

**GUIDING  
POLICY  
PRINCIPLES  
FOR TOBACCO  
AND VAPING  
PRODUCTS**

## ABOUT THE ONTARIO CHAMBER OF COMMERCE

For more than a century, the Ontario Chamber of Commerce has been the independent, non-partisan voice of Ontario business. Our mission is to support economic growth in Ontario by defending business priorities at Queen's Park on behalf of our network's diverse 60,000 members.

From innovative SMEs to established multi-national corporations and industry associations, the OCC is committed to working with our members to improve business competitiveness across all sectors. We represent local chambers of commerce and boards of trade in over 135 communities across Ontario, steering public policy conversations provincially and within local communities.

As the indispensable partner of business, the OCC provides exclusive support, networking opportunities and access to policy insight and analysis to our members. We also work alongside the Government of Ontario on the delivery of programs, and leverage our network to connect the business community to public initiatives relevant to their needs.

The OCC would like to thank members of the Tobacco and Vaping Working Group, whose input helped shape the report in a meaningful way. This report was informed by consultative meetings held between June and November 2019.

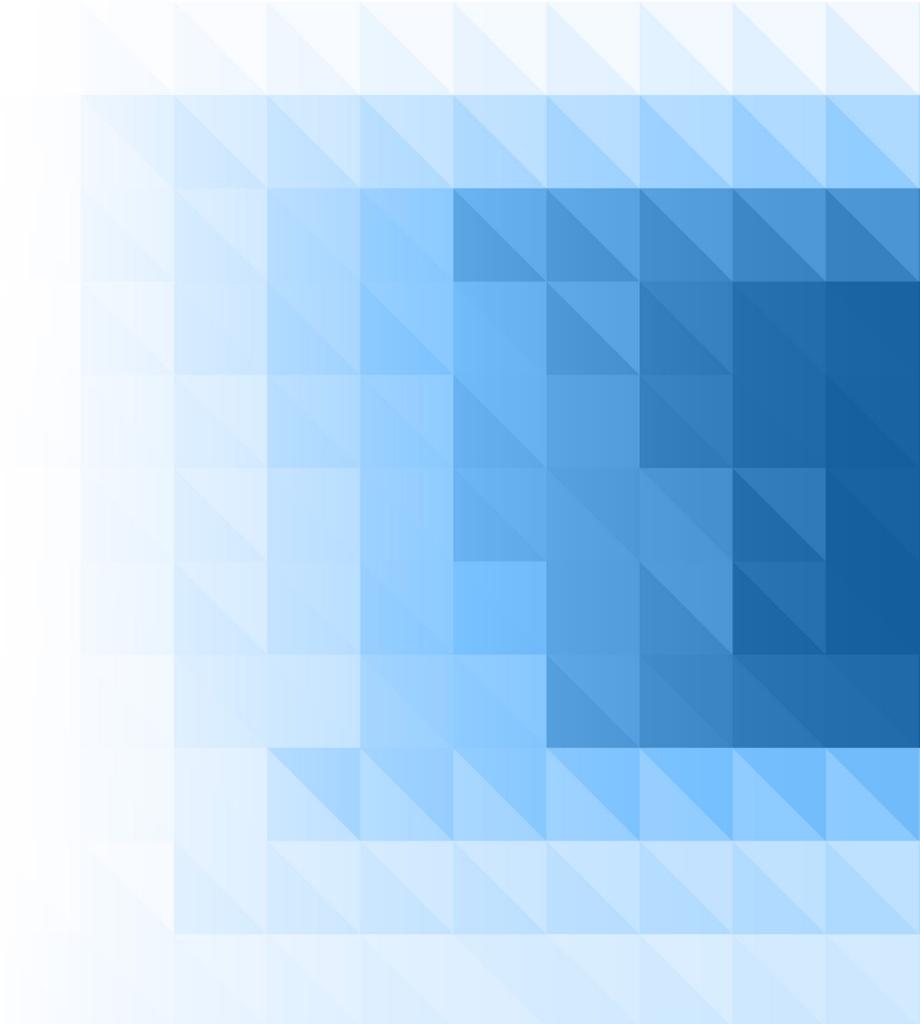


The OCC is Ontario's business advocate.

Author: Catrina Kronfli, *Senior Policy Analyst*

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## GLOSSARY

### COMBUSTIBLE TOBACCO PRODUCTS

Cigarettes and cigars are combustible products that are designed to be smoked. In comparison, non-combustible tobacco products do not require the burning of the product for consumption, such as snuff, snus, and heat-not-burn products.

### CONTRABAND TOBACCO

Any tobacco product that does not comply with all applicable federal and provincial statutes, including importation, stamping, marking, manufacturing, distributing, and payment of duties and taxes.<sup>1</sup>

### DELTA-9-TETRAHYDROCANNABINOL (THC)

One of the chemical substances (or cannabinoids) responsible for how the body reacts to cannabis. THC is the main psychoactive cannabinoid and most responsible for the high associated with cannabis use.

### DUAL USE

In this report, dual use refers to the use of an electronic nicotine delivery system and smoking combustible cigarettes.

### ELECTRONIC CIGARETTE OR E-CIGARETTE

A battery-powered device that works by heating a liquid into an aerosol that is inhaled and exhaled by a user. E-cigarettes are a vaping product.<sup>2</sup>

### E-LIQUID OR E-JUICE

The fluid inside an e-cigarette that is heated. According to Health Canada standards, e-liquid contains vegetable glycerin and/or propylene glycol, flavourings, and/or nicotine that is inhaled and becomes vapour.<sup>3</sup>

### HARM REDUCTION APPROACH

Aims to reduce the morbidity and mortality of cigarette smoking by recognizing the potential public health benefits associated with the use of less harmful alternatives for adult smokers, like e-cigarettes that do not involve combustion.

### HEAT-NOT-BURN PRODUCTS (OR HEATED TOBACCO PRODUCTS)

Heat-not-burn products, also known as heated tobacco products, only heat tobacco. The heating process generates a flavorful nicotine-containing vapor. And since the tobacco does not burn, the levels of harmful chemicals are significantly reduced compared to cigarette smoke.<sup>4</sup>

### NICOTINE

A naturally occurring chemical found in tobacco and is the chemical primarily responsible for the addictive effects associated with tobacco products. When tobacco is smoked, nicotine enters the bloodstream through the lungs and reaches the brain in 10 to 20 seconds. Since it produces effects on the brain, like mood changes, it is considered a psychoactive substance.<sup>5</sup>

### NICOTINE REPLACEMENT THERAPIES (NRT)

Products designed to help people quit smoking (e.g., gum, patches, nasal spray, lozenges, and inhalers) by giving a smoker a controlled amount of nicotine without the other harmful chemicals found in tobacco. This helps relieve the physical withdrawal symptoms smokers experience when trying to quit.<sup>6</sup>

### OPEN AND CLOSED VAPING SYSTEMS

E-cigarettes are categorized as either an open or closed system. Vaporized liquid in an open system can be refilled by the individual. In comparison, a closed system e-cigarette is designed to not be adulterated or opened by a consumer.<sup>7</sup>

### SECOND-HAND SMOKE

Most of the smoke from a lit cigarette is not inhaled by a smoker but rather fills the air around the smoker. Second-hand smoke refers to the smoke from burning tobacco products and from exhaled tobacco. Tobacco smoke contains harmful chemicals and some of these chemicals are known to cause cancer.<sup>8</sup>

**SMOKELESS TOBACCO**

Non-combustible tobacco products used orally, such as snuff and snus, which are sold in loose or pouch form. These products are not burned or inhaled.

**SOCIAL REFERENCE PRICING**

Usually refers to a minimum price set by government through regulation for the sale of alcohol in retail stores to reduce harms.

**SNUFF**

A moist smokeless tobacco product that is used orally (usually under the lip) and sold in loose or pouch form. Snuff is made with finely cut or ground tobacco that is fermented during manufacturing. Using snuff is also referred to as dipping. Less commonly used dry snuff can be sniffed into the nose.

**SNUS**

A moist smokeless tobacco product that is used orally (usually under the lip) and typically sold in pouch form. Snus has been popular in Sweden, where the product originated, since the middle of the 19th century and more recently became widely available in North America. The manufacturing of snus involves steam-pasteurization rather than fermentation.

**TOBACCO**

A plant that contains nicotine and can be manufactured for ingestion in many forms.

**TOBACCO PRODUCTS**

A product category that refers to a product (such as cigarettes, cigars, heat-not-burn products, snuff, and snus) made in whole or in part of tobacco (this includes tobacco leaves).<sup>9</sup>

**TRADITIONAL TOBACCO (OR SACRED TOBACCO)**

While not used by all First Nations communities, traditional tobacco has been used by many First Nations communities for thousands of years in ceremonial/sacred rituals for giving thanks to the Creator, seeking protection and guidance, cleansing, and healing.<sup>10</sup> Traditional tobacco differs from commercial tobacco.

**VAPING**

Vaping refers to inhaling and exhaling an aerosol produced by a vaping product, for example, with an electronic cigarette. Vaping does not require burning like cigarette smoking.<sup>11</sup>

**VAPING PRODUCTS**

A product category that refers to a vaping device which uses electrical power from a battery to heat a liquid solution with a range of different substances (i.e., flavourings, nicotine, and/or THC). The heat causes the solution to become vaporized. The vapour then condenses into an aerosol, which is breathed in by the user through the mouthpiece. Vaping devices have many names including e-cigarettes, vape pens, and e-hookahs.<sup>12</sup>

**VAPING POD**

A disposable pod that is inserted into the bottom of a vaping device. The pod contains a coil that heats liquid and delivers the flavour and/or nicotine to the user.

