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Directly eroding tobacco industry power as a tobacco control strategy: lessons for New Zealand?

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Abstract

Aims To examine some recent examples of tobacco control policies used elsewhere that seek to directly erode tobacco industry power, and to consider the relevance of these to New Zealand.

Methods A literature search was supplemented with six key informant interviews, with World Health Organization (WHO) officials, and Canadian officials and advocates.

Results The Provincial Government of British Columbia (BC) from 1997 to 2001 had an explicit objective of 'denormalising' the tobacco industry. Legal action was started against the industry to recover healthcare costs. The Canadian Government has been involved in defending its comprehensive tobacco control legislation in court against the industry since 1988. The policies to directly erode industry power, of both Canada overall and at the province level (BC), have been temporally associated with significant declines in smoking prevalence. Since 1998, WHO has conducted a series of inquiries into tobacco industry influence within WHO, and at regional and national levels. Its research and publishing focus on the industry has supported the creation of the Framework Convention on Tobacco Control, which has sections with the potential to assist national governments in strengthening strategies to erode tobacco industry power. The limitations of such strategies, and the uncertainties with using these approaches in the New Zealand context, suggests the need for careful planning and ongoing evaluation.

Conclusions Recent experience (in several jurisdictions and organisations) suggests that policies to directly erode tobacco industry power may contribute to the effectiveness of comprehensive tobacco control programmes. Some of these lessons could be incorporated into New Zealand's tobacco-control strategy.

Until the 1990s, tobacco control in many countries tended to concentrate on smoking behaviour or on protecting non-smokers, as shown by the predominance of the particular interventions used.[1] Except for some notable exceptions,[2–4] attention to the control of the tobacco industry was largely limited in scope and not a particular goal in itself. Because of complex factors in different jurisdictions,[5–7] a perspective began to emerge that saw the direct erosion of industry power as an equally important part of a comprehensive tobacco control strategy.[8] In part, the move was towards seeing the industry as the problem,[9] rather than the addicted smoker.

This article examines some recent (post-1997) tobacco control policies that seek to *directly erode industry power*, in contrast to those that concentrate on smoking behaviour or on protecting non-smokers. 'Directly eroding industry power' is defined as directly controlling tobacco companies' ability to operate, to hide and to obscure

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their behaviour, and their ability to neglect the externalities of their products and escape responsibility for them.

In contrast, changing smoking behaviour can *indirectly* reduce industry power by reducing their profits. The approaches that directly erode industry power include requiring health warnings; promotion and marketing bans; disclosure and fire safety requirements; inquiries into the industry; limits on associations with the industry; government litigation against the industry; and mass media campaigns with anti-industry themes. New Zealand has already partly utilised the first two of these approaches.

This definition is not meant to be exhaustive, with other policies also contributing to the erosion of industry power. Many policies (such as warnings and advertising bans) will both erode industry power *and* influence smoking or protect non-smokers. There is extensive evidence of the tobacco industry's marketing and political activity as determinants of both smoking and tobacco control policies.[10–12]

The term 'denormalisation' is sometimes used for some parts of strategies that aim to directly erode tobacco industry power. However, when referring to the tobacco industry, the term is generally used to mean 'making the industry appear less legitimate to the public'. Our aim is to examine a far wider range of policy options around eroding tobacco industry power.

Methods

Medline, EBSCO, Proquest, Tobacco.org, and Google electronic databases were searched, using the search terms: *tobacco, industry, tobacco control, anti-industry, social marketing, denormalisation, countermarketing, legislation, litigation, inquiry,* and *policy*. From the literature found, we selected three recent disparate policy examples. The criteria for selection was that they were substantial and explicit policies that were intended to directly erode industry power, and had high potential relevance for the future of New Zealand tobacco control. The examples can also be considered as very brief intrinsic case studies, of interest in themselves.[13]

The examples were: British Columbia, as a case of a jurisdiction legislating to enable litigation against the industry; Canada, as a case of long-term resistance to the industry in court; and the Tobacco Free Initiative of the World Health Organization (WHO) as a case involving effective inquiries into links with the industry. To provide additional information, six interviews were conducted with officials and advocates in the cities of Geneva, Ottawa, and Victoria (British Columbia [BC]) during 2003.

Results

Actions by the Government of British Columbia

Since 1997, the Provincial Government of BC has operated a tobacco control programme with a considerable focus on directly eroding tobacco industry power. In 1997, that Government adopted two main tobacco-control strategies which were complementary:

- To prevent smoking uptake; and
- To 'denormalise' the industry.

