

# Health Canada's 10-year tobacco strategy expires

## AN UNCERTAIN FUTURE AMID FEDERAL FUNDING CUTS.

In 4 short months, one of Canada's most successful public health strategies will have come to the end of its 10-year run. Health Canada's Federal Tobacco Control Strategy (FTCS) expires on March 31, 2012.

Despite a public consultation process launched in September, there has been very little information provided about plans for the coming years. What makes this silence worrisome is that the renewal of the strategy comes at the same time that the federal government is asking each department to cut 5% to 10% of its budget.

### A successful strategy (despite falling short of its goals).

The FTCS is the largest anti-tobacco program ever run by Health Canada. It started in 2001 in response to an energetic nation-wide campaign for a levy on tobacco products to provide sustained financing for tobacco control.

The original funding level planned for the strategy was \$100 million per year. A series of government cuts resulted in this level of funding never being reached: the core budget is now around

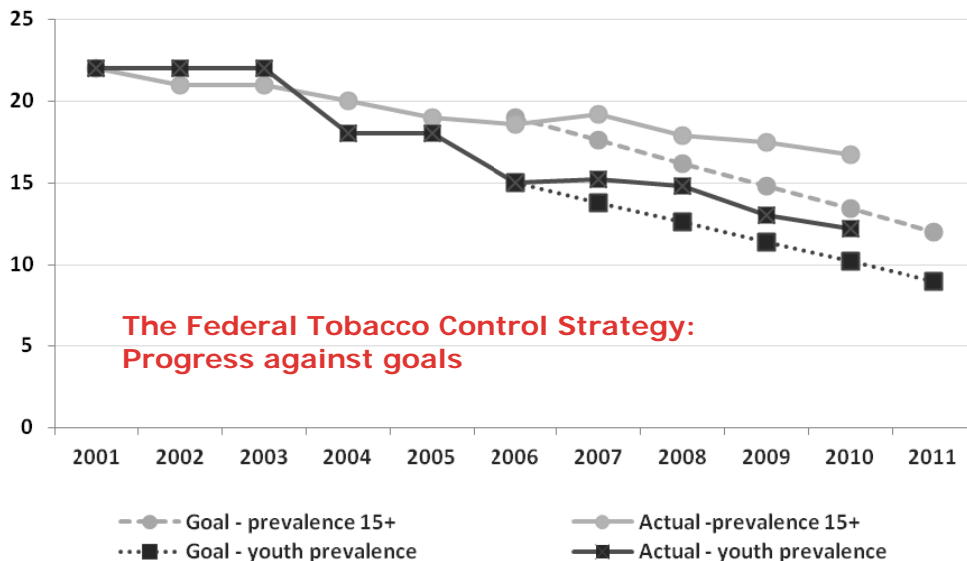
\$40 million per year. About one-third of the budget was allocated to support tobacco control activities of community partners, such as health charities and other levels of government.

The first half of the strategy, between 2001 and 2006, exceeded expectations. Tax increases, mass media campaigns, new health warnings and rapid implementation of smoke-free spaces contributed to a reduction in smoking from 25% to 19% (as measured by the Canadian Tobacco Use Monitoring Survey).

In the second half of the strategy, from 2006 to 2011, regulatory developments stalled and so did progress against tobacco use. Between 2006 and 2010, smoking prevalence fell, but only 2 percentage points (from 19% to 17%). The federal goal of 12% smoking prevalence by 2011 was not met.

### An adaptive industry

One reason the second half of the strategy was not as effective was the speed with which tobacco companies adapted to new regulations. Tobacco companies are able to use new forms of



## The renewal of the Federal Tobacco Control Strategy (continued)

marketing (like price contracts with retailers, more innovative packaging and flavoured products). If tobacco use is to continue to decline, tobacco company innovations must continue to be met with timely and effective responses from government.

### A contraband problem left to fester

Contraband has been allowed to slow progress in reducing smoking by making cigarettes less expensive in three ways. (1) Inexpensive contraband cigarettes are available to many smokers. (2) All cigarettes are less expensive than they otherwise would be because the federal government and provincial governments in Quebec and Ontario have been persuaded not to raise taxes because of contraband. (3) Tobacco companies have reduced the price of many brands to 'compete' with contraband cigarettes.

