Legislative review of the Tobacco and Vaping Products Act

Comments on Health Canada's discussion paper

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Format of our comments. These comments are divided into two parts. Part 1 makes general comments about the legislative review and the framing of the issues in the discussion paper. Part 2 addresses the five objectives and questions raised in the discussion paper. Finally, we make some broad recommendations in response to the conclusion of the discussion paper.

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Part 1: Introduction and general observations

We are writing to provide brief comments on the discussion paper published to inform the Government of Canada's legislative review of the Tobacco and Vaping Products Act (TVPA) of 2018.[1]

According to the consultation document:

> *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.*

This framing sidesteps key trade-offs and ignores the risk of unintended harmful consequences. Vaping policy cannot be isolated from smoking policy, and youth welfare cannot and should not be isolated from the effects of policies on adults.

We wish to raise five broad issues.

First, vaping and smoking function as alternative nicotine-using behaviours, and e-cigarettes and cigarettes function as economic substitutes. A range of evidence from randomised controlled trials, observational studies, population trends, and quasi-experimental economic analysis shows that vaping and smoking are linked as *substitutes*.[2] It follows that measures that are "tough" on vaping may have the effect, if not the intention, of *increasing* smoking and creating a *net increase in harm*. Health Canada and the complex of influential Canadian health organisations that oppose vaping and tobacco harm reduction may be doing more harm than good in tobacco policy. They should recognise that nearly everything they do in opposition to vaping has the effect of protecting the cigarette trade from competition, inhibiting switching from smoking to vaping, and therefore prolonging the epidemic of smoking-related disease.

Second, an exclusive or excessive focus on young people ignores adult welfare and interactions between adult and adolescent welfare. For example, measures taken to prevent trivial risks to young people may create lethal consequences for millions of adults. Also, there are young people for whom vaping functions as a protection from smoking by providing a diversion pathway at initiation or later. Finally, for a coherent public health approach, the link between adult and youth behaviours must be recognised. Young people do not live in isolation from adults. The primary driver of youth smoking initiation is the

[1] Government of Canada. Discussion Paper: Legislative Review of the Tobacco and Vaping Products Act. 16 March 2022 [link]

[2] We have summarised this evidence for substitution in a recent submission on tax policy to the National Treasury of South Africa. See: Abrams DB, Bates CD, Niaura RS, Sweanor DT, Yach D. Comments on Discussion paper: *Taxation of Electronic Nicotine Non-Nicotine Delivery Systems (Vaping)*, December 2021. 4 February 2022. [link]

smoking behaviour of parents or significant adults.[3] [4] Young people are harmed by the economic and health impacts of parental smoking and through second-hand smoke exposure.

Third, the discussion paper is grounded in a naïve view of risk behaviours and the effect of regulation. Taking measures to prevent youth vaping does not make vaping disappear as far as young people are concerned. Like all measures with a prohibitive element, such restrictions trigger changes in how products are supplied, who supplies them and at what price. On the demand side, regulatory interventions trigger changes in consumer behaviour, and it is wrong to assume that a young person who would otherwise have vaped will switch to behaviours deemed virtuous by Health Canada. For example, young people could access the unregulated black market, participate in the black market as low-level suppliers, mix and sell their own vape liquids, switch to smoking, or switch to the use of other drugs. It would help Health Canada to recognise that for some youth, for some of the time, some sort of substance use is inevitable, whatever adult authorities say or do. Vaping nicotine should be of much less concern than the use of alcohol or cannabis or the use of nicotine through smoking tobacco. While foundations, health activists, motivated academics, and an uncritical media have created a moral panic about vaping, policymakers and legislators need to approach the issue with a sense of proportion. We are not arguing that youth vaping should be of no concern, but that it is a relatively innocuous behaviour compared to, say, binge drinking, driving under the influence, or regular use of cannabis. Youth vaping presents a far lower and probably transient public health risk compared to the risks facing adults who have already smoked for years or decades.

Fourth, there should be better clarity on public health policy goals and, therefore, a focus on reducing *smoking* as deeply and rapidly as possible. The legislative review should adopt a rigorous public health perspective and focus on minimising the severe health and economic consequences of tobacco use, predominantly arising from smoking. This means reducing smoking in adults and adolescents to the greatest extent possible. In taking this approach, vaping would be regarded as a significant harm reduction opportunity not to be squandered through poorly designed regulation. The danger of focussing on "youth vaping" is that it distracts from the primary public health mission and leads to more cancer, cardiovascular and respiratory disease. The discussion paper is written as though not mentioning these trade-offs and interactions somehow means they do not need to be considered or do not have real-world consequences in terms of adult mortality and morbidity and risks to youth.

