



Vaping and the Law

Comparing legislation across Canada



CANADIAN
CONSTITUTION
FOUNDATION

February 2017

The CCF has not as of the time of this report's release accepted any funding from either tobacco companies or from manufacturers, purveyors, or promoters of e-cigarettes.

Funding for research provided in part by the Institute for Liberal Studies' Summer Fellowship program.

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The Canadian Constitution Foundation
240 - 1830 52 Street SE
Calgary, AB T2B 1N1

Charitable Number: 86617 6654 RR0001
The CCF is also a 501(c)(3) public charity in the U.S.

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FOREWORD

Historically, public health advances have been inextricably linked to political battles. Advances seldom come easily, and they require constant vigilance if we are to protect the gains. Often this is because changes in science, technology and consumer interests challenge conventional thinking and those who benefit from it. Rethinking nicotine delivery is clearly a candidate for the most dramatic example of this battle in Canada today.

Conceptually, dealing with the massive burden of cigarette-caused disease is simple: “It’s the smoke.” Delivering the nicotine smokers need or want without the inhalation of the products of combustion would largely solve an epidemic that kills around 40,000 Canadians annually.

Vaping is probably the most significant alternative to lethal cigarettes that we have seen in my third of a century of work to reduce smoking. It is consumer led, the technology is improving at the extraordinary rate we have come to associate with electronics, the cigarette business faces an existential crisis and it is all being done without cost to taxpayers. It is reminiscent of the way refrigeration largely eliminated stomach cancer.

But, as usual in public health advances, the push-back is severe. Those with an abstinence-only agenda are following the playbook of those before them on issues of drugs and alcohol, burying us in an avalanche of ideologically driven “studies” on potential harms, actively misleading consumers on issues of relative risk and pushing for policies that are focused on limiting rather than facilitating the transition away from combustion-based products.

The good news is that there are also many in Canada who seek to get the balance right, and to maximally reduce the death toll from smoking. They are supported by a strong body of law that protects Canadians from harm, not least our *Charter of Rights*.

I commend the CCF for their efforts to articulate these issues, in the hope of a more informed discussion on issues of nicotine harm reduction. A great many lives hang in the balance.

A handwritten signature in blue ink, appearing to read 'D. T. Sweanor', with a long horizontal flourish extending to the right.

David T. Sweanor J.D.

Adjunct Professor, Faculty of Law, University of Ottawa

Centre for Health Law, Policy & Ethics, University of Ottawa

Honorary (Consultant) Assistant Professor, University of Nottingham

Legal Counsel, Non-Smokers' Rights Association, 1983-2005

Recipient of Ottawa's 2016 Outstanding Individual Philanthropist award

About the authors

Derek James From

Derek has worked at the Canadian Constitution Foundation since 2009. He graduated with a degree in law from the University of Western Ontario after earning degrees in philosophy and religious studies. He regularly appears in print and broadcast media discussing issues such as freedom of expression, individual liberty and human rights.



Lauren Millar

Lauren is a second-year law student at the University of Ottawa and a graduate of Trinity College at the University of Toronto. She has worked at the Legislative Assembly of Ontario and RBC and has conducted research at G8 summits and the U.S. consulate in Toronto. Recently, Lauren completed an Institute for Liberal Studies Fellowship at the Canadian Constitution Foundation.



Russell Phillips

Russell earned his B.A. from Mount Royal University in Calgary in 2013. Since joining the Canadian Constitution Foundation in 2014, Russell has been involved primarily with its communications work as well as helping plan and organize its annual Law & Freedom conference.



About us



CANADIAN CONSTITUTION FOUNDATION

Freedom's Defence Team

The Canadian Constitution Foundation protects the constitutional freedoms of Canadians through education, communication and litigation.

The Canadian Constitution Foundation is grateful for the help and support given by our donors (both big and small), volunteers, clients, board and advisory board members, and staff. We consider all of them members of Freedom's Defence Team.

Our Priorities:

Individual freedom — the “fundamental freedoms” in section 2 of the *Charter*:

- Freedom of association;
- Freedom of peaceful assembly;
- Freedom of conscience and religion;
- Freedom of thought, belief, opinion and expression.

Economic liberty: the right to earn a living and to own and enjoy property.

Equality before the law: Section 15 of the *Charter of Rights and Freedoms* guarantees equal rights and equal opportunities for all Canadians.

**What are
e-cigarettes?**

What are e-cigarettes?

E-cigarettes are battery-operated devices used to inhale a vapour that can contain nicotine and other chemicals. Inhaling activates a heating element within the device, which releases liquid that is vaporized into a fog, or smoke-like cloud.

This report only discusses liquid-based e-cigarettes, as they are the most widely-available legal e-cigarettes in Canada. Most of the conclusions and recommendations, including the benefits of a harm-reduction regulatory regime, would also apply to non-combustible tobacco-based e-cigarettes.

These devices first appeared on the market in the early 2000s, but did not become widely available until 2007. The act of inhaling from an e-cigarette, colloquially referred to as “vaping”, quickly proved to be a way for people addicted to nicotine to replace smoking traditional tobacco cigarettes with a much less harmful behaviour.

As more Canadians turned to e-cigarettes to kick their dangerous smoking habit, many local and provincial governments raced to stop the expansion of the e-cigarette industry. Fearing the re-normalization of smoking and seeing e-cigarettes as a possible gateway for youth to smoking, some jurisdictions across Canada have introduced strict regulations, which threaten the industry’s ability to grow, research and innovate.

