



COALITION QUÉBÉCOISE  
POUR LE CONTRÔLE DU TABAC

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February 11<sup>th</sup> 2018

Bill Casey  
Chair, Standing Committee on Health  
House of Commons  
Ottawa, Ontario K1A 0A6  
[Bill.Casey@parl.gc.ca](mailto:Bill.Casey@parl.gc.ca)

**Subject: Bill S-5's negative consequences: children and non-smokers will be exposed to ads for nicotine-containing vaping products on TV and the Internet**

Dear Mr. Casey,

We are writing to you today as hearings for Bill S-5 (*An Act to amend the Tobacco Act and the Non-smokers' Health Act and to make consequential amendments to other Acts*) are about to begin before the Standing Committee on Health.

When it was initially tabled in November 2016, the Quebec Coalition for Tobacco Control expressed full support for Bill S-5, in part because it provided Health Canada with greater enabling powers to ensure comprehensive regulations with respect to packaging for tobacco products, namely plain and standardized packs which are supported by more than 350 Canadian organizations, including over 200 groups in Quebec<sup>1</sup>.

**However mounting scientific evidence and legislative developments elsewhere, as well as unfortunate assertions pronounced by the then Health minister before the Senate Committee, have lead us to reconsider our support for S-5. Without simple and straight-forward amendments to limit permitted advertisements for nicotine vaping products, the legislation will be too flawed for us to support.**

While nicotine vaping devices are far less harmful than conventional cigarettes, it is also true that virtually all consumer good are less harmful than cigarettes. Comparisons to smoked tobacco products are a *very low bar* in terms of consumer safety. Taken on their own, nicotine vaping devices can be harmful in many respects and there is no justification to allow them to be promoted to non-smokers or long-time ex-smokers.

Based on the history of tobacco advertising in Canada and on current e-cigarette marketing across the world, we believe that the potential for the promotion of nicotine vaping products under Bill S-5 is largely underestimated and misunderstood, and that the bill is far from balanced in this regard. The current stance taken by the government — that is, to *eventually* tighten the restrictions through regulations *in reaction* to problematic promotional practices, is misguided and inadequate.

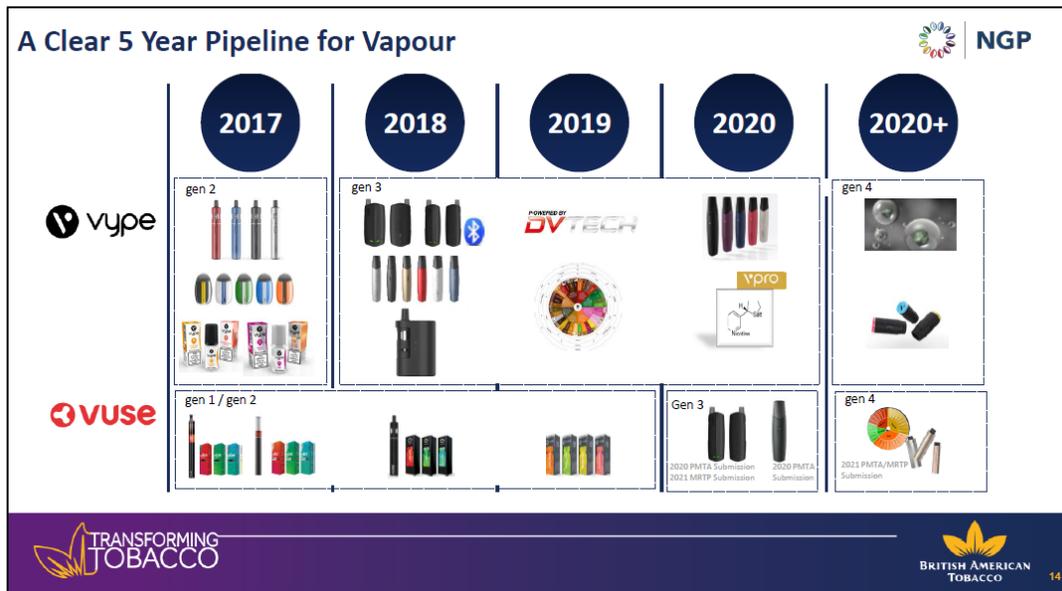
By legalising nicotine vaping devices in Canada, Bill S-5 will open the Canadian vaping market to the tobacco multinationals, who all market their own e-cigarette brands as demonstrated by Imperial Tobacco parent