**VITAMIN E ACETATE**

A thickening agent used in e-cigarettes containing Delta-9-tetrahydrocannabinol (THC). Vitamin E is found in vegetable oils, fruits, vegetables, cereals, and meats. It is not harmful when ingested as a vitamin supplement or applied to the skin, but research suggests it may interfere with normal lung functioning when inhaled.<sup>13</sup>

## SUMMARY OF RECOMMENDATIONS

### Tobacco Products

1. The Government of Ontario should continually monitor the rates of smoking, vaping, and nicotine delivery systems to identify the demographics most likely to begin smoking and the product(s) they are using to ensure anti-smoking campaigns and cessation services are up-to-date, relevant, and effective.
2. The Government of Ontario should support employers and associations from high-risk industries (such as the trades, transportation, and utilities) to introduce cessation supports in the workplace.
3. The Government of Ontario should take further action on combatting contraband tobacco by:
  - Maintaining the freeze on provincial tobacco taxes until further efforts to address the illicit market are implemented;
  - Evaluating the effectiveness and outcomes from the Tobacco Enforcement Grants Pilot Program to determine whether the program should be renewed and/or how the program can be improved to effectively tackle contraband tobacco; and
  - Conducting a feasibility study that examines the Québec model, to develop a made-in-Ontario solution.
4. The Government of Canada should modernize the Canada Tobacco Strategy by:
  - Educating smokers on the range of potentially reduced risk alternatives available to support smoking cessation;
  - Re-evaluating the state of the market, the availability of non-combustible products, and how this impacts the federal government's ability to reach its target; and
  - Providing Canadians who use non-combustible alternatives with resources to help them quit.
5. The Government of Canada and Government of Ontario should ensure that tax policies are responsive to new products available on the market and reflect the distinction between combustible and non-combustible products. Specifically:
  - The federal government should amend the *Excise Act, 2001* and the provincial government should amend the *Tobacco Tax Act, 1990* to create separate tax categories for tobacco products that fall within the current manufactured tobacco category—pipe tobacco, roll-your-own tobacco, smokeless tobacco, and heat-not-burn products; and
  - The federal and provincial governments should tax smokeless tobacco products and heat-not-burn products based on the weight of the tobacco mixture contained within the device.

## Vape Products

6. The Government of Ontario should expand the mandate of the *Tobacco Tax Act, 1990* to include vaping.
7. The Government of Ontario should permit only specialty vape stores to sell open system vaping devices.
8. The Government of Canada should dedicate resources to track the volume and test the contents of counterfeit e-cigarettes and compatible pods.
9. The Government of Ontario should invest in a public awareness campaign that:
  - Educates youth and adult smokers and e-cigarette users about the risks associated with counterfeit e-cigarettes and compatible pods;
  - Provides information on where current adult smokers and e-cigarette users can legally obtain vaping products;
  - Informs youth and adult smokers and e-cigarette users about the importance of not tampering with open systems; and
  - Explains that e-cigarettes are intended for adult smokers and educates youth on the risks associated with nicotine use.
10. The Government of Canada and Government of Ontario should collaborate with relevant stakeholders to create a research roadmap on vaping, including the following areas of inquiry:
  - The short- and long-term health risks associated with prolonged vaping, and relative to cigarettes;<sup>14</sup>
  - Whether e-cigarettes are a gateway to nicotine addiction or dual use;
  - Vaping's effectiveness as a smoking cessation device in comparison to nicotine replacement therapies;
  - The effects of second-hand aerosol;
  - Whether youth who vape are more likely to become traditional smokers later in life;
  - What regulations are needed to successfully deter youth from vaping while providing adult smokers with an alternative to combustible cigarettes;
  - Whether the amount of nicotine should be lowered in vape pods; and
  - Whether flavour bans effectively deter youth, negatively impact current adult smokers, or encourage the illegal market.
11. The Government of Ontario should ensure service providers that deliver smoking cessation supports to Ontarians meet the following criteria, namely having:
  - Knowledge of potentially reduced risk alternatives currently available on the market for Ontarians who are addicted to nicotine but want to quit smoking combustible cigarettes;
  - Training on e-cigarettes, how these devices function, the potential benefits and risks, as well as the importance of not tampering with open systems or purchasing counterfeit e-cigarettes or compatible pods; and
  - Supports available to help Ontarians who want to quit smoking cigarettes and/or vaping.
12. The Government of Ontario should assess appropriate options for taxation and social reference pricing for e-cigarettes to address youth access.

## INTRODUCTION

While Canada has a long history of tobacco control, over the past several years the landscape of this market has changed dramatically, most notably with the introduction of e-cigarettes or vapes. While traditional smoking rates decline, usage of e-cigarettes is on the rise. The general public and policy-makers may view cigarettes and vapes as one in the same—and smoking as a straightforward public health concern that has not changed in decades—but transformations in product offerings and consumer habits have led to a landscape where both regulation and cessation supports are increasingly out of date.

As the third report in the Ontario Chamber of Commerce’s (OCC) ‘social responsibility’ series—covering also cannabis and beverage alcohol—this document observes that, as Ontario’s tobacco and vaping industries evolve, so too must the regulatory and tax regimes that govern these product categories. Furthermore, government strategies and programs that aim to reduce smoking rates must also be informed by this shifting landscape. *Guiding Policy Principles for Tobacco and Vaping Products* presents the Government of Ontario and Government of Canada with tangible, responsible public policy recommendations to combat the contraband and counterfeit markets, safeguard public health, promote effective and targeted harm reduction strategies, and deter youth from accessing these products.

The first section of this report focuses on the tobacco product category and explores issues well-known to policymakers, namely contraband tobacco, smoking cessation, and taxation of non-combustible tobacco products. It is important to note, however, that we exclusively discuss commercial tobacco, not sacred tobacco\* used by many First Nations peoples.<sup>15</sup>

The second part of this report captures the vaping product category and explores emerging issues in which action is needed by policymakers: specifically, youth vaping, compatible pods, counterfeit e-cigarettes, and harm reduction strategies. We also identify how seemingly well-intentioned actions by governments, such as increasing taxes to address

contraband tobacco or product or flavour bans to address youth vaping, are not without risk, underscoring the importance of a measured and evidence-based response to the emerging vaping category.

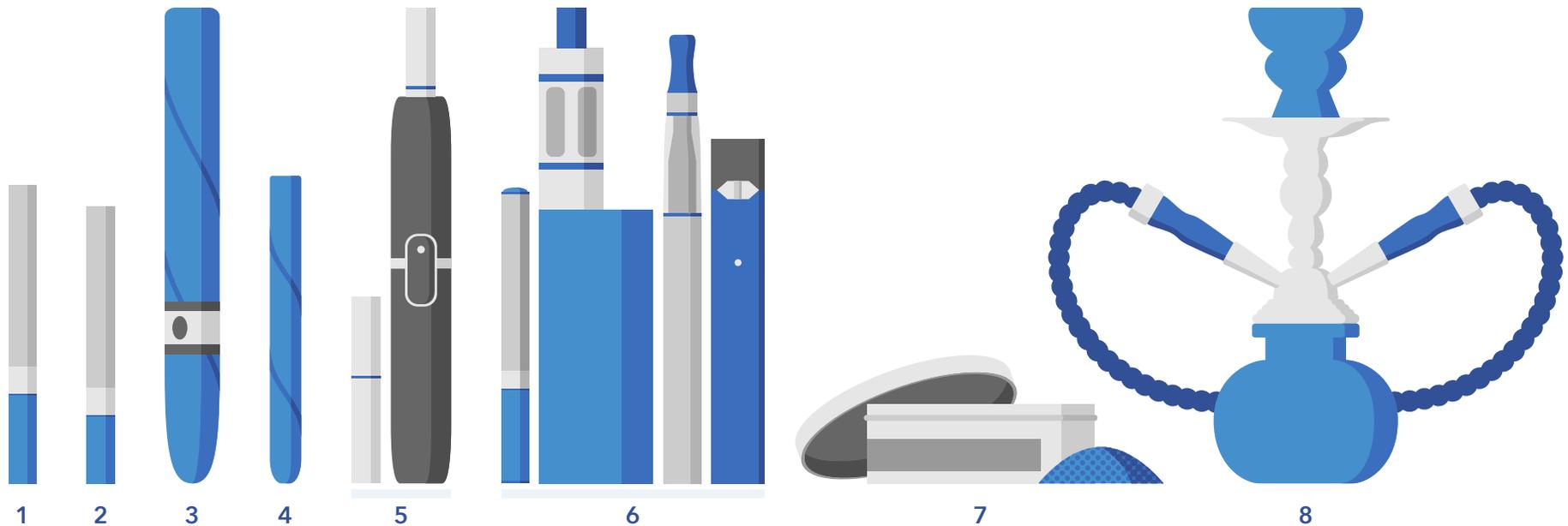
The OCC believes that any discussion of tobacco and vaping regulation must be held within the context of responsible use; namely, encouraging adult smokers to quit and preventing youth and non-smokers from ever starting.

Ultimately, as the provincial and federal governments develop new strategies and cessation programs, they must be informed by an understanding of how the market has evolved and continues to evolve. Striking the right balance between competing policy objectives will require policymakers to consider current data on what motivates individuals to start smoking and what prevents them from stopping, investment in further scientific research on these products, and how best to engage relevant private and public stakeholders.

