



To the members of the
Standing Senate Committee on
Social Affairs, Science and Technology

Written Submission

Bill S-5
An Act to amend the Tobacco Act and the
Non-Smokers' Health Act

April 6, 2017

Introduction

From its humble beginnings a few short years ago, vaping in Canada has grown exponentially. The number of vape product shops has grown throughout Canada, with the current estimate of retail outlets and manufacturing facilities numbering over 800, representing well over 5000 employees, serving hundreds of thousands of customers and generating over 350 million dollars (CDN) in revenue.

The growth of the industry has been the result of the substantial demand for these products by millions of smokers in Canada seeking an alternative to cigarettes. In fact, the vast majority of vape product shop owners, manufacturers of e-liquids and advocates in Canada are former smokers, who, having switched from smoking to vaping have realized the potential of this disruptive technology and the benefits that vaping provides as a safer alternative to smoking.

In many ways, the Canadian Vaping Association (CVA) believes that Bill S-5 makes good sense.

CVA also believes Canada is a role model for other countries in developing and implementing effective ways at reducing the harms of smoking, with Canada's smoke-free Legislation being a cornerstone of that effort. We believe Canada has taken on the mantle once again by implementing suitable and effective legislation that ensures adult smokers have access to products that can substantially reduce the harm that cigarette smoking is known to cause.

CVA is pleased that Health Canada provided leadership at COP7 by not agreeing to prohibit Vaping like the World Health Organization pressured so many other countries to do. In effect, to make a category for vaping is not only welcomed, it creates an opportunity for effective regulation and CVA looks forward to working with Health Canada and the government to that end.

We believe vaping is a better choice over smoking and has the potential for dramatically reducing the disease and death caused by smoking. CVA suggests additions to the legislation and amendments. By way of summary,

- Recent studies have suggested that Vaping is less harmful than smoking. The Minister, herself, echoed CVA's messaging suggesting, when the Legislation was announced, that "science is catching up with vaping". Based on this, we respectfully seek a mandatory two-year review so that the science and research that is underway reaches lawmakers in a timely fashion such that Regulation can be developed appropriately and in accordance with up-to-date science.
- With respect to industry Regulation, we have been working closely with the E-cigarette Trade Association (ECTA) and other educational organizations

on the development and implementation of Accreditation and Certification programs and believe that this is necessary on a national level. As context, the patchwork of Regulation from provincial legislative initiatives across Canada has confounded the industry while it has waited for Bill S-5. We believe Bill S-5 offers a national framework for retailers and manufactures of vape products and as such we have taken the initiative to create standards on technology and products.

- With respect to Health Benefits, evidence shows that e-cigarettes are an effective harm reduction tool. In fact, many clinical and academic experts have written about this very topic. Moreover, technology has improved over the years. Bill S-5, however, as written threatens the industry's ability to maximize the public health benefits through an inability to detail or inform cigarette smokers wishing to switch to less harmful e-cigarette technologies. We have suggested an amendment to this prohibition and we have provided alternative wording herein.
- In sections 30.48 and 30.49, the Bill makes reference to flavours and identifies in Schedule 3 a list of flavour types about which is proposed a prohibition on their promotion. CVA believes it's ironic that for the very reason the Bill has been initiated - to make vaping products more acceptable to smokers to reduce harm - there is a prohibition on promoting flavours to encourage it. It's counterintuitive that the Bill would lay out such a prohibition when the promotion of flavours is crucial in helping smokers transition to vaping. Certainly by having the industry commit and submit through ECTA on a balanced approach with respect to flavouring we in the industry could be more innovative about naming flavours and we will challenge ourselves accordingly. A stark example is the flavour Anise - which has similarities in taste to licorice and is satisfying to vapers but is not a confectionary.
- The CVA respectfully encourages the Committee to consider the establishment of an Industry Advisory Committee. We have presented suggested wording herein. Its addition into the Bill is innovative and demonstrates our willingness to work alongside the Regulators.

CVA would hate to see the promise of this breakthrough dashed, marginalized or even forced underground through crusades of misinformation about the effectiveness of vaping by those who, in our view, should be champions for its effective and responsible use as an option to help get smokers away from harmful cigarettes.

CVA Views on the Industry and its Future

The CVA fully agrees that regulation is needed, however the goal of these regulations should be to ensure that maximum benefits are realized while minimizing potential harms. We are concerned that Bill S-5, as it is written, will have substantial impacts on an industry that is growing as a less harmful alternative to smoking and consequently, the very constituents who seek to make a **less harmful choice**.

The CVA wholeheartedly agrees that sales should be restricted to minors. We concede that restricting its use in public spaces is inevitable. We agree that certain “lifestyle” promotion or advertisements are not appropriate.

The amendments that have been put forward ensure that youth are not able to access these products, and that the use and acquisition of vaping tools is limited to public areas that minors are prohibited from entering. In fact, CVA has come out in advance and developed age of majority signs branded by CVA for prominent display in all vape shops across Canada. Additionally, we believe these amendments provide adult smokers with access to the assistance provided by **qualified vape product shop** employees, which can be crucial to the success of a smoker seeking an alternative to cigarettes.

Vaping technology has catapulted in quality by leaps and bounds and research has debunked the myths that have permeated mainstream media about vaping. Because the technology is getting better vaping may yet prove to be an effective breakthrough in anti-smoking.

