

Media Release

Tobacco and Vaping Products Act: New developments lead some health groups to reconsider their support for Bill S-5

Ottawa, February 12th 2018 — New evidence and recent developments regarding e-cigarettes have reinforced ongoing concerns regarding **Bill S-5** (the “**Tobacco and Vaping Products Act**”), leading a number of tobacco control groups and other health organizations to call for parts of the legislation, now headed to the **Standing Committee on Health** for hearings starting **this week**, to be significantly strengthened.

Up until now, the nicotine vaping industry in Canada has kept a low profile and has not aggressively marketed its products. However, the passage of **S-5** will likely trigger the entry of large tobacco companies into the Canadian vaping market. These multinationals have demonstrated that they are willing and able to aggressively market their products to new users including non-smokers.

“The overly permissive approach of Bill S-5 with respect to promotion makes this legislation more about ‘product diversification’ than ‘harm reduction’. Our fear is that Bill S-5 will result in Big Tobacco promoting vaping products in mainstream media, and that this will result in higher rates of nicotine addiction among young people and non-smokers, long-term health problems and potentially higher smoking rates,” says **Neil Collishaw, Research Director of Physicians for a Smoke-Free Canada**.

“Unless the bill is amended, Canadians could find themselves in a sea of nicotine containing e-cigarette advertising similar to what we saw decades ago when Big Tobacco filled the airwaves and public spaces which cigarette ads,” adds **Ian Culbert, Executive Director of the Canadian Public Health Association**, echoing the concerns of many others.

Initially tabled on November 22nd 2016 before the Senate, **Bill S-5** introduces a legal framework for e-cigarettes and other vaping products, allowing advertising of these products on television, radio, billboards, internet, social media, newspapers and retail environments frequented by minors.

Neil Collishaw continues: *“Bill S-5 is far from balanced. At this point, we feel that the risks associated with promoting addictive vaping products to the entire population, including through lifestyle ads aimed at young adults, outweigh the potential health benefits they represent to smokers who need help to quit. Given the mounting evidence of potential harms linked these products, and as a group representing physicians whose oath is to ‘first, do no harm’, it would be difficult for us to support the bill as is. Bill S-5 could easily be amended in a way that ensures smokers receive appropriate information about the availability of less harmful forms of nicotine while at the same time protecting kids and non-smokers.”*

“Most of us initially supported the bill based on our confidence that the government would be open to reasonable adjustments to prevent probable spillover effects of promoting e-cigarettes among the general public,” explains **Flory Doucas, spokesperson of the Quebec Coalition for Tobacco Control**. *“However, with barely 48 hours scheduled between the last panel of expert witnesses and the Committee’s votes on amendments, we are concerned that the intent is to rubber stamp the bill.*

“If the government is closed to tightening up the advertisement provisions, our Coalition is prepared to withdraw its support for the bill,” warns **Ms Doucas**.

“There is no question that vaping technologies are far less harmful than combustible cigarettes. That said, no regulator should take nicotine addiction lightly. The question before MPs is not whether smokers should have access to nicotine vaping products — of course they should. Rather, the question is ‘do you want your kids or grandkids to be exposed to advertisements promoting cool gadgets and fog machines that contain one of the most addictive substances on the planet?’” adds **Les Hagen** of Alberta’s **Action on Smoking & Health (ASH)** in Edmonton.

“The multinationals that will be advertising e-cigarettes are the same ones that are still pushing the products that kill 45 000 Canadians every year. Internal tobacco industry documents show that their goal is to maximize profits through a more diversified market. As it is written, Bill S-5 will not be used to transition their customers out of the tobacco market but as a way to keep the cash flowing from ex-smokers and dual users, and to generate new revenues from non-smokers. Canadians deserve better protection from such harmful corporate greed,” concludes **Mr. Collishaw**.

Since the tabling of Bill S-5 on November 22nd of 2016, new evidence regarding the potential risks of vaping products has been mounting in an alarming way:

- On November 30th 2016, a [review of global e-cigarette laws](#) by the **Johns Hopkins Bloomberg School of Public Health** found that only 8 of 68 countries did not ban e-cigarettes or ban promotion of e-cigarettes. In fact, Bill S-5 would make Canada even more permissive in terms of e-cigarette advertising than England, a country touted for embracing the devices in its harm reduction strategy. Some countries have opted to maintain a therapeutic approach, banning the sale of nicotine as a recreational drug (including [Brazil](#), [Thailand](#), [Uruguay](#), [Singapore](#), [Australia](#)).
- On December 7th 2016, in light of the high curiosity factor and experimentation of e-cigarettes by American kids, the **U.S. Surgeon General** [called for](#) advertising restrictions on e-cigarettes that include *“avoiding media channels with high youth access”*.
- On October 25th 2017, **British American Tobacco (Imperial Tobacco Canada’s parent company)** [presented its global long term business strategy to its shareholders](#), revealing that a substantial proportion of its [customer base for “Vype” e-cigarettes \(slides 54 and 59\)](#) consists of dual *“smoker-vaper”* (43%) and *“never smokers”* (12%).
- On January 23rd 2018, the **National Academies of Science Engineering Medicine** published the most comprehensive report on the evidence regarding the possible harms and smoking cessation potential of e-cigarettes: [“Public Health Consequences of E-cigarettes”](#). The report, which reviewed over 800 scientific studies, draws [several conclusions](#) on various health aspects, including:

- “Overall, there is *limited evidence* that e-cigarettes may be effective aids to promote smoking cessation.”
 - “There is *substantial evidence* that some chemicals present in e-cigarette aerosols (e.g., formaldehyde, acrolein) are capable of causing DNA damage and mutagenesis”
 - “There is *substantial evidence* that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults.”
- On January 11th 2018, the **Annual Review of Public Health** published “[E-Cigarettes: Use, Effects on Smoking, Risks, and Policy Implications](#)” which recommends subjecting e-cigarettes “*to the same marketing restrictions that apply to conventional cigarettes (including no television, radio, or outdoor advertising)*”.
 - These developments add to the August 2016 endorsement by the **World Health Organization of a recommendation** put forward by the **Conference of Parties** to the international **Framework Convention on Tobacco Control** urging parties “*to consider banning or restricting advertising, promotion and sponsorship of ENDS*” (Electronic Nicotine Delivery Systems).
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BACKGROUNDER - The anticipated impacts of S-5

The passage of S-5 will radically transform the currently unregulated vaping industry, and will allow companies to promote vaping products to young people and non-smokers.

- Bill S-5 does not restrict where ads for vaping product can be placed (and allows them on television, radio, billboards, etc.). (s. 30.1)
- S-5’s restrictions on the kinds of ads for vaping products that are allowed in public places (not reasonably attractive to youth, not lifestyle) (s. 30.2) are more theoretical than applicable, as these same restrictions failed when applied to tobacco (which led to the eventual federal ban on all tobacco advertising that can be seen by youth.)
- S-5 places very few restrictions on ads in adult-only venues (where lifestyle ads and purchase incentives are permitted). (s. 30.3)
- The ability for government to add further restrictions by regulation was added by the Senate Committee (s. 30.701). Health Canada has said that it could tighten restrictions once it obtained evidence of companies targeting youth. In practice, this would mean that many youth would have to fall into the trap of nicotine addiction before Health Canada took any take steps to respond to the problem.
- S-5’s permissions for vaping advertisement are inconsistent with legislation covering other drugs or psychotropic substances (i.e. tobacco, cannabis and pharmaceutical medicines). For example: Bill C-45 contains stronger language regarding protecting youth from cannabis advertising and promotion, yet nicotine is more addictive than cannabis, and the intended audience for vaping product advertising and promotion is smaller than that for cannabis (adults who smoke vs. adults).

The safeguards in S-5 are too weak to protect youth and non-smokers from industry marketing.

- On the basis of enforcement actions taken with other health regulations, there are many reasons to believe that enforcement of subjective assessments (“reasonable grounds to believe that it could make the product appealing to young persons”) will prove ineffectual.
- In fact, the eventual promotional regulations suggested in [the consultation paper issued this fall by Health Canada](#) seem to be inspired by the tobacco industry’s own voluntary code from the 1970s that allowed the industry to aggressively and successfully target kids and teenagers with cigarette advertising.
- On the basis of current advertisement for vaping products used by tobacco companies in jurisdictions where they are allowed, S-5 will expose youth and non-smokers to attractive advertisements which [encourage trial](#).

The harm reduction principles that underlie S-5 are unarticulated and informal.

- During the debate on this bill in the Senate, Health Canada officials said that S-5 offers a [harm reduction](#) approach, by offering nicotine users a new safer form of delivery.
- Publicly, Health Canada has not established a harm reduction policy or articulated the goals and administrative measures one would expect (nor were these aspects included in the only [consultation](#)).
- Legally, courts will not have a harm reduction framework to assist them in enforcing/upholding restrictions.

S-5 undermines provincial health regulations.

- Several provinces including [New-Brunswick](#), [Nova Scotia](#) and [Quebec](#) have already enacted some marketing restrictions on e-cigarettes and other vaping products, especially in terms of banning visible displays at regular retail outlets which are accessible to minors.
- S-5 would allow a billboard showing vaping products across the street from a corner store that is not allowed to display the same products.
- Federal claims that restrictions on vaping ads are not ‘Charter proof’ have raised particular concerns for those jurisdictions that have determined that they are justifiable.
- By being exempted from specific tobacco taxes, bans on “characterizing flavours” and allowing their visible display in the ever burgeoning number of vaping speciality stores, the Federal government should be mindful of the fact that provinces already provide important market advantages to these products compared to conventional tobacco products.