

**“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”**

## **Canada’s Implementation of Article 5.3 of the Framework Convention on Tobacco Control**

**A Civil Society Shadow Report**

September 2016

**This report is endorsed by the following organizations :**

Canadian Cancer Society | Canadian Council for Tobacco Control | HealthBridge |  
Heart and Stroke Foundation | Non-Smokers' Rights Association |  
Physicians for a Smoke-Free Canada.

Action on Smoking and Health | Coalition Québécoise pour le contrôle du tabac |  
Ontario Campaign for Action on Tobacco

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# Introduction

The tobacco industry's practice of blocking or delaying measures to protect health is a problem in Canada as it is world-wide. This interference is a problem that has for decades hindered efforts by Canadian federal, provincial and municipal governments to protect the public from tobacco use.

It is behaviour that has been proven and condemned in court. In a scathing ruling against the three Canadian cigarette manufacturers in May 2015, the Quebec Superior Court determined that the companies had colluded in the last half of the 20<sup>th</sup> century *“to delay and water down to the maximum extent possible the measures that [the government of] Canada wished to implement to warn consumers of the dangers of smoking as much as possible.”*<sup>1</sup> Even in recent years the industry has been able to trigger delays in regulations.<sup>2</sup>

Tobacco company actions to impede public health measures are a problem that urgently needs to be addressed. The upcoming renewal of the Federal Strategy on Tobacco Control, plain and standardized packaging regulations, menthol bans, and other federal, provincial and municipal initiatives are already targets of industry interference. The much-needed modernizing and strengthening of Canada's tobacco control efforts<sup>3</sup> will be weakened and delayed if these actions continue to be tolerated.

Canadian governments have an obligation to address this problem, an undertaking made when Canada ratified the World Health Organization Framework Convention on Tobacco Control (FCTC) in 2005. Article 5.3 of the treaty includes the requirement that *“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”*

This is a key provision of the treaty. In recognition of its importance, the treaty's governing body (the Conference of the Parties, COP) gave priority to developing guidelines to assist governments in applying its general language to the specific challenges of industry interference. Adopted in 2008, these guidelines were among the first adopted by the COP.<sup>4</sup> Further assistance has been offered by the World Health Organization in the form of a roadmap of “practical steps” which governments can take to put these guidelines into practice.<sup>5</sup>

Despite this guidance and assistance, implementation of Article 5.3 has not been a priority for action by the federal government. Very little discernible action has been taken to develop measures that go

5.3. In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.

WHO Framework Convention on Tobacco Control

1 Létourneau c. JTI-MacDonald Corp., 2015 QCCS 2382 (CanLII).

2 CBC News. Tobacco lobbying preceded label retreat. December 8, 2010.

3 Canadian Coalition for Action on Tobacco. Press release. A call to modernize and strengthen Canada's national tobacco control strategy. May 31, 2015.

4 FCTC. Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. FCTC/COP3(7). 2008.

5 World Health Organization. Technical resource for country implementation of WHO framework convention on tobacco control article 5.3 on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. 2012.

beyond those already in place for all manufacturers to protect public policy against the vested commercial interests of tobacco companies. Not surprisingly, given the absence of federal leadership, little or no action has likewise been taken by provincial or municipal governments, who are also bound by the treaty.

Progress now appears to be on the horizon, however. In its April 2016 report to the COP, the government of Canada acknowledges the need to address the unique behaviours of the tobacco industry: *“Health Canada recognizes the importance of Article 5.3 and in the last quarter of 2015 put in place measures to undertake a review of existing domestic actions, global approaches and opportunities to reinforce and build on current domestic measures.”*<sup>6</sup>

It is in response to this welcome development and in recognition of the urgency of putting more effective measures in place that Article 5.3 was chosen as the focus of this fourth civil society shadow report on Canada’s FCTC implementation.<sup>7</sup> Following a brief description of industry interference and the Article 5.3 Guidelines, this report provides an assessment of Canada’s progress in implementing each of the core Guideline recommendations.

Strengthening Article 5.3 implementation in Canada will not only improve health in this country, it will contribute to a stronger global tobacco treaty. Canada plays a global leadership role in both tobacco control and democratic governance. As such, we unavoidably lead by example. By giving Article 5.3 a low priority, and failing to develop a strategy to tackle industry interference, Canada has helped other Parties justify taking insufficient action. Achieving a high standard of implementation, by contrast, will pave the way for stronger global measures to reduce the power of this unscrupulous industry.

### **Overarching recommendations**

The quickest route to high level implementation of Article 5.3 is to follow the Guidelines approved by COP and to adopt the administrative actions identified by the FCTC Secretariat. These can be adopted and adapted by each level of government.

**The following are recommended as priority actions for Canadian governments:**

- 1. Canada should move quickly to develop a strategy for Article 5.3 implementation. The strategy should include developing policies, legal instruments and accountability methods for compliance.**
- 2. Canada should develop a mechanism to assist other levels of Canadian government in implementing Article 5.3 within their jurisdictions and to coordinate implementation across governments.**
- 3. Civil society organizations that are in a position to accelerate implementation should be invited and enabled to assist.**
- 4. Provincial, territorial and municipal government should similarly develop strategies and management plans for Article 5.3 implementation.**

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6 Government of Canada. Report to the FCTC Conference of Parties. 2016.

7 Previous shadow reports are:

FCTC Monitoring report. Review of Canada’s progress towards implementing the Framework Convention on Tobacco Control. 2006.

The FCTC in Canada. A Civil Society Report on Canada’s Progress Toward Implementing the Framework Convention on Tobacco Control. 2007.

Canada’s Implementation of the Framework Convention on Tobacco Control. A Civil Society Shadow Report. 2010.

# Tobacco Industry Interference in Canada

*“There is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests.”* This first principle of the Article 5.3 Guidelines explains why tobacco companies operating in Canada persist in their efforts to defeat public health measures.

To do so, they engage the strategies and tactics which the World Health Organization (WHO) has identified world-wide: exploiting weaknesses in the political process, exaggerating the economic importance of the industry, manipulating public views to gain acceptability, using front groups, attacking sound research and using lawsuits to intimidate governments.<sup>8</sup>

The list of tactics used by the industry to interfere with tobacco control which was compiled by the World Health Organization is replicated in the table below.

No structure has yet been put in place in Canada to monitor and report on such activities (although the guidelines call for this to be done). Among the most visible are the use of alliances and front groups. Observatories, such as those recently established in Brazil and planned for South Africa and Sri Lanka, are not yet in place in North America.<sup>9</sup>

## Front Groups

A common tactic of the industry in Canada is to arrange for other organizations with greater credibility to speak on their behalf. They do so by creating front groups, or by influencing established organizations, like hotel, restaurant and convenience store associations.<sup>10</sup> Examples of front groups previously used by the industry to interfere with tobacco control policy were the Smokers Freedom Society, Coalition 51, the Alliance for Sponsorship Freedom, Mouvement pour l’abolition des taxes réservées aux cigarettes, MyChoice, and the Fair Air Association of Canada.<sup>11</sup>

## “Forms of tobacco industry interference

In its efforts to derail or weaken strong tobacco control policies, tobacco industry interference takes many forms. These include:

- manœuvring to hijack the political and legislative process;
- exaggerating the economic importance of the industry;
- manipulating public opinion to gain the appearance of respectability;
- fabricating support through front groups;
- discrediting proven science; and
- intimidating governments with litigation or the threat of litigation.”

World Health Organization  
Tobacco Industry Interference. A Global Brief. 2012.

8 World Health Organization. Tobacco Industry Interference. A Global Brief. 2012.

9 Conference of the Parties to the WHO Framework Convention on Tobacco Control. Implementation of Article 5.3 of the WHO FCTC. FCTC/COP/7/7. 2016.

10 Physicians for a Smoke-Free Canada. Behind the Scenes. How Canadian Tobacco Companies orchestrated the war on smoking bans. 2003.

11 Non-Smokers’ Rights Association. Exposing recent tobacco industry front groups and alliances. 2008.

**Table 1. Examples of tobacco industry tactics that interfere with tobacco control<sup>12</sup>**

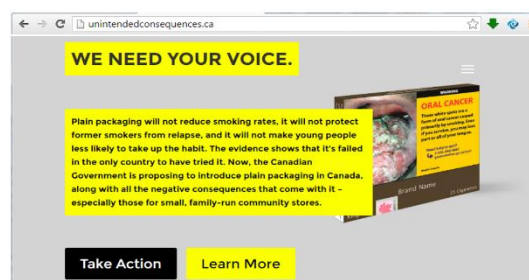
<b>Tactic</b>	<b>Goal</b>
<b>Consultancy</b>	To recruit supposedly independent experts who are critical of tobacco control measures
<b>Corporate social responsibility</b>	To promote voluntary measures as an effective way to address tobacco control, create an illusion of being a “changed” industry and establish partnerships with health and other interests
<b>Creating alliances and front groups</b>	To mobilize, or create the impression of mobilization of farmers, retailers, advertising agencies, the hospitality industry, grassroots and anti-tax groups, with a view to influencing legislation
<b>Funding research, including universities</b>	To create doubt about evidence of the health effects of tobacco use and the economic impact of tobacco control
<b>Intelligence-gathering</b>	To monitor opponents and social trends in order to anticipate future challenges
<b>International treaties and other instruments</b>	To use trade agreements to force entry into closed markets and to challenge the legality of proposed tobacco control legislation
<b>Intimidation</b>	To use legal and economic power as a means of harassing and frightening opponents who support tobacco control
<b>Joint manufacturing and licensing agreements</b>	To form joint ventures with state monopolies and subsequently pressure governments to privatize these monopolies.
<b>Litigation</b>	To challenge laws and intimidate tobacco industry opponents through court action.
<b>Lobbying</b>	To make deals and influence political processes.
<b>Philanthropy</b>	To buy friends and social respectability from arts, sports, humanitarian and cultural groups.
<b>Political funding</b>	To use campaign contributions to win votes and legislative favours from politicians.
<b>Pre-emption</b>	To achieve the overruling of local or state government by removing its power to act.
<b>Programmes for youth smoking prevention and for education of retailers</b>	To appear to support efforts to prevent children from smoking and to depict smoking as an adult choice.
<b>Public relations</b>	To mould public opinion, using the media to promote positions favourable to the industry.
<b>Smokers’ rights groups</b>	To create an impression of spontaneous, grassroots public support.
<b>Smuggling</b>	To undermine tobacco excise tax policies, marketing and trade.
<b>Voluntary agreements with governments</b>	To avoid enforced regulatory and legislative measures.

12 World Health Organization. Technical resource for country implementation of WHO framework convention on tobacco control article 5.3 on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. 2012.

In recent years, retail associations have become the predominant front groups for tobacco companies. Imperial Tobacco has described retailers as part of its “integrated campaign approach” to influence public policy.<sup>13</sup> The most visible are the Canadian Convenience Stores Association (CCSA) and its affiliated organizations:<sup>14</sup> the National Convenience Stores Distributors Association (NACDA), the Western Convenience Stores Association, the Atlantic Convenience Stores Association, the Ontario Convenience Stores Association and the Association Québécoise des dépanneurs en alimentation (AQDA).

