

*Quebec Coalition for Tobacco Control; Non-Smoker's Rights Association;
Physicians for a Smoke-free Canada; Canadian Cancer Society*

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CIGARETTE PACKAGING: MORE INFORMATION = MORE PROTECTION

INDUSTRY ARGUMENTS	PUBLIC HEALTH RESPONSE
<p><i>Cigarette packaging is a form of expression; requiring more warnings is an attack on the "integrity" of the package and the trademark.</i></p>	<ul style="list-style-type: none"> ■ Warnings <u>add</u> information, for consumers' benefit. ■ As is the case for any other consumer product, the government can and should require labelling that provides enough information so that people can make informed decisions about what they consume. ■ Imperial Tobacco lawyer Simon Potter has said it himself: "<i>As a matter of constitutional and Charter law, senator, it is clear also that lawyers who may complain about an attack on freedom of expression cannot complain about the government putting out more information rather than making less information available to people</i>"¹ ■ At present, cigarette packaging provides <u>no</u> information on dozens of toxic substances inhaled by smokers (including hydrogen cyanide, benzene, formaldehyde, etc.), no information on the death rate among lung cancer patients (85%), no information on impotence or mouth disease caused by tobacco products, etc.
<p><i>Smokers are already aware of the risks of smoking.</i></p>	<ul style="list-style-type: none"> ■ This argument was already being used by the Canadian Tobacco Manufacturers' Council back in 1969 (to oppose the principle of package warnings of any type), and again in 1988 to oppose the warnings presently in effect, in particular with respect to addiction.² ■ The tobacco industry's own studies show that smokers underestimate the risks of tobacco-caused disease for their own health: a 1986 Imperial Tobacco study indicated that only 55% of smokers "are worried about the effects of tobacco on themselves."³ ■ In 1996, only 64% of Canadians identify lung cancer as a tobacco-induced disease; addiction was known to only 26%.⁴ ■ At present, there are only eight health warnings on packages. But tobacco products cause many other diseases and health problems that are not even mentioned in the present warnings: gangrene, asthma, impotence, reduced athletic performance, osteoporosis, wrinkles, gum, eye and ear disease, ulcers and reduced fertility, to name just a few. ■ After five years on cigarette packs, the present eight warnings are going stale and have reduced impact. Many smokers know them by heart and pay little attention to them.⁵
<p><i>Health warnings have no effect on smoking levels.</i></p>	<ul style="list-style-type: none"> ■ The packaging on the 2 billion cigarette packs sold each year in this country is an ideal tool for communicating with virtually every smoker and providing them with information of the effects of tobacco products on their health: 99% of smokers read pack warnings, on average 1.7 times per day.⁶ ■ It has been shown that package warnings lead not only to increased awareness of risks, but also to increased desire to quit.⁷ ■ The more prominent and the more extensive health messages, the better health objectives are met.⁸ ■ The best evidence for judging the effectiveness of warnings may be the intensity of the tobacco industry's opposition to them. A formerly secret document about health warnings from British American Tobacco (Imperial Tobacco's parent company) makes the

¹ Minutes of the Standing Committee on Legal and Constitutional Affairs, April 1st, 1997.

² Rob Cunningham, *Smoke & Mirrors: the Canadian Tobacco Wars*, 1997

³ The Creating Research Group Limited, 1986. Project Viking, vol. I: A behavioral model of smoking, prepare pour Imperial Tobacco Ltée, février-mars 1986

⁴ Environics Research Group, "Public attitudes towards the listing of toxic ingredients on cigarette packages: a survey report", Ottawa: Health Canada, 1996

⁵ Environics Research Group, "Qualitative (focus group) report regarding health warning labels and images on cigarette packages," research conducted fo Health Canada, Ottawa, March 1999.

⁶ 1996 Health Canada study, taken from: Canadian Cancer Society, "Confronting the Tobacco Epidemic: Recommendations for Regulations under the Tobacco Act", March 1998.

⁷ 1996 Health Canada study, taken from: Canadian Cancer Society, "Confronting the Tobacco Epidemic: Recommendations for Regulations under the Tobacco Act", March 1998.

⁸ Canadian Cancer Society, "Confronting the Tobacco Epidemic: Recommendations for Regulations under the Tobacco Act", March 1998.

