

You thought Canada had a ban on tobacco advertising. Take another look. Canada will not come close to ending tobacco promotion until the government addresses the core of all tobacco marketing — the package itself.

# **THE CASE FOR PLAIN AND STANDARDIZED TOBACCO PACKAGING**

***The Case for Plain and Standardized Tobacco Packaging***

is a publication of the Non-Smokers' Rights Association and the Smoking and Health Action Foundation.

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The NSRA is supported by the research of the Foundation.

In 2000, the NSRA was the recipient of the international Luther L. Terry Award in the "Outstanding Organization" category.

# It's about stripping the package of its power to hook kids and hike sales

## A tobacco package is more than a container for a day's supply of an addictive drug — it is the core of all tobacco marketing

The devastation caused by tobacco industry products is staggering. Based on World Health Organization (WHO) estimates of tobacco-caused mortality, Health Canada predicted that tobacco industry products will kill three million Canadians presently alive. <sup>1</sup> Three million!

A ban on tobacco advertising and promotion is a critical component of any comprehensive plan to address the tobacco epidemic. Canada understood the need to end tobacco advertising and promotion when it passed tobacco legislation in 1988 and when it ratified the WHO's landmark health treaty, the *Framework Convention on Tobacco Control (FCTC)*, in 2005.

However, Canada will not come close to terminating the advertising and promotion of tobacco as envisioned by the *FCTC* until it legislates plain and standardized packaging.

Plain packaging of tobacco products is packaging that is stripped of the colours, graphics, manufacturer's trademarks, and other promotional elements that recruit kids and encourage tobacco use.

***"The package is the core of all tobacco marketing. No country has a tobacco advertising ban until it deals with package-based tobacco advertising."***

*Martin Rothstein  
President and CEO  
MacLaren: Lintas  
(Canadian advertising agency), 1994*

Under effective plain packaging legislation, tobacco products would be sold in packs of a standardized colour, shape, and size, with the brand name in a prescribed font and location. The only other elements permitted on the pack would be the information required by law: health warnings, manufacturer's name, product identification code, and tax paid markings.

Because of its potential to neutralize the power of tobacco marketing, plain and standardized packaging has been identified as a powerful public health strategy by health experts and as a major threat by tobacco manufacturers and their allies.

Both interests recognize that **tobacco packaging is tobacco advertising**. In fact, the tobacco package is the **cornerstone** of all tobacco marketing.

This brochure will highlight the evidence — from internal tobacco company documents, research studies, investment analyses, and insight from smokers themselves — that packaging communicates brand image, that this image is vital to making cigarettes a badge of identity for smokers, especially adolescent starters, and that the package itself sells tobacco.



*Front face of a plain package using a predominantly gray background along with one of Canada's current warnings*

## 37,000 preventable tobacco deaths in Canada every year demand an extraordinary public health response

Tobacco manufacturers will not react passively to any effort that will hinder their recruitment of kids, make smokers reassess the product, and discourage ex-smokers from relapsing. **When the industry pushes back, parliamentarians must not allow Big Tobacco to dictate a standard of proof that tobacco consumption will drop as a result of the reform — a standard that may be impossible to achieve.**

In the face of an industry-created epidemic, if additional justification for the reform beyond the abundant evidence now available is required, the burden of proof must be reversed. The onus must be on the industry to prove that its ongoing investment of millions of dollars in tobacco packaging has no effect on the consumption of its products.

Common sense must prevail. Why would any rational society that cares about the health of its citizens allow tobacco products — products that kill when used exactly as the manufacturer intends, products that kill half of their long-term users and half of this group in middle age, products that cost Canada's health care system over \$4 billion a year — to be sold in beautiful packages that both mask and normalize their lethal contents?

***“[Is] anyone naive enough to believe that the very act of banning snazzy multi-coloured packaging won't have some effect? At the very least, it [plain packaging] will make it obvious to consumers — especially impressionable young consumers — that cigarettes should not be treated like any other product. The ban on packaging would underscore the message that cigarettes ... are a pariah product.”***

*Editorial*  
*Canada's Marketing Magazine* <sup>2</sup>

## The tobacco package is the cornerstone of tobacco marketing

### Packaging communicates brand image

Experts consider packaging to be one of five key components of successful marketing, along with product, price, place, and promotion. Indeed, the package “may be the biggest medium of communication” with potential customers.<sup>3</sup> This is particularly true of cigarette packs. Marketing research shows that:

- The package is present at the crucial moment when the purchase decision is made.
- The package has extensive reach to all purchasers and most users.
- Consumers obtain information from the package, even if the information provided by the industry is intended to seduce and misinform.
- Consumers are intimately involved with the package. Smokers retain the package, reopening it many times a day, implicitly endorsing the product every time they open the package in front of others, especially children.



