

Overview Summary of Federal/Provincial/Territorial Tobacco Control Legislation in Canada



Canadian Cancer Society **Société canadienne du cancer**

October, 2017

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**Overview Summary of Federal/Provincial/Territorial
Tobacco Control Legislation in Canada**

Canadian Cancer Society
October 31, 2017

Introduction

This report provides a pan-Canadian overview of federal/provincial/territorial tobacco control legislation. There is a Table that provides an at-a-glance summary of measures by jurisdiction, followed by a section with Explanatory Notes.

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Many individuals contributed information during the preparation of this report, which is very much appreciated.

The content of the report is based on information known to be current as of October 31, 2017.

Overview Summary of Federal/Provincial/Territorial Tobacco Legislation in Canada

Summary Table

Canadian Cancer Society

October 31, 2017

Legend: X = measure implemented; R = restrictions; (P) = not proclaimed; n = see note
DSR = designated smoking room allowed; a = regulatory authority exists
n/a = not available or non applicable; B = govt bill introduced

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
Population ('000, as of July 1, 2017)	36,708	4,817	4,286	1,163	1,338	14,193	8,394	760	954	152	529	38.5	44.5	38.0
1 Taxation														
2 cigarettes, total taxes per 200 (\$)	25.81	49.40	50.00	59.88	67.24	47.75	29.80	60.55	64.95	58.47	58.31	60.00	60.80	60.00
3 cigarettes, tobacco taxes per 200 (\$)	21.56	49.40	50.00	54.00	59.00	40.95	29.80	51.04	55.04	50.00	49.00	60.00	60.80	60.00
4 cigarettes, sales taxes per 200 (\$) (about)	4.25	n/a		5.88	8.24	6.80	n/a	9.51	9.91	8.47	9.31			
5 ryo, total taxes per 200 units (100g) (\$)	15.20	24.70	37.50	29.70	32.22	23.55	14.90	29.87	30.40	25.05	45.80	30.00	27.20	40.00
6 ryo, tobacco taxes, 200 units (100g) (\$)	13.475	24.70	37.50	27.00	28.50	20.475	14.90	25.52	26.00	21.50	40.00	30.00	27.20	40.00
7 ryo, sales taxes, 200 units (100g) (\$) (about)	1.73	n/a		2.70	3.72	3.08	n/a	4.35	4.40	3.55	5.80			
8 sales tax rate (GST/PST/QST, prov portion of HST)	5%	7%	n/a	6%	8%	8%	9.975%	10%	10%	9%	10%	n/a	n/a	n/a
9 tobacco tax rates indexed to inflation	Xn											X		
10 tobacco tax applies in duty-free stores	X													
11 duty-free import allowance, cigarette quantity	200													
12 age eligible, duty-free import allowance	18													
13 herbal shisha taxed same as water pipe tob.														
14 agreements with First Nations to collect amount equal to prov. tobacco tax		R			R			n						
15														
16 corporate profit surtax														
17														
18 Tobacco Control Budgets (FY 2016-17)														
19 per capita funding, w/o cessation products (\$)	1.04	1.03	1.55	0.35	2.45	3.58	2.07	n/a	0.59	0.47	1.01	6.53		
20 funding w/o cessation products (\$) ('000)	37,600	4,875	6,572	407	3,233	50,056	17,200	n/a	562	70	533	245		
21 cessation products (\$) ('000)		21,575	2,300	389	n/a	n/a	12,400	n/a	n	8	n/a	50	62	
22 per capita cessation products, (\$)		4.54	0.54	0.34	n/a	n/a	1.49	n/a	n	0.05	n/a	1.33	1.39	
23 total incl. cessation products (\$) ('000)	37,600	26,450	8,872	796	n/a	n/a	29,600	n/a	562	78	n/a	295		
24 per capita incl. cessation products (\$) ('000)	1.04	5.57	2.09	0.69	n/a	n/a	3.56	n/a	0.59	0.52	n/a	7.87		
25 tobacco strategy cost recovery from mfrs														
26 population Oct. 1, 2016 (mid-year, FY 2016-17)	36,286	4,752	4,253	1,151	1,318	13,983	8,326	757	950	149	530	37.5	44.5	37.1
27 expenditures w/o cessation products as % of tobacco tax revenues (fiscal year 2016-17)	1.13%	0.66%	0.69%	0.16%	1.33%	4.07%	1.60%		0.25%	0.21%	0.33%	2.40%		

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
28 expenditures with cessation products as % of tobacco tax revenues (fiscal year 2016-17)		3.59%	0.93%	0.31%			2.76%		0.25%	0.24%		2.89%		
29 tobacco tax revenues (FY 2016-17) (\$ million)	3,321	737	953	260	243	1,230	1,072	158	222	32.7	162	10.2	15.3	
30 tobacco tax revenues (FY 2015-16) (\$ million)	3,249	734	980	264	256	1,226	1,083	149	217	32.4	158	10.0	16.2	16.8
31														
32 Smoke-Free Places														
33 second-hand smoke legislation of some kind	X	X	X	X	X	X	X	X	X	X	X	X	X	X
34 smoke-free legn applies to all water pipe, incl. herbal			X(P)			a(P)	Xn	X	X	X	X			
35 bans cannabis smoking where smoking banned	X(B)		X(P)		X	a(P)	X	X	X					
36 bans smoking anything (including cannabis) where smoking banned			X(P)			a(P)	X	X	X					
37 applies to heated tobacco products	X(B)	X	X(P)	n	X	X(P)	X	X	X	X	X	n	n	n
38 bars		X	X	X	X	X	X	X	X	X	X	X	X	X
39 restaurants		X	X	X	X	X	X	X	X	X	X	X	X	X
40 office workplaces	Xn	X	X	X	X	X	X	X	X	X	X	X	X	X
41 vehicles with kids (under specified age)		16	18	16	16	16	16	16	19	19	16	18	a	
42 all vehicles with a passenger, not just kids		a		a	a	a		a		a	a		a	
43 all vehicles, even if just driver, no others		a		a	a	a		a		a	a		a	
44 taxis		X	X	X	X	X	X	X	X	X	X	X	X	X
45 prisons - indoors	X	X	X	X	X	X	X	X	X	X	X	X	X	X
46 prisons - outdoors grounds	X	X	X	X	X	X	X	X	X	X	X	X	X	X
47 hotels, minimum smoke-free room %							80%							
48 hospitals		DSR	X	X	X/DSR	Xn	DSR	Xn	Xn	X	X	X	X	X
49 seniors homes		DSR	DSR	DSR	DSR	DSR	DSR	DSR	DSR	DSR	DSR	DSR	DSR	DSAn
50 social housing - all units 100% smoke-free												X		
51 smoking breach of lease, eviction grounds (n)				Rn										
52 optional no-smoking clause in standard lease														
53 apts/condos must have/disclose smoking policy														
54 apartments/condominiums, common areas		X	X	X	X	X	DSR	X	X	X	X	X	X	X
55 ashtrays prohibited where smoking prohibited				X	X	X	X	X	X			X	X	X
56 tickets can be issued for enforcement	X	X	X	X	X	X	X	X	X	X	X	X	X	
57														
58 Smoke-Free Outdoor Places														
59 patios of restaurants and bars			X			X	X	X	X	R	X	X	R	R

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
60	perimeter surrounding patios (in metres)							3				5		
61	outdoor areas, workplaces/public places (generally)									R				
62	children's playgrounds					X	X	X						
63	sport fields/areas					X	R	X						
64	spectator stands at sports fields/areas					X	R	X						
65	stands/seating areas other than at sports fields/areas					R								
66	local parks													
67	provincial/territorial/national parks				R			R						
68	beaches				R			X						
69	walking/jogging trails							X						
70	within distance of walking/jogging trails (m)							9						
71	bus shelters		Xn	X	X	X	X	X	X	Xn	X	X	X	X
72	line-ups													
73	construction sites									R				
74	events on government property													
75	government office building grounds					R								
76	vacation camp grounds						X							
77	child care centre grounds (per tobacco legislation)					X	X	Xn		X	X			
78	university/college campuses											X		
79	elem/secondary school grounds, ban smoking		X	R	X	Xn	X	X	X	X	Xn	X		
80	elem/secondary school grounds, ban all tobacco use		X	R	X			Xn	R			X		
81														
82	building entrances (in metres)		6	5	3		n	9	9	4	4.5	5	3n	3n
83	building exits (in metres)		6	5	3			9	9			5	3n	3n
84	building windows (in metres)		6	5	3			9	9	4	4.5n	5		
85	building air intakes (in metres)		6	5	3			9	9	4	4.5	5		
86	hospital grounds		R			X	R	X		X				
87	psychiatric facilities grounds		R			X	R	X						
88	regulatory authority to prescribe other outdoor places	a(B)				a	a			a	a			
89														
90	authority for municipal smoking bylaws		X	X	X	X	X	X	X	X	X	X	X	X
91														

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
92 Retail Location Restrictions														
93 sales only allowed in tobacco-only stores														
94 declining cap - total number of retailers														
95 retail licence required		X			X	Xn	X	X	X	X	X	X	X	X
96 annual retail licence fee (\$)		\$0			\$0	\$0	\$0	\$50	\$42	\$0	\$0	\$0	\$0	\$0
97 municipal tob. retail licences, some municipalities			X			X								
98 minimum distance between tobacco retailers														
99 within specified distance of elem./sec. schools														
100 universities/colleges		Xn	Xn			X	X		X	X	X		n	
101 restaurants							Rn		X					
102 bars							X		X					
103 places licensed to serve alcoholic beverages									X					
104 no tobacco sales co-location with alcohol sales														
105 no tobacco sales co-location with cannabis sales														
106 athletic facilities		Xn					X		X	X	X		X	
107 recreational facilities		Xn					X		Xn	Xn	Xn		Xn	
108 casinos/gambling facilities/bingo halls							Xn		X					
109 cultural facilities							X							
110 theatres/cinemas				X			X		X	X	X			
111 libraries							X		X		X			
112 art galleries							X		X		X			
113 outdoor locations							X		X					
114 temporary locations							X		X		Rn			
115 movable locations							X		X					
116 non-enclosed locations							X							
117 pharmacies			X	X	X	X	X	X	X	X	X	X	X	X
118 premises containing a pharmacy			X	X	X	X	X	X	X	X	X	X	X	
119 associated premises next to pharmacy														
120 hospitals		Xn	X	X	X	X	X		X	Xn	X			X
121 other specified health facilities		Xn	X	X	X	X	X		X	Xn	X			X
122 nursing homes/residential care facilities		Rn	X	X		X	X		X	X	X			X
123 provincial government buildings		X		X		Rn			X	X	X			
124 municipal government buildings				X					X	X	X			

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
125 Crown corporation buildings		X		X							X			
126 amusement parks				X			X		X	X	X			
127 video arcades				X			X		X	X	X			
128 child care facilities							X				X			X
129 elementary/secondary schools				X			Xn		X	X	X			
130														
131 regulatory authority to ban, other locations		a	a	a	a	a	a	a	a		a	a	a	a
132 vending machines, ban	X(B)			R	X	X	X	R	X	X	R		X	X
133														
134 Advertising and Promotion														
135 total advertising/promotion ban		a										a		
136 location restriction for ads, beyond retail (n)	R	a	X	X	X	X	R	a	X	X		a		
137 content restriction for ads, beyond retail (n)	R						R							
138 sponsorships, ban (n)	X						X							
139 brand-stretching, ban (n)	R						X							
140 mfr promotional payments to retailers, ban (n)							R							
141 incentive promotions to consumers, ban (n)	X						X							
142 free distribution ban	X						X							
143 health warnings on permitted ads	a						R							
144 ads within tobacco trade, restrictions (n)							R							
145														
146 no income tax deductibility, tobacco promotion														
147														
148 Advertising and Promotion at Retail														
149 retail displays, ban		Xn	X	Xn	Xn	X	X	X	X	X	X	X	Xn	X
150 storage under counter/out-of-sight							n		R					
151 retail display ban applies to tobacconists		n		n	n				Rn			X	n	X
152 retail display ban applies to duty-free stores		Rn	Rn	Rn	Rn	n	n	Rn	X	Rn	Rn	X	Rn	X
153 display of tobacco accessories banned				X	X		X	X	X	X	X		X	
154 display of branded non-tobacco goods banned in tobacco retailers		X	X	X	X		X	X	X	X	X	X	X	X
155 limits on feature pricing	Rn						Rn							
156 ban different manufacturer prices for different retailers within same municipality/area														

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
157 ban price reductions based on quantity sold														
158 maximum number of interior POP signs		3;1/till	3;1/till	3;1/till	3;1/till	3	1	no max	3;1/till	1/till	3;1/till	3;1/till	0	no max
159 maximum size, interior POP signs (cm ²)		968	968	605	968	968	3600	100	968	968	605	929	n/a	no max
160 content restricted, interior POP signs	X	X	X	X	X	X	X	X	X	X	X	X	n/a	
161 ban brand indications on interior POP signs		X		X	X	X		X	X	X	X	X	n/a	
162 signs on outside of POP locations, banned		X	X	X	X	X	X	X	X	X	X	X	X	X
163 consumer catalogues/price lists permitted	X	X	X	X	X	X	X	X	X	X	X	X	X	X
164														
165 Flavours														
166 has legislation on flavours	X	a	X	a(P)	(P)	X	X	X	X	X	X			
167 legislation applies to menthol	X		X			X	X	X	X	X	X			
168 applies to all tobacco products							X	X		X				
169 cigarettes	X		X			X	X	X	X	X	X			
170 roll-your-own tobacco			X			X	X	X	X	X	X			
171 blunt wraps	X		X			X	X	X	X	X	X			
172 cigars	R		R			R	X	X	R	X	R			
173 traditional pipe tobacco							X	X	R	X	R			
174 water pipe tobacco						X	X	X	R	X	X			
175 smokeless tobacco			X			X	X	X	X	X	X			
176 kreteks			X			X	X	X	X	X	X			
177 bidis			X			X	X	X	X	X	X			
178 heated products			X			X	X	X	X	X	X			
179 flavour cards (sold separately, to insert in packages)							a							
180 herbal non-tobacco shisha/water pipe products							X							
181 all non-tobacco products intended to be smoked							X							
182 cigarette papers when sold separately							X		X	X	X			
183 cigarette tubes when sold separately							X			X	X			
184 cigarette filters when sold separately							X			X	X			
185 cigarette holders							X			X	X			
186 pipes							X			X	X			
187 cigar clips										X	X			
188 cigarette makers										X				
189 pipe cleaners										X				

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
190														
191	bans all flavours, not just characterizing flavours	X						X						
192	ban packaging indicating product is flavoured	X		X		X	X	X	X		X			
193	regulatory authority to prescribe additional restrictions	a	a	a	a(P)	aR(P)	a	a	a(P)	a	a	a		
194	regulatory authority to restrict flavours in e-cigarettes	a(B)	a			a(P)	a		a					
195														
196	E-cigarettes													
197	has e-cigarette legislation	X(B)	X		X	X	X	X	X	X	X			
198	minimum age	18(B)	19		18	19	18	19	19	19	19			
199	ban on use where smoking banned	X(B)	X		X	X(P)n	X	X	X	X	X			
200	ban on use applies to cannabis, other substances, when consumed with e-cigs	X(B)				a(P)	X	X	X	X	X			
201	sales ban where tobacco sales banned		X		X	R(P)n	X	X	X	X	X			
202	advertising restrictions	X(B)	X		X	X(P)	X		X	X	X			
203	advertising restrictions same as for tobacco		X		X	X(P)n	X		X	X	X			
204	advertising restrictions beyond retail	X(B)	a		X	X(P)n	X	a	X	X				
205	display ban (with exception for e-cig specialty stores)		X		X	X(P)	X	X	X	X	X			
206	specialty e-cigarette store display definition - only e-cigarettes and related products can be sold						X		X		X			
207	other adv/promotion restrictions at retail	X(B)	X		X	X(P)	X	X	X	X	X			
208	ban on using tobacco branding for e-cigarettes	X(B)	n				X							
209	ban on incentive promotions to consumers	R(B)					X							
210	flavour restrictions													
211	regulatory authority over flavours	a(B)	a			a(P)	a		a					
212	other ingredient/emission restrictions	R(B)	a				a							
213	regulatory authority over packaging/labelling	a(B)			a	a(P)	a		a					
214	vending machine ban	X(B)			X	X(P)	X	R	X	X	R			
215	reporting obligations	a(B)	a				a							
216														
217	Youth Access													
218	minum age	18	19	18	18	18	19	18	19	19	19	19	18	19
219	ask for ID, appear below age			25	18	25		19	19	19	19		18	19
220	photo ID provisions	X	X	X	X	X	X	X	X	X	X		X	X
221	offence to present false ID					X	X			X			X	X

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
222	offence to sell or supply/furnish	X	X	X	X	X	n		X	X	X		X	X
223	applies if sale/supply occurs in private place		X		Rn	Rn	X	n	X	X	X		Rn	X
224	applies to tobacco accessory sales to minors	X			X	X	X	X	X	X	X		X	
225	sales to minors sign facing public	X	X	n	X	a	X	a	X	X	a		X	X
226	repealed previous sales to minors sign	X(B)						X			X			
227	only gov't authorized sales to minors signs etc permitted				R				X				R	
228	vending machine ban	X(B)			R	X	X	R	X	X	R		X	X
229	self-service displays, ban	Xn	Rn	X	Xn	Xn	Xn	X	X	X	X	X	X	X
230	sales suspensions possible if repeat conviction	X	X	X	X		X	X	X	X	X		X	X
231	automatic sales prohibition for suspensions				X		X		X		X		X	X
232	post signs indicating suspension when suspended		X		X		X			X	X		X	X
233	no storing tobacco during suspension		R		X		X	Xn		Xn	X		X	X
234	administrative enforcement system		X											
235	ticketing can be used for enforcement	X	X	X	X	X	X	X	X	X	X		X	
236	training required (by legislation) (n)			a										X
237	monitoring required (by legislation) (n)													X
238	sales only in face-to-face exchange in store						X							
239	mail order ban	X					Xn							
240	interprovincial sales ban	X					Xn							
241														
242	Packaging and Labelling													
243	plain and standardized packaging	n												
244	reg. authority, plain & standardized packaging	a	a			a	a		a					
245	regulatory authority, warnings/packaging	a	a			a	a		a					
246	exterior package warnings	X					Xn	Xn						
247	warning size, cigarette package front/back	75%					75%							
248	minimum warning surface area, cigarettes (cm ²)						46.5							
249	must comply with fed. packaging/warning measures						X							
250	ban on superslim "purse"/"perfume" pack format						X							
251	interior package messages	X					Xn							
252	message on foil wrapper inside packages													
253	toll free quit line on packaging	X					Xn							
254	web address on packaging	X					Xn							

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
255	toxic emission message, lateral side	X				Xn								
256	misleading descriptors (e.g. "light"), specific ban	X				Xn								
257	warning/message on cigarette itself	a	a				a							
258	cost message included, eg "Quit, save money"													
259	warnings required, cigarette cases sold empty													
260	ban on cigarette cases								n					
261	single presentation requirement for brands													
262														
263	minimum package quantity, cigarettes	20	20	20	20	20	20	15	20					20
264	minimum package quantity, little cigars	20		20	20	20	10n	20(P)						
265	minimum package quantity, other cigars			Rn			Rn							
266	minimum package quantity, blunt wraps	20		20		20n	10n							
267	minimum package quantity, bidis			20			10n							
268	minimum package quantity, loose tobacco													
269														
270	Regulation of Product Characteristics													
271	regulatory authority over product itself	a	a				a							
272	warning/message on cigarette itself													
273	ban tobacco logos/branding on cigarette													
274	ban on slims/superslims													
275	minimum width													
276	maximum width													
277	minimum length													
278	maximum width													
279	flat filter end													
280	ban all capsules	n												
281	standardized filter overwrap colour													
282	control colour of cigarette paper	Rn												
283	vitamins, ban	Rn												
284	caffeine ban	Rn												
285	colouring agents, ban	Rn												
286	probiotics, ban	Rn												
287	all products must be registered	Rn												

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
288														
289	<u>Water Pipe</u>													
290	Tobacco legislation applies overall, all herbal products for smoking													
291	ban herbal w.p. smoking, work/public places		X(P)			a(P)	Xn	X	X	X	X			
292	Ban on herbal shisha sales to minors						X				X			
293	bans herbal shisha sales where tobacco sales banned						X				X			
294	bans flavoured water pipe tobacco					X	X	X	R	X	X			
295	bans flavoured herbal shisha						X							
296	herbal shisha taxed same as water pipe tob.													
297	health warning on water pipe equipment													
298														
299	<u>Medicare Cost Recovery</u>													
300	legislation		X	X	X	X	X	X	X	X	X		X(P)	X(P)
301	lawsuit filed		X	X	X	X	X	X	X	X	X			
302														
303	<u>Contraband Prevention</u>													
304	tax-paid marking, cigarette packages	X	X	X	X	X	X	X	X	X	X		a(n)	
305	tracking and tracing													
306	tax-paid marking on cigarette itself	a	a				a							
307	refund system-products sent to reserves			X	X	X	X	X		X			X	
308	quotas, tax-exempt shipments to reserves		X			X		X	X				Xn	
309	distinct tax-exempt marking, reserves		X	X		X			X					
310	real-time verification system, on-reserve sales				X									
311	manufacturer licensing requirement (n)	X				X	X							
312	export tax	X												
313	tobacco tax applies, sales in duty-free stores	Xn								n		n	n	n
314	cigarette carrying cases, ban								n					
315	ban growing of tobacco					R	R		R					
316	ban grow-at-home tobacco					n	R		R					
317	mail order ban	X					Xn							
318	interprovincial sales ban	X					Xn							
319	Party to Illicit Trade Protocol													

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
320														
321	Cessation-Specific Initiatives													
322	toll-free quitline operated	n	X	X	X	X	X	X	X	X	X	X	X	X
323	cessation website operated	X	X	X	X	X	X	X	X	X	X	X	X	X
324	subsidized NRT available to all residents	Rn	X				X			n		X	X	X
325	sales tax not applied on NRT products		X	n/a		X	X					n/a	n/a	n/a
326	NRT may be sold outside of pharmacies	n	X	X	X	X		X	X	X	X	X	X	X
327	NRT label - indicated use-as long as necessary													
328	drug plan coverage for Zyban (bupropion)	Xn	X	X	X		X	X		n	Xn	Xn	X	X
329	drug plan coverage for Champix (varenicline)	Xn	X	X	X	X	X	X		n	Xn	Xn	X	X
330	pharmacists may prescribe Zyban/Champix			X		X	n	X	X	X	X			
331	nurses may prescribe Zyban/Champix (n)													
332	dentists may prescribe Zyban/Champix (n)													
333	doctor fee for advice on quitting (\$) (n)													
334	pharmacist fee for advice on quitting (\$) (n)													
335	minimum standards needed, hospital accreditation													
336														
337	Reporting													
338	regulatory authority for reporting to gov't	a	a	a			a	a						
339	sales volumes	X												
340	marketing expenditures	X												
341	prices	Rn												
342	copies of all advertisements	X					X							
343	samples/images of packages	X												
344	research studies	X												
345	additives/ingredients	X												
346	constituents in the product	X												
347	emissions in smoke	X												
348	other product characteristics	R												
349	manufacturing processes	X												
350	public disclosure, additives/ingredients	a (B)	a(n)											
351	other public disclosure	a (B)	a											
352														

	Fed	BC	Alta	Sask	Man	Ont	Que	NB	NS	PEI	N&L	Yuk	NWT	Nun
353 Various Measures														
354 endorsed goal-under 5% tobacco use by 2035	X													
355 govt annual/regular report required	X(B)						X							X
356 manufacturer price controls														
357 cigarette flammability standard	X													
358 confectionary (candy) tobacco products, ban									X(P)			X		X
359 health warning signs at point of purchase(POP)		a		X		X	X	a	a	a	a		X	X
360 health warning signs at POP repealed		X						X	X	X	X			
361 endorsed Canada's FCTC ratification	X	X	X	X	X	X	X	X	X	X	X	X	X	X
362 18A movie rating if smoking depicted (n)														
363 health warning/ads prior to movies with smoking														
364 govt subsidies to films depicting tobacco, ban														
365 death certificate – indicate whether tob. contributed													X	
366 injunction can be sought for continuing violations		X												X
367 divestment			n											
368 growing of tobacco, ban						R	R		R					
369 ban manufacturing (but not sales) of tobacco														
370 look-back provision														

Abbreviations for provinces/territories

BC	British Columbia
Alta	Alberta
Sask	Saskatchewan
Man	Manitoba
Ont	Ontario
Que	Quebec
NB	New Brunswick
NS	Nova Scotia
PEI	Prince Edward Island
N&L	Newfoundland and Labrador
Yuk	Yukon Territory
NWT	Northwest Territories
Nun	Nunavut Territory

**Overview Summary of Federal/Provincial/Territorial
Tobacco Control Legislation in Canada:**

Explanatory Notes

Canadian Cancer Society
October 31, 2017

The purpose of the Explanatory Notes is to add some information and context regarding the Table. Some sections in the Explanatory Notes provide more detail than others, depending on the subject.¹ A listing of principal federal/provincial/territorial tobacco control laws is found in the final Appendix, Appendix 7.

Abbreviations used in the Explanatory Notes, notably for provinces/territories, include the following:

Fed	Federal
BC	British Columbia
AB	Alberta
SK	Saskatchewan
MB	Manitoba
ON	Ontario
QC	Quebec
NB	New Brunswick
NS	Nova Scotia
PEI	Prince Edward Island
NL	Newfoundland and Labrador
YT	Yukon Territory
NWT	Northwest Territories
NU	Nunavut

Most laws cited in this report are available online.²

¹ Abbreviations used in footnotes:

c. = chapter

s. = section

ss. = sections

Sch. = Schedule

S = Statutes, e.g. SBC = Statutes of British Columbia

RS = Revised Statutes, e.g. RSC = Revised Statutes of Canada

Note that in the Table “a” indicates that a government has enabling authority to adopt regulations on a particular matter. Where regulatory authority exists the “a” is frequently but not necessarily in every case indicated.

