

Don't Drink That: A Constitutional Analysis on the Implementation of Health Warning Labels on Alcoholic Beverages in Canada

Alcohol consumption is widespread in many countries; however, regular consumption can cause significant health and social harms. Many people remain unaware of these harms. Public health advocates have therefore encouraged governments to adopt measures to address this knowledge gap and promote healthier consumption patterns. This paper examines one of the most frequently recommended measures: health warning labels on alcoholic beverages. Health warning labels have been used successfully in tobacco control and therefore tobacco health warning labels provide a useful framework for the application of health warning labels to alcohol products. Despite potential public health benefits, alcohol manufacturers have strongly opposed this initiative and have used political and legal strategies to impede their adoption. This paper examines how a health warning labelling system could be implemented in Canada. Specifically, it argues that a well-designed system can address jurisdictional considerations under Canada's division of powers and comply with Charter requirements, specifically the freedom of expression, that are imposed by Canada's constitutional framework.

For over 10,000 years, humans have imbibed alcohol¹ and this indulgence remains an integral aspect of many social and cultural traditions.² Despite the widespread use, alcohol consumption can result in significant social harms and health problems. In fact, these issues resulted in the Canadian Centre on Substance Abuse and Addiction to release new guidelines in 2023 concluding that there is no safe level of alcohol consumption.³ As scientific understanding of alcohol-related harms has evolved, governments have increasingly adopted regulatory measures to curb these problems.⁴ Nevertheless, public health experts continue to advocate for additional interventions to better inform consumers of the health risks associated with alcohol use.

One proposed intervention is the introduction of mandatory health warning labels on alcoholic beverages, like those required for tobacco products. In January of 2023, the World Health Organization called on governments to

¹The terms alcohol and alcoholic beverage will be used interchangeably and will be used in relation to beverages containing alcohol for the purposes of human consumption.

²See, Elizabeth Yuko, "When Did Humans Start Drinking Alcohol?" (May 27, 2025) *History*, online: <<https://www.history.com/articles/alcohol-earliest-evidence>>; International Agency on Cancer Research (1988), *Alcohol Drinking, IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*, No. 44 PMID: 3236394.

³Canadian Centre on Substance Use and Addiction, *Canada's Guidance on Alcohol and Health: Final Report*, (January 16, 2023), online: <<https://www.ccsa.ca/en/canadas-guidance-alcohol-and-health-final-report>>.

⁴Proven government measures have included taxation, restrictions on advertising and marketing, limitations on availability, and public education initiatives. Center for Disease Control, *Preventing Excessive Alcohol Use with Proven Strategies*, (December 12, 2024), online: <<https://www.cdc.gov/alcohol/prevention/proven-strategies.html>>.

1 implement health warnings labels on alcoholic beverages to increase public
 2 education on the link between alcohol consumption and cancer.⁵ In May 2025,
 3 Senator Patrick Brazeau introduced Bill S-202⁶ in the Canadian Senate.⁷ Bill S-
 4 202 will require mandatory health warning labels on alcoholic beverages sold in
 5 Canada. As the Senate considers this legislative proposal, questions over the
 6 constitutional authority to enact such legislation and its compatibility with the
 7 *Canadian Charter of Rights and Freedoms*⁸ become increasingly important.

8 This paper argues that Parliament has the jurisdiction to require mandatory
 9 health warning labels on alcoholic beverages under its criminal law power
 10 pursuant to section 91(27) of the *Constitution Act, 1867*.⁹ Furthermore, while
 11 compulsory warning labels would constitute a prima facie violation of the
 12 freedom of expression guaranteed by section 2(b) of the *Charter*, that
 13 infringement would likely be justified under section 1. Drawing on the Supreme
 14 Court of Canada's jurisprudence on the labelling of tobacco products, this paper
 15 posits that properly designed warning label legislation would be a
 16 constitutionally permissible response to the public health harms associated with
 17 alcohol consumption. The discussion begins by reviewing the health
 18 consequences of alcohol consumption and the existing regulatory framework
 19 governing alcoholic beverages in Canada. It then examines the legislative
 20 proposal before the Senate prior to analyzing the constitutional issues raised by
 21 this legislation. Specifically, it considers Parliament's legislative authority to
 22 enact mandatory warning labels and the constitutional compliance of this
 23 measure. It concludes by arguing that a federal system of mandatory,
 24 government-attributed health warning labels represents both sound public policy
 25 and a constitutionally defensible way of advancing critical public health
 26 objectives.

⁵World Health Organization, *No level of alcohol consumption is safe for our health*, News Release, (4 January 2023), online: < <https://www.who.int/europe/news/item/04-01-2023-no-level-of-alcohol-consumption-is-safe-for-our-health>>. The World Health Organization has established a Technical Advisory Group (TAG) for alcohol labelling. This group “will advise on building evidence for alcohol labelling, including the specific task of developing evidence on the impact of health warning labels and producing specific guidance to inform decisions of Member States.” Online: <[https://www.who.int/europe/groups/technical-advisory-group-\(tag\)-for-alcohol-labelling](https://www.who.int/europe/groups/technical-advisory-group-(tag)-for-alcohol-labelling)>.

⁶S-202, *An Act to amend the Food and Drugs Act (warning label on alcoholic beverages)*, 1st Sess, 45th Parl 2025 at s 1 online: <<https://www.parl.ca/DocumentViewer/en/45-1/bill/S-202/first-reading>>.

⁷This is Senator Brazeau’s second attempt at mandatory health warning labels on alcoholic beverages. Bill S-254 was introduced in November 2022; it died when Parliament concluded its session. S-254, *An Act to amend the Food and Drugs Act (warning label on alcoholic beverages)*, 1st Sess, 44th Parl, 2021.

⁸*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. [*Charter*].

⁹*Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.

Alcohol and Health Effects of Alcohol Consumption

Alcoholic beverages contain ethanol (ethyl alcohol), a clear, psychoactive liquid that is typically produced through the fermentation of sugars.¹⁰ The concentration of ethanol varies among different types of alcoholic beverages (wine, beer and spirits). This means that the size of a standard drink varies considerably depending on the type of alcoholic beverage being consumed. For instance, in Canada a standard drink contains approximately 17.05 millilitres of pure alcohol, which is equivalent to 341 millilitres of beer containing 5 percent alcohol by volume, 142 millilitres of wine containing 12 percent alcohol by volume, or 43 millilitres of spirits containing 40 percent alcohol by volume.¹¹ Standard drink measurements are critical because they are the basis of current public health guidance.¹²

In small doses, ethanol depresses the central nervous system resulting in feelings of relaxation and reduced anxiety.¹³ Ethanol can also trigger a dopamine release in the brain which may lead to an individual feeling more confident and can lead to increased sociability.¹⁴ Unfortunately, short-term overconsumption of alcohol results in poor coordination and impairs judgment which can lead to violence, impaired driving and other forms of risky behaviour.¹⁵ More recently, scientific research has shifted towards the long-term consequences of regular alcohol consumption.

In 1988, the International Agency on Cancer Research declared alcohol a carcinogen.¹⁶ Studies have shown that the consumption of alcohol can lead to 7 different types of cancers: breast, colon and rectum, liver, esophagus, larynx, mouth, and throat.¹⁷ In 2020, it was estimated that alcohol consumption was

¹⁰JF Cacho & R Lopez, "Food and Nutritional Analysis: Alcoholic Beverages" 2005 Encyclopedia of Analytical Science (2nd ed) 285 at 285; see also, World Health Organization, "Alcohol" (28 June 2024), online: <<https://perma.cc/LZJ7-CMVR>>. See Ethanol, *Chemical Safety Facts* (May 2026) online: <<https://www.chemicalsafetyfacts.org/chemicals/ethanol/>>; see also, Health Canada, *About Alcohol*, (2025) online: <<https://www.canada.ca/en/health-canada/services/substance-use/alcohol/about.html>>.