Although the CCSA represents interest beyond those of the tobacco industry, the importance of the industry to its operations is reflected in its acknowledgement of support in its annual internal publication, State of the Industry Report:<sup>15</sup> Five of its seven largest contributors are tobacco manufacturers. The Canadian Convenience Stores Association has refused to disclose its financial relationship with the tobacco industry, either to the media or to Quebec legislators.<sup>16</sup>

Retail organizations with links to the tobacco industry regularly campaign against tobacco control proposals, such as menthol bans<sup>17</sup> and plain packaging.<sup>18 19</sup>



*The financial contribution of tobacco companies to the Canadian Convenience Stores Association is recognized in its internal publications (State of the Industry Report, above) but is not made clear in its public campaigns against tobacco control measures like a menthol ban or plain packaging (below)*

- 13 British American Tobacco. Investor Presentation. Anti-illicit trade: scale and opportunities. Neil Withington. 2011.
- 14 Canadian Convenience Stores Association. C-Stores Advocacy News. CCSA-NACDA together raising C-channel profile. 2014.
- 15 Canadian Convenience Stores Association. National 2012 Industry Report. Over-regulation a pivotal crossroad for the c-store industry. 2013.
- 16 La Presse. L'association des dépanneurs financée par les cigarettiers. Isabelle Hachey, November 5, 2015. Translation available. Is Quebec's convenience store association funded by tobacco companies?
- 17 Association québécoise des dépanneurs en alimentation (AQDA). Press Release. SAUVONSLEMENTHOL.ca - Les dépanneurs invitent leurs 75 000 clients de menthol à dire NON à la prohibition. 7 May 2015.
- 18 Canadian Convenience Stores Association. Web-site. NACDA responds to ON gov't menthol tobacco ban. Accessed June 2, 2016.
- 19 Canadian Convenience Stores Association. Media Advisory. Head of Canadian Convenience Store Association Available to Speak to Impact of Plain Tobacco Packaging on Canadian Retailers. June 1, 2016.
- 20 National Convenience Stores Distributors Association. Website. Lobby Day 2016. Accessed June 2, 2016.
- 21 In the summer of 2016, the Canadian Convenience Stores Association managed a website to oppose plain packaging: www.unintendedconsequences.ca/effetsnondesires.ca.



## Think tanks

Business-oriented policy institutes remain a strong presence in the development of tobacco control policy and are now understood to present a vulnerability with respect to tobacco industry interference. The Atlas Network of think tanks, for example, has been linked to industry-funded campaigns to spread disinformation about and to discourage the adoption of tobacco control measures.<sup>20</sup>

Such efforts have recently been seen in Canada. In the spring of 2016, as the federal government was advancing its plans for plain packaging, a tour was organized in Canada for Sinclair Davidson of Australia's Institute for Public Affairs to discourage the adoption of this measure. His inaccurate information on the effects of plain packaging in Australia were given considerable media coverage, although his links with the tobacco industry were not.<sup>21</sup>

The collusion between some policy institutes and tobacco companies oppose tobacco control measures have long been observed in Canada, most notably through the Fraser Institute<sup>22</sup> and the Montreal

Economic Institute.<sup>23</sup> Such organizations are not required to disclose any financial or other relationship with tobacco companies, even when they continue to promote industry-generated, factually incorrect views, such as second hand smoke is not harmful;<sup>24</sup> tobacco tax increases cause contraband;<sup>25</sup> plain packaging is ineffectual;<sup>26</sup> and further tobacco regulation is ill-advised.<sup>27</sup> Only through the happenstance of legally mandated document disclosure in the United States has some of the link to tobacco industry funding been revealed.<sup>28</sup> There are currently no requirements in Canada that agencies or individuals disclose any financial or other relationships with the tobacco industry when they intervene in or comment on tobacco control policies.

Canadian news coverage of Australian anti-plain packaging campaigners did not identify their relationship with the tobacco industry.

- 20 Smith, J et al. The atlas network: a 'strategic ally' of the tobacco industry. Health Planning and Management. April 2016.
  - 21 Smith, J and Lee, K. Protecting plain packaging from industry interference. Canadian Medical Association Journal. August 22, 2016.
  - 22 Non-Smokers' Rights Association. The Fraser Institute: Economic Think Tank or Front for the Tobacco Industry. April 1999.
  - 23 Non-Smokers' Rights Association. Exposing recent tobacco industry front groups and alliances. 2008.
  - 24 Pierre Lemieux. The Economics of Smoking. The Fraser Institute, 2014.
  - John Luik. Second hand smoke and cancer. The research evidence. The Fraser Institute, 2000.
  - Gio Gori and John Luik. Passive Smoke: The EPA's betrayal of science and policy. The Fraser Institute, 1999.
  - 25 Diane Katz. High tobacco taxes encourage black market in cigarettes and organized crime. Fraser Institute.
  - 26 Yael Ossowski. Canadian libertarians say no to nanny state on World No Tobacco Day. PanAmPost. May 31, 2016.
  - 27 Safe Enough? Managing Risk and Regulation. Fraser Institute. 2000.
  - 28 Donald Gutstein. Following the money: the Fraser Institute's tobacco papers. Rabble.ca. October 14, 2009.
- As recently as 2011, Philip Morris International disclosed a "general grant" of \$50,000 to Canada's Fraser Institute.

## Universities

The freedom of university-based researchers to explore and express views has been used by the industry to interfere with health policy. Researchers who received money from the industry — including Hans Selye,<sup>29</sup> Theodore Sterling,<sup>30</sup> Dollard Cormier,<sup>31</sup> Zalman Amit,<sup>32</sup> and André Reynaud<sup>33</sup> — participated in industry efforts to delay or defeat tobacco control measures including smoke-free workplaces, tobacco taxes and plain packaging. The association between these researchers and the industry was often not revealed until decades later as a result of court actions. Although some academic conferences require disclosure of conflict of interest, there is still no requirement that a university-based researcher testifying before Parliament or elsewhere be required to disclose their relationship with the companies.

## National Coalition Against Contraband Tobacco

In the 1990s, Canadian tobacco companies orchestrated a significant contraband problem in a successful effort to convince the federal government and several provincial governments to slash their tobacco tax rates.<sup>34</sup>

In the 2000s, Canadian tobacco companies frequently cited when lobbying to block or delay implementation of stronger tobacco control measures, including tax increases<sup>35</sup> and labelling reforms.<sup>36</sup> They did so through direct lobbying and through their “integrated campaign approach” of advertising and front groups.<sup>37</sup> They are currently trying to use the spectre of an increased illicit tobacco market as a shield against bans on menthol cigarettes and requirements for plain packaging.<sup>38</sup>



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- 29 Mark Peticrew and Kelley Lee. The “Father of Stress” Meets “Big Tobacco”: Hans Selye and the Tobacco Industry. *American Journal of Public Health*. March 2011.
- 30 Testimony before the Legislative Committee on Bill C-204, October 27, 1987.
- 31 Donald Cormier. Critical Analysis of the Report by a Committee of the Royal Society of Canada. “Tobacco, Nicotine and Addiction” 1989.
- 32 Physicians for a Smoke-Free Canada. The plot against plain packaging. 2008.
- 33 André Reynaud and Jean Pierre Vidal. Smokers' Burden on Society: Myth and Reality in Canada. *Canadian Public Policy* 1992. The authors did not disclose that this work was financed by the industry through the Smokers’ Freedom Society.
- 34 Non-Smokers’ Rights Association. What were they smoking. 2013.
- 35 BAT Investor Day Presentation. Managing the Challenge sin Americas, 2011. “Increased illicit trade awareness leads to less tax increases”. 2011 .
- 36 CBC News. Tobacco lobbying preceded label retreat. December 8, 2010.
- 37 BAT Investor Day Presentation. Anti Illicit Trade – Scale and Opportunities. 2011
- 38 Sidhartha Banerjee. Imperial Tobacco challenges Quebec bans on tobacco, menthol cigarettes. *Globe and Mail*. Mar 1, 2016.; Ryan Jespersion Show. Can plain packaging on tobacco products prevent smoking? 630 CHED. July 25, 2016.

# The Guidelines

In October 2000, representatives of the countries that belong to the World Health Organization met in Geneva to begin negotiations for a new treaty. On May 21, 2003, the World Health Assembly unanimously adopted the WHO Framework Convention on Tobacco Control, the world's first modern public health treaty.

The Health Canada officials who were on the Canadian delegation arrived with decades of bitter experience trying to implement effective tobacco control measures in the face of persistent tobacco industry resistance. Even as the treaty was being negotiated, the department was simultaneously defending the *Tobacco Act* in court and dealing with delays in its implementation that resulted from an end-run to the Prime Minister's office orchestrated by a tobacco industry front group.<sup>39</sup>

Tobacco industry interference soon became the back-drop to the treaty negotiations. Early in the process, the WHO used documents that had recently become public as a result of U.S. court actions to expose how the WHO been targeted by the industry, and to illustrate how vulnerable public health authorities were to the systematic hostile actions of the industry.<sup>40</sup> The attempts by the industry to influence country positions in order to weaken the treaty were apparent throughout the negotiations, although it was only after the fact that their actions were more fully documented.<sup>41 42</sup>

By the time the treaty text had been agreed to, there was wide acknowledgement that it was not enough for countries to be aware of the strategies and tactics of the tobacco industry. Number three on the high-level obligations of members of the FCTC was the duty to be proactive to protect public health from such interference: *"In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."*<sup>43</sup>

During the initial years of the treaty, following rapid and widespread ratification, the focus of the Conferences of the Parties was on establishing procedures and priorities for implementation. One of the first aspects of the treaty to be identified as a priority for focused discussion and development of guidelines was Article 5.3. In 2007 at COP2 a working group was established to begin this work. Guidelines for the implementation of Article 5.3 were adopted by COP3 in November 2008.<sup>44</sup>

Civil society organizations represented the interests of their communities by monitoring and participating in the development of the FCTC. A core concern of many was the need to protect governments from being taken hostage by or yielding to pressure from tobacco companies to weaken, delay or drop measures that would reduce tobacco use. The Article 5.3 Guidelines that were adopted were developed in consultation with civil society groups, and it is these organizations, along with the World Health Organization, that have been most active in promoting application of the Guidelines in national settings.

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39 Kennedy, M. Tobacco law to be weakened: Changes may permit continued arts, sports sponsorships -- at least temporarily. *Ottawa Citizen*. 22 May 1998.

40 WHO. Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization. 2000.

41 Gruning et al. Tobacco Industry attempts to influence and use the German government to undermine the WHO Framework Convention on Tobacco Control. *Tobacco Control* 2012; 21:30-38.

