

Physicians for a Smoke Free Canada



Bittersweet Victory

WSIB Accepts Second-hand Smoke Claim

The struggle to protect workers from the deadly effects of second-hand smoke was given a major boost when the Ontario Workplace Safety and Insurance Board ruled this October in favour of Ottawa area waitress Heather Crowe's second-hand smoke claim.

The ruling gives Heather compensation for lost earnings from the time of her diagnosis as well as a lump sum compensation for permanent impairment and other compensation covering personal care, medical expenses and an independent living allowance.

A life-long non-smoker, Heather worked as a waitress in various restaurants and bars across the country for 40 years. In March she discovered three lumps in the side of her neck, and a subsequent x-ray showed a large tumor in her chest. The diagnosis confirmed that Heather had lung cancer, due to her long exposure to second-hand smoke.

When she received her prognosis, Heather decided to use her experience to help others. She wanted to share with everyone the injustice of her situation and do her part to prevent the same thing from happening

to others. Along with her claim to the WSIB, Heather was also the subject for Health Canada's latest media campaign detailing the dangers of second-hand smoke.

The commercial was released less than a week after Heather's historic victory with the WSIB, and will run for two months, along with transit stop posters.

Her story has received national coverage, being covered initially by the Ottawa citizen, then by national newspapers when her victory occurred.

While there has been a small number of previous workers compensation decisions dealing with second-hand smoke issues, Heather's case is the first one of this magnitude. It is expected that the fallout from the WSIB decision will be widespread, affecting municipal and provincial governments as they attempt to put in place smoke-free legislation to protect all workers. ♦

Health Canada's media campaign to tell Heather Crowe's story has reached millions of Canadians through television, cinema and transit advertisements.

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The tag line to Health Canada’s media campaigns on second-hand smoke carries one of the first ‘denormalizing’ messages:

Some tobacco companies say second hand smoke bothers people. Health Canada says it kills.

Heather wants to be the last person to die from second-hand smoke.

We want to help her.

One Sunday evening last July, I dropped into the office to put the garbage out for collection when the phone rang. Nothing could have prepared me for the call and Heather’s greeting: “I’m a waitress. I’ve been diagnosed with lung cancer and I am hoping you can help me with a workers compensation claim.” Heather Crowe had seen us on a lo-

cal news story about smoke-free bars, and needed some scientific evidence to support her WSIB claim.

That was the first of many meetings with Heather over the summer.

Throughout this time, I have been moved by Heather’s stoicism and determination. She is as calm as she is purposeful: she wants to be the last person to die from second-hand smoke and she is willing to spend the coming months doing what she can to help that happen.

Research support was only one of the ways we chose to help Heather. We have also volunteered to help

raise the funds of her lawyer’s fees. These fees include both the costs of presenting her claim to WSIB, and support for advocacy follow-up with provincial governments.

If you would like to support Heather’s legal costs, or if you want copies of posters or brochures to distribute in your office, please call me at 1-800-540-5418.

**Cynthia Callard
Executive Director**

What we did with our summer vacation....

The PSC office was crowded this summer, as five summer interns joined us for a busy season of research and activism. Two more dynamic young Quebecers joins our efforts from their base in Quebec City.

Support from the Social Sciences and Humanities Research Council (for research on tobacco industry documents), from the McConnell Foundation and from Health Canada allowed us to harness the enthusiasm and talents of these young Canadians. On our team:

Matthew Butler and Alex Dion: These philosophy and engineering

launched a new area of investigation for PSC—the development of a new industrial strategy for tobacco.

Michael Chaiton: A biology and philosophy graduate, now studying epidemiology at the University of Toronto, reviewed Imperial Tobacco’s scientific research. Watch for his findings in a scientific journal near you.

Christy Ferguson: recently graduated with a M.Phil from Cambridge, worked on tobacco marketing, harm reduction (and was the driving force behind SlutsAgainstButts.com).

Jean-Francois Gaboury: A graduate of Université Laval’s public health program, Jean-Francois researched the marketing initiatives of tobacco companies..

Heidi Meldrum: Currently studying law at the University of Ottawa, Heidi reviewed the process of holding tobacco companies accountable through our legal system, and looked at how we could better protect children from second-hand smoke.

Paul Steeves: A graduate in health promotion, Paul kept the team together with his computer and administrative skills.

