

## COVER ESSAY

## Warnings that tell the truth: breaking new ground in Canada

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In Canada, the federal government predicts that tobacco industry products will cause the premature death of a third to a half of long-term smokers.<sup>1</sup> Health Canada predicts that out of a population of 30 million, the tobacco industry will kill more than three million Canadians now alive.

In 1998, a panel of 26 health experts acting on behalf of 130 health agencies and professions published a strong warning to the federal government. The expert panel said: "By any measure, by any standard, tobacco use in Canada constitutes a public health crisis . . . tobacco industry products will kill 3 million Canadian presently alive. We know the measures now that are necessary to prevent the addiction of our youth . . . There is nothing magical involved in preventing this epidemic. What is needed is political will."<sup>2</sup>

A public health problem of this magnitude should raise obvious questions. Where is the deep sense of urgency and outrage that should accompany a prediction of such gravity?<sup>3</sup> What kind of warnings should be placed on a product that addicts and results in the premature death of almost half of its users. What kind of warnings would be fair for a product that causes more avoidable mortality in Canada than motor vehicle deaths, suicide, murder, alcohol, and AIDS combined? A good start might be warnings that tell the truth.

Instead, we send conflicting messages to the public. We tell them that there are very serious risks associated with tobacco products. Then we allow our major cause of preventable death to be sold in some of the most beautiful packaging ever created. Children cannot help but notice that it is sold next to candy in every corner store. Equally surreal, we allow these same products to be advertised on posters and billboards next to schools, endorsed by tennis stars and motor sport idols, and promoted by engaging cartoon characters. Why should we be surprised when kids, and everyone else, underestimate the risks of tobacco use?

(Traditional brand advertising in Canada ended in 1989 with the coming into force of the Tobacco Products Control Act (TPCA). Tobacco sponsorship advertising continued as a result of loopholes in the legislation. In 1997, the Tobacco Act replaced the TPCA but sponsorships ads were, once again, given special treatment. Throughout the decade following

enactment of the TPCA, sponsorship ads have proliferated in Canada.)

### A breakthrough in warning systems

Part of this problem may be addressed if the dramatic new warning system now under consideration in Canada becomes law. If Health Minister Allan Rock stands up to the anticipated industry attempts at intimidation, the new warnings could be the largest in the world, using dramatic images and blunt messages to make their points.

Some of the warnings on the cover of this issue, designed by Canada's National "Tobacco OR Kids" Campaign, have been tested by Health Canada. The research results have been emphatic. Smokers want larger warnings with pictures, colour, and graphics. And they want tough, frank messages outside and inside the package.<sup>4</sup> Most smokers seem to be saying "Give us the truth, however uncomfortable. We want anything that will help us get off cigarettes." If the government listens, the recommended warnings could prevent tens of thousands of deaths over time.

To encourage the government to produce the best warnings possible, the Non-Smokers' Rights Association (NSRA), Physicians for a Smoke-Free Canada (PSC), and the Canadian Cancer Society (CCS) developed a brief for submission to Health Canada: *Criteria for an effective tobacco warning system* (12 March 1999). The National "Tobacco OR Kids" Campaign, supported by 150 Canadian health agencies, boards, and professions, then manufactured six model cigarette packages to demonstrate the potential of a package-based health education system. While the CCS commissioned research to expand our knowledge about warnings,<sup>5</sup> the NSRA obtained legal opinions to ensure that the federal government had the legal authority to move against the industry.

Our strategy had several objectives. We wanted to raise the standard for warning systems as well as the level of expectations on the part of the media and the public with respect to what warnings would emerge from the government's consultation process. We also wanted to frame the issue of warnings not as a run-of-the mill public health measure but as a moral and legal obligation to repair the damage and give fair warning after decades of consumer fraud.



Figure 1 Presentation box for six cigarette packages with the proposed new warning system designed by Canada's National "Tobacco OR Kids" Campaign. Under each package is a picture of children to remind decision takers of the purpose of the new warnings. The box and sample packages triggered significant news coverage.

To implement our strategy, the "Tobacco OR Kids" Campaign held a news conference and delivered the new packages in a dramatic black presentation box (figure 1) to every member of parliament and the senate, and to the national press, editorial boards, and health agencies. The strategy had impact. It triggered unpaid national television, radio, and press coverage that reached millions of Canadians. More importantly, we think the government listened.