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\* Ceremonial tobacco predates European contact and is used to establish a link with the spiritual world. Tobacco use is not traditional for some First Nations peoples, such as communities in British Columbia. Inhalation is minimal when it comes to the use of traditional tobacco.

# TOBACCO AND VAPING PRODUCTS AVAILABLE IN CANADA



1. **Cigarettes** contain approximately 600 ingredients that, when burned, create over 7,000 chemicals. 69 of these chemicals are known to cause cancer.<sup>16</sup>
2. **Mini size cigarettes** emerged in 2008 in Canada. They are “mini” because the filter is shorter, but they deliver similar amounts of smoke and toxic chemicals as a regular-sized cigarette.<sup>17</sup>
3. **Cigars** contain a filler, binder, and wrapper that can be made from natural or processed leaf tobacco.<sup>18</sup> 2% of Canadians aged 15 and older reported smoking a cigar in 2017.<sup>19</sup>
4. **Little cigars (or cigarillos)** are the smallest type of cigar and may or may not contain a filter. Most filtered little cigars have a brown wrapper made of processed tobacco. Little cigars without filters are generally wrapped in tobacco leaves. They pose the same risk as smoking cigarettes.<sup>20</sup> In 2017, 1% of Canadians aged 15 and older reported smoking little cigars in the past 30 days.<sup>21</sup>
5. **Heat-not-burn products**, also known as heated tobacco products, only heat tobacco. The heating process generates a flavorful nicotine-containing vapor.<sup>22</sup>
6. **E-cigarettes** deliver nicotine in the form of aerosol. The device is made up of a battery, heating element, and tank that contains a solution or e-liquid. Puffing the device causes the heater to heat the liquid, producing aerosol that the user inhales.<sup>23</sup>
7. **Smokeless tobacco products** are sold in loose form or pre-packaged in a pouch. They are placed in the user’s mouth, between the cheek and gum, to be sucked on and are either “spit” or “spitless.”<sup>24</sup> In 2017, 1% of Canadians aged 15 and older reported smokeless tobacco use in the last 30 days.
8. **Waterpipe tobacco smoking**, also known as “shisha” or “hookah,” is a form of tobacco consumption that uses a single- or multi-stemmed device to smoke flavored or non-flavoured tobacco. Before reaching the smoker, the smoke passes through water or another liquid.<sup>25</sup>

The tobacco industry has a longstanding history in Canada, and despite traditional smoking rates declining for decades,<sup>26</sup> remains a \$183 million industry in Ontario.<sup>27</sup> The history of tobacco control is nearly as long, beginning in 1963 when the then-federal Minister of Health concluded that smoking was a contributing cause of lung cancer. In 1989, health warnings were added to 20 percent of cigarette boxes. By 2004, smoking in restaurants and bars was banned across the country. Most recently, in 2018, the federal government established an objective to reduce tobacco use to less than five percent of the population by 2035,<sup>28</sup> in contrast to 16 percent that year.<sup>29</sup>

Various factors, both regulatory and market-based, have pushed the tobacco industry to adapt by developing potentially reduced risk products. Despite these changes, as this section outlines, regulation and cessation strategies have not kept pace with industry changes. The governments of both Canada and Ontario will need to modernize their efforts to tackle the contraband tobacco market and reduce smoking rates, particularly among vulnerable populations, to reach its ambitious target of a five percent smoking rate by 2035.

### Smoking Demographics

While smoking rates in Canada have fallen significantly over the last 50 years—from approximately 50 percent in 1965 to 15 percent in 2017<sup>30</sup>—smoking is concentrated among particular demographic and often linked with health and social inequalities. For instance, the prevalence of smoking among Indigenous peoples is approximately two to five times higher than that of the general population. Smoking rates are also high among LGBTQ+ persons, ranging from 24 percent to 45 percent across different groups.<sup>31</sup>

Furthermore, analysis of Statistics Canada data conducted by the Conference Board of Canada revealed that level of education and income were the most important predictors of smoking behaviour. In 2011, almost 21 percent of Canadians with only a high school education

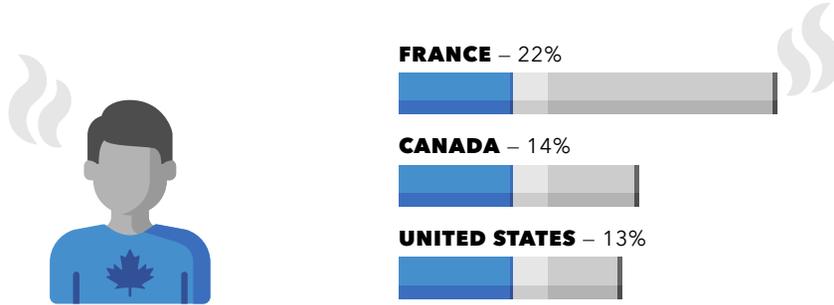
were smokers, while only nine percent of Canadians with a university degree smoked.<sup>32</sup> Canadians who earned less than \$20,000 per year also had higher smoking rates when compared with those making \$80,000 per year.<sup>33</sup> Smoking rates were also concentrated among those working in the trades, transportation, and utilities, and less common in jobs related to the social sciences, education, government, and health.<sup>34</sup> Given that this data is nearly a decade old, there is a clear need for continued research to understand tobacco use within vulnerable populations to support the downward trend in smoking prevalence.

While governments must lead smoking cessation efforts through policy and regulation, employers also have a role to play, given how concentrated smoking prevalence is in particular sectors and professions. Employers who provide employees with supports to quit smoking benefit their bottom line by increasing productivity\* and decreasing costs associated with health benefits.<sup>35,36</sup> Employers in high-risk industries should consider investing in cessation aids that provide employees with the tools and options needed to quit. This includes counselling, pharmaceutical products, nicotine replacement therapies, promotion of harm reduction alternatives, and workplace cessation programs.

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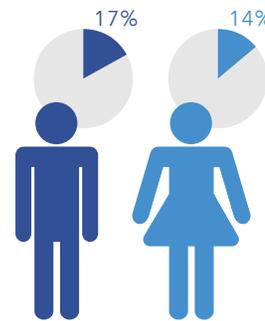
\* Current smokers are 33 percent more likely to be absent from work than non-smokers, taking on average 2.7 extra days off per year.

# SMOKING RATES IN CANADA



Approximately 5 million Canadians, or 15% of the population, used tobacco in 2017 with 4 million cigarette smokers—an increase from 13% in 2015.<sup>37</sup>

Among G7 countries, Canada had the second lowest percentage of daily smokers in 2014 (14%), while the United States had the lowest percentage (13%). France had the highest percentage of daily smokers (22%).<sup>38</sup>



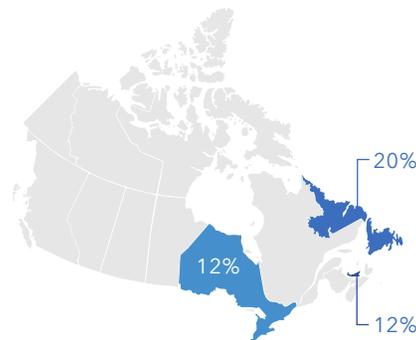
Smoking rates were higher among men than women (17% versus 14%) in 2017. They were also highest among those aged 45 to 54 (20%) and lowest among those aged 15 to 19 (8%).<sup>39</sup>



Smokers are overrepresented in some industries. In 2011, 34% of construction workers in Canada smoked, followed by 29% of workers in the mining, oil and gas extraction, transportation, and warehousing industries.<sup>40</sup>



Smoking is 2 to 5 times higher among Indigenous Canadians than non-Indigenous Canadians. In some First Nations communities, traditional tobacco has a sacred and ceremonial role.<sup>41</sup>



Newfoundland and Labrador had the highest smoking rate (20%), while Prince Edward Island had the lowest (12%) in 2017. Ontario had the second lowest smoking rate (12%), which was below the national average (15%).<sup>42</sup>



In 2012, over 45,000 Canadians died from smoking. Tobacco use cost the federal government \$16 billion in indirect and direct costs, including hospital care, physician care, law enforcement, fire damage, short- and long-term disability, and premature mortality.<sup>43</sup>



Canada's Tobacco Strategy set a target of less than 5% tobacco use by 2035 and earmarked \$330 million over 5 years, aiming to reduce the number of deaths and health costs associated with tobacco use.<sup>44</sup>

## Canada's Tobacco Strategy

In March 2018, the federal government launched Canada's Tobacco Strategy, which aims to reduce the number of tobacco users from 16 percent in 2017 to less than five percent by 2035, alongside the number of deaths and disease associated with tobacco use. The Strategy committed \$330 million over five years to help Canadian smokers quit or access less harmful alternatives, as well as protect young people and non-smokers from using nicotine and tobacco. The federal government took a targeted approach by focusing on populations with higher rates of tobacco use, namely Indigenous peoples, LGBTQ+ persons, and young adults.<sup>45</sup> If this target is met, the number of tobacco users in Canada would decline from 4.6 million to 1.8 million, saving lives and reducing public health spending associated with illnesses and deaths due to tobacco use.\*

While this initiative is important from a public health perspective and appropriately targets demographics with the highest smoking rates, several challenges remain. The Tobacco Endgame Cabinet, a coalition of health charities, researchers, physicians, and health care professionals led by The Lung Association, notes that no Canadian province or territory has endorsed the federal government's five percent by 2035 goal.<sup>46</sup> The group warns it is unlikely Canada will reach this goal and, without additional steps, the current rate may only decline to 12.9 percent by 2035.

