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**Official Report
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(Hansard)**

Thursday 5 May 2005

**Journal
des débats
(Hansard)**

Jeudi 5 mai 2005

**Standing committee on
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Chair: Pat Hoy
Clerk: Trevor Day

Président : Pat Hoy
Greffier : Trevor Day

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS**

**COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES**

Thursday 5 May 2005

Jeudi 5 mai 2005

The committee met at 1002 in room 151.

**TOBACCO CONTROL STATUTE LAW
AMENDMENT ACT, 2005**

**LOI DE 2005 MODIFIANT DES LOIS
EN CE QUI A TRAIT
À LA RÉGLEMENTATION
DE L'USAGE DU TABAC**

Consideration of Bill 164, An Act to rename and amend the Tobacco Control Act, 1994, repeal the Smoking in the Workplace Act and make complementary amendments to other Acts / Projet de loi 164, Loi visant à modifier le titre et la teneur de la Loi de 1994 sur la réglementation de l'usage du tabac, à abroger la Loi limitant l'usage du tabac dans les lieux de travail et à apporter des modifications complémentaires à d'autres lois.

The Chair (Mr. Pat Hoy): The standing committee on finance and economic affairs will please come to order. We're gathered here this morning for clause-by-clause consideration of Bill 164. Are there any comments, questions or amendments—

Mr. Toby Barrett (Haldimand-Norfolk-Brant): On a point of order, Chair: I just want to draw to the attention of committee members, and members will know this, that 225 various associations and individuals applied to testify before the finance committee. I'm not referring to the content of their testimony or the bill itself, but the fact that only 88 people were allowed to testify. Many people have expressed disappointment to me with respect to the lack of consultation not only by the standing committee but by the government itself with various stakeholders.

Even House leader Dwight Duncan is quoted in the Windsor Star about his request to have casinos and bingos and other associations in the Windsor area testify, saying it's quite unusual of his request or application. His request was also mirrored by Minister Sandra Pupatello. It was indicated in the Windsor Star that they would be approaching you, Chair, to ask for, as I understand it, one delegation from the Windsor area.

The reason for that is I'm hearing from people that the Smoke-Free Ontario Act, if it is passed as is, will impact many people and businesses that did not have an opportunity to testify before these hearings. I would

indicate that 137 associations and individuals were not able to testify or were not allowed to testify, if you will. We know they are resorting to other measures to try and get the ear of government. Just yesterday morning, the Ontario Korean Businessmen's Association, the Ontario Convenience Stores Association—

Mr. John Wilkinson (Perth-Middlesex): Point of order.

Mr. Barrett: Can a point of order interrupt a point of order? I guess it can.

The Chair: Mr. Barrett has the floor.

Mr. Barrett: Thank you, Chair. Both of these associations feel they have not been consulted. I guess the concern is, I know a motion was tabled in Tillsonburg for more hearings. That motion was defeated by the Liberals, but subsequent to that we heard that House leader Dwight Duncan and Minister Sandra Pupatello have—

The Chair: If you could come to your point of order.

Mr. Barrett: I guess my point of order is, if I can just use one example perhaps, the London Korean Businessmen's Association sent me a piece of information that they were not allowed to present in Tillsonburg. I know there were five or six members at the Tillsonburg hearings. I had a chance to speak with them. I could present what they wanted to present, if that was in order. I suspect members of the committee may have actually received this particular fax from the London Korean Businessmen's Association, in addition to perhaps 100 or maybe 200 other faxes from the Korean businessmen—

The Chair: Mr. Barrett, we're in clause-by-clause now, and this is not a point of order.

Other comments or amendments? We're ready to begin.

There are no amendments to section 1. Shall section 1 carry? All in favour? Opposed? Carried.

There are no amendments to section 2. Any debate? Shall section 2 carry? All in favour? Opposed? Carried.

Are there any amendments to section 3? Ms. Martel.

Ms. Shelley Martel (Nickel Belt): I move that the definition of "enclosed public place" in section 1 of the Tobacco Control Act, 1994, as set out in subsection 3(1) of the bill, be struck out and the following substituted:

"'enclosed public place' means any place, building or structure or vehicle or conveyance or a part of any of them,

"(a) that is covered by a roof of any kind, and

“(b) to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry; (‘lieu public clos’).”

The purpose of the change in the definition, and it is a small one, is to add at the end of (a) “of any kind.” That is to make it very clear that people who are trying to put up tarps, hard plastic or something else in order to essentially enclose a space perhaps in winter to allow perhaps smokers on a patio, that that kind of thing is not going to be permitted. That would be considered an enclosed public space where smoking would not be permitted. So it’s to try to make it clear that what we are trying to do is catch those enterprising folks who have roofs of various kinds, shapes and sizes, particularly in winter months, to allow people to smoke outside.

1010

The Chair: Further debate?

Mr. Peter Fonseca (Mississauga East): The ministry has looked at several options for the wording of this provision, and has found that it would prefer to use existing regulatory authorities to deal with enclosed public places.

Mr. Barrett: Coming from Ms. Martel, I’m assuming this relates to a worker issue.

Ms. Martel: The next one does.

Mr. Barrett: OK. Further to that, the Workers’ Compensation Board in British Columbia—we know that in the British Columbia case it came up in testimony that there were other ways of doing this. A compromise was reached initially in 2000. The Workers’ Compensation Board implemented a regulation that essentially banned smoking in any kind of—either indoor or outdoor, but over the course of time, the Workers’ Compensation Board and the hospitality industry were able to sit down in the province of British Columbia and hammer out a solution that was amenable to all.

Ms. Martel: Just on the point raised by the parliamentary assistant, I’m looking at government motion 33, which provides for the regulatory power to deal with the definition of “enclosed public space,” but I note that it talks about defining “inside,” and then part (b) talks about “prescribed places.” I’m assuming that means “sites.”

I’m wondering how the government intends to cover the issue of suspicious roofs that start to form a workplace where people should be protected from second-hand smoke. I can understand trying to sort out what is inside; I’m not sure that also deals with my concern about how a roof is used to create a space where people can smoke and then put a worker at risk.

Mr. Fonseca: We fully support the intent of Ms. Martel’s motion. I’ll bring up legal counsel to bring forward why we would be doing this through existing regulatory authorities. We feel it would be the best way to go.

Ms. Donna Glassman: Do you just want me to deal with this—

Mr. Fonseca: Yes—why we would do it through regulatory authority.

Ms. Martel: Even further to that, if I might, as you do it through the regulation, what is the provision to deal with issues around that kind of structure? You’ve got it in the legislation that you’re going to define “inside” or that you’re going to define “prescribed place,” but I assume “place” to mean a site.

Ms. Glassman: It can be more broad than—

The Chair: If you would please identify yourself for the purposes of Hansard, then you can begin.

Ms. Glassman: I’m Donna Glassman, legal counsel for the Ministry of Health and Long-Term Care.

There are a few places in the bill that would allow you to further define what either an enclosed workplace or an enclosed public place is—the reg-making powers that we’ve added—but also, recognize that it’s difficult. There are some places that might not fall into those specific definitions. I would point out that subsection 9(2) of the bill talks about that, but the general prohibition on smoking in enclosed public places and enclosed workplaces is in 9(1). Subsection 9(2) provides other prohibitions. That’s where you find the school, the private school and the common areas.

Number 7 of that section is “a prescribed place or area.” If you use this section plus the other two motions that are put forward to further define what is meant by “enclosed public place” or “enclosed workplace,” it’s going to cover—you already have the options in there to cover a roof or other places that might not be a roof, and then also to get to what the meaning of “inside” is. Right now, the bill is dealing with indoor places. It’s not dealing with a complete open patio, but if it’s covered with a roof, it could. There’s also the ability in 9(2)7 to deal with other prescribed places.

The Chair: Further debate? Hearing none, all in favour? Opposed? The motion is lost.

An NDP motion; Ms. Martel.

Ms. Martel: Mr. Chair, the second amendment was moved to define “workplace,” essentially to capture the same concern—that is, a space becoming closed and then affecting a worker who would be subjected to second-hand smoke. I see the government has a motion 34, which also provides for the definition of “enclosed workplace” by further looking at defining “inside” and prescribing places to be enclosed workplaces, so—

The Chair: Ms. Martel, could you read the motion into the record. We need to have that done for—

Ms. Martel: What I was going to say, Chair, is that, given what the government is doing, I would withdraw the motion. Based on what legal counsel has just told me and amendment 34, I trust that my concerns are going to be dealt with.

The Chair: OK, thank you.

Government motion; Mr. Fonseca.

Mr. Fonseca: In subsection 3(2) of the bill, subsection 1(2) of the Smoke-Free Ontario Act, I move that paragraphs 1 and 2 of subsection 1(2) of the Smoke-Free Ontario Act, as set out in subsection 3(2) of the bill—are we not here? I’m sorry, I don’t have—

The Chair: The packages are numbered. I'm looking at page 3.

Mr. Fonseca: Oh, you withdrew number 2. OK. I correct that, Mr. Chair.

In subsection 3(1) of the bill, section 1 of the Smoke-Free Ontario Act, I move that the definitions of "enclosed public place" and "enclosed workplace" in section 1 of the Smoke-Free Ontario Act, as set out in subsection 3(1) of the bill, be struck out and the following substituted:

"enclosed public place" means,

"(a) the inside of any place, building or structure or vehicle or conveyance or a part of any of them,

"(i) that is covered by a roof, and

"(ii) to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or

"(b) a prescribed place; ('lieu public clos')

"enclosed workplace" means,

"(a) the inside of any place, building or structure or vehicle or conveyance or a part of any of them,

"(i) that is covered by a roof,

"(ii) that employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time, and

"(iii) that is not primarily a private dwelling, or

"(b) a prescribed place; ('lieu de travail clos')."

The Chair: Any debate?

Mr. Barrett: Again, I just wanted to indicate that a lot of this was worked out in British Columbia, where the government, the hospitality industry and employees, through their Workers' Compensation Board, sat down and hammered out a solution, if you will, that was amenable to all. It was satisfactory for smokers, non-smokers, employees and other staff of these various facilities and the owners, the proprietors of these facilities.

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried.

NDP motion; Ms. Martel.

Ms. Martel: I move that section 1 of the Tobacco Control Act, 1994, as amended by subsection 3(1) of the bill, be amended by adding the following definition:

"place of entertainment" means a place to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, and which is primarily devoted to eating, drinking or any form of amusement; ('lieu de divertissement')."

This is not a significant change, but what it's doing is putting the definitions all in one place. As the bill is currently structured, on page 3 under subsection 3.2(2), we have a definition of "place of entertainment." The amendment puts that definition into the definitions section at the front of the bill and makes it clear that in other places where we talk about entertainment—and there are amendments that follow—we're using the same definition, because at one point in the bill we have a different definition. We talk about an entertainment venue elsewhere.

1020

So the point is to have it as a definition. The definition I used is the same as appears in subsection 3.2(2), but it puts it at the top with the rest of the definitions. There are subsequent amendments to ensure that every time we talk about entertainment, we're talking about a place of entertainment as it appears in the definition that I'm proposing and that the government is using in other sections.

The Chair: Further debate? Hearing none, all in favour? Opposed? The motion is lost.

Mr. Fonseca: I move that paragraphs 1 and 2 of subsection 1(2) of the Smoke-Free Ontario Act, as set out in subsection 3(2) of the bill, be struck out and the following substituted:

"1. Private self-contained living quarters in any multi-unit building or facility."

The Chair: Any debate?

Ms. Martel: I have a question, Chair. I apologize to legislative counsel that I'm not clearly understanding what this is a reference to and the implication. Does this have to do with section 1 of the act right now, where it references private dwellings?

Ms. Glassman: Yes.

Ms. Martel: OK. So you're striking out essentially where it says "Private dwelling ... For greater certainty, and without restricting..."?

Ms. Glassman: We're keeping that part in.

The Chair: Excuse me, which legislative counsel did you want? Is this what you were seeking?

Ms. Martel: Yes. Fine; sorry about that.

Ms. Glassman: We're keeping it in for greater certainty, but instead of specifically discussing retirement homes and supportive housing, we're simply clarifying that it's a private self-contained living quarter, which would be an apartment, in a multi-unit building or facility.

To clarify why we put it in there to begin with, we wanted to be clear that an enclosed workplace would not include a place that is primarily a private dwelling. We recognized that in dealing with some types of housing, supportive housing or retirement homes, you have a spectrum of what's offered and people who are living in them. You have some retirement homes where people are living in their own individual apartments; you have some where there's quite high care and they're in a room that will have a bathroom, but it's not a self-contained unit. The same with supportive housing. Older supportive housing might be people living in a house and they have a room, but they're not living in their own individual apartments.

When we envisaged having controlled smoking areas in some types of residential care facilities, the idea was that for people who require more care—you wouldn't want them smoking in their own room, but an operator may choose to put in a controlled smoking area within the establishment.

I think the problem that we got into here is that it's not really up to an operator to designate. There are clearly residential care settings where people are in their own

apartments and they should be treated the same as an apartment building, and that's why we changed that definition. But we still leave in any other prescribed place in case there is difficulty interpreting what the intent is.

Ms. Martel: Is it also covered, then, as you take out retirement homes and supportive housing, on page 5 of the bill, where you talk about exemptions for residential care facilities?

Ms. Glassman: We still have in subsection 9(7) that they can create a controlled smoking area. We're simply clarifying that where you have self-contained living quarters, the private apartment itself is not an enclosed workplace.

Ms. Martel: OK.

The Chair: Further debate? All in favour? Those opposed? The motion is carried.

Shall section 3, as amended, carry? All in favour? Opposed? Carried.

PC motion number 6 is out of order.

Mr. Barrett: On a point of order, Mr. Chair: I'd like to have an explanation why compensation will not be discussed in the finance committee.

The Chair: The following motion, as mentioned, is out of order under standing order 56: "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown." PC motion number 6 is out of order, as stated.

PC motion number 7 is out of order.

Mr. Barrett: On a point of order, Mr. Chair: Why would the charities not get a chance to discuss compensation?

The Chair: This motion is out of order for the same reason as PC motion number 6, under standing order 56.

Mr. Wilkinson: On a point of order, Mr. Chair: Did we not approve section 3 just a minute ago? So this is a moot point.

The Chair: We're at section 3.1.

PC motion number 8 is also out of order.

Mr. Barrett: On a point of order, Mr. Chair: Do I need to raise it as a point of order?

The Chair: It's the same, under standing order 56.

