




PUBLIC POLICY SOURCES

Public Policy Sources #40: Preface

- Search 
- Media Releases
- Events
- Online Publications
- Order Publications
- Student Programs
- Radio
- National Media Archive
- Membership
- Other Resources
- About Us



[\[Contents\]](#) [\[Next\]](#)

Throughout North America, governments--federal, provincial, state, and local--have declared tobacco to be public health enemy Number 1. What should public policy be toward tobacco, a legal product that remains a habitual pleasure for one Canadian in four? To answer this question, The Fraser Institute invited leading scientists, public-policy experts, and journalists to meet in Ottawa on May 13, 1999 to debate the costs and benefits of tobacco regulation.

This seminal event produced several important critiques of past and present government policies towards both the companies that produce tobacco products and the consumers of these products. This publication is the first of a number of Public Policy Sources highlighting specific aspects of the debate over tobacco regulation.

I am frequently asked why The Fraser Institute is interested in this issue. In my judgement, assessing the regulation of tobacco entails an examination of several important public-policy questions. These include: the enforcement of the rule of law; the importance of property rights; the question of individual responsibility; issues of freedom of speech; and the personal freedom to trade longevity knowingly for pleasure.

Opinions about the respective merits and demerits of tobacco, smoking, and the appropriate amount of government intervention in this sphere are anything but new. It was 400 years ago, in 1598, that the poet Ben Jonson complained: "Tobacco . . . is good for nothing but to choke a man, and fill him full of smoke and embers." Almost 300 years later, in 1891, the writer Oscar Wilde retorted: "A cigarette is the perfect type of a perfect pleasure: It is exquisite and it leaves one unsatisfied. What more can one want?"

Today, the respective arguments are more technical, more empirically based, and more financially and politically explosive than they were in either Jonson's or Wilde's day. However, contrary to conventional wisdom, the private--if not the public--argument remains just that, an argument.

Nevertheless, for two decades, a significant amount of political influence has been exercised throughout both Canada and the United States in support of increased regulation of smoking. The law has prohibited smoking on all domestic commercial flights. At the provincial, state, and municipal level, there have been a multitude of regulations imposed that restrict smoking in both public and private establishments and one jurisdiction after another has steadily

escalated excise taxes on cigarettes.

The stimuli for increases in governmentally imposed burdens on smokers are many and varied. They include well-intentioned individuals who consider government efforts necessary to minimize the economic, social, and health costs borne by both smokers and non-smokers. They also include policy makers alert to opportunities to obtain more tax revenues at minimum political risk.

To the casual observer, tobacco regulatory policy appears to have been based for the last 20 years upon two assumptions: first, that tobacco advertising leads young people to experiment with tobacco; and, second, that the addictiveness of tobacco turns young people into regular smokers. From these two assumptions flow the following five tobacco-control instruments that dominate respective provincial and federal government agendas: (1) educational programs describing the health risks associated with tobacco; (2) the banning of tobacco advertisements and promotions; (3) enhanced package warnings; (4) tax increases on tobacco products; and (5) tighter controls on access to tobacco products.

In the United States, the failure of tobacco legislation in the summer of 1997 along with a federal appeals court ruling that the Food & Drug Administration does not have jurisdiction over cigarettes led anti-smoking activists to pursue policy changes through litigation. To date, American juries have awarded damages in five individual smoking-liability cases, including a US\$81 million award by a Portland jury in March 1999 following on the heels of a US\$51.5 million award by a San Francisco jury a month earlier.

In November 1998, 46 American state governments agreed to a US\$206 billion settlement with the tobacco industry, including restrictions on advertising and promotion, to reimburse the states for money spent treating smoking-related illnesses; the other four states had earlier reached settlements totalling US\$40 billion. In his January 1999 State of the Union address, President Clinton announced his intention to sue the tobacco companies to recover money spent on smoking-related medical expenses under Medicare and other federal programs. The Clinton administration is expected to seek more in damages than all the states combined.

Meanwhile, in Canada, 1998 saw the government of British Columbia introduce legislation to charge tobacco companies license fees to sell their products, in order to help finance British Columbia's anti-tobacco campaign. Then, in April 1999, a report sponsored by the Ontario government concluded that there is a need for a sweeping new strategy to curb tobacco use in Canada's most populous province.

In partial response, on April 23, 1999, Ontario Health Minister Elizabeth Witmer announced that the Ontario government is seeking to sue American tobacco companies to recoup tens of billions of dollars in health-care costs. The government of British Columbia has also filed a lawsuit in a bid to recover such costs. An even more radical step was the introduction in January 1999 of an anti-smoking by-law--the toughest in Canada at the time--in Victoria, British Columbia. Within a couple of months, Toronto's chief medical officer recommended a ban on smoking in all restaurants and bars, in addition to all work places.

In a related issue, the year ended with the federal government's decision on December 21 to sue R.J. Reynolds Tobacco Holdings Inc., RJR-Macdonald Canada, the Canadian Tobacco Manufacturers Council and several related companies for US\$1 billion in the American courts on the grounds that, in 1991, these companies allegedly established an "elaborate network of smugglers and shell companies" to "undermine" the federal government's policy to reduce tobacco use by raising cigarette prices. On January 1, 2000, the entire province of British Columbia became subject to a complete ban on smoking in all bars.

Clearly, at the dawn of the twenty-first century, smoking a cigarette--though still a legal activity--has been pushed to the fringes of social acceptability.

This publication analyzes the history of tobacco regulation. It relates how government policy recommendations for tobacco are inevitably brought forth with a heavy veneer of public-interest rhetoric. In the case of tougher restrictions and higher taxes on smokers, the argument is that those measures are needed to reduce the economic costs that result from cigarette use. Hence, a relevant public-policy question regarding smoking is not "how much does smoking cost?" but "how much, if any, of the costs are paid by non-smokers?" Furthermore, is government coercion more efficient than persuasion at achieving public goals?

Such questions are insightfully addressed in Professor Palda's stimulating and provocative overview of the history of tobacco regulation. Regrettably, contemporary social issues often spark unfounded claims cloaked beneath spurious science. It is Professor Palda's ability to disentangle fact from fiction and science from mythology that makes his essay so timely a contribution to this important debate.

Patrick Basham, Director
The Social Affairs Centre
The Fraser Institute

[\[Contents\]](#) [\[Next\]](#)



info@fraserinstitute.ca

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