

**PLAIN TOBACCO PACKAGING**

**A BRIEF TO THE HOUSE OF COMMONS  
STANDING COMMITTEE ON HEALTH**

**FROM THE**

**CANADIAN TOBACCO MANUFACTURERS COUNCIL**

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## **INTRODUCTION**

The Canadian Tobacco Manufacturers' Council (CTMC) and its member companies welcome this opportunity to address the Committee in regard to its reference study of plain packaging of tobacco products.

We acknowledge that Canadians, both smokers and non-smokers, are aware of the health risks associated with smoking and that their governments have decided to develop policies to discourage the consumption of tobacco products.

In view of this, we would like to question what constitutes credible or rational policy-making in this area and, more particularly, whether proposals for so-called plain packaging meet the tests of sound public policy.

Our submission is accompanied by a number of supplementary documents expanding on some of the key points presented in more summary form in this brief.

## SECTION 1

### A CREDIBLE POLICY RATIONALE

In recent years federal and provincial governments have decided that it is in the public interest, as a matter of health policy, to reduce the consumption of tobacco products by Canadians.

There is, in fact, a well-documented long-term trend beginning well before most government tobacco control measures, and driven principally by health concerns, toward reduced consumption. Prevalence rates, i.e. percentages of the population who choose to smoke, have declined steadily over the past 30 years. There are now actually more ex-smokers than smokers among the Canadian population.

Governments want to maintain -- and, if possible -- accelerate those trends by discouraging Canadians, especially young Canadians, from starting to smoke and by encouraging smokers to quit.

The industry, where appropriate, has cooperated with governments. We carried the government's prescribed warning messages and withdrew from certain forms of advertising long before any law required us to do so. In such areas as discouraging the sale of tobacco products to minors, we have been active in supporting programs to that end.

Anti-smoking programs and policies must be able to meet certain basic criteria or tests.

Above all, governments must be satisfied that the means chosen will achieve the stated goals.

Policy-makers have a responsibility to differentiate between soundly-based programs to encourage a reduction in tobacco consumption -- and proposals which are simply and needlessly anti-industry. Targeting the industry -- a clearly stated goal of many of the plain packaging proponents -- may be useful to them in generating headlines. The real question for responsible policy makers, however, is whether a proposed policy impacts on the smoking decision.

Past policies have produced a series of initiatives which, in retrospect, have done little or nothing to affect consumption while causing significant societal costs. These ought to have been foreseen, and were often predicted, but were ignored by governments in their haste to be seen to be doing something.

There is no better case study in this regard than recent experience with tobacco taxation.

The root cause of the problem, which led to large-scale smuggling, increasing violence and widespread disrespect for the law, is clear.

Federal and provincial governments, whether driven by fiscal need or the demands of pressure groups, raised taxes on tobacco products to such an excessive level that it invited criminals to develop a contraband market and consumers to patronize it.

As the studies and charts by Informetrica/Jacobson clearly demonstrate, these excessive taxes had no measurable impact on the overall trend in the percentage of smokers in the Canadian population. That trend continued along a line of steady but gradual reduction, well established before tobacco taxes were pushed to the extreme -- a trend virtually parallel to that which occurred in the United States during the same period under vastly different tax and regulatory policies.

What excessive taxation did do was to switch an increasing percentage -- up to 40 percent, according to the government's own figures -- of Canadian consumption away from the long-established legal tax-paid distribution and retail system to an "underground" market dominated by criminals and operated outside the law and Canadian tax system.

The decision by the federal and certain provincial governments to roll back tobacco taxes to more reasonable levels was nothing more than overdue recognition of this central fact: high taxes did not work. They had minimal impact in lowering consumption, but maximum impact in terms of criminal activity, lost jobs and government revenues, and public disrespect for the law. These costs continue despite the tax roll-back.

The notion that, having finally recognized the error of their own tax policies, governments now have to "even things up" with some other offsetting initiative simply invites still more ill-considered and ineffective policy-making.