*Retail display in Ontario using tobacco packages as promotion (before the province's 2006 display ban)*

What the cigarette package communicates is the brand image. Don Brown, then Vice-President of Marketing with Imperial

Tobacco Limited, Canada's largest tobacco manufacturer, said it best. He explained that a cigarette is just a cigarette but with the packaging comes the brand:

"The product itself ... is very interesting, because in the cigarette business there is very little to distinguish, particularly in Canada, because we all use the same kind of tobacco.... So the discrimination in product terms, pure blind product terms, without any packaging or name around it, is very limited.... Put it in a package and put a name on it, and then it has a lot of product characteristics."<sup>4</sup>

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## "Brand image is everything"

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The creation and reinforcement of brand image are vital to cigarette sales. What the companies are selling, apart from an addictive drug to satisfy the cravings of smokers, is a badge of identity. Professor Richard Pollay, an expert witness for the Attorney General in Canada's defence of the *Tobacco Act*, says:

"In the cigarette category, brand image is everything. The brand of cigarettes a person smokes is their identity. Cigarettes tell others who they are as a person. There is a strong emotional connection to the brand, the image it projects about the smoker, not only to themselves but to others."<sup>5</sup>

But how can cigarettes serve as a badge of identity in an era when smoking has become socially unacceptable? This pack of the new Canadian brand XS provides part of the answer: Make the pack discreet, but also make it the size and shape of what is arguably the most important badge product of teens and young adults today — their cell phone or BlackBerry.



*A package of the new brand of cigarettes XS Extra Slims next to a BlackBerry*

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## Packaging is even more critical when promotion is restricted

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In an era of restrictions on advertising and promotion, the pack assumes a far greater role. It replaces traditional advertising as the primary means by which tobacco companies establish a unique image for their brands and promote their products. Three decades ago, tobacco executives foresaw the day when all of their promotional might would have to be wielded by the packaging alone:

"Under conditions of total ban, pack designs ... have enormous importance.... Therefore, the most effective symbols, designs, colour schemes, graphics and other brand identifiers should be carefully researched.... *An objective should be to enable packs, by themselves, to convey the total product message* (emphasis added)."<sup>6</sup>

Tobacco companies have undertaken sophisticated scientific research to understand how to enhance the effectiveness of pack design. BAT, the parent of Canada's Imperial Tobacco, conducted a series of experiments using an eye-gaze monitor and projection tachistoscope to measure the visual prominence of various elements of a cigarette pack. The findings ensure that those elements with the greatest importance in communications terms achieve the greatest visual impact on the pack.<sup>7</sup>

Tobacco marketing and design professionals nowadays work closely with printing, ink, and packaging companies to exploit every inch of the pack and to help the packaging do the job previously assigned to a range of promotional vehicles:

*"All the focus on advertising and marketing is now turned to the pack, as restrictions abound and the pack remains the one venue of communication with the consumer. Today's packs are certainly turning heads with glitz and glamour — flashy foils, fancy paperboard featuring unique curves, and etching and embossing that you just have to touch* (emphasis added)."<sup>8</sup>

The radical redesign of the top-selling brand in Canada, du Maurier, from the traditional four-sided slide-and-shell to an eight-sided, bevelled-edge, hinge-lid pack reveals much about the motivation of tobacco companies in developing new packages. According to Jeff Guiler, Imperial Tobacco's Vice-President of Marketing who led the project, the goal of the 'Signature Pack'

was to set du Maurier apart from the competition and reinforce its image and position as Canada's leading premium brand.



