

Strengthening Ontario's Smoking and Vaping Laws

**Proposed changes to regulations made under the
*Smoke-Free Ontario Act and Electronic Cigarettes Act, 2015***

**Public Consultation Paper
March 10, 2016**

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Purpose

This consultation paper aims to solicit feedback from businesses, retailers, employers, health care facilities, public health experts, medical marijuana users, physicians, medical organizations, and the general public on the impacts of the Ministry of Health and Long-Term Care's proposal to strengthen Ontario's smoking and e-cigarette (vaping) laws.

This paper outlines the ministry's proposal to make changes to Ontario's smoking and vaping laws that would restrict where people can smoke medical marijuana and vape an e-cigarette, where e-cigarettes can be sold, and how e-cigarettes can be displayed and promoted.

Feedback

Your feedback and comments will inform the development of proposed amendments to Ontario Regulation 48/06¹ made under the *Smoke-Free Ontario Act* (SFOA)² and Ontario Regulation 337/15³ made under the *Electronic Cigarettes Act, 2015* (ECA)⁴.

Comments on this public consultation paper are welcome until **April 24, 2016** and can be provided in three different ways:

- Complete the Response Form provided on the Regulatory Registry in connection with this paper at <http://www.ontariocanada.com/registry>.
- Email comments directly to SFOA-ECA-Consultations@ontario.ca quoting this paper "Strengthening Ontario's Smoking and Vaping Laws"
- Mail comments to:
Population and Public Health Division
Ministry of Health and Long-Term Care
777 Bay Street, Suite 1903, 19th Floor
Toronto, ON M7A 1S5

Please note that all comments received from organizations, including individuals indicating an affiliation with an organization, will be considered public information and may be used and disclosed by the ministry to help in developing its final proposal.

¹ Ontario Regulation 48/06 made under the *Smoke-Free Ontario Act* can be found here - <https://www.ontario.ca/laws/regulation/060048>

² The *Smoke-Free Ontario Act* can be found here - <https://www.ontario.ca/laws/statute/94t10>

³ Ontario Regulation 337/15 made under the *Electronic Cigarettes Act, 2015* can be found here: <https://www.ontario.ca/laws/regulation/150337>

⁴ The *Electronic Cigarettes Act, 2015* can be found here - <https://www.ontario.ca/laws/statute/15e07>

Comments from individuals who do not indicate an affiliation will also be considered public and will be used and disclosed by the ministry to help in developing its final proposal. However, any personal information, such as names or contact details, would be removed prior to disclosure of the comments.

Summary

The Ministry of Health and Long-Term Care (the “ministry”) is committed to improving the health and wellness of Ontarians. In May 2015, the *Making Healthier Choices Act, 2015*⁵ received Royal Assent, strengthening the *Smoke-Free Ontario Act* by banning the sale of certain flavoured tobacco products, and increasing the maximum fines for youth-related sales offences. The *Making Healthier Choices Act, 2015* also created new legislation - the *Electronic Cigarettes Act, 2015* – to regulate the sale, use, display, and promotion of e-cigarettes.

On January 1, 2016, provisions in the *Electronic Cigarettes Act, 2015* came into force, which prohibit the sale or supply of e-cigarettes to persons who are less than 19 years old.

The ministry is considering further legislative and regulatory amendments that would strengthen smoking and e-cigarettes laws. This proposal is outlined below:

1. Expand “no smoking rules” to apply to medical marijuana;
2. Prohibit the use of e-cigarettes - including the use of vaporizers to consume medical marijuana and testing in stores that sell e-cigarettes – in all enclosed public places, enclosed workplaces, and other specified outdoor areas;
3. Permit parents, guardians and caregivers to supply e-cigarettes to minors for medical marijuana purposes;
4. Expand the definition of “e-cigarette” to include “e-substance”;
5. Expand the list of places where e-cigarettes are prohibited for sale;
6. Establish rules for the display and promotion of e-cigarettes at places where they are sold.

