

# An Appropriate Response to Electronic Cigarettes

---

Presentation to the House of Commons Standing Committee on Health  
October 2014

## Physicians *for a* Smoke-Free Canada

---

134 Caroline Avenue  
Ottawa, Ontario,  
K1Y 0S9

[www.smoke-free.ca](http://www.smoke-free.ca)  
613 600 5794

## **Introduction**

In its review of the optimal approach towards the regulation and control of electronic nicotine delivery systems (ENDS), this committee will consider ways in which other jurisdictions have evaluated the potential risks and benefits associated with this new form of nicotine use.

We encourage the committee to rely on two public health principles when making its recommendations to government. The first of these is reliance on science and on research unbiased by commercial interests. The second is to protect a population from exposure until there is clear evidence of net benefit.

We also encourage the committee to insist that the federal tobacco control strategy be renewed, and that ENDS be managed within the context of a modernized policy framework to reduce nicotine and tobacco related disease, including addiction.

## **Recommendations**

**The federal government should adopt the following measures with respect to the sale of Electronic Nicotine Delivery Systems:**

### **1. Changes to legal structures and policies**

- The regulation of electronic cigarettes should be embedded in a modernized tobacco control strategy.

### **2. Regulatory controls on nicotine and non-nicotine electronic smoking devices**

#### **Smoking in Public Places**

- Prohibit use of e-cigarettes in public spaces and workplaces where smoking is banned by law or by administrative policy.

#### **Sales restrictions**

- Prohibit e-cigarette sales to minors.
- Prohibit e-cigarette sales in locations where tobacco sales are banned under federal law (eg, vending machines).

#### **Advertising**

- Prohibit health claims for ENDS, including that ENDS are smoking cessation aids, until and unless these claims are approved by Health Canada.
- Apply same advertising restrictions to e-cigarettes as are currently applied to tobacco products.

#### **Warnings**

- Establish regulatory requirements for appropriate health warning messages for ENDS, commensurate with risks.
- Prohibit sale or manufacture of products on which warnings are not appropriately displayed.

#### **Product approval**

- Approve e-cigarette nicotine product designs or products on a case-by-case basis, and/or set performance requirements.
  - Prohibit flavours
  - Require that e-cigarettes be visually distinct from regular cigarettes.
  - Establish safety regulations to achieve minimal toxic emissions, to standardize nicotine delivery, to impede alteration for use with other drugs.

### **3. Monitoring, surveillance and enforcement measures**

#### **Enforcement**

- Actively enforce the existing ban on e-cigarettes with nicotine to prevent illegal/non-approved nicotine based e-cigarette products from being available in Canada.

#### **Research and Monitoring**

- Strengthen tobacco surveillance and monitoring systems to assess developments in ENDS and nicotine use by sex and age.
- Dedicate research funding to enable a deeper understanding of the usage, potential benefits of e-cigarettes as a cessation device as well as their possible risks, including safety, gateway to addiction potential and renormalization.

#### **Protection from industry interference**

- Transparency should be required from ENDS and tobacco companies advocating for and against legislation and regulation, both directly and through third parties.
- Article 5.3 of the WHO FCTC should be respected when developing and implementing ENDS legislation and regulations.

#### **Reporting**

- Require manufacturers to provide information on their products and marketing activities.
- Establish by law that such reports are in the public interest, and therefore available to the public.

### **4. Access to financial and other resources**

#### **Apply the polluter-pay principle**

- Since February 1994, the Canadian government has imposed a 50% surtax on the profits of tobacco companies, which was originally imposed to help defray the regulatory costs associated with tobacco use. Restoring this surtax to its previous level and applying it to imported tobacco products and electronic nicotine systems would provide sufficient funds for regulating e-cigarettes.

# **1** Canada should follow the advice of science-based health authorities like the World Health Organization.

World-wide, only a few countries (notably the United Kingdom and the United States) have allowed the widespread advertising and marketing of electronic cigarettes.

Most countries and other OECD countries, have taken a more precautionary approach, consistent with the recent report of the World Health Organization.<sup>1</sup> The WHO-recommended measures aim to balance the potential benefits of a less harmful form of nicotine delivery against the risks of increased or prolonged nicotine use and tobacco smoking. They provide a sound basis for policy decisions in Canada.