These governmental fears were not grounded in strong evidence. E-cigarettes have repeatedly been demonstrated to be an effective, consumer-driven, harm-reduction tool, which the free market has created and continually improved. It is a technological innovation that should be encouraged, not restricted. Further, because it is an effective harm-reduction tool and an aid to cigarette smokers trying to break their life-threatening habit, impeding Canadians’ access to e-cigarette technology may violate section 7 of the *Canadian Charter of Rights and Freedoms*:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

This report does not encourage e-cigarette use as a healthy or harmless act for non-smokers. Instead, it outlines how government can take a rights-based and evidence-based approach to developing e-cigarette laws and regulations. This would ensure that provincial governments do not limit the constitutional rights of Canadians to choose a less damaging alternative to combustible cigarettes — by far the most harmful form of legal nicotine consumption.

**Section 7
and
harm reduction**



Section 7 and harm reduction

In *Canada (Attorney General) v. PHS Community Services Society*, the Supreme Court of Canada (“SCC”) ruled that the federal government must renew a *Controlled Drug and Substances Act* exemption for the Insite drug injection clinic in Vancouver’s Downtown Eastside.

The exemption from Canada’s criminal laws permitted intravenous drug users to inject illicit drugs under the supervision of the clinic’s medical staff without the risk of arrest. Ignoring the evidence that the exemption reduced the considerable harms associated with such intravenous drug use, the federal Minister of Health refused to renew the exemption in 2008 and the clinic initiated legal proceedings.

The Court found that Insite successfully reduced the risks of a harmful activity, which saved lives and improved the health of drug users using Insite’s facility. Without the criminal law exemption, those users would lose the option of a less harmful means of satisfying their addictions.

The SCC held that the minister had ignored evidence that the exemption reduced the considerable harms associated with unsupervised intravenous drug use, and his failure to renew the exemption therefore violated section 7 of the *Charter*, guaranteeing the rights of life and security of the person of Insite patrons.

For the SCC, the question “was not whether harm reduction or abstinence-based programs are the best approach to resolving illegal drug use, but whether the federal government has limited the rights of claimants in a manner that does not comply with the *Charter*.”

The Canadian Constitution Foundation believes that the same question applies to unnecessary and non-evidence based restrictions on the sale and use of e-cigarettes. The point is not whether e-cigarettes are the best approach to stopping people from smoking, but whether laws and regulations restricting access to e-cigarettes violate the right of Canadians to seek harm-reducing alternatives to traditional smoking. We believe they do.

E-cigarettes and science

The “war against tobacco”, relying heavily on abstinence-based policies, education and taxation to make cigarettes prohibitively expensive, has had notable success, but has failed to stop all smoking. Health Canada estimates that approximately 40,000 deaths per year are a result of smoking tobacco, with nearly 4.6 million Canadians continuing to smoke regularly. People of all ages, many from Canada’s most marginal communities, remain addicted and find traditional cigarettes nearly impossible to quit.

For them, e-cigarettes offer a real possibility to mitigate the serious harms of their smoking habits. Nevertheless, most Canadian governments continue to treat e-cigarettes as either exactly or substantially the same as the much more harmful traditional cigarettes, launching prohibitionist restrictions on e-cigarette sales and use, and missing the opportunity to encourage smokers to switch to a much less injurious technology. In some cases, government have even banned communications of the harm-reduction benefits of switching from traditional cigarettes to e-cigarettes.

E-cigarettes use non-combustible, non-tobacco vapour technology to deliver nicotine without smoke, which is the most dangerous aspect of smoking cigarettes. Based on numerous international studies, the scientific consensus is that vaping is significantly less harmful than smoking tobacco.

Public Health England’s studies, funded by the United Kingdom’s Department of Health and conducted in partnership with other health agencies such as the British Lung Foundation, Cancer Research U.K. and the Royal College of Physicians, have strongly supported encouraging cigarette users to switch to e-cigarettes. These reports have found that:

- Vaping is at least 95 per cent less harmful than traditional cigarettes;
- Among youth, e-cigarette use is almost exclusively confined to those who already smoke;
- There is little to no evidence that using e-cigarettes leads to tobacco smoking; and,
- Discouragingly, around half the general public wrongly believes that e-cigarettes are as unhealthy as traditional tobacco cigarettes.

This last finding illustrates why laws and regulations that treat e-cigarettes and cigarettes the same, without highlighting the health benefits of switching technologies, are so potentially harmful to public health.

Since 2000, nearly three million people in the U.K. have started using e-cigarettes. Of these, 98 per cent are estimated to be current or ex-smokers. Since 2013, e-cigarettes have become the U.K.'s most popular choice for smokers trying to quit. The Royal College of Physicians found in clinical trials that e-cigarettes were 50 per cent more effective than unsupported or over-the-counter nicotine replacement therapies (NRT) attempted without professional help, and are roughly as effective as prescribed NRT or drugs. Responding to concerns that e-cigarettes themselves may create a new crisis, Public Health England — the foremost health body in the U.K. — instead heralds them as a "public health opportunity."

Legitimate concerns regarding e-cigarettes include access by minors and safety standards for the ingredients used

in creating the liquid to be vaporized, colloquially known as "e-juice." Targeted regulations, however, would minimize the risks associated with these concerns without restricting access to the resulting, safer products. All levels of government in Canada should look to the U.K.'s regulations as a guide to creating laws rooted in scientific evidence of widespread harm reduction.

