



**BRITISH AMERICAN  
TOBACCO  
CANADA**

**Imperial Tobacco Canada**

**Written Submission**

*Bill 90, An Act to Amend Chapter 14 of the Acts of 1993, the Tobacco Access Act*

April 22, 2015

On behalf of Imperial Tobacco Canada Ltd. (ITCAN), thank you for the opportunity to comment on Bill 90, *An Act to Amend Chapter 14 of the Acts of 1993, the Tobacco Access Act*. While we support the intent of the legislation, which is to keep tobacco products out of the hands of youth, we have concerns about its scope, its implications for the Province's thriving illegal tobacco trade, and its timeline for implementation.

We will argue that menthol cigarettes should not be included in the proposed flavoured tobacco ban, for the same reason that other provinces and the Federal Government have exempted these and other traditional products that appeal to adult consumers. There is no study demonstrating that menthol is the cause of youth smoking. The real issue is youth access to any tobacco products – flavoured or not, contraband or legal – which is not addressed in Bill 90. Finally, the May 31 implementation deadline is unrealistic as it doesn't allow time for the depletion of product and material inventories.

### **About Imperial Tobacco Canada Limited (ITCAN)**

Established in 1908, ITCAN is Canada's leading tobacco company, offering brands like du MAURIER, Player's, Peter Jackson and Vogue to over five million adult Canadians who choose to smoke. ITCAN is headquartered in Montreal and employs 550 people across Canada.

ITCAN is dedicated to conducting its business responsibly, in a manner that meets society's expectations of a 21<sup>st</sup> century tobacco company. ITCAN recognizes the health risks associated with tobacco consumption and believes underage people should not consume tobacco products.

### **Flavoured Tobacco Products**

Our company has supported past efforts to ban flavoured tobacco products, both federally and at the provincial level. Our company does not make any flavoured tobacco products other than menthol cigarettes. We voluntarily elected to not manufacture products with candy, fruity or confectionary flavouring long before Governments started to regulate in this area. That is based on our belief that young people should not smoke. In fact, we believe that those who have put these flavoured tobacco products into the market in recent years have done a disservice to the industry.

Therefore, to be clear, we support a ban on candy, fruity and confectionary flavoured tobacco products, provided it is enforced on all manufacturers and retailers and that traditional products are exempt.

However, the tobacco control community has been requesting a ban on menthol cigarettes, arguing those should be included in any flavour bans. We appeal to the Committee to distinguish between products that appear designed, packaged and priced to appeal to youth, versus traditional products catering to an adult demographic, like menthol cigarettes, that have been sold in Ontario for over 80 years.

Candy, fruity and confectionary flavoured tobacco products fall under a completely different legislative, regulatory and tax structure than menthol cigarettes. For example, menthol cigarettes are only sold in legally-mandated package sizes of at least 20 cigarettes, which puts them at a significantly higher price point than other flavoured tobacco products that may be sold individually or in small packages.

Notwithstanding what you may have heard, notably from the tobacco control community, the scientific weight of evidence does not support the conclusion that menthol cigarettes are more addictive than non-menthol, that menthol draws youth to smoking, or that a menthol ban would have an impact on youth smoking rates. No cause-and-effect relationship has been established and to suggest otherwise is misleading. Furthermore, independent market data from GFK confirms that menthol is more popular with smokers over 30 years old,<sup>1</sup> which contradicts suggestions that it is a tobacco product preferred by youth.

It is also worth noting that menthol cigarettes have been sold in Canada since 1934 whereas there has been an explosion of candy, fruity and confectionary flavoured tobacco products since 2001. In fact, menthol use has been declining for decades whereas the use of other flavoured products increased eight-fold between 2001 and 2007.<sup>2</sup>

We must also mention the Province's *Tax and Regulatory Review*, which our company was strongly encouraged to take part in by your Government, which we did in good faith. That report included a lengthy section on smart regulation and evidence-based decisions. One of the recommendations stated that "[R]egulatory decisions must be based on the best available data, analysis and testing rather than ideological or emotional reaction to events or incidents."

To that end, smart regulation has to be developed in consultation with the entities being regulated, and with due recognition for its negative unintended consequences. However, we were barred from the consultation process on Bill 90 and this is a clear example of legislating based on emotion rather than evidence, suggesting the whole Review was a sham.

Finally, there is a question of scale and focus here. The tobacco control community would have you believe that youth smoking rates are skyrocketing, when in reality Health Canada's Youth Smoking Survey found that 4% of students in grades 6 to 12 were current smokers (which we feel is still too high).<sup>3</sup> In fact, Canada's overall smoking rate is at an all-time low.<sup>4</sup>

---

<sup>1</sup> General consumer survey: GFK dynamics 52 weeks rolling ending December 2012.