Award-winning eight-sided du Maurier Signature pack (L) vs. traditional 4-sided slide-and-shell pack (R)

The Imperial executive was revealing:

“Given the current ban on cigarette advertising and severe limits on promotional activities, manufacturers must find other meaningful ways of communicating brand awareness. Enhancements to packaging and other product details provide consumers with tangible touch points that effectively express the brand’s identity.”<sup>9</sup>

Another noteworthy package design trend is the use of designer tipping and wrapping papers [speciality papers that wrap around the filter and tobacco leaf, respectively]. The papers incorporate branding elements, such as the brand name, brand logo, brand colours, and distinctive patterns that render each cigarette an individual emblem of brand identity.<sup>10</sup>



Kool cigarettes branded filters and paper. This is where cigarette design is going

The introduction in 2008 of a new line of Player's, the second best-selling brand in Canada, illustrates how Imperial Tobacco is embracing these trends. The line (Black & Gold; Black & Silver; Black & Red) is offered in a new side-opening slide pack that includes new pack colouring, size and shape.



Novel side-opening Player's pack with designer branding on cigarette and foil (photo courtesy of Info-tabac)

## Creative packaging undermines key health promotion measures

The innovations in cigarette package design in Canada over the past few years not only make the product more appealing but also undermine or, worse, neutralize many key tobacco control measures already in force.

### 1. Package designs reduce the effectiveness of Canada's health warnings

The diminutive size of many of the new packs reduces the size of the warning text and graphics and diminishes their effectiveness. Several of the new packs of twenty cigarettes are not much larger than the kiddy packs of 5 and 10 cigarettes that were banned in Canada in the 1990s. The use of bold colours in metallic finishes also reduces the visual prominence of the warnings and minimizes their impact.



The warning is much more prominent on the traditional Export 'A' slide-and-shell pack (L) compared to the warning on the new 'purse pack' of B&H Superslims (R)

## 2. Package designs weaken reforms intended to reduce package deception

For decades, a major deception on cigarette packages has been created by the marketing of so-called low tar cigarettes. The fraud involves the use of descriptors such as 'light', 'mild' and 'smooth' which encourage smokers to believe that these products offer reduced risks when compared to full strength cigarettes.<sup>11</sup> In response to a complaint filed by the Non-Smokers' Rights Association with the Competition Bureau, the Bureau struck what could only be described as a sweetheart deal with the tobacco industry.\* The manufacturers agreed to stop using the terms 'light' and 'mild', but only those terms.

The settlement allowed the manufacturers to replace the banned terms with alternatives like 'smooth' and 'mellow', descriptors

\* The NSRA filed its complaint with the Competition Bureau in response to the government's unwillingness to put an end to the 'light' and 'mild' consumer fraud. When it became apparent that the Bureau was also reluctant to challenge the manufacturers, the NSRA took the inaction on the complaint to the Federal Court of Canada. The Bureau stopped the NSRA's legal challenge and avoided future litigation with the manufacturers by settling with them on the narrow prohibitions related to 'light' and 'mild'. In doing so, the cigarette makers avoided the potential within the *Competition Act* for severe civil or even criminal sanctions including admissions of guilt, disclosure of documents, massive fines, corrective advertising and jail time.

that are as misleading as the old terms. Moreover, the Bureau made no effort to curb the ongoing deception created by colour gradations and numbering systems in the packaging. The Competition Bureau's decision left much of the deceptive power of the package in the hands of the cigarette makers.



As shown in this guide for retailers, tobacco manufacturers merely replaced the banned terms with other misleading descriptors. In the case of Export 'A', the banned term 'light' became 'smooth'<sup>12</sup>

Creative packaging undermines the broad prohibition in the *Tobacco Act* on forms of promotion designed to create an **erroneous impression** about the product's characteristics or health risks. Despite this prohibition, as research by Hammond shows, consumers hold the same erroneous impressions about brands marketed with a lighter packaging colour, with the descriptors 'smooth' or 'silver', or with lower numbers as they do with products labelled 'light' or 'mild'.<sup>13</sup>



One example from Hammond's research that shows that the vast majority of smokers and non-smokers surveyed believe that identical cigarettes in a lighter coloured package provide lower health risks, deliver less tar, and taste smoother<sup>14</sup>

***“The settlement allowed the manufacturers to replace the banned terms with alternatives like ‘smooth’ and ‘mellow’, descriptors that are as misleading as the old terms.”***

The findings from an international four-country study corroborate Hammond’s findings that bans on descriptors such as ‘light’ and ‘mild’ are insufficient to correct smokers’ erroneous impressions (false beliefs) that these brands are safer or healthier, perceptions that the manufacturers have carefully nurtured.<sup>15</sup>

With the industry’s freedom to continue to incorporate deception into its packaging, cigarette packs are now adorned with descriptive phrases that trumpet the company’s history, the tobacco’s quality, or the brand’s unique features. Serving the same role as the advertising slogans of the past, these phrases normalize and legitimize the product and divert attention away from its lethal nature.



