



Tobacco Harm Reduction Association of Canada Inc.

E-mail: info@thra.ca

Website: www.thra.ca

Written Submission SOCI Hearing Bill S-5 on April 5, 2017

The Tobacco Harm Reduction Association of Canada (THRA) would like to thank the Standing Senate Committee on Social Affairs, Science and Technology (SOCI), for the invitation to provide evidence to the committee on behalf of consumers. The consumers referred to include present tobacco product users and former tobacco product users, now vapers. Consumers are the single most important stakeholders in the debate about tobacco and non-tobacco product regulation as the potential impact of these products is one of quality of life, and for a very large proportion of present smokers, it is an issue of life and death.

THRA is an international rights education organization and we advocate for consumers only. It is THRA's mission to see vapers and smokers be given the freedom to have access to safer alternatives to combustible tobacco products. As a consumers' organization, THRA has no conflicting interest in: the vaping industry; the tobacco industry; the pharmaceutical and medical devices industries, or indeed, the public health 'industry.' We are not medical experts or scientists, but we are the end-users of this product. Our views are based on real science as delivered through peer reviewed studies by world leading scientists in their relevant fields and our experiences as ex-smokers, and now vapers. We will highlight some of these views here today.

Bill S-5's impact on tobacco and smoking/vaping regulations will impact the health, now and in the future, of a substantial proportion of the Canadian population. In order for that impact to be beneficial, Bill S-5, **or preferably standalone legislation**, must be based on real science and conscientious consideration of health issues, and not created and fed on by conflicts of interests, unfounded comment, conflicted attitudes, perceived smoking ideology, and bias. The need for a fair and balanced science based evidence approach is paramount. We owe this to the 37,000 Canadians who die each year from smoking related diseases; we owe this to their friends, families, and the future of our youth.

Canada supports many harm reduction policies including condoms, safe injection sites, and seat belt laws to name but a few. Legislation must be about Tobacco Harm Reduction and not about a "vaping is smoking" ideology approach, and must allow smokers and vapers to make a safer choice.

It is ironic in the extreme to see that Canada is proposing to place obstacles in the way of a true and effective harm reduction product when, just this week, 120 leaders in Tobacco Control indicated, "*...with the expectation of new nicotine products being verified as reduced-risk, the tobacco control field must revisit and tweak traditional policies such that less-risky products will not be subject to the same barriers to use as are combustible cigarettes.*"¹ How strange to find that measures designed to place Canada in the lead of tobacco control and see the Nation forge ahead, only to find that, when they turn and look back they see the pack going off in a totally different direction.

E-cigarettes are not combustible cigarettes. Vapour is not smoke, and they present no perceptible second-hand risks to the public². Vaping is not smoking and nicotine is not tobacco. Vaping is an alternative which can be and is being used for cessation like the nicotine patch or gum, but is up to the user, having been given accurate information to make an informed safer choice. In the UK, the Government and Public Health England supports and promotes vaping as at least 95% safer than smoking³. There are now over 2.8 million vapers in the UK as of today. This number is increasing daily and has produced the lowest rates for adult and youth smokers ever recorded.

We have discussed these issues with the vaping community, leading international and Canadian vaping experts and the critical analysis response is that Bill S-5 is anti vaping and has the unintended consequences of protecting smoking by equating that vaping is the same as smoking. Bill S-5 will deter current and future smokers from switching to a safer product. The real fight is against smoking, not nicotine or vaping. Vapers have made a choice to quit smoking through vaping. Don't restrict that choice for smokers - it's a matter of life and death.

