



VAPING INDUSTRY TRADE ASSOCIATION
ASSOCIATION DES REPRÉSENTANTS DE L'INDUSTRIE DU VAPOTAGE

Tobacco and Vaping Products Act – Review

Consultation Submission

April 27th 2022

Declaration of Interests and Association

The Vaping Industry Trade Association is a membership based national non-profit corporation representing Canada's vaping sector. VITA does include members who also produce tobacco products. This participation includes a minority position on our Board of Directors. The participation and inclusion of vaping industry stakeholders of all sizes and types allows us to better understand and address challenges related to vaping products across Canada. VITA is exclusively funded by its founding members and member companies through regular membership fees. VITA does not, and has never funded any other vaping advocacy associations, movements, or campaigns. We trust that the information and perspectives provided in this submission will be considered during the review.

To whom it may concern,

The Vaping Industry Trade Association of Canada (VITA) is pleased to provide our input and perspectives as it relates to the operation and effectiveness of the TVPA and associated regulations.

The review of TVPA legislation provides the first substantial opportunity to present the full scope and commitment of industry efforts, challenges, and concerns that are founded on the principals/purpose as laid out in the Act.

On behalf of VITA and its membership, I would like to sincerely thank Health Canada, the Honourable Minister of Health Yves Duclos, and the Honourable Associate Minister of Health Carolyn Bennett for conducting a robust and fulsome review of the TVPA.

Best Regards,

Daniel David,

President,

Vaping Industry Trade Association (VITA)

VITA Consultation Submission

About VITA:

Canada's largest trade association (by market share) representing the vaping industry's manufacturers, importers, distributors and retailers, VITA is committed to working with stakeholders and governments to set and uphold regulations for vaping products in Canada. Our approach is based on credible evidence, science, facts, and logic. In our efforts to responsibly grow and defend the category, the Association is committed to collaborating with Health Canada and other regulatory bodies to identify best practices and to inform the development of evidenced-based regulations.

Introduction:

On May 23rd, 2018, the Act to amend the Tobacco Act and the Non-smokers' Health Act and make consequential amendments to other Acts received royal assent, bringing the Tobacco and Vaping Products Act (TVPA) into force. This created a policy framework which allowed the legal and highly regulated sale of vaping products in Canada.

Various other regulations under the TVPA have been implemented since this time, including restrictions on advertising, online sales, labelling, child resistant containers, and new nicotine restrictions.

In addition to Federal regulations, every province and territory in Canada has enacted additional legislative and regulatory regimes on vaping products. Many of Canada's cities have also enacted further municipal restrictions on vaping. These legislative and regulatory steps have ensured that **in no part of Canada is it legal for:**

- Any person to supply vaping products to minors.
- Target and expose minors to marketing/promotions or inducements to use vaping products.

From May 23rd 2018 to now, new legislation and regulations at all three levels of government have been rapidly and repeatedly implemented in response to youth uptake concerns. During this period, the industry has had to continuously address newly proposed legislation/regulation while making every possible effort to adapt and comply with new standards at a time of unprecedented global challenges that often disrupt industry operations. Many of these challenges are made more difficult due to the classification of vaping industry stakeholders in the same manner as the tobacco industry. Despite these challenges, the industry continuously takes the initiative to seek out opportunities that serve the best interest of consumers, industry, and government.

Vaping as a Harm Reduction Product:

Vaping is not harm-free and should never be presented as a completely safe, or harmless product. It is however significantly less harmful than smoking combustible cigarettes.

According to Health Canada:

- Vaping products deliver nicotine in a less harmful way than smoking cigarettes.

- Vaping products may reduce health risks for smokers who cannot or will not quit using other methods.
- Vaping products contain a very small fraction of the 7,000 chemicals found in tobacco smoke, and where present, they are at significantly reduced levels.¹

This view is informed and supported by the majority opinion in the global scientific community that vaping is significantly less harmful than smoking. For example:

- Public Health England’s 2015 evidence report found that, in their “While vaping may not be 100% safe, most of the chemicals causing smoking-related disease are absent and the chemicals which are present pose limited danger.”²
- In 2018 the US National Academies of Sciences, Engineering and Medicine (NASEM) found that the available evidence suggests e-cigarettes are far less harmful than combustible cigarettes.³
- According to the Royal College of Physicians (UK), the available data suggests that vaping products “are unlikely to exceed 5% of those [risks] associated with smoked tobacco products and may well be substantially lower than this figure.”⁴

Due to this significant disparity in harm, vaping has become an effective tool for many adult smokers seeking to reduce their risk associated with the consumption of nicotine.

The Canadian Tobacco and Nicotine Survey (CTNS) data indicates that over 1 million adult Canadians have used a vaping product in the last 30 days, compared with an estimated 4.5 million adult smokers.⁵

This is positive, as increasingly, evidence is emerging that demonstrates that vaping is one of the best ways, if not the best way, to transition smokers away from combustible cigarettes.

For example, a 2021 comparison of the efficacy of vaping vs nicotine replacement therapy (NRT) in England found that vaping was approximately twice as effective in encouraging quitting smoking.⁶

The First 12 Months After Implementation: Changes & Impact

Following the implementation of the TVPA, a new access point was added to the pre-existing vape shop/online model; C-stores & Gas stations.

C-store & Gas Station Model:

Prior to the TVPA, vape product sales in Canada were dominated by vape shops, online vendors, and other small businesses. This was due to the risk exposure of large corporations getting involved in what many considered to be a ‘Grey Market’. This was not an unexpected situation, and thousands of newly legal access points had to be expected to increase demand on limited enforcement resources.

