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'Smoker' challenges obstruction charge

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these guys think they're doing?"

The inspector's account of the August confrontation at Mr. Findlay's office indicates he was trying to follow up on a complaint and became suspicious

smoking was occurring when he visited. Copies of Mr. Hewitt's notes filed with the court indicate he identified himself as an inspector, only to have Mr. Findlay close the door in his face. Mr. Hewitt's notes say there was a "very strong" smell of cigarette smoke present. The notes say although Mr. Hewitt

knocked several times, Mr. Findlay would not allow him inside and insisted he produce a search warrant.

Mr. Findlay does not dispute that version of events, except to say he quit smoking in his office after the first warning from the health department.

Mr. Findlay questions the bylaw's application in his case.

Brian Patterson, a forensic accountant who will act as Mr. Findlay's agent in court, agrees prosecution of the case under the regional legislation is inappropriate.

The region's bylaw is specific in its prohibition of smoking in the workplace, as well as the right of inspectors to enter premises to check for infractions.

The legislation states no person shall smoke in a workplace and further directs employers to ensure no smoking is allowed. A workplace is defined as a building or structure in which one or more employees work.

The legislation also empowers bylaw officers or health department inspectors to conduct inspections of premises; it says obstructing an inspector is an offense, whether or not the smoking bylaw is being contravened. The maximum fine is \$5,000.

All of that strikes Anita Fisher as rather excessive. Ms. Fisher, who works alone in an office in an industrial area in Aurora, was cited by Mr. Hewitt on Sept. 20 for having an ashtray in her workplace.

"I wasn't smoking when he walked in but there was an ashtray on my desk and a package of cigarettes," Ms. Fisher said. "(Mr. Hewitt) told me I was in contravention of the smoking bylaw. I said, 'What are you talking about?'"

"I said, 'That's silly.'" The statement of infraction issued by Mr. Hewitt states that Ms. Fisher's employer, Universal Filter Media, failed "to prohibit ashtrays and like paraphernalia in the workplace". She has been given 14 days to comply with the bylaw.

Ms. Fisher insists it's preposterous for the region to be enforcing a bylaw aimed at protecting people from second-hand smoke in an office that's occupied all day by just one person.

"I think they're stepping over the bounds of what they should be allowed to tell us," Ms. Fisher said.

"If I had a bag of pot on my desk and he called the police and I was charged that would be okay, because pot is illegal," she said. "Cigarettes are not illegal."

Dr. Hanif Kassam, associate medical officer of health with the region, said inspections of workplaces such as Ms. Fisher's and Mr. Findlay's are necessary to ensure the integrity of the bylaw.

"Our intention is a good intention. Our intention is to protect the health of the public," Dr. Kassam said.

"We have a law that has been put into place by our elected officials," he said. "When major policies are made... there's going to be a segment of the population that will not be happy with it. This is one very good example of such a policy."

90 PER CENT COMPLIANCE

Between June 1, 2001, the date the bylaw took effect, and July 31 of 2002, regional inspectors laid more than 400 charges for infractions in restaurants, pubs, places of business and other public gathering spots. Just two obstruction charges have been laid, Dr. Kassam said.

"We use obstruction charges only as a complete last resort," he said. "We've got over 90-per-cent compliance in workplaces."

A group of restaurant and bar owners has hired constitutional lawyer Morris Manning to launch a challenge to the region's bylaw. That case goes to court next February.

The region has hired Paterson, MacDougall, a law firm that successfully fought a similar challenge to anti-smoking legislation in Kitchener-Waterloo

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