Bill S-5 has redefined smoking to include vaping why? (***smoke means to smoke, hold or otherwise have control over an ignited tobacco product or to vape using a vaping product***), The act of vaping is not smoking as there is no combustion or tobacco, and the exhaled vapours are not Second Hand Smoke. Passive vaping shows no identified hazards and is not considered dangerous to bystanders based on current studies (RCGP UK⁴). Nicotine is not tobacco. This definition needs to be clearly separated so

¹ <http://www.tobaccoreform.org/wp-content/uploads/2017/03/Executive-Summary-Report-Ending-Cigarette-Use-by-Adults.pdf>

² <https://www.ncbi.nlm.nih.gov/pubmed/22672560> (Schripp et al., 2013)
Peering through the mist: systematic review of what the chemistry of contaminants in electronic cigarettes tells us about health risks Burstyn

³ <https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review>

⁴ Hess IMR, Lachireddy K, Capon A. A systematic review of the health risks from passive exposure to electronic cigarette vapour. Public Health Res Pract. 2016;26(2):e2621617

as to not encourage confusion as it implies vaping is the same as and as harmful as smoking.

Standalone legislation. Instead of a harm reduction approach, Bill S-5's emphasis is focused on the harms and safety concerns of vaping without the key issue of relative risks compared to smoking. E-cigarettes should not be regulated like medicine or tobacco. Instead, an evidence-based regulatory standalone Act specific to e-cigarettes as per HESA Recommendation 3 should be created that addresses legitimate safety concerns but maximizes smokers' knowledge of and access to alternative harm-reduction products. Vaping products should not be part of a Tobacco Act – there is no tobacco. Bill S-5 needs to be a balanced framework that regulates nicotine-containing products according to the degree of risk that they pose to the public.

Youth. Bill S-5 emphasizes that this Act is primarily aimed at stopping youth from vaping and smoking using a gateway theory that youth vapers will graduate to smoking. Current studies, surveys and reports suggests that this theory is not supported by facts⁵. We do acknowledge that youth vaping has increased but is this a factor of experimentation or possible harm reduction by already youth smokers and needs to be monitored closely. However, the latest Health Canada, FDA US, ASH UK yearly youth tobacco reports all show record low levels of youth smoking with a steady decline over the past several years.

The UK Office for National Statistics states that among youth, e-cigarette use is almost exclusively confined to those who already smoke. This record decline also holds true for adult smokers as well. There are still quite a number of youth smokers. Will we also stop them from accessing e-cigarettes who are using them as a harm reduction strategy? If Tobacco Harm Reduction is supported, the future looks bright as e-cigarettes and other alternative products start to disrupt the cigarette cartel and hasten the decline of smoking in Canada.

RECOMMENDATIONS:

- THRA recommends and supports more research on youth and non-smoker vaping with specific questions on smoking to vaping rates, regular and experimentation, ever use, one puff versus actual use, dual and e-cig nicotine/non-nicotine usage;
- Common sense restrictions on advertising of e-cigarettes that may appeal to minors with consultations with all stakeholders on criteria;
- Parents/guardians and/or Doctors should be able to procure e-cigarettes for already smoking youth or by prescription.

⁵ <http://www.rcgp.org.uk/clinical-and-research/clinical-news/to-vape-or-not-to-vape-the-rcgp-position-on-ecigarettes.aspx> <http://fortune.com/2015/09/24/e-cigarette-use-vaping-gateway-regular-cigarette-use/>

Section 30.41 prevents the sale of vaping products based on “*sensory attributes*” which include: sight, sound, touch, **taste** and **smell with** reasonable grounds to believe that it could make the product appealing to young persons.

There is no solid guideline for what “*reasonable grounds*” on what appealing to youth actually means. All the sensory attributes are subjective depending on who makes the decisions on what is youth appealing based on criteria that has so many variables. This would require stakeholder consultation to develop objective criteria for this type of regulation. What one person may think is aimed solely at youth, another may think otherwise. It must be stated that Youth (under 18 years of age) are already restricted from purchasing these products.

RECOMMENDATIONS:

- No prohibition on accurate descriptor names for soft drink, candy, or dessert flavours.
- Consultation with ALL stakeholders on development of criteria for what is considered youth appealing including logos, name and labelling changes.