As Professor David Sweanor of the University of Ottawa's Faculty of Law points out, Canadian governments already promote harm-reduction policies for many unsafe practices, such as using condoms to protect against sexually transmitted disease, supervised drug injection sites for using illicit intravenous drugs more safely, and mandatory seatbelt use in motor vehicles. These policies recognize that, when dealing with an inherently dangerous activity, it is important that laws and regulations reflect the different levels of risk in various behaviours and that public education can help people make safer choices. The same approach is necessary for e-cigarettes.

Photo: Lindsay Fox under CC 2.0. (Cropped).



Economic benefits of e-cigarettes

Canada has a lot to gain financially from smokers switching to e-cigarettes, which are not linked to the same deadly and expensive diseases as combusted tobacco. A recent study in the Canadian Journal of Public Health concluded that the annual health-care cost per smoker is \$3,071, with the total burden to the health-care system alone estimated at \$17 billion annually. This includes a direct health-care cost estimated at \$4.4 billion. The annual economic burden attributed to smoking in 2008 was \$18.4 billion, and while down from \$21.3 billion in 1998, is still an extraordinarily high figure.

Between 2010 and 2012, smoking rates in Canada decreased from 17.9 per cent to 17.5 per cent, along with a sharp decline in the prevalence of diseases commonly associated with combustible tobacco smoking. If e-cigarettes could help to lower the national rate of cigarette use to 12.7 per cent (the rate in British Columbia, the lowest of any Canadian province), it would save taxpayers \$2.8 billion.

The Federal Tobacco Control Strategy implemented by the Canadian government in 2001 credits itself for reducing tobacco

smoking rates from 24 per cent in 2000 to 17 per cent in 2011, representing approximately 1.2 million fewer smokers in this time period. While it does not credit e-cigarettes with playing a role in this dramatic decline, the federal government does state that this reduction has benefited the overall Canadian economy by approximately \$505 billion, with another \$590 billion to be saved if rates can be reduced further to 12 per cent.

Smokers have much to gain financially from switching to e-cigarettes, as they are significantly cheaper than traditional tobacco cigarettes. While Canada is currently experiencing its lowest smoking rates in history, some communities continue to have relatively high rates similar to those from several decades ago. For example, 58 per cent of on-reserve First Nations and Inuit persons are estimated to be daily smokers, more than three times the national average. Convincing these populations to switch to e-cigarettes would not only improve their health but would save some of Canada's poorest people thousands of dollars a year.

Lets see the savings for you now, shall we!?

Enter the first three fields below and see personalized results.

How many cigarettes do you smoke per day (on average)?*

How much do you spend per pack? (CAD \$)*

How much do you spend on indirect cigarette expenses like dental, mouth-freshners, dry-cleaning & lighters per year?

Do you know which E-Cigarette you will get?*

 Disposable

 Cloudmaker

 Starter-Kit

 Not Sure

RESULTS

Your yearly spend on tobacco cigarettes right now!

Your expected spend with e-cigarettes

Your expected savings!!

A calculation based on smoking a 20-pack of cigarettes a day, using the average price of a pack of cigarettes in Alberta in November 2016.

E-cigarette Cost Savings Calculator screen capture from 180 Smoke (<http://info.180smoke.ca/savings-calculator/>).

TIME magazine recently estimated that a pack-a-day smoker could save around US\$1,387 per year by switching to vaping. With the typical cost per year of tobacco cigarettes being US\$2,569, this represents a 40 per cent cost savings. Using reusable refills could save an additional US\$500-\$600, making a person's overall annual savings approximately US\$2,000. The Canadian experience would be similar. (See [E-cigarette Cost Savings Calculator](#)) This considerable savings would be critical in improving the lives of many low-income people, who make up a disproportionate percentage of Canadian smokers.

The Canadian government is investing more than \$230 million between 2012 and 2017 with the stated goals of preventing children and youth from starting to smoke; helping people to quit smoking; helping Canadians protect themselves from second-hand smoke; and regulating the manufacture, sale, labelling and promotion of combustible tobacco products. Most, if not all, of these goals could be accomplished more expediently by encouraging people who are unwilling or unable to quit nicotine consumption altogether to switch to safer, smokeless technologies such as vaping.

Recommendations for legislation

Much of the legislation introduced to date across Canada is arbitrary and likely to be not merely ineffective, but harmful. It fails to consider the scientifically proven harm reduction of e-cigarettes and to take advantage of the substantial benefits they offer to public health. Canadians must guard against any moves by government to limit our right to be informed and to access harm-reduction tools to improve our health. Outright bans and over-regulation of e-cigarettes may be motivated by good intentions, but ignoring the strong evidence of the benefits of e-cigarettes and continuing to promote a purely abstinence-based smoking cessation policy will discourage uptake of safer technologies by cigarette smokers and ultimately will do more harm than good.

Canada should look to the U.K. for guidance in developing and implementing e-cigarette regulations. Since 2000, the number of cigarette-smoking adults in England has fallen by one-third, and smoking by children has fallen by two-thirds. The U.K. government has accepted that e-cigarettes are a much less harmful alternative to cigarette smoking, especially for those unable or unwilling to quit their nicotine habit altogether.

The government's commitment to providing information on scientific evidence to encourage smokers to switch has helped 1.3 million U.K. e-cigarette users to quit combustible tobacco, with an additional 16,000-22,000 quitting every year. The U.K. has also found that many former tobacco smokers have been able to reduce their nicotine intake to zero.