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[3] Mays, D., Gilman, S. E., Rende, R., Luta, G., Tercyak, K. P., & Niaura, R. S. (2014). Parental Smoking Exposure and Adolescent Smoking Trajectories. *Pediatrics*, *133*(6), 983–991. [link]

[4] Vuolo, M., & Staff, J. (2013). Parent and Child Cigarette Use: A Longitudinal, Multigenerational Study. *Pediatrics*, *132*(3), e568–e577. [link]

Fifth, Health Canada is acting as an enemy of innovation. The discussion paper amounts to a proposal to obstruct the diffusion of technological innovation that addresses the main causes of harm within the world's most harmful and pervasively available consumer product. Unless Health Canada believes that nicotine use will somehow disappear, the availability of technologies for using nicotine with relatively low risk is an inherently beneficial development and a significant advance. The emergence of a much safer technology than the dominant market incumbent should not be opposed because some young people may use it. The approach of Health Canada and the complex of influential activists that shape policy through Canadian politics is well characterised in this quote about historic hostility to innovation from the innovation scholar Calestous Juma.[5]

> Claims about the promise of new technology are at times greeted with skepticism, vilification or outright opposition—often dominated by slander, innuendo, scare tactics, conspiracy theories and misinformation. The assumption that new technologies carry unknown risks guides much of the debate. This is often amplified to levels that overshadow the dangers of known risks.

Though Professor Juma was not describing vaping, his description of the hostility to innovation captures the recoil against this critical new technology very well.

[5] Juma C. Innovation and Its Enemies: Why People Resist New Technologies. Oxford, New York: Oxford University Press; 2016. [link]

Part 2: Comments on objectives and consultation questions

The Tobacco and Vaping Products Act sets out five specific vaping-related objectives (A-E). The legislative review discussion paper poses a series of questions about each objective and the effectiveness of the Act. We repeat each objective and related questions below and provide a brief commentary on each section. Finally, we provide a comment on the conclusion of the discussion paper with ideas on improving the public health impact of the legislation.

A. Protect young persons and non-users of tobacco products from inducements to use vaping products.

1. Are the current restrictions on advertising and promotional activities adequately protecting youth?
2. 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?
3. Are there other measures that the Government could employ to protect youth and non-users from inducements to use vaping products?
4. 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?
5. 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?

Comments in response

The "inducements" in question function in the marketplace as *anti-smoking* inducements. They have the advantage that they do not draw on the public finances and are subject to market disciplines in driving their effectiveness.

The discussion paper describes these measures as follows:

> 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.

The discussion paper provides no analysis of the impact of these measures or whether they have resulted in any of the likely unintended consequences. We have previously extensively referenced arguments and criticisms of Health Canada's proposals to ban nearly all e-liquid

flavours and the flawed analysis that justified it.[6] We would be grateful if this analysis could be considered in the legislative review without repeating it here.

It is not necessarily the case that inducements to vape are bad for public health or bad for young people. If vaping displaces smoking among young people, then it is beneficial. There is some evidence that this is happening.[7] [8] [9] If vaping helps adults quit smoking, that is clearly good for the adults concerned. But it is also helpful in reducing inducements to smoke in adolescents via attenuation of the parental and adult role model effect.

The legislative review should be open to reversing ill-conceived measures in the TVPA in 2018. There is no reason to assume that the direction of the legislative review should be to *strengthen* measures that are counterproductive to start with.

B. 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.

1. 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?
2. 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?
3. 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?
4. 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?

Comments in response

The efforts to control nicotine exposure through limits on e-liquid nicotine concentration are ill-conceived and counterproductive – equivalent in futility to trying to control alcohol consumption by limiting the strength of drinks available. Nicotine users *self-titrate* (i.e., they control their exposure by inhaling at a rate and depth that ensures that they achieve a satisfactory exposure with the available liquids) and will choose a device that allows them to

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[6] Abrams D, Bates C, Niaura R, Sweanor D. The case against banning flavoured e-liquids in Canada, 2 September 2021 [PDF]. Related blog: Bates C. Health Canada consults on the really dumb idea of making vaping a less appealing alternative to smoking, 2 September 2021 [link]

[7] Selya, A. S., & Foxon, F. (2021). Trends in electronic cigarette use and conventional smoking: quantifying a possible 'diversion' effect among US adolescents. *Addiction*, add.15385. [link]