Mr. Barrett: I do point out that the hospitality industry identified a \$1-billion cost—

The Chair: That's not a point of order.

The page 9 PC motion is out of order under standing order 56.

Mr. Barrett: On a point of order, Mr. Chair: Again, I just feel it incumbent to point out that police resources are required in addition to what we have now.

The Chair: The motion is out of order under standing order 56.

Number 10 PC motion is out of order under standing order 56.

Mr. Barrett: Here again, the reason for that is that 30% of the stores are going to go bankrupt.

The Chair: That's not a point of order, Mr. Barrett.

PC motion number 11 is out of order under standing order 56.

Mr. Barrett: I give the same reason as for my last motion—

The Chair: That's not a point of order.

There are no amendments to section 4. Shall section 4 carry? All in favour? Opposed? Carried.

Section 5, an NDP motion.

Ms. Martel: I move that clause 3.1(1)(a) of the Tobacco Control Act, 1994, as set out in section 5 of the bill, be struck out and the following substituted:

"(a) display or permit the display of tobacco products in a retail store by means of a countertop or wall display."

The top part of that should be,

"No person shall,

"(a) display or permit the display of tobacco products in a retail store by means of a countertop or wall display."

I'd like to make some comments on this section. Let me make a couple of points here. I make these in light of the fact that I understand that the government, through this package, will bring forward an amendment that will essentially ban what we call power wall displays, but not until 2008.

Interjection.

Ms. Martel: No, the power wall displays.

Mr. Wilkinson: In 2006.

Ms. Martel: In 2008, right? If you go—

Interjection.

The Chair: Order, please. Ms. Martel has the floor.

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Ms. Martel: A couple of things need to be said in this regard. If I go back to the Liberal election document, specifically the health care document, it says very clearly, under "Tougher controls," "We will ban countertop and behind-the-counter retail displays of tobacco products."

I don't think that when people read that commitment they thought it meant that a portion of that would not be done until 2008. I think that most people assumed that when the government brought forward its anti-smoking legislation, it would deal with both the countertop and behind-the-counter retail displays at the same time and have the same date by which those would have to be banned. I think 2008 is far too long to deal with an issue that was a very serious matter that was raised by this committee during the public hearings.

At the time that the minister brought forward the bill, he was asked the question about the Liberal election promise and about the behind-the-counter display in particular and why it wasn't included in Bill 164. He said, at the time, that this was because there was a court case that was still under way in Manitoba, a challenge to the Saskatchewan government at the time, and so it wasn't going to appear in the Ontario law until there was some sense of what the outcome was. He also said, at the time, that if there was going to be some provision, depending on the outcome of the Saskatchewan case, it could be

covered off at the time that we knew the decision had been made.

After the Saskatchewan case became clear and the government won, this minister was asked what he was going to do about the Liberal promise to ban behind-the-counter displays. He said he would wait for the course of the public hearings, let people have their say, and take into account what was heard.

All of us know that, during the course of the public hearings, so many groups came forward to say that the government had to do this and the government needed to do it at the same time as they got rid of the countertop displays.

There was overwhelming evidence that was presented by a number of groups showing that tobacco companies do look at this final point of sale as a most powerful way to advertise their product. In fact, it is a very powerful advertising tool, especially for people coming in at the last minute, impulse-purchasing, grabbing a pack of cigarettes as they grab milk and grab other things. We heard that tobacco companies have looked at the research on this and made it very clear that they understand that this does happen. That's why they're spending \$88 million advertising in retail stores right now, a lot of that going to the big displays, which are bright and colourful and really do attract attention, particularly of young people. The research makes it very clear that that is happening and that if we're going to deal with helping young people not to make the choice to start smoking, we need to deal with not only the countertop displays; we need to deal with all forms of advertising that are behind the counter as well.

We saw most powerfully, in the words of the young people who were before us—to a person, every single young person, every single group of young people who came to this committee said that if the government really wanted to help them to make a decision not to smoke, then the government should get rid of the advertising of big tobacco that they see every time they go into a convenience store. We heard it again and again from the young people, who said, "If you really want to make sure that we don't start smoking, that we're not addicted and that we're not some of the statistics for cancer 25 years from now, then get rid of that advertising because, so many of us, so many of our friends are thinking about smoking, trying to make choices about whether or not we should, and we are so captivated by the advertising that's going on on the countertop and behind the cash register that we decide to make that choice, we buy a pack and it goes from there."

We heard the same from people who had quit. They're trying to stay as non-smokers but they go in, see all that advertising, say, "I'll just buy one pack," and there they go again as well. That's very clear why big tobacco is spending so much money in this regard.

We suggested during the hearings—and I know my colleague Mr. Kormos suggested yesterday—in response to concerns from convenience stores, that the government could do a couple of things. The government could look

at significantly increasing commissions from the sale of lottery tickets in some of these retail stores to help cover some of the loss that will come for some of these stores when they lose the advertising money they get from big tobacco. I know my colleague Mr. Kormos suggested strongly yesterday, and I'll repeat this today, that the government should use some of the money that it gets from taxes on cigarettes and put it into healthy promotion of lifestyle choices in some of these retail outlets to replace the advertising that's going on with big tobacco.

In the last two tax increases alone—and I'm not even talking about the one that went into effect January 18—in the two tax increases that went on before that, in the last year or 18 months, the government has brought in \$220 million of new revenue. I'm not sure how much the government is bringing in with the most recent tax that went into effect about January 18, but we're well over \$220 million. You could use a portion of that and replace the entire amount of money that big tobacco is now spending advertising in retail and convenience stores, which is about \$88 million. From my perspective, that would be a really good way to use that money to make sure that money that's coming from the sale of cigarettes is going back into those places where they're sold with positive advertising to ensure that young people don't start to smoke and that we're sending them good health messages with respect to a broad range of health initiatives: nutrition, fitness etc. That's another source of money.

We do know, because we heard it in testimony about what happened in Saskatchewan, that, once big tobacco was out of the way in terms of taking up a lot of space in retail stores through advertising, there were producers of other manufactured goods, other products, who were very happy to pay to have some of that prime advertising space behind the counter, on the countertop etc.

I think there are lots of opportunities that are open to us to get big tobacco money out of advertising in retail and convenience stores and be able to replace some of that, for a portion of time, to make sure that a whole bunch of retailers don't go down. I don't want to see that and I know the government doesn't want to see that. I've tried to put forward some options and suggestions that could avoid that happening.

Finally, we look at other provinces that have already done this. After a very significant, serious and fierce court challenge, Saskatchewan was successful. Manitoba has done the same thing, Nunavut has done the same thing, and Ontario should do the same thing by 2006. We should have a total ban of tobacco advertising out of all retail outlets and convenience stores by the May 31, 2006, deadline.

I just say this to the government: Think about what we heard during the course of the hearings. We heard some really powerful, overwhelming presentations from young people. I spent some time asking young people what it was about power walls and advertising that attracted them, because I've got to tell you that I, for one, go into a grocery store or convenience store and I don't think

about that. I don't see that; it doesn't influence me in the least. But we heard very powerful testimony that for young people this is a very powerful tool in terms of influencing them to smoke.

One of the studies that we were given information on during the course of the hearings demonstrates that very clearly. We heard it anecdotally but we heard it very clearly in research that was done in California: 2,000 students between grades 7 and 9 who were surveyed, who were frequently in convenience stores. If you take other factors into account in terms of other places where they might see tobacco advertising, the mere fact that they were in convenience stores frequently meant that over 50% of them made a decision to start smoking. I suspect that those numbers would be the same here. I suspect that the influence and the allure and the decision-making would be replicated day in, day out in Ontario.

We're going to have thousands and thousands of new young people start smoking in the next number of years. The government had what I thought was a realistic choice with respect to the banning of countertop. May 2006 gave people time to make adjustments. I'm arguing that we should do the whole nine yards and we should also do it by May 2006. The government should look at some other mechanisms around revenue that I've suggested to help some of those small retailers so they don't collapse entirely. But we cannot afford to have thousands and thousands of new young people start to smoke between 2006 and 2008. We cannot afford that. They will be the statistics 25 years from now. The \$1.7-billion or \$1.9-billion cost that we're already looking at, that you as the government use for statistics, the 16,000 deaths associated with smoking, are going to be that much higher.

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If you really mean what you said, which was that part of the goal of this bill is to stop young people from starting to smoke, then do the right thing now. Let's get it all done with respect to the banning of all advertising by big tobacco in retail outlets, and let's do it by the 2006 deadline.

Mr. Fonseca: Ms. Martel, you've made some great points in regard to how this industry looks for different creative and innovative ways of using that space, and we would hope that they would use it for things like health promotion and promoting good, healthy products.

When we listened to all the presenters, from the youth who presented to public health units to the convenience stores, we wanted to make sure that we did this in an orderly way when we looked at power walls, and we actually looked at the definition of a power wall. The power wall was really around the advertising and promotion around the cigarette products, around the display. Those power walls, in all ways, shapes, forms and sizes that are out there, will be banned May 31, 2006. Having done this in a fair and balanced way with the convenience stores, we will not be allowing for any displays. By May 31, 2008, all displays will be out of sight.

This piece of this legislation will go beyond what anybody else in Canada has done. In Saskatchewan, they

do not allow for the displays in any venues that are open to those aged 18 or under, although they do allow for those visual displays to be seen anywhere where somebody is aged 19 or over. So this piece of legislation would not allow for that. Come May 31, 2008, you would not see any tobacco products on any shelf that is visible.

Ms. Martel: I listened to the parliamentary assistant say that no displays will be tolerated, that power walls will be banned, and I look at the government motion that's coming up, number 16, and see under the section that talks about cigarettes that,

"No person shall display or permit the display of cigarettes in any place where cigarettes are sold or offered for sale unless the cigarettes are displayed in the following manner:

"1. Only individual cigarette packages are displayed."

Where are they going to be displayed so that they would be out of sight and out of mind for the young people we're trying to help make a decision not to smoke? This is the government amendment. Where do you anticipate that these individual cigarette packages are going to be displayed, and why wouldn't the display of that have a similar influence on young people making a decision not to smoke? I thought the point of the exercise was to, if I look, "ban countertop and behind-the-counter retail displays of tobacco," which I thought meant getting them all out of sight and out of mind to reduce entirely a situation where they were in people's face?

Mr. Fonseca: As I mentioned earlier in regard to the power walls and the advertising and promotion, that will all be phased out May 31, 2006, so those illuminated walls, those big—I'm not going to name the brands, but the different brands that are displayed with various colours, etc., all around the display will be banned. What will not be banned May 31, 2006, will be the holder or wherever the individual cigarette packages are put, and those will also be banned in terms of not being visible to the consumer May 31, 2008.

Mr. Barrett: Under this NDP motion, as we know, the original legislation does not use the phrase "power wall." The parliamentary assistant talks about power walls, and you gave a bit of a definition. I guess my question on this legislation is: We have a definition for "enclosed public place," for example, or "enclosed workplace." Do we require a definition for the retail wall display area in a store to understand what we're talking about here? You made mention of cigarettes; I'm wondering about chewing tobacco.

Mr. Fonseca: In amendment 16, it's described very clearly what we mean by power walls.

Ms. Martel: I want to return to the line of questioning about the individual cigarette packages being displayed. Can I ask the parliamentary assistant: Where are you going to allow retailers to display individual cigarette packages? Where will they be located in the store?

Mr. Fonseca: I'll refer to legal, but my understanding is that they will be allowed to be displayed anywhere in the store, although no tobacco product will be able to be handled by the consumer till after purchase.

Ms. Glassman: There's no restriction on where the cigarette packages will be displayed. Theoretically, for a store owner who has cigarette packages behind the counter, which is what we heard in most of the presentations, I assume the cigarettes would stay there on the shelves.

Ms. Martel: So: 250 packs right behind me, and I've got the cash here. Maybe there are no lights. What's the difference? Somebody tell me what the difference is. We take down the lights, for those stores that have them, but we heard from the president of the Korean Businessmen's Association that he's got 250 packs in his store. If I look at this, what stops him from continuing to display the 250 packs right behind him on the counter so that anybody who comes to purchase sees that, in all its glory, right behind him at the counter?

Mr. Fonseca: What would happen is that a large portion of the display would come down that is really an advertising display today. What we're looking at is a transitional period where we'd hope, especially through some of the creative ways that Ms. Martel brought up, that the industry would look at using that space for more preventive and proactive means for the community.

Ms. Martel: What industry?

Mr. Fonseca: The convenience store industry, or anybody selling—

Ms. Martel: We hope that's going to happen, but—

Mr. Fonseca: It's to give them time, Ms. Martel. They would have at least enough time to look at changing their business model and addressing their needs. As we listened to them, they know this is coming; they just want enough time to be able to absorb the change to their business.

Ms. Martel: I've put some suggestions on the table about how I think the government could help them in that regard, and I'm serious about those suggestions. I seriously think that the government should look at the commissions that go to some of these convenience stores right now on the sale of lottery tickets and see what can be done, and I seriously think the government should look at using some of its own money that it takes in from the tax on cigarettes, which is quite significant, and step up to the plate and have health-promotion advertising in some of these stores. I'm quite certain that other folks who produce things will also step up to the plate, but I think there's a role for government if what you're trying to do is stop young people from smoking.

For the life of me—and I'm trying very hard to see how this is going to work—I don't see in your motion any kind of regulation about the number of individual cigarette packages that can be displayed. As I look at that, I have to say to myself that the president of the Korean Businessmen's Association, who has 250 packs now, can continue to have 250 packs. I'm not sure how much he can minimize his display, with that number of cigarette packages. They'll still be there. They'll probably be where they are right now, and the only thing that might be missing would be the bright lights for whoever

has bright lights, and bells and whistles for whoever has those.

I'm having a really hard time seeing what the significant difference is. In fairness, what is the difference here between what we're seeing now, which is advertising in a power wall, and the opportunity for that same individual to still display 250 packs behind the wall?

1050

The Chair: Further debate?

Mr. Fonseca: I want to address Ms. Martel's wanting to help the industry with a new business model. It's my understanding that the ministry has spoken to Minister Cordiano's office and is looking at changing the business model and helping with convenience stores. That is in the works and it is something we would like to see.

