

## A RAPIDLY CHANGING LANDSCAPE FEDERAL GOVERNMENT'S PLANS FOR A RENEWED STRATEGY REMAIN VEILED.

On the last day of March next year, 2018, the federal tobacco control strategy (FTCS) expires. If all goes smoothly, it will be replaced with a new cabinet-approved five-year plan the following day.

This will be the first cabinet-level tobacco policy review by the new government, and the fourth 'refreshing' exercise on the federal approach since it was set up as a multi-departmental initiative in 2001.

So far, there are few hints on how this government sees tobacco control beyond the measures included in S-5 to legalize vaping products and implement plain packaging. The consultation process, discussed later in this bulletin, has been vague on details.

The absence of an articulated vision for tobacco control by the new government is a cause for concern. It may also be a symptom of a larger challenge of maintaining political interest in the long-standing problems of tobacco in the face of newer problems, like the opioid crisis and cannabis reform.

### **Successive cuts, but a strong regulatory presence and a record of achievements**

As one would expect in a program that has been overseen by 9 health ministers and submitted to numerous organizational changes, there have been a number of changes to the FTCS since it was put in place in 2001. Most of these have resulted in a reduction of the scope and scale of the federal tobacco control activities.

Initially designed as a \$110 million a year program, the budget for the FTCS is now only \$43 million, of which Health Canada receives \$37 million. Once inflation is taken into consideration, the budget has fallen by two-thirds from the original design.

Whole swathes of federal activity have been abandoned: advertising and public education, community programming and international support. Other aspects, like smoke-free environments, retail regulations, youth-programming and cessation support have largely been handed off to provincial governments.

Even in some areas of core federal responsibilities, such as those affecting the health of some indigenous communities or controlling contraband, federal investments were pulled back.

Despite this, the program is generally viewed as a successful one. Health Canada is still regarded as a global leader in the area of tobacco product regulation. The FTCS—particularly in its early years—is acknowledged as a contributor to the changed social attitudes around tobacco use and to reducing the smoking rate. (The two competing federal measures of smoking prevalence in these years are shown on the back page).

### **New challenges on the way**

Circumstances are very different now than they were when the FTCS was initially designed, and there is general acknowledgement that it is time for a deep re-think of tobacco control strategies, and for the development of qualitatively different approaches.

This review is even more pressing given the new challenges on the horizon. These include the upcoming legalization and increased commercialization of two products closely linked with tobacco use — cannabis and nicotine vaping products. They also include the impact of emerging technologies developed by the tobacco industry (like heat-not-burn tobacco products).

Where once there was a consensus to simultaneously address nicotine addiction and tobacco use, there is growing pressure to unbundle these objectives. How to do so is the subject of competing scientific and social views as well as a number of commercial operators.

The government has received thoughtful advice from experts and community leaders who have worked to elaborate options for modernizing and strengthening tobacco control. Prominent among these are the results of an "Endgame" Summit in 2016 and the recommendations of the Executive Steering Committee for the Modernization of Smoke-Free Ontario, convened by the Ontario government.

So far, Health Canada has shown little appetite for any of the major reforms presented, at least on the basis of the consultation paper it issued this spring

**Proposals for the next phase of federal tobacco control are wending their way through cabinet. For the moment, while the goal of achieving 5% prevalence by 2035 is accepted, there is no signal on how Health Canada intends to get there.**

# With "less risky" products, why not phase out combustible cigarettes?

## Getting the smoke out of cigarettes

2017 saw an acceleration in the move by Philip Morris International and British American Tobacco to rehabilitate their reputation and to re-invent their market.

For the first time in decades, the companies' executives are not keeping a low profile in the media or staying out of tobacco control discussions. Instead, they have launched pro-active campaigns, including media events, speaking tours and pro-active lobbying for changes to tobacco laws.

Their message? Heated tobacco is a disruptive technology that should be used to drive down smoking rates.

