

## THE NEED FOR A RE-THINK A SCRAMBLE TO FIX URGENT FLAWS IN FEDERAL LAW DELAYS DEVELOPMENT OF A LONG-TERM PLAN TO REDUCE SMOKING.

For most of 2020, health ministries across Canada scrambled to manage the COVID-19 pandemic. To their credit, many also gave priority to implementing measures to protect young people from the marketing of electronic nicotine products.

Regulations were put in place to take down remaining billboards and store displays, to restrict flavours and to set limits on the amount of nicotine permitted. The federal Health Minister has indicated that federal measures on flavours and nicotine are in development.

While these measures are welcome, they arrived too late to protect the half million or more Canadian children who have experimented with vaping products. Health Canada's most recent survey of student drug use found that in 2019, one in ten high school seniors was vaping daily.

These restrictions were adopted many years after health organizations called for them to be included before the new vaping law was passed.

The reluctance of governments to adopt a precautionary principle when dealing with tobacco has become a multi-generational phenomenon. It took decades after health leaders called for bans on tobacco advertising (in the 1960s) before they were adopted (in the late 1980s).

Another area where the federal government seems determined to repeat the mistakes of the past is with respect to harm reduction.

Health Canada's approach to tobacco regulation gives priority to encouraging vaping products as a less harmful alternative for smokers. Although the product is different, the thinking is largely the same as it was in the 1970s and 1980s when the federal government focused on "less harmful smoking". Smokers were encouraged to select lower tar brands, to smoke less of the cigarette or otherwise reduce their exposure to toxins.

The problem with this strategy was that it didn't work. It took decades before it was clearly established that lower tar cigarettes caused no less harm than others. It took only a short time before it was apparent that the new messaging and products were recruiting new users (women and younger people) more than they were helping existing smokers. It took more than 40 years before Health Canada formally abandoned its promotion of less harmful smoking (in 2011 tar levels were removed from cigarette packages).

Health Canada's current approach to harm reduction is similarly challenged. So far, the

harms are exceeding the benefits, as young people are picking up the "less harmful" products more than smokers are switching to them. To date, Health Canada has never made public more than a few lines to describe its approach to harm reduction, and has not provided any measurable objectives for reduced harm.

We see important reasons to include a harm reduction approach within tobacco control. Product standards and market regulation are ways to attempt to reduce injury to those who use nicotine.

But Health Canada's poorly articulated plan does not include measures to address the more harmful products. A mandatory phase-out of combustible cigarettes or other regulatory approaches to ending their sale is an approach that has surprisingly not yet been assessed by federal or provincial governments.

Meanwhile, the evidence accumulates that vaping products are much less safe than originally presented and that in real-world conditions, smokers who use them are no more likely to stop using cigarettes. New Zealand researchers who once modeled the impact of a liberalized e-cigarette market and found a net benefit are now acknowledging the "possibility of net harm to health." [1]

The role of e-cigarettes in tobacco control remains contested, and a variety of approaches are being used by governments around the world. Many (including leading tobacco control nations like Thailand and Brazil) have banned these products. Australia is proposing to replace its ban with prescription-based access. The United States has temporarily permitted sale while it requires producers to seek authorization on the basis of proven net health benefit. In preparation for a revision of its tobacco products directive, the European Union has commissioned scientific and other reviews.

Fortunately, the federal Tobacco and Vaping Products Act includes a provision which requires the department to undertake a review, beginning in the spring of 2021 and to later submit it to parliament.

We are pressing the department to use this as an opportunity for a meaningful review of the persistent tobacco epidemic, the changing commercial landscape and the emerging evidence.

[1] Blakely, T et al. Brief report to select committee on Tobacco Harm Reduction. Nov 2020.

# Comparison of provincial laws

## Progress in regulating e-cigarette marketing

The good news is, that in a year gripped with the COVID-19 epidemic, many jurisdictions nonetheless gave priority to protecting young people from marketing for vaping products.

The bad news is that key measures are not yet in place, and young people in some regions are far less protected.

Storefronts and billboards no longer display colourful posters promoting vaping devices and flavours, and vaping products are now required to display (small, text only) warnings about addiction. But in most parts of Canada high-strength, high-flavoured and low-priced electronic nicotine devices are easily accessed by high-schoolers.