The contraband situation makes an powerful federal regulatory presence all the more important—had it not been for the regulatory and programming measures put in place, smoking may well have increased over the last four years.

### An array of new measures waiting for implementation.

There are many measures that government could take to further reduce smoking. These include:

- performance-based requirements on tobacco companies to require them by law to achieve measurable targets for reducing in smoking.
- plain and standardized packaging of cigarettes (and removal of brand elements from the product)
- restructuring of the retail environment for tobacco products to reduce availability, accessibility and normalization.
- a moratorium on the introduction of new tobacco products.
- effective regulations on shisha, chewing and other novelty tobacco products to reduce their appeal to youth.
- support for effective tobacco control in first nations' territories.
- strengthened FCTC implementation in Canada and abroad.
- developing a response to massive price discounting by tobacco manufacturers.
- developing better enforcement methods for federal laws.

## The unsolved problem of flavoured tobacco:

by Annie Duchesne

It was a drizzly Monday morning when I stepped into a downtown tobacco shop to buy my first pack of smokes. I stood in front of the cash register feeling a little nervous. The shopkeeper was very friendly and helpful. He drew back the metal coverings behind the cash to reveal hundred of brightly packaged tobacco products. When I asked for flavoured tobacco, he offered me clove cigarettes, little cigars in milkshake flavors like cherry, vanilla and chocolate, and chewing tobacco in varieties such as citrus, berry and mint. The spread was impressive. Delicious scents wafted from the packages.



*These little cigars are the size of a cigarette, smell like candy, and are priced like a bag of chips (\$2). They are sold without health warnings*

I had been charged with the task of collecting samples of flavoured tobacco product in

Ottawa's downtown area. Due to a law passed two years ago restricting the sale of flavoured tobacco, I fully expected that these products would be few and far between. In reality I found 19 different products in over 60 different flavors.

Bill C-32, passed in July 2009, is an amendment to Canada's Tobacco Act. The aim of the bill is to prevent youth from taking up smoking by banning certain flavoring additives in cigarettes, cigar wraps and little blunts. The bill states that "the use of certain flavors, such as fruit and chocolate, in these tobacco products is believed to induce youth to smoke." It was considered to be a breakthrough success at the time of its induction. However, tobacco companies were a few steps ahead.

I considered the multitude of options on the counter and finally decided on five different samples: three packs of mini cigars, a can of long cut, chewing tobacco and a pack of little "exotic spicy clove" cigarillos. These products came in a variety of flavors. I chose vanilla, cafe moka, cherry and berry.

# Candy-coated nicotine initiation.

As I visited more stores, my collection became more extensive. Perhaps the most shocking product was the "adjustable cigar": a single, flavoured tobacco cigar that had been triple-wrapped in flavoured blunt wraps. It was packaged in a sleek, lip-gloss-like container. The cigar retailed for \$6, the price of a few candy bars. The saleswoman assured me that I could remove the extra blunt wraps and use them to roll my own flavoured cigars. She didn't recommend that I smoke the cigar with all the wraps. It would be too strong. I saw varieties like "blueberry bomb", "liquid honey", "bahama mama", and "VSOP cognac".

Tobacco companies have cleverly sidestepped the laws by altering their products in minor ways. For instance, Bill C-32 defines a "little cigar" as a cigar that has a cigarette filter or that weighs less than 1.4 grams. One tobacco company simply removed the filter on their little, flavoured cigar and increased the weight slightly making it legal for sale.

Other products, such as chewing tobacco, are not addressed in the bill at all, even though they contain the same flavoring additives banned in the bill such as sweetener (sucralose). Chewing tobacco, in particular, has experienced a revival in the past few years due to its popularity among youth. When my younger cousin dropped by and saw

the tobacco samples I bought, he picked up the can of berry, chewing tobacco and said, "I know this. Some of the guys on my high school sports teams used to use it."

Many owners of tobacco shops told me that the variety of flavoured product available for sale has decreased since Bill C-32 came into effect. Yet, of all the shops I visited, only one did not carry any flavoured product.

Of those that did carry flavoured tobacco, one store carried over twelve different brands of cigarillo, clove, chewing tobacco, tobacco shisha, and blunt cigars with fifty-nine flavors to choose from. Another store carried just two varieties of flavoured tobacco product, yet the owner was outraged when I described my mission for PSC. He accused people like me of trying to hurt his business. "It is not the big companies that suffer when these (surveys) are done and laws are passed," he argued. "It is the small businesses that pay and we are just trying to put bread on the table."