Credible government policies require careful and thoughtful analysis rather than emotional rhetoric. Only on this basis can they meet the standard tests of legitimacy, namely:

1. They are based on objective and reliable research and evidence.
2. They are reasonable, coherent and consistent.

3. They are carefully designed to achieve their stated aim.
4. They are designed to respect and enhance the core values of a democratic society, including the right of individuals to make their own lifestyle decisions and to have those decisions respected.

They should not, in other words, be frivolous, confiscatory, anti-competitive, anti-jobs, or illegal.

The position of CTMC and its member companies is quite clear and straightforward.

As long as it is legal to smoke and several million Canadians choose to exercise that legal right, there will be a market in Canada for high quality tobacco products. That market has supported -- and can continue to support -- significant levels of economic activity, including jobs for well over 40,000 Canadians and substantial tax revenue for governments.

Surely it is only common sense that, as long as this market exists, it should be served by a Canadian industry providing Canadian jobs and tax revenues to Canadian governments.

We will continue to oppose by all appropriate means policy proposals which do nothing to reduce tobacco consumption in Canada, but seek simply and needlessly to harass the almost six million Canadians who use our products, or the growers, distributors and manufacturers who bring the product to its legal market.

Plain packaging is just such a proposal.

## SECTION 2

### PLAIN PACKAGING -- A CREDIBLE POLICY ?

There is not one iota of credible evidence to support the proposition that plain or colourful packaging plays any role in an individual's decision to smoke or to quit smoking.

The major evidence presented by those advocating such a law -- the "study" sponsored by the Canadian Cancer Society -- is flawed throughout its methodology, analysis, and conclusions. (See attached commentaries by Decima Research, Dr. Z. Amit and Dr. C. Chakrapani.)

It is not surprising that Health Canada officials, having reviewed that study and others, told this Committee on April 12th that:

"No statistical correlations could be established from these studies"<sup>1</sup>

and:

"What is the packaging that will reduce consumption? There is no data available for that question, to answer that question, and that's what we're looking at".<sup>2</sup>

The vital link between means and ends is missing.

Like excessive taxes, however, plain packaging will certainly risk a number of negative and damaging consequences:

- It will invite a resurgence of the contraband tobacco market. It will encourage criminals to provide Canadians with easily counterfeited versions of current Canadian brands. It will create a new and lucrative black market for properly packaged foreign brands, again undermining the livelihoods of Canadian wholesalers and retailers. Losses of government tax revenues will again increase.

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<sup>1</sup> (Carole Lacombe, Director, Product Safety, Health Protection Branch, Health Canada, Hansard, April 12th, 1994, p. 1:67)

<sup>2</sup> (Murray Kaiserman, Acting Head, Tobacco Section, Bureau of Chemical Hazards, Health Protection Branch, Health Canada, Hansard, April 12th, 1994, p. 1:73)

- It will encourage price based competition from abroad using non-Canadian tobacco. It will encourage price based competition within Canada, by leaving price as the only available tool of competition. The introduction of cheaper low-quality cigarettes would run directly contrary to the ends plain packaging is intended to achieve.
- It will deny consumers the benefits of trademarks in the areas of consistency and product differentiation.
- It will cause serious economic dislocation within the Canadian packaging and related industries, including the direct loss of up to 1,200 jobs, and more through the multiplier effect.
- It is an expropriation of long-established and valuable trademarks of Canadian manufacturers and will result in legal action to recover compensation.
- It will further limit the ability of Canadian manufacturers to compete for brand share among Canadian smokers contrary to the principles of the Competition Act.
- It will cause actions by Canada's major trading partners, on behalf of affected domestic manufacturers in their countries and their domestic shareholders in Canadian manufacturers, under the relevant provisions of the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT). Canadian governments will almost certainly face large compensation costs.
- It will provide further competitive advantage to foreign manufacturers, whose "spillover" advertising already is exempt from the Tobacco Products Control Act (TPCA).
- It will impose further multi-million dollar costs on Canadian manufacturers who are now spending \$30 million to comply with new packaging requirements under the TPCA, requirements which are just now emerging on the retail market and the effectiveness of which has yet to be evaluated.
- It will amount to an abuse of due process given that the Supreme Court of Canada has yet to hear and decide on the constitutional validity of the TPCA, including arguments focused on the government's powers under the Charter of Rights and Freedoms to interfere with communications between the manufacturers and consumers of a legal product.