This year, Nova Scotia and British Columbia have introduced the most comprehensive protective measures, including capping nicotine strength and using taxes to increase the price. Nova Scotia and Prince Edward Island have

banned flavours other than tobacco flavour (PEI's comes into force in 2021), and Ontario and B.C. have taken flavoured products out of convenience stores. PEI has taken all vaping products out of convenience stores, and has raised the minimum age to purchase these products to 21.

The federal government has passed two sets of regulations this year — one establishing labelling requirements and the other placing more restrictions on advertising and promotion. Officials are also working on regulations to set a maximum nicotine concentration of 20 mg/ml (the same standard in place in the European Union and several other countries) and to restrict flavours.

Enforcement of these rules, however, has been challenged by COVID-19. Federal and provincial enforcement efforts have been impacted by COVID-19, and tobacco companies have not hesitated to take

advantage of the extended grace periods that governments have offered. They also flaunt the restrictions with impunity — using digital media to send their ads across borders, and using on-line engagement to distribute lifestyle ads.

In addition to the measures listed above, we continue to press for stronger vaping regulations, including:

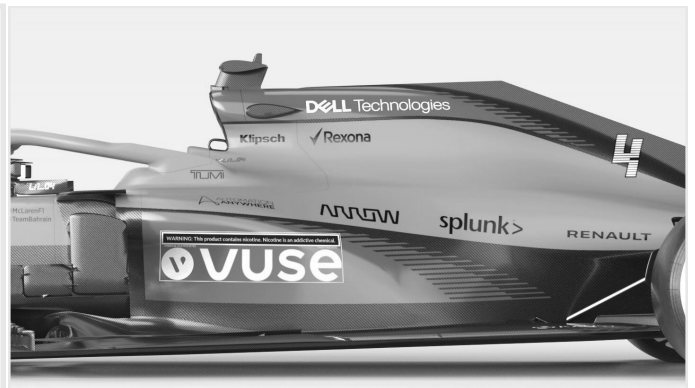
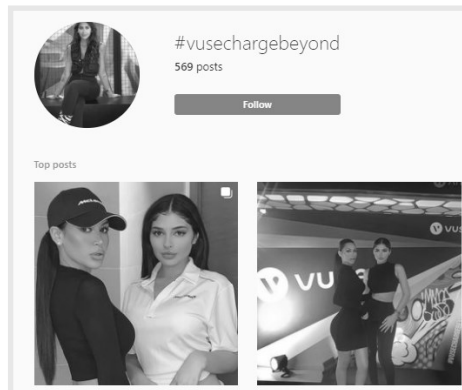
- ban on additives which make facilitate addiction,
- Plain packaging,
- Taxes and price controls,
- Stronger graphic health warnings,
- Mandatory reporting.

For tobacco and nicotine products, we advocate regulations to require

- sales limited to adult-only specialty stores,
- raising minimum age to 21.

*Lifestyle ads for vaping products are banned under federal law. Yet BAT uses its trademarked slogans (like 'Vuse Charge Beyond') on off-shore Instagram accounts to circumvent these restrictions.*

*As before, the company recruits customers with pretty women and fast cars.*



## Regulatory Restrictions on Electronic Nicotine Delivery Systems

	FED	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	Nfld	Yuk	NWT	Nun
Tax		●	P						●		P			
Pricing restrictions														⓪
Age 21										●				
Flavour bans (ex tobacco)		○				○			●	●				⓪
Advertising bans:	●	●	⓪	●	●	●	●	●	●	●	●	F	F	⓪
Nicotine cap (20 mg)		●				○			●					
Health warnings	●	F	F	F	F	F	F	F	F	F	F	F	F	F
Plain packaging		○												
Retail licensing		●					●		●					
Age-restricted stores										●				

Legend: ●=measure in force; ○=partial measures in force; ⓪=legislation in development; P=promise to implement; F=federal measures apply

## On-ramp?

**"Are teenagers who vape more likely to become cigarette smokers?"**

This year several scientific teams were asked by governments to answer that question.

The European Commission asked its Scientific Committee on Health Environmental and Emerging Risks (SCHEER). The Irish government asked its Health Research Board. The Australian government asked its National Centre for Epidemiology and Population Health.

Each research team reviewed the same body of evidence (20+ research studies). Like the studies they reviewed, these panels came to similar conclusions: **teenagers who used e-cigarettes were 3 to 4 times more likely to smoke cigarettes.**

Opinions differed on how to characterize the relationship. SCHEER found evidence of a gateway effect, the Irish HRB thought the evidence built a case towards a causal relationship as the findings are consistent across all studies, and recommended research to consider theoretical models (gateway, common liability, catalyst). The Australian team thought a causal relationship was likely.

