



**Legislative Assembly
of Ontario**

First Session, 39th Parliament

**Assemblée législative
de l'Ontario**

Première session, 39^e législature

**Official Report
of Debates
(Hansard)**

Thursday 7 May 2009

**Journal
des débats
(Hansard)**

Jeudi 7 mai 2009

**Standing Committee on
Justice Policy**

Tobacco Damages
and Health Care Costs
Recovery Act, 2009

**Comité permanent
de la justice**

Loi de 2009 sur le recouvrement
du montant des dommages
et du coût des soins de santé
imputables au tabac

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 7 May 2009

Jeudi 7 mai 2009

The committee met at 1402 in committee room 1.

The Chair (Mr. Lorenzo Berardinetti): I'd like to call this meeting to order. Good afternoon, and welcome everybody to the Standing Committee on Justice Policy. On today's agenda, we're dealing with Bill 155, An Act to permit the Province to recover damages and health care costs incurred because of tobacco related diseases and to make a complementary amendment to the Limitations Act, 2002.

SUBCOMMITTEE REPORT

The Chair (Mr. Lorenzo Berardinetti): The first item on the agenda is the report of the subcommittee dated April 24, 2009. Mr. Leal?

Mr. Jeff Leal: I think Mr. Rinaldi's going to move it.

The Chair (Mr. Lorenzo Berardinetti): Mr. Rinaldi?

Mr. Lou Rinaldi: Your subcommittee on committee business met on Friday, April 24, 2009, to consider the method of proceeding on Bill 155, An Act to permit the Province to recover damages and health care costs incurred because of tobacco related diseases and to make a complementary amendment to the Limitations Act, 2002, and recommends the following:

(1) That the committee hold one day of public hearings at Queen's Park on Thursday, May 7, 2009, during its regularly scheduled afternoon meeting time.

(2) That the committee clerk, with the authorization of the Chair, post information regarding the committee's business as soon as possible on the Ontario parliamentary channel and the committee's website.

(3) That interested people who wish to be considered to make an oral presentation on Bill 155 should contact the committee clerk by 12 noon, Friday, May 1, 2009.

(4) That groups and individuals be offered 15 minutes in which to make a presentation.

(5) That on Friday, May 1, 2009, the committee clerk provide the subcommittee members with an electronic list of all requests to appear.

(6) That if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties.

(7) That, if all groups cannot be scheduled, each of the subcommittee members provide the committee clerk with a prioritized list of names of witnesses they would like to hear from by 4 p.m., Friday, May 1, 2009, and that these witnesses must be selected from the original list dis-

tributed by the committee clerk to the subcommittee members.

(8) That the deadline for written submissions be 5 p.m., Wednesday, May 6, 2009.

(9) That legislative research prepare a brief paper on the rationale for the legislation.

(10) That the committee determine the deadline for filing amendments on Thursday, May 7, 2009.

(11) That the committee meet for one day of clause-by-clause consideration on Thursday, May 14, 2009, in the afternoon. If there are few witnesses scheduled, the committee may consider beginning clause-by-clause consideration on May 7, 2009.

(12) That the committee clerk, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's your subcommittee report, Chair.

The Chair (Mr. Lorenzo Berardinetti): Thank you. Any discussion?

Mr. Lou Rinaldi: Chair, knowing that there are only four deputants today, and as discussed in your subcommittee report, number 11, I wonder whether we will be able to give consideration to the clause-by-clause today. I see Mr. Kormos nodding away.

Mr. Garfield Dunlop: That was going to be my question, Mr. Chair. I've been here 10 years now and I've never seen this happen before, where we included clause-by-clause on the day we started third reading debate. I thought we had to have prepared amendments. How do I know that someone from here may not approach my office on Monday or Tuesday with an amendment they'd like to see put forward? They'd be out of luck if we started clause-by-clause today. So you can do what you want, but I won't be supporting that.

The Chair (Mr. Lorenzo Berardinetti): Mr. Kormos?

Mr. Peter Kormos: I'm prepared to proceed to clause-by-clause today. I don't contemplate presenting any amendments. But if one caucus is not prepared to do that, then I think it creates a problem in terms of being fair to that caucus if it contemplates or anticipates—or even if there's a possibility of it presenting amendments and needing time to prepare.

I should tell you that I know this was considered in passing in the House leaders' meeting yesterday, and I

indicated to the government House leader at that time that we, the New Democrats, didn't anticipate any amendments. I don't want to tell you that there was a firm commitment from the Conservatives. Mr. Dunlop may want to check and see if there was a commitment made by Ms. Witmer in that regard. I don't want to speak for Ms. Witmer.

1410

Mr. Garfield Dunlop: If I may, Mr. Chair—

Mr. Peter Kormos: I don't want to put you on the spot, Mr. Dunlop.

Mr. Garfield Dunlop: It's my understanding that we were not prepared to go to clause-by-clause today. If you vote me down, that's not a problem, but the reality is, we can't support that.

The Chair (Mr. Lorenzo Berardinetti): Go ahead, Mr. Kormos.

Mr. Peter Kormos: If I can be of assistance, the government wants to get this in third reading, obviously, to get the litigation going. What we will do, I'm telling you, is agree to, through an order of the House on consent, have this committee meet, if necessary, even before next Thursday afternoon or next Thursday to deal with clause-by-clause, if the government needs this bill earlier than June 4 for the purpose of pursuing the litigation. I don't know whether the Conservatives are in that position or not.

The Chair (Mr. Lorenzo Berardinetti): Mr. Rinaldi?

Mr. Lou Rinaldi: Then I would offer that we carry on. If Mr. Dunlop, at the end of the proceedings today, is prepared to rethink or whatever the case may be, then we'll deal with it at that time. I certainly don't want to jeopardize the proceedings.

Mr. Garfield Dunlop: What I'm concerned about is just the rights of people to approach me as an elected member with potential amendments over the weekend, early in the week. I thought we had planned on two days of this—the committee hearings—then clause-by-clause next week. That would have given us time to prepare amendments, if they were necessary.

You guys have been here for six years. If this bill was so important to you, you could have done more work on this earlier. I don't think it's going to be the end of the world here if you have to wait a week.

Mr. Peter Kormos: Paragraph 11 of the standing committee report indicates that it was agreed upon that if there are few witnesses scheduled, the committee may consider beginning clause-by-clause consideration. I appreciate that it says "may," and that gives Mr. Dunlop the opportunity—or the right, in my view—to block that. But this isn't new; this is something that the subcommittee considered way back on April 24.

Mr. Lou Rinaldi: Just as a final comment, I think we should carry on. I stand by the comment I made before. To Mr. Dunlop's comments about people having the opportunity to get a hold of their MPPs or the government side, this had first and second reading, the dates had been advertised, and I can tell you, just as an experience, most people get a hold of me the minute we introduce

legislation to express their opinion. But anyway, I think we should carry on with dealing with these folks here today who have committed their time. At the end of that, we should revisit whether we do clause-by-clause today.

The Chair (Mr. Lorenzo Berardinetti): Mr. Kormos?

Mr. Peter Kormos: I'm going to respond to that, because I appreciate what Mr. Rinaldi's saying, but let me tell you that most people get a hold of me—in view of how often this government uses time allocation and one-day committee hearings after the bills receive third reading, they aren't aware of it because of the haste with which this government pursues most of its legislation.

The Chair (Mr. Lorenzo Berardinetti): So is there general consensus, then, to hold this report down until the end of the meeting? Is that—

Mr. Peter Kormos: We can hold on this. We can agree because it says "may," and in my view, "may" means that any one, single caucus can veto the pursuit of clause-by-clause.

The Chair (Mr. Lorenzo Berardinetti): All right.

Mr. Peter Kormos: Is that fair?

Mr. Garfield Dunlop: I thought we were going to have two days of this and the clause-by-clause would be like we normally do, even if there were no amendments. But I felt that it was fair to all stakeholders, even if they thought of something over the weekend or they were reviewing something after what they heard today—they may want to get a hold of any one of us, and that would give them an opportunity to make an amendment, contact one of us and we could make a formal amendment to legislative counsel and prepare it for next week. That was my intention. I'm not going to change on that. You can talk until you're blue in the face, but that's the position that I'm going to take as the representative on this committee.

The Chair (Mr. Lorenzo Berardinetti): Mr. Rinaldi?

Mr. Lou Rinaldi: I'm prepared to vote on the subcommittee report. Maybe we'll stand down number 11 and decide on that at the end.

The Chair (Mr. Lorenzo Berardinetti): No, we don't need to. I think there's a solution here, and that is, we can vote on this now and then at the end of public deputations, we can have a subcommittee meeting afterwards.

Mr. Lou Rinaldi: That's fair.