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Denormalisation is an approach which places the industry as outside normal society, because of its consistently and inherently unacceptable behaviour. At one level, it is the destruction of the industry's desired image, and its replacement by one based on the industry's adverse effects on health, equity, the economy, life and other social costs. While a subsequent and more conservative BC Government has diminished some aspects of tobacco control efforts since early 2002, much of the industry focus has continued.

From 1997, industry activity was framed as 'Big Tobacco', legal action was started against the industry to recover healthcare costs, and retail sales were further restricted from 1998 with regulations under the *Tobacco Sales Act 1994*.[14] The industry was required to publicly disclose the material, additives and harmful products from each brand.[15] The BC Government has legislated twice to enable the court action to go ahead (the first action was defeated by the industry on constitutional grounds).[16] In 2004, it won an Appeal Court action to be able to continue the court action, and the industry's Supreme Court appeal against this was heard in June 2005.[17] The BC legislation established 'the province's right of action to recover costs from tobacco companies; the province's right to pursue claims on an aggregate basic; (and) the validity of placing the onus of proof on the tobacco industry on issues where the industry has superior knowledge'.[16]

The litigation is paid for and controlled by the BC Provincial Health Department, ensuring that the action meets health objectives, and is also not vulnerable to the priorities of other agencies. The litigation has created free publicity, and has helped make public internal industry documents that could be used for advocacy and health promotion.[18] It has also helped set the tone of political and public attitudes to, and discourse about, the industry.

Actions by the Canadian Federal Government

The aspects of the national Canadian tobacco control strategy that directly erode tobacco industry power include legal action, mandated health warnings, advertising restrictions, and research into industry activities. The industry launched a legal attack on the 1988 Canadian tobacco control legislation that banned advertising, winning a judgement against the Government in 1995 on constitutional grounds. The Government then passed a new Act in 1997 which was again challenged by the industry. In December 2002, the Government won a comprehensive victory, with the Act being upheld, including the right to require large picture warnings on packages. This judgement was very largely upheld on appeal in 2005.[19]

This court action required a large commitment by Government and officials over several years, with the Government defence depended on indepth research in several fields. Besides the upholding of legislation, other immediate results of the court action included evidence of document destruction and concealment by the industry.[20] Several other Government-initiated court cases against tobacco companies are underway in Canada.[21,22]

This long experience of litigation appears to have produced a number of downstream effects in Canada. These include the sensitising of the public and politicians to industry misconduct, and the accumulation and use of internal tobacco industry documents.[20,23] The willingness to confront the industry has included the passage by the Canadian Parliament of a Bill regulating the fire safety of cigarettes.[24]

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The Canadian Government has been exploring the adoption of industry denormalisation as a basic tobacco control strategy. Political considerations meant that the brief adoption of denormalisation in 1999 (as part of the official tobacco control policy at the Federal level) was followed by the suspension of the policy in 2000 and the replacement of it by a 'harm reduction' policy in 2001.[25] Currently, the strategy does not specifically include industry denormalisation,[26] despite the continued government court actions.

WHO's Tobacco Free Initiative (TFI)

In 1998, the incoming WHO management was persuaded that the tobacco industry was a threat to both WHO and to WHO tobacco control plans.[27] This understanding was achieved by the production of internal tobacco industry documents and by skilled advocacy. Lawyers who had just won the Minnesota case against the industry and had a grasp of the industry's pernicious and deceitful behaviour,[28,29] helped demonstrate the need for research and action against the industry.[30]

An independent investigation committee with indepth skills in organisational, policy, and corruption inquiries was assembled by WHO. The committee found that the industry had deliberately subverted the purposes of WHO's tobacco control programmes, by elaborate plans over many years.[31] The report and its recommendations enabled the WHO to establish conflict-of-influence policies that would help limit tobacco industry influence.[32] The report also enabled a mandate from the World Health Assembly (WHO's political masters) to 'inform Member States on activities of the tobacco industry that have negative impact on tobacco control efforts'.[33]

In turn, that mandate enabled WHO's regional offices to commission regional case studies that further demonstrated the harmful effect of industry influence, (for instance in Latin America).[34] Further WHO inquiries are being conducted for national governments that have requested them. The results of the reports were taken out to workshops and conferences, to emphasise the need for awareness and action to limit industry influence.

