

# REGULATING RETAIL DISPLAYS OF TOBACCO RELATED PRODUCTS.

A response to Health Canada's Consultation  
Document

March 2007



Physicians *for a* Smoke-Free Canada

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# INTRODUCTION

"A Proposal to Regulate the Display and Promotion of Tobacco and Tobacco-Related Products at Retail" (referred to elsewhere in this submission as 'the document' or 'the proposal') provides a clear and compelling case why the proposed regulatory development:

- is justified by science and experience
- is important to current and future health outcomes
- is urgently required
- is worthy of a high level of support from Canadians in all walks of life, including those working in the retail sector.

This submission by Physicians for a Smoke-Free Canada is offered in support of the suggested measures.

We also provide suggestions for ways in which the proposed measures can be strengthened, can be made more robust (to withstand anticipated adaptations by commercial interests) and can be made more acceptable to the commercial sectors involved.

Our view is that the proposed measures are an important interim measure, and that in the long-term more significant changes need to be made to the system through which smokers obtain their cigarettes.

Our responses to the specific questions raised in the consultation document are provided in Part 1 of this document. Part 2 outlines factors which unnecessarily weaken the proposals. Part 3 includes recommendations for ways in which this measure can be strengthened. We also append a discussion paper "Changing Perspectives on tobacco retailing" in which we outline other recommendations for government consideration and which is offered as part of this submission.

# **PART 1: IN SUPPORT OF THE PROPOSALS**

## **1. WHY THE PROPOSED MEASURES SHOULD BE IMPLEMENTED.**

The government proposes to extend the logic of the current Tobacco Act to regulations on tobacco displays. That is, it proposes to generally allow displays of tobacco and tobacco branded products except in the circumstances where young persons can see them. The stated goal is to protect non-smokers and young persons from inducements to use tobacco products and to weaken predisposition to smoking.

### **The measures are supported by health research and by health researchers.**

This approach is well presented and fully justified in the proposal document. We have nothing substantive to add to the arguments the government presents, but include reference to further research supporting the government's position, including:

- Restrictions on the Retail Display of Tobacco Products, prepared for Smoke-Free Nova Scotia, August 2004
- Tobacco marketing at Point of Sale in Ontario, November 2005
- *Promotion aux points de Vente*, Coalition quebecoise pour le controle du tabac.
- The influence of Tobacco Powerwall Advertising on Children, Non smokers Rights Association. 2005
- Bringing down the Powerwall. ASH New Zealand. 2006
- "Strengthening Measures to Protect Children from Tobacco", Tasmania Department of Health and Human Services.
- Summary of evidence and current practice regarding under-the counter sales of tobacco products ASH Scotland

### **The measures are supported by public opinion**

Health Canada commissioned research on the likely response of consumers (smokers and non smokers) to increased regulation on the display and/or sale of cigarettes. Focus group research indicated that:

- There is considerable support for placing restrictions on the retail display of cigarettes. Specifically, six in ten Canadians think there should be some form of restriction on the display of cigarettes (i.e., either not prominently displayed or kept out of sight unless

requested), while three in ten think there should be no restrictions.<sup>1</sup>

Canadians believe restrictions on cigarette displays will help protect youth from smoking.

- "Most thought that limiting the visibility of cigarettes would probably not have much influence on youth, since their first contact with cigarettes was usually through their friends and family. As well, many were not convinced that limiting the number of sales locations would have much effect on youth smoking. Still, some did think that these proposals would be beneficial since they would reduce the number of times that youth would see cigarettes. Potential quitters, and particularly non-smokers, were more enthusiastic than core smokers in offering suggestions about changes to the retail environment that might prevent youth from smoking."<sup>2</sup>
- However, one-half of all Canadians believe displays promoting cigarettes encourage young people to be more likely to smoke. In fact, younger smokers (i.e., 18 to 34 years of age) are significantly more likely than older smokers to say seeing the wall of cigarettes makes them want to purchase cigarettes more often.<sup>3</sup>

Restrictions on cigarette displays may benefit those trying to quit.

