

An obligation and an opportunity:

Health Canada's 3-year report on the *Tobacco and Vaping Products Act*. April 2022.

Our key recommendations:

1 Health Canada should respect its obligations to provide a complete and timely report to Parliament.

- The *Tobacco and Vaping Products Act* (TVPA) requires the Minister to have initiated “a review of the provisions and operation of this Act.” and to table this report no later than May 23, 2022.¹ The legislative review process is the main form of government accountability for actions taken towards reducing tobacco use.
- The law does not provide the Minister with the discretion to select a subset of the provisions and operations of the Act to be reported on. A report which does not meet the conditions set in a statute is in contempt of a de-facto order of Parliament and may be a breach of parliamentary privilege.² The TVPA is binding on the crown and an infraction of the section requiring the timely tabling of a report is subject to a fine of up to \$25,000.³

2 Health Canada should seize this opportunity to modernize its tobacco/nicotine strategy

- The Canadian federal approach to the tobacco industry reflects a 20th century focus on reducing consumer demand for cigarettes, particularly among young people. The objectives of the federal tobacco law (which were mapped onto vaping products in 2018) have not been revisited in 35 years.⁴
- Although Health Canada has adopted the goal of reducing tobacco use to “under 5% prevalence by 2035”,⁵ this objective is not legislated, and is not supported by an accountability framework for government or industry.
- Although Health Canada adopted “harm reduction” language in 2018, no formal strategy (and no legislative basis) has accompanied this change. There is no federal legislative or programmatic objective with respect to vaping or other forms of nicotine use by individuals over 18 years of age.⁶
- In recent years the tobacco industry has re-invented its marketing strategies and is expanding its range of nicotine products (e.g., heat-not-burn, nicotine pouches, hybrid products) and other psychologically active products (e.g. CBD, functional food and beverages). There is currently no federal programmatic or legislative response to these market developments.^{7 8}
- **The Legislative Review is an opportunity for Health Canada to present its analysis of developments in the nicotine market, to articulate a public health objective with respect to this market, and to make recommendations for the legislative foundation that would support these objectives.**

1 Tobacco and Vaping Products Act (SC 1997, c. 13) s. 60.1

2 House of Commons. House of Commons Procedure and Practice. Chapter 10. The Daily Program, Footnote 93.

3 Tobacco and Vaping Products Act, s. 3 and s. 48.

4 The tobacco-related objectives of the *Tobacco and Vaping Products Act* are the same as those of the *Tobacco Products Control Act*, introduced to Parliament in 1987

5 Health Canada. Canada's Tobacco Strategy. <https://www.canada.ca/en/health-canada/services/publications/healthy-living/canada-tobacco-strategy.html>

6 Health Canada's objectives for vaping by Canadian students (grades 7 to 12) is “at most 10%”. Treasury Board Infobase.

7 Physicians for a Smoke-Free Canada. BAT reboots and rebrands for “a better tomorrow”. May 18, 2020.

8 Ling, P et al. Moving targets: how the rapidly changing tobacco and nicotine landscape creates advertising and promotion policy challenges.. Tobacco Control 2022.

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Health Canada should transparently report the challenges it has faced in implementing the TVPA.

Over the past four years, Health Canada has faced a number of challenges in administering the TVPA, including 6 identified by its internal evaluators, which were:⁹

1. The absence of workplans which “set out a clear path, including interim targets in the short- and medium-term, for reaching the long-term goal of less than 5% tobacco use by 2035 and for addressing the issue of youth vaping.”
 2. Technology systems that are “outdated” or “non-existent”, and which prevent the collection and analysis of needed information.
 3. Robbing-Peter-to-Pay Paul, and shifting financial and human resources from tobacco to vaping-related activities, risking losing ground on tobacco-related issues
 4. Time-intensive regulatory processes.
 5. Public communications which are not informed by updated scientific assessments, and which make questionable therapeutic claims for un-licensed products
 6. Inconsistent performance measurement and limited systematic knowledge exchange.
- These are in addition to the long-standing systemic barriers noted by ourselves and others, including the absence of efficient enforcement systems (e.g. administrative monetary penalties) and a reluctance to prosecute offenders, the absence of a mechanism for a rapid regulatory response (e.g. interim orders)¹⁰ and the loss of surveillance tools during key periods.¹¹
 - **The Legislative Review is an opportunity for Health Canada to present its analysis of the challenges it has faced and to make recommendations for legislative and programmatic actions to address these.**


⁹ This is detailed in the department’s Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21.

¹⁰ Delays in developing key regulations (delayed regulations that were indicated during the Parliamentary review of S-5 include reporting regulations for vaping companies and criteria for release of industry reports on tobacco manufacture).

¹¹ The department’s decision to terminate the Canadian Tobacco Alcohol and Drug Survey in 2017 resulted in no measure of vaping product use between 2017 and 2020. Departmental delays in re-assigning responsibility for the Canadian Student Tobacco Alcohol and Drug Survey which resulted in a missed cycle (2021) of the survey.

Physicians for a Smoke-Free Canada

Additional recommendations in response to Health Canada’s Discussion Paper: *Legislative Review of the Tobacco and Vaping Products Act*¹²

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
1	<p>Introduction</p> <p>The <i>Tobacco and Vaping Products Act</i> (TVPA) came into force on May 23, 2018. It amended the former <i>Tobacco Act</i>, which was originally enacted in 1997. The purpose of the TVPA with respect to tobacco products is the same as the former Act - to provide a legal framework in response to the national public health problem posed by tobacco use. The TVPA also created a new legal framework, in conjunction with other pieces of federal legislation, to respond to the increasing availability of vaping products (with and without nicotine) in Canada and to help ensure that Canadians would be appropriately informed about and protected from the risks associated with these products. While the TVPA still sets out the specific objectives of the Act with respect to tobacco products, its purpose statement was amended in 2018 to include specific objectives with respect to vaping products and established a link between those vaping products provisions and the overall tobacco control objectives of the Act.</p>	<p>Canada needs to strengthen the purpose of its tobacco laws.</p> <p>This discussion paper uses the existing purposes of the <i>Tobacco and Vaping Products Act</i> to guide input and analysis. By doing so, it perpetuates the narrow and inadequate scope of the current law, and ignores the recommendations made to Parliament in 2017 that a broader and stronger purpose of the law was needed. Parliament has not broadened or strengthened the purpose of its tobacco laws since 1988. ¹³ A better approach in this consultation would be to ask if the current purpose of the Act meets the needs of Canadians.</p> <p>This approach also ignores the need to integrate the management of vaping and tobacco and other nicotine products, instead of giving them parallel but separate treatment. For example, HNB products are tobacco products. They are covered by the act, but not by most of the regulations. Nicotine pouches are manufactured in Canada (and sold illegally) but are not covered by federal law.</p> <p>A revised law should be called a nicotine law, not a tobacco law and should control all current and future non-therapeutic nicotine products.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Identify the limitations of the current purpose in the TVPA and the benefits to public health if the legislation had an expanded purpose.• Recommend a new law which would manage the sale of all non-therapeutic sources of nicotine.	<p>Finland provides an example of a more powerful and appropriate objective for a tobacco law. The Finnish <i>Tobacco Act</i> directs government to regulate tobacco with the objective of ending nicotine use.</p> <p><i>(1) The objective of this Act is to end the use of tobacco products and other nicotine-containing products that are toxic to humans and cause addiction.</i></p> <p><i>(2) To achieve the objective referred to in subsection 1, this Act lays down measures to prevent people from taking up the use of tobacco products and developing a nicotine addiction, to promote the cessation of the consumption of tobacco products and similar products and to protect the population from exposure to smoke from such products.</i></p> <p>Nicotine pouches are sold in Canada (as found in this store in Penticton, 2021), even though they are not permitted under the TVPA or Food and Drugs Act.</p> <p>Finland, <i>Tobacco Act</i>, 2016. ¹⁴</p> 

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Health Canada. Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act. March 16, 2022. <https://www.canada.ca/en/health-canada/programs/consultation-legislative-review-tobacco-vaping-products-act/document.html>

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The same purpose is found in section 3 of the 1988 Tobacco Products Control Act. <https://www.industrydocuments.ucsf.edu/docs/ysgw0132>

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Finland. Tobacco Act. (549/2016; amendments up to 1374/2016 included) https://www.finlex.fi/en/laki/kaannokset/2016/en20160549_20161374.pdf

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information																																																																		
2	<p>The effective regulation of tobacco and vaping products is a key element of Canada's Tobacco Strategy - one that supports achieving the ambitious target of less than 5 percent tobacco use by 2035. Tobacco use remains the leading cause of preventable death and disease in Canada, with approximately 48,000 people dying from smoking-related illnesses every year. Footnote1 Decades of tobacco control have resulted in significant progress being made with respect to reducing the number of Canadians who smoke. The smoking rate has seen a steady and continuing decline from 35 percent in 1985 Footnote2 to 13 percent in 2020, or 4.2 million Canadians who smoke Footnote3. Reducing rates of tobacco use to reach the goal of less than 5 percent tobacco use by 2035 remains a significant challenge. It was in this context that the TVPA sought to strengthen proven measures that had contributed to a reduction in tobacco use.</p>	<p>Continued progress against tobacco use cannot be presumed.</p> <p>Health Canada cites “proven measures that had contributed to a reduction in tobacco use” without identifying that success in recent decades has been is almost entirely achieved by better prevented the onset of tobacco use than by accelerating quitting.¹⁵ Health Canada acknowledged this in its recent program evaluation: “<i>This decline has largely been driven by a reduction in initiation (primarily teen smoking) and, unfortunately, deaths.</i>” ¹⁶</p> <p>The liberalization of the vaping market has increased the number of young Canadians using nicotine, threatening the progress against the onsets of nicotine and tobacco use but has not increased the number of Canadian smokers who are attempting to or succeeding at quitting.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Recommend that Parliament amend the law to set the objective of zero new users of commercial nicotine products, with penalties on industry if this goal is not met.	<p>Nicotine use among young Canadians has increased since the TVPA was implemented (2018)</p> <table><caption>Prevalence (%) of past 30 day cigarette smoking and e-cigarette use. Canadian youth age 15-19 (CTUMS, CTADS, CTNS)</caption><tr><th>Year</th><th>Current cigarette smoking (%)</th><th>Current e-cigarette use (%)</th></tr><tr><td>2000</td><td>25</td><td></td></tr><tr><td>2001</td><td>22</td><td></td></tr><tr><td>2002</td><td>22</td><td></td></tr><tr><td>2003</td><td>18</td><td></td></tr><tr><td>2004</td><td>18</td><td></td></tr><tr><td>2005</td><td>18</td><td></td></tr><tr><td>2006</td><td>15</td><td></td></tr><tr><td>2007</td><td>15</td><td></td></tr><tr><td>2008</td><td>15</td><td></td></tr><tr><td>2009</td><td>13</td><td></td></tr><tr><td>2010</td><td>13</td><td></td></tr><tr><td>2011</td><td>12</td><td></td></tr><tr><td>2012</td><td>11</td><td></td></tr><tr><td>2013</td><td>11</td><td>1</td></tr><tr><td>2014</td><td></td><td>3</td></tr><tr><td>2015</td><td>10</td><td>6</td></tr><tr><td>2016</td><td></td><td>6</td></tr><tr><td>2017</td><td>8</td><td>6</td></tr><tr><td>2018</td><td></td><td></td></tr><tr><td>2019</td><td>5.1</td><td>15.1</td></tr><tr><td>2020</td><td>3</td><td>14.4</td></tr></table>	Year	Current cigarette smoking (%)	Current e-cigarette use (%)	2000	25		2001	22		2002	22		2003	18		2004	18		2005	18		2006	15		2007	15		2008	15		2009	13		2010	13		2011	12		2012	11		2013	11	1	2014		3	2015	10	6	2016		6	2017	8	6	2018			2019	5.1	15.1	2020	3	14.4
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PSC. Newly-released data shows quitting rates are stagnant -- and most vapers are not reducing harm. <https://smoke-free-canada.blogspot.com/2022/03/newly-released-data-shows-smoking-rates.html>

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Office of Audit and Evaluation. Evaluation of the Health Portfolio Tobacco and Vaping Activities. 2016-2017 to 2020-2021. Draft August 2021. https://smoke-free.ca/pdf_1/2022/Evaluation-A-2021-000914.pdf

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<p>3 The new legislation sought to regulate vaping products in a way that underscored that these products were harmful for youth and non-users of tobacco products. At the same time, it recognized emerging evidence indicating that, while not harmless, vaping products were a less harmful source of nicotine for an individual who smokes and quits smoking completely. Around the same time that the new legislation was being enacted, vaping products were being used by significantly more people in Canada. In 2017, nearly 900,000 Canadians over the age of 15 had reported past 30-day use Footnote4 and the design of and market for these products had evolved significantly since they were first introduced in Canada in 2006.</p>	<p>Health Canada’s “balanced approach” was misguided.</p> <p>The discussion paper does not acknowledge that in its decision to liberalize the market for vaping products, Health Canada deliberately sought to “balance” the interests of protecting youth against the perceived benefits to adult smokers.</p> <p>This was a flawed foundation, implicitly seeking a zero-sum game of balancing the health interests of children against vapers. There is currently no scale on which the benefits of vaping products can be accurately measured against the harms. Moreover, Health Canada’s attempts to establish a trade-off between the health interests of children and those of adults lacks a transparent policy framework, as the department has never released details on its harm reduction policies.¹⁷</p> <p>There is no sound scientific basis for the claim that vaping products are “less harmful”, let alone sufficient confidence in the relative harm that would permit the department to calculate a balance between potential harms and potential benefits. Health Canada moved its assessment of vaping products from being “likely less harmful” to “less harmful” without any transparency in the science that was used to arrive at this conclusion, and leaving no formal record of the decision (see next column). Vaping products are harmful for the majority of users, including the majority of adult smokers who use these products in addition to smoking, and not instead of smoking.</p> <p>The discussion paper continues Health Canada’s failure to recognize that the harms of e-cigarettes can be imposed on people other than “youth and non-users of tobacco products.” Vaping products cause harm to smokers, including those who use them to quit smoking instead of using a less harmful method, those who continue to vape instead of ending their addiction, and those who are dual users.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none"> • Acknowledge that the “balanced” approach was flawed and propose a new way of managing the market that does not depend on permitting youth addiction. • Acknowledge the uncertainties around potential benefits and harms for e-cigarettes • Acknowledge that one reason that nearly 900,000 people were using vaping products in 2017 was because Health Canada was not enforcing its prohibition on the sale of vaping products. • Make transparent the evidence used and the decision-making process followed in assessing the harms of vaping products. 	<p>The federal government consciously offset the need to protect youth with an unjustified expectation of benefits to older Canadians.</p> <p><i>“The Tobacco and Vaping Products Act provides a balanced framework for vaping products by protecting youth and non-users of tobacco products from nicotine addiction and inducements to use tobacco, while allowing adults to legally access vaping products as a less harmful alternative to tobacco.”¹⁸ (emphasis added)</i></p> <p style="text-align: right;"><i>Health Canada. Backgrounder on Vaping Products. May 2018.</i></p> <p>Health Canada has failed to respond to the industry’s strategy of modernizing its products in order to expand the total market of nicotine users (by ‘using a “broader portfolio” of products to grow income and profits by regaining’ moments and consumers’).¹⁹</p> <div data-bbox="1849 727 2575 1136"> </div>

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For further elaboration on this point: Comments on proposed order amending schedules to the Tobacco and Vaping Products Act (Flavours). <http://www.smoke-free.ca/SUAP/2021/PSC%20comments%20on%20draft%20order%20to%20restrict%20vaping%20flavours-2021.pdf>

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Health Canada. Vaping Products. Backgrounder. <https://www.canada.ca/en/health-canada/news/2018/05/backgrounder-vaping-products.html>

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Physicians for a Smoke-Free Canada. BAT reboots and rebrands for "a better tomorrow". March 18, 2020

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Further information

4 During the course of developing and debating the proposed legislation, protecting young persons and non-users of tobacco products from nicotine addiction and tobacco use emerged as a key objective. At the same time, Parliament recognized that while vaping presented the potential to be a less harmful source of nicotine for persons who smoke and switch completely to vaping, there was uncertainty around the health risks and benefits of using these products. Accordingly, broad regulatory authorities pertaining to elements of the legislation, which included advertising, promotion, labelling, access, flavours, and product attributes, were included in the TVPA to enable the Government of Canada to respond to emerging evidence and fine-tune restrictions as needed. As an added safeguard, the Act also included a requirement for a legislative review of the provisions and operation of the TVPA, three years after coming-into-force, and every two years thereafter.

If Parliament had not disregarded Health Canada’s intention for even more lax regulation of e-cigarettes, things would be even worse.

This paragraph acknowledges that Parliament strengthened the TVPA without admitting that had the bill been passed the way the department drafted it, vaping product advertising would have remained.²⁰

In the TVPA, Health Canada proposed a weaker structure for advertising restrictions on vaping products than were implemented for cannabis or tobacco. For those two other products, all promotions are banned unless explicitly permitted. For vaping products, all promotions are permitted unless specifically prohibited.

The discussion paper asserts that Parliament recognized that vaping products posed less harm. This is not the case. Parliament made no formal decisions with respect to the relative harms of vaping products and cigarettes, either in Senate and Commons review of S-5, nor in the Commons Health Committee review which preceded it. In its 2014 review, the Committee acknowledged that some witnesses had offered this perspective, but did not endorse this opinion.²¹

- Recommendation:** The Minister’s report should:
- Acknowledge that the “harm reduction” strategy currently implemented by the department was not presented to Parliament.
 - Recommend to Parliament that vaping product promotion restrictions should be aligned with those for tobacco and cannabis.

In 2018, tobacco control groups warned parliament that the controls on promotion were too weak.²²



This fall, they might do so again.

Bill S-5 will legalize and regulate nicotine vaping products. That's a good thing, but the bill is flawed. It will allow the return of TV, radio and billboard ads for nicotine products made by the same companies that sell cigarettes. Harm reduction is one thing. Open season on promoting addiction to youth and non-smokers is another.

Amend Bill S-5 to ban mass media advertising for vaping products.



