

## Briefing note

### S-5: The proposed Tobacco and Vaping Products Act

#### The issue:

- S-5 will result in big tobacco companies promoting vaping products in the mainstream media (television, radio, billboards, internet, social media, newspapers, in convenience stores and other retail environments frequented by minors, etc) and that this will result in higher rates of nicotine use and addiction among young people and non-smokers.
- Amendments are needed to allow smokers to receive appropriate information about the availability of less harmful forms of nicotine use while reducing the risks that non-smokers will be induced to use them.

#### Background:

##### The anticipated impact of S-5

##### **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 safer form of delivery.
- Privately, health officials confirm that S-5 is part of a harm reduction approach.
- 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.**

- 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 (see letter attached).

**International comparisons**

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](#).

- In 2016, the [U.S. Surgeon General issued a “Call to Action”](#) 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.<sup>1</sup>
- Most OECD countries which allow vaping products to be sold apply similar restrictions for promotion as exist for tobacco. This includes [Austria](#),<sup>2</sup> [Belgium](#),<sup>3</sup> [Denmark](#),<sup>4</sup> [Finland](#),<sup>5</sup> France ([Art. L. 3513-4](#)),<sup>6</sup> Germany, Hungary ([s. 1](#)),<sup>7</sup> [Ireland](#),<sup>8</sup> the [Netherlands](#),<sup>9</sup> [Norway](#),<sup>10</sup> [Sweden](#),<sup>11</sup> 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](#).<sup>12</sup>
- The [United Kingdom](#) permits e-cigarette advertising, but not on television, radio or commercial e-mails.
- 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](#).
- 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.<sup>13</sup>

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- 1 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>
  - 2 Austria Policy Summary. <http://globaltobaccocontrol.org/ru/e-cigarette/austria>
  - 3 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>
  - 4 Denmark. Electronic cigarettes etc. Act. 2016. <https://www.tobaccocontrolaws.org/files/live/Denmark/Denmark%20-%20Act%20No.%20426.pdf>
  - 5 Finland. Tobacco Act. 2016. [https://www.tobaccocontrolaws.org/files/live/Finland/Finland%20-%20Tobacco%20Act%20%28No.%20549\\_2016%29.pdf](https://www.tobaccocontrolaws.org/files/live/Finland/Finland%20-%20Tobacco%20Act%20%28No.%20549_2016%29.pdf)
  - 6 France. Ordonnance no 2016-62. <https://www.tobaccocontrolaws.org/files/live/France/France%20-%20Order%20No.%202016-623%20Transposing%20TPD%20-%20national.pdf>
  - 7 Hungary. Government regulation 239/2016 (16 August). [https://www.tobaccocontrolaws.org/files/live/Hungary/Hungary%20-%20Regulation%20239\\_2016.pdf](https://www.tobaccocontrolaws.org/files/live/Hungary/Hungary%20-%20Regulation%20239_2016.pdf)
  - 8 Ireland. SI No. 271 of 2016. <https://www.tobaccocontrolaws.org/files/live/Ireland/Ireland%20-%20EU%20Regs%202016%20-%20national.pdf>
  - 9 Netherlands. Regulation of E-cigarettes. <https://www.government.nl/topics/smoking/regulation-of-e-cigarettes>
  - 10 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>
  - 11 Sweden. Lag (2017:425) om elektroniska cigaretter och påfyllningsbehållare
  - 12 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>
  - 13 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>