If approved, this proposal would have a variety of impacts on the public, businesses and employers in Ontario. The ministry is interested in hearing from stakeholders about these impacts, and welcomes continued input.

⁵ The *Making Healthier Choices Act, 2015* can be found here - http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session1/b045ra.pdf

Background

Electronic cigarettes

E-cigarettes are an emerging trend in Ontario. Concerns have been raised about the potential negative health effect of e-cigarettes. The World Health Organization recommends taking precautionary action on e-cigarettes, and jurisdictions around the world have put into place restrictions to protect people from potential health impacts. In Ontario, the government has also taken precautionary measures to protect people, especially youth, from exposure to e-cigarettes and potential harms through restrictions on e-cigarette sales to minors, restrictions on where e-cigarettes can be used, restrictions on where e-cigarettes can be sold, and restrictions on how they can be displayed and promoted in stores.

Medical marijuana

Possession of marijuana is a criminal offence under the federal *Controlled Drugs and Substances Act*. However, the federal government provides access to a legal source of marijuana for medical purposes under its *Marihuana for Medical Purposes Regulations* (MMPR) made under the *Controlled Drugs and Substances Act*. Health Canada has not approved marijuana as a therapeutic product.

In order to obtain marijuana for medical purposes, a person must have a medical document from a physician and obtain medical marijuana from a licensed producer. As of September 2015, there are just over 30,000 clients in Canada who were registered with licensed producers of marijuana under federal regulation.

Evidence about the use, forms, and effectiveness of medical marijuana is still evolving. Although methods of consuming marijuana are also rapidly evolving, smoking is the most common form of consumption⁶. People can also consume medical marijuana using a vaporizer, which is considered an “e-cigarette” under the *Electronic Cigarettes Act, 2015*.

While there are some laws that impact where a medical marijuana user may smoke, vape, or ingest marijuana for medical purposes, such as the *Liquor Licence Act* and driving laws, they do not address the specific forms of smoking or vaping in public places.

Proposal

The following summary outlines and explains the proposed rules to strengthen smoking and e-cigarette laws in Ontario. The ministry is soliciting feedback on how these rules

⁶ Canadian Centre on Substance Abuse. “Clearing the Smoke on Cannabis: Respiratory Effects of Cannabis Smoking.” J. Diplock and D. Plecas. 2015

would affect you and how they can be improved to protect the health of Ontarians. Note that the final regulation may be different from what is in this proposal.

1. Expand no smoking rules to apply to medical marijuana

Issue

Ontario's *Smoke-Free Ontario Act* (SFOA) currently only applies to tobacco. It includes prohibitions on the smoking of tobacco in all enclosed public spaces and enclosed workplaces (including movie theatres and restaurants) and a number of outdoor public spaces (including playgrounds, restaurant/bar patios). It does not address the smoking of marijuana or other substances.

There are few laws, such as liquor license and driving laws, which address where a medical marijuana user may smoke, vape, or ingest marijuana for medical purposes.

Proposed approach

The ministry is proposing to amend the SFOA and Ontario Regulation 48/06 made under the SFOA to establish that the "no smoking" rules apply to medical marijuana. This would provide reasonable and precautionary safeguards to employees, customers and bystanders from exposure to medical marijuana smoke.

