

MORE WAYS TO END TOBACCO ADVERTISING

Tobacco advertising is harmful because it results in more people starting to smoke and fewer people stopping smoking which, in turn, results in more illnesses, deaths, health care costs and bereaved families.

Because tobacco advertising increases smoking, bans on such advertising reduce tobacco use. The World Health Organization recommends banning tobacco advertising. 148 countries—including Canada—have ratified a tobacco treaty which acknowledges that “a comprehensive ban on tobacco advertising, promotion and sponsorship would reduce the consumption of tobacco products.”

TOBACCO COMPANIES ADVERTISE TO INCREASE PROFITS

Tobacco companies do not advertise in order to cause more people to become ill or die from smoking cigarettes. This is a consequence of their actions, but not the purpose of them. The primary purpose of tobacco advertising is to increase revenues, and subsequently profits, for the tobacco company shareholders.

By distinguishing between the effect of tobacco advertising (disease and death) and the primary purpose of tobacco advertising (making money) we can strengthen public policy by using both measures which seek to blunt the effect of the cigarette marketing and also measures to amend the motivation that drives the harmful activity of promoting smoking.

ADVERTISING CHANGES ATTITUDES TOWARDS SMOKING

Advertising helps tobacco companies sell more cigarettes because it:

- **Affects perceptions about smoking.**
Promotions create imagery and awareness about brands, but also affect more general perceptions of smoking, its social acceptability, and about the type of people who are addicted to tobacco.
- **Undermines health knowledge by:**
 - providing ‘friendly familiarity’ about brands and tobacco products;
(“if cigarettes were really harmful, they wouldn’t be advertised in mainstream magazines”)
 - providing positive imagery about tobacco brands or about smoking;
(“if cigarettes were really that harmful, they wouldn’t be smoking in movies.”)
 - creating the impression of normalcy.
(“If cigarettes were really that harmful, governments wouldn’t allow them to be marketed this way.”)

Tobacco advertising works to:

- Reassure smokers
- Recruit starters
- Create brand imagery
- Establish visual branding
- Generate 'friendly familiarity'
- Improve corporate image
- Associate cigarette brands with imagery of sponsored events

- **creates allies against public health measures**

Those who benefit economically from tobacco marketing help the companies oppose public health measures aimed at reducing tobacco use. Recent examples include:

- opposition of retailers to bans on retail displays of cigarettes in Nova Scotia, Quebec, Ontario, Manitoba and Saskatchewan (2000-2006);
- opposition of festival organizers to bans on sponsorship advertising (1988-2003);
- opposition of printers and trade unions to new health warning labels (2000).

In most cases, tobacco control measures are weakened or postponed as a result of these third-party interventions.

These economic relationships are not only forged through direct purchase of advertising space, but also through corporate marketing to the affected sectors. Tobacco companies provide generous sponsorship to trade associations, like convenience retailers, hospitality sectors, etc.

- **improves public attitudes towards their industry**

The continued presence of corporate names, logos, colours, images and continued portrayal of smoking ameliorates the low public standing of tobacco companies. Through sponsorship of business events, promoting their charitable donations, sponsoring community programmes, hosting dignitaries at sporting events, the companies seek to maintain legitimacy and normalcy within the business sector.

(See: How Cigarette Advertising Works: Rich Imagery and Poor Information, Richard Pollay, 2000, Expert report to RJR vs. AG Canada)



CURRENT TOBACCO PRODUCT ADVERTISING

Canada's 1997 *Tobacco Act* allows tobacco product advertising:

- in general audience newspapers and magazines (interpreted to include web-sites);
- in direct mail to adults (interpreted to include e-mail);
- in bars and other venues where youth are not allowed;
- Through sponsorship, using tobacco company brand names, of certain goods and services that are thought not to appeal to youth, such as taxis, security services or currency exchanges.

Although cigarette manufacturers have refrained from advertising while their court challenge has been heard, other tobacco merchants are using these provisions to market tobacco products. The newspaper and direct mail advertisements shown here were circulated in Ottawa in 2006.

