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COMPARISON BETWEEN THE TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)¹ AND THE TOBACCO ACT

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Long Title</p> <p>An Act to regulate the manufacture, sale, labelling and promotion of tobacco products, to make consequential amendments to another Act and to repeal certain Acts.</p>	<p>TPCA: An Act to prohibit the advertising and promotion and respecting the labelling and monitoring of tobacco products.</p> <p>TSYPA: An Act to restrict access to tobacco by young persons.</p>		
<p>Section 2</p> <p>"accessory" means a product that may be used in the consumption of a tobacco product, including a pipe, cigarette holder, cigar clip, lighter and matches.</p>	<p>No equivalent.</p>	<p>The SCC did not comment on any of the definitions in the TPCA. The TSYPA was not challenged before the Supreme Court of Canada.</p>	

¹ The TSYPA is also replaced by the Tobacco Act. The TSYPA was not challenged in *RJR-MacDonald Inc. v. Attorney General of Canada* [1995] 3 R.C.S. 199.
² Refers to Supreme Court of Canada decision in *RJR-MacDonald Inc. v. Attorney General of Canada* [1995] 3 R.C.S. 199.

NB: In this table, RJR refers to RJR-MacDonald Inc; RBH refers to Rothmans, Benson & Hedges; and ITL refers to Imperial Tobacco Ltd. Unless otherwise specified the statement "stay requested" refers to the fact that all three tobacco companies have requested a stay of the provision.

The three tobacco companies seek a declaration that the entire *Tobacco Act* is *ultra vires* the Parliament of Canada.

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"analyst" means a person designated as an analyst under subsection 34(1).	TPCA: "analyst" means a person designated as a tobacco product analyst pursuant to section 11;		
"brand element" includes a brand name, trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design or slogan that is reasonably associated with, or that evokes, a product, a service or a brand of product or service, but does not include a colour.	TPCA: "trade-mark" includes any trade-mark whether or not it is registered or registrable as such under the Trade-marks Act, and any recognizable variation thereof.		
See definition of "manufacture" below.	TPCA: "distributor" means a person engaged in the business of selling tobacco products otherwise than at retail only, and includes a manufacturer or importer thereof;		
"emission" means a substance that is produced when a tobacco product is used.	No equivalent.		

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"entity" includes a corporation, firm, partnership, association, society, trust or other organization, whether incorporated or not.	No equivalent.		
"furnish" means to sell, lend, assign, give or send, with or without consideration, or to barter or deposit with another person for the performance of a service.	No equivalent.		
"inspector" means a person designated as an inspector under subsection 34(1).	TPCA: "inspector" means a person designated as a tobacco product inspector pursuant to section 11;		
"manufacture", in respect of tobacco products, includes the packaging, labelling, distributing and importing of tobacco products for sale in Canada.	No equivalent.		

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<p>"manufacturer", in respect of tobacco products, includes any entity that is associated with a manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer.</p>	<p>TPCA: "manufacturer" includes any corporation that is associated with a manufacturer;</p> <p>TPCA: 2(2) Associated corporations</p> <p>(2) For the purposes of this section, two corporations are associated with each other if one is controlled by the other or if both are controlled by the same person.</p>		
<p>"Minister" means the Minister of Health.</p>	<p>TPCA: "Minister" means the Minister of Health;</p> <p>TSYPA: "<i>Minister</i>" means the Minister of Health;</p>		
<p>"package" means the container, receptacle or wrapper in which a tobacco product is sold.</p>	<p>TPCA: "package" means any pack, carton, wrapping or other container in which tobacco products are customarily sold at retail;</p>		
<p>"prescribed" means prescribed by regulation.</p>	<p>TPCA: "prescribed" means prescribed by regulations made under this Act;</p> <p>TSYPA: "<i>prescribed</i>" means prescribed by regulation;</p>		

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"retailer" means a person who is engaged in a business that includes the sale of a tobacco product to consumers.	TPCA: "retailer" means a person engaged in any business that includes the sale of tobacco products at retail;		
"sell" includes offer for sale and expose for sale.	No equivalent		
"tobacco product" means a product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves. It includes cigarette papers, tubes and filters but does not include any food, drug or device that contains nicotine to which the <i>Food and Drugs Act</i> applies.	<p>TPCA: "tobacco product" means any product manufactured from tobacco and intended for use by smoking, inhalation or mastication, and includes nasal and oral snuff;</p> <p><i>TSYPA: "tobacco product" means (a) tobacco leaves, and (b) any product manufactured from tobacco, including nasal and oral snuff, intended for use by smoking, inhalation or mastication and includes cigarette, tubes and filters.</i></p>		
"young person" means a person under eighteen years of age.	<i>TSYPA covered sales to person under the age of eighteen.</i>		

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Section 3 This Act is binding on Her Majesty in right of Canada or a province.	No equivalent.		No Stay requested.

