Two years later:

How Canadian governments have responded to recommendations of their Medical Officers of Health on vaping

In January 2020, the Council of Chief Medical Officers of Health issued their third joint statement on nicotine vaping,¹ providing federal, provincial, territorial and municipal governments with a set of recommendations on how they could better protect young people from using these addictive and harmful products.

Their specific recommendations are reproduced below, annotated with actions taken by governments. In the past 24 months, eight provinces (Alberta, British Columbia, Nova Scotia, Newfoundland and Labrador, Ontario, Prince Edward Island, Saskatchewan and New Brunswick), and three territories (Yukon, Northwest Territories and Nunavut) as well as the federal government have advanced regulatory controls on e-cigarettes. Quebec has also indicated its intention to do so.

Statement from the Council of Chief Medical Officers of Health on Nicotine Vaping in Canada, January 22, 2020

Context

The overarching objectives of these recommendations are to protect young people from inducements to use vaping devices by regulating such devices as equivalent to tobacco products, and to encourage smokers who use vaping devices to use them solely to end or reduce their use of all nicotine-containing products.

These recommendations are made in the context of the emerging evidence of the short and longterm harms associated with the use of vaping products. We recognize that evidence is still emerging on the effectiveness of nicotine vaping products to help smokers decrease or stop their use of all nicotine-containing products. It is important that the regulatory and policy approaches for vaping products be reviewed as the evidence of health risks and benefits evolve. For example, if it becomes clear that vaping products are effective in helping people stop or reduce their use of all nicotine-containing products, then it may then be appropriate to approve, license and regulate vaping products in the same way as other tobacco cessation products.

Status

This policy approach has not been adopted.

No Canadian government has adopted the policy approach of encouraging smokers who use vaping devices to use them only as products to end all forms of nicotine use.

In some respects vaping products are regulated as "equivalent to tobacco products", but in others (i.e. warnings, advertising, flavourings), they are not.

This approach has not been adopted.

No Canadian government has made public any effort to track and respond to emerging evidence of the harms of smoking. The federal government, which normally manages the approval and licensing of therapeutic products, has not required that these products be managed in this way.

No Canadian government has made public any research it has commissioned or conducted of the emerging evidence with respect to the health risks and benefits of vaping products.

Opportunities for both federal and provincial/territorial jurisdictions
Federal action would be preferred to create national consistency, but individual provinces/territories can consider individual action.

Recommendation

Ban all flavoured vaping products and then provide regulatory exemptions or market authorizations for a minimum set of flavours to support smokers who choose to use vaping to end or reduce their use of nicotine-containing products.

Status

Three provinces have banned all flavours except tobacco flavour:

- Nova Scotia (effective April 1, 2020) ²
- Prince Edward Island (effective March 1, 2021) ³
- New Brunswick (effective September 1, 2021) 4

One territory has passed legislation that will ban all flavours but tobacco

• Nunavut⁵ (Not yet in force)

One territory has proposed draft regulations to ban all flavours but tobacco

Northwest Territories. 6

Two provinces ban the sale of certain vaping liquids in stores other than specialty vaping stores.

- Ontario: all flavours except tobacco, mint or menthol (effective 1 July, 2020)
- British Columbia: all flavours other than tobacco (effective September 15, 2020)⁸
- Saskatchewan: all flavours other than tobacco and menthol.(September 2021)⁹

Health Canada has proposed draft regulations to ban flavours other than tobacco, mint -menthol. 10

other than tobacco, mint -menthol. 10

Two provinces have banned the sale of nicotine liquids that have concentrations in excess of 20 mg/ml

- British Columbia (Effective September 15, 2020)¹¹
- Nova Scotia (Effective September 1, 2020) 12

One province bans the sale of vaping liquids with nicotine concentrations in excess of 20 mg/ml other than in specialty vaping retail outlets:

• Ontario (effective 1 July, 2020)¹³

Health Canada finalized regulations to cap nicotine concentration at 20 mg/ml, which came into force on July 23,2021. ¹⁴

No Canadian government is known to have initiated development of other standards for nicotine delivery (eg use of salts).

Regulate all constituents of e-liquids based on potential to cause harm when inhaled rather than oral ingestion.

Limit the nicotine content in vaping products,

addictive potential for youth) and adopt other

delivery (e.g. temperature, use of nicotine salts)

lower than this may further decrease the

appropriate standards regarding nicotine

as evidence on vaping products evolves.

including pods, to a maximum of 20mg/ml (levels

Health Canada's proposed regulations to restrict flavours will restrict ingredients that are permitted to be used.¹⁵

Tax vaping products in a manner consistent with maximizing youth protection while providing some degree of preferential pricing as compared to tobacco products.

