



## Canadian Alcohol Policy Evaluation (CAPE) Community of Practice Event Series

### Event Summary

#### CAPE Community of Practice Event #3: Alcohol Warning Labels: Informing Canadian Consumers, March 16, 2022

**Presenters:** *Dr. Norman Giesbrecht (Centre for Addiction and Mental Health), Dr. Thomas Gremillion (Consumer Federation of America), Dr. Erin Hobin (Public Health Ontario), Dr. Jacob Shelley (Western University), Prof. Robert Solomon (Western University)*

Thank you to all the community of practice members who attended the CAPE Community of Practice's second live webinar event on March 16, 2022. We had another strong turnout and were pleased to see a wide range of interest in alcohol warning labels from members across Canada. Before the event got underway, we took a moment to honour our friend and colleague, Harold Johnson, who passed away on February 9, 2022. Harold was a storyteller, writer, elder, and a strong advocate for social justice and effective alcohol policies. He continues to be an inspiration to all of us.

Below you will find a summary of the webinar presentation. The summary includes an overview of alcohol warning labels, alcohol labels in the US context, and a two-part presentation about Canadian constitutional authority and civil liability. Corresponding slide numbers from the PowerPoint presentation are listed for each section of the summary.

Based on input from members who attended the alcohol warning labels webinar, our next CAPE community of practice event will be a follow-up roundtable event on **March 30, 2022**. This roundtable session will provide a more in-depth exploration of the legal issues and considerations around implementation of warning labels in Canadian jurisdictions. Visit the [CAPE project page](#) for more details and to [register for the event](#). Please note that this event will once again be open to CAPE community of practice members only. If you are not yet a member, you can sign up [here \(en Français\)](#).

*Our hope in delivering these CAPE Community of Practice events is to connect with a broad cross-section of individuals and stakeholders across jurisdictions and sectors to strengthen and advance alcohol policy change in Canada and ultimately prevent and reduce the harms caused by alcohol. We hope to continue to encourage a diverse membership in our CAPE community of practice and at our webinar events to explore the commonalities and potential synergies between diverse policy stakeholders in public health, alcohol regulation, finance, non-profit, and peer sectors.*

#### CAPE CoP Event #2 Webinar Links

- [View the event recording \(English only\)](#)
- [Download presentation slide deck](#)
- [Register for the follow-up roundtable session on warning labels and legal issues](#)
- [Provide feedback on the event / Donnez votre avis sur l'événement](#)
- [Sign up for the community of practice / Rejoindre la Communauté de Pratique de l'ÉPCA](#)
- [Give input on CAPE 3.0 / Partagez vos commentaires sur l'ÉPCA 3.0](#)

These resources are also available on the [Community of Practice tab](#) on the CAPE project website.

Question or comments? Please email us at: [CAPECoPCoord@uvic.ca](mailto:CAPECoPCoord@uvic.ca)



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### CAPE Community of Practice Webinar Event Summary

**Presentations: (1) Overview of alcohol warning labels (2) labels in the US context (3) Canadian constitutional authority and civil liability**

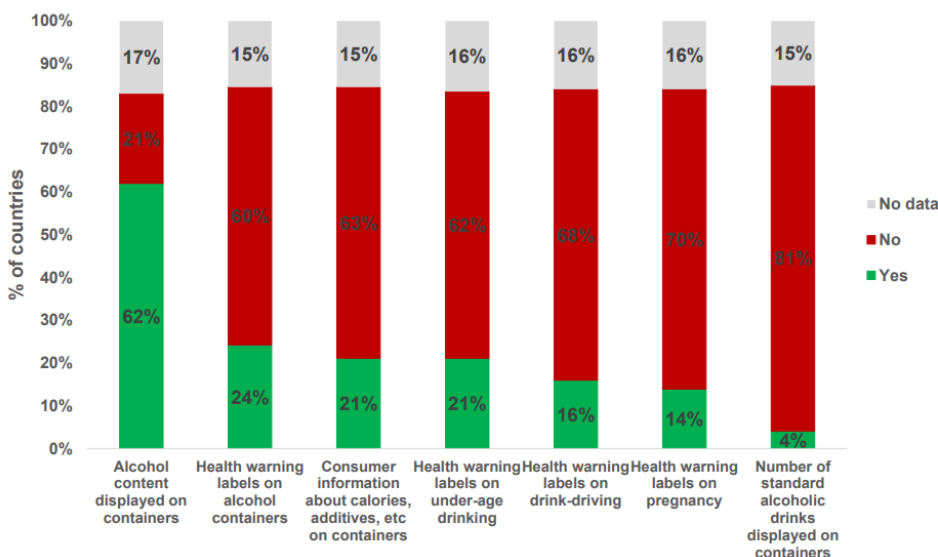
#### 1. Mandatory alcohol labelling: an international overview (see slides 9-22 [in the PowerPoint deck](#))