The most interesting encounter I had was with the owner of a popular smoking accessories store. When I attempted to buy some of the flavoured tobacco he carried, the owner gave me a stern lecture about the dangers of smoking.

"Do not start," he said. "It is impossible to stop."

*The fruit flavouring and near-invisibility of health warnings may be why many young Canadians see shisha smoking as 'fun' and not harmful.*



He told me about the teenagers that walk into his store and attempt to buy the flavoured tobacco products. When he turns them away, some of the teens pay street people outside to buy the products for them.

"I don't allow it," he said. "I have children myself."

He is not worried about hurting his business by turning down these kinds of customers. "There are plenty of other things I can sell."

Ultimately, the businesses that make a profit selling items other than tobacco were friendlier and more accommodating towards me when I told them about my purpose. These are the businesses that will continue to thrive no matter what tobacco laws are passed.

For the moment it would seem that tobacco sellers have little to worry about. In the two years since Bill C-32 has come into effect, tobacco companies have found ways around Canadian law. They continue to offer a variety of flavoured product. Parliament will have to push for tougher laws if they want to ban flavoured tobacco product and protect youth from tobacco company incitements to try smoking.

*Annie Duchesne recently graduated in journalism and biology and volunteered to help PSC during her gap year before graduate work.*



## A \$2 tax increase would help 128,000 smokers quit Inflation weakens the power of tobacco taxes

Almost a decade has passed since the federal government last increased tobacco taxes. Because the value of the dollar has decreased by 20% during that time, the power of federal taxes has been reduced by one-fifth.

There are two federal taxes on tobacco products: a specific excise tax and the GST. The specific tax was set in 2002 at \$15.85 per carton and raised slightly to offset the general reduction in GST from 7% to 5%. It is currently \$17.00 per carton.

In 2003 (after the taxes were in place), the federal government received about \$20.35 on a carton of cigarettes — in 2011 it collects about \$21.15. Once those figures have been adjusted for inflation since 2002, tax revenues per carton have fallen from \$19.92 in 2003 to \$17.70 in 2011.

To keep pace with inflation, tobacco taxes should be increased by \$1.94 a carton, for a total federal tax of \$18.94 per carton.

### A federal tobacco tax increase of \$1.94 per carton would help 128,000 smokers quit.

A recent review of the impact of taxes on smoking rates in Canada found that "if there is a 10% increase in taxes then smoking participation will fall by about 2.3%." [1] Based on this estimate, an inflationary adjustment to federal taxes would decrease the number of smokers by 2.7% - 128,000 people.

### A federal tobacco tax increase of \$1.94 per carton would likely increase public revenues by \$300 million

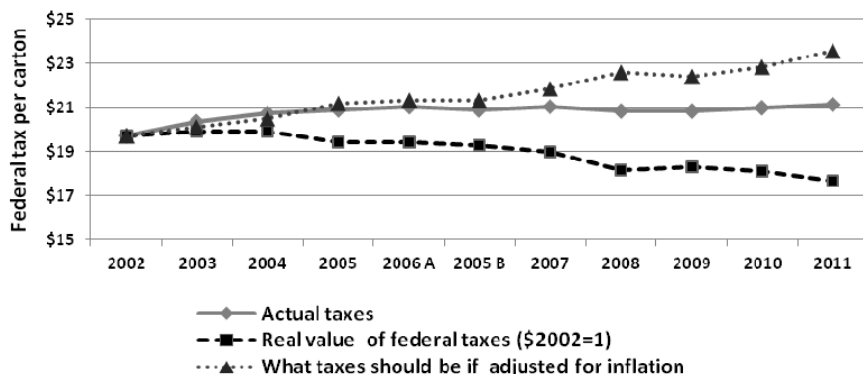
A price increase would also reduce the number of cigarettes smoked (even by remaining smokers). The overall impact of a 10% price increase in Canada was recently measured at -3% (usually expressed as a price elasticity of -0.31) [2]. Based on this estimate, an inflationary adjustment to federal tobacco taxes would decrease the number of cigarettes smoked in Canada by 251 million (1.2 million cartons).