[8] Sokol, N., & Feldman, J. (2021). High school seniors who used e-cigarettes may have otherwise been cigarette smokers: evidence from Monitoring the Future (United States, 2009-2018). *Nicotine & Tobacco Research*, [link]

[9] Shahab, L., Beard, E., & Brown, J. (2020). Association of initial e-cigarette and other tobacco product use with subsequent cigarette smoking in adolescents: a cross-sectional, matched control study. *Tobacco Control*. [link]

do that. The main effect of the controls on nicotine strength is to favour devices with higher liquid volume flows, higher operating power, and larger batteries. Higher nicotine strengths allow for smaller, more compact devices, lower volume flows for a given nicotine exposure, lower power, and smaller tank sizes. The effect is to make the more compact devices that appeal to smokers making the initial switch from smoking to vaping less viable as satisfactory alternatives to cigarettes. Dependence on nicotine is not a function of the devices or liquids available but primarily of the individual's behavioural drives and circumstances. Wellman and colleagues identified ninety-eight risk factors for smoking onset, including lower socioeconomic status, poor academic performance, sensation-seeking, rebelliousness, and low self-esteem.[10] Young people seeking a higher nicotine dose can do this most obviously by smoking but also by using a higher-powered vaping device using a weaker liquid. There is no argument for encouraging either behavioural response.

We have previously set out detailed arguments and criticisms of Health Canada's proposals to limit nicotine strength and the flawed analysis that justified it.[11] Other scientists and experts also pointed out the flaws in this approach,[12] and the vaping company Juul provided an informative, evidence-based submission.[13] All of these arguments made in early 2021 remain valid today. None of the arguments presented then have since been addressed or refuted by Health Canada.

Until Health Canada can provide a more coherent argument to support any nicotine cap or at least addresses the longstanding criticisms of the cap in place, we can see no reason to go further. Given the poor justification of the cap and the likelihood of unintended consequences, there is a strong case for *reversing* this ill-advised measure following the legislative review. It has the effect of reinforcing the dominance of the cigarette in terms of nicotine delivery and creating an additional and unnecessary barrier to switching from smoking to vaping.

Several of the arguments in the discussion paper used to justify these controls are asserted confidently and without qualification but have a weak or contested grounding in science. We recommend Health Canada consults the carefully crafted paper published in the American Journal of Public Health by fifteen former presidents of the Society for Research on Nicotine and Tobacco on vaping science.[14] This paper provides a valuable scientific

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[10] Wellman RJ, Dugas EN, Dutczak H, et al. Predictors of the Onset of Cigarette Smoking: A Systematic Review of Longitudinal Population-Based Studies in Youth. *Am. J. Prev. Med*. 2016 [link]

[11] Bates C, Sweanor D. Proposal to limit permitted nicotine e-liquid strength to 20mg/ml. 1 March 2021. [link]

[12] Lynne Dawkins, Sharon Cox and Catherine Kimber, London South Bank University [link]; David Abrams and Ray Niaura, New York University School of Global Public Health [link]; Amelia Howard, University of Waterloo, Canada – personal and expert testimony [link]; Jonathan Foulds, Penn State College of Medicine, USA. [link]

[13] Juul Labs Inc (Canada) submission in response to Canada Gazette Part I, Vol. 154, No. 51, December 19, 2020: Concentration of Nicotine in Vaping Products Regulations, December 19, 2020 [link]

[14] Balfour, D. J. K., Benowitz, N. L., Colby, S. M., Hatsukami, D. K., Lando, H. A., Leischow, S. J., Lerman, C., Mermelstein, R. J., Niaura, R., Perkins, K. A., Pomerleau, O. F., Rigotti, N. A., Swan, G. E., Warner, K. E., & West, R. (2021). Balancing Consideration of the Risks and Benefits of E-Cigarettes. *American Journal of Public Health*, *111*(9), 1661–1672. [link]

overview and is carefully written. For example, it covers three subjects relevant to the legislative review: vaping as a cause of teenage nicotine addiction, vaping as a cause of smoking initiation, and the effect of vaping on the development of the adolescent brain. In these areas, it draws different or more tentative conclusions than those presented in the discussion document. In our view, it provides a more reliable scientific basis for the legislative review and Canadian policymakers.

C. Protect the health of young persons by restricting access to vaping products.

1. 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?
2. Are there other measures that the Government could employ to protect youth from accessing 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?