Ms. Martel: I appreciate that, but the point I'm trying to make is that it would be not terribly honest to say that no displays will be tolerated, which is what I heard you say—I wrote that down—because your own amendment is going to allow for individual cigarette packages to be displayed in a manner that, I am fearful, will be much the same as the display that young people are forced to see now when they go to the counter. I don't see much change here. I hope you don't continue to bill it like that, because I'm listening carefully to what you say and I hear no restrictions on cigarette packages and no restrictions on where those individual cigarette packages will be, so they can continue to be right behind the counter, where they were before: in people's face. I don't see much change in your amendment—in fact, I don't see any change—that's going to make this much better for young people, whom we are all trying to help in ensuring that they don't start smoking in the first place.

The government has the majority, at the end of the day. You made an election promise. I've got to tell you, we heard overwhelming, powerful evidence from young people that, "We need this out of our face. It is the single biggest reason we start to smoke: seeing that kind of advertising in a convenience store when we're in there three days a week." I regret to say, even with the change you're bringing forward, I don't see how we're going to make it easier for those young people. I don't see, realistically, what the change is here that's going to lessen that form of advertising in their face and in the face of ex-smokers who really want to ensure that they continue to quit.

Maybe you have to sell that, Mr. Fonseca, because you're the PA. I'm hoping some others over there have a different view and would like to do something different. I don't see any significant change, in terms of your proposal, from what is going on in the convenience stores right now. At the end of the day, all we're going to do is defeat what I thought was one of the goals, which was to ensure that young people don't start to smoke, because we know that once they do, they're hooked, and then there are the statistics 25 years later that we heard about all during the course of the public hearings.

Mr. Fonseca: Ms. Martel, I can assure you that you will see significant change within those displays. When I

reference displays, I say advertising and promotional displays, so it's everything around the package of cigarettes. We will do everything in our power to make sure that advertising is not there come May 31, 2006, and further, to May 31, 2008, that all tobacco products will be out of sight.

The Chair: Further debate? Hearing none, all in favour?

Ms. Martel: Could I have a recorded vote, please?

The Chair: Recorded vote.

Ayes

Martel.

Nays

Barrett, Fonseca, McNeely, Milloy, Rinaldi, Wilkinson.

The Chair: The motion is lost.

A PC motion, Mr. Barrett.

Mr. Barrett: I move that section 3.1 of the Smoke-Free Ontario Act, as set out in section 5 of the bill, be struck out and the following substituted:

“Display and handling

“3.1(1) No person shall,

“(a) display or permit the display of tobacco products in a retail store by means of a countertop display; or

“(b) display or permit the display of tobacco products in a retail store in any manner that permits the purchaser to handle the tobacco product before purchasing it.

“Tobacconists

“(2) Nothing in this section prevents tobacconists from displaying tobacco products by means of a countertop display and despite any other provision of this act, a person may smoke or hold lighted tobacco in a properly ventilated smoking room of a tobacconist.

“Definition

“(3) In this section,

“‘tobacco product’ includes the package in which tobacco is sold;

“‘tobacconist’ means a retail store whose income is derived solely or primarily from the sale of tobacco.”

I know there's talk here of big tobacco. I suppose I would put cigar shops in the category of little tobacco. They are opposed to having their products treated the same as cigarettes, as seen in this legislation. One rationale, that I know they have explained to this committee, is that the federal government through Health Canada and through federal taxation policies, recognizes cigars as being different from cigarettes. The Ontario government, through Ontario taxation policy, has a different regimen for cigarettes as opposed to cigar tobacco. By and large, people do not inhale cigars; by and large, young people do not smoke cigars.

There is a feeling—I'm attempting to reflect this in the motion—that this legislation, as it's now drafted, would have unintended consequences for small cigar stores, the

tobacconists. Much of this legislation—I hear the discussion around the table—is primarily targeting cigarettes, although the parliamentary assistant quite recently mentioned tobacco products—I'm assuming, beyond cigarettes.

The Chair: Further debate? Hearing none, all in favour? Opposed? The motion is lost.

A PC motion, page 14, Mr. Barrett.

Mr. Barrett: I move that section 3.1 of the Smoke-Free Ontario Act, as set out in section 5 of the bill, be struck out.

This is what we received back from legal advice. My assumption is that this relates to the motion I just put forward.

The Chair: Further debate? Hearing none, all in favour? Opposed? The motion is lost.

NDP motion, Ms. Martel.

Ms. Martel: I move that subsection 3.2(2) of the Tobacco Control Act, 1994, as set out in section 5 of the bill, be struck out.

This amendment would have been required if the definition of “places of entertainment” had moved from this section into the definition section at the front of the bill, but it did not, so it's either going to be ruled out of order or voted down.

The Chair: Further debate? Hearing none? All in favour? Opposed? The motion is lost.

To the committee, for procedural reasons, government motion 16 has been split into two. So we'll be looking at 16R.

Mr. Wilkinson: On a point of clarification, Mr. Chair: We deal with 16R and then we deal with 16? What are we doing?

The Chair: We are dealing with 16R and then procedurally we would move to 16.1R. It should be in your package as split.

Government motion 16R, Mr. McNeely.

1100

Mr. Phil McNeely (Ottawa-Orléans): I move that section 5 of the bill be struck out and the following substituted:

“5(1) The act is amended by adding the following section:

“Display

“3.1(1) No person shall,

“(a) display or permit the display of tobacco products in any place where tobacco products are sold or offered for sale by means of a countertop display; or

“(b) display or permit the display of tobacco products in any place where tobacco products are sold or offered for sale in any manner that permits the purchaser to handle the tobacco product before purchasing it.

“Same, cigarettes

“(2) No person shall display or permit the display of cigarettes in any place where cigarettes are sold or offered for sale unless the cigarettes are displayed in the following manner:

“1. Only individual cigarette packages are displayed.

“Promotion

“(3) No person shall, in any place where tobacco products are sold or offered for sale, promote the sale of tobacco products through product association, product enhancement or any type of promotional material, including, but not limited to,

“(a) decorative panels and backdrops associated with particular brands of tobacco products;

“(b) backlit or illuminated panels;

“(c) promotional lighting;

“(d) three-dimensional exhibits; or

“(e) any other device, instrument or enhancement.

“Regulations

“(4) The Lieutenant Governor in Council may make regulations governing what constitutes promotional material for the purposes of this section.

“Interpretation

“(5) In this section, “tobacco product” includes the package in which tobacco is sold.”

“(2) Subsection 3.1(2) of the act, as enacted by subsection (1), is repealed and the following substituted:

“Display

“(2) No person shall display or permit the display of tobacco products in any place where tobacco products are sold or offered for sale in any manner that will permit a consumer to view any tobacco product before purchasing the tobacco product.”

The rationale for this motion is to make clear the restrictions on point-of-sale display and promotional material coming into effect on May 31, 2006, and the total prohibition of display of tobacco products coming into effect on May 31, 2008.

To follow up on the discussions that were held earlier, it’s “The Lieutenant Governor in Council may make regulations governing what constitutes promotional material for the purposes of this section,” so regulations may come into effect to show what is permitted and what is not permitted on May 31, 2006.

The Chair: Debate?

Ms. Martel: I have a few questions. The regulations, as I understand it, refer to what constitutes promotional material. Does it also mean that the Lieutenant Governor will be dealing with the location of cigarette packages or restrictions on numbers of packages displayed in a retail establishment? For me, promotional material is different from actual location and numbers of cigarette packages still to be on display from 2006 to 2008. Can I get some clarification on what the LG actually has some control over?

Ms. Glassman: It is promotion, but I guess what it would come down to is that if you have 10 packages of the same cigarette in a row, would the government consider that promotion and make regulations based on the fact that you are promoting a particular product by placing that many packages out there? I think there’s a difference between displaying your product for sale and having it there as access versus promoting. It’s not specifically listed in (a) to (d); (a) to (d) is really focusing on what’s peripheral—

Ms. Martel: What’s behind or beside the packages.

Ms. Glassman: Yes, what’s peripheral to it. But there is regulation-making ability in terms of promotion. Theoretically, if the government felt that a huge display of all cigarette packages sitting there—that might be considered promotional.

Ms. Martel: You talked about 10 of the same brand. I can understand that as being promotion for one single product. What about 250 different brands?

Ms. Glassman: I wouldn’t see that as promoting a single brand.

Ms. Martel: That’s what I’m worried about. I appreciate your answering the question, because I go back to my original concern: I don’t think it would be fair to say that the Lieutenant Governor, under this section dealing with promotional material, would be in a position to deal with either how much is displayed or where it’s displayed. That continues to be my ongoing concern, that we are still going to see retailers with the same amount of product displayed, which, in at least some of the cases we heard, is a very significant amount of product out in front of young people. It will still make it very alluring to them. That’s the first problem I have with that.

I have some other questions, Mr. Chair.

The Chair: Go ahead.

Ms. Martel: I notice that in this section, the government had a section that dealt with tobacco products—3.1(1)(a) and (b)—and then you had the same for cigarettes. I wasn’t clear what the distinction was.

Interjection.

Ms. Martel: Sorry. I’ll start again.

I’m trying to sort out what distinction the government is trying to make in the amendment. In the original bill, there was not a distinction made with respect to “Same, cigarettes,” which now appears in this amendment. You’ve got the description, “No person shall ... display or permit the display of tobacco products.” Then you have “Same, cigarettes,” and you talk about display, but you don’t talk about handling of cigarettes in that section. Were you assuming that was covered under tobacco products? If it was, how did we end up with a provision that sits by itself that refers only to cigarettes?

Ms. Glassman: I would say it’s an oversight, but the fact is that they wanted to focus on the display of cigarette packages as opposed to cigars, pipes and pipe tobacco in this specific section. So there are no tobacco products on a countertop and there’s no permissiveness to handle tobacco products; in terms of having cigarettes, the idea was that the cigarettes just be displayed in individual packages. There are no specific display provisions for other tobacco products except that they’re not on the counter and you can’t handle them.

Ms. Martel: And the handling is a reference to, at least in part (b)—I should assume that means both tobacco products and cigarettes.

Ms. Glassman: Yes.

Ms. Martel: I wasn’t sure, when you said “oversight,” if you were—

Ms. Glassman: You know what? I shouldn’t have said “oversight.” Really, the intention is that, in terms of

display, you cannot display any tobacco products on a counter, you can't display any tobacco products in a manner that a consumer can handle them, and cigarette packages should be displayed in packages as opposed to cartons. There are no references as to how you display your other tobacco products, except not on the countertop and not in a place where they can be handled.

Ms. Martel: Can I just make one point? I don't think I had other questions in this section, so let me put this on the record. I don't agree with the amendment from the perspective of the timing. I've made that clear. However, the reality is that the current bill says nothing about other displays outside the countertop. This particular provision at least says something with respect to advertising that's not on the countertop, and that's better than nothing at all. So I'd be supporting the amendment, but I'm going to vote against the timeline in one of the last amendments with respect to the deadline when this goes into effect.

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried.

Shall section 5, as amended, carry?

Mr. McNeely: Don't we have to—

The Chair: Since it was split, it will fall under section 5.1.

Shall section 5, as amended, carry? Carried.

Now we have government motion 16.1R.

1110

Mr. McNeely: I move that the bill be amended by adding the following section:

“5.1 The act is amended by adding the following section:

““Places of entertainment

“3.2(1) No person shall employ or authorize anyone to promote tobacco or the sale of tobacco at any place of entertainment that the person owns, operates or occupies.

“Definition

“(2) In this section,

““place of entertainment” means a place to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, and which is primarily devoted to eating, drinking or any form of amusement.””

The Chair: Any debate?

Mr. Barrett: What would be examples of places of entertainment? Casinos, for example: Is that what we're—

Mr. McNeely: I would go to legal for that.

Mr. Fonseca: Yep.

Mr. Barrett: I heard a “yep.” What are some examples of places of entertainment?

Mr. McNeely: Could I go to legal for that? What is included and what is not?

Ms. Glassman: A place of entertainment would probably be a place where alcohol is available, a bar or other type of establishment in that form.

Mr. Barrett: A bowling alley, for example?

Ms. Glassman: Yes. It's eating, drinking and amusement.

Mr. Barrett: I was wondering what some examples were. I mentioned casinos, and I think I heard a yes. I

mentioned bowling alleys, and I think I heard a yes. What else would it be? A bingo hall?

Ms. Glassman: It could be. It has to be primarily devoted to eating, drinking and amusement. I don't know that a bingo hall falls into that. It's more of a nightclub atmosphere. It's bars and nightclubs, that kind of thing.

Mr. Barrett: So a bingo hall would probably be under another definition?

Mr. Wilkinson: “Enclosed public space.”

Mr. Barrett: The “enclosed public space” definition?

Ms. Glassman: A bingo hall would definitely fall into an enclosed public place and an enclosed workplace, but in terms of the purposes of this section, you're looking at promoting—

Mr. Fonseca: At the Air Canada Centre, an amphitheatre, clubs, nightclubs, we've seen that the tobacco industry has often hired so-called cigarette girls or tobacco girls who are out promoting the product. That will not be permitted.

Mr. Barrett: Like, say, a company annual meeting, where they have those girls, for example?

Mr. Fonseca: A company annual meeting? Where would that take place? In an entertainment venue?

Mr. Barrett: That would take place in Delhi.

Laughter.

The Chair: Order, please.

Ms. Glassman: If you focus on the definition, it's “a place to which the public is ordinarily invited.” An annual meeting of a specific corporation I wouldn't see as the public being invited.

Mr. Barrett: So if it's private, it may not apply.

Ms. Glassman: Well, you're permitted access whether or not a fee is charged, but it's a public venue.

Mr. Barrett: Strictly public. OK.

Ms. Martel: Can I get some clarification? What's the difference between this and what was already in the bill?

Ms. Glassman: There's no change to it. It's the exact same section.

Ms. Martel: So why did we have to split it out?

Mr. Ralph Armstrong: I'm Ralph Armstrong, legislative counsel.

It's all part of the wonderful world of legislative drafting, which you've probably heard about thousands of times over the years, ma'am. When the section was changed, we're now adding a provision that amends 3.1 after making 3.1, which created a split in our minds between the way the section was originally, which only added 3.1 and 3.2. Having done that, we needed a new section strictly to add 3.2.

If I could tell a story about how these things work, my editor said, “You can't do that all as section 5 now. Do it as 5 and 5.1.” The clerk said, “You can't have one motion changing section 5 and adding section 5.1. You need a motion to add 5.1.” So now we have this rather odd situation of a new motion to add a provision that was already in the bill. This is my world, ma'am.

Ms. Martel: All right. That's as clear as mud. Thank you very much.

The Chair: Further debate? Hearing none, shall section 5.1 carry? Carried.

Shall section 6 carry? All in favour? Carried.

Shall section 7 carry? Carried.