20 Clause 30.701 was added during the Senate’s Clause-by-Clause review on April 13, 2017. <https://sencanada.ca/en/Content/Sen/Committee/421/SOCI/21EV-53262-E>

21 House of Commons. Standing Committee on Health. Vaping: Towards a regulatory framework or e-cigarettes. 2014. <https://www.ourcommons.ca/Content/Committee/412/HESA/Reports/RP7862816/hesarp09/hesarp09-e.pdf>

22 Advertisement placed in the Hill Times April 2018

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5	While the review of the TVPA will focus on the federal legislation and efforts, it is important to recognize that all orders of government share responsibility within their own authorities/jurisdiction for adequately promoting and protecting the health of Canadians from known health hazards such as tobacco use. For example, provincial and territorial governments are primarily responsible for restricting smoking in workplaces and public places, such as restaurants, bars and shopping centres. For more information regarding the tobacco and vaping regulations in a particular province or territory, please consult their individual websites.	<p>Health Canada has abandoned its role as convenor of a national consensus tobacco control strategy.</p> <p>From the mid 1980s until 2001, Health Canada led the National Strategy to Reduce Tobacco Use (NSTRTU). This effort was abandoned around with the adoption of the Federal Tobacco Control Strategy (FTCS, in place until 2018), which was succeeded by Canada’s Tobacco Strategy. With the termination of the NSTRTU, Canada lost a pan-Canadian planning process to integrate governments and civil society partners. This has contributed to a policy rift between the federal and provincial governments and non-governmental organizations with respect to the delivery of a harm reduction approach through a liberalized market for vaping products as consumer goods.</p> <p>Health Canada should address conflicts between its approach and those of governments and agencies working to reduce tobacco use. Health Canada has undermined provincial governments who have put stronger measures in place by describing them as not consistent with the <i>Charter of Rights and Freedoms</i> (even though the federal government later adopted similar restrictions). These statements increased the vulnerability of provincial governments to charter challenges by industry.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Acknowledge that this “shared responsibility” between federal and provincial governments is not guided by a common strategy.• Outline Health Canada’s plans to develop a pan-Canadian strategy to reduce nicotine use.	<p>Health Canada has undermined provincial governments who have put stronger measures in place by describing them as not consistent with Canada’s Charter of Rights and Freedoms</p> <hr/> <p><i>Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology</i> <i>Issue No. 21 - Evidence - April 12, 2017</i></p> <hr/> <p><i>Senator Seidman: ... What we had proposed to us was that we should have only information and fact advertising and do away with all lifestyle advertising. I'd like your response to that.</i></p> <p><i>Ms. Philpott: To do away with all lifestyle advertising of e-cigarettes?</i></p> <p><i>Senator Seidman: Exactly.</i></p> <p><i>Ms. Philpott: That wouldn't be Charter compliant either. Based on the evidence we have to date, it all comes down to recognizing that to date the expectation would be that it would not meet the requirements of the Charter.²³</i></p>
6	The first review of the Act will focus primarily on the vaping-related provisions in the TVPA - in particular the provisions to protect young persons. More specifically, it will assess the operation of the Act, and examine the early evidence from the Act's first three years of existence to assess whether it is making progress towards achieving its stated vaping related objectives. Subsequent reviews, which will take place every two years, will focus on additional elements of the TVPA, including the tobacco-related provisions.	<p>Health Canada seems poised to defy the TVPA requirements for a report on the implementation of the entire TVPA, not just particular sections</p> <p>A review which focuses only on young persons is not consistent with the obligations under the TVPA for the Minister to “undertake a review of the provisions and operations of the Act.” In directing the Minister to file a report, Parliament did not offer the Minister discretion on which aspect to report on. Had this been their intention, they would have worded the requirement as “a review of selected provisions...” or language to that effect.</p> <p>A report which does not meet the conditions set in a statute is in contempt of a de-facto order of Parliament and may be a breach of parliamentary privilege.²⁴ The TVPA is binding on the crown and an infraction of the section requiring the timely tabling of a report is subject to a fine of up to \$25,000.²⁵</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Adhere to the requirements of TVPA s. 60.1 and address the entirety of the department’s experience in implementing the TVPA.	<p>The TVPA requires the minister to report on “the” - not “some” provisions and operations of the act.</p> <hr/> <p><i>Tobacco and Vaping Products Act. .</i></p> <p><i>Binding on Her Majesty : 3 This Act is binding on Her Majesty in right of Canada or a province.</i></p> <p>...</p> <p><i>Review of the Act</i> 60.1 (1) The Minister must, three years after the day on which this section comes into force and every two years after that, <i>undertake a review of the provisions and operation of this Act.</i></p> <p><i>Report to Parliament</i> (2) The Minister must, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.</p>

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Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology Issue No. 21 - Evidence - April 12, 2017 <https://sencanada.ca/en/Content/Sen/Committee/421/SOCI/21EV-53253-E>

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House of Commons. House of Commons Procedure and Practice. Chapter 10. The Daily Program, Footnote 93. <https://www.ourcommons.ca/MarleauMontpetit/DocumentViewer.aspx?DocId=1001&Sec=Ch10&Seq=3&Language=E#fnB93>

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Tobacco and Vaping Products Act, s. 3 and s. 48.

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		
	PSC Comments on text	Further information
<p>7</p> <p>We want to hear from you</p> <p>A key part of this review is seeking the perspectives of Canadians, experts, and other stakeholders as it relates to the operation of the TVPA, with a particular emphasis on protecting young persons.</p> <p>You are invited to participate in this consultation by sharing your perspectives. To assist in providing your input, a list of key questions for each vaping-related objective in the Act has been provided. You are also encouraged to submit any evidence that you may have to support your responses.</p> <p>You may participate by sending your written submission by April 27, 2022 to: legislativereviewtpva.revisionlegislativelpv@hc-sc.gc.ca</p>	<p>This public consultation is unreasonably close to the deadline and is therefore abusive of the consultation process.</p> <p>Health Canada has known for 5 years that a legislative review would be required. There is no requirement in the legislative review for a public consultation process.</p> <p>By initiating a public consultation roughly 2 months before the department’s report is due (and setting a deadline less than one month before tabling is required), the department has delayed public engagement beyond the time where it can be expected to be meaningfully integrated into the departmental position.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Provide additional transparency in how the submissions in this consultation process are applied to its legislative review.	<p>Health Canada acknowledged that consultations were supposed to begin in the fall of 2021, yet delayed the process for 5 months.</p> <p><i>In order to meet the legislative requirement for the Minister to table a report in Parliament by May 23, 2022, public consultations are proposed to start this fall.</i></p> <p><i>Briefing Packages – Minister and Deputy Minister</i> <i>October 2021</i>²⁶</p>
<p>8</p> <p>Please note: you must declare any perceived or actual conflicts of interest with the tobacco industry when providing input to this consultation. If you are part of the tobacco industry, an affiliated organization or an individual acting on its behalf, you must clearly state so in your submission.</p> <p>Health Canada is also interested in being made aware of perceived or actual conflicts of interest with the vaping and/or pharmaceutical industry. Therefore, please declare any perceived or actual conflicts of interest, if applicable, when providing input. If you are a member of the vaping and/or pharmaceutical industry, an affiliated organization or an individual acting on their behalf, you are asked to clearly state so in your submission.</p>	<p>In the absence of regulatory measures, Health Canada is shifting responsibility for managing conflict of interest to the public.</p> <p>This consultation paper states that individuals affiliated with tobacco companies “must clearly state” their relationship, but there is no legal requirement for them to do so and there is no published policy requirement. This is because Health Canada has failed to put in place regulatory measures to implement Article 5.3 of the Framework Convention on Tobacco Control. As a hypothetical example, an individual who works as a sales representative for Imperial Tobacco is under no legal obligation to identify this position when responding to this public consultation. As a result, Health Canada cannot infer that all conflicts of interest have been stated.</p> <p>This consultation paper distinguishes between conflicts of interest with tobacco companies (“must clearly state”) and those affiliated with vaping product suppliers (“is also interested” ... “please declare ...”). No rationale for this distinction is made.</p> <p>The absence of guidelines or for FCTC Article 5.3 implementation is the responsibility of Health Canada. The introduction of S-5 and the TVPA (more than a decade after Canada signed the FCTC) was an opportunity to give legal standing to this requirement.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Recommend that the TVPA be amended to include conflict of interest provisions consistent with the FCTC guidelines.• These COI provisions should apply to manufacturers of all products managed under the legislation.	

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
9	<p>Please do not include any personal information when providing feedback to Health Canada. The Department will not be retaining your e-mail address or contact information when receiving your feedback and will only retain the comments you provide. Submissions will be summarized in a final report; however, comments will not be attributed to any specific individual or organization. This final report will be tabled in Parliament in 2022 and will be made public on Canada.ca at that time.</p>	<p>Health Canada seems poised to defy the TVPA requirements for a report on the implementation of the entire TVPA to be filed on May 23, 2022 and not later.</p> <p>The law is clear that the Minister must begin preparing a report no later than May 23, 2021 and must table the report no later than May 23, 2022. As identified in line 6, the late filing of a report late would be a breach of Parliamentary privilege and of the TVPA.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Adhere to the requirements of the TVPA and be tabled no later than May 23, 2022.	<p>The TVPA requires the minister to report by May 23, 2022 – not sometime “in 2022”.</p> <p><i>Tobacco and Vaping Products Act. .</i></p> <p><i>Binding on Her Majesty : 3 This Act is binding on Her Majesty in right of Canada or a province.</i></p> <p>...</p> <p><i>Review of the Act 60.1 (1) The Minister must, three years after the day on which this section comes into force and every two years after that, undertake a review of the provisions and operation of this Act.</i></p> <p><i>Report to Parliament (2) The Minister must, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.</i></p>
10	<p>Discussion Areas</p> <p>In the three years since the TVPA was enacted, the vaping product market continues to evolve and additional evidence is emerging. The Act includes an overarching purpose as it relates to vaping products, which is to support the overall tobacco control objectives of the Act and prevent vaping product use from leading to the use of tobacco products by young persons and non-users of tobacco products.</p> <p>In particular, the Act enumerates five specific vaping-related objectives:</p> <ol style="list-style-type: none">protect young persons and non-users of tobacco products from inducements to use vaping products;protect the health of young persons and non-users of tobacco products from exposure to and dependence on nicotine that could result from the use of vaping products;protect the health of young persons by restricting access to vaping products;prevent the public from being deceived or misled with respect to the health hazards of using vaping products; andenhance public awareness of those hazards. <p>In order to meet these objectives, the Act regulates the manufacture, sale, labelling and promotion of vaping products sold and manufactured in Canada. Vaping products are defined as a distinct set of products that are separate from tobacco products.</p>	<p>Health Canada is not consistent in its decisions to make distinctions between types of nicotine-bearing products. It accord vaping products a privileged standing that is denied to other products marketed as ‘reduced risk’.</p> <p>The distinctions between vaping products and cigarettes (inhaled, but different emissions) are arguably no greater than the distinctions between vaping products and heat not burn products (inhaled, but different emissions) or between cigarettes and oral tobacco (mode of delivery and exposure to different products). The evidence on continuum of risk for these different tobacco products is similar to that for vaping products, and Health Canada has not made transparent why it accepts reduced risk regulation for vaping products but not for heat-not-burn or snus. (To be clear, we do not advocate reduced risk regulation for any).</p> <p>A better approach is to include vaping products within the definition of tobacco. Other governments (including the government of Quebec) have done so. A legislative amendment to this effect will bring into force certain other regulatory requirements (e.g. reporting regulations) and will otherwise facilitate implementation of the act.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Include proposals to include all non-therapeutic nicotine (including synthetic nicotine) in the TVPA definition of tobacco products as an interim measure until a more comprehensive modernization of the Act is developed.	

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11	Measures relating to vaping products contained in the Act are similar to, but not as restrictive as, those that apply to tobacco products. This reflects the scientific evidence available at the time the TVPA was put in place, that vaping products are harmful, but less harmful than tobacco products. As such, the legislation restricts access to vaping products to persons over 18 years of age and also includes significant restrictions on the promotion of vaping products, including prohibiting advertising that appeals to youth, lifestyle advertising, testimonials or endorsements and sponsorship promotion. It also prohibits the promotion of flavours that are appealing to youth or specific flavour categories listed in the Act (confectionary, dessert, cannabis, soft drink and energy drink) and restricts giveaways of vaping products or branded merchandise. The Act also includes regulatory authorities to respond to emerging issues, as required.	<p>Health Canada’s communications regarding the risks of e-cigarettes lack clarity and scientific support.</p> <p>The discussion paper states that “scientific evidence was available at the time the TVPA was put in place that vaping products are harmful, but less harmful than tobacco products.” In fact, there was no firm evidence in November 2016 that e-cigarettes were safer, nor was evidence firm on May 23, 2018 when the Royal Assent was given.^{27 28}</p> <p>Since 2018, Health Canada has told Canadians that “vaping is less harmful than smoking” and that “If you are a smoker, vaping is a less harmful option than smoking.” The reference given for these claims is the 2018 report of the National Academies of Science Engineering and Medicine.²⁹ While NASEM did acknowledge that “The evidence about harm reduction suggests that across a range of studies and outcomes, e-cigarettes pose less risk to an individual than combustible tobacco cigarette,” (emphasis added) they made no firm conclusion to that effect. The committee found no evidence with respect to the long-term outcomes (which is where most of the harms of smoking lie) and recommended research to address these gaps.</p> <p>When the TVPA was introduced, the departmental position indicated a level of uncertainty regarding relative risks (“likely less harmful”) which was in line with the NASEM “suggests,,,less risk”. Health Canada’s description was changed between 2016 and 2018 to “less harmful,” removing uncertainty from this claim. When asked for a record of this decision, the department replied that there was no such document.³⁰</p> <p>Since 2018, the weight of evidence increasingly points to e-cigarettes being quite harmful,³¹ yet Health Canada has not revised its public positions and does not reference research more recent than 2018.^{32 33}</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Include details of measures taken and planned to review the evidence on e-cigarettes and make transparent the government’s position on the relative and absolute harm of each product category regulated under the TVPA and FDA.	<p>Health Canada had no formal decision process to support its conclusion that e-cigarettes were certainly “less harmful” than cigarettes ³⁴</p> <div><h3>Informal Request for ATI Records Previously Released</h3><p>Organization: Health Canada</p><p>Year: 2021</p><p>Month: March</p><p>Request Number: A-2020-001624</p><p>Request Summary: In 2016, Health Canada described vaping products as "likely less harmful". In 2018, the department was describing these products as "less harmful". A record of the decision made by department officials in 2017 or 2018 to change the description of relative harmfulness in this way, and for the evaluation made of the evidence at that time (2017 to 2018) which was used to support this decision.</p><p>Disposition: No records exist</p><p>Number of pages: 0</p></div>

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Information on progress of legislation available at: <https://www.parl.ca/LegisInfo/en/bill/42-1/S-5>

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Collishaw, N. Letter to Minister Petittas-Taylor. May 30, 2018. https://www.smoke-free.ca/pdf_1/2018/May%2030%20Ginette%20Petittas-Taylor%20Vaping.pdf

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Public Health Consequences of E-cigarettes. A Consensus Study Report of the National Academies of Sciences, Engineering and Medicine. The National Academies Press, Washington D.C.; 2018. www.nationalacademies.org/eCigHealthEffects

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Access to Information Requests. A-2020-001624. <https://open.canada.ca/en/search/ati/reference/8cce5a29a0619c1e09b9d8fcd0b26f17>

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Physicians for a Smoke-Free Canada. Science has marched on: it is time to update the advice to Canadians. February 14, 2022. <https://smoke-free-canada.blogspot.com/2022/02/science-has-marched-on-it-is-time-to.html>

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Health Canada. Risks of Vaping. <https://www.canada.ca/en/health-canada/services/smoking-tobacco/vaping/risks.html>

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Health Canada. Vaping and Quitting Smoking. <https://www.canada.ca/en/health-canada/services/smoking-tobacco/vaping/smokers.html>

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Access to Information Request A-2020-001624I. <https://open.canada.ca/en/search/ati/reference/8cce5a29a0619c1e09b9d8fcd0b26f17>

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12	Over the past three years, the Government of Canada has used these regulatory authorities to implement further restrictions on vaping products to protect youth and non-users of tobacco products	<p>Health Canada has scrambled to fix the problems it made in adopting a “business friendly”³⁵ policy framework for vaping products.</p> <p>Health Canada implicitly acknowledged that it erred in providing broad permissions for vaping advertising by introducing regulations to remove those permissions within 2 years.³⁶ It reversed its decision to allow high-nicotine vaping liquids within 3 years.³⁷ It has proposals for further regulations which are not yet in place, including flavour restrictions and restrictions on packaging and design features).³⁸</p> <p>There was a barrage of advertising in all media in 2018 and 2019 before there was any regulation or enforcement (see next column). This coincided with an upsurge in youth vaping. This upsurge is imperfectly documented because monitoring activities were delayed or suspended during the same period. Many of those young vapers are still vaping or have started smoking because they became addicted to nicotine. It is an error that cannot be corrected. We can hope, however, that youth will be better protected in the future. Widespread, uncontrolled advertising in 2018 and 2019 is documented in a 2019 report by PSC:</p> <p>Other regulations which the department informed Parliament would be in place on which no forward movement has been publicized include Vaping Products Reporting Regulations.³⁹</p> <p>By contrast, when the Cannabis Act was passed in 2018, the regulations to implement measures like reporting had already been developed and were immediately brought into force.⁴⁰ In legalizing these two different products, the department took a much less precautionary approach with vaping.</p> <p>In September 2019, Canadian health organizations proposed that the government use the powers of the Department of Health Act to put in place an interim order to restrict flavours, reduce nicotine content, curb advertising and otherwise put vaping products under the same types of restrictions that are in place for tobacco products.⁴¹ The department rejected this approach.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none"> Acknowledge that the failure to implement regulations in a timely manner likely contributed to the high frequency of use of these products by young Canadians. Recommend a mechanism to accelerate the implementation of regulations in the tobacco-nicotine market, including the use of interim orders. 	<p>Health Canada’s permissive policy for vaping advertising predictably led to widespread promotions – including promotions that included lifestyle imagery, evoked risk and daring and testimonials. No charge were ever laid.⁴²</p> 

