



## chapter 10

### THE TOBACCO REGULATORY SYSTEM



#### Key Messages

##### What does this Chapter tell us?

- The growth, distribution, sale, taxation and use of tobacco is regulated through federal, provincial and municipal laws and regulations.
- Two Federal Acts (Non-smokers' Health Act and the Tobacco Act) regulate smoking in workplaces, and the manufacturing, selling, labelling and promoting of tobacco. In Ontario, we have the Smoke-Free Ontario Act, and the Supporting Smoke Free Ontario by Reducing Contraband Tobacco Act.
- Provincial polls show that Ontario residents have become less tolerant over the past 10 years towards the sale of tobacco products, the tobacco industry's role in smoking related health care costs and attitudes towards second-hand smoke.
- Ontario has one of the lowest tobacco tax rates in Canada (second only to Quebec). As the tax rate has increased, the prevalence of smoking has declined.
- The consumption of contraband tobacco has increased substantially between 2006 and 2008 in Ontario.

The growth, distribution, sale, taxation, and use of tobacco is regulated through federal, provincial, and municipal laws and regulations. This section will describe the purpose of these tobacco laws and will also include a description of the impact of sales tax on contraband tobacco.

## Laws and Regulations

### **Federal Laws and Regulations**

The Non-smokers' Health Act came into effect in 1989. This Act is administered by the Department of Human Resources and Skills Development and was amended on October 25, 2007. The Non-smokers' Health Act regulates smoking in the workplaces under federal jurisdiction. It also amended the Hazardous Products Act in relation to cigarette advertising.

The key aspect of this amended Act was that smoking rooms and smoking areas were prohibited in federal work places, including any enclosed space under the control of the employer whether or not the space is attached to a building.

The Tobacco Act, passed in 1997 and administered by Health Canada, governs the manufacturing, sale, labelling and promotion of tobacco products. This Act also provides authority to the Governor in Council to make regulations on these issues.

Key regulations of the Act include:

### **Manufacturing**

- Tobacco products must be manufactured in conformity with product standards.
- Manufacturers of a tobacco product must provide information about the product and its emissions.

### **Selling**

- Tobacco products may not be furnished to a young person in a public place or in a place to which the public has reasonable access.
- Retailers must post signs that inform the public that the sale or giving of a tobacco product to a young person is prohibited by law.
- Retailers may not sell a tobacco product by means of a display that permits a person to handle the tobacco product before paying for it.

### **Labelling**

- Manufacturers or retailers may not sell a tobacco product unless the package containing it displays information about the product and its emissions, and about the health hazards and health effects arising from the use of the product or from its emissions.





Licensed under Health Canada copyright



Licensed under Health Canada copyright

**Promoting**

Tobacco products or tobacco product-related brand elements may not be promoted, except as authorized by this Act or the regulations.

- Inspectors may enter any place in which they believe a tobacco product is manufactured, tested, stored, packaged, labelled or sold.



**Provincial Laws and Regulations**

Provincially, the Smoke-Free Ontario Act 2006 (which amends the 1994 Tobacco Control Act), and the Supporting Smoke Free Ontario by Reducing Contraband Tobacco Act:

- Sets rules about selling and smoking tobacco,
- Prohibits smoking in all enclosed workplaces and enclosed public spaces and in motor vehicles when children under 16 years of age are present,
- Bans the public display of tobacco products prior to purchase and prohibits youth-targeted tobacco products, such as flavoured cigarillos, and
- Enhances control of contraband by introducing:
  - New fines for possession of contraband,
  - A system for identifying illegal fine cut tobacco,
  - Greater management of all raw leaf tobacco products, and
  - The authority for police to seize contraband products.

**Municipal Laws and Regulations**

In 1999, the three municipalities in the Region of Peel passed bylaws requiring workplaces and public spaces to become smoke-free. With the exception of certain types of establishments (i.e., restaurants, food courts, recreation facilities, skating rinks, billiard halls, bingo halls, casinos, bars/taverns or nightclubs), workplaces and public spaces in Peel became 100% smoke free in 1999. Listed below is some history about the changes to the municipal legislation over time within Peel:

- June 1, 2001: Restaurants, banquet halls, food courts and the food areas of recreational facilities in Peel were required to become 100% smoke-free or provide an enclosed, separately ventilated smoking room.

