

A NEW GOVERNMENT AND FRESH COMMITMENTS

HOPE FOR A RENEWED FEDERAL PRESENCE

A traditional strength of tobacco control in Canada has been the ability of health charities to draw on the support of well-minded people across the political spectrum. Good tobacco control measures have been pioneered by governments of all political stripes and have usually, if not always, earned the support of all sides of the House.

The goodwill and access to decision makers that we have been able to draw on was less apparent in recent years in Ottawa. (This experience was not unique to public health). Our work to support healthier public policy became more challenging after key resources, (funding, knowledge, legitimacy) were removed or challenged by government.

Against these recent setbacks, our experiences during the federal election were encouraging. With our colleagues in other health agencies we contacted the three main political parties to canvass their commitments to tobacco control.

Two of the parties provided us with their undertakings for new tobacco control measures. These went beyond the platform commitments in any previous election.

Liberal party pledges included a commitment to plain packaging, to modernizing the federal strategy and to achieving a goal of 5% prevalence by 2035. Similar promises were made by the New Democratic Party.

The commitment to plain packaging was re-stated in the mandate letter issued by the Prime Minister to the new health minister, Dr. Jane Philpott. In

Platform commitments and other undertakings by parties during the 2015 federal election.

	CL	NDP
Endgame goal	X	✓
Modernized strategy	X	✓
Increased funding	X	?
Plain packaging	X	✓
Menthol ban	X	?



“ Introduce plain packaging requirements for tobacco products, similar to those in Australia and the United Kingdom. ”

We made a commitment to invest in growing our economy, strengthening the middle class, and helping those working hard to join it. We committed to provide more direct help to those who need it by giving less to those who do not. We committed to public investment as the best way to spur economic growth, job creation, and broad-based prosperity. We committed to a responsible, transparent fiscal plan for challenging economic times.

one of her first interviews with the media, she confirmed that she would “forge ahead” with plain packaging “to make sure that we try to decrease the impact of smoking and decrease smoking rates in Canada.”

There are other tobacco control files which have languished in recent years for which leadership is strongly needed.

- The federal program expires in the next fiscal year (March 2017). The administrative renewal process will require new policy objectives and gives the opportunity for more innovative and ambitious strategies.
- The black market for electronic cigarettes has flourished without a federal response.
- The unchecked use of menthol and novelties to recruit young people to smoking
- Federal support for community programming has virtually disappeared, and the introduction of requirements for private sector partnership for any financial support has imposed additional constraints.

There is much to do. For the first time in a while, there is also hope that it will be done.

"GUILTY." Tobacco firms fined \$15+ billion.



"Over the nearly fifty years of the Class Period, and in the seventeen years since, the Companies earned billions of dollars at the expense of the lungs, the throats and the general well-being of their customers."

"The Companies' actions and attitudes over the Class Period were, in fact, 'particularly reprehensible' and must be denounced and punished in the sternest of fashions. To do so will be to favour prevention and deterrence both on a specific and on a general societal level."

Justice Brian J. Riordan

On May 27 this year, Justice Brian J. Riordan released his judgment on the two Quebec class actions against tobacco companies. He found the companies guilty of violating 4 Quebec laws, and called their behaviour "immoral", "reprehensible" and "brutally negligent".

His ruling came almost 17 years after the lawsuits were filed on behalf of Quebecers who had become ill with lung cancer, emphysema or certain throat cancers (the *Conseil Québécois pour le contrôle du tabac-Blais* case) or who had become addicted to smoking (the *Létourneau* case).

He ordered the companies to pay more than \$15 billion in compensation and punitive damages. To the almost 100,000 eligible smokers in the *Blais* case, he ordered payments of \$30,000 to \$100,000 (plus interest) in moral damages. (These are the losses which, unlike lost wages, are not pecuniary).

Addicted smokers in the *Létourneau* class will not receive any individual payments for moral damages, as the judge felt the circumstances of each addicted smoker were too varied to allow him to set a single payment to respond to their personal injury. He ordered the companies to pay \$130 million in punitive damages.

