Worldwide news and comment

CANADA: EXPERTS WANT HEALTH ON LITIGATION AGENDA

In the early 1980's, Canada had one of the globe's highest rates of per capita tobacco consumption. But in less than two decades, in response to aggressive campaigning by health NGOs, Canada experienced arguably the largest decline in use anywhere.

Gains were made on many fronts: through increases in tobacco taxation, a world precedent-setting ban on tobacco advertising, breakthroughs in smoke-free air travel and federally-regulated workplaces, and from landmark tobacco package warnings.

But Canada can no longer claim that it is at the forefront of responses to the tobacco epidemic. In 2010, the neo-liberal federal government cancelled longstanding plans for a renewal of stale package warnings. Then, in the face of fierce opposition, it reversed itself and a year later mandated new warnings which discarded several of the precedent-setting elements of Canada's ground-breaking 1994 and 2001 warning systems.

Then, the health minister cancelled the entire grants and contributions component of the national tobacco strategy. This cut millions of dollars of funding from troublesome NGOs which had pressed the government to produce the updated warnings. Needless to say, plain packaging is no longer on the government's agenda.

One of the most severe criticisms of the federal government, said Western University law professor Robert Solomon, "stems from the sweetheart tobacco smuggling settlements that it negotiated with Big Tobacco in 2008 and 2010. In those settlements, health remedies to deal with the illness caused by the smuggling fraud appear not to have been given any consideration."

Unlike American tobacco litigation, criminal investigations and civil lawsuits in Canada produced settlements of pennies on the dollars claimed, no disclosure of industry documents and no real incentives for the manufacturers to change their behaviour. Tobacco executives facing jail time had their charges stayed.

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An image from the Campaign for Justice on Tobacco Fraud.

According to William Marsden of Montreal's *The Gazette*, the tobacco executive who planned much of the smuggling told him that the federal police knew "all about this. They could have walked in and just handcuffed everybody at Imperial [Canada's largest tobacco company. The government]...did not have the guts of a field mouse to go after the executives of the company...."

Now, Canada's provinces are suing tobacco manufacturers and their international parents to recover the health care costs associated with smoking which resulted from industry fraud and conspiracy over five decades. The governments allege that the companies involved lied about risks, addiction, 'light' and 'mild' cigarettes, and second-hand smoke.

The claims filed to date by nine provinces exceed CDN \$110 billion. If this wrongful behaviour is proven in court, as it was in the USA, it will constitute the largest fraud in the history of Canadian business. It certainly was the most destructive with estimates that industry deception caused or contributed to up to two million deaths in Canada since 1964.

The smuggling settlements trivialised the harms caused by the fraud. So the

Campaign for Justice on Tobacco Fraud (CJTF) was incorporated, to advocate for positive health outcomes from the health care cost recovery litigation.

As mentioned in the September 2014 Tobacco Control, the CJTF pressed provincial and territorial governments to take Big Tobacco to trial, insist on the disclosure of industry documents, and allocate a significant portion of monies recovered to an arms-length-from-government agency with a mandate to reduce tobacco industry-caused disease. The CJTF submission was signed by the heads of 60 health organisations, by the deans of schools of public health, and by professors of medicine and law, 137 signatories in all.

It will take a determined health community to put public health into the litigation deliberations and to offset years of federal government back-sliding.

This story is also published on the Tobacco Control website at <http://blogs.bmj.com/tc/2014/09/25/canada-what-were-they-smoking-experts-want-health-on-tobacco-litigation-agenda/>

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BANGLADESH: INDUSTRY ATTEMPTS TO COUNTER CIVIL SOCIETY CRITICS

Bangladesh has been notable in the past decade for the range of academics, bloggers, civil society groups and media practitioners who have been highly critical of the tobacco industry and its effects on health, the environment, agriculture and education. A new study funded by the Johns Hopkins Bloomberg School of Public Health and managed by the Bangladesh Center of Communications Programs has documented the corporate social responsibility (CSR) narratives employed by the industry to divert criticism and create an alternative public image.

The study reviewed the activities of the four main tobacco companies in Bangladesh – British American Tobacco Bangladesh (BATB), and Bangladesh-owned companies Dhaka Tobacco Industries (DTI), Abul Khair Tobacco, and Nasir Tobacco Industries. It found all three have corporate philosophies based on a ‘triple bottom line’ approach of corporate social responsibility – concern for people, environment and country as well as profits.

BATB, despite being a multinational corporation, promotes connectedness with Bangladesh, while the other three companies showcase themselves as examples of the potential and capabilities of Bangladeshi businessman, emphasising humble beginnings as small entrepreneurs and “rags to riches” narratives.

