Physicians for a Smoke-Free Canada

Response to questions identified in Health Canada Document
"SEIZING THE OPPORTUNITY: THE FUTURE OF TOBACCO CONTROL IN CANADA"

April 2017

Introduction

Physicians for a Smoke-Free Canada welcomes this "call to action" from Health Canada. We agree that "a new approach to tobacco control is needed" and would certainly welcome "bold federal leadership on tobacco control." We are particularly pleased to learn that "The Government of Canada is committed to a target of less than 5% tobacco use by 2035." Many of the suggestions we will make in this document will provide suggestions for actions that will ensure that this goal is achieved.

We include by footnote reference papers or research we have previously conducted on this topic, which should be considered as an integral part of this response. We note that the recommendations we made during the pre-consultation exercise, which were presented in early September 2016, are virtually invisible in the consultation document. We nonetheless re-iterate the advice we provided in the summer of 2016 as Appendix 1 to this response, and ask that it be similarly included it as an integral part of this response.

We note that at least one of PSC's physician members, Dr. Stuart Kreissman, has submitted his own response to the consultation document. We applaud his initiative and fully endorse his suggestions for improved tobacco control.

In addition, we invite you to re-read our comprehensive response to a 2011 call for consultations. It was called "Moving Forward."[1] Regrettably, recommendations made there were not adopted by the government. That paper proposed five options for the level of financial and policy investment by the federal government future of tobacco control. They were:

- Coast
- Cruise control
- Pedal to the metal
- More horsepower
- Upgrade

1 Moving Forward. Physicians for a Smoke-Free Canada. October, 2011. http://www.smoke-free.ca/pdf_1/2011/future-strategies-PSC-response-oct4.pdf

While we would have preferred adoption of at least some of options 3, 4 and 5, the government chose Option 1, "Coast." Under "Coast" we predicted in 2011 that the number of smokers in 2015 would be 5.7 million. Actual progress was slightly better than predicted. The number of smokers in 2015 was 5.3 million.[2]

A. Less than 5% by 2035 and other targets — in addition to the goal of less than 5% tobacco

The target of less than 5% by 2035, and the monitoring of progress towards that goal should be based on the LARGEST available reliable estimate of tobacco use. It may be expected for differing statistical approaches to produce differing numbers, but the government should err on the side of caution, and refrain from the temptation to portray a more optimistic picture by using lower estimates.

As an implementation of this principle, Health Canada should immediately adopt the use of the Canadian Community Health Survey estimates of prevalence of cigarette smoking, and should use the largest reliable measure of other forms of tobacco use from other surveys. This could include CTADS, CSTADS, the CAMH or other surveys.

1. Should all tobacco use be included in the less than 5% by 2035 target for the general population?

Yes.

2. Should a target for vaping product use among youth and others who do not use tobacco be included?

Yes

3. What other sub-targets should the Government adopt?

Annual targets should also be set and should be included in the public reporting on progress towards the 2035 goal, as detailed below.

To achieve the goal of "less than 5 by '35", strengthen tobacco control legislation sooner rather than later.

To reach the goal of "less than 5 by '35", we will need to see reductions in the number of smokers of about 200,000 per year. Our rate of progress on this statistic from 1965 to 2015 has been an average reduction of 22,000 smokers per year. That 50-year period included some years when the number of smokers increased year over year. If we consider the more recent time period of 2005 to 2015 when there have been more-or-less slow and steady declines, we have reduced the number of smokers by an average of 60,000 per year. No matter how you look at it, if we are to achieve a rate of decline of 200,000 per year, we will have to up our game considerably. It will also be important to start sooner rather than later. Starting later will only mean that annual average reductions will have to be even higher if the goal is to be achieved.

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2 1.45 million smokers are still missing. Physicians for a Smoke-Free Canada. Blog. March 23, 2017. http://smoke-free-canada.blogspot.ca/2017/03/145-million-smokers-are-still-missing.html

Fortunately, there is an opportunity to start sooner rather than later. Revisions to the *Tobacco Act* are currently being considered in Parliament in the form of Bill S-5. We would urge the Government to adopt the revisions to Bill S-5 that we have recommended to the Standing Senate Committee on Social Affairs, Science and Technology. Briefly these recommendations are:

- Expand the purpose of the *Tobacco Act* to include reducing the burden of disease, preventing addiction to nicotine and achieving the Minister's goal of less than 5 by 35.
- Give effect to the expanded purpose of the law by reducing the supply and demand for tobacco products and require tobacco companies to assist the Minister in this regard.
- Charge tobacco companies an annual fee to defray the costs to government of effective tobacco control. An annual fee of $200 million is suggested.
- Create the necessary regulatory authority to achieve these ends.
- Legalize vaping products and allow them to be advertised by the same rules that apply to tobacco advertising.

If we are to achieve the goal of "less than 5 by '35", then it would be preferable to introduce these legislative changes in 2017, rather than in 2018 or later. Our presentation to the Standing Senate Committee on Social Affairs. Science and Technology, including our proposed amendments to Bill S-5 are given in Appendix 2.

B. Protecting youth — preventing young people and others from starting to use tobacco and vaping products, and protecting them from second-hand smoke and vapour.

1. Should the Government work with provinces and territories to increase the minimum age to be sold tobacco products to 21 years?

The minimum age should be raised to 21.

The federal power to implement this minimum age to be sold cigarettes should be exercised with or without provincial agreement. If necessary, the federal government should expand its enforcement capability so that, irrespective of provincial policy, a minimum age can be enforced across Canada.

4. Should the Government develop regulatory options to reduce the addictiveness of tobacco products in order to prevent people from becoming users?

Yes.

The goal of such an approach should be both to prevent people from becoming users and to prevent people from remaining users. We recommend that preventing nicotine addiction should be included as one of the purposes of the proposed *Tobacco and Vaping Products Act.* (See Appendix 2).

There are many regulatory options that have been proposed to reduce the overall burden of nicotine addiction These include performance-based regulations, [3] reversing incentives by ensuring that tobacco companies can profit from reducing tobacco consumption, but denying them profits if tobacco consumption does not decrease, requiring tobacco manufacturers to reduce the number of people addicted to their products, or imposing increasingly restricted limits on the amount of tobacco that can be sold. [4] These and several other proposals for reducing the burden of nicotine addiction by phasing out tobacco have been summarized by Patricia McDaniel and her colleagues.[5]

5. What additional interventions should the Government consider to reduce the contraband market?

Measures to reduce contraband should be expanded to include:

- Controls on manufacturing inputs, such as bans on imports of machinery, filter material, etc. These controls should be included in the *Tobacco Act* and its associated regulations and should be administered by the Health Minister.
- Nation to nation negotiations with those indigenous territories where tobacco products are manufactured, with a goal to establishing a mutually-agreeable option for Canadian support for economic development in those territories to coincide with an end to tobacco manufacture.
- Nation to nation negotiations with the United States to stem the flow of contraband tobacco products from the United States.
- Increased tracking and tracing controls on raw leaf tobacco, processed tobacco and manufactured tobacco products.[6]
- Enhanced coordination between all levels of federal activity against contraband, including a lead role for Health Canada in this work.
- Public disclosure on the federal government's analysis of the contraband issue, so that greater community research can be conducted to assist in anti-contraband efforts.
- Shifting the management of contraband tobacco by the federal government from a "law and order" file to one where the health impact is given equal or higher weight. The Health Minister and her officials should have a leading role in this improved contraband management system.

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3 Performance-based regulation of tobacco. Physicians for a Smoke-Free Canada. June, 2010. http://www.smoke-free.ca/pdf_1/2010/Performance-based%20regulation%20of%20tobacco.pdf.

4 PSC Press release. Health Canada should close the black market for e-cigarettes and replace it with a legal market directed towards health goals. January 19, 2015 http://www.smoke-free.ca/eng_home/2015/news_press_19_Jan_2015.htm

5 McDaniel PA, Smith EA, Malone RE. The tobacco endgame: a qualitative review and synthesis. *Tobacco Control* 2016; 25: http://dx.doi.org/10.1136/tobaccocontrol-2015-052356.

6 Collishaw NE. The Global Tobacco Leaf Supply Chain. Physicians for a Smoke-Free Canada. Presented at the Sixth Canadian National Conference on Smoking or Health. Montreal. November, 2009. [available on request from Physicians for a Smoke-Free Canada].

6. Should the Government support broadening the application of smoke-free and vapour-free space rules? If so, how?

Health Canada should support the development of a 'rights-based' approach to clean air in areas which have not traditionally been regulated (i.e. multiple unit dwellings, private homes). This could include the commissioning of research, intervenor or other funding for test cases or other legal efforts.

Health Canada should support smoke-free and vapour-free spaces by funding media awareness campaigns and other public education and methods of changing social norms. These activities should ideally be executed at a community level (geographic, ethno-graphic, etc.).

7. What other innovative measures should be considered to protect youth and others from starting to use tobacco and vaping products?

Those who benefit from the recruitment of young people into tobacco use and nicotine addiction should have the legal responsibility to prevent it, and should be held accountable for their efforts to do so. Adopting the proposed revisions to Bill S-5 shown in Appendix 2 would be a good first step toward establishing tobacco industry responsibility and accountability for smoking prevention.

C. Helping Canadians who use tobacco — enabling access to treatment to help people quit tobacco and reducing harm to those who are not ready to quit.

1. How should the Government balance efforts between cessation and harm reduction?

A comprehensive harm reduction approach must include:

1. A definition of harm reduction within the context of tobacco control, including a clear articulation of the nature of harms which are being included. Recommended expansion of the purposes of the proposed *Tobacco and Vaping Products Act* would include prevention of nicotine addiction, prevention of disease and reducing smoking prevalence to less than 5% by 2035 as new purposes (See Appendix 2). A clearly articulated policy of what is intended to be achieved, including the trade-offs in health status between groups of individuals that might be impacted (i.e. new users vs. current users; changing social norms towards acceptance of addiction vs. reducing burden of addiction).
2. A clearly articulated statement of the research basis on which such an approach would be adopted. There are competing and conflicting research findings in this area – the government must be clear about which research it is accepting or rejecting and why.
3. Parliamentary approval to adopt a harm reduction approach, beyond that which is implied/inferred but not stated in the current bill S-5.
4. A mechanism to oversee the implementation of a harm reduction approach, including more frequent and effective monitoring and surveillance systems than are currently in place (i.e. a return to semi-annual, not bi-annual surveys).
    - A greatly improved monitoring system would also include monthly small sample surveys of key tobacco use indicators and real-time monitoring of retail sales transactions of tobacco and vaping products.

- Since Imperial Tobacco moved its manufacturing operations to Mexico, it has become much more difficult for the public to know what the state of tobacco consumption is. The reporting system needs to be greatly improved. Health Canada, in collaboration with Statistics Canada should make reports available at least quarterly and preferably monthly on imports and exports of raw leaf tobacco, stemmed and stripped tobacco leaf, and manufactured tobacco products. We also need data on wholesale and retail sales of each type tobacco products by province and brand (or at least by price categories). The monitoring reports should also include reports on inventories held for each stage of production from raw leaf to processed leaf to cut tobacco to cigarette as well as reports on where those inventories are held.
- The greatly improved monitoring data would be used to track progress towards achieving the goal of less than 5 by 35. If it becomes apparent that we are falling short on the needed rate of progress to meet the goal, then there needs to be capacity in the system to quickly make whatever changes are needed to ensure that we stay on track towards reaching the goal.

