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TOBACCO CONTROL IN THE NORTHWEST TERRITORIES

Introduction

There are a number of pieces of legislation in place that control tobacco use and restrict access to tobacco and tobacco products. These include the Government of Canada's *Tobacco Act*, the Government of the Northwest Territories' *Tobacco Control Act* and *Tobacco Tax Act*, Workers Safety and Compensation Commission regulations and some municipal bylaws.

Federal Legislation aims to protect the public's health by imposing limits on the sale, production, packaging and promotion of tobacco products, and restricts the age of purchase. Provincial and territorial tobacco legislation determines how and where tobacco can be accessed, used, and displayed within individual jurisdictions. Municipal governments have the ability to further regulate smoking in public places in their own municipalities.

A number of new initiatives are taking place across Canada that aim to reduce tobacco use and curb usage by youth, protect non-smokers from second hand smoke, and reduce the promotion of smoking. These initiatives are taking place through changes in federal legislation, provincial/territorial legislation, and campaigning and prevention activities by various health organizations. The House of Commons Standing Committee on Health put forth 14 recommendations to increase tobacco control efforts in Canada. These recommendations inform the path forward in tobacco control.

The Department of Health and Social Services (Department) is looking to amend the GNWT *Tobacco Control Act* (Act). We want to discourage tobacco use, support Northerners in their efforts to quit smoking, and protect the public from second hand smoke exposure. The Department is seeking feedback on potential enhancements to existing legislation.

E-Cigarettes and Other Unregulated Tobacco Products

E-Cigarettes and Vaporizers

The latest trend in smoking is the use of e-cigarettes. E-cigarettes and vaporizers are devices that contain a power source and heating element that heats a liquid substance to produce a vapour to be inhaled by mouth. The liquid substance contains a number of chemicals that have unknown effects on the user's health. The liquid substances that contain nicotine are not legally sold in Canada, but are widely available for purchase online.

The use of e-cigarettes and vaporizers can normalize tobacco use. Most provinces have regulated, or started the process to regulate, the use and sale of e-cigarettes and related devices under their tobacco control legislation.

Currently, e-cigarettes and related devices are not regulated in the NWT. Anyone can purchase and use these devices and their components, including children. There are no laws prohibiting the use of e-cigarettes or vaporizers in public places. The Department is

considering revising the definition of “tobacco accessory” within the Act to include e-cigarettes and vaporizers. E-cigarettes and vaporizers would be regulated the same way as tobacco is in the NWT. For example, laws prohibiting tobacco use in public places will also apply to e-cigarettes and those under the age of 18 will not be allowed to purchase e-cigarettes, related devices, or their components.

Water Pipes (Hookahs)

Another device not currently regulated in the NWT is water pipes, also known as hookahs. Water pipes are a single or multi-stemmed instrument for smoking flavoured tobacco. Premises for water pipe use, such as cafés, are widespread in a number of provinces. However, more provinces are now prohibiting the use of water pipes in public places. Though the NWT does not currently have premises for public water pipe use, adding water pipes to the definition of “tobacco accessory” in the Act will address public use and prevent exposure to second hand smoke and continued normalization of smoking.

Questions for Consideration:

1. Should e-cigarettes and vaporizers be regulated in the NWT?
2. Should there be limits on the locations where e-cigarettes and vaporizers can be used?
3. Should the regulation of e-cigarettes and vaporizers only apply to adults?
4. Should water pipes be regulated in the NWT?
5. Should there be limits on the locations where water pipes can be used?
6. Should the regulation of water pipes only apply to adults?
7. Are there any other tobacco related items that should be regulated in the NWT?

Sale of Tobacco and Tobacco Accessories to Persons under the Age of 18

Under the Government of Canada’s *Tobacco Act* (1997) it is illegal to supply or provide a tobacco product to person under the age of 18. This means that individual provinces and territories cannot lower the age at which a person can legally purchase a tobacco product but they do have the flexibility to increase this age above the set minimum of 18. In the NWT it is illegal to sell tobacco and tobacco accessories to a person under the age of 18.

Appropriate documentation providing proof of age, such as government issued identification, is required by individuals under the age of 18 and want to purchase tobacco or tobacco accessories.