In terms of ethics, each of the companies is at pains to remove itself from regular accusations broadcast in the media of money laundering, bribery and skirting tobacco control regulations – instead projecting an image of being mindful of the law, acting in the best interests of stakeholders and ensuring high standards of professionalism. Values such as honesty, transparency, accountability, commitment, confidence and capability are showcased. These values reinforce the assertion that that tobacco industry is an employer of high standing (or in the case of BATB, one of the country’s ‘preferred employers’).

Social issues are strongly promoted: BATB has afforestation as a flagship project, DTI and Nasir Tobacco Industries have health and education projects and Abul Khair Tobacco focuses on education. The study researchers note that the Bangladesh government encourages private companies to conduct CSR activities and has approved a tax exemption facility which allows 10% of corporate income to be spent as CSR. Perhaps unsurprisingly, this tax rebate is not mentioned on the

communication materials of any of the companies.

All of the companies also have a range of programs which they use to counter criticisms that the tobacco industry is destructive to the environment. These include afforestation, biodiversity initiatives, renewable energy, energy efficiency and recycling, together with a range of agricultural initiatives. While these initiatives are promoted as examples of good corporate citizenship, it is also likely that each one supports companies’ supply chains, complements infrastructure, guarantees continuous company operations and/or promotes business cost savings, delivering a double benefit to the company.

Similarly, each of the companies runs a range of education programs. BATB runs a talent promoting platform called ‘Battle of the Minds’, which has been established for a decade, and engages the best universities across the country to participate, with the winning students offered an opportunity to work at BATB (one of the country’s ‘preferred employers’). Contestants are asked to solve a real business challenge to help them transition from academic life to the corporate world. The winners are widely publicised in the media. This initiative positions BATB as concerned for education and helps it to recruit the best graduates in the country.

The study lends weight to calls from anti-tobacco groups such as the Bangladesh Anti Tobacco Alliance (BATA), Campaign for Tobacco Free Kids and Bangladesh National Control Cell, all of which have called for a ban on tobacco industry corporate social responsibility campaigns in Bangladesh. It illustrates how tobacco companies manipulate public opinion through CSR, and potentially subvert or undermine tobacco control approaches and policies.

The study report can be obtained by contacting M Rizwan Sharif by email rizwan.sharif@ulab.edu.bd.

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NEW ZEALAND: BOOK RAISES CONFLICT OF INTEREST CONCERNS

Investigative journalist Nicky Hager released a book in August 2014 on the seamier side of New Zealand politics. *Dirty Politics: How attack politics is poisoning New Zealand's political*

environment is based on the hacked (and subsequently leaked to Hager) emails and Facebook messages of Cameron Slater, who runs the right wing Whale Oil Beef Hooked blog website, and other figures related to the currently governing National party.

One such figure is public relations consultant and former British American Tobacco (NZ) corporate affairs manager Carrick Graham. The book alleges that Graham fed Slater a large amount of material, often attacks on scientists and advocates in the public health field working on tobacco, alcohol and obesity issues. Slater would schedule the posts unedited according to Graham’s instructions and with no indication that an external party supplied the posts. For this service, it is alleged that Graham paid Slater NZD\$6555 per month.

The book did not include direct evidence of Graham’s clients, however the correspondence between Slater and Graham does implicate Katherine Rich, who is both the chief executive of the Food and Grocery Council (FGC, representing companies selling alcohol, soft drinks, confectionery, tobacco), and a board member of the government’s Health Promotion Agency (HPA, informing health promoting policy and practice). A series of ‘hits’ was coordinated to defend the interests of FGC members; as seen in the extract overleaf.

Acting on behalf of the FGC, Rich has made public submissions to parliamentary committees and ministerial consultations opposed to tobacco control policies. In January 2011, the FGC opposed legislation to ban the retail display of tobacco products. In October 2012, March and May of 2014, her name was attached to submissions from the FGC opposing plain packaging of tobacco products. On each occasion, Rich deployed standard tobacco industry/front group arguments.

Rich is facing renewed criticism and questions about conflict of interests between her industry role and her service on the HPA board from the Green, New Zealand First, and Labour parties. Green Party health spokesperson Kevin Hague has said that her role is no longer tenable: “Katherine Rich, Carrick Graham and Cameron Slater have all been involved in a systematic undermining of health promotion in New Zealand. She cannot tenably remain on the board of that organisation.”