- Potential quitters found the displays problematic when they were trying to quit.<sup>4</sup>
- Some potential quitters found the displays problematic when they were trying to quit; some former smokers recalled the same effect when they were in the process of quitting. A few, particularly in Montreal, thought of the displays as a painful reminder of the joys of smoking to every person that is trying to quit, and compared them to "*placing a recovering alcoholic in the middle of a liquor store.*"

"When you're trying to quit, it's hard because they're right there."

"It doesn't help to see them if you're trying to quit."<sup>5</sup>

Displays have an effect on smokers in ways that help them continue smoking.

- Some smokers agreed that seeing the cigarette display reassured or relaxed them, while some. Some former smokers recalled the same effect when they were in the process of quitting.<sup>6</sup>

- Some said that seeing the displays created a small craving in them, and a few said they would buy a pack even though they had one at home. A few suggested that seeing the displays reassured them that there are a lot of other people still smoking; a kind of "community of smokers" feeling.

## 2. RESPONSES TO SPECIFIED QUESTIONS.

The following are the responses of Physicians for a Smoke-Free Canada to the specified questions in the consultation document:

*Should Health Canada introduce regulations that would restrict the display of tobacco products/accessories bearing a tobacco product brand element at retail in ways that would prevent their being displayed where visible to young persons under 18 years of age while allowing retailers the option of banning children from their premises.*

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Physicians for a Smoke-free Canada submits that:

- Displays of tobacco products and accessories bearing a tobacco product related brand element should be banned in ALL retail outlets, regardless of whether children are permitted.
- Bans on displays of retail products are justified because they reduce inducements to begin smoking, because they diminish any predisposition to smoke and because they protect smokers from being injured by tobacco industry promotional communications intended to encourage harmful behaviour.
- The option of allowing retailers to designate their premises 'child-free' is an offensive attempt to circumnavigate a now outmoded Supreme Court decision (1995 RJR-Macdonald) which has been falsely interpreted to suggest that the government could not have the authority to ban tobacco promotions aimed at current smokers. We use the word offensive because it offends the principles of public health that ALL Canadians are entitled to legislative and administrative measures to protect their health.

*Should displays of tobacco products and accessories bearing a tobacco product related brand element be restricted in retail outlets where the sale of tobacco products and accessories is the major activity of the outlets/cigar rooms and duty-free stores?*

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Physicians for a Smoke-free Canada submits that:

- Displays of tobacco products and accessories bearing a tobacco product related brand element should be banned in retail outlets,

regardless of type of outlet. Regulations should be used to implement this ban until such time as an even better public policy measure is designed.

*What would be the rationale for not restricting displays of tobacco products and accessories bearing a tobacco product-related brand element in this type of retail outlet?*

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Physicians for a Smoke-free Canada submits that:

- The only rationale to not restrict displays of tobacco products and branded accessories in specialty shops would be a political decision to appease the short-term commercial interests of tobacco specialty shops.
- Suggestions that the fact these outlets may restrict their clientele to adult smokers should not be considered a rationale for an exemption for this type of retail outlet from a general prohibition, as smokers are also entitled to protection from tobacco marketing, as we explain elsewhere in this response.

*If displays were to be restricted, what should be the nature of the restrictions? For example, should there be restrictions on the number, size and location of displays in these premises and the number of tobacco products and accessories bearing a tobacco product-related brand element on display?*

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Physicians for a Smoke-free Canada submits that:

- The restrictions should be comprehensive. Tobacco products should not be displayed nor visible to clients

*What would be the rationale for such restrictions?*

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Physicians for a Smoke-free Canada submits that:

- The rationale is that cigarette display, like all forms of tobacco product promotions, are intended to and are successful at injuring Canadians by encouraging smoking. Canadians are entitled to protection from such injurious behaviour.
- The achievement of the goal of promotional restrictions is undermined if the restrictions can be circumvented through exemptions.