The cheques will not be sent any time soon. The companies have appealed the ruling, and the higher court review will not start until late fall 2016. The Court of Appeal has nonetheless ordered two of the three defendant companies to start contributing to a security deposit of almost \$1 billion, to help safeguard against their declaring bankruptcy or otherwise failing to make the payments to smokers should this judgment be validated by the higher courts.

The impact of this Court decision could go beyond the money that is involved.

Justice Riordan established new standards for consumer safety and for the responsibilities of manufacturers. These could lead to better protection against the marketing of tobacco products and other harmful products.

The criteria he set for manufacturers' duty to warn are higher than those currently observed by tobacco companies, alcohol merchants or food manufacturers. For example, he ruled that when the ordinary use of these products is risky *"The warning must be sufficient detailed to give the consumer a full indication of each of the specific dangers arising from the use of the product."*

He ruled that manufacturers of such products must also provide instructions on how to use the product to reduce risk. Whether or not consumers act on this additional information does not affect their duties to provide this information.

By Justice Riordan's criteria, the current warnings on cigarette packages are likely not sufficient. The U.S. Surgeon General has identified more than 60 diseases for which smoking is an established or probable cause. (See chart)

But the Canadian warnings mention only 14, and many Canadians are likely

CANADA'S BIG 3 TOBACCO COMPANIES WERE FOUND GUILTY OF VIOLATING:

- Their manufacturer's obligation not to hide the truth from or mislead their clients concerning their products under the *Quebec Consumer Protection Act*
- Their general duty not to cause injury to another under the Civil Code of Quebec.
- Their manufacturer's duty to inform their clients of the risks and dangers of their products under the Civil Code of Quebec.
- The rights to life, personal security, personal inviolability and dignity protected by the *Quebec Charter of Human Rights and Freedoms*.

unaware of the increased risk of many other cancers, diabetes, fractures, etc.

Because the recent Quebec class actions involved events that took place before 1998, the judge was not asked to comment on whether the current warnings on cigarette packages were adequate.

His ruling suggests that he would have said they were not.

- They omit information on many diseases caused by smoking
- They provide no information on how to reduce the risks.

His ruling provides the basis for further action before the courts or with regulators to demand better consumer protection with respect to cigarettes or other harmful products.

	Conseil Québécois pour le tabac et la santé/ Jean-Yves Blais			Cécilia Létourneau
Disease	Lung cancer	Cancer of the larynx, oropharynx or hypopharynx	Emphysema	Addiction
Number of victims	72,398	7,243	20,316	918,218
Moral damages**	\$100,000*	\$100,000*	\$30,000*	\$0
Punitive damages	\$1.175 billion* reduced to \$90,000 if moral damages are paid in recognition of financial circumstances of companies			\$131 million*

* 1998 dollars ; ** For each individual. Those who started to smoke after 1980 will receive 80% of this amount

Addressing the threats (and exploiting the potential) of E-cigarettes

Demanding a reduction in harmful cigarette smoke

In the important work of reducing greenhouse gas emissions, lawmakers are looking to policy innovations that force polluters to achieve public policy objectives.

We think it is time to apply the same spirit of regulatory innovation to tobacco, and to require cigarette companies to meet hard targets to reduce exposure to harmful cigarette emissions. For over a decade, we and others have been proposing "sinking lid", "performance based measures" or "cap-and-trade" style regulations for this industry.

These proposals are given a new relevance now that tobacco companies have shown their ability and interest in providing smokers with other, less harmful, forms of ingesting nicotine. (BAT, as shown below, produces 5 categories of products along a spectrum of harmfulness.)

Currently these products are not legal for sale in Canada. Unlike small producers, the major tobacco companies have not entered the widespread black market found in most Canadian cities.

When the federal government legalizes the e-cigarette market, the aggressive marketing of these wealthy companies can be expected to transform the small-scale informal market for e-cigarettes into a major consumer product category—one that is directed at recruiting and maintaining customers for these companies.

What's missing is a plan to ensure that these products are marketed in ways that will allow them to help meet the goals of reducing disease, reducing smoking and reducing addiction.

In its development of NGP (Next Generation Products), BAT markets into each of 5 levels of 'harmfulness', but has no apparent plan to phase-out its most harmful products.