¹¹Government of Canada, *Low-Risk alcohol drinking guidelines*, (2025) online: <<https://www.canada.ca/en/health-canada/services/substance-use/alcohol/low-risk-alcohol-drinking-guidelines.html>>. Washington State Liquor and Cannabis Board, *Understanding Alcohol Content*, (2026), online: <https://lcb.wa.gov/education/understanding_alcohol_content>.

¹²Canadian Centre on Substance Use and Addiction, *Canada's Guidance on Alcohol and Health: Final Report*, (January 16, 2023), online: <<https://www.ccsa.ca/en/canadas-guidance-alcohol-and-health-final-report>>.

¹³Jena Hilliard, "Is Alcohol a Depressant?" (2026) Addiction Center (reviewed by Kristen Fuller, MD), online: <<https://www.addictioncenter.com/alcohol/is-alcohol-a-depressant/>>.

¹⁴Alex Paton, "Alcohol in the body" (2005) 85 (7) *BMJ* 330, online: <<https://pmc.ncbi.nlm.nih.gov/articles/PMC543875/>>.

¹⁵International Agency on Cancer Research (1988), Alcohol Drinking, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*, No. 44 PMID: 3236394

¹⁶*Ibid.*

¹⁷Center for Disease Control, *Alcohol and Cancer*, (January 29, 2026), available online: <<https://perma.cc/RD4H-DE5X>>

responsible for over 741,000 new cancer cases.¹⁸ The regular consumption of alcohol has also been known to cause a number of other debilitating diseases, including heart disease,¹⁹ liver disease, and cognitive and memory issues.²⁰ Consumption during pregnancy is also risky. Alcohol also crosses the placenta during pregnancy and may result in fetal alcohol spectrum disorder, a lifelong condition associated with significant physical, cognitive, and behavioural impairments.²¹ Finally, alcohol is addictive and regular consumption of alcohol can lead to alcohol use disorder. Alcohol use disorder has both physical and psychological impacts, including disruptions to family and work.²²

While the burden of disease associated with alcohol consumption is enough to be concerning, the economic impact is equally alarming. It is now estimated that the economic cost of alcohol consumption is approaching \$20 billion dollars a year as a result of health care expenditures, lost productivity, and other social consequences.²³ Although, some of these costs are offset by the revenue raised by the heavy taxation imposed on alcohol, it remains a significant financial burden on Canadian society.²⁴

Public health advocates have pushed to increase awareness of these detrimental effects, hoping that increased public knowledge will alter consumption patterns. Government intervention is needed to achieve this goal.²⁵ In Canada, the federal and provincial governments already use legislative and regulatory means to control the alcohol industry. Understanding this legal and regulatory framework is critical to evaluating the constitutional issues surrounding mandatory health warning labels on alcoholic beverages; therefore, the following section examines the framework for regulating alcohol in Canada.

¹⁸Harriet Rumgay, et al., *Global burden of cancer in 2020 attributable to alcohol consumption: a population-based study*, (2021) 22(8) *The Lancet* 1071 at 1071.

¹⁹ Not all health information about alcohol is negative. Some studies have demonstrated that the consumption of red wine may offer beneficial heart protection; however, these benefits may be overstated or misunderstood. Gemma Chiva-Blanch & Lina Badimon, *Benefits and Risks of Moderate Alcohol Consumption on Cardiovascular Disease: Current Findings and Controversies*, (2019) 12(1) *Nutrients* 108; PMID 31906033. See also, John Hopkins Medicine, *Alcohol Heart Health: Separating Fact from Fiction* (2026), online: <<https://www.hopkinsmedicine.org/health/wellness-and-prevention/alcohol-and-heart-health-separating-fact-from-fiction>>.

²⁰*Supra* note 3 at 8-11.

²¹*Ibid* at 9.

²²*Ibid* at 33. See also, Tuasif Huq, et al, “A Systematic Review of Household and Family Alcohol Use and Childhood Neurodevelopmental Outcomes in Low-and Middle-Income Countries” (2020) 52(6) *Child Psychiatry Hum Dev* 1194 at 1195 online: <<https://pmc.ncbi.nlm.nih.gov/articles/PMC8528783/>>.

²³Adam Sherk, “At-a-glance – The alcohol deficit: Canadian government revenue and societal costs from alcohol” (2020) online: <<https://doi.org/10.24095/hpcdp.40.5/6.02>>.

²⁴Adam Sherk, “Canada’s Alcohol Deficit, 2007-2020: Social Cost, Public Revenue, Magnitudes of Alcohol Use, and the Per-Drink Net Deficit for a Fourteen-Year Period” (2024) 85 (3) *J Stud Alcohol Drugs* 306.

²⁵See the recommendations from the Canadian Centre on Substance Use and Addiction, *supra* note 3.

1 Regulation of Alcohol in Canada

2
3 The regulation of alcoholic beverages in Canada is an area of shared
4 jurisdiction between the federal and provincial governments. The federal
5 government regulates certain areas of manufacturing and importation,
6 compositional standards, and excise duties of alcohol beverages, while provinces
7 exercise authority over their sale, distribution, taxation, and retail consumption.
8 Provinces also regulate certain areas related to manufacturing and importation.
9 Both the federal and provincial governments can regulate public health aspects.
10 This overlapping jurisdiction provides both levels of government a constitutional
11 basis for further public health initiatives, including mandatory health warning
12 labels. This section will briefly review each level of governments jurisdiction
13 related to alcohol.

14 15 Federal Jurisdiction

16
17 Parliament has several heads of power under section 91 of the *Constitution*
18 *Act 1867* that support the regulation of the alcohol industry. First, under section
19 91 (3), Parliament has the power to impose both direct and indirect taxes. Using
20 this power, Parliament imposes excise duties on alcohol manufacturers through
21 the *Excise Act*²⁶ and the *Excise Act 2001*.²⁷ Public health organizations have
22 advocated for increased taxes on alcoholic beverages because there is a strong
23 correlation between higher price points and lower levels of alcohol
24 consumption.²⁸

25 Parliament also has the power to regulate the alcohol industry using its
26 jurisdiction in criminal law power, under section 91 (27).²⁹ This head of power
27 allows Parliament to create laws prohibiting behaviour that is likely to cause
28 harm to humans. Parliament has used this jurisdiction to pass the *Food and*
29 *Drugs Act*.³⁰ Under the *Food and Drugs Act*, the federal government regulates
30 the compositional standards of alcoholic beverages.³¹

²⁶RSC 1985, c. E-14. This *Act* imposes an excise duty on beer.

²⁷SC 2002, c. 22. This *Act* imposes an excise duty on spirits, wines, and other products. Excise duties are subject to yearly increases; which are currently capped at 2%. Department of Finance Canada, “Extending alcohol excise duty relief to support Canadian businesses” (2026) online: <<https://www.canada.ca/en/department-finance/news/2026/04/extending-alcohol-excise-duty-relief-to-support-canadian-businesses.html>>.

²⁸Tim Stockwell, Jiali Leng, & Jodi Sturge, “Alcohol Pricing and Public Health in Canada: Issues and Opportunities” (2006) Centre for Addictions Research of BC, online: <<https://www.uvic.ca/research/centres/cisur/assets/docs/report-alcohol-pricing-public-health-cnd.pdf>>.

²⁹*Reference re Validity of Section 5(a) of the Dairy Industry Act*, [1949] SCR 1 at 49 [*Margarine Reference*]; See also *R v Malmo-Levine* [2003] 3 SCR 571 at para 74.