- **Dr. Erin Hobin (PHO)** began by providing an overview of the status of alcohol warning labels in Canada, the WHO recommendations for alcohol labelling, the international context of legislation mandating labels, and the importance of label design.
  - Canada is a world leader in well-designed product labels for tobacco and cannabis, but alcohol is largely exempt from food labelling legislation despite its significant contribution to energy intake and low nutritional value (slide 11 & 12).
  - Currently in Canada, federal labelling requirements are that alcohol containing  $\geq 1.1\%$  alcohol by volume (ABV) must show an alcohol by volume declaration on the principal display panel of the container. Jurisdictional requirements enacted in Yukon and Northwest Territories require that a health and safety risks warning label be added to containers before retail. These warnings publicize pregnancy, overall health, and drinking and driving-related harms (slide 13).

**In addition to alcohol by volume (ABV) labels, WHO recommendations for alcohol container labels include: (slide 14)**

- Warnings of health and safety risks such as alcohol-caused harm relevant to the whole population (e.g., cancer), pregnancy-caused harm, harm to minors, and drinking and driving.
- The number of standard alcoholic drinks in a container
- Nutrition information such as an ingredient list, calories, and nutritional information.

**Global Information System on Alcohol Health (GISAH): Alcohol container label indicators (slides 15 & 16)**



- From left to right, most frequent labelling policy to least. Of 194 countries, alcohol content is the most frequently employed labelling policy and the number of standard alcohol drinks, the least.





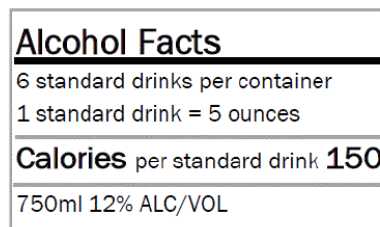
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### International examples of mandated alcohol labels (slides 17-20)

- US mandated health-warning label showed to have some effects among specific populations, but no general population-level effects on drinking behaviour. Limited impacts could be due to poor design of label.
- Australia and New Zealand requires that all beverages above 0.5% ABV must include a statement of the number of standard drinks and most recently, must include a pregnancy harm warning. This warning label has specific legislation requirements for size, font, colour, and border. Also, in Australia/NZ, work to enact legislation around mandatory calorie and nutritional labelling for alcoholic beverages is underway.
- Ireland passed the Public Health Alcohol Act (2018), which included policies pertaining to labelling of alcohol products. These policies have yet to be implemented due to lobbying. Legislation mandates labels include health, pregnancy harm, and cancer warnings, in addition to calories labelling.

### Importance of label design (slide 21)

- Labels are not one size fits all and can be used as potentially complementary tools, which provide distinct information.



## 2. Alcohol labeling in the U.S. (see slides 23-44 [in the PowerPoint deck](#))

- **Speaker Dr. Thomas Gremillion (CFA)** provided an in-depth account of alcohol labelling in the US. He walked through a brief history of US warning label requirements comparing the treatment of alcohol to other food and beverage products and other carcinogens. He then spoke on recent US advancements in alcohol labelling requirements, including advocacy efforts to implement cancer-warning labels and touched upon potential first amendment concerns with labelling.
- The US has required health warning labels since 1990 on all beverages >0.5% ABV. These labels are non-rotating and written in all-capitals making them difficult for consumers to find and read.