Canada's Tobacco Strategy states, "Traditional cessation approaches are not the only tools available to help Canadians transition away from smoking cigarettes... A harm reduction approach aims to reduce the negative consequences of cigarette smoking by recognizing the potential benefits of using less harmful alternatives." While the federal government acknowledges the potential that vaping products hold for current adult smokers trying to quit, it stops short of mentioning other potentially reduced risk products currently on the market, such as heat-not-burn, smokeless tobacco, and oral nicotine products.

The unfortunate reality is that no silver bullet exists: smoking cessation is an individual journey not well suited to a one-size-fits all approach. While the Strategy only acknowledges vaping as an alternative to combustible cigarettes for those unable to quit smoking, the federal

government should focus on harm reduction and encourage current adult smokers who cannot quit to consider potentially reduced risk alternatives. Accordingly, Canadians need information and access to a range of non-combustible options. The Strategy therefore fails to consider how the tobacco industry has evolved with the availability of non-combustible products on the market. While the federal tobacco strategy advocates for complete smoking cessation, Canadians are switching to non-combustible products to help them quit smoking.

It is also unclear whether Canadians who use e-cigarettes, smokeless tobacco, or heated tobacco products are considered part of this five percent demographic. Although the harms associated with combustible cigarettes are declining as more Canadians quit smoking, the prevalence of e-cigarette consumption, for instance, is on the rise. Moreover, as Canadians quit smoking but begin (and continue) to use e-cigarettes, it is unclear how this shift will impact the federal government's ability to reach its 2035 target. Since these non-combustible products are not without risk, it is also unclear what federal government supports are in place for Canadians who may be addicted to a potentially reduced risk product.

## The Contraband Cigarette Market in Ontario

The prevalence of smoking exists within the broader context of a well-established contraband tobacco market. The contraband cigarette market in Ontario acts in response to regulatory measures taken by governments to make tobacco products more expensive, and is also the source of its own unique public health challenges. Policy and regulation that attempts to support the cessation journey must, unfortunately, contend with a serious criminal challenge to their success.

Ontario has the second-largest contraband tobacco problem\*\* in the Americas, with volumes akin to El Salvador according to the National Coalition Against Contraband Tobacco (NCACT).<sup>47</sup> The NCACT notes

\* The federal government notes that 45,000 Canadians die from cigarette smoking every year.

\*\* Twenty percent of all smokeless tobacco sold in Ontario is sold in the illicit smokeless tobacco market. Illicit sales include on-reserve sales to First Nations persons who, for whatever reason, are not registered with the federal government or a band that has signed a treaty with the Crown, as well as the re-sale of illegally imported US product into Ontario.

that the RCMP has identified approximately 175 criminal gangs involved in producing and selling contraband tobacco, with 50 illegal manufacturing plants that use industrial manufacturing equipment to produce up to 10,000 cigarettes per minute.<sup>48</sup> The revenue collected from the sale of contraband cigarettes in Canada may be used by criminal organizations to fund activities related to human trafficking, drugs, and guns.<sup>49</sup>

In March 2018, an Ernst & Young (EY) report estimated that contraband tobacco in Ontario accounted for one-third of all cigarettes in Ontario. With 83 percent of contraband tobacco sold or produced in Ontario, the province's contraband tobacco market represents over 80 percent of the total tobacco contraband market in Canada.<sup>50</sup> It is also estimated that the contraband tobacco market accounted for \$750 million in lost Provincial revenue annually—totalling \$3.42 billion between 2013 and 2018.<sup>51</sup>

This underscores how certain policy levers implemented by government—in this case, taxation—can have unintended consequences. If the Province increased the provincial tobacco tax rate, EY predicted the gap would widen between the price of legal and illegal cigarettes.\* A significant price differential between legal and illegal tobacco could spur the contraband market, resulting in a tobacco tax revenue shortfall of \$470 million from 2018-19 to 2019-20.<sup>52</sup> Accordingly, EY recommended the Province consider alternatives like enforcement to stem the flow of contraband.

However, the catch-22 of tobacco taxation should not be ignored: the World Health Organization (WHO) argues that raising tobacco taxes to make cigarettes and other tobacco products more expensive is the most effective way to discourage people from starting to smoke, and encouraging them to quit,<sup>53</sup> especially among demographics that are price-sensitive (i.e., youth, young adults, and individuals with low incomes). Taxation alone as a policy lever is, therefore, unlikely to achieve the dual policy objectives of combatting the contraband market and addressing public health concerns surrounding tobacco.

\* EY notes that the price of contraband cigarettes grew from \$54 per carton (fourth quarter of 2014) to \$66 per carton (third-quarter of 2017). In contrast, if the Government of Ontario had proceeded with its proposed tax increase, this would have raised the price of a legitimate carton of cigarettes to \$78 per carton by the end of 2019.

## Public Health and Safety Considerations Associated with Contraband Cigarettes

Though this concern is often overlooked due to the criminal consequences of the illegal tobacco market, contraband cigarettes also pose unique public health challenges.

Due to the avoidance of tobacco taxes and regulations, contraband cigarettes can be purchased for a fraction of the price of legal cigarettes. Estimates vary, but a carton of 200 cigarettes purchased legally can cost \$130 (including taxes), while a bag of 200 contraband cigarettes can cost \$12 or less.<sup>54</sup> The price differential leads to higher consumption rates of contraband cigarettes for vulnerable demographics that are more price sensitive.<sup>55</sup>

Contraband products are often sold in transparent plastic bags or baggies. Consequently, the information required by regulators to appear on cigarette packages—such as illustrated health warnings, toxic emissions information, a stamp indicating that the manufacturer has paid applicable taxes/duties, and the manufacturer's name or license number—is not displayed.<sup>56</sup> This lack of regulatory oversight also applies to contraband production. Health Canada analyzed the tobacco smoke of legal cigarettes and contraband seized in 2006 by the Canadian Border Services Agency. At that time, their sample of contraband cigarettes had higher amounts of chemicals than legal cigarettes sold in Canada. Contraband cigarettes seized by the RCMP Border Integrity Unit have also been found to contain mould, dead flies, and insect eggs.<sup>57</sup>

Contraband cigarettes also pose a fire hazard, as they lack the self-extinguishing features found in legal cigarettes. Since 2005, legal cigarettes in Canada have been manufactured with reduced ignition propensity materials, which allow cigarettes to self-extinguish if left unattended or 'un-puffed.' In contrast, contraband cigarettes lack these fire-safety features, meaning the paper burns down to the filter and can ignite surrounding flammable materials, potentially leading to property destruction, injury, and death.<sup>58,59</sup>

## ADDRESSING CONTRABAND TOBACCO IN ONTARIO

The Ontario government has responded to the problem of contraband tobacco with three measures. First, they announced that provincial tobacco tax rates would remain at the 2018 level in 2019 due to concerns that regular increases to these taxes had stimulated the contraband market.<sup>60</sup>

Next, the government introduced the Tobacco Enforcement Grants Pilot Program to provide local law enforcement agencies with up to \$7,000 in funding to conduct a time-limited tobacco investigation within their jurisdiction.<sup>61</sup> While this is a welcome initiative, \$7,000 is insufficient to conduct robust police investigations and surveillance. Nor has it been made clear whether, at the end of the pilot period, the Province will review the uptake from law enforcement agencies and their outcomes to determine whether the program should be renewed.

Finally, the government announced it would launch an awareness campaign to educate the public about how to identify illegal tobacco and the repercussions associated with participating in the illegal market.<sup>62</sup> This campaign has yet to launch, although both the Government of Ontario<sup>63,64</sup> and the Government of Canada<sup>65</sup> have dedicated websites on this topic.\*

\* In Ontario, packages of legal cigarettes and fine cut tobacco are marked with a yellow federal tobacco stamp, meaning the relevant provincial and federal taxes have been paid. Under the *Tobacco Tax Act*, it is illegal to buy, possess, or distribute untaxed cigarettes or any other untaxed tobacco products, unless otherwise authorized. Without proper authorization, it is against the law to have packages of cigarettes or fine cut tobacco that do not have a legal Ontario stamp. If convicted of possessing unmarked cigarettes, this could result in fines or jail time.

\*\* According to the 2019 Québec Budget, the contraband tobacco market has since increased and constituted between 10 and 12 percent of the market in Québec in 2017, although no reason was provided as to why this backslide occurred.

## Québec's Approach to Combating Contraband Tobacco

The Québec government's approach to tackling contraband tobacco has been touted as an effective model that Ontario should consider implementing. Although federal and provincial tobacco taxes in Québec increased between 2008 and 2014, the supply of contraband in Québec declined from around 31 percent to four percent due to the province's model of enforcement, according to analysis conducted by the C.D. Howe Institute.<sup>66\*\*</sup>

The reduction in the supply of illegal tobacco in Québec owes to the investment in law enforcement, the passage of *An Act to Amend the Tobacco Tax Act, 2009*, and other legislative provisions directed at countering smuggling.<sup>67</sup> The table on the next page illustrates the distinctions between Ontario and Québec's approaches to reducing contraband.<sup>68</sup>

Given the success of the Québec model, the Ontario government should undertake a feasibility study on applying its methods to this province, with the goal of developing a made-in-Ontario solution. This study should include consultations that bring together the tobacco industry (including tobacco farmers and producers), law enforcement, First Nations communities, public health officials, and representatives from the Ministry of Finance, Ministry of Agriculture, Food and Rural Affairs, Ministry of Health, Ministry of Indigenous Affairs, and the Solicitor General. Most importantly, it should yield tangible outcomes, such as an action plan, dedicated resources, or a funding pool, to help make measurable progress on addressing the contraband tobacco market in Ontario.