42 WHO. Tobacco Industry Interference: A Global Brief. 2012.

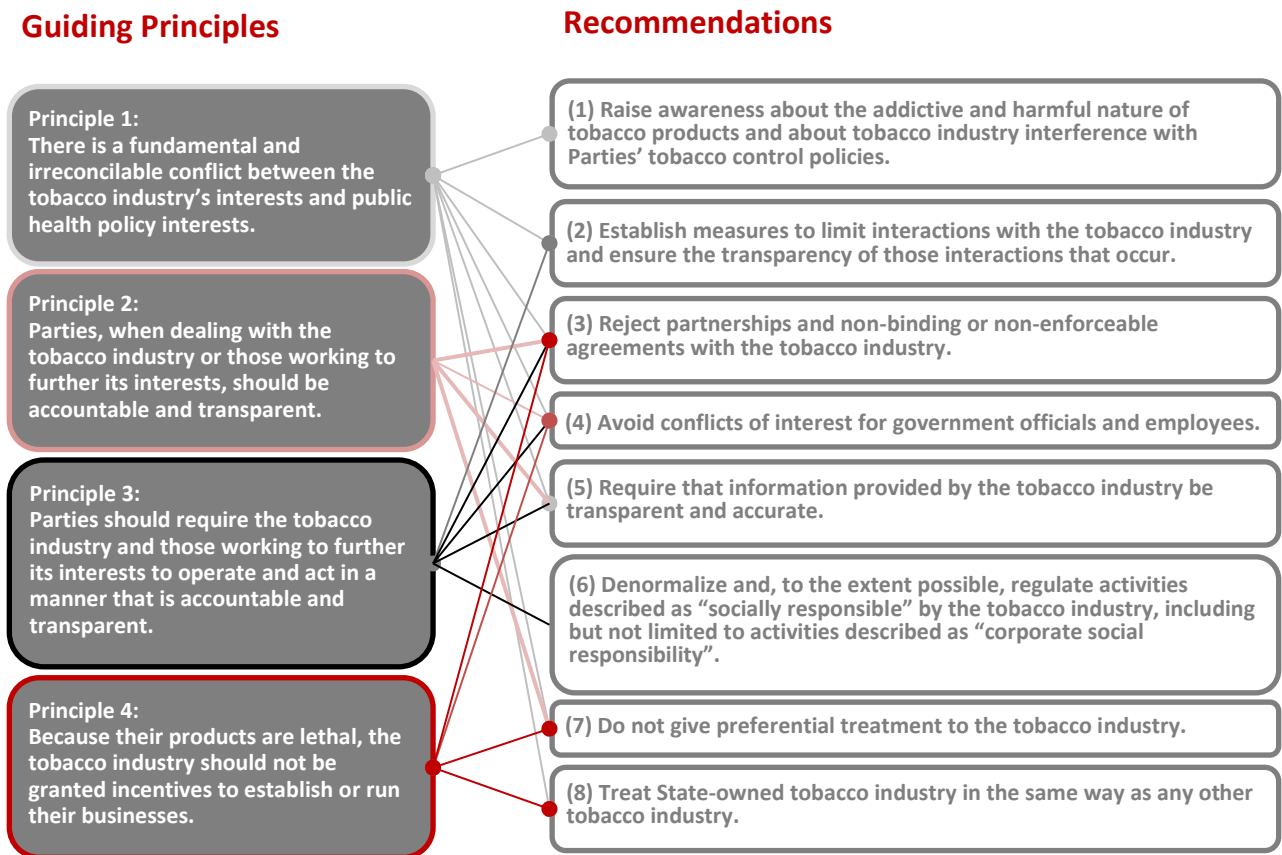
43 WHO. Framework Convention on Tobacco Control, Article 5.3. 2013.

44 WHO. Guidelines for Implementation. Article 5.3 | Article 8 | Articles 9 and 10 Article 11 | Article 12 | Article 13 | Article 14. 2013.

At the heart of the approach adopted by the COP are four guiding principles which are the foundation for eight core general recommendations, each of which is further refined with specific recommendations for governments, including the following key recommendations:

- Raise public awareness about tobacco industry strategies and tactics
- Raise awareness about the use of front groups to further tobacco industry interests
- Limit interactions with the industry
- Ensure transparency of all interactions with the industry
- Avoid voluntary agreements with the industry
- Avoid conflicts of interest with the industry, and provide a code of conduct for public officials in dealing with the industry
- Require disclosure of public office holders of any previous links to the tobacco industry
- Divest of any tobacco industry holdings
- Require disclosure of any groups acting on the industry’s behalf
- Ensure public access to a wide range of information on industry activities
- Raise awareness and concerns about corporate social responsibility (CSR) programs of the industry
- Refuse to support or participate in industry CSR programs

### Relationship between Guiding Principles and Recommendations in the Article 5.3 Guidelines



# International Examples

No country has yet adopted measures that provide adequate protection from tobacco industry interference, but many have taken steps towards implementation of Article 5.3. Among these are several measures that could be adopted in Canada.

The **Australian** government included the need to “develop policies and regulatory options to implement Article 5.3 of the WHO FCTC”<sup>45</sup> when it renewed its National Tobacco Strategy in 2012. It has adopted administrative practices, such as the proactive disclosure of meetings between the health and taxation ministries and the industry. Australia’s sovereign wealth fund, the Future Fund, decided in February 2013 to end direct investments in tobacco manufacturing industries.<sup>46</sup> The Australian government has facilitated public access to documents related to the tobacco industry’s legal challenge to its plain packaging measures.<sup>47</sup>

**Brazil** has adopted guidelines for government officials working on tobacco policy. These establish that the relationship between government and industry is to be guided by the principles of transparency, primacy of the interests of public health policy, sharing of information and disclosure of interactions.<sup>48</sup>

**Ecuador’s** tobacco control law bans “promotion of programs of social responsibility by the tobacco industry,” consistent with the Guideline recommendation to prohibit tobacco Corporate Social Responsibility (CSR).<sup>49</sup> The **European Commission** health department publishes minutes of its meetings with tobacco industry representatives.<sup>50</sup> The Ombudsman of the European Commission issued recommendations that similar measures be adopted by all departments, in light of FCTC Article 5.3.<sup>51</sup>

**Mongolia’s** tobacco control law includes the objective “to protect public health policy from the negative influence of the tobacco industry” and bans tobacco industry CSR, e.g., “tobacco industry contributing to any donations, assistance or grants, participating as a sponsor of cultural, physical fitness, sports and other social events.”<sup>52</sup>

**New Zealand** provides proactive disclosure of any meetings between tobacco companies and the Health Ministry.<sup>53</sup> Citing the FCTC and concerns about conflict of interest, all government financial institutions discontinued investing in tobacco in 2007.<sup>54</sup>

**Norway** has initiated consultations on implementing Article 5.3,<sup>55</sup> and has already put some measures in place. The Norwegian Pension Fund divested of tobacco in 2009 and the Finance Ministry required

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45 Government of Australia. National Tobacco Strategy 2012-2018.

46 Future Fund. Press release. Future Fund excludes tobacco producers. February 28, 2013.

47 Government of Australia. Attorney General’s Department. Website. Tobacco plain packaging-investor-state arbitration

48 Government of Brazil. Administrative Rule No. 713, of April 17, 2012. Unofficial translation.

49 Government of Ecuador. Organic Law for the Regulation and Control of Tobacco. 2011.

50 See, for example, Directorate General for Health and Food Safety. Meeting with Tobacco Industry Representatives on the Tobacco Products Directive 2014/40EU (TPC) on 8 March 2016.

51 European Ombudsman. Recommendation of the European Ombudsman in the inquiry into complaint 852/2014/LP against the European Commission regarding its compliance with the Tobacco Control Convention. 2015.

52 Government of Mongolia. Law of Mongolia on Tobacco Control. 2005.

53 New Zealand Ministry of Health. Website. Meetings with tobacco industry representatives.

54 New Zealand Superannuation Fund. Background information for tobacco stocks divestment. 2007.

55 Government of Norway. Consultation on the proposal for standardised tobacco packaging and the implementation of Article 5.3 of the Framework Convention on Tobacco Control. 2015.

government investment funds to divest of tobacco holdings in 2010.<sup>56</sup> Organizations or individuals who make comments on tobacco control measures are asked to disclose *“any direct or indirect links with, cooperation with, or financial support from the tobacco industry.”*<sup>57</sup>

The **Philippines** has adopted several measures to limit interaction of government officials with the tobacco industry and its representatives. Among these were instructions to public servants,<sup>58</sup> and the establishment of an interagency and multi-sectorial committee to coordinate efforts.<sup>59</sup>

The **United Kingdom** issued guidance to overseas representatives to assist them in supporting the FCTC and limit support to tobacco industry representatives.<sup>60</sup> The Revenue Ministry (HM Revenue and Customs) proactively discloses meetings held between it and the tobacco industry.<sup>61</sup> When seeking public input on tobacco control measures, the government acknowledges that its obligations to the FCTC requires it to *“ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.”*<sup>62</sup>

The **FCTC Secretariat** commissioned a review of United Nations agencies’ experience with tobacco industry interference, current policies that comply with Article 5.3 and recommendations for steps to strengthen protection from interference.<sup>63</sup> Among the policies noted was the decision by the United Nations Joint Staff Pension Fund (UNJSPF) to restrict investments in the tobacco industry, including any corporations that derive any portion of its revenue from tobacco production or primarily deal with tobacco manufacturing and distribution.<sup>64</sup>

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56 Government of Norway. Guidelines for observation and exclusion from the Government Pension Fund Global. Updated 2016.

57 Government of Norway. Consultation on the proposal for standardised tobacco packaging and the implementation of Article 5.3 of the Framework Convention on Tobacco Control. 2015.

58 Republic of the Philippines. Civil Service Commission. Joint memorandum Circular No. 2010-01.

59 Southeast Asia Tobacco Control Alliance. FCTC Article 5.3 Guidelines Best Practice: Philippines. 2015.

60 U.K. Department of Health. United Kingdom’s revised guidelines for overseas posts on support to the tobacco industry. 2013.

61 U.K. Government web-site. HM Revenue & Customs officials’ meetings with tobacco stakeholders

62 The Department of Health (England), the Chief Medical Officer’s Directorate (Scotland), the Health and Social Services Directorate General (Wales) and the Department of Health, Social Services and Public Safety (Northern Ireland). Consultation on standardised packaging of tobacco products. 2012.

63 Bialous, S. Article 5.3 and International Tobacco Industry Interference. November 2015.

64 United Nations Joint Staff Pension Fund. Investment Management Division. Responsible Investment. Accessed August 2016.

## Progress in Canada:

# 1. Raising Awareness

The Guidelines call on Parties to inform all branches of government and the public about:

- the addictive and harmful nature of tobacco products;
- the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry;
- the strategies and tactics used by the tobacco industry to interfere with tobacco control policies.

They also call for activities to *“raise awareness about the tobacco industry’s practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.”*

In all its reports to the FCTC Secretariat since 2010, Canada said it has discussed the Article 5.3 Guidelines with its partner federal departments and with “relevant departments” of provincial and territorial governments. There were no further details on what information had been shared, or the intensity or frequency of the discussions.

Informing departments about the guidelines is not the same as informing them about the harmfulness of tobacco products, the threats of industry interference, or the importance of being alert to the use of front groups. On these aspects, Canada’s report was silent. We must infer that there was no communication on these points.

With respect to informing the public of the addictive and harmful nature of tobacco products, Canada’s requirement that most tobacco products display large graphic health warnings serves as a useful way of providing this important information. Other important communications tools have been abandoned in recent years, most notably the use of mass media. Nor have any measures been taken to inform the public of the threats of industry interference or the use of front groups.

The need for public awareness campaigns focused on industry activities has long been identified in Canada and was recognized by the member organizations of the Steering Committee of the National Strategy to Reduce Tobacco Use almost 20 years ago. During the renewal of the (now abandoned) national strategy in 1999, denormalization was identified by this multi-sectoral committee as one of the four main pillars of a comprehensive tobacco control approach. The strategy noted the use of denormalization to *“draw attention to the way the tobacco industry operates”* and to *“the role of other industries and organizations in supporting the promotion and sale of tobacco.”*<sup>65</sup> This key element of the national strategy was not included in the Federal Tobacco Control Strategy adopted shortly afterwards, against the advice of civil society groups.<sup>66</sup>

In the subsequent 17 years, evidence has grown that tobacco industry denormalization (TID) *“is an effective tobacco control intervention at the population level that has a clear exposure response effect.”*

*“(1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.”*

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65 Health Canada. *New Directions for Tobacco Control in Canada: A National Strategy*. 1999.