BAT Investor Presentation, September 2015

Government should bind manufacturers to a legal obligation to use this new technology to reduce the exposure of smokers to harmful products, and to support the success of smokers trying to quit.

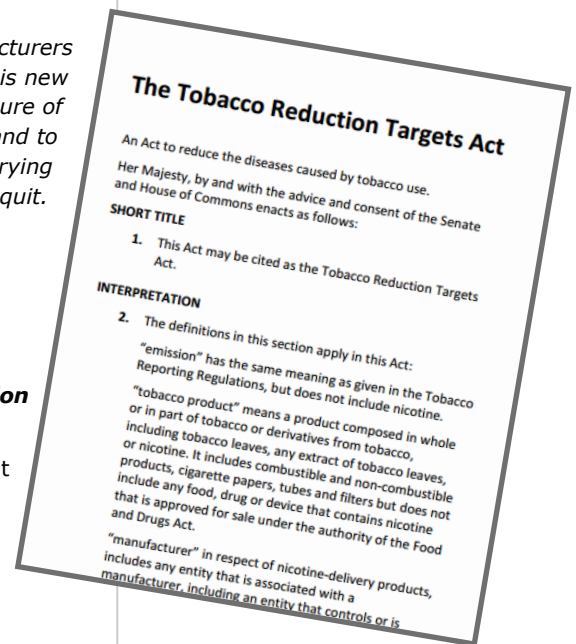
The proposed Tobacco Reduction Targets Act

This year we called on government to integrate the legalization of electronic cigarettes with regulations to require the phase-out of conventional tobacco products.

The decision to turn a blind eye to the sale of electronic cigarettes is one which concerns us. It undermines the integrity of the government as a health regulator, it exposes Canadians to products which have not been tested for safety and it creates a new illegal market for recreational drugs.

A laissez-faire attitude to e-cigarettes also misses the opportunity to ensure that any potential benefits of "safer" nicotine products are not undermined by the threat that new products will be used to expand nicotine addiction and prolong the tobacco epidemic.

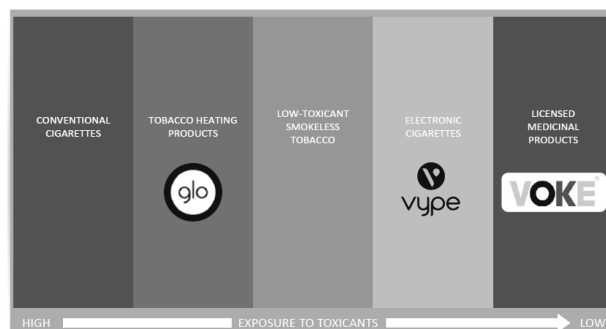
This time, government should bind manufacturers to a legal obligation to use this new technology to reduce the exposure of smokers to harmful products, and to support the success of smokers trying to quit.



The regulatory regime proposed by PSC, and illustrated in a prototype law, would:

- Allow electronic cigarettes to be sold under the same provisions of the *Tobacco Act* that are applied to conventional cigarettes
- impose safety standards on electronic cigarettes under the *Consumer Product Safety Act*.
- impose a "sinking lid" on conventional cigarettes, requiring each manufacturer to reduce the number of more harmful products sold each year.
- impose a cap on the market for recreational nicotine products, with a modest reduction each year to reflect the reduced number of smokers that result from quitting and death.

Uniquely active in three NGP categories...



- allow the government to establish cap-and-trade or other programs to allow the market to adjust to these legal requirements, including adjustments for contraband cigarette sales.

PSC urges the government to draw on experience in Canada and elsewhere by which manufacturers have been obliged to phase out incandescent light bulbs, leaded gasoline, acid-rain emissions, and other undesirable products or by-products.

A fresh assault on children

Novelty menthol products appear in Canadian stores

This fall, the Canadian affiliate of the world's largest tobacco company made a marketing move which could be expected to provoke a firm regulatory response.

Rothmans, Benson and Hedges launched four new sub-brands of menthol capsule cigarettes:

But whether the federal government will react to the introduction of new "clickable" flavour cigarettes by banning menthol is far from certain.

Canada is only the most recent country where cigarette companies have launched brands with flavour capsules secreted in the filter which the smoker can crush between her fingers and release a "burst of flavour."