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Liber, A. Formulating a Regulatory Stance: The Comparative Politics of E-Cigarette Regulation in Australia, Canada and New Zealand. PhD Dissertation. Michigan. https://deepblue.lib.umich.edu/bitstream/handle/2027.42/162993/acliber_1.pdf?sequence=1

On July 8, 2020 Health Canada announced the final Vaping Products Promotion Regulations (SOR/2020-143). <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2020-143/index.html>




On June 10, 2021, the Nicotine Concentration in Vaping Products Regulations (SOR/2021-123) were finalized. <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2021-123/index.html>

Health Canada. Forward Regulatory Plan 2021-2023: Regulations Amending the Vaping Products Promotion Regulations (Package and Design Features) <https://www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines/acts-regulations/forward-regulatory-plan/plan/regulations-amending-vaping-products-promotion-regulations.html>

Forward Regulatory Plan 2021-2023: Vaping Products Reporting Regulations <https://www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines/acts-regulations/forward-regulatory-plan/plan/vaping-reporting.html>

Cannabis Regulations (SOR/2018-144) <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2018-144/index.html>

Physicians for a Smoke-Free Canada. Enforcing the Tobacco and Vaping Products Act to protect young people from the current marketing practices of the vaping industry in Canada. 2019. smoke-free.ca/wp-content/uploads/2020/04/2019-05-Vape-ads.pdf

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
13	<p>This discussion paper will examine each of the vaping-related objectives listed above, provide a summary of the current context, and describe federal government actions that have been taken to respond to issues that have emerged since the legislation was enacted. Each section will include a list of key questions to assist in providing your input.</p> <p>Protect young persons and non-users of tobacco products from inducements to use vaping products</p> <p>Context :</p> <p>The Act aims to protect young persons and non-users of tobacco products from inducements to use vaping products. As such, the legislation includes significant restrictions on the promotion of vaping products, including restricting giveaways of vaping products or branded merchandise, along with prohibiting the promotion of flavours that are appealing to youth or specific flavour categories listed in the Act (confectionary, dessert, cannabis, soft drink and energy drink). It also prohibits advertising that appeals to youth, lifestyle advertising, testimonials or endorsements and sponsorship promotion.</p>	<p>The narrow purpose of the TVPA fails to protect Canadian adults and smokers from inducements to vape, even though this likely results in harm for most of them.</p> <p>The structure of the TVPA legislation (including the purpose) is designed to protect young people and non-tobacco-users from inducements to vape, but deliberately allows such inducements for smokers. Underlying this approach is the assumption that, on balance, it is beneficial to smokers to be encouraged to use vaping products sold under the (non-therapeutic) conditions of the TVPA. This assumption has been challenged by research demonstrating that there is no greater likelihood that smokers will stop using cigarettes if they start vaping if these products are sold on the consumer product market although there is a greater likelihood if they are sold as therapeutic products.⁴³</p> <p>Other assumption underlying this approach is that young people can be protected from the marketing that is permitted for smokers, that vaping manufacturers will (or can be forced to) obey marketing restrictions. Experience has challenged these assumptions to.</p> <p>In the 1960s to 1980s, Health Canada supported a similar approach to tobacco marketing, where suppliers were required (through a voluntary code) to respect specific restrictions on marketing. This too was a failure, proving that a comprehensive ban on all marketing for the public was necessary if young people were to be protected.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none"> Recommend to Parliament that all non-therapeutic nicotine products be subject to the same marketing restrictions. 	<p>Vaping product advertisements continue to reach young people</p> <div>   </div> <p>Toronto, 2019 Ottawa, 2022</p>
14	<p>Vaping product usage in Canada increased overall after the TVPA was enacted in 2018. Some of this can be attributed to the expansion of the market as a result of the introduction of a new legal framework for these products. At the same time, vaping product technology and design was changing rapidly with many new products arriving on the market that were smaller, sleeker and easier to use, contained high concentrations of nicotine, and offered in a variety of flavours. Major international players in the vaping product market also began to introduce new products in Canada. During this same period, television, social media and retail advertising which could be seen or heard by youth increased dramatically.</p>	<p>The impact of the TVPA on the way e-cigarettes were marketed was entirely predictable – and was predicted. The market changes did not increase vaping among adults – only among adolescents.</p> <p>The growth in marketing activity and the entrance of multinational companies was predictable and was predicted. These were not inadvertent events, but were direct results of the policy decisions that framed Bill S-5. The products marketed by these companies were directed at younger people and non-users. The new products did not result in increased vaping product usage among adults after 2018. As Figure 1 in the discussion paper shows, the prevalence of current vaping has not grown since 2015, and has been stable at 3%. The prevalence has only grown for young people.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none"> Acknowledge that the market developments after 2018 were predicted during committee review. Acknowledge that the TVPA increased use among young people only while having little or not impact on overall quitting success. 	<p>In 2017, Health Canada was warned that the market changes it was triggering would result in irresponsible marketing.⁴⁴</p> <div>  </div>

42 Physicians for a Smoke-Free Canada. Enforcing the Tobacco and Vaping Products Act to protect young people from the current marketing practices of the vaping industry in Canada. 2019. smoke-free.ca/wp-content/uploads/2020/04/2019-05-Vape-ads.pdf

43 Wang, RJ et al. E-Cigarette Use and Adult Cigarette Smoking Cessation: A Meta-Analysis. Am J Public Health . 2021 Feb;111(2):230-246.

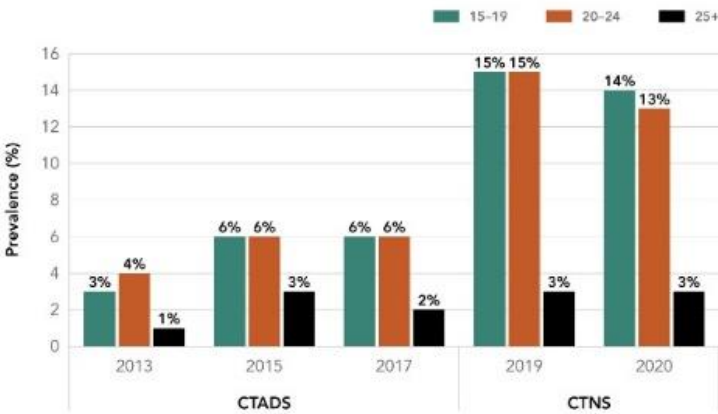
44 Physicians for a Smoke-Free Canada. Brief to the House of Commons Standing Committee on Health. February 2018. <https://www.ourcommons.ca/Content/Committee/421/HESA/Brief/BR10593746/br-external/PhysiciansForASmokeFreeCanada-e.pdf>

Physicians for a Smoke-Free Canada. Brief to the Senate Committee April 2017. <https://smoke-free.ca/wp-content/uploads/2020/04/S-5-submission.pdf>

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15 All of these factors played a role in the rise in youth vaping. Surveys have shown that youth vaping rates doubled over the two-year period since 2017, increasing from 6 percent (127,000) in 2017^{Footnote5} to 14 percent (291,000) in 2020, unchanged from 2019.^{Footnote6} While the most recent available data, released in March 2021 by Statistics Canada, revealed that the concerning trend of rising youth vaping rates may be levelling off, additional data is needed to reliably assess trends, especially in light of the social and economic restrictions imposed by the COVID-19 pandemic. Daily use of vaping products by youth aged 15-19 years of age was 5 percent (107,000) in 2020.

Figure 1 – Past 30-day vaping prevalence in Canada by age. Canadian Tobacco Alcohol and Drugs Survey (CTADS) 2013, 2015, 2017 / Canadian Tobacco and Nicotine Survey (CTNS) 2019, 2020.



Note: Caution is warranted when comparing results from the Canadian Tobacco, Alcohol and Drugs Survey and the Canadian Tobacco and Nicotine Survey, given the differences in the sampling frames, data collection modes and timeframes, and sample sizes of the surveys

PSC Comments on text

Instead of increasing surveillance and monitoring after liberalizing the vaping market, Health Canada reduced it.

Since 2018, Health Canada retired or suspended two major surveys which, had they been continued, would have provided information on the impact of the changes to the vaping market.

Health Canada conducted the Canadian Tobacco Alcohol and Drug Survey in 2017, but terminated the survey after that date. (Bill S-5 was introduced in 2016 and passed in 2018.) The (much smaller) Canadian Tobacco and Nicotine Survey, was not in the field until the fall of 2019. Plans for that survey to be done on a semi-annual basis were scuttled, and it is now only in the field every year. The Canadian Student Tobacco, Alcohol and Drug Survey was in the field in 2013, 2015, 2017 and 2019, but was not in the field for 2021 as a result of Health Canada procurement decisions.

There is no longitudinal survey being conducted which would inform policy by demonstrating whether vaping is associated with increased tobacco use (by previous non-users) or with decreased tobacco use (by smokers). The Vaper Panel followed for Health Canada by Environics Research suggests that there has been no decrease in tobacco use among those Canadian vapers who have been followed for 3 years.⁴⁵

Recommendation: The Minister's report should:

- Acknowledge that decisions to terminate and change suppliers for surveys has resulted in data gaps and impeded knowledge on current nicotine use.

Further information

Canadian researchers confirm that the decision to liberalize the market for vaping products had very little impact on smokers' transitioning from combustibles to e-cigarettes, but did drive usage among youth and non-smokers.⁴⁶

What this paper adds

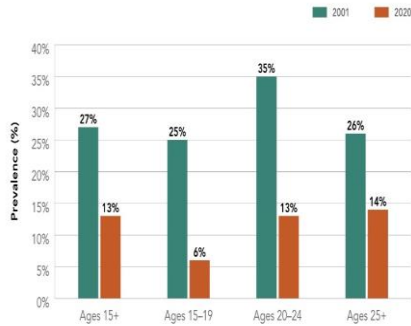
- ▶ In May 2018, Canada changed their regulatory framework for e-cigarettes and permitted the sale of nicotine-containing e-cigarettes and e-cigarette advertising/promotion.
- ▶ Studies have highlighted increases in youth vaping following Canada's new framework, but there is little research at the population level. This study is therefore the first to examine how smoking and vaping evolved between 2017 and 2019, using data from two nationally representative surveys.
- ▶ Between 2017 and 2019, the prevalence of current smoking among Canadians decreased (15.1%–11.9%) and, in 2019, current smoking was higher among adults than youth.
- ▶ Between 2017 and 2019, the prevalence of vaping doubled in Canada (past 30-day: 2.8%–4.7%, daily: 1.0%–2.1%). Never smokers, youth, and young adults accounted for most of this increase.
- ▶ In 2019, over half of all past 30-day vapers and almost half of daily vapers reported using e-cigarettes for reasons other than smoking cessation, abstinence or reduction.
- ▶ Findings suggest that e-cigarettes should be better targeted toward adult smokers for the purpose of smoking cessation in Canada.

45 Physicians for a Smoke-Free Canada. Health Canada study following vapers over 2 years found no reduction in tobacco smoking. <http://smoke-free-canada.blogspot.com/2021/11/health-canada-study-following-vapers.html>
46 East, KA et al. Smoking and vaping among Canadian youth and adults in 2017 and 2019. Tobacco Control. 2021.

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16 There have also been concerns that an increase in youth vaping may lead to increases in youth smoking rates in Canada. However, recent data, presented below, suggests that, thus far, this has not been the case. Smoking rates, for both youth and adults, continue to decline and are at an all-time low. The prevalence of daily smoking among youth aged 15 to 19 years was so low (small sample size) that it was considered to be 'unreportable' in 2020.

Figure 2 - Past 30-day smoking prevalence in Canada by age. Canadian Community Health Survey (CCHS) 2001, 2020.



PSC Comments on text

The discussion paper fundamentally misunderstands (or, worse, misrepresents) the analytic methods used to establish whether vaping leads to an increase in smoking.

The (welcome) fact that smoking rates among young people continue to fall does not mean that e-cigarette use is not contributing to smoking by those young Canadians who have been recruited to nicotine use as a result of the policy decision to allow a liberalized vaping market.

The fallacy of this ecological argument has been well described.⁴⁷ The impact of vaping on youth smoking cannot be determined by repeated cross-sectional studies, but requires different data (e.g. longitudinal). The evidence in support of a substantiated link between vaping and later smoking among young people has been reviewed and upheld by repeated independent scientific panels commissioned by other governments.^{48 49 50} Studies have debunked the vaping industry argument that this relationship stems from a “common liability”, and have shown that there are distinct risk factors associated with youth vaping and smoking.⁵¹

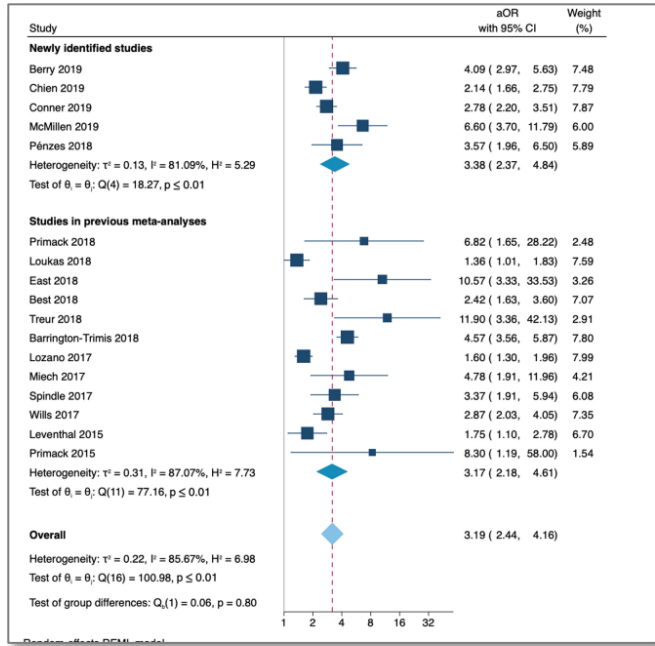
Health Canada has failed to undertake or commission a proper analysis of the scientific literature and has failed to collect data that would allow for a longitudinal study of Canadian youth. In these circumstances, the claim that an impact of vaping on tobacco use “has not been the case” in Canada is outrageous and irresponsible.

Recommendation: The Minister’s report should:

- Detail the methods used by the department in arriving at the conclusion that vaping has not contributed to tobacco use in Canada by young people (or adults and former smokers).

Further information

Meta-analyses show that young people who vape are 3 to 4 times more likely to smoke.



47 Chapman, S. et al. The Gateway Effect of E-cigarettes: Reflections on Main Criticisms <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6468127/pdf/nty067.pdf>

48 Ireland. Health Research Board. Electronic cigarette use and tobacco cigarette smoking initiation in adolescents. An evidence review <https://www.hrb.ie/publications/publication/electronic-cigarette-use-and-tobacco-cigarette-smoking-initiation-in-adolescents-an-evidence-review/>

49 Baenziger, ON et al. E-cigarette use and combustible tobacco cigarette smoking uptake among non-smokers, including relapse in former smokers: umbrella review, systematic review and meta-analysis. BML Open 2021 <https://bmjopen.bmj.com/content/11/3/e045603>

50 European Commission. Scientific Committee on Health, Environmental and Emerging Risks (SCHEER) April 2021 https://ec.europa.eu/health/system/files/2021-04/scheer_o_017_0.pdf

51 Physicians for a Smoke-Free Canada. Science has marched on: it is time to update the advice to Canadians. 14 February 2022. <https://smoke-free-canada.blogspot.com/2022/02/science-has-marched-on-it-is-time-to.html>

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17	<p>With respect to adult use, there is some evidence that adults who smoke are using vaping products as a less harmful source of nicotine. Surveys also show that vaping rates for adults 25 years and older have changed little since 2015.Footnote7 Data from the 2020 Canadian Tobacco and Nicotine Survey indicate that vaping products were used by 3 percent (854,000) of Canadians aged 25 years and older.Footnote8 Among this group, 94 percent (799,000) identified themselves as current or former smokers.Footnote9 Among those who currently smoke and vape, 49 percent (192,000) stated that they are vaping to quit and/or reduce the number of cigarettes smoked.Footnote10</p>	<p>Health Canada fails to acknowledge that the use of vaping products can harm smokers.</p> <p>The sentence: “With respect to adult use, there is some evidence that adults who smoke are using vaping products as a less harmful source of nicotine” suggests that smokers who also vape can reduce harm. This claim is not referenced, and is not consistent with current evidence.</p> <p>Smokers who use e-cigarettes while smoking and smokers who use e-cigarettes instead of other quit methods are not reducing harm, they are increasing it. A recent review published in Circulation noted “<i>dual use of e-cigarettes and cigarettes has been associated with higher rates of cardiovascular disease (OR = 1.36 [95% CI: 1.18–1.56])</i>”²⁶, and cardiovascular risk factors, including metabolic syndrome (OR = 1.57 [95% CI: 1.03–2.40]) versus sole cigarette users. Smoking cessation aided by e-cigarettes or other non-combustible nicotine/tobacco products was recently shown to put quitters at increased risk of cardiovascular disease relative to those who quit without use of these alternatives (HR = 1.31 [95% CI: 1.01–1.70]).”⁵²</p> <p>Health Canada’s suggestion that reducing the quantity of cigarettes smoked achieves a reduction is not supported by recent evidence reviews. A recent systematic review and meta-analysis concluded: “<i>We did not find any significant difference in all-cause mortality, all-cancer risks, and smoking/tobacco-related cancer risk among those who reduced</i>”.⁵³</p> <p>For the large majority of Canadians who are using vaping products, these are increasing, not decreasing harm. While 94% of vapers over 25 years of age who responded to the Canadian Tobacco and Nicotine Survey identify as current or former smokers, of Canada’s entire vaping population, just over one-third (36%) were former smokers, one-third were current smokers (33%) and just under one-third (30%) were never smokers.⁵⁴</p> <p>Results from the Rapid Response module of the 2020 Canadian Community Health Survey provide additional insight, showing that only 1 in 20 vapers is a recent quitter (6%) (see figure in next column).</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">Detail the methods used by the department in arriving at the conclusion smokers who vape are reducing harm.	<p>Fewer than one-third of Canadian vapers are former smokers. Only 1 in 20 is a recent quitter.</p> <p>Canadian Community Health Survey, Rapid Response 2020</p> <div><p>Share of past-month vapers, CCHS 2020</p><table><thead><tr><th>Category</th><th>Percentage</th></tr></thead><tbody><tr><td>Daily Smoker</td><td>24%</td></tr><tr><td>Occasional Smoker</td><td>20%</td></tr><tr><td>Other former</td><td>22%</td></tr><tr><td>Past-year quitter</td><td>6%</td></tr><tr><td>Abstinence</td><td>15%</td></tr><tr><td>Experimenter</td><td>13%</td></tr></tbody></table></div>	Category	Percentage	Daily Smoker	24%	Occasional Smoker	20%	Other former	22%	Past-year quitter	6%	Abstinence	15%	Experimenter	13%
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52

Neczypor, EW et al. E-cigarettes and cardiopulmonary health: A review for clinicians. Circulation. 2022 January 18;

53

Chang, JT et al. Cigarette Smoking Reduction and Health Risks: A Systematic Review and Meta-analysis. Nicotine and Tobacco Research. April 2021.