### Alcohol labelling versus other product labelling (slides 26-28)

- Federal Alcohol Administration Act (FAA) regulates most alcoholic beverages and was implemented by the US department of treasury, tax and trade bureau (TTB) with the intent to provide the consumer with information on identity and quality of food and beverage products.
- Hard seltzers are regulated by the FDA and have nutritional facts labels but do not include alcohol by volume labelling.




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- California enlisted alcohol as a carcinogen, but state does not require labelling to be on the container and instead there is a requirement to have a warning statement at the point of sale.

### Consumer group advocacy on alcohol: recent history (slides 29-34)

- To bring alcohol to conform with other food and beverage product requirements, a 2003 petition was submitted asking for an update. This update was to add standard serving size, alcohol by volume, calories, ingredients, and a statement on moderate drinking guidelines.

#### Proposed new labelling rules (slide 29)

Alcohol Facts	
 Contains <b>5</b> Servings	<b>Calories per Serving:</b> 98 Alcohol by Volume: 13% Alcohol per serving: 0.5 oz
	Serving Size: 5 fl oz
U.S. Dietary Guidelines advice on moderate drinking: no more than two drinks per day for men, one drink per day for women.	
<b>Ingredients:</b> Grapes, yeast, sulfiting agents, and sorbates.	

- Comments from industry caused a push back against the new requirements. Industry claimed that the consumer did not care about nutritional labelling on alcoholic products. However, a Center for Science in the Public Interest (CSPI) poll of consumers found overwhelming support for nutritional labelling. This sentiment was furthered by media attention and consumer interest in a CFA publication of the nutritional information in 28 of the most popular alcoholic beverages in the US.
- In the years since, progress has been made in the implementation of alcohol labelling requirements. In 2010, calories in menu items (including alcoholic beverages) were required to be disclosed. This has been shown to have a significant impact on lowering alcohol use. In 2013, a TTB ruling allowed for voluntary placement of Serving Facts labels on alcohol products. This ruling had been aided by support of the spirits industry.



Figure 1. Voluntary Serving Facts label on Cans of Bud Light and Coors Light

Some voluntary labelling seen on non-spirit beverages is difficult to read, presented as a continuous block of text with abbreviated terms for nutritional info (cal, carb) (slide 34).

### Efforts to implement a cancer warning label on alcohol products in the US (slides 35-40)

- While some may argue that including cancer warning labels on alcohol products is unnecessary, the argument for their implementation can be made with two numbers: **3** and  $\frac{1}{2}$



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- Alcohol is the **third** largest overall contributor to invasive cancer cases and deaths in the US. 2014 estimates from cancer research agencies claim alcohol contribution to 6.4% of all cancer cases in women and 4.8% in men. Over 20,000 deaths per year contributable to alcohol use.
- And according to survey data, **less than half** of people appreciate the significant link between alcohol and cancer. There is a widespread lack of awareness amongst the US population.
- This gap between awareness of alcohol as a cancer risk factor and the actual contribution of alcohol to the cancer burden called advocacy groups to push for an update to the health and warning statement on alcoholic beverages.
- A 2020 consumer group petition asked TTB to report to congress when an update to the alcohol warning statement is called for and recommended based on scientific consensus the need for a cancer warning statement like the one originated in the Yukon study.

### **First amendment concerns (slides 41 & 42)**

- There is no first amendment concern with the alcohol warning labels recommended by advocacy groups

### **3. Alcohol, Health Labels, Manufacturers' Duty to Inform, and Canadian Law (see slides 47-59 in the PowerPoint deck)** (A separate highlights summary of this presentation is also available [here](#))

- **Speaker Prof. Robert Solomon provided an overview of the legislation for requiring alcohol manufacturers and suppliers to attach warning labels to alcohol containers and the duty to inform consumers on the wide range of injuries and illnesses associated with both moderate and heavy use of alcohol.**

