

[Non-smokers' Health Act](#) (R.S. 1985, c. 15 (4th Supp.))

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Subject: Health

Non-smokers' Health Act

R.S., 1985, c. 15 (4th Supp.)

An Act to regulate smoking in the federal work-place and on common carriers and to amend the Hazardous Products Act in relation to cigarette advertising

[1988, c. 21, assented to
28th June, 1988]

Short title

1. This Act may be cited as the *Non-smokers' Health Act*.

Definitions

2. (1) In this Act,

"designated smoking area" «*zone fumeurs*»

"designated smoking area" means an area, other than an enclosed room, that is designated for smoking under subsection 3(2);

"designated smoking room" «*fumoir*»

"designated smoking room" means an enclosed room that is designated for smoking under subsection 3(2);

"employee" «*employé*»

"employee" means a person who is employed by an employer;

"employer" «*employeur*»

"employer" means a person who employs one or more persons in employment described in subsection 123(1) of the *Canada Labour Code*, or

(a) the Treasury Board, in relation to employees of any portion of the public service of Canada specified in Part I of Schedule I to the *Public Service Staff Relations Act*,

(b) an employer named in Part II of Schedule I to the *Public Service Staff Relations Act*, in relation to employees of that employer,

(c) the Senate, House of Commons or Library of Parliament, in relation to employees thereof or employees of a committee of the Senate or House of Commons, as the case may be, or

(d) a member of the Senate or House of Commons, in relation to employees on the staff of the member, including persons employed in the office of a Minister, or in relation to employees on the staff of a political party housed in accommodation provided by the Senate or House of Commons who are under the direction and control of the member;

"inspector" «*inspecteur*»

"inspector" means a person who is designated as an inspector pursuant to section 9, and includes a health and safety officer as defined in subsection 122(1) of the *Canada Labour Code*;

"smoke" «*usage du tabac*»

"smoke" means to smoke, hold or otherwise have control over an ignited tobacco product;

"tobacco product" «*produit à base de tabac*»

"tobacco product" means any product manufactured from tobacco and intended for use by smoking;

"work space" «*lieu de travail*»

"work space" means any indoor or other enclosed space in which employees perform the duties of their employment, and includes any adjacent corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment.

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| Application outside Canada | (2) This Act, except section 10, applies outside Canada in respect of a work space on an aircraft, train or motor vehicle being operated between Canada and another country by a Canadian, as defined in section 55 of the <i>Canada Transportation Act</i> or a work space on a ship registered under the <i>Canada Shipping Act</i> that is being operated between Canada and another country, to the extent that compliance with this Act within the territory of another jurisdiction does not result in the contravention of the laws of that jurisdiction. |
| Non-application to foreign carriers | (3) This Act does not apply in respect of a work space on an aircraft, train or motor vehicle being operated between Canada and another country by a person other than a Canadian, as defined in section 55 of the <i>Canada Transportation Act</i> or a work space on a ship registered under the laws of another country that is being operated between Canada and another country. |
| Non-application to commuter trains | (4) This Act does not apply in respect of a work space on a passenger train operated in commuter service by or for the account of the government of a province or an agency thereof. |
| | R.S., 1985, c. 15 (4th Supp.), s. 2; 1989, c. 7, s. 1; 1996, c. 10, s. 247; 2000, c. 20, s. 28. |
| Duty of employers | 3. (1) Every employer, and any person acting on behalf of an employer, shall ensure that persons refrain from smoking in any work space under the control of the employer. |
| Designation of smoking rooms and areas | (2) An employer may, to the extent permitted by the regulations, designate for smoking <ul style="list-style-type: none"> <li data-bbox="600 1509 1544 1585">(a) enclosed rooms under the control of the employer other than rooms normally occupied by non-smokers; and <li data-bbox="600 1639 1544 1845">(b) areas under the control of the employer on an aircraft, train, motor vehicle or ship or in an airport passenger terminal, railway passenger station, interurban bus station or marine passenger terminal other than areas normally occupied by non-smokers. |
| Exception | (3) Notwithstanding subsection (1), an employer may require employees, by reason of the nature of their duties, to perform those duties in a room or area designated for smoking under subsection (2). |

Independent ventilation

(4) Where an employer has designated a room for smoking under subsection (2) in a building or portion of a building the construction of which commenced before January 1, 1990, the employer shall, to the extent reasonably practicable, ensure that the room conforms to any requirements of the regulations respecting independent ventilation of designated smoking rooms.

Idem

(5) No employer shall designate a room for smoking under subsection (2) in a building or portion of a building the construction of which commenced after December 31, 1989 if the room fails to conform to any requirements of the regulations respecting independent ventilation of designated smoking rooms.

