

## **Update on the Constitutional Challenge to The City Of Toronto and York Region No-smoking By-laws**

Mr. Manning's examination of the prosecutors' witnesses is underway.

The prosecutors for the City of Toronto and York Region have filed affidavits on behalf of Dr. Ted Boadway, Dr. Helena Jaszczek and by-law inspectors Rob Colvin and Tom Coleman.

Dr. Jaszczek's and Mr. Colvin's affidavits contain the materials reviewed by the York Region and the City of Toronto Councils, respectively, in concluding that ETS represents a significant health hazard, and upon which they relied in passing their by-laws. Dr. Jaszczek's material related to the alleged health hazards of ETS, while Mr. Colvin's included studies purporting to dismiss any economic consequences.

Dr. Boadway's material specifically purports to be an accurate review of the available body of literature on the health hazards of ETS. Although Dr. Boadway frankly admits his lack of expertise in the area, the Court found reason to qualify him as an expert in the state of the scientific literature on the subject.

**The material put before the Court in the affidavits of these witnesses demands a full and vigorous response with defense evidence.**

**The materials filed by Dr. Boadway, Dr. Jaszczek and Mr. Colvin must be answered with defense evidence demonstrating that the materials relied upon by the cities represents a mere selection of the body of available scientific literature in the area of ETS, that the picture reviewed by the councils was incomplete, and that the by-laws therefore were not passed on the rational basis required by our Constitution. The economic studies must be showed up in the same way.**

Mr. Manning began his response to these witnesses by preempting much of their testimony with that of Dr. Roger

Jenkins. His testimony was specifically directed to the area of analytical chemistry and ETS exposure. He demonstrated, through references to his own studies and other peer-reviewed material, that the theory of the prosecution, the studies and reports they put before the Court relied upon flawed assumptions and conclusions respecting the chemistry of ETS, exposure to the constituents of ETS in hospitality environments and the possibility of controlling ETS exposure through ventilation.

Dr. Jenkins also reviewed for the court the Ontario Occupational Health and Safety Regulations and their American counterparts, which demonstrate that the exposure to the individual chemical constituents of ETS in work environments is already strictly regulated. Dr. Jenkins referred to his own studies to show that exposure to these regulated ETS constituents in typical smoking workplaces generally falls well below legislated levels.

**To complete his response, Mr. Manning must now follow through with a strong case on the epidemiological and economic fronts.**

Both Dr. Gori and Dr. Evans are pre-eminent in their fields and can offer valuable evidence and testimony. An expert such as Dr. Gio Gori is needed to give evidence on the epidemiology of ETS and show the lack of a demonstrable causal connection between ETS and the health issues alleged to justify the passing of the by-laws.

As to Dr. Michael Evans, he can testify as to the economic consequences of smoking bans in hospitality environments and provide sound evidence showing the flaws in the studies called by the prosecution and demonstrating that revenue shortfalls, unemployment and pub and bar closures can be predicted upon the imposition of a smoking ban.

It is Mr. Manning's firm belief that Constitutional applications are won and lost on the strength of the evidence brought by the applicant.

## **MEMBERSHIP BULLETIN — JUNE 2004**

### **Communication**

Pubco is always trying to improve communication with its members. Bi Monthly updates will be mailed, faxed or emailed to all of our members. We will also continue to produce our semi annual Newsletter which is sent to more than 12000 licensees in Ontario. If you feel that you are out of the loop, or have any questions, call our toll free number anytime at 1-866-314-2179.

The costs associated with mailing out the News Bulletin can be substantially reduced if we use email or fax. If you do not have a registered email with PUBCO or would like to update your information including a valid fax number, just go to our website at [www.pubcoalition.com](http://www.pubcoalition.com) and fill in form. You can also email your information to us at [pubco-office@rogers.com](mailto:pubco-office@rogers.com)

### **Morris Manning Constitutional Update**

Attached you will find an update to the Constitutional Challenge that is being supported by our membership. PUBCO has lined up the best expert witnesses possible to provide evidence in the fields of Epidemiology, Economics and Chemical Analysis. To many of you who have seen your businesses suffer big economic losses because a ban has been implemented in your area, this case has not been proceeding fast enough through the courts. Today we need to remind our members that PUBCO has made commitments based on your commitment and in order to proceed with cross examinations of York Region's witnesses and keep the court case on track we need to keep our membership numbers up. (Turn to page 4 for full update).

