

Eye on the tobacco industry

An update on current Canadian tobacco industry activities
October-December 2010

Imperial Tobacco opposes new tobacco package warnings

On December 30th, Health Minister Leona Aglukkaq announced that Canada would require warnings on 75% of the major front and back surfaces of cigarette packs.¹ A toll-free smokers' quitline number will also be included in the new warnings, and a complementary social marketing campaign aimed at youth and young adults is also in the works. Aglukkaq unveiled four of the 16 new warnings at a news conference in Ottawa and said they will be refreshed every four years to ensure they do not become ineffective over time.

The government emphasized that tobacco use costs Canadian health care systems \$4.4 billion annually in direct health care costs and that it kills 37,000 Canadians every year.

The announcement was made after months of intense pressure from the media, the public, health groups and opposition parties following a meeting with provincial and territorial health ministers in September in Newfoundland. There, provincial officials claimed they were told plans to require new warning labels were being put on hold so the federal government could focus on addressing the contraband tobacco problem instead.

Health groups and opposition parties suspected that the tobacco industry was behind the delay and that it was aggressively lobbying against the warnings. This lobbying was detailed in a CBC News report:

“Health Canada's abrupt decision in September to back down from



Three of the 16 new Health Canada warnings.

expanding warning labels on cigarette packages came after tobacco company lobbyists waged a coordinated, sometimes secretive lobbying campaign, CBC News has learned.”

“An analysis by CBC News of lobby registry filings and other documents reveals tobacco executives and their paid lobbyists communicated dozens of times with key government ministries and their policy advisers, including the Prime Minister's Office.”²

Following the government's decision to proceed with the new warnings, Imperial Tobacco Canada (ITC) spokespeople took to the airwaves to denounce the decision and tried to turn the tables in the blame-game by suggesting that the government had only agreed to proceed with new warnings after intense lobbying from government-funded “special-interest anti-tobacco groups.”³

In reality, the new larger and more graphic tobacco package warnings are supported by a wide constituency of Canadians, as demonstrated by the many editorials in various newspapers nationwide.^{4 5 6 7 8} In addition, a broad cross-section of health agencies and professional organizations across the country supported the new warnings.

ITC (which health interests suspect is worried that the new warnings will lead to reduced sales) claimed that the government is ignoring “today's real tobacco problem”—contraband cigarettes. This despite the fact that the vast majority of cigarettes smoked in Canada are supplied by “legal” manufacturers.

John Clayton, ITC's vice president of Corporate Affairs, had this to say:

“After announcing in September that tackling illegal tobacco was her priority, special-interest anti-tobacco groups lobbied the Minister heavily to focus on increasing the size of health warnings on legal products....”

““Three months ago, the Minister of Health said illegal tobacco was her priority. However, she has done nothing to crack down on the illegal trade since then. Instead, she caved into the pressure of a handful of anti-tobacco groups,” said Mr. Clayton.”⁹

Clayton even suggested the new warnings will be ineffective in helping smokers become more aware of the dangers of tobacco use:

““Increasing the size of health warnings will not provide greater awareness to consumers or decrease the number of smokers” said Mr. Clayton. “It is unfortunate that the Health Minister has decided to let a few anti-tobacco groups dictate the government's tobacco control strategy instead of using a common sense approach,” he added.”¹⁰



Former Conservative health minister Perrin Beatty, who is now president of the Canadian Chamber of Commerce, was one of the lobbyists urging the government to not implement the new warnings.



According to CBC News, Ezra Levant was registered as a lobbyist for Rothmans, Benson & Hedges.

Imperial advertises its Vogue cigarettes to retailers, women

Imperial Tobacco Canada (ITC) used the one-year anniversary of its *Vogue* brand cigarettes being sold in Canada to advertise to retailers and consumers. In November, stickers were placed on the cellophane wrappers of the cigarettes packs (see next page), while the poster (at right) and pamphlet (below) were sent to retailers. The pamphlet says:

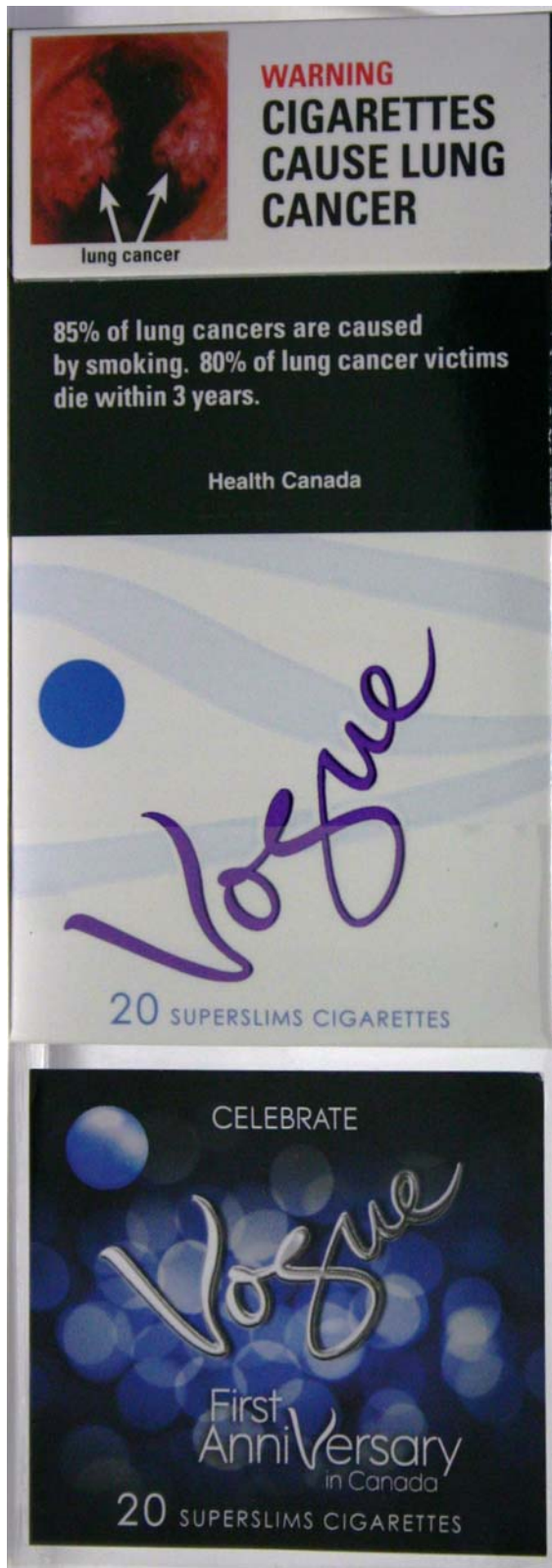
An anniversary is a timeless moment of reflection and celebration. It is a time to appreciate the present moment, commemorate the past, and anticipate that which is yet to come.

On the occasion of Vogue's first anniversary in Canada, we would like to thank you for supporting Vogue as the ultimate feminine expression in cigarettes.

We look forward to more great things in the year to come.

Merci!





The advertising campaign was met with resistance in Quebec, where the Coalition québécoise pour le contrôle du tabac said the ads flout the federal *Tobacco Act*. The ads were mailed directly to adult retailers, so this aspect of the ad campaign is not against the law, since direct mail to adults is allowed under the *Act*. However, although retailers are not permitted to display the ad in any way to consumers, the presence of the ad was well-known. Several convenience store customers reported having seen the posters.

In addition, there is no doubt that the ads are lifestyle advertising, which is barred by the federal legislation. As was reported by *The Gazette* in Montreal in December, the pamphlet and poster show “a svelte woman in a party dress” and could lead to the impression in some people’s minds that smoking is done by glamorous, sexy, beautiful people.¹¹

“‘You can’t get more ‘lifestyle’ than the popular fashion magazine *Vogue*,’ said Flory Doucas of the Coalition québécoise pour le contrôle du tabac.”

“The ad is trying to change the perception of a deadly addictive product, branding it as socially acceptable to a segment of the Quebec public. It’s clearly a cigarette for women.”¹²

Doucas also questioned the timing of the ad campaign, as many people choose the New Year to make quit attempts. She said the federal *Tobacco Act* should be strengthened to ensure these types of ads do not continue.

The cellophane wrapper (which is shown nearly removed from the package at left) of these Vogue cigarettes asks consumers to “Celebrate” the fact the superslims brand has been sold in Canada for one year.