The recent EU directive reflects the concerns of the WHO and others. The EU has agreed that its countries will adopt more stringent regulatory controls on the manufacture and licensing for sale of e-cigarettes.<sup>2</sup> (The EU directive does not specify the conditions under which these products can be marketed, but encourages controls)

Approaches consistent with that of the WHO are also echoed in the recommendations of prominent health organizations like the International Union Against Tuberculosis and Lung Disease<sup>3</sup>, the Heart and Stroke Foundation of Canada,<sup>4</sup> and other tobacco control organizations.<sup>5 6</sup>

Our recommendations to this committee outlined on the previous pages are grounded in the WHO's approach.

---

1 Electronic nicotine delivery systems. Report by WHO. 21 July 2014. FCTC/COP/6/10.  
[http://apps.who.int/gb/fctc/PDF/cop6/FCTC\\_COP6\\_10-en.pdf?ua=1](http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10-en.pdf?ua=1)

2 EU Tobacco Directive. 2014/40/EU.

3 Position Statement on Electronic Cigarettes [ECs] or Electronic Nicotine Delivery Systems [ENDS]  
[http://www.theunion.org/what-we-do/publications/official/bocigarette\\_statement\\_FULL.pdf](http://www.theunion.org/what-we-do/publications/official/bocigarette_statement_FULL.pdf)

3 Heart and Stroke Foundation: E-cigarettes in Canada  
[http://www.heartandstroke.com/site/c.iklQLcMWJtE/b.9207931/k.D09C/Heart\\_and\\_Stroke\\_Foundation/E-cigarette\\_statement\\_FULL.pdf](http://www.heartandstroke.com/site/c.iklQLcMWJtE/b.9207931/k.D09C/Heart_and_Stroke_Foundation/E-cigarette_statement_FULL.pdf)

4 Heart and Stroke Foundation: E-cigarettes in Canada  
[http://www.heartandstroke.com/site/c.iklQLcMWJtE/b.9207931/k.D09C/Heart\\_and\\_Stroke\\_Foundation/E-cigarettes\\_in\\_Canada.htm](http://www.heartandstroke.com/site/c.iklQLcMWJtE/b.9207931/k.D09C/Heart_and_Stroke_Foundation/E-cigarettes_in_Canada.htm)

5 Smoke-Free Nova Scotia Position Statement on E-cigarettes and Electronic Nicotine Delivery Systems  
<http://www.smokefreens.ca/site-media/documents/sfns-e-cig-position-statement-january-2014.pdf>

6 Coalition québécoise pour le contrôle du tabac. Press release August 8, 2014  
[http://cqct.qc.ca/Communique\\_docs/2014/PRSS\\_14\\_08\\_14\\_ECig\\_et\\_initiation\\_Jeunes.pdf](http://cqct.qc.ca/Communique_docs/2014/PRSS_14_08_14_ECig_et_initiation_Jeunes.pdf)

## **2** It would be very risky to expand e-cigarette sales until the federal government is better able to respond when things go wrong.

Tobacco companies have shown themselves adept at adapting to public health laws in order to subvert their effect. There are numerous historic examples of such set-backs.<sup>7</sup>

Despite this experience, Health Canada has still not been provided with the power to move quickly when manufacturers increase the risks to public health from smoking or nicotine use.

### **Flavoured cigars continue to be sold, despite laws intended to ban them.**

The 2009 Cracking Down on Tobacco Marketing to Youth Act (Bill C-32) was intended to remove candy-flavoured tobacco products from the market.

The companies which make these products quickly found a loop-hole in the law. Despite the Prime Minister's promise in July 2010 to take action if necessary,<sup>8</sup> despite a private member's proposal of a solution,<sup>9</sup> despite repeated calls from our organization and others,<sup>10</sup> the federal government has not - four years later - fixed this problem.<sup>11</sup>

**Before C-32**



**After C-32**



---

7 By creating sponsorship shell companies (like du Maurier Jazz) to undermine restrictions on advertising. When they were forbidden from using terms like "light" and "mild", they turned to colours and numbers to continue to deceive smokers into thinking that they could reduce the harms from smoking by smoking a "lower-tar" brand.