54

Physicians for a Smoke-Free Canada. The Canadian Tobacco & Nicotine Survey, 2020-21 <http://www.smoke-free.ca/SUAP/2021/CTNS-2020-results.pdf>

18 Given the rise in vaping products promotion following the introduction of the Act, to which youth were exposed on television, in social media, at events, on outdoor signs, and in retail locations, the Government took action to strengthen the existing restrictions on promotions by putting in place the *Vaping Products Promotion Regulations (VPPR)* in July 2020. The VPPR prohibit the advertising of vaping products that can be seen or heard by young persons. For example, advertising in places such as recreational facilities, public transit facilities, on broadcast media, in publications, including those online, is prohibited, if the ads can be seen or heard by anyone under eighteen years of age. To limit youth exposure to the promotion of vaping products at points of sale, the VPPR also prohibit the display of vaping products and vaping product-related brand elements that can be seen by young persons.

Health Canada’s controls on vaping promotions were too late to protect hundreds of thousands of young Canadians.

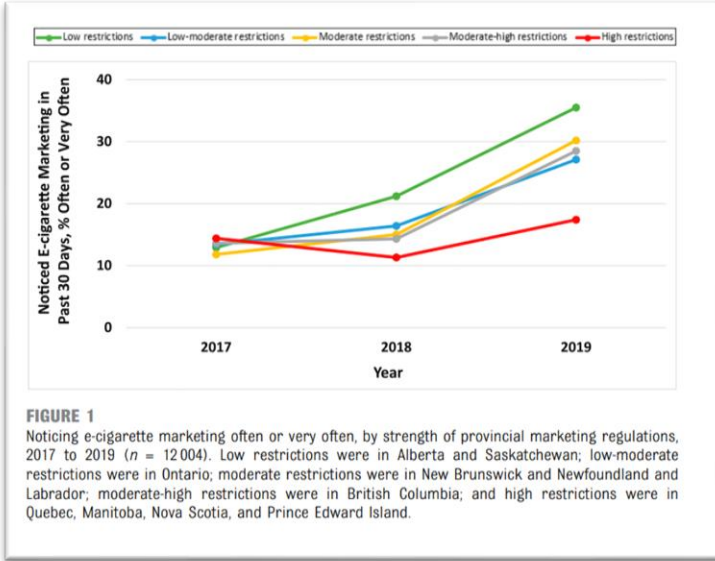
The government acknowledges here that they waited until their legislation resulted in harm to young people before introducing measures to protect these vulnerable Canadians from inducements to use these harmful products.

Although the vaping promotion regulations were developed and implemented quickly (relative to other tobacco control regulations), it took more than 2 years for the government to implement restrictions which were identified as needed when the proposed legislation was before parliament. The leave-regulations-to-later approach taken with respect to legalizing the recreational vaping market stands in contrast to the approach taken by Health Canada when legalizing the cannabis market, for which regulations were in place before the law came into force.⁵⁵

Some provincial governments had the wisdom and foresight to impose stronger restrictions before legalizations. Research has shown that young people living in those jurisdictions were less likely to use vaping products (see next column)

- Recommendations:** (repeated from line 12). The Minister’s report should:
- Acknowledge that the failure to implement regulations in a timely manner likely contributed to the high frequency of use of these products by young Canadians.
 - Recommend a mechanism to accelerate the implementation of regulations in the tobacco-nicotine market, including the use of interim orders.

Young people with only the benefit of federal restrictions on promotion (green line) were much less likely to vape than those living in provinces with stronger restrictions (red line) ⁵⁶



55 Canada Gazette. Part II. Wednesday July 11, 2018.
56 Hammond, D et al. E-cigarette Marketing Regulations and Youth Vaping: Cross-Sectional Surveys, 2017–2019. PEDIATRICS Volume 146, number 1, July 2020:e20194020

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19	<p>To ensure compliance with the Act and its regulations, Health Canada undertakes proactive compliance promotion activities (e.g. distributing educational materials) to raise awareness within the vaping industry of their obligations under the TVPA and its regulations. Health Canada inspectors regularly perform inspections of vaping product retailers, specialty vaping establishments, manufacturers, online-based points of sale, and any other establishments where vaping products are sold, promoted, manufactured or labelled. Regular enforcement actions to address non-compliance include issuing warning letters and seizing products. For example, Health Canada inspectors visited more than 3,000 specialty vape shops and convenience stores across the country between July and December 2019. These inspections resulted in the seizure of more than 80,000 units of non-compliant vaping products. In 2020 and 2021, within the constraints of the COVID-19 pandemic, Health Canada conducted virtual inspections of 304 Instagram accounts of online retailers, particularly as it relates to promotion restrictions. Non-compliance was observed in 53 percent of inspections and resulted in warning letters being issued to the regulated parties. Health Canada continues to monitor to ensure compliance.</p> <p>Since the new legislation was enacted in 2018, inspection activities carried out at retail establishments and online have revealed a range of non-compliance issues related to promotions aimed at youth. Health Canada has responded to these instances of non-compliance by issuing warning letters, seizing vaping products and by shutting down prohibited promotions in public places. Health Canada also engaged with vaping industry associations to urge them to take measures with their members to stop the continued, widespread non-compliance in the vaping market. The Department also publicly discloses the results of its compliance efforts on its website to further promote compliance within the industry and to provide transparency for Canadians.</p>	<p>After 4 years, Health Canada has failed to achieve compliance with its law.</p> <p>The discussion paper does not explain why Health Canada had not prosecuted any of the non-compliant suppliers, despite repeated infractions.⁵⁷ It does not explain why its policy to “continue to monitor to ensure compliance” is not achieving compliance.</p> <p>The department has not made public any enforcement efforts with respect to major suppliers for which complaints were filed with the department (e.g. television advertisements for Vype in September-November 2019, #Factsnotfear campaign in January 2020, Clear the Smoke campaign in March 2022, etc.). By inference, there have either been no compliance actions taken or the Department is not fully disclosing the results of its compliance efforts.</p> <p>The consultation document does not identify the work done by Health Canada to monitor age-getting mechanisms, even though this work was undertaken in 2020-2021.⁵⁸</p> <p>The discussion paper does not identify the internal barriers to compliance reported in the departmental evaluation: “<i>human resource issues, in particular a high turnover at the Director level and contention regarding the different job classifications of employees doing similar work, information technology system-related barriers and issues related to COVID.</i>” Also missing is the recommendation that the legislation be amended to allow for administrative monetary penalties, the ability to recall products, and requirements of manufacturers, importers and sellers to be licensed by Health Canada.⁵⁹</p> <div><p>Recommendation: The Minister’s report should:</p><ul style="list-style-type: none">• Provide parliamentarians with a report on all the complaints received and proactive inspection results and the actions taken in response.• Include Health Canada’s plan to ensure higher level compliance by the end of 2022.• Advise Parliament on the need to adopt licensing requirements and the power to impose administrative monetary penalties.</div>	<p>Because resources were diverted to address non-compliance by vaping suppliers, Health Canada drastically reduced its compliance efforts on tobacco.</p> <p><i>Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021.</i>⁶⁰</p> <p>“In 2019-2020, fewer tobacco inspections were completed due to the prioritization of vaping product inspections caused by the recent coming into force of the TVPA and the alarming increase in youth vaping rates.”</p> <table><tr><th rowspan="2">Fiscal Year</th><th colspan="2">Tobacco Retail Inspections</th><th colspan="2">Tobacco Manufacturer Inspections</th></tr><tr><th># of Completed Inspections</th><th>% of Planned Inspections</th><th># of Completed Inspections</th><th>% of Planned Inspections</th></tr><tr><td>2016-17</td><td>6792</td><td>101%</td><td>66</td><td>99%</td></tr><tr><td>2017-18</td><td>4109</td><td>100%</td><td>67</td><td>102%</td></tr><tr><td>2018-19</td><td>6716</td><td>99%</td><td>73</td><td>101%</td></tr><tr><td>2019-20</td><td>691</td><td>33%</td><td>2</td><td>4%</td></tr></table> <p>“Resource capacity and a limited range of enforcement tools available ... limit the program’s ability to address non-compliance issues in a timely manner in certain circumstances.</p>	Fiscal Year	Tobacco Retail Inspections		Tobacco Manufacturer Inspections		# of Completed Inspections	% of Planned Inspections	# of Completed Inspections	% of Planned Inspections	2016-17	6792	101%	66	99%	2017-18	4109	100%	67	102%	2018-19	6716	99%	73	101%	2019-20	691	33%	2	4%
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20	<p>Questions:</p> <p>1. Are the current restrictions on advertising and promotional activities adequately protecting youth?</p>	<p>Actions on the issues raised by these questions are needed – but larger reforms to Canada’s regulatory regime are also required.</p> <p>Q1/Q2/Q3. Youth are demonstrably not being protected, but the commercial activities which are harming them go beyond advertising and promotional activities. There are many regulatory controls which urgently need to be implemented (see next column for some examples). In addition to those measures, there is an urgent need to address the</p>	<p>Federal measures proposed by the Council of Chief Medical Officers of Health in January 2020:⁶²</p> <ul style="list-style-type: none">• ban on all flavoured vaping products (with exemptions for some flavours),• regulate constituents of e-liquids on the basis of their potential to cause harm when inhaled rather than oral ingestion																													

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Physicians for a Smoke-Free Canada. Reporting on enforcement of Canada's tobacco and vaping laws. January 10, 2022. <https://smoke-free-canada.blogspot.com/2022/01/compliance-and-enforcement-reports-for.html>

58

Office of Audit and Evaluation. Health Canada and the Public Health Agency of Canasda. Evaluation of the Health Pportfolio Tobacco and Vaping Activities, 2016-2017 to 2020-2021. Draft August 2021. P. 27

59

Evaluation, p. 27

60

Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021. https://smoke-free.ca/pdf_1/2022/Evaluation-A-2021-000914.pdf

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Council of Chief Medical Officers of Health. Statement from the Council of Chief Medical Officers of Health on Nicotine Vaping in Canada. January 22, 2020 <https://www.canada.ca/en/public-health/news/2020/01/statement-from-the-council-of-chief-medical-officers-of-health-on-nicotine-vaping-in-canada.html>

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<div><div>2.</div><div>Are the restrictions within the Act and its regulations sufficient to address potential inducements to use these products by youth and non-users of tobacco products?</div></div> <div><div>3.</div><div>Are there other measures that the Government could employ to protect youth and non-users from inducements to use vaping products?</div></div> <div><div>4.</div><div>Does the TVPA contain the appropriate authorities to effectively address a rapidly evolving product market and emerging issues such as the observed increase in youth vaping?</div></div> <div><div>5.</div><div>Has scientific evidence emerged in this area since the legislation was enacted in 2018 that points to the need for additional action or further restrictions?</div></div>	<div><div>use of price promotion (such as giving products away or selling products below cost of production) and social media promotions.</div><div>Q2. It is not enough to ensure that youth and non-users of tobacco products are not targeted with inducements to use vaping products. As the Canadian Council of Chief Medical Officers of Health has recommended (see next column), these products should be managed so that smokers are not induced to use them other than as a measure to end or reduce their use of all nicotine products.</div><div>Q4. The TVPA absolutely is not structured to address a rapidly evolving market of nicotine and other tobacco industry products. Known gaps include lack of controls or standards on device designs, e-liquid ingredients, other forms of nicotine (e.g. pouches), heat-not-burn and hybrid products.</div><div>Q5. As noted above, the scientific evidence that was available in 2018 did not support the liberalization of the vaping market that was adopted by the Canadian government, and this is even more true with respect to the evidence available today. There is evidence of the need for better regulation of tobacco (including removing combustible products from the market) and targeted therapeutic supply of vaping products to smoke. Fundamental reforms that place responsibility on suppliers to meet public health objectives are required.</div><div><div>Q3. Additional measures recommended to Health Canada by PSC in January 2020:⁶¹</div><div><div><div>•</div><div>Prohibit alterations to vaping products that facilitate inhalation</div></div><div><div>•</div><div>Ban all flavours except tobacco in all vaping products but establish a mechanism that would allow exemptions if there is evidence that doing so is in the public interest.</div></div><div><div>•</div><div>Include vaping products in definition of tobacco products to apply regulations, such as reporting of sales and promotional expenditures, to vaping products.</div></div><div><div>•</div><div>Require large, rotating, graphic health warnings on packages of vaping products and plain and standardized appearance of packages of vaping products.</div></div><div><div>•</div><div>Measure and report on pH in and particle size of tobacco and vaping products so that valid comparisons can be made</div></div><div><div>•</div><div>Measure and report on maximal limits of temperature and voltage of vaping products.</div></div><div><div>•</div><div>Measure and report on chemical constituents in vaping product aerosol.</div></div><div><div>•</div><div>Revise and upgrade promotional and educational materials on tobacco and vaping and increase expenditure on these activities.</div></div><div><div>•</div><div>Restructure the TVPA to include targets of less than 5% prevalence of use of tobacco and other recreational nicotine products by 2035, with accountability for government and industry.</div></div></div></div></div>	<div><div>•</div><div>tax vaping products "in a manner consistent with maximizing youth protection while providing some degree of preferential pricing as compared to tobacco products."</div></div> <div><div>•</div><div>raise the minimum age to be sold tobacco or vaping products to 21 years.</div></div> <div><div>•</div><div>require age-verification of internet purchases of vaping products that are the same as those required for cannabis.</div></div> <div><div>•</div><div>allow adult-oriented marketing if aimed solely at supporting adult smokers ending or reducing their use of all nicotine-containing products</div></div> <div><div>•</div><div>require plain and standardized packaging along with health risk warnings for all vaping products</div></div> <div><div>•</div><div>enhance compliance, enforcement and public reporting</div></div> <div><div>•</div><div>enhance public awareness and educational initiatives on the risks of vaping products, targeted at young, parents, educators and health care professionals.</div></div> <div><div>•</div><div>establish comprehensive cessation initiatives for people with nicotine addiction, especially for youth.</div></div> <div><div>•</div><div>monitor and research and short and long-term health effects of vaping products and research the effectiveness of policy approaches to address youth vaping.</div></div> <div><div>•</div><div>research the effectiveness of vaping products in supporting smokers to end or reduce their use of all nicotine-containing products.</div></div> <div><div>•</div><div>enhance surveillance and reporting of vaping product use and population health impacts.</div></div> <div><div>•</div><div>develop a broad regulatory approach to all alternative methods of nicotine delivery (i.e. other than tobacco products) and require manufacturers to demonstrate that marketing new products is in the public interest.</div></div>

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Collishaw, N” Letter to Matthew Cook, Manager Tobacco Products Regulatory Office. January 17, 2020. <https://smoke-free.ca/wp-content/uploads/2020/04/PSC-comments-on-draft-promotion-regulations-2020-01-14.pdf>

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21	<p>Protect the health of young persons and non-users of tobacco products from exposure to and dependence on nicotine that could result from the use of vaping products</p> <p>Context:</p> <p>A key objective of the TVPA is protecting the health of young persons and non-users of tobacco products from exposure to, and dependence on, nicotine that could result from the use of vaping products. To support this, the TVPA restricts access to vaping products to persons over 18 years of age. This recognizes the negative health effects associated with nicotine use, and seeks to guard against the risk that nicotine dependence could lead to tobacco use and the resultant serious health hazards.</p>	<p>Health Canada has not modernized or strengthened its minimum age laws in 3 decades.</p> <p>Although most Canadians live in a province where the minimum age to purchase tobacco or vaping products is 19 and in Prince Edward Island it is 21.⁶³ Health Canada has not raised the federal minimum age in almost 30 years.</p> <p>There is strong evidence that raising the minimum age to 21 will better protect youth.⁶⁴ This measure has been adopted by several other countries, including the United States in December 2019.</p> <p>In its 2017 consultation paper, Health Canada identified the potential of raising the minimum age to 21,⁶⁵ an idea supported by the large majority of respondents (73%) (see next column). Nonetheless, this desired measure was not included in the strategy renewal that resulted from this exercise and seems to have been abandoned.</p> <p><u>Recommendation:</u> The Minister’s report should:</p> <ul style="list-style-type: none">• Recommend to Parliament that the minimum age to be sold tobacco and vaping products should be raised to 21 years.• Recommend a consultation on proposals for a nicotine-free generation, as the government of Denmark is proposing.⁶⁶	<p>Health Canada received strong support for raising the minimum age to 21 – but did not act on this advice.⁶⁷</p> <div><p>Raising the minimum age of access</p><p>The majority of respondents (about 73%) would support the idea of raising the minimum age to legally access tobacco products in Canada to 21 years old. A small number of respondents expressed concerns with regard to this idea, namely that age-restrictions are under provincial and territorial (PTs) jurisdiction, but most importantly, that such a measure could be at odds with the regulation of the purchase of alcohol or cannabis and that legally adults should have the right to make informed choices regarding their own life.</p><p>Still, others suggested that the Government consider the introduction of measures to create a “tobacco-free generation” in Canada, as it is being considered by some other countries, whereby individuals born in or after a certain year cannot legally access any tobacco products.</p></div>

