

Non-Smokers' Rights Association Smoking and Health Action Foundation

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Smoke-free Prisons

The problem of second-hand smoke (SHS) in prisons is first and foremost an occupational health and safety issue for correctional officers. The smoking rate among prisoners is anecdotally about 70-80%, which makes for a lot of SHS. Federal prisons, where inmates serve sentences of two years or more, will be totally smoke-free inside and out as of April 30, 2008. This follows a partial smoking ban that was introduced in January 2006, which prohibited smoking indoors but allowed inmates to keep cigarettes in their cells for smoking outdoors. That policy was not supported by the Union of Canadian Correctional Officers, which called it a half-measure and a logistical nightmare to enforce. Because tobacco was not considered contraband, officers could not confiscate it following complaints, and inmates were rarely found guilty

for breaching the ban. A spokesman for the union stated that officers essentially had to catch inmates in the act of smoking for any charges to stick. With predictable and routine observation rounds, inmates had lots of time to smoke and then extinguish their cigarettes. Federal prison canteen tobacco sales figures confirm that the ban did little to stop inmates from smoking indoors. In the six months prior to the ban, inmates bought \$541,000 worth of tobacco. Sales stood at \$527,000 in the six months after the ban, even though the opportunities to smoke were supposed to have been severely curtailed.¹ Prior to the decision by Correctional Services Canada (CSC) to introduce a full ban,

¹ Armstrong F. *Inmates fear fights in wake of smoking ban; Prisoners need incentives to quit, more things to do, expert says.* Kingston Whig-Standard, June 28, 2007.

prison guards exercised work refusals and had launched legal action over their involuntary exposure to SHS.

At the provincial level, all provinces except Quebec have 100% smoke-free prison policies inside and out. Unfortunately, three days after Quebec's province-wide smoke-free policy went into effect in February 2008, the government abruptly reversed its decision. It is still not entirely clear why this happened. What now effectively exists is a partial ban with smoking permitted outside and prisoners permitted to possess tobacco. Sound familiar? The decision was good news for the province's prison guard union which had not supported the complete ban, stating that the current shortage of guards would have made enforcement difficult. However, from the perspective of the NSRA, the govern-

ment's decision is a mistake. How can a partial ban, which demonstrably requires more policing, be easier to enforce than a total ban when a serious employee shortage exists? If comprehensive smoke-free prison policies can be successfully managed in every other jurisdiction in Canada, it can be done in Quebec as well.

Experience from other provinces demonstrates that offering inmates free and easy access to smoking cessation support and nicotine replacement therapy (NRT) before and immediately after a ban goes into effect is an important element of a successful smoke-free policy. However, it appears that nicotine gum may be preferable to the patch, as prisoners in other provinces have tried smoking the patch. In fact, the problem was so pronounced in Alberta that correctional officers filed 21 Workers Compensation Board claims due to the noxious fumes.²

² MacLennan D. President of the Alberta Union of Provincial Employees. Personal communication, May 2006.

Other strategies for a smooth transition include increasing the availability of healthy snacks and providing opportunities for recreation and activity to help allay prisoner unrest. Barbara Hill, director of policy development with the John Howard Society of Ontario, says that quitting smoking in prison can be very difficult because of the boredom typically experienced by inmates. "*Smoking becomes one of those things you do when there's nothing else to do and, believe me, there's nothing else to do in prison,*" she said.³

Those opposed to 100% smoke-free prisons argue that such bans only compound existing illicit drug problems and make the environment more unsafe than it already is. Tobacco is reportedly used as currency, and banning it increases its value as well as increasing the risk of inmate violence. Concerns also include widespread stress and

³ Armstrong F. *Inmates fear fights in wake of smoking ban; Prisoners need incentives to quit, more things to do, expert says.* Kingston Whig-Standard, June 28, 2007.

tension related to nicotine withdrawal. Again, other provinces and territories have successfully dealt with these problems and more, and are able to maintain smoke-free prison environments inside and out using the strategies mentioned.

Others claim that a smoking ban violates inmates' rights. This is incorrect. A handful of Canadian case law uniformly demonstrates that a smoke-free prison environment does not constitute a violation of the *Canadian Charter of Rights and Freedoms*.⁴ In fact, in 2005 a non-smoking inmate at Fenbrook Institution in Ontario actually won a \$5000 judgment in federal court over his involuntary exposure to SHS in prison. The judge found that CSC had failed in its duty of care to provide a healthful environment.⁵

⁴ Non-Smokers' Rights Association. *Canadian case law on drifting second-hand smoke in multi-unit dwellings.* www.nsra-adnf.ca/cms/file/pdf/Canadian_drift_smoke_case_law_March_2007.pdf.

⁵ Office of the Commissioner for Federal Judicial Affairs. *Maljkovich v. Canada, 2005 FC 1398.* <http://reports.fja.gc.ca/eng/2005/2005fc1398/2005fc1398.html>.