The Chair (Mr. Lorenzo Berardinetti): Is that okay? Or a motion to go into clause-by-clause, and if that's defeated or someone's opposed to it—

Mr. Peter Kormos: Now, wait just a minute. I'm indicating that I believe that Mr. Dunlop has a right to block a proceeding to clause-by-clause.

The Chair (Mr. Lorenzo Berardinetti): Yes.

Mr. Peter Kormos: I'm prepared to vote on this. I agree that we can go to clause-by-clause because I don't have any amendments to propose. But if the government is going to use its majority to overcome or deny Mr. Dunlop his right to defer clause-by-clause, then we should be told now, because he may want to talk to this

issue longer or he may want to ask for a 20-minute recess on the recorded vote on the acceptance of the subcommittee report.

The Chair (Mr. Lorenzo Berardinetti): But it does say in here, though, that it may consider clause-by-clause. If we adopt this and if you at the end, Mr. Dunlop, feel that you need time, I think there would probably be some motion or some indication—

Mr. Garfield Dunlop: Mr. Chair, all I can say is that it may say “may,” but you know what? I want the option, as a member of this committee, to be able to accept clause-by-clause amendments up until one or two days into the beginning of next week. If that’s not possible and I’m voted down, I accept that. I’ll vote on the clause-by-clause now and I’ll support the amendment, but I’m not going to support going to clause-by-clause this afternoon.

The Chair (Mr. Lorenzo Berardinetti): Mr. Rinaldi?

Mr. Lou Rinaldi: Chair, if I may, I think if Mr. Dunlop feels so strongly—and I respect that—then we’ll proceed and deal with clause-by-clause next week.

The Chair (Mr. Lorenzo Berardinetti): Why don’t we vote on this, and if we need to make a motion after the deputations, then we can do that, okay? Because we do have other business at 3:20. So we have the subcommittee report in front of us. All those in favour? Opposed? That carries.

TOBACCO DAMAGES
AND HEALTH CARE COSTS
RECOVERY ACT, 2009

LOI DE 2009 SUR LE RECOUVREMENT
DU MONTANT DES DOMMAGES
ET DU COÛT DES SOINS DE SANTÉ
IMPUTABLES AU TABAC

Consideration of Bill 155, An Act to permit the Province to recover damages and health care costs incurred because of tobacco related diseases and to make a complementary amendment to the Limitations Act, 2002 / Projet de loi 155, Loi autorisant la province à recouvrer le montant des dommages et du coût des soins de santé engagés en raison des maladies liées au tabac et à apporter une modification complémentaire à la Loi de 2002 sur la prescription des actions.

CANADIAN CANCER SOCIETY,
ONTARIO DIVISION

The Chair (Mr. Lorenzo Berardinetti): We now move on to our first deputation. Deputations are going to be 15 minutes long. We will ask questions in any time that’s not used on up a rotating basis.

The first deputation is the Canadian Cancer Society. I want to welcome Irene Gallagher Jones and Andrew Noble from the Canadian Cancer Society. Thank you for being here today.

Ms. Irene Gallagher Jones: Mr. Chairman and members of the committee, good afternoon. Thank you for the

opportunity to present to you today supporting Bill 155, the Tobacco Damages and Health Care Costs Recovery Act. My name is Irene Gallagher Jones, senior manager, public issues, and I am with the Canadian Cancer Society, Ontario division. Presenting with me is Andrew Noble, senior coordinator, public issues.

The Canadian Cancer Society is pleased to fully support Bill 155. If passed, this bill will be another tremendous achievement in tobacco control for the government of Ontario.

The Supreme Court of Canada determined that this type of legislation is valid. In September 2005, the Supreme Court of Canada unanimously found British Columbia’s Tobacco Damages and Health Care Costs Recovery Act constitutional. Bill 155 will facilitate the ability of the government of Ontario to take legal action against the tobacco industry for the benefit of all Ontarians. Not only will a lawsuit potentially lead to the recovery of health care costs due to tobacco-related illness, but it will also further advance tobacco control efforts in Ontario.

I would like to begin by highlighting the current burden of cancer in Ontario and, more specifically, the impact that tobacco has on cancer.

As you may know, cancer is a leading health issue in Ontario, and while cancer treatments have improved and mortality rates have fallen, cancer incidence is expected to increase drastically due to Ontario’s aging and growing population. It is estimated that by 2020, cancer cases in Canada will increase by two thirds. Approximately 65,000 Ontarians will be diagnosed with cancer and 27,400 deaths from cancer will occur in 2009. More specifically, tobacco is a major cause of cancer morbidity and mortality. Smoking causes 30% of all cancers and 30% of cancer deaths. Tobacco is responsible for 85% of lung cancers and 13,000 Ontarians die every year from smoking.

As mentioned, legal action against the tobacco industry provides significant benefits to all Ontarians. These benefits include justice, truth, compensation and health. Andrew and I will review these benefits for the committee. If members would like further information, please refer to our written submission.

1420

Bill 155 creates an opportunity for justice through the courts. Through its fraud and negligence, such as advertising to youth and failing to warn consumers, the tobacco industry has caused or contributed to the deaths of tens of thousands of Ontarians. In 1995, the Supreme Court of Canada concluded that the tobacco industry had advertised to underage youth.

Although the link between smoking and lung cancer was first published in 1950, no warnings were placed on cigarettes in Canada until 1972. The industry fought successive rounds of improved federal warnings, implemented in 1989, 1994 and 2001. The tens of thousands of Ontarians, and their families, who have suffered due to tobacco-related illness deserve justice.

Mr. Andrew Noble: A lawsuit following the passage of Bill 155 will provide Ontarians with the truth about

the tobacco industry. Hidden information about the Canadian tobacco industry may be revealed through a lawsuit. Through the discovery process and court submissions, lawsuits in other jurisdictions have revealed documents about the tobacco industry's activities, including deceptive marketing strategies. As a result of the Master Settlement Agreement, MSA, in the United States, the tobacco industry was required to publish and index this type of information on a website at their expense.

Information revealed about the tobacco industry could be effectively used in youth tobacco control projects. Research has shown that to reach youth, it is useful to illustrate the lengths that the tobacco industry has gone to deceive and manipulate them. For example, Florida's Truth campaign from 1998-2000 included information about the tobacco industry's marketing activities. The campaign achieved considerable success, as the number of middle school students who tried smoking in the previous 30 days dropped from 18.5% to 11.1% in just two years. The Canadian Cancer Society believes that information about the Canadian tobacco industry's marketing practices could be used to enhance youth-oriented tobacco control initiatives here in Ontario.

Another significant benefit of legal action against the tobacco industry is compensation. The tobacco industry manufactures and markets a product that places an enormous burden on the health care system. The citizens of Ontario are entitled to compensation. Although it is premature to put a figure on the extent of a settlement or a judgment, considering that tobacco use is estimated to cost the health care system \$1.6 billion annually, it is conceivable that a successful lawsuit against the tobacco industry could represent the recovery of billions of dollars for the government of Ontario.

Ms. Irene Gallagher Jones: Significant public health benefits can be achieved through a lawsuit against the tobacco industry. If the tobacco industry's financial situation and assets such as trademarks are threatened through a lawsuit, they are likely to negotiate with government on further marketing restrictions. For example, the Master Settlement Agreement in the US banned the use of Joe Camel and other cartoons in packaging and promotion.

Although many of the gains in the Master Settlement Agreement have already been established in Ontario and Canada through laws like the Smoke-Free Ontario Act and the federal Tobacco Act, there are numerous additional restrictions on the industry's behaviour which could be enacted as part of an Ontario settlement.

In conclusion, the Canadian Cancer Society views the tobacco industry as a unique contributor to cancer. As an industry, their role has been to profit from a product that, when used according to the manufacturer's instructions, is responsible for 85% of lung cancers. Bill 155 is the first step in holding the tobacco industry accountable for its actions. The passage of Bill 155 and subsequent legal action against the industry will help contribute to the achievement of the Canadian Cancer Society's mission of creating a world where no Canadian fears cancer.

Once again, we would like to thank the committee members for the opportunity to appear today.

The Chair (Mr. Lorenzo Berardinetti): Thank you. There are about seven minutes; about two to three minutes per party. We'll start with the Liberal Party.

Mr. David Zimmer: Thank you very much for your thoughtful presentation.

The Chair (Mr. Lorenzo Berardinetti): We'll move to Mr. Dunlop.

Mr. Garfield Dunlop: It's a very interesting process to go through with this. I know it has happened in a few of the states, and some of the other provinces have made moves in the direction to recoup some health care costs from the tobacco companies etc. I guess there are two questions I'd like to ask. One is: In Canada, I'm not aware of the successes of any of the provincial governments with this type of legislation. That's the one question, because I don't want to take a lot of time speaking. I'm curious also on other causes of cancer, whether it may be some kind of drinking, or toxins in the air: Do you feel that the government of Ontario should follow the same type of process—if they're successful at some point in convicting the tobacco companies, do you think there's a possibility or should they go after other businesses, other corporations that might cause some other impact on someone's health?