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Physicians for a Smoke-Free Canada. At-a-glance: Provincial restrictions on vaping products. <http://www.smoke-free.ca/SUAP/2020/Provincial%20regulations%20on%20vaping%20promotions.pdf>

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Physicians for a Smoke-Free Canada. Tobacco 21 laws and their impact on youth smoking and vaping. <http://smoke-free.ca/SUAP/2021/tobacco%2021.pdf>

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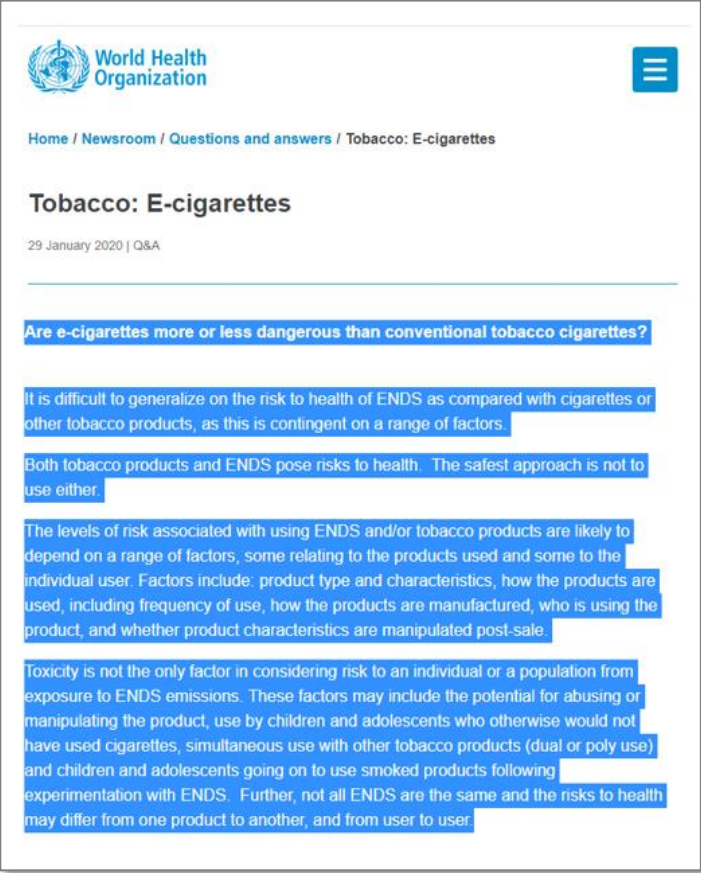
Health Canada. Seizing the Opportunity. The future of Tobacco Control in Canada. 2017. <https://www.canada.ca/content/dam/hc-sc/documents/programs/future-tobacco-control/future-tobacco-control-consultation-eng.pdf>

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Denmark. Sundhedsministeriet. Health reform - Make Denmark healthier <https://sum.dk/publikationer/2022/marts/sundhedsreformen-goer-danmark-sundere>

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Health Canada. Consultation on the Future of Tobacco Control in Canada: What We Heard, <https://www.canada.ca/en/health-canada/services/publications/healthy-living/consultation-future-tobacco-control-what-we-heard.html>

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22	<p>When the legislation was enacted, vaping products were relatively new to the market and there was limited scientific evidence on their long-term health impacts. While scientific knowledge continues to evolve, there is a general consensus in the scientific community that for people who smoke, switching completely to vaping is less harmful than smoking conventional cigarettes. In that context, potential public health benefits associated with reducing tobacco-related disease and death might be realized if adult tobacco users either quit or switched completely to vaping as a less harmful source of nicotine.</p>	<p>While many scientists believe that e-cigarettes are less harmful than combustible tobacco, it is not accurate to say there is a “general consensus in the scientific community” to this effect.</p> <p>Scientists can acknowledge that aerosols produced by e-cigarettes have lower levels of toxins found in cigarette smoke without making the inference, as Health Canada has done, that using e-cigarettes results in reduced lifetime harm to smokers who quit smoking conventional cigarettes. Nor does it necessarily follow that a potential benefit to individuals will be extended to a “public health benefit”.</p> <p>Examples of major scientific bodies who do not accept these hypotheses include:</p> <ul style="list-style-type: none">• The World Health Organization. “Regarding the potential health effects for which the evidence is mounting, there is insufficient data to understand the full breadth of their impact on health as devices have not been on the market long enough. Especially the long-term effects of using e-cigarettes or being exposed to them are yet unknown.”⁶⁸ (2020)• The International Union Against Tuberculosis and Lung Disease. “Insufficient harm reduction evidence among smokers. If used exclusively and in lieu of traditional cigarettes, e-cigarettes may decrease smoking harms for those who cannot otherwise quit, but this is not the dominant pattern.”⁶⁹(2020)• The World Heart Federation. “...aggressive marketing strategies and misleading claims by manufacturers, which have led to a widespread belief that e-cigarettes are a healthy option compared to regular tobacco cigarettes. These claims, however, appear to ignore the growing number of studies that link e-cigarettes to a range of health issues, including an increased risk of cardiovascular disease.”⁷⁰ (2021)• World Medical Federation. “Due to the lack of rigorous chemical and animal studies, as well as clinical trials on commercially available e-cigarettes, neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established. Lack of product testing does not permit the conclusion that e-cigarettes do not produce any harmful products even if they produce fewer dangerous substances than conventional cigarettes.”⁷¹ <p>Recommendation (repeated from line 11): The Minister’s report should:</p> <ul style="list-style-type: none">• Include details of measures taken and planned to review the evidence on e-cigarettes and make transparent the government’s position on the relative and absolute harm of each product category regulated under the TVPA and FDA.	<p>It is imprudent to describe a “general consensus in the scientific community” for a position not shared by global health authorities.</p> <div></div>

68 World Health Organization. E-cigarettes are harmful to health. February 2020. <https://www.who.int/news/item/05-02-2020-e-cigarettes-are-harmful-to-health>

69 International Union Against Tuberculosis and Lung Disease. Where Bans are Best. 2020. https://theunion.org/sites/default/files/2020-08/TheUnion_TobaccoControl_E-CigPaper_English_07.pdf

70 World Heart Federation. World Heart Federation Calls for Strict Regulation of E-cigarettes. October 18, 2021. <https://world-heart-federation.org/news/world-heart-federation-calls-for-strict-regulation-of-e-cigarettes-and-greater-oversight-of-the-industrys-marketing-and-sales-strategies/>

71 World Medical Association. Handbook of WMA Policies. 2021. <https://www.wma.net/wp-content/uploads/2022/03/HB-E-Version-2021-2-1.pdf>

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23 However, it is important to recognize that vaping products are not harmless. Vaping can increase a person's exposure to **potentially harmful chemicals, including nicotine**, which is found in most vaping products sold in Canada. Nicotine is highly addictive and youth can become dependent on nicotine at lower levels of exposure than adults. Moreover, exposure to nicotine during adolescence can negatively alter brain development and may have negative long-term effects on cognition.

Vaping products have evolved tremendously in the relatively short period of time since they were first introduced in Canada. New product formulations, and delivery mechanisms, some of which simplify usage and increase exposure to nicotine and other chemicals, have resulted in changing behaviours and preferences amongst users, particularly among youth.

In July 2020, the **Government of Canada responded to these changes in the market** by putting in place regulations to enhance awareness of the health hazards of using vaping products and protect young persons and non-users of tobacco products from exposure to, and dependence on nicotine that could result from their use. The *Vaping Products Labelling and Packaging Regulations* (VPLPR) require all vaping products that contain nicotine to display a nicotine concentration statement and a health warning on the products and/or packaging about the addictiveness of nicotine.

PSC Comments on text

It is irresponsible for Health Canada to acknowledge only those harms from vaping that are related to nicotine use.

In this discussion paper, as on Health Canada's website, there is little or no acknowledgement of the variety of ways in which chemicals other than nicotine – including flavourings, solvents like propylene glycol and glycerine, and ultrafine particles – can harm the human body.

This has the impact of suggesting that the greatest risk to human health posed by e-cigarettes is addiction and brain functioning.

The discussion paper suggests that changes to product design since 2018 have necessitated warning labels. It does not acknowledge that these warnings must only appear on the exterior packaging of a vaping device, and are not seen when the device is in subsequent use. It does not acknowledge that the mandated warning is less informative than the voluntary warnings required by regulation.

Recommendation: The Minister's report should:

- Include plans for revision and strengthening of warnings on vaping products.
- Include plans for graphic health warnings on vaping liquids and on devices.
- Strengthen the impact of warnings and reduce confusion on health risks by removing imagery through requirements for plain packaging.

Further information

World Health Organization statement that is the basis of a more powerful warning than is currently available to Canadians⁷²



Graphic health warnings required on vaping products in **South Korea**. Plain packaging is required in **Israel**



72 World Health Organization Twitter. <https://twitter.com/WHO/status/1219628313091682308>

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24	<p>In addition to enhancing awareness of health hazards, the government also took action to reduce the availability of high nicotine concentration vaping products in the Canadian market, which were shown to be appealing to youth. The <i>Nicotine Concentration in Vaping Products Regulations</i> (NCVPR), which came into force in July 2021, set a maximum nicotine concentration of 20mg/mL to make them less appealing, especially to youth, thereby lessening youth exposure to nicotine, which can result in dependence, increased risk of tobacco use and adverse health effects.</p>	<p>The delay in implementing restrictions on nicotine concentration unnecessarily exposed hundreds of thousands of young Canadians to high-nicotine products. The new regulation has reduced nicotine concentration by less than originally thought.</p> <p>One of the first regulatory measures introduced by Health Canada set the maximum concentration for nicotine at 66 mg/ml. ⁷³ This regulation was published in the Canada Gazette Part I in June 2019,⁷⁴ and finalized in Canada Gazette Part II in December 2019.⁷⁵ The proposal to reduce concentration to 20 mg/ml was not gazetted until December 2020,⁷⁶ and finalized in June 2021.⁷⁷ Health Canada is to be commended for the very short transition period included in this regulation, which allowed it to come into force in July 2021.</p> <p>Health Canada was advised of the need to lower nicotine concentrations in 2019,⁷⁸ including urging by health groups to accelerate a cap on nicotine concentration through an interim order.⁷⁹ Two years would pass before a lower threshold was implemented.</p> <p>The new regulation has reduced nicotine concentration by less than originally thought. Prior to the regulation, manufacturers identified the concentration based on the weight of the sale nicotine molecule, but the regulation required only the weight of the nicotine portion of that molecule. As a result, 20 mg/ml products under the new regulation contain as much nicotine as 33 mg/ml concentrations did previously (see next column).</p> <p>Manufacturers have the ability to manipulate nicotine delivery through heating technology and the use of additives. A major additive used for this purpose is organic acids, which produce nicotine salts. Nicotine salts are designed to facilitate the absorption of nicotine, and thus make vaping more addictive.⁸⁰ Health Canada has not responded to calls to end the use of these additives.⁸¹</p> <div><p>Recommendation: The Minister’s report should:</p><ul style="list-style-type: none">• Acknowledge that the delay in capping nicotine concentration likely contributed to the increased use of nicotine products by young Canadians and propose ways to accelerate the future development of protective regulations.• Report that officials have been directed to prepare regulations to prohibit the use of additives which facilitate inhalation and absorption or otherwise undermine the effect of caps on nicotine concentration.</div>	<p>Because Health Canada introduced new measuring standards, Canadian vaping manufacturers were able to relabelled 36 mg/ml nicotine liquids as 20 mg/ml in the summer of 2021.⁸²</p> <div><h3>New Changes to Salt Nic Ejuice</h3><p>July 24, 2021</p><p>Key Takeaways:</p><ol style="list-style-type: none">1. Our salt nicotine strength is changing and the numbers on the bottle will be stronger than the numbers you’re used to, in accordance with the new regulations and nicotine testing standard.2. A new 20mg/mL salt nic ejuice will now be as strong as an old 36mg/mL.3. A new 10mg/mL salt nic ejuice will now be as strong as an old 18mg/mL.4. Not all manufacturers or retailers will understand this situation just yet until the information has had sufficient time to disseminate, and be incorporated into business processes.5. 35mg/mL users are safe, but 50mg/mL is gone. Long live 50mg/mL...</div>

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Vaping Products Labelling and Packaging Regulations SOR/2019-353

74

Canada Gazette, Part I, Volume 153, Number 25: Vaping Products Labelling and Packaging Regulations. <https://gazette.gc.ca/rp-pr/p1/2019/2019-06-22/html/reg4-eng.html>

75

Canada Gazette, Part II, Volume 153, Number 26: Vaping Products Labelling and Packaging Regulations: SOR/2019-353

76

Canada Gazette, Part I, Volume 154, Number 51: Concentration of Nicotine in Vaping Products Regulations. <https://gazette.gc.ca/rp-pr/p1/2020/2020-12-19/html/reg3-eng.html>

77

Canada Gazette, Part II, Volume 155, Number 13 Nicotine Concentration in Vaping Products Regulations: SOR/2021-123

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Physicians for a Smoke-Free Canada. Response to proposed Vaping Products Labelling and Packaging Regulations. June 2019. <http://smoke-free.ca/wp-content/uploads/2020/04/response-to-CG1-physicans-for-a-smoke-free-canada.pdf>

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CTV News. Canadian health groups concerned about teen vaping call for urgent government action <https://www.ctvnews.ca/health/canadian-health-groups-concerned-about-teen-vaping-call-for-urgent-government-action-1.4601027>

80

Physicians for a Smoke-Free Canada. Pass the Salt. Why nicotine salts make vaping products more addictive. 2020. <http://smoke-free.ca/SUAP/2020/Nicotine%20Salts.pdf>

81

Physicians for a Smoke-Free Canada. Comments on Canada Gazette, Part I, Volume 155, Number 25: Order Amending Schedules 2 and 3 to the Tobacco and Vaping Products Act (Flavours) <http://www.smoke-free.ca/SUAP/2021/PSC%20comments%20on%20draft%20order%20to%20restrict%20vaping%20flavours-2021.pdf>

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Theravape. Salt Nic eJuice Canada | Theravape <https://theravape.net/collections/salt-nic-ejuice>

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25	<p>The Government of Canada has also implemented new surveillance tools to provide timely data on vaping and tobacco use, including the Canadian Tobacco and Nicotine Survey Footnote11, and invested in a new national vaping module to the Canadian Community Health Survey.Footnote12 These tools have produced nationally representative data to monitor smoking and vaping prevalence across Canada.</p>	<p>The new surveillance tools do not compensate for the ones which were terminated and suspended.</p> <p>See comments at line 15.</p> <p>Footnote 12 in the consultation paper indicates that CCHS data can be obtained through Statistics Canada. However, the only information available at that link is with respect to current smoking and daily smoking (vaping, former smoking, never smoking, experimental smoking are not pro-actively disclosed). University-based researchers may have access through data agreements, but the general public must purchase custom tabulations or wait for the Public Use Micro files to be released.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Include a report on plans to establish longitudinal and cross-sectional surveys which allow for annual or semi-annual updates on nicotine use.• Include plans to establish indicators to monitor the impact of vaping behaviour on cessation, poly-use and other addictions.	<p>The Canadian Community Health Survey shows no increase in quitting behaviour among Canadian smokers since vaping products were liberalized in 2018.⁸³</p> <div><p>Smoking behaviour of Canadians, Ages 12+, CCHS</p><table border="1"><thead><tr><th>Year</th><th>Daily Smoker</th><th>Occasional Smoker</th><th>Past year quitter</th><th>Other Former</th><th>Experimentier</th><th>Never Smoker</th></tr></thead><tbody><tr><td>2003</td><td>18%</td><td>5%</td><td>24%</td><td>2.5%</td><td>13%</td><td>37%</td></tr><tr><td>2005</td><td>17%</td><td>5%</td><td>24%</td><td>3.0%</td><td>13%</td><td>39%</td></tr><tr><td>2007-08</td><td>17%</td><td>5%</td><td>23%</td><td>2.4%</td><td>11%</td><td>41%</td></tr><tr><td>2009-10</td><td>16%</td><td>5%</td><td>23%</td><td>1.7%</td><td>12%</td><td>42%</td></tr><tr><td>2011-12</td><td>15%</td><td>5%</td><td>23%</td><td>1.6%</td><td>12%</td><td>42%</td></tr><tr><td>2013-14</td><td>14%</td><td>5%</td><td>23%</td><td>1.7%</td><td>12%</td><td>44%</td></tr><tr><td>2015-16</td><td>12%</td><td>5%</td><td>23%</td><td>1.6%</td><td>13%</td><td>45%</td></tr><tr><td>2017-18</td><td>11%</td><td>5%</td><td>23%</td><td>1.3%</td><td>13%</td><td>47%</td></tr><tr><td>2020RR</td><td>9%</td><td>4%</td><td>23%</td><td>1.1%</td><td>13%</td><td>51%</td></tr></tbody></table></div>	Year	Daily Smoker	Occasional Smoker	Past year quitter	Other Former	Experimentier	Never Smoker	2003	18%	5%	24%	2.5%	13%	37%	2005	17%	5%	24%	3.0%	13%	39%	2007-08	17%	5%	23%	2.4%	11%	41%	2009-10	16%	5%	23%	1.7%	12%	42%	2011-12	15%	5%	23%	1.6%	12%	42%	2013-14	14%	5%	23%	1.7%	12%	44%	2015-16	12%	5%	23%	1.6%	13%	45%	2017-18	11%	5%	23%	1.3%	13%	47%	2020RR	9%	4%	23%	1.1%	13%	51%
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26	<p>In addition, the Government has committed \$14 million over five years in grants and contributions funding through the Substance Use and Addictions Program to provinces, territories, non-governmental organizations, Indigenous organizations and individuals, to contribute to efforts to protect Canadians from the harms of smoking and nicotine addiction. For example, the Government of Canada contributed more than \$1.1 million over 36 months to the University of Waterloo to support research on vaping use and cessation in youth (aged 16 to 19). The Government of Canada has also provided more than \$670,000 over 21 months to the Centre for Addiction and Mental Health to develop national evidence-based Low-Risk Nicotine Use Guidelines comparing the benefits and harms of using alternate nicotine delivery devices, including vaping products.</p>	<p>Because Health Canada has underspent its budget for grants and contributions, less work has been done to address tobacco and vaping use. G&Cs for the 2022-2023 year are threatened by administrative decisions.</p> <p>The Evaluation of the program from 2016 to 2021 reported that grants and contribution budget was underspent by 24% in the first 2 years of the program (only \$5.3 million of a \$7 million budget had been allocated) and that the Public Health Agency underspent its tobacco-control resources by \$2.7 million over 5 years.⁸⁴ Similar underfunding can be expected over the next few years, as most of the currently funded projects expire in 2022⁸⁵ and no call for proposals has been issued since 2018.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Report on any underspending of grants and contributions.• Provide details on a strategy to sustain community action to end nicotine use.																																																																							

