

School Inspections and Progressive Enforcement Under the Smoke Free Ontario Act 2017

School Inspections

The Smoke Free Ontario Act Inspectors (SFOAIs) will continue to attend high schools within the district at the commencement of the school year.

They will meet with principals, vice-principals and others who may have interactions with offenders during the school year.

The SFOAIs will review the layout of the school grounds ensuring that the appropriate Smoke Free Ontario Act (SFOA) requirements are adhered to.

The SFOA requires that proprietors and employers of public and private schools make sure that smoking and vaping laws on school property are followed.

A proprietor includes the owner, operator, or person in charge. Every proprietor and employer of a school must:

- Give notice to staff, students and visitors that smoking, and vaping is prohibited in the smoke-free and vape-free areas described above.
- Post “No Smoking” and “No Vaping” signs, or a dual “No Smoking and No Vaping” sign at entrances, exits and washrooms of the smoke-free and vape-free areas, in appropriate locations and in sufficient numbers, to ensure that staff, students and visitors are aware that smoking and vaping is not allowed.
- Ensure that no ashtrays or similar items remain in the smoke-free and vape-free areas.
- Ensure that staff, students, and visitors do not smoke or vape in the smoke-free and vape-free areas.
- Ensure that someone who refuses to comply with Ontario’s smoking and vaping laws does not remain in the smoke-free and vape-free areas.

Offences

Smoking and vaping is not allowed in public and private schools, including the grounds associated with the school, and public areas within 20 metres of any point on the perimeter of the grounds of the school.

This includes school buses.

Where a private school is not the only occupant of the premises, then the grounds designated for the school (e.g., a playground) and public areas within 20 metres of any point on the perimeter of those grounds are affected.

It is also illegal to sell tobacco and vapour products in public schools and private schools.

An individual who violates the prohibition on smoking and vaping in schools or on and around school

grounds may be charged and if convicted, face a maximum fine of \$1,000 (for a first offence) or \$5,000 (for any further offence).

An employer or proprietor of a school that fails to fulfill their responsibility under the law may be charged with an offence and if convicted, could face a maximum fine.

Signage responsibilities

- For individuals: \$2,000 (for a first offence); \$5,000 (for a second offence); \$10,000 (for a third offence); \$50,000 (four or more offences).
- For corporations: \$5,000 (for a first offence); \$10,000 (for a second offence); \$25,000 (for a third offence); \$75,000 (four or more offences).
- Other responsibilities
- For individuals: \$1,000 (for a first offence); \$5,000 (two or more offences).
- For corporations: \$100,000 (for a first offence); \$300,000 (two or more offences).

Failing to comply with prohibition on selling tobacco or vapour products.

Any individual convicted of selling tobacco or vapour products on school grounds could face a fine ranging from \$2,000 to \$50,000, depending on the individual's number of prior convictions.

Any corporation convicted of selling tobacco or vapour products on school grounds could face a fine ranging from \$5,000 to \$75,000, depending on the corporation's number of prior convictions.

It must be remembered that the simple possession (in a backpack, locker, or pocket) of a tobacco or vape device or product is not an offence.

This includes holding a vape device that is not activated. As per the SFOA - "vaping" means inhaling or exhaling vapour from an electronic cigarette (e-cigarette) **or holding an activated e-cigarette**, whether or not the vapour contains nicotine.

Investigations

SFOAs follow progressive enforcement guidelines when dealing with identified offences. In the past, it was noted that several schools varied on how they followed this process.

To ensure a consistent approach, Timiskaming Health Unit (THU) will now take the following approach to complaints at school when smoking or vaping complaints are received.

1. THU Education – legislation, fact sheets and education will be provided at the commencement of the school year to all area high schools through email communication and through in-person inspections and meetings. Expectations will be discussed, and any required documentation will be provided and covered.
2. School Education – it is expected that schools/boards will internally educate its staff and students in expectations relating to the SFOA. This will include issues, offences, and fines.

3. First Offence – if an offender is identified, investigated, and found to have committed an offence and is a first-time offender the following points will be reviewed.
 - Level of co-operation and attitude towards the offence
 - Parent or guardian notified and level of co-operation
 - Were any other sanctions applied by the school
 - Was the sale of tobacco or vapour products involved?

If the student meets the criteria required, a formal warning letter will be issued by the school administrator after consulting with the SFOAIs. This is a new step and meant to reduce unnecessary attendance or interactions.

In many instances, youths have already warned by the school and then SFOAIs attend and re-warn the youth. The step is found to be redundant and often falls on deaf ears of students who have already received internal punishment.

Once completed, this warning letter will be sent to THU along with the Witness Report and both will be retained by the school and by THU to be used to verify previous offences in subsequent offences.

The new warning letter will be provided, and the required steps for completion at the commencement of the 2022/2023 school year

4. Suspensions – these sanctions are internally applied by schools and fall outside the authority of the SFOAIs. If applied in the right situation, they can be very effective. Some schools utilize an administrative internal suspension whereas students are essentially given an all-day attendance within the admin office. Other suspensions are applied when students are sent home outright for progressive number of days.

These internal sanctions may be used in conjunction with the first-time offenders and the formal warning letter but fall outside the scope of the SFOAIs.