Dr Barrie Gordon, senior lecturer in health and physical education at Victoria

Carrick Graham's next job for the Food and Grocery Council was a few days later, this time in defence of Coca-Cola and Frucor, the manufacturer of Pepsi. On 20 and 21 January advertisements in the *New Zealand Herald* had sought people whose families had suffered from Type 2 diabetes, heart condition and/or premature death 'from becoming addicted to Cola at an early age'. They said Australian lawyers were considering a class action against cola companies.³⁹ Rich and Graham responded immediately. Graham e-mailed Slater a blog post on 21 January with the subject line 'KR Hit – TF #1' and a note saying 'we'll run more hits based on these as well'.⁴⁰

Rather than addressing the health problems associated with sweet drinks, they focused the response on attacking a man named Tony Falkenstein ('TF'), who was the New Zealand contact on the class action advertisement.⁴¹ Carrick e-mailed through 'KR hit #2 TF' later that day. 'Run tomorrow morning,' he wrote to Slater. 'Follow-up piece coming shortly for tomorrow afternoon. 3 hits smashing him good and proper.'⁴² He also forwarded Slater an e-mail from Rich, with a copy of the class action advertisement to use with the post.⁴³ Slater published it as directed and Graham wrote in the on-line comments as Naylor, 'Coke will spend millions to defend this. Typical exploitative Australians – trying to make money off dumb kiwis.'⁴⁴

A third post, e-mailed through to Slater as 'KR hit #3 TF – For tomorrow afternoon,' said, 'While Tony Falkenstein is trying to make out he actually cares about sugary drinks, his credibility and involvement in the obesity debate is tumbling faster than his Just Water International share price.' Falkenstein was likely to 'face the wrath' of public health researchers and doctors opposed to sweetened drink sales ('publicly funded troughers'), who wouldn't like 'being played like two-bit hookers'.⁴⁵ The general idea appeared to be to make Falkenstein and the health professionals sound dodgy and deflect attention away from the health issues. Each hit

An extract from Dirty Politics.

University said that the government had been either naïve or staggeringly cynical when it appointed Ms Rich to the HPA board. "Now that it's been exposed what she's been up to, and the conflicts, I assume she will resign," he told Radio New Zealand.

Prime Minister John Key was reluctant to say whether it was appropriate for Rich to receive public money through the HPA. "I wouldn't want to offer a view on it, unless I could see all the facts," he said. Health Minister Tony Ryall, however, told Radio New Zealand that he was confident Rich could manage any conflicts appropriately.

An Official Information Act request has recently been made by Stuart Yeates for conflict of interest statements from all HPA board members past and present. The response is due on or before 17 September 2014.

Concerns had been raised in the past by addiction specialist Professor Doug Sellman about the suitability of Rich to serve on the HPA board. Sellman was subsequently a frequent target of the Whaleoil blog.

The hacker Rawshark, who leaked the messages between Slater and others that form the basis of Dirty Politics, had been leaking selected correspondence via the twitter account @Whaledump. Material released so far includes screenshots of correspondence between Rich, Graham, and Slater. While Rich does not directly implicate herself in the source material, there is substantial correspondence between Graham and Slater, with Graham coordinating the 'hits' labelled 'KR' for Katherine

Rich, and in line with FGC interests. Other correspondence released includes Graham advising Slater of payment for \$6,555, and a confidential proposal to FGC member Nestle from Graham for public relations services.

The day after the release of the above material, Twitter suspended the @whaledump account. Slater confirmed he had made a complaint to Twitter about the @whaledump account, and would do so again if required. Hours later a new account (@whaledump2), and at least two false accounts, were created.

The relationship between Rich, Graham, and Slater is just one story continuing to unfold in a scandal that has upset a lot of interests, and already led to the resignation of a senior cabinet minister, just weeks before a general election. How the Dirty Politics affair will affect the tenability of Rich's service on the HPA board, remains to be seen.

Additional details from this article are published on our website at <http://blogs.bmj.com/tc/2014/10/02/new-zealand-dirty-politics-raises-conflict-of-interest-concerns/>

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THE PHILIPPINES: FIGHT FOR GRAPHIC HEALTH WARNINGS

In July 2014, the Philippines government passed a graphic health warning law that was first filed in 2007.

Although the passage of the law is considered a significant step in the right

direction, industry influence is evident in the requirement for graphic warnings to be placed at the bottom rather than top half of the front and back of tobacco product packages. This is in contrast with the practice of over 60 countries and territories that have adopted graphic health warnings.

The law is in effect but retailers have 20 months to comply after the health department issues a maximum of 12 graphic health warning templates, planned for release in September 2014. As a result, packs with graphic warnings are not legally required to appear in the market until after May 2016, the month of the presidential elections.

During hearings, representatives of the major tobacco companies (including Philip Morris, Fortune Tobacco, Japan Tobacco, and British American Tobacco) stated that they support the idea of graphic health warnings but the terms must be 'reasonable'. As reflected in the bills filed by lawmakers from tobacco-producing provinces and position papers of the tobacco companies, the so called 'reasonable' demands of the industry included having a 3–5 year lead time, warnings that cover only 30% of the bottom of one side of the pack, warnings that change only after 2–3 years, and a mandate for IACT, a multi-sectoral committee on which the Philippine Tobacco Institute (an association of tobacco companies) sits as a member, to issue graphic warnings and implement the law. The committee is chaired by the head of the trade department, with the head of the health department serves as vice chair.