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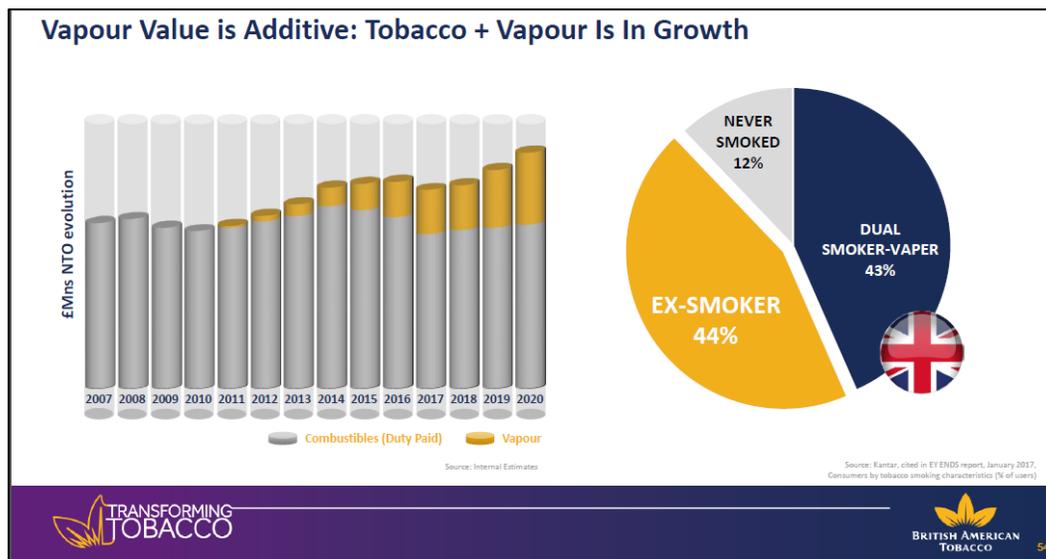
<sup>1</sup> As of April 27 2017, complete list:

[http://www.cgct.qc.ca/Documents\\_docs/DOCU\\_2017/DOCU\\_17\\_00\\_00\\_Liste\\_appuis\\_EmballageNeutre\\_Canada.pdf](http://www.cgct.qc.ca/Documents_docs/DOCU_2017/DOCU_17_00_00_Liste_appuis_EmballageNeutre_Canada.pdf)

company's (British American Tobacco - BAT) projected pipeline of new vaping products<sup>2</sup>:



While current vape shop operators in Canada may sincerely hope to offer smokers with less dangerous nicotine delivery system, big cigarette manufacturers' overriding objective is to maximize profits in all of their product categories. For example, BAT conveys to its shareholders that its commercialization of vaping products in the UK *adds to* its cigarette market, as one can see from its sales projections thru 2020. As a matter of fact, 12% of BAT's vaping consumers have *never* smoked cigarettes while 44% consist of dual-users<sup>3</sup>.



<sup>2</sup> Kingsley Wheaton, Managing Director – NGP at British American Tobacco, "Next Generation Products", slide 14, accessed on February 9, 2018. [http://www.bat.com/group/sites/UK\\_9ZTFMCM.nsf/vwPagesWebLive/DOARDFMZ/\\$FILE/Next\\_Generation\\_Products\\_v2.pdf?openelement](http://www.bat.com/group/sites/UK_9ZTFMCM.nsf/vwPagesWebLive/DOARDFMZ/$FILE/Next_Generation_Products_v2.pdf?openelement)

<sup>3</sup> Kingsley Wheaton, Managing Director – NGP at British American Tobacco, "Next Generation Products", slide 54, accessed on February 9, 2018. [http://www.bat.com/group/sites/UK\\_9ZTFMCM.nsf/vwPagesWebLive/DOARDFMZ/\\$FILE/Next\\_Generation\\_Products\\_v2.pdf?openelement](http://www.bat.com/group/sites/UK_9ZTFMCM.nsf/vwPagesWebLive/DOARDFMZ/$FILE/Next_Generation_Products_v2.pdf?openelement)

It is important to highlight that dual use of vaping and smoking — even if it ultimately leads to lower amounts of cigarettes smoked — does not provide much in terms of health benefits. In fact, a large new meta-analysis published in the *British American Journal*<sup>4</sup> found that smoking just one cigarette a day drastically increases the risk of coronary heart disease and stroke. While smoking a lower number of cigarettes is generally seen as “safer,” one cigarette a day carries a risk of developing coronary heart disease and stroke as much as half of that of a pack-a-day smoker.