³⁰See *Food and Drugs Act*, RSC 1985, c F-27. The Supreme Court of Canada confirmed that the *Food and Drugs Act* is valid criminal law in *Reference re Firearms Act*, 2000 SCC 31 at para 29.

³¹See the Food Compositional Standards Document, volume 2-Alcoholic beverages, online: <<https://inspection.canada.ca/en/about-cfia/acts-and-regulations/list-acts-and-regulations/documents-incorporated-reference/canadian-food-compositional-standards-0>> which is incorporated into the *Food and Drug Regulations*, CRC, c 870.

1 Parliament has also used its powers under section 91(2), trade and
 2 commerce, to regulate trademarks.³² Sections 11.11-11.24 of the *Trademarks*
 3 *Act*,³³ require manufacturers of alcoholic beverages to adhere to geographical
 4 indications. This means that the labelling and naming of alcoholic beverages is
 5 restricted in certain situations. For instance, wine that contains dissolved carbon
 6 dioxide can only be called champagne if it is produced in Champagne, France
 7 and meets the regional standards; other wines containing dissolved carbon
 8 dioxide may be called sparkling wine.³⁴ A manufacturer cannot use a
 9 geographical indication or label their product with one if it does not meet the
 10 requirements found in the *Trademarks Act*.

11 Finally, Parliament also has the power to legislate under Peace, Order, and
 12 Good Government (POGG) in section 91. While POGG was historically
 13 considered a residual power provision, the Supreme Court of Canada (SCC) has
 14 recognized that POGG can also be used to justify federal laws that address
 15 national concerns or emergencies.³⁵ Although it is not currently being used to
 16 regulate aspects of the alcohol industry, it was used as the source of jurisdiction
 17 for Parliament's laws on prohibition.³⁶ Taken together, these constitutional
 18 powers provide Parliament with extensive authority to regulate the alcoholic
 19 beverages industry. As discussed later, the criminal law power provides the
 20 strongest constitutional basis for mandatory health warning labels.

21 22 *Provincial Jurisdiction*

23
24 Provincial governments also possess significant jurisdiction over alcohol
 25 regulation. Pursuant to their jurisdictions under sections 92(7), 92(13), and
 26 92(16) of the *Constitution Act 1867*, the Supreme Court of Canada concluded
 27 that the provinces have jurisdiction over the bulk of health care.³⁷ Pursuant to
 28 these powers, provincial governments can determine what types of programs and
 29 counselling that may be publicly provided to people living with alcohol use
 30 disorder and can use this jurisdiction to mandate public health initiatives.³⁸

31 Provincial governments also have jurisdiction under section 92 (13)
 32 property and civil rights, and section 92 (16) local matters, to determine how

³²See *Kirkbi AG v Ritvik Holdings Inc.*, [2005] 3 SCR 302.

³³RSC 1985, c T-13.

³⁴Canadian Intellectual Property Office, List of Geographical Indications, Champagne, online: <<https://www.ic.gc.ca/cipo/listgiws.nsf/gimenu-eng?readform&sort=all&ord=1>>. See also, Dana Beninati, "Champagne vs Sparkling Wine: What's the Difference" (February 2023), *The Food Network*, online: <<https://www.foodnetwork.com/how-to/packages/food-network-essentials/champagne-vs-sparkling-wine>>.

³⁵*Re: Anti-Inflation Act*, [1976] 2 SCR 373; *References re Greenhouse Gas Pollution Pricing Act*, [2021] 1 SCR 175.

³⁶*Local Prohibition case (Attorney-General for Ontario) v. Attorney-General for the Dominion*, [1896] AC 348; see also, *Attorney-General for Ontario v. Canada Temperance Federation*, [1946] AC 193. In *Local Prohibition*, it was recognized that prohibition is an area of double aspect.

³⁷*Schneider v The Queen*, [1982] 2 SCR 112 at 137.

³⁸Government of Canada, Canadian Drugs and Substances Strategy: Substance use services and supports (2024), online: <<https://www.canada.ca/en/health-canada/services/substance-use/canadian-drugs-substances-strategy/substance-use-services-supports.html>>.

alcohol products are sold within their respective jurisdictions. Each province has established a regulatory body responsible for licensing, retail oversight, and the enforcement of these laws.³⁹ These regimes regulate matters including hours of sale, licensing requirements, retail distribution models, minimum drinking ages, etc.⁴⁰ Although similarities exist across Canada, each province is unique, and differences remain between these schemes.

Provincial governments also have the power to impose tax on alcohol. Provincial taxation structures vary considerably and may distinguish between different categories of alcohol or their place of production. For example, the government of Ontario imposes different tax rates on domestic and imported wines and provides preferential treatment to locally produced beers.⁴¹ Similarly to the federal government, public health organizations are urging provincial governments to increase provincial tax rates on alcohol to support public health purposes.⁴²

The regulation of the alcohol industry is complex and involves a myriad of provincial and federal government laws. This shared jurisdiction provides the constitutional context for proposals requiring mandatory health warning labels on alcoholic beverages. The next section discusses how mandatory warning labels may be designed to promote public health while remaining consistent with Canada's constitutional framework.

Health Warning Labels on Alcoholic Beverages

Health warning labels have long been employed as a public health intervention to educate the public about hazardous products. Their most prolific use has been in the tobacco industry where mandatory warning labels are a critical educational tool.⁴³ The primary goal of health warning labels is to

³⁹For instance, the Ontario government has established the Alcohol and Gaming Commission, *Alcohol and Gaming Commission of Ontario Act*, 2019, SO 2019 c 15, sched 1, which is responsible for overseeing the sale and service of alcohol in the province. See also, Alberta Gaming, Liquor & Cannabis Commission created by the *Gaming, Liquor, Cannabis Act*, RSA 2000, G-1; see also Manitoba Liquor and Lotteries Corporation which creates *The Liquor, Gaming and Cannabis Control Act*, CCSM c L153.

⁴⁰See *ibid*. See also information pages for the above bodies at Manitoba Liquor & Lotteries Corporation, online: <<https://www.mbl.ca/>>; See Alcohol and Gaming Commission of Ontario, online <<https://www.agco.ca/en>>; Alberta Gaming, Liquor & Cannabis, online: <<https://aglc.ca/>>.

⁴¹*Liquor Tax Act*, 1996, SO 1996, C 26, Ontario wine is subject to a 0% tax, but non-Ontario wine is subject to a base rate of 12% tax; beer in Ontario is taxed differently depending on whether it is draft or non-draft and whether it is an Ontario-based microbrewery (federal excise duties and sales taxes apply over and above provincial taxes).

⁴²World Health Organization, *Raising taxes on alcohol to save lives and protect public health*, online: <<https://www.who.int/europe/activities/raising-taxes-on-alcohol-to-save-lives-and-protect-public-health>>; Kate Dubinski, "As Ontario expands booze sales, public health officials urge caution and stricter rules" CBC News, (July 19, 2024) online: <<https://perma.cc/AE3X-Y49M>>.

⁴³Rob Cunningham, "Tobacco package health warnings: a global success story" (2022) 31(2) *Tobacco Control* 272 <<http://orcid.org/0000-0003-2219-2384>>.