New warnings like those illustrated will become law if Canada's health community wants them badly enough. This writer's experience is that, in the face of tobacco industry muscle, governments only deliver reforms of significance when pummeled into submission by health agencies, health professions, and the media.

With this background, this article discusses the purpose of a warning system, looks briefly at the health minister's proposed package changes, and discusses the possibility that the reforms will work. It will also look at some blocks which will arise during this campaign. If these warnings pass, they may again influence the development of warning systems in other countries. The existing Canadian warnings influenced the development of warnings in Australia, Poland, Singapore, South Africa, and Thailand.<sup>6</sup> Warnings based on the Canadian model were also written into the draft American settlement agreement in 1997 and into other subsequent bills, including the McCain Bill, that were debated in the United States Congress.)

#### Goals of a warning system

Any effective plan to address the tobacco epidemic will include measures to create

"informed consent" among users and potential starters about the risks of tobacco use. This necessitates an effective warning system. In Canadian law, a condition of informed consent is believed to exist when the adult buyer is informed about: the nature of the risks (for example, that cigarettes cause lung cancer and a host of other terminal diseases); the magnitude of the dangers including the prognosis for the smoker should illness develop (for instance, that lung cancer has a very high fatality rate); and the probability of such diseases occurring. Informed consent also assumes an understanding of the likelihood of tobacco-caused diseases occurring compared with other causes of preventable morbidity and mortality, such as the risk of dying from cigarettes compared with the risk of dying from motor vehicle injury, industrial pollution, or car exhaust (or, to mention examples the tobacco industry would prefer, the risks of demise from eating too much red meat or apple sauce). Finally, an informed consumer should also understand the benefits of ending or modifying the use of tobacco.<sup>7</sup>

The government is taking steps to force the industry to improve its warnings because the manufacturers have largely ignored their common law duty to warn. One leading common law decision expresses the manufacturers' duty to warn as follows:

"Once a duty to warn is recognized, it is manifest that the warning must be adequate. It should be communicated clearly and understandably in a manner calculated to inform the user of the nature of the risk and the extent of the danger; it should be in terms commensurate with the gravity of the potential hazard, and it should not be neutralized or negated by collateral efforts on the part of the manufacturer."<sup>8</sup>

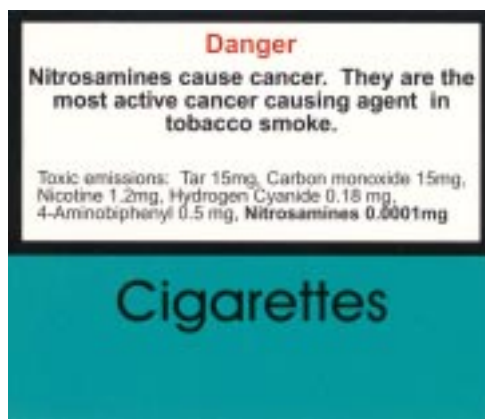


Figure 2 The Canadian government's proposed warning that was criticised for being too technical and scientific.

Achieving informed consent will involve two goals: getting better information about tobacco risks into the marketing process (for example, vastly improved warnings and public education campaigns), and removing disinformation from the system (for instance, advertising and sponsorships bans, or the prevention of manufacturers from claiming that there is a “scientific controversy” about the risks of tobacco).<sup>9</sup> Because attractive packaging gives legitimacy to tobacco products and may imply that the product is safe, the package itself may be the single major source of disinformation about tobacco products.

#### Canada proposes new warning labels

Canada's eight rotating cigarette warnings introduced in 1994 set world precedents in several respects.<sup>10</sup> Unfortunately, after five years of exposure, these labels are stale. Faced with this problem and with pressures to produce warnings under Canada's new Tobacco Act, Health Minister Allan Rock proposed the new warning system in January 1999 as part of a larger package of promised reforms.<sup>1</sup>

The system announced focused on tobacco product chemistry and was almost universally criticised for being too technical and scientific (figure 2). Canada's national newspaper said, “The language is much, much too sciency for even the university-educated taste . . . put some negative images on cigarette packages.”<sup>11</sup>

Fortunately, the government got the message. The chemistry lessons will be downplayed and a new warning approach used.