*Should displays of non-tobacco products, other than an accessory, bearing a tobacco product-related brand element be regulated in retail outlets?*

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Physicians for a Smoke-free Canada submits that:

- There should be an absolute restriction/ban on the display of any tobacco branded product at retail. The use of tobacco brands on non-tobacco products other than accessories is a significant mechanism for tobacco manufacturers to create and communicate brand images, to promote the use of their products, to change social attitudes towards their products.
- The provisions of s. 28 of the Tobacco Act present a significant vulnerability to tobacco control. Until legislative changes are made to remove these provisions, regulatory provisions should be implemented to reduce these vulnerabilities.
- The development of provisions to ban/restrict the display of tobacco products without concurrently developing measures to ban/restrict the display of tobacco brand elements on non-tobacco products other than accessories creates the opportunity for tobacco companies and retailers to replace current promotional activities with new generations of tobacco-branded products. The management of these companies can be fully expected to seize this opportunity, as they are under a statutory obligation to keep their companies' profits as high as possible. This behaviour compels them to undertake actions which will aim to increase the sale of cigarettes or increase the sale of promotions to cigarette manufacturers.
- Health Canada has significant experience (as do Canadians) with the practice of tobacco companies undermining promotional restrictions by creating alternative products to promote. Examples include du Maurier Jazz, Extreme Sports Series, Players Racing.

*What would be the rationale for not restricting displays of these products?*

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Physicians for a Smoke-free Canada submits that:

- There is no health rationale for not restricting displays of these products.
- There may be a cost to government of refraining from applying restrictions to a new category of products. They may receive arguments that the costs of defending such a measure against a likely legal challenge exceed the anticipated benefit. Should such a soulless arithmetic be applied, the government should make this decision process transparent and public.

*If displays were to be restricted, what should be the nature of the restrictions? For example, should there be restrictions on the number, size and location of displays in these premises and the number of tobacco products and accessories bearing a tobacco product-related brand element on display? What would be the rationale for such restrictions?*

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Physicians for a Smoke-free Canada submits that:

- All tobacco branded products and products or services or promotions controlled by tobacco companies (such as Extreme Sports or CART) should be removed from public view, regardless of the age or smoking status of the public involved, regardless of the nature of the product, service or promotion.

*Should dispensing devices, as a means of promoting tobacco products or tobacco product-related brand elements, be regulated?*

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Physicians for a Smoke-free Canada submits that:

- The use of dispensing devices has not been sufficiently studied, in our view. Because vending machines facilitated access to cigarettes by minors, they were banned or restricted in a number of jurisdictions.
- Vending machines have historically served as mini-billboards for tobacco products, displaying brand imagery and product descriptions. This promotional role also justified restricting or banning their presence.
- However, the potential for non-human dispensing of cigarettes as a way of further reducing promotional impact has not been studied. It is possible that the ideal mechanism for storing, controlling access to and dispensing cigarettes is a dispensing machine.
- The potential for dispensing systems is illustrated by the following hypothetical scenario:

*To keep cigarettes completely out of view while allowing easy access to cigarettes, retail managers reconfigure their stores to use automatic dispensing devices. The name of the brand is entered either by the customer or the clerk, and is mechanically released from a storage container kept out of sight. The dispensing machine is installed to facilitate the sale of cigarettes in a way that keeps the product invisible while ensuring security of inventory and staff.*

## **PART 2: FACTORS WEAKENING THE PROPOSED MEASURES**

### **1. THE POLICY FOUNDATION IS UNNECESSARILY NARROW.**

The current proposal is unnecessarily constrained by self-imposed assumptions, namely that the public policy purpose objectives are limited to:

- measures that seek to achieve the objectives of the current Federal Tobacco Strategy (p.4 )
- measures that can be developed as regulations under the federal Tobacco Act (p. 5).
- the primary objective of reducing incentives for young persons and/or former smokers or occasional smokers.
- regulating the display of cigarettes or tobacco branded tobacco accessories (although non-tobacco related products are referred to in Question 3 on page 21, the scope of marketing through such products permitted under the Tobacco Act is not much discussed in this paper).

We respectfully submit that while these instruments provide sufficient policy and legal footing to justify these measures, they are not the only policy and legal options or commercial considerations that can be drawn on in this regard.

Other instruments or reasons to strengthen the proposed measures include:

#### **A. THE NATIONAL STRATEGY FOR TOBACCO CONTROL**

This strategy is also an instrument of federal policy and engagement, as ministers of health from provincial and territorial governments AND ALSO the federal government agreed to this approach after prolonged examination in the late 1990s.