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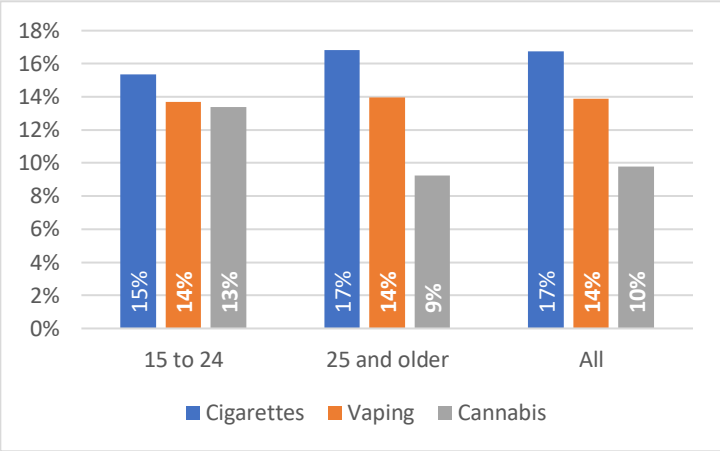
Physicians for a Smoke-Free Canada. Newly-released data shows quitting rates are stagnant -- and most vapers are not reducing harm. March 18, 2022. <https://smoke-free-canada.blogspot.com/2022/03/newly-released-data-shows-smoking-rates.html>

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Health Canada Office of Audit and Evaluation. Evaluation fo the Health Portfolio Tobacco and Vaping Activities 2016-2017 to 2020-2021, p. 33 https://smoke-free.ca/pdf_1/2022/Evaluation-A-2021-000914.pdf

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Health Canada. Substance Use and Addictions Program. Existing projects. <https://www.canada.ca/en/health-canada/services/substance-use/canadian-drugs-substances-strategy/funding/substance-use-addictions-program.html>

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information																
27	<p>Questions:</p> <ol style="list-style-type: none"> Are the current restrictions in the Act and its regulations sufficient to protect the health of young persons from exposure to and dependence on nicotine that could result from the use of vaping products? Are the new restrictions on nicotine concentration levels sufficient to protect youth and non-users of tobacco products from nicotine exposure? If not, what additional measures are needed? Are there other measures that the Government could employ to protect the health of young persons from exposure to and dependence on nicotine from vaping products? Has scientific evidence emerged in this area since the legislation was enacted in 2018 that points to the need for additional action or further restrictions? 	<p>Actions on the issues raised by these questions are needed – but larger reforms to Canada’s regulatory regime are also required.</p> <p>Q1/Q2 Youth are demonstrably not being protected from exposure to and dependence on nicotine. One in ten senior high school students (grades 10 to 12) was vaping every day, according to the most recent Canadian Student Tobacco, Alcohol and Drug Survey.⁸⁶ The ‘retention’ of experimenters into daily use is almost as high for vaping as it is for cigarettes.</p> <p>Q2/Q3 Young people would be better protected if the government were to implement the measures suggested by the Canadian Council of Chief Medical Officers of Health (see line 21) and others, cited above. These include controls on nicotine (e.g. an end to salted nicotine), but also require removing vaping products from the consumer market and placing their supply under therapeutic direction.</p> <p>Q4. Yes. Scientific evidence was available in 2018, and more has emerged that points to the need for additional action.</p>	<p>For every 100 Canadians who have tried vaping, 14 became daily users⁸⁷</p>  <table border="1"> <caption>Percentage of Daily Users by Age Group</caption> <thead> <tr> <th>Age Group</th> <th>Cigarettes</th> <th>Vaping</th> <th>Cannabis</th> </tr> </thead> <tbody> <tr> <td>15 to 24</td> <td>15%</td> <td>14%</td> <td>13%</td> </tr> <tr> <td>25 and older</td> <td>17%</td> <td>14%</td> <td>9%</td> </tr> <tr> <td>All</td> <td>17%</td> <td>14%</td> <td>10%</td> </tr> </tbody> </table>	Age Group	Cigarettes	Vaping	Cannabis	15 to 24	15%	14%	13%	25 and older	17%	14%	9%	All	17%	14%	10%
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28	<p>Protect the health of young persons by restricting access to vaping products</p> <p>Context</p> <p>Before the TVPA was put in place in 2018, vaping products with nicotine were not legally available for sale in Canada unless they had been evaluated for safety, quality, and efficacy under the <i>Food and Drugs Act</i> (FDA) and had received approval by Health Canada. No products were authorized for sale under the FDA. Despite this fact, vaping products were gaining in popularity and being sold in an unregulated market, primarily through specialty vape shops.</p> <p>Once the TVPA was enacted, vaping products with and without nicotine were legally permitted to be sold in Canada and are now sold in specialty vape stores, gas and convenience stores and by online retailers. The availability of vaping products at gas and convenience stores represented a major shift in the Canadian vaping product marketplace - one that substantially increased the availability of vaping products in many easily accessible locations across Canada. In 2016, prior to the TVPA, the vaping market in Canada was estimated to be worth \$500 million, and gas and convenience stores accounted for \$5 million (1 percent) of vaping sales. Footnote13 In 2019, after the TVPA was enacted and nicotine-containing vaping products began to appear in gas and convenience stores, the vaping market in Canada was estimated at \$1.3 billion and gas and convenience stores accounted for \$400 million (30 percent) of vaping product sales. Footnote14.</p>	<p>Canadians do not have the information needed to monitor the vaping market.</p> <p>The figures cited here with respect to the increase in sales value in corner stores following liberalization of the vaping market are not the most important data with respect to public health impact. Knowing how much Canadians are spending on vaping products is less important than knowing how much of these liquids they are consuming, and what types of liquids they are consuming.</p> <p>Had the vaping reporting regulations been in place at the time of legalization (as they were for cannabis), this information would now be available.</p> <p>Health Canada’s acknowledgement that “prohibiting sales to minors has proven to be effective” is cold comfort when the department reports no enforcement activities of the federal prohibition on sales to minors. If Health Canada is conducting enforcement actions on retailers, it has not been made public.</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none"> Provide assurance that requirements for vaping suppliers to report information to Health Canada will be in place by the end of 2022, and should provide details on how this information will be shared with the public. 	<p>Health Canada’s information infrastructure has proven inadequate.</p> <p><i>Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021.</i>⁸⁸</p> <p><i>“Another key challenge for tobacco and vaping activities at Health Canada relates to information technology systems. Some systems are antiquated while others are non-existent, for example, commitments for an information technology system for vaping compliance and enforcement were not completed as planned. These issues with information technology systems have led to extra time required to process and access information and sometimes opportunities to collect and analyze information that could inform the program have been missed.</i></p>																

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Health Canada. Canadian Student Tobacco, Alcohol and Drugs Survey 2018-2019. Table 10. <https://www.canada.ca/en/health-canada/services/canadian-student-tobacco-alcohol-drugs-survey/2018-2019-detailed-tables.html#t10>

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Physicians for a Smoke-Free Canada. Six Insights from the Canadian Tobacco and Nicotine Survey. Wednesday, 14 July 2021 <https://smoke-free-canada.blogspot.com/2021/07/six-insights-from-canadian-tobacco-and.html>


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Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021. https://smoke-free.ca/pdf_1/2022/Evaluation-A-2021-000914.pdf

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
29	<p>Prohibiting sales to minors has proven to be effective in comprehensive tobacco control programs. This approach has been used both by the Government of Canada and provinces and territories to limit access to tobacco products. The TVPA put measures in place to protect the health of young persons by restricting access to vaping products. Similar to restrictions on tobacco in the Act, the TVPA includes a ban on selling, sending or delivering vaping products to young persons under the age of 18</p> <p>Many provinces and territories have focused their tobacco and vaping control efforts on retail access and have taken action to go beyond the minimum requirements in the TVPA. For example, Nova Scotia, Newfoundland and Labrador, and the Northwest Territories, have increased the minimum age of sale to 19, and Prince Edward Island was the first to increase the minimum age to 21, in 2019. British Columbia, Saskatchewan, and Ontario limit sales of flavoured vaping products with exceptions for some flavours to specialty stores, whereas some provinces have banned flavoured vaping products, with the exception of tobacco flavour (Nova Scotia and Prince Edward Island). Finally, certain provinces (British Columbia, Newfoundland and Labrador, Saskatchewan, Quebec, Nova Scotia) have implemented an e-cigarette retail licensing system or have guidelines for retailers in order to prevent sales to minors (Alberta, British Columbia, Newfoundland and Labrador, Prince Edward Island, Saskatchewan). In 2019, Health Canada conducted a survey of retail establishments in Canadian cities to determine the willingness of retailers to sell vaping products to youth (15-17 years old). The survey found that 88 percent of retailers refused to sell vaping products to youth at retail locations across the country. Footnote15</p> <p>Despite the restrictions currently in place, young persons are still accessing and using vaping products. Studies suggest that many students in grades 7 to 12 (Secondary I to V in Quebec) believe that accessing vaping products would be easy. Footnote16 Among young people, aged 15 to 19 years, who vaped in the past 30 days, the majority (57 percent) reported usually getting their vaping devices from social sources (friends or family).Footnote17 However, despite having both federal and provincial access restrictions in place, some portion of the remaining 43 percent of young people, aged 15 to 19 years, who vape are obtaining their vaping devices from retail sources (vape shops, convenience or gas, supermarkets, grocery stores, drug stores, and online sales) despite being prohibited by legislation.Footnote18</p>	<p>One purpose of the TVPA was to “protect the health of young persons by restricting access to vaping products.” By liberalizing the market, Health Canada has achieved the opposite. It has increased access.</p> <p>Citing unpublished data, the consultation paper reports that in 2019, 88% of retailers refused, when tested, to sell to youth (aged 15-17). This is an improvement on the percentage of retailers who refused such sales in 2015 (67%) when only 2 of 10 provinces had retail age restrictions on e-cigarettes in place.⁸⁹</p> <p>Despite this apparent progress, the increase in the number of stores selling vaping products means that the accessibility to young purchasers has grown. Euromonitor reported to Health Canada that opening the market to convenience stores “increased vaping distribution outlets by an estimated 27,239 stores.” If 12% of these retailers were willing to sell to young people, legalization resulted in an additional 3,269 outlets where young people could buy vaping products.</p> <p>Health Canada as reduced the frequency of retailer surveillance in comparison with previous years. The department formerly conducted annual “secret shopper” tests of retailers, which were conducted by AC Nielsen.</p> <p>In February 2021, Health Canada signalled that it intended to publish draft regulations to address age verification for on-line sales in the fall of 2021, but no further developments have been made public.⁹⁰</p> <div><p>Recommendation: The Minister’s report should:</p><ul style="list-style-type: none">• Include detailed information on current and future efforts to monitor retailer behaviour.• Explain how Health Canada ensures compliance with restrictions on sales to youth.• Identify how and when age regulations to verify age on on-line sales will be in force.</div>	“

89 Ipsos Public Affairs and We Check. Retailer Behaviour with Respect to Youth Access to Electronic Cigarettes and Promotion Final Report. February 2016. https://buyandsell.gc.ca/cds/public/2018/09/19/da95771d89ec0f758477beab4ea1137e/app_e_en_e-cigarettes_report_-_final_february_2016_eng.pdf

90 Health Canada. Forward Regulatory Plan 2021-2023: Amendments to the Tobacco Access Regulations (Age Verification for Online Sales). <https://www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines/acts-regulations/forward-regulatory-plan/plan/amendments-tobacco-access-regulations.html>

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
30	<p>In April 2019, the Government of Canada consulted on potential regulatory measures to reduce youth access to, and appeal of, vaping products. Over half of the respondents were supportive of further restrictions to limit youth from accessing vaping products online. Respondents provided suggestions on how to strengthen federal access requirements. A summary of what we heard can be found here.</p> <p>Building on these consultations, additional regulatory measures have been put in place, or are under development, to control flavours, online sales and nicotine content in vaping products. In response to the rise in youth vaping, the Minister of Health sent a letter to retail associations in June 2019, to remind their members of their responsibilities under the TVPA, including the prohibition on furnishing vaping products to young persons. In addition to education efforts, compliance and enforcement measures are in place to address complaints regarding access to vaping products, in collaboration with the provinces and territories. Provincial and territorial governments also have regulations in place that prohibit sales to young persons, which include enforcement provisions, and have conducted compliance verification and enforcement on access to tobacco and vaping products at retail locations. Health Canada has also implemented compliance measures to monitor and inspect youth access to vaping products and promotions online.</p>	<p>Three years after seeking public input on reducing access, Health Canada has taken no further action to reduce access (or the related issues of affordability and availability).</p> <p>The consultation paper reports on the actions taken with respect to a limited number of marketing issues, namely promotions and product. No action has been taken with respect to the other marketing “Ps”, price and place.</p> <p>The price of vaping products has fallen significantly since 2018, and pricing promotions (like the sale of devices for \$1) has emerged with no response from Health Canada. When BAT launched its Vype vaping products (now branded VUSE) in Canada, the price of a starter kit was \$40.00. By mid-summer, the price had fallen to under \$10. (see next column). As a condition of their contracts with BAT, retailers who sell VUSE e-liquids must respect maximum price policies.⁹¹ The federal government has not taken steps to monitor prices and their promotional impact.</p> <p>Retail density is associated with youth tobacco use, and can be expected to similarly impact youth vaping. ⁹² Health Canada has failed to develop proposals to address the impact of availability on youth access.</p> <div> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none"> • Include information on efforts to monitor vaping product pricing • Include a plan to assess the need for measures to reduce availability and affordability of tobacco and vaping products . </div>	<p>Health Canada has failed to address youth-friendly price promotions of vaping products. ⁹³ (Prices shown are from November 2019)</p> 

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Reports in trade publicatino is available on demand.

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Marsh, L et al. Association between density and proximity of tobacco retail outlets with smoking: A systematic review of youth studies. Health Place. January 2022

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Physicians for a Smoke-Free Canada. How cheap will vaping products get before we see price as part of the youth vaping problem? November 2019. <https://smoke-free-canada.blogspot.com/2019/11/how-cheap-will-vaping-get-before-we-see.html>

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
31	<p>Questions</p> <ol style="list-style-type: none">Are measures in the Act sufficient to prevent youth from accessing vaping products? If not, what more could be done to restrict youth access to vaping products?Are there other measures that the Government could employ to protect youth from accessing vaping products?Has scientific evidence emerged in this area since the legislation was enacted in 2018 that points to the need for additional action or further restrictions?	<p>Actions on the issues raised by these questions are needed – but larger reforms to Canada’s regulatory regime are also required.</p> <p>Q1/Q2/Q3. Insufficient measures to prevent youth from accessing vaping (and tobacco) products are in place. It has long been known that social sources, social attitudes and regulatory context frame the willingness of commercial and non-commercial actors to provide harmful products to youth. Health Canada should develop a strategy which limits access to vaping products to smokers only, in addition to other measures in a comprehensive strategy.</p> <p>Measures to consider in this strategy include:</p> <ul style="list-style-type: none">Dedicated retail outlets to which adults only are admittedPerformance objectives for suppliers with respect to youth uptake (and other problematic use), such as a look-back or other legislated requirement.Removal of barriers to enforcement, including a penalty structure that allows for ticketing offences and more collaboration with other levels of government.More transparency in enforcement to allow for greater public understanding of the need for complianceLicensing system on suppliers, including conditions of license geared to reducing overall nicotine use.Mass media campaigns to foster supportive public attitude.	
32	<p>Prevent the public from being deceived or misled with respect to the health hazards of using vaping products</p> <p>Context</p> <p>As noted earlier in this document, the vaping product market has changed significantly following the enactment of the TVPA and the entry into the market of large multinational tobacco companies. A new generation of vaping products that are more user-friendly (i.e. closed pod systems), smaller and easier to conceal, contain high concentrations of nicotine, and a wide variety of flavours quickly dominated sales. There was also a dramatic increase in marketing on television, social media and in retail locations to which youth were exposed.</p> <p>To ensure that the public had access to accurate information in order to make well informed decisions about vaping products, the TVPA prohibited the promotion of vaping products that suggests that its use may provide a health benefit or that compares the health effects of using a vaping product versus a tobacco product. However, the Act provides the authority to make regulations to set out permitted statements related to the health benefits of vaping products or relative health risks of vaping products to tobacco products. This authority would allow manufacturers and retailers to use prescribed statements regarding the potential health benefits and comparison statements that align with evolving scientific knowledge.</p>	<p>Health Canada has failed to protect the public from advertising that suggests a health benefit to vaping, or which compares the health effects of using vaping products versus tobacco products.</p> <p>Health Canada has not passed regulations which authorize vaping suppliers to make reduced risk claims. Nonetheless, these claims appear in advertising campaigns directly controlled by the companies,⁹⁴ by trade associations,⁹⁵ and also by groups funded by the industry.^{96 97}</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">Acknowledge the failure of the proposed relative risk statements.Acknowledge the failure of enforcement actions to prevent advertising which makes claims that were not provided for in the law.Recommend changes to the legislation to prevent future occurrences.	<p>Imperial Tobacco Canada Health Reassurance ads (2022 and 2020)</p>

