

PART VI

Winning the War:
An Agenda for Victory

A Prescription for Health



The solution to many of today's medical problems will not be found in the research laboratories of our hospitals, but in our Parliaments. For the prospective patient, the answer may not be cure by incision at the operating table, but prevention by decision at the Cabinet table. ... Historically, a nation would look to its doctors for better health. Now they should look to their Members of Parliament.^[650, p. 123]

— Sir George Young, British health minister, in an address to the 1979 World Conference on Smoking and Health in Stockholm, Sweden

Not all tobacco-control measures have equal impact. But they can all have some impact. Which are likely to be the most effective? As a rule of thumb, the greater the potential effectiveness, the greater the industry opposition will be. Of the items that governments have considered so far, the industry has most strongly opposed high taxes, a total ban on advertising and sponsorship, prominent warnings, plain packaging, and ETS restrictions. Where do we go from here?

Legislative framework

As a start, the Government of Canada should be given complete regulatory authority to control all aspects of the growing of tobacco and the manufacture, importation, advertising, promotion, and sale of tobacco products, other nicotine-delivery devices, and tobacco

supplies, such as rolling papers. In this way, the government would have the authority to adopt regulations without the delays that come with introducing legislative amendments in Parliament. An efficient and flexible regulatory process is essential for addressing an epidemic.

A similar framework has long been in place for prescription drugs, hazardous products, pesticides, and radiation-emitting devices. Many provincial governments have had complete regulatory authority over alcoholic products. Tobacco deserves similar treatment, but to date it has been excluded from regulation under the *Food and Drugs Act*, the *Hazardous Products Act*, and narcotics legislation. British Columbia has broad control over tobacco through its *Tobacco Sales Act*, but regrettably the province has passed only a few regulations under the Act. In the 1960s, MP Barry Mather introduced several private-member's bills to place tobacco under the *Food and Drugs Act* or to give the government the same regulatory authority over tobacco as it would have if tobacco were covered by this Act. However, the bills were not voted upon.

Total ban on advertising and promotion

The government should introduce a total ban on all forms of tobacco advertising and promotion, including sponsorships. Also prohibited would be the free distribution of tobacco; the use of tobacco brand names and logos on nontobacco goods like lighters and T-shirts; and the use of games, contests, and other incentives to promote sales. Canada had almost all of these covered under the TPCA; the only exceptions were certain kinds of sponsorship advertising and certain displays of tobacco in retail stores. Measures proposed in the federal government's 1995 blueprint would improve on what had been in the TPCA before the Supreme Court's decision.

Point-of-sale displays are prominent forms of promotion. In 1987, in the period leading up to the enactment of the TPCA, RJR–Macdonald spent \$20.3 million (57%) of its \$35.3 million advertising and promotion budget on displays and other point-of-sale activity.^[497] Imperial Tobacco spent 39% of its marketing budget on retail activities.^[288] To address the problem of prominent retail displays, the government should require that tobacco products be stored under the counter.

The need for a total advertising ban is demonstrated by past experience with a partial ban. As previously noted, when the industry voluntarily removed cigarette advertisements from Canadian television and radio in Canada in 1972, tobacco companies simply shifted the expenditures to other types of advertising. When France initially restricted advertising but did not regulate the use of brand names on other goods, the industry promoted Camel lighters and boots with ads identical to those previously used for cigarettes. This loophole was later closed. In the United States, when Congress prohibited television advertising for cigarettes but not for other tobacco products, commercials for smokeless tobacco continued. This contributed to a marked rise in the use of smokeless tobacco. Congress later closed this loophole.

Apart from Canada's experience with the TPCA, total or almost total advertising bans have been adopted by about 20 countries, including New Zealand, Australia, France, Norway, Iceland, Finland, Sweden, Portugal, Singapore, and Thailand. Dozens more have legislated partial restrictions on advertising.

Tax increases and anticontraband measures

High tobacco taxes are a critical component of a comprehensive strategy. All forms of tobacco products should be taxed at a rate equivalent to that for cigarettes to discourage cigarette smokers from switching to cheaper alternatives. For example, tobacco sticks should be taxed at the same rate as cigarettes. The tax on a gram of roll-your-own or raw leaf tobacco should be at least as high as the tax on one cigarette.

With high taxes, measures are needed to prevent the emergence of a sizable contraband market. Packages should be clearly marked to indicate they can be legally sold on the Canadian market. Canada's revised health warnings on packages visibly differentiate licit and illicit products, but a distinct tax marking should also be required. A "tax-paid" marking on individual cigarettes would further help identify licit and illicit products.

Given that cigarette manufacturers fostered the contraband market in the past, measures are needed to control industry behaviour. An effective export tax is needed to prevent exports from reentering Canada. The export tax should be high enough to narrow the gap between the prices of licit and illicit products. An export tax alone is not enough, given that manufacturers might shift some production out of Canada to avoid the tax. If this were to happen, the government would have to respond decisively. For example, if RJR-Macdonald had its American parent company produce Export "A" cigarettes for the Canadian contraband market, then the Canadian government should be in a position to suspend RJR-Macdonald's ability to sell Export "A" in the much bigger legitimate Canadian market. This type of suspension, twice imposed on TTCs by Italy, would give manufacturers a financial incentive to ensure their products only went into legitimate distribution channels and to cooperate with police to identify and shut down illegal operations. Suspension targets the source of the problem. Suspension also sends a message to the industry that the government can play hard ball too.

Contraband may flourish when one jurisdiction has significantly higher tobacco taxes than a neighbouring one. To counter this, the government with the higher taxes should lobby its neighbour to raise taxes. Law-enforcement officials from neighbouring governments should collaborate and share enforcement-related information.

In Canada, tobacco products sold on an Indian reserve are exempt from provincial tobacco taxes. This exemption has sometimes led to abuse. Provincial governments should set limits on the quantity of tax-exempt tobacco entering the reserve and take other steps to ensure that tax-exempt tobacco is not being sold illegally to off-reserve consumers. Better yet, band councils should be able to collect a tobacco tax equal to the provincial tax and then use the revenue for community-development projects.

