

# EVIDENCE

Standing Committee  
on

## HEALTH

Chairman: Roger Simmons

Meeting No. 25

Friday, December 6, 1996

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### **ORDER OF THE DAY:**

Bill C-71, An Act to regulate the manufacture, sale, labelling and promotion of tobacco products.

### **APPEARING:**

Hon. David Dingwall, Minister of Health.

### **WITNESSES:**

#### *Department of Health:*

Judy Ferguson, Director General, Health Policy and Information Directorate;

Murray Kaiserman, Chemist, Office of Tobacco Control;

Chris McNaught, Counsel, Legal Services;

France Pégeot, Acting Director, Office of Tobacco Control.

#### *Ontario Flue-Cured Tobacco Growers' Marketing Board:*

Frank Menich, Chairman.

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The first concern I have, though, is this tight balancing act that you have between the producer and the customer. You say you don't want to prohibit advertising or sponsorship, but the producers and manufacturers claim that you will be. They will claim that you are prohibiting advertising the brand name at the point of sale.

I'd like you to address whether that's true or not true. Will that then cause us a problem in the Supreme Court? Will they challenge it in court? That's the first question.

**Ms Judy Ferguson (Director General, Health Policy and Information Directorate, Department of Health):** Advertising will be restricted at the point of sale. We are limiting advertising to printed material in publications with primarily adult readerships. We are limiting it to direct mail to adults, which includes e-mail, and we will be limiting it to signs in places where young persons are not permitted by law.

As for advertising that companies will be allowed to do, we are looking at the kind of ads that would be detailed in regulations that would be the subject of consultations with the industry. There would be health messages on the ads. There would be toxic-constituent information on the ads, but there would likely as well be a depiction of some sort of the tobacco package, which is one of the more significant advertising tools the tobacco company has.

**Mr. Silye:** Will it be a no-name package or will it be -

**Ms Ferguson:** No, we're not considering that at all.

**Mr. Silye:** So they could put their brand name on it. They could put Rothmans or du Maurier on it?

**Ms Ferguson:** Yes.

**Mr. Silye:** Oh, okay.

**Mr. Dingwall:** If I may, Mr. Chairman, to my colleague, they will be able to put their name on the product. If they weren't allowed that, we would be in violation both of trademark and of the Charter of Rights and Freedoms because the product is not deemed to be an illegal product. That's the balance here.

**Mr. Silye:** No, I appreciate that.

The second question relates to the powers granted under the regulations to the Governor in Council. This is a very big concern. I feel that if you give Health Canada extremely broad and far-reaching powers that go even beyond the scope of the act and if Health Canada doesn't have to come back to Parliament - after all, we are the guardians for the public - then there could be some question about the democratic process in this situation.

Here are my concerns. I know that the major concern about this legislation of our chief health critic, Mr. Grant Hill, is the powers granted under paragraphs 7(e), 14(e), 14(f), 17(b), 17(c), 33 (i) and 33(j) and clause 42. He indicates that there are far too many clauses in the proposed act that are prefaced or made conditional with such phrases as "subject to the regulations" and "in accordance with the regulations". There's also the fact that any changes, after we approve or pass this bill, can then be amended or changed by Health Canada just through an Order in Council.

Do you have any concern about that, Mr. Minister, for the day or the year after you're no longer

there?

**Mr. Dingwall:** Do you know something that I don't know?

**Mr. Silye:** Yes, maybe a couple of years from now.

**Mr. Dingwall:** Mr. Chairman, my colleague has dealt with a very important question, and it may take me a moment or two. He's right to make reference in terms of our consultations for the purposes of regulation, but the bill was drafted in such a way that it is in different parts.

For instance, you have a part I and a part II. Part I, for instance, is tobacco products. That in itself has a series of regulations. Part II is access. That has a series of regulations. Part III is etc., etc. Each has its own compendium, if you will, of regulations.

Here's the reason and rationale for that. Say there's a challenge on the constitutionality of this particular bill, and they challenge us, for instance under part III, which is labelling, on the regulations. If at some future time the Supreme Court would deem them to be *ultra vires* or unconstitutional, it would only be that part, not the bill, that would be null and void.

What you saw in the last piece of legislation that went before the Supreme Court was that they found the bill to be null and void and *ultra vires*. Therefore it was thrown out. If there was ever a challenge, it would only be on that particular part.

Second, in terms of the power of the state in terms of regulatory control, our intent here is to gather information for the purposes of developing good public policy. There is much scientific evidence out there, and the state must gather this. It must have the capacity, the enabling legislation, to gather that information.

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