1 provide consumers with clear, accessible information about the health
 2 consequences of the product at the point of purchase and consumption.⁴⁴ People
 3 who consume the product may be aware that it is “bad” for their health but may
 4 not be aware of the specific health risks associated with the consumption; a clear
 5 warning label at the time of consumption fills this knowledge gap and may
 6 impact on consumer choice and consumption patterns.⁴⁵ For alcohol health
 7 warning labels, the largest push has been to highlight the link between alcohol
 8 consumption and cancer.⁴⁶ While proponents highlight the potential public
 9 health aspects of warning labels, labels typically face fierce industry opposition.
 10 The alcohol industry argues that there is no evidence that warning labels are
 11 effective and lack scientific evidence supporting warning claims (particularly the
 12 causal connection between alcohol consumption and cancer); that mandatory
 13 labelling will negatively impact trade and have severe economic repercussions;
 14 and, that the industry voluntarily acts as responsible stakeholders in public health
 15 initiatives.⁴⁷ These arguments echo those made by the tobacco industry when
 16 health warning labels were introduced for tobacco products.⁴⁸

17 Health warning labels differ considerably in their design: size, placement,
 18 content, format (textual, graphic, or combination) are all variables that need to
 19 be considered when implementing a labelling system. Empirical evidence has
 20 consistently demonstrated that the design of the warning label drastically
 21 impacts on its effectiveness.⁴⁹ First, for health warning labels, size matters.⁵⁰ For
 22 tobacco health warning labels, the World Health Organization and the
 23 *Framework Convention on Tobacco Control*⁵¹ recommend that warning labels
 24 take up 50% of the label; in Canada, the warning label covers 75% of the front

⁴⁴Conference of the Parties to the WHO Framework Convention on Tobacco Control. Guidelines for Implementation of Article 11 of the WHO Framework Convention on Tobacco Control (Packaging and Labelling of Tobacco Products), 2008. Online: <https://www.who.int/fctc/guidelines/article_11.pdf>. See also Cunningham, *supra* note 42.

⁴⁵World Health Organization, *Encouraging health warnings on tobacco packaging*, (date accessed: May 5, 2026) online: < <https://www.who.int/europe/activities/encouraging-health-warnings-on-tobacco-packaging>>.

⁴⁶ World Health Organization, *No level of alcohol consumption is safe for our health*, News Release, (4 January 2023), online: < <https://www.who.int/europe/news/item/04-01-2023-no-level-of-alcohol-consumption-is-safe-for-our-health>>.

⁴⁷Eadaoin Cott, et al, “Labelling the debate: a thematic analysis of alcohol industry submissions to the EU consultation on alcohol health warnings in Ireland” (2025) 21 (34) *Global Health*, online: <<https://pmc.ncbi.nlm.nih.gov/articles/PMC12125837/>>.

⁴⁸Eric Crosbie, et al, “Overcoming tobacco industry opposition to standardized packaging in the Americas” (2022) 46 *Rev Panam Salud Publica* e145, online: <<https://pmc.ncbi.nlm.nih.gov/articles/PMC9534348/>>.

⁴⁹Cunningham, *supra* note 43.

⁵⁰John P Pierce, et al, “Real-world exposure to graphic warning labels on cigarette packages in US smokers: The CASA randomized trial protocol” (2020) *Contemp Clin Trials* 98 online: <<https://pmc.ncbi.nlm.nih.gov/articles/PMC7502239/>>.

⁵¹*WHO Framework Convention on Tobacco Control*, 21 May 2003, 2302 UNTS 166, art 5.3 (entered into force 27 February 2005) [WHO FCTC].

1 and back packaging of tobacco products.⁵² This size of label makes the warning
 2 label difficult to hide or disguise, it disrupts the product's commercial branding,
 3 and draws the attention of the end consumer.⁵³

4 In addition to sizing, the type and content of the health warnings impact on
 5 their effectiveness. Graphic picture warning labels are often more effective than
 6 merely textual warnings.⁵⁴ In tobacco health warning labels, both textual and
 7 graphic images have been used. Currently, best practices recommend the use of
 8 graphic images that are accompanied with short textual information messages.
 9 Canada has adopted this approach in its tobacco control regime. For instance, a
 10 consumer may purchase a package that has a warning label that contains a
 11 graphic picture of a tongue with a cancerous tumour protruding on it with the
 12 statement that tobacco causes tongue cancer.⁵⁵ In Canada, the government has
 13 approved over a dozen different warning labels and tobacco companies must
 14 rotate between all the labels and ensure equal use of the labels.⁵⁶ The Canadian
 15 government also changes the approved labels every 24-36 months to prevent
 16 message fatigue.

17 The placement of warning labels also impacts on their effectiveness. For
 18 instance, labels that are placed on the back of packaging are not as effective as
 19 those on the front.⁵⁷ Canada, in tobacco labelling, became the first country to
 20 introduce warning labels on each individual cigarette, in addition to maintaining
 21 mandatory warning labels on packaging.⁵⁸ This additional step makes "health
 22 warning labels virtually unavoidable."⁵⁹ Ensuring that labels are seen is critical
 23 for effectiveness. Warning labels on alcoholic beverages should adhere to best
 24 practices to increase effectiveness.
 25

⁵²*Ibid* at Art 11 (1)(iv). Canada has adopted plain packaging for tobacco products. This means that a tobacco companies name may appear on the package, but the name must be devoid of all standard logos, trademarks and get-up typically associated with tobacco companies. Packaging now consists of a graphic warning label covering 75% of the package with the company's name and cigarette brand appearing in standardized black font on a taupe backdrop. See *Tobacco Products Appearance, Packaging and Labelling Regulations*, SOR 2019-107.

⁵³Cunningham, *supra* note 43. See also, John P Pierce, et al, "Real-world exposure to graphic warning labels on cigarette packages in US smokers: The CASA randomized trial protocol" (2020) *Contemp Clin Trials* 98 online: <<https://pmc.ncbi.nlm.nih.gov/articles/PMC7502239/>>.

⁵³*Supra* note 51.

⁵⁴Cunningham, *supra* note 43.

⁵⁵Government of Canada, *Health-related messages for all tobacco product packaging: Health warnings on packages*, (2026), online: <<https://www.canada.ca/en/health-canada/services/smoking-tobacco/regulating-tobacco-vaping/tobacco/packaging-warnings.html>>.

⁵⁶*Ibid*.

⁵⁷Helene Normann Ronnow, "The Effect of Front-of-Pack Nutritional Labels and Back-of Pack Tables on Dietary Quality" 12 (6) *Nutrients* 1704 (June 6, 2020).

⁵⁸Health Canada, News Release, *Canada to become first country in the world to require health warnings on individual cigarettes* (May 31, 2023), Ottawa, Ontario. Online: <<https://www.canada.ca/en/health-canada/news/2023/05/canada-to-become-first-country-in-the-world-to-require-health-warnings-on-individual-cigarettes.html>>.

⁵⁹Canada will be the first country to print warning labels on each cigarette: "Poison in every puff" *CBS News* (June 1, 2023), online: <https://www.cbsnews.com/news/canada-warning-labels-individual-cigarettes-poison-in-every-puff/>.

Legal Proposals for Health Warning Labels on Alcoholic Beverages

Unlike tobacco products, health warning labels on alcoholic beverages are underutilized in most jurisdictions.⁶⁰ Nevertheless, international momentum toward warning labels on alcoholic beverages has increased. Ireland became the first country in the world to mandate labelling of alcoholic beverages requiring a warning label linking cancer to alcohol consumption.⁶¹ Unfortunately, the implementation of this law has been delayed; the Irish government has cited economic uncertainty, the need for further consensus-building with the European Union and potential retaliatory tariffs.⁶² Other jurisdictions have different label requirements, though few countries adopt rigorous labelling akin to those of tobacco.⁶³

In Canada, there have been several proposals regarding the labelling of alcoholic beverages. Most notably, legislation currently before the Senate proposes amendments to the *Food and Drugs Act* that would require the health warning labels on alcoholic beverages. Specifically, labels would contain four key aspects: a direct warning about cancer risks; the exact volume of a standard drink; the number of standard drinks in a package; and the number of standard drinks that should not be exceeded for health purposes.⁶⁴ The proposed legislation only identifies the basic content of the warning labels, critical design features are left to future regulations. Matters such as the size, placement, format, and visual presentation impact the effectiveness of the label and the constitutional validity of the warning labels.