*Using a cellophane overwrap, this du Maurier pack emphasizes the use of “premium tobaccos cut beyond ordinary standards.” Peter Jackson packs trumpet the brand’s “Sun ripened tobacco inside, bright colour outside”*

### **3. Creative packaging evades Canada’s ban on lifestyle advertising**

In Canada, the *Tobacco Act* bans all forms of lifestyle advertising. Nonetheless, both the front and back of the cellophane overwrap on special editions of du Maurier promote associations between the du Maurier brand and upscale lifestyles.

### **Special edition du Maurier pack with lifestyle associations**



*Back of pack: “Yaletown by Day/ Vancouver/Yaletown. Urban and urbane. The city’s old warehouse district. Teeming with electronic media and movie types; who live, work and play here. And boy do, they ever”*

### **4. Creative packaging violates Canada’s tobacco advertising restrictions**

The *Tobacco Act* also bans tobacco advertising, except in three specified venues. Blatantly disregarding this prohibition, in 2009 Imperial Tobacco began advertising two new members of the du Maurier brand family, “Smooth Taste” and “Fine Taste,” right on the cellophane overwrap on packages of regular du Maurier!

### **New members of du Maurier brand family advertised on packages of regular du Maurier**



*“Out now. A new offer from du Maurier. See back for details”*

*“Introducing 2 new members of the du Maurier family: Charcoal filtered for a super smooth taste. Ask your retailer for du Maurier Smooth Taste or Fine Taste today”*

## The Necessary Law Reform: Plain and Standardized Packaging

If the problem is that tobacco packages have become mini-billboards — fulfilling the same role as traditional advertising in promoting brand image — then the solution is to strip the packaging of all its promotional elements, in other words, to legislate **plain packaging** of tobacco products.

And when tobacco manufacturers play with the size and shape of their packages to create greater demand and, generally, to undermine measures to cut tobacco-caused disease, then the solution is a **standardized package** that works, not for marketing purposes, but for public health.

Plain packaging would apply to the package **exterior and interior** and would **prohibit** colours, logos, descriptive words and phrases, and distinctive fonts. Plain packaging would **regulate** and **standardize**, by type of product:

- size and shape of the package
- style of opening
- packaging material, including gloss level
- lining material and colour
- ink colour and type
- font type, size, and colour.

To prevent tobacco companies from merely transferring their marketing expertise from the packaging to the product, **package reforms must also apply to the tobacco product itself**. Cigarettes, for example, would be made a prescribed length and circumference and would carry no logos or other embellishments. They would be rolled in a standard paper in a mandated colour. Plain packaging would **apply** to:

- all forms of smoked tobacco — cigarettes, cigars, cigarillos, hookah tobacco, and loose leaf (roll-your-own) tobacco
- all forms of smokeless tobacco — snus, spit/chew, oral snuff, nasal snuff
- cigarette papers — wrapping, tipping, rolling

- blunts
- carton wrappings
- carrying cases.

## Six Public Health Benefits from Plain Packaging

### 1. Plain packaging will reduce deception on the package

Research cited earlier <sup>16</sup> shows that, in Canada and other countries, prohibitions on the use of the descriptors ‘light’ and ‘mild’ alone did not serve to correct consumers’ false beliefs that so-called ‘lower tar’ brands are safer or healthier. In fact, limiting the ban to only these two descriptors has simply inspired industry innovation.

Tobacco companies have proven adept at circumventing such narrow restrictions on their ability to market their products. The only way to prevent the manufacturers from offering their customers false reassurances about the risks of tobacco is to legislate a broad prohibition on the use of all colours, numbers, and descriptors on tobacco packaging.

### 2. Plain packaging will increase the power of warnings

Research shows that plain packaging increases the salience of package warnings. Various studies of adolescents, conducted in New Zealand, Australia, and Canada, found that both the noticeability and the unaided recall of tobacco package health warnings increase substantially with plain packaging.<sup>17,18,19</sup> Noticeability is a critical determinant of the effectiveness of a health warning.