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<p>Section 4</p> <p>Describes the purpose of the Act:</p> <p>(a) to protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;</p> <p>(b) to protect young persons and others from inducements to use tobacco products and the consequent dependence on them;</p> <p>(c) to protect the health of young persons by restricting access to tobacco products; and</p> <p>(d) to enhance public awareness of the health hazards of using tobacco products.</p>	<p>TPCA, Section 3</p> <p>The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular,</p> <p>(a) to protect the health of Canadians in the light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;</p> <p>(b) to protect young persons and others, to the extent that is reasonable in a free and democratic society, from inducements to use tobacco products and consequent dependence on them; and</p> <p>(c) to enhance public awareness of the hazards of tobacco use by ensuring the effective communication of pertinent information to consumers of tobacco products.</p>	<p>McLachlin J. at para 144: "As my colleague has noted, the <i>Tobacco Products Control Act</i> is but one facet of a complex legislative and policy scheme to protect Canadians from the health risks of tobacco use. However, the objective of the impugned measures themselves is somewhat narrower than this. The objective of the advertising ban and trade mark usage restrictions must be to prevent people in Canada from being persuaded by advertising and promotion to use tobacco products. The objective of the mandatory package warning must be to discourage people who see the package from tobacco use. Both constitute important objectives." See also p. 336, para. 146.</p>	<p>The purpose is similar to the purpose of the TPCA with the addition of paragraph c) which incorporates a purpose similar to the TSYPA.</p> <p>No stay requested.</p>

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	<p><i>TSYPA, Section 3</i></p> <p><i>The purpose of this Act is to protect the health of young persons by restricting their access to tobacco in light of the risks associated with the use of tobacco.</i></p>		
<p>Section 5</p> <p>No person shall manufacture a tobacco product that does not conform with the standards established by the regulations.</p>	<p>No equivalent.</p>	<p>La Forest J. in dissent, but speaking for the majority on the issue of division of powers, said: "...the detrimental health effects of tobacco consumption are both dramatic and substantial...tobacco kills." (para. 32, p. 245) "This Court may validly employ the criminal law power to prohibit or control the manufacture, sale and distribution of products that present a danger to public health" (para. 39, p. 252)</p>	<p>Such powers, which are common to legislation dealing with hazardous consumer products (food, drugs, pesticides, household chemicals), were not in the TPCA or the TSYPA. See also <i>Hazardous Products Act</i>.</p> <p>No stay requested.</p>

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<p>Section 6</p> <p>Requires manufacturers to provide any information about their tobacco products and the emissions as the Minister specifies in regulations.</p>	<p>Section 10 of the TPCA and sections 17 to 21 of the TPC Regulations required quarterly reports on toxic constituents, monthly sales-data and annual sponsorship contribution report. Information concerning emissions was not required.</p>	<p>Not part of RJR.</p>	<p>Reporting requirements on emissions.</p> <p>No stay requested.</p>
<p>Section 7</p> <p>Authorizes regulations setting standards for all aspects and all emissions of all tobacco products and the information to be provided by manufacturers about their tobacco products.</p>	<p>No provisions concerning regulation of tobacco products. Section 10 of the TPCA required information only on the constituents.</p>	<p>Not part of RJR.</p>	<p>Regulations making authority is provided in accordance with powers given in Section 6 to regulate the product.</p> <p>No stay requested.</p>
<p>Section 8</p> <p>Prohibits furnishing tobacco products to "young persons" as defined in section 2.</p>	<p><i>Section 4 of the TSYPA prohibited furnishing tobacco products to persons under 18.</i></p>	<p>Not part of RJR.</p>	<p>No stay requested.</p>

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<p>Section 9 Requires retailers to post signs informing public that sales of tobacco products to young persons are illegal and provides exception by regulation for use of provincially mandated signs</p>	<p><i>Section 7 of the TSYPA required retailers to post signs informing the public that sales of tobacco products to young persons were illegal.</i></p>	<p>Not part of RJR.</p>	<p>No stay requested.</p>
<p>Subsection 10(1) Requires at least 20 cigarettes per package or a greater number set by regulation. Subsection 10(2) sets the minimum number, quantity or portion of other tobacco products by regulation.</p>	<p><i>Section 7.1 of the TSYPA required at least 20 cigarettes per package.</i></p>	<p>Not part of RJR.</p>	<p>Subsection 10(2) authorizes the setting of minimum quantity rules for tobacco products other than cigarettes in regulations. No stay requested.</p>
<p>Section 11 Prohibits self-serve displays of tobacco products, unless exempted by regulations.</p>	<p>No equivalent.</p>		<p>Covers self-service display of "tobacco products" but not of accessories. No stay requested.</p>