Ms. Irene Gallagher Jones: To your first question, yes, other provinces have begun the process of suing the tobacco industry. British Columbia and New Brunswick both have filed lawsuits. There has been a lot of work done in BC to set the stage for Ontario in terms of the success of those lawsuits because they haven't been fully completed. There isn't much more to add unless Andrew has any more to add.

Mr. Andrew Noble: Just to go back to the point that Irene made in the presentation, this type of legislation has been determined to be valid by the Supreme Court of Canada. So in that sense, there has been work done on this.

Ms. Irene Gallagher Jones: In terms of your second question, there are many risk factors and contributors to cancer. Tobacco is one of the most significant and is why the Canadian Cancer Society has been advocating for tobacco control measures for many years. As I mentioned, taking this sort of step to move forward with legal action against the tobacco industry is important because the tobacco industry is a unique contributor to cancer. They're the only products on the market that, when used as directed, cause 85% of lung cancers. So I agree with you that there are other areas to look at, but this particular approach is a measure that is designed to provide Ontarians with justice—those who have suffered tobacco-related illness and the family members who have suffered as well.

Mr. Garfield Dunlop: A quick question: If BC has moved in a positive direction in their legislation, should we be waiting on the outcome of their court hearings before we move forward?

Ms. Irene Gallagher Jones: As mentioned, there has been a lot of heavy lifting done in BC that has really

paved the way for Ontario to move forward with swift action to a lawsuit in Ontario.

Mr. Andrew Noble: The sooner the Ontario government gets moving on this, the sooner we will have results. There's no sense waiting; it's time to start.

The Chair (Mr. Lorenzo Berardinetti): Mr. Kormos.

Mr. Peter Kormos: Thank you, folks. Ms. Nader is standing at the door compelling my attendance in her office. A certain Ruby Dhalla and some nannies and a Minister of Labour and the media interest are cramping your style here. So I'm going to be absent for a bit.

New Democrats are supporting the legislation; it's going to pass before June 4. But let's understand: This is not the romanticized David-and-Goliath civil litigation that we witnessed in the States where the victim's family gets to sue the tobacco company and the lawyers rip the butt off the tobacco company and award multi-million-dollar damages. That's justice. This is largely symbolic. It's going to involve lawyers making millions of dollars. Success will depend upon the courts. Ideally, midway through, the tobacco companies would sit down with the governments and settle it. But the governments are going to be fearful of looking weak and not pushing it to the wall, and the tobacco companies are not going to want to give any quarter. That's part of the problem, so here we are.

Ms. Irene Gallagher Jones: As we've mentioned, Ontarians who have suffered—and the Canadian Cancer Society is the voice for cancer. We are here to say that a lawsuit will provide justice and discussion about it in the media, in the public, through the courts. Even, as you say, if it's not an individual, it will provide that feeling of justice being served in Ontario.

1430

Mr. Peter Kormos: I'd sooner see people go to jail, quite frankly, but that's not going to happen either, is it? Thank you, folks.

The Chair (Mr. Lorenzo Berardinetti): Thank you for your presentation.

NON-SMOKERS' RIGHTS ASSOCIATION

The Chair (Mr. Lorenzo Berardinetti): We will move on to the next deputation, which is the Non-Smokers' Rights Association, Garfield Mahood.

Again, the same general rule: 15 minutes; you can use all the time as you see fit. Any time that you don't use up, we'll put towards questions. Good afternoon, and welcome.

Mr. Garfield Mahood: Thanks very much, Mr. Chair, members of the committee. Thank you for inviting me to address the committee on the Tobacco Damages and Health Care Costs Recovery Act.

I'm here wearing two hats. As executive director of the Non-Smokers' Rights Association, we've had an interest in litigation and accountability for the tobacco industry for a number of years. I run a national non-profit health agency with offices in Ottawa, Montreal and

Toronto, and this is certainly a primary interest of our organization. I'm also here in a way representing the Campaign for Justice on Tobacco Fraud, and in the materials handed out to you, you'll see a letter that was addressed to Premier McGuinty about a year ago that addresses this issue. I'll come back to that particular letter. Anything I say on behalf of the people who signed that letter is contained in the letter. They're not responsible for the additional comments that I will put before the committee.

My compliments to the government. It took a while to persuade the government to get involved in the litigation, but the government has, and this government has shown real leadership on tobacco issues. I want to compliment the Attorney General for taking a different path than his predecessor and finally coming forward with this legislation. Frankly, we hope that the passage of this legislation will go a long way to setting up a national litigation effort, which is really what is needed.

I want to tell the committee, because it is not well known, a little bit about what led up to the American states, Canadian provinces and jurisdictions throughout the world suing the tobacco industry over fraud, negligence, conspiracy and a number of other unsavoury activities. Let's be blunt. Let's take it right back to the beginning. It started in a room in 1953 at the Plaza Hotel in New York. When CBC national television news did its outstanding documentary on the tobacco industry, the opening scene was a photo of this hotel, where one of the most horrendous meetings in the history of business or public health ever took place. The heads of major tobacco companies met with John Hill of Hill and Knowlton, and they mapped out a campaign in 1953 that would confuse the public, that would attack the science and indeed would even attack the scientists.

That campaign to create a belief that there was controversy over the risks of tobacco, that campaign to discredit the scientists who were putting forward information in the interests of public health, led ultimately to millions of deaths and decades of deception by the tobacco industry. How bad was that? Frankly, as a result of the activities of the industry, the World Health Organization predicted some time ago that the tobacco industry would kill 500 million people on this planet presently alive. Most of the marketing of the industry was constructed on that fraud. Phil Hiltz of the New York Times, who got some of the original documents on this, said, "There is no case like it in the annals of business or health."

Someone a moment or two ago asked the question, "Shouldn't we look at other industries?" My response is that with five million people dying every year, 37,000 of them in Canada, if somebody has some idea about another industry that is engaged in this kind of activity, this kind of wrongful behaviour, if somebody knows of an industry that is behaving like that, be my guest and go after them with all gloves off, with everything available to governments. Go after them passionately and make sure they are the recipients of civil sanctions and the

criminal justice system. There is nothing like the tobacco industry in the history of business.

The disinformation campaign involved lying about the risks of addiction, lying about the risks of second-hand smoke, lying about targeting to kids, lying about virtually every aspect of their business, including “light” and “mild.” This is unsavoury business.

Let me tell you what the reaction was when it was discovered what this industry had been up to. Justice is a major component of the purpose of this bill. The disinformation campaign was so bad that when the Minnesota government had the courage to take these people into court and the industry was faced with a choice, after it had gone through the jury process and the jury was about to go out and deliberate, the industry, rather than risk the wrath of the jury, settled for US\$6.3 billion. That, in Canadian dollars at the time, was \$10 billion. When you adjust for the differences in population between Minnesota and Ontario, the Minnesota settlement in Ontario would have been \$1 billion a year for 25 years. The same behaviour has gone on on both sides of the border.

Forty-six states sued—as Mr. Perley will tell you, I’m sure, later and go into detail—46 states came in, making a total of 50 that ultimately held the industry to account. The settlement was close to C\$400 billion. In the lawsuit over this same fraud, Judge Gladys Kessler, in the United States Attorney General v. Philip Morris et al, including the parents of some of the Canadian companies, wrote—this quote is in the booklet on page 18 that’s in the package handed out to you. This quote by this federal court judge is so delicious, I have to read it:

“Put more colloquially,” she says, “and less legalistically, over the course of more than 50 years, Defendants lied, misrepresented, and deceived the American public, including smokers and the young people they avidly sought as ‘replacement smokers,’ about the devastating health effects of smoking and environmental tobacco smoke, they suppressed research, they destroyed documents, they manipulated the use of nicotine so as to increase and perpetuate addiction, they distorted the truth about low tar and light cigarettes so as to discourage smokers from quitting, and they abused the legal system in order to achieve their goal—to make money with little, if any, regard for individual illness and suffering, soaring health costs, or the integrity of the legal system....”

“In this case, the evidence of Defendants’ fraud is so overwhelming that it easily meets the clear and convincing standard of proof.”

So you see, when we come here today and praise the government for finally deciding to hold the industry to account, one of the things we did in order to try to engage the Ontario government was to send the letter that was sent to Premier McGuinty in 2008, almost a year ago to this time. In that letter—by the way, I commend this letter to you. It was signed by Dr. Mary Jane Ashley, professor emerita at the University of Toronto, who was Elizabeth Witmer’s—she was the head of the expert panel that made recommendations on the revision of the Ontario tobacco strategy.

