

Non-Smokers' Rights Association Smoking and Health Action Foundation

March 2008

Ontario

Name of legislation	<ul style="list-style-type: none"> • <i>Smoke-Free Ontario Act</i>
Date in force	<ul style="list-style-type: none"> • May 31, 2006
Workplaces	<ul style="list-style-type: none"> • Smoking prohibited in virtually all enclosed workplaces • Smoking prohibited in private homes that operate a daycare, whether or not children are present • Smoking permitted in DSRs by in-patients or residents of group living facilities (includes long-term care and other residential care facilities) • Smoking permitted by registered guests and their invited guests in designated smoking hotel rooms
Restaurants	<ul style="list-style-type: none"> • Smoking prohibited
Casinos, bingos, etc.	<ul style="list-style-type: none"> • Smoking prohibited
Bars	<ul style="list-style-type: none"> • Smoking prohibited
Public places	<ul style="list-style-type: none"> • Smoking prohibited
Outdoor provisions	<ul style="list-style-type: none"> • Smoking prohibited on bar and restaurant patios if patio has partial or complete roof, regardless of whether the roof is permanent or made of temporary coverings (includes awnings but not single umbrellas, although two or more umbrellas pushed together could constitute a roof—subject to an inspector's assessment) (see notes section) • Smoking prohibited on school grounds • Smoking prohibited within 9 metres of entrances and exits of hospitals, health care facilities, psychiatric facilities • Smoking prohibited in reserved seating area of outdoor sports arenas and entertainment venues
Private motor vehicles (New!)	<ul style="list-style-type: none"> • Private Member's Bill 11 introduced Dec. 2007 • Government has announced that it will introduce a bill in the spring legislative session •

Provision for municipalities	<ul style="list-style-type: none"> Section 12 of the <i>Smoke-Free Ontario Act</i> states that municipalities may pass bylaws that are more restrictive and the more restrictive prevail
Summary	<ul style="list-style-type: none"> Legislation strong for the indoor protection from SHS. However, the fact that this Act does not uniformly prohibit smoking on outdoor patios, does not offer protection around doorways to all workplaces and public places, and does not include protection around windows that open or air intakes makes this legislation slightly behind current outdoor protection standards

Notes

The *Smoke-Free Ontario Act* states that smoking is prohibited in any enclosed public place or workplace that, among other things, is covered by a roof. The regulations define a roof as “*a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or place, and that is capable of excluding rain or impeding airflow, or both.*” In other words, the spirit of the law prohibits smoking on any part of an outdoor patio that has a partial or complete roof. However, some proprietors with outdoor patios have been interpreting the *Act* differently, allowing smoking on the uncovered sections of their patios. [In what is believed to be a precedent-setting decision, in July 2007 a court ruled in favour of the owner of a bar that smoking should be permitted on the uncovered section of his patio. The decision is being appealed.] Once patio season is in full swing, it will be interesting to see how this decision influences other patio proprietors. Ideally, the province should amend the *Smoke-Free Ontario Act* to make smoking prohibited on all patios regardless of whether they have a roof or not. Such an amendment would eliminate confusion for proprietors, extend outdoor protection from SHS, and bring Ontario to the fore. Newfoundland and Labrador, Nova Scotia and Alberta all have legislation banning smoking on patios.

The double standard in Ontario that allows outdoor smoking shelters at casinos but not at bars and restaurants has received much criticism and negative media coverage over the past year. Casino Windsor had a \$2.3 million provincially-funded smoking shelter constructed, and another \$250,000 went towards a shelter at the Windsor Raceway Slots. Jim Watson, then Minister of Health Promotion, stated that because the primary business of casinos and other gaming facilities is not serving food or alcohol, they are permitted to construct outdoor smoking shelters as long as they have no more than 2 walls and a roof. Although casinos may not exist primarily to serve food and alcohol, they are kept busy feeding and quenching the thirst of their gamblers—and most certainly

compete with local non-gaming establishments. In addition to offering uniform protection from SHS, one of the goals of comprehensive smoke-free legislation is to provide a level playing field in business. By allowing casinos and gaming facilities to build smoking shelters, the government has created an unfair advantage for casinos over bars and restaurants.

In May of 2007 a new bingo hall opened on the Munsee Delaware First Nation, located outside London, Ontario. According to media reports, Paradise Bingo is smoker-friendly—it has a 4,000 square foot smoking room that can accommodate 160 people and will even have a concession stand that sells cigarettes. The owner of the hall said it will be staffed mostly by native people and will in all likelihood be patronized predominantly by non-natives. The local health unit has stated that because the reservation is under federal legislation it is unable to intervene.

The *Indian Act* allows band councils to pass bylaws “to provide for the health of residents on the reserve ...”¹ A bylaw that increases, not decreases, exposure to SHS does the opposite of providing for the health of residents on reserve and is therefore beyond the scope of the *Indian Act*. There are many other provincial laws that apply on reservations, including liquor laws, highway traffic laws, occupational health and safety laws, etc. Ontario’s *Smoke-Free Ontario Act* should be no different.

In other news, on December 6th, 2007 Private Member’s Bill 11, *Protecting Children and Youth from Second-Hand Smoke in Automobiles Act, 2007*, received first reading. The bill was introduced by Liberal MP David Oraziotti and amends the current *Smoke-Free Ontario Act* to ban smoking in vehicles with children under the age of 16 present. The government has since announced that it will introduce smoke-free car legislation in the spring 2008 legislative session. Ontario is set to become the third jurisdiction to ban smoking in vehicles with children present, after Nova Scotia (December, 2007) and the Yukon (May 15, 2008, third reading still required). To track the bill’s progress, visit the Ontario Legislature online at www.ontla.on.ca. To read the NSRA’s position statement on smoke-free vehicles with children present, visit us at [www.nsra-adnf.ca/cms/File/pdf/Smoke free cars Position statement.pdf](http://www.nsra-adnf.ca/cms/File/pdf/Smoke_free_cars_Position_statement.pdf).

¹ **Government of Canada.** *Indian Act*, Powers of the Council. 81. 1(a). <http://lois.justice.gc.ca>.