2. While maintaining protections for youth, to what extent and how should the Government encourage Canadians who cannot quit tobacco use to switch completely to less harmful products?

The government should resist the temptation to encourage any Canadian to use an addictive product, either through direct messaging (if you can't quit, then switch), or through regulatory interventions (i.e. reduced requirements to provide factual information on health risks, such as addiction).

Through S-5, Health Canada is removing the barriers to the marketing of non-therapeutic nicotine. This is sufficient regulatory action for the moment.

There will be significant commercial pressure for Health Canada to implicitly or explicitly endorse the use of nicotine-bearing products. It should resist this pressure, as it has for other therapeutic products in other areas of health concern.

The advice above does not mean that Health Canada should not increase its efforts to encourage people to stop using combustible tobacco, and to warn them of the risks of dual use. Such advice could be given by means of new advisories on or in cigarette packages.

Success in achieving the best balance between protection and harm reduction will be greatly aided by adopting the suggested amendments to Bill S-5 given in Appendix 2.

3. Which best practices or innovative measures in cessation should the federal government consider?

Health Canada should resist the temptation to think of cessation as a service provided to smokers, and should instead adopt the view that all tobacco control levers are, in effect, cessation tools.

With respect to cessation services, this work is better done by health service systems, to which Health Canada and the federal government has an important funding role to play, but which is not a primary service provider to the general public.

With respect to cessation policy, the federal government could play a role in advancing innovations in several areas, including:

- **Mass media and social media:** It is particularly shameful that for many years the federal government has spent no money on anti-tobacco advertising in mass media. Funding in this area should be restored to a level of $25 to $50 million per year.
- **Support to civil society:** Non-governmental organizations play a valuable role in public education about tobacco use that will lead to more cessation and better prevention of smoking uptake. Funding to NGOs should be restored to the level of at least $25 million per year.
- **Fixing current loopholes in tobacco policy** (discount pricing, absence of health warnings on some tobacco products, permission for flavours in some tobacco products).
- **Requiring manufacturers to achieve targets** in reduction of the use of their products.
- **Requiring reductions in sensory appeal** of tobacco products.
- **Imposing a moratorium** on all new combustible tobacco products.

4. Where should the Government focus its policy and support for research on new tobacco products?

Health Canada should learn from its shameful past involvement with 'less hazardous smoking' and reduced risk products, and play no active role in trying to mitigate the harms of combustible tobacco products instead of eradicating them.[7]

While the current approach of avoiding pre-clearance by government of new products on the markets has reduced the government's liability for when things go wrong, it has left Canadians vulnerable to an industry that can place on the market any tobacco product at any time. To prevent this from continuing to happen, we reiterate our call for a moratorium on all new tobacco products.[8]

D. Indigenous peoples — supporting the development of a shared approach to address higher prevalence rates of commercial tobacco use among Indigenous peoples

A renewed FTCS should include outreach to first nations which goes beyond the role of Health Canada. Effective nation-to-nation negotiations should include other federal departments, including Indigenous Affairs and the Prime Minister's office.[9]

7 See, for example, Imperial Tobacco's analysis of the federal Less Hazardous Cigarette Program, in its Notes and Authorities to the Blais-Létourneau case. http://www.smoke-free.ca/eyeonthetrial/2014-09-15-ITL_Notes_and_Authorities.pdf

8 Tobacco industry innovation: cool new ways… to an early grave. Why we need a Moratorium on new tobacco Products. http://www.smoke-free.ca/pdf_1/Moratorium-Septemer2009.pdf

9 Physicians for a Smoke-Free Canada. Towards effective tobacco control in First Nations and Inuit communities. March 2007. http://www.smoke-free.ca/pdf_1/Effective%20tobacco%20control%203.pdf

E. Tobacco use and health and social inequities — addressing higher rates of tobacco use in groups such as those living with mental illness and those with lower socioeconomic status.

1. What research is needed to better understand tobacco use in certain sub-populations?

Some disparities in tobacco use align with well-accepted contributors to social and economic disadvantage (such as poverty, lower education), some do not. In a review of CCHS data from 2014, we found higher smoking rates, as expected, among those with lower household incomes, with less education, and with mental health and substance use challenges. In other cases, populations which are not conventionally viewed as being disadvantaged (including men, "white" people, non-immigrants) were found to have higher smoking rates than their counterparts (women, visible minorities, immigrants). Cigarette smoking therefore may exacerbate health inequalities in some populations and may mitigate them in others.

The disparities, as expressed as a relative risk of being a current smoker among certain sub-populations are shown in the figure below. (The Ontario Tobacco Research Unit, in their recent monitoring report, has found similar patterns for Ontario.[10])

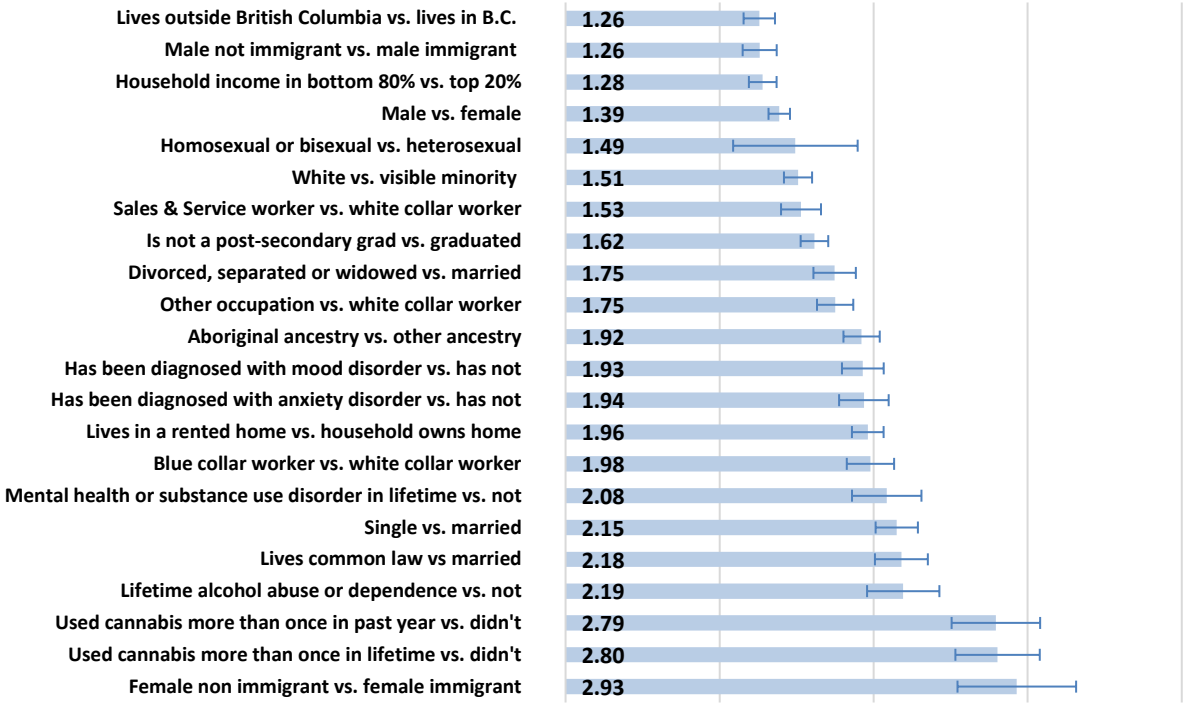
From this it can be seen that as unacceptably high as smoking rates are among indigenous Canadians, they are even higher among Canadians who use cannabis, do not have the economic stability reflected in home ownership, work as construction workers, trades people, sales clerks or other non-white collar jobs, etc.

The role of tobacco in these modifiable and non-modifiable factors should be explored in addition to the traditional lens put on social determinants of health.

Given the anticipated changes in market place for vaping and marijuana, and the relationship of smoking to these two patterns, there should be an increased focus on research about tobacco use among sub-populations which are defined by health conditions like addiction and substance use.

10 OTRU" Smoke-Free Ontario Strategy Report. Page 2, 23. http://otru.org/wp-content/uploads/2017/03/2016_SMR_Full.pdf

Figure 1: Inequities in tobacco use, shown as relative risk of being a current smoker, 2013-2014. (95% Confidence interval shown)



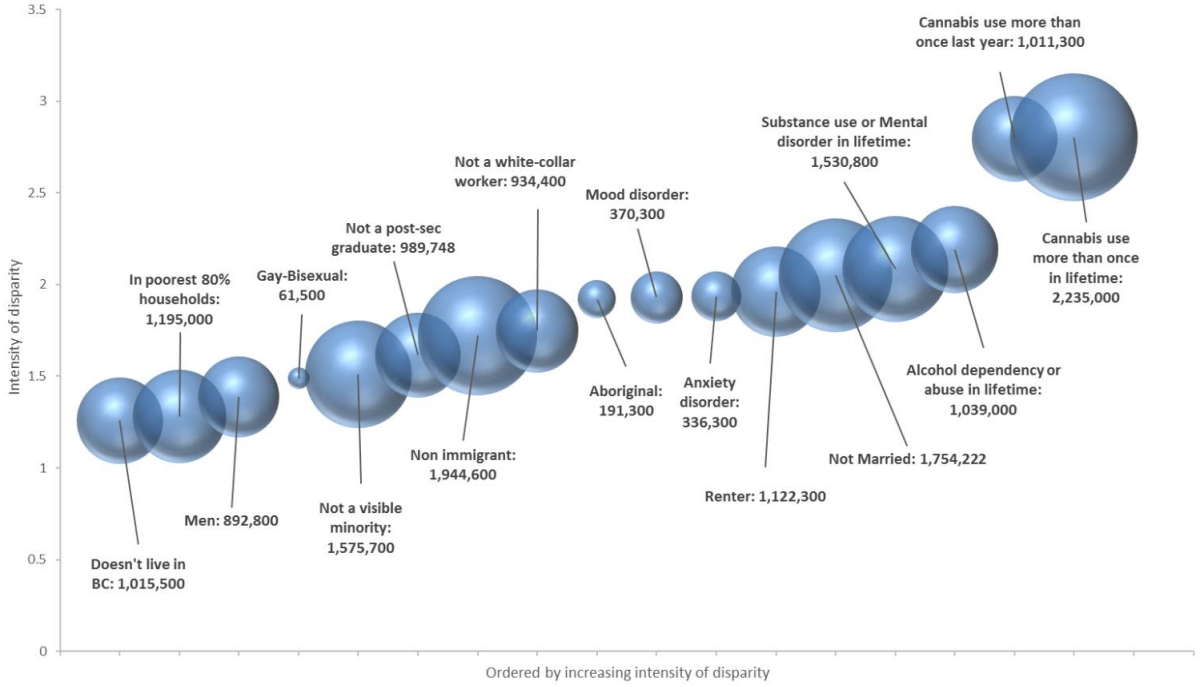
2. Which existing programs that reach populations affected by health and social inequities could be augmented with tobacco prevention, cessation and harm reduction measures? What could these measures look like?