There should be an end to duty-free sales. Lower duty-free prices encourage consumption and may result in large quantities of tax-exempt tobacco entering the market illegally. As well, governments lose revenue. Ending duty-free sales might best be implemented through reciprocal agreements between neighbouring countries. Alternatively, duty-free status given to tobacco could be phased out over a period such as 5 years.

At the same time, the government should eliminate or reduce the duty-free entitlement for travelers entering Canada. At present, even though most smokers do not exercise their full entitlement, a pack-a-day smoker is nonetheless legally able to bring in almost a 6-week supply tax free (200 cigarettes, 400 cigarette sticks, and 400 grams of roll-your-own), not to mention 50 cigars. In addition, it is not unusual for nonsmokers to “give” their allotment to a traveling companion who does smoke.

Tobacco should be taken out of the consumer price index so that increases in tobacco tax do not increase the official rate of inflation.

Smoking bans in all workplaces and public places

Involuntary exposure to ETS should be eliminated from all enclosed workplaces and public places. If smoking is not banned outright, it should be limited to enclosed rooms that are independently ventilated to the outside. The rooms should be used for no purpose other than smoking.

Simply having designated smoking and nonsmoking areas is inadequate. This is like having chlorine and nonchlorine sections in a swimming pool.

Regulation is preferable to letting workers and employers set their own individual policies, the approach advocated by the tobacco industry. The resulting compromise or absence of restrictions might have a particularly negative impact on individuals most vulnerable to the dangers of ETS. Health and safety laws should not be optional. Society does not tolerate voluntary standards for fire protection, automobile safety, or restaurant cleanliness. Besides, employers find that the existence of a law requiring a smoke-free workplace makes implementation easier — management can respond to complaints by citing an external requirement.

Governments should be a model and prohibit smoking in their own workplaces, a step the federal government and most provincial governments have now taken. A complete smoking ban should also apply in all parts of legislative buildings, including offices and rooms for elected members, their staff, and the Press Gallery. When politicians and journalists can work successfully in a smoke-free environment, it makes it a lot easier for them to support a law mandating the same thing for everyone else.

Smoke-free spaces create an environment where nonsmoking is the norm, and this helps prevent teens from smoking. It is important to ban smoking on elementary and secondary school property. Ontario does have such a ban, but many schools across the country still permit students to smoke on secondary school grounds, despite the fact that most, if not all, students are too young to be sold cigarettes. Peer pressure influences teenagers to

take up smoking. Teens want to be accepted, especially at school, which is usually the centre of their social lives. Designated smoking areas create an environment where smoking is endorsed, and teens hanging out there may then be seduced into addiction against their better judgment. As well, schools that have a smoking area are undermining the credibility of their own health messages.

Profit controls

Federal and provincial governments should take steps to control the exorbitant profitability (in terms of return on investment) of tobacco manufacturing. The more than \$500 million in industry-wide annual aftertax profit in Canada should be reduced by at least 70% to bring profitability into line with that of other industries.

Profit is driving the tobacco epidemic. Reduced profitability would therefore have many benefits:

- ♦ The industry would be less able (less money to spend) and less motivated (less profit to defend) to fight tobacco-control efforts.
- ♦ Tobacco companies would have less money available for marketing their products.
- ♦ The financial incentive for recruiting new smokers would decrease.
- ♦ It would eliminate the injustice of manufacturers' earning massive profits at the expense of public health and the taxpayer.
- ♦ It would reduce the amount of money that leaves Canada and goes to parent multinationals.

A manufacturer's profit is best controlled by regulating the factory prices it charges. Current factory prices would have to be rolled back to reduce profitability. Government revenue could be increased substantially by increasing tobacco taxes by the same amount that factory prices are rolled back, thus keeping retail prices unchanged. Profitability could also be controlled through new corporate taxes.

Many prices are already regulated in some way, including those for cable television, local telephone service, passenger train travel, local transit, mail, apartments (rent control), patented prescription drugs, taxis, funeral parlours, and medical care. If these products and services beneficial to society can have their prices controlled, there is no reason why the manufactured cigarette, a hazardous product, should be treated differently. Given the health-care costs associated with tobacco use, there is no reason why companies should enjoy profit levels massively surpassing those of all other major industrial sectors. It is ironic that the federal government has put controls on the price of nicotine patches and has rolled back prices but places no controls on prices of cigarettes containing nicotine.

The government should also set a fixed price for the retail sale of tobacco products to prevent retailers from putting tobacco on sale. Such sales pressure competing retailers to

lower their own prices, which in turn increases consumption. A fixed price would also prevent stores from selling tobacco at or below cost to draw customers to buy other items, a practice of many gas stations. A fixed retail price would help maintain the benefits of a high-tax strategy.

Health messages

The government should require a series of rotated, prominent, easy-to-understand health messages on tobacco packages — the more space allocated, the better. Warnings should appear on both the front and the back of the package, as well as on the six sides of a carton. Regulations should specify the colours for the messages to prevent companies from choosing colours that blend in with the package design. The specified design and colours should maximize impact.

Messages on packages need not be restricted to health. Other nonhealth messages may be equally or more effective in reducing smoking. Some possible examples are the following:

- ♦ Quit smoking, save money.
- ♦ Men: Smoking increases the risk of impotence and may reduce sexual performance.
- ♦ Cigarettes give you bad breath.
- ♦ Smoking makes your clothes smell.
- ♦ Smoke yellows teeth and fingers.
- ♦ Smoking reduces athletic performance.
- ♦ Life insurance costs less for nonsmokers.
- ♦ Smoking gives you premature wrinkles.
- ♦ Ever tried nicotine gum or the nicotine patch? Details on reverse.
- ♦ Men prefer women who don't smoke.
- ♦ Women prefer men who don't smoke.
- ♦ Out of breath? Don't get left behind. Quit smoking.

Some of these messages may have a much more immediate meaning for teenagers. These messages are harder to dismiss than warnings about heart disease or lung cancer, which teenagers may see as way off in the future and in any event “will not happen to me.”

Detailed health information should be provided to consumers, either on a package insert or on the packaging itself. Australia requires a warning on the front, with detailed information explaining the warning on the back. One possibility is to print detailed information on the inside slide portion of the package or on paper laminated to the foil that keeps cigarettes fresh inside packages.

