

**Ontario Campaign for Action on Tobacco
Campagne Ontarienne D'Action Contre le Tabac**

MEMORANDUM

Founding Agencies:

Canadian Cancer Society–Ontario Division
Heart and Stroke Foundation of Ontario
Non-Smokers' Rights Association
Ontario Lung Association
Ontario Medical Association

Supporting Agencies:

Alcohol and Drug Concerns Inc.
Association of Local Public Health Agencies
Cancer Care Ontario
Ontario Association of Children's Aid Societies
Ontario Association of Naturopathic Doctors
Ontario Federation of Home and School Associations
Ontario Physical and Health Education Association
Physicians for a Smoke-Free Canada
Registered Nurses Association of Ontario
The Ontario College of Family Physicians

Date: 26 September 2002

To: Interested Parties

From: Michael Perley
Director

Subject: PUBCO

On April 5, 2001, an ad appeared in the *Ottawa Sun* sponsored by several dozen Ottawa bars, pubs and restaurants claiming that the proposed 100% smoke-free Ottawa by-law would hurt hospitality business in Ottawa, and that ventilation technology should be permitted as a compliance option. The ad was sponsored by an organization calling itself the Byward Association for Responsible Service (BARS). The phone number provided in the ad turned out to be that of the Canadian Tobacco Manufacturers' Council. When challenged about the link between tobacco companies and her association, BARS President Jill Scott told the *Ottawa Citizen* that "the CTMC had volunteered to answer the phones for us."

Shortly thereafter, another organization of Ottawa bar and pub owners, calling itself PUBCO, became visible through its attacks on Ottawa's smoke-free by-law. Jill Scott became (and remains) the President of PUBCO.

PUBCO, which has at various times claimed 157, 170 and 190 member bars and pubs, has recently broadened its attack beyond Ottawa to the point where either PUBCO's General Manager, Barry McKay, or local bar and pub owners representing PUBCO, are appearing in more and more Ontario municipalities in opposition to smoke-free by-laws.

PUBCO presentations to by-law consultation meetings and municipal councils are a combination of strong rhetoric and allegations concerning the economic impacts of smoke-free by-laws, challenges to the science behind the health impacts of second-hand smoke, promotion of ventilation as an alternative to smoke-free policies, and attacks on surveys and studies commissioned by the City of Ottawa and other health agencies, which it calls the "Health Industry".

Councillors, local media and members of the public unfamiliar with the issues involved in passing smoke-free by-laws, may be influenced by PUBCO's combination of rhetoric and allegations. PUBCO has now made enough information available through its website and in statements to municipal councils, letters to newspapers and other media interviews, to permit an assessment of the accuracy of these claims.

Give Kids A Chance

*Donner Une Chance
Aux Enfants*

Before looking at the substance of PUBCO's allegations in detail, it is important to note that despite nearly 18 months of advocacy, a major lawsuit, legal challenges to charges laid under the Ottawa by-law and a great deal of anti-by-law media coverage, PUBCO has not succeeded in convincing Ottawa Council to reconsider its smoke-free by-law.

The following is divided into three sections covering the major areas addressed in PUBCO's campaign to block smoke-free policies:

1) PUBCO claims that hospitality business in Ottawa and elsewhere has been negatively affected by smoke-free policies

Depending on the date and the venue, PUBCO representatives have variously claimed that:

- Ottawa beer sales dropped 12% after implementation of the City's smoke-free ban in August 2001 (B. McKay to Elizabethtown-Kitley Township Council, 12 July/02),
- 26 bars have gone out of business as a direct result of the ban (B. McKay, 12 July/02),
- There has been a 20% drop in year over year sales among licensed Ottawa establishments (PUBCO Ottawa rally, media release, 5 May/02),
- The top 300 Ottawa bar and pub accounts for all breweries show a 6% sales decline in the 7 months after September 2001 (PUBCO media release, April 11/02),
- Ottawa bar and pub sales were down 22% in September 2001 and 20% in October of the same year (Jill Scott, PUBCO media release, 19 December/02),
- Beer sales in Ottawa were down 10.5% during the ten months following implementation,
- The by-law has cost Ottawa \$25 million in its first 10 months in force.
- 25 PUBCO establishments surveyed (of 1500 Ottawa restaurants and bars) predict sales declines of 16% and reductions in tips of 25% (Geospace Research, August/01).

In a further claim of economic damage, PUBCO predicted that 60 bars and pubs would be driven out of business within months of Ottawa's smoking ban going into effect (*Ottawa Sun*, 14 April/02).