*We found a four-fold association between ever using e-cigarettes and initiating smoking tobacco cigarettes in adolescents*

**Irish Health Research Board,  
October 2020**

*There is **strong** evidence that electronic cigarettes are a gateway to smoking for young people.*

**EU Scientific Committee on Health  
Environmental and Emerging Risks,  
September 2020**

*[We found] strong and consistent evidence that never smokers who have used e-cigarettes are more likely than those who have not used e-cigarettes to try smoking conventional cigarettes and to transition to become regular tobacco smokers.*

**Australian National Centre for  
Epidemiology and Population Health,  
September 2020**

## Off-ramp?

**"Are smokers who use e-cigarettes as a cessation aid more likely than those who use other methods?"**

During 2020, research panels reviewing the evidence on the effectiveness of e-cigarettes as cessation aids mostly concluded that the evidence was insufficient or weak to conclude that e-cigarettes were an effective smoking cessation therapeutic aid.

Continuing research on this question is tending to show that in real-world settings e-cigarettes are less effective than clinical trial reports. Chief among these are reports from one of the largest longitudinal studies, the U.S. PATH study (population assessment of tobacco and health).

There is no comparable study in Canada, but Health Canada has commissioned a return-to-sample survey of Canadian vapers. The first results of this research show that after one year, there was no net benefit to this group of smokers: the number of vapers who quit smoking cigarettes were matched by the number of vapers who picked up cigarette smoking.

*There is insufficient evidence that ENDS are efficacious for smoking cessation compared to no intervention, placebo or NRT.*

**Australian National Centre for  
Epidemiology and Population Health,  
September 2020**

*Nicotine e-cigarettes probably do help people to stop smoking for at least six months. They probably work better than nicotine replacement therapy and nicotine-free e-cigarettes.*

**Tobacco Addiction Group,  
Cochrane Collaboration,  
October 2020.**

*There is **weak** evidence for the support of electronic cigarettes' effectiveness in helping smokers to quit.*

**EU Scientific Committee on Health  
Environmental and Emerging Risks,  
September 2020**

*The evidence is inadequate to infer that e-cigarettes, in general, increase smoking cessation.*

**US Surgeon General.  
January 2020.**



**Since March 2019 tobacco companies and the provincial governments that are suing them have been locked in secret mediation talks.**

The talks were imposed by an Ontario judge following requests from the 3 'Big Tobacco' companies using federal insolvency law (Companies' Creditors Arrangement Act).

The provinces have sued for more than \$500 billion in compensation for the costs of treating tobacco-caused disease for several decades. (The companies' current Canadian earnings are about \$2 billion per year.)

All lawsuits against the companies have been suspended now for more than 18 months, delaying any payment to the injured Quebec smokers who won a \$13 billion class action claim in 2015.

Without the CCAA proceedings, the companies would likely have been thrown into bankruptcy by the Quebec claims.

The current mediation talks are not only about payments to government—they **involve the future of the tobacco industry in Canada.**

Yet not one of the provincial governments has made public any health objectives for these negotiations. And the federal government is not involved.

The next hearing in the CCAA process is expected in March 2021.

## A “balanced” approach badly out of kilter

In May 2018, the federal government legalized the sale of non-therapeutic electronic nicotine devices, setting off a race by tobacco companies to dominate this new category of consumer good.

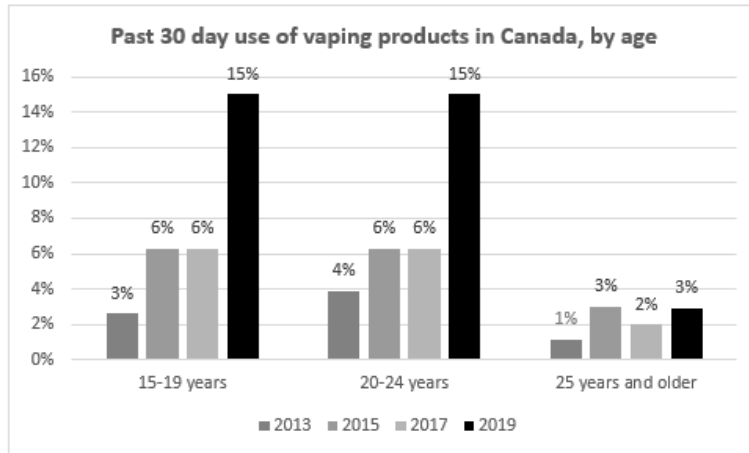
Prior to this date, these products were widely available in vape stores, of which there were an estimated 1,000. Although Health Canada cautioned these retailers were breaking the law, it mostly turned a blind eye with respect to enforcement, allowing the grey market to continue.