Despite widespread support from public health organization, proposals for mandatory alcohol warnings labels continue to encounter significant resistance by the alcohol industry; Canada will have to contend with these political

⁶⁰Kayla M. Joyce, et al. “A systematic review on the impact of alcohol warning labels” (2024) 42 (3) *Journal of Addictive Diseases* 170. See also, Jinhui Zhao, et al, “The Effects of Alcohol Warning Labels on Population Alcohol Consumption: An Interrupted Time Series Analysis of Alcohol Sales in Yukon, Canada” (2020) 81(2) *Journal of Studies on Alcohol and Drugs* 225, online: <<https://www.jsad.com/doi/full/10.15288/jsad.2020.81.225>>. Sybil Goulet-Stock, “A comparison of labelling requirements for alcohol, tobacco, and cannabis across WHO regions and implications for alcohol labelling policy in Canada” (2026) 154 *International Journal of Drug Policy* online: <www.unsw.edu.au/newsroom/news/2025/07/why-its-time-for-cancer-warning-labels-for-alcohol>.

⁶¹See Stephanie M Rutledge and Frank Murray, “Failure to introduce alcohol health-warning labels in Ireland” (2026) 407 *The Lancet* 4072288 online: <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(26\)00914-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(26)00914-1/fulltext)>.

⁶²Shawn Pogatchnik, “Ireland to delay cancer warnings on alcoholic drinks as US tariff risks rise” (July 15, 2025), *Politico*, online: <<https://perma.cc/8QGR-MQNQ>>.

⁶³In Australia, alcohol containers must include a warning label advertising harms associated with consuming while pregnant. See Food Standards Australia/New Zealand, *Pregnancy warning labels on alcoholic beverages*, (2025), online <<https://www.foodstandards.gov.au/business/labelling/pregnancy-warning-labels>>. The United States also requires a health warning statement regarding consumption by pregnant women and the impact of consumption on driving. See the *Alcoholic Beverage Labeling Act* of 1988, 27 U.S.C. §§ 213–219.

⁶⁴S-202, *An Act to amend the Food and Drugs Act (warning label on alcoholic beverages)*, 1st Sess, 45th Parl 2025 at s 1 online: <<https://www.parl.ca/DocumentViewer/en/45-1/bill/S-202/firs-t-reading>>.

pressures should it choose to pursue this public health initiative.⁶⁵ This paper will not delve into the politics, rather it will address the legal arguments on whether mandatory warning labels can be implemented in a manner consistent with Canada’s constitutional framework.

Constitutional Authority to Require Health Warning Labels

Canada is a constitutional democracy; any law that contravenes the constitution is of no force or effect to the extent of the inconsistency.⁶⁶ This entails two follow-up questions when it comes to labelling of alcoholic beverages: does the federal government have the jurisdiction to pass a mandatory labelling law and would such a law violate the *Charter*? Each question will be analysed in turn.

Jurisdictional Issues

The provinces exercise broad jurisdiction over public health, retail distribution and the sale of alcoholic beverages while Parliament regulates standards, criminal law, and aspects of international and interprovincial trade. Consequently, legislation requiring health warning labels could, in theory, be enacted by either level of government under the doctrine of double aspect.⁶⁷ From a practical perspective, however, a federal legislative scheme is preferable. A federal warning label system ensures uniform health messaging throughout the country, reduces compliance costs for manufacturers and avoids the fragmented regulatory landscape that would happen if each province adopted its own labelling regime. As such, the analysis will focus on whether Parliament has jurisdiction to require mandatory health warnings on alcoholic beverages.

In short, Parliament has the jurisdiction to pass laws requiring warning labels on alcohol products using its jurisdiction in criminal law under section 91(27) of the *Constitution Act 1867*. While the Supreme Court of Canada (SCC) has not directly ruled on mandatory warning labels for alcoholic beverages, its

⁶⁵Tim Stockwell, et. al, “Cancer Warning Labels on Alcohol Containers: A consumer’s Right to Know, a Government’s Responsibility to Inform, and an Industry’s Power to Thwart” (2020) 81 (2) *Journal of Studies on Alcohol and Drugs* 284. See Hansard Debates of the Senate (1st Session, 45th Parliament Volume 154, Issue 56) on S-202, *An Act to amend the Food and Drugs Act (warning label on alcoholic beverages)*, 1st Sess, 45th Parl 2025, online: <https://sencanada.ca/en/content/sen/chamber/451/debates/056db_2026-03-10-e?language=e>. See *supra* note 61.

⁶⁶*Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 52., see also *Re Secession of Quebec*, [1998] 2 SCR 217 at para 72.

⁶⁷The doctrine of double aspect was described by the Judicial Committee of the Privy Council in 1883. In *Hodge v The Queen*, double aspect was explained as “subjected which in one aspect and for one purpose fall within sect. 92, may in another aspect and for another purpose fall within sect. 91.” (1883) 9 App Cas 117 at 130. Furthermore, “[t]his “double aspect” doctrine allows governments at two levels to enact similar statutes or regulations “when the contrast between the relative importance of the two features is not so sharp”. *Rogers Communications Inc v Chateauguay (City)* 2016 SCC 23 at para 50 citing *Multiple Access Ltd v McCutcheon*, [1982] 2 SCR 161 at 182.

jurisprudence concerning health warning labels on tobacco products provides a highly persuasive constitutional framework to resolve the issue. *RJR-MacDonald Inc. v Canada (Attorney General)*,⁶⁸ establishes that Parliament may require health warning labels on harmful consumer products as a valid exercise of its criminal law power. In *RJR-MacDonald*, the SCC considered both Parliament's legislative authority to enact the *Tobacco Products Control Act*⁶⁹ and the legislation's compatibility with the *Charter*.

In *RJR-MacDonald*, the SCC concluded Parliament has jurisdiction to require warning labels on tobacco products under section 91(27). For a law to be criminal pursuant to section 91(27), the law must contain three essential features: a prohibition, a penalty, and criminal law purpose.⁷⁰ The impugned law, *The Tobacco Products Control Act*, met all three requirements. Firstly, it prohibited a variety of acts related to the sale and advertising of tobacco products, including a prohibition on the sale of tobacco products without health warning labels.⁷¹ Secondly, the legislation created a series of penalties for contravening the *Act*, including both monetary fines and imprisonment.⁷² Finally, the SCC also concluded that the impugned legislation pursued the criminal purpose of protecting Canadians from the well-documented harms associated with tobacco consumption.⁷³

The SCC elaborated on several pertinent arguments that will be relevant when applying this law to warning labels on alcohol beverages. In terms of the criminal law power, the SCC ultimately concluded that criminal law is a plenary power whose scope is not fixed.⁷⁴ This allows criminal law to change and adapt to society's needs and, behaviours that had previously been legal, may be criminalized.⁷⁵ Even more relevant, the SCC recognized that Parliament, under the criminal law power, can criminalize ancillary behaviour while still allowing the targeted behaviour to remain legal. In the tobacco context, this meant that while the government was trying to stop people from smoking tobacco products, it was allowed to pass criminal law related to tobacco activity (advertising, labelling, sales, etc.) while still not criminalizing the actual act of smoking products.⁷⁶ The SCC recognized that it was likely not possible for the government to criminalize smoking itself because of the widespread use of tobacco products and the addictive qualities of the product.⁷⁷ Finally, the SCC also concluded that one of the ordinary aims of criminal law is to allow the

⁶⁸*RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 SCR 199.