The TFI has also helped point to a number of research and action needs. These included the countering of industry marketing to youth by a range of tactics, including the use of industry documents,[35] and research on the international activity of tobacco companies and policies to control those activities.[36] Examples of such research were published by the TFI. Of particular note is the report for the TFI on litigation and public inquiries as effective tools for tobacco control.[37]

Work for the TFI was conducted in parallel with the development of the WHO Framework Convention on Tobacco Control (FCTC) and was supportive of that process. The efforts of NGOs, particularly through the Framework Convention Alliance, has been significant in supporting and enabling the success of the official FCTC process.[38]

The FCTC may provide opportunities for governments to directly erode tobacco industry power. In particular, one part appears to give a wide obligation and mandate: *'Parties shall act [to protect public health] from commercial and other vested interests of the tobacco industry in accordance with national law'* (Article 5, section

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3). This section appears to support government legislation and action to control tobacco-industry activities.

Other examples of government activity to directly erode tobacco industry power

Media campaigns that have focused on the tobacco industry have included those of California (from 1990),[39] Florida (from 1998),[40] the American Legacy Foundation across the USA[41], Norway,[42] and Quebec, Canada.[43]

Government legal action continues in the USA, with the Department of Justice case against the tobacco industry.[44] The European Community has taken a legal action against tobacco companies on several issues. These include smuggling cigarettes into Iraq, in contravention of the UN embargo.[45] Elsewhere, countries such as Singapore, Thailand, and Brazil are requiring graphic health warnings on cigarette packs.[46]

Inquiries into tobacco industry activity have been conducted by the United Kingdom (UK) Parliamentary Health Select Committee,[47] the UK Department of Trade and Industry (from 2000),[48] the Irish Parliament (as part of a wider inquiry, with reports in 1999 and 2001),[49] and the Australian Senate (1994), amongst others. The Australian Competition and Consumer Commission has investigated the industry to see if the terms ‘light’ and ‘mild’ were deceptive, and forced their removal from tobacco brands.[50]

The possible impact of policies to erode industry power

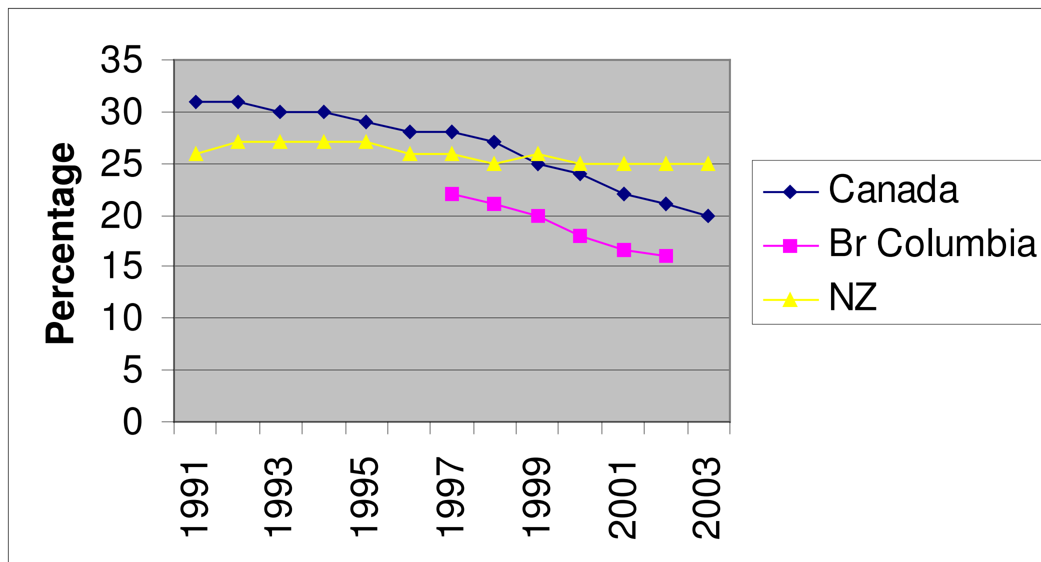
In conjunction with other tobacco-control activities at a provincial and federal level (including significant tobacco tax rises and smokefree environments policies) the BC tobacco-control strategy has been associated in time with a reduction in smoking prevalence (for the 15 years plus age group) from 22% to 15% between 1997 and 2004 (i.e. 1% per year for 7 years in absolute terms).[51,52]

This decline is even faster than the most successful periods in California and New Zealand. In California, the greatest prevalence reduction was during 1991 to 1994, at 1% per year.[53] In New Zealand, smoking prevalence fell from 30% to 26% during 1987–91.[54] The health and other cost savings to government from the smoking prevalence reduction in BC were successfully used to argue for the programme’s continuance. The legislative and legal focus on the industry in Canada since 1987 (part of a comprehensive tobacco control strategy) accompanied a decline in smoking prevalence from over 30% in 1991 to 20% in 2004 (for the 15 years plus age group)[55] (Figure 1).