Put the Heat on Big Tobacco:

KOOL Cigarettes Prompt Call for Tougher Tobacco Laws

This October, BAT/Imperial Tobacco launched a Canadian version of their best-selling "KOOL" cigarette brand. KOOL is the first international brand to be launched in Canada by British American Tobacco (BAT) since it assumed full ownership of Imperial Tobacco in early 2000. The launch has identified several loop-holes and flaws in the federal *Tobacco Act*:

- **The current Tobacco Act does nothing to block internet advertising.**

Imperial Tobacco launched a website (www.theicebox.ca) to KOOL cigarettes with nightclub events and contests. The federal *Tobacco Act* was drafted in 1996, when the importance of internet marketing was not yet identified, and the law makes no specific provisions for internet or electronic marketing.

- **The companies can escape Canadian advertising bans by selling brands advertised in U.S. magazines.**

KOOL is one of the most heavily advertised youth brands in the United States, and is marketed through youth magazines – like Rolling Stone, Maxim and Sports Illustrated. The Tobacco Act exempts

most imported cigarette advertising, as long as the advertiser does not live in Canada, a clear invitation for Canadian subsidiary tobacco companies to introduce brands which are promoted in magazines, car races and other cross-border media.

- **Retail promotions remain a way for tobacco companies to market brands.**

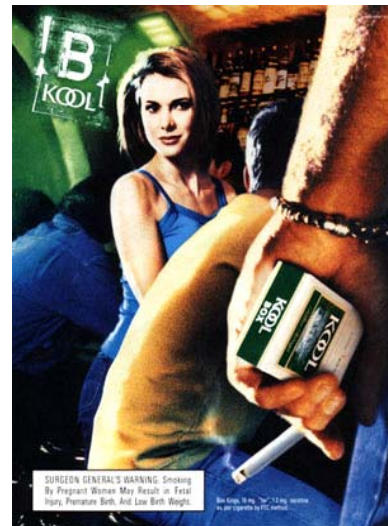
Although two provinces (Saskatchewan and Manitoba) have banned the display of cigarettes in retail stores where children are allowed, the federal government has not moved forward with the development of regulations governing retail displays (despite proposing such regulations as long ago as January 1999).

- **The absence of requirements for health warnings on advertisements encourages new forms of advertising.**

BAT has been able to create an image for this brand through the staging of nightclub events, and by circulating images of the event. Pictures mounted on the web-site show that the KOOL

logo, colours and imagery is displayed without any indication that these cigarettes are both lethal and addictive. Canada is almost unique in not requiring that

KOOL cigarette advertisements are carried in magazines, like Sports Illustrated, that are popular with Canadian youth



health warnings accompany tobacco advertisements. The failure to regulate in this area is all the more disturbing in light of Health Canada's analysis four years ago that such regulations were needed. In January 1999, Health Canada released a discussion paper proposing that health warnings appear on all tobacco promotions, but no regulations been developed to date.

- **The proposed ban on 'light' and 'mild' needs to be much broader to cover misleading words and images, of which "KOOL Frost," and "cooling menthol" are current examples.**

Imperial Tobacco further confused smokers with terms like "FROST" which it uses to create a false distinction between differently ventilated KOOL cigarette styles. Health Canada's

The web-site www.theicebox.ca was used to launch KOOL cigarettes in Canada



December 2001 announcement that the use of 'light' and 'mild' would be banned has led to the tobacco companies finding more creative ways to mislead smokers into thinking that some cigarettes provide smokers with less tar or nicotine than others.

The launch of KOOL cigarettes prompted PSC to strengthen its appeal to the Minister of Health to:

- Amend the Tobacco Act to ban internet promotions
- Require health warnings on all tobacco promotions.
- Restrict the retail display of cigarette packages and promotions.
- Develop effective methods to ban cross-border advertisements
- Ban all terms which convey the wrongful impression that ventilated cigarettes provide smokers with less tar or nicotine.

The development of these laws and regulations is one of PSC's highest priorities for national tobacco control measures.

No health warning messages appear on KOOL promotions in Canada



Who's in Charge?

Protecting Children in Care from Second-hand Smoke

Protecting vulnerable people is an important aspect of tobacco control, and most people will readily admit that children are among the most vulnerable of all. With little or no voice of their own in society, children must depend on adults for protection from all dangers, including second-hand smoke.

