ECTA
Electronic Cigarette Trade Association of Canada

Presentation to
Standing Senate Committee on Social Affairs, Science and Technology

Bill S-5 Tobacco and Vaping Products Act

Daniel David, Chairman of the Board

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# Contents

ECTA Introduction .................................................................................................................. 3
Certification and Accreditation ............................................................................................... 3
Concerns about Bill S-5 ........................................................................................................ 4
Conclusion ............................................................................................................................. 6

Appendix A – Requested Amendments to Bill S5 .............................................................. 7
  Mandatory two (2) year review ......................................................................................... 7
  Schedule 2 – Prohibited Ingredients .............................................................................. 7
  Schedule 3 - Flavours ........................................................................................................ 7
  Functions and sensory attributes ..................................................................................... 8
  Relative Risk and Unintended Consequence ................................................................. 8
  Vaping Product – Definition .......................................................................................... 11
ECTA Introduction

Through you Mr. Chairman, I want thank committee members for inviting us to present our thoughts on Bill S-5. I am here as a representative of the Electronic Cigarette Trade Association of Canada, or ECTA.

(The Electronic Cigarette Trade Association) ECTA is a self-regulatory organization for the vapour products industry, active since 2011. During this time we have developed and implemented regulations and compliance standards that respond directly to consumer needs, evolving technology and trends, and the ever growing body of scientific research on vaping and harm reduction. Our members voluntarily submit to ECTA requirements and uphold the highest standards in retail, manufacture and wholesale.

We recognize and embrace the critical need for an appropriately regulated vapour product industry and we continually develop standards and policies through direct interaction with scientists, researchers, policy makers, industry experts and consumers. The bulk of our program is detailed in a 230 page guide, supported by an online membership portal. Our program is regularly updated with pro-active policies and standards covering business operations, information communication, laboratory testing and compliance procedures.

Certification and Accreditation

Mr. Chairman, ECTA is committed to the implementation and continuous evolution of our program entitled “Industry Standard of Excellence”. We constantly improve standards in direct proportion to concerns raised through scientific study, product development and consumer demands about safety and product quality.

Two years ago we became aware of new studies indicating that a compound commonly used in e-liquid flavoring was likely harmful for inhalation. We incorporated that compound into our testing protocols and set thresholds based on consultation with qualified experts. This resulted in higher quality e-liquid produced and available for sale. It also helped to set new quality benchmarks for the entire Canadian industry. We are proud that our e-liquid testing methods and tolerances, published on our website, are available for use by manufacturers here in Canada and globally.

As devices advance, we have seen an increase in the number of battery failure incidents directly related to a lack of consumer education. ECTA reacted by setting a requirement for the industry to include warning inserts with the sale of certain device categories. Information and inserts were also made available to the public.
Recently, there have been incidents leading to injury from improperly stored spare batteries from something as simple as pocket change shorting out the cell. In response, ECTA joined forces with CVA to create “Battery Safety Week”. Through this initiative, we developed safety information and educational details that are distributed free to every vape product shop in Canada. We created fifty thousand battery storage cases for vapers to hold spare batteries – avoiding the potential for injury.

Mr. Chairman, trends, technology, and science in vaping constantly change and directly impact the efficacy of vapour product regulation. ECTA is uniquely qualified in this area and we are working with CVA to develop certification and accreditation programs designed to complement support and assist in the evolution of federal regulation, but more importantly, reinforce industry compliance.

We will launch online certification courses to ensure operators and employees have essential product and safety knowledge and comply with provincial and federal vapour product regulations as they work in the industry. We will also launch a rigorous accreditation program for manufacturers and vape product shops to ensure and maintain standards compliance, while streamlining reporting and auditing.

**Concerns about Bill S-5**

Mr. Chairman, while we fundamentally support regulation for the industry we do have concerns regarding Bill S-5.

In 2014 I presented to the HESA committee, detailing reasons for creating purpose built regulations for vaping products as a harm reduction consumer product. This recommendation was echoed by numerous presenters, and we were encouraged that the HESA report recommended a new legislative framework.

Bill S-5 sets a new vapour product framework within the Tobacco Act and, in so doing we believe that regulating vapour products within the Act is flawed based on the alignment with tobacco products.