¹ <https://www.canada.ca/en/health-canada/services/smoking-tobacco/vaping/smokers.html>

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733022/E-cigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_England_FINAL.pdf

³ <https://www.nap.edu/catalog/24952/public-health-consequences-of-e-cigarettes>

⁴ <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction>

⁵ <https://gazette.gc.ca/rp-pr/p1/2020/2020-12-19/html/reg3-eng.html>

⁶ <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-february-2021/vaping-in-england-2021-evidence-update-summary>

- Legalization opened the market to the entry of well funded multinational corporations
- Legalization had legitimized and created confidence in a previously unregulated (Federal level) industry. This opened new investment, funding, and expansion opportunities.
- During the first year post-TVPA, federal and provincial regulations on marketing & advertising were yet to be fully & consistently implemented. This created a window of time where companies entering the market for the first time could legally advertise vape products through existing channels that had not carried vaping products prior to legalization.

Vape Shop & Big Corporate Challenges:

After the Act was implemented, the pre-TVPA industry had to adapt to competing with large corporations that had multiple advantages, including:

- Funding and human resources
 - o Pre-existing distribution channels (c-stores) for nicotine products (tobacco) increased access points by orders of magnitude for vape products.
 - o Ability to promote and provide access directly to the target market; adult consumers buying cigarettes
 - o Closed pod devices with advanced technology perfected in other markets
 - o Products that were Inexpensive, effective, and had wide brand awareness
- In Ontario, C-stores & gas stations had an advertising advantage by not being classified as Vape shops, which (for a time) allowed for posters and signage stating [X brand available here] to be displayed in public.

There was also at least one significant dis-advantage that large corporations had to compensate for; the pre-TVPA industry had an 8-year head-start on market penetration.

Vaping Industry Numbers:

- 1100-1400 dedicated specialty vape shops which are predominantly small independently owned businesses.
- Over 30,000 convenience stores and gas stations.
- 200 domestic manufacturers of E-liquid.
- Approximately 10-15 large distributors.

VITA estimates that excluding C-stores, the average number of employees in the vaping industry are:

- Approximately 7000 - 7500 Canadians directly employed in full or part-time roles within the specialty vape channel and ancillary areas such as e-liquid manufacturing and distribution.

Industry Context: Pre-TVPA, Post-TVPA, VITA & Association Initiatives

This section has been included to establish context as it relates to the questions in the TVPA review document and VITA's answers/response.

A Disruptive Industry

The vaping industry is the definition of what it means to be a "disruptive industry". The vaping industry supplies a product that is similarly satisfying, better tasting/smelling, less expensive, less harmful, and more convenient compared to its primary competing product:

cigarettes/smoking. At its most basic level these product features are disruptive because they have far reaching fiscal and employment impacts on other industries and institutions due to:

- Reduced tobacco product sales
- Reduced tax revenue from tobacco sales
- Reduced NRT/cessation product sales
- Reduced reliance on pharmaceutical treatments due to a reduction in harm
- Reduced use of alternative therapeutic interventions (laser/hypnosis ect..)
- Reduced funding priority for anti-smoking campaigns & associations
- Increased concerns related to employment income in competing sectors
- Increased fear of 'unknown' consequences

The Canadian vaping industry is often portrayed by its opponents (opposition stakeholders) as:

- Only being interested in profits
- Irresponsible and unprofessional
- Intentionally targeting youth & non-smokers
- A big tobacco strategy to re-normalize smoking behaviour
- undermining regulations
- and many more.....

The reality is that the vaping industry has always proactively led advocacy efforts to establish new and appropriate legislation and regulation for the category prior to, and after the TVPA came into force.

We are highlighting the disruptive nature of the vaping industry, and the messaging/position of it's opponents because we believe it is important to recognize that the vaping industry (including tobacco affiliated companies) is far from the only fiscally biased/vested interest stakeholder.

Pre-TVPA Associations & Initiatives:

There were two national trade associations representing the vaping industry prior to bill S-5/TVPA being passed; The Electronic Cigarette Trade Association (ECTA) & The Canadian Vaping Association (CVA).

ECTA:

The Electronic Cigarette Trade Association of Canada was established in early 2012 and opened for membership in the summer of 2013. This was Canada's first industry trade association and it implemented standards on youth prevention, quality control, and consumer safety over a year before any Canadian government would propose any legislation.

ECTA members and industry leaders voluntarily adopted ISO 7, 9, & cGMP standards at production facilities, submitted e-liquid samples for regular testing, and educated retailers and

consumers about the importance of improving quality and safety standards for harm reduction products.

CVA:

The Canadian Vaping Association was established in 2014/2015 as a non-profit corporation with a focus on public and government relations. The CVA was Canada’s second industry trade association and worked on various initiatives in collaboration with ECTA until 2018.

Pre-TVPA Initiatives:

The following list of initiatives are only some of the industries efforts prior to the TVPA. These are not the actions of an irresponsible or predatory industry intent on addicting the next generation of children to nicotine as many opponents to vaping claim. All of these initiatives were communicated in detail to Health Canada at the time they were conducted.

Examples to self regulate prior to the TVPA include:

- **E-liquid Testing:** ECTA was the first association in the world to identify a list of potentially harmful compounds in e-liquid and to establish safety thresholds based on NIOSH, OSHA, and Canadian occupational exposure standards. All of these standards were developed by leading health/research experts. **This type of innovative approach should be recognized, supported, and encouraged.**

Specific Testing Points, Protocols and Tolerance:

ECTA’s testing protocol includes testing for the following items:

Component / Element	Protocol MDL*	Tolerance
Nicotine Concentration	GC/FID Analysis 0.1 mg/ml	± 10%
Diethylene glycol (DG)	GC/FID Analysis 2.23 µg/ml (ppm)	< 100 µg/ml (ppm)
Acetaldehyde	HPLC/UV Analysis 0.640 µg/ml (ppm)	< 100 µg/ml (ppm)
Acetoin	HPLC/UV Analysis 0.841 µg/ml (ppm)	None Set (Informational)
Diacetyl (2,3-Butanedione)	HPLC/UV Analysis 0.742 µg/ml (ppm)	Non-Detection Goal < 22 µg/ml no disclosure < 100 µg/ml (ppm) disclosure > 100 µg/ml (ppm) is Fail
Formaldehyde	HPLC/UV Analysis 0.846 µg/ml (ppm)	< 30 µg/mL (ppm)
Acetyl Propionyl (2,3-Pentanedione)	HPLC/UV Analysis 0.840 µg/ml (ppm)	Non-Detection Goal < 45 µg/ml no disclosure < 100 µg/ml (ppm) disclosure > 100 µg/ml (ppm) is Fail
pH Level	Karl Fischer Analysis	Target Levels (Informational) 5.0 to 8.5
% Water	Karl Fischer Analysis	None Set (Informational)

* MDL - Minimum Detection Limit or Level of Detection (LOD). The MDL remains constant with some variation from test to test depending on the calibration of equipment.

