

**Rationale Supporting a Total Ban on
Tobacco Displays and Signage at Point of Sale**

A Brief Submitted to Manitoba Health

Canadian Cancer Society

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Jurisdictions around the world are increasingly adopting measures to limit retail displays:

- In Saskatchewan, *The Tobacco Control Act* prevents product displays from being visible in any store accessible by young persons.
- In January, 2002, the Manitoba Minister of Health announced the Manitoba Government's intention to introduce legislation regarding retail displays similar to that adopted in Saskatchewan.
- In Newfoundland and Labrador, professional standards for pharmacists require a ban on tobacco sales in pharmacies as of January 1, 2005. During the phase-in period, there are increasingly restrictive provisions regarding retail promotions, including, effective January 1, 2004 a ban on "the display of tobacco products in view of the public in a pharmacy." (There is also a ban on POS advertising as of January 1, 2001.) (Standards of Pharmacy Practice (Sale of Tobacco), Guidelines on Promotion and Sale of Tobacco Products by Community Pharmacies In Accordance with Pharmaceutical Association Regulation 14(1), Approved by Newfoundland Pharmaceutical Association Council, June 19, 2000).
- The Irish *Public Health (Tobacco) Act*, adopted in 2002, prohibits retail displays.
- Several Australian jurisdictions (including Tasmania and Australian Capital Territory) have adopted restrictions on retail displays.
- Some U.S. municipalities have adopted ordinances. Some such municipalities have banned self-service displays.
- A Government Bill before the U.K. Parliament, the Tobacco Advertising and Promotion Bill, would establish regulatory authority over retail displays, authorizing a possible ban.
- A Government measure before the New Zealand Parliament deals with retail displays.
- Quebec, New Brunswick, Nova Scotia and the federal government have prohibited self-service displays.

- New Brunswick and Nova Scotia have prohibited counter top displays. Quebec and B.C. have established regulatory authority to restrict retail displays.
- In January, 1999, Health Canada released a Discussion Paper regarding retail displays: “Options for Tobacco Promotion Regulations”. No regulations have yet been adopted as the federal government first adopted regulations regarding package warnings, the subject of a Discussion Paper also released in January 1999.

There is ample justification that point of sale advertising and displays increase tobacco use and should be eliminated. This justification includes the following:

- National and provincial health organizations have strongly endorsed a ban on retail displays as a means of reducing tobacco use. Indeed, there is an international consensus in the health community that there should be a total ban on all forms of tobacco advertising and promotion. Such a total ban is recommended by the World Health Organization.
- A ban on retail displays was recommended in a Report by the Special Committee on Tobacco Control of the Saskatchewan Legislature. This Report followed a study that involved extensive hearings around the province.
- There is a mountain of evidence that tobacco advertising and promotion increase tobacco use. In *RJR-Macdonald v. Canada (A.G.)* (1995), all nine members of the Supreme Court of Canada found that there was a rational connection between a ban on tobacco advertising and reducing tobacco use. Considerable additional evidence has emerged since the 1989-1990 trial in *RJR-Macdonald*.
- Evidence of the impact of tobacco advertising and promotion can be found in these reports: Canadian Cancer Society, “Selected Evidence in Support of Banning All Tobacco Advertising and Promotion, and Requiring Large, Picture-Based Health Warnings on Tobacco Packages” (Ottawa: Canadian Cancer Society and International Union Against Cancer, 2001); Canadian Cancer Society, “Compilation of Selected Evidence Regarding the Impact of Tobacco Advertising and Promotion: A Submission to Parliamentarians for Use During Consideration of Bill C-42, *An Act to amend the Tobacco Act*” December 1998.

- Point of sale (POS) promotions for tobacco products stimulate impulse purchases (including among recent ex-smokers, among occasional smokers, and among teenage experimenters). Given that about one-fifth of smokers are non-daily smokers, and that a considerable proportion of youth are experimenters or are at risk of experimenting, this is significant.
- Point of sale promotions weaken the resolve of ex-smokers to remain smoke-free. The highly visible presence of cigarettes provides an extremely large temptation for an individual craving nicotine. Just one purchase can turn an ex-smoker back into a daily smoker.”
- In the past, at least some provinces in Canada (including Ontario) required alcohol to be displayed out of sight at retail. These restrictions were removed over time as society placed less emphasis on reducing liquor consumption.
- Many Canadians would be shocked to learn that tobacco companies pay retailers for prominent displays of their tobacco products. Tobacco companies do this in part to increase the perceived popularity and social acceptability of their cigarette brands. Prominent displays create the impression that cigarettes are far more popular than is actually the case.
- It is unacceptable that tobacco companies can have displays immediately beside displays for candy or hockey cards. Companies pay for unnecessarily large “power walls”, even in stores where young people have access.
- Companies selling other products, whether lottery tickets, chocolate bars, hockey cards, magazines or otherwise, use POS promotions to increase overall category sales, not just to compete for market share.
- Movie theatres have a monopoly on concession sales yet they advertise. If such POS advertising did not stimulate sales, why go to the expense of advertising?
- In opposing proposed retail restrictions in Manitoba, JTI-Macdonald noted that the practice of paying retailers for space began in Canada in the 1970s. This shows that payments for retail displays are a relatively recent development and are not necessary to market tobacco products.
- A 1999 Expert Panel in Ontario recommended that tobacco products be placed out-of-sight at retail. (“Actions will speak louder than words; Getting serious about tobacco control in Ontario; A Report to the Minister of Health from her Expert Panel on the Renewal of the Ontario Tobacco Strategy” February 1999.)

