

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf.
Your File/V/Réf.

DATE 11 October 1996

TO/DEST. Coordinator, Community Services Committee

FROM/EXP. Acting Medical Officer of Health

SUBJECT/OBJET **RESPONSE TO CSC INQUIRY # 28 -
ILLEGAL TOBACCO SALES TO MINORS**

DEPARTMENTAL RECOMMENDATION

That the Community Services Committee receive this report for information.

BACKGROUND

On 19 September 96 at Community Services Committee, Councillor Alex Cullen inquired as to the Health Department's efforts to enforce the provisions of the Tobacco Control Act, regarding illegal tobacco sales to minors.

The Ontario Tobacco Control Act, 1994 (OTCA) makes it an offence for anyone to sell and to supply tobacco to anyone who is less than 19 years of age.

In order to lay a charge under the Act an Inspector must be able to confirm that a sale has taken place either by actually witnessing the sale or obtaining a confession from the clerk or the youth exiting a premises with cigarettes that a sale took place. In addition, the Inspector must prove that the youth is under 19 years of age. The youth is not required to produce identification for the Inspector and can simply walk away if he chooses to. The provision of badges to Inspectors has helped in this regard but approaching a group of youths is not only threatening for the Inspector but still presents a problem for obtaining identification. If a case goes to trial, the youth must be willing to testify that they did purchase the cigarettes. Surveillance itself is similar to undercover activities of the police. The inspector must remain inconspicuous to both the sales clerk and the youth. This often requires observing from a distance through binoculars which can make the determination of the age of a purchaser very difficult. The inspector only gets one opportunity to approach and then their presence is known. Fruitful surveillance time is also at a premium as it must be done when students are likely to be purchasing cigarettes (e.g., noon hour or after school).

OFFENCES

Since the passing of the OTCA, the Environmental Health Directorate has laid 38 sales of tobacco charges against vendors. Eighteen (18) convictions have been obtained to date. A total of six (6) charges were withdrawn, on the advice of legal counsel, and one case was dismissed by the courts. The remaining charges are outstanding awaiting payment of the fine or a trial. The rate of laying charges has increased recently with approval from the Ministry of Health to use Provincial Office Notices. Ottawa-Carleton currently ranks third among the province's 42 health units in terms of convictions and charges outstanding.

ENFORCEMENT AGENCIES

Staff of the Environmental Health Directorate have met with local municipality By-law Officers and with members of Regional Police. Both groups cited limited resources as a reason for not being able to conduct active enforcement of the OTCA. They have, however, indicated their availability to provide assistance on a request basis. Also, the Environmental Health Directorate does occasionally receive information (e.g., complaints) forwarded by members of both groups. The Department currently has one full-time inspector responsible for OTCA enforcement. These duties include the monitoring of signage, monitoring of smoking in prohibited places, surveillance of tobacco sales, responding to complaints from the public and educating retailers as to their legal responsibilities. These activities are supported by the equivalent of .5 FTE Federal Inspectors who spend approximately two (2) to three (3) days a week in the Region conducting surveillance activities.

COMPLIANCE AND ENFORCEMENT CHECKS

In addition to field surveillance and enforcement by inspectors, there is a graded program of compliance and enforcement checks.

First Stage Compliance Checks

This first stage consists of a random survey of a representative sample of tobacco retailers. The attempted purchase intentionally not completed. Retailers who have demonstrated a willingness to sell to youth are advised that checks will continue and the surveillance will increase. Retailers who are compliant are congratulated for being responsible tobacco retailers.

The March 1996 compliance survey demonstrated that 54% (n=134) of the 247 retailers surveyed were prepared to sell cigarettes to three (3) youth between 17 and 18 years of age. Results from our sixth first stage compliance check will be available later this fall. If they do not show a reduction in retailers' willingness to sell to underaged youth, additional resources will be directed to surveillance and enforcement activities.

The local overall results of similar surveys conducted by Health Canada and the Ontario Ministry of Health in August-September of this year will also be made available to us later this fall. It should be noted that compliance comparisons between surveys and areas must be interpreted with caution if the apparent age of the youths attempting purchase differ.

Second Stage Compliance Checks

This stage consists of a survey of retailers who have failed a recent and at least one other compliance survey over the past year. As in first stage compliance checks, the attempted purchase is intentionally not completed. The difference between second and first stage checks is that retailers are advised personally and by registered mail that they are now subject to enforcement checks. Forty (40) retailers were identified as being eligible for a second stage compliance check following the March 1996 survey. Twelve (12) of these establishments were prepared to sell to a 15 or 17 year old male.

Businesses willing to sell cigarettes to youth in our next survey will be subject to second stage compliance checks later this year.

Enforcement Checks

These checks are conducted only when retailers consistently or flagrantly refuse to comply as demonstrated by two first stage and one second stage compliance check. Underage youth who look 16 are instructed that the attempted purchase is to determine if there is a violation, not to create one. In instances where the youth is able to purchase cigarettes a ticket (fine \$180.00) will be issued, preferably within 24 hours. We do not go directly from failing a first stage compliance check to an enforcement check as we need to establish a consistent pattern of being prepared to sell to underage persons. See Associate Medical Officer of Health information memo dated April 24, 1996 for further details.

Eleven (11) of the twelve (12) vendors who were subject to enforcement checks were visited by a 15 year old male this summer. None sold cigarettes to this youth who was age tested at 16 years of age. The twelfth vendor was not visited as he was charged before the enforcement checks got underway and subsequently convicted.

PUBLIC COMMUNICATION

Statistical results of each future first stage compliance check survey will be communicated to Community Services Committee, all tobacco retailers by letter and the general public by media release. On each occasion, an update on charges and convictions for sales to underage youth will be included.

A media release will be issued whenever there are two (2) convictions against a tobacco vendor, leading to the prohibition of sale of tobacco for a period of at least 6 months. There is currently one (1) vendor who has been charged for a second offence and we are awaiting court date for that case. It is felt that publicity surrounding a prohibition to sell tobacco will be the most effective method of reinforcing with tobacco vendors the potential serious consequences of their illegal actions.

CONCLUSION

Enforcement of the Ontario Tobacco Control Act with respect to sales of tobacco to minors remains a high priority for the Department. Surveillance and gathering of evidence to sustain convictions are labour-intensive and time-consuming. The Health Department has introduced enforcement checks which seem to be having an impact. We will continue to monitor the situation closely through compliance checks and will increase surveillance and enforcement activity as necessary. Education and enforcement efforts need to continue together to change the attitudes and behaviour of retailers, the public and the courts in recognition of the importance of this issue to the health of our youth.

*Approved by
Dr. Geoff Dunkley*