

# PUBCO

September 2003

Fall Issue

## Pub and Bar Coalition of Canada — PUBCO

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## History of PUBCO

### The Beginning

PUBCO -The Pub and Bar Coalition of Canada was created in the spring of 2000 as a result of Ottawa's infamous 100% smoking ban. Bar owners knew instinctively that smoking bans would be disastrous for business, and the fact that politicians were saying the exact opposite convinced most owners that their businesses were definitely headed for financial rough water.

What followed was 18 months of sheer hell for bar operators as the bottom fell out of their businesses almost immediately.

To ensure compliance, the city of Ottawa waged what can best be described

as a reign of persecution. New by-law enforcement officers were hired and some of them, who appeared to be wannabe cops, went on a real power trip. Hundreds of tickets were issued for by-law infractions — many of them without the owners or staff even being notified at the time. Tickets were piling up, sometimes several in one day and owners were obliged to go to court to fight even though a provincial case was underway and a cloud of confusion surrounded the bylaw. With a bottomless pit of taxpayers' money at their disposal the city was bound to win this game — especially when the city's legal bills for outside

lawyers alone totaled almost \$300,000!

After 18 months there were still some stand-outs and Ottawa city hall decided to bully them into submission with a threat of a \$50,000 court injunction. This was basically game over. The city had waged a pretty dirty battle from start to finish and they proved successful.

Not a chapter in the city's history that anyone should be particularly proud of, especially when one considers the arrogant anti-business statements of some elected officials.

*Continued on p. 5*

## Morris Manning Q.C. Constitutional Challenge

The PUBCO Supreme Court challenge to the regional municipality of York's smoking bylaw continues. PUBCO would rather negotiate a compromise solution than spend valuable resources on lawyers. However, as long as municipalities stubbornly refuse to see the serious damage they are causing to our industry, then the legal route offers the only alternative.

### Key Dates for PUBCO Challenge

May 1, 2003	Pre-Trial
June 1, 2003	Applicants will advise the Respondents of their position concerning the agreed statement of facts.
August 15, 2003	Affidavits of Applicant's experts filed.
September 15, 2003	Affidavits of Crown experts filed
October 7,8,9, 2003	Cross examinations on Affidavits
December 10, 2003	Applicants factum filed 830 a.m. confirmation appearance, OCH
January 9, 2004	Crown factums filed
January 15, 2004	Reply factums filed
January 26-30, 2004	Hearing of Application, OCH Court 122
February 2,3, 2004	Continuation of Application OCH Court 122

# Beer sales still plummeting due to smoking bans

Licensed beer sales figures released by the Brewers of Ontario clearly indicate that beer sales in municipalities/regions that have introduced 100% smoking bans have plummeted in comparison to

those where no such bans exist.

Figures for Oakville, Kitchener-Waterloo and Ottawa for the 8 month period (1 Sept 2002 to 1 May 2003) compared to the same period two years ear-

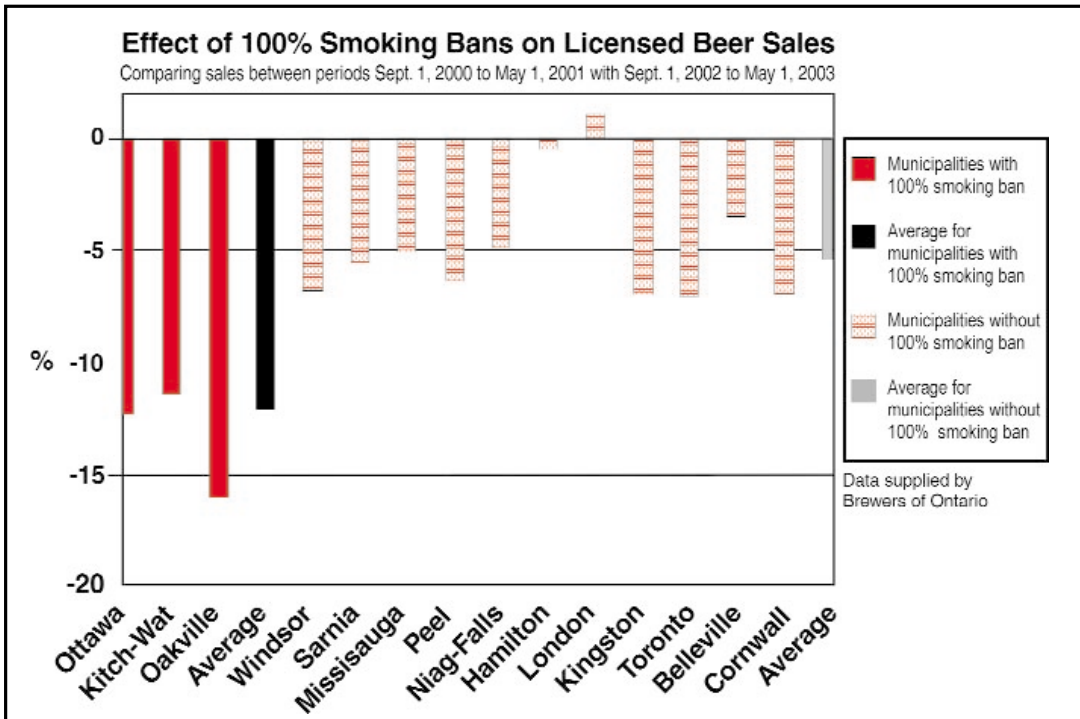
lier preceding the implementation of 100% smoking bans, show a combined decrease of 12.07% in licensed sales.

