

TO: The Senate Committee

FROM: Mr. Ninan Thampy
Cell: 604-339-9479

DATE: April 7, 2017

RE: BILL S-5

Premium Liquid Labs Incorporated (“Premium Labs”) respectfully submits the following evidence to the Standing Senate Committee on Social Affairs, Science and Technology as part of the study Bill S-5, An Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts. As a leading Canadian business in the independent vaping sector, we have valuable evidence that can inform Senators on achieving the best possible regulatory framework vaping in Canada.

Overview of the Brief

This brief gives an overview of our company, the independent vaping market, flavours, and harm reduction in Canada. It then covers several problems in Bill S-5, focusing specifically on the implications for the independent sector, including consumers.

Our Company

Premium Liquid Labs Inc. is a leading Canadian e-liquid manufacturer, located in Burnaby, B.C. Our mission is to create innovative e-liquid recipes that result in top shelf premium blends. Our growing portfolio of flavours is focused primarily on helping people quit smoking by providing top quality products that appeal to transitioning smokers and committed vapers.

Premium Labs was founded in 2014 by Samuel Boucher, who had quit smoking with vaping, and discovered a passion for making e-liquids. Our e-liquids are bottled in Canada at our state of the art lab (clean room) in accordance with Good Manufacturing Practices (GMP) applicable to pharmaceutical and food industries. Our Canadian bottling lab is certified by, Canada’s largest lab certification professional H.E.P.A for ISO7, Class 10,000 and GMP.

The Independent Vaping Industry and Harm Reduction

Canada’s independent vaping sector is almost entirely populated by small businesses established and run by Canadian former smokers who switched to vaping. Specifically, the industry is made up of retail, distribution and a small number of manufacturing companies, such as ours. While tobacco companies make and sell mass-produced closed system e-cigarettes in retail chains and convenience stores in the US and around the world, these products are not currently sold in Canada.

Canada’s vaping market is almost exclusively an “open-systems market.” Practically speaking, vapers are able to choose from a wide range of compatible and interchangeable hardware, software and consumable components, ingredients, and parts. The modularity of open-systems technologies facilitates rapid innovation and improvements in safety, effectiveness and design products. Open systems are currently the most popular vaping devices amongst committed users of the technologies world-wide. The appeal lies in the technical superiority and the fact that they afford users a method of “building” a customized system, tailored to meet their very precise and individualized needs as transitioning smokers. Because the entrepreneurs and innovators in the independent sector were smokers who switched themselves, they have unique insight into what consumers need to quit.

Flavours

The variety of flavours available on the vaping market plays a crucial role in helping adults transition away from smoking. Some anti-smoking activists, who do not understand or respect the fundamental differences between vaping and smoking, or vaping companies and large tobacco firms, claim that flavors, including confectionary, beverage, and desserts, serve the sole purpose of enticing children. There is no evidence to support this claim.

Contrary to concerns that young people are drawn to sweet flavours in e-cigarettes, an experimental study by *Shiffman et al* found that non-smoking adolescents' interest in e-cigarettes was very low and largely unrelated to flavours, though when preferences were expressed, 'Single Malt Scotch' and 'Classic Tobacco' were top. The use of e-cigarettes is limited to smokers and former smokers, most of whom are adults. Daily use of e-cigarettes was not detected in any meaningful numbers in the 15-19 demographic according to the 2015 Canadian Tobacco Alcohol and Drugs Survey. Several population level surveys and systematic reviews, confirm that regular use of e-cigarettes by never-smoking youth is extremely uncommon.

The independent vaping market driven entirely by consumer demand. Our consumers are adults who have switched from smoking to vaping, or those in the process of making the switch. Given the large existing pool of adult smokers and vapers, there is absolutely no motivation for vapour businesses to target marketing to young people.