30.48 (1) It is forbidden to promote a product vapotage set out in column 2 of Schedule 3, including through packaging, using a reference or an illustration, including an element of a mark, which could give the impression that the product has a flavour set out in column 1.

A major component of the vaping experience is different flavourings which helps smokers quit and keeps vapers from relapsing.⁶ THRA does not support any bans on flavouring unless there is a legitimate science based reason or health concern and not because youth may like the same flavours that adults like. There should only be common sense based restrictions on packaging/advertising that may appeal to youth with input from stakeholders, and no prohibition on accurate names of all flavourings. Like any product consumers need accurate descriptions to make purchases without being confused.

No relative risk information permitted (no health benefits or comparisons to tobacco).

“*No person*” can state facts, cite studies, provide testimony, state public information or make comparative remarks about relative risks of Vaping Products compared to smoking (aggregate of points in Bill S5, 30.21-30.48)

As it stands, Bill S-5 prevents smokers from receiving relative risk information, which clearly runs counter to the stated goal of the *Tobacco and Vaping Products Act* to protect the health of Canadians. Does this mean that a consumer who makes an online

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3881166/> Flavours

review on vaping or battery safety or testimonial is a criminal? It places every scientist, advocate, vaper, and vape shop employee in an ongoing series of choices about giving accurate and personalized information that could save the lives of smokers, and risking fines of up \$500,000 and 2 years in jail.

Even Health Canada recognizes that vaping products could bring public health benefits if they reduce tobacco-related death and disease by helping smokers quit or switch completely to a likely less harmful source of nicotine.⁷

Bill S-5 as it currently stands is **anti-health**, **anti-consumer** and **pro-cigarette** and **possibly against the Charter**.

RECOMMENDATION:

Vaping needs to be completely disengaged from Bill S-5 and dealt with in standalone legislation. Beyond its intended or unintended bias, this Bill will most likely face Charter and free speech challenges from this section. Further, the penalties for non-compliance represent “cruel and unusual” sanctions when compared to the advertising, distribution and sale of flavoured alcohol to name but one. For a Canadian citizen to face 2 years in jail and/or a bankrupting \$500,000 fine for trying to save another Canadian’s life by advocating for vaping is mind-boggling. It places every vape shop employee in an ongoing series of choices about giving accurate and personalized information that can save the lives of smokers, and risking fines and imprisonment for doing so. That is not an acceptable trade-off for any Canadian, and should be as abhorrent to elected officials as it is to us.

Federal Ban

Bill S-5 introduces the same regulations for vaping products that are in place for tobacco products in all federally-regulated workplaces;

A Federal vaping policy that treats e-cigarette users like traditional cigarette smokers will discourage many Federal employees from making a complete switch to the less harmful technology. Bans should be implemented only if health hazards are scientifically proven. “We don’t just ban everything that may or may not have significant risks and wait until behaviors are proven to be benign before we allow them. This reinforces the perception that e-cigarettes are the same as combustible cigarettes and smoking.

SUMMARY:

In summary, standalone legislation, including THRA’s recommendations and those made by the HESA Report 2014, would propel Canada as the world leader in Tobacco Harm Reduction. This would support the goals of Public Health through tobacco harm reduction for smokers and vapers and their families and all Canadians. By helping reduce smoking and related deaths and also lessen the burden on public health

⁷ <http://news.gc.ca/web/article-en.do?nid=1158589> HC Vapour Backgrounder

budgets is a major win for all Canadians. Canada deserves a modernized 21st century approach to tobacco and nicotine regulation that will reduce harm and remain relevant in the face of rapidly changing technology and an ever-increasing spectrum of alternative nicotine products.

E-cigarettes and the development and marketing of other reduced risk options for Canadian smokers represent an unprecedented public health opportunity; do not let this pass us by. If Bill S-5 proceeds, we request that it be subject to a regular two-year review process and updating as new information becomes available. Consumers and Industry are major stakeholders in any legislation concerning vaping and need to be directly involved with future hearings and follow on regulation consultations.

Nothing About Us Without Us