In addition, although the Government of Ontario froze the provincial tobacco tax rate in the 2018 Ontario Economic Outlook and Fiscal Review, it did not make this commitment for future years in the 2019 version of that document. Given the relationship between higher taxes and an increase in contraband tobacco, the Province should not proceed with an increase in provincial tobacco taxes without further consultation and a robust plan or resources earmarked to combat contraband tobacco.

# ONTARIO AND QUÉBEC APPROACHES TO REDUCING CONTRABAND

## QUÉBEC

Any police officer can enforce the *Tobacco Tax Act* based on reasonable and probable grounds, in other words, illegal tobacco does not have to be in plain view to lay charges. Prior to *An Act to Amend the Tobacco Tax Act*, only Revenu Québec could seize contraband. When someone is arrested for contraband tobacco, a press release is also issued to generate awareness.

The ACCES Tabac Program\* has been in place since 2001. Funded by the Ministry of Finance, the program had a \$20 million budget in 2019/2020. The program provides greater resources to police through:

- Joint investigations between the Québec provincial police, Montreal police, RCMP, and Revenu Québec;
- Funding for short-term investigations and municipal police contraband operations; and
- Training sessions for investigators and patrol officers.

The fine for a minor offence (up to 200 cigarettes or grams) is \$350, while the fine for serious offences varies from \$5,000 to \$10,000, and a prison term of up to two years may be imposed. Subsequent offences committed within a five-year period could result in a fine between \$10,000 and \$2.5 million.

## ONTARIO

OPP and municipal police can confiscate contraband tobacco found in plain view and they must go through the Ministry of Finance to lay charges. The Province also has Ministry of Finance investigators dedicated to enforcement of the *Tobacco Tax Act*.

In 2016, the Ontario government worked with the Ontario Provincial Police to establish a dedicated Contraband Tobacco Enforcement Team that focuses on addressing the links between illegal tobacco and organized crime. In 2018, this team was expanded due to their success.

Those convicted of possessing unmarked cigarettes can be fined three times the tax on the unmarked cigarettes they possessed, in addition to a fine of:

- \$100 if you possessed 200 unmarked cigarettes or less
- \$250 if you possessed more than 200 unmarked cigarettes but less than 1,001
- \$500 if you possessed more than 1,000 unmarked cigarettes but less than 10,001
- not less than \$500 and not more than \$10,000 if you possessed more than 10,000 unmarked cigarettes

In addition, if it is not the first conviction for possessing unmarked cigarettes or if in possession of over 10,000 unmarked cigarettes, an individual may be sentenced to up to two years in jail.<sup>69</sup>

\* The “ACCES Tabac Program” refers to “actions concertées pour contrer les économies souterraines” translated as “concerted actions to counter the underground economy.”

## Non-Combustible Tobacco Products

In addition to the relationship between taxes on cigarettes and the prevalence of contraband tobacco, another issue of concern is appropriate tax policies for non-combustible products, namely smokeless tobacco and heat-not-burn products.\* These two products fall under the same federal excise tax category, meaning the unique nature of these products have not been taken into consideration by policymakers.

Although smokeless tobacco products are non-combustible, existing taxation policies do not take this into consideration. Instead, smokeless tobacco products fall under a federal excise tax category called “manufactured tobacco other than cigarettes and tobacco sticks.” Under this expansive tax category, smokeless tobacco products are categorized with unrelated products, namely combustible pipe tobacco and roll-your-own tobacco for making cigarettes.<sup>70</sup> Consequently, all tobacco products under this broad category are taxed the same. Ontario takes a similarly oversimplified approach to taxing tobacco products other than cigars.

Furthermore, smokeless tobacco products are taxed in 50-gram intervals federally, even though these products are exclusively sold in cans ranging from 23 to 34-grams. Since the product does not remain fresh in a 50-gram can, this quantity is not feasible for smokeless tobacco manufacturers. Adult consumers who use smokeless tobacco products therefore pay tax on a 50-gram product even though the actual product contains less than that amount.<sup>71</sup>

The heat-not-burn category faces a similar challenge as the smokeless tobacco category when it comes to taxation. New to the market, heated tobacco products come in different forms (a capsule or small tobacco stick). With this non-combustible device, tobacco is heated using a battery that generates aerosol that is inhaled by a user. Heat-not-burn products are not akin to cigarettes since the latter involves burning tobacco.

The device retains the sensory experience of a traditional cigarette with the same amount of nicotine as a traditional cigarette and less of the carcinogenic toxins.<sup>72</sup> On the other hand, public health stakeholders do not believe the device differs much from a cigarette.

Despite their unique characteristics, heated tobacco products also fall under the broad federal excise tax category—“manufactured tobacco other than cigarettes and tobacco sticks”—alongside combustible products. These products have a high price point and appeal to current adult smokers looking for an alternative that preserves the taste, sensory experience, nicotine delivery profile, and ritual characteristics associated with smoking a cigarette.<sup>73</sup> The Government of Canada should, therefore, tax heated tobacco products based on the weight of the tobacco contained within the product. Taxing heated tobacco products based on the weight of the tobacco would mean these products would be taxed less, potentially incentivizing current adult smokers to switch from a combustible to a non-combustible alternative.<sup>74</sup>

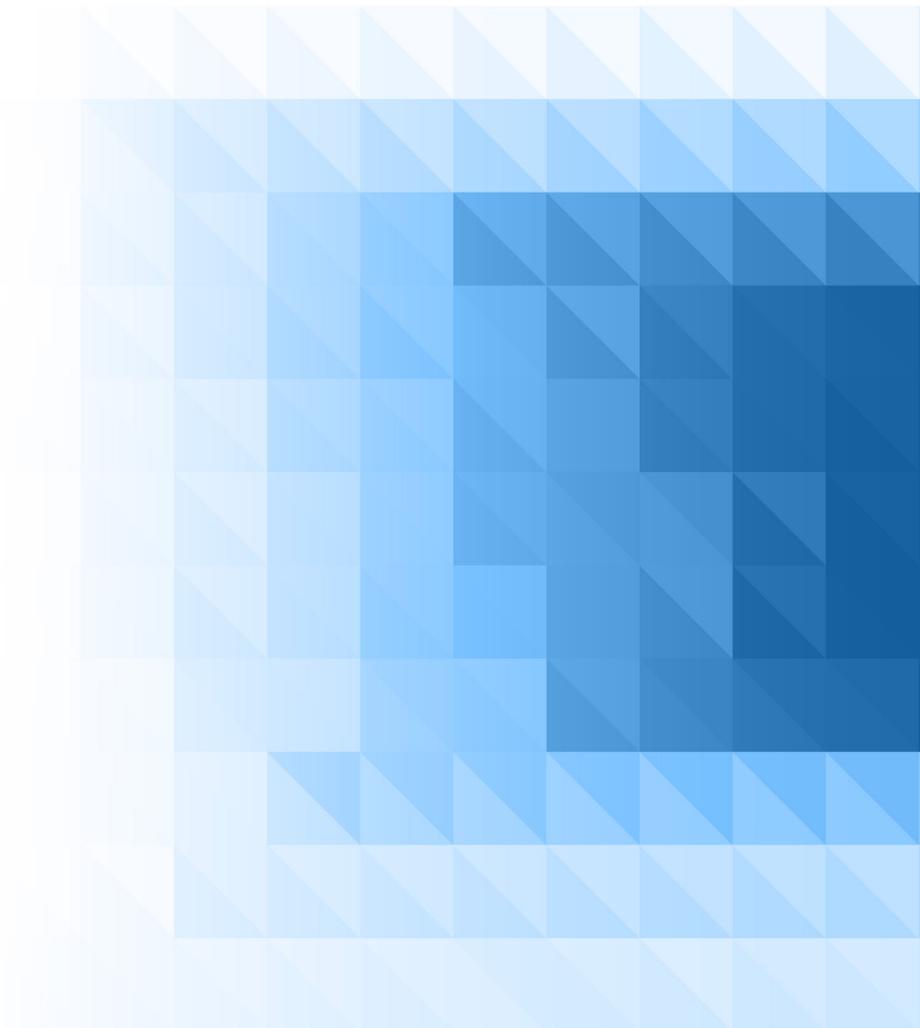
### TOBACCO PRODUCT RECOMMENDATIONS:

1. The Government of Ontario should continually monitor the rates of smoking, vaping, and nicotine delivery systems to identify the demographics most likely to begin smoking and the product(s) they are using to ensure anti-smoking campaigns and cessation services are up-to-date, relevant, and effective.
2. The Government of Ontario should support employers and associations from high-risk industries (such as the trades, transportation, and utilities) to introduce cessation supports in the workplace.
3. The Government of Ontario should take further action on combatting contraband tobacco by:
  - Maintaining the freeze on provincial tobacco taxes until further efforts to address the illicit market are implemented;

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\* Smokeless tobacco refers to products that are not burned or inhaled; instead, they are used orally, like snuff and snus, and can be purchased in either loose form or in a small pouch. These products constitute one percent of all tobacco sold in Canada. Research conducted by Environics Research Group on behalf of Health Canada found that only 13 percent of Canadians who participated in their survey said that they have used a heated tobacco product.