- In 1994, the House of Commons Standing Committee on Health recommended implementation of plain packaging, a recommendation supported by persuasive evidence. Plain packaging would have the impact of reducing POS promotions for tobacco products.
- If there was no impact on consumption from POS promotions, it would not make sense for the tobacco industry to spend large amounts of money to organize political opposition to the measure and to hire lawyers to fight the measure in court.
- POS promotions, notably displays, represent a significant portion of overall tobacco industry marketing budgets. In 1996, the three major companies spent about \$60 million on payments to retailers in Canada for retail displays. As other forms of marketing become restricted, retail displays take on an ever greater role.
- If POS advertising did not have an impact on overall demand, in addition to market share, then RBH would not be opposing proposed Manitoba restrictions. A reduction in POS promotions would lead to reduced marketing expenses and increased profitability.
- In Australia, some jurisdictions have limited the number of packs per brand that could be displayed. Tobacco companies responded by increasing the number of brand extensions available, thus maintaining the visual impact of retail displays. The authors of a study reviewing this experience concluded that: “The only practical way to reduce point of sale cigarette promotion may be to prohibit any display of tobacco products so that cigarettes become an ‘under the counter product.’ (Source: “An increase in cigarette brand variation since legislation to reduce point of sale promotion” *Health Promotion Journal of Australia* 2000; 10(2).)
- A draft report of March 11, 1999 by Tilson Consulting “Preliminary Research on Tobacco Retail Displays” provides evidence supporting a ban on retail displays. This report was prepared for the Canadian Cancer Society.
- The following report provides evidence of the impact of POS promotion: Ron McCarville & Colleen Bee, “Point-of-Purchase Techniques and Their Influence on Tobacco Consumption: A Review of Literature in Private Sector Journals” Prepared for the Centre for Behavioural Research and Program Evaluation, National Cancer Institute of Canada.
- The 2002 International Tobacco Expo, a tobacco industry trade show held in Las Vegas, included a presentation entitled “Stimulate and Drive Impulse Purchases”. The presentation was described as follows: “Dick Blatt, president of Point-Of-Purchase Advertising International (POPAI),

this seminar will provide ways to help increase sales of tobacco products by learning how to stimulate impulse purchases.” Source: “INTERNATIONAL TOBACCO EXPO PREVIEW: A STATE OF "MINE" ” Tobacco Retailer, February 1, 2002.

- In 1999, the Canadian Cancer Society prepared a summary document “The Case for Controlling Retail Displays of Tobacco Products”.
- The promotional value at retail of package displays is reduced because of increased space on package used for health warnings, now 50% of the front and back of the package.
- RBH has said that it has stopped paying for displays in many small volume stores.
- Retailers receive much more money for tobacco displays than for other product categories: E.C. Feighery, K.M. Ribisl, D.D. Achabal, T. Tyebjee “Retail Trade Incentives: How Tobacco Industry Practices Compare with those of Other Industries” *American Journal of Public Health* 1999; 89(10): 1564-1566.
- There are undoubtedly many marketing case studies about how POS displays/advertising increase overall category volume (e.g. for lottery tickets).
- Point of sale price advertisements create competition that lowers prices generally among retailers. Lower prices lead to increased consumption. Price advertisements highlighting a lower priced product may induce a smoker to switch to the lower priced product instead of quitting altogether, or to entice a former smoker who quit because of price to resume smoking.

The Saskatchewan restrictions and proposed Manitoba restrictions are no different than the historic legislated restrictions on product displays and signage in liquor stores.

Legal Issue

Eliminating product displays at retail is fully consistent with the freedom of expression provisions in the Canadian Charter of Rights and Freedoms. In *R. v. Greenbaum* (1991), 77 D.L.R. (4th) 334 (Ont. C.A.), rev'd but not on these grounds [1993] 1 S.C.R. 674, a case involving the unlawful exposing of T-shirts for sale on a street corner, the Ontario Court of Appeal stated at p.342: “I do not think the display of goods and wares for sale, in this case T-shirts, is a form of expression contemplated by s.2(b) of the Charter.”