66 Ekos. *Evaluation of the Relevance and Design and Delivery of the Federal Tobacco Control Strategy*. 2006.

*TID may also contribute to other tobacco control outcomes not explored in this review (including efforts to ‘directly erode industry power’), and thus may enhance public support and political will for structural reforms to end the tobacco epidemic.”<sup>67</sup>*

In Canada it is civil society that has principally been involved in raising awareness about tobacco industry interference, as noted in Canada’s implementation reports. Such awareness campaigns have, however, been few in number and regional in scope. Examples include Quebec’s de Facto,<sup>68</sup> Hamilton region’s Unfiltered Facts<sup>69</sup> and Ottawa’s Exposé.<sup>70</sup> There is currently no federal government support for any external research or communication on tobacco industry interference.

### **Conclusion and recommendations:**

The federal government does little to raise awareness among the public of the strategies used by the industry to interfere with public health or of the nature and extent of the health consequences of tobacco use. The actions of Health Canada to raise such awareness across government departments are not obvious or made public.

**The following are recommended as priority actions for government:**

- 5. Health Canada should regularly inform agencies and officers responsible for federal government stewardship of tobacco control policies (the Privy Council, the Prime Minister’s Office, Treasury Board, Finance Canada, the Canadian Revenue Agency, the Canadian Border Services Agency, the Speaker of the House of Commons and Senate, etc.) of Canada’s obligations under Article 5.3 of the FCTC. These communications should be reinforced periodically and proactively disclosed to the public.**
- 6. Provincial and territorial governments should be informed, through Health Canada or other appropriate federal agencies, of the need to ensure their actions conform with FCTC Article 5.3. These communications should be proactively disclosed to the public.**
- 7. Health Canada should provide funding for independent monitoring of and reporting on industry actions.**
- 8. The federal government should implement an effective communications strategy, including mass media, to enhance public understanding of the health consequences of tobacco use and of the strategies and tactics of the tobacco industry.**

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67 Malone, RE et al. Tobacco industry denormalisation as a tobacco control intervention: a review. *Tobacco Control*, 2012.

68 [www.defacto.ca](http://www.defacto.ca). Accessed August 2016.

69 [www.unfilteredfacts.ca](http://www.unfilteredfacts.ca). Accessed August 2016.

70 [www.exposeottawa.ca](http://www.exposeottawa.ca). Accessed August 2016.



Progress in Canada:

## 2. Limiting Interactions

The Guidelines call on Parties to:

- restrict their interactions with the industry to those which are strictly necessary for regulatory purposes;
- ensure that all interactions with the industry are conducted transparently, preferably in public or with disclosure of records of such interactions to the public.

Canada reported in 2010, 2012, 2014 and again in 2016, that “Generally, in Canada the primary channels of communication between governments and the tobacco industry are limited to (i) technical discussions in regard to both health and tax-related regulations and (ii) litigation-related responses.” With respect to disclosure of records of any such interactions, the report referred to the provisions of the *Lobbyist Registration Act* and the requirement that returns be filed with the Commissioner of Lobbying.

### Lobbying

No measures have been adopted in Canada to formally or informally impose a different style of interaction between government (legislative, executive or judiciary) and the tobacco industry than exists with any other citizen or business.

The *Lobbyist Registration Act* requires some disclosure of financing (regarding receipt of government funding),<sup>71</sup> but does not require lobbyists to declare whether they have received funding from tobacco companies. Since the FCTC came into force, there have been four opportunities to include such a provision when amendments to this Act were before Parliament.

Recent interactions between the tobacco industry and public office holders are not small in number. Since the 2015 election, there were more than 40 occasions where Canada’s largest tobacco company reported communicating orally and/or meeting with policy makers, including in the offices of the Ministers of Health, Finance, Public Safety, Canada Revenue, Treasury Board Secretariat, and more than 31 Members of Parliament.<sup>72</sup>

“(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.”

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In the first 6 months of 2016, Imperial Tobacco Canada reported 80 communications to public office holders, including policy advisors to the minister and members of the House of Commons health committee.

71 Government of Canada. *Lobbyist Registration Act*. S. 5 (2)(e.1).

72 Office of the Commissioner of Lobbying of Canada. Registry Search for “tobacco” in Monthly Communications Reports. August 2016.

The Canadian Convenience Stores Association reported to its members about meetings with Members of Parliament to discuss plain packaging and contraband.<sup>73</sup> These do not appear on the database maintained by the Commissioner of Lobbying.

While the Lobbyist Registry contributes to the transparency of interactions with the tobacco industry, but it does not achieve it. For several reasons, the *Lobbyist Registration Act* is an inadequate tool to monitor tobacco industry interference, to provide disclosure of interactions with government, to meet a sufficient standard of transparency on government-industry relations, and to otherwise protect public health from interference:

- It does not cover all interactions between the industry and public officials that might ultimately influence health policy outcomes, including many social or informal meetings.
- For those interactions that are reported under the *Act*, specific details on the content of discussions is not required and therefore remains veiled.
- There is no responsibility on public office holders to disclose their interactions.
- There is evidence that some meetings are not reported.

## Litigation

Federal and provincial governments are involved in litigation against the tobacco industry. With rare exception, these efforts are not managed in an open and transparent way beyond the minimum requirements imposed by the justice system.

There are no proactive steps taken by any level of government to make available the court filings in cases where the government is the plaintiff (such as the tobacco damages and health care costs recovery suits). None of the provinces has established a web portal or other mechanism to disseminate or otherwise make available the official documents associated with the lawsuits.<sup>74</sup>

There are a number of unresolved attempts by tobacco companies to defeat health regulations in court. These include litigation efforts related to graphic health warning labels<sup>75</sup> and to the menthol bans in

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73 NACDA. Website. Lobby Day 2016. Accessed June 1, 2016.

74 HMTQ vs. Imperial Tobacco Canada Ltd., Supreme Court of British Columbia, Case # 2010421;  
Alberta v. Altria Group, Inc., Court of Queen's Bench, Alberta, Case # 1201-07314;  
Government of Saskatchewan vs. Rothmans, Benson & Hedges, Court of Queen's Bench for Saskatchewan, Case #871 of 2012;  
Her Majesty the Queen in Right of the Province of Manitoba v. Rothmans et al. Court of Queen's Bench of Manitoba. Case # CI 12-01-78127;  
Ontario v. Rothmans et al. Superior Court of Justice, Ontario, Case #CV-09-387984;  
Quebec (Procureur général) c. Imperial Tobacco Canada Ltd., Superior Court of Quebec, Case # 500-17-072363-123;  
R. v. Rothmans Inc. Court of Queen's Bench of New Brunswick. Case # F/C/88/08;  
Her Majesty the Queen in Right of the Province of Prince Edward Island v. Imperial Tobacco, Supreme Court of Prince Edward Island, Case # S1-GS-25019;  
Her Majesty the Queen in Right of the Province of Nova Scotia v. Imperial Tobacco, Supreme Court of Nova Scotia, Case # 434868,  
Attorney General of Newfoundland and Labrador v. Rothmans Inc., Supreme Court of Newfoundland and Labrador, Case # 201101G0826.

75 JTI-Macdonald Corp. v. Attorney General of Canada. Ontario Superior Court of Justice. Case # CV-12-450415;  
Imperial Tobacco Canada Ltd. V. Attorney General of Canada. Ontario Superior Court of Justice. #CV-12-452062

Nova Scotia,<sup>76</sup> New Brunswick,<sup>77</sup> and Quebec.<sup>78</sup> In none of these cases have additional measures been put in place to ensure transparency of interactions with the industry, or even to disclose exchanges with the companies.

### **Conclusion and recommendations:**

Public office holders do not appear to have been provided with guidelines on managing their interactions with tobacco companies, and the industry continues to have broad access to several government departments and policy makers.

There are a number of legal actions between governments and tobacco companies, but few efforts have been made to ensure these are conducted in a transparent fashion, or to disclose proceedings to the public.

The following are recommended as priority actions for government:

- 9. With the assistance of Health Canada and in consultation with civil society and other stakeholders, guidelines for interaction with tobacco industry officials should be developed for public servants, crown corporations, senior management, elected officials, and order-in-council appointees. Guideline provisions should include, among other measures, proactive disclosure of meetings between tobacco industry and government representatives and departments, including attendees, subjects discussed, and meeting minutes. Adherence to these guidelines should be monitored and reported on.**
- 10. Canadian governments should facilitate access to documents connected with lawsuits launched by or against tobacco companies, in domestic or international courts, tribunals or administrative bodies through the establishment of a web portal. Health Canada should maintain a record of these activities.**

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76 Global News. Province says imperial Tobacco lawsuit will fail. May 29, 2015.

77 Imperial Tobacco. Press Release. Imperial Tobacco files legal challenge against New Brunswick menthol ban. March 24, 2016.

78 JTI-Macdonald v. Attorney General of Quebec. Application for Judicial Review. Quebec Superior Court. Case / 500-17-092852-162.  
Imperial Tobacco. Press Release. Imperial Tobacco files legal challenge against Quebec's Act to bolster tobacco control. March 1, 2016.

Progress in Canada:

## 3. Rejecting Partnerships

The Guidelines call on Parties to reject several forms of partnership with tobacco companies. These include:

- partnerships and non-binding or non-enforceable agreements, as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests;
- the tobacco industry organizing, promoting, participating in, or performing, youth, public education or any initiatives that are directly or indirectly related to tobacco control;
- any voluntary code of conduct or instrument drafted by the tobacco industry that is offered as a substitute for legally enforceable tobacco control measures;
- any offer of assistance or proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry.

In its reports to the Secretariat since 2010, Canada said it had “adopted administrative measures” which included Health Canada’s “policy of not partnering with the tobacco industry on tobacco control programming.” No mention was made of policies of other departments or of whether there were other issues on which a partnership with the industry would be acceptable to government.

It is difficult, but not impossible, to find examples of other federal government departments and agencies or municipal or provincial governments partnering with tobacco companies. The relative rarity of these partnerships may result from ad hoc administrative decisions of these departments to reject such partnerships, or as a result of the adoption of policies in keeping with the Article 5.3 guidelines to systematically avoid them. Nonetheless, several government departments and Crown agencies acknowledge continued relationships with Canadian tobacco companies that are not in keeping with Guidelines on partnership.

- Revenue Canada entered into long-term agreements with each of the tobacco companies as part of a settlement over tax losses resulting from industry-fueled contraband. These agreements give the companies “an active role in developing solutions that see all tobacco manufacturers and retailers competing fairly under the laws and regulations established by the Governments.”<sup>79</sup>
- The Canada Border Services Agency has signed a partnership agreement with Imperial Tobacco Canada Ltd. as part of its “partners in protection” program, although the details of the agreement have not been disclosed.<sup>80</sup>

“(3) Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.”

