

HOOKED ON THE WEED: BILL C-71, THE TOBACCO INDUSTRY, AND THE ARTS AND SPORTS LOBBIES

BY TIM PORTEOUS

Bill C-71, which was given first reading on December 2, 1996, is the federal government's second attempt to legislate restrictions on the sale and promotion of tobacco products. The first law was struck down by the Supreme Court in 1995 as an unreasonable limitation on the tobacco companies' freedom of expression.

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There are an estimated 7 million tobacco smokers in Canada, some in thrall to nicotine and others to the feeling of sophistication which smoking a cigarette apparently engenders, particularly in female adolescents. (One columnist has suggested that the best way to turn off the would-be rebels in high schools is to make smoking a compulsory school subject.)

The multi-billion dollar tobacco industry currently sponsors about \$60 million of arts and sports events, usually the kind that attract large and youthful audiences such as jazz festivals, fireworks displays, and car races.

As the grants often cover a large part or, in some cases, the entire costs of an event, the grantee becomes dependent on the sponsor. In turn, the arts and sports event organizers expect their lobbyists and advocacy bodies to defend their right to receive the grants. The Canadian Conference of the Arts, for example, which claims to speak for the arts community, has played a prominent role among the advocates of "sponsorship freedom".

Whatever the industry or its supporters may claim, it seems obvious that expenditures on sponsorship are intended to retain existing customers and to influence potential new ones. Unfortunately for the drafters of tobacco control legislation, this connection has proved difficult to establish to the satisfaction of the courts.

Of course, there are many

artists who are opposed to tobacco sponsorship of arts events. To them it seems contradictory that athletes, who

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should have a special interest in health, and artists, who are normally critical of material values, should become outspoken supporters of tobacco promotion on the grounds that they need the money.

The tobacco industry, as a manufacturer of consumer goods, loses customers to withdrawal from product use, and from death. To enlarge, or just to maintain its market, the industry has to recruit new smokers, including younger ones. Whatever the industry or its supporters may claim, it seems obvious that expenditures on sponsorship are in-

tended to retain existing customers and to influence potential new ones. Unfortunately for the drafters of tobacco control legislation, this connection has proved difficult to establish to the satisfaction of the courts.

Although the tobacco industry continues to contest it, most Canadians have accepted the scientific evidence that smoking is a major cause of cancer and that a large proportion of heavy smokers die of it. This tragic sequence provokes a strongly motivated reaction among those close to the victims and the many organizations devoted to health issues. They argue that the prevalence of smoking is imposing financial and human-resource costs on the health care system and society in general, which the tobacco industry does not pay.

Governments are dependent on tobacco tax revenues, but they are also vulnerable to pressures from the tobacco industry—an active supporter of political parties and individual politicians—from the arts and sports lobbies, from the health lobbies, and from concerned members of the general public.

Governments must also take into account the threat to civil order posed by cigarette smugglers, both individuals and gangs, ready to spring into action whenever the financial rewards make the risks worthwhile. Since smuggling cannot be stamped out by police action, the federal government has been reduced to shrinking the price differential between legal and illegal sales by keeping cigarette taxes down.

All of these forces and dependencies are contending in a society whose moral standards are constantly shifting. In

some areas, we are becoming more permissive. Until 1967, homosexual acts between consenting adults were a crime. There could have been no question of homosexual marriage. Thirty years later, the courts and legislatures are gingerly adapting the institution of marriage to the new climate of acceptance. In early December, the Ontario Court of Appeal ruled that it was not illegal for a woman to bare her breasts in public, a judgment that would have been unthinkable in the years when the Doukhobors were defying that taboo.

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Public attitudes toward tobacco smoking are going in the opposite direction. When the demand for an activity considered immoral by one segment of the public is too strong and too widespread to heed the moralists' call for outright prohibition, as is the case with alcohol consumption and prostitution, a com-

mon response is to enact legislation which restricts the venues and reduces the visibility of the vice. This leads to laws based on uneasy compromises which remain open to attack from both sides.

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Bill C-71 is clearly an example of this strategy. The tobacco industry lawyers have a point in complaining that the bill creates much uncertainty for their clients. It leaves many questions to be answered by regulations (which are not yet drafted), and the language of the bill itself is far from clear. "Lifestyle advertising", which is prohibited, is defined as "advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life or an aspect of living such as glamour, recreation, excitement, vitality, risk or daring". How's that again?

Evidence that the government was apprehensive about the bill's reception is found in its regrettable decision to "fast-track" it through Parliament. (The term "fast-track" has been imported from Washington and should have been stopped at the border.)

Much routine legislation in every session can be disposed of in short order, but when a bill raises as many controversial issues as this one, sufficient time should be allowed for debate and amendments. As it happens, the bill was held up in committee and there should be time for adequate debate when Parliament reconvenes in the new year.

There seems to be sufficient support in Parliament for the bill to become law. Any amendments will likely make it more acceptable to the tobacco industry. The regulations will be carefully drafted to permit, though not to encourage, tobacco sponsorships of arts and sports events. The tobacco industry will probably challenge whatever law is enacted and the Supreme Court may well reject all or parts of it as a violation of freedom of expression—but not until after the next federal election.


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Even if the law is upheld and there is a measurable de-

cline in smoking among young people, it will be difficult to prove that it results from the law.

Although many arts organizations will probably hang on to their sponsorships, the arts community as a whole has been damaged. To obtain the funding they need from private and public patrons, artists must earn their respect. To be seen as the handmaidens, or worse, as the shills of the tobacco industry, or as just another special interest lobbying for financial advantage, undermines the artists' credibility.

In the long run, all sponsors are fickle. Sooner or later, the tobacco companies will adopt new marketing strategies and drop their current sponsorships. Successful arts organizations learn to adapt to such changes by cutting costs and finding new revenues, as many are now doing when faced by radical cuts in government grants.

There have been few winners in this ongoing free-for-all; perhaps only those lobbyists and lawyers who can claim temporary victories for their clients. Canada-watching observers of the democratic process can be sure of many rounds to come. 

Tim Porteous was the President of the Ontario College of Art and is the former Director of the Canada Council.