-free by-law.

Experience in other municipalities has shown that the vast majority of people who smoke observe the requirements of smoke-free by-laws. It should also be noted that, in order for a proprietor to maintain his or her liquor license in good standing, the provincial liquor license regulations require that proprietors observe all the conditions of local by-laws. The risk is too great that their license will not be renewed in the future if a proprietor ignores a smoke-free by-law. Liquor license enforcement personnel can be informed of instances where proprietors refuse to observe the conditions of a smoke-free by-law.

Freedom of Choice

The use of a substance that produces a health hazard is not an issue about rights or freedom of choice, but it is a health issue. Non-smokers should be protected from the harmful effects of second-hand smoke. Smoking does not fall into any of the human rights categories in the Charter of Rights and Freedoms of race, religion, gender, sexual orientation, age and physical disability. It is not about choice, it is about involuntarily being forced to smoke because one works or goes to a venue where there is smoking. Smoke-free by-laws ensure children, pregnant women, restaurant and bar workers, seniors and individuals with lung and heart problems can breathe smoke-free air in public places. Focus on this public health issue is not about taking away the rights of smokers to smoke a legal product, but to give non-smokers a cleaner, healthier indoor air. There is no safe level of exposure to second-hand smoke.⁵

Respectfully submitted,

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