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<p>Section 12</p> <p>Prohibits sales by means of vending machines, except 1) in bars etc if the machine has a prescribed security device or 2) in places to which the public does not have reasonable access.</p>	<p><i>Section 5 of the TSYPA prohibited installation of vending machines except in bars, taverns and beverage rooms. No security requirements. Machines existing in other locations at coming into force could remain in place.</i></p>	<p>Not part of RJR.</p>	<p>Section 12 restricts the location of vending machines.</p> <p>No stay requested.</p>
<p>Subsection 13(1)</p> <p>Subsection 13(1) prohibits mailing of tobacco products or their delivery across a provincial boundary for consideration except between manufacturers and retailers.</p>	<p>No equivalent.</p>		<p>Subsection 13(1) ensures that tobacco products are sold in a face to face transaction permitting verification of age before the customer receives a tobacco product.</p> <p>No stay requested.</p>
<p>Subsection 13(2)</p> <p>Subsection 13(2) prohibits advertising a service to mail tobacco products or deliver them across a provincial boundary.</p>	<p>No equivalent.</p>		<p>Subsection 13(2) is a corollary to subsection 13(1).</p> <p>No stay requested.</p>

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<p>Section 14</p> <p>Authorizes regulations respecting:</p> <p>1) documentation to prove age; and</p> <p>2) signs at retail, secured vending machines, minimum quantities of tobacco products other than cigarettes and self-service displays, including exceptions.</p>	<p><i>Section 10 of the TSYPA authorizes regulations with respect to the placement of vending machines and the content and placement of signs at retail.</i></p>	<p>Not part of RJR.</p>	<p>No stay requested.</p>
<p>Subsection 15 (1)</p> <p>Requires health messages and a declaration of the amount of emissions specified by regulations in both official languages on all tobacco products. Subsection 15(2) requires the same declarations on leaflets if required by the regulations.</p>	<p>Subsection 9(1) of the TPCA authorized regulations mandating health warnings and toxic constituent labelling requirements on packaging and on leaflets .</p>	<p>McLachlin J. at Para. 146: "While the limited objective of reducing tobacco-associated health risks by reducing advertising-related consumption and providing warnings of dangers is less significant than the broad objective of protecting Canadians generally from the risks associated with tobacco use, it nevertheless constitutes an objective of sufficient importance to justify overriding the right of free expression guaranteed by the Charter. Even a small reduction in tobacco use may work a significant benefit to the health of Canadians and justify a properly proportioned limitation of right of free expression. "</p>	<p>Subsection 15 (1) also covers information about emissions which should be provided to consumers and which was not included in the TPCA.</p>

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<p>Subsection 15 (3)</p> <p>Permits optional attribution of health messages to a prescribed person or entity.</p>	<p>Subsection 9(2) of TPCA prohibited the addition of any extra wording to the packaging other than trademarks, health messages, toxic constituents and information required under the <i>Excise Act</i></p>	<p>All of section 9 of the TPCA was struck by the Supreme Court of Canada (SCC) because subsection 9(2) prevented tobacco companies from attributing the health warnings to their author.</p> <p>McLachlin J at para. 124, "The combination of the unattributed health warnings and the prohibition against displaying any other information which would allow tobacco manufacturers to express their own views, constitutes an infringement of the right to free expression guaranteed by s. 2(b) of the <i>Charter</i>."</p>	<p>Section 15 does not prohibit additional information as was the case under subsection 9(2) of the TPCA.</p> <p>Subject to regulations, subsection 15(3) expressly authorizes attribution of the health message at the option of the manufacturer.</p> <p>Stay requested.</p>
<p>Section 16</p> <p>Clarifies that compliance with the Act does not constitute fulfilment of the manufacturer's common law duty to warn of hazards of its product.</p>	<p>Equivalent to subsection 9(3) of TPCA.</p>	<p>Struck down by SCC as part of section 9.</p>	<p>No stay requested.</p>

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<p>Section 17</p> <p>Authorizes regulations setting out the form and content of the health messages and emission information and the manner in which they are to be displayed on all tobacco products and leaflets and for prescribing anything that is to be prescribed.</p>	<p>Section 17 of the TPCA authorized, <i>inter alia</i>, regulations setting out the manner in which the health warnings and toxic constituent information were to be displayed on tobacco products.</p>		<p>Section 17 of Tobacco Act is more specific than section 17 of the TPCA.</p> <p>No stay requested.</p>

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<p>Section 18 Defines the term "promotion".</p>	<p>The TPCA prohibited advertising (section 4), the use of trade marks on non-tobacco products (section 8) and free distribution (section 7). It also restricted retail display (section 5) and sponsorship promotions (section 6).</p>		<p>The term "promotion" is used to cover different activities used by marketers to promote products or services. Section 18 must be read as a whole. Subsection 18(1) sets out a general definition which is qualified by the broad exceptions in subsection 18(2). Section 18 must also be read in the context of Part IV and in light of the purpose of the Act set out in section 4. In this setting, it is clear that section 18 applies only to commercial promotion.</p> <p>Stay requested.</p> <p>Challenged under the <i>Charter</i>.</p>