Public Health England's clear position that "there is no circumstance in which it is better for a smoker to continue smoking — a habit that kills one in every two and harms many others, costing the NHS and society billions every year," is saving lives. Canadian governments should adopt and support a similar approach.

**...there is no
circumstance in
which it is better
for a smoker to
continue smoking...**

- Public Health England

To protect the *Charter* rights of Canadians, governments must not unduly limit information about or access to harm-reduction alternatives or regulate them out of the marketplace. The Canadian Constitution Foundation recommends that a rights- and evidence-based approach to regulation would incorporate the following principles:

- E-cigarettes should not be regulated like either medicine or tobacco. Instead, an evidence-based regulatory model specific to e-cigarettes should be created that addresses legitimate safety concerns but maximizes smokers' knowledge of and access to alternative harm-reduction products.
- Governments should not restrict e-juice flavours on the market.
- Governments should allow youth to purchase e-cigarettes with the explicit permission of a parent, guardian or doctor.
- Vape shop owners should be able to work with consumers at the point-of-sale to explain, test and sell e-cigarettes.
- Vaping should not be prohibited by law, as cigarettes are, in public places and workplaces. Private property owners, such as businesses, should be free to set their own rules.
- Governments should not restrict communication about the harm-reduction advantages of e-cigarettes for current smokers.

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Problems and recommendations

Problem: Overly broad policies negatively impact citizens' individual freedoms, including the *Charter*-protected right to make healthier decisions about one's own body.

Restrictive regulations on e-cigarettes trigger section 7 of the *Canadian Charter of Rights and Freedoms*, which says that:

"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

In *Canada (Attorney General) v. PHS Community Services Society*, the Supreme Court of Canada held that closing down drug injection sites deprives users of the right to reduce the harmfulness of injecting illicit drugs by doing so under the supervision of health professionals, with clean needles in a clean facility. The Court held that the federal minister's denial of an exemption from the *Controlled Drugs and Substances Act* to the Insite facility, forcing them to close, was an arbitrary denial of the claimants' section 7 rights that had disproportionate negative effects on their health. The Court ordered the minister to grant the exemption.

Cigarette users share the same right not to have their access to a proven harm-reduction alternative unduly restricted. Overly broad regulations that ignore evidence of the benefits of e-cigarettes limit users' rights in a manner that does not comply with section 7 of the *Charter*.

Recommendation: E-cigarettes should not be regulated like medicine or tobacco. Canadian governments should look to the U.K. for guidance on evidence-based policies tailored specifically to the uniqueness of e-cigarette products.

I feel better every day. I am asthmatic and have not used my inhaler since getting off cigarettes and going to vaping.

-Russ Prior

Russ went from 50 cigarettes a day to **zero**. He had tried nicotine gum, patches, hypnosis, acupuncture and prescriptions to no avail.

Problem: Restrictions on e-juice flavours are unnecessary and will make it less likely for people to stop smoking combustible tobacco cigarettes and switch to e-cigarettes.

Vaping is the most popular harm reduction method in the U.K., where studies have repeatedly shown that most e-cigarette users are smokers or ex-smokers. Vaping has been credited with helping over 1.3 million people in the U.K. to stop smoking, and the variety of e-juices on the market has an important role in aiding people to switch.

In the U.K., “while the use of e-cigarettes has been increasing, the prevalence of tobacco smoking has been decreasing.”

While there is evidence that the availability of a range of flavours encourages smokers to switch to vaping, contrary to frequently-voiced concerns, there is no clear evidence that flavoured e-cigarette liquids encourage non-smokers or youth to pick up the habit.

E-juice flavours should not be banned based on unproven assumptions. Without clear evidence that flavoured e-juices do more harm than good, there should be a presumption that the market is the best way to determine the available range of e-cigarette flavours.

Recommendation: Governments should not restrict e-juice flavours.

The selection of e-liquid flavours have helped me stay off tobacco.

- Corey

Cigarette smoking among youth and adults has continued to decline and there is no current evidence in England that EC are renormalising smoking or increasing smoking uptake. Instead, the evidence reviewed in this report points in the direction of an association between greater uptake of EC and reduced smoking, with emerging evidence that EC can be effective cessation and reduction aids.

- Public Health England

Problem: There is no strong evidence that e-cigarettes serve as a “gateway” for youth to use cigarettes.

Teen smoking rates have been declining dramatically over the past decade, with only seven per cent of teens aged 15-17 currently smoking regularly, down from 18 per cent in 2001. While recent studies indicate that youth are experimenting with vaping, these studies can be misleading, as occasional or even one-time experimentation is sometimes deemed to be “regular use.”

Further, an August 2016 report by Public Health England found no evidence to support the claims that e-cigarettes could re-normalize smoking or act as a gateway into traditional smoking for non-smokers and children. Reviewing the existing studies, Public Health England concluded that “regular use by children is rare and almost entirely confined to those who have already used tobacco.”

The existence of some new youth using e-cigarettes must, therefore, be compared not with an ideal world in which no youth use or experiment with vaping, but with the real world in which those same youth have already experimented with cigarette smoking or would otherwise do so in the absence of e-cigarettes as an alternative. Ironically, a blanket ban without exceptions on youth using e-cigarettes will make it more likely that youth will become traditional smokers of cigarettes and will deny youth who are already addicted to traditional cigarettes the option of switching to the much safer e-cigarette technology.