- 2003: Region of Peel Council passed the Region of Peel's Smoke-free By-law. This by-law stipulated that all enclosed public spaces had to phase out their designated smoking rooms (DSRs) by June 1, 2010.
- June 1, 2004: As part of the Region of Peel's Smoke-free By-law, billiard halls, bingo halls, casinos, bars/taverns, and nightclubs were to become 100% smoke-free or provide an enclosed, separately ventilated smoking room.
- 2006: The Smoke-Free Ontario Act superseded the Region of Peel's Smoke-free By-law, requiring all enclosed public spaces and workplaces to be now 100% smoke-free (i.e., no DSRs). This eliminated DSRs from billiard halls, bingo halls, casinos, bars/taverns, nightclubs and entertainment lounges in Peel four years earlier than the Region of Peel's Smoke-free By-law.

## Public Opinion about Tobacco Regulation

Provincial polls regarding the sale of tobacco products, the tobacco industry's role in smoking related health care costs and attitudes towards second-hand smoke demonstrate that Ontarians have become less tolerant over the past 10 years.

### **General sale of cigarettes:**

- 69% of Ontario residents agree that the number of outlets selling cigarettes should be reduced.<sup>F1</sup>
- 42% of Ontario residents agree that tobacco products should be sold in government-owned stores.<sup>F1</sup>
- 72% of Ontario residents agree that cigarettes should be sold in plain white packages that only display health warnings, ingredients and brand name.<sup>F1</sup>
- 57% of Ontario residents agreed that smokeless tobacco (i.e., oral snuff, spit or chewing tobacco) should not be sold in Ontario.<sup>F2</sup>

### **Improper sale of tobacco:**

- 86% of Ontario residents agree that stores convicted of selling tobacco to young people under 19 years of age should lose their license.<sup>F4</sup>

### **Tobacco taxes:**

- 45% of Ontario residents support the increase of cigarette taxes.<sup>F1</sup>

### **Tobacco industry accountability:**

- 76% of Ontario residents agree that tobacco companies are responsible for the health problems of smokers.<sup>F3</sup>
- 60% of Ontario residents agree that tobacco companies should be fined by the government for the money they earn from minors who smoke.<sup>F4</sup>
- 52% of Ontario residents agree that the Ontario government should sue tobacco companies for health care costs that result from tobacco smoking.<sup>F3</sup>

### **Smoking in public spaces:**

- 59% of Ontario residents agree that smoking should be banned in public parks and beaches.<sup>E2</sup>
- 50% of Ontario residents support a smoking ban on public sidewalks.<sup>F1</sup>
- 80% of Ontario residents agree that smoking should not be allowed on restaurant or bar patios.<sup>F1</sup>
- 84% of Ontario residents agreed that smoking should not be allowed in multi-unit dwellings with shared ventilation, such as apartment buildings, rooming houses and retirement homes.<sup>F1</sup>

### **Smoking in the home and cars:**

- 80% of Ontario residents agree that parents should be banned from smoking inside if children live at home.<sup>F1</sup>
- 93% of Ontario residents support legislation banning parents from smoking in their cars if children are present.<sup>F1</sup>

## Tobacco Taxation and Tax Revenue from Tobacco Sales

Taxation is an important tool that serves two purposes: it reduces tobacco use by increasing price and serves as a revenue source for government. In Ontario, tobacco taxes are applied through a variety of federal and provincial excise taxes collected at the manufacturer level and at the point of purchase.<sup>37</sup>

In Canada, the federal government applies both an excise duty and an excise tax to tobacco products. Excise duties are applied to a specific list of domestic products, which includes spirits, beer, cigarettes and tobacco. The excise duty on cigarettes consists of a specific amount in dollars applied per thousand standard cigarettes. The excise duty is higher for cigarettes that contain more tobacco.<sup>67</sup>

Excise taxes are either a fixed dollar amount imposed on a specific quantity of goods or an ad valorem tax applied to a prescribed list of domestic and imported goods and certain specific taxes. These taxes are in addition to the general or retail sales taxes.<sup>67</sup>