An Australian government study of adults that specifically examined the relationship between package design and warning impact found that plain packaging increases the believability and strengthens the impact of the warning messages.<sup>20</sup>

### 3. Plain packaging will undermine the seductiveness of the brand image

Most plain packaging research has examined the potential impact of this reform on brand image. These studies have concluded that for adolescents and adults, non-smokers and smokers, plain packaging would demean brand image.

Evidence of the potential of the plain package health strategy surfaced in 1987 with a *Forbes* magazine article about the value of packaging to Marlboro smokers. When offered Marlboros at half price in generic brown boxes, only 20% of Marlboro smokers were interested, even though they were assured that each package was fresh, had been sealed at the factory, and was identical (except for the packaging) to what they normally bought.<sup>21</sup>

In 1991, a New Zealand study found that young people consider plain packs to be “dull and boring.” The researchers concluded that package design has a “huge impact” and that their study “clearly supports the idea of plain packs as a deterrent [to smoking].”<sup>22</sup>

Closer to home, an international study carried out by the University of Illinois and the University of Toronto, involving more than 2,000 students, found that those who smoke cigarettes in plain packs were considered “wimpy,” “boring,” and “geeky.” Plain packages were rated by 86% of Ontario students as “more boring” and by 78% as “uglier” than regular cigarette packages.<sup>23</sup>

One of the most important studies on plain packaging to date is the 1995 report of a panel of marketing experts assembled by Health Canada. *When Packages Can't Speak* found that removing brand imagery from the package hinders the pack from communicating positive associations related to personality and lifestyle:

“Denuding cigarette packages of major elements of their brand markings (other than their name) appears to limit teenagers’ capacity to associate specific images with specific brands. Under these circumstances, these brands lose their badge value and self-defining characteristics.”<sup>24</sup>

A recent study of adult smokers in Australia found that plain brown packs with few brand elements gave rise to negative perceptions of the attractiveness of the pack, the quality of the cigarettes, and the personality of smokers with such packs. Smokers

of the plain packs were rated as considerably less stylish, social, and mature than smokers of the original branded packs.

Respondents also deduced that the cigarettes in the plain packs would have a less rich flavour, would be made of lower quality tobacco, and would be less satisfying. The study showed that for most of the attributes examined, the plainer the pack the more negative the ratings.<sup>25</sup>

Recognizing the importance of the package and of branding in the tobacco business, analysts with Citi Investment Research concluded that “plain packaging would go a long way to undermine the power of tobacco brands and it is the brands that make the industry so profitable.”<sup>26</sup>

**“[P]lain packaging would go a long way to undermine the power of tobacco brands.”**

*Citi Investment Research, June 2008*

### 4. Plain packaging will destroy cigarettes as badge products

If all cigarettes were sold in plain and standardized packages, then the value of cigarettes as badge products that communicate a desired image to others would be greatly reduced or lost. Health Canada’s expert panel reported:

“In the end, if all cigarette brands and packaging look alike, it would be considerably harder for teenage smokers to point to one brand of cigarettes as being unique and self-definitional and another as being antithetical to them.”<sup>27</sup>

***When Packages Can't Speak* concludes that destroying the badge value of cigarettes would likely reduce the number of teens starting to smoke and increase smoking cessation among both youth and adult smokers.<sup>28</sup>**

### 5. Plain packaging will reduce tobacco company profits

The reaction of market analysts to the possibility of plain packaging provides valuable insight into the likely impact of this

policy on the tobacco business. The investment house Morgan Stanley concluded that plain packaging and retail display bans are reforms that concern the industry the most (after taxation), as both “would significantly restrict the industry’s ability to promote their products.”<sup>29</sup>



Cover of a leading voice of the international tobacco industry, April 2008

Analysts with Citi Investment Research predict that with plain packaging, consumers would be much less willing to pay a premium for certain brands, substantially lowering tobacco company profits.<sup>30</sup> Morgan Stanley reached much the same conclusion:

“In contrast to existing regulations, we believe that UK ‘plain packaging’ — which could become a standard in other markets — could have a materially adverse impact on cigarette brand equity, commoditize the overall category, and could result in significantly reduced profit.”<sup>31</sup>

## 6. Plain packaging will take Canada one step closer to a comprehensive tobacco ad ban

The *Framework Convention on Tobacco Control (FCTC)*, mentioned earlier, is an international public health treaty which 166

countries, including Canada, have ratified. Article 13 of the *FCTC* requires all Parties to “undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship,” in recognition of the fact that a comprehensive ban would reduce tobacco consumption.