Recommendation: Governments should allow youth to purchase e-cigarettes with the explicit permission of parent, guardian or doctor.

The ability to sample e-liquids in a store allows me to choose flavours that help me from using tobacco and make my vaping experience more enjoyable.

- Jessica Wykes

Problem: Bans on point-of-sale testing and consultation make e-cigarettes less effective.

E-cigarettes are technological devices, and just as someone may need a tutorial on a new cellphone when they purchase it, e-cigarette users need to be taught how to properly clean, refill and use these products.

Anyone who has spent time in a vape shop understands the complexity and variety of e-cigarette devices and e-juices on the market. With hundreds of options, it is essential that users find the device and e-juice that best fit their needs. Limiting store staff from showing consumers different types of devices, teaching them how to properly use and clean them, and

choosing a suitable e-juice with the correct nicotine content, places consumers in a potentially hazardous position. First-time users, confused by a new technology and the variety of options, may choose an unsuitable e-juice or device or may never be taught how to use it properly, reducing its effectiveness as a combustible tobacco alternative.

Many jurisdictions have rightly included exemptions within their legislation to allow for sampling and tutorials within vape shops. All jurisdictions should adopt this practice.

Recommendation: Vape shop owners should be able to work with consumers at the point-of-sale to explain, test and sell e-cigarettes to potential users.

Problem: The decline of cigarette use is correlated to an increased use of e-cigarette technology, giving the appearance that e-cigarettes are replacing the use of traditional cigarettes. Laws or regulations treating e-cigarette users like traditional cigarette smokers may discourage them from making a complete switch to the less harmful technology.

The current smoking rate of 20 per cent among Canadian young adults is still cause for concern. Not only is this higher than other Canadian demographic groups, but it is significantly higher than the smoking rate among teenagers aged 15-17 (seven per cent).

Smoke-free legislation does not cover e-cigarette use in the U.K. Instead, organizations are permitted to make their own policy decisions as to whether they will allow it. Some hospitals have lifted vaping bans on their grounds and prisons sell single-use e-cigarettes to help inmates become smoke-free.

Recommendation: Vaping should not be regulated like traditional cigarettes in public places and workplaces.

I find that I could breathe a lot better. Sleep better. Just everything in general was better than smoking

– Matthew Ferguson

Problem: Citizens cannot be expected to know the health benefits of e-cigarettes if governments, producers, or both, are not accurately presenting those benefits to them.

Governments should treat and promote e-cigarettes as a public health opportunity. Anti-smoking campaigns should be accompanied with clear advice regarding different means of harm reduction, including the use of safer technologies like e-cigarettes.

Governments must not actively misinform citizens or imply a non-existent equivalence of harm by regulating the two products identically, or so similarly that the benefits to switching to e-cigarettes are lost or decreased.

Recommendation: Governments should ensure that cigarette smokers are accurately informed and educated on the harm-reduction advantages of e-cigarettes. Labelling and packaging policies, as well as sales and communications regulations, must reflect these inherent differences and not treat traditional cigarettes and e-cigarettes the same way.

Grading

GRADING

There is no uniform approach to the regulation of e-cigarettes across Canada. Some provinces have implemented aggressive policies to discourage their use, while other provinces have no legislation. Neither of these approaches is ideal. The former restricts Canadians' access to a potentially life-saving product, while the latter leaves the formation of regulations up to municipalities, creating a confusing patchwork of inconsistent and hard-to-enforce policies across a province.

In determining the methodology for grading the provincial approaches to e-cigarettes, the CCF has looked to the U.K.'s laws and regulations, which are the leading example from a comparable jurisdiction as to what an evidence-based policy would look like.

When grading the provinces we have asked:

- Does the legislation treat e-cigarettes in the same way as it treats traditional tobacco cigarettes?
- Does the legislation restrict e-juice flavours or prevent nicotine from being added to certain flavours?
- Does the legislation ban youth from purchasing e-cigarettes even when a parent, guardian or doctor approves?
- How much discretion is afforded to vape shop owners to demonstrate and explain e-cigarettes to potential users within the store?
- Does the legislation ban the use of e-cigarettes in indoor spaces, workplaces or other places to which the public generally has access? And how are these bans advertised?
- Does the legislation misinform or mislead its citizens about the benefits of harm-reduction technologies, including vaping?

Photo: [Lindsay Fox](#) under [CC 2.0](#). (Cropped).



Grading governments

FEDERAL GOVERNMENT: **F**

There is currently no federal legislation that deals with vaping. Government Bill S-5, which was introduced in the Senate, passed first reading on Nov. 22, 2016 and any final bill may be significantly different if and when it receives Royal Assent and comes into force with all of its accompanying regulations.

The federal government claims jurisdiction over vaping, relying on its criminal law head of power in section 91 of the *Constitution Act, 1867*.

The following analysis is of S-5 as it was at first reading.

Legislation: [S-5](#), amending [The Tobacco Act](#), [The Non-smokers Health Act](#), [The Tobacco Reporting Regulations](#), & [The Tobacco Products Labelling Regulations](#)

Treatment: Purports to treat e-cigarettes differently than combustible cigarettes, yet there is nothing to indicate that this distinction is meaningfully applied in the law or likely regulations.

Flavours: No products that could be appealing to young persons are permitted. Confectionery, dessert, cannabis, soft drink and energy drink flavours are not permitted, except by prescription in some circumstances. The Governor in Council may amend the list of prohibited flavours at any time.