First launched in Japan about 8 years ago, these brands have proven very popular in Latin America and some parts of Europe. (Euromonitor reports that their market share grew from 1% to 25% in only 5 years).

A harmful additive

There is increasing evidence that menthol as a cigarette additive which makes it easier for young people to become initiated and harder for smokers to quit.

The European Union included a ban on menthol in its 2014 revision to its tobacco directive. This year, Turkey imposed a ban

which will come into effect at the same time as the EU, in in 2020.

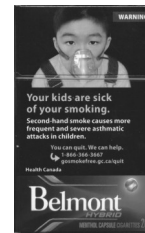
This September, the U.S. FDA ordered RJ Reynolds to remove one of its menthol-click brands (Camel Crush bold), saying that these products may raise new questions of public health concern.

The Canadian federal government has not yet acknowledged that menthol poses health concerns which warrant intervention.

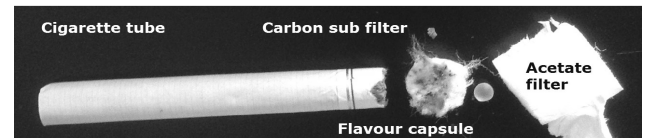
The menthol loop-hole

Canada was the first country to ban flavours and sweeteners in cigarettes, but the 2009 federal law gave an explicit exemption for menthol and menthol-like flavours.

The federal proposal to update this regulation this year was met with a near unanimous call from sub-national health authorities, health professionals, academics, and NGOs for a total ban on all flavoured tobacco products, including menthol products. Only industry groups and a lone member of the general public were opposed.



In 2015, Philip Morris International launched 4 "capsule flavour" brands in the Canadian market.

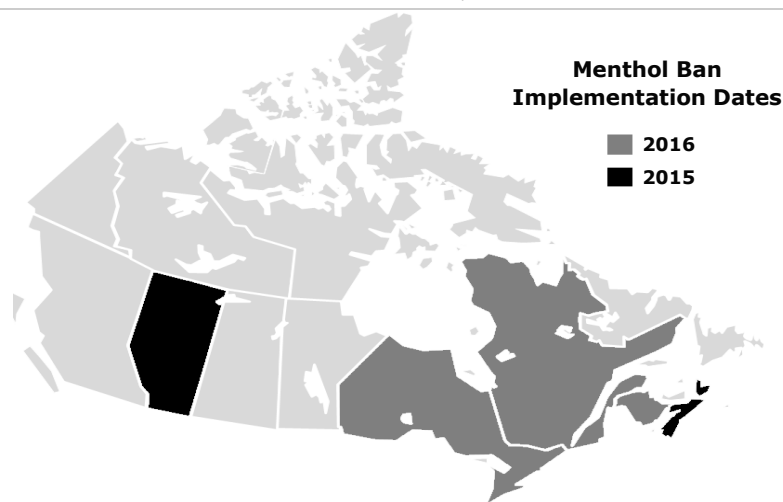


Each of the new products uses a seemingly identical filter. A translucent capsule is buried within the acetate filter. A short carbon filter lies between it and the tobacco tube.

It takes very little finger or lip pressure to crack the flavour capsule.

Despite this support, the federal government refused to include menthol in its flavour ban.

Before the election, the Liberal Party did not take a position on tobacco flavourings. It will likely face renewed pressure to support a Canada-wide menthol ban.



Provincial leadership : Recognizing that the federal government was not going to take action, some provincial governments planned to exercise their own authority to regulate the tobacco market. This spring six provincial governments began or completed the process of legislating this additive off the market.

Nova Scotia's ban came first (May 31, 2015), with Alberta, New Brunswick, Quebec, Ontario and Prince Edward Island scheduled behind. Collectively, these six provinces include 70% of Canada's smokers.

Menthol cigarettes target Canadian kids.

Among high school students (grades 6 to 12):

- 1 in 4 (24%) has tried smoking cigarettes
- 1 in 6 (15%) has tried smoking a flavoured tobacco product, like menthol or shisha
- Half (49%) of those who smoked a cigarette in the past 30 days used a flavoured tobacco product in the same period.
- 1 in 3 (29%) of those who have smoked a cigarette in the past 30 days smoked a menthol cigarette in the same period.