Comments in response

There is widespread agreement that vaping products should not be available to persons under 18. The most appropriate risk-proportionate framework should be to restrict cigarette sales to those aged 21 or over and vaping products to persons aged 18 and over. This would encourage those emerging from adolescence as smokers to switch from smoking to vaping and form an implicit recognition of the difference in risk.

Measures that attempt to reduce the appeal to youth are likely to reduce the appeal to *everyone* unless very carefully designed, targeted, and tested. There is nothing clever about regulation that does this – any regulator can make a product less appealing through excessive requirements and restrictions. Why not insist that all vaping products are made with ‘rancid meat’ flavouring? That would deter nearly all adolescent users. But there would also be no adult users. A credible regulator should be looking for options to control appeal to youth without destroying the value to adults – either as a harm reduction option or a pleasurable product that adults should be free to use. Rather than controls on product design elements, ingredients, flavours, or aesthetics, the regulatory focus should be on reducing appeal through controls on *marketing and on flavour descriptors* rather than the product itself or flavours as a sensory experience.

D. Prevent the public from being deceived or misled with respect to the health hazards of using vaping products.

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?

Comments in response

The most damaging misunderstanding in this field relates to public understanding of the relative risk of smoking and vaping. There is no real doubt that vaping is much less harmful than smoking: many toxicants present in cigarette smoke are not detectable in e-cigarette aerosol. Almost all of the rest are present at much lower levels. This is because there is no combustion, and therefore no hazardous combustion products are formed. Human exposure biomarkers (traces of toxicants in blood, saliva or urine) are much lower. There is simply no basis for claiming equivalent risk or that uncertainties preclude drawing any conclusions about risk. We do not know *everything*, but we know *enough* to make policy on the basis that vaping is, beyond reasonable doubt, much less harmful than smoking.

However, these fundamental realities are not reflected in public opinion, where less than 4% correctly identify e-cigarettes as *much less harmful* than cigarettes.

<table>
<tr><th colspan="4">Perception of harm using a vape compared to smoking cigarettes among all respondents and those who used a vape or smoked a cigarette in the past 30 days, 2020[15]</th></tr>
<tr><th>All ages (2020)</th><th>All persons</th><th>Past-30-day e-cigarette use</th><th>Past-30-day cigarette use</th></tr>
<tr><td>Population estimate ('000)</td><td>31,183</td><td>1,454</td><td>3,218</td></tr>
<tr><td>Much less harmful than cigarettes</td><td>3.7</td><td>26.2</td><td>4.9</td></tr>
<tr><td>Somewhat less harmful than cigarettes</td><td>15.7</td><td>31.5</td><td>17.4</td></tr>
<tr><td>About the same as cigarettes</td><td>32.4</td><td>21.5</td><td>29.2</td></tr>
<tr><td>Somewhat more harmful than cigarettes</td><td>7.9</td><td rowspan="2">8.7</td><td>8.6</td></tr>
<tr><td>Much more harmful than cigarettes</td><td>9.0</td><td>8.5</td></tr>
<tr><td>Don’t know</td><td>31.2</td><td>12.1</td><td>31.4</td></tr>
</table>

These numbers are *terrible*: almost half (49.3%) of Canadians believe that vaping is as harmful or more harmful than smoking, an absurd and baseless proposition. Many of these will be non-smokers and not directly affected. However, the views of the wider public will influence the “information environment” (the opinions of friends, family, work colleagues, public figures, media etc.) that informs smokers’ behaviour change decisions.

[15] This table is adapted from Table 13 of the Canadian Tobacco and Nicotine Survey (CTNS): 2020 detailed tables, accessed 27 April 2022. [link]. Please see the original for footnotes, confidence intervals and breakdown by age.

More than three-quarters of smokers, the primary population at risk, believe that vaping is as harmful or more harmful than smoking or don't know what to think. That proportion represents 2.5 million Canadians who are at the greatest tobacco-related health risk yet have unreliable information or profound misunderstanding about the choices they could make to dramatically reduce their health risks by switching to vaping. It would be wrong to blame Health Canada exclusively for this disgraceful state of public understanding – many activists, academics, misguided health organisations, and journalists have played their part. But it is right to blame Health Canada for doing nothing to address this problem, up to and including the way the Legislative Review discussion document has been written.