- **Battery Safety (ECTA & CVA Initiative):** The following is an ideal example of what can be accomplished when Health Canada communicates with industry on a common ground issue, it can produce the unnecessarily rare win-win-win scenario. After learning of increasing instances of battery related injuries from HC and their cause, an industry wide campaign was immediately funded, developed, and executed within approximately two months. This campaign established a dedicated educational website, posters, signage, packaging and the distribution of 50,000 silicone battery cases that were shipped to virtually every vape shop in the country to be given away for free to consumers. **These types of successful initiatives should be encouraged.**



- **CCCR Labeling Standards & Templates (ECTA):** Years before any legislation or regulation on e-liquid labeling was implemented, the industry voluntarily developed and applied consumer chemical and container regulations as a membership requirement and best practice. Tools and templates were developed by the association and provided publicly to the entire industry, which were widely adopted pre-TVPA. Following Royal Assent of the TVPA, the very same labeling standards that were voluntarily adopted by industry since 2013 became the legal requirement (with minor adjustments) until the release of VPPR/VPLPR regulations in 2020. **Example pre-TVPA label template:**



- **ISO Standards for Manufacturing & ISO 17025 for Testing:** The industry established an expectation that Canadian manufacturers of e-liquid should apply top tier facility production standards despite not being required by government even today. Ventilation, cGMP procedures, traceability systems, and testing facilities/certifications are exceedingly time consuming, difficult to attain and expensive, yet every medium to large e-liquid manufacturer in Canada has voluntarily implemented one or more of these systems.



These actions by the vaping industry prior to the TVPA are important to establish the context for post-TVPA efforts and address issues that are frequently raised by opponents.

Post-TVPA Initiatives

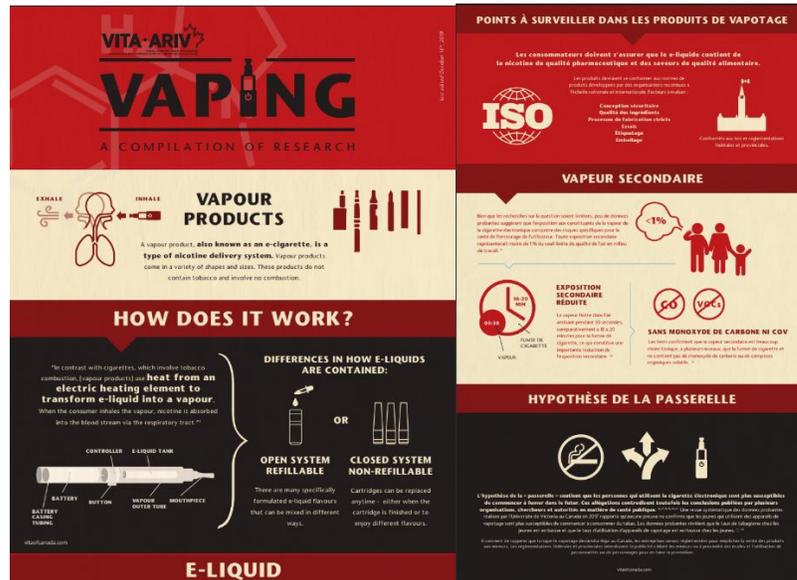
****Note: Every post-TVPA initiative listed below has been communicated and shared with Health Canada. ****

- **Signage:** VITA voluntarily created retail signage in English and French for “Not for Minors” messaging, “ID Required” messaging, and even postage stickers that remind delivery personnel to verify age upon delivery.

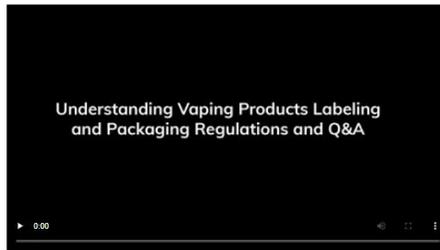
Infographics, Signage & Posters



- **Infographics:** Both VITA and CVA have created visual resources for use in age restricted retail settings that provide information that staff are prohibited from explaining verbally, as the explanation would be considered prohibited under the Act and promotion regulations.



- **Fake ID Verification Technology (Patronscan):** Both VITA and CVA have established group discounts/benefits for association members to use patronscan fake ID scanning technology. VITA also conducted multiple industry webinars and created a section on its website to encourage retailer adoption and greater awareness of the prevalence of fake ID's.



Understanding Vaping Products Labeling and Packaging Regulations and Q&A

Join Ky Tang, Dell Tech Product Safety Specialist, as she explains Vaping Products Labeling and Packaging Regulations and the current state of regulatory compliance in the industry.