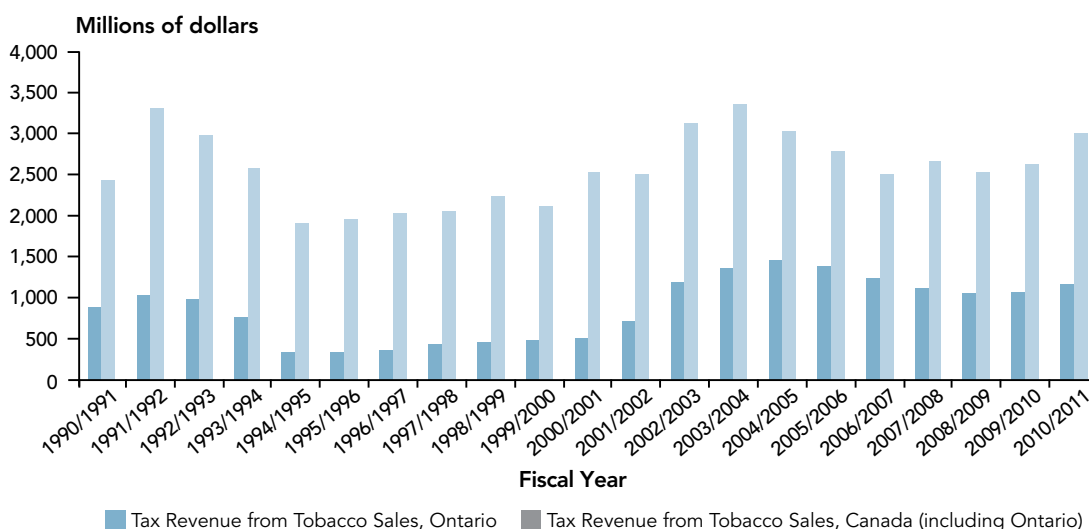
In Ontario, tobacco taxes are applied to all tobacco products sold (cigarettes, cigars and other tobacco such as loose, bidis, snuff, chewing, leaf, blunt wraps, water pipe and snus).<sup>68</sup>

**! Peel Fact**

The Cities of Brampton and Mississauga both require stores and shops where tobacco is sold by retail to have a tobacco license. Alternative tobacco products fall under these licensing requirements.

The tax revenue collected from cigarettes (Figure 10.1) is much lower than the health care costs attributable to smoking. In 2009, Ontario collected \$1 billion in tax revenue from tobacco sales, compared to an estimated \$6 billion (direct and indirect costs) spent for smoking-attributable health costs.<sup>27</sup>

**Figure 10.1**  
Tax Revenue from Tobacco Sales by Fiscal Year, Ontario and Canada, 1990-2011



† one unit of fine cut tobacco is equivalent to one cigarette  
‡ sales not available for 1997 and 1998

Source: Tax Revenues from Tobacco Sales [Internet]. Ottawa: Physicians for a Smoke-Free Canada [updated November 2011; cited May 18, 2012]. Available from: [http://www.smoke-free.ca/pdf\\_1/totaltax.pdf](http://www.smoke-free.ca/pdf_1/totaltax.pdf).

Using cigarette pricing to impact tobacco use is a well proven tobacco control strategy. Increases in the price of cigarettes result in: decreased demand; decreased consumption of cigarettes; and an increase in tax revenues for government.<sup>37,69</sup> For every 10% increase in the real price of cigarettes there is a three to four per cent decrease in consumption.<sup>33,37</sup>

Compared to other Canadian provinces and territories, the tobacco tax in Ontario is low. In 2012 the average price of a carton of 200 cigarettes in Ontario was \$80.16. Of the 13 provinces and territories in Canada, only Quebec sells a carton for a lower price. The majority of the cost of a carton of cigarettes is driven by tobacco taxes (Table 10.1).<sup>37</sup>



#### Did You Know

Ontario's tobacco taxes are among the lowest compared to all other provinces and territories.



**Table 10.1**

**Total Tobacco Taxes and Total Retail Price for a Carton of 200 Cigarettes in Canada's Provinces and Territories<sup>†</sup>**

Province	Total Tobacco Taxes (\$)‡	Total Retail Price (\$)
Northwest Territories	79.37	108.61
Nova Scotia	73.43	102.67
Manitoba	72.95	102.19
Saskatchewan	67.82	97.06
Prince Edward Island	72.65	101.89
Newfoundland and Labrador	65.95	95.19
British Columbia	63.99	93.23
Yukon Territory	63.41	92.65
Nunavut	63.41	92.65
Alberta	61.31	90.55
New Brunswick	61.43	90.67
Ontario	50.92	80.16
Quebec	42.20	71.44

<sup>†</sup> As of January 4, 2012

<sup>‡</sup> GST/HST is calculated on the total of pre-tax price + federal excise duty + provincial excise tax.