Four provinces have imposed higher taxes on vaping products than on other consumer goods:

- British Columbia increased the PST on vaping products from 7% to 20%, effective assesses a 20% HST (Effective January 1, 2020) ¹⁶
- Nova Scotia imposes a 20% tax on devices and a tax of \$0.50 per millilitre of liquids, on top of which a 15% HST is collected. (Effective September 15, 2020) 17
- Newfoundland and Labrador imposes a 20% tax on devices and liquids, on top of which a 15% HST is collected. (Effective January 1, 2021).¹⁸
- Saskatchewan imposes a 20% tax on devices and liquids, replacing a 6% sales tax. (Effective September 1, 2021.)¹⁹

The federal budget delivered in April 2021 proposed a specific excise tax of \$1 per 10 ml of vaping liquids or fraction therefor (effectively a minimum tax of \$1 per pod or other unit sold). A consultation on the tax was held, and the government indicated that the tax will come into effect "in 2022". ²⁰

Consider making the age of 21 the minimum sales age for both tobacco and vaping products, knowing that establishing the legal minimum sales age requires balancing policy objectives to minimize an illegal market while delaying the onset of youth use through limiting access through social sources.

One Canadian jurisdiction has increased the minimum sales ages for tobacco and vaping products to 21 years of age.

Prince Edward Island (effective March 1, 2020.) 21

Create requirements for age-verification of internet purchases of vaping products that are the same as those required for cannabis.

In April 2021, **Health Canada** included the development of "Amendments to the Tobacco Access Regulations (Age Verification for Online Sales)" in its Forward Regulatory Plan. The department indicated that the proposed regulation would identify the "mechanisms that must be undertaken to verify age and identity in the context of online sales." ²² No further information has been made public.

Enhance surveillance and reporting of vaping product use and population health impacts.

Since January 2020 national surveys have been established or expanded to include vaping use. These include:

- *Statistics Canada's annual Canadian Tobacco and Nicotine Survey, (conducted in the winter of 2019-2020, 2020-2021 and 2021-2022).²³
- * Statistics Canada's annual Canadian Community Health Survey has, since 2020, included questions on e-cigarette use.²⁴ This data has not yet been released.

Health Canada has supported consumer research on vaping product use, including a vaper panel which has monitored behaviours of some individuals over a two-year period.²⁵

Other national surveys were diminished in this period. As a result of contracting delays, the bi-annual Canadian Student Tobacco, Alcohol and Drug Survey, last conducted in 2018-2019, did not take place in the 2020-2021 school year. The contract was awarded in December 2020 to CCI Research and the survey is in the field for the 2021-2022 school year.²⁶

Opportunities for Federal Jurisdiction

Recommendation

Restrict the advertising/marketing/promotion/ sponsorship of vaping devices in a manner consistent with maximizing youth protection, including online advertising/promotion and social influencers, while allowing adult-oriented marketing of vaping devices as a product that supports adult smokers solely to end or reduce their use of all nicotine-containing products.

Require product manufacturers to disclose all ingredients of vaping devices to Health Canada as a condition of being marketed, including establishing consistency in reporting nicotine levels in both open and closed vaping systems.

Require plain and standardized packaging along with health risk warnings for all vaping products.

Status

In July 2020, **Health Canada** published regulations to further restrict vaping promotions, and to clarify that "a vaping product or a vaping product-related brand element must not be promoted by means of advertising done in a manner that allows the advertising to be seen or heard by young persons."²⁷ These measures fully into force in September 2020.

Health Canada has indicated its intention to require vaping manufacturers to report such information. In the Forward Regulatory Plan 2021-2023, it identifies that "Vaping Product Reporting Regulations" will be developed, with draft regulations made public in the winter of 2022. ²⁸

Federal government requirements for health warnings came into force on July 1, 2020.²⁹ The only health risk identified in these warnings is addiction.

The federal government does not currently propose to require plain packaging of vaping products, but one province has taken steps in this direction.

 British Columbia allows the sale of vaping products only when "packaged in a plain manner that does not contain any text or image other than as required or permitted under this section."³⁰

Include vaping as part of smoke-free restrictions for locations under federal jurisdiction.

The use of vaping products is restricted under the federal Non-Smokers' Health Act. ³¹

Enhance compliance, enforcement and public reporting of the provisions of the Tobacco and Vaping Products Act.

Health Canada expanded its enforcement activities in 2019, and has made public the results of three rounds of inspections. ³²

In December 2021, **Health Canada** disclosed that it "has not pursued any prosecutions against regulated parties manufacturing or selling vaping products under the TVPA."

Opportunities for Provincial/Territorial Jurisdictions

Recommendation

Statu

Ban all point of sale advertising of vaping devices and products with an exception for specialized vaping product stores accessible only to those of minimum age. Point of sale advertising other than price signs is banned by all provinces and one territory (**Nunavut**) has passed leislation to do so also. Federal regulation bans these displays, even in territories where no provincial measure is in place.