THE COST-BENEFIT DECISION TO ADVERTISE

Cigarette companies advertise only when the benefits of doing so outweigh the costs. Because they can 'externalize' the health care costs that result from the use of their products (that is to say, make smokers, their families and health care providers pay these costs), they need only consider the 'internal' costs. **Internalized** marketing costs include:

- direct financial marketing costs;
- risks to the image of their products or corporation if there is a backlash to their products.

Cigarette advertising is a good business decision for tobacco companies only because the main costs that result from smoking are not paid by the companies. Externalized costs that result from tobacco marketing include:

- cost to the cigarette smoker whose cigarettes cost more in order to pay for the advertising;
- cost to the cigarette smoker who pays for more cigarettes as a result of starting smoking or continuing to smoke longer than he or she otherwise have done;
- costs to the smoker, the smoker's family and the community to pay for health care services for the diseases caused by smoking the additional cigarettes smoked as a result of marketing;
- costs to the smoker, the smoker's family and the community that result from disability, lower productivity and early mortality caused by smoking the additional cigarettes as a result of advertising.

In 2002, tobacco industry products cost the Canadian economy \$17 billion in direct and indirect costs—more than \$500 per Canadian.

EXTERNALIZED/SOCIAL COSTS OF TOBACCO AND OTHER SUBSTANCES

	Tobacco	Alcohol	Illegal Drugs
Direct costs			
▪ health care	\$4,360,200,000	\$3,306,200,000	\$1,134,600,000
▪ law enforcement		\$3,072,200,000	\$2,335,500,000
▪ prevention & research	\$78,000,000	\$53,000,000	\$16,500,000
▪ other direct costs	\$87,000,000	\$996,100,000	\$79,100,000
Indirect Costs			
▪ long-term disability	\$10,536,800,000	\$6,163,900,000	\$4,408,400,000
▪ short term disability	\$60,600,000	\$39,500,000	\$21,700,000
▪ premature mortality	\$1,873,500,000	\$923,000,000	\$248,500,000
Total	\$16,996,200,000	\$14,554,00,000	\$8,244,300,000
Total per capita	\$541	\$463	\$262

source: *Costs of Substance Abuse in Canada 2002, Canadian Centre on Substance Abuse 2006*

PUBLIC POLICY CAN CHANGE THE BUSINESS DECISION

Governments can use public policy to change the way tobacco companies behave and also the way they think.

- Public measures can increase the costs of advertising or decrease the benefits so that there is no longer a good business case for advertising. If the costs of advertising outweigh the benefits, advertising will cease. This would prompt a change in **internal calculations**.
- Public measures can shift the requirement to maximize profits into requirements to reduce the number of cigarettes smoked. With such new legal requirements, the industry will not advertise in ways that increase smoking (although they might advertise in ways that decrease smoking). This would prompt a change in **internal motivation**.

INCREASING THE COSTS

The Canadian government has the power to put measures in place which will stop tobacco companies from considering only the direct internal costs of tobacco marketing and oblige them to account for at least some of the external costs they impose on society. Measures which would affect the business decision by increasing the costs of marketing include:

- **Banning tobacco promotions**

A comprehensive ban on marketing with sufficient penalties in place that the industry perceives that the costs of breaching the law or exploring loopholes would exceed any benefits of doing so will make tobacco marketing uneconomic. Such a ban is not currently in place in Canada (the 1997 Tobacco Act allows for advertising in newspapers, magazines, bars, direct mail, web-sites, e-mail, matches and lighters, some non-tobacco goods and services and does little to prevent cross border advertising).
- **Ending financial incentives and creating financial disincentives for marketing**
 - Removing any corporate income tax relief from promotions (these are currently considered allowable business expenses).
 - Requiring tobacco manufacturers to be licensed, and having a significantly higher license fee for tobacco companies which wish to advertise or promote their products.
 - Recouping the externalized costs that result from tobacco marketing. Such approaches have been explored, but not yet put in place in other North American jurisdictions.