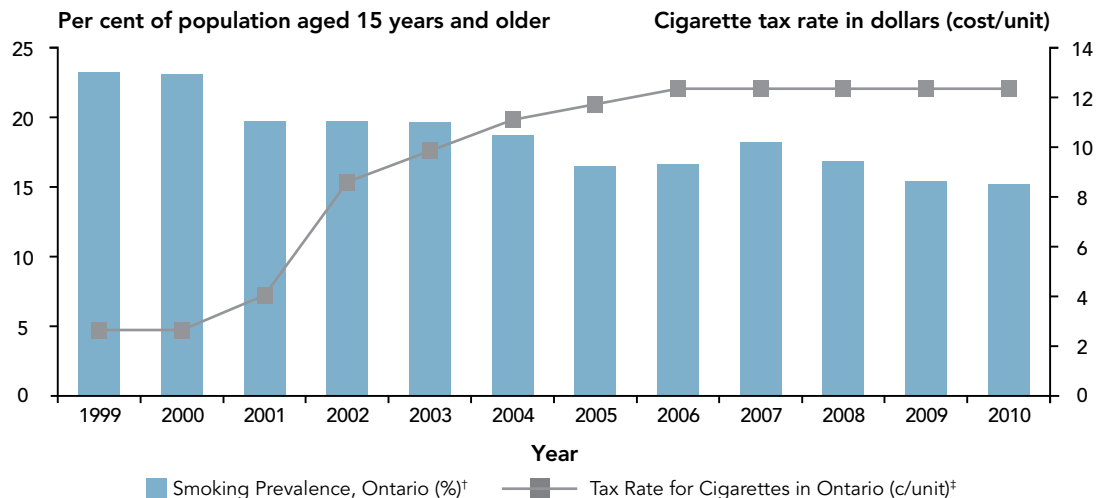
Notes: All provincial and federal taxes (including GST) are included.

Source: Cigarette prices in Canada [Internet]. Ottawa: Non-Smokers' Rights Association, Smoking and Health Action Foundation [updated April 13, 2011; cited May 18, 2012]. Available from: [http://www.nsr-aadnf.ca/cms/file/pdf/cigarette\\_prices\\_Canada\\_13\\_April\\_2011\\_map\\_and\\_table.pdf](http://www.nsr-aadnf.ca/cms/file/pdf/cigarette_prices_Canada_13_April_2011_map_and_table.pdf)

In Ontario, tobacco products are produced and distributed by licensed manufacturers, and regulated through the Tobacco Tax Act. The relationship between taxation and smoking prevalence is shown in Figure 10.2.

**Figure 10.2**

**Smoking Prevalence and Tax Rate for Cigarettes by Year, Ontario, 1999-2010**



Sources:

† Reid JL, Hammond D, Burkhalter R, Ahmed R. Tobacco use in Canada: Patterns and trends, 2012 edition. Waterloo, Ontario: Propel Centre for Population Health Impact, University of Waterloo; 2012.

‡ Tobacco tax: Current tobacco tax rates [Internet].: Government of Ontario: Ministry of Finance; 2011 [updated October 21, 2011; cited November 25, 2011]. Available from: <http://www.rev.gov.on.ca/en/tax/tt/rates.html>.

In addition to taxation, another way that the government can control tobacco pricing is with the use of a mandated pre-tax price (the price of tobacco before taxes) for tobacco products. The implementation of minimum pre-tax price in Ontario should help to control the growing “discount” cigarette market.<sup>70</sup>