After legalization there were large changes to the suppliers, the products and the distribution system. Multinational tobacco companies entered the market, and used their existing players, the products and the route to market. Clunky tank systems gave way to JUUL-type devices; vape shops gave way to convenience stores; nicotine salts became the norm, advertising was omnipresent until further restricted, prices plummeted.

The stated objectives of the change in federal law were to facilitate harm reduction by smokers while protecting young people from nicotine addiction.

Thirty months later, and with several national surveys having reported, the impact of this legislative change is becoming apparent.

- The number of young people using vaping products has doubled between 2017 and 2019. [1] [2] [3]
- Because many of these young people have never smoked, the number of young people using nicotine (either vaping or smoking) has increased. [4]
- Young people who vape are more likely to go on to smoking, even after other factors have been considered. [5]
- There has been no benefit observed in Canadian smokers at a population level. [6]
- The number of adult smokers who use vaping products has not increased following legalization. [4]
- The smoking rate continues to fall gradually, with no apparent acceleration in the gradually falling rate of smoking. [7]



Source: CTADS 2013, 2015, 2017; CTNS 2019

### Although the legalization of vaping products was intended to help adult smokers, it is kids who have been mostly affected.

The percentage of Canadians over 25 who have used vaping products in the past month did not increase significantly 18 months after legalization (from 2% in 2017 to 3% in 2019). The percentage of Canadian youth and young adults more than doubled (from 6% in 2017 to 15% in 2019). [4]

### For every 100 people who tried vaping, 13 became daily users.

The rate at which experimenting with vaping products results in daily use is lower than tobacco, but higher than cannabis. [1]

The rate is higher in younger people. In 2018-2019, roughly one-half (47%) of senior high school students had tried a

vaping product, and one-quarter of those (12 % of students) were vaping daily. By comparison, only 5% of those who had ever tried a cigarette were smoking daily. [2]

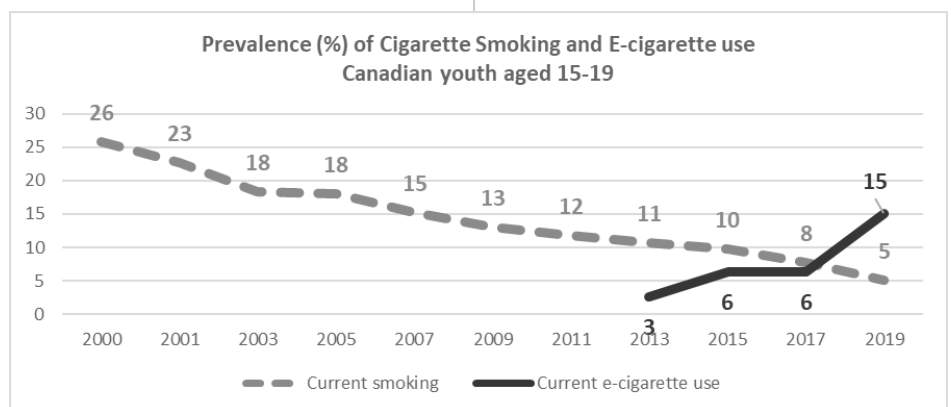
### One-fifth of current Canadian vapers are teenagers (age 15-19) who have never smoked a cigarette.

Vaping appears to have increased nicotine use more than it could have helped decrease it. Four in 10 vapers (38%) in Canada have never smoked cigarettes, compared with the one-quarter (25%) who are former smokers. The

remaining 38% are people who both smoke and vape.

### Sources:

- [1] Statistics Canada. Canadian Tobacco and Nicotine Survey, 2019.
- [2] Health Canada. Canadian Student Tobacco Alcohol and Drug Survey, 2018-2019
- [3] University of Waterloo. COMPASS Survey.
- [4] Health Canada Surveys, see charts
- [5] Aleyan et al. Exploring the Bi-Directional Association between Tobacco and E-Cigarette Use among Youth in Canada. (Using COMPASS data) IJERPH. 2019.
- [6] Environics Vapers Panel, Conducted for Health Canada POR 098-19. 2020.
- [7] Statistics Canada. Canadian Community Health Survey, 2000 to 2019.