Consultation

(6) No employer shall designate a room or area for smoking under subsection (2) in a work place, other than on an aircraft, train, motor vehicle or ship that is carrying passengers, until after the employer has consulted with the work place committee or health and safety representative in respect of that work place or, if there is no such committee or representative, with the employees employed there.

Expressions used in *Canada Labour Code*

(7) In subsection (6), the expressions "work place committee", "health and safety representative" and "work place" have the same meaning as in Part II of the *Canada Labour Code*.

R.S., 1985, c. 15 (4th Supp.), s. 3; 1989, c. 7, s. 1; 2000, c. 20, s. 29.

Smoking prohibited

4. (1) No person shall smoke in any work space under the control of an employer except in a designated smoking room or designated smoking area.

Notice

(2) An employer shall, to the extent and in the manner required by the regulations, inform employees and members of the public of the prohibition imposed by subsection (1) and of the location of designated smoking rooms and designated smoking areas under the control of the employer.

R.S., 1985, c. 15 (4th Supp.), s. 4; 1989, c. 7, s. 1.

Smoking areas on aircraft

5. (1) An employer may not designate an area for smoking under subsection 3(2) on an aircraft carrying passengers for hire or reward except

(a) on segments of a flight that are longer than two hours or such greater period as the regulations prescribe;

(b) on segments of a flight that includes a segment extending between Canada and a country other than the United States; or

(c) on a flight operated in accordance with a charter contract under which the cost of transportation of all passengers is paid by one person, company or organization and no charge or other financial obligation is imposed on a passenger as a condition of carriage or otherwise in connection with the transportation.

Smoking areas on trains

(2) An employer may not, in respect of a train carrying passengers, designate for smoking under subsection 3(2)

(a) areas comprising more than two thirds of the seating accommodation of any class;

(b) areas on more than two thirds of the cars providing a class of seating accommodation; or

(c) areas comprising more than two thirds of the sleeping car accommodation other than enclosed accommodation.

Request to stop smoking

(3) An employee who becomes aware that a passenger is smoking in contravention of section 4 on an aircraft, train, motor vehicle or ship operated by the employer of the employee shall request the passenger to refrain from smoking.

Removal of passenger

(4) Where a passenger fails to comply with a request made under subsection (3), the employer shall require the passenger to disembark at the next scheduled stop following the passenger's failure to comply.

R.S., 1985, c. 15 (4th Supp.), s. 5; 1989, c. 7, s. 1.

6. Nothing in section 4 or 5 affects the operation of any other Act of Parliament or regulations thereunder or any rule of law in relation to the protection of persons from exposure to tobacco smoke.

R.S., 1985, c. 15 (4th Supp.), s. 6; 1989, c. 7, s. 1.

7. (1) The Governor in Council may make regulations

(a) respecting the size, number, proportionate floor space, location, use, number of occupants and other characteristics of rooms and areas that may be designated for smoking under subsection 3(2);

(b) respecting the ventilation of designated smoking rooms;

(c) permitting the designation of the whole or any part of aircraft, trains, motor vehicles or ships as areas or rooms for smoking, either generally or on specified routes or in specified classes of service and, subject to subsection 5(2), prescribing the maximum proportion of accommodation of any class thereon that may be designated for smoking;

(d) respecting the maximum proportion of aircraft flights, train schedules, motor vehicle trips or ship voyages operated for hire or reward in passenger service in respect of which designated smoking areas or rooms may be provided during any specified travel period, either generally or on specified routes or in specified classes of service;

(e) prescribing, either generally or in respect of specified routes or specified classes of service,

(i) a period greater than two hours for the purposes of paragraph 5(1)(a), or

(ii) the minimum duration of an aircraft flight referred to in paragraph 5(1)(b) or (c), or of a flight not carrying passengers, in respect of which areas may be designated for smoking;

(f) requiring employers to inform employees and members of the public of the prohibition imposed by section 4 and of the location of designated smoking areas and designated smoking rooms, and respecting the manner of so informing them; and

(g) prescribing the form of tickets and informations for the purposes of section 14 and fixing the fine payable in proceedings under that section in respect of a first or a subsequent contravention of any provision of this Act, not exceeding the amount fixed by section 11 for such a contravention.

Application of regulations

(2) Regulations made pursuant to this section may be made applicable to all employers or to a class of employer and in respect of all work spaces or a class of work space.

R.S., 1985, c. 15 (4th Supp.), s. 7; 1989, c. 7, s. 1.