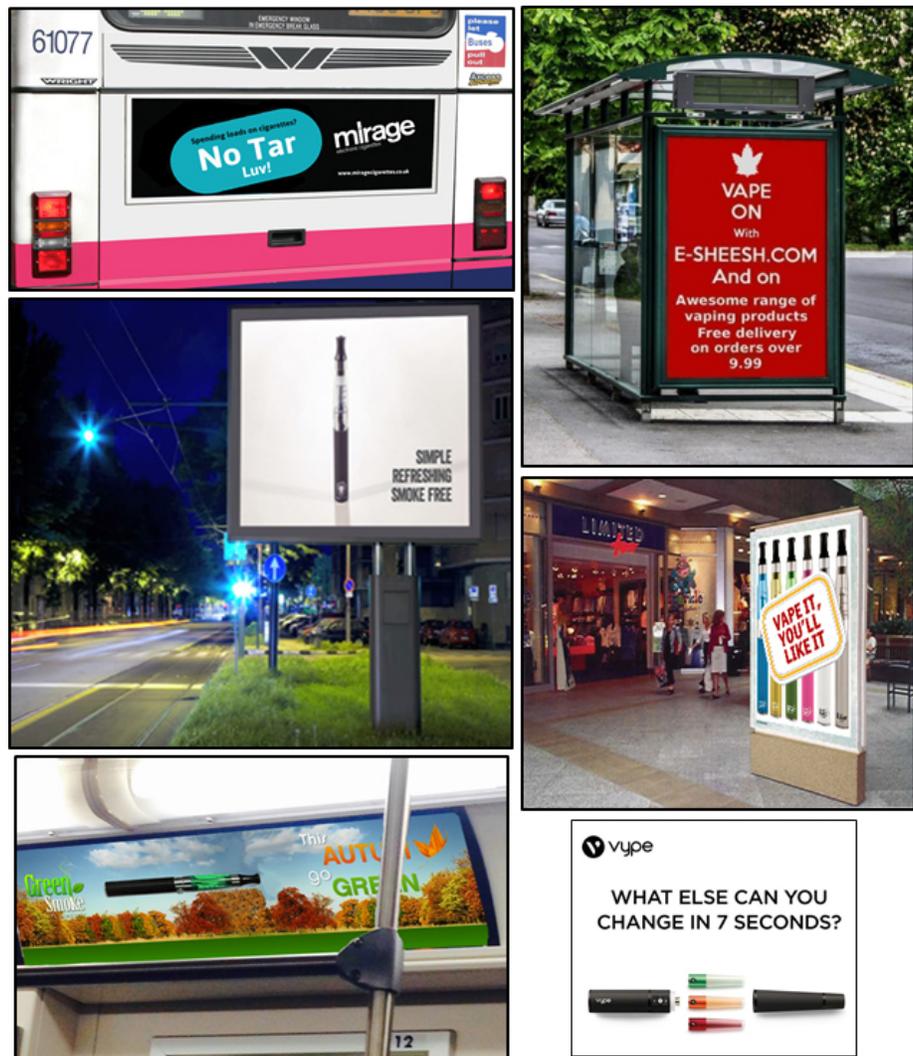
### ***Overly permissive advertising provisions***

Studies have shown that young people are particularly sensitive to ads for e-cigarettes regardless of their smoking status and that exposure to this types of advertising increases their chances of starting to smoke.<sup>5</sup>

While we recognize the need to provide factual information on the characteristics and benefits of these devices to smokers, Bill S-5 goes so far as to allow "lifestyle" advertising to adults, in addition to "information" or "brand-preference" advertising for everyone without any restrictions on the vehicle used or the location where it appears.

In other words, the law would expose the public, including teenagers and non-smokers, to advertising that presents nicotine vaping devices as multicolored electronic gadgets alongside catchy slogans: on large billboards or bus shelters near schools, or even on public transportation and in shopping centers, not to mention ads on television, radio or the Internet.