Now we come to an NDP motion.

Ms. Martel: I move that paragraph 5 of subsection 9(2) of the Tobacco Control Act, 1994, as set out in section 8 of the bill, be struck out and the following substituted:

“5. A place where private-home daycare is provided within the meaning of the Day Nurseries Act.”

This is a section that establishes the prohibitions with respect to where people cannot smoke or hold lighted tobacco: a school, a private school, a common area in a condominium etc., a day nursery. The provision essentially says, “A place where private-home daycare is provided” through the Day Nurseries Act, which means it would be regulated by the government, if it was under the provisions of the Day Nurseries Act, so the government would have a direct involvement in the licensing, the inspection of and determining what goes on in that private-home daycare. In those private-home daycares, there should be no smoking.

Right now, as the provision is stated in the act, smoking is allowed up to any point where the child arrives. Smoking is prohibited only during that portion of the day where there are children in the house. I think that is just ridiculous. I can't imagine that there's any way, shape or form of mechanism to clear smoke out of those premises. It is why I asked—I believe his name was Dr. Graham, who appeared before us from the Lung Association; he was a cardiologist. I asked him a very specific question about what the impact of second-hand smoke still be in the air could be on children, and he told us very clearly that children are even more susceptible to and more at risk from second-hand smoke.

I've moved the provision, because I very strongly feel that if the government is involved in the licensing of a private-home daycare—which also, I should point out, allows for subsidies for daycare in that home such that, if someone qualifies, they get a subsidy for a significant portion of their child care costs from the government of Ontario. The government is involved in many ways in a private-home daycare that's licensed under the Day Nurseries Act, and I feel very strongly that if someone wants to be licensed by the government and wants to get subsidies for some of the parents of children for whom they are providing care, that someone should make the decision that there will be no smoking in that home, period, and not just when there are children or a child in the house.

I think it's very clear—Dr. Graham said it—that it is just impossible to assume that second-hand smoke is being cleared out of that house, and in fact those children would be susceptible to it five days a week for however long their parents use child care. This, for me, is a no-brainer and a really serious safety matter with respect to some of our youngest citizens, whom I am hoping we're trying to protect with this legislation.

1120

The Chair: Further debate?

Mr. Fonseca: The ministry's concern is that with 20% to 25% of the population being smokers—the concern around the availability of child care is why the legislation is being left the way it is.

Ms. Martel: I would have hoped the ministry's first concern would be for the safety and the health and well-being of the children in that care. Mr. Fonseca, I know you've had some discussions with Minister Bountrogianni's office. I gather it's her office saying that this should be kept in place. I just think that is completely irresponsible.

I suspect that in a lot of these operations, the owners aren't smoking now, because maybe their own children are involved in the daycare. That's usually how these things get started: You have your own children and you're staying home, so you decide to care for others, and if you have more than five children in your home, you get licensed and you go from there. Those are all good things. I suspect that most, because they may have their own children involved, wouldn't be smoking.

However, it seems a small but very significant matter to make sure that no child is put at risk of exposure to second-hand smoke. That should be our paramount concern, especially in the legislation before us. I cannot comprehend how we square the circle of saying we're trying to use this bill to protect workers and the general public but that we would leave some of our youngest citizens at potentially the highest risk if smoking goes on before they come to and after they leave those premises.

Mr. Fonseca: We would hope that those who run the child care homes would not smoke, and with this piece of legislation, they would not be permitted to smoke when it is a place of business and the children are there. We'd also hope that the parents who bring their children to child care would investigate and make the right decision around having or not having their children in that home. We would leave it at that.

Ms. Martel: I would think we would move beyond hope to forcing the issue, especially given the clientele we're talking about. I think we're making a mistake with this one.

Mr. Fonseca: Maybe I could refer to legal on this.

Ms. Glassman: The only thing I would add is that I think there would be difficulties with enforcing the section beyond the current drafting. Basically, any kind of enforcement in this type of setting would be complaint-driven. When children are not in the home, it would be very difficult, from a practical perspective, to actually enforce beyond those hours, in terms of knowledge.

Ms. Martel: Except that, because it's licensed under the Day Nurseries Act, inspectors from Comsoc are permitted to go in unannounced at any point to determine what's going on. It doesn't have to be complaint-driven. In fact, they are supposed to be in there for licensing purposes and to do an annual inspection and to make sure this is a home that should continue to be licensed. I don't

see their power as being any different from powers of other people to go into a workplace, for example, during the day. I'm assuming that under this legislation, we are going to send inspectors into workplaces, just like municipalities did when their bylaws went into place to ensure that the bylaws were being enforced. I don't see this as any different.

In the same way that we heard from people that, even where there was a designated smoking area, you could smell smoke long afterwards in areas that were supposed to be pure, I can't imagine that an inspector going in at 5 or 6 o'clock couldn't pick up that smoking was going on or had occurred. You just can't clear smoke out of a residence like that; you can't purify the air. With all due respect, that's just not an argument that I can accept as a reason for not doing this.

Mr. Fonseca: We have John Garcia from public health. Maybe he can speak to this part of the legislation.

Also, I will bring forward to Minister Bountrogianni the idea of maybe having signage within the home so parents are aware of the legalities around that home when children are there.

The Chair: Would you identify yourself for Hansard?

Mr. John Garcia: I'm John Garcia, director of the chronic disease prevention and health promotion branch in the Ministry of Health and Long-Term Care.

One of the principal considerations in the development of policy was to balance public smoking with private residences. I would like to point out that the Smoke-Free Ontario Act is a central piece of the comprehensive strategy that's used by the Ontario government to reduce tobacco use. There will be other components directed at controlling smoke, including public education dealing with smoking in the home.

The concern that's raised is certainly a very legitimate one. There is concern about the exposure of children. It's a matter of judgment as to where to draw the line, and I think the government has made its decision as to how far it has decided to go in that matter.

Ms. Martel: It's a private residence and it's a place of work. It's a workplace, but it's a public space from the perspective of having children there. We don't allow smoking in any regulated child care facilities right now that are not in someone's home; we haven't for a long time. It seems to me a natural extension, especially since the government is directly involved. We can't do anything about private child care where there are fewer than five kids in somebody's home; we can't do anything about that because there are no regulations. We certainly can do something about this, because we license these homes. Over and above that, we give public money for subsidies where parents can qualify. We have a dual role here, and I think that leaves us with lots of leeway to say we have an obligation to do what we think is best, and what we think is best would be to say, "If you want to be licensed, you can't have smoke in that residence at all." I think we really have a tie there that we may not have in other places.

That's the end of that, Chair.

The Chair: Further debate? Hearing none—

Ms. Martel: Can I have a recorded vote, please, Chair?

The Chair: A recorded vote.

Ayes

Martel.

Nays

Barrett, Fonseca, McNeely, Milloy, Rinaldi, Wilkinson.

The Chair: The motion is lost.

An NDP motion, Ms. Martel.

Ms. Martel: Chair, given that the other two amendments that related to this matter have been defeated, I will withdraw this motion. The two amendments that preceded it have been defeated already.

The Chair: The motion is withdrawn.

Page 19 is an NDP motion.

Ms. Martel: My amendment is similar to the next amendment, which is a government motion. In discussing this with the government, I will withdraw mine, because my purpose is also served with the government's motion.

The Chair: Motion 19 is withdrawn.

A government motion, Mr. Fonseca.

Mr. Fonseca: I move that paragraphs 3 and 4 of subsection 9(7) of the Smoke-Free Ontario Act, as set out in section 8 of the bill, be struck out and the following substituted:

"3. A resident who desires to use the room must be able, in the opinion of the proprietor or employer, to smoke safely without assistance from an employee. An employee who does not desire to enter the room shall not be required to do so.

"4. Smoking in the room is limited to residents of that facility."

The Chair: Debate? Hearing none, all in favour? Opposed? Carried.

A government motion, Mr. Fonseca.

Mr. Fonseca: I move that section 9 of the Smoke-Free Ontario Act, as set out in section 8 of the bill, be amended by adding the following subsection:

"Psychiatric facility

"(7.1) Subsection (1) does not apply to a person who smokes or holds lighted tobacco in an indoor room in a psychiatric facility that also serves as an enclosed workplace if the conditions set out below are met, and the obligations under subsections (3) and (6) do not apply to a proprietor or employer with respect to such a room if the proprietor or employer complies with any prescribed requirements respecting the maintenance of the room:

"1. The psychiatric facility is designated in the regulations.

"2. The room has been designated as a controlled smoking area.

"3. A patient of the facility who desires to use the room must be able, in the opinion of the proprietor or

employer, to smoke safely without assistance from an employee. An employee who does not desire to enter the room shall not be required to do so.

“4. Smoking in the room is limited to patients of that facility.

“5. The room is an enclosed space that,

“i. is fitted with proper ventilation in compliance with the regulations,

“ii. is identified as a controlled smoking area by means of prescribed signs, displayed in the prescribed manner, and

“iii. meets any other prescribed requirements.”

1130

The Chair: Debate? Hearing none, all in favour? Opposed? Carried.

Government motion 22.

Mr. Fonseca: I move that section 9 of the Smoke-Free Ontario Act, as set out in section 8 of the bill, be amended by adding the following subsection:

“Facilities for veterans

“(7.2) Subsection (1) does not apply to a person who smokes or holds lighted tobacco in an indoor room in a facility for veterans that also serves as an enclosed workplace if the conditions set out below are met, and the obligations under subsections (3) and (6) do not apply to a proprietor or employer with respect to such a room if the proprietor or employer complies with any prescribed requirements respecting the maintenance of the room:

“1. The facility for veterans is designated in the regulations.

“2. The room has been designated as a controlled smoking area.

“3. A resident of the facility who desires to use the room must be able, in the opinion of the proprietor or employer, to smoke safely without assistance from an employee. An employee who does not desire to enter the room shall not be required to do so.

“4. Smoking in the room is limited to residents of that facility.

“5. The room is an enclosed space that,

“i. is fitted with proper ventilation in compliance with the regulations,

“ii. is identified as a controlled smoking area by means of prescribed signs, displayed in the prescribed manner, and

“iii. meets any other prescribed requirements.”

The Chair: Debate?

Ms. Martel: I have a question. Is this in reference to a long-term-care home for veterans?

Mr. Fonseca: This is in reference to, I believe, two facilities, Sunnybrook and London, where there are veteran hospitals.

Ms. Glassman: There are two hospitals under the Public Hospitals Act that have veterans' wings in them. They are similar to long-term-care facilities, but the ministry doesn't fund them as long-term-care facilities. The funding actually comes from the federal government, but they're viewed by the residents who live in them as a long-term-care facility. There are two wings at Sunny-

brook Hospital—the Kilgour and the Hees wings—and then there is a stand-alone building in the Parkwood Hospital in London. They're similar to long-term-care facilities, but they're not run through the province. The admission is done through Veterans Affairs Canada.

Mr. Barrett: Just to clarify, this would not apply to, say, an army/navy/air force club room?

Mr. Fonseca: No.

Mr. Barrett: And would not apply to any branch of a Royal Canadian Legion?

Mr. Fonseca: No.

Mr. Barrett: Or the Six Nations—I'm a member of the Six Nations Veterans Association.

Mr. Fonseca: These are facilities at the Sunnybrook and London hospitals for veterans, funded by the federal government.

Mr. Barrett: I was saying that I'm a member of the Six Nations Veterans Association. We have a club room at Ohsweken on the Six Nations reserve. Do we continue to smoke at the Six Nations Veterans Association? It is located on the—I shouldn't say “reserve.” It's located on Six Nations territory.

Ms. Glassman: That's a very separate issue from this amendment.

Mr. Barrett: So this whole package applies only to the two facilities?

Mr. Fonseca: Correct.

Mr. Barrett: Just one other question: We've heard so much debate to and fro with respect to fitting proper ventilation in a designated smoking room. Does this assume that proper ventilation would work, essentially?

Ms. Glassman: That's not a legal question.

Mr. Barrett: No, it's more of a technical question. This amendment makes the assumption that ventilation would discharge second-hand smoke.

The Chair: Does the parliamentary assistant wish to reply?

Mr. Fonseca: These hospitals are seen as where the veterans have their private residences.

Mr. Barrett: So the facility would be required to put in proper ventilation, if they don't have it now, that would discharge second-hand smoke?

Mr. Fonseca: That's not talking to this amendment.

Mr. Barrett: Well, 5(i) says, “is fitted with proper ventilation in compliance with the regulations.”

Ms. Glassman: Yes, there will be ventilation requirements. They will be set out in regulation.

Mr. Barrett: So I guess we would have no idea what kind of system, whether the door could be left open or closed, whether it would actually discharge the second-hand smoke or not. That would all have to be determined under regulation.

Ms. Glassman: Yes, it will be determined under regulation. I don't anticipate that we would allow the door to remain open. I'll be working with the policy people in public health, who have the background and experience, to determine what they feel are appropriate ventilation requirements for the situation at hand.

Mr. Barrett: So it does recognize that there are appropriate ventilation systems available.

Ms. Glassman: I think the policy is there in terms of recognizing that people are in their homes in some of these unique residential settings. There is definitely a policy put forward by the government, which is within the legislation here, recognizing that people in their own private homes, if they smoke, should smoke, but that there are unique situations where people are residing in care-type facilities, whether it be a psychiatric facility for tertiary care or the veterans' wing of a hospital or a long-term-care facility, where it is pretty much their home. They're just looking for ways to try to accommodate those particular people in their residences.

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried.

An NDP motion, Ms. Martel.

Ms. Martel: I move that paragraph 2 of subsection 9(8) of the Tobacco Control Act, 1994, as set out in section 8 of the bill, be struck out and the following substituted:

"2. The guest room is designed primarily as sleeping accommodation, and has been designated as such by the management of the hotel, motel or inn."

This is to make it very clear that it's the owner or proprietor doing the designation. There is a clear distinction between those rooms, guest rooms included, where you are allowed to smoke and those where you are not. It was to add some more certainty to this section in terms of who is responsible for making that determination and that the room has been designated as such by the management.

The Chair: Further debate? Hearing none, all in favour? Opposed? The motion is lost.

Ms. Martel: I move that subsection 9(9) of the Tobacco Control Act, 1994, as set out in section 8 of the bill, be amended by adding "approved by the Minister of Health and Long-Term Care" after "scientific research and testing facility".

