Response to Consultation 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

SUBMITTED BY:
The Western Convenience Stores Association

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About the Western Convenience Stores Association

The Western Convenience Stores Association (WCSA) was founded as a not-for-profit organization in 2002 to provide leadership for the industry on key issues affecting owners, operators, employees and customers in Western Canada. The WCSA is affiliated with the Canadian Convenience Stores Association, the National Convenience Distributors Association and regional associations in Quebec, Ontario and Atlantic Canada.

The WCSA represents the interests of more than 7,000 gas and convenience retailers throughout the four western provinces and three northern territories, including their suppliers, distributors and stakeholders. The WCSA represents industry stakeholders to key audiences and works to build constructive relationships with municipal and provincial governments. Its board is comprised of independent, affiliated and corporate chain retailers from the gas and convenience channel.

Focus of this submission

The WCSA is committed to assisting retailers and their staff in upholding the highest standards of professionalism and ethical conduct and to supporting public health and safety. In 2015, the convenience and gas industry collected over $21 billion in taxes for Canadian governments and sold over $56 billion in goods and services. As partners with government in the sale of age restricted products, our members take pride in their contribution to the continuing decline in tobacco consumption, particularly among youth, for whom it is at an all-time low. The WCSA offers free age verification training to employees through its We Expect ID program which has made a significant positive impact on the decline in tobacco consumption by young people.

Bill S 5 contains proposed elements regarding tobacco packaging and the sale of e-cigarettes that are not likely to support the continuing reductions in tobacco use in Canada. Some of these elements will place considerable burdens upon retailers who are tasked with managing the controlled sale of affected products. The WCSA supports legislation that is effective in achieving desired public policy goals, however, we believe Bill S 5 will fail to achieve its goals and that it will generate adverse impacts for honest business owners and the communities they serve.
Concerns about the impact of plain packaging

The rationale for plain packaging is the same as the rationale for point-of-sale tobacco display bans – reducing youth tobacco consumption by removing any enticement that the sight of tobacco product labels might create for youth. In observing historical trends from the perspective of 2015 data, it is clear that display bans did not measurably contribute to the downward trend in youth smoking (approximately 0.66% per year). At the time the display restrictions were being proposed in 2006, Health Canada noted that the potential impact of this measure was “very speculative.” The policy may not have achieved its desired objectives in a measurable way, but it did create operational burdens on retailers and their employees.

The movement to implement a plain packaging requirement follows a similar pattern of reasoning but the adverse impacts for both communities and businesses will be far worse.

The example of Australia’s implementation of plain packaging is highly instructive. It was found, for example, that “consumption did not change in year 1 among daily, regular or current smokers or among smokers of brands in any market segment.”

Moreover, it has been suggested that plain packaging could trigger an overall increase in tobacco consumption because brands would be forced to compete on price alone, resulting in a shift to value brands and illicit tobacco.

The Government of Canada’s website, Consultation on "Plain and Standardized Packaging" for Tobacco Products notes that:

A 2014 review of 75 original articles, conducted on behalf of the Irish Department of Health, concluded that the “evidence unequivocally demonstrates that plain packaging is perceived as less attractive and less appealing, particularly among youth and young adults.”

However, acknowledgement that plain packaging is “perceived as less attractive”

1 Tobacco Use in Canada: Patterns and Trends. (http://www.tobaccocontrol.ca/2015/TobaccoUseinCanada_2015_Accessible.pdf)
3 Changes in use of types of tobacco products by pack sizes and price segments, prices paid and consumption following the introduction of plain packaging in Australia http://tobaccocontrol.bmj.com/content/24/Suppl_2/i66.abstract
4 Changes in use of types of tobacco products by pack sizes and price segments, prices paid and consumption following the introduction of plain packaging in Australia http://tobaccocontrol.bmj.com/content/24/Suppl_2/i66.abstract
does not imply that smoking is thereby rendered any less appealing. After plain packaging was implemented in Australia, the number of individuals who cited packaging prominently marked with health warnings as a reason for quitting or smoking less actually decreased from 15.2% in 2010 to 11.1% in 2013.6

The introduction of plain packaging in Australia did not reduce tobacco consumption beyond its trending rate of decline, which had been progressing for many years prior to its implementation. The likely result of such a policy in Canada is that cigarette packages would look more unattractive than they already do but this has not corresponded to a reduction in tobacco use according to the evidence from Australia.

The adverse impacts of plain packaging threaten to be far worse in Canada. Unlike Australia, Canada produces domestic tobacco products that are not for legal sale to non-status individuals but which are distributed as contraband by more than 100 criminal organizations. Plain packaging would make it easier for these organizations to shift toward counterfeit products as plain packaging is easier to replicate.

In addition to the risks to public health and safety due to increased contraband tobacco trafficking, plain packaging poses operational challenges to legal retailers and distributors. All of these carry financial costs that will be unfairly imposed on the very industry that has a long history of responsibly restricting access to tobacco products and collecting associated tax revenues. For example:

- Customer service will be impacted by confusion at the point of sale. Plain packaging will make it more challenging to differentiate between brands and this will be exacerbated for employees and storeowners with limited English communication skills and/or literacy.
- Opportunities for abusing retailers will increase. For example, people may try to "return" counterfeit products in exchange for legal ones claiming to have been sold the wrong brand.
- Some customers will ask for their brand but receive the wrong brand but will not realize it until after they open the package. The challenges will arise when these customers demand a new "free" pack while returning an opened one.
- Customers returning counterfeit products in exchange for legal products
- Internal theft by cashiers as they will be able to stock cartons behind similar cartons of different value and keep the difference (which could be $4 - $5 per pack).
- Wholesaler error may also strain relationships with retailers, as filling orders accurately will be more challenging.

Concerns about controls on the sale of e-cigarettes

Bill S 5 allows the sale of vapour products containing nicotine, presumably because such products have been considered to help people stop using tobacco products. Our members have refrained from selling such products in accordance with Health Canada regulations. However, countless unlicensed vape shops have emerged across the country and have profited significantly. Currently, vape shops are not restricted in the display of products or required to comply with health and tobacco regulations applied to convenience stores. Vape shops are permitted to allow customers to test products before purchasing them.

As products containing nicotine will now be brought into the legal market, our primary concern is that all sellers be treated equally going forward – be they convenience stores or vape shops – and that neither be granted special treatment or exemptions. As the distinction between convenience stores and vape shops is potentially very fluid, it is crucial that government policy applies equally and fairly to all retailers of these products.

Recommendations on Bill S 5

1) Increase resources to law and order measures to fight the existing problem of contraband across Canada.

Should plain packaging be pursued:

2) Ensure some element of differentiation between packages and cartons (on the outside of packages only) which would allow retailers to distinguish packages from one another.

3) Allow for the retention of brand labeling on individual cigarettes to make it possible to continue research into contraband tobacco use that relies on being able to distinguish legal from illegal cigarettes in collected samples;

4) Implement a reasonable and separate transition period for retailers of no less than 12 months following the registration of regulations to allow adequate time for product recall and clearing of inventory, proper staff training and preparation for the operational challenges such a regulation will cause.