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79 Agreement between JTI-Macdonald Corp and Her Majesty the Queen in Right of Canada. April 13, 2010.  
Agreement between Imperial Tobacco Canada Ltd and Her Majesty the Queen in Right of Canada, July 31, 2008.  
Agreement between Rothmans, Benson and Hedges and Her Majesty the Queen in Right of Canada, July 31, 2008.

80 Canada Border Services Agency, Partners in Protection Members. Accessed May 30, 2016.

- The National Sciences and Engineering Research Council of Canada identifies Imperial Tobacco among its NSERC project partners.<sup>81</sup>
- The National Gallery lists Imperial Tobacco among its Founding Partners.<sup>82</sup>

### **Conclusion and recommendations:**

Although there remain few apparent partnerships between the government of Canada and the tobacco industry, the administrative practice adopted by Health Canada to avoid partnerships has not been adopted by all departments and agencies.

### **The following are recommended as priority actions for government:**

- 11. Canadian governments should instruct their departments, agencies and crown corporations to avoid any partnerships with the tobacco industry and monitor adherence to this instruction.**
- 12. Health Canada should require tobacco companies to report on all partnership agreements with the public and private sector (domestic and international). These reports should be proactively disclosed.**
- 13. Health Canada should raise public awareness about the unacceptability of tobacco industry partnerships.**

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81 Natural Sciences and Engineering Research Council of Canada. Partner List. Accessed May 30, 2016.

82 National Gallery of Canada. Website: Founding Partners. Accessed May 29, 2016

Progress in Canada:

## 4. Avoiding Conflicts of Interest

The Guidelines provide more than ten clear action steps for Parties to take to manage potential conflicts of interest between the tobacco industry and the government.

These include:

- Requirements for disclosure of potential conflicts of interest that applies “to all persons” persons involved in setting and implementing public health policies.
- Establishment of a code of conduct for public officials.
- No awarding of contracts for work to tenderers who have a conflict of interest.
- Policies related to employees moving from government to industry or vice-versa.
- Divestment of tobacco holdings by government officials and by government institutions.
- No participation by industry on government committees or advisory groups involved in health policy.
- No participation by industry on delegations to the Conference of Parties.
- No acceptance of payments of any nature by tobacco industry to government officials or employees.
- No contribution by the industry to political parties or campaigns.

In its reports to the Secretariat since 2010, Canada identifies only one measure in place which conforms to these recommendations: the banning of donations to political campaigns for electoral purposes. This prohibition applies to all corporations, trade unions and non-governmental organizations, not just to tobacco companies.

There are several other measures which were not identified in these reports that are in place to reduce conflicts of interest between government and any commercial interest. These include the federal *Conflict of Interest Act*,<sup>83</sup> Treasury Board policies on Conflict of Interest and Post-Employment,<sup>84</sup> and the Departmental Code of Conduct which significantly limits the acceptance of gifts, hospitality or any benefits.<sup>85</sup> These are intended to apply a high standard of protection against conflicts of interest. Although these policies were adopted or revised after the FCTC came into force, there is no acknowledgement of the potential benefit of having even more stringent measures in place for tobacco than for any other commercial sectors.

The ability of individuals to build a career that involves both public service and the sale of tobacco is a long-standing concern within the public health community. Prime Ministers, Senators, Cabinet Ministers, Members of Parliament, senior government advisors and officials from the health ministry

“(4) Avoid conflicts of interest for government officials and employees”

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83 Government of Canada. *Conflict of Interest Act*, 2006.

84 Treasury Board Secretariat. *Policy on Conflict of Interest and Post Employment*, 2012.

85 Treasury Board Secretariat. *Departmental Code of Conduct*. 2013

have moved from the tobacco industry to federal government policy roles or vice-versa.<sup>86</sup> Even after the ratification of the FCTC, a tobacco control regulator was able to move sequentially from Health Canada to Imperial Tobacco to the Public Health Agency of Canada.<sup>87</sup>

Canada does not currently include conflict of interest provisions in its solicitation of bids for services to be provided by external agencies, beyond those involving the bidding process, which are required of all tenderers. The recent call for a cost-benefit analysis of plain packaging of tobacco products, for example, did not exclude those who might have provided similar analysis for tobacco companies. Because those who had experience with tobacco regulations were ranked more highly in the bid, an advantage may have been offered to those who simultaneously work for industry.<sup>88</sup>

Canada does not currently include conflict of interest provisions during public consultations on tobacco control measures, as the United Kingdom and Norway do. Solicitations of public input on proposed tobacco control measures does not require participants to disclose any financial or other interests with the tobacco industry.<sup>89</sup> As a result, tobacco industry influence on third-party respondents is not disclosed.<sup>90</sup> This leaves industry interference veiled, as well as making independent respondents vulnerable to inference. Importantly, it does not provide the policy-making process with the level of clarity about competing interests recommended by the Guidelines.

### **Conclusion and recommendations:**

Canada has implemented several measures to protect public policy against conflicts with commercial and other interests, but none of these measures have been adopted to meet the specific challenges posed by the tobacco industry.

Perceived and real conflicts of interest have arisen and are likely to continue unless preventive actions are taken.

**The following are recommended as priority actions for government:**

- 14. Canadian governments should develop specific conflict of interest guidelines related to implementation of Article 5.3. These guidelines, and the monitoring of adherence to them, should be pro-actively disclosed.**
- 15. Any relationship between the tobacco industry and respondents to a government consultation on tobacco control or health measures should be required to be disclosed.**

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86 Prime Minister: Louis St. Laurent; Senators: Roch Bolduc and William Kelly; Cabinet Ministers: Robert Winters, Maurice Sauvé, Alistair Gillespie, Paul Martin, Jr. ; Members of Parliament: Robert Parker, Leo Duguay ; Senior advisers to governments: Torrance Wylie, Jodi White, Marie-Josée Lapointe, Brian Levitt, Rod Love, Mark Resnick, Norman Spector, Nancy Daigneault, David Small, William Neville; Former government officials from department of health: Albert Liston, Luc Martial, Karen Proud, Yves-Thomas Dorval.

87 Karen Proud worked at Health Canada from 1997-2006, was Manager of Government Relations at Imperial Tobacco from 2006 to 2009 following which she worked with the Public Health Agency of Canada. LinkedIn Profile accessed May 30, 2016.

88 Health Canada. Cost-benefit analysis of the plain packaging of tobacco products. Solicitation Number 1000179835. March 11, 2016.

89 See, for example: Health Canada. Notice to Interested Parties - Proposed Order to amend the Schedule to the Tobacco Act (Menthol). April 29, 2016.

90 See, for example: Order amending the Schedule to the Tobacco Act. Canada Gazette. Vol. 149, No. 12. June 2015.

Progress in Canada:

## 5. Ensuring Transparency

The Guidelines provide several action steps for Parties to take to “ensure that all operations and activities of the tobacco industry are transparent.”

These include:

- Requiring reports on tobacco production, manufacture, market share, marketing expenditures, revenues, and any other activity, including lobbying, philanthropy, and political contributions;
- Establishing rules for disclosure or registration of industry entities, affiliated organizations and individuals acting on their behalf;
- Imposing penalties for false disclosure;
- Ensuring public access to a wide range of information on tobacco industry activities.

In its reports to the Secretariat since 2010, Canada identifies the *Tobacco Reporting Regulations* as the mechanism through which research and promotional activities are disclosed and the legal context under which this information is made public: “Public access to information about the tobacco industry which is reported to the government pursuant to these Regulations is governed by the Canadian Charter of Rights and Freedoms, Access to Information & Privacy Act, and the common law as it relates to confidential business information.”<sup>91</sup> Canada was among the first and is still among the few countries to impose on tobacco companies the obligation to provide detailed information on the tobacco products they manufacture, their ingredients, promotional expenditures, etc.

The *Tobacco Reporting Regulations*, authorized by the *Tobacco Act*, were adopted in 2000 and modified in 2005.<sup>92</sup> The regulations build on previous regulatory programs in place in Canada, including those under the *Tobacco Products Control Act*,<sup>93</sup> and the *British Columbia Tobacco Testing and Disclosure Regulation*.<sup>94</sup> The tobacco industry has significantly redesigned its marketing structure since the adoption of these disclosure regulations, making some of them redundant and creating information gaps where these new activities were not anticipated by the reporting regulations.<sup>95</sup>

### Barriers to accessing information

The information provided about promotion and products is valuable for the contribution it makes to the knowledge base in support of government regulation. Its impact on public health is, however, constrained by the policies that have prevented most of the information reported from being used by independent health researchers or from otherwise made available to the public.

“(5) Require that information provided by the tobacco industry be transparent and accurate.”

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91 The reference to the Charter of Rights and Freedoms was added in 2012.

92 Government of Canada. Tobacco Reporting Regulations. SOR/2000-273 and SOR/2005-179, s. 1.

93 Government of Canada. Tobacco Products Control Regulations, SOR/89-21.

94 Government of British Columbia. Tobacco Testing and Disclosure Regulation.

95 By 2006, most provinces had adopted display bans, following which traditional retail display allowances were replaced with new retailer incentive programs.



Health Canada provides annual updates for aggregate sales data for cigarettes and fine-cut tobacco at national and provincial levels. However, no information on brand-share or price is provided. Some data (i.e., aggregate cigar sales, payments to retailers) is available on request to the department, and other information (i.e., emissions data) has been made available on an ad-hoc basis.<sup>96</sup> Health Canada's own analysis of the information is on occasion presented at scientific or other meetings, or otherwise made available.<sup>97</sup>

In some areas, less information is provided than was made available by the federal government or the government of British Columbia when previous regulatory systems were in place. In the early 2000s, for example, B.C. provided access to data concerning the levels of chemicals measured in cigarette smoke and second hand smoke on a brand-by-brand basis.<sup>98</sup> During the same period, Health Canada provided, on request, monthly sales data for each province on a brand-by-brand basis. In response to tobacco industry pressure, after 2004 this information was no longer made unavailable.