Youth Smoking Survey, 2012-2013

An opportunity for better long-term planning

The “Endgame”.

Over the past decade, there has been an increasing call for public health authorities to take a more ambitious approach to tobacco control, and to supplement existing measures with more innovative approaches.

The proposed measures are diverse: harm reduction by shifting smokers from combustible cigarettes, banning tobacco use for those born after 2000, imposing a “sinking lid” on the number of cigarettes that can be sold, removing the profit incentive from the tobacco supply.

PSC has encouraged governments to consider many of these measures, and has contributed our own ideas to the growing menu of choices for the next phase of tobacco control. (You will have read about many of these in this newsletter!)

But until recently there was little appetite either within the public health community or by government to give any of these ideas serious consideration.

This may be changing.

The federal government is beginning the process that will result in a “renewal” of its tobacco control program by March 2017. This bureaucratic requirement opens the door to public consultations, new research, new ideas and fresh decision-making.

The renewal of the federal tobacco control strategy coincides with a change in government, and, hopefully, a renewed confidence in the federal government about being a health leader.

The significant measures introduced in this century — graphic health warnings, smokefree public spaces, retail display bans, cessation support — have contributed to significant progress against tobacco use.



Many new “endgame” policies have been proposed and studied. Time now to choose some for implementation.

But there is a growing acknowledgement that even more must be done. And there is growing confidence that planning for an “endgame” for tobacco use is not unrealistic, but that not planning for it is irresponsible.

Other countries have launched endgame targets. Finland, New Zealand, Scotland and Ireland have accepted the challenge of ending tobacco use and have set a timeframe for this ambition.

A number of Canadians have begun the process of seeking a consensus on what an endgame for tobacco will look like for Canada.

PSC is delighted to be part of this process.

An opportunity for a public health approach

Threats and Opportunities to Legalizing Marijuana.

The federal government will return to the subject of reforming Canada’s marijuana laws. The newly-elected government has reaffirmed its commitment to legalize cannabis use.

How this policy can best be implemented and how the government will respond to the differing concerns of Canadian communities has yet to be determined.

But some helpful suggestions are already on the table. The Health Officers Council of British Columbia, for example, has long recommended that psychoactive substances (drugs, alcohol, tobacco) be managed and regulated towards public health objectives. This can be achieved by reducing the harms caused by criminalization and by commercialization.

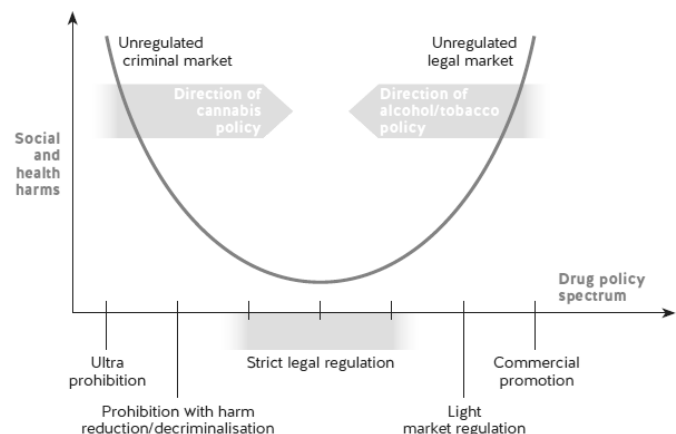
The upcoming review of how marijuana is managed and regulated is an opportunity to encourage better management of tobacco. The logic for marijuana-only stores, for example, is equally compelling for proposals to remove tobacco from convenience stores and similar outlets.

Few rules for one drug can also become a threat to measures to control another. Permission to smoke marijuana in public places is an erosion of smoke-free laws, for example. In November, the Ontario government was forced to back-pedal after issuing regulations allowing marijuana to be smoked or vaped in public places.

There is a risk that a commercial market will be established before the right regulatory approach can be agreed upon. Already marijuana “dispensaries” are commonplace in British Columbia. They may quickly expand across Canada before lawmakers choose to act. (This has been the experience with electronic cigarettes, whose retailers are similarly operating in a tolerated black market).