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<p>Subsection 18(1) sets out the following general definition: "promotion" means a representation about a product or service by any means, whether directly or indirectly, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behaviours about the product or service."</p> <p>Subsection 18(2) specifies that Part IV of the <i>Tobacco Act</i> does not apply to:</p> <ul style="list-style-type: none"> a) literary, scientific and artistic works; b) reports, studies and opinions; and c) intra-industry communications <p>unless consideration is given for the specific use of or reference to a tobacco product or brand in the work, production, performance, report etc.</p>	<p>No equivalent.</p>		

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<p>Section 19</p> <p>Prohibits all forms of promotion except where permitted by the Act or the regulations.</p>	<p>No equivalent.</p>		<p>Part IV of the <i>Tobacco Act</i> governs all forms of marketing used to promote a tobacco product or a brand element of a tobacco product. This section cannot be read in isolation from the provisions in the Act setting out specific permissions and prohibitions for different types of promotion (e.g. section 22 advertising and section 24 sponsorship promotion).</p> <p>Stay requested.</p> <p>Challenged under the Charter.</p>

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<p>Section 20</p> <p>Prohibits promotions that are false, misleading or deceptive or likely to create an erroneous impression about the characteristics, health effects or health hazards of a tobacco product or its emissions.</p>	<p>No equivalent.</p>		<p>Section 20 parallels subsection 5(1) of the <i>Food and Drugs Act</i> which provides that "No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety."</p> <p>Stay requested.</p> <p>Challenged under the <i>Charter</i>.</p>

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<p>Section 21</p> <p>Prohibits a testimonial for or endorsement of tobacco products by a person, character or animal. Depiction of a person, character or animal in a tobacco product promotion is a testimonial or endorsement, except where the depicted person, character or animal is a trade-mark that appeared on a tobacco product sold in Canada on December 2, 1996.</p>	<p>No equivalent.</p>		<p>No stay requested.</p> <p>Challenged under the <i>Charter</i> only by ITL.</p>

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<p>Section 22:</p> <p>Permits information and brand preference advertising while prohibiting lifestyle advertising and advertising that appeals to young persons.</p> <p>Subsection 22(1) prohibits advertisements for tobacco products except where permitted.</p> <p>Subsection 22(2), subject to regulations, permits information advertising and brand preference advertising that is not lifestyle advertising or advertising that appeals to young persons, where the advertising appears in:</p> <ol style="list-style-type: none"> 1) publications mailed to named adults; 2) publications with at least 85% adult readership; and 3) signs in places where young persons are not permitted by law. 	<p>Subsection 4(1) of the TPCA banned all advertising of tobacco products for sale in Canada except advertisements in foreign publications: subsection 4(3).</p>	<p>McLachlin J. at para 162: "I turn first to the prohibition on advertising contained in s. 4 of the law. ... It extends to advertising which arguably produces benefits to the consumer while having little or no conceivable impact on consumption. Purely informational advertising, simple reminders of package appearance, advertising for new brands and advertising showing relative tar content of different brands -- all these are included in the ban."</p> <p>at para 164: "...while one may conclude as a matter of reason and logic that lifestyle advertising is designed to increase consumption, there is no indication that purely informational or brand preference advertising would have this effect. The government had before it a variety of less intrusive measures when it enacted the total ban on advertising, including: a partial ban which would allow information and brand preference advertising; a ban on lifestyle advertising only; measures such as those in Quebec's <i>Consumer Protection Act</i> to prohibit advertising aimed at children and adolescents."</p> <p>and at para.176 "I have found ss. 4, 8 and 9 of the <i>Tobacco Products Control Act</i> constitute unjustified infringements on free expression. See also Iacobucci J. at para. 188 and 191 and La Forest J. at para. 88 and 95.</p>	<p>Section 22 must be read as a whole. Subsection 22(1) sets out a general prohibition but is subject to subsection 22(2) which permits information and brand preference advertising but not lifestyle advertising or advertising appealing to young persons.</p> <p>Stay requested.</p> <p>Challenged under the <i>Charter</i>.</p>

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Subsection 22(3) contains definitions of "brand-preference advertising", "information advertising" and "lifestyle advertising".			
<p>Section 23</p> <p>Prohibits packaging a tobacco product contrary to the regulations.</p>	See section 9 of the TPCA	Section 9 was struck down by the SCC. See discussion under subsection 15(3) of the <i>Tobacco Act</i> .	<p>No stay requested.</p> <p>Challenged under the <i>Charter</i> only by VTL.</p>