Proceedings against Crown

8. Notwithstanding any other Act of Parliament, proceedings in respect of an offence under this Act may be brought against an employer that is an agent of Her Majesty in the employer's own name, or against a person acting on behalf of such an employer, in the same manner as if that employer were a person not an agent of Her Majesty, and a fine imposed against the employer in such proceedings may be paid out of any funds held by the employer.

R.S., 1985, c. 15 (4th Supp.), s. 8; 1989, c. 7, s. 1.

Provincial Crown corporations

8.1 The Governor in Council may by regulation direct that this Act applies in respect of any employment, or any class or classes of employment, on or in connection with a work or undertaking set out in the regulation that is, or is part of, a corporation that is an agent of Her Majesty in right of a province and whose activities are regulated, in whole or in part, pursuant to the *Nuclear Safety and Control Act*.

1996, c. 12, s. 5; 1997, c. 9, s. 125.

Exclusion from application

8.2 (1) The Governor in Council may by regulation exclude, in whole or in part, from the application of any or all of the provisions of this Act any employment, or any class or classes of employment, on or in connection with a work or undertaking set out in the regulation whose activities are regulated, in whole or in part, pursuant to the *Nuclear Safety and Control Act*.

Regulations

(2) On the recommendation of the Minister of Labour, the Governor in Council may make regulations respecting the use of tobacco in a workplace at which is carried on employment that is subject to a regulation made pursuant to subsection (1).

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| Incorporation of provincial law | (3) A regulation made under subsection (2) incorporating by reference, in whole or in part, an Act of the legislature of a province or an instrument made under such an Act may incorporate the Act or instrument as amended to a certain date or from time to time. |
| Application of regulation | (4) A regulation made under subsection (2) may apply <ul style="list-style-type: none"> <li data-bbox="598 432 1544 510">(a) generally, with respect to all employment that is subject to a regulation made pursuant to subsection (1); or <li data-bbox="598 562 1528 645">(b) to any class or classes of employment that are subject to a regulation made pursuant to subsection (1). |
| Administration and enforcement | (5) A regulation made under subsection (2) incorporating an Act or instrument shall, after consultation by the Minister of Labour with the appropriate provincial minister, be administered and enforced by the person or authority that is responsible for the administration and enforcement of the Act or instrument. |
| Offence and penalty | (6) Every person who contravenes a regulation made under subsection (2) by contravening a provision of an Act of the legislature of a province that, or an instrument made under such an Act that, is incorporated by the regulation is guilty of an offence against this Act and liable to the same punishment as is imposed by or under an Act of that legislature for the contravention of that provision. |
| Procedure | (7) The prosecution of an offence in respect of a contravention described in subsection (6) shall be commenced by the attorney general of the province in which the offence was committed. |
| | 1996, c. 12, s. 5; 1997, c. 9, s. 125. |
| Designation of inspectors | 9. (1) The Minister of Labour may designate any person to be an inspector for the purposes of sections 10 and 14. |
| Provincial inspectors | (2) The Minister of Labour may, with the approval of the Governor in Council, enter into an agreement with the government of a province or an agency thereof stipulating terms and conditions under which a person employed by that government or agency may act as an inspector for the purposes of this Act, and a person so employed and so referred to in the agreement shall be deemed to be designated an inspector under this section at the time fixed by or under the agreement. |

Certificates

(3) The Minister of Labour shall provide an inspector with a certificate of the inspector's authority and, on entering any work space referred to in section 10, the inspector shall, on demand by the person in charge of that place, produce the certificate for examination by that person.

R.S., 1985, c. 15 (4th Supp.), s. 9; 1989, c. 7, s. 1.

Inspection of premises

10. (1) For the purpose of verifying compliance with this Act, an inspector may at any reasonable time enter and inspect any work space under the control of an employer.

Assistance to inspectors

(2) The person in charge of a work space entered by an inspector pursuant to subsection (1) and every person found in that place shall give the inspector all reasonable assistance to enable the inspector to carry out the inspector's duties and shall furnish the inspector with any information that the inspector has reasonable grounds to believe is required to carry out the inspection.

Obstruction

(3) No person shall wilfully obstruct an inspector in the performance of the inspector's duties under this section.

1989, c. 7, s. 1.

Offence and punishment

11. (1) Every employer who contravenes section 3 or subsection 4(2) or 5(4) is guilty of an offence and is liable on summary conviction

(a) for a first offence, to a fine not exceeding one thousand dollars; and

(b) for a subsequent offence, to a fine not exceeding ten thousand dollars.

Idem

(2) Every person who contravenes subsection 4(1) or 5(3) is guilty of an offence and is liable on summary conviction

(a) for a first offence, to a fine not exceeding fifty dollars; and

(b) for a subsequent offence, to a fine not exceeding one hundred dollars.

