



Psychiatric Patient Advocate Office

*Submission to the Standing Committee on Finance and Economic Affairs
Regarding Bill 164
Tobacco Control Statute Law Amendment Act, 2004
Smoke Free Ontario Act*

April 20, 2005

*Psychiatric Patient Advocate Office
55 St. Clair Avenue West
Suite 802, Box 28
Toronto, Ontario, M4V 2YZ
Telephone: (416) 327-7000
Toll Free: 1-800-578-2343
www.ppao.gov.on.ca*

PROMOTING PATIENTS' RIGHTS



Psychiatric Patient Advocate Office

Bureau de l'intervention en faveur des patients des établissements psychiatriques

April 20, 2005

Mr. Pat Hoy M.P.P.
Chair
Standing Committee on Finance and Economic Affairs
Room 1405, Whitney Block
Queen's Park
Toronto, Ontario, M7A 1A2

Dear Mr. Hoy:

RE: Bill 164 - Tobacco Control Statute Law Amendment Act, 2004
Smoke Free Ontario Act

Thank you for the opportunity to participate in the consultation process relating to "Bill 164 - The Smoke Free Ontario Act." We are supportive of the Ministry's policy on smoking bans but we believe that there are unique circumstances and special considerations that must be taken into account with respect to smoking in mental health facilities in Ontario.

We have many clients who have made an informed decision to smoke and who wish to exercise their choice to smoke. However, given their legal status and restrictions on their freedom of movement, many of our clients cannot leave the facility to smoke in non-enclosed areas. It is because of these restrictions that we are asking the Committee to provide an exception for the current and former provincial psychiatric hospitals, forensic programs and any Schedule 1 facility, as defined under the *Mental Health Act*.

While we understand and appreciate the challenges of balancing the rights of both smokers and non-smokers, we also believe that there is a solution available, the use of controlled smoking areas. Many facilities already have such areas available and these controlled areas could continue to be used if permitted by law.

The PPAO also recommends that Bill 164 be strengthened to supersede any municipal by-laws that either impose more restrictive measures or prohibit smoking in controlled smoking areas. If the Bill does not supersede these by-laws, there will continue to be a patchwork of by-laws and inequitable application of the law across Ontario.

Again, we are hopeful that the Committee will recognize the special circumstances of clients in mental health facilities in Ontario and provide an exception that will allow them to exercise their choice to smoke, like clients in other types of residential care facilities. Should you have any questions or wish to discuss our submission, please contact me at (416) 327-7004.

Sincerely,

David Simpson
Program Manager

55 St. Clair Avenue West
Box 28, Suite 802
Toronto, ON M4V 2Y7

Telephone: (416) 327-7000
Toll Free: 1-800-578-2343
Fax: (416) 327-7008

E-mail: ppao@moh.gov.on.ca
Website: www.ppao.gov.on.ca

*Submission of the Psychiatric Patient Advocate Office
to the Standing Committee on Finance and Economic Affairs*

*Regarding Bill 164
Tobacco Control Statute Law Amendment Act, 2004
Smoke Free Ontario Act*

The Impact of Bill 164 on Patients in Mental Health Facilities

The Psychiatric Patient Advocate Office (PPAO), an arm's length program of the Ontario Ministry of Health and Long-Term Care, has the mandate to protect the rights of patients with mental illness in the current and divested provincial psychiatric hospitals (PPH). As partisan advocates for our clients, we are supportive of their right to make informed decisions and choices, including having their decision to smoke respected.

Bill 164 proposes to ban smoking in all workplaces and enclosed public areas. It also proposes to eliminate controlled smoking areas (CSA). The proposed legislation will apply to all psychiatric facilities in Ontario with serious implications to patients in these facilities and specially those who by virtue of their mental status and legal status (e.g., forensic and involuntary patients; those on constant observation or those who do not have privileges to leave the ward, hospital or walk freely on the hospital grounds). Many of these patients are considered seriously mentally ill and are expected to stay in hospital for an extended period of time. Many of these patients are isolated from their families and have come to regard these facilities as their place of residence, much like residents in nursing homes, homes for the aged, a retirement home or a supportive housing residence, which are funded by the Ministry or other Ministries.

While Bill 164 bans smoking tobacco or holding lighted tobacco in any enclosed public place or enclosed workplace [Section 9], it provides an exception to those who smoke or hold lighted tobacco in an indoor room in a residence that also serves as an enclosed workplace; nursing homes, charitable homes, homes for the aged and retirement homes, and supportive housing residences funded through the Ministry of Health and Long-Term Care or the Ministry of Community and Social Services. Bill 164 as well provides for conditions for persons in these homes to be able to smoke. These conditions include:

- (1) the room has been designated as a controlled smoking room;
- (2) a resident who desires to use the room must be able to smoke without assistance from an employee. An employee who does not desire to enter the room shall not be required to do so.
- (3) Smoking in the room is limited to residents of the residential facility only;
- (4) The room is an enclosed space 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; and
 - (c) meets any other prescribed requirements.