VITA Best Practices

- Best Practice Guide
- Placement & Use
- Consumer Signage
- Staff Signage
- Best Practice Guide - FR
- Placement & Use - FR
- Consumer Signage - FR
- Staff Signage - FR

General Best Practices

- Ontario Health & Safety Guidance
- How to Wear a Mask
- Cleaning / Disinfecting Public Spaces
- Social Distancing Guidelines
- Cloth-Face Covering Guidelines
- Handwashing Guidelines

Other Resources

- Financial Support Information
- Graphic - Don't Share Your Vape
- Graphic - Sanitize Your Vape

**HELP PREVENT THE
SPREAD OF COVID 19
DON'T SHARE
YOUR VAPE**



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DE L'INDUSTRIE DU VAPOTAGE

- **Provincial Compliance Support:** VITA has conducted multiple industry webinars when new provincial regulations are released in order to assist industry with compliance efforts. Guidance resources created by provincial governments (eg. BC) were utilized during these webinars, and widely distributed to the industry.
- **Industry Webinars:** Since VITA's foundation in the summer of 2019, we have conducted a total of 55 industry webinars on topics such as compliance, general support, upcoming events, and other important updates.
- **Child Resistant Container (CRC) Initiative:** VITA and CVA worked independently with Chinese/international manufacturers and accredited certification companies to communicate the unique requirement to have CRC compliant tanks, cartridges, and pods developed and tested. Months prior to implementation of CRC regulations, VITA had created a public page on our website that provided information and a list of devices, their CRC testing status & ETA, and a public dropbox containing the testing reports and certificates for new products.

VITA-ARIV

Child Resistant Container Certifications for Tanks & Pods

Part II of the [Vaping Product Labeling and Packaging Regulations \(VPLPR\)](#) requires that all refillable tanks and pods comply with child resistant standards under sections 50 - 55. These requirements are scheduled to go into effect as of January 1st 2021. The global pandemic has resulted in substantial delays to industry compliance efforts, and while VITA continues to work with government on this issue, we urge stakeholders to continue making every effort to become compliant.

In support of compliance efforts, VITA has developed a list of products that have been certified and that are currently (or soon to be) available for retailers to order on the Canadian market.

[Read the Background](#)

Get Instant Access
 Subscribe to get instant access to the current list of CRC compliant tanks & pods sent directly to your inbox.
 This list will be updated weekly, and you will receive the latest list every time it's updated.

First Name

Email Address

[ACCESS THE LIST](#)

Background Information

Health Canada Alert!
 On November 19th Health Canada issued the following notice to the industry regarding their CRC Enforcement Plan

[Read the Official Letter](#) [Lire la lettre officielle](#)

- **Compliance Review Initiative:** In early 2021 VITA received a much appreciated ‘heads up’ from Health Canada, where we were informed that ongoing inspections of industry websites/social media pages were finding high levels of non-compliance. Following that communication, VITA (with support from CVA) designed, built, and implemented the single largest industry compliance initiative ever attempted by the Canadian industry. This initiative achieved the following:
 - o 2 weeks of design and development
 - o Created training modules for volunteer reviewers (volunteers were limited to compliance department staff from VITA & CVA member companies)
 - o Had 11 highly experienced volunteers participate in review process
 - o Review results were compartmentalized to ensure confidentiality among competing companies.
 - o Launched and completed (exceeding all goals) within 6 weeks (8 total)
 - o Established a system to track changes and improvement over time
 - o Created an online review request portal (still active and operational)
 - o Motivated the vast majority of the industry to participate
 - o Conducted 701 individual website and social media initial reviews
 - o Issued 254 non-compliant notices (all specified the exact issue & location)
 - o Conducted multiple webinars and held dozens of 1 on 1 Q&A calls
 - o Tracked and recorded ALL results in secure master list
 - o Conducted 701 follow up reviews in the last 3 weeks to track improvements
 - o By the beginning of June 2021, VITA tracked a total of **336 previously non-compliant issues resolved.**

Compliance Notice Example:



Dear Owner,

Compliance inspections conducted by Health Canada over the past year have primarily targeted the online marketplace due to Covid-19. VITA has been briefed on the scale and nature of the vaping industry's non-compliance issues and has committed to do everything we can to address this situation. To this end, we have initiated voluntary online compliance reviews across the industry and available to anyone who signs up via the online portal at www.vitaofcanada.com/online-compliance. **VITA has no authority to enforce any non-compliance issues we find.** However, we can and will make recommendations for improvements that may lower your risk of incurring an infraction should your business be audited by Health Canada. VITA has always promoted best practices and is proud to support industry members in reaching compliance.

We take privacy very seriously and make all reasonable efforts to comply with Health Canada's directives under the TVPA/VPPR/VPLPR.

VITA is writing you today to let you know we have reviewed your website and social media for Inc as a part of our voluntary online presence review. We are examining age-verification (age-gating) upon entering your website, prohibited flavour categories/names/descriptions, prohibited lifestyle advertising and testimonials, as well as ensuring the Health Canada warning is on each product page.

Currently, your pages have a few minor issues we would like to bring to your attention, such as:

Website:

Age Verification: A 3-factor verification box (mm/dd/yyyy) is not present and blocking visibility to your website until the verification is complete is needed. A solid page for age verification is necessary so not

Example: <https://blackvapordivision.com/collections/mrdrip-original/products/mr-drip-resrv-60ml> "Butterscotch and aged Cognac"

Testimonials:

Subsection 30.21(1) of the TVPA states:

(1) *No person shall promote a vaping product through a testimonial or an endorsement, however, displayed or communicated, including by means of the packaging.*

(2) *For the purposes of subsection (1), the depiction of a person, character or animal, whether real or fictional, is considered to be a testimonial for, or an endorsement of, the product. VITA suggests removing review sections.*

Example: <https://blackvapordivision.com/collections/mrdrip-original/products/mr-drip-resrv-60ml> "This flavor comes straight from the bottom. In the past, TrizOhm and Luxury (Our two mixologists) had made this recipe for themselves. Having worked on it for several years, we decided to offer it to you as it is, in its splendor."

Instagram:

Health Canada Warning: There is no presence of the Health Canada Warning on your social media product posts. Under the VPPR the Health Canada Warning must be on any page that displays products, on social media the HC warning must be on each product photo, and at the beginning of any associated text. VITA suggests the addition of the Health Canada warning on your product posts. The warning must be 20% and non-transparent at the header of your product images, and the beginning of any associated text.

Testimonials:

Subsection 30.21(1) of the TVPA states:

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By the time Health Canada had released the report of non-compliance results, VITA's program brought compliance levels from 53% compliant, to more than 80% compliant. This initiative is one of VITA and the Industries proudest achievements.