### The industry wants relaxed regulation of new "reduced risk" products

Over the past year, both BAT and ITL have introduced electronic devices which produce an aerosol by heating tobacco sticks that resemble short cigarettes. In support of the claim that these are "reduced risk" products, the companies point to a number of studies which show lower levels of toxins in the aerosol compared with the smoke from conventional cigarettes.

For the moment these products lie in a kind of legal limbo in Canada – they are subject to the federal laws that apply to all tobacco products (like restrictions on advertising), but are not captured by the regulations which are more product-specific (like health warnings and bans on flavourings). They also reveal a vulnerability in Canada's health laws. Unlike the United States, Australia, New Zealand and many other developed countries, there is no requirement for them to be approved by any government before they can be marketed in Canada.

There is not even an appropriate tax category for heated tobacco products – they are currently taxed at the rate set for oral tobacco. This is set on a per-gram basis, which makes the tax less than half the tax for cigarettes on a per-stick basis.

The manufacturers of these new types of cigarettes are using private visits with policy-makers, news events and other means to encourage regulators that the health of Canadian smokers would benefit if even fewer rules and lower taxes were in place for these products.

They see the current parliamentary review of S-5 (the proposed *Tobacco and Vaping Products Act*) as an opportunity to make this happen.

### A better option: stronger measures on the old "high risk" cigarettes.

We agree with the companies that Bill S-5 should be opened to respond to these new products. We agree that the new technologies should prompt a review of tobacco laws.

Our suggestions for revisions to the law however, differ from those proposed by the companies.

Now that the companies have shown that they can produce a less harmful form of inhaling tobacco, we think they should be required to remove their more harmful products from the market.

It's time to stop exempting tobacco manufacturers from consumer protection laws that ensure products are no more dangerous than necessary.

Canadian law makes it relatively easy to put such a phase-out in place. Tobacco companies must regularly test the levels of toxins produced by their cigarettes and report the findings to government. They have recently used the same tests to show that their newer cigarettes are less toxic (and have published the results). The results of the toxic emission reports on the heated tobacco products could become a performance standard for all heated or ignited tobacco products.

This would give the marketing edge that the companies claim they need to encourage smokers to switch to a less bad option.

It is a much more prudent approach than granting their request to be able to use the tools of modern advertising and marketing to promote these brands– tools

**BAT's i-glo (right) and PMI's iQOS (below) were launched in Canada in 2017.**



we know they would use to grow the number of people who use tobacco or other forms of nicotine.

Phasing out combustible cigarettes could also be a springboard for the meaningful negotiation and effective enforcement necessary to wind down the contraband market.

Parliament has an opportunity in S-5 to ensure that nicotine, like gasoline and paint, is regulated so that most harmful products are phased out when better options become technically feasible.

A collage of news snippets and a photo of Jorge Araya. The main snippet is titled "Seeing past the smoke" and features a quote from André Calantzopoulos: "Canada ranks among the healthiest countries in the world. Yet there are more than four million men and women in Canada who smoke cigarettes – and that's despite vivid warnings and universal awareness of the serious health risks." Other snippets include "REGULATE NICOTINE LIKE POT: CEO" from the Calgary Herald (10 Nov 2017), "Big tob pitching nicotine", and "Big cor". A photo of Jorge Araya is also included, with the caption "Jorge Araya The president and CEO of British American Tobacco Canada is".

# Bill S-5: The threat of widespread advertising for nicotine

## The risk of addicting future generations to nicotine

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 since about 2012.

The illegality of selling e-cigarettes has kept Big Tobacco (and mainstream retailers) out of the e-cigarette and nicotine vaping market, even though they have developed many such products and are marketing them in other countries.

All this will change when S-5 (the proposed *Tobacco and Vaping Products Act*) becomes law. Tobacco companies will likely enter the vaping market as aggressively in Canada as they have elsewhere. (S-5, which began in the Senate last November, is now being studied by the House of Commons.)