Those are some of the serious negative effects which will flow from an attempt to impose plain packaging on tobacco products in Canada.



Those who advocate plain packaging -- the same groups and individuals who were so loud in their demand for and support of excessive taxation -- misunderstand or misrepresent the dynamics of the consumer market place. Above all, they continually confuse the two quite distinct steps involved in a consumer's decision to purchase and use any good or service.

The first step in this process is the decision to use the product. There is considerable literature available, including studies by Health Canada itself, on the factors which motivate individuals, including young people, to start or keep smoking. The major factors repeatedly identified are peer and sibling example, parental smoking and rebelliousness.

**There is not a single credible study on smoking initiation anywhere in the world which identifies packaging as playing any role in influencing this basic decision.**

Where packaging does play a role is in the second stage of consumer decision-making. Having decided to use tobacco products, the individual then chooses among the different brands of that product available.

In that context, we readily acknowledge the importance of packaging. It is a visible and influential expression of the product's trade mark, image and reputation which, often over many years, the manufacturer has been able to build around a particular brand. It communicates not only that reputation, but elements of flavour, format, comparability to other brands, and so on.

Is it valuable? Of course it is. There is no more important factor in today's market place than brand loyalty, all the more so given the restrictions of the Tobacco Products Control Act which forbids advertising and other marketing techniques used to try and influence or change brand preferences.

The CTMC and its members are not here to argue that packaging is not important. Quite the opposite. Our trademarks are our most valuable asset. As indicated above, any attempt by government to expropriate them via plain packaging laws will result in a significant claim for compensation.

But their value is not that they encourage individuals to start smoking. That simply is not true. Their value is that, once an individual has decided for other reasons to smoke, they are very important in influencing his or her brand choice and thus, in a highly competitive marketplace, which manufacturer will enjoy that individual's patronage.

Finally, let us deal with the question so badly misrepresented in the Cancer Society study. The real issue is whether packaging "per se" has any measurable impact on an individual's decision to smoke or whether the availability of only plain packaging would have any measurable impact on a current smoker's decision to continue or to quit. There is no evidence to support this, in any existing studies.

By contrast, irrelevant and clearly biased "research" was attempted on a completely unconnected and fundamentally different question: whether current smokers, offered a choice, would prefer attractive packaging to plain packaging. The answer to this false question posed by the Canadian Cancer Society is rather obvious.

If there is a possible exception to a preference for attractive, familiar packaging, it may be -- as evidence the Cancer Society study and Dr. Amit's critique -- among young smokers. As Dr. Amit notes, the fact that more young smokers chose plain than brand packaging in "payment" for taking part in the study "strongly supports the hypothesis that plain packaging will be counter-productive" among this age group.

Given all this and given the serious negative consequences that will flow from a plain packaging law, we earnestly hope and urge that the Committee heeds the hard lessons of the tobacco taxation fiasco and recommends against a new ill-conceived and ill-considered initiative on tobacco product packaging.

## **SECTION 3**

### **OUTLINE OF ISSUES AND INDEPENDENT STUDIES**

The following pages contain detailed commentary on particular aspects of the plain tobacco packaging issue, and/or brief summaries of independently authored studies. The latter were forwarded to the Standing Committee with this brief.

Formal executive summaries prepared by the authors, and their detailed curricula vitae, appear in the separate documents.

