

# Health Canada proposes restrictions on the promotion of vaping products under the Tobacco and Vaping Product Act

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Health Canada has proposed new regulations that would place stricter limits on the advertising and promotion of vaping products and make health warnings on vaping products mandatory. According to Health Canada, the proposed *Vaping Products Promotion Regulations* (the Proposed Regulations) under the *Tobacco and Vaping Products Act* (TVPA) are a stated effort to mitigate the impact of vaping product promotion on young persons and non-users of nicotine containing products.<sup>[1]</sup>

It is important to note that under the TVPA and its regulations, the definition of a “vaping product” explicitly excludes cannabis and cannabis accessories as defined by and regulated under the *Cannabis Act*.<sup>[2]</sup> However, certain provinces have issued restrictions that apply to cannabis vaping products as well as nicotine containing vaping products (see “Provincial developments” below for further information). For more details regarding the promotion and advertising of cannabis products and cannabis accessories in general, please see our previous Osler Update, “[Frequently asked questions regarding cannabis promotional materials](#).”

The Proposed Regulations would

1. **prohibit the promotion** of vaping products and vaping product-related brand elements by means of advertising that is done in a manner that can be **seen or heard by young persons**, including the display of vaping products at points of sale where they can be seen by young persons<sup>[3]</sup>
2. require that all vaping advertising convey a **health warning** about the health hazards of vaping product use<sup>[4]</sup>

The Proposed Regulations aim to ensure that young Canadians would not see advertising for vaping products in public spaces, in convenience stores or online. Marketing of vaping products would be allowed in specialty shops, businesses and online spaces that are accessible by adults only.

In instances where promotion is permissible, the Proposed Regulations require that any advertising of vaping products or a vaping product-related brand element displays the required health warning about the product and its emissions.<sup>[5]</sup> The health warnings that would need to be included have not yet been identified and will be set out in a yet-to-be published document entitled “*List of Health Warnings for Vaping Product Advertising*”.<sup>[6]</sup>

## Background on the regulation of vaping products sold in Canada

The TVPA was enacted on May 23, 2018, to regulate the manufacture, sale, labelling and promotion of tobacco products and vaping products sold in Canada. The TVPA provides a legal framework for regulating vaping products with the stated purpose of protecting young persons from nicotine addiction and tobacco use, while allowing adults access to vaping products as a less harmful alternative to smoking.<sup>[7]</sup>

### Provincial developments

Several provinces have passed or proposed new regulations addressing vaping products or announced intentions to do so. Examples of recent developments include the following:

- **British Columbia:** The Ministry of Health has proposed new regulations as part of a “10-point plan” to protect young people from the harms associated with vaping. These proposed new regulations would, if adopted, limit nicotine content of vaping pods and liquids, restrict the sale of flavoured products, implement new labelling requirements to include plain packaging and health warnings, strengthen restrictions on public advertising and increase the provincial sales tax on vaping products and accessories from 7% to 20%.<sup>[8]</sup>
- **Alberta:** The Alberta government has stated that “we are reviewing Alberta’s *Tobacco and Smoking Reduction Act* which will allow us to consider options to further prevent and reduce the harms of tobacco, tobacco-like products and vaping, especially among youth... The full review will be completed by the end of [2019] to allow any potential amendments to the act to be introduced in 2020.”<sup>[9]</sup> As of the date of this publication, Alberta is the only province without provincial legislation addressing vaping devices and products.
- **Saskatchewan:** The Saskatchewan government passed amendments to the *Tobacco Control Act* to bring vaping product regulation in line with existing tobacco legislation in Saskatchewan. This includes restricting the sale of vaping/e-cigarette devices and products to individuals 18 years of age and older, prohibiting the display of vaping products in retail businesses where young persons have access, restricting advertising of vaping products in the same manner as tobacco products by prohibiting advertising signs in areas where young persons can enter and provide the ability to restrict the sale of flavoured tobacco and vaping products by regulation.<sup>[10]</sup>
- **Ontario:** As of January 1, 2020, Ontario has banned the promotion of vaping products in convenience stores and gas stations. Promotion of vaping products will continue to be allowed in specialty vaping stores and cannabis shops (open only to those aged 19 and over).<sup>[11]</sup> Health Minister Christine Elliot also issued a ministerial order to public hospitals to report vaping-related cases of severe pulmonary disease.<sup>[12]</sup> In addition, while sales of vaping products continue, Minister Elliot has stated the province is considering a ban on flavoured vaping products.<sup>[13]</sup>
- **Nova Scotia:** The Nova Scotia Health Minister has announced regulatory changes which

would as of April 1, 2020, ban the sale of flavoured vaping devices.<sup>[14]</sup>