In **all jurisdictions**, specialty vape shops which are not accessible by young persons are exempted from this restriction.

Require a vendor's licence for those selling vaping devices and products.

Five provinces now require provincial retail licenses or registration to sell vaping products.

- British Columbia requires retailers to report annually on their intention to sell and to provide some commercial information on sales. (Effective July 2020)³³
- Quebec requires those who sell vaping products to identify this activity in their business registration (Effective 2015)
- Nova Scotia issues 3-year licenses at a cost of \$124.60 (Effective July 1, 2020)³⁴
- Newfoundland and Labrador requires a license, for which there is no charge. (Effective January 1, 2021)³⁵
- New Brunswick' licensing requirements will be implemented in April 2022.³⁶

In addition:

- Prince Edward Island restricts sale of e-cigarettes to specialty stores.³⁷
- Ontario requires that vaping retailers be registered with local health authorities.

Include vaping as part of provincial/territorial smoke-free restrictions.

All provinces and two territories have now aligned restrictions on vaping with those for tobacco. Nunavut has passed legislation to this effect.³⁸

Routinely use youth test purchaser programs for all tobacco and vaping product retail locations.

There is limited public information on the results of compliance activities underway in Canadian provinces.³⁹

Opportunities for Municipal Jurisdictions:

Recommendation

Status

Include vaping as part of municipal smoke-free restrictions

In addition to provincial smoke-free laws, several municipalities have banned vaping in places where smoking is not permitted. 40

Restrict the density of tobacco and vaping products retail sites and ban the sale of vaping products and devices within at least 250 metres of a school

No jurisdiction has adopted measures aimed specifically at reducing the density of tobacco and vaping products or imposing protective perimeters around school. Diverse other retail restrictions are in place (such as bans on sales in pharmacies, colleges or bars), some of which have the effect of reducing density. 41

Along with these policy and regulatory actions, we recommend that federal, provincial and territorial governments continue to work collaboratively to:

Recommendation

Status

Enhance public awareness and educational initiatives on the risks of vaping products targeted at youth, parents, educators and health care professionals.

Some educational campaigns are underway. For example, **Health Canada** runs a "Consider the Consequences" campaign directed at young persons, with a 3-year budget of \$12 million. 42 Reported expenditures for Health Canada's Youth Vaping Prevention Campaign were \$6 million in 2019-2020, 43

Most provinces have undertaken some form of communication on vaping and health.

Establish comprehensive cessation initiatives for people with nicotine addiction, especially for youth.

Health Canada has provided financial support for programs to assist young people to quit vaping⁴⁴, as have some provincial governments.⁴⁵ Health Canada has commissioned consumer research aimed at assessing supports for youth vaping cessation.⁴⁶.

Canadian organizations which have recommended, reviewed or provided support for vaping cessation also include the Canadian Paediatric Society,⁴⁷ CADTH,⁴⁸ the Canadian Cancer Society⁴⁹ and others.

Monitor and research the short and long-term health effects of vaping products.

Research the effectiveness of policy approaches to address youth vaping.

In 2020, the **Canadian Institutes for Health Research** with the Canadian Cancer Society awarded 27 grants for research directed to the health effects of vaping and policy approaches to address youth vaping. ⁵⁰

Through its Substance Use and Addictions Program, Health Canada has provided support for the development of youth vaping cessation interventions and research on policy development. ⁵¹

Research the effectiveness of vaping products in supporting smokers to end or reduce their use of all nicotine-containing products.

The Canadian Task Force on Preventive Health Care has conducted a systematic review of evidence on 'Tobacco Smoking in Adults' and is currently preparing draft guidelines. These are expected to be released in 2022/23.⁵²

"Ending or reducing their use of all nicotine-containing products" is not an identified goal of Canada's Tobacco Strategy.⁵³ The strategy is silent on objectives other than with respect to tobacco products.

A number of other products for the delivery of nicotine have or are being developed (e.g. heated tobacco devices, oral nicotine products). We encourage federal and provincial/territorial governments to work together to develop a broad regulatory approach to all alternative methods of nicotine delivery (i.e. other than tobacco products) that offers strong youth protection while allowing appropriate access for adult smokers to products if they are proven effective in decreasing or stopping the use of all nicotine-containing products. A key component of any such regulatory approach should be the requirement for the manufacturer to provide enough evidence to satisfy the regulator that allowing any new product on the market is in the public interest before that product can be legally sold.

No developments have been made public with respect to federalprovincial efforts to develop "a broad regulatory approach to all alternative methods of nicotine delivery."

In May 2022, the **Minister of Health** is obliged to present a report on the implementation of the federal *Tobacco and Vaping Products Act.*⁵⁴

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