An obvious focus for research, policy and program support are sub populations where there are many additional smokers who result from inequities in tobacco use who can be identified or reached through established means.

This would suggest, policy and programs focused at:

- Mental health systems
- Occupational groups where tobacco use is high (construction, restaurants, resource industry)
- Single people or those who live in common-law relationships
- Renters (i.e. increased focus on multiple unit dwellings)

Figure 2: Number of additional smokers resulting from inequities in tobacco use



F. Building capacity — ensuring that the Government of Canada has the resources, information and partnerships it needs to achieve its targets and to support partners in their roles.

Fundamental to the success of a revised strategy are the following:

- Sufficient and sustained resources.
  The government should recover the costs of tobacco control from the industry which causes the problem. This should not be done in the form of excise taxes imposed on those who are already harmed by these products, but in the form of additional levies, surtaxes, regulatory fees or other methods. We recommend that the tobacco companies be charged an annual fee of $200 million that would be used to pay for the cost of tobacco control (See Appendix 2).
- Political support
  Although parliamentarians are informed of most regulatory changes made under the Tobacco Act, these are relatively few and far between. Health Canada should provide an annual report to Parliament on its progress towards achieving reductions in tobacco use, and should request regular briefing with legislators.
- Accountability of government
  Over the past few decades we have seen funding withdrawn from tobacco control at the federal level and program cuts even though the stated goals of the program had not been reached and no policy change had been articulated. Without diminishing the authority of future governments to reverse the current tobacco control strategy, they should not be permitted to do so without explanation. Annual reporting to Parliament on progress towards reducing tobacco use should be made a statutory obligation of the department. If we are failing to meet an annual rate of

reduction in the number of smokers of 200,000 per year, then the report to Parliament should include a clear plan for what will be done to get the smoking prevalence reduction plan back on track.

- Accountability of industry
  The tobacco industry should have legal obligations to reduce the harm it is now causing to Canadians. Current provincial and private actions are addressing historic harms, but are not seeking remedies that will change how the industry operates in the future. A good start on making the tobacco industry accountable can be accomplished sooner rather than later by a few amendments to Bill S-5 (See Appendix 2).

1. How should the Government work with partners to ensure that the tobacco industry is held to better account for the societal burdens caused by its products?

The tobacco industry should be liberated from its responsibility to maximize profits, and to put the interest of shareholders above the interest of Canadians. An initial step to do this would be to exempt the industry from relevant sections of the Corporations Act.[11]

2. How should the Government best support research to provide the evidence needed to inform a new agenda in tobacco control?

The Canadian Tobacco Control Research Initiative should be re-established with sufficient funding from the federal government.

3. What mechanisms should be used by the Government to better facilitate knowledge transfer and exchange with tobacco control partners?

See answer to question 4.

4. Which new partners should be engaged by the Government to support its work in tobacco control?

Knowledge transfer, including between levels of government and silos within government – is a core capacity of civil society. Health Canada should re-establish funding for civil society organizations, and should remove the obligation that such funding involve private-sector partners.

To manage problems created by globalized commerce, there should be greater exchange and knowledge transfer with governments, researchers, civil society and other partners in other countries. A clearinghouse or knowledge exchange hub could be established within Canada.

Over the past decade, university based researchers have done much of the heavy lifting for tobacco control. This work would be more powerful if they were given a responsibility (and appropriate funding) to work more effectively in partnership and more effectively across provincial lines.

11 PSC Proposed a way to do this at: The Tobacco Reduction Targets Act http://www.smoke-free.ca/eng_home/2015/The%20Tobacco%20Reduction%20Target%20Act.pdf

5. Where should Canada focus its work with international partners?

There are many options to focus international efforts – the main issue is to choose some, to focus on them and to provide sufficient and sustained resources.

Of the $200 million that we are proposing as the fee to pay for tobacco control, we recommend that no less than $50 million of it be devoted to supporting global tobacco control efforts.

Here are the areas where Canada's contribution is needed and recommended:

- Establish centres of excellence in Canada on tobacco legislation, regulation and litigation. These will be places that will produce reports on these subjects for use around the world. People can come to these centres from around the world to learn from Canada's experiences in tobacco control, and experts from these centres can travel to other countries to assist in their efforts to strengthen tobacco control.
- Greatly increase Canada's technical, human and financial contributions to the work of the FCTC secretariat in WHO's global, regional and national offices.
- Work with developing countries to strengthen their tobacco control programs, working both nationally and regionally.
- Work with partners to improve monitoring and implementation of tobacco control at national, regional and global levels.
- Work with partners to establish levies on tobacco company revenues in all countries, with the money so raised to be used to fund national, regional and global tobacco control programs.
- In keeping with Article 2.1 of the FCTC, work with partners to develop and implement stricter tobacco control measures than are currently required under the FCTC.

Appendix 1:
Physicians for a Smoke-Free Canada

Response to questions identified in Health Canada Document
"CONSULTATIONS / FUTURE OF TOBACCO CONTROL IN CANADA".
August 2016.

Questions:

1. The Federal Tobacco Control Strategy (FTCS) was implemented in 2001 to reduce tobacco-related disease and death in Canada. In your opinion, what has been the FTCS' greatest contribution to Canadian's health?

The origins of the FTCS pre-date 2001, and it is difficult to disentangle the contributions of the FTCS with those of previous strategies. Major contributions towards health during this century (for Canadians and others) include:

- Support for smoke-free provisions across Canada, catalyzed through mass media (e.g. Heather Crowe campaign), community programming, research.
- Support for development of a strong global treaty on Tobacco Control, the Framework Convention on Tobacco Control. Canada promoted, supported and negotiated for strong treaty provisions.
- Establishment of global precedents, e.g.
    - Graphic health warning messages.
    - Ban on flavourings and additives
    - Reduced ignition potential cigarettes
- Phasing out of tobacco promotions, including removal of sponsorship and print advertising.
- International leadership on expanded product regulation, e.g. ban on flavourings and additives.

Are there any opportunities that have been missed along the way?

- Missed opportunity for Canada to benefit from earlier implementation of plain packaging.
- Missed opportunity to end package and product deception by allowing the replacement of 'light' and 'mild' descriptors with colour coding.
- Missed opportunity to obtain the health and economic benefits of achieving the target of 12%.
- Missed opportunity to sustain social momentum towards tobacco reduction. The renewal of the strategy in 2007 and in 2012 both resulted in significantly reduced activities (including reduced regulatory, programmatic, funding activities).
- Missed opportunity to maintain a national strategy to address tobacco use, one which transcended jurisdictional borders.
- Missed opportunity to sustain community and civil society engagement with government activities. The closure of the Steering Committee of the National Strategy to Reduce Tobacco Use and the exclusion of civil society organizations from its replacement and the termination of

the Ministerial Advisory Committee symbolized the end of structural engagement with the community.

- Missed opportunity to harness the energy of tobacco control NGOs across the country when contributions program was terminated in 2012.
- Missed opportunity for sustained mass media. The 2001 strategy aimed for mass media to receive more than 30% of federal expenditures on tobacco control, but was wound down by 2006 and virtually eliminated soon thereafter.
- Missed opportunity phase out tobacco growing in Canada
- Missed opportunity to sustain revenues from the Tobacco Manufacturers Surtax
- Missed opportunity to maintain disclosure of production information (e.g brand by brand sales data provided to Health Canada under reporting regulations was released in 2001, but no longer is; Statistics Canada and Finance Canada now suppress information on tobacco production and tax revenues under Manufacturing Surtax.
- Missed opportunity to develop a long-term plan for tobacco control, to advance new policy options, to develop mechanisms for industry accountability. The 2007 review included the objective of identifying future directions, and the 1998 National Strategy included industry accountability as a policy objective, but work towards both of these was never given a priority and was apparently abandoned after 2010.
- Missed opportunity to better insulate tobacco control policies from tobacco industry influence by stronger implementation of FCTC Article 5.3
- Missed opportunity to research social and environmental drivers of tobacco use for which the federal government has some level of authority (e.g. cannabis use, income inequality)
- Missed opportunity to coordinate, tobacco control, e-cigarette control and marijuana control into a coherent set of policies and programs serving public health objectives.

2. Since the implementation of the Federal Tobacco Control Strategy (FTCS) in 2001, the federal government has undertaken a variety of actions in support of tobacco control such as restricting flavours, implementing a grants and contributions program and funding a national quitline service. Among these and other interventions, and based on your area of expertise, which of these were the most effective and why? Which were the least effective and why?

Each of these interventions was developed on solid rationale, and each made a contribution that we believe provided a return on investment. They were not all aimed at comparable outcomes, and are not as a result suited to a comparison on effectiveness. Other effective interventions, not identified in this question, were mass media and regulatory development (e.g. reduced ignition potential cigarettes).

On the basis of evaluations to date, the impact of the national quitline service has not been sufficient to have a demonstrable effect on prevalence.

How could these interventions be improved?

For ongoing interventions, this important question warrants a separate consultation process. With respect to interventions that have been suspended (e.g. mass media, NGO mobilization), restoration of the programs would be an obvious improvement to the status quo.

3. Since 2001, the consumer and tobacco control environment in Canada have changed substantially. For example, the emergence of new nicotine delivery systems, such as vaping products, have challenged traditional tobacco control ideas. In addition, most provinces and territories have enacted tobacco control legislation and their spending on tobacco control has more than doubled, representing more than half of all tobacco control spending in Canada.

What changes have you noticed in the Canadian tobacco control environment since the Strategy started in 2001?

Other changes not identified in the question include:

- Increased power of transnational tobacco companies in Canada and globally. Each of the three large companies operating in Canada had ownership changes since 2000 which resulted in greater control by multinational owners, and less transparency on business operations in Canada.
- Marketing changes by tobacco companies, in response to regulatory restrictions (i.e. display bans, promotion bans), and in response to internationalization. In the past decade international brand introduction and price segmentation have an increasing significance to tobacco use.
- Emergence of a contraband market which has been used as a pretext to avoid additional measures to reduce tobacco use (e.g. higher taxation).
- Greatly enhanced research capacity, as reflected in the number of tobacco specialist researchers in university settings,
- Greater emphasis on international regulatory standards, as reflected in FCTC development and number of discussions on tobacco policy at the World Trade Organization in bilateral trade for a.
- Changed role of government in promotion of social objectives and reduction of federal social marketing for health (e.g. redirection of federal mass media towards promotion of economic action plan).
- Apparent diminished interest of federal government in developing new policies, as reflected in the reduction of consultations initiate by government or the number of meetings held to discuss policy development after 2010.
- The increased presence of provincial governments also reflects a decreased presence of the federal government. For example, if the federal government had maintained the planned FTCS budget at $100 million per year or more, it would not be true that “one half” of spending was at the provincial level.
- The decreased presence after 2010 of the federal government in global efforts to address tobacco use.
- Changing social norms and proposed change to legal restrictions on marijuana use.

How have these changes affected the roles and responsibilities of your organization?