Acknowledging that packaging is an important element of advertising and promotion serving to attract consumers, cultivate and promote brand identity, and encourage use, recently-adopted Guidelines for the implementation of Article 13 recommend plain packaging:

“Parties should consider adopting plain packaging requirements to eliminate the effects of advertising or promotion on packaging. Packaging, individual cigarettes or other tobacco products should carry no advertising or promotion, including design features that make products attractive (emphasis added).”<sup>32</sup>

## Significant Support for Plain Packaging

Significant interest in plain packaging emerged in Canada in the late 1980s. In 1989, the year that the New Zealand Toxic Substances Board recommended that cigarettes be sold in plain packages,<sup>33</sup> a coalition of over 20 health groups, health professions and other non-governmental organizations made this reform one of its main campaign objectives. By 1991, many of these groups were pressing the Ontario government to adopt this reform, giving rise to editorial commentary on the issue by a number of major Canadian newspapers.

*The Globe and Mail* encouraged Ontario “to take up generic packaging.” Other provinces, said *The Globe*, “would be certain to follow.” The editorial concluded: “Research indicates that such packages turn teenagers off.”<sup>34</sup>

Canada’s largest circulation paper, *The Toronto Star*, showed similar leadership:

“The idea [plain packaging] — a logical extension of Ottawa’s ban on tobacco advertising — deserves serious consideration... [I]f image sells a dangerous product, especially to impressionable teens, why not obliterate the image?”<sup>35</sup>

The *Ottawa Citizen* editorialized:

“And though legislating plain packaging probably infringes on a tobacco company’s right to freedom of expression, the Citizen surely believes this is a justifiable infringement given the health dangers of smoking.”<sup>36</sup>

Other Ontario newspapers also favoured plain pack legislation, suggesting strong support at the community level. Although this reform was never legislated in Ontario, it remained on the health agenda.

In 1994, to placate some of the anger created when it caved in to industry-fuelled cigarette smuggling and lowered tobacco taxes, the federal government referred the plain pack health strategy to the House of Commons Health Committee and had Health Canada commission the expert panel report on the subject cited earlier.

*The Globe and Mail* weighed in again on the subject in a lead editorial:

“Ottawa clearly has the legal right to go ahead with plain packaging.... If it can be shown that plain packaging will significantly decrease the incidence of smoking, particularly the tendency of young people to take up the habit, we would be in favour of it — as we were in favour of high cigarette taxes.”<sup>37</sup>

In its report entitled *Towards Zero Consumption*, the all-party Health Committee recommended that the government proceed with plain packaging legislation if the expert panel provided evidence that such packaging would reduce consumption.<sup>38</sup>

In 1995, Health Canada’s expert panel completed its report, *When Packages Can’t Speak*. This landmark study gave further impetus to this reform. It predicted that plain packaging would decrease teen starters and increase smoking cessation.

Throughout 1994 and 1995, the tobacco industry waged an aggressive campaign to block plain packaging. Nevertheless, the health community held its own until September 1995 when the Supreme Court of Canada, in a 5-4 split decision, overturned the historic *Tobacco Products Control Act*. At this point, the plain packs campaign was put on hold while the health community campaigned for replacement legislation.

Despite the fact that plain packaging has not been on the public agenda since 1995, public opinion surveys conducted in Ontario

between 1994 and the present reveal consistently strong support. In 2007 almost three-quarters of Ontario adults (72.8%) agreed that plain packaging of tobacco products should be legislated.<sup>39</sup>

**“Ottawa clearly has the legal right to go ahead with plain packaging.”**

**The Globe and Mail**

Plain and standardized tobacco packaging is now back on the Canadian public health agenda. In addition, several countries around the world are actively considering plain packaging. The Scottish Government made a commitment in 2008 to consider the merits of plain packaging as part of its comprehensive *Smoking Prevention Action Plan*.<sup>40</sup>

In 2008, Australia’s National Preventative Health Task Force recommended that Australia “act quickly ... and become the first country in the world to mandate that cigarettes be sold in plain packaging,” citing “good evidence that this would have a profound effect on young image conscious teenagers.”<sup>41</sup> The Australian government is reviewing these recommendations.