1440

Roy Cameron, the executive director of the Canadian Cancer Society and the National Cancer Institute of Canada, signed that letter. Paul Garfinkel, the CEO of the Centre for Addiction and Mental Health, signed that letter. More than 20 medical officers of health in Ontario signed that letter that you have in your hands. The former medical officer of health for the province of Ontario signed that letter: Richard Schabas. Fraser Mustard, probably one of the most pre-eminent health professionals in the country, the founding president of the Canadian Institute for Advanced Research, signed that letter, as did the dean of law at Osgoode Hall Law School. What did they say? In effect, the letter says it would be unthinkable for any government to allow an industry that is responsible for the deaths of approximately 400,000 Ontarians to not hold an industry to account that is responsible for that kind of behaviour. It is unthinkable that civil remedies and criminal prosecution would escape these people.

The second thing they made a point of is cost recovery. In terms of stewardship, people have mentioned here the cost of lawyers. So what if it costs a few million dollars for lawyers? We are talking about billions of dollars. The Conservative government estimated that the claim from Ontario would be in excess of \$40 billion. What person investing his money wouldn’t invest a few million in order to recover billions? The stewardship wouldn’t be there if you didn’t do that, and too bad if some lawyers make some money in the process.

Deterrents: What message do you send about deterrents if you don’t hold this industry accountable? There is no other way. Individuals can’t do that in Canada. The Supreme Court limitations don’t allow the lawyers to get involved and go after the industry. So it’s the provinces that have to do it. Cost recovery is absolutely critical. Deterrents.

Health benefits were mentioned by the Canadian Cancer Society. The disclosure of documents in the American litigation was probably the biggest health gain the Americans had in the 1990s: 30 million tobacco industry documents pushed out into the public domain. This is incredibly important.

Public education: You can spend all the money you want on public education. I was chair of the media campaign for the federal Minister of Health. I know a little bit about these media campaigns. I was an adviser to the Massachusetts campaign for a period of time. Let me tell you, those media campaigns struggle to have an impact. But you get this lawsuit going and the public information that will spill from that will be the most important mass-media campaign that we’ve seen in this country in a long time.

The final thing, because I’m nearly out of time: Sharing the costs of litigation is important. This has to be a national litigation effort. It’s not Ontario beating BC; it’s a matter of the provinces getting together and doing the job, the heavy lifting, together and Ontario should be involved.

Finally, I have to say something, because we have the tobacco folks—by the way, in your booklet I refer you to the first five or six pages. The title of this book is *What do the Smoke Folk have in Common with Organized Crime: or Taking the Normal out of an Industry that Kills*. Why did we make the reference to organized crime? Because the US litigation was based on the Racketeer Influenced and Corrupt Organizations Act, which was set up to deal with the Mafia. The legal experts advised the US states and the federal US Attorney General that the same construct was going on with respect to how the tobacco industry managed this issue.

The tobacco guys will come in here today and they will say one of the things that we've heard them say before: that the government is senior partners with the tobacco industry, because they're making money off taxes. So they're senior partners. Let me tell you, I know of no government in this country that committed fraud that is responsible for 37,000 deaths a year, that has killed more than one million Canadians in the last five decades because of this fraud.

So I commend this legislation to you. I praise the government for finally engaging. We encourage the opposition parties to come together and make sure that they go after this industry with the determination that this industry merits.

Thank you very much.

The Chair (Mr. Lorenzo Berardinetti): Thank you. That pretty well uses up your time, unless anyone had a quick point to make, because it was about 15 minutes long.

Thank you, Mr. Mahood, for your presentation.

Mr. Garfield Mahood: Thank you for listening.

ONTARIO CAMPAIGN FOR ACTION ON TOBACCO

The Chair (Mr. Lorenzo Berardinetti): We'll move on, then, to our next deputation, the Ontario Campaign for Action on Tobacco, Michael Perley.

Mr. Michael Perley: Thank you, Mr. Chairman and members of the committee. Thank you very much for the opportunity to also support Bill 155.

The founding members of our campaign—the Canadian Cancer Society, Heart and Stroke Foundation, and Non-Smokers' Rights Association, which are here with you today; as well as the Lung Association and the Ontario Medical Association—fully support the government's intention to bring the tobacco industry to account for its decades-long campaign, which Gar has so eloquently described, to resist serious efforts to control the spread of the disease epidemic caused by its products.

Many of these industry strategies and tactics are described, as Gar said and as others have said, in its own documents, now on the public record in the US and elsewhere, some of which refer to Canada. We look forward to much more documentation of this type becoming available here as a result of the government's action, for

the reasons Gar said: a public education campaign, the likes of which no government has mounted in the history of tobacco control.

I'd like to give you a little bit of a sense, more directly, of the industry described in these documents, and I want to briefly quote from two of them.

The first is from R.J. Reynolds and states: "Studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and incidence of cancer of the lung."

This conclusion is no surprise, you may say. Some have suggested that we're all very familiar with such facts today. The industry acknowledges that the use of its products carries risks, and it's heavily taxed, so why litigate?

The answer is partly, at least, that this statement dates from 1953. You'll recall Gar's reference to the deliberate campaign that was launched in 1953 to obfuscate this and other effects of tobacco industry product use. This was shortly before the industry consciously launched an international campaign to deny, hide and otherwise misrepresent these and many related health impact findings. I won't go over again the hundreds of thousands of deaths—if not millions—that have been caused worldwide by this.

Our society, especially our health care system, began paying the costs of this industry behaviour decades ago, long before there was any significant taxation of industry products and long before there was any widespread consensus on the dangers represented by the use of industry products, either by first-hand smoking or through exposure to second-hand smoke, which has been, of course, a focus of the present government's very significant and successful smoke-free Ontario strategy.

For the second quotation I'd like to mention, I'll ask you to recall—and I think you've probably all seen it—the image of US tobacco executives testifying to the US Congress in April 1994, with their hands raised, that nicotine was not addictive. They each repeated this, following questions from subcommittee chair Henry Waxman.

Contrast this with the following statement from US tobacco giant Brown and Williamson, today owned by British American Tobacco, which also owns Canada's Imperial Tobacco: "Nicotine is addictive. We are, then, in the business of selling nicotine, an addictive drug." This statement dates from 1963 and helps us understand what the industry knew, and when it knew it, about nicotine addiction in truth, which has kept hundreds of thousands of Ontario smokers chained to what proved to be, for them, a fatal addiction. It is another excellent illustration of why Ontario needs the litigation enabled by Bill 155.

When we think of lawsuits based on legislation of this type, we inevitably focus, and quite understandably, on the potential financial recovery from the industry. To give you a little additional sense of the order of magnitude potentially involved here, I want to mention the four US states, which settled individually with the indus-

try in advance of the US Master Settlement Agreement of 1999. Gar has already mentioned Minnesota. Other individual states settling included Mississippi, Florida and Texas. The total population of those four states is just over 40 million people, which is maybe a little less than 25%—more like 20%—larger than Ontario. They settled out of court for a total of US\$36.6 billion.

1450

As you've heard, the entire Master Settlement Agreement reached with the industry in 1999 totalled \$246 billion, payable over approximately 25 years. It's important to again emphasize that this kind of recovery, if successful in Ontario, has nothing to do with recent or current taxation rates, which neither redress past wrongs nor come close to covering current provincial annual health care expenditures on tobacco-induced disease. I'm not speaking here at all of the broader impacts of forgone income and lost productivity on people suffering from tobacco-induced illness and on employers employing them, which usually amounts to two to three times the health care cost.

What I'd also like to emphasize, though, and others have mentioned this, is that the MSA led to a settlement which included many of what we call non-monetary tobacco control provisions, which were enacted to rein in the industry's destructive behaviour and avoid incurring future costs. The non-monetary provisions of the Master Settlement Agreement are an important illustration of what's possible through the negotiation process when a similar settlement is reached with the Canadian tobacco industry. Bill 155 need not contain such provisions itself. Rather, it paves the way for a settlement which can contain these provisions if the government insists that they be part of such a settlement.

Let me give you a few additional illustrations of the types of controls placed on the industry in the US as part of the MSA. Here are some of those provisions: a ban on certain types of outdoor advertising, including billboards—we've done that in Canada; a ban on the use of cartoons, such as Joe Camel—that was mentioned earlier; and a ban on tobacco companies taking any action directly or indirectly to target youth in the advertising, promotion or marketing of tobacco products. I think it's certainly arguable that that job is not complete here in Canada.

The MSA also prohibited the companies from taking any action the primary purpose of which was to initiate, maintain or increase youth smoking. Again, that job is not, I don't think, complete here in Canada.