- Between 2007 and 2015, the role and responsibility of our organization was reduced as a corollary of diminished federal activities. The reduction and re-profiling of federal funding for civil society organizations was a significant factor in this diminishment. Equally significant was the reduction of federal interest in policy development between 2010 and 2016.

How have these changes affected the role of the federal government?

- The federal government accepted a diminished role after 2010. It is not established that this was a result of the changes identified above, or whether some of these changes were a result of policy decisions to vacate some policy areas or the result of industry interference. The movement to ban menthol by provinces, for example, can be seen in the context of the federal decision to NOT ban menthol, the reasons for which have not yet been made public.

4. Since the implementation of the Strategy in 2001, the federal government has implemented most of the actions recommended by the World Health Organization as recognized good practices. In addition, the government has pledged to implement plain packaging of tobacco products and to ban menthol in some products in the near future. In spite of these actions, the decline in tobacco use prevalence rates has slowed in recent years. As Health Canada considers options for a new Strategy, what innovative measures or interventions could the federal government implement or support to further control tobacco and tobacco use in Canada?

- In our view, the most important innovative measure that can be implemented by the government is to align the motivation of tobacco suppliers and the legal constraints on their behaviour with public health policy goals. Ways to accomplish this have been described elsewhere, and further description is available on request.

What would the challenges be in implementing these measures and what would be required to implement them effectively and efficiently?

- A key obstacle to implementing these measures is lack of understanding about their necessity and a mindset that continues to focus on demand reduction measures and a service delivery model (eg. Quitlines). This obstacle can be overcome by fostering and promoting pubic discussion and awareness of the importance of a paradigm shift to include effective supply side options among tobacco control measures.

How can we target these interventions to the populations that need them the most?

- This question reflects the mindset identified above (that the population whose behaviour is the focus of government intervention should be the tobacco user). Suppliers (manufacturers and retailers) can be targeted through reformed incentives and disincentives, including but not restricted to financial and regulatory rewards and punishments.

5. What goals and objectives do you think the federal government should prioritize in the development of a future tobacco control strategy?

The federal government should adopt both long and short term goals and objectives for tobacco reduction. These should be "stretch" goals in that they plan for accelerated progress. They should not be "aspirational" goals for which non-achievement does not require accountability. There should be legislated accountability mechanisms which apply to tobacco suppliers (e.g. financial or commercial penalties) and also to government (e.g. reporting, external review).

How can Health Canada better work with partner organisations to address these goals and objectives?

Improved engagement of partner organizations with Health Canada warrants a separate consultation. Obvious improvements include: measures to sustain the capacity of partner organizations for involvement; expanding the role of partner organizations and providing for independent monitoring of government and industry actions; capacity to intervene against industry wrongdoing. (Examples of mechanisms for civil society intervention can be found in Quebec's Consumer Protection Act and in the French tobacco control law.)

What could Health Canada improve or do differently as it relates to leading the federal strategy?

The federal role on tobacco control could be improved by:

- Fostering and catalyzing innovations (policy, programming, interventions)
- Mobilizing communities and promoting a social movement to support the end of tobacco use
- Achieving a whole-of-government response, with the alignment of policies and legislation across government towards reductions in tobacco use. (This would include, for example, changes to the Corporations Act, agricultural support programs, etc).
- Enhancing federal accountability for the achievement of tobacco reduction goals.
- Establishing industry accountability for the achievement of tobacco reduction goals.

6. Other than those that are part of the CCAT, are there groups that Health Canada should consult on the future of federal tobacco control policy?

- Health care providers
- Civil society organizations working at provincial and municipal levels
- University and other academic researchers
- Consumer groups and corporate watchdogs
- International health agencies

Appendix 2:
Presentation to the Standing Senate Committee on Social Affairs, Science and Technology on Bill S-5 by Physicians for a Smoke-Free Canada, including proposed amendments to Bill S-5

Bill S-5: The proposed *Tobacco and Vaping Products Act*

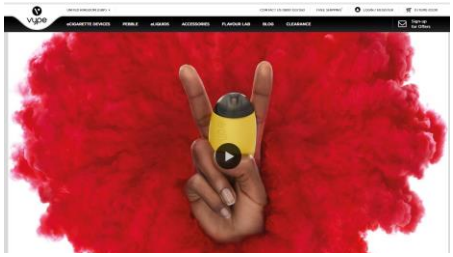
S-5 WILL OPEN THE VAPING MARKET TO POWERFUL AND IRRESPONSIBLE INDUSTRIES

Amendments to the bill are needed to protect young people and others from excessive advertising.

Big Tobacco is waiting for legislation like S-5 before marketing e-cigarettes in Canada. E-cigarettes and other vaping products currently occupy a legal grey zone, which is why Parliament has been asked to find a way to bring them into the regulated market. For the past few years they have technically been illegal, but have been tolerated by Health Canada which has done little to prevent the proliferation of small operators selling nicotine delivery systems.

As deplorable as it has been for this illegal activity to be tolerated for so long, there is a danger that legitimization of this market through S-5 could be more damaging to public health than the status quo. That's because the current legal uncertainty of nicotine systems has kept Big Tobacco out of the market. Today, with only small operators present, no one is aggressively marketing these addictive products.

Once Bill S-5 becomes law, that will change. Big Tobacco companies will enter the Canadian market with massive advertising and promotional budgets.



BAT's Vype Pebble is marketed in ways similar to those that permitted under S-5 www.govype.com

E-cigarettes may be safer than cigarettes, but they are addictive and can sustain smoking. Non-combustible nicotine 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 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 products.

The legislative challenge, then, is to create a legislative regime that will allow and even encourage their use for public health benefit, while minimizing the possibility of public health detriment that could result from these products.

S-5 gives e-cigarette makers very wide scope for promotions. Regrettably Bill S-5, as currently proposed, opens the door too wide to use of these products by non-smokers and the possibility of the public health harm that could result. Bill S-5 would allow advertising for vaping products in many media. It would allow advertisements on television, YouTube, internet, radio, billboards and other prominent places. Big Tobacco has the money to exploit these marketing opportunities in a way that those operating in the current grey market do not.

Vaping products will already enjoy a significant marketplace advantage. Unlike cigarettes, they are not taxed and the health information that appears on packages will be very different from the health information on tobacco packages. No reason exists to extend advantages even further into the realm of advertising.

Recommendation

It is recommended that Division 2 (Articles 30. 1 to 30. 8) of Bill S-5 concerning advertising and promotion of vaping products be revised to closely conform to the revised law governing advertising and promotion of tobacco products as proposed in Division 1 of Bill S-5 (Articles 25 to 36).

S-5 COULD BEGIN THE END FOR THE COMBUSTIBLE CIGARETTE.

A harm-reduction approach requires a commitment to reduce the harm.

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?

Bill S-5 is a legislative response to the potential benefits of e-cigarettes. It opens the door for a less harmful nicotine product. But it is an incomplete policy response, in that it does nothing to close the door on the most harmful tobacco products.

Bill S-5 offers no clear vision of the place of vaping products in the wider context of bringing the tobacco epidemic to an end. The bill reflects an implicit hope that the marketing of less hazardous vaping products might replace the market for conventional cigarettes. But without any other policy or legislative pieces in place, this is no more than a hope.

The reality is that sellers of vaping and tobacco products will all be obliged to maximize their sales of both kinds of products as part of their overarching legal responsibilities to their shareholders to maximize profits.

Parliament can require the companies to put their efforts where their public relations are going.

Each of the large tobacco companies is expanding its production into likely less harmful nicotine sources, like heat-not-burn or vapour products.

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. [12] He did not, however, provide a time frame for this transition.

During its review of S-5, the Senate could call for changes to S-5 and to federal policy which would ensure that the most harmful tobacco products are taken off the market as less harmful products become available.

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 reduce the supply and demand for conventional cigarettes so that the conventional cigarette smoking prevalence is decreased to 5% or less by 2035. This would respond to an emerging consensus that the national tobacco strategy should aim for “less than 5 by 35” – i.e. smoking rates below 5% before 2035.

Recommendation

It is recommended that Senators urge the Government to use the legalization of vaping products as an opportunity to require a phase-out of conventional tobacco products, with an interim goal of fewer than 1 in 20 Canadians using tobacco by 2035.

Detailed proposals for amendments to Bill S-5 follow.

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12 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. ” (http://www. pmi. com/eng/media_center/press_releases/Pages/201609230900. aspx#)

BILL S-5: An Act to amend the Tobacco Act and the Non-smokers' Health Act and to make consequential amendments to other Acts

The good:

- Paving the way for plain packaging
- Making information more available to the public
- Creating conditions to end the black market in vaping products

Main concerns:

- Fails to provide legislative support to the Minister's stated goal of reducing smoking prevalence to less than 5% by 2035.
- Opens the door to the marketing of a new drug with abuse potential, without providing safeguard mechanisms.
- Adopts a harm reduction legislation, without the other elements of a harm reduction strategy in place.
- Takes a "fingers' crossed" position that the new nicotine market will be one in which vaping replaces smoking, but does not have any contingency for the scenario in which vaping leads to smoking:
    - Safeguard mechanisms could be: statutory review of impact, obligation on manufacturers to meet goals, coordination;
    - Government has not yet consulted on, let alone established, a communications strategy for harm, objectives for transfer to non-combustible products;
    - Elements that are missing from a more comprehensive harm reduction strategy included frequent monitoring, review, evaluation, ability to quickly make corrections based on learnings from evaluation.
- Continues to put onus on individuals to be informed, to make risk assessments, with some regulatory duties (i.e. packaging, sales to youth), but otherwise leaves manufacturers' without liability for any damage resulting from the use of their product.
- Is parallel legislation (vaping and tobacco), but not coordinated legislation (in which vaping replaces tobacco).
- Is not coordinated with new challenges of marijuana (i.e. banning blunts, vaping as likely less harmful use of marijuana, dual or triple use of tobacco, vaping products and/or marijuana).
- The restrictions on advertising flavoured vaping products is incomplete.

Fixable through amendments:

- Stronger statement of purpose and new measures to give effect to the stronger statement of purpose.
- Overly broad promotional scope for marketing vaping products (prizes, etc). Fix by making the restrictions more similar to those for tobacco products.
- Reversing the regulatory onus – i.e. information must be shared unless exempted, not shared only if and when regulations are passed.