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<p>Section 24</p> <p>Limits promotion through sponsorship. Subsection 24(4) permits sponsorship promotion that does not involve lifestyle and is not youth related. The combined effects of subsections 24(1) to (3) is that lifestyle and youth related sponsorship are permitted where the tobacco product related brand element is restricted to the bottom 10% of the display surface of the promotional material and where those material are limited to the media or location specified in paragraphs 24(3)(a) to (d).</p> <p>Subsection 24(1) authorizes, subject to any applicable regulations, the display of a tobacco a brand element in a promotion for a sponsored performance, event or activity where the performance, event or activity has lifestyle or youth associations.</p>	<p>Section 6 of the TPCA permitted the use of the names of tobacco manufacturers or importers and of tobacco brand names -- if not used in association with a tobacco product -- in a sponsorship promotion of a cultural or sporting event or activity that acknowledges a contribution by the manufacturer or importer .</p>	<p>Section 6 of the TPCA was struck by the SCC along with sections 4, 8 and 9 on the basis that it was not severable from those sections: McLachlin J. at para 176 "I have found ss. 4, 8 and 9 of the <i>Tobacco Products Control Act</i> constitute unjustified infringements on free expression. These provisions spearhead the scheme under the Act and cannot be severed cleanly from other provisions dealing with promotion and trade mark usage, ss. 5 and 6.."</p>	<p>Sponsorship promotion acknowledges a contribution of resources by the use of the brand name of the contributor in the promotion of the sponsored event.</p> <p>No stay requested.</p> <p>Challenged under the Charter only by IFL.</p>

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<p>After October 1, 1998, or an earlier date set by order, subsections 24(2) and (3) will limit the display of a tobacco brand element in a promotion for a sponsored performance, event or activity that has lifestyle or youth associations to:</p> <p>24(2), the bottom 10% of the sponsorship promotion; and</p> <p>24(3), the following locations:</p> <ul style="list-style-type: none"> a) publications mailed to named adults; b) publications with at least 85% adult readership; c) signs at the event; and d) signs in places where young persons are not permitted by law. 		<p>McLachlin J. at para 164: "...while one may conclude as a matter of reason and logic that lifestyle advertising is designed to increase consumption, there is no indication that purely informational or brand preference advertising would have this effect. The government had before it a variety of less intrusive measures when it enacted the total ban on advertising, including: a partial ban which would allow information and brand preference advertising; a ban on lifestyle advertising only; measures such as those in Quebec's <i>Consumer Protection Act</i> to prohibit advertising aimed at children and adolescents."</p> <p>See also Iacobucci J. at para. 188 and 191 and La Forest J. at para. 88 and 95.</p>	<p>Where a sponsored event is associated with lifestyle or youth, both the use of the brand element and the location of the promotion are controlled.</p> <p>The implementation of subsections 24(2) and (3) has been delayed until October 1, 1998 or an earlier date set by order, to give time for sponsored persons, entities, events, activities and facilities to seek alternative sponsorship.</p> <p>No stay requested.</p>

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TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Subsection 24(4) requires that the use of a brand element in a promotion for a sponsored performance, event or activity conform with regulations where the sponsored performance, event or activity does NOT have a lifestyle or youth association.</p>	<p>No equivalent.</p>		<p>In the absence of a lifestyle or youth association, subsection 24(4) permits the display of a tobacco brand element in a sponsorship promotion that acknowledges a contribution of resources from a manufacturer. The limits set out in 24(2) and (3) do not apply.</p> <p>No stay requested.</p>
<p>Section 25</p> <p>Permits the use of a tobacco brand element on a permanent facility where it conforms with the regulations.</p>	<p>No equivalent.</p>		<p>No stay requested.</p> <p>Challenged under the Charter only by IFL.</p>

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)¹
AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Sections 26 to 28</p> <p>Permit a controlled use of tobacco brand elements on non-tobacco products.</p> <p>Section 26 permits the use of tobacco brand elements on tobacco accessories such as matches and lighters.</p> <p>Sections 27 and 28 restrict the use of tobacco brand elements only on lifestyle and youth associated non-tobacco products.</p>	<p>Section 8 of the TPCA was an absolute prohibition on the use of any tobacco product trademarks on any non-tobacco good or in the advertising of any non-tobacco good, except where it was used on a non-tobacco good for sale in Canada in 1986.</p>	<p>The total prohibition on the use of tobacco trade marks on non-tobacco products was struck down by the SCC.</p> <p>McLachlin J. at para 158: " On the other hand, there does not appear to be any causal connection between the objective of decreasing tobacco consumption and the absolute prohibition on the use of a tobacco trade mark on articles other than tobacco products. ... "It is hard to imagine how the presence of a tobacco logo on a cigarette lighter, for example, would increase consumption." " [Emphasis added]</p> <p>By a 6:3 majority, the Court found that prohibiting tobacco trade marks on non-tobacco products was rationally connected to achieving the objectives of the Act; however, by a 5:4 majority, the Court found that the absolute prohibition of tobacco trade marks on non-tobacco products was not minimally impairing.</p>	

