

Comments on the Proposed Changes to Ontario Regulation
48/06 re: *Smoke-Free Ontario Act*
Middlesex-London Health Unit

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Date: Wednesday August 26th, 2015

To: Martha Greenburg
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The following comments are from the Middlesex-London Health Unit concerning the proposed amendments to Regulation 48/06 under the *Smoke-Free Ontario Act*. Our comments are based on the summary information posted in the absence of actual regulatory language.

Re: Definitions

We would recommend that all terms that provide authority and/or that may be used for compliance and enforcement are defined in the regulations to provide clarity.

Comments Related to “Flavouring Agent” and Exemptions

Define “**flavouring agent**” in such a way that the prohibition of flavoured tobacco products applies to “a tobacco product that has a flavour or aroma other than that of tobacco”. Tobacco products should only taste like tobacco; any flavours or additives like wine, rum, whiskey, cherry, vanilla or any other flavour should not be permitted and the Regulations need to take a comprehensive and prohibitive approach, like the approach embodied in Quebec’s Bill 44, *An Act to Bolster Tobacco Control*. Use of the word “distinguishing”, as outlined in the summary comments posted, may infer that only characterizing candy, fruit or other such flavours are to be prohibited from sale, creating a loophole for the tobacco industry to create and package tobacco products like “crisp blend” and “rich blend”, that tell users that these products are not simply products with a basic tobacco taste. The prohibition of flavoured products needs to apply to “all tobacco products that have a flavour or aroma other than that of tobacco”.

The menthol ban exemption should be revoked in January 2016, and menthol should be captured within the definition used for “flavouring agent” as described above. The menthol ban should come into effect at the same time as the ban on other flavours and additives. The most recent Youth Smoking Survey results indicate that of the Ontario youth who use a flavoured tobacco product, approximately 19,400 use menthol products.

Remove the exemption for cigarettes that contain only a flavouring agent that imparts a flavour or aroma of “clove”, and “clove” should be captured within the definition used for “flavouring agent”, and the prohibition of sale should come into effect January 2016.

Remove the exemption for all flavoured pipe tobacco products from the prohibition on the sale of flavoured tobacco products. New Brunswick took a comprehensive and progressive approach to the ban on the sale of flavoured tobacco products. If the Smoke-Free Ontario strategy is committed to comprehensive tobacco control and intends to be successful in preventing initiation of tobacco use, regardless of age, and promoting cessation attempts by those currently using tobacco, a comprehensive flavour ban on all forms of tobacco products – cigarettes, cigars, pipes, cigarillos and smokeless - is required. Tobacco products should taste like tobacco, and not contain additives or flavourings that mask the taste and aroma of tobacco with wine, port, rum or whiskey flavours.

Remove the exemption from the flavour ban for cigars. The language proposed for the exclusion of cigars from the prohibition on the sale of flavoured tobacco is reminiscent of language that was enacted for the flavour ban on cigarillos in 2010. The challenges that Health Units faced with enforcement, the increased cost of enforcement, and the readiness of the tobacco industry to circumvent the legislation through the manufacturing and distribution of slightly larger, unfiltered “little cigars” provides a prophetic view of the future potential enforcement challenges that Health Units will face if the cigar exemption, as proposed, goes forward. The industry already has 6g+ cigars flavoured with grape and chocolate available for sale. A comprehensive ban on the sale of all flavoured tobacco products would be more cost effective to implement and enforce across the province, with greater likelihood of consistent application of the legislation and lesser likelihood that the tobacco industry will counter the health protective measures that the proposed flavour ban regulations intend to provide.

Flavouring agent and tobacco products should be defined by way of Regulation that prohibits the sale of flavoured hookah or shisha products.

The Middlesex-London Health Unit recommends that Ontario prohibit the use of all flavours and additives for all forms of tobacco products, including hookah/shisha products so that products that contain tobacco taste only like tobacco, without any other aroma, flavour or taste.