### **3.1 Smoking Trends Among Canadians**

**Informetrica Limited and Jacobson Consulting Incorporated** were commissioned by CTMC to prepare an analysis of tobacco consumption trends using publicly available data.

Overall conclusions as written in their study are as follows:

- 1) The best indicator of the extent of smoking by the Canadian population is the share of adults who smoke.
- 2) There is no indication of significantly faster rates of decline in prevalence during the previous regime of high taxation increases.
- 3) Changes in the real price of tobacco products clearly has some effect on prevalence. However, the significant increases in taxation during the late 1980s and early 1990s are not associated with major decreases in prevalence among younger Canadians.
- 4) Claims of major success in anti-tobacco policies in Canada relative to the U.S. are not supported by the data.
- 5) The government should be conducting regular prevalence and usage surveys to determine the true trends in the smoking behaviour of Canadians.
- 6) The currently available data suggests that significant progress has been made in the overall goal of reducing the share of the population who smoke. However, the attribution of this success to specific policies is not obvious from the data.

### **3.2 Efficacy of Plain Packaging on Consumption**

As the Standing Committee was told by Department of Health officials on the first day of hearings, two studies purportedly address the notion that plain packaging might have some impact on youth uptake of smoking. The Australian study in fact used just 66 test subjects to measure the visibility of warning messages on plain versus branded packaging. Even the conclusions reached on that very limited area have been subject to extensive academic criticism on their validity.

The other study, commissioned by the Canadian Cancer Society at an announced cost of \$100,000., was released in November of 1993, and again in January of 1994. Portions of the study said to be available in the January release have not been made available to anyone, as far as we could determine. Health Department officials confirmed that the Department collaborated in the study, despite the absence of evidence noted by those same officials. "Part III" of this research, using larger sample sizes for the same hypotheses and methodology, will apparently begin soon.

Given the interest by Committee Members, and repeated representations made to them by proponents of plain packaging, three separate, independent and expert evaluations of the design, methodology, analysis and conclusions of the Canadian Cancer Society sponsored study were commissioned by or on behalf of CTMC.

A bio-behaviourial psychologist with a specialty in psychopharmacology, Dr Zalman Amit, a national market research firm, Decima Research Limited, and consulting statistician Dr. C. Chakrapani of Standard Research Systems Inc. all examined the report from their individual and quite different professional perspectives.

Despite those differing backgrounds, the evaluations were uniformly and extensively critical of the document.

Dr Amit said: "...the report is invalid and does not provide a sound basis on which to draw any useful conclusions."

Dr. Chakrapani said "...the report fails to follow accepted principles of research analysis and inference. It fails to distinguish facts from opinions. Many of the inferences it reports and the press releases of the sponsors are not supported by the evidence presented."

Decima Research said "...the research does not support the contention that plain packaging will contribute to fewer teenagers taking up smoking, or dissuade smokers from smoking more."

**See : Review of the Report "Effects of Plain Cigarette Packaging among Youth" By The Centre For Health Promotion, Dr. Z. Amit, Centre for Studies in Behaviour Neurobiology, Concordia University, Montreal, April 1994.**

**Evaluation of "Effects of Plain Cigarette Packaging Among Youth", Decima Research, April 1994.**

**An Evaluation Of A Report Entitled "Effects of Plain Cigarette Packaging Among Youth" by Centre for Health Promotion, University of Toronto and ParticipACTION, Standard Research Systems, Inc. April 1994.**

The point for Committee Members to consider goes beyond the failings of a particular piece of research, the pre-conceived biases of its sponsors and supporters, and the dishonest contentions regarding its results.

Members are being asked to consider a notion so ludicrous on its face that it would not survive five minutes serious examination were it not for the atmosphere of controversy and emotion surrounding any aspect of the tobacco issue.

Packaging has no impact on market size for any established commodity. No child ever took a first bite of candy because of its package. No consumer ever decided to learn to drive because of a car design. No drinker ever first consumed alcohol because of the label on the bottle, or first tried a soft drink because of the design of the can.