This was to deal with the presentation we had from an individual that—they didn't name the manufacturer, but there was a manufacturer who defined as a testing facility that everyone at their desk was allowed to smoke, and that was considered by management to be testing for the purpose of conducting research into tobacco or tobacco products. Clearly, that's not what we want to support. To ensure that we really do have a testing facility, the sole purpose of which is to deal with tobacco or tobacco products, and not an effort to circumvent the law with respect to no smoking in workplaces, those that really are research facilities have to be designated as such by the ministry to allow that to happen on-site.

1140

The Chair: Further debate? Hearing none, all in favour? Opposed? The motion is lost.

A PC motion, Mr. Barrett.

Mr. Barrett: I move that section 9 of the Smoke-Free Ontario Act, as set out in section 8 of the bill, be amended by adding the following subsection:

"Designated smoking room

"(11) Subsection (1) does not apply to a person who smokes or holds lighted tobacco in an indoor room in a hospitality establishment that also serves as an enclosed workplace if the conditions set out below are met, and the obligations under subsections (3) and (6) do not apply to a proprietor or employer with respect to such a room if the proprietor or employer complies with any prescribed requirements respecting the maintenance of the room:

"1. The room has been designated as a controlled smoking area.

"2. An employee who does not desire to enter the room shall not be required to do so or shall be required to be in the room for no more than 20% of the employee's work shift.

"3. Entrance into the room is restricted to individuals 19 years of age or older.

"4. The room is an enclosed space that,

"i. is fitted with proper ventilation in compliance with the regulations,

"ii. is identified as a controlled smoking area by means of prescribed signs, displayed in the prescribed manner, and

"iii. meets any other prescribed requirements."

Much of the incentive for this particular motion comes from testimony before this committee and briefs submitted, and also the 50% of applicants who oppose the legislation, particularly those in the hospitality industry. Part of this is quantitative; there is a cost put on it. I refer to one study several weeks ago by Dr. Evans about the \$1-billion cost to the bar and pub industry with respect to losing designated smoking rooms, and that was quantified at 50,000 jobs. We heard in testimony from Mr. Michael Perley, with the Ontario Campaign for Action on Tobacco, who in 1999 signed an agreement of support for designated smoking rooms with the Ontario Restaurant Association and the Greater Toronto Hotel Association.

It's predicated on the assumption—as we are aware from a previous government amendment on page 22—that proper ventilation does work, that it does discharge second-hand smoke, and if it can provide a safe environment for residents of Sunnybrook, it can do the same for a person in a bar or a pub. It's predicated on the assumption that ventilation works, as seen in the overturning of the British Columbia legislation similar to what's proposed here, with the substitution of designated smoking rooms with proper ventilation and measures to ensure that employees are not forced to do something they don't want to do.

The Chair: Further debate?

Mr. Wilkinson: Given the fact that Mr. Perley is here, could we have unanimous consent to have him appear and comment on what Mr. Barrett was saying? I think it's only fair, if he's here, that he have some chance to discuss this matter.

The Chair: Mr. Wilkinson is asking for unanimous consent. Agreed. It is up to Mr. Perley if he wants to

come forward. Yes? Please identify yourself for the purposes of Hansard.

Mr. Michael Perley: Michael Perley, director, Ontario Campaign for Action on Tobacco. Thank you very much for this opportunity. Mr. Barrett has repeatedly referenced this agreement and my signature on it and our support for it. It's a great opportunity to clarify the record.

At that point in Toronto, in 1999, when the bylaw campaign was going forward there, the health community and the hospitality industry were presented with a choice by Mayor Lastman: Either we would have no smoking bylaw at all—there would be no restrictions on bars and restaurants—or we would have to accept a bylaw that allowed for designated smoking rooms.

At that time, Dr. Basrur was medical officer of health for the city of Toronto, and she said she did not support designated smoking rooms but would leave the political decision to the council, which was appropriate.

We reluctantly supported this on two grounds, really. A bylaw that regulated what we thought would be the vast majority of premises would be better than no bylaw or at all, first of all. But more important, secondly, we had no experience with designated smoking rooms being constructed in any municipality under any smoke-free hospitality bylaw at the time. If we had known then what we know today, we would never have agreed to that agreement.

The reason is very simple. You've heard testimony from various people, myself included, about a series of tests done by an independent engineering firm on DSRs in York region: 103 were tested, and 78% failed their operating tests, for a variety of reasons. You saw a videotape from Councillor Jenkins, admittedly anecdotal, of several DSRs in Toronto, where there were serving apertures cut in the doors, the doors were left open etc. This mirrors anecdotal evidence from virtually every public health department in every municipality where DSRs are now allowed to operate.

To suggest that somehow our agreement with that bylaw six years ago in any way represents our current attitude about DSRs entirely misrepresents our position.

The Chair: Thank you. Further debate?

Mr. Barrett: A question for Mr. Perley, Chair: You indicated that if you had known then what you know now, you would not have supported it or signed the agreement. We have just seen a government motion passed—and I compliment you; you've attended all five days of our deliberations—where a designated smoking room will be available in Sunnybrook, for example, called a controlled smoking room. Secondly, it will be fitted with proper ventilation in compliance with regulations that are as yet to be determined. Do you have a problem with the proper ventilation in a controlled smoking room?

Mr. Perley: Well, we have no knowledge of what constitutes proper ventilation. I think that's the bottom line. The American Society of Heating, Refrigerating and Air-Conditioning Engineers, or ASHRAE, when it estab-

lished ventilation rates—and they've done this on a number of occasions over the years—up to a couple of years ago allowed for the presence of second-hand smoke when determining ventilation rates for various types of smoking rooms. A couple of years ago, they removed any reference to second-hand smoke as being appropriate for consideration when setting ventilation rates, because of the established science on the toxicity of that substance.

There have been numerous references to the BC model, which I think have also entirely misrepresented what goes on there. In fact, a door to a smoking room is not required under the BC regulations, and also, the workmen's compensation board panel there did not agree with the current model that was put in place in BC. So references to the BC model I think are quite spurious.

We have no knowledge of what would constitute a ventilation system in a DSR that would guarantee that no smoke would escape from the DSR. We've done a lot of research in this area and we're not aware of any model that would fit that bill.

1150

Mr. Barrett: As the province of Ontario develops a regulation for a proper ventilation system in a controlled smoking room, who they should consult with regarding ventilation?

Mr. Perley: I would assume ASHRAE would be the appropriate body to consult with, as well as public health authorities, notably Dr. Basrur.

Mr. Barrett: Someone, obviously, with technical expertise, people who have put in ventilation systems for medical labs or underground mines?

Mr. Perley: I'm not certain that any of those ventilation systems address this particular issue. There is no safe level of exposure to second-hand smoke, so I don't know how you establish a ventilation system to clear a room of a substance to which there is no safe level of exposure permitted. I suppose there are technical people you can consult, but whether they will actually produce a design that does the job is questionable to us at best.

Mr. Barrett: Do you think there is any possibility, then, that it would put veterans at Sunnybrook at risk from second-hand smoke?

Mr. Perley: If it's one veteran at a time in a sizable room by himself or herself, it's a question of how extensive that risk is; I think it would be very modest, though there might still be some residual risk. To me, it's not a question of the individual veteran, because we're not talking about circumstances that are at all similar to, say, hospitality premises. The question is that after a period of time, somebody has to go in and clean that room and somebody has to clean the ventilation equipment, and can we guarantee that such a person will be protected from what would be exposure to very heavy concentrations of a toxic substance? I don't know that we can guarantee that. That's another person and another group of people that you have to take into consideration. I'm not sure that any protocol you put in place can guarantee protection for those people.

The Chair: Further debate? Hearing none, all in favour?

Mr. Barrett: Recorded vote.

The Chair: Recorded vote.

Ayes

Barrett.

Nays

Fonseca, Martel, McNeely, Milloy, Rinaldi, Wilkinson.

The Chair: The motion is lost.

PC motion 26.

Mr. Barrett: I move that section 9 of the Smoke-Free Ontario Act, as set out in section 8 of the bill, be amended by adding the following subsection:

“Grandfathering

“(12) Nothing in this section prevents a person from smoking or holding lighted tobacco in a designated smoking room that,

“(a) is fitted with proper ventilation in compliance with the regulations;

“(b) is identified as a controlled smoking area by means of prescribed signs, displayed in the prescribed manner;

“(c) meets any other prescribed requirements; and

“(d) was in existence as a designated smoking room before May 31, 2006.”

By way of brief explanation, we’ve discussed ventilation and the issue of designated smoking rooms. What has sparked this particular request for an amendment is the situation with a number of establishments that, in good faith, constructed designated smoking rooms and installed the ventilation equipment in compliance with municipal bylaws, based on advice and recommendations from Mr. Perley, for example, and through the Ontario Restaurant Association and Greater Toronto Hotel Association. They incurred a cost ranging from, say, \$10,000 to \$20,000 up to, we’ve been told, \$300,000 to establish one of these designated smoking rooms. Martin McSkimming, with Hemingway’s Restaurant, testified that he built one that cost him \$300,000. I think he is in the Yorkville area, just north of here. He built this two years ago as a business person. To pay for his initial investment, let alone loss of ongoing business from smoking clientele, he says he’d need at least 10 years to depreciate that kind of investment.

The Chair: Further debate?

Mr. Wilkinson: With all due respect to the member, it would be difficult to vote for something to protect grandfathering for something that doesn’t exist yet. May 31, 2006, hasn’t existed yet. My understanding of grandfathering, in regard to the tax laws of this country, is that it has to do with something that has already happened, not something that would happen.

Mr. Barrett: That’s not my understanding. Very simply, he built it two years ago. In 2006, under the proposed legislation, it will be history. He spent \$300,000 two years ago and he wants to depreciate his costs over 10 years at a minimum. He may voluntarily—maybe we’re speculating about what he would do with this in future, but we do know that he has built it, it’s there, and his customers are there. Because he has already invested \$300,000 and is a person who believes in the principle of property rights, he would like to be grandfathered.

Mr. Wilkinson: Referring to clause (d) of your motion, with all due respect, “was in existence ... before May 31, 2006”—you can’t be in existence before that without saying that they’re permitted until 2006. That’s not grandfathering people who have already made an investment; that’s giving a green light to everybody in this province who wants to have a DSR and get it in before May 31, 2006. We are opposed to designated smoking rooms, and that’s why I’m sure we’ll be voting against the motion.

Mr. Barrett: Maybe you’re arguing a technicality I don’t understand. Perhaps the lawyer didn’t write this properly. I didn’t write it. Maybe someone could clarify that. I didn’t mean to mislead people here. I’m talking about grandfathering. Could I get some advice on that? I’m not a lawyer and I’m not a tax specialist.

Mr. Armstrong: Sir, I was the drafter on this. My understanding of what was intended was that it was grandfathering in the sense that people who, as of now or up to the time the new legislation comes into force, have a designated smoking room installed would be able to have it after the act comes into force. “Grandfathering” is a term of wideness. I would have thought that it would be regarded as grandfathering places that were legal before May 31. If it’s regarded as a loophole, that it would allow new places to be put in between today and that time, I apologize if I did not understand the intent. But my understanding was that the idea was to allow people to have their designated smoking rooms on June 1, 2006, that were legal as of May 31, 2006.

Mr. Barrett: My intention is not to have a municipality stampede and start giving permission for designated smoking rooms to be built between today and May 31, 2006. That certainly was not my intention.

The Chair: Further debate?

Ms. Martel: The intent is that those establishments that have DSRs will be allowed to continue the operation of those DSRs after May 31, 2006. Is that the intent, just so I’m clear?

Mr. Barrett: Yes. Simply, that would be my intent. They have built them.

Ms. Martel: OK. If I can speak to that, I can’t agree with that. I think I’ve been pretty clear and consistent that we should shut down DSRs. In my own community, we never allowed for them in the first place when the bylaw was put in place, and I think that made the most sense for everybody.

I have said, and I should repeat this again, that I think the government should consider the matter of those pro-

prietors, those owners, who, given the bylaw in place at the time and in full compliance with that bylaw, established DSRs, not knowing what the government was going to do. The government has said, "This is what our intention was," but we've also had some discussions about that fact that sometimes the government's intentions don't come to fruition. I think the government should look at the matter of compensating those who did and were in full compliance and did everything legal at the time to meet the provisions of the bylaws that were in place in a municipality. I've also said that there is some precedent for a government doing that. Certainly the former government did when it unilaterally cancelled the spring bear hunt.

I think that's what the government should do, but I would not and could not agree that DSRs should continue. It was not in place in our municipality, and that was probably the best thing that ever happened when the bylaw went into place.

The Chair: The committee will need to recess now until orders of the day or 3:30. Do you wish to vote before we recess?

Mr. Wilkinson: I seek unanimous consent that we vote on this.

The Chair: Do we have unanimous consent to vote on this motion? Agreed.

Mr. Barrett: I request a recorded vote.

The Chair: Recorded vote.

Ayes

Barrett.

Nays

Fonseca, Martel, McNeely, Milloy, Rinaldi, Wilkinson.

The Chair: The motion is lost.

We are recessed until orders of the day or 3:30.

The committee recessed from 1200 to 1556.

The Chair: The standing committee on finance and economic affairs will come to order. We will continue clause-by-clause of Bill 164.

Ms. Martel: On a point of order, Mr. Chair: I'd like to move a motion that was not included in the package that members received today. I am seeking consent from the committee to be able to move that motion at this time.

The Chair: Do we have consent? Agreed.

Ms. Martel: I move that paragraph 5 of subsection 9(2) of the Tobacco Control Act, 1994, as set out in section 8 of the bill, be struck out and the following substituted:

"5. A place where private-home daycare is provided within the meaning of the Day Nurseries Act, whether or not children are present."

I think I made my point earlier, so I won't belabour it now. I would look forward to the passage of this motion.

The Chair: Debate? Hearing none, all in favour? Opposed? Carried.

PC motion, page 27.

Mr. Barrett: I move that section 9 of the Smoke-Free Ontario Act, as set out in section 8 of the bill, be amended by adding the following subsection:

"Exceptions

"(13) Nothing in this section prevents a person from smoking or holding lighted tobacco in any branch hall or other building of the Royal Canadian Legion or the army, navy or air force, or in any private club."

By way of discussion, from testimony before this committee and various communications or meetings that I have had, in a sense what Legions and other veterans' organizations are requesting is a separately confined and ventilated smoking area to be allowed in their halls. They indicate that many of the branches would find it difficult to raise the money to build something like this; however, they do request that they be given the choice.