If the proposals become law, the new exterior warnings would occupy 60% of both major faces of Canadian packages (English on one face, French on the other) as well as one side and one end panel (figure 3). According to an analysis of the announcement by the Canadian Tobacco Manufacturers' Council, the suggested warnings would be about twice the size of any other existing warning, just for the major face warnings alone!<sup>12</sup>

The warning reforms would not be limited to the outside of the package. Most Canadian packages are made up of the exterior shell (see cover) and an interior slide which surrounds and holds the cigarettes and which the smoker



Figure 3 The new warnings, if adopted, would occupy 60% of the exterior major face.



Figure 4 Interior slide that wraps around and holds the cigarettes (see also figures 5–7). The slide warnings create questions and surprises and use all of the surface to make critical points. Quit contemplators and the families of smokers will discover that the packages hold interesting facts all over the package.

moves inside the shell to expose the cigarettes. Health Canada's proposal is to also use at least one side of the interior slide to expand the warning messages. This article shows some of the proposed slide warnings manufactured by the “Tobacco OR Kids” Campaign (figures 4–7).

What are the chances that smokers would ignore warnings of the quality illustrated on the cover and in the article? Not great. Even if smokers prefer to put their heads in the sand, warnings like these will often be drawn to their attention by their spouses, children, and friends.

Consider the potential of these reforms. With over two billion cigarette packages in circulation in Canada every year, an effective package-based message system could become the most effective health education campaign the country has ever seen. The messages on and in the package would perfectly target smokers (about 70% of whom want to quit<sup>13</sup>)

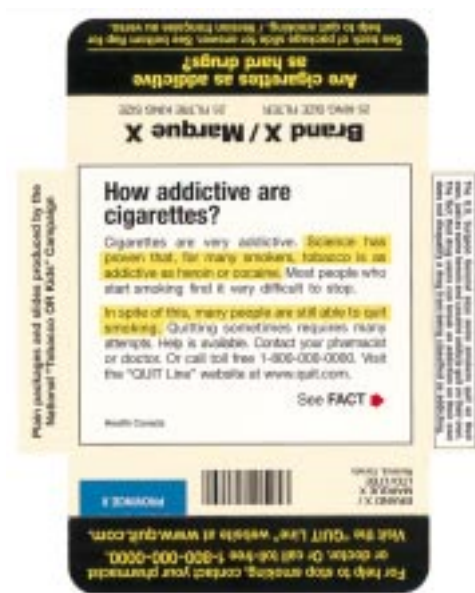


Figure 5 Interior warning of addiction: Tobacco industry documents show that the industry fears addiction warnings above other warnings. One document states “the entire matter of addiction is the most potent weapon a prosecuting attorney can have in a lung cancer/cigarette case. We can’t defend continued smoking as ‘free choice’ if the person was addicted.” (Minnesota Trial exhibit 14303 TIMN 0107 823.)

and young starters who are not yet addicted. They would give the health minister virtually unlimited opportunities to address a variety of subjects such as addiction, nicotine manipulation, and the folly of the use of light cigarettes as an alternative to quitting. These reforms could be introduced at no cost to the taxpayer.

**The package as an advertisement**

There is an important ancillary benefit to the introduction of warnings of the kind illustrated. As Slade has noted:

“As advertising restrictions loom or become a reality, the surfaces of the pack itself remain

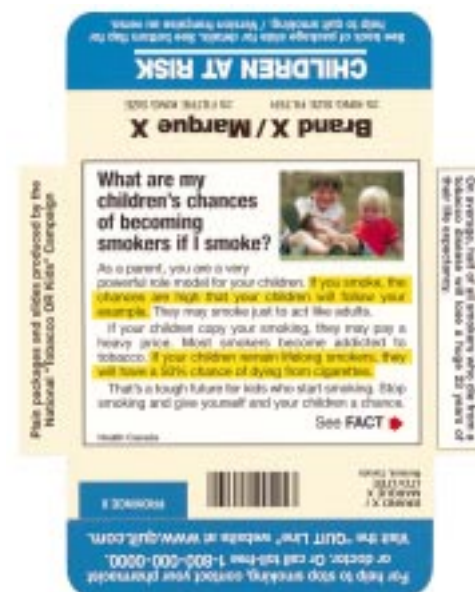


Figure 6 Warning about parental modelling.



