Heart and Stroke Foundation Submission to the Senate Standing Committee on Social Affairs, Science and Technology

Consultations on

Bill S-5, An Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts

April 11, 2017
Improving Bill S-5, An Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts

Introduction

The Heart and Stroke Foundation (Heart&Stroke) is grateful for the opportunity to submit a brief regarding proposed improvements to Bill S-5. We are pleased with the introduction of Bill S-5 and the opportunity it affords for advanced tobacco control and a regulatory framework on e-cigarettes.

We are a strong supporter of plain and standardized products and packaging for tobacco. There is a solid evidence base demonstrating the efficacy of this policy measure. Canada should act quickly to implement this tobacco control intervention despite the misleading information and faulty statements from the tobacco industry and their front groups.

With regard to vaping, Heart&Stroke was the first Canadian health organization to develop a position statement on the need for a regulatory framework on e-cigarettes. Our position on e-cigarettes has evolved with time and advances in research. And while the evidence base on e-cigarettes continues to grow, there is still much left unknown about this fairly new technology. We continue to strive for a balance to leverage the potential benefits and avoid the potential risks. In our most recent statement on e-cigarettes we state that “Governments need to regulate e-cigarettes to protect Canadians against possible harms and to commission further research to better understand usage trends, product safety and determine potential cessation benefits.”

While we acknowledge that e-cigarettes are less harmful than combustible tobacco, Heart&Stroke wants to ensure our children, youth and young adults are protected from potential risks and that all Canadians are encouraged to fully quit tobacco use rather than sustain dual use of tobacco and vaping products. We know that e-cigarettes are appealing to young people. A Canadian study found that 18% of high school student non-tobacco smokers had tried e-cigarettes, and another 31% are interested in trying them. Current use of e-cigarettes among 15-19 year olds has more than doubled in the past couple of years. Studies also show that more teens are using e-cigarettes as they see them as “cool” or “fun”. Our greatest concern is the opportunity for wide scale marketing of e-cigarettes in Canada. It is essential that the regulatory framework protect young Canadians from marketing exposure. Furthermore, we want to ensure the marketing of e-cigarettes does not sustain use of or create dual use of nicotine and tobacco. In the proposed legislation, the allowance for marketing is too wide in scope.

Heart&Stroke works closely with other health organizations and as such, we have chosen to endorse the recommendations developed by the Canadian Cancer Society. A summary of these recommendations is listed below.

Summary of Recommended Amendments to Bill S-5

Tobacco-related amendments

Ban all tobacco manufacturer incentive/sales promotions targeting tobacco retailers (eg bonuses for achieving sales volume targets; sports and entertainment tickets; incentives for participating in sales promotion programmes; chances to win vacations; and all other incentive promotions). This type of tobacco industry marketing tactic is significant. However, Quebec has had a legislated ban in force since November 26, 2016.
Ban all remaining tobacco brand-stretching, that is using tobacco brands on non-tobacco goods and services. For example, tobacco brand names/logos on lighters/matches would no longer be allowed. Allowing tobacco logos on non-tobacco goods is promotion, and undermines plain packaging. Quebec has banned brand-stretching since 1998. There are now more than 100 countries that have banned tobacco brand-stretching.

Establish regulatory authority to restrict promotion within the tobacco trade (manufacturers-wholesalers-retailers). At present, promotions within the tobacco trade are completely exempt from the Act pursuant to s.18(2)(c) of the Act. Bill S-5 contains a mechanism to require companies to report on promotions within the tobacco trade, but there is no mechanism to regulate such promotions based on the information reported. To fill this gap, Bill S-5 should be amended to establish regulatory authority to restrict advertising and promotion within the tobacco trade. For example, regulations could prohibit lifestyle advertising within the tobacco trade – lifestyle advertising is a frequent current practice being used in trade publications. These trade promotions are reaching thousands and thousands of employees of retailers and wholesalers, who may be consumers or potential consumers of tobacco products. Quebec banned lifestyle advertising through 2016 legislative amendments.

Ban menthol and cloves in all tobacco products (instead of the federal provision banning menthol in only cigarettes, most cigars and blunt wraps, but not other tobacco products, which creates a loophole). Several provinces have banned menthol and cloves in all tobacco products. Both menthol and cloves can be considered a local anesthetic and thus can be identified for distinct treatment across all tobacco products.

Establish regulatory authority to require health warnings on cigarettes and tobacco products themselves (as Bill S-5 provides for vaping products, and as recommended for consideration in international guidelines under the WHO FCTC) on water pipe equipment (as Turkey has required, and as recommended for consideration in international guidelines under WHO FCTC)

Clarify that regulatory authority over the packaging includes the ability to prohibit specific brand names, such as those associated with a lifestyle. This would follow the recent (January 30, 2017) example in France where brand names such as Vogue, Fine, Corset, Allure and Slims were prohibited.

Ban cigarette cases (such as metal tins/containers in which cigarettes can be placed). These are typically sold empty, and depict no health warnings. Such cases undermine plain packaging as they could be stylish or depict attractive images, or potentially brand names, graphics and logos. Cigarette cases can also be used to facilitate consumer purchases of contraband – for example, contraband cigarettes, in a baggie or otherwise, could be transferred to the cigarette case. Cigarette cases are frequently sold in dollar stores and in many convenience stores.