The MSA prohibited tobacco companies from giving anything of value to any person or entity in exchange for placement of a product and/or endorsement of a product, such as placing certain brands of tobacco products in movies or on television shows, formerly a frequent industry practice, and there's some debate about whether it goes on today.

Participating manufacturers were prohibited from marketing, distributing or licensing apparel or merchan-

dise bearing a tobacco product name, including catalogues and direct mail.

The settlement prohibited or restricted the companies from facilitating youth access to their products by such tactics as sale of packages with less than 20 cigarettes—we've done that here in Ontario—or distribution of gifts and free samples.

A large variety of tobacco industry documents, as you've heard, were made public and still remain available to us.

The industry—and this is very interesting—was prevented from lobbying to oppose state or local restrictions on issues such as youth access, retail sale to youth or limitations on non-tobacco products which are designed to look like tobacco products. There's a lot that we could be doing in a somewhat different vein but in a similar direction, generally, on that issue.

The American Legacy Foundation was created to support the study of and programs for the reduction of youth use of tobacco products and to support the study of and programs for the prevention of diseases associated with tobacco use. In light of the recent very significant cuts to the financing of the Ontario tobacco strategy, that could be a very interesting possibility in years to come.

Finally, a growers' trust fund was negotiated with tobacco-growing states under which the latter were eligible to receive payments in exchange for exiting the industry. That job is well under way in Canada but it's not complete in Ontario.

In Canada, the federal government and various provinces have enacted many of the above restrictions, as I mentioned. Nevertheless, there are numerous additional restrictions on the industry's behaviour which could be enacted as part of an Ontario or Canadian settlement. The partners of the Ontario Campaign for Action on Tobacco look forward to providing their expertise and advice on these restrictions to government at an appropriate time.

Finally, again, congratulations to the government for introducing this bill, and I want to thank you for this opportunity to testify in support of the bill.

The Chair (Mr. Lorenzo Berardinetti): Thank you. There are about five minutes if anyone has any questions. We'll start with the Conservatives. Mr. Dunlop?

Mr. Garfield Dunlop: Thank you very much, Mr. Perley, for being here today and for your comments.

I'm trying to get my head around the American legal system and the direction they went, and our Canadian system with our provincial governments all taking action at one time or another, or in the future, against tobacco companies.

I'll ask two questions here because we don't have a lot of time.

One is, and maybe the parliamentary assistant can answer this from a legal perspective: Why is this not done as a national lawsuit, as opposed to each province taking a challenge?

Second of all, I know we've done a lot in Ontario, and the Smoke-Free Ontario Act has done a lot, but we still have a long way to go. I've talked to small business

people in my community who have convenience stores. They've got these huge power walls. You can't even see the word "cigarette" anywhere. In my riding of Simcoe North, most of the people just go up to the First Nations and Wahta—there's a number of them north of us—and they can buy whatever they want. There are open smoke shops everywhere, and that's where people buy their cigarettes now.

I'm curious about what we should do in those particular cases, to combat smoking. Obviously these aren't brands that you see on the shelf behind the power walls. These are brands that are contraband.

So I'd like to hear your comments on that, plus this national lawsuit case as well.

Mr. Michael Perley: On the national versus provincial question, the provinces administer and run the health care system and incur the expenditures that we're talking about recovering. So I think that's the short answer. There's more to it, but that's it in a nutshell.

On the contraband issue, we very strongly support more action on contraband. We have not seen enough action on contraband, on the one hand. On the other hand, we've always done multiple things at the same time on tobacco control. Focusing on contraband, which is a matter for the Ministries of Revenue and Finance, and hopefully the Ministry of Health and Long-Term Care to a lesser extent, on the one hand, and litigating in the manner we're talking about by the Attorney General on the other hand, to me shouldn't be mutually exclusive.

The justice, accountability, truth, cost recovery and stewardship issues have all been outlined by Mr. Mahood. I think there's a very, very strong case there. They've been supported by all 50 states—success in the US on the same principles, and even, in fact, more drastic principles, as Mr. Mahood outlined. So I think there is a case to answer that cries out for action there. At the same time, there's also not enough action on contraband.

On contraband, we also have a split jurisdiction between the feds and the provinces, and we have some action that's gone forward at the federal level—the RCMP's strategy; there's an interdepartmental committee. We haven't seen a similar strategy of that type from the province. We need that strategy, but because that hasn't yet been completed shouldn't be a reason not to litigate and just simply focus on contraband.

I know that tobacco companies, particularly Imperial, have been making much of the contraband issue lately. If I was losing the kind of money they're losing from contraband, I'd be complaining too. It's eating into their profit picture. That, to me, is of no consequence, and I'm sure it's of no consequence to any of my colleagues. What is of consequence is that it is undermining efforts to get people to stop smoking through tax increases, which are the single most effective intervention against initiation and use of product by many people. We can't use tax increases in Ontario and Quebec as readily as we could, because we have a contraband problem. We need action there, but that should not preclude action on litigation.

The Chair (Mr. Lorenzo Berardinetti): Any other questions or comments? Mr. Zimmer?

Mr. David Zimmer: Thank you very much for your thoughtful advocacy.

1500

IMPERIAL TOBACCO CANADA

The Chair (Mr. Lorenzo Berardinetti): We'll move on to our next deputation: Imperial Tobacco Canada, Donald McCarty.

Again, it's basically 15 minutes. Any time that you don't use, we'll set aside for questions.

Mr. Donald McCarty: Thank you, Mr. Chairman. I've taken your lead on the dress code, with your permission.

We're just setting up a few slides that we'd like to show you somewhere in the middle of the presentation, so I'll just start, if that's okay with you, while we do that.

Thank you for the opportunity to come and speak to you today. My name is Don McCarty. I'm vice-president of law at Imperial Tobacco Canada, a position I've had since 2000. I was not present at the meeting in 1953; I was six months old at the time. But I do know that with respect to that supposed secret meeting that did occur, representatives of the United States government were invited, in writing, to come. They declined, but after the meeting was over they did receive minutes of that meeting. So perhaps it's not as secret as it's made out to be.

We have prepared a formal submission. It's been distributed. I hope you take the time to read it. We took some time in preparing it.

I can no longer come before committees such as this and say that we are Canada's leading tobacco manufacturer. The leading tobacco manufacturer in this province now is the illegal tobacco manufacturing segment. Many members of the Legislature chose to speak about this issue during the debates on this bill; rightly so. The most recent information on the illegal tobacco market in Ontario is that 50% of tobacco purchased in this province is contraband. This is a staggering number. Ontario has a higher rate of illegal cigarette trade than Columbia, Peru, Bolivia, Ecuador, Zimbabwe or Nigeria, to name but a few. The indication from media accounts of RCMP seizures is that it's going to get worse. Last week, they announced a seizure of 13 million cigarettes in Cornwall, one of the largest seizures they've ever done. If it had gone through to the market, this would have deprived the Ontario treasury of over \$1.6 million in tobacco revenues. It's not unreasonable to assume, and the police would agree, that a similar amount of cargo evades police regularly. This is nothing short of scandalous in a developed province in a developed country and in a province and in a country that prides itself on being at the forefront of tobacco control initiatives and holds itself out as such in tobacco control forums such as the WHO's framework on tobacco control.

We have prepared a few slides to illustrate what is happening to illicit trade, to tobacco revenues and, more

alarmingly, smoking rates in this province. You'll notice that none of the slides refer to our lost revenues.

The first slides tell a good story. Ontario tobacco taxes are rising in the years 2001 to 2005. The theory is that higher taxes reduce smoking prevalence. You will see from the purple line that the Canada tobacco use monitoring survey shows that smoking prevalence is indeed declining in those years. Tobacco tax revenue for the government of Ontario is also increasing in those years—more good news. Then we move to the post-2005 years. Tax levels are high and remain so. Illicit trade makes its appearance. In 2006, 2007 and 2008 the rates become so high that in 2008, illicit trade is almost 50% of the tobacco purchased in this province.

What happens with smoking prevalence? Well, the Canada tobacco use monitoring survey now indicates that smoking prevalence appears to be going in the wrong direction, and so is government tobacco tax revenue. The Auditor General of Ontario recently estimated the losses at more than \$500 million. So what about the bill itself—sorry, I have one more slide I meant to show you.

Recently, the government of Ontario, as you know, harmonized the PST and the GST. Ordinarily what it had done was it included the provincial GST, if you will, in the provincial tobacco taxed. Now, in the harmonized taxes coming into effect, they are no longer doing that. This leads to an effective 13% increase in the rates of tobacco taxation in this province for the coming years. Where will illicit trade go, where will your revenues go, where will smoking prevalence go, are the questions that this graph and I ask.

Bill 155, in our view, has nothing to do with tobacco control or with health; it has everything to do with money. We need to debunk some of the myths that surround these types of cases. First of all, if Ontario takes a lawsuit and it loses, well, it loses. In the United States, more than 200 cases of such kind have actually been taken to trial. All of them have resulted in verdicts for the tobacco industry for one reason or another.