² See CanLII, a website providing access to federal, provincial and territorial statutes and regulations, as well as court cases from across Canada: www.canlii.org

See also the Canadian Partnership Against Cancer Prevention Policies Directory

<http://www.cancerview.ca/preventionandscreening/preventionpoliciesdirectory/>

For the Non-Smokers’ Rights Association Smoke-Free Laws Database, including municipal bylaws, see:

<http://database.nonsmokersrights.ca/>

For foreign tobacco control laws, see www.tobaccocontrolaws.org

Tobacco Taxation

The federal government and all provinces/territories tax tobacco products. Here is a summary of tobacco tax rates:

Comparative Federal/Provincial/Territorial Tobacco Tax Rates
As of October 31, 2017

	200 Cigarettes	200 roll-your-own cigarettes (100g)
Man	\$67.24 (\$59.00)	\$32.22 (\$28.50)
NS	\$64.95 (\$55.04)	\$30.40 (\$26.00)
NWT	\$60.80	\$27.20
NB	\$60.55 (\$51.04)	\$29.87 (\$25.52)
Nun	\$60.00	\$40.00
Yuk	\$60.00	\$30.00
Sask	\$59.88 (\$54.00)	\$29.70 (\$27.00)
PEI	\$58.47 (\$50.00)	\$25.05 (\$21.50)
N&L	\$58.31 (\$49.00)	\$45.80 (\$40.00)
Alta	\$50.00	\$37.50
BC	\$49.40	\$24.70
Ont	\$47.75 (\$40.95)	\$23.55 (\$20.475)
Que	\$29.80	\$14.90
federal	~\$25.81 (\$21.56)	~\$15.20 (\$13.475)

Notes re the table:

The above table includes scheduled tobacco tax increases in British Columbia (date pending), Yukon (April 1, 2018) and Ontario (2018 and 2019):

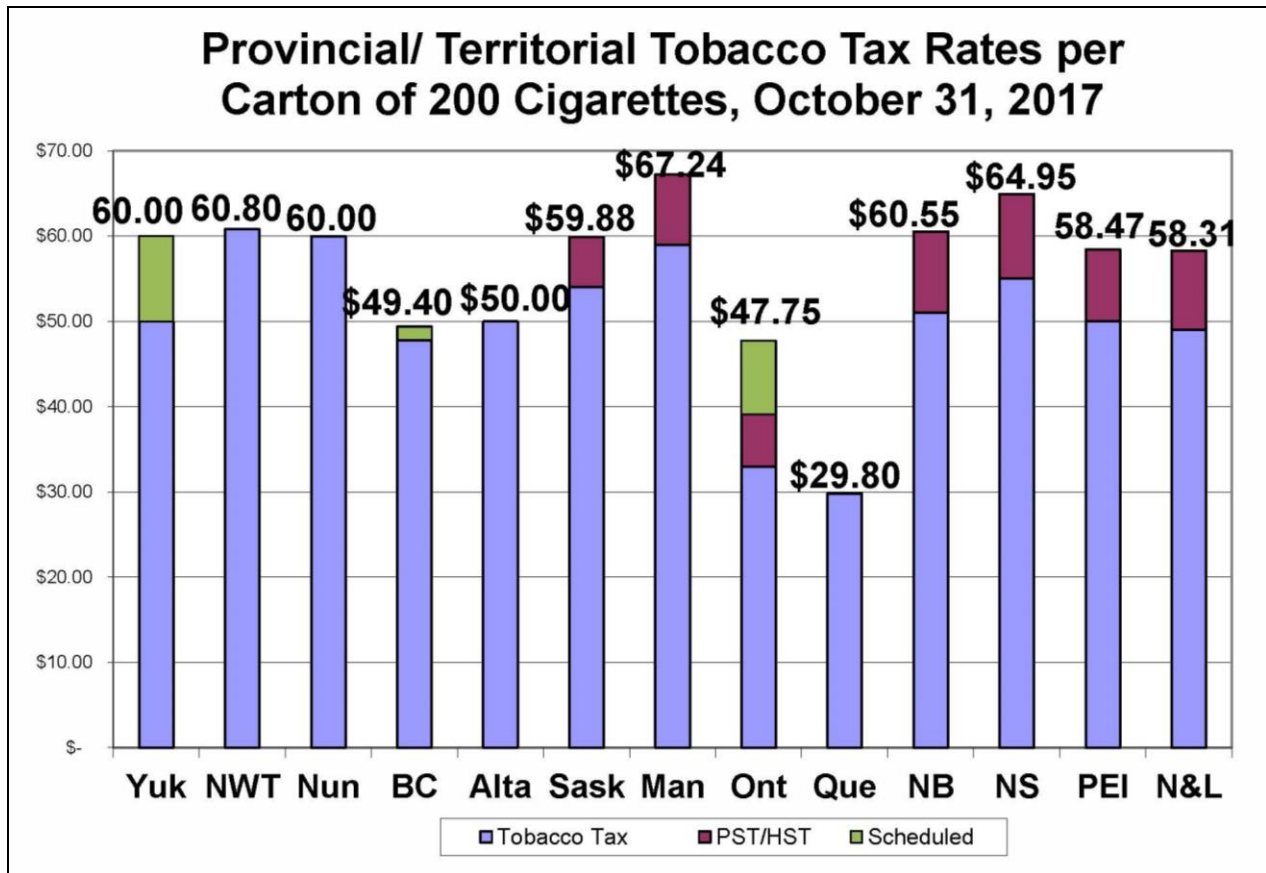
- **BC:** there will be a tobacco tax increase of \$1.60 per 200 cigarettes and \$0.80 per 100g of roll-your-own; the effective date will be fixed by regulation after the budget implementation bill for the Sept. 11, 2017 budget receives Royal Assent; the government's intent is that there will be at least one month's notice for the effective date following adoption of the regulation.
- **YT:** effective April 1, 2018, there will be a tobacco tax increase of \$10.00 per 200 cigarettes and \$5.00 per 100g of roll-your-own.
- **ON:** there will be a tobacco tax increase of \$4.00 per 200 cigarettes and \$2.00 per 100g in each of 2018 and 2019, but the specific dates have not been determined.

Federal, provincial and territorial tobacco tax rates for 200 manufactured cigarettes and 200 roll-your-own cigarettes are reproduced in the table. The rates include PST for Sask (6%), Man (8%), and the provincial portion of HST for Ont (8%), NB (10%), NS (10%), PEI (9%), N&L (10%). For these seven provinces, the rate in round parentheses represents the tobacco tax rate not including PST/HST. For the federal government, the number in round parentheses represents tobacco taxes not including GST; federal GST (or federal portion of HST) varies slightly by province depending on provincial tobacco tax rates. (Note: Alberta has no PST, and the three territories do not have a

territorial sales tax. BC has a 7% PST, but this does not apply to tobacco products. Quebec has a 9.975% QST, but this does not apply to tobacco products.) The total amount collected for provincial sales taxes and for federal GST (which are based on a percentage of the price) varies by brand and by store, because there are varying prices on which the sales tax is calculated.

A listing of federal/provincial/territorial tobacco tax increases from 2004 to 2017 is found in Appendix 1.

Here is a graph showing provincial/territorial rates:



Roll-your-own (ryo) tobacco

The federal government and all provinces/territories tax roll-your-own tobacco at a rate less than cigarettes. AB, NL, NU and the federal government have made progress towards closing the loophole, but a gap remains.

Indexing tobacco tax rates to inflation

The Yukon and the federal government index tobacco tax rates to inflation. The Yukon implemented indexation in its 2017 budget – indexation will take place annually, with the first inflationary increase to take effect Jan. 1, 2019.

The federal government indexes every five years, with the first inflationary increase to take effect Dec 1, 2019, and every 5 years afterwards.³

In its 2016 budget, Ontario implemented annual indexation to inflation for a period of 5 years, with the inflationary increase of 2% per year fixed in advance to take effect each June 1 as follows for 200 cigarettes and for 100g of roll-your-own (to make 200 cigarettes):

		<u>Cigs</u>	<u>rvo</u>
June 1, 2017	Ont	\$0.62	\$0.31
June 1, 2018	Ont	\$0.63	\$0.315
June 1, 2019	Ont	\$0.644	\$0.322
June 1, 2020	Ont	\$0.658	\$0.329
June 1, 2021	Ont	\$0.67	\$0.335

However, in the April 27, 2017 Ontario budget, this indexation was replaced with a much larger increase of \$10 per carton over three years (\$2.00 on the day after the budget (April 28, 2017); and \$4.00 per carton in each of 2018 and 2019), though implementation dates in 2018 and 2019 were not specified.

Tax on tobacco products sold in duty-free stores

Beginning in 2001, the federal government imposed a tax on tobacco products sold in duty-free stores. The federal tobacco tax imposed in duty-free stores is now at the same rate as in other stores in Canada. However, tobacco products are still sold in duty-free stores exempt from provincial tobacco tax, and GST/HST/PST.

No province/territory through government action has ended a practice of tobacco products being sold in duty-free stores exempt of provincial/territorial tobacco taxes.

There are no duty-free stores in PEI, YT, NWT and NU.⁴ In the past in Nunavut (in 1999 at a minimum), tobacco products were sold in the duty-free store at the Iqaluit airport.

Canada has not yet prohibited duty-free tobacco sales to individuals travelling between specified countries through amendments to regularly-reviewed bilateral air agreements involving Canada and other countries.

Duty-free import allowance

The federal government permits a duty-free import allowance that includes 200 cigarettes, 200 tobacco sticks, 50 cigars *and* 200g of other types of tobacco. An increasing number of countries have lowered their duty-free allowance – for example, Australia and New Zealand now have a duty-free import allowance of only 25 cigarettes (see Appendix 2).

³ The initial federal inflationary increase to take effect Dec. 1, 2019 is to be determined based on the change to the Consumer Price Index from Sept. 30, 2013 to Sept 30, 2019.

⁴ Canada Border Services Agency, “Duty-Free Shop” accessed Sept. 10, 2017. There are 55 duty-free stores in Canada. <http://www.cbsa-asfc.gc.ca/do-rb/services/shop-bout-eng.html>

The federal government permits individuals older than 18 to be eligible for the duty-free import allowance, even if the province/territory of entry has a higher minimum tobacco age, such as 19. In contrast, for alcohol, the minimum age to be eligible for the alcohol duty-free import allowance is 18 or 19, depending on the minimum alcohol age of the province/territory of entry.

Corporate profit surtax

The federal government imposed a corporate income surtax on tobacco manufacturer profits during 1994-2017.⁵ This surtax was initially imposed in 1994 for three years, was extended, and was subsequently made permanent. However, in the 2017 federal budget, the federal government ended the surtax.

During 1994-1997, Quebec also had a corporate income surtax on tobacco manufacturers.⁶ But Quebec did not extend this surtax following expiration after three years.

It appears that only the federal and Quebec governments, with effectively their own corporate income tax legislation structural approaches, have the easy capacity to impose a corporate income surtax on tobacco manufacturers.

First Nation tobacco taxes and sales taxes

In Manitoba, most First Nations in the province have an agreement with the Manitoba Government whereby an amount equal to the provincial tobacco tax applies to tobacco products sold on the reserve, and the First Nation government keeps the revenue.

In BC, as a result of comprehensive agreements between certain First Nations, the BC government and the federal government, the on-reserve tobacco tax exemption does not apply to Nisga'a lands nor to Nisga'a citizens, not to the Tsawwassen First Nation.⁷ As well, the provincial tobacco tax exemption has scheduled expiration dates for two other First Nations.⁸

⁵ *Income Tax Act*, RSC 1985 c. 1 (5th Supp.), ss. 182, 183, enacted by *An Act to amend the Excise Act, the Excise Tax Act and the Income Tax Act*, SC 1994, c. 29, s. 16, repealed by *Budget Implementation Act, 2017, No. 1*, SC 2017, c. 20, s. 27. (In 1994 and in 2017, the surtax did not apply to the full calendar year.)

⁶ *Taxation Act*, CQLR c. I-3, Part III.11, ss. 1129.46 – 1129.50, enacted by SQ 1995, c. 49, s. 235. See also *Regulation respecting the Taxation Act*, CQLR c. I-3, r. 1, Title XLV, s. 1129.48R1 (under the *Taxation Act*, CQLR c. I-3).

⁷ BC Ministry of Finance, "Sales to First Nations and the Tobacco Tax Exemption Program" Tobacco Tax Bulletin TTA 001, revised October 2016.

<http://www2.gov.bc.ca/assets/gov/taxes/sales-taxes/publications/tta-001-sales-first-nations-tobacco-tax-exemption-program.pdf>

⁸ See *ibid.* The following lists the tobacco tax exemption expiry date for the indicated treaty First Nations:

- Tsawwassen First Nation, May 1, 2017
- Maa-nulth First Nations, May 1, 2019
 - Huu-ay-aht First Nations
 - Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations
 - Toquaht Nation
 - Uchucklesaht Tribe
 - Yuułu?ıł?ath (legally Ucluelet First Nation)
- Tla'amin First Nation (Sliammon), May 1, 2024

Pursuant to federal legislation, the First Nations Goods and Services Tax (FNGST), when in place, applies to all goods and services that the federal GST applies to, and is the same rate (5%) as the GST/federal portion of the HST.⁹ As of Aug. 1, 2017, there are about 30 First Nations that have implemented the FNGST.¹⁰ A listing is found in Appendix 3. The GST represents only a small part of the normal retail price of tobacco products. When provincial tobacco taxes are not included in the sales price (as is the case for tobacco product sales on reserves to status First Nations people on most reserves in Canada), the amount of GST collected is even smaller.

A different tax, the First Nations Sales Tax (FNST), applies to tobacco, alcohol and gasoline and is at the same rate as the GST/federal portion of the HST (5%). There are 8 First Nations (all in BC) that implement the FNST.¹¹ A listing is found in Appendix 4. The FNST pre-dates the FNGST. Now that the FNGST is available, the federal government is not entering any new agreements to implement the FNST.

Federal legislation adopted in 2005 and 2006 gives First Nations the ability to adopt a tobacco tax equal to provincial tobacco tax provided that an administration agreement with the applicable provincial government is in place.¹² This mechanism supports the approach in Manitoba where almost all First Nations in the province have an agreement with the provincial government to implement a tobacco tax equal to the Manitoba provincial rate, and keep the revenue that arises from on-reserve tobacco product sales.

One First Nation, the Cowichan First Nation (on Vancouver Island in B.C.), collects a tobacco tax equal to the provincial tobacco tax based on federal legislation adopted in 1997 specific to the Cowichan First Nation.¹³

New Brunswick has agreements with at least most First Nations in the province whereby the First Nations receive tobacco tax revenue from tobacco products purchased by non-First Nations purchasers (but not First Nations purchasers, as is the case in Manitoba).

In 1999, Quebec and the Kahnawake First Nation (near Montreal) entered into an agreement related to taxation of tobacco, petroleum and alcohol, an agreement that continues in effect. Among the provisions, Kahnawake would undertake actions to prevent tobacco contraband, and Quebec would provide certain remittances to Kahnawake. The agreement defines “special products” as tobacco, petroleum and alcohol products. The agreement provides in part that: “7. Kahnawake will establish a single supply system for all special products sold in the Territory. 8. Kahnawake will provide that

⁹ *First Nations Goods and Services Tax Act*, SC 2003, c. 15, s. 67.

¹⁰ The federal Department of Finance maintains a listing of the First Nations that have implemented the FNGST, with a link to each agreement:

http://www.fin.gc.ca/activty/firstnations/aagoods_-eng.asp

¹¹ The federal Department of Finance maintains a listing of the First Nations that have implemented the FNST, with a link to each agreement:

http://www.fin.gc.ca/activty/firstnations/aasales_-eng.asp

¹² *First Nations Goods and Services Tax Act*, Part 2, ss. 17-29, Sch. 2. The provisions initially just applied to First Nations in Quebec: *Budget Implementation Act, 2004, No. 2*, SC 2005, c. 19, s. 10, amending the *First Nations Goods and Services Tax Act*, SC 2003, c. 15, s. 67. The following year, the provisions in the *First Nations Goods and Services Tax Act* were amended to apply to First Nations across Canada: *Budget Implementation Act*, SC 2006, c. 4, ss. 91 – 97.

¹³ This is authorized by *Budget Implementation Act, 1997*, SC 1997, c. 26, Part II.

all special products supplied in the Territory to persons who are not Mohawks have been legally obtained from sources acceptable to both parties. 9. Except to the extent that the operation of this Agreement provides otherwise, the supply of special products outside the Territory is subject to applicable taxes.”¹⁴ Kahnawake is not respecting these provisions in the agreement.

Government Tobacco Control Budgets

In the Table, government tobacco control funding information is indicated as both a total amount, as well as on a per capita basis.¹⁵ Funding as a percentage of tobacco tax revenue¹⁶ are also indicated. The amounts do not include tobacco tax enforcement costs by finance/revenue departments; nor do they include compensation to physicians for assisting/advising patients to quit; nor education as part of elementary and secondary school curriculums.¹⁷

Among provinces, per capita funding (not including cessation products) ranges from \$0.35 in Saskatchewan to \$3.58 in Ontario. In the Yukon it is \$6.53. Government per capita tobacco control funding in Canada is far lower than the US CDC recommended best practices for comprehensive tobacco control programs for U.S. state governments that varies by state and that ranges per capita from US\$6.77 to US\$14.76 per year, with an average of US\$10.53, in 2014 dollars.^{18,19} Converted to Canadian dollars (exchange 1.25), the range is C\$8.46 to C\$18.45, with an average of C\$13.16.

Here are some specific notes by government:

- **Federal** – The \$37.6 million amount indicated for FY 2016-17 was the tobacco control budget amount, not actual expenditures. In fiscal year 2014-15, the Health Canada tobacco control budget was \$37.6 million, but only \$32.5 million was expended, broken down as follows: policy and regulatory development, \$9.6 million; research \$3.8 million; surveillance, \$4.1 million; enforcement, \$5.2 million; grants and contributions, \$1.4 million; programs for Aboriginal

¹⁴ “Agreement on fiscal matters related to tobacco, petroleum and alcohol products between Québec and Kahnawake”, March 30, 1999.

[https://www.autochtones.gouv.qc.ca/relations_autochtones/ententes/mohawks/kahnawake/19990330_tabac_en.htm](https://www.autochtones.gouv.qc.ca/rerelations_autochtones/ententes/mohawks/kahnawake/19990330_tabac_en.htm)

See also *An Act to provide for the implementations of agreements with Mohawk communities*, SQ 1999, c. 53.

¹⁵ Tobacco control budget information for provinces and territories is the best available information, with some limitations, as outlined in the Explanatory Notes.

¹⁶ For trends in federal and provincial tobacco tax revenue, see Physicians for a Smoke-Free Canada, “Tax Revenues from Tobacco Sales: Provincial and Federal Tobacco Tax Revenues, 1990-1991 to 2016-2017” November 2017.

http://www.smoke-free.ca/pdf_1/totaltax.pdf

Tobacco tax revenue for the three territories was obtained from public accounts for each of the territories.

¹⁷ The amounts also do not include cessation aids covered through government employee or retiree health care plans.

¹⁸ U.S. Centers for Disease Control and Prevention (CDC). *Best Practices for Comprehensive Tobacco Control Programs — 2014*. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf

¹⁹ The state amounts per capita of US\$6.77 to US\$14.76 with an average of US\$10.53 includes some amounts for cessation products.

Canadians, \$4.3 million; litigation, \$3.0 million; national marketing cessation outreach and awareness campaign, \$1.2 million; mass media, \$0.0 million.²⁰

- **AB** – includes enforcement costs through Alberta Liquor and Gaming Commission but does not include enforcement costs (eg police, peace officers) through Ministry of Justice and Solicitor General.
- **MB** – the cost of accessing Champix through the Provincial Drug Pharmacare Program is not available.
- **QC** – This information is for fiscal year 2014/15, the most recent year available. Does not include enforcement costs for tobacco control legislation. For enforcement, there is no longer an enforcement unit dedicated to tobacco. In FY 2014-15, the Direction de l'inspection et des enquêtes had a budget of \$2.26 million, but the responsibilities included such matters as seniors homes, tanning salons, prosthetics, and funeral homes, in addition to tobacco – the proportion of this \$2.26 million applicable to tobacco is not available. Does not include contraband enforcement by the Ministry of Finance, which in FY 2014-15 was \$19 million. Does not include about \$5 million per year for physician fees for assisting/advising patients regarding cessation through the Régie de l'assurance maladie du Québec. Information for fiscal years 2010-11 to 2014-2015 has been summarized by the Quebec government.²¹
- **ON** – The amount for Ontario comes from the public accounts for 2016-17 for transfer payments for Smoke-Free Ontario.²² Expenditures on smoking cessation products covered by the drug plan are not available. However, in fiscal year 2016-17, the government spent an additional \$5 million on cessation initiatives for that fiscal year only, including \$2.5 million in quit cards for nicotine replacement products for patients discharged from hospital.²³
- **NB** – Although the Table indicates “n/a” for New Brunswick, the tobacco control budget of New Brunswick can be expected to be less than \$1.00 per capita. The cost of NRT/Champix/Zyban provided under the Prescription Drug Program is not available.
- **NS** – does not include the cost of enforcement of tobacco control legislation, which is done by a different department. Does not include a health promotion budget out of which some tobacco control work is done. The overall amount does include funding for the Nova Scotia Health Authority for cessation at the local level, a proportion of which would go towards cessation products, but a breakdown is not available.
- **NL** – the expenditures do not include enforcement, work of the Department of Justice or Regional Health Authorities, or the Newfoundland and Labrador Prescription Drug Program.
- **NWT** – A significant portion of the NWT population is First Nations or Inuit. In 2016-17, the federal government spent \$111,676 on cessation aids for the First Nations and eligible Inuit

²⁰ Federal government response to written question on the Order Paper (Q-779), tabled in the House of Commons Jan. 30, 2017, Sessional paper 8555-421-779.

²¹ Ministère de la Santé et des Services sociaux, « Informations concernant les investissements pour la lutte au tabagisme »
http://www.msss.gouv.qc.ca/ministere/acces_info/documents/demandes_acces/2015-2016/2015-2016-072-Document.pdf

²² Ontario Treasury Board Secretariat, Public Accounts of Ontario, 2016-17, Volume 1, Ministry Statements and Schedules. https://files.ontario.ca/volume1_eng.pdf

²³ Ontario Ministry of Health and Long-Term Care, “New Supports to Help People in Ontario Quit Smoking” January 18, 2017 (news release).
<https://news.ontario.ca/mohltc/en/2017/01/new-supports-to-help-people-in-ontario-quit-smoking.html>

population through the Non-Insured Health Benefits Plan; this is not included in territorial tobacco expenditures indicated in the Table.

For fiscal year 2010-11 and for some prior years, tobacco control budgets of federal/provincial/territorial governments have been summarized by the Ontario Tobacco Research Unit.²⁴

No province/territory earmarks a portion of tobacco tax revenue for tobacco control purposes, as California and a number of other US states have done. In Quebec, a portion of the tobacco tax revenue was for many years used to pay down the debt from the 1976 Montreal Summer Olympics. With the Olympic debt being retired in 2006, earmarking continued, but for different purposes. Initially, as announced in 2006, a portion of the tobacco tax revenue – \$10 million per year – was to go to the Québec Cultural Heritage Fund,²⁵ with a further portion – \$30 million per year – to go to Sports and Physical Activity Development Fund.^{26, 27} Funds for other matters were subsequently implemented, financed through tobacco tax revenue.²⁸ For fiscal year 2016-17, here is how Quebec earmarked \$137 million in tobacco tax revenue out of total tobacco tax revenue of \$1,072 million.²⁹

Sports and Physical Activity Development Fund	\$66 million
Québec Cultural Heritage Fund	\$16 million
Fund for the Promotion of a Healthy Lifestyle	\$20 million
Early Childhood Development Fund	\$15 million
Caregiver Support Fund	\$15 million
Fonds Avenir Culture	<u>\$5 million</u>
TOTAL	\$137 million

²⁴ For the 2010-11 fiscal year, see Ontario Tobacco Research Unit, “Tobacco Control Funding Commitments: Monitoring Update” July 5, 2011.

<http://otru.org/wp-content/uploads/2012/06/funding2011.pdf>

For some prior fiscal years, see:

<http://otru.org/otru-publications/all-otru-publications/>

²⁵ Ministère de la Culture et des Communications, « BUDGET DU QUÉBEC 2006-2007 : Investissements majeurs pour le développement culturel de toutes les régions du Québec » March 23, 2006, Communiqué.

See also *Act to establish a special olympic fund*, SQ 1976, c. 14, as repealed by *An Act to repeal the Act to establish a special olympic fund and to amend other legislative provisions*, SQ 2007, c. 27.

²⁶ Ministère de l'Éducation, du Loisir et du Sport, « *Fonds pour le développement du sport et de l'activité physique : DÉPÔT À L'ASSEMBLÉE NATIONALE DU PROJET DE LOI INSTITUANT LE FONDS POUR LE DÉVELOPPEMENT DU SPORT ET DE L'ACTIVITÉ PHYSIQUE* » May 10, 2006, Communiqué.

²⁷ *Act to establish the Sports and Physical Activity Development Fund*, CQLR c. F-4.003.

An Act to amend the Act respecting the Ministère de la Culture et des Communications, SQ 2006, c. 30.

²⁸ See for example, *An Act to establish the Fund for the promotion of a healthy lifestyle*, S.Q. 2007, c.1; *An Act to establish a caregiver support fund*, SQ 2009, c. 42; *An Act to establish an early childhood development fund and to amend the Act to establish the Fund for the promotion of a healthy lifestyle*, SQ 2009, c. 39.

²⁹ After the 2016-17 fiscal year, the Fund for the Promotion of a Healthy Lifestyle is being eliminated. The expenditures will be covered by the Ministry of Health and Social Services.

Quebec Government “The Québec Economic Plan” March 2017 (a budget document).

p.D.60: http://www.budget.finances.gouv.qc.ca/budget/2017-2018/en/documents/EconomicPlan_March2017.pdf

In BC in 1971, a \$25 million endowment was created through legislation and was called the Drug, Alcohol and Cigarette Education, Prevention and Rehabilitation Fund.³⁰ The Fund was eventually dissolved with the money placed in the government's Consolidated Revenue Fund.³¹

Tobacco strategy cost recovery from manufacturers

At present, no province/territory recovers from the tobacco industry the annual cost of implementing the government's tobacco control strategy (e.g. cessation, prevention, mass media programs), such as through a fee on tobacco manufacturers. This is a distinct issue from recovering tobacco-related health care costs. A fee is cost recovery in nature, and is not an earmarked tax, nor a tax at all.