Comments on Economic Arguments

The tobacco industry opposes proposed controls on point of sale displays in Manitoba. The industry claims that retailers will suffer serious economic loss once the proposal is in place. Such claims are without merit.

First of all, the successful implementation of Saskatchewan legislation demonstrates the invalidity of the industry's position. The same arguments being made in Manitoba were made in Saskatchewan as the legislation was being considered. In Saskatchewan today, with legislation in place, retailers are continuing to sell tobacco products.

Further, on average, retailers can recover any loss of revenue from manufacturers by simply increasing cigarette prices by a mere \$0.03 per pack.¹ Such amount is trivial, given the current retail price of cigarettes in Saskatchewan. In any event, given that manufacturers will have reduced expenses, manufacturers could lower their price by \$0.03 per pack, resulting in no net change to the retail price.

As well, the government has the option of banning tobacco sales in pharmacies, as five other provinces have done. While this measure would contribute to a reduction in tobacco use, there would also be a large proportion of existing sales in pharmacies that would shift to remaining retailers. This would represent a financial windfall for remaining retailers that would more than compensate for any perceived loss in industry promotional payments.

The industry typically argues that proposed tobacco control legislation will result in economic disaster. Current public relations efforts in Manitoba along this line are nothing new.

Even if it were the case that there would be some economic impact, implementation of proposed legislation should still proceed. Health must come before profit. No one would argue that drinking and driving laws should not be implemented because of potential job loss in car repair shops. No one would argue that World War II should have been continued in order to protect jobs in armaments factories.

Other Arguments Advanced by the Tobacco Industry

An argument has been advanced that retailers will incur significant costs in implementing the new legislation, such as through building new cabinets, retrofitting existing displays, etc. However, the same argument was put forward in Saskatchewan. Retailers have found ways to comply in ways that best meet their needs: using a curtain, placing sliding doors in front of shelves, putting cigarettes under the counter, putting cigarettes in drawers, etc.

¹ This is calculated by dividing the \$60 million in annual industry promotional payments to retailers by the approximately 2 billion packages sold annually.

It has been argued that removing tobacco products from sight creates store security problems as the clerk must turn their back on the customer to retrieve tobacco products. However, this same argument was made in Saskatchewan – and the new Saskatchewan legislation is being implemented successfully. As it stands in Manitoba, and as was the case in Saskatchewan prior to legislation, clerks often have had to turn around anyhow to obtain cigarettes, often reaching down to ground level.

As an alternative to controlling retail displays and signage, some in the tobacco industry suggested that youth possession be made illegal. In taking this position, manufacturers and retailers are attempting to avoid responsibility themselves and shift responsibility for tobacco addiction to minors. Manufacturers are trying to avoid legislation that would reduce tobacco sales. A September 2001 Canadian Cancer Society report “Youth Tobacco Possession Laws: Policy Analysis” explains why youth possession laws are not recommended.

Exception for Tobacconists

In the new legislation, there should not be an exemption for tobacconists:

1. The option provides no health benefits. In fact, allowing prominent retail displays in these stores counters health objectives. These displays will be seen by customers – and friends and children/relatives of customers – whether those customers are smokers or nonsmokers, adults or children. These displays will encourage spontaneous purchases, will help create the impression that smoking is more popular than is actually the case, will undermine the resistance of ex-smokers trying to remain smoke-free, and will undermine the determination of potential quitters to become smoke-free. Further, displays in tobacco specialty shops might well be seen outside the shop (e.g. in a shopping mall, or through a window).
2. The option will increase enforcement costs given the effort required to monitor that each store is above a stipulated percentage sales threshold, for example.
3. The option will encourage the opening of more tobacco specialty shops, perhaps a series of kiosks, hardly a development beneficial to public health.
4. An exemption for tobacco specialty stores will unnecessarily create a loophole. Past experience in tobacco control suggests that any loophole will be widely exploited.
5. The exemption will provide an incentive to some retailers to increase tobacco sales to a level above the stipulated threshold, hardly a motivation that should be encouraged by regulation.

6. Such an exemption will legitimize certain categories of tobacco retailers, something that is counter to tobacco control objectives.

In the new legislation, there should not be an exemption for bars, including for reasons previously described. Ex-smokers may lose their inhibitions after consuming alcoholic beverages, have a single cigarette, and then find themselves quickly back to becoming a daily smoker. Tobacco promotions in bars – a current tobacco industry activity – cannot be justified. This is especially the case when municipalities are being encouraged to adopt bylaws to ban smoking in bars.