Public health may be hitting its own “Uber taxi” challenge—where the rules of the market place make traditional regulatory approaches ineffective.

The ongoing challenge for the health community is to provide workable and healthy options for public health law.



“The Paradox of Prohibition” as visualized by John Marks

2015

The year in review

March

House of Commons Standing Committee on Health releases its report "Vaping: Towards a regulatory frameworks for e-cigarettes". Asks the government to respond to its 14 recommendations.

United Kingdom approves regulations to require plain packaging of cigarettes by May 20, 2016.

Alberta increases cigarette taxes by \$5 per carton.

April

Nova Scotia increases tobacco taxes by \$4.00 per carton.

Manitoba increases tobacco taxes by \$1.00 per carton.

May

Nova Scotia ban on menthol takes effect May 31

New Brunswick adopts law to ban flavoured products, including menthol, effective January 1, 2016

Manitoba increases cigarette taxes by \$1.00 per carton.

Ontario adopts law to put electronic cigarettes under similar regulations to other tobacco products and to ban flavourings. The temporary exemption for menthol expires no later than January 1, 2018.

Alberta's recently-elected government announces that menthol tobacco products will be banned effective September 30.

Whistler ski resort launches total smoking ban—indoors or out. The regulation covers marijuana, e-cigarettes and vaporizers as well as tobacco.

June

Quebec Superior Court finds tobacco companies guilty of violating four laws by failing to warn smokers and by taking actions intended to delay public understanding of the harms of smoking. More than \$15 billion is awarded in compensation and punitive damages.

The **Federal government** updates its flavour regulations, but does not include menthol as a prohibited flavour. New regulations come into force December 2015.

Prince Edward Island increases cigarette taxes by \$5.00 per carton.

July

Federal government ignores parliamentary rules and fails to provide an answer to the Health Committee recommendations on e-cigarettes.

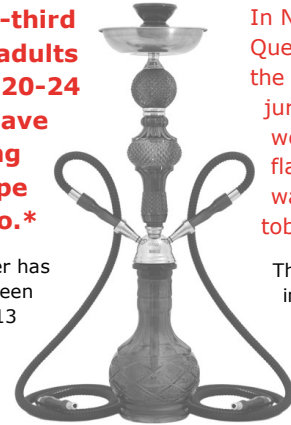
September

Philip Morris International subsidiary (Rothmans, Benson and Hedges) introduces new "click" menthol brands, in defiance of upcoming bans on menthol in several provinces. (These brands were not found in jurisdictions, like Nova Scotia, where menthol is banned.)

Almost one-third of young adults (29% of 20-24 year olds) have tried smoking waterpipe tobacco.*

The number has doubled between 2006 and 2013

*CTUMS, 2006, CTADS 2013



In November, Quebec became the first jurisdiction in the world to ban flavourings in waterpipe tobacco.

The measure was included in Bill 44, *An Act to Strengthen Tobacco Control*

Alberta increases price of cigarettes by \$5 per carton—the second such increase in a year.

The **Trans Pacific Partnership** negotiated by Canada and other countries representing 40% of the world's economy includes special protection for tobacco control measures.

November

Dr. Jane Philpott is appointed federal health minister, which a mandate directive to implement plain packaging in Canada.

Quebec National Assembly gives unanimous consent to Bill 44 and its pioneering ban on promotional payments to retailers. The new law also bans menthol and other flavours and requires a minimum size of 4648 square millimetre for health warnings. It imposes the same constraints on the sale and use of e-cigarettes as are currently in place for tobacco products, and increases protection against second hand smoke in public places.

France adopts a law to require cigarettes to be sold in plain packages.

October

Federal election campaign commitments include agreement to modernize the federal approach to tobacco and implement plain packaging (Liberal and New Democratic parties), to ban menthol cigarettes and increase funding (NDP) and to achieve 5% smoking levels by 2035 (Liberal).

In 2015, three countries adopted laws to join follow Australia's example and require that cigarettes be sold in plain packages.

- Ireland
- United Kingdom
- France

In 1994, Canada was the first country whose legislature studied this measure.



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