Standing Senate Committee on Social Affairs, Science and Technology (SOCl)
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4

Senators,

It is my understanding that SOCl is reviewing Senate Bill S-5; An Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts.

I would like to take a few moments of your time to discuss how this Bill, and more specifically just two sections as they are currently worded, will impact our fledgling business.

Alternatives & Options – Vapourizers and E-Liquids Ltd. (A&O) was incorporated in the province of Alberta in October of 2015 and opened its first retail location in the town of Morinville on March 7th of 2016. Our corporate philosophy is to introduce current smokers to an alternative means of consumer recreational nicotine intake that removes combustion from the delivery system. We want to do this in a socially responsible manner that deals with many of the image issues normally associated with our branch of the smoke free alternatives industry. As such, apart from the current controversy about the legality of nicotine containing products in our industry, A&O adopted the following operational principles and policies that guide our business;

- We are licensed to operate in our community.
- We are an adult only business. Demonstrations, discussions, and sales are restricted to age of majority and older for the province of Alberta (18+). This is posted on our entrance door and enforced by mandatory I.D. checks for all individuals who appear to be under the age of 25 (Challenge 25 policy) and are not already known to us.
- The sales and demonstration floor is not visible from the exterior of the premises. There is no external promotion of the product we sell visible from the street beyond the name of the corporation on the property signage as required by law.
- As a matter of policy, A&O does not make cessation or health claims. We offer an alternative to combustion based delivery systems not a cure. When asked about cessation or harm reduction our standard response as a business is as follows “Health Canada has some very specific concerns about our discussing matters of cessation and harm reduction.” Further queries about such matters are directed to the 2009 Health Canada position statement on e-cigarettes, the Royal College of Physicians (London) 2016 report, Public Health England’s 2015 Report, and more recently, the 2017 study by the University of Victoria as an example of Canadian data.
- Immediately after opening, A&O joined the Electronic Cigarette Trade Association (ECTA) of Canada, a self-regulating organization that audits its membership to specific standards meant to boost both consumer and legislative confidence in the product we carry. For example, labeling of liquid product to CCCR2001 standards (Bilingual, Hazard notifications, etc.) and random sampling and testing of liquids for known and suspected constituents and contaminants of concern as well as quality control at a lab recognized by Health Canada.
- A&O does not knowingly deal in product labeled or marketed in a manner that could be seen as overtly appealing to youth, offensive to the general public, violating trademarked properties, or infringing on intellectual property rights.

We adopted these principles and policies (among others), in a jurisdiction that has no legislation at the Municipal, Provincial, or Federal level that demands we do so. We did it because it was the “right” thing to do.
As one might imagine, adopting those principles put us at a distinct disadvantage to some of our regional competitors who enjoy a lower overhead, larger field of product selection, and less restriction in practice than we do. Despite that we have still managed a slightly better than average start up curve compared to other small businesses in the region. Our reward in this is that our community and our customers appreciate our standards.

In short; We have strived to be, and today believe we are an example of the “Legitimate business” that should “have no fear of regulation” as I heard in a recent soundbite.

\textbf{Senate bill S-5 has several points that cause A&O grave concern from an operating standpoint:}

\textbf{Section 30.43 (1) and (2)} state that “\textit{No Person} shall promote a vaping product (...) 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, and, “\textit{No Person} shall promote a vaping product (...) 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."

Our entire business model is to sell an alternative product to former and current tobacco users, right down to the name of the corporation and the name of the shop. Comparisons between the two are inescapable. Section 30.43 makes it illegal for us to share valid scientific and health data with our customers. It makes valid scientific research focusing on relative risk illegal in Canada. It also puts A&O and other entities in a position where we may violate consumer protection laws through “deception by omission”. In fact, should Bill S-5 pass as is, this very letter is in violation of section 30.43 and could result in fines up to $500,000.00 and a two year prison sentence because I have referenced valid scientific data and reports, from credible and accepted sources that not only compare vaping directly to smoking, but reference the relative harm levels between the two.

This section will impact a smoking Canadian’s access to valuable information that would help them make an “informed” decision regarding access and availability to a scientifically recognized less harmful alternative to combustible tobacco.

It is our opinion that Section 30.43 does not regulate shops, it silences them. It does not protect Canadians, it denies them access to valid scientific data from reputable resources. It does however protect the pecuniary interest of an industry who would absolutely be negatively impacted by legitimate scientific health comparisons of vaping to combustible tobacco use.

The use of “\textit{No Person}” has already been flagged by the Canadian Constitution Foundation as being of grave import as it extends that gag order to every Canadian and could be found to be a violation of their rights and freedoms as put forth in The Charter.

