



# Breathers' Digest

*News from the Front Lines*

Fall 2008

**Airspace Action on Smoking & Health**

Vital Health Advocacy and Legal Action – Since 1986  
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According to Health Canada, more than 45,000 Canadians will die this year due to smoking. Of those, more than 300 non-smokers will die of lung cancer & at least 700 non-smokers will die of coronary heart disease caused by exposure to second-hand smoke.

"THOSE WHO USE TOBACCO PRODUCTS SHOULD NOT BE DEEMED CRIMINALS, ONLY THOSE WHO ENGAGE IN THE MANUFACTURE AND SALE OF THESE PRODUCTS."  
- ED KOCH, FORMER MAYOR OF NEW YORK, 07/13/2007

## How to get away with smuggling

The following is excerpted from an article by William Marsden, an investigative journalist at Montreal's *The Gazette*. A link to the full article, published in the *Gazette* on October 19, is on Airspace's website.

On July 31, after a year of secret negotiations, Canada's two largest tobacco companies — Imperial Tobacco Canada and Rothmans Inc. — pleaded guilty to aiding and abetting tobacco smuggling from 1989 to 1994, defrauding Canadian governments of more than a billion dollars in unpaid taxes.

Imperial Tobacco, maker of 16 cigarette brands including Canada's top sellers Players and du Maurier, agreed to pay US\$582 million for "aiding persons to sell or be in possession of tobacco products manufactured in Canada that were not packaged and were not stamped in conformity with the Excise Act" while Rothmans, parent of Rothmans, Benson & Hedges Inc. and maker of 16 cigarette brands, agreed to US\$534 million.

Key to the settlement was the government's readiness to release all former and present executives, employees, directors and officers from civil or criminal prosecution. Also released were the companies' foreign owners and affiliates. Tobacco bosses who oversaw the smuggling could now live out their retirements without fear they might be interrupted by a spell in prison. It wasn't an idle fear. Two former executives with Canada's third largest tobacco company, RJR Macdonald, have been convicted. One served four years in jail. Six others are awaiting trial or procedures that could eventually send them to trial.

Paul Finlayson, a former executive with Imperial's holding company Imasco Inc., recalled that after the RCMP raided Imperial Tobacco's head office in Montreal in November 2004, they contacted him because his name was on some critical documents. "Don [Brown, president of Imperial] should have ordered that stuff destroyed. I mean that should have been for your eyes only. . . It was not ever intended to be stored or kept after presentation."

One of those documents, he added, was a planning document for exporting Imperial brands into the United States to be sold to smugglers. Finlayson said he drew up the plan and "The police could've walked in and handcuffed everybody at Imperial Tobacco. But the government didn't have the guts of a field mouse."

Even though the fines and penalties set records in the annals of Canadian white-collar crime, they were a pale reflection of the staggering amounts that smugglers had defrauded governments during the early 1990s, when as many as one in every three cigarettes sold in Canada was contraband. After the Canadian government doubled tobacco taxes in 1991, Imperial alone earned annually \$600 million to \$700 million in net profits "lubricating" the smuggling through its supply of cigarettes, according to Finlayson. At the height of the smuggling, Imperial, Rothmans, and RJR were selling an estimated 10 billion cigarettes a year into the illicit market, or about 20 percent of their total production, amounting to a tax loss for Canadian governments of more than \$1 billion during the peak year in 1993.

In reality, the government likely had very little choice but to settle for a relatively small amount, since Canada's three major manufacturers had successfully used their global reach to insulate their assets from seizure. Corporate and court records show that over the last 10 years, the companies sold off or transferred assets, rendering them out of reach to Canadian tax collectors. Both the federal and Quebec governments have petitioned the court to have these transactions reversed, claiming they were designed to "reduce the value of its assets and to try to fraudulently shelter its shares" against seizure.

Imperial Tobacco moved its manufacturing to Mexico and was reduced to little more than a shell in Canada with a head office in Montreal. By the time Canadian governments got around to pursuing Big Tobacco, the companies were little more than shells with rights to a few popular tobacco brands, owned by offshore companies. This reduced government leverage to the threat of criminal prosecution and the seizure of future revenues. *(continued on p. 2)*

(continued from p. 1)

The settlement has left RJR out in the cold. The company, now called JTI Macdonald after its 2000 purchase by Japan Tobacco, faces about \$10 billion in claims from various Canadian governments.

Marc Ander

## Continued Federal inaction on cigarette advertising

As many *Georgia Straight* readers are now aware, the free Vancouver weekly is one of a number of Canadian publications running full-page cigarette ads. And these aren't just the tobacco sponsorship ads that many more established publications such as the Sun and the Province ran in the 90s, but ads proudly displaying cigarette packs, which would have been illegal in the 90s. Some ads don't even bother with the health warnings that were required in the 90s.