94 Physicians for a Smoke-Free Canada. 'Clear the Smoke': Imperial Tobacco launches an illegal health-reassurance ad campaign. <https://smoke-free-canada.blogspot.com/2022/02/imperial-tobaccos-clear-smoke-campaign.html>

95 Canadian Vaping Association. Press release. Canadian Vaping Association: Vaping is 95% less harmful than smoking, but what does that mean?. September 15, 2021

96 “If every Canadian smoker switched to vapour products, cases of lung cancer, COPD and oral cancers would plummet.” Rights 4 Vapers. <https://www.rights4vapers.com/vaping-saves-lives/>

97 Rights4Vapers funding by the chair of the Vaping Industry Trade Association was reported to Elections Canada. https://www.elections.ca/fin/oth/thi/advert/tp44/TP-0039_ecr.pdf

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act																				
33	<p>The TVPA also prohibited the manufacture, promotion and sale of products containing ingredients that could give the impression that they have positive health effects or were associated with vitality or energy, which might make them attractive to youth and non-users of tobacco products. These ingredients, including vitamins, mineral nutrients, amino acids, and caffeine (as listed in Schedule 2 of the Act) were prohibited, except in certain vaping products such as prescription vaping products. Other ingredients, which could also contribute to making vaping liquids appealing to youth, like colouring agents, were also banned. The legislation also included regulatory authority to amend ingredient lists, and place restrictions on the promotion of products, should future evidence indicate that such ingredients act as inducements for young persons or non-users of tobacco to use vaping products. The use of flavour ingredients, on the other hand, were not restricted under the Act, but the promotion of certain flavours (dessert, cannabis, confectionary, energy drink and soft drink flavours), including by means of the packaging, was banned.</p> <p>To prevent the public from being deceived or misled with respect to the health hazards of vaping products, along with restricting promotions that can be seen or heard by young persons, in July 2020, the government introduced requirements under Part 2 of the <i>Vaping Products Promotion Regulations (VPPR)</i> that prohibited vaping products from being advertised without conveying a health warning. To further protect youth, the VPPR only allows advertisement in age-restricted places that youth cannot access.</p> <p>In addition, recognizing that many flavoured vaping products appeal to youth, Health Canada has proposed regulations that would restrict vaping product flavours to tobacco, mint and menthol only, through amendments to Schedules 2 and 3 of the TVPA. Several studies have found that young people, especially those who do not smoke, were more likely to initiate vaping with fruit and sweet flavours. This is aligned with data from the 2020 Canadian Tobacco and Nicotine Survey which indicates that fruit flavours are the most used flavours (64 percent) among young people, aged 15-19, who vaped in the past 30 days. Moreover, studies have shown that vaping products with flavours other than tobacco are also perceived as less harmful among youth. Consultations on the proposed regulations closed in September 2021, and feedback received is being considered. The proposed changes, if adopted, are expected to make these products less appealing to youth and non-users, while allowing some options for adults who smoke and who wish to quit and switch completely to vaping as a less harmful source of nicotine.</p>	<p>PSC Comments on text</p> <p>Health Canada acknowledges that the absence of controls on flavours increased youth vaping, but does not explain why regulations are not yet in force.</p> <p>Five Canadian jurisdictions have adopted bans on all flavours other than tobacco, and these are in place in 4 jurisdictions (Nova Scotia, Prince Edward Island, New Brunswick and Northwest Territories). but the federal government has not</p> <p>Chemicals added do e-cigarettes to produce flavours generate the impression that the products are less harmful (because it makes them taste like harmless substances), but they actually increases the harms of vaping by adding toxins to the aerosol.⁹⁸</p> <div><p>Recommendation: The Minister’s report should:</p><ul style="list-style-type: none">• Include a reassurance that all vaping flavours other than tobacco flavour will be prohibited by the end of 2022, and that vaping products authorized as therapeutic devices would be exempt from this requirement.</div>																		
	<p>Further information</p> <p>Many countries have acted more quickly than Canada to protect the public from flavoured e-cigarettes: ⁹⁹</p> <table><tr><th>Country</th><th>E-liquid flavour restriction implementation date</th></tr><tr><td>China</td><td>October 1, 2022</td></tr><tr><td>Denmark*</td><td>April 1, 2022</td></tr><tr><td>Estonia*</td><td>July 2019</td></tr><tr><td>Finland</td><td>2016</td></tr><tr><td>Hungary</td><td>May 2020</td></tr><tr><td>Lithuania</td><td>October 2023</td></tr><tr><td>Netherlands</td><td>July 2022</td></tr><tr><td>Ukraine</td><td>July 2023</td></tr><tr><td>Sweden (proposal)</td><td>January 2023</td></tr></table> <p>*menthol flavour also permitted</p>	Country	E-liquid flavour restriction implementation date	China	October 1, 2022	Denmark*	April 1, 2022	Estonia*	July 2019	Finland	2016	Hungary	May 2020	Lithuania	October 2023	Netherlands	July 2022	Ukraine	July 2023	Sweden (proposal)
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Physicians for a Smoke-Free Canada. Flavourings make e-cigarettes more harmful. Another good reason to ban them. February 2022. <https://smoke-free-canada.blogspot.com/2022/02/flavourings-make-e-cigarettes-more.html>

99

Physicians for a Smoke-Free Canada. Restrictions on e-cigarette flavours. March 2022. <https://smoke-free.ca/SUAP/2021/e-cigarette-flavour%20restrictions.pdf>

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
34	Finally, the TVPA provides the authority to make regulations to collect information from industry about vaping products, their emissions and any research and development (e.g., sales data and information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements). Health Canada is currently developing proposed regulations in this area. Footnote19	<p>Health Canada has stated its intention to require vaping manufacturers to file reports with government, but has yet to produce draft regulations.</p> <p>The absence of any federal reporting requirements on vaping producers is in stark contrast to measures in place in other countries. The European Union requires companies to provide pre-notification at least 6 months before products are place don the market, but there is no mechanism in Canada for Health Canada to be informed of which devices and liquids are on the market.</p> <p>The United States requires pre-market authorization (PMTA), and companies are required to provide evidence that the marketing of each individual product meets a public interest test (this requirement came into force in September 2021, and is not yet fully implemented).¹⁰⁰ Japan Tobacco’s Logic e-cigarette was marketed in Canada from February 2019 to August 2021, but the company was never required to provide Health Canada with any information about its design, sales or research. By contrast, the PMTA for the same product in the United States includes conditions for postmarket reporting as well as marketing restrictions.¹⁰¹</p> <p>The Council of Chief Medical Officers of Health has recommended such a system for Canada: <i>“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.”</i>¹⁰²</p> <div><p>Recommendation: The Minister’s report should:</p><ul style="list-style-type: none">• Recommend that the TVPA be amended in line with the recommendations of the Council of Chief Medical Officers of Health to require manufacturers to demonstrate that the sale of their products is in the public interest before the product can be legally sold.• Identify when regulations will be drafted which establish ministerial responsibility to discloses information to the public (see TVPA, s. 7(d.02), 8 (ii))</div>	<p>5 years ago, Health Canada acknowledged the need for reporting regulations.</p> <p><i>Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology.</i></p> <hr/> <p><i>Issue No. 21 - Evidence - April 12, 2017</i>¹⁰³</p> <p>Suzy McDonald (DG, Tobacco Products Directorate. <i>In tobacco control for many years now we have collected data under the Tobacco Reporting Regulations. Those reporting regulations require industry to report to us on sales data, new research, how they are promoting the products and other pieces of information. We use that robust data all the time to be able to understand what the market looks like and to make good policy decisions....</i></p> <p><i>There is a regulatory authority that would allow us to collect similar data from the vaping industry. It would go through the full regulatory process before it's brought into place, including consultations on CG1 and CG2, but there is an anticipation that we would need to be able to collect some data so that we could really understand what that market looks like and make informed decisions moving forward.</i></p>

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U.S. Food and Drug Authority. Premarket Tobacco Product Applications. [https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/premarket-tobacco-product-applications#:~:text=Overview%20of%20PMTAs,and%20Cosmetic%20\(FD%26C\)%20Act.](https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/premarket-tobacco-product-applications#:~:text=Overview%20of%20PMTAs,and%20Cosmetic%20(FD%26C)%20Act.)

101

U.S. Food and Drug Authority. Marketing Granting Order Logic Vapeleaf Regular Cartridge/Capsule Package 11. <https://www.fda.gov/media/157143/download>

102

Statement from the Council of Chief Medical Officers of Health on Nicotine Vaping in Canada. January 22, 2020. <https://www.ca.nada.ca/en/public-health/news/2020/01/statement-from-the-council-of-chief-medical-officers-of-health-on-nicotine-vaping-in-canada.html>

103

Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology Issue No. 21 - Evidence - April 12, 2017. <https://sencanada.ca/en/content/sen/Committee/421/soci/21ev-53253-e>

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
35	<p>Questions</p> <ol style="list-style-type: none">1. Are the current measures in place sufficient to prevent the public from being deceived or misled about the health hazards of vaping products?2. What additional measures would help reduce the misconceptions about the health hazards of vaping products?3. Has scientific evidence emerged in this area since the legislation was enacted in 2018 that points to the need for additional action or further restrictions?	<p>Q1/Q2/Q3. Health Canada has failed to implement sufficient regulatory or administrative measures to protect the public from being misled about the harms of e-cigarettes.</p> <ul style="list-style-type: none">• Through earned media, social media and front groups, nicotine manufacturers continue to promote the idea that the risks of vaping are a fraction of those related to smoking, despite the lack of evidence about how the long term health risks compare with those of tobacco.• Through product design, including flavours and ornamentation, nicotine manufacturers create a user experience designed to diminish concerns about health risks.• Through lack of enforcement, Health Canada permits these behaviours to continue. <p>Q1/Q2/Q3. Health Canada has provided inadequate and outdated information to the public with respect to the harms of vaping. The information on Health Canada’s website was improperly referenced, incomplete and inadequate when it was uploaded in May 2018.¹⁰⁴ Despite a significant growth in knowledge about the risks of vaping, the department has largely not updated its website, a concern raised during the evaluation of the program (see next column).</p>	<p>Health Canada’s own evaluation identified that Health Canada has contributed to misconceptions about the health hazards of vaping.</p> <p><i>Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021.¹⁰⁵</i></p> <hr/> <p><i>“Some of the information on Health Canada’s website may not reflect the latest science on the subject of vaping-related risks and or fully address certain risks. In addition, some of Health Canada’s statements in relation to vaping products appear to be consistent with a therapeutic claim even though no vaping products are licensed for cessation in Canada.”</i></p>

104

Collishaw, N. Letter to Minister Petitpas-Taylor. May 30, 2018. https://www.smoke-free.ca/pdf_1/2018/May%2030%20Ginette%20Petitpas-Taylor%20Vaping.pdf

105

Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021. https://smoke-free.ca/pdf_1/2022/Evaluation-A-2021-000914.pdf

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
36	<p>Enhance public awareness of health hazards</p> <p>Context:</p> <p>The TVPA includes an objective to enhance public awareness of the health hazards of vaping products so that Canadians can make informed decisions about the use of these products. In particular, the Act recognizes that vaping products present a risk to youth and those who do not use tobacco products.</p> <p>Studies have linked youth vaping with known and potential health hazards associated with nicotine use and other chemicals present in vaping products. Nicotine is highly addictive and youth are especially susceptible to its negative effects, as it can alter their brain development and can affect memory and concentration. It can also lead to an addiction and physical dependence, which may occur more rapidly among children and youth than adults.</p>	<p>Health Canada does not provide the public with clear information on the health risks of vaping – even in this discussion paper.</p> <p>In its public communications, Health Canada identifies addiction and the impact on adolescent brain development as the specific risks associated with vaping. It also communicates benefits to vaping, including statements that for quitters “using e-cigarettes is linked to improved rates of success”¹⁰⁶ and, as in this document “vaping products are a less harmful source of nicotine for those who currently smoke and switch completely to vaping.” Neither in this document nor in other communications does Health Canada inform the public of information that would help them make informed decisions about whether to try vaping products. These include:¹⁰⁷</p> <p>Recommendation: The Minister’s report should:</p> <ul style="list-style-type: none">• Acknowledge that dual use (smoking and vaping) is common and harmful.• Acknowledge that e-cigarettes cause damage to respiratory and circulatory systems.• Acknowledge that young people who use e-cigarettes are more likely to smoke conventional cigarettes• Acknowledge that when purchased as consumer products, e-cigarettes are not effective cessation aids• Acknowledge that because the long-term health consequences are unknown, it cannot be assumed that vaping is safer than smoking.	<p>Health Canada’s own evaluation identified that Health Canada has not provided clear guidance on the risks associated with vaping.</p> <p><i>Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021.</i>¹⁰⁸</p> <hr/> <p><i>“Many external and internal interviewees discussed the challenges associated with this ‘double messaging’, indicating that it was potentially conflicting or confusing. Some were of the view that having a message focusing on the relative harm of vaping products compared to cigarettes could lead the population to overlook the harms associated with vaping. A few Health Canada interviewees did not perceive there to be issues with the harm reduction messaging; however, they acknowledged that the messaging may have been misinterpreted by different groups.</i></p> <p><i>In terms of communications related to the health hazards of vaping, Health Canada’s vaping website includes statements regarding potential harms. However, the website does not appear to reflect updated science.</i></p>

106 Health Canada. Vaping and quitting smoking. <https://www.canada.ca/en/health-canada/services/smoking-tobacco/vaping/smokers.html>

107 Physicians for a Smoke-Free Canada. Science has marched on: it is time to update the advice to Canadians. 14 February 2022 <https://smoke-free-canada.blogspot.com/2022/02/science-has-marched-on-it-is-time-to.html>

108 Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021. https://smoke-free.ca/pdf_1/2022/Evaluation-A-2021-000914.pdf

37 Studies suggest that there is public awareness of health hazards associated with vaping, whereas other studies point to potential knowledge gaps. Evidence suggests that most Canadian youth and non-users of tobacco are aware that there are risks associated with using vaping products containing nicotine. According to a recent survey, 42 percent of Canadian students (grades 7-12) (Secondary I to V in Quebec) indicated that using nicotine vaping products on a regular basis posed a "great risk" of harm, while 32 percent believed it posed a moderate risk.^{Footnote20} Another recent survey showed that 81 percent of adult non-users of tobacco believe that nicotine vaping is moderately, very or extremely harmful.^{Footnote21} **For adults who smoke, there appears to be a lack of awareness that vaping products are a less harmful source of nicotine for those who currently smoke and switch completely to vaping.** A 2020 survey found that only 22 percent of current smokers recognized that vaping is less harmful than smoking cigarettes.^{Footnote22}

To help ensure that Canadians are aware of the risks of vaping product use and nicotine addiction, in July 2020, provisions under the *Vaping Products Labelling and Packaging Regulations* (VPLPR) came into force requiring all vaping products to display important health and safety information. Those products containing nicotine must display the nicotine concentration and a health warning about the addictiveness of nicotine. All vaping substances must display a list of ingredients, regardless of nicotine content.

Health Canada confuses the public by failing to articulate its views on addiction as a harm and does not provide details on “harm-reduction” strategy.

Implicitly, Health Canada does not include the harm of addiction when making its assessment of the relative harms of cigarettes and vaping. Nor does much of the (substantial volume) of consumer research commissioned by the department explore what Canadians mean when they talk about the harms they associate with vaping products. Addiction is a highly probable harm to a person’s health that results from using e-cigarettes, and those who respond to federal surveys by saying that e-cigarettes are as harmful as cigarettes may be showing awareness of the risks of addiction and priority concern for this risk, and not the ‘lack of awareness’ of Health Canada’s position that there is a lesser overall risk of premature mortality. Fundamentally, until the harms of vaping are known, questions about the relative harm cannot produce answers that are ‘right’ or ‘wrong’, although they can measure the extent to which Health Canada’s views are supported (or not) by the public.

Notably, Health Canada is not pursuing the same inquiries about beliefs on relative harms about other products which are sold as “reduced risk”, such as snus or heat-not-burn tobacco. This would appear to be a result of a harm reduction approach that the department has adopted (but not made transparent) which accepts vaping but not other reduced risk products.

Harm reduction is not identified in the *Tobacco and Vaping Products Act*, and Parliament has not endorsed the department’s harm reduction approach. In designing and implementing a harm reduction philosophy in favour of vaping, the department did not consult on the details of the approach, did not elaborate on its strategy, and did not identify the indicators that would be used to monitor or evaluate the results. In fact, barely 65 words were made public to explain this new direction in the 2018 revised tobacco strategy¹⁰⁹.

Notably, some Canadian health leaders consider the harms of vaping to be greater than those of cigarettes.¹¹⁰

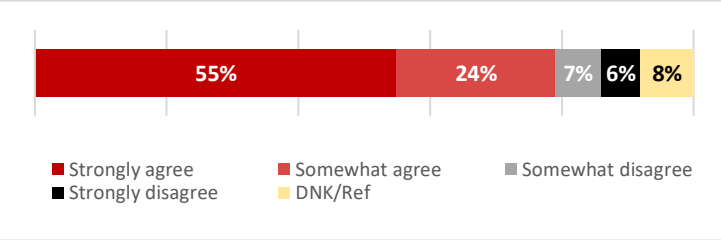
Despite the assertions in the discussion paper, Health Canada does not require manufacturers to provide details on flavouring ingredients on package labels.¹¹¹

Recommendation (repeated from line 11): The Minister’s report should:

- Include details of measures taken and planned to review the evidence on e-cigarettes and make transparent the government’s position on the relative and absolute harm of each nicotine product category regulated under the TVPA and FDA.
- Provide a rationale for not requiring vaping product manufacturers to display warning messages for diseases other than addiction.

Canadians do not support Health Canada’s Harm Reduction Approach.