Youth: No one is permitted to furnish e-cigarettes to any individual under the age of 18, with no exceptions for permission by parents, guardians or doctors.

In-store sampling: Vape shops have no discretion to explain, test and sample vaping products with clients.

Communications and Advertising: Testimonials and endorsements are prohibited. Any promotions that could appeal to young persons or rely on lifestyle advertising are prohibited. All claims of vaping as harm reduction, or as less harmful than combustible cigarettes are prohibited. This would include claims from peer-reviewed scientific studies.

Final note: Although any constitutional analysis must be preliminary until a bill receives Royal Assent, this legislation appears to be vulnerable to constitutional attack on the grounds that the well-established evidence of harms that the federal government used to justify the severe restrictions and prohibitions in the Tobacco Act do not apply in the case of e-cigarettes.

BRITISH COLUMBIA: **B**

Legislation: *Tobacco and Vapour Products Control Act*

Treatment: Treats e-cigarettes the same as combustible tobacco cigarettes, banning their use in all enclosed public spaces, including all public and private school grounds, workplaces and health-care facilities other than in designated smoking and vaping areas.

Health Link B.C. regards e-cigarette use as a potentially useful smoking cessation method.

Flavours: Flavoured e-juices are permitted.

Youth: No one is permitted to sell or supply e-cigarettes to any individual under the age of 19.

In-store sampling: Sampling is permitted within vape shops if no one under the age of 19 is permitted in-store, the store is fully enclosed so that vapour does not escape, and fewer than three individuals are sampling at the same time.

Communications and Advertising: Vape shops cannot advertise or display vaping products when they can be seen by individuals under the age of 19 inside of the shop or passersby outside of the shop. All signage must comply with complicated rules regarding the size, colour, font and content of the sign. Vape shops can provide consumers with testimonials and health information regarding vaping.

Photo: Nick Kenrick under CC 2.0. (Cropped).



ALBERTA: N/A**Legislation:** N/A

Alberta has no provincial law regulating the use or sale of e-cigarettes. However, some municipalities have enacted bylaws limiting the use of e-cigarettes, for instance:

Cold Lake: [Bylaw No. 554-PL-15, A Bylaw Regulating Smoking in Public Places](#)

Treats e-cigarettes like combustible cigarettes, prohibiting their use in all places to which the public customarily has access, including restaurants, patios and workplaces. There is no exemption for sampling products in vape shops.

Calgary: [Bylaw No. 57M92, The Smoking Bylaw](#)

Treats e-cigarettes like combustible cigarettes, prohibiting their use in all places to which the public customarily has access including restaurants, patios and workplaces, or within five metres of outdoor spaces like playgrounds, sports fields and skating rinks. The bylaw permits demonstration and sampling of e-cigarettes in stand-alone, enclosed vape shops.

Red Deer: [Bylaw No. 3345/2005](#)

Treats e-cigarettes like combustible cigarettes, prohibiting their use in all places to which the public customarily has access, including restaurants, patios and workplaces. There is no exemption for sampling products in vape shops.

Edmonton: [Bylaw No. 14614, Public Places Bylaw](#)

Treats e-cigarettes like combustible cigarettes, prohibiting their use in all inside spaces to which the public customarily has access, including restaurants, patios and workplaces, or within 10 metres of outdoor spaces like playgrounds, sports fields and spray parks. The bylaw permits demonstration and sampling of e-cigarettes in stand-alone, enclosed vape shops.

Were smokers able to get the nicotine they need or want without smoking, this horrendous epidemic would virtually disappear.

- David Sweanor

SASKATCHEWAN: **N/A**

Legislation: N/A

Saskatchewan has no provincial law regulating the use or sale of e-cigarettes. However, some municipalities have enacted bylaws limiting the use of e-cigarettes, for instance:

Saskatoon: [Bylaw No. 8286, The Smoking Control Bylaw](#)

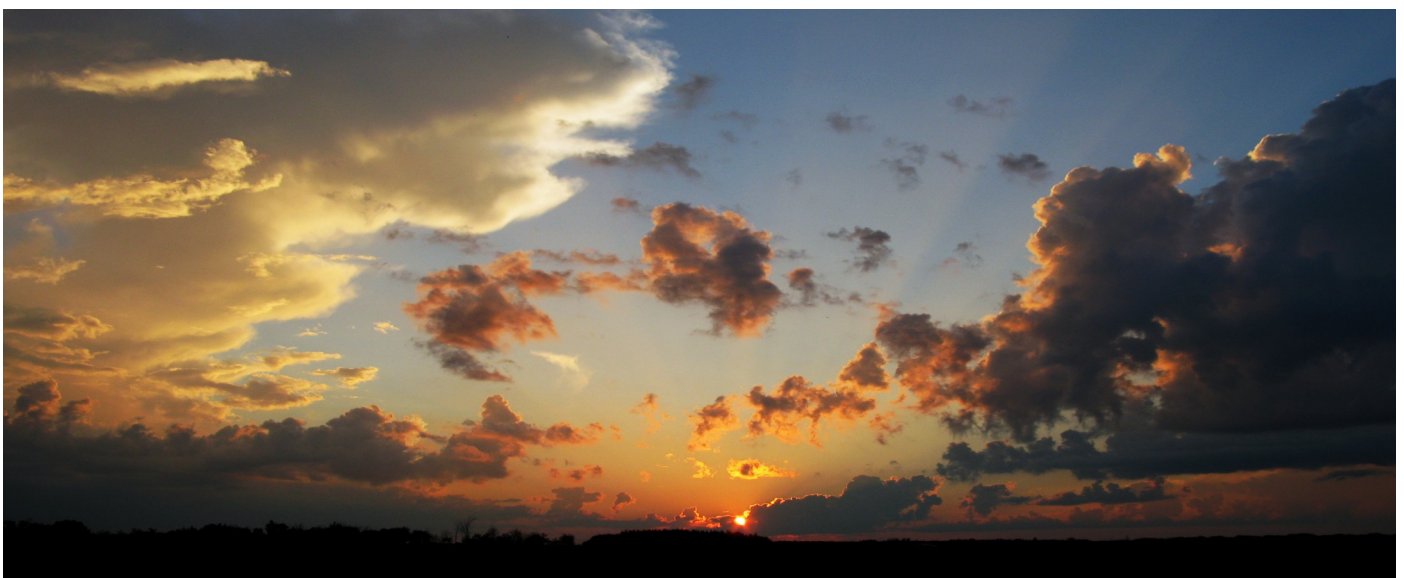
Treats e-cigarettes like combustible cigarettes, prohibiting their use in restaurants, private clubs, sidewalk cafes, all outdoor spaces owned or operated by the City of Saskatoon, or in an enclosed space at a school or on school grounds. There is an exemption for sampling products in vape shops.