The *Straight* began running ¾-page snuff ads in May 2007, followed quickly by full-page cigarette ads by Canada's third-largest tobacco company JTI-Macdonald, which was fined \$1.36 billion in 2004 by Revenue Quebec for smuggling its own cigarettes back into Quebec to evade taxes and is facing another \$10 billion in claims from other Canadian governments. Imperial Tobacco, Canada's largest tobacco company, began running full-page cigarette ads in the *Straight* in April 2008, with many issues running three or four full-page cigarette ads.

What's that you say? Haven't we banned cigarette advertising in Canada?

Well, not really. In 1988, the Conservatives under Brian Mulroney brought in a tobacco-advertising ban, but the industry lobbied for and got a loophole which allowed them to advertise the name of their tobacco company. Why they pressed so hard for this loophole became immediately obvious: the companies quickly set up fake no-employee shell companies with names of their cigarette brands, which allowed them to continue advertising cigarette brands as usual.

And even that weak legislation was struck down by the Supreme Court of Canada in 1995. Current legislation allows cigarette advertising in publications where youth readership is under 15%, and doesn't even require the health warnings that used to be mandatory. Canadian tobacco companies had voluntarily stopped running tobacco ads in publications for a few years prior to last year while the matter was being tossed about in the courts, but now they're back in full swing.

While the vast majority of Canadian publications have voluntarily refused tobacco advertising since the 90s, the *Straight* has a long history ignoring ethics and accepting any kind of ad that's not legally prohibited. Perusing its classified ad section is not something for the faint-of-heart. Airspace's Grim Reaper has had many colourful run-ins with *Straight* staff while

protesting in front of its offices.

Today many countries including the European Union have banned tobacco advertising. Canada has ratified the Framework Convention on Tobacco Control, an international treaty which requires us to either ban all tobacco advertising by 2010 or demonstrate why our constitution prohibits us from doing so. So far, the Conservatives have done neither. Canada was once a proud leader in tobacco control, and now we are in danger of running afoul of the most basic provisions in a treaty signed and ratified by 160 nations.

On September 17 in the midst of the election campaign, Prime Minister Stephen Harper's office sent out a press release promising to amend the Tobacco Act to ban "all tobacco advertising and promotion in print and electronic media which may be viewed and read by youth." Why they don't simply adopt a complete advertising ban as the Framework demands is a mystery. And it remains to be seen if this is one of the election promises they plan to keep, what year they plan on keeping it, and whether it will have as many loopholes as Mulroney's legislation.

Harper also said during the election campaign that his government would ban the sale of flavoured cigarillos in Canada. Knock yourself out, Stephen.

Marc Ander

## Your public pension dollars at work

Reporter John Daly of Global TV did some research, and learned that the BC Investment Management Corporation (bcIMC), which manages investments for public bodies and public sector pension plans, is a heavy investor in the tobacco industry.

In response to a letter complaining about this, then-Finance Minister Carole Taylor wrote that bcIMC's Directors "must by law put the interests of the beneficiaries at the forefront."

Oh, really? One of the companies that bcIMC invested in was Philip Morris International, a company set up specifically to sell cigarettes outside of the United States. They recently bought up Rothmans, to make it easier for Rothmans to pay their share of the settlement discussed on page 1 in this issue. How do we beneficiaries benefit from this investment? Well, we make some bucks from selling cigarettes all over the planet.

Our public funds are also invested in British American Tobacco (a company that the government says it intends to sue), Altria Group (convicted of civil racketeering in 2006), and UST Inc. (purveyors of smokeless tobacco; guess we had better forget about this stuff being outlawed).

Robert Broughton

## White Rock's beaches are smoke-free

White Rock City Council has unanimously passed a bylaw prohibiting smoking on White Rock's beaches and promenade. It will go into effect on November 1.

The bylaw also bans smoking in enclosed and partially enclosed transit shelters, vehicles for hire and in outdoor gathering places, including sports fields and playgrounds. Council made a decision in 2007 to make White Rock a smoke-free community by 2010.

Airspace thanks Councillor Matt Todd and Mayor Judy Forster for their effort in making this happen.

Discussions will be taking place among the Vancouver Park Board staff and Board members in early 2009 with a view to getting a number of Vancouver "family" beaches designated smoke-free in time for the 2009 beach season.

*Bob Broughton*



## Thank you, Project A.B.L.E. Donors

Project A.B.L.E. (A Better Life for Everyone) is a humanitarian aid effort in Malawi that is supported by Airspace. One of the things that Project A.B.L.E. is doing is lobbying Malawi's government to help farmers convert their crops from tobacco to jatropha, a feed stock and bio-fuel source.

Here's an especially big **thank you** to those who have already so generously donated to Project A.B.L.E.

If you would like to donate, please send your cheque to: Airspace Action on Smoking and Health Box 18004, 1215c 56th St. Delta, B.C. V4L 2M4 And please be sure to write "Project A.B.L.E." in the "memo" space. You can also contribute via PayPal at the Airspace site, <http://airspace.bc.ca/>

For more info about Project A.B.L.E., please contact Tamina Gurd via e-mail, [taminac@shaw.ca](mailto:taminac@shaw.ca).

*Errol Povah*

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