In testimony they have indicated that they are member-only, private organizations, and the freedom of choice is requested by the various representatives, people I have spoken with, to protect the rights of all, whether they smoke tobacco or do not smoke tobacco. It's felt that this would not infringe on an employee's rights with respect to those who wish a smoke-free environment. Much of their operation is run by volunteers. They have assured us that public access would not be permitted.

Further to that, just to give you an idea of how many halls we're talking about, the Legion itself in Ontario has 428 branches and a membership of 168,352 individuals. It is, again, a member-only, private organization, incorporated under the act to incorporate the Royal Canadian Legion. Across Canada there are something in the order of 500,000 Legionnaires.

Just to sum up, my concern is that this kind of legislation is disrespectful to veterans. You are putting other members of the Legion in a position where they would have to go up to a veteran and tell them to take that cigarette or that cigar out of their mouth.

We also heard testimony that there was a concern, without the option for some Legions to have the choice of a designated smoking area, that this would hasten the closing of a number of Royal Canadian Legions across Ontario.

The Chair: Further debate? Hearing none, all in favour?

Mr. Barrett: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Barrett.

Nays

Fonseca, Marsales, Martel, McNeely, Milloy, Wilkinson.

The Chair: The motion is lost.

NDP motion on page 28.

Ms. Martel: I move that subsection 9.1(3) of the Tobacco Control Act, 1994, as set out in section 8 of the bill, be struck out.

This is a section that involves the right of home health care workers to leave a home and not provide a health care service if the person they are providing the service to refuses to comply with a request not to smoke when the home health care worker is on the premises. Right now, the bill says that a home health care worker has the right to leave without providing further services unless to do so would present an imminent serious danger to the health of any person. But the bill also goes on to say that a home health care worker cannot exercise that right to leave unless he or she has acted in accordance with regulations under subsection (4).

I can't imagine what regulations we could—or, more importantly, should—be putting into place that would set up a schedule or a protocol which a home health care worker has to follow in order to exercise their essential right to refuse and their right to leave. We have said this bill is about protecting workers from second-hand smoke. We have said that that is going to be across all workplaces. It's going to be in public places. In this provision, we are talking about protecting a home health care worker who faces second-hand smoke while they're trying to provide a health care service. I don't think there's any provision, protocol or framework under which someone has to justify their doing that if they don't want to be subjected to second-hand smoke. The provision already says they won't do that unless there's a present, imminent danger. I think that's the only circumstance under which someone might not leave that particular home.

Otherwise, from my perspective, there's no other reason why a worker should have to put up with that, if they have indeed asked someone to quit smoking and they refuse to do so. What it does is to strike out any possibility that someone can only exercise that right if they follow regulations that have been made under this section outlining what they have to do in order to leave.

The Chair: Further debate?

Mr. Fonseca: I believe our legal counsel will speak to what provisions will be put in the regulations in regard to the health risk.

Ms. Glassman: I apologize, because I didn't hear all of your comments, but I will address why we drafted it the way we did. We felt that it would be in the best interests of the people running the agencies and the workers themselves to have some guidelines set out, so they would feel that there were some parameters that they could relate to in terms of, if they're going to leave, if there's a right to leave, as opposed to just saying, "You can leave." Unless to do so would present an immediate danger, we really felt that regulations would assist the service providers directly by having a bit more laid out than just that sentence.

Ms. Martel: Can I ask, what does the ministry perceive to be appropriate or legitimate circumstances, other

than imminent danger, that a home health care worker would have to follow before they leave? As a home health care worker, you come into that establishment, you say very directly to the client you're going to provide service to, "I'd appreciate it if you don't smoke when I'm here," and the client ignores your request and proceeds to do that. Unless your leaving is going to pose some imminent danger, what could possibly be the other scenarios whereby we wouldn't just expect someone to leave under that circumstance?

Ms. Glassman: It's definitely immediate, serious danger to the health of a person. We just wanted to have the ability to put more detail in regulation, to provide further clarity, if it was necessary. It's a judgment call. In terms of the wording, yes, the wording is clear, but "immediate, serious danger" might mean one thing to one person and something to someone else. It's just to set out guidelines in terms of what you do when you do leave. Do you phone your employer? Do you make other arrangements?

Ms. Martel: OK, but we're not putting what I would describe as an additional burden on any other worker to justify why they're leaving. Even in the case of someone working in a long-term-care home, we have said that as long as the proprietor makes it clear that that person has to be able to safely be in a smoking room, we have no additional requirement for a worker to assist or not to enter.

We're very clear: Either you can safely smoke or you shouldn't be in there, and we're certainly not expecting anybody else to be in there. For me, even if it's not clear what the regulation or the parameter might be, it seems to me that we are putting an additional onus or obligation, an additional responsibility, on a home care worker to meet an as-yet-unspecified framework before they can leave. We know from the legislation already that they will have to respect the fact that they cannot leave if there is serious and imminent danger. That's clear in the legislation; that's going to be made clear to the worker. But I can't for the life of me foresee what would be a potential other scenario that we would have to consider by regulation which we would put in place before they could leave.

They shouldn't be subjected to second-hand smoke. If someone doesn't want to stop and they're not in danger, they're out of there and that's it. There shouldn't be any other obligation or any other protocol for them to follow, from my perspective.

Mr. Fonseca: I just thought of an example as Ms. Martel was speaking. Say there was a home care patient who may have Alzheimer's, and their regular caretaker or person who is with them at all times—because they can't be left alone for fear of turning on the stove or whatever else may happen—isn't there; then the home care worker comes in. The Alzheimer's patient wants to smoke and they just take control and start smoking. What would happen in that situation? The home care worker would have to make a call, I guess, but would not leave the premises right away for fear of danger of leaving the Alzheimer's patient alone.

1610

Ms. Martel: OK, but I'd counter with this: I think most home health care workers who are providing home care services to Alzheimer's patients clearly recognize what they're dealing with and would themselves assume that leaving an Alzheimer's patient alone would present a serious risk. I can't fathom a circumstance under which—especially dealing with an Alzheimer's patient—that you, as a home care worker, wouldn't have that at the top of your mind. You're not going to leave that person. You may not like them smoking when you've asked them not to, but you're not going to leave that person until a family member or whoever shows up.

Ms. Glassman: I'll just say a couple of things. First of all, in terms of the protection for the home care workers versus what goes on in a long-term-care facility, in a long-term-care facility a person is still in a place where there is supervision and there are staff. The province tries to maintain that people can remain in their home as long as possible without having to go into a facility, and that's where this whole home care program comes from. People who work in the community obviously are very dedicated and devoted to the people they serve, but I think that people do have different abilities. Some might be more sensitive and recognize what this means over others. Different people have different levels of expertise. Some people have been working in the field for years; other people may not have been.

When we were drafting this, we were really seeing this as a safety mechanism and as something, as I said before, not to repeat myself, to just provide clarity and set out what we would think are acceptable steps to take. We put it in here because we fully support the right to leave. We don't think these workers should be exposed to second-hand smoke, but having said that, we just wanted the ability to create some additional guidelines, if necessary, in regulation.

Ms. Martel: I disagree. I appreciate what you've said, but I guess I can't really see a scenario where there could be some other regime in place where we would say they would have to stay.

Ms. Glassman: That's not what this is saying. This is actually—

Ms. Martel: It sounds like you're saying, "If you don't meet this protocol, you'd better be staying." You have to meet X, Y and Z before you can leave.

Ms. Glassman: I think it's more steps to take if you are going to leave. What do you do? If you're going to leave somebody in their home—it's what I said earlier. It might be that you're phoning your employer. You're saying, "I'm not providing the service. The person is smoking. They are not responsive to my request."

Ms. Martel: But if you look at the language—

Ms. Glassman: That's what the regulations are for. It's not to say that you can't leave if there is a threat. It's saying: These are the circumstances that you follow if you leave.

Ms. Martel: But it also says "a home health care worker may not exercise a right to leave." That's pretty

clear. You cannot exercise your right to leave "unless regulations have been made under subsection (4) and he or she has acted in accordance with those regulations." That says to me that, outside of a serious issue, where you probably wouldn't leave anyway, you can't leave unless you do (a), (b) and (c). I just say again to the government members, I can't imagine what that circumstance would be, because we've covered off the serious danger. I can't imagine what the circumstances would be where we would say to a worker, "You can't leave unless you do (a), (b) and (c)," if (a), (b) and (c) have been established.

Ms. Glassman: It's more meant for reporting requirements—on that level. It's really to keep communication, because you don't know—I think there are a lot of scenarios where people are in their homes, and some people are there without a caregiver or without a family member. Most people probably are, but you find different circumstances for people who are receiving care and services in their home. We felt it was, from a safety perspective, for everybody's best interests to be able to set out something of our expectation.

Ms. Martel: I'll just end by saying this, because we're not going to come to a meeting of the minds on this. I would assume that most home care agencies have a number of policies and procedures already in place for their workers in homes on a broad range of—"If this happens, this is what you do." I assume that most CCACs have reporting requirements already, or if not, the agency they work for that's contracted by the CCAC has that in place.

What I don't want is a scenario where somebody at some point has a regulation-making power that would put an additional or an undue or an unfair burden on a home health care worker to do something before they leave. For me, just putting that possibility, just leaving that open in regulation, sets up that possibility. I just don't think we should be there. I'll stop with that.

Mr. Fonseca: We'd like to defer this so that we could just revisit some of the wording, if that would be all right, acceptable with everyone.

The Chair: It's agreeable with the mover?

Ms. Martel: We'd have to do both, because the next one is the same.

Mr. Fonseca: OK. We ask that we defer also the next one.

Ms. Martel: If I might speak to the next one, because it's also mine, and it was for number 4. It was also speaking to the regulation-making power in the same section. So I assume we need to defer both.

The Chair: Are we agreed to defer? Agreed.

Shall section 9 carry? All in favour? Carried.

Section 10: Government motion 30.

Mr. Fonseca: Section 10 of the bill, subsection 13(4) of the Smoke-Free Ontario Act: I move that section 10 of the bill be amended by adding the following subsection:

"(2) Subsection 13(4) of the act is repealed and the following substituted:

"Place for traditional use of tobacco

“(4) At the request of an aboriginal resident, the operator of a hospital, facility, home or other place set out below shall 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:

“1. A hospital as defined in the Public Hospitals Act.

“2. A private hospital as defined in the Private Hospitals Act.

“3. A designated psychiatric facility.

“4. A nursing home as defined in the Nursing Homes Act.

“5. A home for special care under the Homes for Special Care Act.

“6. An approved charitable home of the aged under the Charitable Institutions Act.

“7. A home as defined in the Homes for the Aged and Rest Homes Act.

“8. A place that belongs to a prescribed class.”

The Chair: Any debate?

Mr. Barrett: It’s a comment, perhaps a question. The “place for traditional use of tobacco”—and I assume that refers mainly to smoking—

Mr. Fonseca: I’m not sure if it’s burned. It’s spiritual and it’s put in the air, though, yes.

Mr. Barrett: “Put in the air.” In contrast to the Sunnybrook example, this amendment does not include the requirement for proper ventilation. Is there a reason for that?

Mr. Fonseca: I would ask legal.

Ms. Glassman: It’s actually a technical amendment. We didn’t change the meaning of the section. So, in fact, the current wording right now in subsection 13(4) of the Tobacco Control Act states that, “At the request of an aboriginal resident, the operator of a health facility, home or institution referred to in subsection 4(2) shall set aside an indoor area, separate from any area where smoking is otherwise permitted, for the use of tobacco for traditional aboriginal cultural and spiritual purposes.”

Really, all that was done here was the reference to subsection 4(2), which was felt to be a little out of whack, so to speak, with what the section is talking about, because they’re referring you to a section which talks about prohibition of sale in designated places. The meaning of the section was not changed; it was simply that the list of places referred to in subsection 4(2) was moved. The motion is to move the actual specified list into 13(4). The original section didn’t deal with ventilation, and there was no motion put forward to add any further restrictions to the cultural use of tobacco. It’s simply to move the places over.

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Mr. Barrett: I see that. I questioned why there is not proper ventilation included, in contrast to the two hospitals that were discussed earlier for other residents.

I know we did receive a briefing from our research officer with respect to First Nations reserves. What is the rationale to separate out an aboriginal resident to use tobacco, say, for cultural purposes versus somebody

from—I don’t know. We have so many people in my area who came up from North Carolina, Virginia, Georgia, South Carolina. Smoking tobacco means something to them. Why is there this separation? They’re not on a native persons’ reserve, and I assume they’re not on other non-reserve territories that they actually have a rightful claim to but that aren’t reserves. Why would there be that distinction in this case? Just because somebody asked?

Ms. Glassman: It has been entrenched for some time that aboriginals use tobacco for ceremonial purposes. I think there’s just a desire to respect that use, especially since I think it can be used for healing purposes. When someone’s in a health care facility, there are times when they desire to have a ceremonial use for it. I think there’s a belief that it can help assist with recovery and with spiritual wellness.

Mr. Barrett: When we say “ceremonial,” that includes cultural and/or spiritual? I don’t think the word “ceremonial” is in here, but I—

Mr. Fonseca: Cultural.

Mr. Barrett: Cultural.

Again, my point is that people use tobacco for many reasons, as we use alcohol for many reasons. Oftentimes it’s for relaxation or socialization—many reasons in addition to that many people are dependent on it. So I do raise that question.

Ontario is host to so many various cultural groups that bring so many traditions with them. I make reference to my area. We have hundreds of families that came up from the south to establish the tobacco industry back in the 1920s and the 1930s. I just raise that issue. None of those families asked. I assume someone here asked for this.

Mr. Wilkinson: Just a point of clarification for my friend: My understanding is that it was the aboriginal community that came and asked the government to include this. I don’t believe there were any other groups that came forward and made a request like this on spiritual grounds. I think the government is proud to be able to introduce this amendment to take into consideration their unique situation in our very diverse and wonderful province.

Mr. Barrett: So it doesn’t tie in with a federal law or exemptions in other provinces where, for example, native reserves are not subject to tobacco legislation. It just happened that a certain cultural group that just happened to be aboriginal requested this.

Mr. Wilkinson: We’re very cognizant of the charter and people’s constitutional right to participate in religious ceremonies. I think we have to be very sensitive to that in this great province of ours.

Mr. Barrett: I fully agree; we do have to be sensitive to people’s feelings around the use of these products.

Ms. Glassman: I would only point out that it was in the previous Tobacco Control Act, and there was no desire to remove that section. There was a request put forward or a questioning by the relevant parties to ensure that that section was going to remain in the act.

