

**BRIEF TO THE HOUSE OF COMMONS STANDING
COMMITTEE ON HEALTH**

**S-5 AN ACT TO AMEND THE TOBACCO ACT AND THE
NON-SMOKERS' HEALTH ACT AND TO MAKE
CONSEQUENTIAL AMENDMENTS TO OTHER ACTS**

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S-5 WILL OPEN THE VAPING MARKET TO THE POWERFUL AND IRRESPONSIBLE TOBACCO INDUSTRY

AMENDMENTS ARE NEEDED TO PREVENT WIDESPREAD ADVERTISING FOR NICOTINE INHALERS.

S-5 will radically transform the vaping market.

E-cigarettes and other vaping products currently occupy a legal grey zone. Although the sale of these products is against the Food and Drugs Act, Health Canada has chosen not to enforce this law.

Yet legalizing this market through S-5 could be more damaging to public health than the status quo. That's because in Canada today, with only small operators present, no one is aggressively marketing these addictive products. The ban on nicotine vaping products has kept Big Tobacco out of the market.

Once Bill S-5 becomes law, that will change. Tobacco companies will enter the vaping market as aggressively in Canada as they have elsewhere.

S-5 would allow these companies to advertise in all available media - television, radio, internet, video-games, newspapers, billboards, corner store windows, bars, text messages, social media, etc. The safeguards in the law (which ban "lifestyle" ads and those that can be proven in court to appeal to young people) may sound good in theory, but they will not be strong enough to protect young people from tobacco industry marketing.

Non-combustible nicotine and tobacco products are widely acknowledged to be less hazardous than regular cigarettes on a product-to-product basis. But they are only better for public health if smokers, and only smokers, use them. Dual use of combustible and non-combustible nicotine or tobacco, or use by former smokers or non-smokers, could all worsen the problems of nicotine addiction. These circumstances could result in more, not less, harm from these new vaping and heat-not-burn products.

The benefits of a legal, regulated market for nicotine products can be achieved without the risks contained in Bill S-5.

If the government wishes smokers to be informed about the availability of alternative forms of nicotine, targeted communications at smokers (including though tobacco package warnings and inserts) are a more prudent approach than risking the spill-over effect of television advertising and billboards.

Recommendation

1. Bill S-5 should be amended to more closely align advertising restrictions for nicotine vaping products with those currently in place for tobacco and proposed for cannabis.



<https://www.youtube.com/watch?v=vklqLQ4BE6E>



BAT Promotions for Vype Pebble

S-5 IS A MISSED OPPORTUNITY TO REDUCE CIGARETTE SMOKING.

AMENDMENTS ARE NEEDED TO KEEP UP WITH TOBACCO INDUSTRY MARKETING.

S-5 does not guide the marketing of new ‘reduced risk’ tobacco products.

Bill S-5 was drafted in response to the vaping products of the past decade and a report of the previous parliament. It does not respond to the many changes in the tobacco market that have taken place since 2015. These include the launch of heat-not-burn cigarettes in many parts of Canada - like Philip Morris International’s iQOS and British American Tobacco’s glo.

These new heat-not-burn products are virtually unregulated, because the federal *Tobacco Act* (which was drafted in 1996) did not anticipate that such products were marketable. In other jurisdictions, like the United States, government health authorities have to approve new tobacco products, but in Canada they can be launched with very few regulatory restraints. There are not even any legal requirements for them to carry health warnings.

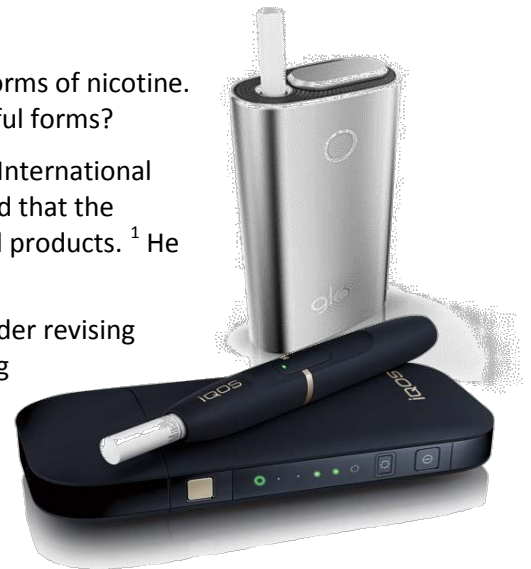
S-5 does not even try to remove the most harmful products

With S-5, tobacco companies will be able to market less harmful forms of nicotine. So why will they be allowed to continue marketing the most harmful forms?