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)
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TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Section 26</p> <p>Subject to regulations, subsection 26(1) permits the sale of smoking accessories bearing tobacco brand elements.</p> <p>Subsection 26(2) requires that a promotion for a smoking accessory displaying a tobacco brand element conform with the regulations and as with tobacco product promotions, be displayed only in the following locations:</p> <ul style="list-style-type: none"> 1) publications mailed to named adults; 2) publications with at least 85% adult readership; 3) signs in places where young persons are not permitted by law. 	<p>See "Section 26 to 28" above.</p>		<p>Subsection 26(1) permits the sale of smoking accessories that display tobacco brand elements.</p> <p>Stay requested only by IFL.</p> <p>Challenged under the Charter only by IFL.</p>

COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)¹
AND THE TOBACCO ACT

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Section 27</p> <p>Prohibits the furnishing or promotion of a tobacco product where its brand element is</p> <ol style="list-style-type: none"> 1) displayed on a non-tobacco product (other than a smoking accessory) that has-lifestyle or youth associations; or 2) used with a service that has lifestyle or youth associations. 	<p>See "Section 26 to 28" above.</p>	<p>McLachlin J. at para 158: " On the other hand, there does not appear to be any causal connection between the objective of decreasing tobacco consumption and the absolute prohibition on the use of a tobacco trade mark on articles other than tobacco products.</p> <p>at para 164: "...while one may conclude as a matter of reason and logic that lifestyle advertising is designed to increase consumption, there is no indication that purely informational or brand preference advertising would have this effect. The government had before it a variety of less intrusive measures when it enacted the total ban on advertising, including: a partial ban which would allow information and brand preference advertising; a ban on lifestyle advertising only; measures such as those in Quebec's <i>Consumer Protection Act</i> to prohibit advertising aimed at children and adolescents."</p> <p>See also Iacobucci J. at para. 188 and 191 and La Forest J. at para. 88 and 95.</p>	<p>Prohibits the sale of tobacco products where the brand element is used on non-tobacco products that have lifestyle or youth associations</p> <p>Stay requested.</p> <p>Challenged under the Charter.</p>

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)¹
AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Section 28</p> <p>Permits the sale and advertising, subject to regulations and in accordance with section 22 of this Act, of a tobacco product where its brand element is</p> <ul style="list-style-type: none"> 1) displayed on a non-tobacco product (other than a smoking accessory) that does NOT have lifestyle or youth associations; or 2) used with a service that does NOT have lifestyle or youth associations. <p>Section 28 also permits the promotion, subject to regulations, of</p> <ul style="list-style-type: none"> 1) a non-tobacco product (other than a smoking accessory) that displays a tobacco brand element and that does NOT have lifestyle or youth associations; and 2) a service that displays a tobacco brand element and that does NOT have lifestyle or youth associations. 	<p>See "Section 26 to 28" above.</p>		<p>No stay requested.</p> <p>Challenged under the Charter only by IFL.</p>

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)
AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Section 29</p> <p>Prohibits manufacturers and retailers from</p> <ol style="list-style-type: none"> 1) giving consumers free tobacco products or smoking accessories displaying tobacco brand names; 2) offering rewards or other consideration for the purchase of a tobacco product; 3) offering tobacco products or smoking accessories in consideration for or as an inducement to a purchase or a service. 	<p>Section 7 of the TPCA prohibited manufacturers and retailers from</p> <ol style="list-style-type: none"> 1) giving consumers free samples; and 2) giving gifts, cash rebates, or the right to participate in any contest, lottery or game for the purchase of a tobacco product. 	<p>The Court unanimously found that s.7 of the TPCA did not violate the Charter.</p> <p>McLachlin J. stated at para 177: "Section 7 of the Act prohibits the free distribution of any tobacco product in any form, a provision which is closely connected to the law's objective. In my view, this provision should stand..."</p>	<p>Section 29 expands the prohibition with respect to free tobacco products in section 7 of the TPCA to include smoking accessories that display tobacco brand elements. Offering tobacco products or their surrogate smoking accessories as inducements to buy other products or services is also prohibited.</p> <p>No stay requested.</p> <p>Challenged under the Charter only by ITL.</p>

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)¹
AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or <i>TSYPA</i>	SCC DECISION ²	COMMENTS
<p>Section 30</p> <p>Subsection 30(1) authorizes the retail display of tobacco products and accessories that conform with the regulations.</p> <p>Subsection 30(2) authorizes retailers to post signs that conform with the regulations indicating the availability of tobacco products and their price.</p>	<p>Section 5 of the TPCA excepted out retail displays from the ban on advertising tobacco products by permitting retailers to:</p> <ol style="list-style-type: none"> 1) expose tobacco products for sale; 2) post signs indicating, other than by their brand names or trade-marks, that the retailer has tobacco products for sale and their price; and 3) to continue to use a business name that signifies that tobacco products are sold by the retailer. 	<p>Section 5 of the TPCA was not found contrary to the Charter but was struck down when section 4 was struck because, section 4 could not be "severed cleanly" from it in view of the opening words of section 5: McLachlin J. at para. 176.</p>	<p>No stay requested.</p>
<p>Section 31</p> <p>Prohibits a person in Canada from communicating prohibited promotions</p> <ol style="list-style-type: none"> 1) on behalf of another person (except for promotions in foreign publications); or 2) by means of a publication, broadcast or other means of communication that originates outside Canada. 	<p>Subsection 4(2) to (4) of the TPCA prohibited a person in Canada from communicating prohibited advertisement</p> <ol style="list-style-type: none"> 1) on behalf of another person (except for promotions in foreign publications); or 2) by means of a publication or broadcast that originates outside Canada. 	<p>Subsection 4(2) to (4) were struck by the SCC because the Court concluded that section 4 was a complete ban.</p>	<p>Section 31 prohibits doing indirectly what cannot be done directly.</p> <p>Stay requested by ITL only with respect to subsection 31(3).</p> <p>Section 31(3) challenged as <i>ultra vires</i> the Parliament of Canada by ITL.</p>