A study published in the International Journal of Environmental Research and Public Health affirms that flavours are marketed to satisfy the demands of vaping consumers. Researchers examined the specific impact of flavour variability on user experience and concluded that "liquid flavourings play a major role in the overall experience of dedicated users" indicating that "they are important contributors in reducing or eliminating smoking consumption. A 2014 community driven survey of 10,000 experienced vaping consumers found that 65% of non-smoking vapers felt non-tobacco flavours were important, or very important, in helping them quit. Most vapers cited using multiple flavours rather than one kind.

Premium makes over 150 unique flavours of e-liquid. Our products are intended for use with open-systems devices. Consumer demand in this market is not for a specific type of device or flavour, but for variety, variability, and customizability. The ability to customize is essential to harm reduction in vaping. **Flavour variability**, rather than individual flavours, is what keeps our consumers attracted to our products and away from cigarettes. There is significant risk that loss of broad flavour categories will cause relapse among vapers, fewer smokers switching, and development of an unnecessarily dangerous DIY black market flavours. The ability of the vaping sector to compete for the business of smokers depends on our ability to innovate and keep consumers interested, and flavours, perhaps more than anything else is vital to that.

Clearly, the hundreds of confectionary, beverage and dessert flavours, or any flavoured e-cigarettes on the market now are not creating a consumer market in the non-smoking youth demographic.

Bill S-5's implication for independent vaping and innovation:

In its current form, Bill S-5 lays the groundwork for a regulatory regime suited exclusively for high-volume, highly standardized products, like those currently made the tobacco industry. Excessive regulations threaten to completely shut down the independent industry, resulting in the loss of thousands of meaningful jobs, a de facto ban on the vast majority of products sold now, and consumer demand for flavoured products and banned devices would be met by an unnecessarily dangerous black market.

For example, much is left to regulation, including the testing regimes, and even the physical design of products. There are no guarantees that regulations will not be out of reach for actors in the market now.

Flavour Restrictions

Section 30.48 (1) of Bill S-5 prohibits companies from honestly describing flavoured products to consumers:

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.

This section forces companies to hide useful and relevant information from consumers. Aside from the fact that hiding the name of a flavour puts companies in a position where they are forced to deceive consumers, there is a functional reason for flavour names in a market where taste is fundamentally important and in a product space characterized by high variability and rapid innovation, high variability. *Banning names and descriptive language used to relay information about the taste of a flavoured product labels amounts to a de facto ban on flavoured e-liquids.*

Other parts of the bill include mechanisms to ban flavoured products entirely if they are deemed to have an attribute that may appeal to youth:

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.

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. which include: sight, sound, touch, **taste** and **smell**. There is no solid guideline for what “reasonable grounds” on appealing to youth actually means.

Bill S-5 contains no solid guideline for what “*reasonable grounds*” on appealing to youth actually means. Removing flavours from the market because of apparent youth appeal is not justified by any evidence, and poses a significant threat to the entire vaping sector and to consumers using the products for harm reduction.

Ban on honest communications about relative risk

The bill is entirely focused on the “*potential*” harms, ignores relative risk compared to smoking, and ignores the possible value in the transition of smokers to a less harmful product, and because of it contradicts the purpose of the Tobacco Act, (to protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases).

The inability state published public information protects tobacco companies. It places retailers and businesses in the position of having to lie to consumers by omission. And given the fact that the information omitted could be life-saving for a smoker, this is extremely unethical.

Concluding Remarks

Regulation for vaping products should be evidence-based and fit for purpose. Considering that products are not likely to exceed 5% risk of smoking, treating vapour products like cigarettes is wildly inappropriate. Vaping products are treated in Bill S-5 as though they pose the same risk to individual and public health as combustible cigarettes, and much of the language in the bill is the same or extremely similar to the Tobacco Act. Vaping products are not tobacco products and they are not medicines. They should not be subjected to a tobacco-style regulatory regime, or medical licensing.

Reasonable regulations for vaping products should incentivize responsible manufacturing of low-risk alternatives to smoking. Regulations should not create barriers to entry for novel ventures, and must continue to facilitate innovation by smaller companies, and by users.