- Evaluating the effectiveness and outcomes from the Tobacco Enforcement Grants Pilot Program to determine whether the program should be renewed and/or how the program can be improved to effectively tackle contraband tobacco; and
  - Conducting a feasibility study that examines the Québec model, to develop a made-in-Ontario solution.
4. The Government of Canada should modernize the Canada Tobacco Strategy by:
- Educating smokers on the range of potentially reduced risk alternatives available to support smoking cessation;
  - Re-evaluate the state of the market, the availability of non-combustible products, and how this impacts the federal government's ability to reach its target; and
  - Providing Canadians who use non-combustible alternatives with resources to help them quit.
5. The Government of Canada and Government of Ontario should ensure that tax policies are responsive to new products available on the market and reflect the distinction between combustible and non-combustible products. Specifically:
- The federal government should amend the *Excise Act, 2001* and the provincial government should amend the *Tobacco Tax Act, 1990* to create separate tax categories for tobacco products that fall within the current manufactured tobacco category—pipe tobacco, roll-your-own tobacco, smokeless tobacco, and heat-not-burn products; and
  - The federal and provincial governments should tax smokeless tobacco products and heat-not-burn products based on the weight of the tobacco mixture contained within the device.



## VAPE PRODUCTS

In comparison to the tobacco market, the legal vaping market is nascent and not as well understood by both the general public and policymakers due to its recent emergence onto the market. In 2018, vaping products became regulated and approved for sale in Canada through the *Tobacco and Vaping Products Act*,\* allowing adults aged 18 years and older to legally purchase vaping products with nicotine.\*\* Vaping products have a heating coil that warms a liquid (sometimes infused with both nicotine and a flavouring) to produce a vapour that is inhaled into the lungs. While e-cigarette use is possibly less harmful for adults than smoking regular cigarettes, the long-term health effects are unknown.<sup>75</sup> The American Cancer Society notes that the aerosol from an e-cigarette is not water vapour and can be harmful. The vapour can contain nicotine, other addictive substances,\*\*\* and additives that can cause cancer, lung disease, and heart disease.<sup>76</sup>

This is particularly problematic when one considers how market trends and consumer preferences are shifting. While the number of smokers has been decreasing globally, the number of individuals who vape around the world has increased rapidly—from seven million in 2011 to 41 million in 2018.<sup>77</sup> In the United Kingdom, Public Health England considers vaping to be approximately 95 percent less dangerous than smoking<sup>78</sup> and says e-cigarettes have helped 20,000 people a year quit smoking cigarettes.<sup>79</sup> In the UK, e-cigarettes are specifically viewed as a smoking cessation device for current adult smokers and there are strict advertising regulations that ban TV, radio, and social media ads related to vaping, as well as a cap on nicotine content.<sup>80</sup> Despite this, the WHO does not currently support the use of e-cigarettes as a smoking cessation aid since the scientific evidence pertaining to its effectiveness is inconclusive.<sup>81</sup>

Against this evolving backdrop, governments have been slow to regulate and appropriately tax vape products. Provinces across Canada have only begun taking action to address rising youth vaping rates, with Nova Scotia recently becoming the first province to ban flavoured vaping products in December 2019.<sup>82</sup> In order to enable the Governments of Canada and Ontario to support public health, safeguard youth, and improve regulation of the legal vaping industry, policymakers require more scientific research to be conducted and a better understanding of the growing e-cigarette market.

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\* The *Tobacco and Vaping Products Act* (TVPA) also places restrictions on the promotion of vaping products, including bans on advertising that appeals to youth, lifestyle advertising, sponsorship promotion, and giveaways of vaping products or branded merchandise. Additional restrictions under the TVPA came into effect on November 19, 2018, which included banning the use of interesting shapes or sounds to sell and promote vaping products that appeal to youth; the use of certain flavours like candy, desserts, or soft drinks that may be appealing to youth; and the use of testimonials or endorsements for product promotion.

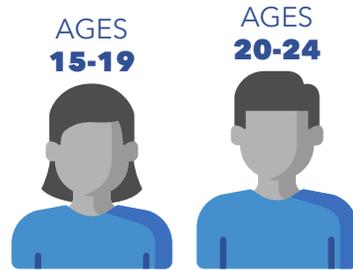
\*\* Before this federal legislation, e-cigarettes containing nicotine were unregulated and could be purchased in stores and online.

\*\*\* The American Cancer Society notes that e-cigarette vapour may contain flavouring chemicals that can be toxic, formaldehyde, and volatile organic compounds that, at certain levels, can cause eye, nose, and throat irritation, headaches, nausea, and damage to the liver, kidney and nervous system.

# VAPING RATES AND UPTAKE IN CANADA



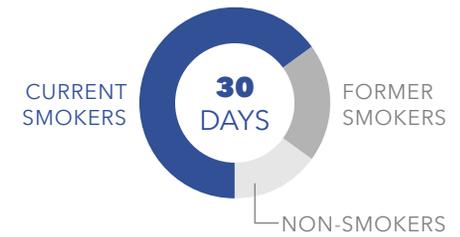
In 2017, the Canadian Tobacco, Alcohol and Drugs Survey found that 4.6 million Canadians aged 15 and older (or 15% of the population) had tried a vaping product.<sup>83</sup>



In comparison to adults over the age of 25, youth (aged 15 to 19) and young adults (aged 20 to 24) had the highest rates of trying vaping.<sup>84</sup>



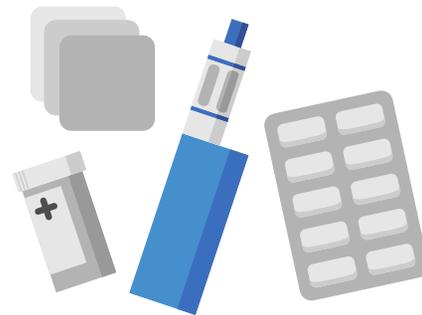
Among first-time vapers who used a vaping product in the past 30-days, the mean age of first-time use was 34.<sup>85</sup>



The majority of respondents who used a vaping product in the last 30-days were current smokers (65%), while 20% were former smokers, and 15% were non-smokers.<sup>86</sup>



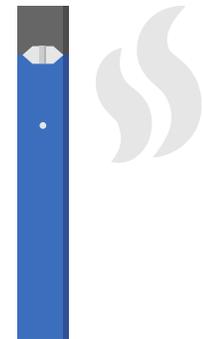
49% of Canadians who tried a vaping product either borrowed, shared, or bought it from a friend or family member. 23% bought the product from a vape shop or vapour lounge. 12% went to a convenience store or gas station.<sup>87</sup>



When compared with other smoking cessation aids (e.g., patches, gum, or medication), vaping was the most prevalent option used by current or former smokers trying to quit.<sup>88</sup>



The health effects from second-hand aerosol remain unknown and Health Canada recommends e-cigarette users be cautious around youth and non-users.<sup>89</sup>



Health Canada notes that e-cigarette use is less harmful than smoking,<sup>90</sup> but the long-term safety of inhaling ingredients found in vaping liquids is unknown and continues to be examined.<sup>91</sup>

## Vaping and Public Health

Any discussion of e-cigarette regulation must begin with an assessment of recent public health incidents linked to vaping, as they are currently understood. As of November 2019, the Centers for Disease Control and Prevention (CDC) identified 2,172 cases of e-cigarette use associated with lung injuries in the US and 42 confirmed deaths. In Canada, there have been seven confirmed or probable cases of severe lung illness related to vaping.<sup>92</sup>

In response, the Council of Chief Medical Officers of Health stated that, until more is known about these types of pulmonary illnesses, Canadians should consider refraining from vaping.<sup>93</sup> Currently, there is no test that doctors can use to link an illness to vaping, so the process has been described as a diagnosis of exclusion.<sup>94</sup> Accordingly, Health Canada launched a new website to provide Canadians with up-to-date information.<sup>95</sup> In Ontario, action has been taken to collect data on incidences of vaping-related severe pulmonary disease, conduct expert roundtables to better understand the issues surrounding youth vaping, and ban ads promoting vaping products from convenience stores and gas stations.<sup>96,97,98,99,100</sup>

While these prominent public health incidents resulted in closer scrutiny on the health impacts of vaping, they have also illuminated a new concern for the industry: the use of illicit vape hardware and additives.

Fluid samples from 29 patients submitted to the CDC identified Vitamin E oil, known as Vitamin E acetate, as a chemical of concern in products containing delta-9-tetrahydrocannabinol (THC).<sup>101</sup> Vitamin E acetate is colourless, odourless, and is as thick as THC oil but cheaper than bulk THC. It has been used as a thickening agent to increase the volume of THC in illegal vape cartridges while cutting costs.<sup>102</sup> According to the CDC, most of the samples tested by the Food and Drug Administration (FDA) contained THC. Further, most patients had a history of using e-cigarettes containing THC, and e-cigarette products containing THC had been obtained from informal sources (such as friends, family, or from dealers in-person or online).<sup>103</sup> While Vitamin E does not cause harm when ingested as a vitamin supplement or applied to the skin, research suggests it may interfere with normal lung functioning when inhaled.