The package should list the product's average and maximum yields of tar, nicotine, and carbon monoxide. The yields of other harmful substances, such as formaldehyde and hydrogen cyanide, should also be listed.

Because a picture sends a thousand words, there could be photographs on packages corresponding to the particular message. Perhaps a photo of a diseased lung, of a cancer patient following chemotherapy, or of a smile with yellow teeth or diseased gums would be à propos. Photographs or graphics help get the message across to those who are illiterate and to those who speak neither official language. Some countries, including Iceland, require some graphic images as part of warnings.

Package warnings can be one of the most effective forms of public education. Messages are targeted directly to smokers and are available for viewing every time the package is opened. Best of all, package warnings cost the government nothing because the industry pays the expense.

Many countries have required warnings for a long time now, but the warnings are often vague, in small print, on the side of the package, and in colour combinations that minimize legibility.

Legislation should also require antitobacco messages on lighters, matchbooks, matchboxes, cigarette carrying cases, and packages containing cigarette tubes, rolling paper, or filters.

Health warnings should also be required for any tobacco advertising or sponsorship advertising permitted during a phase-out period before a total ban. In Canada, some billboard advertising was going to be permitted during the first 2 years of the TPCA, but only if the warning "Smoking causes lung cancer, emphysema and heart disease" occupied the top 20% of the ad. This requirement prompted tobacco companies to voluntarily stop placing billboard advertising in new locations. "We did some mock-up boards and, frankly, find it very unacceptable to put an advertisement for our product out in that manner," said Don Brown, then Imperial Tobacco's Marketing Vice-President. "The first thing you see is a big warning that says 'Smoking causes cancer'. You've got to see it to understand. It's just a feeling."^[572]

Point-of-sale signs and pamphlets discouraging the use of tobacco should be required at all retail locations. Point-of-sale messages are read by people waiting in line, including teens who might be thinking about starting to smoke.

The packages should also carry the telephone number of a toll-free Quit Line, as they do in Australia. Smokers could call the hotline to obtain information about smoking and health or to get advice on quitting. Staff answering these lines should be well trained, able to respond to calls in either official language, and on duty at times most convenient to callers. During off hours, a touch-tone-computer-response system could provide some of the more basic information. A toll-free line is an excellent way to reach smokers in rural or remote parts of the country. Manufacturers should be required to pay for the cost of operating the Quit Line.

Packaging controls

All tobacco products and tobacco supplies, such as filters and rolling papers, should be required to come in plain packages. An interesting suggestion is that the standard cigarette package should be too big to fit easily into a pocket.

A cigarette pack might be required to contain no fewer than 20 cigarettes. Canada has had this requirement since 1994 — there are no more kiddie packs (15 cigarettes) or toddler packs (5 cigarettes), which used to make a pack of cigarettes more affordable to low-income consumers, including teens. For a similar reason, it should be illegal to sell single cigarettes, a practice banned in Canada.

A minimum package size of 20 grams could be required for smokeless tobacco, if it is not banned altogether. This would eliminate the 10-gram Skoal Bandits, a product that has come under fire for being aimed at teenage boys.

Product design regulations

Some countries have set maximum limits for tar and nicotine yields, but few have done much to regulate the design of the actual product. Much can be done in this area.

Controls are needed on so-called light and mild cigarettes. For example, *light* should have a consistent meaning across all brands. A preferred approach would be to ban such terms altogether because they are misleading or to require classifications like Player's Poisonous, Player's Highly Poisonous, and Player's Extra Highly Poisonous.

The package could inform consumers that the tar yield depends on how intensely the cigarette is smoked. One desirable option is to require packages of filtered cigarettes to carry a diagram with, say, five circles representing the filter end. Each circle would be a different shade of brown and labeled with a tar level. The darkest circle would represent the highest tar yield. After a smoke, consumers could compare their butts with the diagram and learn how much tar they were exposed to by their style of smoking.

Ventilation holes in filters should be visible to the naked eye. They should be far enough away from the butt end that lips or fingers would not cover the holes.

Slim cigarettes, targeted at and overwhelmingly smoked by women, should be prohibited. Luxury-length cigarettes (100 and 120 millimetre) suggest fashionability and should also be banned.

Perhaps tobacco products could be required to have a more unappealing flavour and odour to diminish the appeal of smoking. Cigarettes with menthol, spearmint, or other flavours should not be permitted. These additives mask the harshness of tobacco smoke that might otherwise make a smoker want to quit. Further, smokers may inhale menthol cigarettes more deeply than the harsher cigarettes, thus increasing the health risks.

Concern over additives in cigarettes is not new. In 1903, MP P. Macdonald told Parliament that the tobacco or paper used for cigarettes was quite possibly laced with narcotics to give the smoker a more pleasurable sensation.^[370] Such rumours of adulteration,

whether true or not, would remain around for some decades. In 1962, MP Herbert Herridge suggested that cigarette manufacturers should be required to disclose ingredients, but no action was taken.^[244–246] Packages should list all the ingredients contained in the cigarettes, including any additives in the filter or cigarette paper. Thousands of food products in grocery stores list their ingredients, and there is no reason why cigarettes should be treated any differently.

Another possibility is to require an unattractive colour for the paper portion of the cigarette. White, the colour almost always used at present, suggests purity (hence manufacturers' use of more white on packaging for light cigarettes). At a minimum, bleached cigarette paper should be prohibited. The colour of the paper covering the filter should also be controlled. The use of colours to suggest a cork should be eliminated. Manufacturers should be required to stop printing brand names and logos on each cigarette. These trademarks reinforce and promote a brand's image.

Some countries have banned smokeless tobacco. Given the small market share of this type of product in Canada, a ban is a feasible and desirable measure.

There could also be a ban on retail sales of roll-your-own and raw leaf tobacco. However, demand for these products could be eliminated if they were taxed at the same rate as cigarettes. These products are usually smoked without a filter, which may increase the health risk. A complementary ban on rolling papers would have a side benefit — they would no longer be available for rolling illegal drugs.