Adjacent here are a few examples of advertising that Bill S-5 would allow in media visible to all the public:



<sup>4</sup> Hackshaw, A., "Low cigarette consumption and risk of coronary heart disease and stroke: meta-analysis of 141 cohort studies in 55 study reports", *British Medical Journal*, January 24th 2018. <http://www.bmj.com/content/360/bmj.j5855>

<sup>5</sup> "Regardless of smoking statuses, adolescents demonstrated an elevated neural response to e-cigarette versus neutral advertisements and rated behaviorally that e-cigarette advertisements make them want to smoke more than neutral advertisements." Chen Y. et al., Adolescents' behavioral and neural responses to e-cigarette advertising, *Addiction Biology*, April 2017. <http://onlinelibrary.wiley.com/doi/10.1111/adb.12510/full>

In addition, Bill S-5 would allow companies to use "lifestyle" advertising in bars or through e-mail to promote nicotine vaping products to non-smokers, including young adults, as a desirable lifestyle in and of itself, something completely different from a substitution for smoking. Examples of potential ads to which young adults might be exposed as a result of Bill S-5 include:



Allowing "lifestyle" advertising promotes the use of nicotine vaping products *outside the context of tobacco substitution*. Nicotine is an extremely addictive drug, one of the most addictive in the world. There are no reasons to justify its association with fashion, femininity, music, glamour or any other lifestyle.

Indeed, vaping products will already have a competitive advantage over tobacco products in at least three ways: (1) they can be flavoured; (2) they will not be subject to forthcoming regulations regarding plain packaging; (3) and they are not subject to specific provincial or federal tobacco taxes.

Brazil, Thailand, Uruguay, Singapore and Australia have all banned the sale of nicotine as a recreational drug. Canada's comparatively very permissive advertising provisions make it a rare exception in the world, outside the USA.<sup>6</sup> Even the UK, which has wholly embraced the harm reduction potential of e-cigarettes, bans ads for such products on TV, in magazines and on the Internet, as they are easily accessible to minors.<sup>7</sup>

Since the initial tabling of Bill S-5, new research regarding the risks of vaping products has not ceased to accumulate and undermines earlier justifications for broader advertising. Many government and health authorities from around the world are now recommending greater caution on the issue. In fact, since the tabling of Bill S-5 on November 22<sup>nd</sup> of 2016, new evidence regarding the potential risks of vaping products has been mounting in an alarming way:

- On December 7<sup>th</sup> 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*"<sup>8</sup>.
- On January 23<sup>rd</sup> 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**"<sup>9</sup>. The report, which reviewed over 800 scientific studies, draws several conclusions<sup>10</sup> 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 11<sup>th</sup> 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*

<sup>6</sup> Kennedy, R. D., Awopegba, A., De Leon, E., Cohen, J. E., "Global approaches to regulating electronic cigarettes", *Tobacco Control*, November 2016. <http://tobaccocontrol.bmj.com/content/early/2016/11/30/tobaccocontrol-2016-053179>

<sup>7</sup> Department of Health & Social Care (United Kingdom), *Article 20(5), Tobacco Products Directive: restrictions on advertising electronic cigarettes*, May 2016. <https://www.gov.uk/government/publications/proposals-for-uk-law-on-the-advertising-of-e-cigarettes/publishing-20-may-not-yet-complete>

<sup>8</sup> U.S. Surgeon General, "The Call to Action", *E-Cigarette Use Among Youth and Young Adults*, 2016. [https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/pdfs/2016\\_SGR\\_The\\_Call-508.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_SGR_The_Call-508.pdf)

<sup>9</sup> National Academies of Sciences, Engineering & Medicine, *Public Health Consequences of E-Cigarettes*, 2018. <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>

<sup>10</sup> National Academies of Sciences, Engineering & Medicine, *Public Health Consequences of E-Cigarettes: Conclusion by Level of Evidence*, 2018. <https://www.nap.edu/resource/24952/012318ecigaretteConclusionsbyEvidence.pdf>

marketing restrictions that apply to conventional cigarettes (including no television, radio, or outdoor advertising)”<sup>11</sup>.