**This is a cause for concern.** S-5 as it is now drafted gives e-cigarette and vaping manufacturers the right to advertise these products in all available media - TV, radio, internet, video-games, newspapers, billboards, corner store windows, bars, text messages, social media, etc.

**Tobacco comes to Vancouver**  
g new ways to consume

Penner (HTTP://VANCOUVERSUN.COM/AUTHOR/DEPENNER)  
17 | Last Updated: August 4, 2017 9:15 AM PDT

**Imperial Tobacco seeks**  
competitive taxes

more

The president and chief executive of Imperial Tobacco Canada is urging governments to use the same logic to regulate tobacco and marijuana as they plan to do for marijuana.

George Araya told a business au-

**In anticipation of S-5 coming into force, Health Canada has proposed rules for ads for vaping products. Under the proposed rules, these ads would be permitted on television (after a certain hour) and billboards (but not near schools). This approach was used UNSUCCESSFULLY for decades to limit the reach of tobacco ads**

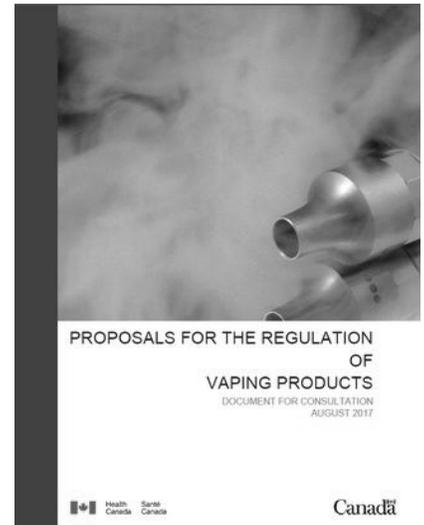
The government currently relies on three safeguards in the bill to protect young people and non-smokers from nicotine marketing:

- a ban on ads if there are "reasonable grounds" to believe that they would appeal to young persons,
- restricting lifestyle ads to publications sent to adults or places where young persons are not permitted (information ads would be allowed in other publications)
- The power for government to impose regulations on e-cigarette advertising. (This was not included in the original bill, but was inserted by the Senate).

Decades of experience with enforcing tobacco laws suggest that tobacco companies will see these safeguards as a challenge, not a barrier.

The same experience suggests that the government will wait until a large number of people have been harmed by this advertising before they impose any stronger measures. Indeed, in the proposed regulations circulated late this summer, the government suggests regulations that are virtually identical to those in place under the tobacco industry voluntary code between the 1960s and the mid-1980s.

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.

Physicians for a Smoke-Free Canada appeared before the Senate Committee and continues to recommend to parliamentarians that Bill S-5 not be passed in its current form, and that:

- **Like cannabis and tobacco, nicotine products should not be advertised on billboards, television or radio.**
- **Promotions for products accepted as reduced harm should be allowed if targeted only at smokers, perhaps at the time of tobacco sale.**

**In 2017, tobacco companies launched public relations campaigns asking for relaxed regulations for heated tobacco products.**

Comparing the options



On only a handful of occasions in the past several decades has the federal cabinet been asked by the Minister of Health to revise the government’s policy on tobacco. This cabinet process is understood to be underway, as a replacement for the current approach which expires on March 31, 2018.

Speaking to a Forum on ‘The Future of Tobacco Control’ last spring, Health Minister Jane Philpott identified the need for a “bold and innovative” approach. The options presented by her department, however, fell short of this mark. As shown below, they included few of the policy reforms proposed at the Endgame Summit at Queen’s University the previous fall, nor those subsequently recommended by experts brought together by the Ontario government.

In addition to regulatory proposals, the non-government panels also identified system reforms and funding requirements necessary to sustain and implement more ambitious programming. In this regard, Health Canada has also not yet revealed its intentions.

Even allowing for the inherently secret process of cabinet decision making, the silence on tobacco issues from senior levels of Health Canada (including the minister) in the months leading up to the forced-renewal of this strategy is a disquieting one.