Many of the tobacco industry's demands were quickly adopted immediately following hearings at the lower house. The version adopted by the 290-member House of Representatives needed to be reconciled with the preferred Senate version during a bicameral committee meeting when legislators from both houses came together to iron out discrepancies in the two bills. The Senate version required 60% warnings on the top of the package, a 1-year lead time, and gave the department of health the sole authority to implement the law.

After hours of hairsplitting debate, the new version, which is now embodied in the signed law, emerged. Legislators representing tobacco industry interests reportedly insisted on ensuring that IACT would be the implementing agency. As a compromise, the implementation role was split among various agencies: the health department to issue templates, trade department to hear complaints, both departments to

A 'refashioned' Be Marlboro poster in Germany. After the campaign was stopped by a German court in late 2013 for targeting youth, the campaign was been relaunched using new imagery. Credit: Forum Rauchfrei.

issue the implementing rules in consultation with stakeholders, explicitly including the tobacco industry, and the IACT to monitor compliance with the law.

The Philippines, which ratified the FCTC in 2004, is currently one of 10 countries with the highest number of smokers and is one of the last countries in the Southeast Asia to adopt graphic health warning measures (together with Laos and Cambodia).

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THE NETHERLANDS: GOVERNMENT FACES COURT FOR FCTC VIOLATIONS

A Dutch NGO, the Youth Smoking Prevention Foundation, has taken action against the Kingdom of the Netherlands to put a stop to tobacco industry influence over Dutch government policy making.

Although the Netherlands are a signatory to the World Health Organization

Framework Convention on Tobacco Control (FCTC), the court summons issued by the Foundation outlines dozens of examples demonstrating how the government has breached Article 5.3 of the FCTC, which protects policy making from the tobacco industry.

The summons notes that the government has systematically violated the provision, and actively invites the tobacco industry to advocate its position on policy development. Using Freedom of Information provisions, the Foundation has obtained hundreds of documents revealing how the government maintains frequent contact with the tobacco industry.

Government departments listed as having regular contact and discussion about draft policies include the ministries of finance, health, welfare and sport. Frequently no minutes are taken of the meetings, and there is no transparency or monitoring of industry consultations.

More information and a link to the summons is available on our blog at <http://blogs.bmj.com/tc/2014/09/15/the-netherlands-dutch-government-sued-over-who-fctc-violations/>

BRAZIL/GERMANY: BE MARLBORO, BE FINED, BE BANNED

Philip Morris International's 'Be Marlboro' campaign, rolled out in more than 50 countries, has been heavily criticised for the use of themes and images that appeal to youth. 'You're the target', a report released in March 2014 by international health and advocacy organisations including Campaign for Tobacco Free Kids, Alliance for Control of Tobacco Use Brazil, Corporate Accountability International, Framework Convention Alliance, InterAmerican Heart Foundation and Southeast Asia Tobacco Control Alliance, clearly showed the campaign uses themes such as risk taking, exploration, freedom and defying authority as the basis for the comprehensive campaign based on advertising, events and social media promotion.

Now the consumer protection agency in the state of Sao Paulo (PROCON) has fined Philip Morris over US\$480,000. The fine was levied in response to a complaint

filed by ACT-Brazil, a tobacco control advocacy NGO. Predictably, Philip Morris has appealed the fine. International partners have vowed to support ACT-Brazil in fighting to have the fine upheld and forcing Philip Morris to pay.

'Be Marlboro' had already been banned by a court in Germany in late 2013 for targeting youth, following numerous complaints by the NGO Forum Rauchfrei. However a new series of ads recently appeared, triggering a fresh round of challenges. While the new posters do not explicitly target youth, they are likely to capitalise on recall from the previous campaign. Meanwhile, German activists there have taken matters into their own hands, by 'refashioning' posters and covering the Marlboro logo.

Both Germany and Brazil are parties to the FCTC, along with most of the countries where 'Be Marlboro' is running. If the total advertising bans mandated by the FCTC were implemented, legal battles to determine whether campaigns target youth would be unnecessary.

FROM THE TOBACCO CONTROL BLOG

News articles and opinion are regularly published on our blog <http://blogs.bmj.com/tc>.

Recent stories include a podcast interview with Professor Mohammad Siahpush about recent research examining whether it is better to be a thin smoker or a fat ex-smoker: (<http://blogs.bmj.com/tc/2014/09/22/is-it-better-to-be-a-thin-smoker-or-a-fat-ex-smoker/>) and a story about the shocking ubiquity of tobacco vending machines in Germany, including near schools (<http://blogs.bmj.com/tc/2014/09/10/germany-pre-schools-and-cigarette-vending-machines/>).

If you have an idea for a blog article, please contact Marita Hefler, marita.hefler@menzies.edu.au or Becky Freeman becky.freeman@sydney.edu.au.

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