

April 21, 2005/ Good afternoon Mr. Chair, Members of the Committee:

My name is Terry Mundell, and I am the President and CEO of the Ontario Restaurant Hotel & Motel Association. It is my pleasure to have the opportunity to speak with you this afternoon regarding Bill 164, the *Smoke-Free Ontario Act*.

The Ontario Restaurant Hotel & Motel Association (ORHMA), is a non-profit industry association that represents the foodservice and accommodation industries in Ontario. With over 4,100 members province-wide, representing more than 11,000 establishments, the ORHMA is the largest provincial hospitality industry association in Canada. Ontario's hospitality industry is comprised of more than 3,000 accommodation properties, and 22,000 foodservice establishments, 17,000 of which are licensed to serve alcohol.

The hospitality industry continues to struggle to recover from the direct and indirect consequences of several factors outside the industry's control. You've heard me discuss them before. 9/11, SARS, BSE, the high Canadian dollar, the NHL strike. Just this month Statistics Canada released its Labour Force report, using 2004 data, and indicated that "there were job losses for the second consecutive month in accommodation and food services, with losses of 18,000 in March and 20,000 in February. All of these declines occurred in food and beverage services. Compared to a year ago, employment and hours worked have declined in parts of this sector, notably in taverns and bars."

Bill 164 will most directly and immediately impact the pub, bar and tavern segment of the hospitality industry. Independently owned small and medium size

businesses dominate this segment. Having suffered four straight years of declining sales, with revenues down 20% for the average operator in the first quarter of 2004 compared to the same period in 2000, operators have seen pre-tax profit margins drop to only 3.7% on average. Data also shows us that alcohol sales in pubs, bars and taverns is declining, but in-home consumption of alcohol is on the rise.

And now the industry is faced with a provincial smoking ban. We know from experience, both municipally and in other jurisdictions, that this too will hurt the industry.

To be clear, the ORHMA supports provincial legislation to eliminate the current patchwork of municipal by-laws that is unfair, uncompetitive, and unworkable for the industry. So we support a model that brings consistency throughout the province. There are however some general and specific concerns, related to the impact of the legislation and the drafting of the legislation respectively, that I would like to present to this Committee.

Over the past few years the Government has placed a tremendous effort in supporting the Ontario Tobacco Strategy. Recognizing that the Ontario Tobacco Strategy will negatively affect both tobacco growers and their communities, by reducing demand for their product, the government established a \$50 Million "Tobacco Community Transition Fund" to assist tobacco farmers and their communities. Through the Ontario Tobacco Strategy the government has also supported Ontarians to quit smoking through smoking cessation programs, public education campaigns, a telephone support line, school and community-based smoking prevention programs, and television and print media advertising. Yet the government has failed to support the hospitality industry as it prepares for a province-wide smoking ban. Unless given some

relief, many operators will either go bankrupt or close their businesses and walk away. The impact will be felt on communities, jobs, and government revenues.

Prior to the introduction of Bill 164 the ORHMA recommended to government that Ontario's provincial smoking legislation be modeled after the legislation in British Columbia which permits the operation of separately ventilated Designated Smoking Rooms (DSRs). We recommended that this model be incorporated into Ontario's legislation, and were disappointed that it was not. In fact, Bill 164 will result in the closure of more than 700 municipally-approved Designated Smoking Rooms on May 31, 2006. These operators have made significant investments in DSRs based on their ability to recoup their investment. That opportunity will now be lost. Hospitality operators who have made an investment in a DSR need a transition period so they can earn a payback on that investment, while adjusting their business models to accommodate smoke-free operations. During that transition, we support separately ventilated designated smoking rooms and occupational exposure limits to protect workers. **The ORHMA recommends that the expiry date for the operation of DSRs be extended to 2010.** This date is recommended as it reflects several current municipal by-laws that included an end-date when they were introduced.

However, we must remember that this Bill affects more than just those 700 operators. 17,000 operators licensed to sell liquor will be affected by this Bill in one way or another, specifically in reduced sales revenues. In order to assist licensees **the ORHMA recommends that the government eliminate the gallonage fee.** The gallonage fee is a tax on alcohol, paid only by Ontario liquor licensees. It is charged, on top of all other provincial and federal taxes and levies, at a rate of 12% for the purchase of wine and spirits and \$2.64 per hectoliter on the purchase of beer. This is an

unlegislated and unjust tax, and its elimination will save licensees approximately \$48 million annually. The elimination of the gallonage fee is the hospitality industry's equivalent to the farmers' transition fund. In fact, in its 2005 provincial budget the Government of Newfoundland and Labrador announced the elimination of its equivalent fee for licensees to support the industry as it too faces a province-wide smoking ban.

I would like now to make a few points about the specifics of Bill 164.

It is now common practice within the accommodation sector to prohibit smoking in common areas of hotels and motels. **The ORHMA recognizes and supports the exemption contained in Bill 164 that permits registered guests and their invited guests to smoke in designated guest rooms.**

A specific concern with the *Smoke-Free Ontario Act* is related to the wording of the legislation. Bill 164 prohibits smoking in all "enclosed public places". Upon introduction of the Bill the Minister stated "we are ... not proposing to ban smoking on outdoor patios. But ... an outdoor patio must be a true outdoor patio". The ORHMA was pleased to hear the Minister's statement that he is not proposing to ban smoking on patios, however, the legislation itself does not mention patios specifically. To avoid confusion, the ORHMA recommends a clearer definition of the term "enclosed public place". Taking the experiences within the City of Toronto as an example, we know that such definitions of public places, without specific mention of patios, lead to confusion and inconsistent interpretation and enforcement. **The ORHMA recommends that the legislation be amended to provide clarity around the definition of "enclosed public place", and ultimately to put to rest any potential confusion about smoking on patios.**

The ORHMA supports the elimination of the patchwork of municipal by-laws through the implementation of provincial legislation, but calls on the government to take immediate steps to provide targeted relief and assistance to Ontario's hospitality industry as part of the Ontario Tobacco Strategy.