	Health Canada	Endgame recommendations	Ontario Committee
<b>Public Health Goal</b>	<b>Less than 5% prevalence by 2035.</b>	Less than 5% prevalence by 2035.	Less than 5% by 2035, with interim goals for 2023 (11%) AND 2028 (8%)
<b>Tax</b>	<b>No options</b>	Substantial increase in taxes.	Substantial increase in tax.
<b>Price</b>	<b>No options proposed.</b>	Curtail price-based marketing incentives, and possibly control wholesale prices.	Eliminate the price differential among different types and brands of cigarettes.
<b>Industry accountability for costs</b>	<b>A manufacturers’ levy was identified as a method used elsewhere.</b>	Impose manufacturers’ license fee to pay for tobacco control; recommendations on provincial health-care cost recovery suits to address other costs of tobacco use.	A manufacturers’ levy to pay for costs of tobacco use that are not recovered through tobacco taxes.
<b>Retail reform</b>	<b>No options proposed.</b>	Limit retail availability through high cost retail licensing, zoning or tobacco only-stores.	Ban all industry incentives offered to retailers; Reduce the number and density of retail tobacco vendors.
<b>Supply controls</b>	<b>No options proposed.</b>	Align behaviour of suppliers with public health goals through new obligations or structural reforms to industry.	Implement a “sinking lid” system that gradually reduces the amount of tobacco released to the market for sale.
<b>Vaping and harm reduction</b>	<b>An active role in encouraging adult smoker to switch to vaping products.</b>	Policies to prevent e-cigarettes from becoming a problem for non-smokers, or for deterring cessation.	Evaluate and regulate the marketing and use of all inhaled drug delivery devices. Restrict the sale of e-cigarettes and vaping products to people who smoke.
<b>Product regulation</b>	<b>Reduce the addictiveness of tobacco products.</b>	Reduce palatability of tobacco products, ban flavours and additives.	Ultimately phase out the sale of all combustible delivery devices.
<b>Packaging</b>	<b>Plain and standardized packaging.</b>	Plain and standardized packaging, enhanced warnings.	Plain and standardized packaging.
<b>Minimum Age</b>	<b>Raise to 21.</b>	Raise to 21.	Raise to 21.
<b>Advertising and promotion</b>	<b>No option identified</b>	Require movies that depict smoking to have an 18A classification; Implement a full ban on tobacco advertising and promotion, including at retail.	An 18A classification and additional restrictions on movies that depict smoking.

# The need for stronger price and tax policies.

## Protecting Canadians from Cheap Cigarettes

**Tobacco companies have managed to keep cigarettes affordable. Governments have failed to respond.**

When it comes to the problem of cheap cigarettes, the news stories are usually about contraband cigarettes. This is no coincidence — a leaked document from British American Tobacco last year detailed how the industry ran campaigns about contraband to block tax increases or further regulations on tobacco.

Meanwhile, the companies have unleashed their own strategies to ensure that the price of cigarettes is aligned with smokers' willingness to pay, and to ensure that taxes do not help drive smokers to quitting.

### **The new problem of price manipulation**

Until a little more than a decade ago, all brands of manufactured cigarettes were sold at essentially the same price (although prices differed among provinces).

Since then, three levels of price control have been introduced by the industry:

- 1. Price-segmentation of brands.** Beginning in 2004, the companies have marketed 'discount' and 'budget' brands whose prices are a third or more cheaper than traditional products.
- 2. Localizing prices to retailers.** After the federal *Competition Act* was changed in 2009, companies could legally charge some retailers more than others for the same product and they began doing so in 2010. (To facilitate

this, the two largest companies dispensed with wholesalers and now sell directly to retailers)

- 3. Suppressing retail mark up.** The companies encourage retailers to put a lower mark-up on cheaper brands, offering them rebates or other incentives to do so.