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
PART 1		
1997, c. 13		
Tobacco Act		
Amendments to the Act		
1 The long title of the *Tobacco Act* is replaced by the following:		
An Act to regulate the manufacture, sale, labelling and promotion of tobacco products and vaping products		
2 Section 1 of the Act is replaced by the following:		
Short title		
1 This Act may be cited as the *Tobacco and Vaping Products Act*.		
2009, c. 27, s. 2(2)		
3 (1) The definitions *accessory*, *additive*, *emission*, *ingredient*, *manufacture*, *manufacturer*, *retailer*, *sell* and *tobacco product* in section 2 of the Act are replaced by the following:		
accessory means a product that may be used in the consumption of a tobacco product, including a pipe, cigarette holder, cigar clip, lighter and matches, and also means a water pipe. (*accessoire*)		
additive, in respect of tobacco products, means an ingredient other than tobacco leaves. (*additif*)		
emission means a substance that is produced when a tobacco product or vaping product is used. (*émission*)		
ingredient means any substance used in the manufacture of a tobacco product, vaping product or their components, including any substance used in the manufacture of that substance, and, in respect of a tobacco product, also includes tobacco leaves. (*ingrédient*)		
manufacture, in respect of a tobacco product or vaping product, includes the manufacture of a tobacco product or vaping product for export, as well as the packaging, labelling, distributing and importing of a tobacco or vaping product for sale in Canada. (*fabriquer*)		
manufacturer, in respect of a tobacco product or vaping product, includes any entity that is associated with a manufacturer, including an entity that controls or is controlled by the		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
manufacturer or that is controlled by the same entity that controls the manufacturer. (*fabricant*)		
retailer means a person who is engaged in a business that includes the sale of tobacco products or vaping products to consumers. (*détaillant*)		
sell includes offer for sale, expose for sale and sell for export. (*vendre*)		
tobacco product means a product made in whole or in part of tobacco and includes papers, tubes and filters intended for use with that product, a device, other than a water pipe, that is necessary for the use of that product and the parts that may be used with the device. (*produit du tabac*)		
2009, c. 27, s. 2(2)		
(2) The portion of the definition *little cigar* in section 2 of the English version of the Act after paragraph (d) is replaced by the following:		
It includes any tobacco product that is designated by the regulations to be a little cigar. (*petit cigare*)		
(3) Section 2 of the Act is amended by adding the following in alphabetical order:		
lifestyle advertising means advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring. (*publicité de style de vie*)		
vaping product means		
(a) a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol;		
(b) a device that is designated to be a vaping product by the regulations;		
(c) a part that may be used with those devices; and		
(d) a substance or mixture of substances, whether or not it contains nicotine, that is intended for use with those devices to produce emissions.		
It does not include devices and substances or mixtures of substances that are excluded by the regulations, tobacco products or their accessories. (*produit de vapotage*)		
2009, c. 27, s. 3		
4 Subsection 2.1(1) of the Act is replaced by the following:		
Regulations — little cigar and vaping product		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
2.1 (1) The Governor in Council may make regulations		
(a) designating any tobacco product to be a little cigar for the purpose of the definition *little cigar*;		
(b) designating any device to be a vaping product or not to be a vaping product for the purpose of the definition *vaping product*; and		
(c) designating any substance or mixture of substances not to be a vaping product for the purpose of the definition *vaping product*.		
5 Section 4 of the Act is replaced by the following:		
Purpose of Act		
4 (1) The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and to protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases.		
Tobacco products		
(2) The purpose of this Act with respect to tobacco products is to support the objectives set out in subsection (1) and, in particular,		
(a) to protect young persons and others from inducements to use tobacco products and the consequent dependence on them;		
(b) to protect the health of young persons by restricting access to tobacco products;		
(c) to prevent the public from being deceived or misled with respect to the health hazards of using tobacco products; and		
(d) to enhance public awareness of those hazards.		
	(e) to reduce the burden of addiction, disease and death from tobacco use;	The government needs to accept responsibility for reducing addiction and disease, not just for aiming to influence behaviour. Doing so allows a broader range of measures under the act.
	(f) to reduce the prevalence of the use of tobacco products every year to no more than 5% of the population by the year 2035.	Minister has stated that she wants to achieve this objective. This goal would be more achievable if the government had legislative authority to aim for it.

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
Vaping products		
(3) The purpose of this Act with respect to vaping products is to support the objectives set out in subsection (1), to prevent vaping product use from leading to the use of tobacco products by young persons and non-users of tobacco products and, in particular,		
(a) to protect young persons and non-users of tobacco products from inducements to use vaping products;		
(b) to protect the health of young persons and non-users of tobacco products from exposure to and dependence on nicotine that could result from the use of vaping products;		
(c) to protect the health of young persons by restricting access to vaping products;		
(d) to prevent the public from being deceived or misled with respect to the health hazards of using vaping products; and		
(e) to enhance public awareness of those hazards.		
	(f) to prevent addiction to nicotine.	Again, a results-focused objective is necessary in the law to reflect the duty of government to protect health and also to widen the scope of authorities in the act.
6 Section 5 of the Act is replaced by the following:		
Product standards		
5 No manufacturer shall manufacture or sell a tobacco product that does not conform with the standards established by the regulations.		
2009, c. 27, s. 4		
7 (1) Subsection 5.1(1) of the Act is replaced by the following:		
Prohibition — manufacture		
5.1 (1) No manufacturer shall use an additive set out in column 1 of the schedule in the manufacture of a tobacco product set out in column 2.		
2009, c. 27, s. 4		
(2) Subsection 5.1(2) of the Act is repealed.		
2009, c. 27, s. 5		
8 Section 5.2 of the Act is replaced by the following:		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
Prohibition — sale		
5.2 No manufacturer shall sell a tobacco product set out in column 2 of Schedule 1 that contains an additive set out in column 1.		
Marking		
5.3 (1) No person shall manufacture or sell a tobacco product that displays a marking, unless the marking is authorized by the regulations.		
Exception		
(2) A person who manufactures or sells a tobacco product that displays a marking does not contravene subsection (1) if the marking is required under an Act of the legislature of a province.		
Additive		
(3) Despite sections 5.1 and 5.2, a manufacturer may use a prescribed additive to display on a tobacco product a marking that is authorized by the regulations or that is required under an Act of the legislature of a province and may sell a tobacco product that displays such a marking.		
2009, c. 27, s. 6		
	Reducing supply and demand for tobacco products	
	5.4. No manufacturer shall sell more than the prescribed quantity of tobacco products.	This gives the Minister the authority to control the supply of tobacco products. See proposed new regulatory authority under s. 7.
	5.5 Tobacco manufacturers shall assist the Minister generally in achieving the purposes of the act, and specifically in	This places responsibility on tobacco manufacturers to help

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
	ensuring that prescribed annual targets for reductions in smoking prevalence, as measured in a prescribed manner, are met, as specified in section 2(f).	achieve the purposes of the Act.
	5.6 If, in the opinion of the Minister, a tobacco manufacturer has not met its obligations under section 5.5, the Minister shall increase the tobacco fee, as described in section 6.4 in the following year by a prescribed amount.	This amendment requires at least annual monitoring of trends in smoking prevalence and penalizes tobacco companies that fail to meet their obligations to assist the Minister to reduce the prevalence of tobacco use.
6 (1) Every manufacturer shall submit to the Minister, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about tobacco products, their emissions and any research and development related to tobacco products and their emissions, whether the tobacco products are for sale or not.		
Supplementary information		
(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information in the form and manner and within the time specified by the Minister.		
Public disclosure by manufacturer		
6.1 Every manufacturer shall make available to the public, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about tobacco products and their emissions.	**6.1** Every manufacturer shall make available to the public information that is required by the regulations about tobacco products and their emissions, unless exempted from doing so by the regulations.	Health Canada has a poor record for passing regulations in a timely manner. The amendment will make sure that disclosure of the information is not delayed as a result of slow regulation-making.

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
Public disclosure by Minister		
6.2 The Minister shall make available to the public, in the prescribed manner and within the prescribed time, information that is required by the regulations about tobacco products, their emissions and any research and development related to tobacco products and their emissions.	**6.2** The Minister shall make available to the public the information that is required by the regulations about tobacco products, their emissions and any research and development related to tobacco products and their emissions unless exempted from doing so by the regulations.	Same reason as for 6.1
Non-application		
6.3 Sections 6.1 and 6.2 do not apply in respect of tobacco products that have never been for sale in Canada.		
10 The Act is amended by adding the following after section 6:		
Prohibition		
6.01 Subject to the regulations, no manufacturer shall sell a tobacco product unless the information required under subsection 6(1) with respect to that product is submitted to the Minister.		
2009, c. 27, s. 8(1)		
	Tobacco Fee	
	6.4 Subject to the regulations, tobacco manufacturers shall pay annually to the Minister the sum of $200 million or other amount as may be prescribed, to be used to defray the costs of administration of the Minister's national and international tobacco control programs and policies. Each manufacturer shall pay a	In 1994, the government instituted a tobacco manufacturers surtax. Initially it was called the Health Promotion Surtax. The money so raised paid for tobacco control programming for a period of three years. Tobacco manufacturers have found ways to avoid paying this surtax. It fell into disrepair. In the budget of March 22,

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
	prescribed amount, approximately proportional to the manufacturer's share of the market for tobacco products in the previous year.	2017, eliminated this tax. Revenue to fund tobacco control programming has fallen precipitously in this century. This proposed tobacco fee would replace a previous source of funding, now lost, and oblige tobacco companies to pay at least some of the cost of fixing the problems they have caused.
11 (1) Paragraph 7(a) of the Act is replaced by the following:		
(a) establishing standards respecting the characteristics of tobacco products and their emissions, including the sensory attributes — such as appearance and shape — of the products and their emissions, the dimensions, weight, components and performance of the products, and the amounts and concentrations of substances that may be contained in the products or their emissions;		
(2) Section 7 of the Act is amended by adding the following after paragraph (b):		
(b.1) respecting markings that may be displayed on tobacco products;		
2009, c. 27, s. 8(1)		
	Section 7 of the Act is amended by adding the following after paragraph (b.1):	.
	(b.2) establishing the quantity of tobacco products that may be sold, the time periods in which they may be sold, the form and manner in which they may be sold.	This gives the Minister the authority to impose supply controls, such as a sinking lid, cap-and-trade or other systems.
	(b.3) establishing how the Minister may determine if tobacco	This gives authority for evidence to gathered and analyzed to allow the

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
	manufacturers have met their obligations under section 5.5, thereby requiring an increase in the tobacco fee to be paid.	Minister to give an informed opinion on whether or not tobacco manufacturers have met their obligations.
(3) Paragraphs 7(c) and (c.1) of the Act are replaced by the following:		
(c) prescribing information that manufacturers must submit to the Minister about tobacco products and their emissions, including sales data and information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements;		
(c.1) prescribing information that manufacturers must submit to the Minister about research and development related to tobacco products and their emissions, including information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements;		
2009, c. 27, s. 8(1)		
(4) Paragraph 7(c.3) of the Act is repealed.		
(5) Section 7 of the Act is amended by adding the following after paragraph (c.2):		
(c.3) respecting the prohibition under section 6.01, including providing for the suspension of the sale of a tobacco product;		
(6) Section 7 of the Act is amended by adding the following after paragraph (d):		
(d.01) prescribing, for the purposes of section 6.1, information that manufacturers must make available to the public, including information referred to in paragraph (c);		
(d.02) prescribing, for the purposes of section 6.2, information that the Minister must make available to the public, including information referred to in paragraphs (c) and (c.1);		
	(d.03) establishing the form and manner in which market share is to be determined, how it is to be apportioned among tobacco manufacturers, the form and manner in which the tobacco fee is to be paid and the frequency and timing of	This creates regulation-making power to give effect to the tobacco fee proposed in section 6.4.