At one point in its evolving approach to vaping, Health Canada led the world in risk communication and was proposing a series of informative health-related statements.[16]

1. If you are a smoker, switching completely to vaping is a much less harmful option.
2. While vaping products emit toxic substances, the amount is significantly lower than in tobacco smoke.
3. By switching completely to vaping products, smokers are exposed to a small fraction of the 7,000 chemicals found in tobacco smoke.
4. Switching completely from combustible tobacco cigarettes to e-cigarettes significantly reduces users' exposure to numerous toxic and cancer-causing substances.
5. Completely replacing your cigarette with a vaping product will significantly reduce your exposure to numerous toxic and cancer-causing substances.
6. Switching completely from smoking to e-cigarettes will reduce harms to your health.
7. Completely replacing your cigarette with an e-cigarette will reduce harms to your health.

All these statements are accurate, proportional, and informative. Yet they were withdrawn by Health Canada and never used to inform public perceptions, thus squandering an international leadership position and the opportunity to help Canadian citizens make sense of the often absurd and exaggerated claims made by activists and amplified in the media.

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[16] The statements were notified to the World Trade Organisation in September 2018 with an explanation of Health Canada's plan at the time. These statements were considered for inclusion in regulations that would implement Section 30.43(2) of the TVPA, but they were not taken forward.

The TVPA includes subsection 30.43(2) that prohibits, subject to regulations, the promotion of vaping products, including by means of the packaging, by comparing the health effects arising from the use of the product or from its emissions with those arising from the use of a tobacco product or from its emissions (subsection 30.43(2)). This subsection comes into force on 19 November 2018. Health Canada is developing regulations to further implement this subsection in the TVPA, to allow for certain statements to be used in the promotion of vaping products that compare the health effects of vaping to smoking. The proposed regulations would (1) refer to a list of comparative health effect statements that are incorporated by reference in the regulations and (2) prescribe conditions for their use in commercial promotions, including on packaging. The list of permitted statements would be published on Health Canada's website. The use of these statements is not mandated; manufacturers, retailers and others can voluntarily choose to use them in the vaping product promotions as long as they meet the prescribed conditions set out in the regulations for their display.

Source: WTO document: G/TBT/N/CAN/513/Add.2, 18 September 2018 [link]

The problem with misleading information and public misunderstanding of risk does not arise from the vaping or tobacco industries, or consumer organisations. It arises from activists and academics, misguided health organisations, and news flow from the United States, where very large philanthropic funds are devoted to demonising vaping and pressing for various forms of prohibition.

Through its timidity and equivocation, Health Canada has failed millions of Canadian citizens by not providing a credible buttress against this tide of misinformation. One way to address this would be to restore the proposal to allow government-approved risk communications, using the seven statements above. Nothing has changed to invalidate these statements, and the objections made by some activists at the time were scientifically baseless. This idea was excellent and should be reinstated.

E. Enhance public awareness of those hazards.

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 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?

Comments in response

The questions asked here simply demonstrate that Health Canada has no idea what it is doing in this area. As shown in (D) above, the problem is not a misunderstanding of the health risks of vaping but a gigantic misalignment between public and expert understanding of the relative risk of vaping and smoking. Until that problem is addressed, there is no case for adding more exaggerated risk claims to the public discourse.

Further, in the questions above, it is unclear what Health Canada means by “health risks of vaping products”. This is asserted as if an established set of facts merely needs to be better communicated to the public. The discussion document provides a woefully inadequate account of the state of knowledge on the health risks of vaping. Most of these risks are speculative or likely to be far less than the equivalent risk for smoking. The discussion of nicotine risks does not bear the slightest scrutiny. It is not appropriate to call for more communication of risks without first forming some sort of credible agreement on the nature of these risks. On this, Health Canada fails on two counts. First, there is no clear articulation of the ‘materiality’ of these risks in *absolute* terms (Are they serious or trivial? Likely or

unlikely? Where do they fit in societal appetite for risk?). Second, these speculative risks are not positioned *relative* to smoking and should not be communicated to the public without this contextual information.

The conclusion to the discussion paper

The conclusion to the discussion paper argues that a full review of the effectiveness of the measures introduced since 2018 will take more time:

> *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*

Again, the emphasis and problem framing are inappropriate for the reasons set out in Part 1 of this commentary – any review should embed concerns about youth vaping in a wider assessment of public health impact. The conclusion poses three further questions:

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?