Key Challenge for Compliance Efforts

The current policy at Health Canada as it relates to providing guidance & support to the vaping industry on compliance seems to be a very different approach when compared to the Cannabis industry for example. Many members of the vaping industry decided to start new companies in the newly legalized Cannabis retail industry. This experience has demonstrated that there seems to be at least a moderate (but not insignificant) difference between the approach to providing compliance support between the two industries.

The vaping industry has long understood that the standard HC response to compliance questions was to seek legal advice only, and that it applied equally to all industries. Recently this assumption was challenged after two key interactions:

1. A member company which also owns a cannabis retail company demonstrated that the adhesive properties of cannabis labels were fully explained and considered fully compliant. The same labels that were deemed compliant for cannabis, were then flagged as not compliant for their vape products due to not being considered "irremovable" as outlined in vaping regulations. This approach is often confusing to industry at a time when there is increasing prevalence of high nicotine products (over 20mg/mL) being widely sold on reserves and by the illicit market while enforcement resources are being used to peel labels off e-liquid bottles to determine if they are sufficiently sticky enough.

2. VITA delivered a presentation to Health Canada last June where we highlighted the industry compliance review initiative. We conducted over 700 websites/social page compliance reviews (Conducted twice for over 1400 total reviews) and Health Canada seemed highly interested and supportive. About a week later VITA received a concerning email from a member who completed the review and made all recommended changes weeks earlier. This member (all data/details/authorization were offered to HC) notified the VITA review team by forwarding a compliance warning email sent from HC a week after VITA completed the presentation. Essentially, this members website made every recommended change identified by the VITA team and no further compliance issues could be found. Two extra reviews were conducted in order to be sure. This led VITA to believe that there could be an issue that our reviews were missing. If the review was systemically missing something it was critically important to correct, so we contacted HC.

VITA asked the following:

There is a matter related to VITA and Health Canada's compliance efforts that we are hoping you might be able to help us with.

As part of our compliance review process, we take notes on each company regarding what issues were found, what needed to be changed, and what actions were taken to correct non-compliance. This week, one of the companies we reviewed reached out to us concerning a letter they received from Health Canada stating that an inspection conducted on June 2nd found that their website (<https://www.██████████>) appears to be non compliant under the VPPR. *"The online inspection mentioned above identified elements that we believe do not respect the requirement of Section 2 of the VPPR."* We spoke to the company owner who authorized us to contact Health Canada on this matter.

According to our review records and notes, the website referenced was reviewed twice, and had quickly taken action to correct all the non-compliance issues identified by the time Health Canada conducted its inspection. We conducted a 3rd review on their website this week to look for something that we may have missed. While we could not inspect every word for every product SKU, we did look closely and were not able to identify an issue that would have flagged the site for non-compliance.

The primary concern is that our review initiative may be missing something that your system is flagging as non-compliant. In order to address this matter and take corrective action we are hoping you could take a look at the website and/or any notes you may have in order to help identify what your inspection is flagging as non-compliant that ours isn't.

I have attached the HC compliance letter that was received, and the company owner has been CC'd on this email.

We would greatly appreciate any information on this that you can provide.

Both VITA and the member received the following:

Dear Mr. David,

This message is in response to your email dated June 10th 2021 concerning a Compliance Promotion letter received by a regulated party.

Health Canada cannot provide details about inspections to a third party. Should the regulated party wish to discuss the letter, they can contact the inspector directly, whose contact information can be found in the letter.

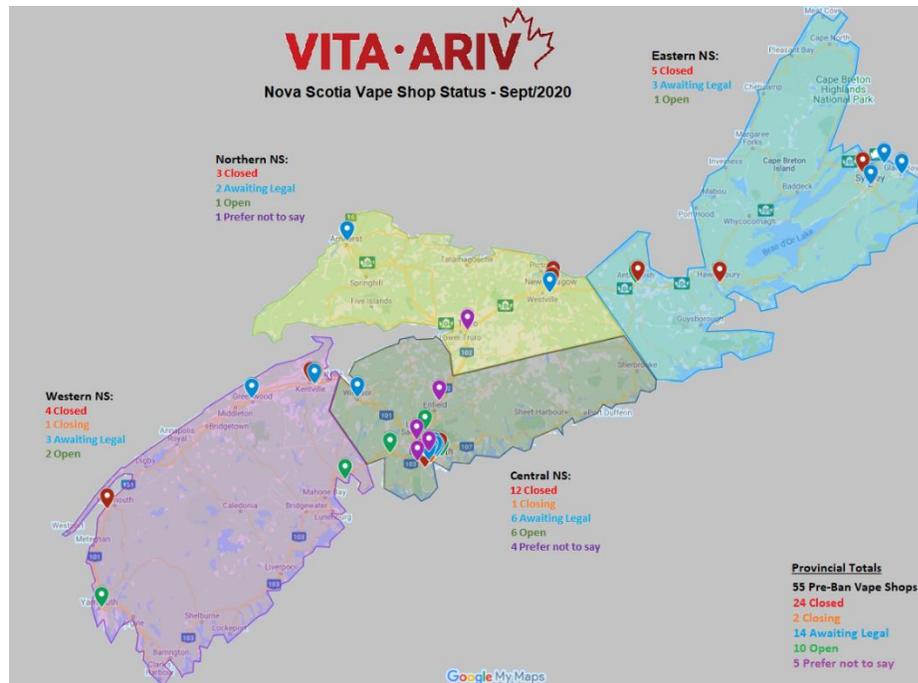
And as you know, Health Canada does not provide any legal interpretation of the Tobacco and Vaping Products Act and its Regulations, including the Vaping Products Promotion Regulations (VPPR). You may wish to seek the advice of a legal counsel to assist you in interpreting the provisions.