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
	payment of the tobacco fee.	
12 The Act is amended by adding the following after section 7.1:		
PART I.1		
Vaping Products		
Product standards		
7.2 No manufacturer shall manufacture or sell a vaping product that does not conform with the standards established by the regulations.		
Information required from manufacturer		
7.3 (1) Every manufacturer shall submit to the Minister, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about vaping products, their emissions and any research and development related to vaping products and their emissions, whether the vaping products are for sale or not.		
Supplementary information		
(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information in the form and manner and within the time specified by the Minister.		
Prohibition		
7.4 Subject to the regulations, no manufacturer shall sell a vaping product unless the information required under subsection 7.3(1) with respect to that product is submitted to the Minister.		
Public disclosure by manufacturer		
7.5 Every manufacturer shall make available to the public, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about vaping products and their emissions.	**7.5** Every manufacturer shall make available to the public information that is required by the regulations about vaping products and their emissions, unless exempted from doing so by the regulations.	Health Canada has a poor record for passing regulations in a timely manner. The amendment will make sure that the information is not delayed as a result of slow regulation-making.
Public disclosure by Minister		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
7.6 The Minister shall make available to the public, in the prescribed manner and within the prescribed time, information that is required by the regulations about vaping products, their emissions and any research and development related to vaping products and their emissions.	**7.6** The Minister shall make available to the public information that is required by the regulations about vaping products, their emissions and any research and development related to vaping products and their emissions, unless exempted from doing so by the regulations.	As above re 7.5
Non-application		
7.7 Sections 7.5 and 7.6 do not apply in respect of vaping products that have never been for sale in Canada.		
Regulations		
7.8 The Governor in Council may make regulations		
(a) establishing standards respecting the characteristics of vaping products and their emissions, including the functions and the performance of the products, the sensory attributes — such as appearance and shape — of the products and their emissions, and the amounts and concentrations of substances that may be contained in the products or their emissions;		
(b) respecting test methods, including methods to assess conformity with the standards;		
(c) prescribing information that manufacturers must submit to the Minister about vaping products and their emissions, including sales data and information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements;		
(d) prescribing information that manufacturers must submit to the Minister about research and development related to vaping products and their emissions, including information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements;		
(e) respecting requests for supplementary information under subsection 7.3(2);		
(f) respecting the prohibition under section 7.4, including providing for the suspension of the sale of a vaping product;		
(g) prescribing the means, including electronic means, by which the information referred to in paragraphs (c) to (e) may be submitted to the Minister;		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
(h) prescribing, for the purposes of section 7.5, information that manufacturers must make available to the public, including information referred to in paragraph (c);		
(i) prescribing, for the purposes of section 7.6, information that the Minister must make available to the public, including information referred to in paragraphs (c) and (d);		
(j) prescribing anything that by this Part is to be prescribed; and		
(k) generally for carrying out the purposes of this Part.		
13 The Act is amended by adding the following after section 7.2:		
Prohibition — manufacture		
7.21 No manufacturer shall use an ingredient set out in column 1 of Schedule 2 in the manufacture of a vaping product set out in column 2.		
Prohibition — sale		
7.22 No manufacturer shall sell a vaping product set out in column 2 of Schedule 2 that contains an ingredient set out in column 1.		
Amendment of Schedule 2		
7.23 (1) The Governor in Council may, by order, amend Schedule 2 by adding, amending or deleting		
(a) the name or description of an ingredient or vaping product; or		
(b) a reference to all vaping products, with or without exceptions.		
Description		
(2) An ingredient or vaping product may be described by reference to a document produced by a body or person other than the Minister, either as the document exists on a particular date or as it is amended from time to time.		
Operation of amendments suspended		
(3) An order made under subsection (1) may provide that the operation of the amendments to Schedule 2 is suspended with respect to retailers for a period of 30 days after the day on which the order comes into force.		
Consequences of suspension		
(4) During the period in which the operation of the amendments is suspended with respect to retailers,		
(a) Schedule 2, as it read immediately before the coming into force of the order, continues to apply with respect to retailers; and		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
(b) no other amendment to Schedule 2 is to come into force.		
14 (1) Subsection 8(1) of the Act is replaced by the following:		
Furnishing products to young persons		
8 (1) No person shall furnish a tobacco product or vaping product to a young person in a public place or in a place to which the public has access.		
(2) Subsection 8(2) of the Act is replaced by the following:		
Defence		
(2) A person shall not be found guilty of having contravened subsection (1) if it is established that they attempted to verify, in accordance with the regulations, that the person was at least 18 years of age.		
15 (1) Section 9 of the Act is replaced by the following:		
Sending and delivering to young persons		
9 (1) No person shall send or deliver a tobacco product or vaping product to a young person.		
Defence — sender		
(2) A person shall not be found guilty of having contravened subsection (1) for having sent a tobacco product or vaping product to a young person if it is established that the person		
(a) informed the person delivering the product of its nature and of the prohibition on its delivery to a young person; and		
(b) instructed the person delivering the product to verify that the person taking delivery of it was at least 18 years of age by asking for and examining a piece of identification issued by a federal or provincial authority or a foreign government and containing that person's name, photograph, date of birth and signature.		
Defence — person making delivery		
(3) A person shall not be found guilty of having contravened subsection (1) for having delivered a tobacco product or vaping product to a young person if it is established that the person		
(a) verified that the person taking delivery of the product was at least 18 years of age by asking for and examining a piece of identification issued by a federal or provincial authority or a foreign government and containing that person's name, photograph, date of birth and signature; and		
(b) believed on reasonable grounds that the piece of identification was authentic.		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
Tobacco products — interprovincial sending and delivering		
9.1 (1) No person shall, for consideration, send or deliver a tobacco product from one province to another unless the sending or delivery is between manufacturers or retailers or is exempted from the application of this section by the regulations.		
Advertising an offer		
(2) No person shall advertise an offer to send or deliver a tobacco product from one province to another.		
(2) Paragraph 9(2)(b) of the Act is replaced by the following:		
(b) instructed the person delivering the product to verify, in accordance with the regulations, that the person taking delivery of it is at least 18 years of age.		
(3) Subsection 9(3) of the Act is replaced by the following:		
Defence — person making delivery		
(3) A person shall not be found guilty of having contravened subsection (1) for having delivered a tobacco product or vaping product to a young person if it is established that the person verified, in accordance with the regulations, that the person taking delivery of the product was at least 18 years of age.		
16 Section 10 of the Act is amended by adding the following after subsection (2):		
Vaping products		
(3) No person shall import for sale in Canada, package, distribute or sell a vaping product that is prescribed for the purposes of this subsection, except in a package that contains a number or quantity of the vaping product that meets the prescribed requirements.		
17 Section 12 of the Act is replaced by the following:		
Dispensing device		
12 Subject to the regulations, no person shall furnish or permit the furnishing of a tobacco product or vaping product by means of a dispensing device.		
18 Section 13 of the Act is replaced by the following:		
Prescription vaping products		
13 (1) Subsections 8(1), 9(1) and 10(3) do not apply in respect of		
(a) a prescription vaping product; or		

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(b) a *device*, within the meaning of section 2 of the *Food and Drugs Act,* that is the subject of an authorization issued under that Act authorizing its sale for use with a prescription vaping product.		
Definition of *prescription*		
(2) In this section, *prescription*, in respect of a vaping product, means that the product		
(a) contains a drug that is set out in the prescription drug list, as amended from time to time, established under subsection 29.1(1) of the *Food and Drugs Act*, or a drug that is part of a class of drugs that is set out in that list; and		
(b) is the subject of an authorization issued under that Act authorizing its sale.		
19 (1) Paragraph 14(a) of the Act is replaced by the following:		
(a) respecting the verifications referred to in subsection 8(2), paragraph 9(2)(b) and subsection 9(3);		
(2) Paragraphs 14(b) to (d) of the Act are replaced by the following:		
(a.1) respecting exemptions to the prohibition under subsection 9.1(1);		
(b) prescribing tobacco products for the purposes of subsection 10(2) and prescribing vaping products for the purposes of subsection 10(3);		
(c) respecting, for the purposes of subsection 10(3), the number or quantity of a vaping product that a package must contain, including minimum and maximum numbers or quantities;		
(d) exempting persons from the application of section 11;		
(3) Paragraph 14(e) of the Act is replaced by the following:		
(e) respecting exceptions to the prohibition under section 12;		
20 (1) Subsection 15(1) of the Act is replaced by the following:		
Information — sale of tobacco products		
15 (1) No manufacturer or retailer shall sell a tobacco product unless the package containing it displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions, and about the health hazards and health effects arising from the use of the product and from its emissions.		
(2) Section 15 of the Act is amended by adding the following after subsection (1):		
Information — packaging of tobacco products		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
(1.1) No manufacturer shall package a tobacco product unless the package containing it displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
(3) Subsections 15(2) and (3) of the Act are replaced by the following:		
Information — leaflet		
(2) If required by the regulations, every manufacturer or retailer shall provide with a tobacco product, in the prescribed form and manner, a leaflet that displays the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
21 Section 16 of the Act is replaced by the following:		
Information — sale of vaping products		
15.1 (1) No manufacturer or retailer shall sell a vaping product unless the product and the package containing it display, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
Information — manufacture of vaping products		
(2) No person shall manufacture a vaping product unless the product displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
Information — packaging of vaping products		
(3) No person shall package a vaping product unless the package containing it displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
Information — leaflet or tag		
(4) If required by the regulations, every manufacturer or retailer shall provide with a vaping product, in the prescribed form and manner, a leaflet or tag that displays the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		

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Attribution		
15.2 The information referred to in sections 15 and 15.1 may be attributed to a person or body designated by the regulations if the attribution is made in the prescribed form and manner.		
Display of information — tobacco product package		
15.3 (1) No manufacturer or retailer shall sell a tobacco product if the package displays information in a manner that is contrary to the regulations.		
Provision of information — other		
(2) No manufacturer or retailer shall provide, in a manner that is contrary to the regulations, written information with a tobacco product.		
For greater certainty		
16 For greater certainty, this Part does not affect any obligation of a manufacturer or retailer at law or under an Act of Parliament or of the legislature of a province to warn consumers of the health hazards and health effects arising from the use of tobacco products or vaping products and from their emissions.		
22 Paragraph 17(a) of the Act is replaced by the following:		
(a) respecting the information that must appear on tobacco product packages and in leaflets about tobacco products and their emissions and about the health hazards and health effects arising from the use of the products and from their emissions;		
(a.1) respecting the information that must appear on vaping products or on vaping product packages and in leaflets or on tags about vaping products and their emissions and about the health hazards and health effects arising from the use of the products and from their emissions;		
(a.2) respecting, for the purposes of section 15.3, the manner of displaying or providing information, including the form and placement of the information;		
23 (1) The portion of subsection 18(2) of the Act before paragraph (a) is replaced by the following:		
Application of Division 1		
(2) Division 1 of this Part does not apply to		
(2) Paragraph 18(2)(a) of the English version of the Act is replaced by the following:		
(a) a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts a tobacco product or tobacco product-related brand element, whatever the mode or form of its expression, if no	Defeat this clause	This widens the loophole that allows smoking to be portrayed in movies and other cultural products.