⁶⁹SC 1988, c 20.

⁷⁰*Reference re Validity of Section 5(a) of the Dairy Industry Act*, [1949] SCR 1 at 49 [*Margarine Reference*]. The Court highlighted "public peace, order, security, health, morality" as criminal law purposes at 50.

⁷¹*Supra* note 68 at para 29.

⁷²*Ibid*.

⁷³*Ibid* at paras 30-32.

⁷⁴*Ibid* at para 28. See also *Scowby v Glendinning*, [1986] 2SCR 226 at 238.

⁷⁵*Ibid* at para 28. In a more recent case, the SCC confirmed that "criminal law must be able to respond to new and emerging matters." *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17 at para 69.

⁷⁶*Supra* note 68 at paras 50-51.

⁷⁷*Ibid* at paras 34-35.

1 government to protect the public from public health evils.⁷⁸ Based on the
 2 evidence before the court, the SCC ruled that “tobacco kills”.⁷⁹ Given the public
 3 health harms associated with tobacco products, the government maintains the
 4 right to criminalize elements related to tobacco consumption.

5 These principles apply with equal force to mandatory health warning labels
 6 on alcoholic beverages. First, like tobacco, consumption of alcohol is legal,⁸⁰ but
 7 as knowledge on the dangers associated with the consumption of alcohol
 8 changes, criminal law can grow and update to meet societal reality. Scientific
 9 understanding of alcohol’s long-term health consequences has evolved
 10 substantially, particularly regarding its causal relationship with several forms of
 11 cancer. The plenary nature of criminal law allows the government to use it to
 12 address societal concerns as they are temporally presented. Thus, while there
 13 were no historic laws requiring health warning labels on alcoholic beverages,
 14 today, such laws may be a necessary to protect Canadians from the public health
 15 harms caused by the consumption of alcohol.

16 Secondly, mandatory warning labels regulate the conditions under which
 17 alcoholic beverages may be lawfully sold rather than prohibiting their
 18 consumption, thereby mirroring the legislative approach upheld in *RJR-*
 19 *MacDonald*. The reduction or elimination of the consumption of alcohol is the
 20 legislative objective, but it remains legal while the government is outlawing
 21 ancillary behaviour (the sale of the product without appropriate health warnings).
 22 Like tobacco, alcohol is addictive and outlawing the consumption and sale will
 23 not stop consumption. The historical experience with alcohol prohibition
 24 supports this conclusion. Both Canada and the United States experimented with
 25 broad prohibitions on alcohol during the early twentieth century. Rather than
 26 eliminating alcohol consumption, prohibition contributed to the growth of
 27 organized crime, illicit markets, and widespread non-compliance.⁸¹ Current
 28 public health policy therefore focuses on harm reduction and education rather
 29 than outright prohibition.

30 Finally, the public health rationale behind mandatory warning labels also
 31 falls comfortably within the established purposes of criminal law. Alcohol, like
 32 the consumption of tobacco products, can be characterized as a public health
 33 evil. Alcohol can be addictive and regular consumption of alcohol has been
 34 linked to a plethora of health problems.⁸² The SCC has repeatedly recognized

⁷⁸In *Reference re Assisted Human Reproduction Act*, 2010 SCC 61 at para 62, McLachlin CJ stated “acts or conduct that have an injurious or undesirable effect on public health constitute public health evils that may properly be targeted by the criminal law”.

⁷⁹*Supra* note 68 at para 32.

⁸⁰The consumption of alcohol has not always been legal in Canada; prohibition laws were upheld under the peace, order and good government (POGG) clause. Recent jurisprudence has emphasized problematic aspects of expanding POGG and the rarity with which the national concern branch should be used. See *Reference re Greenhouse Gas Pollution Pricing Act*, [2021] 1 SCR 175 at paras 92-95. Given the evolution of case law on criminal law, as discussed throughout the argument, criminal law is a more appropriate head of power and would likely be relied on by Parliament should a challenge arise.

⁸¹Seth Harp, “Globalization of the U.S. Black Market: Prohibition, the War on Drugs, and the Case of Mexico” (2010) 85 New York University Law Review 1661 at 1671.

⁸²See *supra* notes 15-24.

1 that Parliament may enact criminal legislation to protect Canadians from threats
2 to health and safety.

3 While the bulk of jurisdiction over the regulation of health care does rest
4 with the provincial governments, legal precedent supports the fact that warning
5 labels for products that threaten public health and safety are within Parliament's
6 jurisdiction. Legislation requiring mandatory health warning labels on alcoholic
7 beverages constitutes a valid exercise of Parliament's criminal law power under
8 section 91(27). Although the provinces likely retain authority to enact
9 comparable measures, a federal legislative scheme provides national standards
10 while remaining grounded in established constitutional doctrine. The remaining
11 constitutional question whether such legislation would unjustifiably infringe the
12 freedom of expression guaranteed by section 2(b) of the *Charter*.

13 14 *Charter Issues*

15
16 While Parliament has the jurisdiction to require mandatory health warning
17 labels on alcoholic beverages, the legislation must also comply with the *Charter*.
18 The main issue would likely be not whether the legislation is an infringement of
19 the freedom of expression guaranteed by section 2(b) but whether the
20 infringement can be justified by the government under section 1 of the *Charter*.⁸³

21 All legal persons in Canada, including corporations, are guaranteed the right
22 to freedom of expression as protected under section 2(b) of the *Charter*.⁸⁴
23 Jurisprudence has articulated with why freedom of expression is protected in
24 Canada and what constitutes expression for the purposes of section 2(b). In the
25 foundational case of *Ford v Quebec*,⁸⁵ the SCC recognized that freedom of
26 expression promotes three interrelated values: the pursuit of truth, participation
27 in democratic decision-making, and individual self-fulfilment.⁸⁶ Given these
28 objectives, and in-line with the rules of constitutional law interpretation,⁸⁷
29 expression has been given a large and liberal interpretation. Expression is
30 protected if there is content and an appropriate form; content is protected
31 regardless of the message being delivered.⁸⁸ The SCC has likewise recognized
32 that commercial expression falls within the scope of section 2(b),⁸⁹ and that

⁸³To justify a *Charter* infringement, the government must meet the standard established by the SCC in *R v Oakes*, [1986] 1 SCR 103. It requires the government to establish that the legislation addresses a pressing and substantial issue, a rational connection between the means and the objective, that the legislation is minimally impairing and that there is proportionality in effect.

⁸⁴*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 91(24). Corporations are not given all the same *Charter* rights as a human; in order to be able to claim a *Charter* protection, the corporation must establish, "an interest falling within the scope of the guarantee, and one which accords with the purpose of that provision" *Quebec (Attorney General) v 9147-0732*, 2020 SCC 32 at para 6.

⁸⁵[1988] 2 SCR 712.

⁸⁶*Ibid* at 765-766.

⁸⁷*Quebec (Attorney General) v 9147-0732*, 2020 SCC 32 at paras 8-13. See also *Taylor v Newfoundland and Labrador*, 2026 SCC 5 at paras 70-102.

⁸⁸*R v Keegstra*, [1990] 3 SCR 697 at 729. *Hansman v Neufeld*, 2023 SCC 14 at para 169. See also *Irwin Toy Ltd v Quebec (Attorney General)* [1989] 1 SCR 928 at 968.

⁸⁹*Ford v. Quebec (Attorney General)*, [1988] 2 SCR 712.

1 compelled expression engages the same constitutional protection.⁹⁰ Consequently,
 2 legislation requiring manufacturers to display health warnings labels on their
 3 products constitutes a prima facie infringement of freedom of expression.