For example, a 'look-back' provision was included in the (failed) U.S. 'global settlement' with tobacco companies. This would have assessed the companies for the costs of new smokers beyond the threshold percentage of youth smoker estimated without the presence of tobacco marketing. Another example is provided in the (abandoned) British Columbia Tobacco Fee Act of 1999 which imposed a levy on tobacco industry profits in order to pay for the costs to the province of programmes to treat cigarette addiction and to prevent tobacco use.

- Creating financial disincentives for those who supply marketing services to tobacco companies by imposing a surtax on income derived from tobacco promotions, or by using a 'contract compliance' approach to ensure that government business is restricted to companies that do not engage in supplying market research, marketing, advertising, promotion or related services to tobacco companies. Precedents for both these approaches currently exist in Canadian federal government practice.

DECREASING THE BENEFITS

Government measures can be used to ensure that tobacco marketing does not help tobacco companies achieve their marketing goals of:

- influencing public and individual perceptions about smoking or tobacco products;
- impacting on public policy and programs;
- influencing public and individual perceptions about the tobacco industry.

Such government measures include:

- **Requiring prominent health or other informational messages on direct and indirect advertising**

Tobacco advertising which is required to carry large, compensatory health messages will blunt any advertising impact with potential benefit to industry, and consequently make such advertising undesirable to companies. For example, a graphic health warning required on any advertisement or promotion paid for by a tobacco company or another company acting on their behalf that takes up 50% or more of the advertising space, will make it unlikely that tobacco companies will find such advertising worthwhile. An example of the impact of such measures was observed in Canada in the early 1990s. During the phase-in period of the Tobacco Products Control Act, companies were required to place 30% health warning messages along the top of any allowed billboards (until the billboards were no longer permitted). The industry responded by terminating their advertising well before they were required to.

- **Severely limiting the channels of any permitted marketing communications.**

Permitted advertising can be restricted to specified narrow channels of communication. One example, recommended by the Canadian Cancer Society, is limiting any tobacco promotions to only a binder of informational material maintained behind the counter at cigarette retail outlets.

- **Plain Packaging**

Tobacco advertising has traditionally attempted to create an association between a brand image and the branded package. By removing all imagery from the package and reducing the 'brand value' of the package, this connection can be severed or reduced.

- **Imposing a 'fairness doctrine'-style program of counter-marketing**

Tobacco industry promotions and messaging (both brand advertising and corporate promotions) can be countered by making equivalent resources available to public agencies for the purposes of managing counter-advertising programs.

CHANGING THE INTERNAL MOTIVATION

The measures mentioned above are intended to change the way tobacco companies behave. Government also has the power to change the way tobacco companies think. Instead of trying to maximize profits by increasing cigarette sales, the managers of tobacco companies can be legally charged with other goals — such as reducing the number of cigarettes sold.

- **Removing tobacco companies from the requirements of the Corporations Act to act in the “best interests of shareholders”**

Current corporate law requires tobacco companies to act in profit-maximizing ways and this compels them to try to increase sales. A new law could be developed to resolve the conflict between ‘best interests of the corporation’ and ‘best interests of Canadians’ with respect to smoking. There are many sectors which have a separate law to govern their business practices for this reason, such as the broadcasting, financial institutions and nuclear industries. Government could remove tobacco companies from the list of enterprises governed by the Corporations Act and add the entire tobacco manufacturing sector to the list of industrial sectors governed by industry-specific laws. (See: *Curing the Addiction to Profits, A supply side approach to phasing out tobacco, Canadian Centre for Policy Alternatives, 2005*)

- **Imposing production quotas**

Governments can set limits on the number of cigarettes that can be legally sold in a year and alter the financial returns on cigarette sales to encourage reduced production. This can be done by imposing conditions of license on tobacco manufacturers, or by imposing supply-management on tobacco product manufacturing. (See: *A strategy for controlling the marketing of tobacco products: a regulated market model, R. Borland, Tobacco Control, 2003, 12*).