Thus, the proposed legislation will allow each of these groups of individuals to make an informed decision about smoking and to be able to exercise that option in their own "residence."

The PPAO is recommending that exceptions under subsection 9(7) expand to include patients in the ten current and former provincial psychiatric facilities and those in forensic programs in other health care facilities. Specifically, any facility that is a Schedule 1 facility as defined under the *Mental Health Act*.

Rationale:

- The exception would apply to:
 - Long-stay patients who suffer from dementia, Alzheimer's or organic brain disorders; about 70% of long-term care facility residents have a similar profile;
 - Long-stay patients with serious mental illness (e.g., schizophrenia);
 - Long-stay patients who are on forensic units referred from the courts because they have been found "not criminally responsible" or "unfit to stand trial"; some of these patients have been in the forensic system for over 30 years, much longer than a typical long-term care facility resident; and
 - Patients who by virtue of their mental state or legal status are detained in the hospital or are without grounds privileges (e.g., forensic and involuntary patients; those on constant observation).
- According to the published scientific literature, the smoking rate among people with mental illness is higher than the general population. Thus, the proposed ban on smoking (Bill 164) in psychiatric facilities is expected to have a greater impact on these patients. The impact will be greater on these patients not only because of the high smoking rate, but also because they have unique physiological needs - medication side effects might be lessened with smoking, and medication taken by patients might exacerbate withdrawal symptoms.
- An absolute ban on smoking would affect patients more than hospital workers. While workers can go outside the facility or at end of day go to their homes to smoke, patients (e.g., forensic and involuntary patients; those on constant observation; those physically frail) cannot.
- An absolute ban could also lead to fire safety concerns as patients may hide cigarettes and matches and smoke in prohibited areas. This could pose a significant threat to the health, safety and well being of other patients.
- For many of these patients, the psychiatric facility has become their place of residence and many do not have families or relatives.

Other Conditions that Further Restrict Smoking

In some municipalities, smoking or lighting tobacco is also prohibited by municipal by-laws in open space such that patients or staff cannot smoke on the grounds of a psychiatric facility. For example, at the Penetanguishene Mental Health Centre, patients and staff are prohibited from smoking on the Centre's grounds and up to and including the gates to the Centre's grounds. On the other hand, the Whitby Mental Health Centre, another provincial psychiatric hospital, and general hospitals have not adopted such stringent restrictions and patients are able to smoke on hospital grounds.

Impact on New Admissions and Referrals from Courts

- An absolute ban would be problematic for new forensic patients who have been smokers for many years and who are being sent to a non smoking facility without the opportunity for prior counseling or cessation therapy. They would suffer serious withdrawal symptoms, which would exacerbate their clinical condition.
- An absolute ban would deter patients who smoke from seeking treatment in a psychiatric facility because of automatic forced smoke cessation resulting in further deterioration of their health. The necessity for early intervention is well documented in the professional literature.

Recommendations

The PPAO recommends that:

1. The exceptions in subsection 9(7) of Bill 164 be expanded to include patients in the ten current and former provincial psychiatric facilities and those in forensic programs in other health care facilities, or any Schedule 1 facility as defined under the *Mental Health Act*.
2. The same or similar conditions as set out in Bill 164 should apply to this population as well.
3. The provisions found in subsection 9(7) 3 that protect workers in a residential care facility from exposure to tobacco smoke should also apply to employees of a psychiatric facility.
4. Recognizing that nicotine is addictive, smoking cessation programs (e.g., counseling) and cessation aids (e.g., patches) should be required for those patients who are willing to quit smoking. For those unwilling to quit, or who have made an informed decision or choice to continue to smoke, opportunities must be created for them to smoke like others who have been afforded an exception under Bill 164.
5. Establish controlled smoking areas in accordance with the conditions set out in the proposed Act. Having controlled smoking areas in psychiatric facilities will also assist patients who by virtue of their illness may have a short stay in the hospital and who will not be in-patients long enough to benefit from any cessation efforts.

6. Patients should be given the same rights as hospital employees to complain about exposure to environmental tobacco smoke (ETS) if they are exposed to ETS as a result of a improperly functioning controlled smoking area.
7. Bill 164 must supercede any municipal by-laws that introduce more restrictive measures to prohibit smoking.

Conclusion

The Psychiatric Patient Advocate Office would like to see an exception included in Bill 164 for the current and former provincial psychiatric hospitals, forensic programs, and Schedule 1 facilities, as defined under the *Mental Health Act*. Our proposed recommendations would strengthen the Bill while taking into account the unique circumstances and special considerations facing individuals with mental illness when they seek care and treatment in residential care facilities. Our clients would like to be treated like other clients in the health care system, to have their rights and choices respected and when their freedom of movement is restricted to be able to exercise their choice to smoke.