This protective attitude towards children has been reflected in various non-smoking legislation. Countless statutes across Canada have made special provisions to safeguard children from exposure to second-hand smoke. But child protection legislation, created specifically to protect children who are, for one reason or another, not safe in their own homes, contains no mention of second-hand smoke.

As a matter under provincial jurisdiction, each province has passed child protection legislation to regulate and control the management of situations where children need governmental care. To provide for the needs of children in such instances, the provinces use a mixture of government run and private child welfare agencies to manage the care of children in need of protection. These agencies recruit and train foster families, who offer the day-to-day care for children in government care.

All of these laws are based on the principle that the best interests of the child must be paramount in any decisions made. Some provinces have also used the safety and well-being of children as their guiding principles. The definitions of these principles refer to a num-

ber of different issues including physical needs and health.

Even for provinces who do not include the word 'health' in their definition of a child's best interests, the very term 'best interests' intuitively includes the child's health. An attempt to protect a child's health should include protection from second-hand smoke. However, as stated above, none of the provinces have included any reference to this issue in their legislation.

But the need to protect children from second-hand smoke is recognized more often. Some of the child welfare agencies or local child protection units (not the ministries responsible for child protection) have created guidelines or regulations requiring foster parents to provide smoke-free homes. (most notably the Kingston area Children's Aid Society)

Whether the necessary protection from second-hand smoke is set out in the legislation or in local guidelines, governments are under an obligation to provide for the best interests of the children in their care. They should be held responsible for any resulting health problems if they do not take appropriate measures to protect children in care from second-hand smoke.

A brochure detailing the current protection available for children in care across Canada is now available on the PSC website

The brochure also includes some answers for concerned third parties such as grandparents or other relatives.

World's Doctors Unite to Control Tobacco

"In this time of increased danger, we must stand together in support of The Doctors' Manifesto for Global Tobacco Control, for the Framework Convention."

C. Everett Koop, MD

The world's doctors are standing together with Dr. Koop. Cynthia Callard, PSC's Executive Director and I were proud to be present in Geneva on October 21, 2002 for the unveiling of the Doctor's Manifesto for Global Tobacco Control.

The World Medical Association, the Commonwealth Medical Association, The European Forum of Medical Associations and the Standing Committee of European Doctors

united behind a manifesto calling for a strong global tobacco control treaty.

Will the world's doctors get their wish? There is every reason to be hopeful. By the conclusion of the fifth and penultimate round of negotiations for the Framework Convention on Tobacco Control on October 25, the lay of the land was clear. Nearly every country in the world supports a strong tobacco control treaty that includes all six measures called for in the Doctor's Manifesto. The only obvious hold-outs are Japan, Germany and the United States, all countries that are home to major tobacco multinational companies.

Will other nations push ahead for a strong treaty or bend to the wishes of the three tobacco indus-

try superpowers? PSC staff and members, together with all the world's doctors, will be lobbying hard for the strongest possible treaty. The outcome will be known when negotiations conclude in February 2003.

Whatever the final outcome of the negotiations, there is every reason to believe that by the time of the next World Health Assembly in May, 2003 we will have a new global treaty on tobacco control and that we will have taken a giant step forward in curbing the global tobacco epidemic.

Neil E. Collishaw
Research Director

The Doctors' Manifesto for Global Tobacco Control

www.doctorsmanifesto.org



Tobacco is one of the greatest threats to health. It is estimated that in the 21st century one billion people will die from tobacco-induced disease.

The epidemic is rapidly shifting from the developed to the developing world. Decisive action is long overdue.

Doctors play a vital part in reducing preventable illness and death. But tobacco is not just a matter for doctors.

National governments and international bodies must also act.

The WHO Framework Convention on Tobacco Control will establish an internationally binding treaty to protect the public health against tobacco. Doctors believe that the

Framework Convention must be firmly rooted in the scientific evidence.