Figure 7 Buerger's disease warning.

available for communication to customers and potential customers. The increased interest these companies are showing in novel pack designs and in novel brands is likely to be a way of exploring how to market cigarettes in a limited advertising environment. The adaption of advertising to the pack itself in this manner is but another reason that a requirement for plain packaging is sound public policy.<sup>14</sup>

The industry acknowledges the importance of the package as an advertising vehicle. In response to the new warning proposals, the Canadian Tobacco Manufacturers' Council (CTMC) complained “the package is at present one of the only remaining means manufacturers have of communicating with their customers.”<sup>12</sup> However, the communication now is dishonest. The CTMC complains that the warnings “currently proposed so reduce the size and presentation of the brand elements on the packages as to render them virtually inert.”<sup>12</sup> No one has ever said that if the truth were told about this product that brand elements would continue to retain the same impact.

The warnings being considered would take Canada a giant step toward plain packaging. At a minimum, they would denormalise the industry's sophisticated packaging. Equally important, the fact that the government would require the product to be sold with such messages, thereby separating this product from other legitimate products in the marketplace, could be the most important warning message of all.

**Do warnings work?**

There is ample evidence to conclude that smokers and potential starters do not understand either the nature of the risks or the magnitude of the dangers of tobacco products. Many understand that “smoking is bad for you.” But beyond this superficial level of awareness, knowledge levels of risk are

inadequate.<sup>15</sup> In 1989, the United States surgeon general reported that smokers were “unaware of even the most rudimentary health risk information about smoking.”<sup>16</sup> In 1996, even with Canada’s stronger warnings in effect, only 64% of respondents could identify lung cancer as a tobacco risk. Addiction was known to only 26%.<sup>17</sup>

Cunningham reviewed Canadian tobacco industry documents and discovered an extraordinary underestimation of risk.<sup>6</sup> Recent evidence shows that the situation has not improved.<sup>18 19</sup>

Warnings can have a positive impact on consumers, especially on starters and those contemplating quitting smoking, if the warnings are highly visible and provide specific rather than general information.<sup>16 20</sup> Recent Polish evidence shows direct increases in awareness and reductions in consumption as a result of new warnings. Zatonski says that 3% of male smokers and 4% of female smokers reported quitting following the introduction of strong warnings.<sup>21</sup> Although these percentages seem modest, when considered across an entire population, such an impact translates into an extraordinary health gain for the Polish people.

In Canada, in 1994, just the movement of a warning from the bottom of the package to the top and a change from the package colours to a stark black-and-white format improved the recall of one warning from 20% to 95%.<sup>1</sup>

As Aftab *et al* point out in this issue of *Tobacco Control* (page 368), similar evidence of the efficacy of warnings comes from Australia and South Africa. Warnings may also be expected to have a greater impact in developing countries where there has been less public education about tobacco risks.

The best evidence that warnings can work may be the intensity of the tobacco industry’s opposition to warnings reform. Recently released industry documents reveal a pattern of industry concern about warnings. One BAT document says “There should be no specific mention of smoking related disease” in warnings.<sup>22</sup> Another says “Reference to specific diseases on health warnings should be resisted strongly.”<sup>23</sup>

### **What are the chances? Tobacco control is politics**

The Canadian tobacco industry aided by its foreign parents will most certainly mount fierce resistance to the proposed warnings. Will the industry be successful in blocking enactment? The governing Liberal party has an ugly track record on tobacco going back decades. One magazine described the party as “The Tobacco Party of Canada.”<sup>24</sup> Its breathtakingly irresponsible cave-in to tobacco industry-fuelled smuggling and the rollback of tobacco taxes in 1994 was described by the national health community as “the largest setback in the history of [Canadian] public health.” This was after over 100 Canadian health and human service organisations published and endorsed a two-page advocacy advertisement to condemn the Liberal government for its planned tobacco tax rollback.<sup>25</sup>

Hence the government’s ongoing close ties with the industry are a source of continuing concern.