In 1998, BC had adopted the *Tobacco Fee Act* that would have required tobacco manufacturers to obtain a provincial licence and pay an annual fee. The annual licence fee would have been equal to the annual cost of the government's provincial tobacco control strategy (set initially at \$20 million per year) multiplied by the company's market share. Thus if the annual cost of the provincial strategy was \$20 million and a company had a 60% market share in the province, the company would pay an annual licence fee to the province of \$12 million. The *Tobacco Fee Act* was adopted on July 30, 1998 and repealed by a different government, without ever having been proclaimed into effect, on April 11, 2002.³²

In the U.S., since 2009, the Food and Drug Administration has implemented a cost recovery fee on tobacco manufacturers to recover the annual cost of the FDA's tobacco control budget. In fiscal year 2017-18, the FDA's tobacco control budget is US\$672 million, all of which is recovered through the fee on the tobacco industry based on market share.³³ (Also in the US, the CDC Office on Smoking and Health had a budget of US\$210 million (fiscal year 2016-17) including US\$84 million from Department of Health and Human Services budget and US\$126 million from *Affordable Care Act* Prevention and Public Health Fund. However, the cost of the Office on Smoking and Health budget was not recovered from the tobacco industry. Together, the total US federal government tobacco control budget is US\$882 million, or C\$1.1 billion (exchange rate 1.25). Health Canada's per capita tobacco control budget is C\$1.04, while for the US federal government it is C\$3.39 (US\$2.71, FY 2017-18). If Health Canada had the same per capita budget as the U.S. federal government, then Health Canada's annual tobacco control budget would be \$124 million.

Here is a breakdown by fiscal year of the annual FDA tobacco control budget, set by legislation in 2009, with the amounts fully recovered through a licence fee on tobacco companies:

³⁰ *Special Funds Appropriation Act*, SBC 1971, c. 57.

³¹ *Special Appropriations Act*, SBC 1982, c. 40, s. 10.

³² *Tobacco Fee Act*, SBC 1998, c. 46, repealed by SBC 2002, c. 12, s. 36.

³³ U.S. *Family Smoking Prevention and Tobacco Control Act*, Public Law 111-31, s. 919, adopted June 22, 2009.

<https://www.gpo.gov/fdsys/pkg/PLAW-111publ31/pdf/PLAW-111publ31.pdf>

<u>Fiscal year</u>	<u>Budget (US\$)</u>
2009-10	\$235,000,000
2010-11	\$450,000,000
2011-12	\$477,000,000
2012-13	\$505,000,000
2013-14	\$534,000,000
2014-15	\$566,000,000
2015-16	\$599,000,000
2016-17	\$635,000,000
2017-18	\$672,000,000
2018-19	\$712,000,000
Subsequent years	\$712,000,000

Smoke-Free Places

Second-hand smoke legislation of some kind

All provinces/territories have a 100% smoke-free requirement inside enclosed workplaces and public places, with no allowance for smoking rooms.

The federal *Non-smokers' Health Act* prohibits smoking inside federally-regulated workplaces such as broadcasting, communications, transportation (e.g. planes, trains, shipping, inter-city buses), airports and other transportation terminals/stations, federal Crown corporations (eg Canada Post), federal public service, RCMP, armed forces, grain elevators, national parks, and fisheries.

Provincial smoke-free legislation applies to most establishments on First Nations reserves³⁴ (e.g. restaurants, bars, bingo halls, casinos, factories, office workplaces), but does not apply to on-reserve workplaces that are federally-regulated, such as those listed in the preceding paragraph.

Application to herbal water pipe products

QC, NB, NS, PEI, NL prohibit smoking of all water pipe products, including herbal non-tobacco water pipe products (herbal shisha), in places where smoking is banned. Here are the implementation dates:

1. Quebec (July 24, 2008)
2. Nova Scotia (May 31, 2015)
3. New Brunswick (July 1, 2015)
4. Prince Edward Island (Sept. 1, 2015)
5. Newfoundland and Labrador (July 1, 2017)

QC does have some limited exceptions.

³⁴ *R. v. Jenkinson*, 2006 MBQB 185, Manitoba Court of Queen's Bench, August 14, 2006.

Application to e-cigarettes and to heated products

For e-cigarettes, all 8 provinces with e-cigarette legislation (BC, MB, ON, QC, NB, NS, PEI, NL), as well as pending federal legislation (Bill S-5), prohibit using e-cigarettes where smoking is banned. (The ON legislation is awaiting proclamation.)

For heated products, the 8 provinces with e-cigarette legislation (BC, MB, ON, QC, NB, NS, PEI, NL), as well as AB and pending federal legislation (Bill S-5), have legislated wording that would apply to heated tobacco products. (The AB and ON legislation is awaiting proclamation.) For the remaining 4 provinces/territories (SK, YT, NWT, NU), it may be that existing legislation would apply to heated products. The Vancouver bylaw banning smoking of herbal shisha was interpreted in court as applying to heating the herbal shisha substance, even though flame did not come into contact with the shisha; dictionary definitions of “burn” were cited.³⁵ Here is the meaning of “smoke” in the remaining 4 provinces/territories:

- **SK** – smoke refers to “lighted tobacco” (*TCA*, s. 11(2)) and to “ignited tobacco” (*OHSR*, s. 77(1)(d)).
- **YT** – “smoke” refers to an “ignited tobacco product” (*SFPA*, s. 1).
- **NWT** – “smoke” refers to “lighted tobacco” (*TCA*, s. 1).
- **NU** – “ ‘smoke’ or ‘smoking’ includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment” (*TCA*, s. 1).

Application to cannabis

• **MB, QC, NB, NS** prohibit smoking of cannabis where smoking of tobacco is banned. Here are the implementation dates:

1. Quebec (July 24, 2008)
2. Nova Scotia (May 31, 2015)
3. New Brunswick (Dec. 16, 2016)
4. Manitoba (Oct. 1, 2017)

- **AB** has legislation awaiting proclamation.
- **QC** has a narrow exception permitting hospitals to designate smoking rooms for smoking of medical marijuana by patients holding “a medical document provided by a physician allowing them to legally obtain dried marijuana from an authorized producer” (*RUTCA*, s. 1.1).

Restaurants and bars

All 13 provinces/territories have adopted legislation to require that all enclosed restaurants and bars be 100% smoke-free, with no allowance for smoking rooms. Here are the implementation dates:

1. Northwest Territories (May 1, 2004)
2. Nunavut (May 1, 2004)
3. New Brunswick (Oct. 1, 2004)
4. Manitoba (Oct. 1, 2004)

³⁵ *Vancouver (City) v. Abdiannia*, 2015 BCSC 1058 (BC Supreme Court, June 19, 2015), affirming BC Provincial Court judgment of Aug. 11, 2014.

5. Saskatchewan (Jan. 1, 2005)
6. Newfoundland and Labrador (July 1, 2005)
7. Ontario (May 31, 2006)
8. Quebec (May 31, 2006)
9. Nova Scotia (Dec. 1, 2006)
10. Alberta (Jan. 1, 2008)
11. British Columbia (Mar. 31, 2008)
12. Yukon Territory (May 15, 2008)
13. Prince Edward Island (Jan. 1, 2010)

Cars with kids

Eleven of 13 provinces/territories have prohibited smoking in vehicles with kids. The two that have not are NWT and NU. Here is a listing of provinces with the applicable age and the implementation date (for example, Nova Scotia prohibits smoking in a vehicle with someone under age 19, effective April 1, 2008):

1. Nova Scotia (19, Apr. 1, 2008)
2. Yukon Territory (18, May 15, 2008)
3. Ontario (16, Jan. 21, 2009)
4. British Columbia (16, Apr. 7, 2009)
5. Prince Edward Island (19, Sept. 15, 2009)
6. New Brunswick (16, Jan. 1, 2010)
7. Manitoba (16, July 15, 2010)
8. Saskatchewan (16, Oct. 1, 2010)
9. Newfoundland and Labrador (16, July 1, 2011)
10. Alberta (18, Nov. 13, 2014)
11. Quebec (16, May 26, 2016)

Wolfville, NS was the first municipality/jurisdiction in Canada to adopt a law prohibiting smoking in vehicles with kids. Wolfville adopted its bylaw Nov. 19, 2007, with an implementation date of June 1, 2008. Nova Scotia followed, with a bill receiving first reading on Nov. 23, 2007 and Royal Assent on Dec. 13, 2007. The Nova Scotia law had an implementation date of April 1, 2008.

All vehicles

No province/territory has banned smoking in vehicles at all times, or in vehicles when there is a passenger other than the driver. At least one country, Mauritius, has banned smoking in vehicles when there is a passenger.³⁶

Prisons – outdoor smoking ban

The federal government and all provinces/territories have prohibited smoking on outdoor grounds of prisons, in addition to indoors. This has often been done by administrative policy. Banning

³⁶ Mauritius: *Public Health (Restrictions on Tobacco Products) Regulations 2008*, No. 263 of 2008, s. 3(1)(c) (under *The Public Health Act*).

smoking outside has been necessary for effective enforcement inside. Permitting smoking outside resulted in cigarettes being brought back in the prison.

Hotels

No province/territory has banned smoking in all hotel rooms.

- **QC** – hotels must set aside at least 80% of rooms as non-smoking.
- Huron County, ON adopted a bylaw in 2003 to ban smoking in all hotel rooms, effective September 2004.³⁷ Canmore, AB adopted a bylaw to ban smoking in all hotel rooms effective Oct. 2, 2006. On a voluntary basis, many hotels and hotel chains have banned smoking in all hotel rooms. Westin, Marriott and CanadInns were among the first hotel chains to do so in Canada.

Hospitals

- **MB** – designated smoking rooms are permitted in an addictions unit or palliative care unit of a hospital (*NSHPVPA*, ss. 1(1), 3(1))
- **ON** – designated smoking rooms are permitted inside a psychiatric facility and a facility for veterans that is prescribed (there are 2 such veterans facilities in Ontario indicated in the regulation) (*SFOA*, ss. 9(8), 9(9)), but prohibited on the outside grounds effective Jan. 1, 2018 (*General Regulations*, ss. 12, 20, 21).
- **NB** – designated smoking rooms are permitted in a psychiatric facility (*SFPA*, ss. 1(1), 4)), but not on the outdoor grounds (*SFPA*, s. 3(j.1)).
- **NL** – designated smoking rooms are permitted in a psychiatric facility or unit (*SFEA*, s. 4(2)(b)).

Seniors homes

For seniors homes/nursing homes, 12 of 13 provinces/territories permit smoking in designated smoking rooms (DSRs), while NU permits in designated smoking areas. Despite being allowed to have DSRs, a large proportion of seniors homes do not have a DSR given the cost to install and maintain the DSR, and given that the percentage of residents who smoke may be very low.

- **NU** – in a seniors home (“elder home”) smoking is permitted in an area set aside for smoking provided the area meets prescribed requirements. However, no requirements are prescribed. Thus the designated area is not required to be an enclosed designated smoking room. (In the Table, DSA = designated smoking area.)

Social housing

- **YT** has had a 100% smoke-free policy for all social housing since Jan. 1, 2012.³⁸

Depending on the province/territory, social housing may be the responsibility of municipalities. Provincial and municipal governments responsible for social housing are requiring an increasing proportion of social housing units to be 100% smoke-free.

³⁷ Huron County, “A Bylaw of the Corporation of the County of Huron to Regulate Smoking in Public Places and Workplaces in Huron County and to Repeal Bylaw No. 9, 2003” By-law No. 21, 2003.

<https://www.huroncounty.ca/wp-content/uploads/2014/07/By-law-21-2003.pdf>

³⁸ Yukon Housing Corporation, “No-Smoking Policy” accessed August 20, 2017.

<http://www.housing.yk.ca/nsp.html>

In St. John's, NL, it was decided on July 28, 2008 to implement a smoke-free policy for new social housing tenants, and to grandfather existing tenants. On Sept. 1, 2017, a 100% smoke-free policy for all units was implemented.³⁹

On Oct. 14, 2009, Waterloo Regional Council, in Ontario, decided that effective April 1, 2010, all new social housing leases would have a smoke-free provision.^{40, 41} Existing leases would be grandfathered.

In the US, a national rule that came into force February 3, 2017 requires federally assisted public housing to be a 100% smoke-free within 18 months, by October 3, 2018, including outdoors within 25 feet (7.6 m) of housing and administrative buildings.⁴² This will affect more than 2 million public housing residents nationwide. In the US, public housing is primarily a federal responsibility.

Smoking in breach of lease grounds for eviction

Legal cases in various provinces have upheld violations of a no-smoking provision in a lease as grounds for eviction. General wording of provincial landlord/tenant legislation may assist in this regard, even if there is not a specific legislated reference to smoking.

- **SK** – a landlord of a residential property in a detached home where the landlord resides and where the residential property is located may end a tenancy by giving notice that smoking in the residential property will end the tenancy, and smoking occurs despite the notice.⁴³

Apartments/condominiums must have and disclose smoking policy

No province/territory requires all apartments/condominiums to have a policy regarding smoking.

In New York City, through a local law adopted Aug. 28, 2017, there is a requirement that residential buildings with 3 or more units, including apartments, condominiums and cooperatives, have a smoking policy and disclose it to current and prospective residents. The policy must be disclosed to residents annually or whenever the policy changes. Buildings are not required to adopt a 100% smoke-free policy.⁴⁴

³⁹ Elaine Henley, City Clerk, Decision Note, "Non-Profit Housing – No Smoking Policy" Sept. 7, 2017; Judy Tobin, Manager, Non Profit Housing, Decision Note, "Riverhead Towers – Grandfathering in of Smoking", Sept. 19, 2016, In: St. John's City Council, Agenda, Regular Meeting, Sept. 11, 2017.

http://www.stjohns.ca/sites/default/files/files/agenda/Regular_Agenda_September%2011%2C%202017_0.pdf

⁴⁰ Waterloo Regional Council, Minutes, Oct. 14, 2009.

<http://www.regionofwaterloo.ca/en/regionalGovernment/resources/CC2009-1104.pdf>

⁴¹ Region of Waterloo, Waterloo Region Housing Smoke-Free Policy.

<http://communityservices.regionofwaterloo.ca/en/housing/resources/Smoke-FreePolicy.pdf>

⁴² U.S. Department of Housing and Urban Development, "HUD Secretary Castro Announces Public Housing to be Smoke-free. New rule protects health and safety of residents, saves PHAs millions of dollars in preventable damage" November 30, 2016 (press release).

https://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-184

U.S. Department of Housing and Urban Development, "Instituting Smoke-Free Public Housing" 24 CFR Parts 965 and 966, 81 FR 87430, published Dec. 5, 2016.

<https://www.federalregister.gov/documents/2016/12/05/2016-28986/instituting-smoke-free-public-housing>

⁴³ *Residential Tenancies Act, 2006*, SS 2006, c. R-22.0001, s. 58(1)(o).

⁴⁴ New York City, "Mayor de Blasio Signs Sweeping Legislation to Curb Smoking, Tobacco Usage," August 28, 2017 (news release).

Ticketing

All provinces/territories except NU have a mechanism whereby tickets can be issued for infractions of some or all smoke-free provisions.

NU – ticketing is not implemented for the *TCA*. Ticketing had previously been designated for the *Environmental Tobacco Smoke Work Site Regulations*, but these regulations are now repealed with smoking restrictions now included in the *Occupational Health and Safety Regulations*.

Smoke-Free Outdoor Places

Patios

• Here are the implementation dates for province/territory-wide 100% smoke-free patios:

1. Newfoundland and Labrador (July 1, 2005)
2. Nova Scotia (Dec. 1, 2006)
3. Alberta (Jan. 1, 2008)
4. Yukon Territory (May 15, 2008)
5. Ontario (Jan. 1, 2015)
6. New Brunswick (July 1, 2015)
7. Quebec (May 26, 2016)

Newfoundland and Labrador was the first of any country/state/province in the world to prohibit smoking on patios, though some municipalities had already done so.

- **PEI** prohibits smoking on patios except between 10:00pm and 3:00am. (*General Regulations*, s. 2(5), under *SFPA*).
- **NL** has an exemption allowing smoking at an event with a special event liquor licence, provided that the event is not held in a building or other enclosed space (*SFER*, s. 8). Under s. 14 of the *Liquor Licensing Regulations*, special events licences may be issued to a charitable or non-profit organization that is raising funds for charitable purposes and that does not hold a subsisting licence.
- **NWT and NU** prohibit smoking on patios when the patios are located as part of a building or structure (but not when the patios are on the ground and not part of a structure). Most if not all actual patios in NWT and Nunavut would be 100% smoke-free.
- **ON** exempts a patio that “(a) was operated by a branch of the Royal Canadian Legion or another veterans’ organization immediately before November 18, 2013 and has been continually operated by a branch of the Royal Canadian Legion or another veterans’ organization since that date; and (b) was not, immediately before November 18, 2013, and is not at any time after that date a “covered or

<http://www1.nyc.gov/office-of-the-mayor/news/565-17/mayor-de-blasio-signs-sweeping-legislation-curb-smoking-tobacco-usage/#/0>

New York City, “A Local Law to amend the administrative code of the city of New York, in relation to disclosure of smoking policies for class A multiple dwellings” signed by Mayor August 28, 2017.

<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3028946&GUID=E8E7774B-D4D0-43BB-B7E9-919852FABED8&Options=&Search=>

partially covered restaurant or bar patio” within the meaning of this Regulation as it read on November 18, 2013” (*General Regulations*, s. 13(3)).

- Municipalities that prohibit smoking on patios include Vancouver, Regina, and Saskatoon.

Hospital grounds

- **ON** will prohibit smoking on grounds of hospitals and psychiatric facilities effective Jan. 1, 2018. Between Jan. 1, 2015 and Jan. 1, 2018, smoking is prohibited on the grounds of hospitals and psychiatric facilities unless areas for smoking are designated by the Board or other governing body. Such smoking areas may not be within 9 metres of an entrance or exit and must be identified by one or more signs (*General Regulations*, s. 12).
- **NB** has, since Dec. 16, 2016, prohibited smoking on the grounds of a regional health authority, which includes hospitals (*SFPA*, s. 3(j.1)).
- **PEI** legislation bans smoking on hospital grounds but has an exemption for patients for one specified psychiatric hospital (Hillsborough Hospital, the only psychiatric hospital in the province), where an outdoor smoking area is permitted (*SFPA*, s. 8(4)).
- **BC**, effective Sept. 1, 2016, prohibits smoking on the grounds of health authority facilities (including hospitals) unless the relevant health authority has designated an area(s) for smoking.
- **QC**, effective Nov. 26, 2017, has the following legislative provision come into force: “Health and social services institutions must adopt a tobacco control policy geared to establishing a smoke-free environment and send it to the Minister. [...] The policy must take into account the policy directions communicated by the Minister. The executive director of an institution or the person holding the equivalent position must report to the board of directors, or the equivalent, every two years on the application of the policy. The institution must send the report to the Minister within 60 days of filing it with the board of directors or the equivalent.” (*TCA*, s. 5.1). Policy directions were published in 2016 by the health ministry, but the directions do not provide for a 100% smoke-free outdoor environment.⁴⁵
- Some provinces may have an administrative policy (not legislation) that prohibits smoking on all hospital grounds.
- Many individual hospitals across the country have banned smoking on hospital grounds on a voluntary basis in the absence of legislation.

Psychiatric facilities

- **ON** – The provisions regarding smoke-free grounds for psychiatric facilities is described above under hospital grounds. The grounds of psychiatric facilities will be smoke-free as of Jan. 1, 2018.
- **NB** – The grounds of psychiatric facilities have been smoke-free since Dec. 16, 2016, when smoking was prohibited on the grounds of a regional health authority (*SFPA*, s. 3(j.1)).
- **BC and QC** – the legislation regarding hospital grounds has the same application to the grounds of psychiatric facilities.
- **PEI** – as noted, the one psychiatric facility in the province is exempt from the requirement that hospital grounds be 100% smoke-free.

⁴⁵ Ministère de la Santé et de Services sociaux, « Orientations ministérielles: Politique de lutte contre le tabagisme dans les établissements de santé et de services sociaux » 2016.

<http://publications.msss.gouv.qc.ca/msss/fichiers/2015/15-006-11W.pdf>

Elementary/secondary school grounds

- **BC, SK and YT** have legislation prohibiting all tobacco use on school grounds, not just smoking.
- **NB** has legislation banning smoking on school grounds (*SFPA*, s. 3(j)), and has an administrative policy prohibiting all tobacco use on school grounds.⁴⁶
- **NL** – all school boards/districts have banned smoking on school grounds through administrative policy.
- **MB** – In 2008, the Manitoba Government announced that all schools and school divisions in the province had adopted policies requiring elementary and secondary school grounds to be 100% smoke-free.⁴⁷
- **AB** has legislation prohibiting all tobacco use by minors under age 18 on school grounds (as well as most other public places). However, some high school students may be 18 (or older), and most staff are older than 18.
- **NS** has legislation prohibiting tobacco possession by anyone under age 19.
- **QC** – the provision does not apply to the grounds of CÉGEPs (Collège d'enseignement général et professionnel, or General and Vocational College). But CÉGEPs, effective Nov. 26, 2017, must adopt a policy that applies to colleges/universities (see later section). Policy directions were published in 2016 by the health ministry, but the directions do not provide for a 100% smoke-free outdoor environment.⁴⁸
- **NU** – no person shall smoke within a 15m radius of an entrance or exit to a school (*TCA*, s. 14(3)).

Entrances/exits/windows/air intakes

Here are rankings for smoke-free entrances in terms of distance from workplace and public place building entrances (in most cases this also applies to exits and air intakes, as indicated in the Table):

9m	Quebec
9m	New Brunswick
6m	British Columbia
5m	Alberta
5m	Yukon
4.5m	PEI
4m	Nova Scotia
3m	Saskatchewan
3m	Northwest Territories
3m	Nunavut

⁴⁶ New Brunswick Department of Education and Early Childhood Development, “Tobacco-Free Schools” Policy 702, March 9, 1998, last revised June 2015.

<http://www2.gnb.ca/content/dam/gnb/Departments/ed/pdf/K12/policies-politiques/e/702A.pdf>

⁴⁷ Manitoba Government, “Manitoba Schools Smoke Free: Bjornson” Sept. 10, 2008 (news release).

<http://news.gov.mb.ca/news/?item=4395&posted=2008-09-10>

⁴⁸ Ministère de la Santé et de Services sociaux, « Orientations ministérielles: Politique de lutte contre le tabagisme dans les établissements d’enseignement collégial ou universitaire » 2016.

<http://publications.msss.gouv.qc.ca/msss/fichiers/2016/16-006-14W.pdf>

The CÉGEP Garneau in Quebec City and the CÉGEP Édouard-Montpetit in Longueuil went 100% smoke-free outdoors for the 2017-18 school year. Other CÉGEPs may have done so.

For one article, see Daphnée Dion-Viens, “Le cégep Garneau 100 % sans fumée” *Journal de Québec*, Aug. 16, 2017.

<http://www.journaldequebec.com/2017/08/16/le-cegep-garneau-100-sans-fumee>

0m	Manitoba
0m	Ontario
0m	Newfoundland and Labrador
0m	Federal

- **ON** prohibits smoking within 9 m of an entrance or exit to a hospital, psychiatric facility or nursing home, as well as 64 listed provincial government buildings, but not other buildings (*General Regulations*, s. 12).
- **PEI** prohibits smoking within 4.5 metres of entrances and air intakes. It is presumed that air intakes include open windows (*General Regulations*, s. 2, under *SFPA*).
- **NWT, NU** – smoking is banned within a 3 metre radius of any entrance to or exit from an enclosed worksite, if the area is owned or controlled by the employer. However, smoking may occur in a designated smoking structure within the 3 metre radius if smoke from the structure does not come into contact with workers entering or leaving the enclosed work site (*NWT Occupational Health and Safety Regulations*, s. 81; *Nunavut Occupational Health and Safety Regulations*, s. 81; see also *Nunavut TCA*, ss. 13(1)(2), 14(1)(2)).

Sports fields/areas

- **NB**: “‘sports area’ includes, but is not limited to, beaches, sports fields, sports courts, skateboard parks, skating rinks, swimming pools and spectator stands, but does not include golf courses”. Smoking is prohibited within 20m of the perimeter of a sports area (*SFPA*, s. 1(1), 3(k)).
- **QC** prohibits smoking “on sports fields and playgrounds, including areas reserved for spectators, that are used by minors and open to the public” and within 9m of such areas (*TCA*, s. 2.1, 2.1(7)). Quebec also prohibits smoking “at skating rinks and outdoor pools that are used by minors and open to the public” but the 9m radius does not apply to these areas (*TCA*, s. 2.1, 2.1(8)).
- **ON** prohibits smoking in sporting areas, spectator areas adjacent to sporting areas, and within 20 m of such sporting areas and spectator areas. “Sporting areas” must meet the following criteria: “1. The area is owned by the Province or a municipality, by an agent of the Province or a municipality, or by a post-secondary institution as defined in subsection 8 (2). 2. The public is ordinarily invited or permitted access to the area, either expressly or by implication, whether or not a fee is charged for entry. 3. The area is used primarily for the purposes of sports such as, but without being limited to the following, but not including golf, whether or not a fee is paid for the use: i. soccer, ii. football, iii. basketball, iv. tennis, v. baseball, softball or cricket, vi. skating, vii. beach volleyball, viii. running, ix. swimming, or x. skateboarding.” (*General Regulations*, s. 13.2)

Provincial parks

- **NB** prohibits smoking in provincial parks, except for an “(a) occupied campsite, (b) a golf course, or (c) designated as a smoking area by the Minister as defined in the *Parks Act*” (*SFPA*, ss. 3, 5.2).
- **MB**, effective summer 2014, prohibits smoking at “a beach or playground or in any other area of a provincial park where signs indicate that smoking is prohibited”.⁴⁹

⁴⁹ *Park Activities Regulation*, Man Reg 141/96, s. 14.1 (under *The Provincial Parks Act*, CCSM c. P20). Government of Manitoba, “Manitoba Provincial Parks First in Canada to Have Smoke-Free Public Beaches, Children’s Playgrounds” March 7, 2013.

