

# Non-smokers' rights association

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## Quebec coalition for tobacco control

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To: News Directors  
Interested reporters, columnists, editorialists

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**Backgrounder: The tobacco industry is seeking an injunction on Monday September 11th in an attempt to block the implementation of new cigarette warnings. All of the parties had initially appeared in court on August 7<sup>th</sup>, but the hearing was adjourned until September 11<sup>th</sup>. This one will take place in Room 15.02 at 9:30 AM.**

**On Monday September 11th, Canada's three major tobacco companies will bring an application before Madam Justice Danielle Grenier of Quebec Superior Court to block enforcement of Health Canada's new cigarette warnings. Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp. will bring their motion at 9:30 AM. Lawyers for the federal government and the Canadian Cancer Society (as intervener) will be present to oppose the industry's motion.**

### 1) The New Warnings

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The primary purpose of warnings on cigarette packages is to provide information to the smoker and any potential smoker in a meaningful way. In Canada, most consumers have a general awareness that "smoking is bad for you." However, few consumers are aware of the array of diseases caused or aggravated by tobacco use, nor are many aware of the magnitude of the risks: cigarettes kill about one out of two long-term users.

The *Tobacco Products Information Regulations*, which became law following registration on June 26 2000, will require 16 warnings with colour pictures to cover 50% of the front and back of cigarette packages. Examples of pictures include a diseased mouth, a cancerous lung, a brain after a stroke, and a limp cigarette for a warning on impotence. An additional 16 messages will be required on the inside of packages, including nine with advice on quitting smoking. The warnings will be required to appear on brands with 2% or more market share after 180 days, which is December 23 2000. Other brands will have one year, which is until June 26 2001.

The warnings and the regulations can be viewed on Health Canada's website, in English and French, at [http://www.hc-sc.gc.ca/hppb/tobacco/ehd/tobacco/legislat/legis\\_april00.html](http://www.hc-sc.gc.ca/hppb/tobacco/ehd/tobacco/legislat/legis_april00.html). High-resolution scans of individual images are available at <http://www.nsra-adnf.ca/english/warnexamples.html>.

The new warnings were initially announced on January 19 2000, during National Non-Smoking Week, by federal Health Minister Allan Rock. After a series of consultation periods that resulted in some amendments to the regulations, followed by parliamentary hearings, the regulations received unanimous approval of the House of Commons Standing Committee on Health (June 7), and the House of Commons as a whole (June 8).

Throughout the regulatory process, the regulations were strongly supported by health organizations, and strongly opposed by tobacco manufacturers.

The new Canadian warnings received significant international media attention at the time they were announced, such as the front page of the *New York Times*. The Canadian model has influenced emerging developments in Australia, Thailand, Singapore, Ireland, and the European Union, as well as the draft provisional text of the World Health Organization's International Framework Convention on Tobacco Control. The Canadian tobacco warning system was featured during a special session at the World Conference on Tobacco and Health in Chicago, August 6-11. The session took place on August 8<sup>th</sup> and was chaired by Allan Rock.

## **2) The Legal Issues**

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In order to obtain the legal stay, the onus will be on the tobacco companies to demonstrate that: (1) there is a serious question to be tried; (2) the tobacco companies will suffer irreparable harm by implementing the regulations; and (3) the "balance of inconvenience" favours suspending the warnings in that the public benefit of the suspension outweighs the public health benefit of implementing the warnings.

Tobacco companies argue that there is no credible evidence that the new warnings will be any more effective than the old warnings. However, it is obvious that larger warnings will be more effective in communicating information than smaller warnings, and those warnings with colour pictures will be more effective communication tools than warnings with text alone. As the saying goes, a picture is worth a thousand words. In any event there is a mountain of evidence in support of the warnings including quantitative research, focus groups, other studies, reports, and expert opinion. A summary of the Canadian Cancer Society's detailed compilation of evidence can be found on the Internet at <http://www.nsra-adnf.ca/english/warnoverview.html>. The compilation includes 69 experts' opinions endorsing larger picture-based warnings.

## **3) Precedents**

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The last time Health Canada adopted new warning regulations in 1993, the tobacco industry brought a motion before the Supreme Court of Canada in an attempt to block the new warnings. Releasing its judgment on March 4 1994, a unanimous Supreme Court, with all nine justices sitting, strongly rejected the tobacco industry's motion. The Court ruled that "*The public interest in health is of such compelling importance that the applications for a stay must be dismissed*"

The federal *Tobacco Act*, which restricts tobacco advertising and sponsorship, received Royal Assent on April 25 1997. Days after Third Reading in the Senate, and even before Royal Assent, tobacco companies filed a motion in Quebec Superior Court seeking to block enforcement of the Act until the conclusion of the trial. On April 29 1997, Madam Justice Grenier rejected the motion stating: "*Stays remain an exceptional measure. The purpose of the Tobacco Act is to protect public health. The applicants had to counterbalance this objective by establishing that staying the application of the law would serve the public's interest. They have not succeeded in demonstrating that their initiative would serve any other interests than their own*". [Our translation]

## **4) Comments in Response to the Industry's Lawsuit**

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The tobacco industry deserves strong criticism for trying to deny consumers truthful information about the harms of tobacco products. This has been an industry strategy for decades. Despite the fact that the warnings have the endorsement of the national health community, and unanimous approval by the House of Commons, the industry is turning to the Courts to attempt to block a major public health initiative. The industry's real concern is that the new warnings will reduce smoking, sales and profits, and that the warnings will be copied by other nations.

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