8 Statement July 5, 2010.  
[http://web.archive.org/web/20100803161729/http://www.conservative.ca/press/news\\_releases/statement\\_by\\_the\\_prime\\_minister\\_of\\_canada-113533](http://web.archive.org/web/20100803161729/http://www.conservative.ca/press/news_releases/statement_by_the_prime_minister_of_canada-113533)

9 Bill C-428, An Act to amend the Tobacco Act (smokeless tobacco and little cigars), formerly introduced as C-631 on March 7, 2011

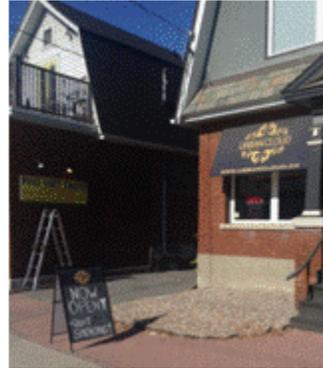
10 See for example, press releases at:  
[http://www.smoke-free.ca/eng\\_home/2012/news\\_press\\_17\\_Jan\\_2012.htm](http://www.smoke-free.ca/eng_home/2012/news_press_17_Jan_2012.htm)  
[http://www.cqct.qc.ca/Communiqués\\_docs/2011/PRSS\\_11\\_04\\_28\\_IllegalCigarsStudy.htm](http://www.cqct.qc.ca/Communiqués_docs/2011/PRSS_11_04_28_IllegalCigarsStudy.htm)

11 A regulatory proposal was published in the Canada Gazette Part I on October 10, 2014.

**The sale of electronic cigarettes with nicotine is not permitted, yet these products are openly sold.**

The widespread open retailing of electronic cigarettes is forbidden by the Food and Drugs Act.<sup>12</sup> Yet there are scores of retail outlets openly selling these products.

Health Canada has not made public its reasons for this decision, nor the results of any monitoring of the products for sale or their use by Canadians.



This retailer illegally sells e-cigarettes (and only e-cigarettes) less than a kilometre from Health Canada offices

**The Consumer Product Safety Act is not used to curb the sales of dangerous non-tobacco waterpipe.**

While tobacco manufacturers are exempt from the provisions of the *Consumer Product Safety Act*, which forbid the sale of dangerous products, manufacturers of non-tobacco waterpipe are not.

Given the harms that Canadian researchers have found to be associated with the use of this product,<sup>13</sup> one might expect the sale of non-tobacco molasses to be disallowed. This is not the case.<sup>14</sup> As there is no other law under which this product would be regulated federally, this means that this product falls into a regulatory void.



Tobacco-free water pipe molasses harms its users when used exactly as intended. There are no controls on its sale in Canada.

---

12 Health Canada Advisory: March 27, 2009  
<http://www.healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2009/13373a-eng.php>

13 See, for example  
Hammal et al. "'Herbal' but potentially hazardous: an analysis of the constituents and smoke emissions of tobacco-free waterpipe products and the air quality in the cafés where they are served." *Tobacco Control*. October 15, 2013

Zhang Bo, et al. "'Enter at your own risk': a multimethod study of air quality and biological measures in Canadian waterpipe cafes". *Tobacco Control*. October 25, 2013.

14 Last year we filed an official Consumer Product Incident Report that we expected would trigger enforcement action. Instead we learned that the department does not wish to apply the CPSA to such products, even though they consequently fall into a legislative void.

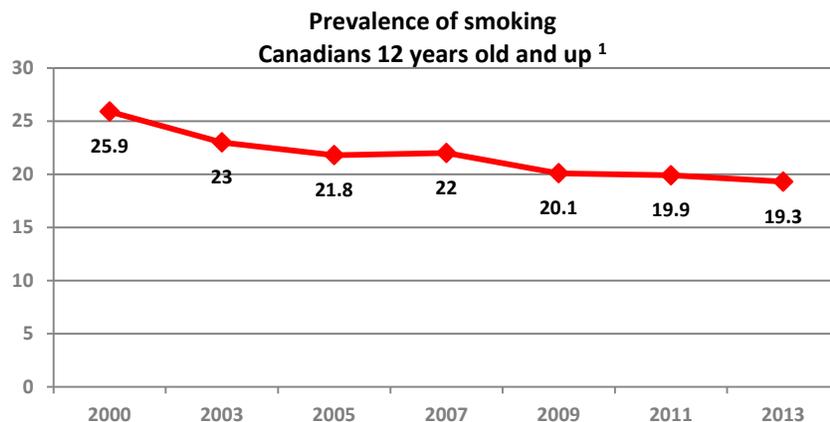
### **3 E-cigarette control should be part of a renewed, expanded and modernized federal tobacco control strategy**

The weaknesses in the current federal strategies towards tobacco and nicotine mean that the risks posed by electronic nicotine delivery systems are higher than they should be, and the benefits that ENDS **might** offer to convert smokers to less harmful forms of nicotine are diminished.