Mr. Barrett: I don't think it came before this committee. Was it one of the briefs that we received? I'm trying to remember. I know so many people did not have a chance to address the committee, but I don't recall any testimony. Was it a brief submitted to this committee? I may have missed it.

Ms. Glassman: No. As I understand it, it has been made public that the ministry and the minister have been trying to work with First Nations communities in terms of the contents of the bill, adopting the bill and the general aboriginal tobacco strategy that's being put forward.

Mr. Barrett: So it didn't go through the standing committee?

Ms. Glassman: No.

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried.

Shall section 10, as amended, carry? Carried.

NDP motion 31, Ms. Martel.

Ms. Martel: I move that subsection 11(2) of the bill be struck out and the following substituted:

“(2) Subsection 14(8) of the act is amended by striking out ‘and’ at the end of clause (d) and by adding the following clauses:

“(f) if he or she finds that an employer is not complying with subsection 9(3), direct the employer or a person whom the inspector believes to be in charge of the enclosed workplace to comply with the provision and may require the direction to be carried out forthwith or within such period of time as the inspector specifies; and

“(g) if he or she finds that a proprietor is not complying with subsection 9(6), direct the proprietor or a person whom the inspector believes to be in charge of the enclosed public place to comply with the provisions and may require the direction to be carried out forthwith or within such period of time as the inspector specifies.”

If I might speak to it, members will see that amendment (f) is essentially the same as clause (f) that appears in the current bill. The new section is actually clause (g).

In (f), you will see that we are talking about an inspector dealing with an employer in an enclosed workplace to deal with matters under this legislation. There was not a similar section to deal with who would be in charge if there was a violation of the act in an enclosed public space, so the addition is with respect to a proprietor who the inspector believes to be in charge of an enclosed public space. We cover off both in (g), dealing with somebody who's responsible for the workplace and dealing with that person in charge in the enclosed public space.

Mr. Wilkinson: I'd like to commend the member for bringing this amendment forward.

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried.

Shall section 11, as amended, carry? Carried.

Government motion 32?

Mr. Fonseca: I move that section 12 of the bill be struck out and the following substituted:

“12(1) Subsections 15(1) and (2) of the act are repealed and the following substituted:

““Offences

“(1) A person who contravenes section 3, 3.1 or 3.2, subsection 4(1), section 5 or 9 or subsection 13(4), 14(16), 16(4), 17(6), 18(4) or (5) is guilty of an offence and on conviction is liable to a fine determined in accordance with subsection (3).

““Same

“(2) A person who contravenes section 6 or 10 or subsection 18(1) is guilty of an offence and on conviction is liable, for each day or part of a day on which the offence occurs or continues, to a fine determined in accordance with subsection (3).”

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“(2) Subsection 15(8) of the act is repealed.

“(3) Subsection 15(9) of the act is amended by striking out ‘or (8).’

“(4) The table to section 15 of the act, as amended by the Statutes of Ontario, 1997, chapter 10, section 26, is repealed and the following substituted:

““TABLE

Column 1	Column 2	Column 3	Column 4
Provision Contravened	Number of Earlier Convictions	Maximum Fine— Individual	Maximum Fine— Corporation
		\$	\$
3(1), 3(2), 3.1, 3.2	0	4,000	10,000
	1	10,000	20,000
	2	20,000	50,000
	3 or more	100,000	150,000
3(6), 4(1), 6, 10, 14(16), 16(4), 17(6), 18(1), 18(4), 18(5)	0	2,000	5,000
	1	5,000	10,000
	2	10,000	25,000
	3 or more	50,000	75,000
5	0	2,000	100,000
	1	5,000	300,000
	2	10,000	300,000
	3 or more	50,000	300,000
9, other than subsection (4)	0	1,000	
	1 or more	5,000	
9(4)	any	4,000	10,000
13(4)	any	4,000	10,000

The Chair: Further debate?

Ms. Martel: I have a question, Chair. The table appeared to be the same under the previous act and this one. Was the change because there is renumbering in the bill? Is that essentially what's happening here? I was trying to sort it out. It didn't look like the fines themselves had changed.

Ms. Glassman: The fines haven't changed. It's simply the date that it's coming into force and effect due to the changes in 3.1.

Ms. Martel: OK.

Mr. Barrett: A further question: I haven't been able to cross-reference the various columns on this table. I see that the first fine is \$4,000 for an individual. What would that refer to?

Ms. Glassman: I apologize. I didn't—please, ask again.

Mr. Barrett: I was just trying to get a bit of a matrix here, with four columns. If I just go down, column 3, where I see a dollar figure, there's a \$4,000 fine. What would that be for? I'm sorry; I haven't been able to go through it.

Ms. Glassman: It's a maximum fine.

Mr. Barrett: Yes. What's the minimum fine?

Ms. Glassman: It's the maximum. There's no minimum set. Usually the fines are much lower than that. The fines are actually the same as they are in the current act. The fines have not been increased at all. We've only added fines for new offences.

Mr. Barrett: So, for example, the maximum \$4,000 fine would be for—

Ms. Glassman: Section 3 deals with providing tobacco to somebody who is under 19 years of age; 3.1 is the display section; 3.2 is promoting a tobacco product at an entertainment venue.

Mr. Barrett: OK. For example, is there a fine for an individual caught smoking in a bar, under this proposed bill? I didn't mean to be that specific. Are there any fines for anyone disobeying the law as far as, say, walking around a pub or a bingo hall with a cigarette in their mouth?

Ms. Glassman: Yes.

Mr. Barrett: There is?

Ms. Glassman: In section 9. Section 9 is the general prohibition in the act. Subsection 9(1): "No person shall smoke tobacco or hold lighted tobacco in any enclosed public place or enclosed workplace." Section 9, if you look on page 2 of the chart—

Mr. Barrett: Page 2, section 9—it's \$4,000?

Ms. Glassman: It should be \$1,000.

Mr. Barrett: It's \$1,000. OK.

Ms. Glassman: It's if you've had no prior convictions. If you've had one or more prior convictions, then the maximum would be \$5,000.

Mr. Barrett: That's the same as for possession of marijuana, \$1,000 for possession?

Ms. Glassman: As a maximum fine? I don't know what the maximum fine is for possession of marijuana. Possession of marijuana is a criminal offence, so I'm not sure that they're—

Mr. Barrett: I think anything under 30 grams is \$1,000 for possession, maximum, as I understand it.

Mr. Wilkinson: We don't know.

Mr. Barrett: Does anybody here know? I see other figures going up to \$300,000. I'm just trying to get a feel for this. I guess no one has any of that information.

Ms. Glassman: I can't answer your question.

Mr. Barrett: For possession of marijuana, as I understand it, under 30 grams it's \$1,000.

I'm assuming, going up to a corporation, that a \$300,000 fine would probably be for a restaurant chain that allowed people to smoke in their place. I just wanted to get a feel for this.

Ms. Glassman: Let's look at the section where the \$300,000 fine is.

Mr. Barrett: OK. We did the \$1,000. I just wondered about the \$300,000.

Ms. Glassman: This is from section 5 of the current act, so there have been no amendments to section 5 in the Tobacco Control Statute Law Amendment Act. The current section 5 deals with packaging requirements. Subsection 5(1) reads, "No person shall sell or offer to sell tobacco at retail or for subsequent sale at retail or distribute or offer to distribute it for that purpose unless,

"(a) the tobacco is packaged in accordance with the regulations; and

"(b) the package bears or contains a health warning and other information in accordance with the regulations."

In subsection 5(2): "No person shall sell or offer to sell cigarettes at retail or for subsequent sale at retail or distribute or offer to distribute them for that purpose unless the cigarettes are contained in packages of at least 20 cigarettes or such greater number as may be prescribed by regulation."

So the fines you're asking about, for \$300,000, are the maximum corporate fines, and they deal with the packaging requirements and not complying with them.

Mr. Barrett: Yes. For example, the new amendment to ban back wall retail display in convenience stores: There's no fine if they display?

Ms. Glassman: Yes, there is. That was the first one you asked me about. It's on the first page of the fine, as 3.1. I'd mentioned that we added new fines for 3.1 and 3.2, but the numbers, the actual amounts of the fines, are consistent with other fines that are in the table. So the fine for your first offence, if you're an individual, is \$4,000. If you're a corporation, it's \$10,000. If you've had one prior conviction, if you're an individual, the maximum is \$10,000, and the maximum fine for a corporation is \$20,000. For two or more prior convictions, the maximum fine for an individual is \$20,000; a corporation is \$50,000.

Mr. Barrett: So those weren't on the books before.

Ms. Glassman: They weren't on the books, but I guess the point I was trying to make was that the fines that were added, we tried to keep the amounts in the ballpark of what was already in the chart. On all prior fines, all the fines that are in the current Tobacco Control Act, 1994, none of those fine amounts were increased.

Mr. Barrett: I guess the only new penalties, then, would be with respect to the back wall display amendment.

Ms. Glassman: And now there's a general prohibition. Under the previous Tobacco Control Act, you were only prohibited from smoking tobacco in certain places, and there was an ability to create a DSR in some of those places—

Mr. Barrett: DSR, sorry? Oh, a designated smoking room.

Ms. Glassman: —like the health facilities. So right now, the basic premise of the act is different in that there's a general prohibition in section 9, which I read out before.

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried.

Shall section 12, as amended, carry? Carried.

Shall section 13 carry? Carried.

Page 33, government motion, Mr. Fonseca.

Mr. Fonseca: I move that section 14 of the bill be amended by adding the following subsection:

“(0.1) Subsection 19(1) of the act is amended by adding the following clause:

“(a.1) for the purposes of the definition of “enclosed public place” in subsection 1(1),

“(i) defining “inside,”

“(ii) prescribing places to be enclosed public places.”

The Chair: Any debate? Hearing none, all in favour? Opposed? Carried.

Government motion 34, Mr. Fonseca.

1640

Mr. Fonseca: I move that section 14 of the bill be amended by adding the following subsection:

“(0.2) Subsection 19(1) of the act is amended by adding the following clause:

“(a.2) for the purposes of the definition of “enclosed workplace” in subsection 1(1),

“(i) defining “inside,”

“(ii) prescribing places to be enclosed workplaces.”

The Chair: Any debate? Hearing none, all in favour? Opposed? Carried.

Government motion 35.

Mr. Fonseca: I move that section 14 of the bill be amended by adding the following subsection:

“(0.3) Subsection 19(1) of the act is amended by adding the following clause:

“(a.3) exempting tobacconists from any or all of the requirements and prohibitions in section 3.1, defining tobacconists for the purposes of such an exemption, and making the exemption subject to one or more conditions provided for in the regulations.”

The Chair: Any debate?

Ms. Martel: I'd like to ask a question on this section. It goes back to the final presentation that we received in Tillsonburg, where the presenters made it clear that they had gone into a tobacconist shop and they were busy selling not only tobacco but cigarettes, pop, chips, chocolate bars—the whole nine yards. I see that this provision also includes “defining tobacconists for the purposes of such an exemption.” I wonder if the ministry can just give me some idea of how you are going to define who is a tobacconist and how you are going to prove that, given that this shop was very clearly outlined as this and it was selling a wide range of other products in the process.

Ms. Glassman: There are a couple of options that are being looked at right now. One of them is the amount of

floor space that's dedicated to the sale of the tobacconist's products. We visited a couple of shops and the walls are lined with humidors that are locked, but filled with cigars. So part of it is whether it's going to be 75% of the floor space dedicated to the sale of those products.

They're also looking at whether there should be an age restriction in terms of being able to enter the premises.

Ms. Martel: Would one of those options include—because I'm pretty sure they told us that they were selling cigarettes as well. It was not my understanding from a presentation we had, I think the first or second day from a group in Toronto, that they were selling anything but tobacco; so not cigarettes. Would that also be a requirement? Have you thought that far?

Ms. Glassman: I don't think that they've considered that far. One of the shops that I went to, he did have some cigarettes for sale, but the main purpose of his business was selling cigars and pipes and other tobacco products.

Ms. Martel: I support what you're doing here, and I would only say that that might be something else you want to take into account, because what you wouldn't want to see—and you would be cognizant of this—is a backdoor mechanism to display cigarettes on a countertop in a tobacconist shop, which you don't want to have happening, but if they are exempt, it clearly might.

Ms. Glassman: At this point, the drafting is—we're going to look at whether they would be exempt from all the sections of 3.1 or just some of the sections. So it might be that they still have to comply with countertop. It's not clear what they're going to do.

Ms. Martel: OK, so you're going to do that piece by regulation, in terms of what, if any, restrictions there might be, and that could be included. I would obviously urge that.

The Chair: Mr. Fonseca?

Mr. Fonseca: Nothing on this.

The Chair: I thought I saw your hand.

Mr. Barrett?

Mr. Barrett: It's unclear if the regulation would allow, say, the countertop humidior or not. That's still unclear, is it? Humidior or display—it's still unclear which way that would go?

Ms. Glassman: Yes. We haven't drafted the regulations yet for this specific section. I just wanted to outline some of the considerations that were being given. We've had discussions about what the appropriate way to define a tobacconist would be, so I'm confident in being able to discuss those provisions. In terms of specifically looking at 3.1 and what's going to apply and not apply, I wouldn't feel confident to give you a response. We haven't gone that far.

Mr. Barrett: But with the regulations, say they did qualify using the floor space formula, or very clearly there's nothing in there but, say, cigars. It would still be unclear whether they would be allowed a humidior on the countertop or under a glass counter or what have you, or on display. That's still unclear?

Ms. Glassman: Yes. At this point, what the motion does is it gives the ability to exempt from any or all of

the requirements of 3.1, but it's not specifying that they're necessarily exempt completely from the entire section.

Mr. Barrett: It would also apply, then, to whether they would be allowed to have boxes of cigars on shelves along the wall. They may have to have bare walls like a convenience store. So that's undetermined as yet?

Ms. Glassman: Right now, under the federal Tobacco Act, a purchaser can't handle tobacco product anyway, and that includes cigars. The tobacconists have not been exempt from the federal Tobacco Act. So, for instance, there wouldn't necessarily be a reason to exempt them from the handling provision that we have in clause (b). They're already complying with it federally.

Mr. Barrett: I wasn't referring to the handling, but the display, like a back wall display, in a cigar store. It's still unclear whether they may have to have bare walls, like a convenience store.

Ms. Glassman: I think it's fair to say that the reason the exemption is there is that the government recognizes that their walls are filled with displays of tobacco and it would be a hardship for those specific merchants to have a prohibition in place whereby they can't display what they're selling.