In 2005, when considering ignition propensity regulations, the House of Commons Standing Committee on Health heard evidence regarding the policy of Health Canada not to make public the information provided by tobacco companies. The Committee recommended that *"all information to be submitted to Health Canada under these regulations be made public."* In its official response to the committee's recommendation, the government responded:

*Agreeing fully with the spirit and intent of the Standing Committee's recommendation, the Government is pleased to affirm its ongoing strong commitment to openness and transparency and to the active and timely provision of information to Canadians and stakeholders on matters that affect their health and well-being. To these ends, the Government will publicly disclose all toxicity data, aggregated on an industry-wide basis, so as to enable a meaningful tracking and analysis of general trends in cigarette toxicity following the adoption of the ignition propensity standards.*

*The Government will also assess the appropriateness of publicly disclosing manufacturer or product-specific data that do not meet the tests for protection of confidentiality.*

du Maurier KS smoke analysis

Example

Page 1 of 2

BRITISH COLUMBIA GOVERNMENT

British Columbia Ministry of Health and Ministry Responsible for Services

1998 Reports on Cigarette Additives and Ingredients and Smoke Constituents

du Maurier King Size

December 16, 1998

	Mainstream Smoke				Sidestream Smoke				
	Standard ISO Labelled Unit	FTL Value SD	Intense Smoking Value SD	TTC Value SD	Standard ISO Labelled Unit	FTL Value SD	Intense Smoking Value SD	TTC Value SD	
Ammonia	µg/10	13.4	1.08	26.5	2.6	4893	548	4420	558
2-aminoanthracene	ng/10	7.27	0.8	9.75	0.58	34.1	6.4	62.6	14.4
1-aminoanthracene	ng/10	6.9	1.06	13.9	3.2	14.2	10.6	18.6	29
4-aminoanthracene	ng/10	1.22	0.21	1.65	0.27	3.9	1.3	11.3	1.9
3-aminoanthracene	ng/10	1.70	0.31	2.41	0.14	17.3	2.3	20.2	2.9
Benzo[a]pyrene	ng/10	11.70	1	13.1	0.6	25.3	2.61	29.9	0.7
Fluorenyl	ng/10	36.4	10.7	69.9	6.6	436	30	367	26.5
Acetone	µg/10	346	33.1	558	62	897	41.9	947	67.1
Acrolein	µg/10	85.4	10.9	175	13.8	125	43.6	228	25.6
Propionaldehyde	µg/10	55.9	7.3	122	9	142	5.5	119	12.5
Crotonaldehyde	µg/10	15.3	3.2	44.5	3.6	52.3	15.7	168.3	7.9
Methyl ethyl ketone	µg/10	64.3	8.4	147	28.8	124	10.3	148	14.6
Diacetaldehyde	µg/10	37.3	4.2	85.7	5.4	97.1	3.9	73.2	7.1
Hydrogen Cyanide	µg/10	139	22	236	34.7	131	23.1	96	39
Mercury	ng/10	6.49	0.9	10.96	0.67	80.6	10.6	80.6	10.6
Nitral	ng/10	12.74	4.89	27.2	17.2	37.4	4.16	31.4	5.9
Lead	ng/10	14.9	2.06	45.6	9.9	46.6	5.5	18.8	16.9
Cadmium	ng/10	123	1.89	276	28	722	61	425	39
Chromium	ng/10	4.16	0.86	12.6	4.9	58.6	12.88	71.8	25.9

*Brand-by-brand sales data, information on toxic constituents and receipts under the Tobacco Manufacturers' Surtax were routinely made available until early in the century. After objections by the tobacco industry to their release, this information was no longer disclosed.*

	A	B	C	D	E	F	G	H
	Company	Brand Family	Brand	Prov.	Amount Sold	Month	Year	Product
1	ITL	AVANTI	KS FT	AB	1,036,600	01	2001	CGRT
2	ITL	AVANTI	KS FT	AB	1,244,000	02	2001	CGRT
3	ITL	AVANTI	KS FT	AB	1,213,600	03	2001	CGRT
4	ITL	AVANTI	KS FT	AB	1,392,000	04	2001	CGRT
5	ITL	AVANTI	KS FT	AB	1,292,200	05	2001	CGRT
6	ITL	AVANTI	KS FT	AB	614,400	06	2001	CGRT
7	ITL	AVANTI	KS FT	AB	1,811,600	07	2001	CGRT
8	ITL	AVANTI	KS FT	AB	1,243,600	08	2001	CGRT
9	ITL	AVANTI	KS FT	AB	1,396,400	09	2001	CGRT
10	ITL	AVANTI	KS FT	AB	1,278,000	10	2001	CGRT
11	ITL	AVANTI	KS FT	AB	1,300,600	11	2001	CGRT
12	ITL	AVANTI	KS FT	AB	1,404,600	12	2001	CGRT
13	ITL	AVANTI	KS FT	BC	43,400	01	2001	CGRT
14	ITL	AVANTI	KS FT	BC	39,200	02	2001	CGRT
15	ITL	AVANTI	KS FT	BC	61,400	03	2001	CGRT
16	ITL	AVANTI	KS FT	BC	60,000	04	2001	CGRT
17	ITL	AVANTI	KS FT	BC	62,200	05	2001	CGRT
18	ITL	AVANTI	KS FT	BC	93,000	06	2001	CGRT

96 Hammond, D. Constituents in tobacco and smoke emissions from Canadian cigarettes. Tobacco Control. 2008

97 See, for example: Health Canada. Contraband Cigarettes: Tobacco Smoke Analysis. Accessed May 30, 2016

98 Government of British Columbia and Canadian Council for Tobacco Control. 1998 Reports on Cigarette Additives and Ingredients and Smoke Constituents. Available on Truth Tobacco Industry Documents. Accessed August 2016.

Finally, the Government remains strongly committed to ensuring the active and timely consideration of requests to disclose information that may be in the public interest, under the discretionary provisions of ATIA section 20(6).<sup>99</sup>

In the 11 years since that commitment, we are not aware of any release of (a) “all toxicity data,” (b) the results of any assessment of the appropriateness of disclosing manufacturer or product-specific data or (c) the use of the *Access to Information Act* section 20(6).<sup>100</sup>

Even with a less industry-friendly application of the *Access to Information Act*, this is not an ideal approach to fulfilling the need for transparent disclosure. The process of obtaining information through ATI requests can be cumbersome and complex and expensive to all parties. It puts the onus on requesters to challenge decisions through legal hearings. Government departments have been known to be very late in responding and to redact important information.<sup>101</sup> This is a significant impediment to transparency for both civil society groups and members of the public.

Table 2 summarizes the information that must be provided to government as well as that which is made available.

### **Conclusion and recommendations:**

Canada has implemented comprehensive reporting requirements on the tobacco industry, but has not updated these regulations to respond to changes in the regulatory or marketing environments. Very little of the information reported to government is available to the public, and the government has not adopted a policy to facilitate access.

#### **The following are recommended as priority actions for government:**

**16. Through administrative practice or legislative change, Canadian governments should exercise their authority to proactively disclose information provided to them by the tobacco industry, and to guarantee the public’s right to have access to this information.**

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99 House of Commons. Standing Committee on Health. Government Response to the Sixth report of the Standing Committee on Health. "Proposed Regulations Amending the Tobacco Reporting Regulations" July 2005.

100 Government of Canada. *Access to Information Act*.

Section 20. (6) The head of a government institution may disclose all or part of a record requested under this Act that contains information described in any of paragraphs (1)(b) to (d) if (a) the disclosure would be in the public interest as it relates to public health, public safety or protection of the environment; and (b) the public interest in disclosure clearly outweighs in importance any financial loss or gain to a third party, any prejudice to the security of its structures, net works or systems, any prejudice to its competitive position or any interference with its contractual or other negotiations.

101 See report of the Office of the Information Commissioner of Canada. Observations on the health of the access system 2013-2014.; See also Canadian Tobacco Manufacturers’ Council A and B (Confidential) v. Minister of National Revenue, Information Commissioner of Canada and Robert Cunningham.

**Table 2: Public disclosure of information provided as a result of the federal Tobacco Reporting Regulations**

<b>Information required under Tobacco Reporting Regulations</b>	<b>Is the information made public?</b>
<b>Permanent Reports</b>	
List of every consumer tobacco product manufactured	No
List of identical products sold under different brands	No
Sample of every package	No
<b>Manufacturing Procedures</b>	
Manufacturing procedure for each product	No
<b>Ingredients</b>	
Quantity and cost of ingredient	No
Weight of products	No
Specifics about ingredients and filters	No
<b>Constituents</b>	
Brand by brand disclosure of constituents present in tobacco products	No
<b>Sales</b>	
Sales volume per brand and package type for each province	Yes and No  Aggregate sales data for cigarettes and roll your own tobacco for each province is made proactively available annually on Health Canada web-site.  Other information on types of products (menthol, slims, etc) is made available on occasion through presentations, but is not proactively available to the public.  Health Canada previously (prior to 2003) made available brand sales per province.
Sales volume per brand and package for duty free	No
<b>Emissions</b>	
Brand by brand disclosure of emissions of specified compounds produced by tobacco products	Yes and No  Emissions data has been made available to researchers, but is not available to the public.  British Columbia previously (1998) released brand-by-brand emissions data. <sup>102</sup>
<b>Toxicity</b>	
Brand by brand results of specified toxicity tests	No

102 British Columbia Ministry of Health, Canadian Council for Tobacco Control, Reports on Cigarettes Additives and Ingredients and Smoke Constituents. Truth Document hsgg0064. Accessed August 2016.

Information required under Tobacco Reporting Regulations	Is the information made public?
<b>Research activities</b>	
Research activities conducted by company on toxicity, health effects, ingredients, taste and flavour, modification, marketing and usage	No
<b>Promotional activities</b>	
Dates of release of any promotional activity	No
Brand by brand costs of promotional activities	No
Reports on any advertisements in publications, with copy	No
<b>Sponsorship</b>	
Display of brand elements on any permanent facility	No
<b>Packaging</b>	
Brand by brand cost of manufacturing the packaging of tobacco products	No
<b>Services</b>	
Detailed description of any services using brand elements	No
<b>Display at retail</b>	
Information on retail displays for tobacco products, including payments to retailers, number of stores where displayed, etc.	Yes and No Aggregate payment to retailers are available on request
<b>Accessories</b>	
Information on branded accessories (like matches) including sales volume, cost of production and promotion	No
<b>Other products</b>	
Information on branded products, including sales volume, cost of production and promotion	No

Progress in Canada:

## 6. Regulating “Corporate Social Responsibility” Activities

The Guidelines provide several action steps for Parties to take to address the abuse by tobacco companies of corporate social responsibility activities (CSR) and the way these are used to impede health measures.

These include:

- Informing all branches of government and the public about the “true purpose” of tobacco industry CSR activities;
- Refusing to in any way to participate in such activities;
- Forbidding the industry and others from publicizing their contributions to such activities, except as legally required;
- Refusing the acceptance of industry funding by any branch of government or public sector.

The importance of curtailing tobacco industry CSR activities is underlined by the inclusion of CSR as a form of promotion that should be banned as part of the implementation of FCTC Article 13 (Tobacco advertising, promotion and sponsorship). Guidelines for that obligation state that: *“The Parties should ban contributions from tobacco companies to any other entity for ‘socially responsible causes,’ as this is a form of sponsorship. Publicity given to ‘socially responsible’ business practices of the tobacco industry should be banned, as it constitutes advertising and promotion.”*<sup>103</sup>

In its reports to the Secretariat since 2010, Canada made no direct reference to any efforts to challenge the CSR activities of the industry. We are not aware of any activities on the part of the Canadian government to monitor or respond to industry CSR.

Nonetheless, in recent years, tobacco companies operating in Canada have modified their CSR activities, and these activities are much less visible than they were a decade ago. In 2003, the provisions of the federal *Tobacco Act* that ban sponsorship promotion came into effect. Immediately after, branded philanthropic marketing arms like the Matinée Fashion Foundation and the du Maurier Arts Council were wound down.<sup>104</sup> The programs which were introduced to replace these, such as the Imperial Tobacco Canada Foundation and the “Arts Achievement Awards,” are now disbanded.<sup>105 106</sup>

“(6) Denormalize and, to the extent possible, regulate activities described as ‘socially responsible’ by the tobacco industry, including but not limited to activities described as ‘corporate social responsibility.’”

Article 5.3 Guidelines  
Framework Convention on Tobacco Control

103 World Health Organization. Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control (Tobacco advertising, promotion and sponsorship).

104 Imperial Tobacco Canada Ltd. Press Release. Imperial Tobacco Celebrates its 100th Anniversary. January 11, 2008.

105 Imperial Tobacco Canada Limited. Press Release. The Montreal Symphony Orchestra receives the Imperial Tobacco Foundation’s 2011 Arts Achievement Award. July 26, 2011.