The Department is considering changing the age at which persons are legally able to purchase tobacco to 19 to coincide with current laws governing the sale of liquor to minors in the NWT. The NWT is just one of three jurisdictions in Canada where the age to legally purchase tobacco is not the same as the age to legally purchase alcohol. For example, in

British Columbia individuals must be age 19 to legally purchase tobacco and alcohol; in the NWT individuals must be 18 to purchase tobacco but 19 to purchase alcohol.

Question for Consideration:

1. Should the age at which individuals can legally purchase tobacco be changed?
2. What age would you recommend? E.g. change the legal age from 18 to 19 or another age.

Sale of Flavoured Tobacco

There are a variety of flavoured tobacco products on the market that are designed to make smoking tobacco seem more enjoyable. Flavoured tobacco products include items such as, but not limited to, menthol and other flavoured cigarettes, shisha (sweetened, wet tobacco for use with water pipes), flavoured rolling papers, and flavoured cigar tips. Research shows that young people are the primary consumers of these flavoured tobacco products.

On April 29, 2016, Health Canada announced a proposal for a national ban on menthol cigarettes. To date, six provinces in Canada have prohibited the sale of flavoured tobacco products. Three of the six provinces still allow certain kinds of cigars to be flavoured. One of the six provinces continues to allow the sale of menthol cigarettes but no other flavours. Another province has legislative changes pending which will prohibit the sale of all flavoured tobacco products. Flavoured tobacco is not currently prohibited for sale in the NWT.

It is argued that flavoured tobacco and its packaging are designed to make smoking more appealing to those with limited tobacco use experience. To minimize the appeal of smoking the Department is considering prohibiting the sale of flavoured tobacco in the NWT.

Question for Consideration:

1. Should the sale of flavoured tobacco be prohibited in the NWT?
2. If so, should the ban include all flavoured tobacco products?

Sale of Food Products Designed to Resemble Tobacco

There are a number of food products readily available for sale across Canada that resemble tobacco products, such as shredded beef jerky sold in snuff containers, candy cigarettes, and black licorice pipes. It is argued that this packaging is designed to normalize tobacco use and promote youth uptake.

Currently, one Canadian province prohibits the sale of confectionary designed to appear as a cigarette or other tobacco product, such as black liquorice pipes while one Canadian territory prohibits the sale of all edible products designed to resemble tobacco. The sale of food products resembling tobacco products is not currently regulated in the NWT or at the federal level.

Question for Consideration:

1. Should the sale of food products that are designed to resemble tobacco products, or come in packaging resembling tobacco products be banned in the NWT or only be sold to adults?

Tobacco Use Prohibited in Public Places

In the NWT, tobacco use is prohibited in public places. The Act defines a public place as all or any part of a building, structure, vehicle or other means of transportation that the public has rightful or invited access to such as:

- Outdoor bus shelters;
- Public buildings used for private events;
- Buildings owned or leased by a private club that limits public admission; and,
- Vehicles used for public transportation.

Exceptions to this law include:

- A public place during any period when being used for traditional Aboriginal spiritual or cultural practice;
- Home day cares during a period when day care is not being provided;
- Designated smoking rooms in nursing homes, group homes or other residential facilities;
- Part of a workplace used for private residential accommodation and to which the public is not admitted;
- Part of a workplace to which the public is not admitted but meets certain requirements;
- A hotel room, motel room or any other room that is rented for private accommodation if that room is set aside to specifically permit smoking; and,
- Approved places, premises, or vehicles.

A number of jurisdictions have amended their tobacco legislation to further protect non-smokers from second hand smoke exposure by expanding the definition of a public place. Recent inclusions to other provincial laws prohibit smoking in:

- Registered day homes;
- Vehicles when a young person is present; and,
- Certain outdoor areas.

Registered Day homes

To protect children from second hand smoke exposure two Canadian provinces have prohibited smoking in registered day homes at all times, regardless of whether or not children are present. Currently, the NWT *Tobacco Control Act* and the Department of Education Culture and Employment's *Child Day Care Act Standards Regulations* prohibit tobacco use during times when children are being cared for. The *Child Day Care Act Standards Regulations* allow day home providers to smoke outdoors during operating hours if another adult is present to supervise the children. Day home providers can smoke in their homes immediately preceding the arrival of children.