There is disagreement about the evidence for the impact of anti-industry advertising. Goldman and Glantz have suggested that ‘industry manipulation’ media strategies are one of the two most effective themes in the USA.[56] Other authors have suggested caution about these conclusions.[57] Farrelly et al argue that anti-industry advertising can be highly effective in changing youth attitudes to smoking.[58] Pechmann et al suggest that the industry’s deception is one of four themes that are effective in preventing youth uptake.[59] However, in a later article, they cast doubt on the effectiveness for youth of anti-industry advertisements, compared to some other tobacco control themes.[60] Three recent evaluations of ‘Truth’ campaigns add support to such campaigns being effective.[61-63] A review of counter-marketing programmes

indicates the difficulty for such evaluations in allowing for the effects of other tobacco control programmes and for context.[64]

Figure 1: Adult smoking prevalence in Canada overall, Canada's British Columbia Province, and New Zealand from 1991 to 2003



Political commitment to policies that erode industry power

In several jurisdictions it appears that a reduction in political commitment to policies that erode tobacco industry power can limit the effectiveness of this approach. In California, the reduced commitment (for a period from 1992) blunted the effectiveness of the media campaign exposing the industry, resulting in a significant decline in the extent to which smoking prevalence was being reduced.[39,53] Similar damage to industry-focused media campaigns occurred in Florida.[65] In British Columbia, the change to a new conservative government in 2002 was associated with the reduction of tobacco control policy staff from 18 to 3, and the halting of tobacco control mass media campaigns.

Discussion

The limitations of this analysis

This analysis is limited in the scope of the type of jurisdictions and organisations examined, and the period covered. The three main examples examined have distinctive political and other contexts, potentially limiting the value of comparisons with New Zealand. The operation of active tobacco-control policies could in each case be partly due to unique political windows of opportunity.

We emphasise that temporal associations between interventions and declines in smoking prevalence provide only weak support for causation in the absence of other evidence. Furthermore, a complicating factor with assessing the impact of an 'eroding

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industry power' policy on tobacco control outcomes is that such policies are generally bundled with other components of tobacco control programmes. In particular, changes in smoking prevalence depends on the interactions and combinations of many factors within comprehensive programmes.[66]

Furthermore, the gradient of the smoking prevalence decline in Figure 1 may suggest that there was no extra effect from the particular industry focus from 1997 in British Columbia on the tobacco industry, compared to Canada overall. However, it may be that the particular focus in BC contributed to the decline in smoking prevalence to continue to below 20%. The data on the smoking prevalence trend in the two jurisdictions over the next few years may help to clarify this issue.

The major themes identified

In considering the direct erosion of tobacco industry power via government policies, several principles emerge for consideration. They include the need for:

- A comprehensive approach for tobacco control;
- Effective political defences for such programmes;
- A firm research base; and
- Periodic new approaches within the industry focus theme.

Directly eroding industry power should be just one part of programmes that include appropriately high tobacco-price levels, effective smoking-cessation support, education, creating smokefree environments, research, and advocacy. Because the political commitment to a policy of eroding industry power may vary, it would be necessary to both embed that policy (by legislation, organisational, and other structural means) and to ensure that supplementary tobacco-control strategies are present. Most importantly, it would be necessary to accurately gauge public attitudes to such policies.

The experience of the WHO's TFI suggests other particular lessons. They include the value of an inquiry into industry activity, which can produce new information, sensitise policy makers and the media, and help mandate action. The experience of the WHO indicates the need for explicit and comprehensive conflict-of-interest policies to prevent industry influence of the policy process.

The process to bring the FCTC to life underlines the mutual dependence of nations in the face of the multi-national tobacco industry, and the need for seeing tobacco control as a cross-border issue. Unless nation states have the advantages of such international law, and have regional neighbours with comparative strengths in tobacco control policies, advances within states will be both more difficult, and more likely to be sidestepped by international industry activity. This is particularly relevant for New Zealand's efforts to support health and development among Pacific Island countries.

Should additional policies to erode industry power be adopted in New Zealand?

Despite the limitations of the analysis, the temporal association between the implementation of policies that erode industry power and tobacco-control outcomes (including declines in smoking prevalence) suggests that such policies need to be

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considered. Furthermore, the strength of tobacco industry resistance to such approaches provides some indirect evidence that such policies benefit tobacco control.[67–70] Although much of the tobacco control progress in Canada and British Columbia could be attributed to tobacco price changes, the rapid progress compared to New Zealand may have been augmented by the industry erosion policies.