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)¹
AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Section 32</p> <p>Requires manufacturers to provide information to the Minister about promotions under Part IV in accordance with the regulations.</p>	<p>See subsection 10(3) of the TPCA.</p>		<p>No stay requested.</p> <p>Challenged under the <i>Charter</i> only by ITL.</p>
<p>Section 33</p> <p>Authorizes regulations respecting</p> <ol style="list-style-type: none"> 1) the promotion of tobacco products and tobacco brand elements and non-tobacco products, services and facilities that bear tobacco brand elements and the packaging of tobacco products, 2) accessibility signs; and 3) reports by manufacturers about promotional activities. 	<p>See subsection 10(3) of the TPCA.</p>		<p>No stay requested.</p> <p>Challenged under the <i>Charter</i> only by ITL.</p>
<p>Section 34</p> <p>Authorizes the Minister to designate inspectors and analysts.</p>	<p>See Section 11 of the TPCA and section 8 of the TSYPA.</p>	<p>The SCC did not comment on any of the enforcement provisions in the TPCA.</p>	<p>No stay requested.</p>

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)
AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Sections 35, 36 and 39</p> <p>Sections 35 (inspection), 36 (warrant to search dwelling-place) and 39 (seizure) deal with enforcement powers of entry inspection, examination, sampling and seizure.</p>	<p>Section 12 and 13 of the TPCA contain powers of entry, inspection, examination, sampling and seizure.</p> <p><i>Subsection 9(1) of the TSYPA provides for the entry of inspectors into places from which tobacco products are being sold.</i></p>	<p>The SCC did not comment on any of the enforcement provisions in the TPCA or the TSYPA.</p>	<p>Stay of section 35 only by IITL and stay by all three tobacco companies on sections 36 and 39.</p> <p>Section 35 challenged under the Charter only by IITL. Sections 36 and 39 challenged under the Charter by all three tobacco companies</p>
<p>Section 37</p> <p>Authorizes analysts to issue certificates containing the results of an analysis or examination.</p>	<p>See section 15 of the TPCA.</p>	<p>The SCC did not comment on any of the enforcement provisions in the TPCA.</p>	<p>No stay requested.</p>
<p>Section 38</p> <p>Requires persons in charge of places under inspection to provide reasonable assistance to the inspector and not to obstruct, hinder or make false statements to an inspector in the course of an inspection.</p>	<p>Section 14 of the TPCA and subsections 9(2) and (3) of the TSYPA.</p>	<p>The SCC did not comment on any of the enforcement provisions in the TPCA.</p>	<p>No stay requested.</p>

COMPARISON BETWEEN THE
 TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)
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TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Section 39</p> <p>See "Sections 35, 36 and 39" above.</p>			
<p>Section 40</p> <p>Provides a civil procedure under which a person who owns a seized thing may seek its restoration.</p>	<p>No equivalent.</p>		<p>Similar to section 25 of the <i>Hazardous Products Act</i>.</p> <p>No stay requested.</p>
<p>Section 41</p> <p>Provides for forfeiture of seized products or other things to which the Act applies by consent, on conviction or by default after 60 days.</p>	<p>See s. 16 of the TPCA. See subsections 6(1) and (2) of the TSYPA.</p>	<p>The SCC did not comment on any of the enforcement provisions in the TPCA.</p>	<p>Similar to section 25 of the <i>Hazardous Products Act</i>.</p> <p>Stay requested by ITL only.</p> <p>Challenged under the Charter only by ITL.</p>
<p>Section 42</p> <p>Authorizes regulations respecting the powers and duties of inspectors and analysts and the taking of samples.</p>	<p>No equivalent.</p>		<p>No stay requested.</p>