Mandatory fire-safe cigarettes

Cigarettes could be modified to make them less likely to start fires. At present, because of their burn characteristics, cigarettes start fires after smouldering on beds or upholstered furniture. Cigarette paper can be designed to enhance burn or to retard it. Tobacco companies have said that sales would be harmed by fire-safe requirements because cigarettes would be less puffable and would have a bad taste. On the plus side, from a health point of view, such side effects would likely cause some smokers to quit altogether.

Product registration

Manufacturers and importers should be required to register each tobacco product with the government before they place the product on the market. The application form for product registration should require product details, such as the following:

- ♦ Yields of toxic constituents;
- ♦ A list of additives;
- ♦ The pH (acidic) level;

- ♦ The length and circumference;
- ♦ The weight of the tobacco;
- ♦ A description of the blend;
- ♦ A description of ventilation holes and other filter characteristics; and
- ♦ The burn characteristics of cigarette paper.

Manufacturers should be required to file an amended registration **before** they start selling a modification of any product already on the market. The amended registration should describe the intended modification and the impact the change would have.

The registration fees should be high enough to allow the product registry to recover its administrative costs and to allow the government to conduct independent tests of its own on each product.

All the information included on an application for product registration should be available to the public. In addition, the information should be available in a *Nicotine-product Information Book* that the industry would be required to put at each retail outlet where tobacco products are sold. Such a book, which could be in binder format for easy updating, would provide consumers with easily accessible information. The book could also include detailed information on the health consequences of smoking, tips for quitting, and information on the financial costs of being a regular smoker. Information on alternative nicotine products would also be helpful.

Ban on the sale of tobacco to young persons

The vast majority of smokers take up the habit before the age of 18.^[225,234] Imperial Tobacco data show that the average age for beginning to smoke regularly is 15.2 years for males and 14.7 years for females. Moreover 20% of male smokers and 22% of female smokers begin regular cigarette use by age 13.^[225]

At the very minimum, tobacco should not be sold to anyone under the age of 19. This age is consistent with the minimum drinking age in most provinces and is high enough to help get smoking out of high schools. The minimum age should also apply to rolling papers and other tobacco supplies. Because it is often difficult to judge a person's age, a clerk should refuse to sell tobacco products to customers who appear to be younger than 25 unless they can produce suitable photographic ID. Stores should display a sign to that effect, thus making it easier for a clerk to refuse. The law should not permit a sale even if the minor has a note from a parent. Some jurisdictions set a minimum age for the employees who serve alcohol to customers. If a similar provision were adopted for tobacco, refusing a sale would be made easier because the clerk would be an adult rather than a teenager.

Cigarette-vending machines should be prohibited altogether. At the very least, they should be restricted to bars where minors are refused entry. In jurisdictions that have

simply required vending machines to be under adult supervision, minors have had continued success at obtaining cigarettes from the machines.

Counter-top cigarette displays, which might be a temptation to shoplifters of any age, including minors, should be banned. Mail-order sales should also be banned because there is no way to ensure that the recipient is old enough to legally be sold cigarettes.

The federal *Tobacco Sales to Young Persons Act*, passed by Parliament in 1993 with all-party support and proclaimed into force in 1994, sets a minimum age of 18 and restricts vending machines to bars. In the 1990s, several provinces passed their own sales-to-minors laws, some of which replaced antiquated laws passed in the 1890s. The new provincial laws vary, but some have set 19 as the minimum age, banned vending machines altogether, required signs at retail, and provided for a suspension to vendors convicted of selling to minors.

The most effective way to reduce illegal sales to minors would be to hold manufacturers responsible for youth smoking. The government should conduct an annual survey of youth smoking rates and estimate each company's share of the youth market. The government should charge each company a fee based on the estimated retail value of the company's share. The tobacco industry would then have a financial reason to **reduce** youth smoking and reverse the present situation. Manufacturers would quickly take steps to make sure retailers were not selling to minors. At present, manufacturers do nothing meaningful to prevent retailers from making illegal sales.

Public-education and smoking-prevention campaigns

Public education is an important part of a comprehensive strategy, but it is only one part. The existence of a modest public-education effort should not be an excuse for failing to adopt other tobacco-control measures, as has sometimes been the case.

Governments should undertake an extensive antismoking campaign using the mass media. Just as large scale tobacco advertising campaigns can increase consumption, large scale antitobacco advertising campaigns can decrease consumption. Media advertising can effectively communicate an antismoking message, whether through TV, radio, movie theatres, billboards, print, or otherwise. The government should have a professional advertising firm create maximum-impact advertisements. Market research should be undertaken to determine what ad content would be most effective. Campaigns should be intensive to best reach target groups. California has a major antismoking advertising campaign, and there is evidence that this has contributed to a decline in smoking.^[271,476] Perhaps the tobacco industry agrees, given how hard it sought to block the campaign.

Between 1967 and 1970 in the United States, the Federal Trade Commission required antismoking messages on television and radio to balance cigarette commercials. At the peak, about 1 minute of antismoking airtime appeared for every 3 minutes of cigarette commercials. Per capita consumption fell during each year of the campaign and rose again when the mandated messages stopped.^[607] The American antismoking commercials

spilled over into Canadian homes and may have contributed to a Canadian decline in per capita consumption during much of this period.

The media can have a tremendous educational impact. News coverage about the health consequences of smoking has a broad reach and costs antitobacco activists almost nothing. Even reports surrounding the debate over proposed laws can heighten the public's awareness of the dangers of tobacco. For example, the release of the 1964 Report of the Advisory Committee to the US Surgeon General generated a great deal of spontaneous publicity and led to reduced smoking.

Given the influence that doctors and nurses have as role models, professional organizations should have a campaign to encourage their members to be nonsmokers and certainly to abstain from smoking while at work.

It should be mandatory for elementary and secondary schools to teach about the hazards of tobacco. Programs should be suitably designed for different ages and should be conscious of gender differences.

National Non-Smoking Week, held in Canada in January every year, started out as an educational activity in 1977 and now has a life of its own. On Weedless Wednesday during that week, smokers are invited to give up smoking for 1 day. The week is often used to organize activities in schools or to host media events. Ministers of Health occasionally announce new initiatives that week. The concept of a week or day with a nonsmoking theme is not a new idea. Starting in about 1960, British Columbia designated May 31 as a nonsmoking day, an event that continued for decades. Coincidentally, WHO now uses May 31 each year to mark World No-Tobacco Day, an event of some significance in many countries. In the United States, the American Cancer Society sponsors the 1-day Great American Smokeout in November every year.