The four goals of the National Strategy are prevention, cessation, protection and denormalization. Ending the retail display of cigarettes would contribute to the achievement of ALL FOUR of the objectives of the national strategy.

- Cessation (as outlined in the proposal)
- Prevention (as outlined in the proposal)
- Denormalization (because it would contribute to changed social norms and social environment)

- Protection (indirectly, by reducing the number of cigarettes smoked through the combined achievement of cessation, prevention and denormalization), and by further denormalizing tobacco use, thus decreasing the likelihood of exposure.

We recommend that retail regulations aim to achieve each of the four goals of the national strategy. This foundation would allow for more expansive interventions at retail.

#### **B. REVISED STATUTORY LAW.**

The government has both legal and administrative capacity to develop a new purpose-built tobacco statute that extends the range of public policies over cigarette supply. This capacity should encourage the government to develop new options for managing cigarette retailing. Staying within the current law is to forever lock health policy in 1997.

#### **C. REVISED FEDERAL OR NATIONAL STRATEGIES TO REDUCE TOBACCO USE.**

The goals of the current federal strategy are not ambitious. It is probably not necessary to ban retail displays in order to achieve reductions in smoking prevalence to 20%. It **IS** necessary to reduce smoking prevalence to far below 20% to achieve health status improvement for Canadians. Changing the way in which cigarettes are supplied to smokers can contribute to the achievement of yet more ambitious targets for reductions in tobacco prevalence. More ambitious goals may require and justify even more ambitious reforms to the 'retail' of cigarettes.

#### **D. REVISED UNDERSTANDING OF THE NEED TO PROTECT SMOKERS FROM TOBACCO MARKETING.**

The view that restrictions on tobacco promotions (including display bans) should be implemented in order to protect young non smokers is often accepted without exploring the issue of what level of protection should be offered to adults, including adult smokers. When governments fail to answer that question, it is not surprising that the public begins to accept that adult smokers are not harmed by tobacco promotions and that protecting them is not a legitimate policy or programme goal.

An alternate view was offered by the government of British Columbia in its submission to the Supreme Court of Canada during its review of the Tobacco Act (File 30611).<sup>7</sup> Because tobacco advertising encourages smokers to smoke (and functions in ways that discourage their quitting), it harms them in measurable ways, the province argued.

*"The consumption of every cigarette by an addicted smoker sustains addiction ... Each cigarette smoked is an inherently harmful event, a fresh and legally-recognized personal injury. It may be only one*

*laceration in what will likely be death by ten thousand cuts, but it is a cut nonetheless.*

*It follows that an activity that advertises or promotes tobacco use among smokers, to the extent that it has an effect, will lead to the increased or sustained consumption of tobacco and thus cause harm. ...*

*The manufacturers are expressly determined to target those persons addicted to their product, to exploit that addiction and thereby to cause their customers an injury from which they profit.*

We suggest that Health Canada develop the rationale for allowing smokers to remain exposed to tobacco promotions rather than simply asking the public to accept it at face value. Such a rationale is not included in the consultation paper, nor, so far as we can determine, on Health Canada's web-site or on its other publications. Such a rationale should be provided before pursuing a 'kids only' approach to regulating displays at retail.

#### **E. AN EXPANDED CONSULTATION WOULD YIELD IMPROVED POLICY OPTIONS.**

We suggest that expanding the legal and policy footing for this proposal would allow consideration of more central public health policy questions. Examples of such questions are:

- *What is the optimal way to provide cigarettes to smokers?*
- *What have we learned from the supply of other addictive and potentially harmful substances (alcohol, psychotropic drugs, methadone, painkillers and therapeutic medicines) and behaviours (gambling) that can be applied to the management of cigarettes?*
- *Can those who supply tobacco products to smokers be included in public health efforts to reduce smoking in non-regulatory ways?*
- *Does the Tobacco Act authorize the government to implement a complete ban on cigarette-brand displays at retail? If not, what would be involved in strengthening it?*
- *Are regulations the best tool to change the retail environment? Do regulations change the economic, commercial and social conditions that lead to tobacco displays?*
- *Have retailers adapted to constraints on retail promotions in Saskatchewan, Manitoba, Iceland and other jurisdictions in ways that reduce the intended impact of these constraints?*