Sources: Health Canada Surveys of Smoking Use conducted by Statistics Canada; 2000 to 2011; Canadian Tobacco Use Monitoring Survey; 2013 to 2017 - Canadian Tobacco Alcohol and Drug Survey; 2019 - Canadian Tobacco and Nicotine Survey

# Single use plastics and post-consumer tobacco waste

## Why stop at plastic straws? Ban cigarette filters too!

This fall the federal government provided details on its plans to achieve zero plastic waste within the next decade. This plan included a proposed ban on 6 categories of single-use plastic items: plastic checkout bags, straws, stir sticks, six-pack rings, cutlery, and food ware made from hard-to-recycle plastics.

The exclusion of cigarette filters from the proposed ban on single-use plastics is surprising in some ways:

Cigarette butts have long been identified as a major environmental problem. Cigarette butts do not biodegrade, but continue to leach toxic amounts of nicotine, and other toxins into the environment, frequently into the water systems.

E-cigarette waste, including the batteries, the electronic components and the residual nicotine in cartridges, has been labelled as hazardous waste by U.S. environmental and health agencies.

The quantity of post-consumer tobacco waste that is improperly disposed of is enormous — in the most recent Greats Canadian Shoreline Cleanup, cigarette butts far exceeded other plastic waste.

That's why many think its time to get rid of the cigarette filter. Last year, the parliamentary committee reviewing plastic waste recommended that cigarette butts be included in Canada's ban of harmful single-use products.

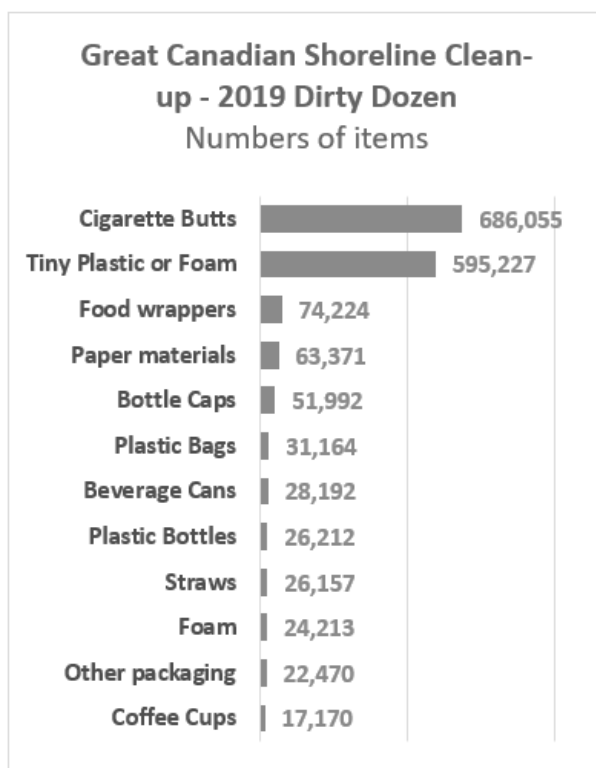
### Why exempt tobacco filters?

Tobacco manufacturers have historically been exempted from regulations that are applied to other industries, including consumer protection and occupational health laws.

Although Environment and Climate Change Canada have identified cigarette filters as

*As we now know, claims that filtered cigarettes were "healthier" were fraudulent. The only thing filters may have done is make smoking easier and less harsh, increasing both the risk of addiction for smokers and the overall burden of the non-biodegradable and toxic cellulose acetate filters in our environment.*

*World Health Organization Tobacco and its environmental impact: an overview 2017*



meeting the criteria that were used to identify single use plastics that would be banned, it exempted them on the basis that there were no "readily available alternatives."

### The world is moving to end single use plastics, and the tobacco industry is trying to avoid a ban on filters.

Measures to curb the use of single use plastics are under development in many countries. In anticipation, tobacco companies have launched public relations campaigns to frame the issue as one of bad smoker behaviour, not product design.

In Canada, the companies have recruited municipalities install attractive public ashtrays (which help normalize smoking), and have funded clean-up activities by community volunteers (which off-loads the corporate burden to volunteer labour).

These corporate initiatives of the companies are worrisome. Good implementation of the Framework Convention on Tobacco Control would not permit Corporate Social Responsibility initiatives, like RBH's grants to clean-up squads, nor tobacco industry partnerships, like Imperial Tobacco's former sponsorship of municipal ashtray programs.