	<p>industry's position clear: "<i>There should be no specific mention of smoking related disease</i>"⁹ in warnings. Another says: "<i>Reference to specific diseases on health warnings should be resisted strongly</i>"¹⁰.</p>
<p><i>The government is going too far.</i></p>	<ul style="list-style-type: none"> ■ The majority of the public (74%) supports larger, more informative warnings, using photos and colour, that cover 60% of the front and back panels of cigarette packs. The majority of smokers, 59%, are also in favour of this type of warning.¹¹ ■ Focus groups among smokers show that they want full and honest warnings, with photos, graphics and colour, on both the inside and the outside of cigarette packs. Many smokers say they would be more motivated to quit if this type of warning were included on their packs.¹² ■ None of the evocative warnings advocated by health groups are in any way exaggerated: the risks and diseases that are portrayed are real and affect thousands of smokers every day. ■ The eight warnings currently on cigarettes packages (which kill 45,000 Canadians per year) each contain an average of eight words, for a total of 120 words. The warning that comes with Aspirin is 200 words long; the Advil warning is 229 words long. Where's the proportionality?
<p><i>The federal government is rushing these warnings through, without proper consultations.</i></p>	<ul style="list-style-type: none"> ■ In the most optimistic scenario for public health, the legislative and regulatory process will have lasted <u>more than three years</u> by the time packaging regulations are actually adopted. (It will likely take even longer before the new warnings make it into Canadian stores.) <ul style="list-style-type: none"> ▪ Bill C-71 (<i>the Tobacco Act</i>), which gave the government the right to regulate cigarette packaging, was passed in April 1997. (Note that no regulation on health warnings has been in effect since 1995, because of a tobacco industry court challenge to the previous legislation with respect to the total ban on advertising.) ▪ A year and a half later, in January 1999, federal Health Minister Allan Rock published a series of general proposals about warnings on cigarette packaging. ▪ In January 2000, after another year of consultations and studies, Rock is to announce his plans with respect to regulating package warnings. ▪ Debate and public hearings on these regulations will likely continue for several more months.
<p><i>It isn't possible to print colour photos on cigarette packs.</i></p> <p><i>Printing costs would be prohibitive.</i></p> <p><i>The implementation deadline is unrealistic.</i></p>	<ul style="list-style-type: none"> ■ Colour photos are printed on the covers of magazines that have press runs of a few thousand copies. Even for a minor brand with a market share of 0.1%, the "press run" would be in the hundreds of thousands. ■ Many consumer products have photographs on the package (ex: cereal boxes). Canadian "tobacco stick" kits include colour illustrations on the back, on how to assemble cigarettes. ■ This is an old story. In 1991, the industry complained that health warnings were a form of "<i>economic and administrative harassment.</i>" When the old regulations on packaging were adopted in 1993, the industry went to the Supreme Court to ask for a one-year injunction, for economic reasons. The request was unanimously (9:0) rejected by the Supreme Court, and the industry had no difficulty meeting the deadline.¹³
<p><i>Inserts are preferable to direct printing on the inside slides.</i></p>	<ul style="list-style-type: none"> ■ The public health community is demanding that further information to reinforce exterior warnings be printed on the inside package slides, not on inserts. ■ Because they are loose, inserts can easily be taken out, ignored or thrown away, along with cellophane wrappers and cash receipts. By definition, warnings evoke health impacts and the negative effects of tobacco products, which may create psychological discomfort for smokers. This will inevitably lead to many smokers dumping the inserts as quickly as possible, without reading them or thinking about their content. ■ Ironically in 1990, the then-president of the Canadian Tobacco Manufacturers' Council, Bill Neville, opposed the idea of package inserts, for environmental reasons.

⁹ Anon. BAT board guidelines, public affairs 1982, Minnesota trial exhibit 13 8666; 680585252

¹⁰ Anon. BAT topics in smoking and health "bible", Minnesota trial exhibit 12 398

¹¹ Action on Smoking and Health press release, Jan. 10, 2000, quoting an Environics survey of 2018 Canadians conducted in August 1999.

¹² Environics Research Group, "Qualitative (focus group) report regarding health warning labels and images on cigarette packages," research conducted for Health Canada, Ottawa, March 1999.