The members of our Association believe that cigarette smoking is a deadly habit. We also believe the tenets of Bill S-5, the work at Health Canada and deliberations by the HESA Committee have the potential to end what is perhaps best described as the “grey zone” view with respect to vaping as a viable alternative to smoking.

If we as a society are looking to reduce the harm from smoking, then Bill S-5, as noted earlier, is the perfect start.

The reforms in Bill S-5 will bring sweeping change to the business of vape product shops, manufacturers of e-liquids and technologies for vaping. We are encouraged that Bill S-5 authorizes a market where vape products can be sold and used; lifts the prohibition on nicotine and sets in motion a framework for national regulation.

In formulating our submission to the Senate Committee, we considered the intent of these reforms in improving the sale, distribution and use of vaping products and services by creating a “system” that is efficient, transparent, accountable and fair.

As context, as members of the Committee, you are all doubtless aware that the vaping industry is evolving and technological advances and research in and on the

effects of vape products and emissions are constantly updated. The industry is maturing and will evolve as the years progress.

As we look to the future, we urge you to consider how those who are in the business of operating vape product shops and manufactures of e-liquids and vape technologies are positioned as the front line of the industry and how the work they provide ought to be maintained, and ultimately built upon. Consider too, that Canadians who vape rely on vape product shop operators to appropriately detail them - either as a new vaper or a habitual vaper - to maintain their vape experience.

While the industry has been waiting for the federal government to enact this legislation, provincial governments in Canada have either enacted or will enact legislation and regulations on vaping and have readily offered that the vape industry has a role to play in making the industry accountable and transparent.

To that end, CVA and its sister organization ECTA are positioned to be drivers of industry programs in Certification for employees and owner operator and to provide rigorous Accreditation programs for those in manufacturing and as owner operators of vape product shops. We have the credibility and the industry knowledge. Moreover, we have begun the process of developing curriculum and process for delivery of said curriculum through CVA and the standards and process for Accreditation through ECTA. We, of course, look forward to working with the Government and Health Canada on our progress.

In spite of the hopes for this progress, CVA has concerns that the Bill as written casts too broad a net by use of the term “Health Benefits” as written into the Bill. Not to be too bold, but no one is suggesting that there is a health benefit per se that arises from the use of a vaping product. The industry focus, though, has been and will continue to be on harm reduction. Note the use of the lead word **harm**; we respectfully submit that as the science is catching up with vaping and the use of such products, vaping has a real likelihood of being less harmful than smoking cigarettes.

With this in mind, we request the removal of the term “health benefit” to be replaced by the term “harm reduction”. Precluding vape product shop operators from talking about harm reduction is concerning given that the government has made such strong policy statements about it. Furthermore, we believe that Section 30.43 should be re-characterized under the heading of harm reduction rather than health benefit. No one suggested or suggests that there is a health benefit derived from vaping. We submit that any harm reduction statements should be limited to educating the public about the principles of harm reduction as related to the use of vaping and vape products or from its emissions as an alternative to smoking cigarettes.

On the issue of flavours, our members have serious concerns that the proposed prohibitions in Schedule 3 (pertaining to Sections 30.48 and 30.49) are so onerous as to render the industry less effective. We would like to see balance in this regard

and also aspire to work closely with Health Canada for amendments hereto. Our industry prides itself on being innovative and, as such, we would like to offer our innovative solutions to the considered when further amending Schedule 3 in the Bill.

PROPOSED WRITTEN AMENDMENTS

Proposed Bill S-5	Proposed Amendments
<p>Division 3 Miscellaneous Provisions</p> <p>NO SUCH PROVISION IS IN THE BILL</p>	<p>Suggested addition to: Division 3 Miscellaneous Provisions (or an appropriate part of the Bill)</p> <p>Add: Industry Advisory Committee The Minister shall establish an industry Advisory Committee co-chaired by the Minister of Health or a person designated by the Minister to represent the Minister and a member of the Canadian Vaping Association. This will ensure the involvement of both in the development of vaping and harm reduction policies in respect to vaping. the Industry Advisory Committee’s duties shall include (but not be limited to):</p> <ul style="list-style-type: none"> a) the provision of expert advice on vaping and the evidence related to harm reduction b) assisting in the definition and implementation of certification and accreditation programs and services directed at vape product shop owners and operators, employees and manufacturing facilities of liquids and technologies their owners and employees,

Proposed Bill S-5	Proposed Amendments
<p>Division 3 Miscellaneous Provisions</p> <p>NO SUCH PROVISION IS IN THE BILL</p>	<p>Suggested addition to: Division 3 Miscellaneous Provisions (or an appropriate part of the Bill) Add: Mandatory 2-year Review The Minister shall establish a process to review the Bill every two (2) years.</p>
<p>30.43 Health Benefits (including sub 1,2,3): No person shall promote a vaping product, including by the means of packaging, 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</p>	<p>Replace 30.43 Health Benefits (including sub 1,2,3): Add: 30.43 Harm Reduction A person can only promote the product in a manner which could educate and inform a person in respect to the principles of harm reduction that may be derived from the use of the product or from its emissions.</p>

THE CANADIAN VAPING
ASSOCIATION

Respectfully Submitted by:
Canadian Vaping Association

Lead Contacts:

Marc Kealey, Member
Public Policy Counsel
marc@kealeyandassociates.com

Darryl Tempest
Executive Director
dtempest@canadianvapingassociation.org



L' ASSOCIATION
CANADIENNE DE LA VAPE