- *What have we learned from recent tobacco industry behaviour that should be factored into public policy measures to reduce incentives to smoke?*
- *As tobacco use declines, what are the anticipated changes in the business environment of cigarette retailing, and what proactive roles can government take to ensure that these changes reinforce public and private efforts to reduce smoking?*
- *How are the self-identified needs of smokers who wish to quit best served by the process in which they receive their cigarettes? How are the self-identified needs of smokers who are not interested in quitting best served by this process?*
- *Is there a risk or likelihood that tobacco companies can use other sections of the law (i.e. section 28) to display brand elements in retail stores and consequently undermine the objectives of the proposed measures?*
- *Would the reform of retail environment benefit from simultaneous development of plain packaging?*

## **2. THE REGULATIONS AS PROPOSED ARE VULNERABLE TO INDUSTRY ADAPTATION.**

In our view, there is a high likelihood that tobacco companies working with retailers can replace any regulated displays of tobacco products with tobacco branded products that are not tobacco accessories.

The proposals as outlined in the consultation paper ignore the potential that exists in the current Tobacco Act to replace tobacco products and accessories with new products that carry tobacco brand elements, but which are not included in the regulatory ambit of the proposal.

It is important to consider the scope that exists in the current Tobacco Act for the display and sale of products other than tobacco products tobacco accessories. Specifically, the Act provides that:

### ***Non-tobacco product displaying tobacco brand element***

*27. No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or is used with a service, if the non-tobacco product or service*

*(a) is associated with young persons or could be construed on reasonable grounds to be appealing to young persons; or*

*(b) is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.*

### ***Exception — tobacco product***

*28. (1) Subject to the regulations, a person may sell a tobacco product, or advertise a tobacco product in accordance with section 22, if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or used with a service, if the non-tobacco product or service does not fall within the criteria described in paragraphs 27(a) and (b).*

### ***Exception — non-tobacco product***

*(2) Subject to the regulations, a person may promote a non-tobacco product, other than an accessory, that displays a tobacco product-related brand element, or a service that uses a tobacco product-related brand element, to which section 27 does not apply.*

### **Regulations**

*33. The Governor in Council may make regulations*

*(a) respecting the promotion of tobacco products and tobacco product-related brand elements and the packaging of tobacco products, including the form, manner and conditions of the promotion and packaging, and the promotion of services and non-tobacco products for the purposes of section 28.*

The federal *Tobacco Act* allow for many tobacco brand-related promotions on non-tobacco products and non-tobacco accessories. Tobacco brands can be promoted on coffee-cups, consumer products, promotions for services or other goods or services that fall within the scope of sections 27 and 28 and of the *Tobacco Act*.

There are currently few tobacco-branded goods or services currently for sale in Canada. There are no regulations developed under article 33 (a) which would to restrain the promotions for such goods and services, including promotions at retail of such products.

Even though retail displays of sponsorship promotions are no longer allowed at retail, tobacco companies have continued to place signage at retail. Examples of signage that has remained since 2003 are the CART.COM advertisements and Extreme Sports ads. The continued presence of these displays over 4 years suggests that they are not considered by Health Canada enforcement officials to be an infringement of the *Tobacco Act* or provincial laws.

Tobacco companies have used goods other than tobacco products or accessories to promote their brands at retail in the past. An example of such a promotion is cups used to sell coffee at Macs Convenience Stores which promoted the Benson and Hedges Symphony of Fire (an event wholly owned and controlled by Rothmans, Benson and Hedges). Such cups would not be legal today (as they promote a disallowed sponsored event), but similar cups promoting the brand name Benson and Hedges could be construed as consistent with sections 27 and 28 of the *Tobacco Act*.



Reasons promotions for replacement products (coffee, courier services, etc) are not already displayed at retail may be because

- the industry is still able to use shelving displays, so their promotional needs are being met
- the industry is still displaying 'lifestyle' imagery for products/events (CART.COM and Extreme Sports) which fall, apparently, outside the scope of enforcement of the *Tobacco Act*.
- the industry is presenting a constitutional challenge to the *Tobacco Act* predicated on the argument that the permissions given for tobacco advertising are so vague and stringent that it is not possible for them to find a form of permitted advertising.