In terms of how these incidents occurred, an investigation conducted by Leafly\* identified a contaminated supply chain. Illicit vape pen hardware is manufactured in Shenzhen, China and shipped to wholesale markets in Los Angeles and Long Beach. From there, the hardware and unsafe additives, including Vitamin E, are purchased and assembled for sale in the illicit market.<sup>104</sup> As a result, Health Canada recommends Canadians not add substances unintended by manufacturers into an e-cigarette, as well as avoid purchasing vaping products from illegal sources. Unfortunately, the CDC finds there is insufficient evidence to rule out other chemicals of concern, so various substances and product sources continue to be investigated.<sup>105</sup>

Response has also been swift from industry. JUUL Labs, for example, initiated its Retail Access Control Standards age-verification platform at the point-of-sale (POS) in retail locations across the US. When a JUUL product is scanned, the POS system remains locked until a retailer electronically scans a valid piece of government-issued identification. The program is meant to ensure that retailers cannot sell products to underage individuals. The system also limits how much a consumer (of legal age) can purchase to prevent adults from purchasing bulk quantities that are then sold to minors.<sup>106</sup>

Given that some of the incidents that occurred in the US involved open vaping systems that had been tampered with, the Province should build on its earlier response by restricting the sale of open vaping products to specialty vape stores. Convenience stores and gas stations should be restricted to selling closed vaping systems, while specialty vape stores could sell both. Specialty vape store employees are knowledgeable about the array of vaping products on the market and are well-positioned to educate adult consumers about how to properly use and re-fill open systems, as well as educate consumers about the health risks associated with adding other chemicals or adulterants.

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\* Leafly is a cannabis information website that allows adult recreational and medical cannabis users to rate and review cannabis products and stores, as well as learn about cannabis more broadly, to make informed choices. Leafly is owned by Privateer Holdings, a private equity firm that invests in the cannabis industry.

## Intellectual Property Infringement

While many policymakers are familiar with the legal and public health concerns surrounding contraband tobacco, perhaps less known are the concerns that counterfeit vaping products pose. Interconnected with the public health concerns associated with illicit vape products, compatible vaping pods or “clones” illegitimately use brand trademarks but fit into legitimate vaping devices. In addition to the violation of intellectual property (IP), compatible pods may also contain unknown adulterants or nicotine levels that exceed the amounts permitted by Health Canada.

Thousands of counterfeit vaping products are made in China in electronic cigarette factories.<sup>107</sup> These products are marketed as authentic products without using a trademark.<sup>108</sup> Given that these fake products are manufactured in unregulated factories, they are sold for a fraction of the price of a genuine product and not well constructed. Indeed, a consumer may believe they are getting a deal, but the use of cheap materials and technology for counterfeit vaping products means the product can break down and cause burns due to overheating.

Although Health Canada’s website provides comprehensive information on vaping—including recommending Canadians not tamper with e-cigarettes—neither the federal or provincial governments have invested in robust public awareness campaigns surrounding counterfeit products. Adult smokers should be educated on the importance of purchasing vaping devices, pods, and kits directly from a company’s website or an authorized retailer. At the provincial level, the Government of Ontario should aim to deter adult smokers and youth from purchasing counterfeit vaping products, compatible pods, or tampering with open vaping systems by emphasizing the public health risks.

Between September and December 2019, Health Canada assigned 22 inspectors to visit 3,000 retailers. These inspectors assessed whether products available in convenience and speciality vape stores conform with the *Tobacco and Vaping Act* and the *Canadian Consumer and Product Safety Act* in terms of their content and nicotine levels.<sup>109</sup> Proactive monitoring and enforcement is certainly a welcome step, but may not be sustainable given the number of retailers selling e-liquids and vaping

products across the country, including online and through brick-and-mortar stores. Without public education, counterfeit vaping products may gain a substantial foothold in the Canadian market.

## Youth Vaping

In Canada, concerns about youth vaping were first highlighted by a study from the University of Waterloo, which found that the number of teenagers (aged 16 to 19) who reported vaping in the past week increased from 5.2 percent in 2017 to 9.3 percent in 2018. The study also revealed a small increase in the number of youths who reported vaping for 15 days out of 30 days—from 2.1 percent in 2017 to 3.6 percent in 2018. The number of teens who reported vaping in the past month also increased from 8.4 percent to 14.6 percent during that timeframe.<sup>110,111</sup> It should be noted, however, that it is unclear if these incidents are examples of addiction or merely experimentation.

In response to mounting pressure from public health stakeholders, Health Canada launched a multi-pronged vaping prevention campaign\* in late 2018.<sup>112</sup> This campaign included a video that aired in movie theatres across Canada, entitled “Consider the Consequences of Vaping.” It shows a male teenager at a house party with friends, appearing scared and unsure how to proceed when another male teen passes him an e-cigarette. The video then outlines the consequences he may experience if he chooses to vape: nicotine addiction; altering the development of his brain; ingesting harmful chemicals; lung damage; and other unknown, long-term health effects. With these risks in mind, the teen returns the vaping product to his disappointed friend.

While the video is well-meaning, it may be ineffective and counterproductive. First, research commissioned by Health Canada notes that youth vaping is primarily driven by friends and peers, vaping

\* To develop its anti-vaping strategy and messaging, Health Canada conducted focus groups with underage teenagers across six provinces. They selected “Consider the Consequences of Vaping” as the campaign’s tagline as opposed to an alternate tagline: “It’s your life. Get the facts.” The former tagline was deemed to be scarier among teens, while the latter tagline was considered less judgmental and more empowering. Teenagers between the ages of 13 and 15 liked the latter tagline as they considered it to be effective at making them question their decision to vape.

flavours, availability, and a reputation for being fun and exciting.<sup>113</sup> For instance, many youths view vaping as “cool” because they can use the vapour to perform smoke tricks.<sup>114</sup>

Rather than making vaping look “uncool,” Health Canada’s video reinforces the notion that vaping is what the “cool” kids do and is necessary to fit in with one’s peers. Second, the ad uses fear-based messaging by focusing on the known and unknown health risks associated with vaping. Since youth have a penchant for risk-taking behavior and experimentation, focusing on the harms associated with vaping may be futile. Given that Health Canada has positioned e-cigarettes as a viable alternative to help adult smokers quit and aims to reduce tobacco use to less than five percent by 2035, the federal government should follow the approach taken by the UK by positioning e-cigarettes as an alternative for adult smokers in its campaigns. Messaging directed towards adult smokers could present vaping as “uncool” as youth are less likely to want to use a product that is used by parents, for instance, to quit smoking.

### Research on Vaping and Its Effects

As a result of decades of research, the harms associated with combustible cigarettes are well-known. The Government of Canada explains on its website that, “If you are a smoker, vaping is a less harmful option than smoking”<sup>115</sup> and has a page that outlines the benefits of switching from smoking to vaping.<sup>116</sup> However, questions remain with respect to both the short- and long-term impact of e-cigarette use. The Heart and Stroke Foundation recommends that dedicated research funding is needed<sup>117</sup> to explore pressing questions regarding vaping, help guide future government policies and strategies, and safeguard public health.

According to the 2017 Canadian Tobacco, Alcohol and Drugs Survey,<sup>\*</sup> most respondents tried an e-cigarette because of positive views of the device as a smoking cessation device. Beyond this, 69 percent used an e-cigarette to help them quit smoking; 58 percent viewed e-cigarettes as less harmful than smoking cigarettes; and 56 percent viewed second-hand aerosol as potentially less harmful than cigarettes.<sup>118</sup> At the same time, the majority of respondents believed there was some degree of

risk associated with e-cigarette use—whether on a regular basis or occasionally. For consumers, public health officials, and the medical community to have confidence in the safety and efficacy of vaping products, there is a need for government to invest in long-term research.

### Expanding Cessation Supports in Ontario

In Ontario, the Province currently funds several smoking cessation programs, including the STOP Program, Toronto’s Centre for Addiction and Mental Health, and the Ottawa Model for Smoking Cessation at the University of Ottawa Heart Institute.<sup>119</sup> Investing in smoking cessation is critical given that tobacco is the leading cause of preventable death and disease in Ontario, killing 13,000 Ontarians every year. In 2012, the Conference Board of Canada estimated the tobacco-related disease cost Ontario’s health care system almost \$2.3 billion in direct costs, \$883 million in indirect costs due to premature death, and led to almost 16,000 deaths.<sup>120</sup>

Historically, Ontario has been considered a leader in tobacco-cessation strategies, spending the most per capita to support individuals wanting to quit.<sup>121</sup> These strategies included a program called Leave The Pack Behind (LTPB), which was recently discontinued due to a cut in funding.<sup>\*\*</sup> Unlike other programs that are currently funded, LTPB was the only program that tailored its supports directly to demographics at-risk of smoking, namely Indigenous and LGBTQ young adults, as well as young adults working in the trades and service sector.<sup>122,123</sup>

Data from the 2017 Canadian Tobacco, Alcohol, and Drugs Survey reveals that smoking rates among those aged 15 to 19 and 20 to 24 declined between 1999 and 2017.<sup>124</sup> The end of the Leave The Pack

\* The results of the Canadian Tobacco, Alcohol and Drugs Survey (2017) are based on phone interviews with 16,349 respondents, aged 15 and older, and in ten provinces. The survey was conducted between February and December 2017 and focuses on Canadian trends in tobacco, alcohol, and drug use.

\*\* Founded in 2000 and housed out of Brock University, Leave The Pack Behind (LTPB) employed 27 staff who designed campaigns meant to appeal to young people aged 18 to 25. Over the years, LTPB worked with 44 post-secondary institutions and 35 public-health units to help 40,600 people aged 18 to 25 quit smoking by offering free supports, phone apps, and social media campaigns.

Behind program geared directly toward young adults may reverse these trends.\* While the Province recently added vaping as a new topic in Ontario's health and physical education curriculum for elementary school children<sup>125,126,127</sup> as concerns over youth vaping grow (including concerns that vaping may be a gateway to smoking combustible cigarettes), it is clear that government needs to re-evaluate its approach to youth smoking cessation. The Province must emphasize to youth (as well as adults who do not currently smoke) that e-cigarettes are specifically intended as a smoking cessation aid for current adult smokers.