### **Designated Smoking Rooms (DSRs)**

The Toronto city bylaw which came into effect on June 1 has heightened the debate on DSRs. PUBCO has never been a proponent to the DSR as a solution to smoking bans as we believe DSRs break up the social fabric that makes up a successful pub or bar. Our belief is that the government should be establishing indoor air quality standards by

improving ventilation and establishing base line Threshold limit values (TLVs) for ETS (Environmental Tobacco Smoke). PUBCO has been active in defending the Toronto position on DSRs because this was a concession made to owners before the bylaw was passed in Toronto.

The recent motions made by the Health Department to push up the sunset clause which removes the DSR exemption from the Toronto bylaw is a move that if not defended will cause hundreds of Toronto bars and pubs to close.

The reasons why the Health Department is making this motion are two fold. First, they are making a move for the Province to exclude DSRs from any Province Wide Legislation, and second, if the scare owners into not constructing DSRs then they will pit owners against owners who will fight over the level playing field scenario.

Conversely, if all owners in Toronto at least applied for a DSR then we would have a strong case to show the necessity for DSRs for establishments to survive. PUBCO has pamphlets on what to do to apply for a DSR, just call our office and we will be happy to send it to you.

### **Complacency and Economic Impact**

When things go wrong in business it is very easy to look for reasons why. SARS, Mad Cow Disease, the Big Black Out, changing customer trends and a winter snow storm are all excuses that we use to blame the down turn in sales. Increasingly, government interference is becoming the number one reason for concern and industry mobilization is the only way to effectively manage our industries needs.

Currently we are undertaking a \$100,000 economic impact study that will show the effects of smoking legislation in Ontario. PUBCO is also challenging the Tobacco Research Unit at the U of T for a study that they produced and released to every newspaper in Ontario. Data used in this study was inconclusive and we may be seeking compensation for owners who have suffered economic hardship because of this false and misleading study based on erroneous data.



**Contact PUBCO:**  
Pub and Bar Coalition  
Suite 210B  
17 Grenfell Crescent  
Ottawa, Ontario  
K2G 0G3

**Tel: (613) 321-0603/4**  
**Fax: (613) 321-9681 or: 1-866-314-2179**  
**E-mail: [pubco-office@rogers.com](mailto:pubco-office@rogers.com)**  
*We're on the web!*  
**[www.pubcoalition.com](http://www.pubcoalition.com)**

**Workplace Safety & Insurance Board WSIB)**

**P**UBCO has been part of a round table discussion group on the prevention of ETS. Our strategy presentation was one of two that was accepted and reviewed by the discussion group. We have summarized our presentation for you on page three and would welcome any comments that you may have at pubco-office@rogers.com .

**Importance of Networking**

**E**veryday we get 20-50 calls and emails from owners of Pubs and bars looking for information, for advice and for help.

We continue to build a database and to communicate with other individuals and organizations with similar goals and interests that our members share. Please keep the communication and level of support high as we continue to fight the fight. We suggest that you get to know your neighbour, he or she probably shares all of the same concerns about government intervention that you do. Encourage them to join **PUBCO** and send any contacts or ideas that you may have directly to our office and we will be able to continue to provide a strong voice for our members.

It is awful that we have to say this but “United we stand, divided we fall” and the government knows how our industry can be manipulated by divide and conquer methods.

**Member Programs**

**R**ecently we have been marketing some programs to our membership. These programs are designed to help increase your profitability and also defray the legal costs that our organization is faced with in our constitutional challenge. The only way that we are able to provide these programs is to use our group purchasing power.

Today we have been able to secure the lowest possible Natural Gas rates (for you home and work), a hydro program, telecom program, VISA/Mastercard merchant rate and a new POS and ATM program. We are currently working on liability insurance, health and dental packages and wireless equipment and accessories for your cellular needs.

These programs will only be successful if our members use them. To keep yourself up to date we will be adding an entire section to our webpage in the coming month

**Fighting The Antis**

**T**he quest for freedom from oppression is a very emotional issue for all of us. However, emotion tends to cloud judgment, and we often say things that may be best left unsaid. In many cultures, the person who shows emotion automatically assumes an inferior position. There’s a time and place for it, but when debating anti-smokers it can help to take the emotion out of the equation.