Beaches

- **NB** prohibits smoking on beaches, and within 20 m of a beach (*SFPA*, ss. 1(1), 3(k)).
- **MB** prohibits smoking at public beaches within provincial parks, effective summer 2014.⁵⁰

Bus shelters

- **BC** – smoking prohibited in a structure that is “substantially or fully enclosed” which is defined as having a roof or other covering and “more than 50% of the nominal wall space is enclosed by any material that does not permit air to flow easily through it” with “nominal wall space” defined as “the area determined by calculating the length, in metres, of the perimeter of the building, structure, vehicle or place, and multiplying it by 2.7 metres” (see *TVPA*, s. 2.3(1)(a), *TVPR*, ss. 4.2(3)(4)).
- **PEI** – if a bus shelter could be considered an outdoor public place, the proprietor (presumably a municipality) could designate a smoking area in the bus shelter (*SFPR*, s. 2), but there is no indication that any municipality has done so; if a bus shelter could be considered an enclosed (and not outdoor) public place, then a smoking area could not be designated.

Universities/colleges

- **QC**: Effective Nov. 26, 2017, college and university-level institutions “must adopt a tobacco control policy geared to establishing a smoke-free environment and send it to the Minister. [...] The policy must take into account the policy directions communicated by the Minister. The executive director of an institution or the person holding the equivalent position must report to the board of directors, or the equivalent, every two years on the application of the policy. The institution must send the report to the Minister within 60 days of filing it with the board of directors or the equivalent.” (*TCA*, s. 5.1). Policy directions were published in 2016, but the directions did not provide for a 100% smoke-free outdoor environment.⁵¹
- As of October 29, 2015, the following universities and colleges are known to have 100% smoke-free campuses:⁵²

1. Acadia University (Wolfville, N.S.)
2. Dalhousie University (Halifax, N.S.)
3. Saint Mary’s University (Halifax, N.S.)
4. University of King’s College (Halifax, N.S.)
5. Memorial University of Newfoundland (with several campuses in Nfld & Lab.)
6. College of the North Atlantic (17 locations across Newfoundland and Labrador)
7. Holland College (13 locations across P.E.I.)
8. University of Prince Edward Island (Charlottetown, P.E.I.)
9. New Brunswick Community College, Edmunston Campus (Edmunston, N.B.)
10. McMaster University (Hamilton, Ontario)
11. University of Winnipeg (Winnipeg, Manitoba)
12. Trinity Western University (Langley, B.C.)

⁵⁰ *Park Activities Regulation*, Man Reg 141/96, s. 14.1 (under *The Provincial Parks Act*, CCSM c. P20).

⁵¹ Ministère de la Santé et de Services sociaux, « Orientations ministérielles: Politique de lutte contre le tabagisme dans les établissements d’enseignement collégial ou universitaire » 2016.

<http://publications.msss.gouv.qc.ca/msss/fichiers/2016/16-006-14W.pdf>

⁵² Canadian Cancer Society, “Universities/Colleges with 100% Smoke-free Campuses” Oct. 24, 2017; University of Prince Edward Island, “Students, staff, and faculty can breathe easily now” Aug. 10, 2017 (news release).

<http://www.upei.ca/communications/news/2017/08/students-staff-and-faculty-can-breathe-easily-now>

13. Emily Carr College of Art + Design (Vancouver, B.C.)
14. Northern Alberta Institute of Technology (Edmonton and St. Albert, Alberta)
15. Yukon College (Whitehorse, Yukon)⁵³

In the U.S., as of Oct. 2, 2017, there are at least 2,064 university and college campus sites that are 100% smoke-free, with 1,736 that are tobacco-free, 1,649 that also prohibit e-cigarette use, 845 that also prohibit all hookah use, and 209 that prohibit smoking/vaping cannabis.⁵⁴

Government office building grounds

- **ON:** Regulations list 64 government office buildings in Ontario for which smoking is prohibited on the grounds of the buildings (*General Regulations*, s. 12(1)(4), Schedule 3).
- Some municipalities prohibit smoking on all municipal property.

Outdoor stands, seating areas (other than for outdoor sport seating areas)

[See also above for sports/fields areas. The additional ON provision applies to non-sports entertainment venues.]

- **ON** – smoking is banned in the “reserved seating area of a sports arena or entertainment venue” (*SFOA*, s. 9(2)6).

Outdoor areas, workplaces/public places (generally)

- **PEI** – smoking is prohibited on outdoor areas of workplaces and public places, except in areas designated by the owner or employer. An outdoor area for smoking may not be designated within 4.5m of an entrance or air intake to the workplace or public place (*SFPA*, ss. 1(1), 1(p), 4(1), 6-8; *General Regulations*, s. 2, under *SFPA*).

Construction sites

- **PEI** – as part of the provisions regarding smoking in outdoor workplaces generally, smoking is prohibited on outdoor areas of construction sites (within definition of “workplaces”), except in areas designated by the owner or employer (*SFPA*, ss. 1(p), 4(1), 6-8; *SFPA*, *General Regulations*, s. 2, under *SFPA*).

Ferries

BC Ferries has adopted a 100% smoke-free policy for its ferries effective Jan. 1, 2018, including on outside decks.⁵⁵ Information regarding ferries operated by other provincial/territorial governments has not been compiled.

⁵³ Yukon legislation (*SFPA*, ss. 1, 4(3)) prohibits tobacco use on the grounds of a post-secondary educational institution. Yukon College indicates that it permits smoking in some outdoor areas, which is inconsistent with territorial legislation: Yukon College, “Campus Housing Standards and Handbook”

https://www.yukoncollege.yk.ca/sites/default/files/inline-files/Campus_Housing_Handbook_V2_2017.pdf

⁵⁴ Americans for Nonsmokers’ Rights, “Smoke-free and Tobacco-Free U.S. and Tribal Colleges and Universities” Oct. 2, 2017. <http://www.no-smoke.org/goingsmokefree.php?id=519#venues>

⁵⁵ BC Ferries, “BC Ferries Implements Smoke-Free Environment Beginning in January 2018 ” Aug. 22, 2017 (news release) <https://www.bcferries.com/bcferries/faces/attachments?id=1083212>

Childcare centre grounds

ON (*SFOA*, s. 9(2)4; **QC** (*TCA*, s. 2.1(4); **PEI** (*SFPA*, ss. 1(1)(i)(c), 4(1), 6-8); and **NL** (*SFEA*, s. 4(1)(e)), as part of tobacco control legislation, prohibit smoking on the grounds of childcare centres. Legislation in these four provinces is worded differently, and may not always apply to home-based childcare services. **NB** prohibits smoking “in an area of an outdoor public place on which playground equipment is situated, [...] or within 20 m of any point on the perimeter of the playground equipment” (*SFPA*, ss. 1(1) (“outdoor public place” definition), 3(k)). Other provinces/territories might do so in legislation specific to childcares, but such other statutes have not been reviewed.

Regulatory authority to prescribe outdoor places

Federal – regulatory authority to prescribe specific outdoor places to be smoke-free is included in Bill C-45, the *Cannabis Act*, which contains provisions to amend the federal *Non-smokers’ Health Act*. The regulatory authority would apply to smoking of either tobacco or cannabis. Bill C-45 is currently before Parliament.

Authority for municipal smoking bylaws

In **MB**⁵⁶ **ON**,⁵⁷ **NL**,⁵⁸ and **NU**,⁵⁹ provincial/territorial legislation specifically mentions authority to adopt smoking bylaws. This was also previously the case in **SK**⁶⁰ and **NWT**,⁶¹ but these provisions have since been repealed leaving the more general bylaw provisions available to authorize smoking bylaws. For example, here is an excerpt from the Saskatchewan *Municipalities Act*:⁶²

- 8(1) A municipality has a general power to pass any bylaws for the purposes of the municipality that it considers expedient in relation to the following matters respecting the municipality:
- (a) the peace, order and good government of the municipality;
 - (b) the safety, health and welfare of people and the protection of people and property;
 - (c) people, activities and things in, on or near a public place or place that is open to the public;
 - (d) nuisances, including property, activities or things that affect the amenity of a neighbourhood;

As another example, here is an excerpt from the Alberta *Municipal Government Act*.⁶³

⁵⁶ *Non-Smokers Health Protection Act*, SM 1989-90, c. 41, CCSM c. S125, s. 6(1).

⁵⁷ *Municipal Act, 2001*, SO 2001, c. 25, s. 115. See also *City of Toronto Act*, 2006, SO 2006, c. 11, Sch. A, s. 98.

⁵⁸ *Smoke-free Environment Act*, SNL 2005, c. S-16.2, s. 12.

⁵⁹ *Cities, Towns and Villages Act*, RSNWT (Nu) 1988, c. C-8, ss. 54.6, 102(e); s. 54.6 enacted by *Tobacco Control Act*, SNU 2003, c. 13, s. 25; *Hamlets Act* RSNWT (Nu) 1988, c. H-1, s. 54.6, enacted by *Tobacco Control Act*, SNU 2003, c. 13, s. 26.

⁶⁰ *The Urban Municipality Act, 1984*, SS 1983-84, c. U-11, s. 142, repealed by *The Municipalities Act*, SS 2005, c. M-36.1, s. 408; *The Rural Municipality Act, 1989*, SS 1989-90, c. R-26.1, s. 215.1, repealed by *The Municipalities Act*, SS 2005, c. M-36.1, s. 407; *The Northern Municipalities Act*, SS 1983, c. N-5.1, s. 108.1, repealed by *The Northern Municipalities Act, 2010*, SS 2010, c N-5.2.

⁶¹ *Cities, Towns and Villages Act*, RSNWT 1988, c. C-8, s.102(e); *Hamlets Act*, RSNWT 1988, c. H-1, s. 102(e).

⁶² *The Municipalities Act*, SS 2005, c. M-36.1, s. 8(1).

⁶³ *Municipal Government Act*, RSA 2000, c. M-26, s. 7.

7. A council may pass bylaws for municipal purposes respecting the following matters:
- (a) the safety, health and welfare of people and the protection of people and property;
 - (b) people, activities and things in, on or near a public place or place that is open to the public;
 - (c) nuisances, including unsightly property;

In NB, comprehensive new municipal legislation was adopted in 2017.⁶⁴ Here is an excerpt:

10(1) Subject to this Act, without limiting the generality of section 6, a local government may make by-laws for municipal purposes respecting

- (a) the safety, health and welfare of people and the protection of people and property;
- (b) people, activities and things in, on or near a public place or place that is open to the public;
- (c) nuisances, including noise, pollution and waste in or on public or private property;
- (d) dangerous or unsightly premises and property;

• **QC** – the Health Minister stated in 2005 that authority for municipal bylaws under the provincial *Tobacco Act*⁶⁵ was not necessary because municipal legislation (with general provisions) would provide authority.⁶⁶

Toronto's bylaw banning all water pipe smoking (including herbal non-tobacco water pipe smoking) in restaurants, bars, cafes, and many other public places was upheld in 2017 by the Ontario Court of Appeal as being within municipal bylaw authority.⁶⁷

The Non-Smokers' Rights Association maintains a database of smoke-free laws in Canada, including municipal bylaws.⁶⁸ The Canadian Partnership Against Cancer maintains a Prevention Policies Directory that includes many municipal bylaws.⁶⁹

Many municipal bylaws have gone further than the requirements of provincial legislation, and have often preceded similar measures being adopted at a provincial level. For example, Capital Regional District (which includes Victoria, BC) was the first municipality in Canada to ban smoking in

⁶⁴ *Local Governance Act*, SNB 2017, c. 18, awaiting proclamation.

⁶⁵ Now the *Tobacco Control Act*.

⁶⁶ *Municipal Powers Act*, SQ 2005, c. 6, ss. 4(6), 59 (nuisances; other sections may also be relevant). In 2005, during deliberations of the Social Affairs Committee of the National Assembly on Bill 112, *An Act to amend the Tobacco Act and other legislative provisions*, the Minister of Health and Social Services testified that another bill currently before the National Assembly contained authority for municipalities to adopt smoking bylaws. That other bill was Bill 62, the *Municipal Powers Act* [now CQLR c. C-47.1].

⁶⁷ *232169 Ontario Inc. (Farouz Sheesha Café) v. Toronto (City)*, 2017 ONCA 484 (Ontario Court of Appeal, June 13, 2017), affirming 2016 ONSC 6221 (Ontario Superior Court, Oct. 7, 2016).

⁶⁸ Non-Smokers' Rights Association, "Smoke-Free Laws Database" <http://database.nonsmokersrights.ca/>

⁶⁹ See also the Canadian Partnership Against Cancer Prevention Policies Directory <http://www.cancerview.ca/preventionandscreening/preventionpoliciesdirectory/>

restaurants and bars, effective Jan. 1, 1999. Vancouver had been the first municipality to ban smoking in restaurants, effective in 1996.

Retail Location Restrictions

Tobacco-only stores

No province/territory has a retail system whereby tobacco products may only be sold from stores that just sell tobacco products (and tobacco-related products), the way some provinces currently do for alcoholic beverages.

Declining cap for total number of retailers

In Canada, no province/territory or municipality has established a declining cap for the number of tobacco retailers.

San Francisco, Philadelphia, and New York City all have a declining cap for the number of tobacco retailer licences that will be issued.

In San Francisco, there are 11 supervisorial districts. Pursuant to an ordinance adopted Dec. 19, 2014, no new tobacco retailer licences will be issued unless the number of tobacco retailers is below the cap of 45 tobacco retailers per district. New licences will not be issued if certain factors exist, such as being within 500 feet of school grounds, being within 500 feet of another tobacco retailer, or being a restaurant or bar.⁷⁰

In Philadelphia, a regulation approved by the Board of Health in December 2016 established a cap on the number of tobacco retailers. “There [are] 18 planning districts in the city and the cap is 1 tobacco retailer per 1,000 residents. If the district is at or above the cap no permits will be approved. If the district is below the cap permits can be approved based on the number of available slots.” The range of number of retailers per 1000 residents for the 18 planning districts is (2017): 5 districts are less than 1.0 retailers per 1000 residents, 5 are between 1.0 and 2.0, 4 are between 2.0 and 3.0, and 3 are above 3.0 (the highest is 3.27).⁷¹

⁷⁰ City and County of San Francisco Department of Health, “Rules and Regulations for the Retail Tobacco Permit Program Article 19H of the San Francisco Health Code” August 12, 2015.

<http://2gahjr48mok145j3z438sknv.wpengine.netdna-cdn.com/wp-content/uploads/Rules-and-Regs-Final.pdf>

City and County of San Francisco, “Ordinance amending the Health Code by adding density, proximity, and sales establishment limitations on the granting of new tobacco sales permits, and renumbering all sections in Article 19H; amending the Business and Tax Regulations Code by increasing the annual license and application fees; and making environmental findings” Ordinance 259-14, signed by Mayor Dec. 19, 2014.

<http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0259-14.pdf>

⁷¹ Philadelphia Department of Health, “Tobacco Retailer Permit Frequently Asked Questions” 2017

<http://www.phila.gov/health/pdfs/environment/Tobacco%20Retailer%20Permit%20Frequently%20Asked%20Questions%201%20Page%202017.pdf>

Philadelphia Board of Health, “Regulation Relating to Tobacco Retailing” Approved December 8, 2016.

<http://www.phila.gov/health/pdfs/TobaccoRetailingRegulation.pdf>

More information from the Philadelphia Department of Public Health:

<http://www.phila.gov/health/environment/retailerPermits.html>

Philadelphia Department of Health “Tobacco Retailers Per 1,000 Daytime Population by Planning District” 2017 (map)

In New York City, there are 59 community districts. The cap is 50% of the number of tobacco retailers in each district as of Feb. 24, 2018, 180 days after adoption of the law. No new licences will be issued until the number of tobacco retailers is below the cap. The local law was adopted August 28, 2017.⁷²

Retail licences

Eleven of 13 provinces/territories (AB, SK excepted) require a tobacco retailer licence. Only two provinces so far (NB, NS) require a licence fee, with the annual fee \$50 in NB and \$42 in NS. (In NB, the annual fee is \$100 for a first application and \$50 for a renewal, while in NS the fee is \$124.60 for three years.)

Ontario will require a licence for all tobacco retailers effective July 1, 2018. Ontario currently requires tobacco retailers to have a provincial tobacco retailer's licence (with no fee), but has a grandfather exemption for tobacco retailers that had a vendor's permit under the *Retail Sales Tax Act* as of June 30, 2010; on-reserve stores that have an Ontario Government authorization to sell tobacco are deemed to have a permit.)

On March 19, 2015, the Québec Taxation Review Committee recommended that Quebec implement a tobacco retailer licensing requirement with an annual fee of \$250.⁷³

Many municipalities in AB and ON require tobacco retail licences. (It may be that there are provinces/territories other than ON and AB that have authority for municipal licensing of tobacco retailers.) Here is a summary of municipal annual tobacco retailer licence fee requirements from Ontario and Alberta as of May 2017 (see also Appendix 5).⁷⁴ Some municipalities have a higher fee for the initial application by a store, and a lower ongoing annual fee. The fees below are the ongoing annual fees.

<http://www.phila.gov/health/images/Retailers%20per%20capita%20daytime%2061317.jpg>

⁷² New York City, "Mayor de Blasio Signs Sweeping Legislation to Curb Smoking, Tobacco Usage," August 28, 2017 (news release).

<http://www1.nyc.gov/office-of-the-mayor/news/565-17/mayor-de-blasio-signs-sweeping-legislation-curb-smoking-tobacco-usage/#/0>

New York City, "A Local Law to amend the administrative code of the city of New York, in relation to expanding the retail dealer license to include retailers of tobacco products and setting caps on retail dealer licenses, and to repeal subdivision c of section 17-702, relating to the definition of cigarette license" signed by Mayor August 28, 2017.

<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3013585&GUID=03576064-7911-4E42-B06D-2741F2336E1A&Options=ID|Text|&Search=tobacco>

For a map of New York City's 59 community districts, see:

http://www.fcny.org/cmnp/streets/pages/nyc_cdmap4.htm

⁷³ Québec Taxation Review Committee, "Focusing on Québec's future, Final report of the Québec Taxation Review Committee", vol. 2, "A Reform of All Methods of Taxation" March 2015, p.135.

<http://collections.banq.qc.ca/ark:/52327/bs2465615>

⁷⁴ Canadian Cancer Society, "Municipal and Provincial Tobacco Retailer Licence Fee Summary", May 2017.

Ontario

Ottawa	\$877
Hamilton	\$698 ⁷⁵
Markham	\$375
Richmond Hill	\$297
Kingston	\$267
Brampton	\$221
Mississauga	\$216
Vaughan	\$212
Windsor	\$191
Greater Sudbury	\$150
Burlington	\$145 ⁷⁶
Chatham-Kent	\$145
North Bay	\$50
Cornwall	\$40

Alberta

Lloydminster, AB/SK	\$1100 (if flavoured tobacco sold)
Lloydminster, AB/SK	\$750 (if flavoured tobacco not sold)
St. Albert	\$714
Edmonton	\$469
Hinton	\$160
Calgary	\$141

Provinces

New Brunswick	\$50
Nova Scotia	\$42

Lloydminster is a city that straddles the Alberta/Saskatchewan border, with part of the city in each of the two provinces. In 2016, Lloydminster adopted a tobacco retailer licence fee of \$750 per year,

⁷⁵ The Hamilton fee is broken down into several components: a \$418 tobacco licensing fee (no HST applicable), a \$64.40 processing fee (plus \$8.40 HST), and a \$183.19 health inspection fee (plus \$23.81 HST), for a total of \$697.80 per year per retailer on an ongoing basis. Tobacco retailers that also sell e-cigarettes would have to pay an additional \$60.00 (plus \$7.80 HST) e-cigarette health inspection fee, making an overall total of \$765.60. Retailers that sell e-cigarettes but not tobacco would have a total fee of \$558.60 comprised of a \$418 e-cigarette licensing fee (no HST applicable), \$64.40 processing fee (plus \$8.40 HST), and an e-cigarette health inspection fee of \$60.00 (plus \$7.80 HST).

First time applicants would have to pay an additional one-time amount of \$232 (no HST) for zoning verification.

See City of Hamilton, "Business Reference License Guide" May 2017, Schedule 27.

<https://d3fpllf1m7bbt3.cloudfront.net/sites/default/files/media/browser/2016-02-01/business-license-reference-guide-may2017.pdf>

⁷⁶ In Burlington, the fee is \$180 for a tobacco retailer that does not sell foodstuffs, \$180 for a retailer that sells foodstuffs but not tobacco, and \$325 for a retailer that sells both tobacco and foodstuffs. Most tobacco retailers also sell foodstuffs. Thus the incremental cost for a retailer selling foodstuffs to also sell tobacco is \$145.

<https://www.burlington.ca/en/services-for-you/Business-Licence.asp>

and an additional \$350 if the store sells flavoured tobacco, for a potential annual fee of \$1100 per store per year.⁷⁷

Municipal licences are required for e-cigarette retailers in Lloydminster (\$750 fee) and Hamilton (\$559 fee if the store does not sell tobacco products, and \$68 incremental fee if the store also sells tobacco products).

In **BC, MB, ON, NB, NS, PEI, YT, NWT, NU**, the tobacco retail licence is required pursuant to tobacco tax legislation. In **NL**, a tobacco retail licence is required by non-tax tobacco control legislation. In **QC**, a tobacco retail licence (registration) is required by both tax and non-tax legislation. Here is a listing of the provincial/territorial legislation requiring tobacco retailer licences:

- BC:** *Tobacco Tax Act*, RSBC 1996, c. 452, ss. 5, 6.
- MB:** *The Tobacco Tax Act*, CCSM c. T80, s. 4.
- ON:** *Tobacco Tax Act*, RSO, c. T.10, s. 3.1.
- QC:** *Tobacco Control Act*, CQLR, c. L-6.2, s. 20.
- QC:** *Tobacco Tax Act*, CQLR c. I-2, s. 3.
- QC:** *An Act Respecting the Québec Sales Tax*, CQLR c T-0.1, Title I, ss. 407.2, 415.0.1.
- NB:** *Tobacco Tax Act*, RSNB 1973, c. T-7, s. 2.
- NB:** *General Regulation – Tobacco Tax Act*, NB Reg 84-250, s. 2 (annual fee).
- NS:** *Revenue Act*, SNS 1995-1996, c. 17, Part III, s. 37.
- NS:** *Revenue Act Regulations*, NS Reg 63/96, s. 3B (annual fee).
- PEI:** *Tobacco Tax Act*, RSPEI 1988, c. T-3.11, ss. 4, 14.
- NL:** *Tobacco and Vapour Products Control Act*, SNL 1993, c. T-4.1, s. 3.1.
- YT:** *Tobacco Tax Act*, RSY 2002, c. 219, s. 5.
- NWT:** *Tobacco Tax Act*, RSNWT 1988, c. T-5, s. 22.
- NU:** *Tobacco Tax Act*, RSNWT (Nu) 1988, c. T-5, s. 22.

In Quebec, under tobacco tax legislation, only one licence is required if a retailer has more than one store (*An Act Respecting the Québec Sales Tax*, s. 415.0.1).

Tobacco sales ban, universities and colleges

In 7 provinces/territories – **BC, AB, ON, QC, NS, PEI, NL** – tobacco sales at universities and colleges are prohibited. In **BC** and **AB**, the ban at universities/colleges applies to most institutions, but not to private institutions. In **NWT**, there is only one college in the territory (Aurora College) which on a voluntary basis does not sell tobacco products.

Restaurants, bars and licensed premises

- **NS** prohibits tobacco sales in “a restaurant, lounge or beverage room, as defined in the *Smoke-free Places Regulations*, or any other place licensed to serve alcoholic beverages” (*TAA*, s. 2A(j)).
- **QC** prohibits tobacco sales “(6) in an establishment operating under a public house, tavern or bar permit within the meaning of the Act respecting liquor permits (chapter P-9.1), other than a cigar

⁷⁷ City of Lloydminster, “Business Licence Bylaw”, Bylaw 16-2016
<http://www.lloydminster.ca/DocumentCenter/View/11492>

room; (7) in premises where the main business carried on is that of restaurateur within the meaning of the *Food Products Act* (chapter P-29)” (*TCA*, s. 17). Note that there are other classes of liquor licences in QC, such as restaurant, club and grocery.

Some provinces allow some alcohol products to be sold in private stores for off-premise consumption, such as specialty wine stores or, in Ontario, The Beer Store. There may be legislation or administrative policies that prevent such stores from selling anything other than the alcohol products and related products. AB allows liquor to be sold in private retail stores. S. 49 of the *Alberta Gaming and Liquor Regulation*⁷⁸ provides that “A licensee who holds a retail liquor store licence or a general off sales licence may not sell or provide from the licensed premises any non-liquor products except for liquor related products that are approved by the board.”

Athletic/recreational facilities

In NS, PEI, NL and NWT, the definition of recreational facilities focuses on facilities where athletic/physical recreation activities take place. In BC and QC, the meaning for recreational facilities is broader to all categories of recreational facilities. In BC, however, the sales ban at athletic/recreational facilities only applies to those owned or leased by a public body. NS regulations include a sales ban at community centres.

Casinos/gambling facilities/bingo halls

- **QC** – the *TCA* prohibits tobacco sales “within premises where sports, recreational, cultural or artistic activities are presented, at the time they are presented” and “within premises or buildings intended mainly for the presentation of sports, recreational, cultural or artistic activities or intended mainly as a place where members of the public may engage or take part in such activities” (*TCA*, ss. 17(4) and (5)). These provisions, especially those referring to recreational activities, should apply to ban tobacco sales in casinos and other gambling facilities, such as bingo halls.

Temporary facilities

- **NL** – “temporary facility” defined as “premises established in conjunction with fairs, circuses, concerts, festivals, civic events or another event lasting not longer than 7 consecutive days” (*TVPCA*, s. 4.1(2)(b)).

Non-enclosed locations

- **QC** – tobacco may only be sold in a retail outlet that “is a fixed place permanently delimited by continuous floor-to-ceiling partitions or walls that is accessible only through an opening equipped with a door and in which tobacco is sold retail by the operator of the place” (*TCA*, s. 14.1 (1)).

Pharmacies

All provinces/territories except BC have adopted legislation to prohibit tobacco sales in pharmacies. Here are the implementation dates:

1. Ontario (Dec. 31, 1994)
2. New Brunswick (July 1, 1997)
3. Quebec (June 19, 1998)

⁷⁸ *Gaming and Liquor Regulation*, Alta Reg 143/1996.