5. Enforcement - Repeat offences / high level offences – when the proceeding steps have not worked, and an offender reoffends or if a serious issue is identified such as the sale of tobacco or vapour products in the school environment, then enforcement will then be utilized.

For students 16 years of age and older, a Provincial offence Notice may be issued with a set fine. The offender will have the option to pay the fine or attend court.

If a repeat offence or where there are serious concerns such as sales of vapes within the school property, a Summons to Defendant may be issued with no set fine compelling the offender to attend court.

Caution needs to be applied when issuing a coinciding internal penalty such as suspensions when a SFOA charge is issued to avoid duplicity and the appearance of being heavy handed.

SFOA Witness Reports

When any offence has occurred on school property relating to the SFOA, a witness report is required to be completed and submitted to the Public Health Unit SFOAs.

When a first-time offender has been identified, the witness report will be submitted to THU and then the formal warning letter issued to the school for issuance. Both documents will be kept on file.

The SFOAs will then review the documents with the administrator and ensure that the witness report is complete. In the instance of a warning, the SFOAs will ensure that a warning is the appropriate step required.

If the incident involves a repeat offender or a situation where sales have occurred, the witness report only needs to be sent. If it is determined that there are insufficient grounds, then the suitability of a warning letter will be reviewed by the SFOAs.

The following must be part of the witness report to ensure completeness and the ability to prosecute an offence at the Ontario Courts.

- All identifiers complete and accurate including names, dates of birth and addresses.
- A full and thorough statement. In the Offence noted portion the statement MUST include all the elements of the offence and be detailed.
- Is this a first offence
- If there was a previous offence – what and when (there is a section near the bottom of the second page for this)
- Level of co-operation and attitude towards the offence
- Parent or guardian notified and level of co-operation – and name of notified party
- Were any other sanctions applied by the school
- Whether video surveillance exists of the offence

The statement must include the following key points

- Location of the offence for both offender and the witness
- Identification of the offender
- If outside the school, distance from the school boundary
- Was the view obstructed
- Was the offender holding a lit tobacco product, lit cannabis or activated vape product
- Was the offender smoking /vaping tobacco, cannabis or vape product.
- Was the prohibited item seized, if so, was it photographed.

In the additional comments section.

- level of co-operation
- notifications made
- first offence warnings
- sanctions applied previously or in this instance - suspensions

The witness report must be able to stand the test in court. Simply stating I saw the offender smoking/ or

vaping is insufficient. Detail is essential as this document will aid as your notes in court should a trial take place and assist in securing a guilty plea at first appearance or at trial.

If the narrative is sparse and incomplete, it is unlikely that a conviction will be secured. If it is incomplete, it will be sent back, and no action will be taken until it is complete and court worthy.

Notification of parent or guardian

In most cases relating to school offences, the offender is a student and more than likely a youth. As such, notification of the parent is required.

For youths 16 years and older that are charged, a telephone notification is sufficient by the school. If the school notifies the parent, the name and contact details of the parent or guardian is required on the witness form.

For instances where the offender is charged and is under 16 years of age, it is a requirement under the Provincial Offences Act (Sec. 96(1)) that the parent or guardian must be formally notified of the offence and the court date and details.

It is preferable that this is done in person and that the parent or guardian is served a copy of the Summons to Defendant and court attendance information.

A formal documented notification may be completed via telephone when a parent or guardian cannot attend. This notification would occur in the school administrative office in the presence of the school representative by means of a teleconference. The parent or guardian would be given the details of the incident and the assigned court date. Electronic proof of Summons may then be issued by THU.

To follow up the call an email address would be required of the notified party, be verified, and then utilized to provide all required documents including confirmation of receipt.

Statements

In many instances, a staff member is not a witness to the offence and receives information of the offence from a student.

During the internal investigation/review by the school administrator, the offender is often spoken to, and an inculpatory statement of admission is received.

This statement cannot be utilized for court unless a caution is given, and the youth understands the jeopardy and consequences of giving a statement may result in. They must understand that they have the right to having a parent or guardian present and that any such statement may result in a charge and having to appear in court.

Finally, they do not have to provide an admission but may do so voluntarily understanding the requirements and consequences. This may be an issue at trial that will be subject to determine the voluntariness of the statement and whether the youth knew the consequences of their admission.

The school administrative staff are persons in authority and any such un-cautioned statement cannot be utilized.

Assigned prosecutors have advised that these non-cautioned utterances will not be used in court and as such a charge laid as a result will be withdrawn.

Student witnesses

Another developing trend is students coming forward and identifying other students smoking, vaping, or selling vapes. Or students that are assisting staff by 'frequenting' restrooms and other areas of vaping and smoking.

It can be appreciated by all involved that this puts the reporting student in a precarious situation. It may come to light that the student reported the offending student, and this may cause issues within the school environment.

Taking this into consideration, placing a student into the court system as a witness for the prosecution is not recommended unless the offence is of a serious nature.

Should it be determined that a student (who is a youth) is required to be a witness in court to continue charges, then their parent or guardian must be notified and be aware of the overall situation.

An example when this may not cause an internal issue is when the offender is an outsider attending the school and selling vapour products or even tobacco or cannabis to students at the school.