<sup>2</sup> See <http://www.heartandstroke.com/site/apps/nlnet/content2.aspx?c=ikIQLcMWJtE&b=3485819&ct=7034215&printmode=1>

<sup>3</sup> See [http://www.hc-sc.gc.ca/hc-ps/tobac-tabac/research-recherche/stat/\\_survey-sondage\\_2012-2013/result-eng.php](http://www.hc-sc.gc.ca/hc-ps/tobac-tabac/research-recherche/stat/_survey-sondage_2012-2013/result-eng.php)

<sup>4</sup> <http://www.theglobeandmail.com/news/national/smoking-among-canadians-at-all-time-low-survey-finds/article22761692/>

Conversely, youth use of other substances is exponentially higher. According to the Youth Smoking Survey, 41% of youth report alcohol use and 19% marijuana,<sup>5</sup> yet Government controlled retail outlets sell an incredible array of flavoured alcohol products (including candy, fruit and confectionary flavoured products) and some are even considering legalization of marijuana. If the Government's position is that flavours are appealing to youth, then we look forward to implementation of a flavoured alcohol ban in Nova Scotia as well.

### Precedents for Exemptions

It is common practice for governments that have banned flavoured tobacco products to exempt certain flavours.

- Federal restrictions on flavoured tobacco products exempt menthol as well as wine, port, whisky and rum flavours "to limit the impact of the proposed Order on adult choice;"<sup>6</sup>
- Manitoba's flavoured tobacco legislation (Bill 52) "does not include snuff, chewing tobacco or a menthol tobacco product;"<sup>7</sup>
- Alberta's flavoured tobacco ban exempts cigars that have a retail price of more than \$4 per unit and weigh 5 grams or more, pipe tobacco and "tobacco products that impart a clearly noticeable smell or taste of menthol and do not also impart another characterizing flavour."<sup>8</sup>

Even Nova Scotia recognized that certain flavours should be exempt when a previous version of this Bill was introduced (Bill 60). The Government planned to exempt menthol cigarettes under Bill 60.<sup>9</sup> The Minister stated in the Legislature on October 28 (emphasis added):

*Through this bill, we are amending our provincial Tobacco Access Act to ban the sale of flavoured tobacco in Nova Scotia. We plan to exempt menthol because it has been on the market for decades and it's not marketed to youth. Our concern is with the explosion of candy-flavoured tobacco that is clearly being marketed to young people in an effort to get a whole new generation addicted to smoking, addicted to nicotine. Other jurisdictions have also chosen to exempt menthol and to focus on candy flavours that lure youth to try smoking.*

Other than a campaign of misinformation about menthol cigarettes from the tobacco control community, what has changed since all these precedents were established?

<sup>5</sup> See [http://www.hc-sc.gc.ca/hc-ps/tobac-tabac/research-recherche/stat/\\_survey-sondage\\_2012-2013/result-eng.php](http://www.hc-sc.gc.ca/hc-ps/tobac-tabac/research-recherche/stat/_survey-sondage_2012-2013/result-eng.php)

<sup>6</sup> See <http://www.hc-sc.gc.ca/hc-ps/consult/tobaccoflavoured-tabacaromatisant-eng.php>

<sup>7</sup> See <http://web2.gov.mb.ca/bills/40-3/pdf/b052.pdf>

<sup>8</sup> See [http://www.gp.alberta.ca/documents/orders/orders\\_in\\_council/2014/1114/2014\\_436.html](http://www.gp.alberta.ca/documents/orders/orders_in_council/2014/1114/2014_436.html)

<sup>9</sup> See <http://novascotia.ca/news/release/?id=20141024003>

### **Realities of Contraband Tobacco**

It is impossible to look at any new tobacco control measure without taking into account Nova Scotia's contraband tobacco trade. The latest data from the Atlantic Convenience Stores Association (ACSA) for Nova Scotia, released last summer, found a 40% increase in contraband tobacco levels since 2013 – from 14% to 20%.<sup>10</sup> The ACSA estimates the Province loses \$54 million in tax revenue annually to contraband tobacco.

It is also interesting to note that the December 2014 fiscal update showed tobacco tax revenue \$15 million lower (6.7%) than projected – the largest shortfall for any of the Province's revenue projections.<sup>11</sup> The update attempted to explain that as being the result of lower cigarette consumption, but that would only take into consideration legal sales. Another possible and highly plausible cause, however, is that consumers are switching to illegal tobacco products in even larger numbers than the Province anticipated.

Therefore, given Nova Scotia's contraband realities, the Government's decision to ban all flavoured tobacco products – including menthol cigarettes – will in all likelihood be counterproductive. While ITCAN supports a ban on candy, fruity and confectionary flavoured tobacco products, banning other traditional tobacco flavours, such as menthol, when contraband is so rampant simply hands a monopoly thereon to the illegal operators.

In effect, sales shift from a legal, taxed and regulated market to one that is illegal, unregulated and untaxed and that is also far more accessible to youth. Perhaps in anticipation of this, there has been a marked increase in the number of illegal menthol brands available. **We are now aware of at least 35 contraband menthol cigarette brands in Canada, which is approximately double the number of legal ones (see enclosed photos).** Most of these are produced on First Nations reserves. As evidenced by the photos, these menthol products retail for as little as \$3 per pack (versus upwards of \$11 for a pack on which all taxes have been paid).

