

Tobacco in the courts

The anti-tobacco lobby has had some rough days in court lately. On Feb. 21 British Columbia's Supreme Court disallowed the province's attempt to sue tobacco companies for the billions of dollars expended on the treatment of smoking-related illnesses.¹ On Mar. 21 the US Supreme Court voted 5 to 4 to reverse the FDA's assertion (made, after some prevarication, in 1996) that nicotine was a drug and thus tobacco products were subject to FDA regulation.² On Mar. 22 the BC Supreme Court overruled a ban imposed by the provincial Workers' Compensation Board on smoking in workplaces such as bars, restaurants and prisons.³

What went wrong? In BC the Supreme Court ruled that the government had no constitutional authority to pursue legal action against the parent companies of Canadian firms, despite abundant evidence that these companies knew that nicotine was addictive and marketed cigarettes to children. The 5 conservative judges in the American case argued that under its founding legislation the FDA is required to ensure that any drug on the market in the US is "safe and effective." The FDA's evidence that tobacco is unsafe implies an obligation to prohibit its sale. But this would be inconsistent with the expressed intent of Congress to keep tobacco on the market. Therefore, the court concluded, tobacco is beyond the FDA's congressionally granted jurisdiction. In the second BC suit, the court ruled that the Workers' Compensation Board had not held sufficient public hearings, as required in its enabling legislation, before introducing the ban.

We won't go as far as Mr. Bumble and call the law an ass. If the law reflects the values and aspirations of a society it also reflects its contradictions.

In these rulings the mirror was ground to reflect the interests of business at the expense of public health. As a bar owner in BC remarked, "cigarette smoke is the smell of money." Should it surprise us that the US Supreme Court felt bound to deny the FDA regulatory authority over "an industry constituting a significant portion of the American economy"?²

The phrase "Justice delayed is justice denied" usually applies to the accused. These rulings have delayed the enactment of long-overdue controls that would serve the public's best interest. The justice denied is that owed to the estimated 1 million children and adolescents in North America who begin smoking each year, to workers in smoke-filled environments, and to taxpayers whose money is spent on preventable illnesses while waiting lists get longer and the quality of essential services declines.

Meanwhile, the government of BC is introducing new legislation that will meet the court's objection and permit the suit to recover damages to go forward, efforts are underway to introduce legislation in the US Congress to expand the jurisdiction of the FDA, and the Workers' Compensation Board in BC will recommence public hearings. And, as we go to press, a former cigarette salesman, Joseph Battaglia, has won the right to take a tobacco giant to trial in a Canadian court.⁴ We'll be watching this one with interest. —
CMAJ

References

1. Available: www.courts.gov.bc.ca/jdb-txt/sc/00/03/s00-0312.html
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3. Available: www.courts.gov.bc.ca/jdb-txt/sc/00/05/s00-0505.html
4. Mitrovica A. Smoker wins right to sue tobacco firms. *Globe and Mail* [Toronto] 2000 Apr 3; Sect A:1,8.