Similarly, responsibility for the Ontario Smokers' Helpline, a telephone-based, smoking cessation service provided by the Canadian Cancer Society was recently transferred to Telehealth Ontario.<sup>128</sup> The decision was made for fiscal reasons—the switch saved the Ontario government \$750,000 per year—and to provide Ontarians with access to holistic cessation supports alongside other health care services and practitioners. Yet this change was made without any public reference to e-cigarettes. Given that it is currently unclear how vaping fits into this new service, it is critical that the Province ensure cessation support services and programs have comprehensive knowledge of the products currently available on the market (and their use trends) to most effectively support Ontarians trying to quit smoking.

Although the tobacco and vaping industries view themselves as separate and distinct, the general public sees many similarities between the two and requires information on both types of products to guide decision-making as it pertains to cessation. As the Province develops and/or invests in future smoking and vaping cessation programs, it should take a holistic approach by recognizing that Ontarians who currently smoke or vape require information on the range of products available on the market to make informed decisions and support cessation efforts.

## Taxation and Social Responsibility Pricing

Taxation of e-cigarettes has drawn the attention of Canadian policymakers as Alberta\*\* and British Columbia\*\*\* have signalled their intention to implement a tax in 2020. A tax could help deter youth (who are price-sensitive) from accessing vaping products and provide

governments with revenues needed to run public health campaigns or law enforcement initiatives. Both jurisdictions estimate that a provincial tax on e-cigarettes would generate \$10 million per year in new revenue.

As Ontario considers how it will approach the taxation of e-cigarettes, the Province will need to balance two key policy objectives. First, it must reduce youth usage of vaping products, while ensuring these products remain accessible to existing adult smokers as a smoking cessation aid. Second, the tax should be unique to vaping products and take into consideration the harm reduction potential the product holds and the long-term health care cost savings attributable to switching from combustible cigarettes.

One possible structure that the Government of Ontario should consider is a volume-based tax (per millilitre) that is collected at the wholesale level and not specific to the nicotine level contained within the e-liquid. This approach would eliminate the complexity associated with taxing different vaping systems (open versus closed systems), maximize the Province's ability to ensure compliance across producers and delivery mechanisms, and clearly separate vaping products from how other combustible products are treated, while maintaining a direct tie to consumption.

Ontario may also want to consider implementing social reference pricing as in Québec where the minimum price for an e-cigarette is \$9.99. Since youth are price-sensitive, a floor price could make it more difficult for youth to purchase an e-cigarette. It could also minimize the risks associated with low-quality, low-cost vaping products entering the Canadian market, and potentially minimize the public health risks associated with these low-quality products.

\* In 1999, 27.7 percent of Canadians aged 15 to 19 smoked, falling to 7.9 percent in 2017. In 1999, 35.4 percent of Canadians aged 20 to 24 smoked, falling to 16 percent in 2017.

\*\* In its 2019 Budget, the Government of Alberta proposed developing and enforcing a tax on vaping products as part of its review of its *Tobacco and Smoking Reduction Act*.

\*\*\* The Government of British Columbia released a ten-point plan as part of its 2019 Budget, in response to increasing rates of youth vaping. In part, the plan proposes to increase the provincial sales tax on vaping products from seven percent to twenty percent. If the legislation is passed, the proposed tax increase would come into effect on January 1, 2020 and British Columbia would become the first province to apply a specific tax on e-cigarettes in Canada.

**VAPE PRODUCT RECOMMENDATIONS:**

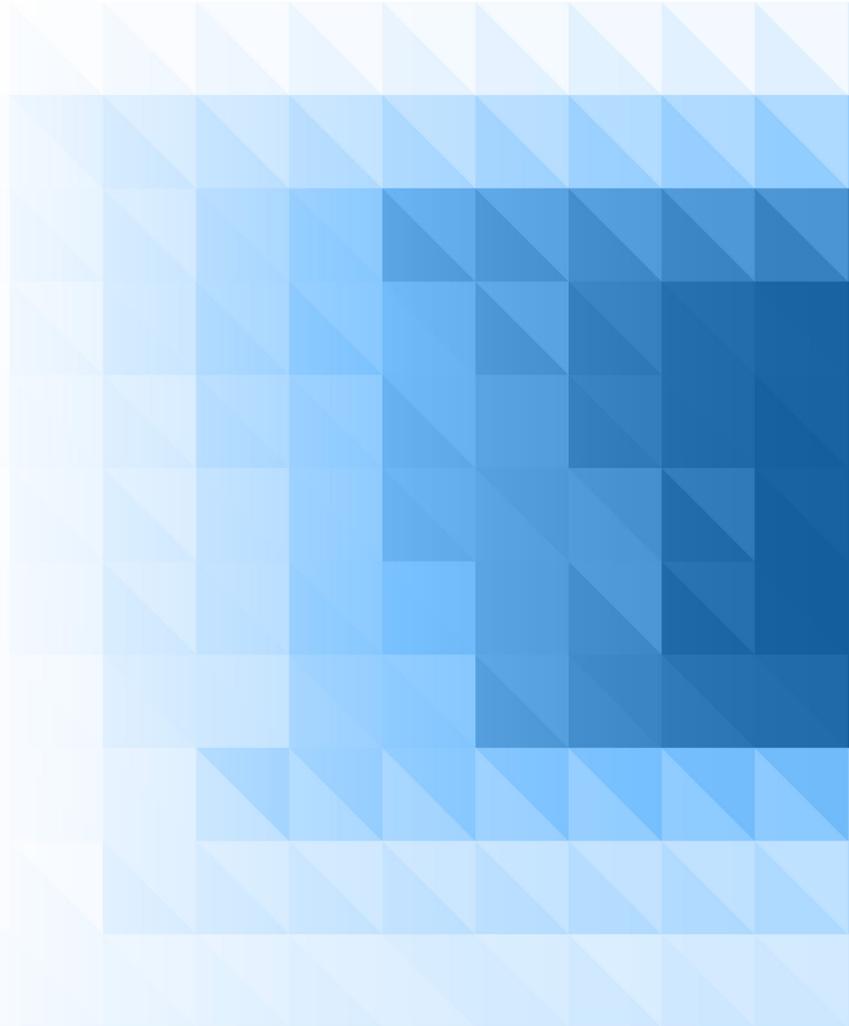
6. The Government of Ontario should expand the mandate of the *Tobacco Tax Act, 1990* to include vaping.
7. The Government of Ontario should permit only specialty vape stores to sell open system vaping devices.
8. The Government of Canada should dedicate resources to track the volume and test the contents of counterfeit e-cigarettes and compatible pods.
9. The Government of Ontario should invest in a public awareness campaign that:
  - Educates youth and adult smokers and e-cigarette users about the risks associated with counterfeit e-cigarettes and compatible pods;
  - Provides information on where current adult smokers and e-cigarette users can legally obtain vaping products;
  - Informs youth and adult smokers and e-cigarette users about the importance of not tampering with open systems; and
  - Explains that e-cigarettes are intended for adult smokers and educates youth on the risks associated with nicotine use.
10. The Government of Canada and Government of Ontario should collaborate with relevant stakeholders to create a research roadmap on vaping, including the following areas of inquiry:
  - The short- and long-term health risks associated with prolonged vaping, and relative to cigarettes;
  - Whether e-cigarettes are a gateway to nicotine addiction or dual use;
  - Vaping's effectiveness as a smoking cessation device in comparison to nicotine replacement therapies;
  - The effects of second-hand aerosol;
- Whether youth who vape are more likely to become traditional smokers later in life;
- What regulations are needed to successfully deter youth from vaping while providing adult smokers with an alternative to combustible cigarettes;
- Whether the amount of nicotine should be lowered in vape pods; and
- Whether flavour bans effectively deter youth, negatively impact current adult smokers, or encourage the illegal market.
11. The Government of Ontario should ensure service providers that deliver smoking cessation supports to Ontarians meet the following criteria, namely having:
  - Knowledge of potentially reduced risk alternatives currently available on the market for Ontarians who are addicted to nicotine but want to quit smoking combustible cigarettes;
  - Training on e-cigarettes, how these devices function, the potential benefits and risks, as well as the importance of not tampering with open systems or purchasing counterfeit e-cigarettes or compatible pods; and
  - Supports available to help Ontarians who want to quit smoking cigarettes and/or vaping.
12. The Government of Ontario should assess appropriate options for taxation and social reference pricing for e-cigarettes to address youth access.

## CONCLUSION

Both the tobacco and vaping markets are at a critical juncture: rates of cigarette smoking are declining while vaping rates are rising, leading to serious concerns over youth access and uptake, and reports of acute pulmonary illnesses in Canada. Further complicating matters is a new counterfeit e-cigarette market that has emerged alongside Ontario's contraband tobacco market, posing new public health challenges and safety concerns.

Government regulations and tax policies related to the tobacco and vaping industries must evolve as new products enter the market and consumer habits change. To be effective, cessation strategies developed by policymakers must be informed by this shifting landscape. In determining appropriate responses, decision-makers should avoid impulsive—albeit well-intentioned—reactions that could have unintended, counterproductive consequences for both public health and safety.

The Government of Canada and Government of Ontario will need to work with the tobacco and vaping industries, retailers, public health officials, employers, First Nations communities, researchers, parents, teachers, and youth. These discussions will be critical to the development of policies and regulations that strike the right balance between providing adult smokers with access to alternatives that are potentially less harmful than combustible cigarettes, helping individuals quit whichever nicotine delivery system product they are using, and ensuring youth (and adult non-smokers) do not start consuming these products. A collaborative relationship with industry is necessary if we are to identify solutions and take action on areas of common concern.



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