- On January 11<sup>th</sup> 2018, the **Australian government** reviewed the latest evidence and published a list of guidelines prioritizing a precautionary approach that “takes into account the broader risks that e-cigarettes may pose to population health, namely their potential to disrupt the decline in tobacco use”<sup>12</sup>, an approach which includes minimising the proliferation of e-cigarette marketing.
- 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 such as Canada “to consider banning or restricting advertising, promotion and sponsorship of ENDS” (Electronic Nicotine Delivery Systems).<sup>13</sup>

We therefore recommend a simple and straightforward amendment that would only allow “information” or “brand-preference” advertising to adults (in places not accessible to minors or through direct communication to adults). This way, youth will never be exposed to e-cig advertisements and, at worst, non-smoking adults will only be exposed to “information” or “brand-preference” ads and not "lifestyle" advertising.

Text at First Reading [our emphasis]	Amendment [our emphasis]	Impacts
<p><b>36. Section 30 of the Act is replaced by the following:</b></p> <p>...</p> <p><b>Vaping Products</b></p> <p><b>Advertising appealing to young persons</b></p> <p><b>30.1</b> <u>No person shall promote a vaping product, a vaping product-related brand element or a thing that displays a vaping product-related brand element by means of advertising if there are reasonable grounds to believe that the advertising could be appealing to young persons.</u></p> <p><b>Lifestyle advertising</b></p> <p><b>30.2 (1)</b> <u>No person shall promote a vaping product, a vaping product-related brand element or a thing that displays a vaping product-related brand element by means of lifestyle advertising.</u></p> <p><b>Exception</b></p> <p><b>(2)</b> <u>Subject to the regulations, a person may promote a vaping product, a vaping product-related brand element or a thing</u></p>	<p><b>36. Section 30 of the Act is replaced by the following:</b></p> <p>...</p> <p><b>Vaping Products</b></p> <p><b>Advertising</b></p> <p><b>30.1</b> <u>No person shall promote a vaping product or a vaping product-related brand element except as authorized by this Act or the regulations.</u></p> <p><b>30.2 (1)</b> <u>No person shall promote a vaping product, a vaping product-related brand element or a thing that displays a vaping product-related brand element by means of lifestyle advertising.</u></p> <p><b>(2)</b> <u>Subject to the regulations, a person may advertise a vaping product by means of information advertising or brand-preference advertising that is in</u></p>	<p>Removes the permission to promote vaping products through "lifestyle" advertising.</p> <p>Ensures that advertising is only seen by adults.</p> <p>Aligns the definition of</p>

<sup>11</sup> Glantz, S. A., Bareham, D. W., “E-Cigarettes: Use, Effects on Smoking, Risks, and Policy Implications”, *Annual Review of Public Health*, 2018. <http://www.annualreviews.org/doi/abs/10.1146/annurev-publhealth-040617-013757>

<sup>12</sup> Australian Department of Health, Principles that Underpin the Current Policy and Regulatory Approach to Electronic Cigarettes (E-Cigarettes) in Australia, January 2018, accessed February 9, 2018. <http://www.health.gov.au/internet/main/publishing.nsf/Content/principles-underpin-current-policy-regulatory-approach-electroniccigarettes-eeCigarettes-australia>

<sup>13</sup> World Health Organization, Electronic Nicotine Delivery Systems and Electronic Non-Nicotine Delivery Systems (ENDS/ENNDS), COP7, India, August 2016. [http://www.who.int/fctc/cop7/FCTC\\_COP\\_7\\_11\\_EN.pdf?ua=1](http://www.who.int/fctc/cop7/FCTC_COP_7_11_EN.pdf?ua=1)

<p>that displays a vaping product-related brand element <u>by means of lifestyle advertising that is in</u></p> <p><u>(a) a publication that is addressed and sent to an adult who is identified by name; or</u></p> <p><u>(b) places where young persons are not permitted by law.</u></p>	<p><u>(a) a printed publication that is provided by mail and addressed to an adult who is identified by name; or</u></p> <p><u>(c) signs in a place where young persons are not permitted by law.</u></p>	<p>"publications" with the one currently in the Tobacco Act, in order to prevent advertising through text-messaging, emailing and social media.</p> <p>Restricts advertising in bars to signs in a bar, in order to prevent the vaping companies from redecorating bars as vaping-branded places (as the tobacco industry has done in the past).</p> <p>Allows for subsequent regulations to permit new vehicles for advertising to reach adult smokers, such as through a pamphlet when a cigarette pack is purchased, etc.</p>
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### Incoherence with other recent harm reduction policies

Bill S-5 is incoherent with other recent regulating initiatives and harm reduction policies. For example, in order to attract opioid addicts to the life-saving antidote drug naloxone, the government has not weakened advertising restrictions for the drug but simply made it easier for addicts to have access to it.<sup>14</sup>

Although cannabis is much less addictive than the nicotine, Bill C-45 does not allow "lifestyle" advertising at all, nor ads aimed at the general public<sup>15</sup>. Cannabis is not as directly associated with cigarettes as e-cigarettes are. Health Canada's claim that banning lifestyle advertising for cannabis *is* constitutional, but that the *same* type of advertising for nicotine-infused vaping products *is not*, is incoherent.