- Tobacco companies could be required to achieve progressively lower production and consumption targets every year. If they achieved lower than targeted levels of production and consumption, they could be rewarded with substantial financial bonuses. If, on the other hand, they failed to meet their annual targets, they could face stiff financial penalties. Both the bonuses and penalties would be very substantial, so as to ensure that they would have the desired effect. In such an environment, the only kind of advertising that would make good business sense would be advertising that served to reduce consumption, not increase it.

Canada is among a very few industrialized countries which still allow tobacco advertising (notable others being the United States and Japan), and almost unique in not requiring health warning messages on these promotions



SUMMARY:**MEASURES AVAILABLE TO GOVERNMENT TO END TOBACCO ADVERTISING****Changing the way tobacco companies behave:**

- Pass a law creating a comprehensive ban on all forms of direct and indirect tobacco advertising, promotion and marketing.
- Guarantee the constitutional validity of such a law by using the notwithstanding clause, if necessary, or by seeking and obtaining the consent of sufficient provincial governments to amend the constitution in order to limit protection of commercial speech to natural persons only (not corporations),
- Failing a comprehensive ban, pass a law banning all but a very few forms of tobacco advertising, i.e. allowing only informational binders behind the counter at point of sales.
- Impose financial disincentives on tobacco marketing through tariffs or license fees, including differential fees for those who wish to advertise.
- Ensure that tobacco companies pick up the otherwise externalized costs of tobacco marketing, through 'look-back' provisions, tariffs or other mechanisms.
- Require prominent health or other informational messages on all forms of tobacco company promotions (including promotions for smoking behaviour, such as smoking in movies).
- Require plain packaging of tobacco products.
- Create a 'fairness doctrine'-style program of counter-marketing to ensure that all tobacco product marketing is balanced with public health information.
- Create financial disincentives to recipients of tobacco industry promotional contracts, such as an income surtax or ineligibility for government contracts

Changing the way tobacco companies think:

- Remove tobacco companies from the Corporations Act obligations to act in the 'best interests' of the shareholder.
- Create a supply-management system for tobacco products
- Introduce requirements for tobacco farmers, manufacturers and importers to achieve annual reductions in tobacco production and consumption.

“Each party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship.”

Framework Convention on Tobacco Control, ratified by Canada, November 2004

THE FRAMEWORK CONVENTION ON TOBACCO CONTROL AND TOBACCO ADVERTISING IN CANADA

In ratifying the FCTC, Canada assumed a number of responsibilities with respect to the control of tobacco. Article 13 of the treaty requires that Canada impose a comprehensive ban on tobacco advertising within the limits of Canada’s constitutional principles by February 2010. Although the Supreme Court ruling may clarify the constitutionality of the current Tobacco Act, it is not expected to address whether or not Canada needs to amend its laws in order to meet the requirements of the FCTC.

Whether or not the Supreme Court upholds the Tobacco Act, the government must determine whether a comprehensive advertising ban, as required under the FCTC, is consistent with Canada’s constitutional principles and, if so, enact one.

Ways in which such a ban can be established to be consistent with Canada’s constitutional principles include:

- a Supreme Court ruling that tobacco advertising is not a form of protected speech (such as position was argued before the court by British Columbia);
- a Supreme Court ruling that tobacco advertising is protected by the charter, but that a comprehensive ban is justified. Although the question of a comprehensive ban is not currently before the court (the Tobacco Act is a partial ban), this question could be possibly be determined by the Supreme Court itself, should it volunteer such an opinion in its judgement on the Tobacco Act. Alternatively, it could be determined through a reference question to the court or through subsequent legislation;
- use of the ‘notwithstanding’ provisions of the Charter;
- a constitutional amendment to the effect that protected speech is reserved for natural persons, and not for corporations.