This would mean that smoking medical marijuana would be illegal in the following locations in which the smoking of tobacco is prohibited:

- Enclosed public places (e.g. shopping malls, theatres, schools)
- Enclosed workplaces (e.g. retail stores, office buildings, factories)
- Schools and school grounds
- Common areas in condominiums, apartment buildings and university/college campuses
- Child care centres within the meaning of *Child Care and Early Years Act, 2014*
- Places where home child care is provided within the meaning of the *Child Care and Early Years Act, 2014*, whether or not children are present
- Reserved seating areas of outdoor sports or entertainment venues
- Motor vehicles while another person who is less than 16 years old is present
- Restaurant and bar patios
- Sheltered areas with a roof and more than two walls
- Children's playgrounds
- Publicly owned sporting areas
- Nine meters from any entrance or exit of a public hospital, private hospital, psychiatric facility, long-term care home, and independent health facility

- Outdoor grounds of public hospitals, private hospitals and psychiatric facilities
- Outdoor grounds of certain government of Ontario office buildings

However, under the proposal, a specific exemption would permit smoking medical marijuana in:

- Scientific research and testing facilities;

Other exemptions in the SFOA for smoking tobacco would not apply to medical marijuana, i.e. designated guest rooms in hotels, motels and inns, controlled smoking areas in residential care facilities (e.g. long-term care homes), and traditional use of tobacco by Aboriginal persons.

The proposal, if approved and implemented, would continue to be enforced by inspectors appointed under the SFOA. These inspectors are employees of local public health units.

Discussion

This proposal would have different impacts on medical marijuana users, employees, businesses, retailers, employers, hospitals, residential care facilities, and public health units.

- How would this proposal impact your current practices or policies?
Do you have specific suggestions to improve this proposal?

2. Prohibit the use of e-cigarettes - including the use of vaporizers to consume medical marijuana and testing in stores that sell e-cigarettes –in all enclosed public places, enclosed workplaces, and other specified outdoor areas

Issue

Though not yet in force, Ontario's *Electronic Cigarettes Act, 2015* and its regulation contain provisions that would prohibit the use of e-cigarettes (i.e. vaping) in enclosed workplaces, enclosed public places and a number of other prescribed places (e.g. restaurant and bar patios, playgrounds).

E-cigarettes are a relatively new and quickly evolving technology; the evidence concerning their potential health effects and implications for tobacco control efforts is in its early stages. The restrictions under the *Electronic Cigarettes Act, 2015* ensure that Ontarians are protected from the potential harms that vapour exposure could have on their health.

Vaporizers, which are considered e-cigarettes under the *Electronic Cigarettes Act, 2015*, can be used to consume medical marijuana. The current regulation, Ontario

Regulation 337/15, made under the ECA (which is not yet in force) includes an exemption for medical marijuana users, which would permit them to use an e-cigarette for medical marijuana in places where vaping is otherwise prohibited.

Proposed Approach

The ministry is proposing that vaping be prohibited in enclosed workplaces, enclosed public places, and other prescribed places. This would protect employees, customers and bystanders from any potential harms associated with exposure to e-cigarettes – no matter the substance being vaped. This proposal would require a change to the regulation.

This would mean that using an e-cigarette (vaping), including the use of a vaporizer to consume medical marijuana, would be prohibited in the following places:

- Enclosed public places (e.g. shopping malls, theatres, schools)
- Enclosed workplaces (e.g. retail stores, office buildings, factories)
- Schools and school grounds
- Common areas in condominiums, apartment buildings and university/college campuses
- Child care centres within the meaning of *Child Care and Early Years Act, 2014*
- Places where home child care is provided within the meaning of the *Child Care and Early Years Act, 2014*, whether or not children are present
- Reserved seating areas of outdoor sports or entertainment venues
- Motor vehicles while another person who is less than 16 years old is present
- Restaurant and bar patios
- Sheltered areas with a roof and more than two walls
- Children's playgrounds
- Publicly owned sporting areas
- Nine meters from any entrance or exit of a public hospital, private hospital, psychiatric facility, long-term care home, and independent health facility
- Outdoor grounds of public hospitals, private hospitals and psychiatric facilities
- Outdoor grounds of certain government of Ontario office buildings

However, under this proposal, specific exemptions for e-cigarettes would permit e-cigarette use/vaping, including the use of a vaporizer to consume medical marijuana, in the following places:

- Scientific research and testing facilities;
- Designated outdoor areas on hospital grounds and on the grounds of specific government of Ontario office properties (to be phased out by January 1, 2018).

