



News release

## Public Health victory: Court of Appeal upholds Quebec measures regulating sale and promotion of electronic cigarettes

**Montréal, November 16h 2021** — The **Quebec Coalition for Tobacco Control** welcomes the judgment handed down by the **Court of Appeal** yesterday afternoon which upholds key provisions of **Quebec's tobacco control Act's**. The law was introduced by the Quebec **Liberal government** in 2015, was strengthened as a result of interventions of the **Parti Québécois** and the **CAQ** and was unanimously adopted by Quebec's **National Assembly**.

The detailed and unanimous judgment signed by **Judge Benoit Moore** completely overturns the **2019 lower court ruling** which had declared several provisions of the law inoperative, including those restricting e-cigarette promotions and in-store sampling. The **Quebec government** had **appealed** the initial court victory for the **Association Québécoise des vapoteries** and the **Canadian Vaping Association**. The **Appeal Court** hearing, in which the **Canadian Cancer Society** participated as an intervener, took place **last March**.

*"This judgment represents a crucial victory for public health and for the health of young people facing an industry which opposes all initiatives to reduce vaping among adolescents and which is, as the court clarified, in process of being taken over by tobacco companies,"* said **Flory Doucas, co-director and spokesperson for the Quebec Coalition for Tobacco Control**. *"The judgment underlines several main principles which should motivate the government to stop delaying further measures to reduce the appeal of e-cigarettes to young people, such as banning all flavours other than tobacco."*

### ***The precautionary principle justifies the adoption of restrictive measures***

The judgment supports the precautionary approach of the **Government of Quebec**, which sought to regulate the promotion and sale of electronic cigarettes given their potential risks and as yet unknown effects.

The **Court** cited reports of the **World Health Organization (WHO)** and numerous experts, identifying "intrinsic" risks such as nicotine dependence and the components of aerosols such as propylene glycol [234], as well as "extrinsic" risks such as the gateway effect to using traditional cigarettes by young people, ex-smokers and smokers who continue to smoke, thereby diminishing the gains made by tobacco control. [235]

The **Appeal court** found that the lower court had ignored the risks to third parties from e-cigarette aerosols, in particular store employees who would be constantly exposed to them. [212]

### ***Cessation potential needs to be validated through certification***

Although the vaping industry has presented e-cigarettes as **effective and recognized** cessation devices and an essential element to **reducing the harm** from smoking, the **Appeal Court** noted that **Health Canada** has not recognized e-cigarettes as a treatment to quit smoking and that these products are not authorized or licensed under Canada's **Food and Drugs Act** [120] in the same way that nicotine patches and gum are. The court acknowledged the opinions of various experts and former smokers who sincerely believe they have quit smoking using these products [274], but underlines the recommendation of the **World Health Organization** that e-cigarettes not be advertised as smoking cessation products until clear proof of their effectiveness is available" [277].

### ***Consideration of all those affected***

The court expressed the need to consider risks to smokers and also for other groups, including young people, non-smokers and ex-smokers [233], rejecting the view of the trial judge who had considered that e-cigarettes are primarily aimed at smokers and who minimized the risks to young people [200]. The court found the vaping industry's claim to be interested only in marketing to smokers as somewhat reductive, and reminiscent of earlier tobacco industry arguments that they were not trying to reach new smokers, but only to increase their market share [278].

### ***Conclusion***

*"Although the measures adopted by the Quebec legislature in 2015 were the strongest in Canada at that time, these have not proven sufficient to prevent the meteoric rise in vaping among young people that followed. Since then - and despite the COVID-19 pandemic - other provinces have strengthened their legislation. We hope that this solid ruling from its highest court will give the Government of Quebec the courage to stand up to the vaping lobby and to introduce **long-awaited regulations**, especially a ban on flavours and a tax on vaping products"* concluded **Ms. Doucas**.

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For more information: Flory Doucas : 514-515-6780