4. Nova Scotia (Jan. 1, 2000)
5. Nunavut (Feb. 1, 2004)
6. Newfoundland and Labrador (Jan. 1, 2005)
7. Prince Edward Island (Jan. 1, 2006)
8. Northwest Territories (Jan. 21, 2007)
9. Alberta (Jan. 1, 2009)
10. Yukon Territory (Feb. 19, 2011)
11. Saskatchewan (Apr. 1, 2011)
12. Manitoba (May 31, 2013)

In all these provinces/territories except Nunavut, legislation also prohibits tobacco sales in premises (e.g. grocery stores) that contain a pharmacy. A problem across Canada remains that in a minority of locations (including both pharmacies and grocery stores) have established a tobacco kiosk with a separate entrance near the front of the store.

In all provinces/territories that have banned tobacco sales in pharmacies (except Nunavut), there is also a ban on tobacco sales in a store if customers of the pharmacy can enter the retail store directly or by use of a corridor or area used exclusively to connect the pharmacy with the retail store. However, this has not prevented tobacco kiosks with a separate entrance from being created.

In 2004, the PEI Legislative Assembly Standing Committee on Social Development recommended a ban on tobacco sales in “establishments where goods or services are sold to the public, if . . . a pharmacy, or an establishment within which there is a pharmacy, is located adjacent to or within twenty metres of the establishment and the two premises are associated with each other by ownership, contract or otherwise”.⁷⁹

- **QC** – in addition to legislation, the ban on tobacco sales in pharmacies is considered professional misconduct for pharmacists.⁸⁰ Even if provincial legislation were to be repealed in QC, tobacco could still not be sold in pharmacies, whether from behind the counter or any other part of the establishment.
- **NL** – it was a decision of the pharmacists’ self-regulating authority that initially required that tobacco sales in pharmacies be banned.⁸¹ This was later confirmed by legislation.

Hospitals/health facilities

- **BC** exempts premises that are not owned or leased by a regional health board.
- **PEI** exempts hospitals/institutions for the mentally ill.

⁷⁹ Standing Committee on Social Development, PEI Legislative Assembly, “Second Report of the First Session Sixty-second General Assembly, Retail Sale of Tobacco Products”, April 20, 2004, p.2.

⁸⁰ *Durand c. Coutu*, plainte no. 30-95-01736, Committee on Discipline, Quebec Order of Pharmacists, October 10, 1996, affirmed *Ordre des pharmaciens du Québec v. Coutu* (June 19, 1998), DDOP 343, (Quebec Professions Tribunal), affirmed *Coutu v. Ordre des pharmaciens du Québec* (Sept. 3, 1998), [1998] RJQ 2824, Quebec Superior Court.

⁸¹ *Standards of Pharmacy Practice (Sale of Tobacco)*, June 19, 2000, adopted under the *Pharmaceutical Association Regulations*, 1998, Nfld Reg 80/98 [later named *Pharmacy Regulations*, Nfld Reg 80/98], adopted under the *Pharmaceutical Association Act*, 1994, SNL 1994, c. P-12.1 [later named *Pharmacy Act*, SNL 1994, c. P-12.1], rescinded June 16, 2006 by the Newfoundland and Labrador Pharmacy Board.

Nursing homes/residential care facilities

BC – this only applies to premises owned or leased by a regional health board.

Government buildings

ON – regulations list 64 government office buildings in Ontario at which tobacco sales are prohibited (*General Regulations*, s. 8(1.1), Schedule 3).

Elementary/secondary schools

QC – the ban applies to CÉGEPs in addition to elementary/secondary schools.

Within specified distance of schools

No province/territory prohibits tobacco sales within a specified distance of schools.

- San Francisco and Philadelphia, and perhaps other US municipalities, prohibit tobacco retailers within a certain distance of elementary and secondary schools, with a grandfather exception for existing tobacco retailers. San Francisco establishes a minimum distance of 500 feet (152.4 m) of school grounds (as measured by the nearest point of the respective property lines).⁸² Philadelphia establishes a minimum distance of 500 feet, as measured by the stormwater parcel line of the location for which the licence is sought, with the stormwater parcel line of the school.⁸³
- India prohibits tobacco sales within 100 yards (300 feet, or 91.4 metres) of any educational institution.⁸⁴

Vending machines

Bill S-5, currently before Parliament, contains a ban on vending machines. Existing federal legislation prohibits vending machines except in bars. MB, ON, QC, NS, PEI, NWT and NU ban vending machines. NB prohibits vending machines in retail stores (*TECSA*, s. 6.3). SK and NL have partial restrictions on vending machines. SK permits vending machines in places where the public has access provided that persons under age 18 are not permitted to enter, the vending machine is at least 5m from the innermost entrance, and the vending machine is located such that the proprietor or employee can monitor its use (*TCA*, s. 9, *TCR*, s. 4). NL permits vending machines in premises licensed under the *Liquor Control Act* that prohibit persons under 19 (*TVPCA*, s. 4). Note that SK, NS, NL, and NWT permit vending machines in places not accessible by the public (SK *TCA*, s. 9; NS *TAA*, s. 6; NL *TVPCA*, s. 4; NWT *TCA*, ss. 1, 4).

⁸² City and County of San Francisco, “Ordinance amending the Health Code by adding density, proximity, and sales establishment limitations on the granting of new tobacco sales permits, and renumbering all sections in Article 19H; amending the Business and Tax Regulations Code by increasing the annual license and application fees; and making environmental findings” Ordinance 259-14, s. 19H.4(f)(3), signed by Mayor Dec. 19, 2014.

<http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0259-14.pdf>

⁸³ Philadelphia Board of Health, “Regulation Relating to Tobacco Retailing” s. 2(b), approved December 8, 2016.

<http://www.phila.gov/health/pdfs/TobaccoRetailingRegulation.pdf>

⁸⁴ *Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act*, 2003, s. 6(b).

Advertising and Promotion

Advertising/promotion ban

Canada has strong restrictions but not a total ban on tobacco advertising and promotion. In 2007, the Supreme Court of Canada unanimously (9:0) upheld the advertising restrictions and the sponsorship ban in the federal *Tobacco Act* as constitutional.⁸⁵

Pursuant to the federal *Tobacco Act*, tobacco advertising is banned except in direct mail to an identified adult, and on signs in places where persons under 18 are prohibited by law (e.g. bars). Permitted advertising may be information advertising or brand-preference advertising that is not lifestyle, is not appealing to youth, is not misleading etc. (pursuant to s. 20), and is not a testimonial or endorsement (which includes depiction of a person, character or animal). At point of sale, product displays are allowed, as are price/availability signs as well as price lists/catalogues. As detailed below, the federal Act bans sponsorships, and restricts (but does not ban) brand-stretching (some use of tobacco brands/logos is allowed on non-tobacco goods, including on lighters and matches). Promotion within the tobacco trade (manufacturers to wholesalers or retailers) is exempt from the *Tobacco Act*, meaning tobacco manufacturer incentive/promotional payments to retailers (eg bonuses for achieving sales volume targets; chances to win vacations) are not banned, nor is tobacco advertising aimed at retailers, some of which is lifestyle.

Provincial/territorial restrictions may go further than federal restrictions.

- **BC** has complete regulatory authority over tobacco advertising and promotion to have a total ban or any level of partial restrictions, but no regulations are currently in place. Historically, in 1971, B.C. legislation contained an advertising ban,⁸⁶ legislation that was upheld in court as being constitutional.⁸⁷ Nevertheless, this ban was replaced in 1972 with partial restrictions – advertising was essentially banned except in publications and at point of sale (thus billboards for example were banned).⁸⁸ Permitted advertising was required to depict a health warning. These regulations were in force between 1972 and 1994.
- **NB** – has regulatory authority regarding signs (the regulatory authority is not limited to signs at retail): “prescribing the manner, place, form, size and content of signs to be displayed by persons who sell or offer for sale tobacco or electronic cigarettes, which regulations may vary for different classes of persons who sell or offer for sale tobacco or electronic cigarettes” (*TECSA*, s. 12(a)).
- **YT** – has regulatory authority for “governing or prohibiting tobacco advertising or tobacco promotions” (*SFPA*, s. 14(1)(g.1)).

⁸⁵ *Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 SCR 610.

⁸⁶ *Tobacco Advertising Restraint Act*, SBC 1971, c. 65, as repealed by *Tobacco Advertising Restraint Act Repeal Act*, SBC 1972 (Second Sess.), c. 12.

⁸⁷ *Benson & Hedges (Canada) Ltd. et al. v. Attorney-General of British Columbia* (1972), [1972] 5 WWR 32, 27 DLR (3d) 257 (B.C. Supreme Court).

⁸⁸ *Tobacco Products Act*, SBC 1972 (Second Sess.), c. 13 (later renamed *Tobacco Sales Act*, now *Tobacco and Vapour Products Control Act*); *Tobacco Products Regulation*, BC Reg 258/72, amended BC Reg 347/89, as repealed by BC Reg 216/94.

Provincial restrictions on location of advertising/promotion beyond retail

All provinces/territories restrict tobacco advertising/promotion at retail.

There are 7 provinces that have restrictions on the location of tobacco advertising/promotion beyond retail: AB, SK, MB, ON, QC, NS, PEI. These restrictions are as follows:

- **AB** – legislation provides that “No person shall advertise or promote tobacco products [...] in any manner if the advertisement or promotion is visible from outside a place in which tobacco products are sold or offered for sale.” (*TSRA*, s. 7.2(1)(b)); “advertise” and “promote” are defined as follows: “‘advertise’ means to use any commercial communication, through any media or other means, that is intended to have or is likely to have the effect of (i) creating an awareness of or association with a tobacco product, a brand of tobacco product or a manufacturer or seller of a tobacco product, or (ii) promoting the purchase or use of a tobacco product or a brand of tobacco product.” (*TSRA*, s. 1(a)). “‘promote’ means to use any commercial act or practice that is intended to encourage or is likely to encourage the purchase or use of a tobacco product or a brand of tobacco product or to create an awareness of or association with a tobacco product, a brand of tobacco product or a manufacturer or seller of a tobacco product” (*TSRA*, s. 1(e.2)).
- **SK** bans advertising or promotion of “tobacco or tobacco-related products on an outdoor sign of any type, including: (a) a billboard or portable sign; or (b) a sign on a bench, vehicle, building or other structure” (*TCA*, S6(5)).
- **MB** bans advertising or promotion of tobacco or a tobacco-related product “(b) in any place or premise to which children are permitted access; (c) on an outdoor sign of any type, including (i) a billboard or portable sign, or (ii) a sign on a bench, vehicle, building or other structure; or (d) inside a building or other structure or vehicle if the advertisement or promotion is visible from outside the building, structure or vehicle”.
- **ON** bans promotion at any “place of entertainment” defined to include “a place to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, and which is primarily devoted to eating, drinking or any form of amusement” (*SFOA*, s. 3.2). This definition would have to include bars and restaurants, but to date the provision has not been enforced in this way.
- **QC** tobacco advertising restrictions include the following:
 24. All direct or indirect advertising for the promotion of tobacco, a tobacco product, a brand of tobacco product or a manufacturer of tobacco products is prohibited where the advertising
 - (1) is directed at minors;
 - (2) is false or misleading, or is likely to create an erroneous impression about the characteristics, health effects or health hazards of tobacco;
 - (2.1) concerns a tobacco product whose sale or distribution is prohibited by section 29.2 [flavours];
 - (3) directly or indirectly associates the use of tobacco with a particular lifestyle;
 - (4) contains testimonials or endorsements;
 - (5) uses a slogan;
 - (6) contains a text that refers to real or fictional persons, characters or animals;

(7) contains anything apart from text, with the exception of an illustration of the package or packaging of a tobacco product occupying not more than 10% of the surface area of the advertising material;

(8) is disseminated otherwise than in printed newspapers and magazines that have an adult readership of not less than 85%;

(9) [...]

However, advertising that is intended to provide consumers with factual information about a tobacco product, including information about the price or the intrinsic characteristics of a tobacco product and about brands of tobacco products, is permitted to the extent that it does not constitute advertising or a form of advertising prohibited under the first paragraph.

Advertising disseminated in printed newspapers or magazines that have an adult readership of not less than 85% must include the warning attributed to the Minister and prescribed by regulation concerning the harmful effects of tobacco on health. The advertising must be forwarded to the Minister on being disseminated.

In **QC**, in printed newspapers or magazines, ads must comply with the following:

- Be rectangular, with a maximum area of 400cm² (about 8 X 8 inches)
- Not be on the first, second or last page of the newspaper/magazine
- Be printed on paper of the same size and quality as usually used in the newspaper/magazine
- The advertising space may contain no advertising other than tobacco advertising
- If several ads appear in the same newspaper/magazine, the ads must be grouped to appear on 1 or, if need be, 2 or more successive pages
- Be bordered by a line that is not less than 0.5 and not more than 1.5 points wide
- Have dimensions sufficient to contain the health warning, with the warning to be placed in the upper left corner of the ad adjacent to the upper and left borders (*RUTCA*, s. 4; *Regulation respecting the warning attributed to the Minister of Health and Social Services concerning the harmful effects of tobacco on health*).

• **NB** – has regulatory authority regarding signs (the regulatory authority is not limited to signs at retail): “prescribing the manner, place, form, size and content of signs to be displayed by persons who sell or offer for sale tobacco or electronic cigarettes, which regulations may vary for different classes of persons who sell or offer for sale tobacco or electronic cigarettes” (*TECSA*, s. 12(a)).

• **NS** – provides that “No person shall display or permit the display of any sign or material promoting or advertising the sale of or otherwise respecting tobacco or tobacco products except as prescribed by regulations.” (*TAA*, s. 9(2)). There is nothing prescribed in the regulations except with respect to retail, and except a magazine or other publication containing tobacco advertising that meets the requirements of the federal *TA* and that is not displayed in such a way at retail that the advertisement is visible to the public (*TAR*, s. 3C).

• **PEI** has a provision as follows:

“No person shall advertise or promote, or permit the advertisement or promotion of, the sale or use of tobacco

(a) [...]

(b) in a place or premises to which persons under the age of 19 years are permitted access;

(c) in a vehicle, building or other structure if the advertisement or promotion is visible from outside the vehicle, building or other structure; or

(d) on any sign located outdoors, including (i) a billboard, (ii) a portable sign, and (iii) a sign on a bench, vehicle, building or other structure.” (*TESDSAA*, s. 5.2(1))

Sponsorships

- **Federal** – sponsorships banned as of October 1, 2003
- **QC** – sponsorships banned as of October 1, 2003
- Many provinces/territories restrict the location of tobacco/advertising promotion (as described above) which may restrict the location of sponsorship promotions.

Brand-stretching

- **Federal** – there are significant restrictions on brand-stretching, but not a ban.
- **QC** – all tobacco brands/logos on non-tobacco goods banned, including on lighters/matches.
- Many provinces/territories restrict the location of tobacco/advertising promotion (as described above) which may restrict the location of brand-stretching sales, display and promotion.
- All provinces/territories except Ontario prohibit the display of branded non-tobacco goods (eg lighters, matches) in tobacco retailers. However, depending on the province/territory, such branded non-tobacco goods may be displayed in tobacco retailers where minors are not permitted access, in stores that do not sell tobacco, or in tobacconists/duty-free stores.

Ban on manufacturer incentives/promotional payments to retailers

- **QC** – Quebec is the only province/territory with a direct provision substantially banning manufacturer incentives/promotional payments to retailers, effective Nov. 26, 2016 (eg bonuses for retailers if sales volume targets are achieved, or chances for retailers (or retail employees) to win vacations/entertainment tickets). The QC provision reads: “A manufacturer or distributor of tobacco products is prohibited from offering rebates, gratuities or any other form of benefit related to the sale or the retail price of a tobacco product to operators of tobacco retail outlets, including their employees” (*TCA*, s. 21.1). There is the potential to improve the wording of this QC legislative provision.
- In some other provinces, legislative provisions on advertising/promotion applying to tobacco retailers may curtail manufacturer incentives/promotional payments to retailers, but further review has not been completed; moreover, no province/territory beyond Quebec has taken enforcement action with its legislation in this regard. Potentially applicable provincial/territorial legislative provisions are as follows:
 - **AB** provides that “No person shall advertise or promote tobacco products (a) in any place where tobacco products are sold or offered for sale” (*TSRA*, s. 7.2(1)(a); see also definitions of “advertise” and “promote” in ss. 1(a), 1(e.2)).
 - **SK** provides that “no person shall advertise or promote tobacco or tobacco-related products in any place or premises in which tobacco or tobacco-related products are sold if young persons are permitted access to the place or premises” (*TCA*, s. 6(1)).
 - **MB** provides that “No person shall advertise or promote tobacco or a tobacco-related product (a) in any place or premises in which tobacco or tobacco-related products are sold” with an exemption for tobacconists (tobacconists must have 50% of floor space devoted to sale of tobacco or tobacco-related products and be specifically identified by regulation (the regulations identify 2 tobacconists

in the province by name and street address) (*NSHPVPA*, ss. 7.1, 7.3(1)(a); *NSHPVPR*, s. 10.1, Sch. B).

- **ON** provides that

“(3) No person shall, in or at any place where tobacco products are sold or offered for sale, promote the sale of tobacco products through product association, product enhancement or any type of promotional material, including, but not limited to, (a) decorative panels and backdrops associated with particular brands of tobacco products; (b) backlit or illuminated panels; (c) promotional lighting; (d) three-dimensional exhibits; or (e) any other device, instrument or enhancement.

(3.1) No person shall sell or offer to sell at retail any tobacco product together with a promotional item that is included with the sale of the tobacco product for nil or nominal additional consideration, or for additional consideration that does not exceed the production cost of the promotional item.

“promotional item” means, (a) an item that is reasonably associated with, or that evokes, a tobacco product of any kind, or a brand of tobacco product, due to the item’s intended use or purpose or through the use of a brand name, trade-mark, trade name, distinguishing guise, logo, graphic arrangement, design or slogan that appears on the item, or (b) another tobacco product; “tobacco product” includes the package in which tobacco is sold.” (*SFOA*, s. 3.1(3), 3.1(3.1)).

- **NB** provides that “No person shall advertise or promote the sale or use of tobacco, smoking supplies or electronic cigarettes in any place or premises in which these products are sold or offered for sale at retail” (*TECSA*, s. 6.5(1)).

- **PEI** provides that “No person shall advertise or promote, or permit the advertisement or promotion of, the sale or use of tobacco (a) in a place or premises where tobacco is sold or offered for sale at retail” (*TESDSAA*, s. 5.2(1)(a)).

- **NL** provides that “A person shall not advertise or promote the sale or use of tobacco, vapour products or non-tobacco shisha in a place or premises in which tobacco, vapour products or non-tobacco shisha are sold or offered for sale on the exterior of the place or premises or anywhere within the boundaries of the place or premises” (*TVPCA*, s. 4.3).

- **NWT** provides that “no person shall advertise or promote tobacco or a tobacco accessory in any place or premises in which tobacco or tobacco accessories are sold, if young persons have access to the place or premises” (*TCA*, s. 5(1)).

- **NU** provides that “no person shall advertise or promote the use of tobacco or tobacco products at a retail premises unless the advertisement or display meets such requirements as may be prescribed” (*TCA*, s. 8); regulations permit advertisements inside the retail premises but not visible from outside; and permit displays provided they are not counter top, are covered by a non-transparent panel, are not visible from outside and meet some signage requirements. The regulations do not permit any other type of promotion at retail. (*TCR* s. 3(1))

- For **BC, NS and YT**, there do not appear to be existing provisions potentially applicable to restricting manufacturer incentives/promotional payments to retailers (though there is regulatory authority in BC and YT).

Ban on incentive promotions to consumers

- **Federal** – Manufacturers/retailers prohibited from offering or providing “any consideration, direct or indirect, for the purchase of a tobacco product, including a gift to a purchaser or a third party,

bonus, premium, cash rebate or right to participate in a game, lottery or contest” (*Tobacco Act*, s. 29(a), with wording quoted based on pending amendments by Bill S-5).

- **Que** – businesses and manufacturers banned from offering “consumers a gift or rebate or a right to participate in a lottery, contest or game or any other form of benefit if consumers must, in return, provide information on tobacco or their tobacco consumption, purchase a tobacco product or present proof of purchase of a tobacco product” (*TCA*, s. 21(3)).

Warnings on permitted ads

- **QC** – permitted ads in printed newspapers and magazines must have a health warning to be placed in the upper left corner of the ad adjacent to the upper and left borders (*RUTCA*, s. 4; *Regulation respecting the warning attributed to the Minister of Health and Social Services concerning the harmful effects of tobacco on health*). Such warnings appear on ads in Quebec publications within the tobacco trade.

Advertising within tobacco trade

- **QC** – Quebec is the only province that explicitly states that legislative provisions apply to advertising within the tobacco trade. The restrictions outlined above (*TCA* s. 24, and regulatory requirements for newspapers/magazines) apply to tobacco advertising by tobacco manufacturers/importers/wholesalers directed at retailers (see wording of *TCA*, s. 26, second paragraph, adopted and in effect November 26, 2015).

No tax deductibility, tobacco promotion

It appears that only the federal and Quebec governments, with effectively their own corporate income tax legislation approaches, have the easy capacity to eliminate the tax deductibility of tobacco promotions. For provinces and territories other than Quebec, provincial corporate income tax structure is reliant on federal provisions.

Advertising and Promotion at Retail

Retail display ban

All 13 provinces/territories have prohibited visible displays of tobacco products. Here is when the provincial/territorial laws came into force:

Canada (13 of 13 provinces/territories)

1. Saskatchewan (March 11, 2002)*
2. Manitoba (January 1, 2004)*
3. Nunavut (February 1, 2004)
4. Prince Edward Island (June 1, 2006)
5. Northwest Territories (Jan. 21, 2007)*
6. Nova Scotia (March 31, 2007)
7. British Columbia (March 31, 2008)**
8. Ontario (May 31, 2008)
9. Quebec (May 31, 2008)
10. Alberta (July 1, 2008)
11. New Brunswick (Jan. 1, 2009)

12. Yukon Territory (May 15, 2009)
13. Newfoundland and Labrador (Jan. 1, 2010)

As a result of legal proceedings involving the Saskatchewan legislation, enforcement of the legislation in Saskatchewan, Manitoba and Nunavut was affected until after the January 19, 2005 unanimous judgment of the Supreme Court of Canada upholding the Saskatchewan legislation. In Saskatchewan, the legislation was enforced between March 11, 2002 and October 3, 2003, not enforced between October 3, 2003 and January 19, 2005 (although a proportion of retailers continued to comply), and enforced again starting January 19, 2005. In Manitoba, the Government began to enforce the legislation as of August 15, 2005. In Nova Scotia, full enforcement began September 1, 2007.

*In SK, MB and NWT, the retail display ban applies only to stores accessible to minors under age 18.

**In BC the retail display ban applies only to stores accessible to minors under age 19.

In 2005, the constitutionality of the Saskatchewan retail display ban was unanimously (9:0) upheld by the Supreme Court of Canada.⁸⁹

Restrictions on where tobacco products may be stored at retail

NS is the only province/territory with specific legislated provisions as to where tobacco products may be stored at retail with a display ban in place, with the following provisions:

Product must not be visible to the public from outside the store and must be stored “under an opaque front counter, above the front counter in an opaque cabinet or behind the front counter” (*TAR*, s. 3A(1)(b)). If product is stored behind the front counter, the following conditions must be met:

- “(b) the cabinet space used for storing tobacco or tobacco products must have a permanent opaque concealing device that automatically closes without the assistance of the vendor or an employee;
- (c) a vendor or an employee shall not open the concealing device to show what is available to the public;
- (d) tobacco must be stored in such a manner that only the Health Canada emissions panel is visible when the permanent concealing device is opened;
- (e) tobacco or tobacco products must not be stored in such a manner that a tobacco manufacturer’s colours, logos and any other product-identifying symbols are visible to the public.” (*TAR*, s. 3A(2))

Also “Once a consumer has indicated to a vendor or an employee an intention to purchase tobacco or tobacco products, they may view and examine only the specific number of units requested of the products before purchasing” (*TAR*, s. 3A).

These NS provisions do not apply to tobacconists. For tobacconists, products may be displayed, but only the federal emissions panel may be visible, and no other sign or material promoting or

⁸⁹ *Rothmans, Benson & Hedges v. Saskatchewan*, [2005] 1 SCR 188.

advertising tobacco or respecting tobacco is permitted, except publications with certain conditions (*TAR*, s. 3B).

- **QC** has a bulletin interpreting the *TCA* stating that products should be stored under the counter or in an overhead place (that can be seen by the employee but not by the customer). The bulletin also states, however, that in some retail locations it would be difficult to store products in this way, in which case there are guidelines to reduce the visibility of products when doors of cupboards behind the counter are opened.⁹⁰

Application of retail display ban to tobacconists

- **YT and NU** apply the retail display ban to tobacconists.
- **NS** – For tobacconists, products may be displayed but only the federal emissions panel may be visible, and no other sign or material promoting or advertising tobacco or respecting tobacco is permitted, except publications with certain conditions; price signs are not permitted (*TAR* ss. 3B, 3D(1)). The tobacconist definition applies to a vendor selling tobacco, tobacco accessories, or lottery tickets, but not e-cigarettes or other products. Thus a store that sells e-cigarettes is not within the definition of tobacconist (*TAR*, s. 1A(1)).
- **BC, SK, MB, NWT** – retail display ban only applies to premises where young persons are allowed. Thus the display ban would not apply to tobacconists provided that the tobacconist does not allow entry to minors under 18/19, and provided displays are not visible from outside the premises.⁹¹
- **AB, ON, QC, NB, PEI, NL** exempt tobacconists from the display ban.
- **AB** exempts tobacconists from the retail display ban provided that minors under 18 are prohibited from entering and displays are not visible from outside. Tobacconists are defined as “a person who sells at retail only (a) tobacco; (b) cigars; (c) cigarettes, or (d) tobacco-related products, including cigarette paper, matches, lighters, cigar and cigarette holders, pipes, pipe cases, pipe cleaners, pouches and humidors” (*TRR*, s. 10(1)).
- **ON** exempts tobacconists defined as “a retail establishment that is registered with the Ministry of Health and Long-Term Care as a tobacconist and where, (a) at least 50 per cent of the establishment’s total sales for the previous 12 months is from specialty tobacco products”; persons under age 19 are not permitted to enter unless accompanied by someone older than 19; displays may not be visible from outside; customers can enter only from the outdoors or from the areas of a shopping mall that are “i. open to the public, ii. common to most of the retail establishments or other businesses within the mall, and iii. not part of a retail establishment or other businesses within the mall”. “Specialty tobacco products” are defined as “tobacco products and tobacco product accessories” but not cigarettes, with “tobacco product accessories defined as “products that may be used in the consumption of a tobacco product, including a humidor, pipe, cigarette holder, cigar clip, lighter and matches” (*General Regulations*, ss. 1(1), 4).
- **QC** exempts only grandfathered tobacconists that meet the following conditions: were in operation on May 10, 2005; 75% of sales in the 12 months prior to May 31, 2006 were from

⁹⁰ Ministère de la Santé et des Services sociaux, « Bulletin d’information sur la loi concernant la lutte contre le tabagisme. Lignes directrices concernant l’application de l’interdiction d’étaler du tabac ou son emballage à la vue du public » 2016.

http://publications.msss.gouv.qc.ca/msss/fichiers/bulletinTabac/15-006-09W_bulletin_3.pdf

⁹¹ In NWT, the *TCA*, s. 5(2), prohibits displays placed in a window if the display is visible from outside the premise, but there is not a more general provision prohibiting displays from being visible from outside the premise.

tobacco, accessories and specialized publications about such products; the retailer notified the government not later than June 30, 2008 of the name and address of the retailer with proof that conditions were met; minors under 18 are not permitted; displays may not be visible from outside; the government certification notice must be posted to be visible at all times (*TCA*, ss. 20.3, 20.3.1).