Nevertheless, it would increase tobacco tax revenues by \$296 million.

This is FIVE times the amount the federal government currently spends on tobacco control.

[1] Sunday Azagba and Mesbah Sharaf. *Cigarette Taxes and Smoking Participation: Evidence from Recent Tax Increases in Canada*. *Int. J. Environ. Res. Public Health* 2011, 8, 1583-1600.

[2] Nikolay Gospodinov and Ian Irvine. *A 'long march' perspective on tobacco use in Canada*. *Canadian Journal of Economics*, Vol. 38, No. 2. May 2005.



## \$85 million tax break to Big Tobacco

In February 1994, in the wake of the contraband crisis, the federal government announced a novel tax measure and imposed a surtax on tobacco industry profits. This tax was initially called the "Health Promotion Surtax."

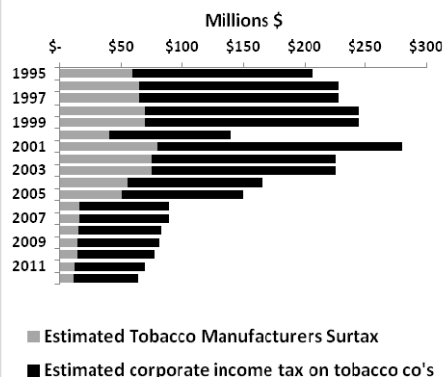
This surtax is unique in and to Canada: similar taxes are not applied to other manufacturers, and we do not know of a similar tobacco tax profit in other countries. Originally imposed on a temporary basis and at the rate of 40%, the tax was made permanent and the rate was increased to 50% in 2001.

The highest level of revenue from this measure was reported by Finance Canada in 2001 at \$80 million.

Two government decisions events have reduced the value of the tax:

- 1) the tax was not adjusted to include imported cigarettes, so Imperial Tobacco was exempt from the tax when it moved its production to Mexico.
- 2) the decision to reduce the general corporate income tax rate from 21% in 2007 to 15% in 2012 had a 'knock-on' effect on the surtax.

The combined effect of these two changes have resulted in profit taxes on tobacco companies being \$85 million lower than they otherwise would be.



# WHEN GOVERNMENTS SUE BIG TOBACCO, WHO PAYS?

More than a decade after British Columbia launched a suit against tobacco companies to recover the costs of treating tobacco-related disease, all of the provinces have passed legislation to ‘follow suit’, and many have engaged legal teams or filed their own statements of claim.

Yet not one government has said how these suits are intended to reduce tobacco use, nor have any invited public input to establish health related goals for the litigation.

There are structural elements to these suits that should concern those who want to see a just outcome to the wrongdoings of tobacco companies.

## It’s about money. Period.

The only stated goal for the legislation at this point is recovery of money. Ontario, the only jurisdiction to have identified an amount, is claiming \$50 billion dollars. On a per-smoker basis, this is equivalent to \$138 billion across Canada, about 5 times as the per-smoker rate as the U.S. Master Settlement Agreement.

## The harms done to smokers are not represented

Governments are suing as “third parties” to the wrongdoing. This is justified, as the costs of health care were borne by government. But health care costs are only a small part of the economic and human consequences of tobacco industry wrongdoing. Smokers and their families suffered (and continue to suffer) great losses.

This is particularly important as any financial settlement will almost certainly result in the costs being passed on to existing smokers or new smokers. (See box below).

## An industry that needs to be wound down, not maintained.

A financial settlement dependent on future tobacco sales maintains the legitimacy of selling cigarettes. Like a litigation ‘Ponzi scheme’ it forces the tobacco industry to seek or maintain new victims in order to compensate previous victims.

A better outcome would be one that accelerated reductions in tobacco use and its harms, such as an agreement to meet targets for smoking reduction.

## How to fix these lawsuits.

Why did governments lose sight of the need for a health-oriented outcome to this litigation? One reason may be that the lawsuits are being managed in complete secrecy and isolation from the health sector. In many provinces, the legal advice is generated by contingency-based lawyers for whom a financial settlement has more obvious rewards than a health outcome.

