Promotion of vaping products under Bill S-5
(An Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts)

May 31st 2017 — In addition to expanding the regulatory authority regarding controls on tobacco packaging and products, Bill S-5 will shift the illegal nicotine vaping market into a legal and regulated one. This is a good thing, as it will allow smokers to access alternative less dangerous sources of nicotine.

The Quebec Coalition for Tobacco Control together with its national and provincial partners wholeheartedly support Bill S-5. However, the Bill is seriously flawed in that its advertising provisions are too permissive. While targeted advertising should be allowed to reach smokers, the Bill fails to protect young people from being exposed to advertisements that promote a product that can result in one of the most powerful addictions in the world. The Bill allows advertising in all available media outlets without limits on the place nor the vehicle as well as “lifestyle” promotion targeting adults non-smokers that presents nicotine vaping as a desirable practice in and of itself — NOT as a tobacco substitute.

That is why we are inviting Parliamentarians to consider an amendment to tighten restrictions on the promotion of electronic cigarettes and other vaping products, all the while ensuring Bill S-5 is adopted before the summer recess.

1) NO RESTRICTIONS ON ADVERTISING VEHICLES

Indeed, vaping product manufacturers will be able to advertise through all available media: television, radio, internet, video-games, newspapers, billboards, corner store windows, bars, text messages, social media, etc., reaching kids and teenagers through their electronic gadgets and on their way to school — provided that these ads don’t promote a “lifestyle” and don’t “appeal” to kids.

These safeguards sound good in theory, but they do not take into account the well-documented history of tobacco industry maneuvering that has consistently circumvented the spirit of laws on promotion. These are the very same companies that will be advertising addictive nicotine vaping products like e-cigarettes. Every tobacco multinational operating in Canada is marketing vaping products somewhere in the world. With their profitability still driven by the sale of cigarettes, it is in their interest to maintain addiction — both through conventional tobacco and vaping products.
Here are some examples of ads that Bill S-5 would allow:
2) LIFESTYLE PROMOTION PERMITTED

In addition, the legislation would allow companies to use "lifestyle" advertising to promote vaping to non-smoking young adults in bars or through e-mail, as something other than a substitution for smoking, that is, as a desirable practice in and of itself: enjoyable, fun, sexy and linked to other social activities. Examples of potential ads to which young adults might be exposed include:
3) PROPOSED AMENDMENT

We are therefore recommending an amendment that would only allow “information” or “brand-preference” advertising to adults (i.e. in places that are not accessible to minors, or through in direct communication to adults). This way, young people will never be exposed to e-cig advertisements and, at worst, non-smoking adults will only be exposed to “information” or “brand-preference” advertising and not "lifestyle" advertising.

Here are some additional arguments in favor of such an amendment:

- The World Health Organization (WHO) recommends that advertising for vaping products (ENDS or Electronic Nicotine Delivery Systems) must, at a minimum, "not make them appealing to or target, either explicitly or implicitly, non-smokers or non-nicotine users", going so far as to says that ads themselves should “indicate that ENDS are not suitable for use by people who do not currently consume tobacco products”, namely young people and non-smokers.

- The vaping industry insists that it does not want to recruit minors. Why then allow advertising to be seen by children? Studies have shown that young people are particularly sensitive to ads for e-cigarettes regardless of their smoking status, and that exposure to this type of advertising increases their chances of starting to smoke or of using vaping products.

- It is also of interest that the Bill that aims to legalize cannabis (C-45) does not allow "lifestyle" advertising nor ads aimed at the general public, even though cannabis is known to be much less addictive than nicotine, which most vaping products contain, in addition to cannabis not being as directly associated with cigarettes as e-cigarettes. Health Canada is not consistent when it claims that a ban on lifestyle advertising is constitutional for cannabis, but not for nicotine-infused vaping products.

- The history of tobacco clearly demonstrates the ease with which the tobacco industry can make its products appealing to young people despite bans on tobacco "lifestyle" promotion, for example though slogans, flavors and packaging that create a product image that is harmless, fun and fashionable. Such marketing tactics have contributed to the popularity of small flavored cigarillos — a public health disaster that required seven years before Health Canada intervened in an effective manner. The industry's ability to thwart restrictions also underlies the 2009 ban on tobacco advertisements in magazines and newspapers.

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• Nicotine is an extremely addictive drug. There are no reasons to justify its association with fashion, femininity, music or any other glamorous lifestyle. Vaping products will already have a competitive advantage over tobacco products in at least three ways: (1) vaping products can be flavored; (2) they will not be subject to forthcoming regulations regarding plain packaging; (3) they will not be subject to specific tobacco taxes. Why give them an even greater advantage by allowing "lifestyle" advertising, which seeks to promote their use outside the context of tobacco substitution? Especially given the risk of creating a powerful addiction amongst non-smokers?

• The then Director General of the Tobacco Control Directorate at Health Canada, Suzy Macdonald, testified last April that Health Canada could use its regulatory authority to intervene, should it notice advertisements that could have a detrimental effect on public health such as commercials aired during children's programming. In other words, thousands of youth would stand the risk of becoming addicted to nicotine before Health Canada could obtain the evidence required to demonstrate there is a public health problem in order to bring in regulatory corrections (as was the case with flavored cigarillos). Why not prevent such harms before they occur, by simply prohibiting ads visible to children? Further changes to the regulations could in any case expand allowed advertising, but in a precise way, should the need arise.

• While it might seem reasonable to think that Health Canada could easily and swiftly remove abusive advertising from public view, the fact is that enforcement is a tricky process. Should the industry disagree with Health Canada’s position, problematic advertising can continue until Health Canada takes the industry to court, and it decides in the government’s favor, a process that can take months, if not years. In practice, Health Canada’s “corrective action” for promotional abuses has been to (eventually) bring in new regulations or legislation, which has also taken years in addition to being entirely dependent on political will.

In summary, Bill S-5 raises critical issues related to public health and the public’s interest, including the ability of for-profit companies to sell and promote nicotine — one of the most addictive substances on earth that is at the core of an epidemic that kills 37,000 Canadians every year — amongst youth and non-smokers. Canadians are entitled to ask for improvements that will minimize the risks of addiction for all Canadians and their families. We hope Parliamentarians will choose to protect the public by further improving Bill S-5, while ensuring it adoption before the summer recess.

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5 Ms. Suzy Macdonald, as Director General of Health Canada’s Tobacco Control Directorate, when answering questions from Senator Eggleton: “Through regulations, if in the future, we were to determine that in fact advertising is happening during Saturday morning children cartoons, we could take action to further restrict where that advertising could happen. Again, that would be done through consultation, and we would need to have the evidence to demonstrate that there is a public health problem… If we look at how we have addressed the tobacco issue, is that, as we have been able to determine that things are appealing to youth, that they are having a public health impact, we have brought in more and more restrictions”. Hearings on Bill S-5, starting at 10:49, April 13 2017.