\textbf{Section 30.44} states \textit{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 it could make the product appealing to young persons.}

Taste and smell are sensory attributes, and already there are members of government referring to flavour bans. Taste buds are not just the provenance of young persons and flavours have been cited by many former adult smokers as being key to their reaching their personal goals of moving from combustion based delivery to vaping in multiple surveys. Taste is also subjective to the individual, “Could make the product appealing to youth” is not the same as “Deliberately make the product appealing to youth”.

A&O is an adult oriented business selling an adult product to adults only. Our average customer age is mid to late 40’s. and these are our top 10 e-liquid flavours for the past 30 days by volume sold;
<table>
<thead>
<tr>
<th>Position</th>
<th>Product Name</th>
<th>Flavour Profile</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ice Ice Berry</td>
<td>Berry Popsicle</td>
</tr>
<tr>
<td>2</td>
<td>Bass</td>
<td>Crunchy Oatmeal Bar</td>
</tr>
<tr>
<td>3</td>
<td>Treble</td>
<td>Apple Cinnamon Oatmeal</td>
</tr>
<tr>
<td>4</td>
<td>Rhythm</td>
<td>Peaches and Cream Oatmeal</td>
</tr>
<tr>
<td>5</td>
<td>Atlantis</td>
<td>Pineapple, Blue Berry, Guava</td>
</tr>
<tr>
<td>6</td>
<td>Iceberry Tots</td>
<td>Mint/Fruit Candy</td>
</tr>
<tr>
<td>7</td>
<td>Messiah</td>
<td>Watermelon, Black Currant</td>
</tr>
<tr>
<td>8</td>
<td>Spellbound</td>
<td>Nectarine</td>
</tr>
<tr>
<td>9</td>
<td>Canadian Ice</td>
<td>Menthol Tobacco</td>
</tr>
<tr>
<td>10</td>
<td>Polar Vortex</td>
<td>Peppermint Menthol</td>
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Those 10 products, while less than 5% of the total product count in our store (hardware and liquids) are responsible for 28% of our gross revenue in the last 30 days.

E-liquid itself has no identifiable flavour outside of “Sweet”. All flavours, including “tobacco” flavours are simulated. Customer preference determines sales.

E-liquid flavours were originally developed in the illicit market as the constituents (excluding nicotine) are easy to find for any member of the public. Flavourings are easily picked up in any bakery supply outlet, pharmaceutical grade Propylene Glycol and Vegetable Glycerine can be found in a drug store and are not controlled, and “recipes” for e-liquid flavours are easily sourced on the internet.

A flavour ban would simply drive the e-liquid market back underground, but first it would put the “Legitimate business” owners who should have “no fear of regulation” out of business. When that happens, the industry loses the manufacturers who have invested in ISO rated clean facilities, Good Manufacturing Processes, and safety procedures and e-liquid will once again be made in back rooms, basements, and garages. The industry loses the manufacturers who test their liquid for known and suspected constituents and contaminants of concern, quality control, and accurate nicotine levels and the consumer will return to not knowing what is in that bottle of liquid.

An illicit e-liquid market cannot be monitored and policed for quality, consistency, marketing tactics, age of majority sales or any other legislative concerns. It’s illegitimate and unaccountable by nature and only a legitimate industry can be held to account for its actions.

Just these two sections of the proposed bill, 30.41 and 30.43 have the very real potential of decimating the legitimate industry by removing our ability to communicate with our customers in an open and honest fashion and meet the adult populations desire for flavour variety in a legitimate market. While A&O has other concerns with the legislation, if we cannot come to terms with these two articles it will not matter because A&O very likely will not exist.

- Yesterday A&O delivered 60+ pounds of collected items to the Morinville Food Bank Society collected from customers as part of our 1 year anniversary celebration. Under S-5 that will no longer be able to occur.
- A&O has a Service Member program that recognizes active Military Personnel and Veterans, Law Enforcement Officers, and First Responders for their service to our community and country. Under S-5 that program would likely not be permitted to continue.
- We want to be a respected, visible, and active member of the community we operate and live in and we are indeed proud of the things we have done to this point, but S-5 will severely curtail our ability to continue to do so.
I would like to thank you for taking the time to review this rather long letter, unfortunately it is impossible to discuss S-5 in a condensed format without losing the impact it will have on Alternatives & Options – Vapourizers and E-Liquids Ltd., the legitimate industry, and the people in our community whose lives we impact every day.

While this letter will be sent electronically initially, it will be followed by signed and dated print versions for official records.

We look forward to your responses and are available to answer any questions you may have as to the impact of Senate Bill S-5 on our business.

Regards,

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2009 Health Canada Statement on E-Cigarettes –

2015 Public Health England Report -

2016 Royal College of Physicians (London) Report –
https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0

2017 University of Victoria Study Executive Summary –

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