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consideration is given by a manufacturer or retailer, directly or indirectly, for that use or depiction in the work, production or performance;		The government has given no explanation of why this is necessary.
(3) Section 18 of the Act is amended by adding the following after subsection (2):		
Application of Division 2		
(3) Division 2 of this Part does not apply to		
(a) a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts a vaping product or vaping product-related brand element, whatever the mode or form of its expression, if no consideration is given by a manufacturer or retailer, directly or indirectly, for that use or depiction in the work, production or performance;		
(b) a report, commentary or opinion in respect of a vaping product or a brand of vaping product if no consideration is given by a manufacturer or retailer, directly or indirectly, for the reference to the vaping product or brand in that report, commentary or opinion; or		
(c) a promotion by a manufacturer that is directed at manufacturers, persons who distribute vaping products or retailers but not, either directly or indirectly, at consumers.		
24 The Act is amended by adding the following after section 18:		
DIVISION 1		
Tobacco Products		
25 Section 19 of the Act is replaced by the following:		
Prohibition		
19 No person shall promote a tobacco product or a tobacco product-related brand element, including by means of the packaging, except as authorized by the provisions of this Act or of the regulations.		
26 Section 20 of the Act is replaced by the following:		
False promotion		
20 (1) No person shall promote a tobacco product, including by means of the packaging, in a manner that is false, misleading or deceptive with respect to, or that is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the tobacco product or its emissions.		

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Considerations		
(2) The general impression conveyed by a promotion and the literal meaning of any statement contained in a promotion shall be taken into account in determining whether a promotion is made in a manner that is misleading or deceptive with respect to, or is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the tobacco product or its emissions.		
27 The Act is amended by adding the following after section 20:		
Comparison and prohibited elements		
20.1 No person shall promote a tobacco product, including by means of the packaging,		
(a) in a manner that could cause a person to believe that the product or its emissions are less harmful than other tobacco products or their emissions; or		
(b) by using terms, expressions, logos, symbols or illustrations that are prohibited by the regulations.		
28 (1) Subsection 21(1) of the Act is replaced by the following:		
Testimonials or endorsements		
21 (1) No person shall promote a tobacco product through a testimonial or an endorsement, however displayed or communicated, including by means of the packaging.		
(2) Subsection 21(3) of the Act is repealed.		
29 (1) Subsection 22(1) of the Act is replaced by the following:		
Advertising		
22 (1) Subject to this section, no person shall promote a tobacco product by means of advertising that depicts, in whole or in part, a tobacco product, its package or a tobacco product-related brand element or that evokes a tobacco product or a tobacco product-related brand element.		
(2) Paragraph 22(2)(a) of the Act is replaced by the following:		
(a) a publication that is addressed and sent to an adult who is identified by name; or	Defeat	The current provision requires publications that are provided by mail. S-5 proposes to increase the ability to promote tobacco products through social media. Publications have been

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		interpreted as messages like e-mails, texts, etc.
(3) Subsection 22(3) of the Act is replaced by the following:		
Lifestyle advertising		
(3) Subsection (2) does not apply to lifestyle advertising or advertising for which there are reasonable grounds to believe that it could be appealing to young persons.	**(3)** Subsection (2) does not apply to lifestyle advertising or advertising for which there are reasonable grounds, in the opinion of the Minister, to believe that it could be appealing to young persons	The length of time that it will take to put any product or definition of `reasonable grounds` of appeal to young persons will risk exposing young persons to inappropriate advertising. The proposed amendment would shift the burden of proof in ways that protect health.
(4) The definition *lifestyle advertising* in subsection 22(4) of the Act is repealed.		
30 Section 23 of the Act is replaced by the following:		
Packaging		
23 (1) No person shall package a tobacco product in a manner that is contrary to the provisions of this Act or of the regulations.		
Prohibition — sale		
(2) No person shall sell a tobacco product that is packaged in a manner that is contrary to the provisions of this Act or of the regulations.		
2009, c. 27, s. 12(1)		
31 Subsection 23.1(1) of the Act is replaced by the following:		
Prohibited additives — packaging		
23.1 (1) No person shall package a tobacco product set out in column 2 of Schedule 1 in a manner, including by means of a brand element, that could cause a person to believe that it contains an additive set out in column 1.		
32 The Act is amended by adding the following after section 23.1:		
Prohibition — vaping product-related brand element		
23.2 (1) No person shall display a vaping product-related brand element on the package of a tobacco product.		

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Prohibition — sale		
(2) No person shall sell a tobacco product if a vaping product-related brand element is displayed on its package.		
1998, c. 38, ss. 1 and 2(1)		
33 Sections 24 and 25 of the Act are replaced by the following:		
Sponsorship promotion		
24 (1) No person shall promote a tobacco product-related brand element or the name of a tobacco product manufacturer in a manner that is likely to create an association between the brand element or the name and a person, entity, event, activity or permanent facility.		
Promotional material		
(2) No person shall use, directly or indirectly, a tobacco product-related brand element or the name of a tobacco product manufacturer in the promotional material related to a person, entity, event, activity or permanent facility.		
Name of facility		
25 No person shall display a tobacco product-related brand element or the name of a tobacco product manufacturer on a permanent facility, as part of the name of the facility or otherwise, if the facility is used for a sports or cultural event or activity.		
34 Sections 27 and 28 of the Act are replaced by the following:		
Brand element — thing or service		
27 No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a thing, other than a tobacco product or an accessory, or is used with a service, and	defeat	The expands the scope for tobacco advertising to include `things` that are not `non-tobacco` products or services. Given that some of the `things` might be related to other forms of drug use (and encourage co-use of marijuana and tobacco, vaping and tobacco, etc), this expands an already dangerous loophole.

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(a) the thing or service is associated with young persons;	defeat	Reasons above
(b) there are reasonable grounds to believe that the thing or service could be appealing to young persons; or	defeat	Reasons above
(c) the thing or service is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.	defeat	Reasons above
Other things and services	defeat	Reasons above
28 (1) Subject to the regulations, a person may sell a tobacco product, or advertise a tobacco product in accordance with section 22, if any of its brand elements is displayed on a thing, other than a tobacco product or an accessory, or is used with a service, and the thing or service does not fall within the criteria described in paragraphs 27(a) to (c).	defeat	Reasons above
Promotion		
(2) Subject to the regulations, a person may promote a thing, other than a tobacco product or an accessory, that displays a tobacco product-related brand element, or a service that uses a tobacco product-related brand element, if the thing or service does not fall within the criteria described in paragraphs 27(a) to (c).	defeat	Reasons above
35 (1) The portion of section 29 of the French version of the Act before paragraph (a) is replaced by the following:		
Promotion des ventes		
29 Il est interdit au fabricant et au détaillant de faire ou d'offrir de faire l'une des actions suivantes :		
(2) Paragraphs 29(a) to (c) of the Act are replaced by the following:		
(a) provide or offer to provide any consideration, for the purchase of a tobacco product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, draw, lottery or contest;		
(b) furnish or offer to furnish a tobacco product without monetary consideration or in consideration of the purchase of a product or service or the performance of a service; or		
(c) furnish or offer to furnish an accessory that displays a tobacco product-related brand element without monetary consideration or in consideration of the purchase of a product or service or the performance of a service.		
36 Section 30 of the Act is replaced by the following:		
Point of sale display of tobacco products		

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30 (1) Subject to the regulations, a person may display, at the point of sale, a tobacco product or an accessory that displays a tobacco product-related brand element.	Defeat	The current act refers to retail. The change proposed in S-5 would allow for promotion on web-sites.
Signs		
(2) A retailer of tobacco products may post, subject to the regulations, signs at the point of sale that indicate the availability of tobacco products and their price.	Defeat	As above
For greater certainty		
(3) For greater certainty, subsection (1) does not authorize the display of a tobacco product that is packaged in a manner that is contrary to the provisions of this Act or of the regulations.		
DIVISION 2		
Vaping Products		
Advertising appealing to young persons		
30.1 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.	**30.1** No person shall promote a vaping product or a vaping product-related brand element except as authorized by this Act or the regulations.	Creates a stronger basis to control vaping promotions. Without this, S-5 will permit vaping advertising on television, radio, billboards, etc.
Lifestyle advertising		
30.2 (1) 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.		
Exception		
(2) Subject to the regulations, a person may 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 that is in	(2) Subject to the regulations, a person may advertise a tobacco product by means of information advertising or brand-preference advertising that is in	Aligns vaping promotions with those for tobacco. Remove's S-5's permissions for lifestyle advertising of vaping products in bars and magazines.
(a) a publication that is addressed and sent to an adult who is identified by name; or	(a) a publication that is provided by mail and addressed to an adult	Aligns definition of publication with that currently in the Tobacco

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	who is identified by name; or	Act – does not pave the way for lifestyle advertising in text-messaging and other social media promotions
(b) places where young persons are not permitted by law.	(c) signs in a place where young persons are not permitted by law.	Restricts promotions to signs in bars, and prevents vaping companies from redecorating bars as vaping-branded places.
Sponsorship promotion		
30.3 (1) No person shall promote a vaping product-related brand element or the name of a vaping product manufacturer in a manner that is likely to create an association between the brand element or the name and a person, entity, event, activity or permanent facility.		
Promotional material		
(2) No person shall use, directly or indirectly, a vaping product-related brand element or the name of a vaping product manufacturer in the promotional material related to a person, entity, event, activity or permanent facility.		
Name of facility		
30.4 No person shall display a vaping product-related brand element or the name of a vaping product manufacturer on a permanent facility, as part of the name of the facility or otherwise, if the facility is used for a sports or cultural event or activity.		
Giving or offering to give		
30.5 No manufacturer or retailer shall give or offer to give a vaping product.		
Sales promotions — offering consideration		
30.6 (1) No manufacturer or retailer shall, in a place to which young persons have access,	**30.6 (1)** No manufacturer or retailer shall,	Unless the words `to which a young person have access` are deleted, vaping companies will be able to engage bar promotions (free food or drinks with purchase of vaping product), or use a modern form of cigarette girls. Bars are a particularly inappropriate

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		place to allow companies to promote, as drinking will interfere with risk assessment and judgment, and will and to encourage trial to an addictive drug.
(a) offer to provide any consideration, for the purchase of a vaping product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, draw, lottery or contest; or		
(b) offer to furnish a vaping product in consideration of the purchase of a product or service or the performance of a service.		
Sales promotions — providing consideration		
(2) No manufacturer or retailer shall, in a place other than a retail establishment where vaping products are ordinarily sold,	**(2)** No manufacturer or retailer shall,	Unless the words "other than a retail establishment where vaping products are ordinarily sold" is deleted, S-5 will permit inducements like lotteries to encourage trial, or provide vaping products bundled for trial use with other goods.
(a) provide any consideration, for the purchase of a vaping product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, draw, lottery or contest; or		
(b) furnish a vaping product in consideration of the purchase of a product or service or the performance of a service.		
Advertising — required information		
30.7 No person shall promote a vaping product or a vaping product-related brand element by means of advertising unless it conveys, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
Point of sale promotion		
30.8 No person shall promote, at the point of sale, a vaping product or a vaping product-related brand element, including by means of the packaging, in a manner that is contrary to the regulations.		

