Dear Senator:

On behalf of the Consumers’ Association of Canada (CAC), please accept the following letter as our submission on Bill S-5, *An Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts*. We have serious concerns about this Bill and encourage the Senate to reject it as it sets a very dangerous precedent for the packaging of all consumer goods.

The CAC views the plain packaging of any product as an anti-consumer policy. There are at least four reasons for this:

- It makes it difficult, if not impossible, for consumers to identify their preferred brands.
- It increases the risk that consumers will be given the wrong product.
- It greatly increases the risk that consumers will be provided with counterfeit or contraband products that have undergone no product or safety testing.
- It is insulting to consumers, suggesting we cannot make decisions about brand choice without being swayed by package design.

We expand on these points below.

**Flawed Consultation Process**

Our concerns with Bill S-5 go right back to its origins in a Health Canada consultation launched in 2016, though the word “consultation” is used loosely. In reality, this was not a consultation. The Minister’s comments at the time of its launch and the accompanying consultation document made clear that the Government had already determined that plain packaging is a worthwhile policy and was simply seeking supportive voices to justify its decision.

The CAC continues to object to this top-down approach to consumer policy. Consumers should have been consulted on plain packaging before the Minister made her decision to proceed.
The consultation did not ask whether plain packaging itself is a good idea. Instead it asked respondents to pick their favourite type of plain packaging. At the time, we predicted that the nanny state advocates, who seem to hold enormous sway over Health Canada, would pick the most extreme, anti-consumer model imaginable — and that is what we ended up with in Bill S-5.

In a letter from the Minister responding to our initial concerns about plain packaging, she suggested there is at least “two decades” worth of evidence to support plain packaging, though none was provided in the consultation document. That alone should set off alarm bells for Senators.

The CAC takes a more empirical approach to this issue. When the idea of plain packaging was first floated in the mandate letter for the Health Minister, we polled consumers to get their views. One would think Health Canada would have done the same.

We asked Canadians if they believe plain packaging of consumer products with negative health impacts is an effective policy and found the following:

- Only 34% of Canadians feel mandatory plain packaging will be effective in reducing the use of such products.
- Even fewer — 25% — feel plain packaging will be effective in reducing their own use of products with negative health impacts.

These are hardly convincing numbers for a policy that has such a profound future impact for consumers. However, we then asked if Canadians felt there are other measures that could be more effective in reducing the use of products with negative health impacts. Compared to plain packaging, the results are stark: 55% view taxation as a useful tool; 89% support warning messages to ensure consumers are aware of health risks; and 90% support improving consumer education about these products and their health risks.

Also, this is polling of actual consumers — not the results of studies prepared by nanny state advocates seeking to justify plain packaging. We know those advocates will present evidence saying plain packaging is effective. The Senate should instead pay attention to the views of Canadian consumers who a) do not think plain packaging is effective, and b) believe other policies would be far more effective.

In effect, by starting the consultation with the premise that plain packaging is good policy, the Government launched the equivalent of a consultation on the arrangement of deck chairs on the Titanic. Rather than consult on what could be the most effective measures to reduce tobacco use, or the use of other unhealthy products, the Government picked a policy and then sought stakeholders to validate that decision.

Not surprisingly, our submission was not referenced in Health Canada’s summary of responses to its consultation.
**Consumer Rights**

Consumers have a right to easily identify their preferred brand of a product, whether tobacco, alcohol, soft drinks, chips, and so on. With that in mind, the CAC polled consumers on this subject as well:

- 50% of consumers say it is important for them to be able to easily identify their preferred brand of a product based on packaging, versus 22% who say it is not important.
- 58% feel plain packaging will mean they are unable to distinguish their preferred brand of a product from other brands.
- 71% feel that it will be more difficult to identify their preferred brand of a product with plain packaging.
- 54% are concerned they will buy the wrong brand.
- 69% are concerned the product they are buying could be counterfeit.

Given these numbers, the CAC must take a principled stand against plain packaging, not because the CAC has a particular affinity for smoking, but because we view the plain packaging of any product as fundamentally anti-consumer.

Also, plain packaging significantly undermines the power of the consumer. If a consumer cannot easily identify his or her preferred brand of a product, the retailer gains the upper hand. For example, a consumer could ask for a more expensive brand of a product and be charged for that, only to find out later that the retailer sold them a cheap brand.

As the polling indicates, the counterfeit fear is also very high within the Canadian population. It seems obvious that plain packaging will greatly increase the counterfeit risk. In fact, anyone who suggests otherwise is being dishonest. When all products must look exactly the same, and international experience suggests that tobacco plain packaging will not be an elaborate design, the counterfeit process becomes easier.

The Government itself seems to recognize this. All the new designs and formats of our currency, for example, are increasingly sophisticated in an effort to fight counterfeit. If we need more sophisticated designs of our currency to prevent counterfeit, how does the Government dismiss the fact that forcing a less sophisticated design on a multi-billion dollar product will lead to a counterfeit explosion? There is no other logical conclusion.

This is even more obvious to the layperson given the contraband tobacco situation in Canada. Does anyone truly believe that the gangs involved in contraband tobacco are not dancing for joy at the prospect of plain packaging? More importantly, what assurances can the Government offer to consumers that this problem is going to be addressed? The Government has demonstrated no capacity to deal with contraband in a non-plain pack environment. How on earth then will it address the problem with plain packaging?

These are important questions as consumers need guarantees that the products they buy have undergone the proper testing.
Dangerous Precedent
Tobacco may be the focus of the plain packaging campaign for now, but in time other consumer products will be targeted by nanny state zealots and once the precedent is set, it is game over. Consumers will lose their right to easily identify their preferred brand of a product, be it tobacco, alcohol, fast food and so on. Once you establish the precedent, you can provide no guarantee that other products will not fall victim to similar measures—and the campaign from nanny state zealots to do so will begin almost immediately.