And no smoker ever first decided to try tobacco because of a package design.

While Health Canada is designing additional research, the likelihood is that no objective research can ever "prove" this entirely false hypothesis. Aside from the near-impossibility of replicating the required market condition, as pointed out by each of the above referenced evaluations, the research is likely to fail because the proposition has no validity in the first place.

### **3.3 Efficacy of Plain Packaging on Smuggling**

Proponents of plain packaging believe that if such a regime were in effect, Canadian smokers would be so embarrassed at the possession of visibly contraband packages that they would simply stop buying them.

Not only is there no evidence to support this touching faith in law-abiding behaviour, there is abundant evidence of the opposite. Canadians rushed to buy contraband cigarettes. At the height of the smuggling, when frustrated Quebec retailers held deliberate public sales of contraband and invited the media to observe, customers delightedly smiled and waved the just-purchased illegal product at the cameras and watching police.

Smugglers' customers introduced their friends and colleagues to their favourite black market source, and overwhelming anecdotal evidence supports the proposition that they would do so again.

All that is required is a sufficient pre-condition for resurgent smuggling. Smuggling of any item happens for one of two reasons - price difference, or non-availability. Previous tobacco smuggling was caused by the first reason. Illegal drugs are smuggled for the second. Plain packaging would contribute to smuggling for both reasons.

Counterfeiting of plain packaging would be much simpler and cheaper than for the current branded packaging - but even the latter were being widely counterfeited by the height of the smuggling epidemic. CTMC intends to present samples of this to the Committee.

Counterfeiting of plain legal domestic packages provides an opportunity for dishonest retailers to openly display and sell the product.

A far more serious incentive to smuggling, however, lies in the attractiveness of smuggled branded packages, produced outside Canada.

The one difference in this new contraband market would be that the illegal product would sell for at least full legal price and quite probably at a premium.

The last smuggling outbreak, now just ending thanks to the February tax roll-back initiative, will be re-ignited with virtual certainty.

All of the damage caused to this industry and others, the threats to the safety of employees, the destruction of legal distribution channels as wholesalers and retailers lost sales volume and jobs, the losses to government revenues, the growing financial strength of criminal organizations and spreading disrespect for the law, all of these would again be caused - ironically by the same government that just moved to put an end to the contraband.

Plain packaging and excessive tobacco taxes have at least one thing in common besides their common proponents - they both cause smokers to change sources of supply, from legal to illegal.

Even without evidence on its consumption effect, the plain package proposition deserves to be rejected by the Committee on this ground alone.



### **3.4 Plain Packaging of Tobacco and Canada's International Trade Obligations**

While it may or may not be legally possible for government in Canada to impose plain packaging requirements on tobacco manufacturers (see next section), the trademarks, logotypes and distinctive colours of the packages are clearly protected under Canada's international trade treaty obligations.

CTMC has obtained and is submitting to the Committee two separate professional opinions, one legal (Ogilvie Renault) and the other from Canada's leading trade policy consulting firm (Grey, Clark, Shih and Associates, Limited). These are submitted separately to the Committee.

Other witnesses will be addressing the same point.

Whether plain packaging were introduced by the federal or any provincial government, the North American Free Trade Agreement (NAFTA) offers the clear and specific protection of compensation that would have to be paid to the trademark owners.

These are among the largest and most valuable assets of tobacco manufacturers, and such claims, both domestic and foreign, could clearly run far into the billions of dollars. Do Committee Members believe this public policy whim is worth that much?

As stated elsewhere, with no evidence at all of downward impact on consumption, the plain packaging proposition deserves rejection on treaty obligation grounds alone.