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)¹
AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Section 42.1</p> <p>Requires the Minister to lay proposed regulations before the House of Commons.</p>	<p>No equivalent.</p>		<p>This provision permits the House of Commons to directly scrutinize and approve regulations proposed under the <i>Tobacco Act</i> before they are made by the Governor in Council.</p> <p>Regulations produced April 24, 1997 as exhibit I-1 were not concurred in by the House of Commons.</p> <p>No stay requested.</p>
<p>The offence provisions are set out in sections 43 to 48. Please see chart appended to this chart.</p>	<p>The offence provision are found at section 18 of the TPCA and subsections 4(1), 5(4) and 6(3), section 7.2 and subsection 9(4) of the TSYPA</p>	<p>The SCC did not comment on any of the offence provisions in the TPCA.</p>	<p>No stay requested.</p>
<p>Section 49</p> <p>Provides that each day that an offence continues is a new offence</p>	<p>No equivalent.</p>		<p>No stay requested.</p>

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TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Section 50</p> <p>Provides that a director or officer of a corporation may be charged with an offence separately from or in addition to the corporation.</p>	<p>No equivalent.</p>		<p>No stay requested.</p>
<p>Section 51</p> <p>The limitation period for summary offences is 2 years.</p>	<p>In subsection 19(1) of the TPCA the limitation period for summary offences is 12 months.</p>	<p>The SCC did not comment on any of the procedural provisions in the TPCA.</p>	<p>No stay requested.</p>
<p>Section 52</p> <p>Permits a prosecution to take place in any jurisdiction in which the accused carries on business.</p>	<p>See subsections. 19(2) of the TPCA.</p>	<p>The SCC did not comment on any of the procedural provisions in the TPCA.</p>	<p>No stay requested.</p>
<p>Section 53</p> <p>Provides that an exception, exemption, excuse or qualification need not be set out in the information or indictment but rather must be proven by the accused.</p>	<p>See section 19 of the TPCA.</p>	<p>The SCC did not comment on any of the procedural provisions in the TPCA.</p>	<p>No stay requested.</p> <p>Challenged under the Charter only by FTL.</p>

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)¹
AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Section 54</p> <p>Provides that an accused may be convicted of an offence committed by an employee or agent of the accused and refers to a due diligence defence for the accused.</p>	<p>No equivalent.</p>		<p>No stay requested.</p>
<p>Section 55</p> <p>Provides that in the absence of evidence to the contrary, copies and extracts of information obtained during an inspection that are certified by the inspector are admissible in evidence as proof of their content.</p>	<p>No equivalent.</p>		<p>No stay requested.</p>

**COMPARISON BETWEEN THE
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AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Section 56</p> <p>Provides that an analyst's certificate or report is admissible in evidence without proof of the signature on it if provided to the accused before the trial. Accused may, with the leave of the court, require the attendance of the analyst.</p>	<p>See section 15 of the TPCA.</p>	<p>The SCC did not comment on any of the procedural provisions in the TPCA.</p>	<p>No stay requested.</p>
<p>Section 57</p> <p>Provides that in the absence of evidence to the contrary, an indication on a package that</p> <ol style="list-style-type: none"> 1) it contains a tobacco product is evidence that the product is a tobacco product; or 2) it was made by a named person is evidence that it was made by that person. 	<p>No equivalent.</p>		<p>No stay requested.</p>

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)¹
AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or <i>TSYPA</i>	SCC DECISION ²	COMMENTS
<p>Sections 58</p> <p>Provides that a court may, in its discretion, assess additional fines equal to the monetary benefit accruing from an illegal act.</p>	<p>No equivalent.</p>		<p>No stay requested.</p> <p>Challenged under the <i>Charter</i> only by ITL.</p>
<p>Section 59</p> <p>Provides that a court may, in its discretion impose additional orders on a convicted accused.</p>	<p>No equivalent.</p>		<p>No stay requested.</p> <p>Paragraph 59(c) challenged under the <i>Charter</i> by all three tobacco companies and paragraph 59(f) challenged under the <i>Charter</i> only by ITL.</p>
<p>Section 60</p> <p>Authorizes the Minister to enter into agreements with provinces or other bodies respecting the administration and enforcement of the <i>Tobacco Act</i> and to enter into equivalency agreements with a province.</p>	<p>No equivalent.</p>		<p>No stay requested.</p> <p>Subsection 60(3) challenged as <i>ultra vires</i> the Parliament of Canada by ITL.</p>

**COMPARISON BETWEEN THE
TOBACCO PRODUCTS CONTROL (TPCA) AND TOBACCO SALES TO YOUNG PERSONS ACTS (TSYPA)¹
AND THE TOBACCO ACT**

TOBACCO ACT	TPCA or TSYPA	SCC DECISION ²	COMMENTS
<p>Sections 61 - 65</p> <p>Contain consequential amendments to the <i>Hazardous Product Act</i> and repeal the TPCA and the TSYPA.</p>			<p>No stay requested.</p>
<p>Section 66</p> <p>Provides that subsection 24(2) and (3) will come into effect on October 1, 1998 or such earlier date as may be set by order.</p>	<p>No equivalent.</p>		<p>No stay requested.</p>