That risk is now becoming reality. For example, in May 2015 the United Kingdom passed a law requiring plain packaging of tobacco products. That policy is not yet even fully implemented and already Public Health England, Health Canada’s equivalent, is aggressively lobbying for plain packaging of alcohol. Media reports from the UK previously shared with all Senators show that other consumer products are also becoming targets of health advocates. Tobacco is the precedent being used to then target other consumer products for similar treatment.

The Minister of Health has failed to give any assurances that this policy will not be extended to other products. In fact, in her announcement that the Government would apply plain packaging to tobacco, the Minister suggested that other products could face a similar fate. This Bill sets a frightening precedent because any future government could use it to impose plain packaging on any other products, like alcohol, wine, beer, certain foods, even oil and gas. That is not fiction either, as all these products are being targeted in various parts of the world.

Governments ought to tread carefully in this area. Our polling found that 49% of Canadians feel requiring products to be sold in plain packaging is an abuse of Government power, with 47% taking the opposite view (though the largest category of respondents here are those who “strongly agree” it is an abuse of Government power at 30%). In addition, 49% believe the Government will expand the policy to other consumer products.

Furthermore, if the Government is going to argue that plain packaging is truly effective at reducing consumer use of products with negative health impacts, then the nanny state advocates focused on alcohol, sugar, salt and so on will be empowered to argue for the same in their crusades. How could Health Canada justify not implementing plain packaging on other products if it argues it is effective with tobacco?

What Next?
No one disputes the negative health impacts of tobacco. In fact, we suspect you would be hard pressed to find anyone unaware of those health impacts. That awareness is seemingly reflected in the national smoking rate, which continues to decline and is now at a record low.

How much lower the rate can realistically go is an open question, but not an insignificant one. The level of regulation on tobacco products is unprecedented, including display bans, product bans, marketing restrictions, health warnings and so on. Some of these may
be effective, some not. However, each creates a precedent that can then be applied to other industries.

That is the real fear of consumers when it comes to tobacco regulation. In an effort to reduce smoking rates by another 1-2%, governments are being urged to take ever more extreme policies, with no guarantees of their effectiveness. As evidence of that, Health Canada recently convened a forum of tobacco control advocates to discuss “radical” new measures to further reduce smoking rates. Each such “radical” measure then sets yet another precedent for consumer policy.

If/when plain packaging proves ineffective — and the evidence is at best inconclusive in the one market where the policy has been implemented — it means the nanny state zealots will be back at the table demanding even more extreme measures — which is exactly what happened when Health Canada convened a summit of tobacco control advocates earlier this year — and Bill S-5 is not even passed!

Already some are asking for plain packaging to be implemented along with other measures, such as massive tax increases or new retail restrictions. Were the policy effective, would it not be able to stand on its own? It is almost as if the zealots know the evidence of plain packaging’s effectiveness is shaky, hence the need to implement other policies at the same time to try to make it look more effective than it actually is.

To return to our main point, therefore, every new measure applied to tobacco sets a precedent for all other consumer products. That is why we must draw a line in the sand with plain packaging.

**Consumers Are Not Stupid**

Implicit in Bill S-5 is the notion that consumers are simpletons who consume unhealthy products because of the packaging, when in fact humans have been engaged in unhealthy behaviours of various kinds for as long as man has walked the earth. It is nonsensical to suggest there is a consumer — youth or adult — unaware of the health risks of smoking. There is, for example, a label on the package now that takes up 75% of the surface area warning of death, which is not the most subtle approach. Some consumers are choosing to ignore that risk and to suggest plain packaging will change that is at best remarkably naive and at worst a gross insult to adult intelligence.

Youth are also frequently mentioned in this debate, though all provinces already have a legal smoking age. If some youth are taking up smoking, then it suggests a) there are problems with retail compliance with those age restrictions, b) youth are getting cigarettes from non-retail sources, and/or c) education efforts about the health risks of smoking have failed. It is not clear, however, that plain packaging would do anything to change that.

Here again we return to the results of our polling, which shows plain packaging is the least likely measure to be effective in reducing consumer use of products with negative health impacts. That is just common sense. The person who eats poorly and does not exercise is not doing so because of packaging, but because of risky lifestyle choices. The
same holds for those who drink too much, consume too much salt or sugar, and so on. The packaging is not the issue, but rather the choices made.

Therefore, it is incredibly simplistic to suggest packaging is the solution. In reality, the solution is some combination of education, counselling, direct support and outreach targeted at the most at-risk populations. However, that takes time and effort, whereas something like plain packaging offers Governments a “feel good” solution without doing any actual work.

The CAC has launched a website – www.dontkidme.ca – which details our frustration with Health Canada’s paternalistic approach to public health issues. Health Canada has a duty to educate consumers about the risks of their lifestyle choices, but ultimately adult consumers should be allowed to make their own choices.

**Conclusion**

The CAC recognizes that taking a stand against plain packaging will lead to attacks from some in the public health community. However, those advocates long ago lost touch with consumers. Our polling clearly demonstrates there are measures that consumers believe will make a significant impact in reducing use of unhealthy products, but plain packaging is not one of those.

Plain packaging is anti-consumer and treats consumers as if they are idiots. Consumers have a right to be able to clearly and easily identify their preferred brand of a product, and to know that the product they are purchasing is in fact the product they want – not some counterfeit knockoff. That is a right we will forcefully defend.

We hope you will see Bill S-5 for what it really is: a dangerous, precedent-setting direct attack on consumer rights – and one that should be defeated.

Thank you for your time.

Sincerely,

Bruce Cran
President

cc: Members. Standing Senate Committee on Social Affairs, Science and Technology Committee Clerk