A virtually identical response letter was sent directly to the member company following their direct request. VITA understands the HC policy, and implies no wrongdoing, but there must be a better way to handle challenges like this. VITA is more than willing to continue these programs, but it becomes ineffective if we can't get answers to compliance questions. Even lawyers and compliance firms that assist us on this file could not provide answers, so who else can we turn to?

VITA Compliance Review System:

The screenshot shows the VITA Compliance Review System website. At the top is a red banner with the VITA ARIV logo. Below it is the heading "VITA Social Media & Website Compliance Review". The main text explains that compliance inspections by Health Canada have targeted the online marketplace due to Covid-19, and VITA has been briefed on the scale and nature of the vaping industry's non-compliance issues. It states that VITA has no authority to enforce any non-compliance issues we find, but it intends to implement an online compliance review system. A red button labeled "Access Sizing Calculator" is visible. Below that is a section titled "Guides & Resources" with two buttons: "Instagram Guide" and "Promotion Compliance". To the right is a "Submit Your Business for Review" form. The form includes fields for Company Name, Owner Name, Phone Number, Email/Chat Address, Website, Facebook URL, Instagram Handle, and Twitter URL. A red "Submit Request" button is at the bottom. Below the form is a section titled "What We Look For..." which lists requirements for age verification, product promotion, and disallowed categories like Confectionary, Dessert, Cannabis, Soft Drink, and Energy Drink. A note at the bottom states that VITA will send a confirmation e-mail once the review has taken place.

- **Impact Tracking on NS Restrictions:** Due to the lack of any government effort (that we are aware of) to understand the impact of new restrictions prior to proposing additional restrictions, VITA committed to track the consequences of Nova Scotia's flavour ban. This task was a heartbreaking burden as it involved contacting every owner/manager of vape shops in the province before and after the ban was implemented. Despite this burden, VITA was able to (for the first time in Canada) understand the real world impact and consequences as a result of banning flavours. The results of this research included:



- **Illicit Market Monitoring (Quarterly Reports):** Beginning in July of 2021, VITA initiated an initiative to better understand the impact of flavour bans and nicotine restriction regulations in relation to illicit market and organized crime activities. This research was included in our response to Health Canada’s proposed flavour restrictions and was shared directly with the public, policy makers, and industry. The results were shocking, and highlighted the real world consequences of policies that severely restrict previously legal vaping products on the basis of reducing their appeal/efficacy and without appropriate implementation time frames. Some of the most important consequences that were caused by reducing maximum nicotine levels by nearly 70% while only providing 15 days for manufacturers to comply and 30 days for retailers to comply include:
 - “Dumping” of massive quantities of inventory over 20mg/mL was primarily due to an unreasonable implementation timeframe. This flooded the market with cheap, high nicotine vape products that the legal industry couldn’t sell in such a short timeframe. This essentially created a competitive sales advantage for companies willing to sell non-compliant products vs companies committed to following the law.
 - Health Canada’s own research showed that 62% of all nicotine containing vape products on the market and in inventory were over the new limit of 20mg/mL.
 - VITA and others repeatedly warned of the likely consequences, even as it related to the impact on international trading standards. The industry expected a more reasonable timeframe following thousands of submissions, but the only change was to provide an extra 15 days for

retailers to clear out inventory. Retail inventory was not the biggest problem, large quantities of inventory in wholesale warehouses was a far bigger issue.

- Vaping products at concentrations between 0mg/mL and 66mg/mL had been legal for over three years. Many adult consumers were former heavy smokers, and they relied on high nicotine products. Removing legal access to a widely used product (62% of all products with nicotine) in a short timeframe drove many adult consumers to seek illicit market sources among other consequences.

Video Release – Investigation of Flavour Ban Impact on Illicit Market & Organized Crime

November 25, 2021 | Daniel David | Press Releases, VITA News



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November 25, 2021 – Today, the Vaping Industry Trade Association released an eye-opening video as part of a report on the illicit market consequences of banning flavoured vape products in Canada. With the Federal Government proposing to implement a national flavour ban, VITA took the initiative to understand and investigate the real-world impact that these measures have on small businesses, illicit markets, and organized crime.

[Read the Full Report](#)

Over the past three years in Canada, various regulatory approaches on vape products have been applied at the municipal, provincial, and federal levels of government without any pause to understand their efficacy, impact or unintended consequences.

VITA shares the federal government's concern about youth vaping. Our belief is that vaping products are for adult smokers seeking to reduce risk, not for non-smokers and never youth. To better understand the impact and risks, VITA hired a highly experienced and credible third-party company that conducted an in-depth scan of the illicit market operating in Nova Scotia since their flavour ban was enacted over a year ago. The findings were clear, prohibition and ineffective enforcement have made the situation far worse while exposing youth and consumers to unregulated products.

A new study^[1] from the well-respected Addictive Behaviors Journal reinforced what VITA learned through the investigation. The study examined the predictive behavioural responses to a hypothetical ban on non-tobacco flavoured vape products. Most notably, the study found that if a flavour ban were to be instituted, 17.1% of vapers would likely return to smoking, and 28.3% "would find a way to get banned flavours", meaning they would turn to the unsafe and untaxed illicit market. As stated in a testimonial featured in the video from a concerned vape product user, "It's going to drive me to the black market and it's going to kill people and the government said so in their regulations"

"Existing regulations federally and provincially provide the tools necessary to go after anyone who is selling vaping products to youth, the problem is they're not being effectively enforced", said Daniel David.