It’s not too late for governments to set a better course. We need to insist that they embrace new principles for their lawsuits:

- Giving priority to health in their statements of claim and negotiations with industry.
- Ensuring the interests of all victims, including smokers, are represented.
- Applying the same standards of transparency to these important policy decisions that are expected of Canadian government.
- De-linking lawyers fees from financial outcomes.

## Where tobacco companies might look to finance litigation payments.

Source	Available?	Reason
Past profits	No	Money has been disbursed to shareholders in the form of dividends, and cannot be recouped.
Industry owners	No	Shareholders are protected by law from such claims.
Industry assets	Not really	All but about \$20 billion of the companies’ global assets cannot be converted into cash
Future profits	Not really	Company managers have a legal obligation to represent the best interests of the shareholders. Since share value is based on future dividend income, management cannot look to solutions that will reduce that value.
Increased sales	Yes	At current profit rate, companies would have to sell 102 billion cigarettes to make \$1 billion. This is enough tobacco to be associated with 91,000 additional deaths.
Increased prices	Yes	Increased prices are the most obvious way for tobacco companies to finance settlement payments. This is what happened in USA with support from governments to prevent other companies entering the market without also paying. A \$50 billion settlement in Ontario, financed over 20 years at 5% would see smokers pay an additional \$4,000 per year.

# 2011

## The year in review

### January

**Quebec's** tobacco taxes increase slightly to \$21.80, reflecting an increase in provincial sales tax.

### February

**Newfoundland** launches a suit against tobacco companies to recover health care costs.

### March

**Minister of Health, Hon. Leona Aglukkaq** announces that the federal tobacco control strategy will be renewed for one more year while the future of the strategy is under review.

**New Brunswick** increases tobacco taxes to \$34.00 per carton.

### April

**Saskatchewan** ban on selling cigarettes in pharmacies comes into effect. B.C. and Manitoba are the only two provinces which still permit pharmacy sales.

**Nova Scotia** announces a new 5 year tobacco strategy with the goal to reduce smoking among young people by one-third.

**Prince Edward Island** raises tobacco taxes from \$44.90 per carton to \$50.80.

**Northwest Territories** increases tax on tobacco products by \$2.40 per carton to \$57.20, the highest rate in Canada.

**Manitoba** increases tobacco taxes by \$4.00 per carton to \$45.00 without PST.

Excise tobacco stamps become mandatory on cigarette packages sold in Canada.

### May

**Winnipeg** bans smoking within 50 metres of city-owned gaming fields.

The **Supreme Court** grants leave for an appeal of the B.C. Court's decision to include the federal government as a third-party in the province's health care cost recovery litigation against tobacco companies.

### June

**Ontario** passes the *Supporting Smoke-Free Ontario by Reducing Contraband Tobacco Act*, which increases controls on raw leaf products, fines for possession and police seizure powers.

**Manitoba** and **Nova Scotia** name the legal firm it has hired to represent it in health care cost litigation against tobacco companies.

### July

The **Supreme Court** rules the federal government cannot be included as a third-party in B.C.'s health care cost recovery litigation against tobacco companies nor the B.C. based class action related to 'light' cigarettes.

**Ontario** announces Champix and Zyban will be covered by Ontario Drug Benefit Plan.

University of **Victoria** bans smoking on campus.

**Newfoundland** becomes the ninth province/territory to ban smoking in cars when children are present. Only Quebec, Alberta, Northwest Territories and Nunavut have not done so.

### August

**NWT** passes law to permit lawsuit against tobacco companies.

**Nunavut** announces it will sue tobacco companies.

### September

**BC** offers free NRT. Phone lines are overwhelmed with demand.

**Quebec** court rejects proposed deal between federal government and Quebec litigants. Trial is set to start in March, 2012.

**Federal government** gazettes health warning messages. New labels must be on packages by June 2012.



**Health Canada** releases Canadian Tobacco Use Monitoring Survey (CTUMS) results for 2010: at 17%, the rate is at lowest level ever recorded.

**British Columbia** has the lowest smoking prevalence at 14%.

**Saskatchewan** selects lawyers for litigation. (Bennett Jones, LLP and Siskinds LLP).

**Health Canada** invites comments on the future focus of its tobacco control strategy.

### October

**Alberta** government investment agency decides to stop investing in tobacco stocks.

### November

**Australia** becomes first jurisdiction to require plain packaging of cigarettes. Reforms are scheduled to take effect December 1, 2012.

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