Let me explain, tobacco legislation was crafted with the purpose of discouraging use and preventing new uptake as a critical matter of public health. This approach is clearly appropriate considering that cigarettes are the most deadly legal consumer product on the market. Vaping is a revolutionary harm reduction alternative – the Minister of Health even suggested that vaping is less harmful than smoking. Like any other harm reduction product vaping is not without risk, but it’s placement under the Tobacco Act, no matter how well crafted, can never achieve the appropriate balance of risk versus reward.
Mr. Chairman, we recognize that it is not an easy task to properly classify and regulate a new and disruptive technology such as vapour products, but an appropriately amended bill S-5 is certainly better than no regulation at all.

In that context, we believe that the long term goal should be the proper classification of vaping products as a harm reduction product. We have all read reports and studies. Science is catching up to vaping and its role in harm reduction. It is in this context, that we strongly urge this committee to include a mandatory 2 year review in the legislation.

The vapour product industry in Canada is growing exponentially. Where once it was operated exclusively by ex-smokers in small start-up businesses, it is fast evolving into a fully regulated mainstream industry. Although vapers and our businesses have been working towards this for years, we are also well aware that the tobacco industry has been eagerly awaiting the same legislation. Until this Bill passes and regulations are in place, this industry remains largely devoid of any tobacco industry vaping products.

Ironically, it’s the lack of federal legislation specifically, that enabled Canada to become one of the only countries in the world with a thriving vape industry and almost no tobacco industry market share.

Mr. Chairman, we further believe that Bill S-5 gives a market advantage to the large tobacco corporations by virtue of a market authorization process. In effect, this provides significant advantage to the only sector with the intent and resources to develop a market authorized vapour product, the tobacco industry. I’m specifically referring to the following sections of the Act:

Section 30.43 (2) prohibits the promotion of a vaping product that compares the health effects to those of tobacco products.

All scientific evidence concludes that vaping is less harmful than smoking in terms of relative risk. This section eliminates the use of the single most important reason to switch from smoking to vaping, while making an exception for corporations with the resources to obtain market authorization.

It’s worth noting that the UK based British American Tobacco received authorization for the very first prescription e-cigarette device shortly after regulations came into effect in that country.

Bill S-5 also gives unfair and unreasonable advantage to market authorized product in the form of promotion by means of the name of the product.

Section 30.48 (1) and column 2 of Schedule 3 restrict promotion of certain flavour categories.
We do not believe there is evidence that market authorization can provide, for example, the promotion of “Blueberry Cheesecake” where the other path to market could not. If there is a genuine concern for promotion of flavour categories deemed enticing for youth, the terms of Schedule 3 should be the same for all vaping products. We therefore suggest that the exception for prescription vaping products in Schedule 3 be removed.

In order to ensure vapour product shops provide truthful and accurate flavour descriptions to adult smokers and vapers, while supporting the purpose of the Act and related prohibitions we are submitting an amendment for section 30.48.

**The requested amendment to section 30.48 would be the addition of the phrase *in a place to which young persons have access*.**

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, *in a place to which young persons have access*.

Sections 30.41, 30.45, and 30.46 will ensure that this change would only permit customer access to descriptions in schedule 3 via age restricted vapour product shops. Regulations can further define the manner in which these descriptions may be provided and we look forward to working with you to that end.

Mr. Chairman, our concerns and full list of requested amendments are detailed in our written submission.

**Conclusion**

Mr. Chairman, Canada is uniquely positioned, and we are recognized as one of the world leaders in terms of promoting harm reduction. Vapour products represent a significant addition to harm reduction that will only be realized with fair and balanced legislation. We have the benefit of a largely professional, responsible industry, devoid of tobacco industry involvement. We have the advantage of an unprecedented level of communication and collaboration between government, vape industry, and consumers, each with the same goal of making responsible choices that have a positive impact on personal and public health. Creating good, well balanced legislation for vaping as a harm reduction alternative to smoking is perhaps the best we could all do to eliminate the single most preventable cause of death and disease in Canada.

Thank you for your time, and I look forward to hearing your questions.
Appendix A – Requested Amendments to Bill S5

This section of our brief contains additional amendments that we respectfully request in an effort to make Bill S-5 more efficient and effective for its outlined purpose:

**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.

**Mandatory two (2) year review**

As stated previously, the science is rapidly evolving for vaping products. For that reason, this legislation should be reviewed frequently to ensure that it is in line with current evidence and the purpose of the act.

We would recommend that this committee consider imposing a mandatory two (2) year review period.

**Schedule 2 – Prohibited Ingredients**

Diacetyl and Acetyl Propionyl are both are used to simulate a creamy or buttery taste in food flavorings. While these are generally regarded as safe for ingestion, regular inhalation of high concentrations should be avoided. From ECTA’s perspective this is an avoidable and unnecessary risk.