#### Did You Know

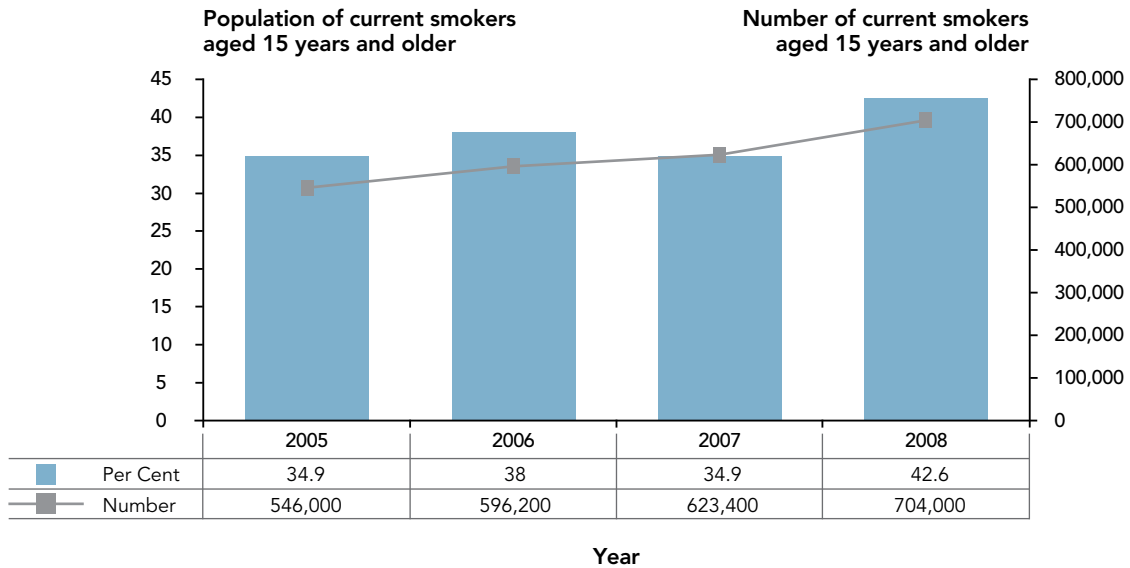
**Discount brand cigarettes** refer to cigarettes that are legally sold at a discount price. They are typically sold at \$12 to \$32 a carton less than “premium” brands.<sup>70</sup>

Discount cigarettes are tobacco products that are priced to be attractive to cost-conscious consumers. Discount cigarettes sell for between \$12 and \$32 less a carton than “premium” brands, and now account for approximately 50% of the legal market; up from 10% of the market in 2003.<sup>70</sup>

In 2008, 43% of Ontario smokers purchased a discount brand of cigarettes (Figure 10.3).

**Figure 10.3**

**Per Cent and Number of Smokers who Purchased a Discount Cigarette Brand<sup>†</sup> by Year, Ontario, 2005–2008**



<sup>†</sup> Purchased within the past six months

Source: Canadian Tobacco Use Monitoring Survey 2005, 2006, 2007, 2008. Tobacco Information Monitoring System, Ontario Tobacco Research Unit

## Contraband Tobacco Sales



### Key Messages

**Contraband tobacco** is tobacco that is sold illegally, without taxation or regulation, or in a way that evades the practices and principles outlined in provincial and federal legislation.

The Ontario Ministry of Revenue designates a production limit for native reserve cigarettes and allows for a specified quota of mainstream tax-exempt cigarettes to be sold on reserves. First Nations reserve vendors are required to add the cigarette tax to tobacco products when selling to non-native status customers. This tax is then collected by the Ministry of Revenue. If the vendor does not add the cigarette tax for non-native status customers then the cigarettes are considered to be sold illegally as contraband.



### Did You Know

First Nations individuals who are registered Indians are exempt from payment of tobacco tax on tobacco products that are purchased for their own consumption on their reserves.

Foreign diplomats are also exempt for payment of tobacco tax on tobacco products purchased for their own consumption through their diplomatic mission.

The majority of contraband cigarettes in Ontario come from tax-exempt tobacco that is manufactured and sold on First Nations reserves. The second source of contraband comes to Ontario by means of smuggling and arrives in unmarked or counterfeit packages.<sup>71</sup>



**?** Did You Know

**How Contraband is Sold**

- In unmarked plastic bags of 200 cigarettes by unlicensed dealers in public venues and on the street,
- To non-natives purchasing untaxed tobacco products from reserve smoke shops, and
- By tobacco retailers selling untaxed cigarettes.<sup>71</sup>