### 3. ANTICIPATING TOBACCO INDUSTRY ADAPTATION

Based on past experience with tobacco regulations, on research and on current experience in Saskatchewan and Manitoba, the federal government should anticipate that the proposed regulations, if implemented would:

- cause tobacco companies to amend, but not end, their promotional activities at retail
- cause tobacco companies to use non-tobacco products to promote brands images at retail.
- be implemented by retailers in a variety of ways, some of which would contribute to a lesser degree to the goals of reducing tobacco use than others
- be resented by retailers, and increase resentment in the retail sector to tobacco control



There is no reason to believe that tobacco companies will abandon the retail environment just because cigarettes can no longer be

displayed through power walls and other public displays. Certainly, they have indicated that they intend to maintain a relationship with retailers even if display bans are in place. Imperial Tobacco Canada Vice President, Rahul Prakash told Your Convenience Manager that “The money will not be shut off all together. Before [retailers] earned money to maintain space in their outlet in the tobacco selling area. Yes, the display money is gone, but there will be other programs developed between manufacturers and retailers. The amount from these programs could range from a few hundred dollars to a few thousand dollars, depending on the size of the store and its traffic.”<sup>8</sup>

Displaying cigarettes is only one way in which retailers can function as promoters of tobacco brands and tobacco products. Retailers can also be incentivized to promote certain brands, to provide promotional information on products, to encourage smokers to select certain brands. The impact of “dark marketing” techniques in tobacco is not yet well studied, and it is difficult to predict how effective these.

Canada’s largest cigarette manufacturer, British American Tobacco, in anticipation of restricted promotions, identified shifting its marketing focus to strengthened relationships with retailers. In a 2001 document “Future Business Environment” it explained that the role of field-force sales representatives will change to one of being a ‘business consultant’ to his

**Marketing**

As advertising restrictions continue to bite, leaving point of sale and direct marketing as the key communication vehicles, the importance of retailer and key account management will increase. The industry will devote greater resources to retail, including the provision of merchandising units in exchange for positioning and visibility.

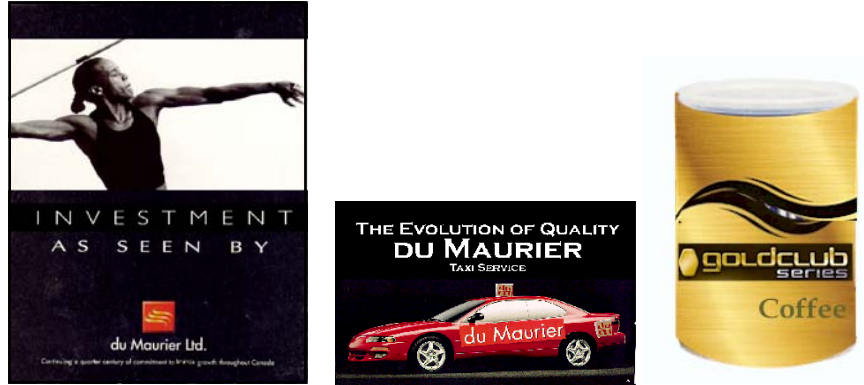
Major tobacco companies will develop their own CRM systems (driven by a desire to capture information and build a relationship with the retailer) and sophisticated direct marketing databases.

The role of the fieldforce sales representative will change to one of a ‘business consultant’ to his trade customers (who will become more knowledgeable about our business), and as supply chains become more closely integrated.

trade customers.”<sup>9</sup>

Subsequent to adopting this strategy, BAT’s Canadian subsidiary revamped its sales structure, and took direct control of supplying cigarettes to retailers. In May 2006, it announced that it would no longer work through third-party wholesalers, but would hire 1,000 field staff to operate a ‘direct to store delivery system.’<sup>10</sup>

We anticipate that they will replace lost retail promotional space with more persuasive ‘selling’ by retailers as well as replacement products that they can brand and display. Examples of the types of products they could promote are shown below.