### **3.5 Legal Aspects of Plain Packaging**

#### **I The Tobacco Products Control Act**

1. The imposition of plain packaging would require amendments to the Tobacco Products Control Act (The "TPCA") since section 9(2) of that Act specifically permits the use of trade marks on packages. The language of section 17 is not broad enough to encompass plain package regulations and would also require amendment.
2. The Constitutional validity of the TPCA in its present, narrower, form was challenged by two member corporations of the C.T.M.C. in the Quebec courts on the grounds that it dealt with matters which fall within provincial jurisdiction and that the ban on advertising violated the Canadian Charter of Rights and Freedoms (the "Charter").
3. The trial judge found the TPCA to be unconstitutional on both of these grounds. This decision was reversed by the Quebec Court of Appeal with a strong dissent on the Charter issue. In October 1993, the Supreme Court of Canada gave leave to appeal on both constitutional issues and it is expected that the appeal will be heard in the latter part of this year.
4. One of the questions specifically in issue in that appeal is whether the federal government has jurisdiction to determine what shall and what shall not appear on tobacco packaging. In short the jurisdiction of the federal government to take the steps now before this Committee is directly in issue before the highest court in Canada and a decision may be expected in less than a year.
5. Insofar as the Charter is concerned, the imposition of plain packaging would constitute an extension of the advertising ban. The even division of opinion amongst the four judges who have already addressed this issue indicates clearly the difficulty and complexity of the legal questions which it raises.
6. This Committee has already heard a representative of Health Canada who advised that at the present time, his department does not have information indicating that plain packaging will reduce cigarette consumption and that a study on that subject is expected to be completed only in December 1994.
7. In such circumstances an immediate assertion of legislative authority by the Government of Canada, thus anticipating the decision of our highest Court, is both unnecessary and inappropriate and would inevitably lead to further litigation.

## II Packaging Regulations under the TPCA

8. Such a step would be particularly inappropriate in the present context. Regulations enacted in 1993 require that as of September 11th, 1994 all cigarette packages in Canada must carry new health messages on the top of the package in black and white formats occupying 25% of the principal display panel within a border of black or white. Including the border these new messages will occupy upwards of 30% of the panel.
9. An application to stay the Phase II regulations until the constitutional issues are settled was heard by the Supreme Court of Canada in October 1993 and was rejected on March 3, 1994. The Attorney General of Canada advised the Court that the government attached great importance to the new messages and formats and considered it essential that they come into force prior to the appeal being heard. Over the next few months packages in the new format are to be introduced. By mid September all cigarette packages will be in the new format. They will then be carrying the most prominent health messages in the world.
10. What is involved here is a proposal which would involve a third major change in packaging requirements, all of them imposed while the federal government's authority is contested before the courts. In this case the Phase II formats, so highly touted by the government, would be discarded and replaced before there has been any opportunity to verify their actual effectiveness. And this in the face of Health Canada's own advice that the usefulness of plain packs has not been determined.

### **III The Evidence in the TPCA Case**

11. The challenge to the TPCA resulted in a very long trial and a voluminous record. There was extensive evidence dealing with the factors leading to smoking uptake by young people and the effect of advertising. Some of that evidence suggests that plain packaging is unlikely to achieve its stated purpose, and at the very least, indicates the need for careful and thoughtful enquiry before such a step is taken.

12. Canadian and other government studies introduced in the court case indicated that smoking uptake among adolescents is associated with a number of psychosocial factors which plain packaging is unlikely to address in any positive way. Careful examination of these factors suggests the possibility that plain packaging will in fact prove to be counterproductive.

13. Numerous studies worldwide associate smoking uptake with parental and sibling example and most particularly in later adolescence the influence of peers. In 1985, the Canadian Active Health Report, dealing with smokers in general, noted with regard to the influence of peers:

"If none of a person's friends smoke, the chances are less than one in ten that he or she will smoke.

If most or all of a person's friends smoke, the chances are six in ten that he or she will smoke.

In total, a person with smoking friends is almost seven times more likely to smoke than a person with no friends who smoke."