The exemption permitting the use of e-cigarettes in theatrical stage productions under specified conditions, would not apply to vaping medical marijuana.

Note that under the ministry's proposal, there would not be an exemption to permit testing/sampling of e-cigarette devices or products in stores that sell e-cigarettes. Under this proposal, e-cigarette use inside stores would be prohibited, as stores are considered enclosed workplaces and enclosed public places. However, stores could continue to be able to display, promote and provide informational material about e-cigarettes under conditions that protect children and youth from exposure. (More details are provided under issue 6, with regard to Display and Promotion.)

The proposal, if approved and implemented, would be enforced by inspectors appointed under the ECA. These inspectors are employees of local public health units.

Discussion

This proposal would have different impacts on medical marijuana users, employees, businesses, retailers, employers, hospitals, residential care facilities, and public health units.

- How would this proposal impact your current practices or policies?
- Do you have specific suggestions to improve this proposal?

3. Permit parents, guardians and caregivers to supply e-cigarettes to minors for medical marijuana purposes

Issue

As of January 1, 2016, Ontario's *Electronic Cigarettes Act, 2015* prohibits the sale or supply e-cigarettes to a person who is less than 19 years old. It also prohibits the sale or supply of e-cigarettes to a person who appears to be less than 25 years old without asking the person for identification and being satisfied that the person is at least 19 years old.

Vaporizers, which are considered e-cigarettes under the *Electronic Cigarettes Act, 2015*, can be used to consume medical marijuana. The current regulation (which is not yet in force) made under the *Electronic Cigarettes Act, 2015* includes an exemption for medical marijuana users and would permit a minor to buy or obtain an e-cigarette for medical marijuana purposes.

Proposed approach

The ministry is proposing to change the regulation to specify that a parent, guardian or caregiver would be permitted to *supply* (but not sell) an e-cigarette to a minor to consume medical marijuana, if the minor is authorized to possess medical marijuana under federal law.

As noted above, the ECA is enforced by inspectors appointed under the Act, who are employees of local public health units.

Discussion

This proposal would have different impacts on medical marijuana users, medical marijuana licensed producers, parents, guardians, caregivers, health care providers, physicians, hospitals, and public health units.

- How would this proposal impact your current practices or policies?
- Do you have specific suggestions to improve this proposal?

4. Expand the definition of “e-cigarette” to include “e-substance”

Issue

As of January 1, 2016, Ontario’s *Electronic Cigarettes Act, 2015* prohibits the sale or supply e-cigarettes to a person who is under 19 years old and to a person who appears to be less than 25 years old without proof of identification. The ECA also contains provisions, which are not yet in force, which would restrict the display and promotion of e-cigarettes in places where they are sold.

Under the ECA,

“electronic cigarette” means any of the following:

1. A vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine.
2. A component of a device described in paragraph 1
3. Any other prescribed device or product.

The current definition of e-cigarette is a device designed to heat a substance. There is some confusion around whether the substance being heated in an e-cigarette (e.g. e-liquid) is a component of the device, and whether or not the substance is covered by the Act’s restrictions on selling, displaying and promoting e-cigarettes.

Proposed approach

The ministry is proposing to clarify by regulation that the definition of “electronic cigarette” in the ECA includes “e-substance”; i.e. any substance manufactured or sold for use in an e-cigarette device (e.g. e-liquid).

This would mean that businesses selling e-cigarettes would not be able to sell or supply an e-substance to a minor. In addition, businesses would not be able to display and promote e-substances, except under certain circumstances (see Issue 6 “Prescribe conditions under which a business selling e-cigarettes could display or promote products”).

As noted above, the *Electronic Cigarettes Act, 2015* is enforced by inspectors appointed under the Act who are employees of local public health units.