André Calantzopoulos, the Chief Executive Officer of Philip Morris International (which owns and runs Rothmans, Benson and Hedges) recently said that the company plans to replace combustible cigarettes with less harmful products.¹ He did not, however, provide a time frame for this transition.

More recently, Mr. Calantzopoulos has urged Parliament “to consider revising S-5 to propel innovations that will lead to drastically lower smoking rates in Canada – well before 2035.”²

We agree. In giving the tobacco industry the opportunity to sell e-cigarettes and heat-not-burn cigarettes, the Canadian government could and should oblige the tobacco industry to phased out its most harmful products.



Recommendations

2. Bill S-5 should be amended to establish target dates for the phase-out of combustible cigarettes.
3. Bill S-5 should be amended to establish regulatory control on heat-not-burn tobacco products.

¹ André Calantzopoulos “Our ambition is to lead a full-scale effort to ensure that non-combustible products ultimately replace cigarettes to the benefit of adult smokers.” PMI News Release. September 23, 2016. Lausanne, Switzerland. <https://www.pmi.com/media-center/press-releases/press-release-details/?newsId=2205628>.

² André Calantzopoulos. “Seeing past the smoke.” Financial Post. September 27, 2017. <http://business.financialpost.com/opinion/this-product-can-help-millions-quit-smoking-if-were-allowed-to-talk-about-it>.

S-5 IS OUT OF STEP WITH THE EVIDENCE ACCEPTED BY MOST HEALTH AUTHORITIES

The passage of S-5 will radically transform the currently unregulated vaping market.

- The vaping market in Canada is currently an informal grey market in which suppliers have kept a low profile and have not aggressively marketed their products, which are technically illegal.
- The passage of S-5 will trigger the entry of large tobacco companies in the Canadian vaping market.
- These companies have demonstrated that they are willing and able to aggressively market products to new users.

The advertising provisions in S-5 will allow companies to encourage young people and non-smokers to try vaping products.

- S-5 does not restrict where ads for vaping product can be placed (and allow them on television, radio, billboards, etc). (s. 30.1)
- S-5 does restrict the kinds of ads for vaping products that are allowed in public places (not reasonably attractive to youth, not lifestyle) (s. 30.2), but places fewer 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 and was not originally included in the bill. (s. 30.701).
- S-5's permissions for vaping advertisement is 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
- On the basis of long experience with tobacco regulations and discussions with the department, there is no indication that regulations to constrain promotions will be introduced quickly.
- On the basis of the consultation paper issued this fall, there is no indication that the regulations will be effective in protecting young people.
- 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 which underlie S-5 are unarticulated and informal.

- Implicitly, S-5 implements a harm-reduction approach, by offering nicotine users a new less hazardous form of delivery.

- However, this approach does not fit into a comprehensive harm reduction framework that would also require reductions in the offer for sale of the most hazardous tobacco products – combustible cigarettes.
- Health Canada has not established a comprehensive harm reduction policy or articulated the goals and administrative measures one would expect (nor were these aspects included in the only consultation on a renewed tobacco control strategy).
- Legally, courts will not have a harm reduction framework to assist them in enforcing/upholding restrictions.

S-5 undermines provincial health regulations.

- Quebec is the only province which has established parallel regulation regarding promotion on tobacco (and vaping) products. The Quebec Tobacco Control Act imposes the similar restrictions on the promotion of electronic cigarettes as are on tobacco products. According the Quebec law, vaping products can be advertised in printed publications with an adult readership (because of the federal ban on print advertisement for tobacco, this option is no longer available for cigarettes and other tobacco products).
- Quebec, New-Brunswick and other provinces have banned the display of vaping products at retail (where minors are allowed). 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 which have determined that they are justifiable.