14. Studies have repeatedly identified personality differences between smokers and non smokers, young and old alike. Young smokers tend to be more rebellious than their nonsmoking counterparts and more inclined towards risky activities in general. This is illustrated for example in the Canadian government studies entitled "Tobacco, Alcohol and Marijuana Use and Norms among Young People" which show that 12 to 29 year olds who smoke are also more likely to drink and use marijuana. Needless to say, marijuana is not sold in attractive packages.

15. A recent study on why children start smoking conducted in the United Kingdom by the Office of Population Censuses and Surveys on behalf of the Department of Health led to this finding:

**"Committed smokers of both sexes were more likely to see themselves as not conforming to expected behavioural norms, but not in any glamorous way."**

16. The same point is made in a major research report entitled "Why Children Start Smoking Cigarettes: Predictors of Onset" published in 1993 in the British Journal of Addiction. That study notes that:

**"The goal of developing effective adolescent smoking prevention programs depends on the identification of reliable predictors of smoking onset."**

17. The authors reviewed 27 prospective studies of the onset of cigarette smoking conducted since 1980 in a number of countries. Among the factors most frequently identified were peer use and approval, family smoking, rebelliousness and negative school attitudes. Family approval was found to be less important than expected. There is nothing to suggest that packaging has any influence. The report notes that:

**"Exposure to tobacco advertising (Goddard 1990) and watching tobacco sponsored sports (Charlton and Blair, 1989) were examined in one study each, but they were non-predictive."**

18. These and other studies suggest that adolescents who are smokers or potential smokers are unlikely to react positively to government initiatives which may be seen as telling them how they should behave. To the extent that plain packaging is intended to make cigarette packages "unattractive" the evidence strongly suggests that what may seem unappealing to middle class adults may elicit a quite different response from this group.

19. The finding noted above with respect to tobacco advertising is consistent with evidence given in the TPCA case. Dr. Michel Laroche, a professor of marketing at Concordia University, was one of three marketing experts who testified at the trial on behalf of the Government of Canada. Dr. Laroche is the author of "Advertising Management in Canada", a book described by Dr. Richard Pollay who was also a witness, and has appeared before this Committee, as the "leading" Canadian advertising text.

20. Dealing with the effect of advertising in general, Dr. Laroche wrote at page 499:

**"The view that advertising can create some kind of irresistible desire and can change otherwise intelligent consumers into robots that advertisers can manipulate is far removed from the real world of advertising communications."**

More specifically with respect to tobacco advertising the following appears at page 500:

"The point cannot be over-emphasized . Vast amounts of money spent on advertising and publicity to promote a given brand of cigarettes will not persuade a non-smoker to smoke. The opposite is also true: thus far, advertising efforts to reduce the intake of cigarette smokers have failed."

21. Dr. Laroche's view of the effect of advertising on young people is also instructive. He wrote at page 503:

"Thus research conducted in this field seems to conclude that the efficiency of advertising aimed at children, while real, has often been exaggerated. Children perceive at quite an early stage the persuasive intent of an advertisement, develop mechanisms against it, are submitted to the same saturation effects as adults and are more influenced if they know parents are likely to give in to their demands."

22. This may be compared with the finding of the Supreme Court of Canada in Attorney General of Quebec v. Irwin Toy et al [1989] 1 SCR 922, a case dealing with a Quebec ban on advertising directed at children under the age of 13. On a review of the extensive evidence in that case, the Court concluded, at page 989:

"The studies suggest that at some point between age 7 and adolescence children become as capable as adults of understanding and responding to advertisements."

23. Evidence from the TPCA case also refutes the thesis that young people take up smoking in ignorance of the health risks involved. As early as 1979, The United States Surgeon General noted:

"By the time they reach the seventh grade, the vast majority of children believe smoking is dangerous to one's health."

and quoted a suggestion of the U.S. Public Health Service which stated in part:

"It is futile to continue to tell teenagers that smoking is harmful and that they shouldn't do it. They know that it is harmful."