Saskatchewan government's tobacco control policy draws First Nations' fire

First Nations leaders in Saskatchewan are using the courts to fight a provincial tobacco control policy. Their move is an attempt to reverse a government decision to limit tax-exempt sales of cigarettes to First Nations people living on reserves to one carton per week from three.

In October, 41 First Nation leaders lined up at a gas station south of Prince Albert and tried to purchase three cartons each of tax-exempt smokes. As was reported by the Saskatchewan News Network, they were told by a cashier that they can only be sold one carton tax-free, due to a July 1st change made by the province “in an attempt to recover an estimated \$5-million to \$7-million tax loss because of black-market tobacco sales.”¹³

While the government maintains the policy change is required to ensure tax-free cigarettes are not sold to non-status Indians, an attorney representing the First Nations said his research has failed to uncover one prosecution of a person abusing the system.



The number of smoke shacks in Canada, such as this one located on Six Nations near Brantford, Ontario, is growing exponentially. Cheap smokes are sold to First Nations and non-First Nations customers alike, stalling progress in further reduction of smoking rates.

The First Nations leaders involved in the orchestrated attempt to reverse the government's decision said they will be filing small-claims suits to recover the rebate on tobacco taxes paid on the extra cartons of cigarettes. They also said they believe limiting them to one tax-free carton is a violation of their treaty rights.

To date, the government has refused to back down. High cigarette prices achieved through tobacco taxation have been identified by the World Bank, among other international authorities, as the most effective tobacco control policy used by governments to drive down smoking rates and to discourage youth uptake.

Tax-free sales of cigarettes on reserves to non-status Indians are a great concern to public health professionals and governments across Canada. Cheap cigarettes lead to more youth becoming addicted and current smokers smoking more than they otherwise would.

Public health groups have been urging governments to reduce the amount of tax-exempt sales of cigarettes to First Nations, as part of a comprehensive anti-contraband strategy. Even some First Nations are supportive of the policy change. Doug Cuthand, writing in the *The Star Phoenix* in Saskatoon, said that First Nations should get their priorities straight, and that fighting for more tax-free cigarette sales should not be amongst them:

“While we may not remit federal and provincial taxes on some items, we should be collecting those taxes for the betterment of our communities. We should be collecting the so-called “sin tax” on tobacco products and using the money to reduce tobacco dependency among our people.”¹⁴

Philip Morris International reports 4.2% increase in legal sales in Canada

Philip Morris International (PMI), parent company of Rothmans, Benson & Hedges, says legal cigarette sales in Canada increased by 4.2% in the 3rd quarter (July-September 2010), on top of the 20% increase in the first six months of 2010.¹⁵



PHILIP MORRIS INTERNATIONAL

The company reported its 3rd quarter results to shareholders in October and said the increase in legal sales is “mainly reflecting government enforcement measures to reduce contraband sales since mid-2009.”

PMI also reported that the estimated prevalence of contraband cigarettes being smoked in Canada is somewhere between 10-20% of the total market. It says those estimates are based mainly on empty pack surveys conducted in 2009 and 2010.

PMI’s share of the Canadian market declined slightly in this same period to 33%. Sales of its *Next*, *Quebec Classique* and *Belmont* brands increased while sales of *Number 7*, *Canadian Classics* and *Accord* all declined.

Tobacco farmers sue Canada and Ontario governments for alleged failure to stop contraband tobacco sales

Tobacco farmers in Ontario have launched class action lawsuits against both the Canadian and Ontario governments for their alleged failure to enforce various tax laws related to contraband tobacco sales.

Farmers from Elgin and Oxford counties in southwestern Ontario have joined forces, arguing that they have suffered financial losses due to illegal cigarette sales. They are bringing the class actions forward on behalf of all those legally engaged in tobacco growing in Canada from 2001 to the present.

In the lawsuit against the federal government, the farmers are seeking \$500 million in damages. They accuse Ottawa of ignoring “flagrant violations” of Canada’s *Excise Act* and the *Excise Tax Act*. The Ontario government is accused of failing to enforce the *Tobacco Tax Act* and the *Retail Sales Tax Act*.

A website, www.tobaccojusticeclassaction.com, created by the farmers and their lawyers features photographs of illegal smoke shacks operating in Ontario near the Six Nations reserve. The farmers allege the governments’ failure to enforce laws on some reserves has allowed illegal contraband sellers to become established in off-reserve communities across Canada. These off-reserve sellers are supplied with tax-free cigarettes by on-reserve operations.