Recent scientific reviews urge caution in regulating vaping products and heat-not-burn products.

- A January 2018 scientific review article on e-cigarettes³ made eleven policy recommendation to minimize deleterious health effects. One of these recommendations was:

“Subject e-cigarettes to the same marketing restrictions that apply to conventional cigarettes (including no television, radio or outdoor advertising).”
- On January 23, 2018 the US National Academy of Science, Engineering and Medicine issued a report of over 600 pages entitled “Public Health Consequences of E-Cigarettes.”⁴ One of the concluding observations of the report was:

“Based on the findings of this report, e-cigarettes cannot be simply categorized as either beneficial or harmful to health. The net public health outcome depends on the balance between adverse outcomes (increased youth initiation of combustible tobacco cigarettes, low or even decreased cessation rates in adults, and a high-risk profile) and positive outcomes (very low youth initiation, high cessation rates in adults, and a low-risk profile).”

3 Glantz, SA and Bareham, DW. E-cigarettes : Use, Effects on Smoking, Risks, and Policy Implications. Annual Review of Public Health. Volume 39. Posted online on January 11, 2018. <https://doi.org/10.1146/annurev-publhealth-040617-013757>.

4. Public Health Consequences of E-Cigarettes. A Consensus Report of the National Academies of Science, Engineering and Medicine. The National Academies Press. Washington DC. USA. January 2018. <http://nap.edu/24952>.

- A February 6, 2018 report from Public Health England⁵ also asserted that:

“Regulations need to balance the risks of e-cigarettes with their potential benefits – and achieve key aims of reducing smoking and continuing to avoid uptake of e-cigarettes by non-smokers.”
- On January 25, 2018, a scientific advisory panel to the US Food and Drug Administration recommended rejection of an application by Philip Morris International that it be allowed to market its heat-not-burn product IQOS as safe.⁶

No international health authority has endorsed the S-5 approach.

- There is growing acceptance (but not yet a complete scientific consensus) that non-therapeutic vaping products are part of a harm-reduction approach for tobacco use.
- There is well-established scientific evidence that nicotine is highly addictive.
- International health regulators have not endorsed a recreational nicotine market as an effective component of a tobacco control approach.
- The 2014 Conference of Parties to the FCTC urged parties “to consider banning or restricting advertising, promotion and sponsorship of ENDS” (Electronic Nicotine Delivery Systems), a recommendation endorsed by the World Health Organization in 2016.⁷
- In 2016, the U.S. Surgeon General issued a “Call to Action”⁸ on e-cigarettes, calling for advertising restrictions that include “avoiding media channels with high youth access”.

S-5 is out of step with international practice on regulating nicotine.

- A 2016 review of global e-cigarette laws found that only 8 of 68 countries did not ban e-cigarettes or ban promotion of e-cigarettes.⁹
- The United Kingdom permits e-cigarette advertising, but not on television, radio or commercial e-mails. In the UK, use of e-cigarettes is officially encouraged as a less hazardous alternative to cigarettes.¹⁰ Bill S-5 would permit the advertising in Canada of vaping products in many more channels than are permitted in the UK.
- Some countries with mature tobacco control systems do not permit the sale of nicotine as a recreational drug, but maintain a therapeutic approach. These include Brazil, Thailand, Uruguay, Singapore, Australia.

5 E-cigarettes and heated tobacco products: evidence review. Public Health England. February 6, 2018.

<https://www.gov.uk/government/publications/e-cigarettes-and-heated-tobacco-products-evidence-review>.

6 F.D.A. Panel Rejects Philip Morris’ Claim That Tobacco Stick Is Safer Than Cigarettes. New York Times. January 25, 2018.

<https://www.nytimes.com/2018/01/25/health/fda-tobacco-philip-morris.html>.

7 Electronic nicotine delivery systems and electronic non-nicotine delivery systems (ENDS/ENNDS): Report by WHO. FCTC/COP/7/11.

August 2016. http://www.who.int/fctc/cop/cop7/FCTC_COP_7_11_EN.pdf?ua=1.