The UK Department of Health carried out a consultation on the future of tobacco control in 2008. It included the option of plain packaging. Subsequently, amendments were introduced in both Houses of Parliament to include reserve powers for plain packaging in the current health bill, but the amendments were not taken to a vote. In May 2009 the UK government agreed that a review of the evidence for plain packaging would form part of its tobacco control strategy to be published later in 2009.<sup>42</sup>

## **Industry Legal Threats Rejected by Legal Scholars and International Trade Organizations**

In the early 1990s tobacco company executives determined that they could not win the plain packaging debate on health grounds and that strategically they needed to refocus the debate onto industrial concerns: “Industry should set the agenda in an effort to confine the argumentation to political, economic, inter-

national trade, and intellectual property issues.”<sup>43</sup> That lives were at stake was not to be part of the discussion.

To develop a coordinated global approach to the plain packaging threat, multinational tobacco companies established a “plain packs [working] group” that would, among other things, seek the support of major intellectual property organizations for their position. A year later, faced with numerous refusals of support from these organizations as well as unfavourable legal opinions, a member of the plain packs group, BAT executive David Bacon, concluded that there was “little joy” to be found in GATT or TRIPS: “Current conventions and treaties offer little protection.”<sup>44</sup>

In addition to their own legal opinions, by mid 1994, tobacco companies had two letters from the World Intellectual Property Association indicating that the *Paris Convention for the Protection of Industrial Property* did not offer legal grounds on which to oppose packaging legislation.

***“In conclusion, it does not seem that Article 7 of the Paris Convention could serve as a basis for challenging existing or planned requirements of Paris Union member States regarding the plain packaging of tobacco products.”***

*Ludwig Baeumer, Director  
Industrial Property Law Department  
World Intellectual Property Organization  
31 August 1994*

Despite knowing at the time that their claims were dishonest, tobacco companies misled Parliament, the national media, and the public that plain packaging would violate their rights under various trade agreements, in particular their right to intellectual property protection. And they continue to make the same specious arguments to this day. In addition to the damning evidence in tobacco company internal documents that the industry’s trade

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\* The Paris Convention was one of the first treaties to establish rules to protect intellectual property, such as patents. Signed in 1883, and revised several times since, the Convention has 172 contracting member countries, making it one of the most widely adopted treaties in the world.

arguments would not withstand scrutiny, summarized compellingly in *The Plot Against Plain Packaging* by Physicians for a Smoke-Free Canada,<sup>45</sup> health groups have obtained several opinions from legal experts on the international trade questions. These scholars all conclude that governments have the right to mandate plain packaging of tobacco products in order to protect health.<sup>46</sup>

Legal opinions on whether mandatory plain packaging would violate the tobacco companies’ right to freedom of expression under the *Canadian Charter of Rights and Freedoms* have likewise concluded that the government’s right to protect health supersedes the companies’ right to commercial free speech.<sup>47</sup>

## **Is the Evidence for Plain Packs Sufficient to Justify Implementation?**

Given that tobacco industry products addict children and kill one out of two long-term users — some 37,000 Canadians each year — the use of every preventive tobacco control measure available is justified.

The Canadian Medical Association, in its brief to the House of Commons Health Committee, explained the importance of exercising the precautionary principle<sup>48</sup> when public health is at stake:

*“In the field of health, scientific evidence is gathered bit by bit, over time, until the weight of accumulated evidence allows a reasoned judgment as to when action in the form of disease prevention activities, diagnostic or treatment changes should occur. The level of proof needed to justify action is inversely related to the seriousness of the problem requiring action. One frequently acts with a lesser degree of proof when the problem is very serious (emphasis added).”<sup>49</sup>*

In light of this accepted approach to interventions to protect public health, there is ample evidence to justify implementation of the plain and standardized packaging reform — and to do so immediately.

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A warning from a leading tobacco industry trade journal to tobacco manufacturers:

**“Plain packaging can kill your business”**

*Tobacco Journal International*

Public health expert Dr. Richard Schabas responds:

**“The tobacco industry admits the obvious. Plain–packaged tobacco products will seriously harm its ability to promote tobacco sales. Cutting tobacco sales and eradicating the tobacco epidemic are the professed goals of governments. The necessity to implement plain packaging therefore should be obvious.”**

*Richard Schabas, MD, MHSc, FRCPC  
Chief Medical Officer of Health  
Province of Ontario, 1987 to 1997*

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## **Non–Smokers’ Rights Association Smoking and Health Action Foundation**

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