### **Part I: Government Mandated Alcohol Labels: The Constitution and the Canadian Charter**

- The federal government could enact legislation mandating the inclusion of alcohol labels under several different heads of power. To be a valid criminal law, the legislation would have to take the form of a prohibition, coupled with a sanction. Violating the legislation would constitute a federal criminal offence and those convicted would have a federal criminal record.
- Provincial governments have broader constitutional authority and more regulatory options regarding health information and warning legislation. They are not limited to creating a prohibition coupled with a sanction. Each province could create its own unique regulatory scheme, which includes various licensing and administrative sanctions, with or without creating related provincial offences.
- If there were to be an “express contradiction” between federal and provincial legislation, federal law would be paramount. An express contradiction would only occur if complying with one law makes complying with the other, impossible. Otherwise, alcohol manufacturers and suppliers would be required to comply with both sets of legislation in any one province.
- Legislation requiring manufacturers and suppliers to attach health information, warnings or images to their products would infringe their freedom of opinion and expression. Rights and freedoms in the *Charter* are not absolute, and may be limited under section 1. Alcohol manufacturers and suppliers would have no Charter remedy if the government could establish that the mandated health information constituted a reasonable limit “prescribed by law as can be demonstrably justified in a free and democratic society”.





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- Legislation requiring alcohol products to display health information would be “demonstrably justifiable” given the annual toll of deaths and social costs that alcohol generates.

### **Part II: Potential Civil Liability for Failing to Inform Consumers of the Risks of Alcohol Use**

- Canadian manufacturers and suppliers, except those in Quebec, have a duty to inform consumers of the risks inherent in the use of their products. In Quebec, liability is governed by the Civil Code, which is equally broad in scope. The duty is defined in terms of what manufacturers and suppliers ought to know. They are expected to be experts in their field and undertake research or at least keep current in relevant literature. The duty to inform is ongoing.
- The duty is limited to informing consumers of the risks inherent in the foreseeable use of a product. If manufacturers know their products are misused, they must inform consumers of the risks. They are not required to inform of obvious or well-known risks. **Canadian alcohol manufacturers and suppliers have a duty to warn consumers of the wide range of injuries and illnesses associated with both the moderate and heavy consumption of alcohol.**
- Information and warnings must be sufficiently specific, detailed, and prominent. Vague general warnings are not sufficient. Manufacturers and suppliers must tell the whole truth and not gloss over or discount the risks. **Canadian alcohol manufacturers and suppliers have long been in breach of their duty to inform consumers of the many serious harms associated with their products.**
- To establish causation, it must be proven on the balance of probability that the alcohol manufacturer or supplier’s breach of their duty to inform was a cause of their injury or illness. **Proving causation poses the greatest challenge to suing the alcohol industry for failing to inform consumers of the risks inherent in their products.**
- It is only a matter of time before alcohol manufacturers and suppliers are sued for failing to inform consumers of some of the more serious and direct risks of alcohol consumption. There would be more successful suits if legislation were enacted, permitting proportional recovery based on the percentage of the harms attributable to alcohol. As demonstrated with tobacco litigation, even if the plaintiff wins, they may only be able to recover a small fraction of the awarded damages. While the alcohol industry should be held accountable through litigation, it is merely one means of protecting the public. The prospect of civil liability should not deflect attention from the need for far stricter and effective regulation of the industry.

### **Funding and Support**

The Canadian Alcohol Policy Evaluation team would like to express our deepest gratitude to our sponsors who have funded and supported the CAPE Project. These organizations include: the Canadian Institute of Substance Use Research (CISUR), the Centre for Addiction and Mental Health (CAMH), the Social Sciences and Humanities Research Council (SSCHR) Connection Grant, the Public Health Agency of Canada (PHAC), the Health Ethics, Law and Policy (HELP) Lab at Western University, and the support from several dedicated knowledge users and government stakeholders. *Please note that the views and opinions expressed in this presentation are those of the presenters alone, and do not necessarily represent those of our funders.*

**Questions or comments? Feel free to contact us at: [CAPECoPCoord@uvic.ca](mailto:CAPECoPCoord@uvic.ca)**



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