Comparative figures for the same periods in 11 municipalities where no such ban

existed showed an average decrease in licensed sales of 5.44%. With additional 100% bans now kicking in elsewhere, the number of small Ontario businesses running into financial difficulties will mushroom.

One of the first areas to feel the impact will certainly be Kingston where, for reasons unknown, smoking has even been banned on patios.

PUBCO would encourage Toronto's council to take a long hard look at these numbers when considering the possible removal of designated smoking rooms (DSRs). Even with DSRs, Toronto showed a downturn in licensed sales of 7.04%, well above the average of 5.44%. A small portion of Toronto's downturn can no doubt be attributed to the SARS outbreak; however, based on the Ottawa experience, introducing a 100% ban will result in the closure of over 200 Toronto pubs and bars.



**Kingston, Belleville and London have since implemented 100 percent bans and some owners are already reporting up to 30 percent declines in sales. PUBCO will provide updates in our winter issue.**

## Rising Insurance Rates

Insurance isn't a luxury for any business operator. For a restaurant or pub it's especially important in an environment where people injured by accidents caused by drunk drivers increasingly look to the insurance policy of the establishment that sold the drinks

as a source of compensation for their injuries.

Soaring insurance rates have been creating havoc for large and small businesses across the country.

Ontario Pub Owners have been screaming about the increases. Some have seen their rates quadruple and

PUBCO has at least one owner who has seen a 900 percent increase.

Cost increases are doing more than taking the profits out of the pockets of business operators. They are putting a halt to economic growth in Ontario. The call for action is needed now as owners have little recourse

but to plead with city, provincial and federal governments to work together to lower premiums. PUBCO is calling on all Ontario licensees to demand answers in the upcoming elections and is effectively calling on Queen's Park for immediate intervention.

# Ventilation

In May 2002, the British Columbia government passed a performance based ventilation regulation to deal with the issue of environmental tobacco smoke (ETS) in the hospitality workplace. This new regulation represented a change in policy that simultaneously protected the health of workers while assuring the hospitality industry is able to cater to all its customers.

The B.C. government recognized that it was of paramount importance to protect hospitality workers from exposure to ETS. That is why they thoroughly studied negative pressurization and directional airflow ventilation before offering it as a technical solution.

They also recognized ventilation does work. State of

the art ventilation technology, which has proven to be affordable, also means that someone sitting in a smoke free area does not have to breathe the second hand smoke of others in the same establishment. The days of smoky bars are over. Not because they've gone out of business as is the case in Ontario but because the B.C. government has recognized that

ventilation is the solution. In addition, this regulation has encouraged more establishments to go smoke free showing that options allow the marketplace to decide and create a true level playing field.

Below is a description and a schematic of the Black Dog Pub Study recently carried out in Toronto.

The walls between the smoking and non-smoking area have two open doorways and two open "window" areas. Since 100% of the exhaust air is taken from the smoking area and over 60% of the fresh air is delivered to the non-smoking area, the ventilation design creates a velocity of approximately 30 feet per minute across the open areas. The exhaust air is taken directly back through the rooftop ERV and exhausted outside, while the fresh air is delivered into the return air side of the two heat/cool rooftop units servicing both areas.

