

New Rules for Ontario Tobacco Retailers

April 2006 Litigation

Most Ontarians already know that May 31, 2006 is the day Ontario's ban on smoking in public areas comes into effect. Retailers should also be aware that significant restrictions on cigarette displays will take effect on the same day. Recently adopted regulations will also severely limit the signs relating to tobacco products that retailers will be allowed to post in their stores. This bulletin provides an overview of the new restrictions that tobacco retailers will face.

PROMOTIONAL SIGNAGE

Under newly adopted regulations, a retailer who sells tobacco products will not be allowed to post any sign that refers to tobacco products or tobacco accessories (things like matches, lighters, pipes) unless the sign complies with all the following rules:¹

1. No sign may exceed 968 square centimetres (e.g., not more than about 31 cm by 31 cm).
2. The background must be white and the text must be black.
3. Signs must not identify or "reflect" a brand of tobacco or tobacco-related product, whether through text or graphically.
4. There must be no more than three signs that refer to tobacco products or tobacco accessories in any place where tobacco products are sold, other than signs required by law. The three-sign limit applies to all outlets, regardless of their size.
5. The sign must not be visible from outside the place where the tobacco products are sold.

In a market with increasing price competition and varying prices by brand, these rules will make it challenging for retailers to communicate to customers the tobacco products they offer and their prices.

TOBACCO DISPLAYS

These new regulations are part of broader restrictions on retail tobacco displays that come into effect on the same day.

Beginning May 31, 2006, the *Smoke-Free Ontario Act*, as it will then be known, will prohibit retailers from promoting the sale of tobacco products "through product association, product enhancement or any type of promotional material" in any place where tobacco products are sold or offered for sale. The prohibition includes using any of the following display "enhancements":

- (a) decorative panels and backdrops associated with particular brands of tobacco products;
- (b) backlit or illuminated panels;
- (c) promotional lighting;
- (d) three-dimensional exhibits; or
- (e) any other device, instrument or enhancement.

All countertop displays will also be prohibited as will any display that permits the purchaser to handle the tobacco product before purchasing it. Displays will have to be limited to individual packs, not cartons.

Beginning May 31, 2008, the restrictions on displays will be replaced by a total ban on the display of tobacco products at most retail outlets.

EXEMPTION FOR TOBACCONISTS

The law allows the government to make regulations exempting tobacconists from these display restrictions. The recent regulations do, in fact, create an exemption for tobacconists. However, it is a very limited exemption. Even a store that qualifies as a tobacconist under the stringent definition established by the regulations is only entitled to display "specialty tobacco products". The term "specialty tobacco products" is defined to exclude cigarettes. Therefore, even a qualified tobacconist which prohibits anyone under age 19 from entering its premises will be subject to all the restrictions on the display and promotion of cigarettes and – from May 31, 2008 – will be banned entirely from displaying cigarettes.

VERIFYING AGE OF CONSUMERS


It is illegal to sell tobacco products to anyone under age 19. Beginning May 31, 2006, it will also be illegal to sell a tobacco product to anyone who appears to be under age 25 without requiring that person to show appropriate identification. The only acceptable IDs are ones that include the person's photograph and date of birth and reasonably appear to have been issued by a government. No other type of identification will be sufficient.

Also beginning May 31, 2006, if a retailer's employee sells a tobacco product to someone under age 19 or fails to demand and verify the identification card of anyone who appears to be under age 25, the owner of the business will be deemed liable for the offence unless the owner proves that it exercised due diligence to prevent the occurrence of the offence. Therefore, owners should establish programs to train employees regarding the application of these rules. A prudent retailer will also actively monitor compliance by its employees. It would be wise for retailers to ensure that their educational and monitoring programs are well documented in order to facilitate proving "due diligence" in the event that charges are laid because of an employee's failure to follow the rules.

PENALTIES

Penalties for corporate retailers who contravene the tobacco display provisions range from a maximum of \$10,000 for a first offence to a maximum of \$150,000 for a third offence. The Act imposes a personal duty on directors and officers of corporations that sell tobacco to take reasonable care to ensure that the corporation does not contravene the Act. Failure to do so can result in substantial fines being imposed on the director or officer. Retailers convicted of illegally selling tobacco products to minors can face automatic prohibitions against selling tobacco for varying periods, depending on the number of prior convictions.

1. Except, of course, for mandatory signs that retailers must post containing health warnings and setting out identification that customers must present.

 <p>OGILVY RENAULT LLP/SENCRL, s.r.l.</p>	<p>The purpose of this document is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of Ogilvy Renault LLP or any member of the firm on the points of law discussed.</p>												
<p>For further information, please contact:</p> <p>Randy C. Sutton (416) 216-4046 rsutton@ogilvyrenault.com</p>	<p>If you wish to correct your mailing information, please contact Carol Saykaly by telephone at (514) 847-4695, by fax at (514) 286-5474 or by email at csaykaly@ogilvyrenault.com.</p> <table border="0"> <tr> <td>Montréal</td> <td>Suite 1100 1981 McGill College Avenue Montréal, Quebec H3A 3C1 Tel.: (514) 847-4747 Fax: (514) 286-5474</td> <td>Toronto</td> <td>Suite 3800 Royal Bank Plaza, South Tower 200 Bay Street P.O. Box 84 Toronto, Ontario M5J 2Z4 Tel.: (416) 216-4000 Fax: (416) 216-3930</td> </tr> <tr> <td>Ottawa</td> <td>Suite 1500 45 O'Connor Street Ottawa, Ontario K1P 1A4 Tel.: (613) 780-8661 Fax: (613) 230-5459</td> <td>Vancouver</td> <td>800 Park Place 666 Burrard Street Vancouver, B.C. V6C 3P3 Tel.: (604) 806-0922 Fax: (604) 806-0933</td> </tr> <tr> <td>Québec</td> <td>2nd Floor 500 Grande Allée Est Québec, Quebec G1R 2J7 Tel.: (418) 640-5000 Fax: (418) 640-1500</td> <td>London</td> <td>38 Charterhouse Square London EC1M 6EQ UK Tel.: +44 20 7600-9005 Fax: +44 20 7600-9006</td> </tr> </table> <p>© Ogilvy Renault LLP 2006 – All Rights Reserved ogilvyrenault.com</p>	Montréal	Suite 1100 1981 McGill College Avenue Montréal, Quebec H3A 3C1 Tel.: (514) 847-4747 Fax: (514) 286-5474	Toronto	Suite 3800 Royal Bank Plaza, South Tower 200 Bay Street P.O. Box 84 Toronto, Ontario M5J 2Z4 Tel.: (416) 216-4000 Fax: (416) 216-3930	Ottawa	Suite 1500 45 O'Connor Street Ottawa, Ontario K1P 1A4 Tel.: (613) 780-8661 Fax: (613) 230-5459	Vancouver	800 Park Place 666 Burrard Street Vancouver, B.C. V6C 3P3 Tel.: (604) 806-0922 Fax: (604) 806-0933	Québec	2nd Floor 500 Grande Allée Est Québec, Quebec G1R 2J7 Tel.: (418) 640-5000 Fax: (418) 640-1500	London	38 Charterhouse Square London EC1M 6EQ UK Tel.: +44 20 7600-9005 Fax: +44 20 7600-9006
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