The federal government has to date given no signal that it will protect its single use plastics plan from tobacco industry influence.

### Public education is not enough.

A number of options for managing tobacco and vaping product waste have been developed by independent researchers and civil society.

In addition to amplifying existing measures (like smoke-free laws, public education and product labelling), these include:

### Banning cigarette filters (or better yet, phasing out cigarettes)

Cigarette filters do not reduce the harm of smoking, and they may increase it. There are increasing calls for governments to ban the sale of cigarettes made with filters.

### Mandatory Deposit-Return

In 2016, the Union of British Columbia Municipalities called for such a system, which was rejected by the provincial government at that time.

### Mitigation fees

These can be imposed at the national or sub-national level. San Francisco currently charges retailers \$1 per package to clean up tobacco waste.

PSC has written to the federal ministers of health and environment to request the creation of an inter-departmental working group to collaborate on stronger measures to protect the environment and public health from tobacco products.

*The Committee recommends that the federal government commit to banning harmful single-use plastic products – such as straws, bags, cutlery, cups, cigarette filters and polystyrene packaging*

*Report of the House of Commons Standing Committee on Environment and Sustainable Development. June 2019.*

*(emphasis added)*



# 2020

## The year in review

### January

**Council of Chief Medical Officers of Health** issues statement proposing federal, provincial and municipal actions to address vaping.

*We encourage ... 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.*

**Council of Chief Medical Officers of Health**  
January 22, 2019

### February

**PEI** publishes draft regulations to ban flavours in e-cigarettes.

**Saskatchewan** restrictions on vaping marketing comes into force.

**Nunavut** begins consultation on vaping regulations.

**Nova Scotia** announces that a vaping product tax will start on September 15, 2020: \$0.50/ml for substances, with 20% tax on devices. Also introduces legislative authority to control nicotine levels.

**Alberta** Budget includes a new 20% tax on vaping products, but an implementation date is not set.

### March

In **PEI** tobacco and nicotine products can only be sold to people over 21 years of age, and e-cigarettes can only be sold in specialty stores accessible only to adults.

**Yukon** amendments to e-cigarette promotions and use come into effect.

**Federal Minister of Health** Patty Hajdu tells House of Commons committee that "we'll be moving to finalize the regulations as soon as possible... we also know we need to develop additional regulations that further reduce the appeal. Also, nicotine concentration and flavours are two of the areas where we believe we need to take stronger and quicker action."

**British American Tobacco** adopts a new logo and strategy — "A Better Tomorrow".

**Statistics Canada** releases results of 2019 survey on vaping and smoking—the first of adults since e-cigarette sales were legalized.

### April

**Northwest Territories** restrictions on e-cigarette promotions and use come into effect.

**Nova Scotia** ban on flavours comes into effect.

**Toronto** requirements for licensing of specialty vaping retailers comes into force.

### May

**Ontario** publishes regulation to limit the sale of nicotine over 20 mg/ml or flavoured other than tobacco, menthol or mint to specialty vape shops. Measures come into effect in July.

**Nova Scotia** adopts regulations to restrict nicotine to 20 mg/ml, effective September 1.

**Alberta** introduces legislation to impose constraints on e-cigarette marketing.

### July

**Canada's Vaping Products Labelling and Packaging Regulations** come into force on 1 July 2020.

**Health Canada** publishes final *Vaping Products Promotion Regulations*, which take effect over the next 60 days.

**British Columbia** announces regulations to restrict sale of flavoured vaping products to specialty stores, to restrict nicotine to 20 mg, to require plain packaging and other measures.

### August

**Nova Scotia** requirement for e-cigarette retail licensing comes into effect.

**Prince Edward Island** adopts regulation to ban flavoured e-cigarettes, effective March 1, 2021.

### September

**Nova Scotia** restrictions on nicotine concentration come into effect.

**British Columbia** regulations on flavours, nicotine levels and plain packaging come into effect

**Ontario court** extended insolvency protection to tobacco companies until March 31, 2021.

### October

**Federal environment minister** announces that single use plastics will be banned, but proposes to exempt cigarette filters.

**Nunavut** introduces legislation to revise its tobacco laws — including price controls and retail measures not in place in other Canadian cities.

**Newfoundland and Labrador** budget includes a 20% tax on vaping products, estimating that this will generate \$313,000 in the remainder of this fiscal year.

For more information, contact:

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Voluntary warning, 2019



Regulated warning, 2020