106 Innovation, Science and Economic Development Canada. Corporations Canada Database. Entry for imperial Tobacco Canada Foundation, no filings since 2013.

Imperial Tobacco’s board-level Corporate Social Responsibility Committee, once controversially chaired by Barbara McDougall,<sup>107</sup> appears to have been disbanded, although one remains at the parent company.<sup>108</sup>

This is a marked departure from the escalation of CSR activities a decade ago. Imperial Tobacco unveiled<sup>109</sup> its “Let’s Talk” social report in 2007,<sup>110</sup> claiming that “stakeholder dialogue” resulted in three corporate objectives for social responsibility: harm reduction, reducing illicit trade, and preventing youth smoking. These themes are priorities in BAT’s “Sustainability Agenda.”<sup>111</sup>

In line with the Corporate Social Responsibility strategy of its parent company, BAT,<sup>112</sup> Imperial Tobacco Canada established and funds “We Expect ID,”<sup>113</sup> a successor to the industry program “Operation ID.”<sup>114</sup>

New styles of CSR have recently been introduced by Imperial Tobacco. In 2012 it partnered with the American commercial recycling firm TerraCycle on a program to place ashtrays on city streets.<sup>115</sup> The City of Vancouver agreed to partner with the program in November 2013, failing to acknowledge when it did so that the program was underwritten by Imperial Tobacco.<sup>116</sup> Following objections from the health community, including the city’s Medical Officer of Health, the City distanced itself from Imperial Tobacco’s sponsorship.<sup>117</sup>



Vancouver City dropped the tobacco-industry sponsorship from its ashtray program.

### "We Expect ID"

Imperial Tobacco Canada believes that kids should not smoke. This is why the company has demonstrated commitment to youth smoking prevention programs for over a decade.

We Expect I.D. is a national program, developed by the Canadian Convenience Store Association. It was designed to help train retail staff to uphold underage smoking laws, and to raise public awareness of Canada's laws governing the sale of tobacco products.

Make sure to become a member of your regional association to benefit from the We Expect I.D. program. It's not only about age verification, but also about workplace safety training, customer service training, hazardous materials training and much more. Visit the [Canadian Convenience Stores Association's](#) website for more details.



The We-Expect-ID Age Verification program is being implemented by most of the major convenience store chains and many independent stores.

The “We Expect ID” program allows ITL to appear to support efforts to prevent children from smoking and to depict smoking as an adult choice.

107 Todkill, AM. Tobacco control and the collateral damage of conflict of interest. Open Medicine. 2010.  
 108 British American Tobacco. 2015 Annual Report. Governance: Corporate Social Responsibility (CSR) committee. British American Tobacco. 2015 Sustainability Report.  
 109 See summary of communications materials. Author unknown. External and Internal Communications.  
 110 Imperial Tobacco Canada Ltd. Social Report 2006-2007. Let’s Talk. No longer available on Imperial Tobacco Canada’s website.  
 111 British American Tobacco. Sustainability Report, 2015  
 112 British American Tobacco. Sustainability Report, 2015. Working with retailers to prevent youth smoking, p. 13.  
 113 British American Tobacco. Website. Working with Retailers. Accessed June 1, 2016.  
 Imperial Tobacco Canada Ltd. Website. “We Expect ID” . Accessed June 1, 2016.  
 Canadian Convenience Stores Association. We-expect-id.com. CCSA Education and Awareness Programs.  
 114 Testimony of Mr. Arnold Kimmell to the Standing Committee on Health, June 5, 2000.  
 115 Imperial Tobacco Canada Ltd./ TerraCycle. Press release. Leaving no butts behind: TerraCycle launches second year of ambitious program to recycle cigarette waste. June 19, 2013.  
 116 City of Vancouver. Press Release. City and TerraCycle launch cigarette butt collection and recycling program. November 12, 2013.  
 117 24 hours Vancouver. Vancouver butts out of big tobacco’s bins. July 21, 2014.

Philip Morris International (Rothmans, Benson and Hedges) and JTI-Macdonald maintain relatively modest CSR and philanthropic activities.<sup>118</sup>

### **Conclusion and recommendations:**

Other than with respect to a comprehensive ban on tobacco sponsorship of sports and cultural events,<sup>119</sup> Canada has not adopted any measures to discourage, monitor or report on corporate social responsibility activities of the tobacco industry.

**The following are recommended as priority actions for government:**

- 17. Guidelines on FCTC implementation issued to federal and sub-national governments and their agencies should include clear instructions to avoid acceptance of any partnerships with tobacco companies.**
- 18. Health Canada should ensure that CSR activities of the industry and its contributions to charitable and other organizations are monitored and disclosed.**

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118 Philip Morris International. Charitable Contributions 2015. “Empowering Women” grant of USD 97,000 to United Way Toronto; Canadian Business. Canada’s Best Employers 2015: The top 50 Large Companies.

119 Tobacco Act, para 25.

Progress in Canada:

## 7. Providing No Preferential Treatment

“(7) Do not give preferential treatment to the tobacco industry.”

Article 5.3 Guidelines  
Framework Convention on Tobacco Control

The Guidelines detail several ways in which governments can ensure that they have not directly or indirectly provided preferential treatment to the industry.

These include

- Not giving the industry any incentives to establish or run their business;
- Not investing in the tobacco industry and related ventures;
- Not providing any preferential tax exemptions to the industry.

In its reports to the Secretariat since 2010, Canada has made no direct reference to its implementation of these elements of the guidelines. In fact, there are a number of government programs in place to support business development (offer incentives) and provide tax credits (preferential tax exemptions).<sup>120</sup> The government does not make public any policies to withhold these benefits from someone whose aim is to establish or run a tobacco business.

There is a small number of government agencies that invest in equities such as shares in publicly traded companies. Of these, only one has adopted a policy against direct investments in the tobacco industry: the Alberta Investment Management Corporation adopted this policy in 2011.<sup>121</sup> Government-managed investment funds that are known to hold investments in the tobacco industry include the Canada Pension Plan Investment Board (CPPIB) and the Quebec Caisse de dépôt et de placement du Québec (Caisse). These two agencies control investments of the mandatory pension contributions of all workers in Canada, and the Caisse also manages investments on behalf of many other depositors. Between them, they have more than \$2.7 billion in tobacco investments, as shown in Table 3.

The pension contributions of municipal, provincial and federal government employees are also invested in publicly-traded companies. Other than Alberta, as identified above, these funds do not exclude tobacco investments. Not all of the funds disclose their holdings: of those that do, all maintain

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120 See, for example:

Futurpreneur ([www.futurpreneur.ca](http://www.futurpreneur.ca))

Federal and provincial tax credits ([www.canadabusiness.ca/eng/page/2738/](http://www.canadabusiness.ca/eng/page/2738/))

Federal and provincial wage subsidies ([www.canadabusiness.ca/eng/page/2739/](http://www.canadabusiness.ca/eng/page/2739/))

Federal and provincial grants, contributions and financial assistance. ([www.canadabusiness.ca/eng/page/2740/](http://www.canadabusiness.ca/eng/page/2740/))

Federal and provincial loan guarantees (<http://canadabusiness.ca/eng/page/2736/>)

Government Equity Investments (<http://canadabusiness.ca/eng/page/3681/>)

121 Alberta Investment Management Corporation. Investment Exclusion Guidelines. 2013.  
CBC News. Alberta dumps millions in big tobacco shares. October 20, 2011.



investments in the tobacco industry.<sup>122</sup> Some other government-managed pension funds that do not disclose their holdings do not exclude tobacco industry from their investment strategy.<sup>123</sup>

### Conclusion and recommendations:

Canadian governments have not adopted policies to ensure that the tobacco industry is not eligible to receive incentives, privileges or benefits. Health Canada is not known to have made any attempt to inform the agencies that assign these benefits of the FCTC Article 5.3 Guidelines.

With one exception (the Alberta government), Canadian governments have no policies against investing in tobacco companies.

**The following are recommended as priority actions for government:**

- 19. Guidelines on FCTC implementation issued to federal and sub-national governments and their agencies should include clear instructions to divest of any tobacco industry shareholdings.**
- 20. The Canada Pension Plan Investment Board and the Caisse de dépôt et de placement du Québec should divest of tobacco industry holdings. If they fail to do so voluntarily, they should be instructed to do so in accordance with the law.<sup>124</sup>**

**Table 3: Tobacco Investments by large government-controlled investment agencies**

Company	Country	Canada Pension Plan Investment Board <sup>125</sup>		Caisse de dépôt et de placement du Québec <sup>126</sup>		Total
		# of shares	\$ million	# of shares	\$million	
Altria	USA	3,421,000	277	927,695	75.0	352.0
British American Tobacco	UK	1,543,000	117	1,571,435	121.3	238.3
British American Tobacco Malaysia	Malaysia	213,000	4	305,490	5.5	9.5
Imperial Brands	UK	926,000	67	805,548	59.2	126.2
ITC	India	616,000	4	3,420,200	23.5	27.5
Gudang Garam	Indonesia	902,000	6	2,067,655	11.5	17.5
Japan Tobacco	Japan	3,771,000	204	697,100	36.0	240.0
KT&G	Korea	95,000	12	307,281	38.0	50.0
Philip Morris International	USA	2,671,000	339	984,825	120.3	459.3
Reynolds American	US	1,175,000	76	507,612	32.5	108.5
Swedish Match	Sweden	758,000	33	124,522	6.2	39.2
<b>Total</b>			<b>1,139</b>		<b>529.0</b>	<b>1,668.0</b>

122 See, for example: British Columbia Investment Management Corporation identifies \$583.4 million in tobacco industry holdings in its most recent Investment Inventory List as at March 31, 2015.

123 See, for example: Nova Scotia Pension Services Corporation. Financial Statements Year ended March 31, 2015. OMERS (Ontario). Website. Our Investments. Accessed June 2, 2016.

124 The Canada Pension Plan Investment Board Act provides authority for the Governor in Council to pass regulations directing investments, provided that they are agreed to by two-thirds of the provinces. Canada Pension Plan Investment Board Act, 1997, s. 53.

125 Canada Pension Plan Investment Board. Website. Foreign Publicly-Traded Equity Holdings as of March 31, 2016.

126 Caisse de dépôt et de placement du Québec. 2015 Annual Report. Additional Information. Holdings as of December 31, 2015.

## Summary of Article 5.3 Guideline Implementation in Canada.

Recommendations for Implementation	Actions Reported <sup>127</sup>	Implementation Status
<b>(1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies.</b>		<b>Partially implemented.</b>
1.1 Parties should, in consideration of Article 12 of the Convention: inform and educate all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control.	No	Through regulated health warning messages on many but not all tobacco products, government informs consumers and many members of the public of the addictive and harmful effects of tobacco products.  Canada has not taken steps to inform the public of the strategies and tactics taken by the industry.
1.2 Parties should, in addition, raise awareness about the tobacco industry's practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry	No	There are no government efforts to raise awareness about the use of individuals, front groups and affiliated organizations.
<b>(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.</b>		<b>Partially implemented</b>
2.1 Parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.	Yes	The government reports that " <i>generally in Canada the primary channels of communication between governments and the tobacco industry are limited to technical discussions in regard to both health and tax-related regulations and (ii) litigation related responses.</i> " Without stronger disclosure and reporting requirements for other federal government departments and other levels of government, it is not possible to conclude that this is generally the case.
2.2 Where interactions with the tobacco industry are necessary, Parties should ensure that such interactions are conducted transparently. Whenever possible, interactions should be conducted in public, for example through public hearings, public notice of interactions, disclosure of records of such interactions to the public	Yes	Canada reports on the provisions of the <i>Lobbyist Registration Act</i> . No stricter measures are in place for tobacco companies than for any other corporation. There is limited transparency of interactions required by this law, and government has not implemented any additional ones through law or administrative practice.  Most provincial government lobbyist laws do not even require disclosure of oral communications.