Since the installation of the ventilation sys-

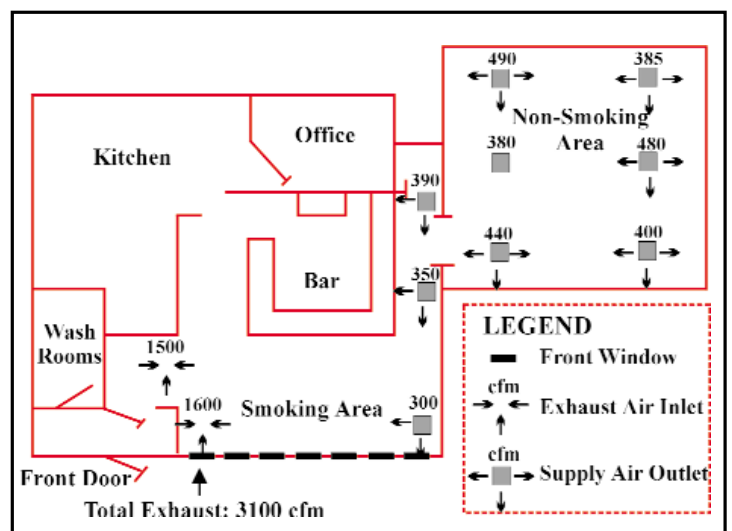
tem, staff and patrons have noticed a remarkable improvement in the Pub's air quality. Through extensive testing, several IAQ indicators were monitored. The results of these tests showed a dramatic reduction in the airborne particulates and gases associated with environmental tobacco smoke.

### Non-smoking Areas:

- ✓ 80% reduction in respirable particulates
- ✓ 50-90% reduction in tobacco specific components

### Smoking Areas:

- ✓ 70% reduction in respirable particulates
- ✓ 40% reduction in tobacco specific components



The test results also showed a significant improvement in other air quality indicators aside from tobacco related compounds. In fact, test results completed by the Centre for Toxicology and Environmental

Health in Little Rock, Arkansas, found that the tobacco smoke levels and air quality were comparable to a publicly regulated smoke-free court.

See survey on level of support for City of Toronto to establish ventilation standard on page 6.

## Owners write

When I joined PUBCO more than two years ago, I decided that an organization was needed to combat the extra intrusive legislation being implemented by our local government.

I realized that my business was under attack, and with my hurried schedule, I was unable to deal with the bureaucrats, policies and legislation that were affecting my top line sales and bottom line profit.

The smoking ban in Ottawa has damaged my late night business when my Southern style restaurant turns into a Southern Blues club.

To PUBCO Ottawa

Once I was informed that our council had planned on ramming the non smoking by-law through I started the fight. I got my wife to find some organization that I could join to feed the information to me. This turned out to be PUBCO and I appreciate all the information that PUBCO supplied me with - it proved indispensable. I also had direct support from about 5 bars and about 19 other PUBCO members that have made my job a lot easier. When I first started I did not think that we had much chance but last week we persuaded the 2 councillors that sit on the health unit board to agree to a 3 year deferral and that was all we needed. They commended me and agreed that I changed their minds with my organized fight and

I have been very fortunate that my food sales along with my large Patio have been able to at least carry me through. Although the original Ottawa court fight was lost, I thought to myself, What next will they ban smoking on outdoor patios? Then on a recent trip to Kingston I see this is exactly what has been done! Economically it will be a disaster and now the need to have all of our industry on the same page is more important than ever.

**Steve Ross**  
*Tucsons Restaurant*  
*Ottawa*

the information I provided.

It also shows the power of public opinion when you have the support of the public. Council even offered more time if we needed it to get our court case finished and to prepare for a ban.

Some of the bars in Timmins said we had no chance but they were proved wrong. When I enter a fight I enter to win and I would personally like to thank the PUBCO group for all of your support.

This is not only a victory for the bars in Timmins but also a victory for PUBCO. If you require anything from me just let me know.

Regards

**Mark Michaud**  
*President Timmins*  
*Bar association*  
*CEO CLUB 147*  
*Timmins ONT. 7*  
*05-264-5277*

## Private Clubs

Are you private or public? Some bylaws ignore the issues while others actually define what a private club is. There are several areas that need to be explored along the lines of a private club. PUBCO is awaiting two lower court decisions to pass along to our members but we still believe that this issue needs to be elevated to a higher court where property rights and constitutional rights are better defined.