These measures have exacerbated the low-tax policies of the largest governments (Federal, Ontario and Quebec). They have allowed the manufacturers to ensure that in the most populous provinces, price-sensitive smokers can continue to find affordable cigarettes.

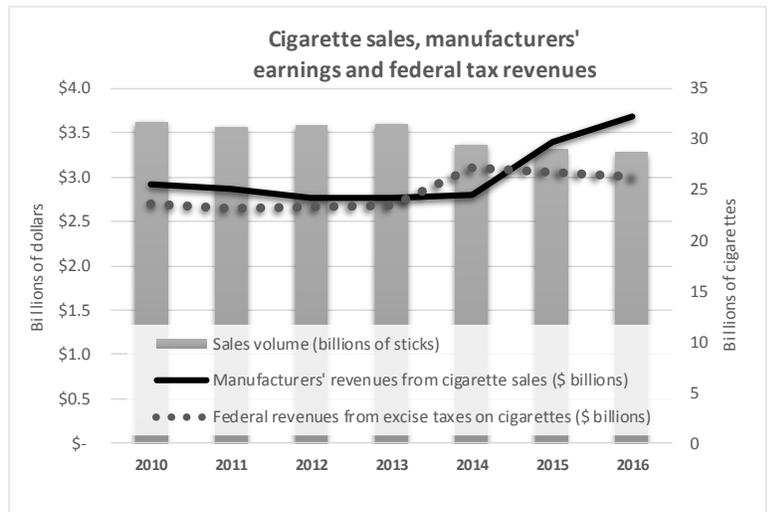
### **The increasing problem of retailer incentives.**

To encourage retailers to sell more cigarettes at cheaper prices, manufacturers have put loyalty programs in place which reward high volume sales with rebates and with travel opportunities and merchandise. Those who fail to keep sales volume high lose these privileges.

Despite the acknowledged importance of cigarette prices to public health, these industry practices have emerged without a policy response from most governments. Only the Quebec government has passed restrictions on some of the incentive programs.

### **Even with its cheap cigarette strategy, the industry has managed to increase profits...**

By adjusting their pricing strategies to local market conditions, and by phasing price increases in slowly, the companies have been able to gradually increase their profits. Health Canada reports that the industry's revenues from cigarette sales have increased by \$1 billion a year since 2014.



Because the companies phase in their price increases slowly over time and unevenly across brands, they are able to minimize the impact that price increases should have on smoking behaviour.

### **...while convincing governments to keep taxes low.**

Meanwhile, tobacco taxes are not keeping up. The real value of federal tobacco taxes is close to what it was at the beginning of the century: once adjusted for inflation, there has been less than one-third of a cent per cigarette increase since 2002.

### **The solution? Public health control of cigarette pricing.**

In our pre-budget submission to the Finance Ministry this year, Physicians for a Smoke-Free Canada called for:

- **An increase in federal tobacco taxes** to ensure that the minimum combined federal and provincial tax on cigarettes in Canada is at least \$0.40 a cigarette (\$80 per carton).
- **Standardization of the local price for cigarettes** within each jurisdiction (while allowing for provincial or municipal taxes or levies).
- **Monitoring of retail tobacco pricing and sales**
- **Improved contraband measures**, including allocation of revenues from tobacco taxes to address the economic and social and political drivers of the illicit tobacco market.



In October 2017, a price difference equal to \$18.00 per carton was observed in the price of the cheapest brands sold by Montreal retailers. The cheapest cigarettes were sold in the poorest neighbourhoods.

# 2017

## The year in review

### January

**Philip Morris International's** heat-not-burn tobacco product, iQOS, becomes available in most provinces through internet sales. (A flagship store is soon opened in Toronto)

**PMI** re-profiles its web-site and public relations efforts as a commitment to "smoke-free future".

**France** fully implements **plain packaging** and introduces innovative new measures—including a €130 million tax on industry revenues to support tobacco control.