Use the anti-smokers own arguments against them with unemotional reason and logic. Don’t just look like you’re advocating one side, but rather enumerate pros and cons to their positions. It’s important to present both sides as fairly and accurately as you can to show credibility. Then weigh the pros/cons to determine rational courses of action. Present such courses of action and present in logical manner.

For example, when debating antis about their position of zero tolerance for exposure to smoke, use their own arguments against them like this:

Ex-smoker asks, “So does your organization now at least admit that second-hand smoke is dangerous? Along with countless studies, even Liggett Group and PMUSA agree. Some on the fringe posts (members of your organization?) dispute the consensus. What is your official stance?”

Of course environmental tobacco smoke is dangerous. However, there is an age-old adage that we all know which is “It’s the dose that makes the poison.” So let’s put a little sanity and reason into your argument.

Is carbon monoxide dangerous? Sure it is. It’s in all auto emissions. Do we ban autos in workplaces, such as in auto repair garages, due to an emotional appeal for zero tolerance for any exposure to carbon monoxide? Of course not. If we did then you couldn’t drive your car into the shop. Auto repair shops would have to buy expensive equipment to haul cars in and haul them out after repairs were done.

Like all toxic substances in workplaces, the Occupational Safety and Health Administration (OSHA) has prescribed permissible exposure limits (PEL) for carbon monoxide. Levels in workplaces must stay within the limits of those PEL or the owners must provide workers with the appropriate safety equipment, but they just don’t declare an emotional appeal for zero exposure, because it is clearly the dose that makes the poison.

**PUBCO** is continuing to expose the truth, our views are not always printed in the Newspaper but we continue to fight for the elusive level playing field. Many of the facts and figures concerning the economic fall out of smoke bans are being suppressed by the media. There are several ongoing legal challenges taking place across the Province. If we can continue to pool our resources and not get pulled in every direction we stand a good chance of achieving some sort of compromise in the end.

**PUBCO’s Prevention Strategy and Recommendations presented to The WSIB**

**PUBCO’s Main Goals and Objectives**

- ✓ There should not be a total ban, there should be a compromise
- ✓ Industry will comply with fair and reasonable legislation
- ✓ Designated Smoking Rooms (DSRs) is a solution when adequate space is allowed for smokers.
- ✓ Designated Smoking Areas (DSAs) using ventilation should be considered as is the case in British Columbia
- ✓ To get Provincial and Federal legislation to establish Threshold Limit Values (TLVs) for ETS.

**The Impact of PUBCO’s Strategy Among Industry Groups**

- ✓ Employers will not be put out of business
- ✓ Hospitality jobs will not be lost
- ✓ Getting at the truth through education and doing away with the misinformation and manipulation being done to establish a total ban on smoking
- ✓ Exposure to ETS will be regulated and will benefit the hospitality industry, the employees and the customers

**The Means and Activities for Achieving PUBCO’s Goals and Objectives**

**Stating a case to support proposed options by presenting:**

- ✓ Evidence through studies and interviews of financial disruption to pubs and bars resulting from smoking bans
- ✓ Studies showing that there is little causal effect between ETS and cancer or lung disease
- ✓ Doing ventilation studies and projects
- ✓ Technical characteristics of the latest filtration units
- ✓ Have Federal and Provincial governments use some of the billions of dollars collected through taxes to fund studies that get at the truth and to stop the propaganda
- ✓ Training of technicians and providing technical support

**DSR Requirements in Toronto**

**A DSR must:**

- Be fully enclosed and not be a washroom, waiting area or used as a public thoroughfare.
- Not contain any food preparation stations or serving bars.
- Be no greater than 25% of the occupied space (only bingo halls may have up to 50%)
- Be used by no more than 25% of the occupancy load at any one time.
- Be equipped with a ventilation system that exhausts air from the room separately and directly outside at least 3 metres from any air intake opening to the building.

- Be ventilated at a rate of 30 litres per second/per person, based on occupancy load.
- Be exhausted at a rate of at least 110% of supply to ensure that the smoky air does not move into the non-smoking area.
- Be equipped with a self-closing door mechanism.
- Be restricted to those who are 19 years of age and older.

**There are lots of misconceptions created by the Anti’s.**

The Toronto bylaw remains unchanged and there is still opportunity for Toronto Owners to build a DSR.