We will keep you posted. In Ottawa a private club can exist because the Ottawa bylaw exempts them.



Our smoking bylaw (Welland) which came into effect on May 31 of this year required us to obtain permits from the municipality and fire department (in order to have an approved Designated Smoking Room). Our unique layout, already having two separate entrances leading to two distinct levels of our establishment was a definite plus. Our back, or dining room entrance had been made smoke-free by us voluntarily 2 years ago and already contained our public washrooms. This eliminated a lot of expense. We had the two levels divided with windows and a french door that swung both ways. We were also required to submit floor plans showing the dimensions of the rooms. Between the interior work and the required separate ventilation exhausting air at a rate of 110% of air supply we spent \$20,000.

Our ventilation system had to be done by an air balancing contractor who was required to sign paperwork and submit drawings of the airflow, distances from exterior openings etc.

In the two months since the bylaw came into effect our sales are up 20% compared to last year. All alcohol, our food sales have remained the same as last year

The bylaw forced us to spend the money and have our sales increase or do nothing and have them decrease by the same margin. There really is no choice, only hope that the health department / region / province will leave us all alone for a few years anyway.

**Barry and John Rolph**  
*Cheers Restaurant*  
*Welland*  
*292 East Main St.*  
*L3B 3W9*

## British Medical Journal reports secondhand smoke danger overstated

Health authorities in many countries have branded environmental tobacco smoke a serious hazard, and their stance has become the basis for laws which have turned smokers into pariahs, turfing them out of offices, restaurants, bars and clubs and onto the street.

A new study, published in the British Medical Journal (BMJ), says it found negligible evidence to sup-

port these allegations among a large group of Californians who were monitored for health for nearly 40 years.

The group comprised 35,561 people who did not smoke but whose spouse was a smoker.

They were among 118,094 adults who took part in a cancer prevention study carried out from 1959 to 1998 by the American Cancer Society.

Although many smokers,

as expected, fell sick with heart disease and lung cancer and respiratory blockage, no such association was found for the passively — smoking spouses, the authors said.

“The results do not support a causal relation between environmental tobacco smoke and tobacco related mortality, although they do not rule out a small effect. The association between passive smoking

and coronary heart disease may be considerably weaker than generally believed” they wrote.

The study carried out by James Enstrom of the University of California at Los Angeles and Geoffrey Kabat, an associate professor at the State University of New York, appeared in a weekly edition of the BMJ in May of this year.

## History of PUBCO... continued from p. 1

PUBCO challenged the legality of the by-law as far as was possible. But when you finally make it to the appeal court and the chief justice comes into the court room trailing an oxygen tank behind him, it's a pretty good indication that this is one case you won't be winning!

### To summarize briefly

Over 18 months we saw a lot of law - but not much justice. As for the costs - well this is something that no-one at city hall wants to discuss? However, we know that 60 small Ottawa bars have been forced out of business -and we are still counting. The Ottawa bingo industry has been decimated, with losses of \$4 million annually, and three bingo halls being forced to close. In addition, Rideau-Carleton Raceway and Slots have suffered revenue losses of 21%.

### Membership Growth

As word spread of the fight that PUBCO was putting up, we began to receive enquiries from owners in other

municipalities who were having similar smoking bans rammed down their throats. We were able to offer advice and gradually started to recruit members province - wide.

### Legal Challenge

A group of owners in the Toronto region were extremely interested in challenging the by-law concept on a constitutional basis.

They had had preliminary discussions with prominent Toronto constitutional lawyer, Mr. Morris Manning Q.C. Mr. Manning was reasonably confident that by-laws can be challenged on a constitutional basis and PUBCO agreed to try and raise funds to help support the legal challenge. This has been done by the recruitment of new members who have agreed to pay an additional legal levy, over and above the PUBCO membership. This membership drive is now well underway and we now have over 350 new members outside of Ottawa and the number is growing daily.

The Manning case is underway and we are hopeful of a preliminary result sometime in 2004. The term “preliminary” is used because no matter which side wins at the lower court level, there will likely be an appeal by the other party.