24. Canadian data found in the report entitled "Smoking And Non-Smoking, A Study Of Canadians' Behaviour and Attitudes" prepared for Health and Welfare by Goldfarb Consultants in 1981 indicates that belief in health risks is higher among adolescents than among their parents.

25. The Health and Welfare Health Risk Study of 1984 reported that:

"The data revealed that people believe smoking has serious health consequences. In fact, the predominantly qualitative risk characteristic of smoking is its harmful consequences."

and that:

"People are more likely to have received information about smoking, alcohol and illegal drugs than any other potential risk."

26. A follow-up study in 1993, "Health Risk Perception in Canada", reported that "cigarette smoking elicited the greatest percentage of responses in the 'high-risk' category" (page 14). Among the conclusions stated at page 55 is the following:

"1. The Canadian public reported a high degree of perceived risk for many hazards. Contrary to the view of many observers that the public is overconcerned about small risks and underconcerned about serious risks, the present study found that people are quite aware of individually chosen lifestyle risks that are judged serious by health and risk professionals (e.g., cigarette smoking, street drugs, alcohol, Aids, suntanning)."

27. Evidence in the TPCA case also showed that attitudes or beliefs do not necessarily alter behaviour. In a study conducted in 1986 for the World Health Organization, smoking habits of young people from England, Austria, Norway and Finland were examined. The authors noted that young Finns scored higher on the health belief scale than their counterparts in other countries and yet smoked more. The apparent contradiction did not surprise them:

"A strong belief in the harmful effect of smoking does not automatically guarantee that a decrease in smoking will take place."

28. It is interesting to note that Finland was one of two countries included in the study which had banned tobacco advertising in 1977, at a time when smoking was already declining. Ten years later in *Changes in Health Habits of Young People in Finland, 1977-1987*, the Department of Public Health of the University of Helsinki reported that smoking among young Finns was going up again, so much so that prevalence in 1987 was the same as it had been ten years earlier.
29. In 1985, long prior to the enactment of the TPCA, the government of Canada reported in "Health and Social Support" that smoking was continuously declining in this country in all age groups. The largest decline was in the age group 15 to 19 and the second largest was the 20 to 24 group. The declines of the 1980's have not accelerated since the TPCA came into force.
30. This is consistent with the findings of Health and Welfare which carried out an extensive review of the effect of advertising on tobacco consumption in the 1980's and concluded that while brand advertising affects brand share of market there was no conclusive evidence to show that it affected overall consumption. It was on the basis of this research that the Minister of Health and Welfare advised the House of Commons in 1986 that:
- "I am saying to her very directly that if she is an expert in this field at all, and if she has looked at the effect that the banning of advertising has on reducing the number of smokers, then she will know that it is painfully few. There are other steps which one has to take. It might be good visuals and she often deals with visuals rather than actualities. I deal with actualities."
31. To borrow Mr. Epp's phrase this committee is being urged to recommend a course of action which may be "good visuals" but which the available evidence does not support.



### **3.6 Competitive Impact of Plain Packaging**

Separate and apart from all of the other harms that would be caused by plain tobacco packaging is the competitive impact on the manufacturers.

This is a complex matter, impossible to analyze fully in the time available prior to presentation to the Committee.

Professor Robert Neil Morrison, a distinguished Canadian expert on management economics, strategy formulation and regulated industry management, is Professor of Management on the Faculty of Management at McGill University.

At the request of a CTMC member company, Professor Morrison has prepared extensive written testimony on the likely competitive impacts of plain packaging, which is bound separately for presentation to the Committee.

Among his predicted results of such a policy are no downward effect on consumption, possible increased consumption as a result of price competition, increased foreign imports to the detriment of Canadian employment and income, increased contraband and further losses to government revenues.

Such clear likelihoods by themselves justify rejection of the plain packaging proposal.