These illegal menthol cigarettes are sold without regulation, without proof of age and with no provincial taxes paid – and they will likely flood the Nova Scotia market if legal menthol cigarettes are banned. At roughly 5% of the legal tobacco product sales, shifting menthol sales to the illegal market would cost Nova Scotia an additional \$11-12 million in lost tax revenue (based on tobacco tax projections for 2014-15). That is in addition to the \$54 million in tax revenue Nova Scotia is already losing every year to the illegal trade.

Looking at the above from another perspective, Bill 90 is likely to be seen as a “get rich quick scheme” by the organized crime groups that control the illegal tobacco trade, as demonstrated in recent Canadian history. For example, within weeks of the original ban on flavoured little cigars and cigarillos at the Federal level in 2009, those products were turning up in First Nations smoke shacks.<sup>12</sup> Worse still, it was quickly revealed that those smoke shacks were selling those products to youth.<sup>13</sup>

---

<sup>10</sup> *More Nova Scotians firing up illegal smokes, study finds, Halifax Chronicle-Herald, July 30, 2014*

<sup>11</sup> See [http://www.novascotia.ca/finance/site-finance/media/finance/Forecast\\_Update\\_Dec\\_2014.pdf](http://www.novascotia.ca/finance/site-finance/media/finance/Forecast_Update_Dec_2014.pdf)

<sup>12</sup> *Ottawa's fruit flavored tobacco bomb, National Post*, November 17, 2009

<sup>13</sup> *See Le Journal de Montreal, September 22, 2009*

### **Youth Access**

While we must again clearly state that we support a ban on candy, fruity and confectionary flavoured tobacco products, we hope that these measures do not distract from the real issue, which is that young people should not have access to any tobacco products, whether flavoured or not.

Data from Health Canada's Youth Smoking Survey shows that upwards of 75% of youth from grades 6-12 get tobacco products from social sources, meaning family and friends. If the goal is truly to eradicate youth smoking, it is respectfully submitted that this is where the focus should lie. Retailers are already banned from selling tobacco products to youth under 19 and adults should be reminded of the importance of not supplying them to those below legal age, perhaps with harsher penalties.

Ultimately, we believe that education and targeted measures focused on at-risk populations are the best means to address youth smoking, in addition to decisive action to address Nova Scotia's contraband tobacco crisis. We remain open to a dialogue on achieving those goals.

### **Implementation Timeline**

If the Government chooses to ignore the available evidence and the obvious implications for contraband tobacco in Nova Scotia and proceed with Bill 90 as written, there is still the problem of the proposed timeline for implementation being completely unrealistic.

No manufacturer, wholesaler or retailer of any consumer product can be expected to cease production and clear inventories of materials and finished goods in a matter of weeks. Indeed the Minister himself used to recognize this as he stated the following in the Legislature on October 28 when debating a previously version of this bill (and one that did not purport to include menthol, thereby making it less draconian):

*... we recognize these amendments will have implications for some businesses, although most will not have large-scale changes to make. To help them adjust, there will be a six-month period between passage of this bill and proclamation when the changes take effect. I want to thank businesses around the province for their excellent track record of compliance with our tobacco legislation to date. I have every confidence that they will comply with these amendments as well.<sup>14</sup> (emphasis added)*

The Minister used to believe six months was needed to implement a less comprehensive ban, yet now he believes it can take place in less than six weeks. It is unacceptable that the Bill is not allowing for a reasonable transition period and therefore penalizes tobacco manufacturers, wholesalers and retailers for having reasonable inventories of finished goods and materials to support the sales of a legal product in Nova Scotia.

---

<sup>14</sup> See [http://nslegislature.ca/index.php/proceedings/hansard/C96/house\\_14oct28/#HPage1585](http://nslegislature.ca/index.php/proceedings/hansard/C96/house_14oct28/#HPage1585)



To put the implementation timeline in perspective, let's look at other jurisdictions dealing with similar restrictions. Ontario is contemplating a flavour ban, but it plans to allow two years before the ban is implemented. Alberta is allowing seven months for its flavour restrictions, which exempt menthol, to take effect.<sup>15</sup> Recent federal restrictions, which also exempted menthol, did not come into full force before a period of 12 months. Proposed changes in Europe will not take effect until 2020.

Our company will not accept to incur costs and suffer losses on reasonable inventories of raw materials and finished goods because of an unrealistic implementation timeline.

### **Conclusion**

Our company supports the intent of Bill 90, provided exemptions are made for traditional adult products such as menthol. If the Government is not willing to make those exemptions, then the timeline for implementation needs to be adjusted to a more realistic schedule, as has been the case in other jurisdiction that have introduced flavour restrictions around the world.

Thank you for the opportunity to submit comments on this Bill.

---

<sup>15</sup> See <http://www.theglobeandmail.com/news/alberta/alberta-to-phase-in-flavoured-tobacco-ban-legislation-but-exempts-menthol/article21580266/>

APPENDIX 1:  
EXAMPLES OF ILLEGAL MENTHOL BRANDS  
CURRENTLY AVAILABLE IN ONTARIO