### Other Activities

PUBCO has been extremely active across the province addressing council hearings in dozens of municipalities. If we have learned one thing, it is that our opposition — the professional anti-smoking lobbyists — is extremely well organized. They constitute only a very small percentage of the population but they make up for this with millions of dollars of taxpayers' money — provided by you of course — which the government liberally doles out for them to spend on their anti-tobacco crusade. What has also become clear about these people is that they have absolutely no qualms when it comes to bending the truth, and they could care less about the financial misery that they are causing

by pushing through these destructive and unnecessary smoking bans. If every bar in Ontario was forced to close, they would not turn a hair.

We were also recently in Thunder Bay where PUBCO successfully appealed the “loaded question” that Thunder Bay council had wanted included as part of the November election process. This was done because they did not have the stomach to discuss the matter in open council and tried to dodge the issue by having the public vote on the following question “Are you in favour of a smoking ban in all public places and in the workplace?.” Not only did the judge rule in our favour that the question was unacceptable, but it also transpired during the hearing that the process followed by the city was also flawed. We are still waiting to see what the city intends doing next, but it could well be that the plebiscite will be canceled. What happens next remains to be seen - but whatever it is PUBCO intends to remain involved.

# A Deal is A Deal

When PUBCO found out that Toronto was going to reverse a 1999 Decision on its smoking bylaw the following was sent to all councillors.

## A Deal is A Deal

- 23% of Canadians - your constituents and our customers - are smokers, and enjoy being able to smoke in bars, pubs and restaurants
- Only 14% of Canadians — your constituents — believe smoking should be banned in bars and taverns (Canadian Journal of Public Health, Jan. 2003)

- A deal is a deal. In 1999 Toronto council voted 50 to 1 for the current compromise by-law
- As a result of your 1999 decision, almost 200 small businesses — your constituents - have made significant investments in DSRs
- According to our membership, hundreds more of

Toronto's operators are planning to invest in DSRs

- The City of Toronto has not consulted our industry on its proposal to reverse its previous decision
- There has been no financial impact analysis carried out to assess the impact of a 100% smoking ban on Toronto's hospitality industry

- 100% smoking bans are perceived as an initiative by the City of Toronto to stifle and drive out small businesses

- A deal is a deal. The DSR compromise was endorsed by the anti-smoking lobby

## Compliance

- As was clearly demonstrated in 1999, our industry is prepared to work with the City of Toronto

- Together we can make the current by-law work

- According to City staff, approximately 90% of DSR operators have a complaint-free history with the City of Toronto

- The hospitality industry believes that DSR operators should be held to the highest standards. Failure to comply with the by-law should result in severe action on the part of by-law enforcement

- The hospitality industry wants to work with the City of Toronto to establish the best possible working practices for DSRs

- The hospitality industry would fully support the City's efforts to enforce the correct operation of DSRs.

## Three out of four Torontonians support smoking in bars

In 1999 Toronto City Council negotiated a compromise solution with the hospitality industry to allow for designated smoking rooms (DSRs).

Some city councillors are now trying to renege on the deal and push

through a 100% smoking ban when they next meet later this month.

While DSRs are not an ideal fix for everyone they do provide a solution for many operators.

PUBCO believes that a deal is a deal and that elected officials should not

be permitted to flip flop on important issues in this manner. A North Star Research poll recently commissioned by PUBCO clearly shows that most Torontonians share the same view. Details of the poll can be found at [www.pubcoalition.com](http://www.pubcoalition.com)

## Where does all the funding go?

In the spring of 2001, the former Minister of Health announced a 480 million, five year "Tobacco Control Strategy."

A total of \$210 million was devoted to mass media campaigns. Where is the other \$ 270 million going? A lot of it into the pockets of the paid lobbyists who appear at council meetings and try to put

you out of business with 100% smoking bans

Did you know that, 480 million is more than 4 times the \$115 million fund to combat Diabetes- of which there are as many as 2.2 million cases in Canada. The number of cases is expected to double in the next few years.<sup>1</sup>

480 million is almost 40 times Health Canada's five year funding for Hepatitis C research<sup>2</sup> and more than

14 times the Canadian Breast Cancer Initiative's five year funding.<sup>3</sup>

Isn't it about time that Health Canada got its priorities right?

1. Health Canada Information Document Nov, 1999

2. Health Canada Press release July 7, 1999

3. Anne McLellan press release Oct 30, 2002



# Get Politically Involved

As well as the **provincial election** now scheduled for October 2, on November 10 we are also looking at province-wide **municipal elections**. This is where the people who are determined to shut down your business will be seeking re-election.