- **NB** exempts tobacconists defined as “a place or premises in which the primary business conducted is the sale of tobacco” and where persons under age 19 are not permitted unless accompanied by someone who is at least 19 (*TECSA*, ss. 6.6(1), 6.6(3)). Any displays or signs may not be visible from the outside of the place or premises (*TECSA*, ss. 6.4(2)(b), 6.5(2), 6.5(3)(b)(i)).

- **PEI** exempts “tobacconist shop” defined as a place or premises in which the primary business conducted is the retail sale of tobacco and/or e-cigarettes, with “primary business” referring to at least 50 per cent of the product display space within the place or premises being devoted to the sale of tobacco and/or e-cigarettes; and “product display space includes floor space, shelf space, wall display space and space on displays suspended from the ceiling” (*TESDSAAR*, ss. 1(b), 2)). Displays may not be visible from outside the tobacconist shop, and persons under 19 are not permitted in the tobacconist shop (*TESDSAAR*, ss. 5(1)(b), 5(2)).

- **NL** – exempts a “tobacconist shop” defined as “a place or premise in which the only business conducted is the sale of tobacco”; persons under 19 are not permitted in the shop unless accompanied by a person aged 19 or older; displays may not be visible from outside (*TVPCA*, ss. 4.6(1)(a), 4.6(4)).

Application of retail display ban to duty-free stores

- **PEI, YT, NWT, NU** – There are no duty-free stores.⁹²

- **NS, YT, NU** – retail display ban applies to duty-free stores (though there are no duty-free stores in YT, NU). There is a duty-free store at the Halifax airport.

- **AB, NB, PEI, NL** – displays permitted in duty-free shop only if conditions of a tobacconist are met (see tobacconist definitions above).

- **BC** – displays are banned if the display “(a) may reasonably be seen or accessed by a minor [under age 19] inside the retail establishment, or (b) are clearly visible to a person outside the retail establishment” (*TVPCA*, s. 4.31(1)). Thus in BC, duty-free stores must establish a separated area for tobacco not accessible to minors in order to display tobacco; the duty-free store in the Vancouver Airport has done this.

- **SK** – prohibits retail displays “visible to the public if young persons [under 18] are permitted access to the premises” and retail displays “visible to the public from the outside of the premises” (*TCA*, ss. 6(3)(4)).

- **MB** – displays banned if “visible to children in any place or premises in which tobacco or tobacco-related products are sold” (*NSHPVPA*, s. 7.2).

- **ON** - ban on retail displays does not apply to duty-free stores, provided that displays are not visible from outside the store, the store is not a thoroughfare, and other conditions are met about customers accessing the store from outside or a shopping mall common area (*General Regulations*, s. 5).

- **QC** – ban on retail displays does not apply to duty-free stores, but displays may not be visible from outside the store (*TCA*, s. 20.3).

⁹² Canada Border Services Agency, “Duty-Free Shop” accessed Sept. 10, 2017.
<http://www.cbsa-asfc.gc.ca/do-rb/services/shop-bout-eng.html>

Ban on display of accessories

SK, MB, QC, NB, NS, PEI, NL, NWT prohibit the display of tobacco accessories (eg cigarette papers, pipes) as part of the display ban. Definitions of accessories vary, and are outlined later in the section on Youth Access.

Display of branded non-tobacco goods

All provinces/territories except Ontario prohibit the display of branded non-tobacco goods (eg lighters, matches) in tobacco retailers. However, depending on the province/territory, such branded non-tobacco goods may be displayed in tobacco retailers where minors are not permitted access, in stores that do not sell tobacco, or in tobacconists/duty-free stores.

Limits on feature pricing for tobacco

- **Federal** – *Tobacco Act* prohibits the offering or provision of a “bonus, premium or cash rebate” (s. 29(a)).
- **QC** – legislation provides that manufacturers, distributors and retailers may not “reduce the retail price of tobacco on the basis of quantity, otherwise than as part of regular marketing operations by the manufacturer, or offer a grant or rebate on the market price of tobacco to consumers” (*TCA*, s. 21(2)).

Ban on price reductions based on quantity sold

- No province/territory has a general prohibition reducing retail sales price based on quantity, eg by selling two packs (“duo-packs”) or a carton.

Point of purchase (POP) signs - size

Note: in addition to price signs at retail permitted in most provinces/territories, provinces/territories also permit catalogues/price lists at retail. Here is the maximum size of price signs by province/territory:

- **BC, AB, MB, ON, NS, PEI** - A maximum size of 968 cm² works out to about 12.25 X 12.25 inches, a little bit larger than a letter size page (8.5 X 11 inches).
- **SK** – A maximum size of 605 cm² is about the same as a letter size page of 8.5 X 11 inches, which works out to 603 cm².
- **QC** – A maximum size of 3,600 cm² works out to about 2 feet X 2 feet, or 1 foot X 4 feet (*RUTCA*, s. 2).
- **NB** – A maximum size of 10 cm X 10 cm (100 cm² total) (4 inches by 4 inches) with no limit on number of signs (*NB Reg 94-57*, s.6.1 under *TECSA*).
- **NL** – A maximum size of 216 mm by 279 millimetres (the same as 8.5 inches by 11 inches), for a total of 603 cm² (*TVPCR*, s. 3(1)).
- **YT** – point of sale price signs maximum size of 929 cm² may not be legible from outside the store. Two signs on the exterior of the store are permitted (or on the inside of window visible from outside) but can only contain the text “Tobacco Products Sold Here” in black text on a white background, and be no more than 4,645 cm² in size (which works out to 5 sq ft) (*TPSR*, ss. 2, 3).

Content restrictions on point of purchase (POP) signs

- **Federal** – signs can only indicate the availability of tobacco products for sale and their price (*TA*, s. 30(2)). Federal legislation does not prohibit the use of brands. There is regulatory authority to do so, but this regulatory authority has not been used.
- **BC** – signs may only be black text on a white background; letters in text may not be higher than 5 cm; must not contain any graphic or design or any symbol (except for “\$”) that is not an alpha-numeric character; must not contain a brand or brand element; must only indicate the types of tobacco and e-cigarettes for sale and the prices, or price range; must not be visible outside. These sign restrictions apply to signs that may be seen by a person under 19 (*TVPCR*, ss. 4.31, 4.32).
- **AB** – signs may only be black text on a white background; maximum letter height of 18 mm; text size and style must be consistent in all parts of the sign, and the text must not contain italics, bold type or underlining; signs may include the name (including brand name) and price of a tobacco product but may not contain any other wording, pictures, logos or other illustrations; text of the sign must not be visible from outside the place (*TRR*, s. 5).
- **SK** – signs may only be black text on a white background; maximum letter height of 13 mm; text size and style must be consistent in all parts of the sign, and the text must not contain italics, bold type or underlining; must not reflect a brand or brand element; must be in the form set out in Appendix A to regulation, and must not contain any words, phrases or figures other than those set out in the form in Appendix A to the regulation (*TCR*, s. 3.1). These sign provisions apply to premises where persons under 18 are permitted access.
- **MB** – signs may only be black text on a white background; sign must not reflect a brand or brand element; text size and style must be consistent throughout sign; maximum height of a letter in sign’s text is 18mm; italics, bold and underlining prohibited; sign must not be visible from outside the store; must be in the sign model set out in Schedule C to the regulation, and must not contain any words, phrases or figures other than those set out in the model in Schedule C of the regulation (*NSHPVPR*, s. 10.2, Sch. C). These sign restrictions apply whether or not persons under 18 are permitted access to the premise; however, the sign restrictions do not apply to the two tobacconists in the province identified by name and street address in the regulations (*NSHPVPA*, s. 7.3; *NSHPVPR*, s. 10.1).
- **ON** – signs may only be black text on a white background and have no other content; sign must not reflect a brand or brand element; sign must not be visible from outside the store (*General Regulations*, s. 7)
- **QC** – sign may only have black text on a white background; sign must be fixed, rectangular, flat and opaque; not have a raised surface; have advertising only on one side; no lighting, sound or other effect may be used to draw attention to the sign (*TCA*, s. 24(9); *RUTCA*, ss. 2, 3).
- **NB** – signs may only have black text on a white background; be limited to only types of tobacco, smoking supplies or electronic cigarettes (and thus may not reflect any branding); not be visible from outside the place or premises (*NB Reg 94-57*, s. 6.1 under *TECSA*).
- **NS** – signs may only be black text on a white background; must not be readable from outside the premises; maximum letter height of 18 mm; lettering size and style must be consistent and not contain italics, bold type or underlining; must not reflect a brand or brand element; text may only contain specified words regarding tobacco product categories and may not contain any words that are not set out in model in Schedule A of the regulations (*TAR*, s. 3D).
- **PEI** – signs may only be black text on a white background; sign must not reflect a brand or brand element; text size and style must be consistent throughout sign; maximum height of a letter in sign’s

text is 18mm; italics, bold and underlining prohibited; sign must not be visible from outside the store (*TSAAAR*, s. 1.2).

- **NL** – signs may only be black text on a white background; not reflect a brand or brand element; not include colour, graphics, pictures, logos or other illustration; can only use specified words to refer to types of product (eg “cigarettes”, “cigarillos”, etc); include the price range for the type of product; not be visible from outside the vendor’s place or premise (*TVPCR*, s. 3).
- **YT** – signs may only be black text on a white background, be set out entirely in one typeface and one type size, without the use of enhancements such as underlining, italics or bold print; may not be legible from outside the store; no information or features that might permit identification of a brand (*TPSR*, s. 2). Two signs on the exterior of the store are permitted (or on the inside of window visible from outside) but can only contain the text “Tobacco Products Sold Here” in black text on a white background, and be no more than 4,645 cm² in size (which works out to 5 sq ft) (*TPSR*, ss. 2, 3).
- **NWT** – signs not permitted in a place or premise where persons under 18 have access (*TCA*, s. 5(1)); signs not permitted in a window if visible from outside the premise (*TCA*, s. 5(2)).
- **NU** – sign must not be visible from outside the retail premises (*TCA*, s. 3(1)(a)).

Ban on signage on outside of POP locations

All provinces/territories prohibit signs on the outside of point of purchase locations, and at least most explicitly state that signs may not be visible from outside.

Ban on branding on price signs at retail

All provinces/territories except AB, QC and NU prohibit brand names/branding on price signs at retail.

Catalogues/price lists at retail

All provinces/territories permit, directly or indirectly, a tobacco product catalogue/price list at retail.

- **SK** – there is a specific provision permitting publications provided that the publication “(a) is displayed in such a way that the tobacco advertisement is not visible to the public; and (b) meets any requirements set out in the *Tobacco Act* (Canada) or any regulations made pursuant to that Act” (*TCR*, s. 3.)
- **NB, NS, PEI and NL** have provisions similar to SK (NB *TECSA*; s. 6.5(3)(b)); NS *TAR*, s. 3C(2); PEI *TESDSAA*, s. 5.2(3)(b); NL *TVPCA*, s. 4.5(c)).

Flavours

The federal government and 7 provinces (AB, ON, QC, NB, NS, PEI, NL) have implemented legislation on flavoured tobacco. Six provinces and territories (BC, SK, MB, YT, NWT, NU) have not done so.

Federal legislation bans all flavours including menthol in cigarettes, most cigars and blunt wraps.

Some provinces (AB, ON, NS, NL) have some product category exemptions to legislation banning flavours (outlined below), while QC, NB and PEI have no such exemptions.

- **MB** has adopted legislation on flavoured tobacco, but the legislation has not been proclaimed and regulations have not been adopted.⁹³
- **SK**, in 2010, adopted legislation to ban flavoured little cigars, and to provide regulatory authority to prohibit other flavoured tobacco products, but this legislation has never been proclaimed.⁹⁴

Implementation date for flavour bans/restrictions

The following lists implementation dates for provincial/federal flavour bans:

1. Nova Scotia (May 31, 2015)
2. Alberta (June 1, 2015; menthol Sept. 30, 2015)
3. New Brunswick (Jan. 1, 2016)
4. Quebec (Aug. 26, 2016)
5. Ontario (Jan. 1, 2016, menthol Jan. 1, 2017; initially (cigarillos) July 1, 2010)
6. PEI (May 1, 2017)
7. Newfoundland and Labrador (July 1, 2017)
8. Manitoba (awaiting proclamation)
9. Federal (July 5, 2010; strengthened Dec. 1, 2015; menthol Oct. 2, 2017)

Implementation date for menthol bans

The following lists implementation dates for bans on menthol cigarettes:

1. Nova Scotia (May 31, 2015)
2. Alberta (Sept. 30, 2015)
3. New Brunswick (Jan. 1, 2016)
4. Quebec (Aug. 26, 2016)
5. Ontario (Jan. 1, 2017)
6. Prince Edward Island (May 1, 2017)
7. Newfoundland and Labrador (July 1, 2017)
8. Federal (Oct. 2, 2017)

Nova Scotia was the first jurisdiction in the world to ban menthol in cigarettes, and in tobacco products.

Federal legislation bans flavours including menthol in cigarettes, most cigars and blunt wraps. Bill S-5, currently before Parliament, contains a ban on menthol and cloves in all tobacco products 180 days following Royal Assent.

Provincial legislation bans menthol in all tobacco products in 5 provinces (QC, NB, NS, PEI, NL), while in two provinces (AB, ON) menthol is allowed in certain product categories. AB permits

⁹³ *The Non-Smokers Health Protection Amendment Act (Prohibitions on Flavoured Tobacco and Other Amendments)*, SM 2014, c. 18.

⁹⁴ *The Tobacco Control Amendment Act, 2010*, SS 2010, c. 34.

menthol in pipe tobacco, water pipe tobacco and some cigars. ON permits menthol in pipe tobacco and some cigars.

Exempt categories of tobacco products from flavour ban legislation

Of the 7 provinces banning flavours, 4 provinces (AB, ON, NS, NL) have exemptions for some categories of tobacco products, while 3 provinces (QC, NB, PEI) have no exemptions. The provisions/exemptions for the 7 provinces are described below.

- **QC** – no category of tobacco product exempt (legislation adopted Nov. 26, 2015).
- **NB** – no category of tobacco product exempt (legislation adopted June 5, 2015). Does not apply to cigarette papers when sold separately.
- **PEI** – no category of tobacco product exempt (regulations approved Sept. 13, 2016).
- **NS** – exempts pipe tobacco (including water pipe tobacco) and cigars with rum, wine, whisky or port flavours, though for cigars each unit must weigh at least 5g and cost at least C\$4.00 (regulation with exemptions adopted May 29, 2015).
- **NL** – exempts pipe tobacco and cigars with rum, wine, whisky or port flavours, though for cigars each unit must weigh at least 5g and cost at least C\$4.00 (regulations filed June 15, 2017). The exemption for pipe tobacco does not apply to water pipe tobacco.
- **ON** – exempts pipe tobacco (but not water pipe tobacco). Ontario exempts cigars weighing 6g or more excluding the weight of any mouthpiece or tip. For cigars that weigh more than 1.4g but less than 6g, there is an exemption for wine, port, whisky and rum flavours. The Ontario cigar exemptions (more than 1.4g and less than 6g, as well as for 6g or more) do not apply if the cigar has tipping paper, or if the cigar does not have a wrapper fitted in spiral form (regulation with exemptions filed Nov. 13, 2015). If the cigar has a filter (“cellulose acetate or other type of filter”), then flavours are banned, regardless of the weight of the cigar. Does not apply to cigarette papers when sold separately.
- **AB** – exempts pipe tobacco and water pipe tobacco; and exempts cigars weighing more than 5g and costing more than \$4 per unit (regulation with exemptions adopted Nov. 14, 2014). Does not apply to cigarette papers when sold separately.
- **Federal** – applies only to cigarettes, blunt wraps and most cigars. Does not apply to roll-your-own tobacco, some cigars, traditional pipe tobacco, water pipe tobacco, smokeless tobacco, bidis, tobacco sticks, kreteks, or any other tobacco product, or to cigarette papers (when sold separately).
 - For the following types of cigars, all flavours are banned:
 - weighs no more than 1.4g, excluding the weight of any mouthpiece or tip;
 - has a cigarette filter;
 - has a wrapper that is not fitted in spiral form;
 - has tipping paper.
 - For cigars that weigh more than 1.4g or 6g or less, excluding the weight of any mouthpiece or tip, the following flavours are permitted: rum, whisky, wine, and port (provided that the cigar does not have a cigarette filter, does not have tipping paper, and does have a wrapper fitted in spiral form).
 - For cigars that weigh more than 6g, there are no flavour restrictions (provided that the cigar does not have a cigarette filter, does not have tipping paper, and does have a wrapper fitted in spiral form).

Bill S-5, currently before Parliament, contains a ban on menthol and cloves in all tobacco products 180 days after Royal Assent.

- **MB** – there is legislation with partial restrictions on flavoured tobacco but, as noted, this legislation has not been proclaimed and regulations have not been adopted.⁹⁵

Provincial approaches to bans on characterizing flavours

While federal legislation bans flavours in any quantity, provincial legislation on flavoured tobacco (except in NB) has generally been drafted to ban characterizing flavours, although the wording has varied. Below is an outline of the approaches taken by the different provinces.

- **NB** – New Brunswick bans a tobacco product “that contains a flavouring agent, including menthol” (*TECSA*, s. 2.1), but does not further define “flavouring agent”. Thus in New Brunswick flavouring agents in any quantity are banned. New Brunswick provisions are not limited to banning characterizing flavours.
- **QC** – Quebec prohibits “a tobacco product that has a flavour or aroma other than that of tobacco, including a menthol, fruit, chocolate, vanilla, honey, candy or cocoa flavour or aroma, or whose packaging suggests it is such a product” (*TCA*, s. 29.2).
- **PEI** – PEI prohibits tobacco products containing a prescribed flavouring agent (*TESDSAA*, s. 3.1). Regulations define a “prescribed flavouring agent” as “an agent added to tobacco to produce an aroma or taste other than the aroma or taste of tobacco, including the aroma or taste of candy, chocolate, fruit, a spice, an herb, an alcoholic beverage, vanilla or menthol”.
- **NS** – Nova Scotia bans a tobacco product that “has a characterizing scent or flavour, other than tobacco, that is noticeable before or during use, or both” (*TAA*, ss. 3(ba), 7(c), 7(d)).
- **NL** – Newfoundland and Labrador bans a tobacco product that “has a characterizing scent or flavour, other than tobacco, that is noticeable before or during use, or both” (*TVPCA*, ss. 2(d), 3.4).
- **AB** – Alberta bans tobacco products with a “characterizing flavour” (*TSRA*, s. 7.4). The Regulations provide that “(2) ... “characterizing flavour” means a clearly noticeable smell or taste other than tobacco that (a) results from an additive or combination of additives, and (b) is noticeable before or during the use of the tobacco product. ... (3) For greater certainty, characterizing flavour includes but is not limited to the following characterizing flavours: (a) fruit; (b) chocolate; (c) honey; (d) spice; (e) clove; (f) herb; (g) alcohol; (h) candy; (i) vanilla. . . . (4) No tobacco product shall be determined to have a characterizing flavour solely because of the use of additives or flavourings.” (*TSRR*, s. 1.3)
- **ON** – Ontario bans tobacco products with a flavouring agent (*SFOA*, ss. 1(1), 6.1). The Regulations provide that “ “flavouring agent” means one or more artificial or natural ingredients contained in any of the component parts of a tobacco product, as a constituent or an additive, that

⁹⁵ *The Non-Smokers Health Protection Amendment Act (Prohibitions on Flavoured Tobacco and Other Amendments)*, SM 2014, c. 18.

impart a distinguishing aroma or flavour other than tobacco either before or during the consumption of the tobacco product” (*General Regulations*, s. 1.2).

Flavour cards

QC has regulatory authority to “specify any other product or class of product considered to be tobacco” (*TCA*, ss. 29.1).

E-cigarettes

The federal government and 8 provinces (BC, MB, ON, QC, NB, NS, PEI, NL) have adopted e-cigarette legislation. Parts of the ON legislation have not yet been proclaimed. The provinces/territories that have not yet adopted e-cigarette legislation are AB, SK, YT, NWT and NU.

Ban use of e-cigarettes where smoking banned

All 8 provinces with e-cigarette legislation, as well as pending federal legislation (Bill S-5), prohibit use of e-cigarettes where smoking is banned pursuant to the principal federal/provincial smoke-free legislation.

- In the two provinces that have not adopted provincial legislation, some municipalities have amended smoke-free bylaws to prohibit use of e-cigarettes where smoking is banned. In AB, the municipalities include Edmonton, Calgary, Cold Lake, and Red Deer. In SK, the municipalities include Regina, Saskatoon, Warman, Martensville and Maidstone. Various municipalities in provinces other than AB and SK have also applied their smoking bylaws to e-cigarettes.
- **ON** – In Ontario, the *Electronic Cigarettes Act, 2015* prohibits use of e-cigarettes in most places where smoking is banned by the *SFOA*/regulations, however regulations are not yet adopted to compare with places covered by the *General Regulations* under the *SFOA*. The provisions in the *ECA* have not yet been proclaimed into effect.

Use of e-cigarettes in e-cigarette retailers

5 provinces prohibit use of e-cigarettes in e-cigarette retail stores: QC, NB, NS, PEI, NL. In BC, and MB, use of e-cigarettes in e-cigarette stores is permitted under conditions.

- **BC** permits use of e-cigarettes in specialty e-cigarette retailers under the following conditions: “(i) no minors are permitted in the premises, (ii) the premises are fully enclosed such that no vapour may escape to an adjacent premises or to a public area outside the premises, (iii) the person (A) is the retailer or an employee of the retailer who holds an activated e-cigarette only to demonstrate the safe and proper use of the e-cigarette, or (B) uses an e-cigarette or holds an activated e-cigarette only to sample an e-substance that, if purchased, will be consumed off the premises, and (iv) no more than 2 persons are, at the same time, using an e-cigarette or holding an activated e-cigarette for the purpose of sampling an e-substance.” (*TVPCR*, s. 4.23(2)(c)).
- **MB** permits e-cigarette use in a specialty e-cigarette store under the following conditions: the predominant trade or business carried on in the premise “is the sale or distribution of vapour products, and where the sale or distribution of other products is merely incidental”; the only products that may be sold are e-cigarettes and related products, non-alcoholic beverages, and “clothing and other promotional items that display only the business name and logo of the vapour product shop”; at least 85% of the floor space of the premises is devoted to the sale of vapour

products; “The proprietor of a vapour product shop and his or her employees and customers may use e-cigarettes in a vapour product shop to test or sample a product for the purpose of sale of the product for use elsewhere, but only if the shop is fully enclosed by floor-to-ceiling walls, a ceiling and doors that separate it physically from any adjacent area in which the use of e-cigarettes is prohibited” and the proprietor “must take reasonable steps to minimize the drifting of [...] vapour [...] into areas of the premises where smoking or e-cigarette use is prohibited” (*NSHPVPA*, ss. 1(1), 4.1, 5; *NSHPVPR*, s. 2.1).

Sales ban where sale of tobacco is banned

In the 8 provinces other than ON that have adopted e-cigarette legislation, the sale of e-cigarettes is banned in the same locations where the sale of tobacco is banned. In Ontario, while the sales ban provisions in the *ECA* match the sales ban provisions in the *SFOA*, regulations have not yet been elaborated (regulations under the *SFOA* prohibit additional sales locations than are found in the *SFOA* itself).

Advertising and promotion restrictions

- **Federal** – Pending federal legislation (Bill S-5) will prohibit e-cigarette advertising that is lifestyle or appealing to youth, or that has testimonials or endorsements (the depiction of a person, character or animal is considered to be a testimonial or endorsement).⁹⁶ Bill S-5 as worded does not restrict the location of advertising, but Health Canada is consulting on regulations that would do so.⁹⁷ (For tobacco there are significant restrictions on the location of advertising.

All 8 provinces that have adopted e-cigarette legislation have the same restrictions on advertising and promotion for e-cigarettes as is applied to tobacco (in ON, regulations have not yet adopted, but the restrictions in the *ECA* match the restrictions in the *SFOA* itself). The extent of these restrictions varies by province. All 8 provinces have restrictions at retail (with exceptions for specialty e-cigarette stores). Of the 8 provinces with e-cigarette legislation, 5 (MB, ON, QC, NS, PEI) have advertising restrictions beyond retail, while BC, NB, NL do not (there are not advertising restrictions beyond retail for tobacco either for BC, NB, or NL). Legislative provisions restricting tobacco advertising and promotion were summarized in the Advertising and Promotion section for tobacco products, including the subsection for provincial restrictions on location of advertising beyond retail.

Ban on sponsorship

- **Federal and QC** legislation ban e-cigarette sponsorship (eg of arts or sports events).
- Provincial restrictions on the location of e-cigarette advertising/promotion may restrict the location of sponsorship promotions.

⁹⁶ Pursuant to Bill S-5, different advertising restrictions will apply for e-cigarettes approved as cessation products, but no such products have to date been approved.