Any attempt to assess the significance and validity of the above statements should take account of the following:

- As reported in the *Ottawa Sunday Sun* on April 14, 2002, Statistics Canada found that in the 8 months ending in March 2002, 1 bar and 15 restaurants had declared bankruptcy in Ottawa. During the same 8 month period a year earlier, 3 local bars and taverns and 20 local restaurants went bankrupt, for a total of 23, or 7 more than the following year.
- As noted in an April 14, 2002 report in the *Ottawa Sun*, the Canadian Brewers Association has pointed out the importance of the direct link between beer consumption and weather. In beer sales figures published by PUBCO in that month, beer sales in Ottawa between April 2001 and August 2001 vary from 11% higher than the previous year, to 1% lower than the previous year (in June 2001). For the period August 2001 to March 2002, figures vary from a sales reduction

of 0.6% in October 2001 over the same period one year previous, to a maximum sales reduction of 12.7% in March 2002.

In these figures, beer sales figures alone are used as indicators of the by-law's impact: no mention is made of other indicators like wine, liquor and food sales, or of other economic conditions, fluctuating tourism revenues following September 11, 2001, or any other factors. Looking at the numbers a different way, we note that the sales reduction of just under 1% in June 2001 is nearly equivalent to the sales reduction in October 2001 (two months after the by-law came into effect). In other words, beer sales fluctuations in a given month in Ottawa do not necessarily have anything to do with the City's smoking by-law.

- PUBCO claims pubs in Ottawa “have seen their clientele evaporate since the introduction of the smoking ban.” (summary of PUBCO presentation, Elliot Lake, 9/02). However, in an *Ottawa Sun* poll conducted by the Corporate Research Group in early December 2002, 29.5% of Ottawa residents said they were going out to bars and restaurants more often since the smoking ban was imposed, while only 16.9% reported going out less often. 53.3% said the by-law had not affected their social habits.
- A report by KPMG Chartered Accountants on the economic impact of the Ottawa smoke-free by-law published in December 2001 pointed out that:
 - ◆ Employment in the Ottawa accommodation and food service sector rose 6.5% from June 2001 to October 2001 despite a decline in total employment;
 - ◆ Employment insurance claims in the accommodation and food service sectors declined by 5% in August 2001 compared to August 2000, and by 9% in October 2001, over a year previous.
 - ◆ Bankruptcy and insolvency statistics for restaurants were lower for the period August to November 2001 than for the previous two years. Two “tavern, bar or nightclub” operations underwent insolvency proceedings in 2001, versus one in 2002 and 1999.
- In May 2002, a City of Ottawa staff report noted that 82 new bars and restaurants had opened since Ottawa went 100% smoke-free on August 1, 2001.
- In what may be the most relevant piece of information, KPMG reported to the City of Ottawa that its attempt to carry out a survey of the economic impact of the City's by-law in March – May 2002 in consultation with PUBCO and the Ottawa chapter of the Ontario Restaurant, Hotel and Motel Association, had failed. In a detailed description of its methodology, KPMG noted that its representatives had met with PUBCO and with the ORHMA's Ottawa chapter to review the study methodology and approach, had sent letters to establishments to be surveyed, and followed up with extensive and repeated contacts with each establishment to locate contacts and obtain cooperation in obtaining accurate data.

KPMG's report noted that the required rate of participation of 60% of the establishments contacted was not achievable, because 43% of establishments contacted refused to participate in the study, and a further 17% of establishments contacted did not respond to contact efforts. 33% of establishments contacted fully participated and provided information from retail sales tax records, while a further 8% participated fully and provided sales data from other than retail sales tax records.

Many, if not most, of the establishments involved in the survey were PUBCO members, or were recommended by PUBCO and/or the ORHMA. If PUBCO's allegations of economic losses from the by-law were true, it follows that these establishments should have been eager to

participate in proving these losses. Why did they not do so? The answer would seem to be two-fold. One, some establishments did not want their records reviewed because such a review would not demonstrate any loss in business (we are reminded of the plaintiff bar/restaurant in the Waterloo compensation lawsuit whose records, when they were produced as a result of a court order, in fact showed that the establishment had lost money the year before Waterloo's by-law was implemented, and made money in the year following implementation). Second, some Ottawa establishments contacted may not have wanted their records reviewed by a major accounting firm due to other deficiencies or inaccuracies in these records.

Whatever the reason for the high refusal rate, the only conclusion to be drawn is that a large number of establishments PUBCO claims have lost business in Ottawa due to the City's smoking by-law, are unwilling or unable to provide information to substantiate these claims.

2) PUBCO has attacked the validity of medical evidence proving the health effects of second-hand smoke, and has used the work of tobacco industry consultants as the basis for this attack.