¹³ Rob Cunningham, "Smoke & Mirrors: the Canadian Tobacco War", 1997, p. 105-106

	<p>In a letter addressed to the federal environment minister of the day, Lucien Bouchard, at a time when Health Canada was considering new warnings, Neville wrote: <i>“It is surely quite predictable that these leaflets will simply become a new source of litter and solid waste disposal on a landscape already plagued by too much discarded paper.”</i>¹⁴</p>
<p><i>If the warnings are too harsh, the industry will challenge them in court.</i></p>	<ul style="list-style-type: none"> ■ In Canada and other countries, the tobacco industry has made a long-standing habit of taking effective tobacco-related laws to court — even when it knows it’s almost certain to lose. This is an intimidation tactic to block government action and slow the introduction of reforms. The federal government is already in court, defending Bill C-71 against an industry challenge; Bill C-71 was carefully crafted to meet the requirements set out by the Supreme Court in its 1995 judgement striking down parts of the government’s previous tobacco legislation. ■ The Supreme Court has set high standards with respect to manufacturers’ duty to warn customers about product-related dangers.¹⁵ ■ As to how much detail is required in warnings, the Supreme Court ruled in 1995 that “All warnings ... must clearly describe any specific dangers that arise from the ordinary use of the product.”¹⁶. In the case of tobacco, an entire <u>book</u> would be necessary to adequately describe all the specific dangers linked to tobacco. In view of this fact, the area being proposed for these warnings (60% of the front and back external panels, and the inside slide) is modest.
<p><i>This will result in job losses in the printing and retail industry.</i></p>	<ul style="list-style-type: none"> ■ The industry may say that colour warnings are too sophisticated for Canadian technology, and therefore they would have to move their printing operations offshore. That’s nonsense: packaging much more sophisticated is produced in Canada. With more than two billion packages sold every year, any printing company could more than afford to purchase any necessary equipment and remain profitable. In fact, these warnings many very well increase jobs among packaging companies. ■ Internal documents show that the Canadian tobacco industry’s 1994 strategy to block plain packaging included <i>“enlisting positive involvement of stakeholders, particularly supplier industries and their unions, and retailers.”</i> The documents also show that the goal was <i>“media focus on ensuring unpleasant side-effects of plain packaging were known”</i> and that the campaign was <i>“Successful in getting out the message of side-effects: job losses became an issue both before the (parliament) committee and in the media.”</i>¹⁷ ■ By threatening to withdraw contracts from any given sector, the industry can easily generate third-party opposition. In 1994, when regulations for the last set of warnings were being debated, the tobacco manufacturers themselves stopped all orders for packages, prompting packaging companies to immediately lay off workers and allowing the industry to use the usual jobs argument to argue against, or at least delay, the new warnings.¹⁸ ■ Retailers may complain that they will loose millions in product placements— particularly “power walls” of cigarette packages. Yet point-of-sale promotional spending by the industry to retailers, including <u>all</u> placement fees (displays, posters, clocks, etc.), amounts to an average of \$1,500 per retailer per year.¹⁹ To compensate for promotion-related revenue, retailers could simply increase their retail prices by 3 cents per packet of cigarettes. (Retailers are free to adjust their margins).

¹⁴ See page 2500015061 of Philip Morris discovery documents in State of Minnesota et al. vs. Philip Morris et al.; available on the Internet at www.pmdocs.com .

¹⁵ Rob Cunningham, “Duty to Warn—Legal Precedents,” Canadian Cancer Society, 1999.

¹⁶ Supreme Court Judgment, « Hollis v. Dow Corning Corp. », (1995) 4 S.C.R. 643

¹⁷ British American Tobacco document, “Talking Points: the Campaign to date”

¹⁸ Rob Cunningham, “Smoke & Mirrors: the Canadian Tobacco War”, 1997, p. 105-106

¹⁹ Calculated from the tobacco industry estimate of \$60 million per year spent on total point-of-sale promotion (Canadian Tobacco Manufacturers’ Council), distributed among 40,000 retailers who sell tobacco (see Imperial Tobacco brief in Imperial Tobacco Ltd. vs. Solicitor-General of Canada, 1997).