Discussion

This proposal would have different impacts on businesses that sell e-cigarettes or any substance meant to be used in an e-cigarette, as well as on e-cigarette users and public health units.

- How would this proposal impact your current practices or policies?
- Do you have specific suggestions to improve this proposal?

5. Expand the list of places where e-cigarettes are prohibited from sale

Issue

Though not yet in force, Ontario’s *Electronic Cigarettes Act, 2015* contains provisions that would prohibit the sale of electronic cigarettes in public hospitals, private hospitals, psychiatric facilities, long-term care homes, pharmacies, and grocery stores containing pharmacies. Ontario’s *Smoke-Free Ontario Act* also prohibits the sale of tobacco in these places.

However, the *Smoke-Free Ontario Act* also prohibits the sale of tobacco in additional places set out in regulation, such as post-secondary institution campuses, independent health facilities, schools and school grounds (including private schools), child care centres, places where home child care is provided, and certain Government of Ontario office buildings.

Proposed approach

To ensure comparable rules for where tobacco and e-cigarettes may be sold, the ministry is proposing to prescribe the following additional places as places where e-cigarettes cannot be sold:

- Independent health facilities
- Schools and school grounds, including private schools
- Campuses of post-secondary institutions including universities and colleges,
- Child care centres within the meaning of the *Child Care and Early Years Act, 2014*
- Places where home child care is provided within the meaning of the *Child Care and Early Years Act, 2014*, whether or not children are present.
- Certain office buildings owned by the Government of Ontario and prescribed in the regulation under the *Smoke-Free Ontario Act*.

As noted above, the ECA is enforced by inspectors appointed under the Act who are employees of local public health units.

Discussion

This proposal would have different impacts on e-cigarette users, e-cigarette retailers, schools, colleges, universities, businesses, health care providers, physicians, hospitals, residential care facilities, and public health units.

- How would this proposal impact your current practices or policies?
- Do you have specific suggestions to improve this proposal?

6. Establish rules for the display and promotion of e-cigarettes at places where they are sold.

Issue

Though not yet in force, Ontario's *Electronic Cigarettes Act, 2015* contains provisions that would:

- prohibit the display of e-cigarettes in a way that would permit a consumer to view or handle an e-cigarette before purchasing it in a store; and
- prohibit the promotion of e-cigarettes at places where e-cigarettes or tobacco products are sold or offered for sale.

These restrictions would protect the well-being of children and youth by limiting their exposure to e-cigarette products.

Proposed approach

The ministry is proposing to permit certain signs/documents to be made available to inform the public that they have e-cigarettes for sale, and educate customers about the types of e-cigarettes available for sale and how to use them.

Signs/documents would need to meet the following conditions:

- A maximum of three (3) signs referring to e-cigarettes and/or e-cigarette product accessories. These signs must:
 - not exceed 968 square centimeters;
 - have a white background with black text;
 - not provide any information about a brand of e-cigarette (including its components and e-substances).
- Documents listing brands, specifications, instructions, or other details about products available for sale, could only be made available for viewing:
 - inside the store;
 - to adults over 19 years of age

The ministry is also proposing to permit the display and promotion of e-cigarette products (but not the testing or sampling of e-cigarettes) in places where they are sold, provided that the following conditions are met:

- Owner must inform its local public health unit in writing that it wishes to operate under the exemption;
- Products and promotional material must not be visible from the outside of the store;
- Individuals under the age of 19 would not be permitted to enter the shop;
- Customers could only access the store from outdoors or from areas in an enclosed shopping mall;
- Store could not be a thoroughfare (e.g. kiosk in a mall corridor).

As noted above, the ECA is enforced by inspectors appointed under the Act who are employees of local public health units.

Discussion

This proposal would have different impacts on e-cigarette users, e-cigarette retailers, distributors, manufacturers, and public health units.

- How would this proposal impact your current practices or policies?
- Do you have specific suggestions to improve this proposal?