The MSA is a different story. It was a settlement. The MSA could occur because in the United States, tobacco prices were so low that the companies had room over the next 25 years of the settlement to dramatically increase their prices and fund the settlement. This is what the governments knew and accepted. They also said it allowed them to bring all kinds of regulations against the tobacco industry in the United States. The fact of the matter is that even the new regulations that the MSA put into place in the United States are laughable compared to what we have in Canada. We don't need that type of settlement, as history has shown here, to put into force the type of regulations that we have now.

If Ontario loses, it loses. If Ontario wins a case like this, it will lose even more. The industry does not have the money to pay the \$40 billion that was talked about earlier. The combined profitability, after tax, of the Canadian legal tobacco industry is about half a billion dollars. Where is that money going to come from? The answer to that is the industry will have to go bankrupt.

Your revenues will go south in a big way, and what will happen to smoking prevalence when the illicit tobacco manufacturers take over? We estimate that their manufacturing capacity right now and their control of the supply chain is such that they could take over the entire market in this province within a matter of days.

If Ontario goes ahead and adopts this bill—and, judging by some of the comments I've heard, I tend to feel that it will—what interest do you have in moving ahead with a lawsuit? The other provinces have already done so. There's no advantage here in getting to the finish line before anyone else. If BC gets there first and if BC wins, well, bankruptcy will result. Just because you were first to get to the finish line doesn't mean you're entitled to any more. With the amounts that Ontario thinks it can get at \$40 billion—sometimes BC puts this number at \$10 billion, but it goes north and south from that. You multiply that by 10 because it's 10% of the population. The amounts of money you're talking about here simply don't exist. Let's get real.

If Ontario does decide to pass the legislation, it doesn't need to move ahead with a lawsuit. It would be a waste of time; it would be a waste of money. The simple solution is to ensure that in the statute itself a clause is inserted allowing the bill to come into force upon proclamation so the government could choose a time and place when the act will come into force.

This bill is a demonstration that the tobacco control agenda has run a little bit out of steam. The problem is that it won't do anything to reduce consumption or to stop people from buying illegal cigarettes or, even more importantly, to stop those who are selling cigarettes to youth at pocket-money prices. The government needs to be doing more to stop this.

The Supreme Court has, it is true, upheld the validity of a similar act in BC. In doing so, it had to declare that there is no such thing in Canada as a right to a civil fair trial. The province has the power to do away with your right to a civil trial that is fair. That is what the Supreme Court has said. That is what our Constitution said. Just because it's legal doesn't mean it's right.

The question has been put: What about other industries? They easily could turn this example to other industries. Two of the more obvious cases are gambling and alcohol. Those industries, in most provinces in Canada, are already well in the hands of government control now as it is. So where is the next industry going to come from? Fast food, perhaps; there are many candidates.

Our own view is that the way to work now on tobacco control is to work with the tobacco companies, not against us. We're willing to participate; we're willing to help. We've put forward solutions for the illicit trade problem. One of the reasons why people don't want to address this issue is that it appears to be too big to handle. We've put forward a number of steps that could be stepping stones to a solution.

1510

One of them is: For God's sake, will you put someone in charge? There is no one in charge of this file in the

government of Ontario. There's no one in charge of this file in the government of Canada. You need to appoint a senior minister in charge who can rally all of the government agencies, government forces, industry, anyone you need, to control this problem. Such a person does not exist. That's the first thing that needs to be done. That person needs to be given the power and the commitment to do the job.

Then you need to enforce the laws. There are dozens of laws being violated on a daily basis by the illegal tobacco manufacturers. You just have to drive through any reserve to see them. Promotion is flagrant. Discounting is everywhere. There are no health warnings anywhere. You need to enforce the laws, and you need to give law enforcement the resources and the powers to deal with the problem.

Control the supply chain: We can help here. You need to control the entry and the access to raw materials needed to make cigarettes. You need to control the access to acetate. You need to control the access to cigarette paper and tobacco. Tobacco is very easy to come by in this province, of course. Canada's leading producer of tobacco leaf is Ontario.

Finally, First Nations have to get involved in the solution. They need to be consulted with and implicated in a solution that would involve them—perhaps being able to implement their own First Nations tobacco tax and take away the incentive for this illegal tobacco. You need to allow them to regulate the trade and to impose tobacco control on their territory and consult with them in the solution. Perhaps then we will see some progress on this issue.

In short, this bill will do nothing to control tobacco in this province. It will do everything, if the initiative and the energies of government are wasted, to increase the rate of illicit trade in this province, and I've already shown you what that will lead to.

The Chair (Mr. Lorenzo Berardinetti): Thank you. We have about five minutes for questions. We'll start with the government side. Mr. Moridi.

Mr. Reza Moridi: Mr. McCarty, do you think that tobacco causes cancer?

Mr. Donald McCarty: Yes, I do. It causes many serious and fatal diseases. Smokers have been aware of those risks for a long time.

Mr. Reza Moridi: People die of cancer as a result of smoking cigarettes, don't they?

Mr. Donald McCarty: I just said that. Yes, I believe that. Smokers have known that for a long time. For many years, the federal government took the initiative in informing smokers of that health risk, and the tobacco industry did everything that the federal government directed or suggested that we do in order to assist them with that.

The Chair (Mr. Lorenzo Berardinetti): Any other questions? No? We'll go to the Conservatives. Mr. Dunlop.

Mr. Garfield Dunlop: Thank you very much for being here today. I congratulate you on your courage to

deal with this legislation, because it's obviously directed at companies like yours.

You made some points that I think are important, and I was the one who brought them up earlier.

Obviously, this is directed at the tobacco companies. A number of members of my own family have passed away due to cancer, and they blame it on cigarette smoking. However, I worry about things like child obesity. As the next step, are we going to tackle people who make chocolate bars, or fast food companies and that sort of thing? In what direction are we really going here?

It's interesting that you would bring up First Nations today. As we speak, right now, the Minister of Community Safety and Correctional Services is making a First Nations policing announcement in my riding, in the Chippewas of Rama First Nation, and it's all about adding more money for policing. But in that very First Nation, there are a number of tobacco smokehouses. You can go to any one of them. And they're not only in Rama. There are a number of them throughout Muskoka and throughout Ontario. In fact, if you go to Wahta First Nation, you can actually stop and have a choice of your cigarette. You can stop there and they will give you a number of cigarettes to try, to see which one you like best. And no one's doing anything. Today the Minister of Community Safety is making an announcement on policing, but he won't stop at the smoke shop and see what he's going to do about smoking. We've heard a couple of times today that that is something that absolutely has to be dealt with if we're going to go down this road of having a completely smoke-free Ontario.

I guess it's more of a comment on my behalf as opposed to a question, but I know that if all the provinces get legal action and they get a court case or a judge who will say, "You're guilty," we're not going to get the money back. We're not going to get \$40 billion for Ontario, \$30 billion for Quebec and maybe \$150 billion across Canada. Do you know what? We're going to get a fraction because you're all going to be broke. There won't be tobacco companies.

It's more of a comment than anything else, but the reality is that more has to be done right here in Ontario and across the country to stop people from learning how to smoke.

Mr. Donald McCarty: If I can respond to a comment with a comment, I agree with what you say. At some of the places in Montreal, while the Habs were still in the playoffs, you could actually put in to win a pair of Habs tickets when you bought 200 cigarettes for five bucks. There's a lot of that going on.

Ontario has the distinction of having the highest rate of anywhere in the country. It's around 50%. We estimate it to be at 40% in Quebec, and the other provinces have considerably lower rates, but in some sections of the country it's on the increase as well.

Mr. Garfield Dunlop: Thank you very much. It was more of a comment than—

The Chair (Mr. Lorenzo Berardinetti): Thank you. We have another minute or so. Mr. Zimmer, you have a question?

Mr. David Zimmer: Thank you for your very detailed presentation.

Mr. Donald McCarty: You're welcome, sir.

The Chair (Mr. Lorenzo Berardinetti): Thank you.

HEART AND STROKE FOUNDATION OF ONTARIO

The Chair (Mr. Lorenzo Berardinetti): We'll move on, then, to our next presentation, which is the Heart and Stroke Foundation. We'll just give them a moment to get the slide projector out of the way here so that nobody gets—

Interjection.

The Chair (Mr. Lorenzo Berardinetti): Okay, so we can begin. Welcome, Laura Syron, from the Heart and Stroke Foundation of Ontario. You know it's 15 minutes. Any time not used by your presentation will allow for questions. Welcome to the committee.