Martensville: [Smoking Regulations Bylaw No. 27-2014](#)

Treats e-cigarettes like combustible cigarettes, prohibiting their use in restaurants, bars, sidewalk cafes, any city-owned, operated or leased facility, and outdoor seating areas, including sports fields and transit shelters. There is no exemption for sampling products in vape shops.

Warman: [Bylaw No. 2014-13, A Bylaw to Regulate Smoking in the City of Warman](#)

Treats e-cigarettes like combustible cigarettes, prohibiting their use in restaurants, bars, sidewalk cafes, any city-owned, operated or leased facility, and outdoor seating areas, including sports fields and transit shelters. There is no exemption for sampling products in vape shops.





MANITOBA: **C**

Legislation: *The Non-Smokers Health Protection Act*

Treatment: Treats e-cigarettes like combustible tobacco cigarettes, prohibiting their use in enclosed public places and other places where smoking is presently prohibited, including workplaces, and work vehicles with more than one occupant.

Flavours: Flavoured e-juices are permitted.

Youth: No one is permitted to sell or supply e-cigarettes to any individual under the age of 18.

In-store sampling: Customers may use e-cigarettes to test or sample products in vape shops.

Communications and Advertising: No person shall advertise or promote a vapour product in vape shops, buildings where children may be present, on outdoor signs, or any place where children might see the advertising. Vape shops can provide consumers with testimonials and health information regarding vaping.

Ontario is permitted to enact public health and safety laws, but those laws cannot violate the rights to life and security of the person in an irrational or arbitrary fashion.

- Derek From, CCF Staff Lawyer

ONTARIO: D

Since the provincial legislation is not currently in force, some municipalities have their own regulations; for instance, Toronto bans e-cigarette use in workplaces owned and operated by the city (E-cigarette Use in City Workplaces Policy, Feb. 9, 2015).

Legislation: Bill 45, [Making Healthier Choices Act](#), 2015 (not yet in force) amending the [Smoke Free Ontario Act](#) and enacting the [Electronic Cigarettes Act](#)

Treatment: Treats e-cigarettes like combustible tobacco cigarettes, prohibiting their use in any enclosed public place, including workplaces, restaurants, bars and patios, outdoor playgrounds, sporting facilities, shelters, the outdoor grounds of hospitals or psychiatric facilities, and the outdoor grounds of a building owned by the province of Ontario and identified in the regulations.

Flavours: Once in force, flavoured e-juices may be restricted or prohibited.

Youth: No one is permitted to sell or supply e-cigarettes to any individual under the age of 19.

In-store Sampling: Vape shops have no discretion to explain, test and sample vaping products with clients. Vape shops can provide consumers with testimonials and health information regarding vaping.

Communications and Advertising: Vape shops cannot display e-cigarettes or vaping supplies in such a way that consumers can view or handle them prior to purchase.

QUEBEC: **D**

Legislation: *Tobacco Control Act*

Treatment: Treats e-cigarettes the same as combustible tobacco cigarettes, prohibiting the use of e-cigarettes in buildings to which the public customarily has access, including enclosed public spaces, workplaces, educational and recreational facilities, restaurants and bars, and vehicles when an individual under the age of 16 is present.

Flavours: There is currently no ban on flavoured vaping products, but the law does grant the government regulatory power to do so in the future.

Youth: No one is permitted to sell or supply e-cigarettes or e-juice to a minor. Minors are not permitted in vape shops.

In-store Sampling: Testing is not permitted in vape shops and samples cannot be provided free of charge.

Communications and Advertising: E-cigarettes and other vaping products may only be displayed in-store and cannot be viewable from outside of the store. Direct and indirect advertising of e-cigarettes and vaping products is greatly restricted, including advertising that could create an incorrect understanding of the health effects of e-cigarettes or that contains testimonials. Vape shops can provide consumers with testimonials and health information regarding vaping.



Photo: Pedro Szekely under CC 2.0. (Cropped).

NEW BRUNSWICK: **D**

Legislation: Bill 57, *Smoke Free Places Act & Tobacco and Electronic Cigarette Sales Act*

Treatment: Treats e-cigarettes the same as combustible tobacco cigarettes, prohibiting the use of e-cigarettes in buildings to which the public customarily has access, including enclosed public spaces, workplaces, restaurants and bars, and vehicles when an individual under the age of 16 is present.