We call on all governments to ensure that the Framework Convention includes strategies proven to reduce tobacco consumption, including measures to:

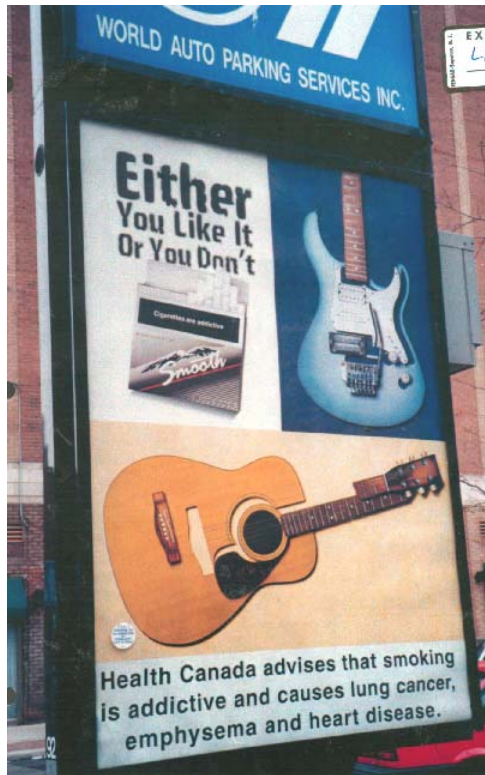
- Include clear, informative health warnings on every packet
- End misleading claims that some cigarettes are safer than others
- Increase the price of tobacco through taxation
- End tobacco advertising
- Protect non-smokers from tobacco smoke
- Ensure that the WHO Framework Convention gives the highest priority to health.

Who us? Target Kids?

In recent public remarks in Montreal JTI-MacDonald President Michel Poirier claimed that the federal government has reviewed 20 years of JTI-Macdonald's marketing documents and has "not found one single instance where we targeted minors, let alone children."

Now even for Big Tobacco, that's a whopper. And we now know for sure it's a whopper, thanks to JTI-MacDonald's own documents made public during the defence of Canada's *Tobacco Act* in a trial in a Montreal courtroom that took place from January to September 2002.. Expert witness, Richard Pollay, prompted by lawyer Maurice Régnier, defender of the *Tobacco Act*, entered dozens and dozens of documents from JTI-Macdonald and other tobacco companies that prove exactly the opposite. Tobacco companies go to great lengths to get their advertisements with youth appeal right in the faces of our children.

Consider just one example, a guitar advertisement with the tag line "Either you like it or you don't."



This ad (Exhibit D-20) was placed by RJR-MacDonald (JTI-MacDonald's previous corporate name) in strategic locations where children would see it in 1996.

In RJR-MacDonald's own focus group research on this advertisement (Exhibit D-21, "An investiga-

tion of the perceived age group appropriateness of ads for Smooth and Export 'A' – *Strictly Confidential*." prepared for RJR-MacDonald Canada Ltd. by Qualitative Science Inc., April, 1996), the following conclusion was reached:

"Approximately three quarters of the Montreal respondents judged this ad to be clearly targeted to younger consumers..."

Teams of lawyers for the Attorney-General for Canada (eight lawyers) and the intervener, the Canadian Cancer Society (three lawyers) did an admirable job of defending public health and ensuring that the courtroom 15.03 of the Montreal courthouse was a place where the real truth about Big Tobacco was told. They did so in the face of confusion and obfuscation presented by eleven lawyers representing three multinational tobacco companies.

All the evidence has now been presented. We all hope that Judge André Denis will be able to tell truth from fiction and soon issue a verdict in favour of public health.

Family Law. Does it protect kids from smoke?

One of the questions commonly faced by workers in tobacco control is that of how to protect children from second hand smoke in custody disputes.

PSC has developed a resource to help guide a parent facing a custody dispute through the relevant issues.

The fact sheet (available at www.smoke-free.ca) helps parents orient themselves in the custody process to ensure they are in the best posi-

tion to deal with protecting their child from smoke during any dispute. From there, the brochure moves on to deal specifically with the issue of second-hand smoke, whether it be from the other parent, from family members or from a new partner.

This resource provides several options that can be used to protect children, identifying levels of protection achievable, depending on the cooperation of the other parent.

The questions deal with both amicable disputes that are solved without outside help and with those that require the intervention of a mediator or a judge. The answers attempt to provide a realistic overview of the possible outcomes given the current social climate.

A key message of this resource is that issues of second-hand smoke should be raised out of a sincere desire to protect the children and not out of any animosity towards the other parent.