Physician counseling

Doctors should counsel patients on the importance of not smoking. At present, even during regular checkups, many general practitioners neither ask patients about their smoking behaviour nor provide counseling, despite the critical role smoking can play in a person's health.

The 1994 *Canadian Guide to Clinical Preventive Health Care* strongly recommends that physicians provide smoking-cessation counseling and offer nicotine-replacement therapy.^[83] A 1996 American clinical practice guideline recommends that doctors "use officewide systems to identify smokers, treat every smoker with a cessation or motivational intervention, offer nicotine replacement except in special circumstances, and schedule follow-up contact to occur after cessation."^[550, p. 1270] There is evidence that physician counseling leads to higher cessation rates.^[340,550]

Other primary-care clinicians, such as dentists, nurses, physician assistants, and respiratory therapists, also have a role to play in patient counseling.

Limited distribution

In an ideal world, only government-owned or government-controlled stores would be allowed to sell tobacco, as is currently the case for alcohol in many provinces. Some countries, including France, have implemented this measure for tobacco. In any case, tobacco should not be sold in hospitals, pharmacies, or other health-care centres. Neither should it be sold from vending machines, on the premises of educational institutions or athletic facilities, from outlets in government buildings, or from establishments in which alcoholic beverages are served.

Reducing the number of distribution outlets would make it less convenient to purchase cigarettes, would decrease point-of-sale promotions, and would decrease the acceptability of tobacco. In the absence of price controls, limited distribution would reduce the likelihood of price competition, thus pushing up the price. Limited distribution would also make it easier to enforce tobacco laws, such as those banning sales to minors.

A store should be required to obtain a licence to sell tobacco. This would make it easier to identify retailers to target for education about legal obligations. If a retailer were to sell tobacco to minors, sell contraband, or infringe other tobacco laws, the licence (and selling privileges) would be suspended. This would provide a meaningful economic incentive to obey the law. A licencing fee provides revenue for enforcement.

In most countries outside North America, pharmacies that sell tobacco are unheard of. But in the United States and Canada, with the exception of Ontario, pharmacists have become major tobacco vendors despite being licenced health professionals with a monopoly over the sale of prescription drugs. From an ethical point of view, pharmacists should not be permitted to sell both remedial drugs and the leading cause of preventable death. Tobacco sales mean that pharmacists profit when customers smoke and profit again when prescriptions are filled to treat an illness. Those pharmacists who voluntarily refuse to sell tobacco should not be placed at a competitive disadvantage because they are acting ethically. Banning tobacco sales in pharmacies would eliminate a conflicting message, especially to children, about the health risks of smoking.

The same conflicting message is given by hospitals and other health-care institutions that allow the sale of tobacco products on their premises. The tobacco industry knows this. Imperial Tobacco's 1971 marketing plans positioned *Matinée* as a low-tar brand that was "safer for health." As part of the campaign, Imperial Tobacco proposed to place *Matinée* ads on vending machines in hospitals and health-care centres.^[292]

Some pharmacies, especially chains like Shoppers Drug Mart, do more than just sell tobacco. They actively promote tobacco through prominent shelf and counter-top displays and through advertising. Shoppers has often put tobacco on sale, thereby putting pressure on other retailers in the community to also lower their prices. The economic impact of selling tobacco may warp a pharmacist's sense of professional duty. One Ottawa pharmacist from a major chain (then selling tobacco) said, "We can't appear to do anything against tobacco."^[130, p. 467]

Industry reporting

Tobacco manufacturers, importers, and wholesalers should be required to report sales volumes by brand and package size to the government. The government could use this information to monitor both market developments and progress on tobacco-control initiatives. All of this information should be publicly disclosed. Disclosure facilitates the work of researchers and assists the efforts of health groups.

Each company should annually report how much it spent on each type of marketing activity (for example, sponsorships, print advertising, retail display space) in the event that some marketing activity continues to be permitted. A copy of all advertisements and packaging should be filed with the government. This would help governments and health organizations monitor industry strategies.

Funding for cessation programs

Smoking cessation benefits public health, reduces health-care costs, and increases worker productivity. However, smokers participating in smoking-cessation programs have to absorb the cost themselves. This should change — government should fund cessation programs. Participants could be reimbursed through provincial health insurance plans or federal income-tax credits. Ideally, tobacco manufacturers would be responsible for reimbursing the cost of participation in cessation programs.

Permitting advertising for nicotine substitutes

In Canada, it is illegal to advertise prescription drugs in the consumer market. An exception should be made for nicotine substitutes, such as the patch, nicotine gum, nicotine inhalers, and nicotine nasal sprays. Advertising nicotine substitutes would increase their market share of the nicotine market, especially in the absence of tobacco advertising. It is already legal to advertise Nicorette, though, because gum with 2 mg of nicotine or less no longer requires a prescription. In the United States, advertisements for the patch are legal, although there are some constraints.

Insurance discounts for nonsmokers

Despite decades of evidence that smokers die at a younger age than nonsmokers, it was not until the 1980s that life insurance discounts for nonsmokers were widely available in Canada.^[439] Later, it became common for insurance companies to offer lower nonsmoker premiums for fire and car insurance as well. Higher premiums for smokers provide an additional economic incentive to quit, and they provide an unimpeachable message about the reduced life expectancy for smokers. In Canada, the competitive marketplace has ensured that lower nonsmoker premiums are obtainable, so government intervention now seems unnecessary.

Agricultural measures

Federal and Ontario governments should continue their programs, especially cash incentives, to encourage farmers to exit from tobacco farming.

Subsidies for tobacco growing should not be allowed, although in Canada there are no direct subsidies. However, research and technical assistance programs provided by the federal and Ontario governments amount to an indirect subsidy and should be discontinued in their present form. Neither taxpayers nor a government committed to a tobacco-free society should be assisting in the development of a lethal product. The cost should be borne by those who are benefiting, namely, the tobacco growers and manufacturers.

Marketing boards artificially inflate the revenues of inefficient farmers. These boards should be disbanded so that leaf tobacco is sold at world prices and farmers are not rewarded with excessively high income for growing a deadly crop.