Another concern is lawyers in the Department of Justice whose conservative, risk-averse advice invariably weakens health policy. Unlike in the private sector where lawyers are asked by the client to find legal solutions to achieve objectives, government lawyers seem inclined to dictate the limits of health policy. And the limits are almost always cautious to the extreme.

There is an ongoing concern within government that the industry will sue. In fact, the industry will always litigate, even if only to slow down the pace of reform. In fact, the government has been constantly in litigation with tobacco manufacturers since 1989. If the government does not find itself in court on any given initiative, that reform may not be expected to impact negatively on sales. “The justice block” as it is called will only be overcome if the health community pushes the government hard. (For periods of time, “the justice block” has brought health policies and initiatives in Health Canada almost to a state of paralysis. Sources within Health Canada informed this writer that while litigation was underway, Canada’s new warnings were blocked for over two years. Even public education campaigns were slowed or stopped.)

Lawyers for the health community contend that if the government takes bold action and legislates as if it believes that tobacco mortality constitutes a health crisis, the courts will give the government more legislative room. But when the government takes hesitant steps and is caught in obviously conflicting and inconsistent positions related to regulating the industry, courts are given the opposite message. When that happens, the courts are less willing to recognise the uniquely destructive nature of tobacco and tend to treat tobacco like other legitimate products on the market. When the government holds the trump cards (the legislative strings), it can afford to be aggressive.

There are signs that the health side may realise the warnings, despite the fact that litigation is assured. First, the government’s track record on tobacco is attracting sufficient criticism that it will have to deliver some significant reforms on this issue. Second, the health minister is ambitious and has had a series of setbacks on a number of key health files. He now needs a “win” on the tobacco/health file.

### **The industry’s case**

The industry does not have a good case to block the introduction of the new warnings. The manufacturers tried to block warnings similar to those now on Canadian packages but the Supreme Court of Canada found little sympathy for the industry position. Nine Supreme Court judges unanimously rejected the industry’s request for a stay:

“Further, both parties agree that past studies have shown that health warnings on tobacco product packages do have some effects in terms of increasing public awareness of the dangers of

smoking and in reducing the overall incidence of smoking in our society. . . . The public interest in health is of such compelling importance that the applications for a stay must be dismissed."<sup>26</sup>

Legal scholars commissioned by the NSRA have concluded that the government has the authority to proceed to plain packaging. The government also has good evidence that this reform would reduce consumption.<sup>27</sup> Given that plain packaging would remove 100% of the industry's "trade dress" (copyright design and graphics), a health reform that uses only 60% of the package is not expected to be an insurmountable barrier.

An internal BAT document strongly suggests that the industry also sees the writing on the wall. In an overhead presentation, the BAT document says that the "plain pack group" has looked at international "trade mark protection" (GATT/TRIPS) for solace. It concludes that: "current conventions and treaties afford little protection; GATT/TRIPS little joy; other industry groupings little support; domestic political solutions needed."<sup>28</sup>

What are the chances that the industry will find a political solution in, for example, the prime minister's office? Our guess is that the industry, as always, will get in the door easily (the president of Imperial Tobacco plays golf with Prime Minister John Chrétien). But the manufacturers are fighting numbers. Almost every significant health profession, health agency, and human service organisation representing millions of Canadians want the "Tobacco OR Kids" warnings. Health Canada research also shows that an overwhelming number of the industry's customers want these warnings. And the media is inside. The only people who are opposed are those who embarrassed the government over tobacco smuggling. If you were a politician, where would you come down? The job of the health community then is to ensure that the numbers work for us, that another inside tobacco deal is blocked.

Thanks to Rob Cunningham, David Sweanor, and Francis Thompson for research assistance with this article.

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### Note to readers

We hereby solicit your ideas and contributions for future covers of *Tobacco Control*. As with previous covers, we would like future covers to be colourful and creative—with a tobacco control theme. Original artwork, anti-tobacco posters, photographs, and cartoons may all be considered. Material with an international flavour would be particularly desirable. A cover essay will generally appear in each issue to provide appropriate background information and commentary on the cover.

Please send ideas and submissions (original or high-quality, camera-ready photographs) to the editor at the address on the inside front cover.—ED