For the sake of comparison, in 2002, cannabis was responsible for 39 deaths versus 37 000 for tobacco.<sup>16</sup> The underlying premise for the legalization of non-therapeutic nicotine vaping products is the tobacco epidemic, as smokers who cannot quit their nicotine addiction are much better off if they can switch to e-cigarettes. However, since vaping products are not strictly reserved for smokers, they should not be regulated on the sole basis of their relative innocuousness as compared to tobacco products.

<sup>14</sup> Government of Canada, "Health Canada authorizes use of naloxone nasal spray", News Release, October 3<sup>rd</sup>, 2016.

<https://www.canada.ca/en/health-canada/news/2016/07/health-canada-allowing-immediate-access-to-naloxone-nasal-spray.html>

<sup>15</sup> Bill C-45, *An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts*, clause 17(1)(e), April 2017. <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8894959>

<sup>16</sup> Rehm J. *et al.*, The Costs of Substance Abuse in Canada 2002. Table 7, Canadian Center for Substance Abuse, 2006.

[https://www.researchgate.net/profile/Svetlana\\_Popova4/publication/225091976\\_The\\_Cost\\_of\\_Substance\\_Abuse\\_in\\_Canada/links/0912f50b9440f77f6c000000/The-Cost-of-Substance-Abuse-in-Canada.pdf](https://www.researchgate.net/profile/Svetlana_Popova4/publication/225091976_The_Cost_of_Substance_Abuse_in_Canada/links/0912f50b9440f77f6c000000/The-Cost-of-Substance-Abuse-in-Canada.pdf)

In fact, Bill S-5's laxity will likely undermine the goal of Bill C-45 of preventing public promotion of cannabis use, since devices for vaping nicotine liquids already physically resemble those used to vape cannabis products or derivatives, and could eventually be adapted to "vape" both substances. Manufacturers of such "multi-use" vaping devices can easily promote them as nicotine vaping devices while indirectly promoting them for cannabis use, as seen on the Internet:



### The proposed limits on advertising are falsely reassuring

Bill S-5's current limitations on the kinds of ads that are allowed in public (s. 30.2: not reasonably attractive to youth, not lifestyle) are more theoretical than practical, *as these same restrictions failed when applied to tobacco*. Indeed, the history of tobacco clearly demonstrates the ease with which the tobacco industry can make its products appealing to young people despite bans on tobacco "lifestyle" promotion, for example through slogans, flavours, displays and packaging that create an image of product that is popular, harmless, fun or fashionable. Such marketing tactics had contributed to the popularity of small flavored cigarillos — a public health disaster that required seven years before Health Canada intervened in an effective manner. Similarly, the industry's ability to thwart restrictions also underlies the 2009 ban on tobacco advertisements in magazines and newspapers.

During the hearings before the Senate, the then Director General of the Tobacco Control Directorate at Health Canada, Suzy Macdonald, testified that Health Canada could use its regulatory authority to intervene should it notice advertisements that could have a detrimental effect on public health, such as commercials aired during children's programming.<sup>17</sup> In other words, thousands of youth would stand the risk of becoming addicted to nicotine before Health Canada could obtain the necessary evidence to bring in regulatory corrections (as was the case with flavored cigarillos). Why not *prevent* such harm before they occur, by simply prohibiting ads visible to children? The amendment we propose would still allow for advertising to be expanded through regulations, should the need arise.

Furthermore, while it might seem reasonable to think that Health Canada can easily and swiftly remove abusive advertising from public view, the fact is that enforcement is a tricky process. Should the industry disagree with Health Canada's position, problematic advertising can continue until Health Canada takes the industry to court, which must decide in the government's favor, a process that can take months if not years. In practice, Health Canada's most common "corrective action" for promotional abuses has been to eventually bring in new regulations or legislation, which in addition to taking years is entirely dependent on political will.