Tobacco growers participate in government-sponsored international trade missions, use the services of Canadian embassies abroad, and take advantage of other programs of the Department of Foreign Affairs and International Trade. By permitting this, the government is supporting the export of raw leaf tobacco to less developed countries. The government should withdraw this support.

Enforcement

Adopting legislation is not good enough if the legislation is not enforced. Past experience shows that in the absence of strict enforcement, the tobacco companies take bolder and bolder steps to avoid compliance with laws.

In drafting legislation, it is important that legislators provide adequate deterrents to illegal activity: fines must be sufficiently high; and the courts must have the option of jail terms for corporate executives. Further, the legislation should give the government the ability to impose the type of cease and desist orders found in some consumer-protection laws. That is, if a company is breaking the law, the government should have the ability to order immediate compliance, instead of having to wait for the delays and pay the costs inherent in the legal process. A company could appeal the order, but meanwhile it has to obey the direction.

In the case of enforcing chronically disobeyed sales-to-minors laws, the best strategy is to impose a fee on manufacturers based on their market share of the youth market, as previously discussed. The next most effective strategy is to use unannounced purchasing tests. In such a test, a health official sends an underage teenager into the store to try to buy cigarettes. If the teen is successful, the official issues a ticket to the store and suspends the store's licence to sell tobacco for a short period (such as 1 day or 1 week) if this is the first offence, for longer periods if it is not. This gives the retailer a strong financial incentive to obey the law.

The municipality of Woodridge, Illinois, a suburb of Chicago, used this test-purchase strategy and achieved 100% compliance by retailers. In Woodridge, some of the retailers who were suspended after failing the test smartened up when they saw customers go to competitors to buy cigarettes. The bottom line for Woodridge was that the proportion of local junior high school students reporting they were regular smokers fell from 16% to 5%.^[315] An increasing number of municipal and state governments in the United States and some provincial governments in Canada are adopting test-purchase enforcement strategies.

Are test purchases entrapment, thereby giving a defence to an accused store? No. Test purchases can be organized in such a way as to avoid legal difficulties. Test purchases have been so successful in some parts of the United States that the American tobacco industry and its allies have taken steps to undermine the use and effectiveness of this strategy. Pro-tobacco forces have lobbied for laws that prohibit journalists, interested citizens, researchers, or stores themselves from conducting test purchases; that contain loopholes making convictions almost impossible; that repeal stronger municipal laws; that prohibit health officials from enforcing the law; and that limit enforcement to a state's least-capable agency.^[588] The industry has even opposed studies that measure compliance rates, even if test purchases do not lead to charges.

Product liability

Provincial laws should make it easy for tobacco victims to sue tobacco manufacturers. Provincial laws should provide that manufacturers and importers are strictly liable for the damages caused by tobacco products. Thus, plaintiffs would not face many of the delays or legal costs that have characterized much American litigation. With proper wording, plaintiffs would only have to prove that it was more likely than not that smoking caused their emphysema, throat cancer, etc., for a court to award damages. For certain diseases, this will often be relatively easy to prove. Where a person has smoked cigarettes made by different companies, liability could be divided up proportionately among those companies.

Because tobacco-industry defendants have deep pockets, creating an economic imbalance between the plaintiff and the defendant in tobacco lawsuits, the government could go a step further and provide financial support for a test case or a class-action lawsuit.

Until the end of 1994, only one liability lawsuit had been filed against a tobacco company in Canada. That was the case started in Vancouver in 1988 by Roger Perron for damages attributable to smoking-caused Buerger's disease (see Chapter 1). By early 1996, the case was still working its way through preliminary procedures.^[465] In January 1995, a major development occurred when four smokers filed a lawsuit in Ontario against Canada's three major companies and sought to have their case certified as a class action.^[91] If the case, *Caputo et al. v. Imperial Tobacco Ltd. et al.*, is certified by the court, millions of smokers could potentially be part of the lawsuit. Potential damages could be in the billions

of dollars. Although the legal process will take years, a successful case — by no means certain — could devastate the industry.

The statement of claim filed by lawyer Richard Sommers of the Toronto law firm Sommers and Roth on behalf of the plaintiffs presents a lengthy list of allegations against the industry. The allegations, which have not been proved in court, include that the defendant tobacco companies

- ♦ Concealed their own research about the addictiveness of nicotine and misinformed the public about that research;
- ♦ Conspired to target advertising at women and children;
- ♦ Controlled the amount of nicotine contained in cigarettes;
- ♦ “Intentionally attempted to create, heighten and maintain addiction to nicotine so as to promote and ensure continued purchase of their products and thereby replace with new, young and healthy recruits who died or became diseased”;^[91, p. 11] and
- ♦ Engaged in a conspiracy that “constitutes a wanton and outrageous disregard for the health and wellbeing of the plaintiffs.”^[91, p. 30]

Previous American lawsuits against the industry were unsuccessful for two main reasons: juries blamed the smoker, not the tobacco company; and industry wealth was able to wear down plaintiff lawyers. Class actions undermine these factors, especially if many lawyers act for the plaintiffs. In the United States, 60 major personal-injury law firms are working together in a series of class-action lawsuits. Not including lawyers’ time, the law firms have each been contributing US \$100 000 a year toward the cost of taking on the industry. This gathering of resources pitted against the industry is unprecedented and enhances the chances for success.

Other new American developments with huge potential are the lawsuits filed by several state governments to recover smoking-related Medicare costs from tobacco companies. State governments have large financial resources and legal departments. It is difficult for juries to blame the health consequences of smoking on plaintiff governments. Provincial governments in Canada could file similar lawsuits, but they have not yet done so.

Criminal liability

The Criminal Code says, “Every one is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.” The offence of “causing bodily harm by criminal negligence” has a maximum penalty of 10 years imprisonment. The offence of “causing death by criminal negligence” has a maximum penalty of life imprisonment.

When he was a lawyer at the firm of McCarthy and McCarthy, David Doherty (now a justice of the Ontario Court of Appeal) wrote a legal opinion for NSRA concluding that

under certain circumstances tobacco companies could be guilty of criminal negligence. Given the duty of companies to design safe products, and given the duty of companies to not make negligent statements about their products, and given the duty of tobacco companies to warn consumers of the health risks of tobacco, and given the failure of tobacco companies to fulfill these duties, a case may someday be made that companies have violated criminal law.