Video/Article/Report source: <https://vitaofcanada.com/video-release-investigation-of-flavour-ban-impact-on-illicit-market-organized-crime/>

Ongoing Initiatives

- **Age Verification Training for Vape Shop Retailers:** Age verification training and certification for retailers (particularly vape shops) has been identified as an important initiative towards preventing youth access. VITA’s staff and technical committee recently completed a detailed review of various Learning Management Systems(LMS), pre-existing age verification training (ie. Smart-serve), feasibility, cost, content requirements, and timeline expectations among other things. The findings and required resources were reviewed by the VITA board and this important new initiative now has unanimous approval to proceed with development. This system requires considerable time and financial resources to create and release, however, the industry is once again demonstrating it’s serious commitment to youth prevention. The ambitious, yet feasible timeline for the launch of this initiative is set for the fall of 2022. Once complete, this program will be made available to all companies in the vaping industry.
- **Secret Shopper Project:** The vaping industry has seen numerous reports, images, videos, and complaints about a small minority of companies that intentionally/knowingly supply vape products that are over nicotine limits or provided to youth. Individual stakeholders have reported these issues to authorities with limited success. VITA is currently evaluating the feasibility and cost of creating a system to better support enforcement efforts. This initiative would include independent secret shopper audits that would identify issues to company managers in order to make every effort to correct the issues, while reporting repeat offenders to enforcement as a last resort. This initiative is at the concept stage and has not been fully evaluated or approved by the VITA board.
- **Illicit Market Initiatives:** Further investigation into the unintended consequences of vape product restrictions, and approaches to address them are a top priority for VITA. Ongoing environmental scans are already indicating that substantial illicit supply chains have been established with suppliers outside Canada, and disposable vape products (none of which are made in Canada) have increased their shelf space by between 20%-50% over the last two quarters. This research is still pending and should not be considered conclusive at this point.

VITA has identified a potential pathway that could assist enforcement efforts in relation to organized crime. Currently, illicit vape products represent a lower risk/penalty compared to tobacco and cannabis products which are often a significant part of organized crime activity.

Consultation Question Responses

Part 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?***

It is VITA's position that current restrictions on advertising and promotional activity are more than adequate to protect youth. The restrictions on advertising and promotion cover all areas where youth could be exposed to viewing them. They also cover product names, consumer testimonials, and online exposure among others.

All of these restrictions are in addition to provincial/territorial regulations. They are only slightly less restrictive than those placed on tobacco products.

The goal and purpose of advertising and promotion restrictions is to protect youth from exposure and inducement to use vaping products, which is an aim that VITA and the legal industry fully support. However, there are numerous problems & challenges in this area, including:

1. **Enforcement** – Heavy restrictions on the industry and products only work when they are effectively and consistently enforced without discrimination or bias. Enforcement of advertising and promotion restrictions has been more actively enforced than any other category of restrictions under the TVPA. Enforcement has been highly effective in the areas of print media, physical products, radio, TV, and in-person public places. The major issues with enforcement in this area are unspecific non-compliance notices/warnings, online restrictions, and an unwillingness to answer any compliance related questions from industry.
2. **Compliance** – The vaping industry has had to comply with initial restrictions under the Act and the CCCR regulations until July 2020 when the new VPPR and VPLPR were implemented. In addition, the industry also has to comply with inconsistent and often overlapping regulations at the provincial level. These are complex regulations that require companies to change physical products and practices. For an industry that was legalized only four years ago, there should have been substantial compliance support and guidance provided by the Government. The minimal support that has been provided has been highly insufficient at best. The approach to ensuring industry compliance has been so bad that a large portion of the industry now believes that the government wants non-compliance so they can justify the next round of crippling restrictions. ****Note: See section on compliance for details****
3. **Authorized Relative Risk & Comparison Statements** – Without the ability for industry to legally use authorized relative risk or comparison to tobacco statements, all the public ever sees is potential harm without benefit or context.

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?*

The restrictions within the Act and regulations are sufficient as they apply to preventing inducements to use the products that could come from the industry.

The restrictions are not sufficient in terms of establishing restrictions that would apply to activities and ads designed to warn against youth use. Warnings intended to prevent youth uptake need common sense and evidence-based regulations in order to ensure they aren't inadvertently creating inducements to use the products by youth. Currently, youth are being constantly exposed to images of vape technology, images of vapes and candy, and images of other youth using vape products. These images have statements that are essentially "Don't use the product we are showing you" which is often paired with statements like "Don't risk your life". It is reasonable to assume that there is a significant risk of these images and messaging being counterproductive to many teenagers, especially those already experimenting with other age restricted substances.

Examples:



3. Are there other measures that the Government could employ to protect youth and non-users from inducements to use vaping products?

The only additional measures to protect youth from inducements to use vaping products would be the creation of restrictions that apply to youth prevention ads. These measures could have a positive impact if created in collaboration with health professionals that specialize in the appropriate field.

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?

The TVPA already contains far reaching authority that can address emerging issues. Improved education material which represents both the risk and benefit would better serve Canadians, while preventing potential loss of trust by youth and the public.

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?

Part 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?***

Yes, the current restrictions youth from exposure and dependence related to vaping products are more than sufficient. There is a slightly confusing contradiction with this approach applying to nicotine in vaping products, while no equivalent concern is given to nicotine in cessation gum/lozenges and non-vape nicotine inhalers. The nicotine used (excluding in salt-form) by nicotine gum and nicotine vapes are chemically identical, yet there are no warnings of “Damage to brain development” on gum, nor are there even age restrictions on purchasing nicotine gum. Contradictory approaches on nicotine warnings without explanation may risk degrading public trust, especially for teens that are already making this connection.

The industry understands the difference in rate and method of nicotine delivery between vaping and chewing gum, but any further restrictions in this area should consider attempting some alignment on messaging about nicotine.

- 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?***

For clear ethical reasons, no studies on youth exposure to different concentrations of nicotine have ever been conducted, so we do not have sufficient evidence to speculate on what nicotine level restrictions would best protect youth.

No additional measures should be considered before sufficient studies and impact analysis are conducted to determine the impact that the last reduction (nearly 70% decrease) had on adults who use vaping products.

- 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?***

VITA recommends that the government fully analyze the impact of recent restrictions, and publicize results, before considering further restrictions.

- 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?***

Part 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?*

The measures in the Act are sufficient when combined with provincial requirements. More could be done to improve Federal – Provincial coordination on enforcement activities.