It should be noted that Diacetyl is a naturally occurring compound and trace amounts will still be found in some raw flavourings but is unnecessary as an ingredient and exclusion of those ingredients does not impede the effectiveness of the product.

We would recommend that this committee considers adding Diacetyl and Acetyl Propionyl to the prohibited ingredients in Schedule 2.

This change would be in line with the purpose of the Act.

**Schedule 3 - Flavours**

In order to ensure vapour product shops can provide truthful and accurate flavour descriptions to adult smokers and vapers, while supporting the purpose of the Act and related prohibitions we are submitting an amendment to section 30.48 (1).

The requested amendment would be the addition of *in a place to which young persons have access* at the end of 30.48.
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, in a place to which young persons have access.

Sections 30.41, 30.45, and 30.46 will ensure that this change would only permit customer access to descriptions in schedule 3 via age restricted vapour product shops. Regulations can further define the manner in which these descriptions may be provided.

As stated above, we do not believe there is evidence that market authorization could provide to justify the promotion flavours where the other path to market could not. If there is a genuine concern for promotion of flavour categories deemed enticing for youth, the terms of Schedule 3 should be the same for all vaping products.

The requested amendment is to remove Confectionery and Dessert from Schedule 3 OR remove the exemption for prescription vaping products from column 2 of Schedule 3.

Functions and sensory attributes
The term “sensory attributes” includes all senses. A majority of e-liquid flavours that are used will have a very pleasant smell or taste that could readily be deemed as appealing to young persons but those attributes are a significant part of what makes vaping products a successful alternative to smokers. This section may not intend to restrict the use of flavours, but it does cause some confusion, particularly for enforcement. Sensory attributes such as taste and smell would be exceedingly problematic to restrict and enforce.

We believe that this committee already recognizes the importance of diversity of available flavours for vaping products but studies can be provided separately if required.

The requested amendment is to remove *sensory* from the section title and remove *or other sensory attribute* from Section 30.41.

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.

Relative Risk and Unintended Consequence
Current scientific evidence clearly shows that vaping products are safer than smoking tobacco cigarettes. Bill S-5 does address the potential harms of vaping products but not address relative risk and prevents comparisons to tobacco products that show relative risk.

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, and relative risks, 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, and relative risks, 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, and relative risks, 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, and relative risks, arising from the use of the product and from its emissions.

Section 16 also does not consider relative risks and may actually have an unintended consequence of protection tobacco companies from existing Consumer Protection Laws as deception by omission. Thus a cigarette company could deceive smokers by not informing them of the relative risks of alternative products and aggrieved consumers seeking to use trade practices laws could be negatively impacted.

We recommend that this committee consider changing Section 16 to include *, and relative risks* as follows:

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, and relative risks, arising from the use of tobacco products or vaping products and from their emissions.
Similar amendments pertaining to relative risks should be considered for other sections relating to Tobacco Products but we will limit our requested amendments to only those directly affecting Vaping Products.

**We recommend that this committee consider changing section 30.2 (2) to include an additional exception:**

**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

(a) a publication that is addressed and sent to an adult 30 who is identified by name; or

(b) places where young persons are not permitted by law.

**c) or as allowed by regulations.**

The restriction on the ability for vaping products to successfully compete with cigarettes continues with sections 30.5 and 30.6. In an effort to preclude the need to return to parliament for modification, we believe adding *Subject to regulation* would be advantageous for future revisions.

**We request that this committee consider the modification to sections 30.5 and 30.6 to include *Subject to regulation* as follows:**

**Giving or offering to give**

**30.5 Subject to regulation,** No manufacturer or retailer shall give or offer to give a vaping product.

**Sales promotions — offering consideration**

**30.6 (1) Subject to regulation,** No manufacturer or retailer shall, in a place to which young persons have access,

(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**

**30.6 (2) Subject to regulation,** No manufacturer or retailer shall, in a place other than a retail establishment where vaping products are ordinarily sold,
(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.

With respect to advertising, the required information should to include information on relative risks or it risks misleading rather than informing Canadians.

We request that this committee consider adding the words *and relative risks* to section 30.7 as follows:

**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, and relative risks, arising from the use of the product and from its emissions.

**Vaping Product — Definition**

The definition of “vaping product” appears to be vague and all inclusive. There are many things that may be used with vaping products that may not ever be intended for use with those products. Any lithium-ion battery for example, may be used with a vaping product but they are not all intended to be used with those devices.

We recommend that this committee consider changing the definition of vaping product (c) by replacing the word *may* with *is intended to*.

(c) a part that is intended to be used with those devices; and

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