Provincial Attorneys General are responsible for enforcing the Criminal Code. They should instruct that an investigation of manufacturer practices be launched and subsequently, if appropriate, that charges be laid and prosecuted against tobacco companies and executives. Possible charges to investigate are criminal negligence, conspiracy, and fraud.

Government annual report

Federal and provincial legislation should require an annual government report on tobacco. Responsibility for the report should be assigned to a designated official, such as a province's Chief Medical Officer of Health or the federal Director of the Office of Tobacco Control. The report should monitor smoking rates, evaluate the effectiveness of legislation and government initiatives, and recommend improvements. In the United States, the annual reports of the Surgeon General provide authoritative statements on the state of tobacco-related knowledge and have helped galvanize public and political support for legislation.

Ban on candy cigarettes

Candy cigarettes and other products designed to resemble a tobacco product should be banned. Thailand and at least one Australian state have such a ban. So does Nova Scotia, although the provision has not been proclaimed into force.

An American study found that repeated candy cigarette purchases were significantly correlated with experimental tobacco use.^[336] Candy cigarettes legitimize the social acceptability of smoking to very young kids. Similarly, products like Big League Chew bubble gum legitimize the social acceptability of chewing tobacco. A child too young to smoke may see candy cigarettes or bubble gum wads as a playful way to imitate an adult behaviour seen as desirable.

In the United States, tobacco manufacturers have been slow to take major action against companies for selling candy cigarettes in packages with trademarks imitating those of cigarette brands. This suggests that tobacco companies have historically had no real objection to these products.

Boycotts of tobacco stocks

Investment managers for pension funds and mutual funds have an obligation to act in the best interests of their clients by maximizing return on investment. Even though it may be ethically desirable to avoid purchasing tobacco-company securities, investment managers may feel hindered in making this decision on ethical grounds alone. Managers should be able to refuse tobacco securities, just as some jurisdictions supporting an end to apartheid gave managers discretion to boycott companies with South African investments. Investment legislation should be amended accordingly.

A successful boycott of tobacco stocks would further isolate tobacco companies and increase public support for regulation. Already, some organizations and institutions have decided not to invest in tobacco stocks. The institutions include Harvard University, Johns Hopkins University, and the City University of New York.

A Research Plan



The need for research

Much is already known about what has to be done to reduce tobacco use. Nonetheless, more research is needed, both in Canada and around the world. Research can help make political decision-makers aware of the need for action within their own country and can help policymakers design more effective tobacco-control policies and programs. However, research should never be used simply as an excuse to delay real action.

The type of research a particular country needs may depend on how advanced the country's tobacco-control strategy is. An LDC intending to implement a strategy might need research on the prevalence of smoking or on the rates of lung cancer — the type of research that was conducted in Canada in the 1960s. Canada, on the other hand, can pioneer in research that would help the country expand its antitobacco strategy.

Health research

Every year, research on tobacco use uncovers more “bad news.” Ever-growing knowledge about the health consequences of smoking, ETS, and nicotine addiction further makes the case for strong action by policymakers.

Compared with DCs, where countless health studies already exist, the LDCs have a greater need for health research because the tobacco epidemic in those countries is not yet as severe. The tobacco industry has frequently argued that a lack of local health evidence in LDCs means that there is no proof that smoking is harmful to local residents.^[622] As false and as racist as such industry claims may be, good research helps to counter the industry's position.

In many LDCs, basic epidemiological research is needed to determine the risks of smoking for a particular population, especially where risks of certain diseases may be higher than they are in DCs. For example, in parts of China the residents have a heavy salt diet, so they already have an elevated risk of heart disease. Tobacco consumption might also worsen existing endemic conditions, such as low birth weight due to poor maternal nutrition, bladder cancer due to schistosomiasis, or cancer due to unregulated exposure to environmental carcinogens.^[474]

Economic research

Given that the industry is quick to emphasize the economic benefits said to arise from tobacco, research into the economic costs from tobacco can provide valuable information for decision-makers. So can information that a domestic company is exporting earnings through dividends to an expatriate parent company. Knowledge of the industry's high profitability can help make the case that profit has to be reduced. Similarly, research demonstrating that tobacco imports are adversely affecting the balance of trade can be powerful information for a country with a significant import market but scarce foreign exchange. Such economic considerations might be enough to persuade the government in question to take strong action against tobacco. Knowledge of how much is spent annually on tobacco by consumers, in LDCs especially, can illustrate how money is not being spent on the necessities of life. This gives a further reason why tobacco should be controlled.

Environmental and agricultural research

Much more research needs to be done to better understand how the growing and curing of tobacco lead to environmental damage. More needs to be learned about the extent of deforestation and soil depletion. Existing research has concentrated on Africa, but little is known about Asia, including China. In the short term, designing fuel-efficient curing barns might reduce environmental damage.

Research into alternative crops can help farmers exit from tobacco growing. Research into the occupational health problems of tobacco growers, especially in LDCs, might provide further reasons for discouraging the growing of tobacco.

Market research

Regular, ideally annual, surveys of the prevalence of smoking are needed. The surveys should be broken down by demographic group (age, sex, region, socioeconomic status, urbanization, ethnic subgroup, and so on). These breakdowns are important for monitoring trends among different groups. Surveys help analysts evaluate the effectiveness of existing prosmoking and antismoking interventions. Surveys also help policymakers design better tobacco-control strategies.

Also needed is continuous updated behavioural research. Why do people start smoking? Why do they continue to smoke? Why do they attempt to quit? Why do they succeed in quitting? There needs to be an understanding of the products being consumed (cigarettes versus roll-your-own, the preference for various tar and nicotine yields, the preference for menthol cigarettes, and so on). Growth in certain market segments may reveal industry strategies and highlight the need for new remedial interventions. The market is continuously changing, and those working in the tobacco field must keep on top of things. Imperial Tobacco knows this and boasts that one of the company's most important strengths is "a deep understanding of consumers gained through extensive market research."^[281, p. 11]

Survey methodology must be culturally sensitive. Thus, in countries where smoking is socially unacceptable for women, interviewers should be women who receive special training. In LDCs, a survey might find a high smoking prevalence among health-care professionals, thus indicating a need for a targeted educational program. Monitoring market changes following entry by TTCs can show other countries why they should — and how they can — keep TTCs out of their own markets.