Ms. Laura Syron: Thank you very much. My name is Laura Syron. I'm the vice-president of research, advocacy and health promotion at the Heart and Stroke Foundation of Ontario. I want to begin by expressing my appreciation, and that of the foundation, for the opportunity today to provide input on this very important piece of legislation.

Before I offer comments on Bill 155, I would like to take a minute to introduce the foundation, for those committee members who aren't familiar with us. The Heart and Stroke Foundation of Ontario is a volunteer-based health charity. We take the lead in eliminating and reducing the impact of heart disease and stroke through our advocacy work, advancement in application of research and the promotion of healthy living.

As part of the smoke-free Ontario strategy, Heart and Stroke conducts the tobacco-control mass-media campaigns on behalf of the Ontario government, aimed at reducing exposure to second-hand smoke and the reduction of current smoking rates.

As a result, we are eager to see any step that will reduce current and future use of tobacco products. There are approximately 13,000 tobacco-related deaths each year in Ontario. That's 36 deaths a day. Smoking is also the primary cause of heart disease, stroke and diseases of the vascular system. If you're a smoker, you are two to three times more likely to have a heart attack than a non-smoker and you are three times more likely to have a stroke.

The foundation has been pleased to come before committees of the House several times in recent years to support government action on tobacco issues. We have endorsed initiatives such as the smoke-free workplace legislation, the ban on tobacco power walls and the protection of children from smoking in cars—initiatives that demonstrate true public health leadership by this government. Today, the foundation is here to lend its support to Bill 155, legislation that promises to further reduce tobacco use and its deadly consequences.

We understand that many public leaders and organizations support this legislation as a matter of justice. They hope to hold the tobacco companies to account.

If I could just interrupt myself for one minute here, just to comment on my honourable colleague Mr. McCarty, who just left—

Mr. Jeff Leal: He's right behind you.

Ms. Laura Syron: —or who has just finished his remarks, it is interesting to me that the industry is talking to you about diverting from what to us is the real issue here, which is the public health issue, and also failed to mention that the Supreme Court of Canada has allowed the provinces to go after the assets of the parent companies as well as the Canadian companies. I think that's an important fact for people to know.

1520

It is well documented that the industry has been involved in misleading marketing practices, smuggling, fraud and deceptions regarding tobacco risks. However, our focus, and why I'm here to talk to you today as a health charity, is the potential beneficial impact on the health of the people of this province and our future generations. We have seen that impact in the United States, where the successful legal action resulted in the master agreement covering all states; a number of speakers have already spoken to that today. That agreement has dramatically reduced the ability of tobacco companies to promote their products to non-smokers and, for us, of particular importance, young people. Joe Camel is gone—you've heard that a lot today—along with other industry attempts to create another generation plagued by addiction and unnecessary illness.

We at the Heart and Stroke are really glad to see the end of product placements of tobacco in movies and TV shows, through endorsements to merchandising, and the end of brand-name sponsorships. We applaud the goodbye to the misleading fog generated by puppet research groups created by the tobacco industry. These groups existed only to muddy the waters of public information and distract from the truth about the harmful effects of tobacco. And goodbye to the tobacco industry's lobbying efforts against what we see as common-sense provisions restricting youth access, banning ads on school properties or including cigars as tobacco products.

The master agreement in the United States, though, also resulted in the disclosure of 30 million pages of industry documents, and for us this was equally important. It shone light into dark corners and on some of the biggest secrets. That information sparked enormous public discussion and raised awareness of how badly the public had been misled about tobacco risks. All of that has come about because of successful litigation. We believe that these victories were just as significant as the massive amounts of money involved, and for us maybe even more significant. Yes, the \$246 billion in fines hurt the industry, but the other provisions of the agreement helped to protect the health of ordinary Americans. They encouraged Americans to turn their backs on the industry and its products, and that stopped many of the practices

that helped to kill people addicted to tobacco. We believe the same advantages could and should be enjoyed here in Ontario by this kind of legislation.

We believe that limiting the ability of tobacco companies to mislead and addict our citizens would be a tremendous step. These limitations are well justified by the public health risk posed by tobacco—and I've already spoken about that—and by the enormous financial burden tobacco use creates for all of us taxpayers and by the siphoning away of precious health care resources to treat its victims. This is not a normal industry or a legitimate business that can lay claim to being bullied or unfairly targeted, and I've heard some questions about that. This is a different business, and everything contained in that lawsuit was well deserved.

So now, Ontario, along with British Columbia, New Brunswick, Newfoundland, Nova Scotia, Saskatchewan and Manitoba—all of these provinces can pursue the same exercise in accountability and reap the same benefits. Ontario must join this legal action to look out for the interests of its citizens, because the tobacco industry is only concerned about profits and addicting more people to its hazardous product.

Certainly, billions of dollars in settlements would be welcomed, both as a deterrent to future misbehaviour but also as compensation for the massive health costs that tobacco has created. I would say that it would be even more welcome if the government were prepared to commit all those settlement monies to research, to cessation treatment and prevention of tobacco-related diseases.

So, as we have been doing since 2006, we at the foundation encourage you, the government, to push forward with litigation against the tobacco industry to expose deceptive practices. Now is the time. With other provinces on board and able to show a united front, now is the time to recover the public's tax dollars and safeguard our children from future addiction. And now, as always, is the right time to pursue justice and uncover the truth but, most importantly for us, protect public health.

In conclusion, we are pleased to support Bill 155 and we thank the Premier and the Attorney General for taking this important step. Now I'm happy to answer questions.

The Chair (Mr. Lorenzo Berardinetti): Thank you. There are almost nine minutes. The last time we started with the Conservatives. Mr. Kormos, do you have any questions?

Mr. Peter Kormos: New Democrats are supporting this legislation. We indicated as much in the Legislature. The legislation is going to pass before June 4. We have concerns over it, concerns that it's largely a symbolic gesture, because of course there's no certainty about success in litigation. But it has to be done because, as you say, and other presenters have indicated, the insurance company has to be brought to justice—not the insurance company—

Laughter.

Mr. Peter Kormos: See, the auto insurance industry is yet another parasitic industry. But the tobacco industry has to be brought to justice.

One also is concerned about the fact that prohibition is never going to happen, other than through the back door, by making smoking illegal in any number of places and now cities like Hamilton, which is considering illegalizing it where second-hand smoke will have any effect whatsoever—interesting legislation. I get complaints in my riding, and I experience it myself, about apartment buildings, for instance, and condominiums, where people make big investments and then have smokers next door where the smoke seeps in. Their right to smoke certainly extends far beyond the threshold of their door.

But the problem is that youth smoking—and all I've got is the newspaper reports of any number of studies. I live down in Niagara region. We're close to Hagersville and Caledonia. There are very, very cheap tobacco products coming off of native reserves. The observation—and I trust it's accurate; nobody's disputed it—that kids, because kids have less money than adults tend to do, are attracted to cheap tobacco: Gosh, all the litigation in the world against the big tobacco companies ain't going to resolve that issue, is it? Because somehow all the educational programs in the world—my generation has quit smoking, and for many of us, it may be far too late; the carcinogenic cells are already implanted.

Ms. Laura Syron: Let's hope not.

Mr. Peter Kormos: Seriously, though—people my age, my generation. But kids are still smoking. I don't have the hard data, but I drive past any high school and I want to get out of the truck and slap them silly. How stupid can you be?

So what's the story? We've had ad campaigns; we've got celebrities; we've got all this stuff. What's going on?

Ms. Laura Syron: There are a couple of things, I think, to sort of tease apart in your question. First of all, and a number of other people have said this, the issue of contraband is a real issue and needs to be tackled by this government. That can happen concurrently to what's going on. Not only does the contraband affect the youth but, as many people have been saying, a number of people in the province, including adults. So Heart and Stroke would be fully supportive of this government taking action on contraband, concurrent with what it's doing, and not waiting.

In terms of youth smoking, overall youth smoking back to when—can I say “when we were young”? It has gone down. But you're right: It's a bigger challenge. There's an attitudinal, psychological issue with that. But again, some of the work that has gone on in Ontario is world-leading, in terms of how we create environments where it's harder for kids to smoke, how we make it not cool to smoke etc. I would say that there's been a lot of success here in Ontario in that.

So I think we have to keep going with it. I think that if we ever in this province think that smoking is done—close that file, move on—we are going to run into exactly what you're saying: We then birth another generation that doesn't know the peril. So we have to keep going on what we're doing, but we just have to do more.

Mr. Peter Kormos: I just wanted to throw that at you.

Ms. Laura Syron: Yes, absolutely.

The Chair (Mr. Lorenzo Berardinetti): We'll move on to the Liberals. Any questions, Mr. Zimmer?

Mr. David Zimmer: Thank you for your very thoughtful presentation.

The Chair (Mr. Lorenzo Berardinetti): To the Conservatives: Mr. Dunlop.