Comments Related to the Prohibition of Use of Hookah/Shisha

The Middlesex-London Health Unit strongly recommends that a province-wide prohibition on the use of hookah/shisha waterpipe smoking wherever smoking is banned under the *Smoke-Free Ontario Act*

be considered. This opportunity was adopted by New Brunswick (effective July 1, 2015), Nova Scotia (effective May 31, 2015) and Prince Edward Island (introduced June 9, 2015).

Comments Related to “Owner” and Automatic Prohibitions

“**Owner**” is the terminology used in the legislation under Section 16, and “**owner**” or “**occupier of a place**” is used in the draft regulation summary under the section titled “**Automatic Prohibition Signs**”. Within the regulation, both “owner” and “occupier of a place” should be clearly defined or clarified to limit the number of challenges that Health Units and the Ministry of Health and Long-Term Care face when issuing Automatic Prohibition orders. Those who are selling tobacco products within a place that contravenes the legislation should be held accountable for their actions. In addition, those tobacco retailers that routinely contravene the legislation should be held accountable for their actions, regardless of the location of those offences. Owners of a tobacco retail establishment with multiple registered convictions should not be allowed to circumvent Section 16 of the legislation through relocation to a different address.

The Middlesex-London Health Unit recommends that Ontario enact firm language regarding vendor compliance histories, ownership and those who own, occupy or operate the place where tobacco is sold to prevent tobacco retailers from circumventing obligations and consequences under the Act.

Comments Related to Hospital and Provincial Government Buildings

In principle, the Middlesex-London Health Unit supports the Ministry’s intention to prohibit smoking on outdoor grounds of public hospitals, private hospitals and psychiatric facilities in Ontario. Within Middlesex-London, St. Joseph’s Healthcare (SJHC) has already enacted their own 100% smoke-free grounds policy and London Health Sciences Centre (LHSC) has already enacted their own policy which limits smoking to outdoor designated areas, however, both have had mixed success.

In both cases, there is not enough hospital administration and senior leader oversight reinforcing the smoke-free provisions. Despite their policies that extend protections beyond the current provisions of the *Smoke-Free Ontario Act*, smoking within 9 metres of the entrance ways still occurs on a fairly routine basis and the amount of enforcement and surveillance required to bring the hospital grounds into compliance with the *Smoke-Free Ontario Act* exceeds the Health Unit’s enforcement capacity. The smoke-free policies enacted by the hospitals do not have adequate enforcement supports built into the implementation plan. If the province prohibits smoking on hospital grounds, or permits designated smoking areas on hospital grounds as a phased approach to smoke-free, several conditions must be met:

- Provincial leadership is required to work with and promote any new smoking restrictions with hospital administrations across the province. Hospital administration must be directed by the Ministry of Health and Long-Term Care to properly oversee management of either the designated smoking areas or the 100% smoke-free grounds provisions, with accountability agreements, hospital accreditation, and funding model structures tied to hospital administration’s obligations to

ensure compliance with the smoke-free provisions.

- The Ministry must convey to Ontario's hospitals that the implementation of a hospital-wide, evidence-based smoking cessation program is mandatory and part of the hospital's provision of healthcare services.
- Non-compliance on the part of hospital staff must be handled internally and swiftly by hospital administration through discipline and codes of conduct policies.
- The designated areas need to be prescribed by Regulation. The current provisions that are prescribed by regulation for the establishment of controlled smoking areas would provide an excellent model, and if the designated smoking areas do not meet the prescribed Regulations, then the hospital would be subject to a charge under the law. Specifically, designated smoking areas on hospital property should:
 - Be set up far enough away from any point in which second-hand smoke can enter the hospital either through doorways, windows or air intake valves.
 - Any approved DSA should only have a roof and no more than 2 walls, and should not be adjacent to an area where food or drink is served, sold or offered for consumption.
 - The number of designated areas should be limited to one.
 - Any designated smoking area must have extensive health warning and smoking cessation support signage.
 - The use of designated smoking areas should be limited to patients only; use of the designated area by staff and visitors should be a chargeable offence.
 - A detailed enforcement protocol should be submitted to the Ministry including the provision of training to hospital security staff and appropriate security staffing levels to support compliance.

If you wish to discuss further any of the considerations provided, please do not hesitate to contact us.



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