4 The SCC reached precisely this conclusion in *RJR-MacDonald*. The
 5 impugned provision, s 9 of the *Tobacco Products Act*, prohibited the sale of
 6 tobacco products unless the product packaging had “unattributed messages
 7 describing the health effects of the product as well as a list of the product’s toxic
 8 constituents and the quantities of those constituents present in it.”⁹¹ The Court
 9 unanimously concluded that these requirements compelled manufacturers to
 10 convey government-mandated messages and therefore infringed section 2(b).
 11 The Court disagreed on whether the infringement could be justified under section
 12 1 of the *Charter*.

13 In a 5-4 split decision, the majority concluded that this violation could not
 14 be justified under section 1. The crux of the differential judicial rulings focused
 15 on the unattributed nature of the health warning. The majority concluded that the
 16 violation of section 2(b) could not be justified because the government was
 17 unable to adduce evidence demonstrating that the law was minimally
 18 impairing.⁹² The absence of sufficient evidentiary support proving that
 19 unattributed messages on the warning labels were critical to the government’s
 20 objective, proved fatal to the government’s justification. This case demonstrated
 21 that even compelling public health objectives must be pursued through carefully
 22 tailored and evidentially justified legislative measures.

23 Parliament responded to *RJR-MacDonald* by enacting the *Tobacco Act*⁹³
 24 and its regulation *Tobacco Products Information Regulations*.⁹⁴ The revised
 25 legislative scheme sought to address the constitutional deficiencies the SCC had
 26 identified with the *Tobacco Products Act*, while still accomplishing the
 27 government tobacco control objectives. In terms of the health warning labels,
 28 two key differences were adopted in the *Tobacco Act*: 1. the size of the health
 29 warning was increased from covering 33 percent of the packaging to 50% of the
 30 packaging; 2. the health warnings now being attributed to the government of
 31 Canada. In addition to the changes and refinement to the legislation itself, the
 32 government provided compelling evidence justifying the adoption of the laws.
 33 These changes formed the basis of the Supreme Court’s subsequent decision in
 34 *Canada (Attorney General) v JTI-MacDonald Corp.*⁹⁵

35 In *JTI-Macdonald*, the SCC concluded that mandatory warning labels are a
 36 violation of section 2(b).⁹⁶ Although, tobacco manufacturers were still able to
 37 use 50% of the packaging to convey messages to the consumer, the large size of
 38 the warning label may nevertheless have interfered with how the tobacco
 39 manufacturer’s wished to express themselves.⁹⁷ This interference was enough to

⁹⁰*Slaight Communications v Davidson* [1989] 1 SCR 1038.

⁹¹*Supra* note 68 at para 8.

⁹²*Ibid* at para 174.

⁹³SC 1997 c. 13.

⁹⁴SOR/2000-272.

⁹⁵2007 SCC 30.

⁹⁶*Ibid* at para 132.

⁹⁷*Ibid*.

1 trigger a violation of the freedom of expression as protected by section 2(b). The
 2 SCC then had to consider whether the infringement of the *Charter* right was
 3 justified under section 1.

4 Applying the *Oakes* framework, which was developed for a section 1
 5 analysis, the SCC concluded that the government established that public
 6 education of the harms of tobacco is a pressing and substantial purpose. The
 7 evidence demonstrated that many consumers were not adequately informed
 8 about the dangers associated with tobacco products and that smoking was a
 9 public health hazard. Furthermore, improved health information furthered
 10 Parliament's broader public health objective of reducing tobacco consumption.⁹⁸
 11 The Court also found that there was a rational connection between mandatory
 12 warning labels and the government objectives. The government introduced
 13 extensive evidence demonstrating the efficacy of warning labels on tobacco
 14 products and its relationship with consumer education and public health
 15 initiatives. The government demonstrated a clear and logical relationship
 16 between the means adopted and the legislative goal.⁹⁹

17 The Court then had to determine whether the legislation was minimally
 18 impairing. Minimal impairment is not an exact standard, and the government
 19 must only prove that the approach adopted falls within "a range of reasonable
 20 alternatives" and courts should give deference to the government when it is
 21 addressing complex social problems.¹⁰⁰ Thus, under minimal impairment, the
 22 Court had to consider whether the changes in the *Tobacco Act* regarding
 23 mandatory labels, including the size increase, can be considered minimally
 24 impairing.

25 Building on the deficiencies identified in *RJR-MacDonald*, Parliament had
 26 refined both the legislative scheme and supporting evidentiary record, and this
 27 led the Court to ultimately conclude these new provisions were minimally
 28 impairing. The Court found that the warnings were now attributed to the
 29 Government of Canada and their size and design reflected emerging
 30 international best practices. The WHO had endorsed large, highly visible
 31 warning labels covering at least 50% of the product package as an effective
 32 tobacco control measure.¹⁰¹ This endorsement was used by Parliament to justify
 33 adopting more effective and rigorous standards to support its pressing and
 34 substantial purposes. This demonstrates that mandatory warning labels that
 35 cover 50% of the packaging is within the range of reasonable alternatives
 36 available to Parliament to address this complex social problem.

37 Finally, the SCC examined the proportionality of the effects. A fulsome
 38 analysis of the proportionality of effects requires the court to examine both the
 39 salutary and deleterious effects of the impugned laws.¹⁰² It is at this stage where
 40 the impact of the *Charter* breach on the effected individual is to be weighed

⁹⁸*Ibid* at para 134.

⁹⁹*Ibid* at para 135. See also *Alberta v Hutterian Brethren of Wilson Colony*, [2009] 2 SCR 567 at para 48 where the Court explains a rational connection.

¹⁰⁰*Hutterian Brethren*, *ibid* at paras 53-55.

¹⁰¹*Supra* note 95 at para 138.

¹⁰²*Hutterian Brethren*, *supra* note 99 at paras 78-103

1 against societal benefits associated with the impugned provisions.¹⁰³ The SCC
 2 ultimately concluded that the “detriments to the manufacturer’s expressive
 3 interest in creative packaging” is minute while societal benefits are clear and
 4 important.”¹⁰⁴ As such, the health warnings required by the *Tobacco Products*
 5 *Act* were a justifiable infringement of section 2(b) and were enforceable.

6 *RJR-MacDonald* and *JTI-MacDonald* provide clear guidance on how a
 7 court may approach analysing a law requiring health warning labels on alcoholic
 8 beverages. Firstly, a court will likely conclude that such a law is a prima facie
 9 violation of section 2(b). Both *JTI-MacDonald* and *RJR-MacDonald* conclude
 10 that expression is a broad, liberal right and a wide variety of expressive activity
 11 is protected under section 2(b).¹⁰⁵ More specifically, forced speech on
 12 commercial products, while it does not strike at the heart of section 2(b)
 13 protection, is a violation of section 2(b). A judicial finding that health warning
 14 labels violates section 2(b) would align with the historical interpretation of
 15 section 2(b) and would follow precedent related to warning labels. The decisive
 16 question is whether that infringement can be justified under section 1.

17 Whether the warning labels on alcohol will be justified under section 1 will
 18 depend entirely on the specific requirements of the law and the evidence led
 19 before the court. A section 1 analysis, as demonstrated by *RJR-MacDonald* and
 20 *JTI-MacDonald*, is entirely context driven. The exact requirements in terms of
 21 content and size of the warning labels on alcohol beverages will be established
 22 by future regulations; however, based on precedent, if regulations are properly
 23 tailored there are compelling reasons to conclude that the infringement can be
 24 justified under section 1.