Comments in response

We would welcome further discussion with Health Canada about improving the public health performance of this legislation. Such improvements may include:

- Setting a clear overarching goal focused on morbidity and mortality and, therefore, focussed on reducing *smoking* at all ages.
- Making policy that recognises that vaping and other smoke-free products represent a public health *opportunity* that should not be squandered and only relatively minor incidental risks, even if these attract a high political focus.
- Taking a risk-proportionate approach to regulation and recognising the risks to a middle-aged adult smoker are far greater than risks, if any, to an adolescent vaper.
- Adopting a more sophisticated view of youth risk behaviours and how harm reduction also applies to adolescents, especially those experiencing various kinds of disadvantage.
- Assessing likely unintended consequences arising from the existing body of legislation as it applies to non-combustible nicotine products, with appropriate surveillance to detect such harms should they occur. This would include the nicotine cap, restrictions on marketing, excessive control over product design intended to reduce appeal, and inappropriate warning and anti-vaping messaging.

- Improving risk communication, including reinstatement of Health Canada's ground-breaking proposal to adopt government-endorsed statements about relative risk.
- Strengthening the base of science and economics on which Health Canada bases policy and legislative proposals. The discussion paper is unacceptably weak in this regard.

Postscript: Health Canada took a wrong turn in 2018

Canada's approach to tobacco harm reduction was derailed by flawed data that emerged late in 2018. Canada's approach to tobacco harm reduction changed radically late in 2018 in response to data subsequently published and later corrected in the British Medical Journal. This data appeared to show that both youth smoking and youth vaping had increased in Canada. This implied that the two behaviours could be complementary and reinforcing rather than substitutes.[17] The paper had been heavily trailed in the media and among policymakers prior to publication in 2019 and generated a hostile policy response to vaping and tobacco harm reduction. The problem was (and remains) that the paper's central premise was based on flawed data.[18]

The paper was eventually corrected in July 2020.[19] However, a false impression had been created, the policy had shifted in response, and the corrective action was inadequate and insufficient to reverse the policy and legislative consequences that followed.[20]

Health Canada reacted quickly to the flawed data but did not rethink when the error was revealed and has since doubled down on its hostile stance. The legislative review is an opportunity to reassess the subsequent embrace of an approach hostile to tobacco harm reduction. Harm reduction is a well-established public health strategy with great potential to address the intolerable burden of smoking-related disease in Canada and globally.

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[17] Hammond, D., Reid, J. L., Rynard, V. L., Fong, G. T., Cummings, K. M., McNeill, A., Hitchman, S., Thrasher, J. F., Goniewicz, M. L., Bansal-Travers, M., O'Connor, R., Levy, D., Borland, R., & White, C. M. (2019). Prevalence of vaping and smoking among adolescents in Canada, England, and the United States: repeat national cross-sectional surveys. *BMJ*, *365*, l2219. [link]

[18] The flaws were apparent almost as soon as the paper was finally published in 2019. It was clear that its data conflicted with official estimates. See Rapid Reaction: Increases in smoking recorded in this study appear to conflict with official Canadian data, July 2019 [link]

[19] Erratum: Prevalence of vaping and smoking among adolescents in Canada, England, and the United States: Repeat national cross sectional surveys (BMJ (2019) 365: l2219 DOI: 10.1136/bmj.l2219). (2020). *The BMJ*, *370*. [link]

[20] For example, see Clive Bates, BMJ rapid reaction *The corrective action taken following the revised data is inadequate and the result is absurd* [link]. The full chronology is set out here: Clive Bates, *Canada takes a wrong turn after a flawed paper induces moral panic about youth vaping and smoking*, 20 July 2020 [link]

About the authors

Clive D. Bates MA MSc is Director of Counterfactual, a consulting and advocacy practice focused on a pragmatic approach to sustainability and public health. After an early career in the private sector and environmental campaigning, he joined the tobacco control movement. From 1997 to 2003, he was Director of Action on Smoking and Health (UK), campaigning to reduce the harms caused by tobacco. From 2000, he was closely involved in developing the Framework Convention on Tobacco Control as head of a leading non-profit tobacco control organisation. In 2003, he joined Prime Minister Blair's Strategy Unit and worked in senior roles in government and regulators and the United Nations in Sudan. He started Counterfactual in 2013.

David T. Sweanor JD is an Adjunct Professor of Law and Chair of the Advisory Board of the Centre for Health Law, Policy and Ethics at the University of Ottawa. He was the first lawyer in the world to work full time on policies to reduce cigarette smoking. He has worked on Canadian and global tobacco and health issues for over 40 years, helping set many international precedents, including in shaping tobacco tax policy, and drafting tobacco control legislation, in South Africa. He has worked on tobacco issues with the WHO, PAHO, World Bank and many other bodies, worked on successful litigation against cigarette companies, and spoken and published widely. He was recognised as Ottawa's outstanding individual philanthropist in 2016.