Mr. Barrett: The third area, and I can't remember if that's covered in 3.1: With some cigar stores, there's the option—if someone's going to drop \$1,000 on a carton of cigars, they like to light one up, to test-drive them, I suppose. Is that going to be an either/or option, or is that a done deal? Do those facilities have to be removed, or is there an option under the regulation for some of these cigar stores to allow people to light up a cigar in the back room, or for people who come in to sit around the table and have a cigar?

Ms. Glassman: I understand the question. There's no motion being put forward to amend section 9 of the bill, which is the general prohibition, to allow an exemption for tobacconists.

Mr. Barrett: So those are definitely gone, then, if this bill passes?

Ms. Glassman: Yes.

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried.

Mr. Fonseca: I ask to move a motion that wasn't in the original package, Mr. Chair: 35.1.

The Chair: OK? Yes.

Mr. Fonseca: I move that section 14 of the bill be amended by adding the following subsection:

“(0.4) Subsection 19(1) of the act is amended by adding the following clause:

“(a.4) exempting retailers who sell tobacco at a duty free shop as defined in subsection 2(1) of the Customs Act (Canada) from any or all of the requirements and prohibitions in section 3.1, and making the exemption subject to one or more conditions provided for in the regulations.”

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried.

Mr. Fonseca: Mr. Chair, I move another motion that wasn't in the original package: 35b.

I move that section 14 of the bill be amended by adding the following subsection:

“(0.4) Subsection 19(1) of the act is amended by adding the following clause:

“(a.5) exempting manufacturers and wholesalers of tobacco products from any or all of the requirements and prohibitions in section 3.1, defining manufacturers and wholesalers of tobacco products for the purposes of such an exemption, and making the exemption subject to one or more conditions provided for in the regulations.”

1650

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried.

Government motion 36.

Mr. Fonseca: I move that section 14 of the bill be amended by adding the following subsection:

“(1.1) Subsection 19(1) of the Act is amended by adding the following clause:

“(h.1) defining “supportive housing residence” for the purposes of subparagraph 1 v of subsection 9(7).”

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried

Government motion 37.

Mr. Fonseca: I move that section 14 of the bill be amended by adding the following subsection:

“(1.2) Subsection 19(1) of the act is amended by adding the following clause:

“(h.2) designating psychiatric facilities for the purposes of subsection 9(7.1) and paragraph 3 of subsection 13(4).”

The Chair: Further debate? All in favour? Opposed? Carried.

Government motion 38.

Mr. Fonseca: I move that section 14 of the bill be amended by adding the following subsection:

“(1.3) Subsection 19(1) of the act is amended by adding the following clause:

“(h.3) designating facilities for veterans for the purposes of subsection 9(7.2).”

The Chair: Further debate?

Mr. Barrett: I have a question. “Designating facilities for veterans”: What facilities are those?

Mr. Fonseca: The facilities that we previously spoke about, which were Sunnybrook and London, the veterans' hospitals.

Ms. Glassman: It's Parkwood hospital in London.

Mr. Fonseca: Parkwood hospital is the one in London.

The Chair: Further debate? Hearing none, all in favour? Opposed? Carried.

Shall section 14, as amended, carry? Carried.

Shall section 15 carry? Carried.

Shall section 16 carry? Carried.

Shall section 17 carry? Carried.

Government motion 39.

Mr. Fonseca: I move that section 18 of the bill be struck out and the following substituted:

“Commencement

“18.(1) This section and section 19 come into force on the day this act receives royal assent.

“Same

“(2) Sections 1 to 4, subsection 5(1) and sections 5.1 to 17 come into force on May 31, 2006.

“Same

“(3) Subsection 5(2) comes into force on May 31, 2008.”

The Chair: Further debate?

Ms. Martel: It would probably be no surprise to anyone that I continue to be opposed to this subsection (3), which will come into force on May 31, 2008. This has to do with our earlier discussion around what kind of advertising is going on and what will still be allowed between 2006 and 2008.

I just have to add one thing, if I might. I’ll be brief. I noted that the Ontario Convenience Store Association was here yesterday, asking government to reconsider the situation. They said, and I’m quoting from Dave Bryans, “We have no problem with taking down any of the lights or colours.” I guess that’s probably the case because the lights and the colours are probably the least of my concerns with respect to tobacco advertising in retail stores. If you look at the possibility, it’s clear that there is no restriction on the number of individual cigarette packages that are going to be allowed. Having a display behind a counter that has 100 different packages of cigarettes or 250 or 70 or 90, really does leave young people with the idea that it’s very normal to smoke, that everybody does it, that a big portion of the population does and they should get hooked too.

From my perspective, the idea that row upon row upon row of individual cigarette packages are still going to be left up on a wall behind a counter in full view of young people coming into a store—people who are trying to quit, people who have quit but might succumb to impulse buying—is probably the worse thing. The lights and the colours are not half as alluring as all of those packages of cigarettes, and they work to really send a very regrettable message to young people that this is normal, this is a part of everyday Ontario life, instead of really promoting the message that says that fewer and fewer people are smoking, and we should be pushing that agenda.

So I just want to say again, I regret that the government would not have a similar timeline—that is, of May 31, 2006—for the banning of all tobacco advertising in retail stores, because I think that’s just going to promote thousands and thousands of young people getting hooked, which, from my perspective, just runs contrary to what I thought the goal of the bill was. It’s going to undermine what I thought the goal was, which was to get this out of sight, out of mind, especially for young people, who are the most likely to get hooked and the most likely to smoke for a long, long time and the most likely to be some of those statistics with respect to cancer that I thought we were trying to avoid.

I just have to vote against this section because I don’t think we should be delaying a portion of this to May 31, 2008.

The Chair: Further debate?

Mr. Barrett: Clarification on section 18, under “Commencement,” subsections 18(1) and (2), that phrase “come into force on May 31, 2006”: I don’t know whether you explained this. Does that refer to designated smoking rooms, Mr. Parliamentary Assistant? When you put forward the motion, I know you explained it. Section 18, and then you go down to “Commencement” and then “Same (2) ... come into force on May 31, 2006.” You are referring to designated smoking rooms?

Mr. Fonseca: Correct. Designated smoking rooms would not be allowed as of May 31, 2006.

Mr. Barrett: OK. Then the next line, “Same (3) Subsection 5(2) comes into force on May 31, 2008,” would be referring to the back wall displays in convenience stores?

Mr. Fonseca: Yes. Any display would have to be out of sight.

Mr. Barrett: In 2008. But just to make it clear in my mind, that probably does not refer to, say, cigar stores that qualify as tobacconists. That would be my understanding—or no? Are we covered off OK on this one?

Ms. Glassman: Yes. There’s the ability in regulation to exempt tobacconists from the provisions of section 3.1. So we’ve discussed already that we can either exempt them from all or some of the sections and—

Mr. Barrett: Yes. So everybody has until 2008, and then perhaps tobacconists will not have to clear the walls.

Ms. Glassman: Right.

The Chair: Further debate? Hearing none, all in favour?

Ms. Martel: Chair, could I have a recorded vote, please?

Ayes

Fonseca, Marsales, McNeely, Milloy, Wilkinson.

Nays

Barrett, Martel.

The Chair: The motion is carried.
PC motion, page 40.

Mr. Barrett: I move that subsection 18(2) of the bill be amended by striking out “2006” and substituting “2010.”

The rationale for this, assuming the way today’s clause-by-clause was going to go, recognizing the fact that so many of the bars, pubs and nightclubs, many of the smaller places in Ontario—we’ve been told that they average profits of around 3.7%. That’s before taxes. Some talk about an annual profit of about \$18,000 a year; that’s about \$50 a day. Obviously, many of these operators—I don’t know what percentage of them—are pretty well hanging on by their fingertips, and we would know the result of any decline in sales.

1700

We know that 700 facilities in Ontario made capital investments for the designated smoking rooms. We've heard figures of anywhere from \$10,000 up to \$300,000. Many indicated they could ill afford a capital expenditure of that magnitude, but at the time, and given the municipal bylaw that permitted them to do that, it seemed to be one option, perhaps the only option, available to them to better enable them to retain their smoking clientele. We understand that the vast majority of the designated smoking rooms in Ontario, about 90%, were built with due regard to a municipal bylaw that did not have an expiry date. This is what we were told. In testimony, one example was that they built it two years ago and spent \$300,000. If you or I were to buy a combine—we could spend up to \$300,000—we might be hard put to depreciate that over 10 years and get our money back.

I put forward that there is a request out there for more time. These people are in business. They've made capital investments. We don't have a mechanism here to talk about compensation; we found that out earlier. They need assistance to depreciate the original capital cost, and, for some of these facilities, there will also be an expense accrued to dismantle them. I say that on behalf of a number of people who have testified and written and phoned. That's my rationale for this motion.

The Chair: Further debate? Hearing none, all in favour?

Mr. Barrett: Recorded vote.

Ayes

Barrett.

Nays

Fonseca, Marsales, Martel, McNeely, Milloy, Wilkinson.

The Chair: The motion is lost.

Shall section 18, as amended, carry? Carried.

Shall section 19 carry? Carried.

Does the committee wish to revert back to the deferred motions on section 8? Page 28.

Ms. Martel: Chair, if I might, we're still getting a photocopy, so perhaps while that happens, we can deal with a different motion that has now been circulated, while we wait for the photocopy.

The Chair: Agreed? Agreed. Mr. Milloy?

Mr. John Milloy (Kitchener Centre): I'm wondering if I can ask for unanimous consent to deal with a motion regarding section 5. It's a housekeeping motion we want to put forward.

The Chair: Mr. Milloy is seeking unanimous consent. Agreed? Agreed.

Mr. Milloy: I move that the French version of subsections 3.1(3) and (4) of the Smoke-Free Ontario Act, as set out in section 5 of the bill, as set out in the motion made by Mr. McNeely, be amended by striking out the

word "publicitaire" wherever it appears and substituting the word "promotionnel."

The Chair: Further debate? Hearing none, all in favour? Carried.

Shall section 5, as amended, carry? Carried.

Ms. Martel?

Ms. Martel: I would like to withdraw the two motions that we had deferred. Do I need to read those into the record again? OK. They are NDP motions 28 and 29. I would like to withdraw those and replace both with the following new motion.

I move that subsections 9.1(3) and (4) of the Smoke-Free Ontario Act, as set out in section 8 of the bill, be struck out and the following substituted:

"Restriction

"(3) A home health care worker who has exercised his or her right to leave shall comply with any procedures set out in the regulations.

"Regulations

"(4) The Lieutenant Governor in Council may make regulations setting out procedures that must be followed if a home health care worker has exercised his or her right to leave."

This is a compromise. Of course, I would prefer that there be no regulations, but as I understand it from the legal staff, the purpose of any regulation that might be drafted would essentially be to set out the guidelines that would give some protection to that worker in terms of the exercise of that right. They can leave but should afterwards be following up with a reporting mechanism that outlined the circumstances that prompted their right to refuse. That should be seen as providing or affording them protection in the event that the client wants to take action or if something indeed happens to the client after that home health care worker has left. I have been assured that this would be a protection to the home health care worker after they have left, to have clearly recorded the circumstances under which they felt they were compelled to leave, when it happened, how it happened etc.

The Chair: Further debate?

Mr. Wilkinson: I would just like to once again commend the member for Nickel Belt for working on this in a collegial fashion to try to improve this bill.

The Chair: Further debate? Hearing none, all in favour? Opposed? The motion is carried.

Shall section 8, as amended, carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 164, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

SUBCOMMITTEE REPORT

The Chair: Would someone be interested in moving the subcommittee report with regard to tomorrow's business?

Mr. Wilkinson: I would move the subcommittee report.

The Chair: We need it read into the record.

Mr. Wilkinson: Your subcommittee met on Wednesday, May 4, 2005, to consider the method of proceeding on Bill 186, An Act respecting the composition of the council of The Regional Municipality of Peel, and recommends the following:

(1) That the committee hold public hearings in Brampton on Friday, May 6, 2005, from 9 a.m. to 11:30 a.m.

(2) That the committee hold public hearings in Mississauga on Friday, May 6, 2005, from 1 p.m. to 3:30 p.m.

(3) That the chair of the region of Peel and the mayors of Brampton, Caledon and Mississauga be invited to appear before the committee for up to 20 minutes each.

(4) That the length of presentations for other witnesses be 10 minutes.

(5) That the committee clerk, with the authorization of the Chair, post information regarding Bill 186 on the Ontario parliamentary channel, the committee's Web site and on Canada NewsWire if possible.

(6) That interested people who wish to be considered to make an oral presentation in Brampton or Mississauga contact the committee clerk by 12 noon on Thursday, May 5, 2005.

(7) That the committee clerk distribute to each of the three parties a list of all the potential witnesses who have requested to appear before the committee by 12:30 p.m. on Thursday, May 5, 2005.

(8) That, if necessary, the members of the subcommittee prioritize the list of requests to appear and return it to the committee clerk by 1:30 p.m. on Thursday, May 5, 2005.

(9) That a subcommittee member's failure to return a prioritized list by 1:30 p.m. Thursday, May 5, 2005, would indicate the member's intention to keep the list in its original priority.

(10) That if all requests to appear can be scheduled in any location, the committee clerk can proceed to schedule all witnesses and no prioritized list would be required for that location.

(11) That the committee clerk, with the authorization of the Chair, be allowed to schedule witnesses who have made their request to appear after the deadline, provided there is space available in that location.

(12) That the deadline for written submissions be Monday, May 9, 2005, at 12 noon.

(13) That the research officer provide a summary of the presentations by Tuesday, May 10, 2005.

(14) That proposed amendments to Bill 186 should be filed with the committee clerk by 5 p.m. on Tuesday, May 17, 2005.

(15) That the committee meet for the purpose of clause-by-clause consideration of Bill 186 on Thursday, May 19, 2005.

(16) That the committee clerk, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Any debate? All in favour? Opposed? Carried.

The meeting is adjourned.

The committee adjourned at 1711.

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Ms. Shelley Martel (Nickel Belt ND)

Mr. John Milloy (Kitchener Centre / Kitchener-Centre L)

Mr. Lou Rinaldi (Northumberland L)

Also taking part / Autres participants et participantes

Mr. John Garcia, director, chronic disease prevention and health promotion branch,

Ms. Donna Glassman, legal counsel,

Ministry of Health and Long-Term Care

Mr. Michael Perley, director, Ontario Campaign for Action on Tobacco

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. Ralph Armstrong, legislative counsel

Ms. Anne Marzalik, research officer, Research and Information Services