- **Prince Edward Island** has passed amendments to the *Tobacco and Electronic Smoking Device Sales and Access Act* which, upon royal assent, will raise the minimum purchase age to buy tobacco and vaping devices from 19 to 21 (the highest in the country), restrict where vaping products can be sold and ban certain flavours.<sup>[15]</sup>

In addition to the above, following the second wave of cannabis legalization involving the sale of edibles, extracts and topicals, certain provinces have also moved to suspend the sale of cannabis vaping devices and products including Alberta<sup>[16]</sup>, Québec<sup>[17]</sup> and Newfoundland and Labrador.<sup>[18]</sup> Nova Scotia has also announced plans to ban the sale of flavoured cannabis vaping products, stating that it is preparing regulations to ban the sale of products that “have a scent or flavour other than cannabis noticeable before or during use” and will prohibit “synthetic flavouring” or any packaging or labelling that mentions any flavour other than cannabis.<sup>[19]</sup>

## Looking forward in 2020

Currently there is not yet a comprehensive, Canada-wide strategy to regulating nicotine and cannabis containing vaping products. However, in addition to the new Proposed Regulations, Health Canada has stated it would soon introduce new rules governing flavoured vaping products.<sup>[20]</sup> The Council of Chief Medical Officers of Health has also issued a statement supporting federal action to create national consistency but have also set out recommendations for individual provinces and territories.<sup>[21]</sup>

These developments, together with the Proposed Regulations and evolving provincial strategies, seem to indicate that we can expect further changes in the regulation of vaping products in Canada in 2020.

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[1] Canada Gazette, Part 1, Volume 153, Number 51: Vaping Products Promotion Regulations – Regulatory Impact Analysis Statement (December 21, 2019), available [here](#). [*Regulatory Impact Statement*].

[2] SC 1997, c 13 at section 2.

[3] Proposed Regulations at Section 2(1).

[4] Proposed Regulations at Section 8(1).

[5] Proposed Regulations at section 8(1).

[6] Proposed Regulation at section 9; also *Regulatory Impact Statement*.

[7] Government of Canada, “Tobacco and Vaping Products Act” (June 26, 2018), available [here](#).

[8] BC Ministry of Health, “Vapour Products Intention Paper” (December 2019), Government of British Columbia, available [here](#).

[9] Government of Alberta, “Tobacco, smoking, vaping review” (October 25, 2019), Government of Alberta, available [here](#); See also: AGLC, “Cannabis Fact”, available [here](#). [AGLC]

[10] Government of Saskatchewan, “Saskatchewan’s Tobacco Control Act to Limit Vaping to Protect Youth” (November 5, 2019), available [here](#).

[11] Ministry of Health, “Protecting Youth from the Dangers of Vaping” (October 25, 2019), Ontario Government Newsroom, available [here](#).

[12] Ministry of Health, “Statement by Deputy Premier and Minister of Health Christine Elliott” (September 18, 2019), Ontario Government Newsroom, available [here](#).

[13] The Canadian Press, “Ontario considering ban on flavoured vape products: health minister” (December 5, 2019), CBC, available [here](#).

[14] Nova Scotia, “Province Bans Sales of Flavoured E-Cigarettes, Commits to Legislation” (December 5, 2019), online [here](#).

[15] Bill No 112, “An Act to Amend the Tobacco and Electronic Smoking Device Sales and Access Act, available [here](#).

[16] AGLC, *supra* note 11. The provincial government and Alberta Gaming, Liquor and Cannabis (responsible for cannabis regulation in Alberta) are considering various aspects related to cannabis extract vaping products to determine whether or not they will be available for consumer purchase in Alberta later in 2020.

[17] Nicola Saminather, “Quebec, Newfoundland & Labrador say they will not allow cannabis vape sales” (December 4, 2019), Globe and Mail, available [here](#).

[18] Minister of Health and Community Services, “Provincial Government announces several developments for the cannabis industry” (December 4, 2019), Newfoundland & Labrador News Releases, available [here](#). [NFLD]

[19] Ministry of Health and Wellness, “Province Bans Sales of Flavoured E-Cigarettes, Commits to Legislation” (December 5, 2019), Government of Nova Scotia, available [here](#).

[20] Carly Weeks, “Juil Canada temporarily halts production of some flavours as it waits for new Health Canada regulations” (January 14, 2020), the Globe & Mail, Available [here](#). [Weeks]

[21] Council of Chief Medical Officers of Health on Nicotine Vaping in Canada “Statement on Nicotine Vaping in Canada” (January 22, 2020), Public Health Agency of Canada, available [here](#).