Tobacco companies are reinventing themselves into manufacturers of conventional combustible tobacco and electronic nicotine systems. Canada needs to respond to this new reality.

There are other reasons for overhauling Canada's aging tobacco control programs. The federal tobacco control strategy (FTCS) was launched at the beginning of this century, and now has almost nothing left to offer. Most of its regulatory elements are in place and much of its programming has been wound down. Mass media and community programs have been virtually phased out.

Not surprisingly, the progress against smoking is stalling.<sup>15</sup>



<sup>15</sup> Statistics Canada, Canadian Community Health Survey, 2000 to 2013.

## **There are several modern tobacco control methods yet to be implemented in Canada**

A number of proposals have been made to modernize tobacco control, or to develop an “end game” for tobacco. These include:

- Measures to modify the business thinking of manufacturers, and to better align their behaviour with public health goals (among these are performance-based regulations, shrinking-lid cap on production, cap-and-trade to reduce consumption over time).<sup>16</sup>
- Modifying the retail environment, in collaboration with provincial governments.<sup>17</sup>
- A moratorium on new tobacco products or marketing to prevent the invention of new ways to recruit smokers or nicotine addicts, while allowing the introduction of alternative safer products.<sup>18</sup>
- Removing from the market (banning) low-volume hazardous tobacco products, such as blunts, chewing tobacco, moist snuff, dry snuff and water pipes.
- Catching up to other countries which are requiring plain packaging, limiting the number of variants in each brand name, and banning menthol.
- Recovering the costs of tobacco enforcement through licensing fees or imposing conditions of license that improve compliance.

### **The research needed for an ENDS strategy is ongoing.**

There is much that remains to be known about whether or how ENDS can support smokers to achieve their health goals of quitting smoking or shifting to less harmful forms of nicotine delivery.

One promising idea is to require the reduction of nicotine in conventional cigarettes<sup>19</sup> so that those who are addicted to nicotine are better served by less harmful forms of use.

---

<sup>16</sup> Several of these are identified at:

Callard, C and Collishaw N. Supply-side options for an endgame for the tobacco industry. Tobacco Control, May 2013.

[http://tobaccocontrol.bmj.com/content/22/suppl\\_1/i10.full.pdf+html](http://tobaccocontrol.bmj.com/content/22/suppl_1/i10.full.pdf+html)

<sup>17</sup> For example, the Non Smokers Rights Association, Reforming the retail landscape for tobacco.

[http://www.nsra-adnf.ca/cms/file/files/Retail\\_Brochure.pdf](http://www.nsra-adnf.ca/cms/file/files/Retail_Brochure.pdf)

<sup>18</sup> For example, Physicians for a Smoke-Free Canada. Why we need a moratorium on new tobacco products.

[http://www.smoke-free.ca/pdf\\_1/Moratorium-Septemer2009.pdf](http://www.smoke-free.ca/pdf_1/Moratorium-Septemer2009.pdf)

This and other ideas need further research. While Health Canada is not, as far as we know, supporting work in this area, there is significant research in the United States. The Tobacco Centers of Regulatory Science program of U.S. National Institutes of Health<sup>20</sup> has a comprehensive research program underway to inform policy on tobacco and nicotine regulations.

Canada should follow this work closely, and be in a position to adopt the new approaches validated through this work.

Should research prove electronic cigarettes to have some public health benefit, consideration could be given to appropriately integrating their use into an end game for tobacco.

---

19 Benowitz, NL and Henningfield, JE. Reducing the nicotine content to make cigarettes less addictive Tobacco Control. May 2013  
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3632983/pdf/tobaccocontrol-2012-050860.pdf>

20 National Institutes of Health.  
<https://prevention.nih.gov/tobacco-regulatory-science-program/research-priorities>