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| Idem | <p>(3) Every person who contravenes section 10 is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.</p> <p>1989, c. 7, s. 1.</p> |
| Offence outside Canada | <p>12. Proceedings in respect of an offence under this Act alleged to have been committed outside Canada may be brought in a court of competent jurisdiction for any judicial division in Canada in which the accused person is found, as if the offence had been committed in that judicial division.</p> <p>1989, c. 7, s. 1.</p> |
| Service on corporations, etc. | <p>13. Service of a summons under the <i>Criminal Code</i> or a ticket under this Act on an employer that is not an individual may be effected by delivery of the summons or ticket to the president, secretary or other executive officer of the employer, to the person appearing to have the control or management of any establishment of the employer, or to the employee or agent by whose act or omission the employer is alleged to have committed the offence.</p> <p>1989, c. 7, s. 1.</p> |
| Proceedings commenced by ticket | <p>14. (1) An inspector or peace officer who has reasonable grounds to believe that an offence has been committed under this Act may serve a ticket in the form prescribed by the regulations, completed and signed by the inspector or peace officer, by causing the ticket to be delivered to the person believed to have committed the offence, if an individual, or to a person referred to in section 13 in any other case.</p> |
| Laying of information | <p>(2) Either before or after service of a ticket, an information under oath shall be laid before a justice in respect of the offence alleged in the ticket.</p> |
| Voluntary guilty plea | <p>(3) A person on whom a ticket is served or, where service is effected in accordance with section 13, a person acting on behalf of the employer so served may, within fifteen days after it is served, complete and sign the plea of guilty set out in the ticket and deliver or mail the plea, together with the fine fixed by the regulations and specified in the ticket, to the court specified in the ticket.</p> |

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| Conviction | (4) Acceptance by the court of a payment made under subsection (3) constitutes a plea of guilty, whether or not the plea is signed or the signature is proved, and endorsement of the payment on the ticket constitutes the conviction of the person for the offence. |
| Proof of service | (5) Service of a ticket may be proved by the oral evidence given under oath of the person who served it or by the affidavit of that person made before a justice or other person authorized to administer oaths or take affidavits. |
| Default conviction | (6) Where no plea is entered in respect of an offence that is alleged in a ticket and service of the ticket is proved before a justice, the justice shall examine the information laid pursuant to subsection (2) and, if it is complete and regular on its face, shall enter a conviction in the accused's absence and impose a fine in the amount prescribed by the regulations and specified in the ticket. |
| Expressions used in <i>Criminal Code</i> | (7) In this section, the expressions "justice" and "peace officer" have the same meaning as in the <i>Criminal Code</i> . |

1989, c. 7, s. 1; 1993, c. 34, s. 96.

HAZARDOUS PRODUCTS ACT

15. [Amendments]

COMMENCEMENT

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| Coming into force | 16. This Act shall come into force on the day that is six months after the day on which <i>An Act to amend the Non-smokers' Health Act</i> is assented to. |
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1989, c. 7, s. 4.

AMENDMENTS NOT IN FORCE

-- 1992, c. 47, s. 84 (Sch., ss. 9 to 11):

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| 1989, c. 7, s. 1 | 9. Subsection 7(1) is amended by adding the word "and" at the end of paragraph (e) thereof, by striking out the word "and" at the end of paragraph (f) thereof and by repealing paragraph (g) thereof. |
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1989, c. 7, s. 1

10. Subsection 9(1) is repealed and the following substituted therefor:

Designation of inspectors

9. (1) The Minister of Labour may designate any person to be an inspector for the purpose of section 10.

1989, c. 7, s. 1

11. Sections 13 and 14 are repealed and the following substituted therefor:

Service on corporations, etc.

13. Service of a summons under the *Criminal Code* on an employer that is not an individual may be effected by delivery of the summons to the president, secretary or other executive officer of the employer, to the person appearing to have the control or management of any establishment of the employer, or to the employee or agent by whose act or omission the employer is alleged to have committed the offence.

-- 2001, c. 26, s. 312:

1996, c. 10, s. 247

312. Subsection 2(2) of the *Non-smokers' Health Act* is replaced by the following:

Application outside Canada

(2) This Act, except section 10, applies outside Canada in respect of a work space on an aircraft, train or motor vehicle being operated between Canada and another country by a Canadian, as defined in section 55 of the *Canada Transportation Act*, or a work space on a vessel registered or listed under the *Canada Shipping Act, 2001* that is being operated between Canada and another country, to the extent that compliance with this Act within the territory of another jurisdiction does not result in the contravention of the laws of that jurisdiction.