#### 4. ANTICIPATING RETAILERS' ADAPTATION

Unless Health Canada provides specific guidance on how cigarettes can be housed prior to purchase, we anticipate that retailers will adapt to any new regulatory measures in ways intended to minimize their costs of compliance or their costs of managing the sale of tobacco products. Adopting new regulations or adapting their business practices to them cannot be expected to be done in ways to maximize the public policy purpose of the objectives. That is to say, retailers will seek to minimize their costs/maximize their revenues. They will not seek to minimize the use of tobacco or maximize the health benefits of the regulations.

This primacy of business concerns is not unseemly nor unusual. Retail outlets are commercial operations, and the managers of retail businesses have an obligation to their livelihood or to the shareholders of the corporations for which they work to maximize the revenues from these operations. Although there is a real public purpose in having a vibrant and efficient retail and convenience store system, these are not public utilities, nor are they mandated to achieve a public purpose.

**We anticipate retailers will use the cheapest and most convenient way of obscuring cigarette packages – not the one most likely to reduce the impact of cigarette promotions.**

“Shower curtains” or wall dispensers covering powerwalls, for example, are arguably less desirable than completely hidden dispensers in that they:

- allow for greater viewing of cigarette products while cigarettes are being accessed by the sales agent
- allow greater potential for accidental or negligent display (curtain being left open)

- leave a larger portion of the store assigned to cigarettes (which is communicated directly or indirectly through the covering).

If federal and/or provincial governments provided guidance on what types of dispensers could or could not be used to display cigarettes, there would be less conflict between a retailer's need to reduce costs and the public's need to reduce tobacco use.

**We anticipate retailers will consider that children are optional, but that profits aren't.**

The proposal suggests that tobacco products may be displayed "as long as they are not visible to young persons. This could be accomplished by, among other possible measures available to retailers, prohibiting young people from entering their premises and making sure that their tobacco displays are not visible from outside their premises." (p. 19).

If this adult-only store provision is retained, retailers will have to assess whether it is in their business interests to maintain cigarette displays or whether to maintain access to children. When restaurant owners faced such a choice in Winnipeg and other communities which adopted measures that banned public smoking in venues where children was allowed, some chose to make their venues child-free, not smoke-free.<sup>11</sup> The impact on families and community cohesiveness and families of barring entry of children to commercial establishments, as well as the enforcement challenges have not been well researched. Although Saskatchewan and Manitoba adopted this approach, more recent government proposals have rejected it, and have adopted or proposed adopting complete bans on displays (i.e. Ontario, Quebec, Tasmania).

**We anticipate that retailers will remain willing to promote cigarettes.**

Health Canada's research found that 25% of Manitoba retailers did believe that "power walls influence consumers to purchase tobacco products"<sup>12</sup> and that this belief did not lead them to stop hosting power walls. That is to say, a retailers understanding of the problem of tobacco promotions cannot be relied upon to influence his or her decision to engage in promotional activities.

If retailers continue to be allowed to sell advertising space in their establishments or to enter into other promotional commercial activities with tobacco manufacturers, we anticipate that they will do so. As long as sections 27 and 28 of the Tobacco Act allow for displays at retail, we anticipate lost cigarette displays will be replaced by displays of other tobacco-branded products or promotions for tobacco branded services.

### **PART 3. WAYS IN WHICH THE PROPOSED MEASURES COULD BE STRENGTHENED:**

This is an opportunity to expand and improve on current provincial measures.

The federal government proposes to be the seventh Canadian jurisdiction to ban the display of cigarettes in retail environments. The benefits of providing both nation-wide and province-specific measures in tobacco control are well-established. All levels of government (federal, provincial, municipal, territorial and, on occasion, aboriginal) are engaged in a pan-Canadian comprehensive tobacco control strategy. There are several examples of over-lapping provincial and federal measures. For example: provincial and federal jurisdictions have implemented sales-to-minors provisions; provincial and federal jurisdictions have implemented promotional restrictions; federal and provincial government seek to make cigarettes less affordable through excise taxes.

There are benefits and draw-backs to standardizing tobacco regulations across Canada. The benefit of a standardized approach (such as, for example, currently exists with warning messages and health information messages) facilitates implementation by sectors which work across Canada (such as the manufacturing and retail sector). The benefits of non-standardized approaches can be seen in the ability of jurisdictions to innovate new measures where there is local support to do so (as British Columbia did in toxic emission and ingredient disclosure and Saskatchewan did with retail display bans). As in the case of B.C.'s requirements for disclosure of ingredients and toxic emissions, the benefits can extend nationally. Other benefits lie in the ability to compare results across jurisdictions (as we should be able to do, for example, with Quebec's financial assistance for the use of stop smoking medications).