Mr. Garfield Dunlop: I don't really have any questions for you, other than I know that your organization does a lot of really positive work across our province. I know we have a very strong Heart and Stroke Foundation in the Orillia area. We have some great speakers every year who talk about all the different issues, not only smoking but child obesity, obesity in general, all the different things that cause sickness to heart and stroke. Really, I just want to thank you for taking part in the committee hearings today.

I think it's safe to say that this bill will pass. It's safe to say that it will get supported by all the political parties, because all the political parties are supportive of this type of legislation. However, I think we've heard other people say here today that if it is successful, if the government wins their lawsuits against the tobacco companies in Canada, I'm not so sure we're going to see this happen overnight, and I'm not so sure we're going to see the money come to the provinces to compensate for some of the expenses they've endured as a result of smoking over the years.

Ms. Laura Syron: Thank you for that, and thank you for your support of our organization and the breadth of what we do.

The Chair (Mr. Lorenzo Berardinetti): Thank you very much for your presentation and thank you for coming out today.

That completes our list of deputations, members of committee. As Chair, I'm in the hands of committee on whether or not we proceed from here. We had the discussion earlier.

Mr. Lou Rinaldi: Sure. I guess—

Mr. Peter Kormos: I'm sorry, I was going to seek unanimous consent for the committee to proceed.

The Chair (Mr. Lorenzo Berardinetti): All right, so—

Mr. Lou Rinaldi: Sorry, Peter, what did you say?

Mr. Peter Kormos: The Chair might seek unanimous consent for the committee to proceed to clause-by-clause, and that means that any one member can block. I'm throwing that out as a proposition.

Mr. Lou Rinaldi: I certainly support that, Chair.

Mr. Garfield Dunlop: I won't be supporting that. I mentioned earlier how I felt.

Mr. Lou Rinaldi: Chair?

The Chair (Mr. Lorenzo Berardinetti): Mr. Rinaldi?

Mr. Lou Rinaldi: Just a question, I guess, to Mr. Dunlop: Based on what we heard here today, it's a matter of—I know we dealt with it already through unanimous consent. Just a question: The fact is that I think we all agreed with most of the presenters today. I'm not sure what your expectations would be that'll come tomorrow.

The Chair (Mr. Lorenzo Berardinetti): Did you want to answer that or—Mr. Kormos?

Mr. Peter Kormos: Just one minute, Chair. Look, it's not for us to browbeat Mr. Dunlop. Mr. Dunlop has made it clear that he wants to reflect on the material and consider amendments. Unless the government majority is prepared to use its majority to force the committee to proceed, then we can't, because we did make it—I've already indicated I'm ready to go, but we've certainly got to respect another committee member's right when the subcommittee said "may"—and that clearly contemplated any number of things: the number of witnesses, the amount of time left and whether or not a particular caucus wanted to consider amendments.

I'm ready to go; Mr. Dunlop says he's not. So either the government's prepared to use its majority to force Mr. Dunlop to proceed, which I think would be a relatively unfair exercise of power, or we adjourn to the next possible date.

Mr. Lou Rinaldi: Chair?

The Chair (Mr. Lorenzo Berardinetti): Mr. Rinaldi.

Mr. Lou Rinaldi: Just for clarification, Mr. Kormos, I think we indicated that we're prepared to wait. My question was, based on the deputations today, whether there were any further thoughts. I wasn't forcing anything. I think we have a right to—

Mr. Peter Kormos: Yes, but you wanted him to answer your questions. He doesn't have to answer those questions.

Mr. Lou Rinaldi: He doesn't have to answer the question; you're right.

The Chair (Mr. Lorenzo Berardinetti): The only other question I wanted to put is a deadline, then. I know we'd meet again—the next date would be a week from today, the 14th. So we need a deadline for amendments, to set a date for the deadline. Mr. Kormos?

Mr. Peter Kormos: What I'm asking now is, does the committee have any interest in seeking permission from the House to meet earlier than Thursday of next week?

Mr. Lou Rinaldi: I'd be more prepared to do that, yes.

Mr. Peter Kormos: So here we are: We meet on Thursday, pursuant to standing orders. We have all day tomorrow—Monday—to consider whether we want to seek permission from the House by way of an order for unanimous consent to meet on Tuesday at 4 o'clock or at 8—7:30 in the morning, 7:30 a.m. You buy lunch—or breakfast.

Mr. Lou Rinaldi: Not a problem.

Mr. Peter Kormos: At 7:30 at night, you buy dinner.

Mr. Garfield Dunlop: Mr. Chair, I have no problem with that. I just wanted an opportunity to make sure—I've never seen this happen at a committee hearing before. I want the opportunity for the general public to have an opportunity to get a hold of any of us for amendments. It's as simple as that. I'm not here to try to kill the bill in any way; I just want the opportunity for people to make that amendment. If it happened that we passed this today and someone contacted my office on Monday by e-

mail and said, “You know, I think the bill should be amended this way,” I would feel kind of guilty that I went—

Mr. Peter Kormos: Oh hell, Garfield, and then you’d blame it on the Liberals.

Mr. Garfield Dunlop: Yes, I would. But the reality is, if in fact we go ahead, I have no problem meeting at—let’s say we call clause-by-clause amendments in by Monday at 4 o’clock, something like that. If you want to meet Tuesday morning or something, or Tuesday afternoon, I have no problem doing that.

The Chair (Mr. Lorenzo Berardinetti): Okay. That would be up to the government House leaders, then, to decide.

Mr. Peter Kormos: So let’s adjourn, which means our next standing-order sitting date, and between now and then we can do any number of things.

The Chair (Mr. Lorenzo Berardinetti): All right. But we don’t have to set a date, then, at this point, for the deadline? Because we don’t know the date that we’re going to meet on.

Mr. Peter Kormos: We could still set a date. I agree that Monday at noon—is that what you’re suggesting?

Mr. Garfield Dunlop: Monday at noon, Monday at 4 o’clock: That would be fine—just in case someone does come forward.

Mr. Lou Rinaldi: I would suggest Monday at noon because then if there are some amendments, we have some time, in case we want to meet earlier.

Mr. Garfield Dunlop: That would be fine. I’ll agree to that and I’ll second that motion.

The Chair (Mr. Lorenzo Berardinetti): So Monday at noon for any amendments. All in favour? Opposed? Carried.

The Clerk of the Committee (Ms. Susan Sourial): Can I just clarify? At the moment, we’re looking at a meeting next Thursday—

Mr. Jeff Leal: Yes.

The Clerk of the Committee (Ms. Susan Sourial):—in the afternoon—

Mr. Jeff Leal: As per the standing orders.

The Clerk of the Committee (Ms. Susan Sourial): As per the order of the House?

Mr. Jeff Leal: Yes.

The Clerk of the Committee (Ms. Susan Sourial): I’ll send out a notice, and then if things change, they change.

Mr. Garfield Dunlop: It will be a motion in the House, right?

The Chair (Mr. Lorenzo Berardinetti): Peter’s going to go in there right now, talk to the House leaders and get it changed.

Mr. Garfield Dunlop: Okay.

The Chair (Mr. Lorenzo Berardinetti): A motion to adjourn?

Mr. Peter Kormos: We’re finished.

The committee adjourned at 1533.

CONTENTS

Thursday 7 May 2009

Subcommittee report	JP-339
Tobacco Damages and Health Care Costs Recovery Act, 2009, Bill 155, Mr. Bentley / Loi de 2009 sur le recouvrement du montant des dommages et du coût des soins de santé imputables au tabac, projet de loi 155, M. Bentley	JP-341
Canadian Cancer Society, Ontario division	JP-341
Ms. Irene Gallagher Jones	
Mr. Andrew Noble	
Non-Smokers' Rights Association	JP-343
Mr. Garfield Mahood	
Ontario Campaign for Action on Tobacco	JP-345
Mr. Michael Perley	
Imperial Tobacco Canada	JP-347
Mr. Donald McCarty	
Heart and Stroke Foundation of Ontario.....	JP-350
Ms. Laura Syron	

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président

Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)

Vice-Chair / Vice-Président

Mr. Jeff Leal (Peterborough L)

Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)

Mrs. Christine Elliott (Whitby–Oshawa PC)

Mr. Peter Kormos (Welland ND)

Mr. Jeff Leal (Peterborough L)

Mr. Dave Levac (Brant L)

Mr. Reza Moridi (Richmond Hill L)

Mr. Lou Rinaldi (Northumberland–Quinte West L)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Mr. David Zimmer (Willowdale L)

Substitutions / Membres remplaçants

Mr. Garfield Dunlop (Simcoe North / Simcoe-Nord PC)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Clerk / Greffière

Ms. Susan Sourial

Staff / Personnel

Ms. Margaret Drent, research officer,
Research and Information Services