127 Based on our reading of Canada's 2016 FCTC Report.

Recommendations for Implementation	Actions Reported <sup>127</sup>	Implementation Status
<b>(3) Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.</b>		<b>Partially implemented</b>
3.1 Parties should not accept, support or endorse partnerships and non-binding or non-enforceable agreements as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests.	Yes	Health Canada has a policy of “ <i>not partnering with the tobacco industry on tobacco control programming,</i> ” but similar policies with respect to partnering with the industry on other elements of health or partnering by other government departments are not in place.
3.2 Parties should not accept, support or endorse the tobacco industry organizing, promoting, participating in, or performing, youth, public education or any initiatives that are directly or indirectly related to tobacco control.	No	
3.3 Parties should not accept, support or endorse any voluntary code of conduct or instrument drafted by the tobacco industry that is offered as a substitute for legally enforceable tobacco control measures.	No	
3.4 Parties should not accept, support or endorse any offer for assistance or proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry.	No	
<b>(4) Avoid conflicts of interest for government officials and employees.</b>		<b>Partially implemented</b>
4.1 Parties should mandate a policy on the disclosure and management of conflicts of interest that applies to all persons involved in setting and implementing public health policies with respect to tobacco control, including government officials, employees, consultants and contractors.	No	There are no conflict of interest provisions for tobacco companies that extend beyond those for other industries.
4.2 Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.	No	There is no code of conduct for public officials dealing with the tobacco industry which extends beyond the code for other industries.
4.3 Parties should not award contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control to candidates or tenderers who have conflicts of interest with established tobacco control policies.	No	There is no known provision to allow the rejection of tenders to independent contractors on the basis of conflict of interest with tobacco industry.
4.4 Parties should develop clear policies that require public office holders who have or have had a role in setting and implementing public health policies with respect to tobacco control to inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a specified period of time after leaving service.	No.	There are no policies to guide public office holders in accepting positions with tobacco companies other than those which apply to other industries.

Recommendations for Implementation	Actions Reported <sup>127</sup>	Implementation Status
4.5 Parties should develop clear policies that require applicants for public office positions which have a role in setting and implementing public health policies with respect to tobacco control to declare any current or previous occupational activity with any tobacco industry whether gainful or not.	No	There are no such requirements in place.
4.6 Parties should require government officials to declare and divest themselves of direct interests in the tobacco industry.	No	There are no requirements to divest of direct interests in tobacco companies that extend beyond the requirements for other investments.
4.7 Government institutions and their bodies should not have any financial interest in the tobacco industry, unless they are responsible for managing a Party's ownership interest in a State-owned tobacco industry.	No.	There are no such requirements.
4.8 Parties should not allow any person employed by the tobacco industry or any entity working to further its interests to be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy.	No.	There are no known infractions of this recommendation.
4.9 Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.	No.	There are no known infractions of this recommendation.
4.10 Parties should not allow any official or employee of government or of any semi/quasi-governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.	No.	There are no measures which extend beyond those required for other industries.
4.11 Taking into account national law and constitutional principles, Parties should have effective measures to prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates or campaigns, or to require full disclosure of such contributions.	Yes	There are no measures which extend beyond those required for other industries.
<b>(5) Require that information provided by the tobacco industry be transparent and accurate</b>		<b>Partially implemented</b>
5.1 Parties should introduce and apply measures to ensure that all operations and activities of the tobacco industry are transparent.	Yes	The Tobacco Reporting Regulations require disclosure of some, but not all, tobacco industry activities.

Recommendations for Implementation	Actions Reported <sup>127</sup>	Implementation Status
5.2 Parties should require the tobacco industry and those working to further its interests to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities not prohibited or not yet prohibited under Article 13 of the Convention.	Yes	Through the Tobacco Reporting Regulations, Health Canada requires information on research and promotional activities, sales and sponsorship and provides some disclosure of this information. There are no requirements for lobbying and philanthropy which extend beyond those in place for other industries.
5.3 Parties should require rules for the disclosure or registration of the tobacco industry entities, affiliated organizations and individuals acting on their behalf, including lobbyists.	Yes	There are no measures which extend beyond those required of lobbyists for any other industry or issue.
5.4 Parties should impose mandatory penalties on the tobacco industry in case of the provision of false or misleading information in accordance with national law.	No.	Penalties are in place for false representation.
5.5 Parties should adopt and implement effective legislative, executive, administrative and other measures to ensure public access, in accordance with Article 12(c) of the Convention, to a wide range of information on tobacco industry activities as relevant to the objectives of the Convention, such as in a public repository.	Yes.	The federal government has taken no legislative, executive, administrative or other measures to ensure public access to information on tobacco industry activities, other than some disclosure of sales data and marketing expenditures.
<b>(6) Denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility”.</b>		<b>Not implemented</b>
6.1 Parties should ensure that all branches of government and the public are informed and made aware of the true purpose and scope of activities described as socially responsible performed by the tobacco industry.	Yes	Health Canada reports that it has <i>“taken steps to inform other federal government departments of the commitment”</i> to Article 5.3, it has provided no details on the information shared with them, or whether it includes reference to social responsibility actions.  No government actions have been taken to provide public information on such industry activities.
6.2 Parties should not endorse, support, form partnerships with or participate in activities of the tobacco industry described as socially responsible.	No	Some government agencies continue to identify partnerships with the tobacco industry and acceptance of funding.
6.3 Parties should not allow public disclosure by the tobacco industry or any other person acting on its behalf of activities described as socially responsible or of the expenditures made for these activities, except when legally required to report on such expenditures, such as in an annual report.	No.	Other than limits on cultural and sports sponsorships, there are no such prohibitions in place.

Recommendations for Implementation	Actions Reported <sup>127</sup>	Implementation Status
6.4 Parties should not allow acceptance by any branch of government or the public sector of political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or legally binding and enforceable agreements.	No.	There are no such prohibitions in place.
<b>(7) Do not give preferential treatment to the tobacco industry.</b>		<b>Partially implemented</b>
7.1 Parties should not grant incentives, privileges or benefits to the tobacco industry to establish or run their businesses.	No.	
7.2 Parties that do not have a State-owned tobacco industry should not invest in the tobacco industry and related ventures. Parties with a State-owned tobacco industry should ensure that any investment in the tobacco industry does not prevent them from fully implementing the WHO Framework Convention on Tobacco Control.	No.	Federal government agencies have invested in tobacco industry ventures, notably through pension funds.
7.3 Parties should not provide any preferential tax exemption to the tobacco industry.	No.	There is no requirement to make any such exemption public. The government has applied a sur-tax to the income of tobacco companies.
<b>(8) Treat State-owned tobacco industry in the same way as any other tobacco industry.</b>		<b>Not applicable in Canada</b>
8.1 Parties should ensure that State-owned tobacco industry is treated in the same way as any other member of the tobacco industry in respect of setting and implementing tobacco control policy.	No.	Not applicable in Canada
8.2 Parties should ensure that the setting and implementing of tobacco control policy are separated from overseeing or managing tobacco industry.	No.	Not applicable in Canada
8.3 Parties should ensure that representatives of State-owned tobacco industry does not form part of delegations to any meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.	No.	Not applicable in Canada

# Summary of Recommendations

1. Canada should move quickly to develop a strategy for Article 5.3 implementation. The strategy should include developing policies, legal instruments and accountability methods for compliance.
2. Canada should develop a mechanism to assist other levels of Canadian government in implementing Article 5.3 within their jurisdictions and to coordinate implementation across governments.
3. Civil society organizations that are in a position to accelerate implementation should be invited and enabled to assist.
4. Provincial, territorial and municipal government should similarly develop strategies and management plans for Article 5.3 implementation
5. Health Canada should regularly inform agencies and officers responsible for federal government stewardship of tobacco control policies (the Privy Council, the Prime Minister's Office, Treasury Board, Finance Canada, the Canadian Revenue Agency, the Canadian Border Services Agency, the Speaker of the House of Commons and Senate, etc.) of Canada's obligations under Article 5.3 of the FCTC. These communications should be reinforced periodically and proactively disclosed to the public.
6. Provincial and territorial governments should be informed, through Health Canada or other appropriate federal agencies, of the need to ensure their actions conform with FCTC Article 5.3. These communications should be proactively disclosed to the public.
7. Health Canada should provide funding for independent monitoring of and reporting on industry actions.
8. The federal government should implement an effective communications strategy, including mass media, to enhance public understanding of the health consequences of tobacco use and of the strategies and tactics of the tobacco industry.
9. With the assistance of Health Canada and in consultation with civil society and other stakeholders, guidelines for interaction with tobacco industry officials should be developed for public servants, crown corporations, senior management, elected officials, and order-in-council appointees. Guideline provisions should include, among other measures, proactive disclosure of meetings between tobacco industry and government representatives and departments, including attendees, subjects discussed, and meeting minutes. Adherence to these guidelines should be monitored and reported on.
10. Canadian governments should facilitate access to documents connected with lawsuits launched by or against tobacco companies, in domestic or international courts, tribunals or administrative bodies through the establishment of a web portal. Health Canada should maintain a record of these activities.
11. Canadian governments should instruct their departments, agencies and crown corporations to avoid any partnerships with the tobacco industry and monitor adherence to this instruction.
12. Health Canada should require tobacco companies to report on all partnership agreements with the public and private sector (domestic and international). These reports should be proactively disclosed.

13. Health Canada should raise public awareness about the unacceptability of tobacco industry partnerships.
14. Canadian governments should develop specific conflict of interest guidelines related to implementation of Article 5.3. These guidelines, and the monitoring of adherence to them, should be pro-actively disclosed.
15. Any relationship between the tobacco industry and respondents to a government consultation on tobacco control or health measures should be required to be disclosed.
16. Through administrative practice or legislative change, Canadian governments should exercise their authority to proactively disclose information provided to them by the tobacco industry, and to guarantee the public's right to have access to this information.
17. Guidelines on FCTC implementation issued to federal and sub-national governments and their agencies should include clear instructions to avoid acceptance of any partnerships with tobacco companies.
18. Health Canada should ensure that CSR activities of the industry and its contributions to charitable and other organizations are monitored and disclosed.
19. Guidelines on FCTC implementation issued to federal and sub-national governments and their agencies should include clear instructions to divest of any tobacco industry shareholdings.
20. The Canada Pension Plan Investment Board and the Caisse de dépôt et de placement du Québec should divest of tobacco industry holdings. If they fail to do so voluntarily, they should be instructed to do so in accordance with the law.



**This report is endorsed by the following organizations :**

Canadian Cancer Society | Canadian Council for Tobacco Control | HealthBridge |  
Heart and Stroke Foundation | Non-Smokers' Rights Association |  
Physicians for a Smoke-Free Canada.

Action on Smoking and Health | Coalition Québécoise pour le contrôle du tabac |  
Ontario Campaign for Action on Tobacco