Policy research

Policy research is needed to help countries design and implement effective tobacco-control policies. Research could take many forms. One initiative might be to assemble a collection of the laws enacted by other governments. A complementary initiative would be to prepare model laws that municipalities, provinces or states, or countries could adopt, as appropriate. Opinion polls could determine how much public support there is for various tobacco-control measures. Politicians place great value on public opinion. A list of tobacco industry arguments, together with counterarguments, would provide a useful reference for advocates campaigning for new tobacco-control measures.

It is important to monitor tobacco-control developments in other places. News reports are helpful for this: in a "war of information," it is essential to keep on top of current events. In addition, case studies detailing successful and unsuccessful campaigns describe lessons learned so that the same mistakes do not have to be repeated elsewhere.

In each policy area, research can help determine the need for a proposed measure or the best way to implement one. There are hundreds, if not thousands, of possible research questions worth investigating. A few, given below, illustrate what can be pursued.

In the realm of taxes, helpful initiatives would be to track prices in different provinces; to measure the impact of higher taxes on consumption; to determine whether higher taxes on cigarettes cause consumers to switch to other tobacco products; and to measure whether taxes are keeping up with inflation and increases in disposable income. Any rise in smuggling should be documented, as should any direct or indirect industry contributions to the problem. Documenting problems make it easier to design remedial actions.

In the realm of advertising, numerous research questions might provide further evidence related to advertising restrictions. One might investigate the impact of advertising on consumer perception of brand imagery; the ability of children to recall advertising; the influence of advertising on consumer perceptions of the safety of light cigarettes; or the influence of advertisers on the news content of magazines and newspapers. It would be helpful to document industry violations of voluntary restrictions on advertising and to investigate how the industry exploits loopholes in existing laws. More research on the promotional value of packaging could provide evidence that would be useful in the inevitable legal challenges to the implementation of plain packaging. Documenting sponsorships, charitable donations, and political contributions is a way to monitor the tobacco industry's PR and promotional activity.

In the realm of smoking restrictions, many questions still need research. What percentage of workers have a smoke-free workplace? How quickly are employers moving to restrict smoking in workplaces? Do 100% smoke-free policies for workplaces influence smokers to quit smoking or reduce their daily consumption? How many restaurants have voluntarily banned smoking? How many health-care institutions are smoke free? Are the consequences of ETS more severe in homes with poor ventilation and open fires? What steps can be taken to make it easier to implement smoke-free policies? How does a city bylaw banning smoking in all restaurants affect restaurant sales?

In the realm of laws prohibiting tobacco sales to minors, researchers could measure the effect of retailer educational programs on compliance. Surveys could measure the compliance rate in a community and identify retailers not complying with the law. Generally, all laws should be monitored for the extent to which they are obeyed. Identifying how laws are being disobeyed is the first step to ensuring compliance.

In the realm of product design, researchers could measure the levels of toxic substances in tobacco products; analyze the content of new or modified products; estimate the impact of banning the use of menthol or other flavouring; investigate ways to control deceptive filter ventilation; or determine ways to make the taste of cigarettes deliberately less palatable.

In the realm of health warnings, researchers could examine which messages are the most effective; determine which photographs or graphics accompanying a warning would

have the greatest impact; measure the impact of existing messages; track changes over time in consumer knowledge of health consequences; or determine which nonhealth messages would be most effective on packages.

In the realm of alternative nicotine products, research on nicotine gum and nicotine patches, for example, might result in products better able to substitute for cigarettes. Such research might be conducted by the drug companies already manufacturing nicotine alternatives.

In determining research priorities, researchers should work together with policymakers and policy advocates. A coordinated approach helps avoid a situation in which insufficient research is being conducted on the most important issues or the research conducted is redundant or of little value.

Program research

Research for designing effective programs should be carried out. What types of school-based educational messages work best for boys and for girls in various age groups? How can physicians achieve the best results when counseling patients about smoking? What types of antismoking advertisements have the greatest impact? How effective are various educational and smoking-cessation programs? What initiatives implemented elsewhere could be copied locally?

Tobacco-industry activity

It is essential that the activities of the tobacco industry and its allies be monitored. Without knowledge of what the tobacco industry is up to, it is not possible to plan counteractions. When the industry releases studies of its own, a thorough analysis may expose faults in assumptions, methodology, conclusions, and so on. Publicly released industry research is frequently flawed. A good rebuttal can effectively undermine the advocacy outcome the industry intended. Some of the best information on industry activity has been found in corporate documents. Such documents, to the extent available, should be collected and made accessible for easy reference.

Paying for research

The least-expensive way to pursue research is to require tobacco manufacturers to publicly disclose internal industry research. Another inexpensive research initiative is to collect what has already been done. Existing studies may provide enough answers on a particular question to make further research unnecessary.

To pay for research, one option is to earmark revenue raised through taxes on tobacco products or industry profits. Much research in California and Massachusetts has

been funded this way. Persuading NCIC and the Heart and Stroke Foundation, and to a lesser extent similar organizations, to allocate funds to tobacco policy research would be highly desirable. The major health charities already spend large sums on research, but virtually nothing is spent on studies relevant to tobacco control.

Disseminating research

Once research has been conducted, it is important to disseminate the findings and make them accessible to others working in the tobacco-control field. The Ontario Tobacco Research Unit, headed by Dr Roberta Ferrence of the Addiction Research Foundation, assists in this respect by linking a network of researchers, hosting an annual conference, publishing a series of working papers, and publishing a monthly report called *Current Abstracts on Tobacco*. A documentation centre, similar to Canada's National Clearinghouse on Tobacco and Health, could be set up to collect relevant literature in one place. Key documents, or at least their abstracts, should be translated into other languages to make them useful in other parts of the world. The availability of new studies could be posted on the Internet.

Finally, new research should be brought to the attention of the media. As previously noted, media publicity can in itself be an important educational tool.