Provide that information reported to Health Canada is to be publicly disclosed, unless the regulations provide otherwise. Bill S-5 provides regulatory authority to require that reports provided to Health Canada by tobacco and vaping companies be publicly disclosed. This amendment would reverse the presumption – instead of the current Bill S-5 provision that reported information is to be publicly disclosed if required by regulation, the amendment would provide that all reported information is to be publicly disclosed unless the regulations provide otherwise. Future regulations could have differential treatment for information reported before and after Bill S-5 comes into force.

Establish regulatory authority to increase the minimum age in the future. The current federal minimum age is 18. Six provinces and one territory have a minimum age of 19. In the US, California, Hawaii and more than 220 municipalities (including New York City, Boston, Chicago, St. Louis, and Cleveland) have a minimum age of 21. Increasing the minimum age to 21 was included in the Health Canada consultation document for the new Federal Tobacco Control Strategy published February 22, 2017. Establishing regulatory authority would provide a mechanism to implement a minimum age of 21.

Provide that packages shipped through online sales must indicate on the outside that the package contains tobacco products or vaping products, as the case may be. This measure would
help curb youth access through online sales. A parent would clearly understand the contents of the package received through home delivery.

Establish regulatory authority for the government to apply some or all of the provisions of the Act to herbal (non-tobacco) water pipe products. Quebec legislation already does this. The new European Union Tobacco Products Directive does this in part (articles 21, 22). In particular, there is a need to regulate non-tobacco herbal products intended for waterpipe smoking, such as advertising/promotion, packaging and labelling, sales to minors, flavours, and other measures. This would not apply to marijuana as separate legislation is intended.

Establish regulatory authority to require tobacco manufacturers to report on funding and activities related directly or indirectly to influencing federal policy related to tobacco control.

This would help document activities that are really of a public relations nature. This would also assist Canada in implementing Article 5.3 of the FCTC by documenting tobacco industry efforts seeking public influence.

Prohibit the sale of multi-packs at a reduced price (eg “duo packs”, two packages wrapped with an elastic sold at a price lower than if the two packages were sold separately.). This amendment would confirm what had been Health Canada’s interpretation of the existing section 29 of the Act (that “cash rebate” prohibits multi-pack discount pricing) and thus respond to an unanticipated court decision that disagreed with Health Canada’s interpretation (Larny Holdings, 2002).

Amend Non-smokers’ Health Act to create regulatory authority to ban smoking in specific outdoor areas in federally regulated places, eg within a certain distance of entrances to federal buildings; a beach, picnic area or children’s playground in a national park; (various provinces have done so)

Technical amendment

The proposed new definition of “tobacco product” would exclude raw leaf tobacco intended for consumer sale. Raw leaf tobacco is specifically mentioned in the current definition in the Tobacco Act, as well as in current package warning regulations. Reference to raw leaf tobacco should be maintained in the definition.

Vaping product amendments

Establish regulatory authority to further restrict vapour product advertising and promotion, including both location and content restrictions. Such regulatory authority already exists for tobacco, as well as under the Food and Drugs Act. The government needs the flexibility to respond to marketplace developments regarding advertising and promotion, but at present Bill S-5 contains no mechanism that would enable the government to respond. The government intends that Bill S-5 have flexibility to strengthen advertising and promotion restrictions, but no such flexibility is found in the current drafting of the bill.

Provide that vapour product advertising may only be information advertising or brand preference advertising. This is the approach for tobacco. This seems to be what the government intends, but this is not explicitly stated given the drafting style in the bill. While the current bill bans lifestyle advertising, there is no provision that states that only information or brand preference advertising is allowed.

Remove provision that allows lifestyle advertising in bars and in publications sent to an adult. There is no need for and should never be lifestyle advertising (eg associating with fashionability, status, masculinity, feminity, etc.). This is especially the case in a bar, where the consumption of alcoholic beverages may mean that individuals have reduced inhibitions.
There should be a **ban on all brand-stretching of vapour products**, that is vapour product brand names and logos should not appear other products and services, such as T-shirts, baseball hats, backpacks, etc.

**Restrict permitted vaping product incentive promotions (eg price discounts) to specialty vaping product retail stores.** At present, Bill S-5 would permit extensive incentive promotions for vaping products in places where young people did not have access, namely gifts, bonuses, premiums, cash rebates, games, draws, lotteries or contests. Such promotions would be allowed in bars, casinos, specialty vape stores and other places where young persons under 18 did not have access. This should be amended such that the only place where incentive promotions would be allowed would be inside specialty vape stores, and that the only allowed incentive promotions would be monetary bonuses, premiums, and cash rebates, and providing a vaping product in consideration of the purchase of another vaping product. At present Bill S-5 would allow draws and contests for individuals to win beach vacations, access to invitation-only parties, and tickets to rock concerts or sports events, among other examples – such promotions should not be allowed.

**Establish restrictions on the location of vapour product advertising to match the provisions restricting tobacco advertising.** At present, the bill contains no such restrictions. Right now under the bill, such advertising could even appear on television, on TV commercials during children’s cartoons, on billboards outside elementary schools, at a local ice rink where peewee hockey is played, etc.

**Conclusion**

We applaud the introduction of Bill S-5 and encourage further improvements. Heart&Stroke is confident that adopting the aforementioned amendments to Bill S-5 will strengthen both the tobacco and vaping components and protect young Canadians from undue harm. It is through such amendments that we can offer a comprehensive policy response to reduce the burden of tobacco related illness while leveraging any potential benefit and reduce potential risks from e-cigarette use in Canada.