The class action against the federal government was filed on October 29, 2010, in the Federal Court of Canada in Toronto. The action against the Ontario government was commenced on October 2, 2010 in the Ontario Superior Court of Justice in London. Neither class action has been certified.

In November, *The Canadian Press* reported that Ontario’s Attorney General, Chris Bentley, said the province is tough on those involved in the business of selling contraband cigarettes and that it is working on next steps to get even tougher:

“So we’ll be speaking more

completely to the next steps in our approach in the months to come.”¹⁶

Canada’s federal Justice Minister, Rob Nicholson, meanwhile, refused to comment on the lawsuit.

Imperial Tobacco Canada wants smuggling-related payments to Ontario redirected to tobacco farmers

Imperial Tobacco Canada (ITC) is arguing that payments to Ontario related to a settlement reached with the federal government and provinces in August 2008 (pertaining to the company’s involvement in cigarette smuggling and tax evasion in the 1990s) should be used to pay tobacco farmers also hurt by the schemes.

The news emerged after some Ontario tobacco farmers and their marketing board filed a class action lawsuit in Superior Court in London.¹⁷ The lawsuits allege that ITC—along with JTI-Macdonald and Rothmans, Benson & Hedges—purchased tobacco at a lower price (reserved for cigarettes for export) than what they paid for tobacco intended for domestic use.¹⁸ Under purchasing agreements at the time, tobacco companies were to pay a premium to Ontario tobacco growers for their crop if it was to be used in Canadian cigarettes.

Although the lower-priced tobacco leaf was to be used in cigarettes for the export market, the tobacco farmers claim that since the cigarettes were exported only temporarily and then smuggled back into Canada, they should have been paid at the higher price for leaf intended for domestic use. Imperial is now arguing that a portion of the monies it was forced to pay to the federal government and the provinces in fines and agreed upon settlements should be used to cover the farmers’ losses, too.

As was reported by *The Expositor* in Brantford:

“[ITC] claims that any money that might be due the growers in their action should be taken from the payments and put in trust.”

“The provincial government commenced its own action asking a court to rule on whether the claims of the growers should be settled by arbitration or by litigation.”

“Sutts, Strossberg LLP, the Windsor-based law firm pressing the class action, disagrees and says the growers were never a party to the global settlement.”¹⁹

As of November, the farmers’ lawsuit had not yet been certified as a class action. As a result, the three tobacco companies have not filed statements of defence.

Alberta announces plans to sue Canadian tobacco companies to recover health care costs

The Alberta government has indicated it will file a lawsuit against Canada’s major tobacco companies in an attempt to recover billions of dollars in health care costs associated with treating victims of tobacco industry products.

Justice Minister Alison Redford made the announcement on October 25, signalling that the province intends to join the three other Canadian provinces that have filed statements of claim—British Columbia, New Brunswick and Ontario.

“We expect that we will file our statement of claim sometime in the next 12 months,” she said.²⁰

Redford added that Alberta is looking forward to working with the other provinces on a

litigation strategy and that many other provinces will likely also file statements of claim as time progresses. Indeed, all Canadian provinces have passed enabling legislation that facilitates their ability to use the courts to recover health care costs for treatment of tobacco-related illness.

Since Ontario is suing the tobacco companies for \$50 billion in a similar lawsuit, it has been estimated that a proportionate claim for Alberta would be \$10-\$12 billion.

Imperial Tobacco Canada calls the move “sheer hypocrisy”

Issuing its standard response to these lawsuits, Canada’s largest tobacco company, Imperial Tobacco Canada, called the action hypocritical:

“For them to regulate an industry, collect taxes an excess of taxes on a product and turn around and sue the industry... it is sheer hypocrisy from our perspective,’ said Imperial Tobacco spokesman Eric Gagnon.”²¹

But Les Hagen, executive director of Alberta-based Action on Smoking and Health, called the announcement a necessary step forward.

“This industry has really been getting away with murder for decades and it’s time for them to be held accountable for an enormous impact on our quality of life.”²²

Hagen stressed that any future court award or settlement should also include non-monetary remedies to improve public health and regulations to control how tobacco industry products are marketed and sold.



Alberta Justice Minister Alison Redford said the province will file its statement of claim against tobacco companies in 2011.

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