One way in which this current regulatory review can benefit from the policy-development work of other jurisdictions in this area is to take note of the consultations and the results of those consultations. For example, in January 2005, the Quebec government issued a consultation document "Pour notre progrès vers un avenir sans tabac. Développement de la législation québécoise contre le tabagisme. Document de consultation. The report on that consultation process, issued four months later, provides useful guidance to the federal review process. It showed that there was considerable support for reducing the number of sales outlets for tobacco. Health Canada's public opinion research on this topic also suggests that benefits may lie in strategies aimed at this end (including, but not limited to, regulatory strategies).

Even without undertaking further research or policy development, Health Canada is in a position to strengthen the proposed measures by anticipating ways in which the measures can be undermined (deliberately or non-intentionally) and designing ways to overcome these vulnerabilities.

We recommend that the government develop further options to manage (through regulatory and non regulatory approaches) the retailing or dispensing of tobacco products in ways that achieve the goals of the federal and national strategies.

Without delaying the implementation of a strengthened version of the proposals outlined in the consultation paper, Health Canada should concurrently begin work to:

- Close the loop-hole that allows 'CART.COM' and "Extreme Sports" signs to remain at retail (sponsorship promotions were supposed to have been removed more than three years ago. in October 2003). Failure to close this loop-hole could result in many more tobacco-funded promotions to replace current retail display shelving.
- Develop regulations to ensure that no replacement products (coffee cups, services, mustards, financial services) are developed to continue tobacco brand promotions at retail.
- Develop effective ways of ensuring that the way in which cigarettes are dispensed meets the needs of smokers, that is, that it is done in ways which do not negatively impact their ability to develop and implement a quit plan.
- Develop effective ways of engaging retailers in the public health efforts to reduce smoking and/or other community health goals by changing the economic incentives that currently define the cigarette market.
- Establish the research base and parliamentary support for strengthened measures to reduce tobacco promotions, such as a total advertising and promotion ban (including retail displays, non-retail products).
- Develop and make available model shelving or dispensing units for use by retailers as well as an effective system to encourage their use (including financial incentives and/or further regulation).
- Develop a strategy to address potential negative impact on public health of retailer activities aimed to over-ride display bans (i.e. shelf covers that show Extreme Sports, CART.COM or other tobacco industry provided material).

- Support the efforts of smokers to quit, strengthen the ability of former smokers to stay quit and reduce the number of youth who would otherwise start smoking by delivering public programs or information or social marketing through retail venues.

Further measures the federal government can take are identified in the attached paper "Changing Perspectives."

## REFERENCES

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- 1 2005 National Baseline Survey on the Tobacco Retail Environment, p. 5
- 2 The Tobacco Retail Environment: Results of a Focus Group Study Final Report PN 5557, p. 7
- 3 2005 National Baseline Survey on the Tobacco Retail Environment, p. 5
- 4 The Tobacco Retail Environment: Results of a Focus Group Study Final Report PN 5557, p. 5
- 5 The Tobacco Retail Environment: Results of a Focus Group Study Final Report PN 5557, p. 18-19
- 6 The Tobacco Retail Environment: Results of a Focus Group Study Final Report PN 5557 P. 5
- 7 Factum of the Intervenor. The Attorney General of British Columbia. File 30611.
- 8 Your Convenience manager. January – February 2006 p. 42
- 9 British American Tobacco. Future Business Environment 2001 . Bates number:324537933-324538045
- 10 Imperial Tobacco Canada. Press release. Imperial Tobacco Canada Redesigns Supply Chain for Effective and Direct Distribution to Retailers. May 16, 2006
- 11 CBC News. No minors allowed: restaurants allow smoking [http://www.cbc.ca/story/news/2002/01/10/Consumers/nosmoking\\_020110](http://www.cbc.ca/story/news/2002/01/10/Consumers/nosmoking_020110)
- 12 Manitoba Survey on the tobacco Retail environment, 2005. p. 28