<sup>17</sup> Ms Suzy Macdonald when answering questions from Senator Eggleton: "Through regulations, if in the future, we were to determine that in fact advertising is happening during Saturday morning children cartoons, we could take action to further restrict where that advertising could happen. Again, that would be done through consultation, and we would need to have the evidence to demonstrate that there is a public health problem... If we look at how we have addressed the tobacco issue, is that, as we have been able to determine that things are appealing to youth, that they are having a public health impact, we have brought in more and more restrictions". Senate of Canada, Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology, April 13, 2017. <https://sencanada.ca/en/content/sen/Committee/421/soci/21ev-53262-e>

## Bill S-5 undermines provincial health regulations

Several provinces including New-Brunswick<sup>18</sup>, Nova Scotia<sup>19</sup> and Quebec<sup>20</sup> have already enacted marketing restrictions on e-cigarettes and other vaping products, including banning displays at retail outlets that are accessible to minors or that do not qualify as tobacconist or e-cig speciality shops. Should S-5 be adopted as is, it would allow a billboard showing vaping products across the street from a store that is not allowed to display the same products (ex: in New Brunswick and Nova Scotia).

Federal claims that more restrictive provisions than those in Bill S-5 are not ‘Charter proof’ have raised serious concerns for jurisdictions that have deemed them justifiable, and have included them in provincial law. The then Health Minister stated that *“To do away with all lifestyle advertising of e-cigarettes” “wouldn’t be Charter compliant either. Based on the evidence we have to date, it all comes down to recognizing that to date the expectation would be that it would not meet the requirements of the Charter”*<sup>21</sup>. Members of the Committee should ask officials to produce the legal analyses they are referencing, and new ones should be produced to take into account more recent developments and research findings.

In light of the preceding evidence and rationale, it is our sincere hope that the honorable members of the Standing Committee on Health will amend Bill S-5.

Based on all the lessons learnt from the tobacco epidemic (and the flavoured cigarillo fiasco in particular) elected officials should heed the concerns expressed by many of Canada’s most reputable public health organizations (including those that signed onto a full-page ad in the Hill Times last May<sup>22</sup>) regarding overly permissive advertising provisions in S-5. These fun-flavoured, cool-looking and cloud-generating gadgets *contain nicotine*: their promotion should be limited to channels that are primarily seen by adult smokers.

Your decisions regarding S-5 will directly impact the next generations of Canadians, as restrictions on promotion will determine their risk of becoming addicted to Big Tobacco’s new wave of nicotine products.

Yours sincerely,



Flory Doucas  
Co-Director and Spokesperson

CC Members of HESA, Health critics and other MPs  
Honourable Ginette Petitpas Taylor  
Mr. James Van Loon, Director General of the Tobacco Control Directorate, Health Canada

<sup>18</sup> Government of New Brunswick, *Reminder: Changes to smoking legislation take effect July 1*, 24 June, 2015. [http://www2.gnb.ca/content/gnb/en/news/news\\_release.2015.06.0585.html](http://www2.gnb.ca/content/gnb/en/news/news_release.2015.06.0585.html)

<sup>19</sup> Government of Nova Scotia, *Tobacco Access Regulations. Section 1 replaced: O.I.C. 2015-155, N.S. Reg. 227/2015*, accessed February 9, 2018. <https://www.novascotia.ca/just/regulations/regs/tobacc.htm>

<sup>20</sup> Government of Quebec, *L-6.2 - Tobacco Control Act*, accessed on February 9, 2018. <http://legisquebec.gouv.qc.ca/en/showDoc/cs/L-6.2?digest=>

<sup>21</sup> Senate of Canada, *Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology*, April 12, 2017. <https://sencanada.ca/en/content/sen/Committee/421/soci/21ev-53253-e>

<sup>22</sup> Quebec Coalition for Tobacco Control, Action on Smoking and Health, Canadian Public Health Association *et al.*, *Bill S-5 - Legislative framework for vaping products - Provincial coalitions, doctors and public health professionals call for an amendment to protect kids against advertising for vaping products*, May 31, 2017. <https://www.newswire.ca/news-releases/bill-s-5---legislative-framework-for-vaping-products---provincial-coalitions-doctors-and-public-health-professionals-call-for-an-amendment-to-protect-kids-against-advertising-for-vaping-products-625499053.html>