Warnings are not fines; people who are selling to minors should be penalized. Vaping is for adult smokers, never youth, never non smokers. Vape products are harm reduction, reduced risk products. Those reporting businesses who are selling to minors are usually overlooked or chalked up to competitors filing false reports. A coordinated reporting and oversight mechanism could potentially strengthen youth access prevention.

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

Coordinating between industry, provincial and federal enforcement to initiate secret shopper campaigns to identify and catch those intentionally and repeatedly selling to minors would have direct and positive impact.

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?*

Part 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?*

These measures are sufficient in preventing the public from being misled by the industry.

The measures are completely insufficient when it comes to preventing misleading information about the relative harm of vaping compared to smoking. There are absolutely no restrictions on claims of harm related to vaping. In fact, any group could currently state that vaping causes spontaneous human combustion and it would be completely legal. Health hazards should not be prioritized to the exclusion of everything else.

2. *What additional measures would help reduce the misconceptions about the health hazards of vaping products?*

Relative risk statements are desperately needed to provide sufficient and balanced information to adult smokers who might consider replacing cigarette smoking with vaping, which would lead to general benefits for public health.

Exaggeration of consequences beyond proven harms may risk loss of trust in public health institutions.

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?

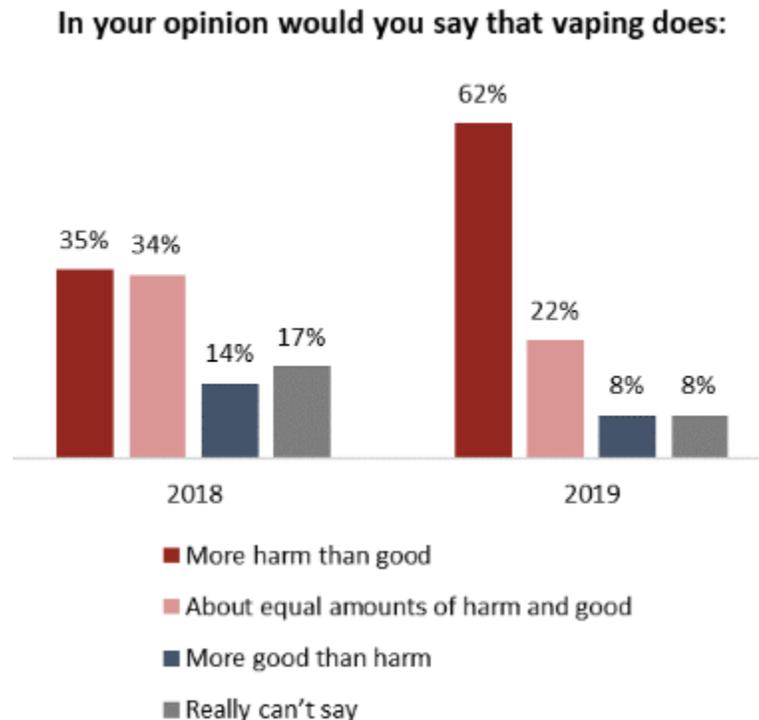
Part E

Enhance public awareness of health hazards

1. Have public awareness efforts been effective at educating Canadians about the health risks of vaping products?

No, these efforts have already misled Canadians about the relative risk of vaping. Government should not ignore the fact that the leading cause of preventable death and disease in Canada is caused by smoking. The government should also be aware that in the 12 years that vaping has been on the Canadian market, not 1 single person has died from vaping. That is not to say vaping is completely safe, it's not, but it is significantly less harmful than the alternative which kills 46000 Canadians every year.

The chart below (from Angus Reid) should disturb every single Canadian as it shows how bad the level of misunderstanding by the public on the relative harm of vaping has become. The Royal College of Physicians UK (the first major institution that sounded the alarm on tobacco harms) continues to maintain that vaping represents 5% of the risk compared to smoking, and likely even less.



<https://angusreid.org/vaping-trends-canada/>

2. ***What more could be done to educate Canadians about the health risks of vaping products?***

The most important educational effort would be to present both the harms AND benefits of vaping.

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?***

More research needs to be conducted on the impact that various vaping product restrictions have. This is even more important considering the accelerated growth of an illicit market that can be directly tied to the last major restriction on vaping products (almost 70% reduction in max nicotine levels)

4. ***What approach should be taken to close the gap between scientific evidence and public perception so that youth and non-users of tobacco products are aware of the health risks of using vaping products, while adults who smoke are aware that they are a less harmful alternative to tobacco if they switch completely to vaping?***

The current focus on “harms” of vaping without any context that compares it to the product it is intended to replace (tobacco smoking) has already done considerable damage, but can still be corrected.

For example, Health Canada states:

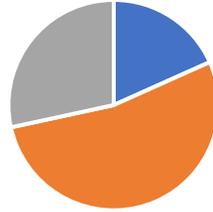
Vaping is less harmful than smoking. Many of the toxic and cancer-causing chemicals in tobacco and the tobacco smoke form when tobacco is burned.

Vaping products do not:

- produce smoke
- contain tobacco
- involve burning

However, compare that statement to the most recent public perception survey data on the relative risk of vaping compared to smoking from the CTNS survey.

Perception of Harm From Vaping Compared to Smoking Canadian Tobacco and Nicotine Survey - 2019 (30,905 Respondents)



- Less Harmful Than Smoking (18.3%)
- As Harmful or Worse Than Smoking (53.3%)
- Don't Know (28.4%)

<https://www.canada.ca/en/health-canada/services/canadian-tobacco-nicotine-survey/2019-summary/2019-detailed-tables.html#t13>

Conclusion

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

The provincial and federal governments need to do more to coordinate effective enforcement and compliance efforts.

Health Canada should be empowered to provide additional clarity and guidance to the industry, and have the flexibility to work with and support industry initiatives.

VITA would also encourage policy makers to look for ways to leverage ongoing industry initiatives in order to achieve and accelerate policy goals such as the 5% smoking rate by 2035.

On behalf of VITA and it's members, we sincerely appreciate the opportunity to provide our input on these important matters.