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DIVISION 3		
Miscellaneous Provisions		
37 The Act is amended by adding the following after section 30.2:		
Testimonials or endorsements		
30.21 (1) No person shall promote a vaping product through a testimonial or an endorsement, however displayed or communicated, including by means of the packaging.		
Depiction of person		
(2) For the purposes of subsection (1), the depiction of a person, character or animal, whether real or fictional, is considered to be a testimonial for, or an endorsement of, the product.		
38 The Act is amended by adding the following after section 30.4:		
Functions and sensory attributes		
30.41 No person shall promote or sell a vaping product that has an appearance, shape or other sensory attribute or a function for which there are reasonable grounds to believe that it could make the product appealing to young persons.	**30.41** No person shall promote or sell a vaping product that has an appearance, shape or other sensory attribute or a function for which, in the opinion of the Minister, there are reasonable grounds to believe that it could make the product appealing to young persons	The length of time that it will take to put any product or definition of `reasonable grounds` of appeal to young persons will risk exposing young persons to inappropriate advertising. The proposed amendment would shift the burden of proof in ways that protect health.
False promotion		
30.42 (1) No person shall promote a vaping product, including by means of the packaging,		
(a) in a manner that is false, misleading or deceptive with respect to, or that is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the vaping product or its emissions;		
(b) by using terms, expressions, logos, symbols or illustrations that are prohibited by the regulations; or		
(c) by using, in a manner that is contrary to the regulations, prescribed terms, expressions, logos, symbols or illustrations.		
Considerations		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
(2) The general impression conveyed by a promotion and the literal meaning of any statement contained in a promotion shall be taken into account in determining whether a promotion is made in a manner that is misleading or deceptive with respect to, or is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the vaping product or its emissions.		
Health benefits		
30.43 (1) No person shall promote a vaping product, including by means of the packaging, in a manner that could cause a person to believe that health benefits may be derived from the use of the product or from its emissions.		
Comparisons		
(2) No person shall promote a vaping product, including by means of the packaging, by comparing the health effects arising from the use of the product or from its emissions with those arising from the use of a tobacco product or from its emissions.		
Exception		
(3) Subsections (1) and (2) do not apply in respect of a vaping product that is the subject of an authorization, including a licence, issued under the *Food and Drugs Act* authorizing its sale.		
Discouraging tobacco cessation		
30.44 No person shall promote a vaping product, including by means of the packaging, if there are reasonable grounds to believe that the promotion could discourage tobacco cessation or encourage the resumed use of tobacco products.	**30.44** No person shall promote a vaping product, including by means of the packaging, if, <u>in the opinion of the Minister,</u> there are reasonable grounds to believe that the promotion could discourage tobacco cessation or encourage the resumed use of tobacco products.	The length of time that it will take to put any product or definition of `reasonable grounds` will risk lengthy inappropriate advertising. The proposed amendment would shift the burden of proof in ways that protect health.
Packaging		
30.45 (1) No person shall package a vaping product in a manner that is contrary to the provisions of this Act or of the regulations.		
Prohibition — sale		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
(2) No person shall sell a vaping product that is packaged in a manner that is contrary to the provisions of this Act or of the regulations.		
Indication or illustration		
30.46 (1) No person shall display on a vaping product or on its package an indication or illustration, including a brand element, that could cause a person to believe that the product is flavoured if there are reasonable grounds to believe that the indication or illustration could be appealing to young persons.	**30.46 (1)** No person shall display on a vaping product or on its package an indication or illustration, including a brand element, that could cause a person to believe that the product is flavoured if<u>, in the opinion of the Minister,</u> there are reasonable grounds to believe that the indication or illustration could be appealing to young persons	The length of time that it will take to put any product or definition of `reasonable grounds` of appeal to young persons will risk exposing young persons to inappropriate advertising. The proposed amendment would shift the burden of proof in ways that protect health.
Prohibition — sale		
(2) No person shall sell a vaping product if an indication or illustration referred to in subsection (1) is displayed on the product or on its package.		
Prohibited ingredients		
30.47 (1) No person shall promote a vaping product set out in column 2 of Schedule 2, including by means of the packaging, through an indication or illustration, including a brand element, that could cause a person to believe that the product contains an ingredient set out in column 1.	[see Schedule 3]	Flavours listed in column 1 do not meet implicit goal of not being attractive to young people. Other flavours likely to be as attractive to youth are: Fruit (i.e. grape, cherry), foods (i.e. peanut butter and jam) and floral or herbal (i.e. mint, rosewater, jasmine, anise, etc)
Prohibition — sale		
(2) No person shall sell a vaping product set out in column 2 of Schedule 2 if an indication or illustration referred to in subsection (1) is displayed on the product or on its package.		
Flavours		

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30.48 (1) No person shall promote a vaping product set out in column 2 of Schedule 3, including by means of the packaging, through an indication or illustration, including a brand element, that could cause a person to believe that the product has a flavour set out in column 1.		
Prohibition — sale		
(2) No person shall sell a vaping product set out in column 2 of Schedule 3 if an indication or illustration referred to in subsection (1) is displayed on the product or on its package.		
Amendment of Schedule 3		
30.49 (1) The Governor in Council may, by order, amend Schedule 3 by adding, amending or deleting		
(a) the name or description of a flavour or vaping product; or		
(b) a reference to all vaping products, with or without exceptions.		
Description		
(2) A flavour or vaping product may be described by reference to a document produced by a body or person other than the Minister, either as the document exists on a particular date or as it is amended from time to time.		
Operation of amendments suspended		
(3) An order made under subsection (1) may provide that the operation of the amendments to Schedule 3 is suspended with respect to retailers for a period of 30 days after the day on which the order comes into force.		
Consequences of suspension		
(4) During the period in which the operation of the amendments is suspended with respect to retailers,		
(a) Schedule 3, as it read immediately before the coming into force of the order, continues to apply with respect to retailers; and		
(b) no other amendment to Schedule 3 is to come into force.		
39 Subsection 30.43(1) of the Act is replaced by the following:		This section repeats a similarly worded section with the same number on page 24 of Bill S-5. Perhaps there is a drafting error.
Health benefits		
30.43 (1) No person shall promote a vaping product, including by means of the packaging, in a manner that could cause a person to		

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believe that *health benefits*, within the meaning of the regulations, may be derived from the use of the product or from its emissions.		
40 The Act is amended by adding the following after section 30.7:		
Tobacco product-related brand element		
30.71 No person shall furnish or promote a vaping product if a tobacco product-related brand element is displayed on the vaping product, on its package or in the advertising of the vaping product.		
41 Subsection 31(3) of the Act is replaced by the following:		
Foreign media		
(3) No person in Canada shall, by means of a publication that is published outside Canada, a broadcast that originates outside Canada or any communication other than a publication or broadcast that originates outside Canada, promote any product the promotion of which is regulated under this Part, or disseminate promotional material that contains a tobacco product-related brand element or a vaping product-related brand element in a manner that is contrary to this Part.		
42 Section 32 of the Act is replaced by the following:		
Report to Minister	**Reporting**	We are proposing that this section now requires reporting to and by the Minister
32 (1) Every manufacturer shall submit to the Minister, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about any promotion referred to in paragraph 18(2)(c) or (3)(c) and about any promotion referred to in Division 1 or 2.		
Supplementary information		
(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information in the form and manner and within the time specified by the Minister.		
	(3) The Minister shall report to Parliament from time to time and no less than once a year on progress made with respect to achieving the purposes of the Act, and to recommend to	The introduction of a new product category will likely result in significant changes in the nicotine market. This section encourages the Minister to make known the implementation

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
	Parliament additional measures to achieve these purposes.	challenges and ways to improve the Act's impact, and increases the accountability of government for public health administration.
43 The heading before section 33 of the Act is repealed.		
44 (1) Paragraph 33(a) of the Act is replaced by the following:		
(a) respecting the promotion of tobacco products, the use and promotion of tobacco product-related brand elements and the packaging of tobacco products, including the form, manner and conditions of the promotion and packaging, and the promotion of services and things for the purposes of section 28;		
(2) Section 33 of the Act is amended by adding the following after paragraph (a):		
(a.1) for the purposes of paragraph 20.1(b), prohibiting the use of terms, expressions, logos, symbols or illustrations in order to prevent the public from being deceived or misled with respect to the health effects or health hazards of tobacco products or their emissions;		
(3) Paragraph 33(b) of the English version of the Act is replaced by the following:		
(b) respecting the advertising of tobacco products for the purposes of subsection 22(2);		
(4) Paragraphs 33(e) to (j) of the Act are replaced by the following:		
(c) respecting, for the purposes of subsection 26(1), the manner in which a tobacco product-related brand element may appear on an accessory;		
(d) respecting the display of tobacco products and accessories at the point of sale;		
(e) respecting signs that a retailer may post under subsection 30(2), including the placement of the signs and their number, size and content;		
(f) respecting, for the purposes of subsection 30.2(2), the promotion of vaping products and vaping product-related brand elements;		
(g) respecting, for the purposes of section 30.7, the information about vaping products and their emissions and about the health hazards and health effects arising from the use of the products and from their emissions that must be conveyed in advertising;		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
(h) respecting, for the purposes of section 30.8, the promotion, at the point of sale, of vaping products and vaping product-related brand elements, including their display;		
(i) requiring manufacturers to disclose the particulars of their tobacco product-related and vaping product-related brand elements and promotional activities;		
(j) respecting requests for supplementary information under subsection 32(2);		
(k) prescribing anything that by this Part is to be prescribed; and		
(l) generally for carrying out the purposes of this Part.		
(5) Section 33 of the Act is amended by adding the following after paragraph (f):		
(f.1) for the purposes of section 30.42, prohibiting or respecting the use of terms, expressions, logos, symbols or illustrations in order to prevent the public from being deceived or misled with respect to the health effects or health hazards of vaping products or their emissions;		
(f.2) respecting, for the purposes of section 30.45, the packaging of vaping products, including by prohibiting the display of terms, expressions, logos, symbols or illustrations on the package that could be appealing to young persons;		
(6) Section 33 of the Act is amended by adding the following after paragraph (f.1):		
(f.11) respecting, for the purposes of subsection 30.43(1), what constitutes a health benefit;		
45 The headings before section 34 and sections 34 to 36 of the Act are replaced by the following:		

[no changes proposed to sections 46 to 85]

Text at first reading				Suggested Amendment	
SCHEDULE 3 (Sections 30.48 and 30.49) **FLAVOURS**					
	Column 1	Column 2		Column 1	Column 2
Item	Flavour	Vaping Product	Item	Flavour	Vaping Product
1	Confectionery	Vaping products, except prescription vaping products			
			2	Fruit	Vaping products, except prescription vaping products
			3	Foods	Vaping products, except prescription vaping products
			4	Herbal	Vaping products, except prescription vaping products
			5	Floral	Vaping products, except prescription vaping products
2	Dessert	Vaping products, except prescription vaping products			
3	Cannabis	Vaping products			
4	Soft drink	Vaping products			
5	Energy drink	Vaping products			

Note: In column 2, *prescription* has the same meaning as in subsection 13(2).