### February

**Health Canada** releases discussion paper on future of tobacco control.

**Slovenia** adopts a law to require plain packaging (effective January 2020).

### March

**Health Canada** invites 150 "stakeholders" to a National Forum on the Future of Tobacco Control in Canada. Minister Philpott affirms goal of 5% prevalence by 2035 and asks for proposals for "bold and innovative" approaches.

Survey data on smoking rate in 2015 released: **Statistics Canada's** Canadian Community Health Survey and **Health Canada's** Tobacco, Alcohol and Drug Survey results differ by 1.5 million Canadians! (18% vs 13% in 2015)

**Nunavut** increases tax by \$1 per package, its first increase since 2012.

Federal budget kills the **Tobacco Manufacturers' Surtax** and replaces it with a 53 cent per carton tax on cigarettes.



iQOS flagship store, Toronto 2017

### April

The **Senate Committee on Social Affairs, Science and Technology** studies Bill S-5, the proposed *Tobacco and Vaping Products Act*. (Physicians for a Smoke-Free Canada asks the committee to tighten restrictions on advertising and to link 'safer' nicotine products with measures to end the use of combustible cigarettes)

**Health Canada** announces a ban on menthol in cigarettes to come into effect 6 months later.

### May

**BAT** launches its tobacco-heated product 'i-glo', in Vancouver. (It is called 'glo' in other markets.)

**Regina** bans smoking on restaurant patios — Winnipeg is now the only major Canadian city to continue to permit patio smoking.

### June

**Ontario** Court of Appeal upholds Toronto hookah ban.

**Bill S-5** is approved by the Senate (with some amendments) and gets First Reading in the House of Commons.

### July

The **US FDA** announces a new comprehensive approach to tobacco regulation, and proposes to require that levels of nicotine in cigarettes be reduced to the point where cigarettes are not addictive. Nicotine would continue to be allowed at higher levels in less harmful products.

Plain packaging begins in **Norway** (and will be fully implemented by July 2018).

### August

Federal cabinet shuffle sees **Dr. Jane Philpott** make way for **Ginette Petitpas Taylor** as health minister.

**Health Canada** initiates the regulatory process for vaping products by issuing a consultation paper.

### September

**McMaster University** decides to go smoke free (**Dalhousie** was the first Canadian University to do so, in 2003).

Plain packaging begins in **Ireland** (and will be fully implemented by September 2018).

### October

**Ontario's** committee of experts releases its recommendations for modernizing tobacco control.

**Conference Board of Ottawa** updates estimates on the cost of smoking in Canada—finding that tobacco use in 2012 resulted in 45,464 deaths, 599,390 potential years of life lost and direct and indirect costs of \$16.2 billion.

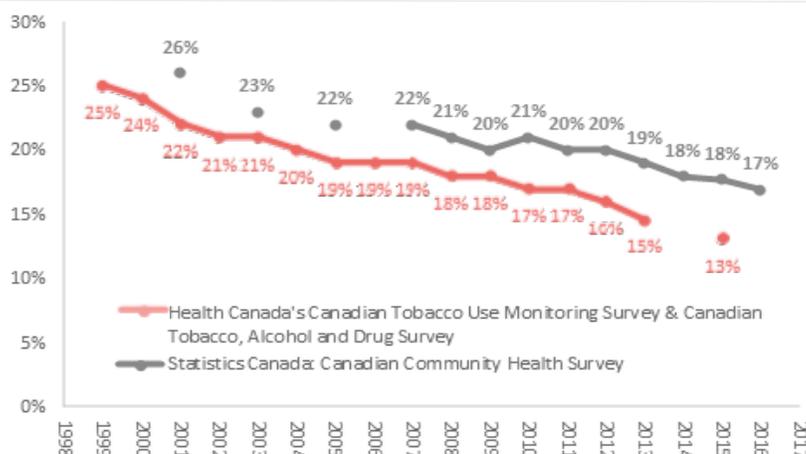
### November

House of Commons begins review of Bill S-5.

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Estimates of smoking rates ('current smoking') produced by federal government surveys.