**?** Did You Know

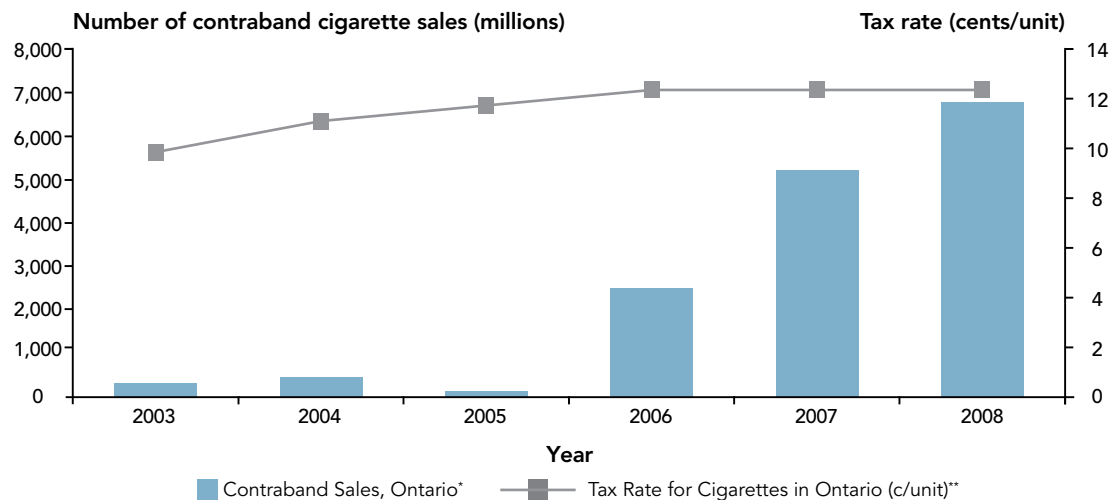
In 2012, the average price of 200 cigarettes sold legally in Ontario (one carton) was \$80, \$50.92 of which is tax collected by the Federal and Provincial governments.<sup>72,73</sup> A bag of 200 contraband cigarettes can be purchased for as low as \$10.<sup>74</sup>

**?** Did You Know

Individuals caught in possession of contraband cigarettes face serious consequences ranging from a fine to imprisonment.<sup>75</sup>

The rate of tax on cigarettes does not result in a direct impact on contraband sales as can be seen in Figure 10.4. While the rate of cigarette tax has remained constant between 2006 and 2008, the contraband market has grown almost three-fold.

**Figure 10.4**  
**Contraband Cigarette Sales and Tax Rate by Year, Ontario, 2003-2008**



Sources:  
 \* Estimating the volume of contraband sales of tobacco in Canada. Physician's for a Smoke-Free Canada; April 2010. Derived from smoking prevalence data (Canadian Tobacco Use Monitoring Survey) and wholesale shipments reported to Health Canada  
 \*\* Tobacco tax: Current tobacco tax rates [Internet].: Government of Ontario: Ministry of Finance; 2011 [updated October 21, 2011; cited November 25, 2011]. Available from: <http://www.rev.gov.on.ca/en/tax/tt/rates.html>.

**Peel Fact**

In Peel, almost one-quarter of youth (24%) who are current smokers use cigarettes from native reserves or unbranded cigarettes.<sup>D</sup>

**Did You Know**

In Ontario between April 1, 2008 and December 31, 2011, approximately 182 million illegal cigarettes, 1.7 million untaxed cigars, and 56 million grams of fine cut tobacco were seized by the Ministry of Finance.<sup>76</sup>

**Summary**

The production, distribution, sale, taxation, and use of tobacco is regulated through federal, provincial and municipal laws and regulations.

Two Federal Acts (Non-smokers' Health Act and the Tobacco Act) regulate smoking in workplaces under Federal jurisdiction, and the manufacturing, selling, labelling and promoting of tobacco. In Ontario, we have the Smoke-Free Ontario Act, and the Supporting Smoke Free Ontario by Reducing Contraband Tobacco Act. In Peel, we follow the Smoke-Free Ontario Act.

Provincial polls shows that over the past 10 years Ontario residents have become less tolerant towards the sale of tobacco products, the tobacco industry's role in smoking related health care costs and attitudes towards second-hand smoke.

Ontario has one of the lowest tobacco tax rates in Canada (second only to Quebec). As the tax rate has increased, the prevalence of smoking has declined.

The consumption of contraband tobacco has increased between 2006 and 2008 in Ontario.