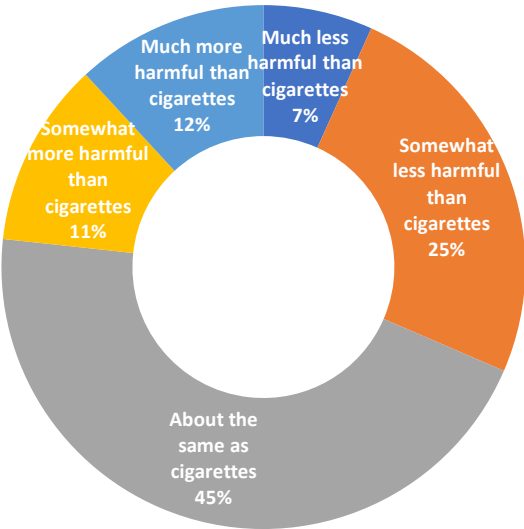
In a poll conducted by Leger, 8 out of 10 Canadians agreed with the statement “Governments should not focus on getting smokers to switch to vaping products but should focus instead on helping smokers quit smoking and nicotine use altogether.”¹¹²



Health Canada has no basis to conclude that Canadians who say e-cigarettes are as harmful as cigarettes are incorrect in their views.

Canadian Tobacco and Nicotine Survey, 2020

In your opinion, compared with cigarettes, how harmful to a person’s health are e-cigarettes or vaping devices with nicotine?



Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
38	<p>The Government of Canada has also intensified its public education and awareness efforts. Since 2018, more than \$13 million has been invested in a national public education campaign called <i>Consider the Consequences of Vaping</i>, which was designed to educate teens and parents about the health impacts of using vaping products . The campaign targets teens aged 13-18 as well as parents of youth aged 9-18 through various media channels (Instagram, Facebook, Snapchat and others) and in a variety of public spaces (cinemas, malls, transit stations). An evaluation of the advertising campaign found that 26 percent of teens who reported having seen the ads decided not to try vaping as a result. Health Canada also launched an experiential tour of schools and community events across Canada where additional information on the health impacts of vaping could be shared with youth, either in person or virtually.</p>	<p>Health Canada’s public education efforts have not protected children from inducements to vape.</p> <p>The \$13 million budget (about \$1.6 per year for each of Canada’s 2 million high-school age children) was insufficient to reach more than a small portion of school aged children. The evaluation report noted that over the 2 year period, only 515 school visits were made (less than one-eighth of Canada’s 2,2600 secondary and 2,100 mixed elementary and secondary schools).¹¹³ The policy choice to liberalize the vaping market and then use public education to reduce the consequent damage to young people. Contact with the public outside of school visits was even smaller, as reported in the evaluation report (see next column).</p> <p><u>Recommendation:</u> The Minister’s report should:</p> <ul style="list-style-type: none">• Acknowledge that public education should be an ancillary method to protect young people from commercial activities, and that the primary responsibility of government is to prevent such activities from reaching youth.	<p><i>Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021.</i> ¹¹⁴</p> <div><p>Consider the Consequences – Outputs 2019 - March 2021</p><ul style="list-style-type: none">✚ Advertising (894 M impressions, mixed media)✚ Experiential events (63,000+ engagements with youth including 515 schools visits and 22 community events)✚ Digital influencers (8 parent influencers and 9 youth influencers; focus on video content.)✚ Outreach materials (15,500+ mailout of parent tip sheet and poster to doctors’ offices, 12,000+ mailout of teen awareness kit to schools)✚ Consider the Consequences webpage (29,276 visits to microsite April 2019 – March 2021)✚ Vaping YouTube video (34,863 total views across 4 videos)</div>
39	<p>To better understand youth vaping trends and the reasons for use, the Government of Canada has invested \$7.1 million since 2018 in research and surveillance activities, including market, science and public opinion research with a view to better targeting its vaping prevention and cessation interventions for youth.</p>	<p>Health Canada’s consumer research has been extensive – but is not presented in a way that facilitates use by other governments or researchers.</p> <p>Because of government policy, public opinion research conducted by Health Canada is made public on the Library of Canada website within 6 months of field work. ¹¹⁵Health Canada does not otherwise disseminate results of this research, and has not facilitated the use of this knowledge by submitting analyses of results to scientific journals. Nor is the raw data made available to external researchers to facilitate their doing so.</p> <p><u>Recommendation:</u> The Minister’s report should:</p> <ul style="list-style-type: none">• Report on the key findings of this research investment• Report on plans to share data from this research with independent researchers.	

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Health Canada. Canada’s Tobacco Strategy. 2018<https://www.canada.ca/content/dam/hc-sc/documents/services/publications/healthy-living/canada-tobacco-strategy/overview-canada-tobacco-strategy-eng.pdf>

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Why Dr. Brian Goldman bought cigarettes for his underage son who has FASD Social Sharing. November 2019 <https://www.cbc.ca/radio/whitecoat/why-dr-brian-goldman-bought-cigarettes-for-his-underage-son-who-has-fasd-1.5356551>

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Physicians for a Smoke-Free Canada. Flavourings make e-cigarettes more harmful. That’s another good reason to end their use. February 2022. <https://smoke-free.ca/flavourings-make-e-cigarettes-more-harmful-thats-another-good-reason-to-end-their-use/>

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Leger. Endgame Measures and Harm Reduction. Survey Conducted amonbg Canadians. 2021. http://www.smoke-free.ca/pdf_1/2021/Leger-A-English.pdf

113

Council of Ministers of Education, Canada. Some Facts about Canada's Population, <https://www.cmec.ca/299/education-in-canada-an-overview/index.html>

114

Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021. https://smoke-free.ca/pdf_1/2022/Evaluation-A-2021-000914.pdf

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A list of these papers can be found at: Physicians for a Smoke-Free Canada. Canadian views on acceptability and risks of use of alcohol, tobacco, e-cigarettes and cannabis (and links to other consumer research commissioned by Health Canada: 2006-2021). March 9, 2022. <https://smoke-free-canada.blogspot.com/2022/03/consumer-research-on-tobacco-and-vaping.html>

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act		PSC Comments on text	Further information
40	<p>Questions</p> <ol style="list-style-type: none">1. Have public awareness efforts been effective at educating Canadians about the health risks of vaping products?2. What more could be done to educate Canadians about the health risks of vaping products?3. Are there still knowledge gaps to fill with regard to the health risks of vaping products? If so, what areas should research focus on?4. What approach should be taken to close the gap between scientific evidence and public perception so that youth and non-users of tobacco products are aware of the health risks of using vaping products, while adults who smoke are aware that they are a less harmful alternative to tobacco if they switch completely to vaping?	<p>Q1 .Health Canada has not educated Canadians on the risks of vaping, and, by not updating its own scientific conclusions since 2018, appears to have not educated itself (see next column).</p> <p>Q2. Health Canada should require that vaping products are sold with a comprehensive list of potential risks that have been identified in the published literature, using wording like “use of this product may cause ...”.</p> <p>Q3. Health Canada’s priority should be to fill its own knowledge gaps by routinely monitoring scientific developments, developing knowledge synthesis reports and making public reports on this review.</p> <p>The Public Health Agency of Canada could be commissioned to review the evidence on a semi-annual basis and to make public the results of this review.</p> <p>Q4. Without a robust and elaborated strategy to guide such efforts, Health Canada should abandon the approach of trying to use a regulated consumer goods market to achieve low rates of youth vaping and higher rates of smoker transition. Instead, it should move to limiting supply of vaping products to smokers in a therapeutic context.</p> <p>.</p>	<p>Health Canada’s monitoring of scientific developments is not transparent.</p> <p>Health Canada does not appear to routinely prepare research summaries for internal distribution.¹¹⁶</p> <div><div>Science and Innovation</div><div><h3>Informal Request for ATI Records Previously Released</h3><p>Organization: Health Canada</p><p>Year: 2021</p><p>Month: February</p><p>Request Number: A-2020-001625</p><p>Request Summary: Summaries of published scientific evidence related to the harms and benefits of using vaping products which were prepared or updated by the Research Division or Policy Division of the Tobacco Control Directorate of Health Canada between July 1, 2020 and December 31, 2020.</p><p>Disposition: No records exist</p><p>Number of pages: 0</p><div>Back to Search ↶</div></div></div>

116 Health Canada Access to Information request A-2020-001625, February 2021. <https://open.canada.ca/en/search/ati/reference/3955ffea67570380d4b638c675d8acda>

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act

Conclusion

The vaping products market in Canada has changed significantly over the three years that the TVPA has been in force. This review represents an opportunity to examine the legislation and assess progress in meeting its objectives. This includes whether the authorities under the TVPA are sufficient to address any issues and concerns as they arise, such as the rise in youth vaping. For these reasons, the focus of the first review of the TVPA are on the vaping provisions of the Act.

As this paper details, since the TVPA was implemented, the government has responded to the rise in youth vaping by exercising regulatory authorities, which were included in the legislation, that were designed to address challenges that might arise in the context of an emerging product and rapidly evolving market, and about which there was limited scientific evidence. In particular, the government has taken action to strengthen controls on access, restrict advertising, and place restrictions on the composition of the product as it relates to nicotine and flavours.

This first review of the TVPA is being undertaken after only three years of operation, in the context of limited new data, compounded by the unusual circumstances brought about by the COVID-19 pandemic. A full assessment of whether the measures taken since the legislation was introduced in 2018 have been effective in responding to the rise in youth vaping will benefit from more time and data. Subsequent reviews will continue to monitor youth use along with other dimensions of the Act.

In closing, Canadians are also welcome to provide their views on these three questions about the legislation and the review provisions therein:

1. Is there anything else that you would like to add as it relates to any of the topics covered in this discussion paper?
2. Are there any gaps in the authorities under the operation of the Act, or the vaping-related provisions, that you believe should be addressed?
3. Do you have suggestions for what could be included in future reviews of the TVPA?

PSC Comments on text

This consultation is not framed to allow adequate review of the purpose of the TVPA.

The TVPA covers tobacco and vaping products, but the consultation does not invite comment on the way in which nicotine-delivery systems can be co-regulated.

Even within Health Canada’s own logic of seeking “tools we can leverage inside or outside the federal government to move smokers from cigarettes to less harmful vaping products”¹¹⁷ it would make sense to close off the sale of the very harmful cigarette market. Many proposals have been made for ways to accelerate declines in tobacco use by imposing emission standards,^{118 119} by imposing market caps,^{120 121} and other regulatory mechanisms.

To date, Health Canada has chosen market liberalization of vaping products. as its policy tool to achieve this objective. The absence of any improvement in quitting rates since 2018 indicates that both sides of the department’s “balanced” approach have failed: no more Canadian smokers have quit, but many more young people have started to use nicotine.

A legislative review which addresses one side of its “balanced” approach while leaving the general strategy unaddressed is unlikely to meet the needs of Canadians for a strategy which will achieve the objective of phasing out tobacco and nicotine use in Canada (or even Health Canada’s more modest objective of ‘less than 5% prevalence by 2035’).

Recommendation: The Minister’s report should:

- Request Parliamentarians to assist in the development of a phase-out plan for tobacco and nicotine in Canada
- Propose an accountability framework that will apply for the duration of a long-term strategy, in line with the new framework for climate change plans.

Further information

Health Canada’s own evaluation criticized the absence of a “detailed action plan” to reduce smoking.

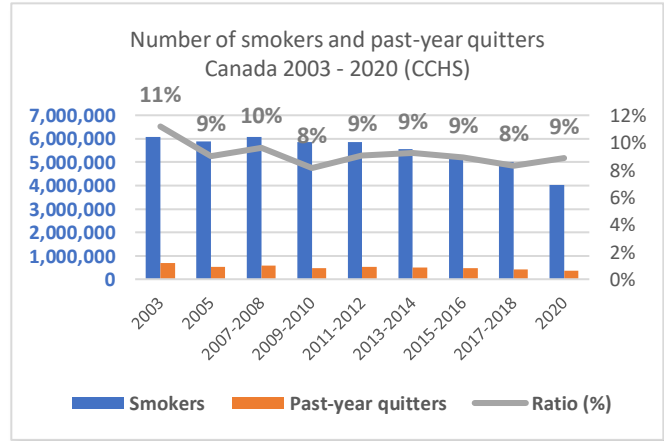
Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021. ¹²²

“Recommendation 1: Develop a detailed action plan for achieving CTS goals and for addressing the rise in youth vaping.

The goal of less than 5% tobacco use by 2035 is an ambitious target and Health Canada has not articulated a detailed action plan for reaching it. While the program does have some operational and performance measurement documents, they do not set out a clear path for reaching the long-term goal or include interim targets.”

Despite legalizing vaping, quitting rates have not increased in Canada.

The most recent data from the CCHS found that the number of Canadians who had stopped smoking in the previous year (357,000) was no greater than the annualized estimate in 2017-2018 (419,900) and much lower than the 679,900 Canadians who stopped smoking in 2003.¹²³ Expressed as a percentage (ratio) of recent quitters to remaining smokers, no progress over recent trends is apparent.



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118 Collishaw. This should change everything: using the toxic profile of heat-not-burn products as a performance standard to phase out combustible cigarettes. Tob Control May 2019 Vol 28 No 3

119 Physicians for a Smoke-Free Canada. Legislative proposal. The Tobacco Reduction Targets Act. http://www.smoke-free.ca/eng_home/2015/The%20Tobacco%20Reduction%20Target%20Act.pdf

120 Physicians for a Smoke-Free Canada. Legislative proposal. An Act to Establish a Tobacco Phase-out Plan. http://smoke-free.ca/pdf_1/2018/2018%20Private%20Member's%20Tobacco%20Supply%20and%20Demand%20Reduction%20Act.pdf

121 Malone, R. ‘Stop me before I kill again’: why Philip Morris International needs governments’ help to quit smoking, and why governments need more pressure to do so. Tob Control March 2018 Vol 27 No 2

122 Evaluation of the Health Portfolio Tobacco and Vaping Activities 2016-17 to 2020-21. Draft August 2021. https://smoke-free.ca/pdf_1/2022/Evaluation-A-2021-000914.pdf

123 Physicians for a Smoke-Free Canada. Newly-released data shows quitting rates are stagnant -- and most vapers are not reducing harm. 18 March 2022. <https://smoke-free-canada.blogspot.com/2022/03/newly-released-data-shows-smoking-rates.html>

Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act	PSC Comments on text	Further information
Footnotes to discussion paper		
Footnote 1 Canadian Substance Use Costs and Harms Scientific Working Group. (2020). Canadian substance use costs and harms 2015-2017. (Prepared by the Canadian Institute for Substance Use Research and the Canadian Centre on Substance Use and Addiction.) Ottawa, Ont.: Canadian Centre on Substance Use and Addiction.		
Footnote 2 General Social Survey (GSS) 1985. Statistics Canada.		
Footnote 3 Canadian Community Health Survey (CCHS) 2020. Statistics Canada. Table 13-10-0096-10 Smokers, by age group. The survey can be accessed here: https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1310009601		
Footnote 4 Canadian Tobacco, Alcohol and Drugs Survey (CTADS) 2017. The survey can be accessed here: https://www.canada.ca/en/health-canada/services/canadian-tobacco-alcohol-drugs-survey/2017-summary.html		
Footnote 5 Canadian Tobacco, Alcohol and Drugs Survey (CTADS) 2017. The survey can be accessed here: https://www.canada.ca/en/health-canada/services/canadian-tobacco-alcohol-drugs-survey/2017-summary.html		
Footnote 6 Canadian Tobacco and Nicotine Survey (CTNS) 2019. The survey can be accessed here: https://www.canada.ca/en/health-canada/services/canadian-tobacco-nicotine-survey/2019-summary.html		
Footnote 7 Canadian Tobacco Alcohol and Drugs Survey (CTADS) 2013, 2015, 2017 / Canadian Tobacco and Nicotine Survey 2019, 2020		
Footnote 8 Canadian Tobacco and Nicotine Survey (CTNS) 2020.		
Footnote 9 Canadian Tobacco and Nicotine Survey (CTNS) 2020.		
Footnote 10 Canadian Tobacco and Nicotine Survey (CTNS) 2020.		
Footnote 11 Canadian Tobacco and Nicotine Survey (CTNS) results can be accessed here: https://www.canada.ca/en/health-canada/services/canadian-tobacco-nicotine-survey.html		
Footnote 12 Canadian Community Health Survey (CCHS) results can be accessed here: https://www150.statcan.gc.ca/n1/daily-quotidien/210917/dq210917e-eng.htm		
Footnote 13 Euromonitor International. Study of the Market Size and Growth Trends of Nicotine-based Vaping Products Market in Canada 2017. A custom report compiled for Health Canada.		
Footnote 14 Euromonitor International. Study of the Market Size, Characteristics and Growth Trends of the Vaping Products Market in Canada 2020. A custom report compiled for Health Canada.		
Footnote 15 Ipsos LP, We Check. Retailer Behaviour re: Youth Access to Electronic Cigarettes and Promotion Report 2019. A custom report compiled for Health Canada.		
Footnote 16 Canadian Student Tobacco, Alcohol and Drugs Survey (CSTADS) 2018-19. The survey can be accessed here: https://www.canada.ca/en/health-canada/services/canadian-student-tobacco-alcohol-drugs-survey/2018-2019-summary.html		
Footnote 17 Canadian Tobacco and Nicotine Survey (CTNS) 2019. The survey can be accessed here: https://www.canada.ca/en/health-canada/services/canadian-tobacco-nicotine-survey/2019-summary.html		
Footnote 18 Canadian Tobacco and Nicotine Survey (CTNS) 2019. The survey can be accessed here: https://www.canada.ca/en/health-canada/services/canadian-tobacco-nicotine-survey/2019-summary.html		
Footnote 19 Health Canada's Forward Regulatory Plan 2021-2023: Vaping Products Reporting Regulations. The regulations can be accessed here: https://www.canada.ca/en/health-canada/corporate/about-health-canada/legislation-guidelines/acts-regulations/forward-regulatory-plan/plan/vaping-reporting.html		
Footnote 20 Health Canada, Summary of results for the Canadian Student Tobacco, Alcohol and Drugs Survey 2018-19, Retrieved from: https://www.canada.ca/en/health-canada/services/canadian-student-tobacco-alcohol-drugs-survey/2018-2019-summary.html		
Footnote 21 Earncliffe Strategy Group (2020), Social Values and Psychographic Segmentation of Tobacco and Nicotine, Retrieved from: https://publications.gc.ca/collections/collection_2020/sc-hc/H14-345-2020-1-eng.pdf		
Footnote 22 Canadian Tobacco and Nicotine Survey (CTNS) 2020.		