⁹⁷ Health Canada, “Consultation on proposals for the regulation of vaping products” August 25, 2017 <https://www.canada.ca/en/health-canada/programs/consultation-regulation-vaping-products/proposals-regulate-vaping-products.html>

Ban on brand-stretching

- **Federal** (Bill S-5, pending) and **QC** legislation bans e-cigarettes (including e-liquids) from using tobacco brand names.
- **Federal** (Bill S-5, pending) – there are significant restrictions on e-cigarette brand-stretching (eg branded T-shirts, hats), but not a full ban.
- **QC** – the use of e-cigarette branding on goods other than e-cigarettes/components is banned.
- **BC** bans brand-stretching in the premises of tobacco retailers and in e-cigarette retailers, that is tobacco branding or e-cigarette branding on non-tobacco or non-e-cigarette goods. Such branded non-tobacco and non-e-cigarette goods (eg clothing, lighters) may not be displayed or sold in such premises (but could be in other premises) (*TVPCA*, s. 4.31). The government’s view has not been ascertained as to whether this provision precludes e-cigarettes from using tobacco brands at retail, or whether this precludes tobacco from using e-cigarette brands at retail.
- Various provinces restrict the location of e-cigarette advertising/promotion (as described above) which may restrict the location of brand-stretching sales, display and promotion.
- Various provinces prohibit the display of goods that are not e-cigarettes but have e-cigarette branding (eg T-shirts, hats) in stores that sell e-cigarettes. However, depending on the province/territory, such branded non-e-cigarette goods may be displayed in retailers where minors are not permitted access, in stores that do not sell e-cigarettes, or in specialty e-cigarette retailers.

Display bans and definition of specialty e-cigarette store for permitted displays

All 8 provinces with e-cigarette legislation ban retail displays but permit visible displays in specialty e-cigarette stores. The definitions of e-cigarette specialty store vary by province.

- **QC, NS and NL** specify that specialty e-cigarette stores may only sell e-cigarettes and related products.
- **QC** – specialty e-cig stores may display e-cigarettes provided that minors are not allowed; a notice is sent within 30 days of the commencement of operations to the government stating the retailer’s name and address (*TCA*, s. 20.3.2); only e-cigarettes, their components and accessories are sold; displays and signs are only visible inside the store; no other activity takes place there (*TCA*, ss. 20.2, 24(9); *RUTCA*, s. 6.4)
- **NL** – a vapour products shop means “a place or premise in which the only business conducted is the sale of vapour products”; vapour products are defined to include components; promotional material and products may not be visible outside the shop; persons under 19 are not permitted unless accompanied by a person aged 19 or older (*TVPCA*, s. 4.6).
- **NS** – an e-cigarette specialty store can only sell e-cigarettes and related e-cigarette products (this is different than the definition of tobacconist whereby a tobacconist can sell lottery tickets in addition to tobacco and tobacco-related products) (*TAR*, s. 1A(1))
- **MB** permits displays in specialty e-cigarette stores (“vapour product stores”) under the following conditions: the predominant trade or business carried on in the premise “is the sale or distribution of vapour products, and where the sale or distribution of other products is merely incidental”; the only products that may be sold are e-cigarettes and related products, non-alcoholic beverages, and “clothing and other promotional items that display only the business name and logo of the vapour product shop”; at least 85% of the floor space of the premises is devoted to the sale of vapour products; any displays, advertising or promotion may not be visible from outside the shop; persons under 18 are not permitted in the shop (*NSHPVPA*, ss. 1(1), 7.3(1)(2); *NSHPVPR*, s. 2.1).

- **BC** - displays are banned if the display “(a) may reasonably be seen or accessed by a minor [under age 19] inside the retail establishment, or (b) are clearly visible to a person outside the retail establishment” (*TVPCA*, s. 4.31(1)).

Flavours

There are no restrictions on flavours in e-cigarettes, whether federal/provincial or territorial. Though there are no federal restrictions on e-cigarette flavours, Bill S-5 will prohibit packaging/promotion that has an indication that an e-cigarette (including e-liquid) has a flavour that is confectionary, dessert, cannabis, soft drink, or energy drink, or that could be appealing to young persons under age 18. The Bill S-5 ban on indicating these flavours on packaging/promotion does not apply to prescription vaping products (there are at present no prescription vaping products). In summary, in Bill S-5, there are some restrictions on packaging/promotion indicating certain flavours, but no restrictions on flavours themselves (see the following sections to be enacted by Bill S-5: ss. 30.46, 30.48- 30.49, Sch. 3).

Prohibited ingredients

Bill S-5 will prohibit the following ingredients in e-cigarettes and e-liquids:

- amino acids;
- caffeine;
- colouring agents;
- essential fatty acids;
- glucuronolactone;
- probiotics;
- taurine;
- vitamins;
- mineral nutrients.

This Bill S-5 prohibition does not apply to prescription vaping products (but that does not mean that an e-cigarette with any such ingredients would be approved as a prescription vaping product) (see the following sections to be enacted by Bill S-5: ss. 7.21 – 7.23, 30.47, Sch. 2).

Youth Access

Minimum age

All provinces/territories, except YT, have a minimum age of either 18 or 19. The minimum age to be sold tobacco products is 19 in BC, ON, NB, NS, PEI, NL and NU, while it is 18 in AB, SK, MB, QC and NWT. The federal minimum age is 18.

YT is the only province/territory/state in North America without tobacco sales to minors legislation. In the Yukon, the minimum federal age of 18 applies. In other provinces/territories (other than

Yukon), retailers are required to comply with both federal and provincial/territorial youth access laws.⁹⁸

In the U.S., a minimum tobacco age of 21 has been adopted in California, Oregon, Hawaii, New Jersey and Maine, and at least 270 US municipalities, including Boston, New York City, Chicago, St. Louis, Kansas City, Cleveland, and Portland (Maine).⁹⁹ Many more U.S. municipalities/states are in progress.

Ban sale or supply/furnish

Most provinces/territories prohibit the “supply” or “furnishing” of tobacco to persons under age, in addition to prohibiting the sale. QC and NB do not.

- **QC** – bans any person from selling, bans retailers from giving, and bans any person on elementary/secondary school grounds from supplying (*TCA*, ss. 13, 14.2, 17.1).
- **NB** only prohibits selling tobacco to persons under 19, but not also the supply/furnishing of tobacco to persons under 19 (*TECSA*, s. 5(1)).

Applies if sale/supply occurs in private place

- **BC, ON, NS, PEI, NL, NU** prohibit the sale/supply to persons under age, even if in a private place.
- **NB** – applies to ban sales in a private place. NB only bans the sale, not the supply, therefore the supply in a private place is not banned.
- **Federal** – legislation provides that “No person shall furnish a tobacco product to a young person in a public place or in a place to which the public reasonably has access” (*TA*, s. 8(1)).
- **SK, MB, NWT** have an exemption allowing parents or guardians to supply tobacco in a place other than a public place (*SK TCA*, s. 4(4); *MB NSHPVPA*, s. 7(2)(a); *NWT TCA*, s. 3(6)(a)).
- **QC** – bans any person from selling, bans retailers from giving, and bans any person on elementary/secondary school grounds from supplying (*TCA*, s 13, 14.2, 17.1). Thus selling is banned in a private place, but not giving/supplying.

Ban on tobacco accessory sales to minors

Many sales to minors laws also prohibit the sale to minors of tobacco accessories when sold separately. Here is how different laws define what types of accessories are covered.

- **Federal** – applies to cigarette papers, tubes, and filters, and (pursuant to pending Bill S-5 amendments) “a device, other than a water pipe, that is necessary for the use of that product and the parts that may be used with the device” (Bill S-5 amendment to s. 2).
- **SK** – applies to “a cigarette paper, a cigarette tube, a cigarette filter, a cigarette maker, a pipe or any other product used in association with tobacco that is prescribed”.
- **MB** – applies to “a cigarette paper, cigarette tube, cigarette filter, cigarette maker or pipe, or any thing used in association with tobacco and prescribed in the regulations” (*NSHPVPA*, s. 1(1)).

⁹⁸ In *R. v. Sobey's* (1998), 172 DLR 4th 111, a unanimous (3:0) Nova Scotia Court of Appeal upheld the constitutional validity of the minimum age of 19 in Nova Scotia, higher than the minimum federal age of 18, on the basis that compliance is required for both laws.

⁹⁹ Campaign for Tobacco-Free Kids, “States and Localities that Have Raised the Minimum Legal Sale Age for Tobacco Products to 21” October 10, 2017.

http://www.tobaccofreekids.org/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf

- **QC** – applies to “cigarette tubes, rolling paper and filters, pipes, including their components, and cigarette holders” (*TCA*, s. 1.1).
- **NB** – applies to “cigarette papers, blunt wraps, cigarette tubes, cigarette filters, cigarette holders and pipes” (*TECSA*, s. 1).
- **NS** – applies to “a cigarette paper, cigarette tube, cigarette filter, cigarette holder or pipe” (*TAA*, s. 3(f)), and to “(i) devices for rolling cigarettes, (ii) cigarette or tobacco carrying or storage cases, (iii) pipe loaders, (iv) cigar cutters, (v) specialty tobacco publications, (vi) lighters and matches that display or depict logos, trademarks or colours of tobacco manufacturers [...]” (*TAR*, s. 1A(2)) (the NS regulations also include e-cigarettes in the definition given the approach to regulatory drafting).
- **PEI** – applies to “a cigarette paper, a cigarette tube, a cigarette filter, a cigarette maker, a cigarette holder, a pipe, a waterpipe, a pipe cleaner and a cigar clip” (*TESDSAA*, s. 1(c.1)).
- **NL** – applies to “a product that may be used in the consumption of tobacco and includes cigarette papers, a filter, a pipe, a cigarette holder and a cigar clip” (*TVPCA*, s. 2(a)).
- **NWT** – applies to “a cigarette paper, cigarette tube, cigarette filter, cigarette maker, pipe, and any other prescribed item that is commonly used in association with tobacco” (*TCA*, ss. 1, 3)
- **BC, AB, ON** – sales to minors provisions do not apply to accessories.

The Burlington, ON bylaw that applies to tobacco retail licences prohibits tobacco retailers from selling “matches, lighters, novelty lighters etc.” to persons under 19.¹⁰⁰

Minimum age for retail clerk

Most provinces/territories have a provision that bans not just the sale but also the “supply” or “furnishing” of tobacco to a person under age 18/19. Such provisions would in many or all cases have the effect of prohibiting persons under age 18/19 from working as employees providing tobacco to customers. However, this has not been fully reviewed.

- **AB** has a provision stating that an employee under age 18 who “holds, gives, carries or otherwise handles a tobacco product while on duty and working in the capacity of an employee” does not infringe the provision banning persons under age 18 from possessing tobacco (*TSRR*, s. 7.3(1)).
- **NS** – the provision banning possession by those under 19 would apply to prohibit persons under 19 from being retail employees providing tobacco to customers.

Sales to minors signage

- **AB** – a sales to minors sign is required to be clearly visible to the sales clerk, but is not required to be clearly visible to the customer. Given that the size of the sign is to have a minimum dimension of 20 cm by 30 cm and minimum of 600 cm², the sign is likely often to be visible to the customer.

Repealing previous sales to minors signage requirements

NB¹⁰¹ and NL¹⁰² have repealed previous sales to minors signage requirements, and a repeal of the federal requirement is included as part of Bill S-5. These signage requirements had initially been required prior to implementation of retail display bans. The signage requirements were repealed

¹⁰⁰ City of Burlington, “A By-law to provide for the licensing, regulating and governing various businesses in the City of Burlington” Bylaw 42-2008, s. 39.2.

<http://www.burlington.ca/uploads/91/635575154676735581.pdf>

¹⁰¹ *New Brunswick Regulation 2015-31*, amending *New Brunswick Regulation 94-57*, with effect from July 1, 2015.

NB still requires a sales to minors sign at each cash register facing the employee.

¹⁰² Newfoundland and Labrador did so in association with implementation of the retail display ban on Jan. 1, 2010.

because the signage was considered to undermine the “out-of-sight”, “out-of-mind” objective of retail display bans.

Only government authorized signs permitted

- **NS** – Prohibits the display of any sign respecting tobacco except as prescribed by regulations (*TAA*, s.4(2)).
- **SK** – Prohibits the display of any sign respecting legal age or health warnings unless supplied or approved by the provincial or federal government (*TCA*, s. 7(1)).
- **NWT** – Prohibits the display of any sign respecting the legal age or health warnings unless supplied or approved by the territorial or federal government (*TCA*, s. 6(1)).

Vending machines

Federal legislation prohibits vending machines except in bars (*TA*, s. 12). Bill S-5, currently before Parliament, contains a ban on vending machines. MB, ON, QC, NS, PEI, NWT and NU ban vending machines. NB prohibits vending machines in retail stores (*TECSA*, s. 6.3). SK and NL have partial restrictions on vending machines. SK permits vending machines in places where the public has access provided that persons under age 18 are not permitted to enter, the vending machine is at least 5m from the innermost entrance, and the vending machine is located such that the proprietor or employee can monitor its use (*TCA*, s. 9; *TCR*, s. 4). NL permits vending machines in premises licensed under the *Liquor Control Act* that prohibit persons under 19 (*TVPCA*, s. 4). Note that SK, NS, NL, and NWT permit vending machines in places not accessible by the public (SK *TCA*, s. 9; NS *TAA*, s. 6; NL *TVPCA*, s. 4; NWT *TCA*, ss. 1, 4).

Self-service displays

In some provinces/territories, the ban on self-service displays is included as part of the legislative provision banning retail displays. Below are exceptions to self-service display bans.

- **Fed** – self-service displays are banned with an exception for duty-free stores, but with no exception for tobacconists (*TA*, s. 11; *TAR*, s. 3).
- **BC** – self-service displays banned in premises where persons under age 19 have access.
- **SK** – self-service displays banned in premises where persons under age 18 have access.
- **ON** – ban on self-service displays does not apply to duty-free stores, provided that displays are not visible from outside the store, the store is not a thoroughfare, and other conditions are met (*General Regulation*, s. 5); tobacconists are not exempted from ban on self-service displays.
- **QC** – duty-free stores (but not tobacconists) exempted from ban on self-service displays (*TCA*, s. 15).
- **NB, PEI, NL** – self-service displays permitted in tobacconists (NB *TECSA*, s. 6.6; PEI *TESDSA*, s. 5.1; NL *TVPCA*, s. 4.6).

Ban on storing tobacco during sales suspension

- **BC** – there is a ban on displaying (but not storing) during a sales suspension
- **NB, PEI** – a sales suspension would be administered under the respective provincial *Tobacco Tax Act*, which has provisions to the effect that a retailer could not store tobacco without a valid licence (NB *Tobacco Tax Act*, s. 2.2(1.6); PEI *Tobacco Tax Act*, s. 16(2)).

Administrative enforcement system

BC – retailers who sell to minors can have their permit suspended administratively by the Ministry of Health without the need to issue a ticket or to lay a charge in court.

Ticketing

• **NB** – For ticketing related to sales to minors, see *TECSA*, s.9 (not regulations under the *Provincial Offences Procedures Act*).

Training and monitoring

BC – for employees charged with selling to minors, whether there was training and monitoring in place is a factor in considering the extent of a penalty to be imposed (*TVPCA*, s. 13(1)); BC has a system of administrative enforcement/penalties.

Generally, a retailer charged with selling to minors will have a due diligence defence. To make out a defence of due diligence to prevent an infraction, among other things, a retailer would have to demonstrate that employees were trained and that there was a system in place to ensure that there was compliance by employees with sales to minors legislation – this should include a system of self-testing. Thus there is a need to train employees even if not specifically mentioned in legislation.

Youth possession/purchasing

Youth possession is banned in AB (under 18) and NS (under 19). In NS, there is no offence for an infraction, but the tobacco may be confiscated. NWT bans youth (under 18) from purchasing or attempting to purchase, but does not ban possession apart from purchasing (*TCA*, s. 4.1). QC (under 18) bans purchasing.

Ban on mail order and interprovincial sales

QC – the requirement that sales only be made in a face-to-face exchange in a store would thus include a ban on mail order sales and interprovincial sales.

Packaging and Labelling

Regulatory authority, plain and standardized packaging

The federal government is moving to implement plain and standardized packaging through regulations under the *Tobacco Act*, with regulatory authority elaborated in Bill S-5. A Health Canada consultation on this was launched May 31, 2016 and completed on August 31, 2016.¹⁰³

¹⁰³ Health Canada, “Consultation on potential measures to regulate tobacco packages and products” May 31, 2016. https://www.canada.ca/en/health-canada/programs/consultation-potential-measures-regulate-tobacco-packages-products.html?_ga=2.75353626.926377688.1504967768-47378864.1504967768

There is a growing international trend for plain packaging, as summarized by the implementation dates for the following 8 countries:

Summary of implementation dates at manufacturer and retailer levels¹⁰⁴

	Country	Manufacturer Level	Retail Level
1.	Australia	Oct. 1, 2012	Dec. 1, 2012
2.	France	May 20, 2016	Jan. 1, 2017
3.	United Kingdom	May 20, 2016	May 20, 2017
4.	Norway	July 1, 2017	July 1, 2018
5.	Ireland	Sept. 30, 2017	Sept. 30, 2018
6.	New Zealand	Mar. 14, 2018	June 6, 2018
7.	Hungary	May 20, 2018	May 20, 2019
8.	Slovenia	Jan. 1, 2020	Jan. 1, 2020

Regulatory authority for plain packaging exists federally (ss. 15.3, 17, 23, 33 – some of these provisions are included in Bill S-5), and in **BC** (*TVPCA*, ss. 2(1)(a), 11(2)(a)); **MB** (*NSHPVPA*, s. 9(1)(e)); **ON** (*SFOA*, ss. 5(1), 19(1)(d)), 19(1)(4)); **QC** (*TCA*, s. 28); and **NS** (*TAA*, s. 9(2)).

Package warnings

Federal – The federal *Tobacco Products Labelling Regulations (Cigarettes and Little Cigars)* require a series of 16 rotated picture-based health warnings to appear on the top 75% of the front and back of packages of cigarettes and little cigars (as illustrated below). One of 8 rotated picture-based interior messages must appear, either as an insert or on the “slide” portion of “slide and shell” packages. On one lateral side of the package, one of 4 rotated toxic emission messages must appear.¹⁰⁵

¹⁰⁴ Canadian Cancer Society, “Plain Packaging – International Overview” August 28, 2017.

¹⁰⁵ The required package health messages, including interior and toxic emission messages, can be seen here:

<https://www.canada.ca/en/health-canada/services/health-concerns/tobacco/legislation/tobacco-product-labelling.html>

Here is an example of the package front and back:

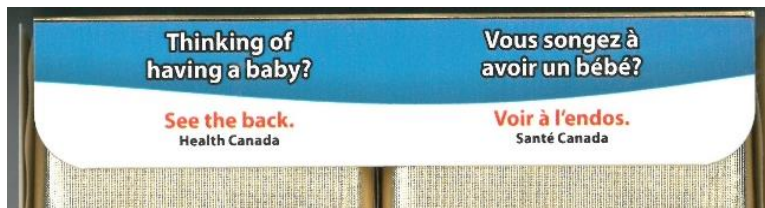


Front



Back

Here an example of one of the 8 interior health messages on slide and shell packages:

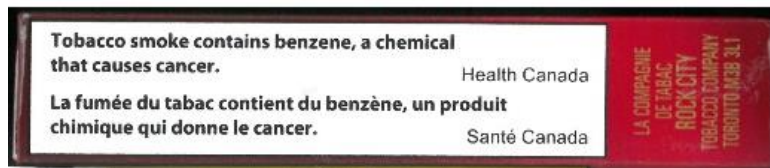


Flap seen when packaged opened



Interior health message on the slide of slide and shell packages

Here is an example of one of 4 toxic emission messages on the side of the package:



In 2007, the Supreme Court of Canada unanimously (9:0) upheld the then federal 50% picture warning requirement as constitutional.¹⁰⁶

Here is the evolution of the warning size and requirements for the front and back of cigarette packages in Canada, as well as interior messages:

¹⁰⁶ *Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 SCR 610.

- 1989 – 20%, 4 text warnings (companies printed these in package colours)
- 1994 – 35%, 8 text warnings, each appearing in black on white and white on black (the size varied somewhat depending on package dimensions)
- 2001 – 50%, 16 picture-based warnings, and 16 interior text health messages
- 2012 – 75%, 16 picture-based warnings, and 8 interior picture-based health messages

The *Tobacco Products Information Regulations* apply to most tobacco products other than cigarettes and little cigars. The warnings required for products other than cigarettes and little cigars have not been updated since coming into effect in 2001. Picture warnings are required for roll-your-own tobacco, tobacco sticks, leaf tobacco for retail sale, kreteks, cigars and pipe tobacco. Warning requirements do not apply to cigars not in a box or bundle, and for cigars in a box the warning may appear on just the back side. For most products the minimum size is 50% of the two principal display surfaces (but that is not the case for cigars or for pipe tobacco in pouches). Health Canada interprets the regulations such that there are no warning requirements for water pipe tobacco.

Canada was the first country in the world to require picture health warnings on packages, in 2001. As of October 2016, at least 105 countries and territories had done so.¹⁰⁷

QC has a requirement that the federally-required cigarette and little cigar warnings must have a minimum surface area of 46.5 cm² (4,648 mm²) on the front and back of packages (*RUTCA*, s. 6.1). The Quebec minimum surface area of 46.5 cm² is the largest in the world. A larger warning increases the impact of the warning. The result of this Quebec measure has been, in part, to ban superslim “purse” or “perfume” packages because the surface is too small to be able to depict the warning with the required minimum surface area. Also, Quebec requires the warning to be on a flat surface (*RUTCA*, s. 6.1), meaning that part of the warning could not be on a bevelled edge.

QC has also prohibited fillers inside packaging that would use up space. In Australia, when plain packaging was implemented with minimum cigarette package dimension requirements, previous superslim purse packs did not meet the new dimension requirements. Thus companies continued to sell superslim cigarettes using a larger package, but also using a space filler to use the empty space. In Quebec, some superslim cigarettes continue to be sold, but some previous brands have been withdrawn from the market. The Quebec provision reads (*RUTCA*, s. 6.3):

6.3 Tobacco product packaging on which a health warning is displayed must contain a maximum quantity of the product, given the circumference of the product unit and the interior volume of the packaging. No device may be placed or integrated inside the packaging to reduce the space for the product.

¹⁰⁷ Canadian Cancer Society, *Cigarette Package Health Warnings: International Status Report*, Fifth Edition, October 2016.

<http://www.cancer.ca/~media/cancer.ca/CW/for%20media/Media%20releases/2016/CCS-international-cigarette-packaging-report-2016-English.pdf?la=en>

ON – provincial regulations (*General Regulations*, s. 9) replicate the provisions in federal law by requiring compliance with exterior and interior package warnings and other packaging requirements mandated by the federal *Tobacco Act* and its regulations. The Ontario provision reads:

9. For the purposes of subsection 5 (1) of the Act, tobacco must be packaged in accordance with the requirements under the *Tobacco Act* (Canada) and the regulations made under that Act and the package must bear or contain the information required under that Act and those regulations.

Regulatory authority for a province-specific package health warning exists in **BC** (*TVPCA*, ss. 2(1)(a), 11(2)(a)); **MB** (*NSHPVPA*, s. 9(1)(e)); **ON** (ss. (*SFOA*, ss. 5(1), 19(1)(d)), 19(1)(4)); **QC** (*TCA*, s. 28); and **NS** (*TAA*, s. 9(2)). No province other than ON and QC currently uses this regulatory authority, although BC did so between 1972 and 1989 at a time when there were no federal package warning requirements. Between 1989 and 1994, BC regulations required the same package warnings as were required federally, incorporating by reference federal requirements.¹⁰⁸

The regulatory authority federally and in BC, MB, ON, QC and NS includes the ability to require a toll-free number on packages, a web address on packages, a message on the inner foil wrapper, and an interior package message.

Toll-free quitline number and web address on packaging

The later section Cessation-Specific Initiatives provides information regarding the toll-free quitline number and web address appearing on packaging.

Misleading descriptors

The federal *Promotion of Tobacco Products and Accessories Regulations (Prohibited Terms)* prohibit the terms “light” and “mild”, as well as any modifiers of the terms including “extra” and “ultra” in packaging and advertising for cigarettes, cigarette tobacco, bidis, little cigars, tobacco sticks, cigarette papers, cigarette tubes, cigarette filters. The ban applies to variations in spelling and abbreviations of the terms, and to other parts of speech and grammatical forms of those terms.

The regulations are subsequent to 2006 settlements between the federal Competition Bureau and the three major tobacco companies,¹⁰⁹ as well as a number of smaller tobacco companies, to remove the terms “light” and “mild”.

Ban on cigarette cases

NS – the display ban applies to any store displaying a cigarette case, whether or not the store sells tobacco (*TAA*, s. 9AA(1); *TAR*, s. 1A(2(ii))).

¹⁰⁸ *Tobacco Product Regulation*, BC Reg 258/72, amended BC Reg 347/89, repealed by BC Reg 216/94.

¹⁰⁹ *JTI-MacDonald Corp. and The Commissioner of Competition*, Agreement Between, November 8, 2006; *Imperial Tobacco Canada Limited and The Commissioner of Competition*, Agreement Between, November 7, 2006; *Rothmans, Benson & Hedges Inc. and The Commissioner of Competition*, Agreement Between, November 8, 2006. These agreements are no longer in force with the adoption of the federal regulation banning “light” and “mild” descriptors.

Single presentation requirement

Uruguay has a single presentation requirement, meaning that only one brand variation per brand is allowed.¹¹⁰ Thus Philip Morris could not sell all of Marlboro Red, Marlboro Gold, Marlboro Silver, and Marlboro Menthol – only one of these brand variations could be sold.

A single presentation requirement has not been adopted in Canada.

Other packaging restrictions

QC – The following advertising restrictions also apply to packaging, that is where packaging:

- (1) is directed at minors;
 - (2) is false or misleading, or is likely to create an erroneous impression about the characteristics, health effects or health hazards of tobacco;
 - [...]
 - (3) directly or indirectly associates the use of tobacco with a particular lifestyle;
 - (4) contains testimonials or endorsements;
 - (5) uses a slogan;
 - (6) contains a text that refers to real or fictional persons, characters or animals;
- (TCA, s. 24, paras. 1-6, s. 28, para. 3)

These provisions, however, do “not apply to trademarks appearing on tobacco products on sale in Quebec on 14 May 1998” (TCA, s. 75).