8 U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016. https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/index.htm.

9 Kennedy, RD et al. Global approaches to regulating electronic cigarettes. Tobacco Control. November 2016.

<http://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2016/11/30/tobaccocontrol-2016-053179.full.pdf>.

10 E-cigarettes and heated tobacco products: evidence review. Public Health England. February 6, 2018.

<https://www.gov.uk/government/publications/e-cigarettes-and-heated-tobacco-products-evidence-review>.

- In January 2018, the Australian government made public the principles it applied to its policy and regulatory approach on electronic cigarettes, and its rejection of a commercial recreational nicotine market.¹¹
- Most OECD countries which allow vaping products to be sold apply similar restrictions for promotion as exist for tobacco. This includes Austria,¹² Belgium,¹³ Denmark,¹⁴ Finland,¹⁵ France (Art. L. 3513-4),¹⁶ Germany, Hungary (s. 1),¹⁷ Ireland,¹⁸ the Netherlands,¹⁹ Norway,²⁰ Sweden,²¹ and others.
- The New Zealand government announced in March 2017 that it would prohibit e-cigarette advertising beyond the retail environment and that doing so was a “justified limitation” on freedom of expression.²²

Recommendations

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2. **Bill S-5 should be amended to establish target dates for the phase-out of combustible cigarettes.**
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- 11 Australia. Department of Health. Principles that Underpin the Current Policy and Regulatory Approach to Electronic Cigarettes (E-Cigarettes) in Australia. <http://www.health.gov.au/internet/main/publishing.nsf/Content/principles-underpin-current-policy-regulatory-approach-electroniccigarettes-eeCigarettes-australia>.
- 12 Austria Policy Summary. <http://globaltobaccocontrol.org/ru/e-cigarette/austria>.
- 13 Belgium. Decree. Arrêté royal relative à la fabrication et à la mise dans le commerce des cigarettes électroniques. <https://www.tobaccocontrolaws.org/files/live/Belgium/Belgium%20-%20Decree%20of%20Oct.%2028%2C%202915%20-%20national.pdf>.
- 14 Denmark. Electronic cigarettes etc. Act. 2016. <https://www.tobaccocontrolaws.org/files/live/Denmark/Denmark%20-%20Act%20No.%20426.pdf>.
- 15 Finland. Tobacco Act. 2016. https://www.tobaccocontrolaws.org/files/live/Finland/Finland%20-%20Tobacco%20Act%20%28No.%20549_2016%29.pdf.
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- 18 Ireland. SI No. 271 of 2016. <https://www.tobaccocontrolaws.org/files/live/Ireland/Ireland%20-%20EU%20Regs%202016%20-%20national.pdf>.
- 19 Netherlands. Regulation of E-cigarettes. <https://www.government.nl/topics/smoking/regulation-of-e-cigarettes>.
- 20 Norway. Law Amending the Tobacco Act. 2017. <https://www.tobaccocontrolaws.org/files/live/Norway/Norway%20-%20Law%20Amd%27ing%20TC%20Act%20%282017%29.pdf>.
- 21 Sweden. Lag (2017:425) om elektroniska cigaretter och påfyllningsbehållare. https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2017425-om-elektroniska-cigaretter-och_sfs-2017-425.
- 22 New Zealand. Cabinet paper. Improving the regulatory framework for electronic cigarettes (e-cigarettes) and emerging tobacco and nicotine-delivery products. <https://www.health.govt.nz/system/files/documents/pages/improving-regulatory-framework-for-ecigarettes-emerging-tobacco-nicotine-delivery-products.pdf>.

About Physicians for a Smoke-Free Canada

Physicians for a Smoke-Free Canada (PSC) is a national health organization, founded in 1985 as a registered charity. We are a unique organization of Canadian physicians who share one goal: the reduction of tobacco-caused illness through reduced smoking and exposure to second-hand smoke. PSC provides leadership for the medical profession on tobacco issues. In the past 20 years, more than 1,500 Canadian physicians have joined PSC. In 2005, the World Health Organization awarded PSC with the World No Tobacco Day Award for outstanding achievement in tobacco control.