Presentations by PUBCO General Manager Barry McKay frequently refer to the 1998 U.S. Federal Court finding that a United States Environmental Protection Agency study proving that second-hand smoke is a human lung carcinogen, is flawed. Mr. McKay's presentations note that "the court ordered a summary judgement against the EPA and nullified the EPA's second-hand smoke risk assessment."

There are several problems with this conclusion:

- The judge involved in this decision, William Osteen, is a former tobacco industry lobbyist,
- Judge Osteen drew conclusions about scientific methodology and medical evidence which were not within his purview or expertise to draw. He did not rely on any independent medical experts or any other authorities in reaching his judgement.
- Most importantly, his ruling's conclusions that second-hand smoke cannot be classified as a human lung carcinogen have since been completely refuted by additional scientific studies, including a June 2002 monograph by the International Agency for Research on Cancer which conclusively proves that second-hand smoke is in fact a human lung carcinogen.

Not to be deterred, Mr. McKay continues to reference the Osteen decision, refers to the medical evidence of second-hand smoke's health impacts as "junk science" (a term coined by the U.S. tobacco industry), and recommends a book by tobacco industry consultants Gio Gori and John Luik titled "Passive Smoke", published by the Fraser Institute, a Canadian think tank funded in part by the Canadian tobacco industry.

Mr. McKay's attacks on second-hand smoke science are a direct reflection of opinions publicly expressed by Canadian tobacco industry executives: in one example, a July 20, 2002 letter to the Editor of the *Brockville Recorder and Times* from JTI-MacDonald Corp's John Wildgust stated in part that "when it comes to ETS, however, we do not believe that the scientific evidence, taken as a whole, is sufficient to establish that ETS is a cause of disease."

3) PUBCO advocates ventilation - the tobacco industry's major counter-strategy to smoke-free policies – as an alternative to smoke-free by-laws.

Increasingly, PUBCO presentations advocate the use of ventilation as an alternative to smoke-free policies. Whether in supporting the province of British Columbia's ventilation-based Workman's Compensation Board's regulations, or in promoting the results of the Ontario Restaurant, Hotel and Motel Association's ventilation demonstration project at the Black Dog Pub in Scarborough, Ontario, McKay's statements increasingly feature ventilation as a centrepiece argument against smoke-free policies.

Recent efforts by the Canadian Restaurant and Foodservices Association and the ORHMA to promote ventilation as an alternative in York Region provided an opportunity to review the links between the hospitality industry and the tobacco industry in the promotion of ventilation.

Documents including memoranda from the Canadian Tobacco Manufacturers' Council (<http://www.pmdocs.com/getimg.asp?pgno=0&start=0&if=avpidx&bool=2065255103&docid=2065255103/5104&docnum=1&summary=0&sell=>

<http://www.pmdocs.com/getimg.asp?pgno=0&start=0&if=avpidx&bool=2065254948&docid=2065254948/4951&docnum=1&summary=0&sell=>) and published results of the Black Dog Pub demonstration, have made several aspects of this relationship clear:

- The ORHMA has employed leading American and Canadian tobacco industry consultants to promote ventilation;
- The ORHMA has received funding from the Hotel Association of Canada to promote ventilation, funding which was in turn received by the HAC from the Canadian Tobacco Manufacturers' Council;
- The ORHMA hired a prominent American tobacco industry consultant to conduct tests at the Black Dog Pub and to provide a journal article summarizing these results;
- The journal in which the results were published, *Regulatory Toxicology and Pharmacology*, is funded in part by U.S. tobacco giant RJ Reynolds, and is edited by Gio Gori, the tobacco industry consultant who, with fellow tobacco industry consultant John Luik, co-authored the Fraser Institute's attack on second-hand smoke science mentioned earlier.

Whether or not PUBCO receives any form of direct or indirect assistance from the tobacco industry is not clear at this point in time. The only public statement by PUBCO in this matter is one made by Barry McKay on January 29, 2002 in response to the Non-Smokers' Rights Association's assertion that PUBCO's legal challenges to Ottawa's by-law must have required extensive financial backing. McKay noted that "we do not receive one penny from the Canadian Hotel Association (sic) or any tobacco-related group. If offered, as we have said before, we would take it in an instant..."

Whether or not PUBCO accepts direct assistance from the tobacco industry is beside the point. In its various allegations of economic loss, in its attacks on the science of second-hand smoke exposure, in its promotion of ventilation as an alternative of smoke-free policies, in its attacks on health agencies such as the Ottawa-Carleton Health Unit and the Non-Smokers' Rights Association, PUBCO presents itself as a strong supporter and advocate of positions and programs which either originate with, or have been repeatedly endorsed by, Canadian tobacco companies. The organization's

frequent assertions that “PUBCO is not pro-smoking” should be viewed against the background of the above.

To see PUBCO’s claims first-hand, go to their website (www.pubcoalition.com).