Question for Consideration:

1. Should smoking prohibitions in Registered Day Homes be changed?
2. If so, should smoking be prohibited at all times?
3. Should the prohibition include smoking outdoors during operating hours?

Smoking in Vehicle with a Young Person Present

Most Canadian provinces and territories have prohibited smoking in vehicles when a young person is present in the vehicle. Ages defining a young person differ between jurisdictions and range from 0 – 16 and 0 – 18. Smoking in enclosed spaces, such as cars, can result in greater exposure to toxins leading to or worsening respiratory conditions and may result in long term health consequences.

Questions for Consideration:

1. Should smoking in vehicles when a young person is present be prohibited?
2. If so, is the age of 16 or 18 acceptable for the purposes of this consideration?
3. Should smoking in a vehicle be prohibited all together?

Smoking in Outdoor Areas

Though the NWT's *Tobacco Control Act* prohibits smoking in public places, this does not apply to the majority of outdoor areas even though the public has access by right or invitation. The NWT's *Environmental Tobacco Smoke Work Site Regulations* (2004) permit smoking outside an enclosed worksite under the following circumstances:

- In designated areas only;
- Not less than a three (3) meters from an entrance or exit; and.
- If the premise is owned by the operator.

A number of Canadian jurisdictions have amended their tobacco legislation to include provisions that put specific parameters on tobacco use in various outdoor areas, such as:

- All entry/exit doors and operable windows of all buildings used by the public including common areas of residential buildings such as condo apartments and seniors residences (but does not extend to the private homes within) - 3 meter radius;
- Children's playgrounds - 20 meters away from boundary of the playground;
- Sporting fields - 20 meters away from boundary of the field; and
- Public Park Amenities - 20 meters away from boundary of the park.

Questions for Consideration:

1. Should smoking in the above listed outdoor areas be regulated by prescribing specific distances where smoking is prohibited? If so, are the above distances appropriate?
2. Are there any other outdoor areas where smoking should be prohibited?

General Enforcement of the Tobacco Control Act and Inspections:

Enforcing tobacco laws in Canada is typically done by Environmental Health Officers (EHOs), RCMP, authorized peace officers, municipal enforcement, and/or tobacco enforcement officers appointed under their respective provincial and territorial tobacco control legislation.

The NWT *Tobacco Control Act* includes provisions for the appointment of tobacco control inspectors. The inspectors can inspect without a warrant where tobacco or tobacco accessories are sold, where tobacco or tobacco accessories cannot be sold, and where smoking is prohibited. EHOs have assumed the role of inspectors under the Act. EHOs are responsible for enforcing the Act.

To ensure that businesses are following the law, premises that sell tobacco and tobacco products are inspected at minimum once a year. Inspections are also carried out on a complaint basis. Inspectors check to ensure that only approved tobacco and tobacco

products are being sold, that the appropriate signage is posted and that tobacco and tobacco products are kept out of the public's view.

Questions for Consideration:

1. Is the current inspection regime adequate for carrying out tobacco control in the NWT?
2. Should there be a required number of inspections per year? How many?
3. Who should be responsible for enforcement?
4. Is there a need for additional signage in places where tobacco is sold? If so, what kind of messaging should the signage include?

Penalties for Contravening the Act:

The NWT *Tobacco Control Act* includes a section that describes the penalties for breaking tobacco control laws.

For businesses, penalties vary between monetary fines for first, second and third offences. Retailers can be required to post signs indicating that the owner/operator has broken the law. There can also be suspensions from selling tobacco.

There are also monetary fines for individuals who break tobacco control laws such as smoking in prohibited places and illegally selling tobacco.

Questions for Consideration:

1. Does the current regime serve to deter individuals and businesses from contravening the Act?
2. Are the current penalties for offences adequate? If not, should there be changes to the fines?

If you would like this information in another official language, contact us at 1-866-846-8601.

Si vous voulez ces renseignements dans une autre langue officielle, communiquez avec nous au 1-866-846-8601.