25 The public health harms associated with alcohol consumption are now well
 26 established and evidence increasingly demonstrates that many consumers
 27 underestimate the dangerous links between alcohol and serious diseases.¹⁰⁶
 28 Improving public awareness of these risks is plainly a pressing and substantial
 29 objective and parallels the objective the SCC identified in the tobacco cases as a
 30 pressing and substantial purpose.

31 To establish whether a health warning label on alcoholic beverages meets
 32 the requirements of rational connection, the government would have to
 33 demonstrate a causal link between the objective and the measure adopted.¹⁰⁷ The
 34 SCC has highlighted that few cases fail this step of the analysis and that scientific

¹⁰³ *Oakes*, *supra* note 83 at 139-140

¹⁰⁴ *Supra* note 95 at para 139.

¹⁰⁵ *Supra* note 68 at para 58 (it should be noted that in *RJR*, the Attorney General conceded that warning labels violated section 2(b) so the argument heavily focused on the justification of the violation under section 1). *Supra* note 95 at para 132.

¹⁰⁶ Ashini Weerasinghe, et al, “Does Believing Alcohol Causes Cancer Moderate the Relationship Between Consumer Awareness of the Alcohol-Cancer Link and Support for Alcohol Policies? Findings from a Canadian Cross-Sectional Study” (2025) 45:1 Drug Alcohol Re. <<https://pmc.ncbi.nlm.nih.gov/articles/PMC12682425/>>. See also, Government of Canada, *Public Awareness of Alcohol-related Harms Survey 2023*, (last updated 2024-01-19) online: <<https://health-infobase.canada.ca/alcohol-related-harms-survey/>>.

¹⁰⁷ *Supra* note 95 at para 40

proof demonstrating efficacy of the proposed measure is not the standard.¹⁰⁸ The government must only show that the impugned measure “may further the goal, not that it will do so.”¹⁰⁹ The evidence regarding the efficacy of warning labels for public education has been well-established and has been recognized by the Supreme Court, this would still apply for warning labels on alcohol and supports a rational connection between mandatory warning labels and Parliament’s objective, even if direct studies showing the efficacy of warning labels on alcoholic beverages are not conclusive.¹¹⁰

The federal government may have more difficulty meeting the requirement of minimal impairment; however, the threshold remains that the law must be within a range of reasonable alternatives. The lessons from *RJR-MacDonald* and *JTI-MacDonald* are instructive. Warning labels should be clearly attributed to the appropriate government authority; failure to do without providing evidence to support the need for unattributed warning labels, will not be minimally impairing. The size of the warning label will likely not be a major concern at this stage. In the tobacco cases, the SCC allowed warning labels covering 50% of the packaging to be included and laws have gone even further with individual cigarettes having a health warning and plain packaging laws. In terms of alcohol products, highly visible large warning labels should be adopted. Moreover, warnings on individual bottles should be implemented. Alcoholic beverages are often distributed, sold, and consumed out of sight of main packaging; a label on the bottle itself will best serve the government objective of public education and ensuring that consumer encounter health information at the point of consumption. Finally, while not determinative, evidence demonstrating widespread consideration of labelling internationally, including the adoption of recent labelling requirements in Ireland, can all be used to help demonstrate that labelling laws are minimally impairing.

The final stage of the section 1 analysis also favours constitutionality. Following *Hutterian Brethren*,¹¹¹ the government will need to demonstrate that the salutary effects of the mandatory labels outweigh the deleterious effects associated with the *Charter* infringement. Similar to the arguments made in *JTI-MacDonald*, the benefits of warning labels that educate consumers about public health harms can improve the overall health of Canadians by potentially reducing consumption, may improve public health, and may end up resulting in economic benefits (by reducing the economic costs associated with alcohol consumption). This is to be balanced against the negative impacts this *Charter* breach would have on manufacturers of alcohol products. In this case, the court would likely find, as it did in *JTI*, that the detriments are minimal. Commercial expression,

¹⁰⁸*Ibid.* See also *Taylor*, *supra* note 87 at para 211.

¹⁰⁹*Taylor*, *ibid* at para 211.

¹¹⁰In *supra* note 95 at para 135, the SCC reiterated “...this Court unanimously held that “both parties agree that past studies have shown that health warnings on tobacco product packages do have some effects in terms of increasing public awareness of the dangers of smoking and in reducing the overall incidence of smoking in our society”: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311, *per* Sopinka and Cory JJ., at p. 353; see also *RJR, McLachlin J.*, at para. 158.”

¹¹¹[2009] 2 SCR 567.

1 while protected, has been found not to be equally worthy of protection;
 2 moreover, warning labels do not stop the company from all expression but only
 3 from doing so in the size they want to. While the rights are infringed, the impact
 4 is minor and is easily outweighed by the benefits associated with the adoption of
 5 warning labels.

6 Mandatory health warning labels on alcoholic beverages would infringe
 7 section 2(b) of the *Charter*; however, there are strong grounds for concluding
 8 that such legislation would constitute a reasonable limit, demonstrably justified
 9 in a free and democratic society under section 1.

12 Conclusion

14 The consumption of alcohol causes Canadian significant health, social and
 15 economic costs. As scientific evidence concerning the risks associated with
 16 alcohol has expanded, so too has the case for regulatory measures designed to
 17 improve consumer awareness and reduce alcohol-related harms. Mandatory
 18 health warning labels on the packaging of alcoholic beverages is one possible
 19 option. Drawing upon the success of tobacco regulation, warning labels have the
 20 potential to provide consumers with accessible, evidence-based information at
 21 the point of purchase and consumption, thereby increasing public education and
 22 furthering important public health goals.

23 This paper argued that Parliament possesses the constitutional authority to
 24 require mandatory health warning labels on alcoholic beverages under its
 25 criminal law power in section 91(27) of the *Constitution Act, 1867*. Although
 26 warning labels is an area of double aspect, a federal scheme would promote
 27 Canada-wide consistency, reduce compliance burdens for manufacturers, and
 28 ensure that all Canadians receive consistent public health information at the point
 29 of purchase. The Supreme Court of Canada's jurisprudence confirms that federal
 30 legislation aimed at protecting public health may validly regulate the conditions
 31 under which harmful, yet lawful, products are marketed and sold.

32 This paper has also argued that legislation requiring mandatory warning
 33 labels is a prima facie infringement of the freedom of expression guaranteed by
 34 section 2(b) of the *Charter*. However, the constitutional analysis developed in
 35 *RJR-MacDonald* and *JTI-Macdonald* strongly suggests that such an
 36 infringement can be justified under section 1. Parliament can justify the
 37 infringement by creating a carefully tailored labelling requirement based on best
 38 practices. This means warning labels should be clearly attributed to the
 39 government, prominently displayed, informed by public health research, and
 40 regularly updated to maintain their educational effectiveness.

41 This paper posited that the constitutional jurisprudence governing tobacco
 42 control provides a framework for evaluating mandatory health warning labels on
 43 alcoholic beverages. Although alcohol and tobacco differ, both are lawful
 44 consumer products associated with well-documented health risks. The principles
 45 articulated by the Supreme Court in the tobacco cases show that Parliament may
 46 require manufacturers to communicate health information where doing so

1 advances a compelling public health objective and minimally impairs
2 commercial expression.
3 As governments continue to confront the growing burden of alcohol-related
4 disease, mandatory health warning labels should be viewed as a key component
5 of a broader public health strategy. Warning labels will not eliminate harmful
6 alcohol consumption, but they can improve public education of alcohol-related
7 risks and complement existing regulatory measures. Warning labels are a low-
8 cost, highly effective public health measure. Considering the constitutional
9 principles examined in this paper and the scientific evidence regarding alcohol-
10 related harms, Parliament possesses both the constitutional authority and a
11 compelling public policy rationale to enact mandatory health warning label
12 legislation for alcoholic beverages.