Denormalising the industry may also benefit tobacco control in general, by making political support more likely and political action more acceptable. Although more research is required to clarify the issues, it would seem prudent that the New Zealand Government and NGOs continue to implement policies that erode industry power where circumstances permit and to evaluate these wherever possible. These approaches would be consistent with past New Zealand efforts to require health warnings, and to restrict tobacco promotion by tobacco companies. Sustainable new policies may also need a minimum of research and policy infrastructure, and work with WHO and with other jurisdictions to boost local, regional and international tobacco control efforts that have an industry focus.

What would the costs be of an industry focus approach? Any government that stands up to the industry risks being the focus of large hostile industry resources.[67–70] However, New Zealand has a record of not only being a successful leader in adopting tobacco control legislation in the face of tobacco industry antagonism, but successfully confronting another powerful group of multinationals—the pharmaceutical industry. The New Zealand Government agency, PHARMAC, has been very effective in using legal actions to defend government policy in that area.[71,72]

Any costs of an industry focus approach needs to be compared with the tangible costs to the New Zealand economy of tobacco industry activity, estimated at 1.7% of GDP annually, and the social cost of consequent illness and premature death.[73] The costs also need to be seen in the context of the low level of spending on tobacco control over the last 20 years, and the level of tobacco tax revenue gained by Government. Less than NZ$250 million (2004 dollars) was spent on tobacco control, which was less than 2.5% of tobacco tax revenue collected during the period.[74,75]

Would an industry approach help narrow health inequalities in the impact of tobacco use? Insofar as it may more clearly demonstrate the exploitation of disadvantaged groups (such as Maori) by a powerful industry, the approach could provide a better foundation for the rejection of that industry by those groups.

The possible options for policies to erode industry power in New Zealand

Within an increased focus on eroding industry power as part of tobacco control, the options for New Zealand include media and community campaigns about industry behaviour, requirements for better warnings on packets, industry monitoring, legal action (in court or by official inquiries), increased and more effective advocacy, and more research about industry processes, strategies, and activities. More fundamentally, an increased focus on the industry within New Zealand tobacco control could require a substantial reorientation of government and NGO processes and policies. Such a reorientation could involve all sectors of Government taking a more critical stance to the industry, and taking a deliberate strategy of distancing themselves from the industry.

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The assumption by some New Zealanders that the tobacco industry is a ‘legitimate’ industry indicates the need for well-resourced media campaigns to fully inform the public of the risks from this industry’s behaviour.[11,76] In particular, information could be given in such campaigns on the international industry’s refusal to take responsibility for its long-term denial of tobacco use risks; its continued refusal to admit to the health risks of secondhand smoke exposure; its misuse of product design; its marketing to youth; its opposition to tobacco-control measures; and its perversion of the research and political policies worldwide.[3,4,10–12,28,29]

The possible uses of statute law to limit industry behaviour, and to make the activity more visible and understood, include legislation on marketing (for instance shop displays), on information disclosure, and to open the avenues of litigation.[37,77] Legislation could set up a regulatory control body for tobacco control that could have powers over the manufacturers, importers, distributors, exporters and retailers.[78–80] Legislation could require tobacco companies to both disclose information, and to answer questions put to them.[80]

Within tobacco-control *research*, several options could be considered to enable a greater focus on the industry. These include monitoring programmes for industry marketing efforts;[81] and the mapping of the associations between business and professional organisations and individuals, and the tobacco industry.[82] Much of industry erosion efforts depend on a better understanding by both Government and NGOs of the industry, its associates, and their activities.[83–5]

A comprehensive approach to eroding industry power

Any comprehensive strategy for a greater focus on eroding tobacco industry power within the New Zealand context may benefit from at least three features:

- The framing of tobacco industry behaviour as both an international and regional problem, where jurisdictions need to actively work on international and regional schemes to deal with the industry;
- A well-resourced plan that involves allies from a wide range of sectors, and which frames the industry as unsustainable socially and economically – a problem and liability for all sectors within the country; and
- An effective research capacity to enable the organisations concerned to have a sufficient understanding of industry processes and strategies, and to understand the arenas in which the erosion of industry power is to be achieved.

To strengthen regional and international tobacco control action, the New Zealand Government could contribute to getting the FCTC ratified in other countries (particularly those in the Pacific). NGO advocates can also encourage a greater involvement by Government in the building of the capacity to target the industry (e.g. through the programmes of the WHO’s Tobacco Free Initiative). Without such international cooperation, the ultimate contribution of these industry-focus policies to global tobacco control is likely to be undermined by the capacity and coordination ability of the multinational tobacco industry.

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