Brief submitted for the consultations 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

Fédération des chambres de commerce du Québec

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About us

The Fédération des chambres de commerce du Québec (FCCQ) brings together approximately 140 chambers of commerce, as well as 1,200 businesses as corporate members. It is Quebec’s largest network of business people and businesses. The FCCQ was founded in 1909 and today represents more than 60,000 businesses and 150,000 business people involved in all sectors of the economy throughout Quebec.

The FCCQ is also an active member of the Canadian Chamber of Commerce; we work together on issues that are common to a number of provinces and that lie in federal government jurisdiction.

Introduction

It will come as no surprise to anyone that Health Canada is taking steps to combat tobacco use. The health effects of regular, heavy tobacco use are widely documented, and even tobacco manufacturers do not challenge the main findings.

The FCCQ supports the concerted efforts of governments over the years to provide appropriate information to smokers, to restrict tobacco use in public places and to conduct anti-smoking campaigns, especially with the young.

In no way is the FCCQ entering this debate in an attempt to increase tobacco use or to undermine the effects of anti-smoking campaigns. But tobacco remains a legal product that is subject to very strict production and marketing rules. The manufacture and sale of tobacco products must certainly be controlled, and they are to a major extent, but the State must respect the basic principles of production and commerce. The FCCQ enters the debate from the perspective of these basic rules of commercial and economic activity, as applied to tobacco products. Prohibitions on, or major barriers to, trade cannot be imposed on a legal product as if the product were unlawful.
A “hard core” of informed smokers

According to a number of studies, anti-smoking campaigns and the implementation of a host of regulations to restrict the marketing of tobacco products and the ability to smoke in many places have resulted in current smokers using tobacco with full knowledge of what they are doing. They are well aware that tobacco exposes them to health risks, especially with a heavy use. In Professor Geraint Howells’ words, they make up a group of “more hard core adherents”.¹

This is not the case for young people who are clearly more easily influenced and who can underestimate the long-term consequences of tobacco use. That is why the FCCQ supports anti-smoking campaigns, in particular those aimed at the young. It is also why we feel strongly that the fight against contraband tobacco must be intensified because the price of contraband cigarettes is particularly attractive to young people. We will come back to this point.

The great majority of current smokers have, for a number of years, been fully aware of the risks of sustained use to their health. As well as campaigns on television and in other media about the effects of tobacco, consumers find such messages covering 75% of the packaging of all cigarettes sold in Canada. The saturation point is being reached. We may shout louder, we may make the pictures and messages more shocking and repulsive, we may cover 100% of the packaging with those messages. The fact is that smokers are not likely to change their behaviour. They may even find some of the messages to be exaggerated.

Plain packaging

Plain packaging, as applied to tobacco products, means the requirement to use a common package that, for all practical purposes, is stripped of trademarks. The principle behind it is that particular brands of cigarettes are no longer sold, just cigarettes. The name of the product and the manufacturer appears in small letters at the bottom of a pack of cigarettes. The marks that distinguish the products are so hard to see that 65% of those selling tobacco products in Australia (where the plain packaging policy is in effect) say that they regularly mistake the products when they sell them.

The FCCQ has two problems with plain packaging. First, in a real sense, trademarks are being expropriated. As long as tobacco remains a product that can be distributed and sold

¹ Professor Geraint Howells, Faculty of Law, University of Manchester. The Tobacco Challenge: Legal Policy and Consumer Protection. Ashgate, 2011.
perfectly legally, it is quite contrary to the rules of commerce to prohibit producers from making their products and some of their characteristics known in some small way. This is the case not only for the rules that govern commerce in Canada, but also for the rules established in a number of international treaties.

Second, the FCCQ has every reason to doubt that plain packaging will really change smokers’ behaviour. The effect is the same as sending a message that is already well known and often repeated by shouting it louder.

In an attempt to see things more clearly, we have to look to Australia, which, until very recently, was the only country to require plain packaging for tobacco products, in August 2012.

A number of studies have been conducted on the Australian experience. As is often the case in such matters, the studies do not all agree. They do not allow us to attribute any significant change in behaviour on the part of consumers to plain packaging alone. This is especially so because the Australian government has been conducting a frontal assault on tobacco use with a number of measures.

Data on customs clearance for tobacco in Australia (including customs and excise charges) shows fluctuations before and after plain packaging was introduced. Hardly any cause and effect relationship can be seen. In the year after the legislation came into effect, there was even an increase in tax revenue from the legal sale of tobacco products.

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Standardized cigarettes

Bill S-5 goes even further by imposing standards on cigarettes. As such, all cigarettes would look the same in colour, length, filter type, and so on. In addition, no text or differentiating element should appear on the cigarette.

We find these new provisions excessive. It is a major State intrusion into the manufacture of a legal product. The standards also make it much easier to manufacture illegal cigarettes.

Moratorium on launching tobacco products

Those who support stronger regulation of tobacco products are arguing in favour of a moratorium on all new tobacco products. This would prevent the industry from any kind of innovation designed to increase the appeal of these products: brands, graphics, packaging and new product types. Developing new products would be impossible. The industry would stagnate.

Such a ban is hard to imagine. Most innovations in the tobacco industry do not come from Canada. In a globalized economic world, how could a ban like that be designed? The end
does not justify the means. Canada cannot close its borders to products legally allowed in
the country.

Contraband tobacco

In Quebec, a carton of 200 cigarettes has cost about $90 since early 2016. Yet a baggie of
200 illegal cigarettes can easily be bought for less than $20. The difference is huge: any
increase in taxes makes contraband cigarettes even more attractive.

Low-income people and the young are the most sensitive to cigarettes prices.
Anti-smoking campaigns target precisely these two groups of people. Yet access to cheap
tobacco undermines these awareness campaigns. The best way to fight smoking, especially
among the young, is to step up the fight against contraband tobacco products. It is also
important to know that contraband tobacco production is subject to no controls or
inspections, unlike the tobacco industry, which is subject to over 200 regulations.

Cigarette smuggling is a recurring problem that poses a serious risk to the health of
Canadians.

Conclusion

The FCCQ respects the efforts of Health Canada and of MPs and senators to fight
smoking.

The FCCQ invites legislators to avoid the easy shortcuts that demonize tobacco products
beyond the true risks they represent. We also invite them not to resort to knock-out
measures that, media hype notwithstanding, do not change smokers’ behaviour. We
believe that plain packaging and standardized cigarettes are among those dramatic actions
that do not produce the results they promise.