With two elections looming on the Ontario horizon you must take the opportunity to ensure that you, your staff and your customers have their say.

Provincial Election  
Liberal leader, Mr. McGuinty is now threatening to implement “The Ottawa Solution,” a province-wide smoking ban in pubs and bars over a three year period. If indeed he does this, bar closures will number around 900 with bingo charities losing around \$50 million a year!  
This could cost you your business, your staff their jobs, and your customers their favourite pub or bar. Far be it from PUBCO to suggest how anyone should vote — but Ernie Eves has made no such commitment — and the Tories are declared supporters of small business. Phone your Conservative candidate and ask whether he/she supports a compro-

mise solution and tell them you need their support. Obviously it is your choice as to which of the three parties you would like elected. Assuming however that you are opposed to a provincial by-law that implemented a 100% smoking ban, then get some signs from the Conservative candidate posted in your windows or put one on your lawn, and be sure to let your staff and customers know why you are supporting him/her. Make sure you get out to vote, and do your utmost to ensure as many of your staff and customers also get out to cast their ballots in support of their jobs and your business.

Municipal Elections  
The municipal elections will be held on November 10 — a couple of months away. This is where you can really make a difference.

If you already have a smoking by-law in your town or city that you are not happy with, first you must find out who is running for councillor in your ward. Contact all the candidates and find out who is prepared to revisit the by-law based on its negative financial impact on our

industry. Do the same thing with the candidates running for mayor. Decide which of them is genuinely committed to a by-law review, and also seems to have a chance of winning, and throw your support behind them 150%.

Put election signs in your windows and inside the bar — have the selected candidates come and talk to your customers — if possible, do some fund raising for them, persuade customers/staff to help them in their campaign, get customers to post lawn signs. Talk to candidates and see what they want you to do to help them get elected. Talk to other owners in your ward, they may be competitors but under these circumstances we must work together.

If the incumbent candidate is anti business find out how many votes he/she won by in the 2000 election. Remember it often only takes a few hundred votes to make the difference and if you can get all the smokers out, acting in concert with other bars in your ward could mean the difference between electing a person who is prepared to put you out of business and someone who is prepared to do

something to put a stop to this nonsense.

You might even consider cooperating with other bars and rent a bus to shuttle customers to the polling booth.

Remember, a few hundred votes often make the difference. If you can help get a friendly mayor elected that's a bonus, but the key is to elect a majority of councillors who are on your side.

For those of you who do not yet have a by-law in place, but have one pending after the election — the same strategy applies. Make sure you identify both a mayoralty candidate and a councillor from your own ward who is not in the pocket of the health industry.

Do whatever it takes to get them elected. It's your livelihood we're talking about here — if you don't take steps to protect it now — one else will.

**The next election is three years away — can you survive that long?**

## WHAT IS PUBCO?

**P**UBCO was founded in Ottawa in May 2001 to effectively represent and protect the interests of liquor licensees in the Province of Ontario

Our volunteer Board of Directors consists of independent bar and restaurant owners.

While our overall objective is to represent our industry on all issues emanating from different levels of Government, at present, our priority is to protect owners from the imposition of the unneces-

sary, intrusive and financially destructive anti-smoking by-laws throughout the province.

**PUBCO** believes this can be achieved through three separate initiatives:

- Firstly, by bringing our position to the municipal level, and persuading local councils that 100% bans are destructive and that there are viable and sensible alternatives.

- Secondly, by convincing our provincial government that smoking bans kill jobs and that ventilla-

tion standards (like those introduced in B.C.) protect the rights of smokers and non-smokers, and;

- Thirdly, by pooling our resources, the launching of a serious challenge to the legal constitutionality of these financially crippling by-laws.

**PUBCO** is not pro-smoking, but **PUBCO** is pro-business and anti-discrimination.

**PUBCO** has over 350 members and is growing daily.

By uniting, **PUBCO** can utilize members' purchasing power resulting in attractive rates for health and dental plans, business and liability coverage and other programmes to protect your profit margin.

Protect your business and your financial security!

Our industry needs a strong voice speaking on its behalf. Join your colleagues in **PUBCO** and help us fight these unjust smoking laws.

Visit our website [www.pubcoalition.com](http://www.pubcoalition.com) or phone us at 1 866 314-2179

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