Flavours: Flavoured e-juices are permitted.

Youth: No one may sell or supply e-cigarettes or e-juice to anyone under the age of 19. No one under age 19 allowed in vape shops unless accompanied by an adult.

In-store Sampling: In-store sampling is not permitted.

Communications and Advertising: Vape shops cannot display e-cigarettes or other vaping products. The law also prohibits indoor and outdoor advertising and promotional materials, even within vape shops. Vape shops can provide consumers with testimonials and health information regarding vaping.

Legislation: *Smoke-free Places Act &*

NOVA SCOTIA: **D**

Tobacco Access Act

Treatment: Treats e-cigarettes the same as combustible tobacco cigarettes, prohibiting the use of e-cigarettes in buildings to which the public customarily has access, including enclosed public spaces, workplaces, education and recreation facilities, restaurants and bars, and vehicles when an individual under the age of 19 is present.

Flavours: Flavoured e-juices are permitted.

Youth: No one may sell or supply e-cigarettes or e-juice to anyone under the age of 19.

In-store Sampling: In-store sampling is not permitted.

Communications and Advertising: Vape shops cannot display products unless individuals under the age of 19 are not permitted into the store. Point-of-sale promotion is not permitted and no signage or advertising outside the store is permitted. Vape shops can provide consumers with testimonials and health information regarding vaping.

NEWFOUNDLAND & LABRADOR: **C**

Legislation: *Smoke-free Environment Act & Tobacco and Vapour Products Control Act*

Treatment: Treats e-cigarettes the same as combustible tobacco cigarettes, prohibiting the use of e-cigarettes in any place to which the public customarily has access, including workplaces, private clubs, licensed restaurants, bus shelters, and health-care and educational facilities.

Flavours: Flavoured e-juices are permitted.

Youth: Prohibits the use of e-cigarettes in motor vehicles when occupied by a person under the age of 16 and prohibits the sale of e-cigarettes and other vaping products to persons under the age of 19.

In-Store Sampling: In-store sampling is not permitted.

Communications and Advertising: There are currently no restrictions on e-cigarette advertising. Vape shops can provide consumers with testimonials and health information regarding vaping.

The opportunity to end an epidemic warrants the use of some creative thinking and the application of basic principles of public health.

- David Swearnor



PRINCE EDWARD ISLAND: **D**

Legislation: [Smoke Free Places Act](#) & [Tobacco and Electronic Smoking Device Sales Act](#)

Treatment: Treats e-cigarettes the same as combustible tobacco cigarettes, prohibiting the use of e-cigarettes in places to which the public customarily has access, other than in designated smoking areas, including workplaces, education and recreation facilities, restaurants and bars, and vehicles when an individual under the age of 19 is present.

Flavours: Flavoured e-juices are permitted.

Youth: No one may sell or supply e-cigarettes or e-juice to anyone under the age of 19.

In-store Sampling: Advertising and visibility of vaping products are both restricted within stores, with vape shops having to place products behind a barrier. A consumer cannot view an electronic smoking device before purchasing it.

Communications and Advertising: Vape shops can only display e-cigarettes if individuals under the age of 19 are not permitted in the store and cannot use a countertop or wall display, or any other display that would allow the public outside the shop to view it. Vape shops can provide consumers with testimonials and health information regarding vaping.

TERRITORIES: **N/A**

None of the Northwest Territories, Nunavut or the Yukon has enacted e-cigarette legislation.

Concluding Remarks

The Canadian Constitution Foundation is concerned about the topic and issues identified in this report and will continue to monitor and report on any new vaping legislation enacted within Canada with respect to their impact on the constitutional rights of Canadians.

E-cigarettes present our nation with an enormous health-care opportunity with the potential to save lives and billions of dollars in taxpayer money.

Until the recommendations in this report can be implemented, the Canadian Constitution Foundation asks legislators to educate themselves on the actual evidence about the relative benefits of e-cigarettes over combustible cigarettes, the public-health approach to e-cigarettes adopted in the United Kingdom, and to bear in mind the constitutional issues implicated in regulating healthier alternatives to combustible cigarettes.

To avoid constitutional scrutiny and future litigation, e-cigarette legislation should not erect irrational or arbitrary legal barriers that unnecessarily impede or inhibit smokers from switching from combustible cigarettes to demonstrably healthier e-cigarettes. Such needless barriers include treating e-cigarettes as if they are traditional combustible tobacco products, banning e-juice flavours, prohibiting access for youth with proper permission, restricting the discretion of vape shop owners to demonstrate products to customers, and failing to educate smokers about the benefits of switching to e-cigarettes or their effectiveness as a harm reduction tool.

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Contact us

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By phone or email:

(Toll Free) 1.888.695.9105— info@theccf.ca

Howard Anglin, Executive Director x. 101 — hanglin@theccf.ca

Adam Revay, Operations Director x. 102 — arevay@theccf.ca

Derek From, Staff Lawyer x.103 — dfrom@theccf.ca

Joanna Baron, Runnymede Society Director x. 104 — jbaron@theccf.ca

Russell Phillips, Communications Associate x.105 — rphillips@theccf.ca

By mail:

The Canadian Constitution Foundation
240 - 1830 52 Street SE
Calgary, AB T2B 1N1

Charitable Number: 86617 6654 RR0001

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