Minimum package quantity

- **AB** – there is a minimum quantity of 4 for designated cigars that have a retail price of less than \$4.00 per unit; a designated cigar means “a cigar that has a cigarette filter or weighs more than 1.4 grams and less than 5 grams excluding the weight of any mouthpiece or tip”; this does not apply to little cigars as defined by the federal TA (TSRR, s. 9.1).
- **ON** – Ontario has a minimum package quantity of 20 for cigarettes and little cigars (SFOA, ss. 5(2), 5(3)). In addition, regulations require that packaging comply with federal packaging requirements, which include a minimum package quantity of 20 for cigarettes, little cigars and blunt wraps (General Regulations under SFOA, s. 9).
- **QC** – Quebec has a minimum package quantity of 20 for cigarettes. There is also a minimum package quantity of 10 units for other tobacco products; however, if the price is more than \$10, the quantity may be less than 10 units (TCA, s. 19; RUTCA, s. 6). The QC minimum quantity provisions do not apply to loose tobacco.

Regulation of Product Characteristics

Warning on cigarette itself

A health warning or other message discouraging smoking on the cigarette itself has not yet been required. Singapore has required a tax-paid marking on the cigarette itself (as illustrated in the Contraband Prevention section).

¹¹⁰ Uruguay: Ministry of Public Health Ordinance No. 514, August 18, 2008.

<https://www.tobaccocontrolaws.org/files/live/Uruguay/Uruguay%20-%20Ordinance%20No.%20514.pdf>

Canada's federal excise legislation contains regulatory authority to require a tax-marking on the cigarette itself. On Feb. 8, 1994, at the time of the federal tobacco tax rollback, the federal government announced its intention to require a tax-marking on each cigarette, but this was never implemented.

Ban tobacco logos/branding on the cigarette itself

Health Canada's proposed regulations for plain and standardized packaging include a ban on tobacco logos/branding on the cigarette itself. Australia has implemented such a measure, though a unique non-descript alphanumeric indicator is permitted for each brand.

Ban on slims/superslims, restrictions on cigarette length

Health Canada has included regulating the length and width of cigarettes as a potential measure in regulations for plain and standardized packaging.

New Zealand has banned cigarettes with a width of less than 7 mm effective June 6, 2018 at the retail level, the first jurisdiction in the world to do so. New Zealand has also established a maximum length of 95 mm.¹¹¹

Flat filter end

Health Canada has included a requirement for a flat filter end (banning filters from containing a groove, hole or recess) as a potential measure in regulations for plain and standardized packaging.

Ban on all capsules

The federal ban on flavours in cigarettes, as well as provincial flavoured cigarette bans, include a ban on flavoured capsules. However, capsules containing something other than flavours or other banned additives are not prohibited. In 2017, Camel North Aqua Filter cigarettes were sold in Canada with a water capsule in the filter.

The EU Directive bans capsules containing flavours, tobacco or nicotine (Art 7(7)).¹¹²

Control colour of cigarette paper

Pursuant to federal legislation, cigarette paper can only be white (TA, Schedule), although the tipping paper may imitate a cork pattern. See below for additional information on restrictions of colouring agents.

Ban on certain additives (other than flavours)

Pursuant to federal legislation (TA, Schedule), the following additives are banned in (a) cigarettes; (b) blunt wraps; (c) little cigars; and (d) all other cigars, except those that weigh more than 6 g

¹¹¹ New Zealand: *Smoke-free Environments Regulations 2017*, LI 2017/123, regulation 42.

http://www.legislation.govt.nz/regulation/public/2017/0123/latest/whole.html?search=ts_act%40bill%40regulation%40deemedreg_smoke_resel_25_a&p=1#DLM7282702

¹¹² European Union: *Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC*.

<https://www.tobaccocontrol.org/files/live/European%20Union/European%20Union%20-%20TPD%202014%20-%20national.pdf>

excluding the weight of any mouthpiece or tip, have a wrapper fitted in spiral form and do not have tipping paper:

- amino acids;
- vitamins, caffeine;
- essential fatty acids;
- fruits, vegetables or any product obtained from the processing of a fruit or vegetable, excluding activated charcoal and starch;
- glucuronolactone;
- probiotics;
- spices, seasonings and herbs;
- sugars and sweeteners, excluding starch;
- taurine;
- vitamins;
- mineral nutrients, excluding those necessary to manufacture the tobacco product.

There are also the following restrictions on colouring agents (*TA*, Schedule):

- For blunt wraps, colouring agents are banned (*TA*, Schedule);
- For cigarettes, colouring agents are banned except (1) “those used to whiten paper or the filter or to imitate a cork pattern on tipping paper” (*TA*, Schedule); trademarks on a tobacco product (*TA*, s. 5.1, though subsequent plain and standardized packaging regulations are expected to ban such trademarks), and a marking required under a federal/provincial territorial law (*TA*, s. 5.1) such as a tax-paid marking on the cigarette itself, though no government in Canada has yet required this.
- For most cigars, there is a ban on colouring agents, with some exceptions including for mouthpieces, tips and tipping paper.

Regulatory authority over the product itself

The federal government, BC and QC have regulatory authority over the product itself.

All products must be registered

Pursuant to the federal *Tobacco Reporting Regulations* (ss. 1, 9), a list of all brand variations for each type of package must be reported to Health Canada (though Health Canada does not maintain a publicly available listing). This applies to cigarettes; cigarette tobacco; leaf tobacco; cigars; pipe tobacco; chewing tobacco; snuff; kreteks; tobacco sticks; and bidis. (But it does not apply to other tobacco products.) This requirement is similar to registration.

Whether a province/territory has a type of product registration requirement in tobacco tax legislation has not been reviewed.

Water Pipe

Quebec is the only province to have fully applied its tobacco legislation to herbal shisha (herbal, non-tobacco water pipe products). A regulation under the *TCA* adopted in 2008 states: “any product

that does not contain tobacco and is intended to be smoked is considered to be tobacco” (*RUTCA*, s. 1).

QC and NL ban the sale of herbal shisha to minors.

QC and NL ban the sale of herbal shisha in the same locations where the sale of tobacco is banned.

QC is believed to be the first and to date only jurisdiction in the world to have banned the sale of flavoured herbal shisha.

QC, NB, NS, PEI and NL have banned herbal water pipe smoking in places where smoking is banned. **QC** has effectively done so through a combination of measures, with limited exceptions. Here are the implementation dates:

1. Quebec (July 24, 2008)¹¹³
2. Nova Scotia (May 31, 2015)
3. New Brunswick (July 1, 2015)
4. Prince Edward Island (Sept. 1, 2015)
5. Newfoundland and Labrador (July 1, 2017)

QC banned smoking of herbal shisha in places where tobacco smoking is banned, effective in 2008. There is a grandfather exemption for about 10 water pipe establishments throughout the province in existence on May 10, 2005, subject to conditions (the full list includes 25 establishments, but some of these were grandfathered cigar establishments, not water pipe). For the grandfathered water pipe establishments, smoking is not permitted on patios, and the supply of flavoured water pipe products is prohibited (almost all water pipe products in Canada are flavoured). In legal proceedings seeking to invalidate the Quebec provisions applying to water pipe establishments (legal proceedings that have not succeeded in invalidating legislation), establishments argued that the combination of measures was such that the establishments would be forced to close.¹¹⁴

In **QC**, the conditions for a grandfathered establishment whereby smoking of cigars or pipe tobacco is permitted include, among others, a minimum annual volume of \$20,000 for cigar/pipe tobacco sales for the taxation year prior to the then current taxation year as of May 10, 2005 (or the then current tax year if the premise was established after May 10, 2004 and before May 10, 2005); notification to the Quebec Ministry of Health by November 10, 2006; no meals nor minors under 18 in the cigar/water pipe room; the room must be fully enclosed, with self-closing doors, and with separate ventilation to outside of the building) and the posting of a government certification notice for the room so as to be visible at all times (*TCA*, ss. 8.1, 8.1.1, 8.2). The renting of water pipes and their components and accessories is banned (*TCA*, ss. 8.1, 8.1.1., 8.2, s.17.2).

¹¹³ *RUTCA*, s. 1, enacted by O.C. 704-2008, s.1.

¹¹⁴ *147488 Canada Inc. v. Procureure générale du Québec*, Quebec Superior Court, June 17, 2016, para 12.

Medicare Cost Recovery

Twelve of 13 provinces/territories (Yukon excepted) have adopted legislation to facilitate a medicare cost recovery lawsuit against the tobacco industry, while all ten provinces have filed lawsuits against the tobacco industry. The three territories have not yet filed a lawsuit. The compensation sought by provinces against the tobacco industry collectively exceeds \$120 billion.

- **NU** – In Nunavut, on November 11, 2016, the territorial government issued a Request for Proposals for legal representation for its intended medicare cost recovery lawsuit.¹¹⁵
- **BC** – *Tobacco Damages and Health Care Costs Recovery Act*, adopted in 2000, was unanimously (9:0) upheld as constitutionally valid by the Supreme Court of Canada on September 29, 2005.¹¹⁶
- **QC** – The *Tobacco-related Damages and Health Care Costs Recovery Act* was unanimously upheld by the Quebec Court of Appeal as constitutional on Sept. 28, 2015, with the Supreme Court of Canada on May 5, 2016 dismissing an application by JTI-Macdonald for permission to appeal.¹¹⁷
- **ON** – In 2000, Ontario filed a US\$40 billion medicare cost recovery lawsuit in U.S. federal courts under the *Racketeer-Influenced and Corrupt Organizations Act* (RICO); this case was not able to go forward on the preliminary technical grounds that a foreign government such as Ontario could not bring such a lawsuit in U.S. courts.¹¹⁸

On May 27, 2015, in the Quebec class actions (separate proceedings from the government medicare cost recovery cases), the Quebec Superior Court found in favour of the victims and awarded \$15.5 billion against the three major tobacco companies.¹¹⁹ An appeal before the Quebec Court of Appeal was argued in November 2016 with a judgment pending.

Contraband Prevention

Tax-paid markings

The federal government and all provinces require tax-paid markings for cigarettes. Most frequently, these markings now appear as a tax-stamp, which the federal government has required for federal purposes since April 1, 2011. The default federal colour on the tax-stamp is peach, unless a province/territory requires otherwise. Different provinces have different background colours as follows:

¹¹⁵ External Legal Services Relating to Tobacco Damages and Health Care Costs Recovery, Nunavut, RFP 2016-56.

¹¹⁶ *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005] 2 SCR 473.

¹¹⁷ *Imperial Tobacco Canada Ltd. v. Québec (Procureure générale)*, 2015 QCCA 1554, Quebec Court of Appeal, September 28, 2015, permission to appeal to the Supreme Court of Canada dismissed May 5, 2016 by the Supreme Court of Canada.

Quebec Court of Appeal judgment: <https://www.canlii.org/en/qc/qcca/doc/2015/2015qcca1554/2015qcca1554.html>

¹¹⁸ *Her Majesty the Queen in Right of Ontario, the Minister of Health and Long Term Care v. Imperial Tobacco Limited et al.*, filed March 2, 2000. Judgment: *In re Tobacco/Governmental Health Care Costs Litigation*, U.S. District Court for the District of Columbia, Aug. 7, 2000.

¹¹⁹ *Létourneau v. JTI-MacDonald Corp.*, 2015 QCCS 2382, Quebec Superior Court, May 27, 2015. Two class actions were heard and decided together: *Létourneau v. JTI-MacDonald Corp* and *Conseil québécois sur le tabac et la santé and Blais v. JTI-MacDonald Corp.*

BC	- pantone green 333
Alta	- pantone red 485
Sask	- pantone beige 466
Man	- pantone grey 430U
Ont	- opaque process yellow
Que	- opaque white
NB	- pantone 207 (burgundy)
NS	- pantone purple U
PEI	- pantone purple U (same marking as required in NS)
N&L	- pantone 804 orange
NWT	- pantone grey 430U (pending, same marking as required in MB) ¹²⁰

“Pantone” is a colour classification system.

As examples, here are images of the tax-stamps required in Ontario (with “ON” and yellow colour) and Manitoba (with “MB” and grey colour).



In NWT, the government is in the process of requiring a territorial tobacco tax stamp, which will be the same stamp as required in Manitoba.

Tracking and tracing

No government in Canada has yet required a tracking and tracing system. If fully implemented, a high-tech tracking and tracing system would enable identification of where product is in the distribution system, in the same way that Federal Express is able to identify the status of a shipment, as well as the last known point prior to any improper diversion.

An effective tracking and tracing system includes not only overt markings, but also covert markings unique to each package. The tax-stamp system in Canada, each with a unique identifier and overt and covert markings, provides a basis to subsequently implement tracking and tracing.

The European Union is in the process of implementing a tracking and tracing system.

¹²⁰ In NWT, *An Act to Amend the Tobacco Tax Act*, SNWT 2017, c.14, was proclaimed to come into force on Oct. 1, 2017. This Act includes the establishment of regulatory authority to require a territorial tax stamp. The territorial government has previously indicated that it intends to use the Manitoba tax stamp.

Marking on cigarette itself

Although regulatory authority exists at least federally and in BC and Que to require a marking directly on the cigarette (tobacco tax legislation in other provinces has not been reviewed), no such regulations have been adopted. On February 8, 1994, at the time of the tobacco tax rollback, the federal government announced that it intended to require such a marking. Amendments to federal excise legislation created enabling authority, but that authority has not yet been used. Such a marking could appear, for example, on the filter overwrap portion of the cigarette.

Singapore has required a tax marking “SDPC” on each individual cigarette (this stands for “Singapore Duty-Paid Cigarette”), as illustrated below.



Cigarettes in Singapore marked “SDPC”

Refund/rebate system for on-reserve sales

Under a refund/system, manufacturers/wholesalers would ship product to reserve retail outlets at a price that would include an amount equivalent to the provincial/territorial tobacco tax. Eligible First Nation consumers would still purchase product exempt from tax, but on-reserve retailers would apply to the provincial government for a rebate. A refund/rebate system is in place in AB, SK, MB, QC, NB, PEI and NWT.¹²¹ Some provinces/territories (MB, NB, NWT) have both a refund system and a quota (allocation) system.

Quotas, tax-exempt shipments to reserves

At a minimum, BC, MB, ON, NB, NS and NWT have quotas (allocation) for the quantity of tax-exempt cigarettes able to be supplied to each reserve. The quotas are calculated using a formula based on reserve population. In MB, the quota would apply to the few reserves where a refund system is not in place. NWT implements a quota through administrative agreements with the two

¹²¹ In NWT, the refund system applies to two stores, one on the Salt River reserve and one on the Hay River reserve.

eligible First Nations in NWT – there are agreements with both the First Nations and the store on each reserve.

Distinct tax-exempt markings for reserves

At least BC, AB, ON, and NS require a distinct coloured marking (the federal default colour, peach) for product intended to be sold on-reserve exempt from provincial tobacco taxes. All of these provinces have quotas for tax-exempt shipments to reserves. None of these provinces require a refund system for tax-exempt products sold on reserves (with a refund system, which is a better approach, there is not a need for a distinct tax-marking for on-reserve sales).

Manufacturer licensing requirement

The federal government and at a minimum Ontario and Quebec (pursuant to tobacco tax legislation) each require a government-issued tobacco manufacturer licence in order to manufacture tobacco products. Thus a manufacturer in Quebec, for example (including a manufacturer located on a reserve), is legally required to maintain both federal and Quebec tobacco manufacturer licences in order to manufacture tobacco products.

Export tax

Since 1994, the federal government has imposed an export tax. There are some specific exceptions, such as if the brand is not sold in Canada. The export tax was imposed to curb the vast quantities of tax-exempt exports being sent to the U.S. and returning to Canada as contraband. The export tax makes it uneconomic for this supply mechanism of the early 1990s to be repeated.

Application of tobacco tax in duty-free stores

- **Federal** tobacco taxes apply to tobacco products sold in duty-free stores. The federal government first imposed tobacco taxes for tobacco products sold in duty-free stores in 2001.
- **PEI, YT, NWT, NU** – There are no duty-free stores.

Ban on cigarette cases

No government in Canada has banned the sale of cigarette cases, containers sold empty and intended to hold cigarettes. (Some consumers place their contraband cigarettes in these containers to help conceal that the consumer has contraband.)

- **NS** – the display ban applies to any store displaying a cigarette case, whether or not the store sells tobacco (*TAA*, s. 9AA(1); *TAR*, s. 1A(2(ii))).

Ban on growing of tobacco

- In at least **ON**,¹²² **QC**¹²³ and **NS**,¹²⁴ a permit is required to grow tobacco, though in ON this does not apply to tobacco grown for personal use subject to specified limits. Thus in QC and NS, a person could not grow tobacco at home without a permit.

¹²² *Tobacco Tax Act*, RSO 1990, c T.10, s. 2.2. The personal use exemption is found *Raw Leaf Tobacco*, O Reg 247/14, s. 3.

¹²³ *Règlement sur les permis et les renseignements des producteurs de tabac*, RLRQ c. M-35.1, r. 282, s. 1 (under *An Act Respecting the Marketing of Agricultural, Food and Fish Products*, CQLR c. M-35.1).

¹²⁴ *Flue-Cured Tobacco Growers' Marketing Board Regulations*, NS Reg 91/85, s. 2.02 (under the *Natural Products Act*, RSNS 1989, c. 308).

Ban on mail order and interprovincial sales

• **QC** – the provincial requirement that sales only be made in a face-to-face exchange in a store would thus include a ban on mail order sales and interprovincial sales.

Party to Illicit Trade Protocol

Canada is not yet a Party to the *Protocol to Eliminate Illicit Trade in Tobacco Products*, a Protocol adopted under the *WHO Framework Convention on Tobacco Control*.¹²⁵ As of October 31, 2017, there were 34 Parties to the Protocol. The Protocol will enter into force 90 days after 40 countries have become Parties to the Protocol.

Contraband settlements with, and convictions of, major tobacco companies

On Aug. 13, 2003, the federal government filed a \$1.5 billion civil lawsuit regarding contraband in Ontario Superior Court. The amount claimed would later increase to \$4.3 billion. On August 11, 2004, the Quebec Government obtained a Quebec Superior Court order that JTI-Macdonald pay \$1.36 billion in unpaid tobacco taxes, penalties and interest. This prompted JTI-Macdonald to contest the order, but also to file for bankruptcy protection.

As part of the JTI-Macdonald bankruptcy proceedings, governments gave notice of claims as follows prior to a June 27, 2005 deadline:

Canadian Gov't	\$4,300,000,000
B.C.	450,000,000
Manitoba	23,000,000
Ontario	1,550,000,000
Quebec	1,360,000,000
New Brunswick	1,495,522,667
Nova Scotia	326,109,000
P.E.I.	<u>75,000,000</u>
TOTAL	\$9,579,631,667
TOTAL, provinces	\$5,279,631,667

Eventually all three major companies would plead guilty to contraband and pay fines, and would enter civil settlements with federal and provincial governments. Imperial Tobacco Canada Ltd and Rothmans, Benson & Hedges did so in 2008, and JTI-Macdonald did so in 2010. The total in fines and civil amounts was \$1.7 billion, enormously short of the revenues forgone by governments through contraband and through the reduction in tobacco taxes that occurred in 1994. Here are the totals for fines and civil amounts combined:

\$600 million, Imperial Tobacco Canada Ltd. (2008)
 \$550 million, Rothmans, Benson & Hedges Inc./Rothmans Inc. (2008)
 \$550 million, JTI-Macdonald Corp./R.J. Reynolds Tobacco Company (2010)

 \$1.7 billion, total, but less on present value

¹²⁵ *Protocol to Eliminate Illicit Trade in Tobacco Products*, approved Nov. 12, 2012, not yet in force.
http://apps.who.int/iris/bitstream/10665/80873/1/9789241505246_eng.pdf?ua=1&ua=1

Here is a breakdown of the fines and civil amounts:

Company	Total	Fine	Civil Amount	Other
Imperial Tobacco Canada Ltd.	\$600 million	\$200 million	\$350 million	\$50 million
Rothmans, Benson & Hedges Inc./Rothmans Inc. group	\$550 million	\$100 million	\$400 million	\$50 million
- Rothmans, Benson & Hedges Inc.	\$350 million	\$100 million	\$200 million	\$50 million
- Rothmans Inc.	\$200 million		\$200 million	
JTI-Macdonald/RJR group	\$550 million	\$225 million	\$325 million	
- JTI-Macdonald Corp.	\$150 million	\$150 million		
- R.J. Reynolds Tobacco Co.	\$325 million		\$325 million	
- Northern Brands International Inc.	\$75 million	\$75 million		
TOTAL	\$1.7 billion	\$525 million	\$1.075 billion	\$100 million

The total fines paid by the companies was the largest ever in Canadian history. The civil amounts paid by Imperial Tobacco and by Rothmans, Benson & Hedges could be paid out over a period of more than 10 years, thus reducing the after-inflation value. The civil amounts paid by JTI-Macdonald were required to be paid immediately.

The “Other” amounts of \$50 million paid by each of Imperial Tobacco and RBH were ostensibly to combat contraband tobacco in Canada.

Rothmans Inc. was the Canadian parent company of Rothmans, Benson & Hedges Inc. Northern Brands International Inc. was a U.S.-based subsidiary of R.J. Reynolds Tobacco Co.

The contraband settlements included some court enforceable contraband prevention obligations for each of the three tobacco companies,¹²⁶ settlements that continue in force.

There were further criminal convictions. Northern Brands International was convicted in US federal court in 1998 with a US\$15 million penalty.¹²⁷ RJR-Macdonald senior employees Leslie

¹²⁶ *Imperial Tobacco Canada Limited and Her Majesty the Queen in Right of Canada and the Provinces Listed on the Signature Pages Attached Hereto*, Comprehensive Agreement, July 31, 2008 (all 10 provinces signed).

• *Rothmans, Benson & Hedges Inc. and Rothmans Inc. and Her Majesty the Queen in Right of Canada and the Provinces Listed on the Signature Pages Attached Hereto*, Comprehensive Agreement, July 31, 2008 (all 10 provinces signed).

• *JTI-Macdonald Corp. and Her Majesty the Queen in Right of Canada and the Provinces and Territories Listed on the Signature Pages Attached Hereto*, Comprehensive Agreement, April 13, 2010 (all 13 provinces and territories signed).

• *R.J. Reynolds Tobacco Company and Her Majesty the Queen in Right of Canada and The Provinces and Territories Listed on the Signature Pages Attached Hereto*, Comprehensive Agreement, April 13, 2010.

• Agreement between Canada and all 10 provinces, *Agreement Respecting Certain Funds Received from ITCL and RBH*, July 31, 2008.

• Agreement between Canada and all 13 provinces and territories, *Agreement Respecting Certain Funds Received from JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, Northern Brands International Inc., or on their behalf*, April 13, 2010.

Thompson and Stan Smith were also convicted. Leslie Thompson was convicted in US federal court in 1999 and sentenced to seven years in prison,¹²⁸ and convicted in the Ontario Court of Justice in 2006 and given a suspended sentence and three months probation.¹²⁹ Stan Smith was convicted in the Ontario Court of Justice in 2006 and given a two years less a day conditional sentence, with \$150,130.12 to be paid in restitution.¹³⁰

Other contraband measures

There are many other potential contraband measures for which a review of federal/provincial/territorial implementation has not been completed for this report. Those measures, which typically would be implemented through tobacco tax legislation, include the following (note that while a province may be indicated as an example of implementation, there may also be other provinces that have implemented the measure):

- Licensing at all levels of distribution and supply. For example, Quebec requires licences for manufacturers, importers, wholesalers, retailers, transporters (including transporters of leaf tobacco), growers, storers/warehousers, and persons in possession of manufacturing equipment.
- Prohibiting the supply of raw materials (eg leaf tobacco, cellulose acetate tow (used in filters), cigarette paper, cigarette packaging) to unlicensed manufacturers. The federal government, Ontario and Quebec prohibit the supply of leaf tobacco to unlicensed manufacturers. Ontario legislation to come into force Jan. 1, 2018 will prohibit cigarette filter materials from being imported or possessed unless the person is a registered tobacco manufacturer, or is otherwise exempt. On Sept. 27, 2017, Ontario launched a consultation¹³¹ on a draft regulation associated with this new legislation, including certain exemptions, such as non-tobacco businesses who notify the government. The consultation deadline is Nov. 13, 2017.
- Requiring a licence to make tax-stamps/markings, as well as to have equipment to apply tax-stamps/markings. Manitoba has done this.
- Requiring duty-free stores to be registered provincially. Saskatchewan has done this.
- Requiring retailers selling tax-exempt tobacco products to be registered (this would apply to on-reserve retailers). Saskatchewan has done this.

¹²⁷ *United States v. Northern Brand International Inc.* (December 22, 1998), U.S. Dist. Ct. N.D.N.Y., (U.S.\$15 million penalty).

¹²⁸ *United States v. Leslie Thompson* (March 25, 1999), U.S. Dist. Ct. N.D.N.Y. Criminal Action No. 99-CR-93 (TJM), (seven years in prison).

¹²⁹ *R. v. Leslie Thompson* (2 February 2000), Toronto (Ont. Ct. J.), (suspended sentence, three months probation).

¹³⁰ *R. v. Stan Smith* (5 January 2006), Toronto (Ont. Ct. J.), (two years less a day conditional sentence, \$150,130.12 restitution).

¹³¹ Ontario Ministry of Finance, "Proposed Cigarette Filter Components Regulation" Sept. 27, 2017.

<http://www.ontariocanada.com/registry/view.do?postingId=24925&language=en>

- Requiring the provision of a bond/security that could be forfeited in the event of non-compliance, as some governments have done.
- Requiring that importers into a province pay to the government an amount equal to tobacco tax at the time of importation rather than at a subsequent point, such as at the point of sale within the province.
- Allowing local police to keep fines arising from enforcement action, thus providing greater resources and incentives to local police for enforcement. Quebec has done this.
- Prohibiting the sale or offering for sale at a price lower than the total amount of federal and provincial tobacco taxes. Quebec has done this.
- Authorizing tickets to be issued for infractions. Several provinces have done this.
- Prohibiting individuals from possessing more than a specified quantity of cigarettes/tobacco products. Several provinces prohibit possession of more than 5 cartons (1000 cigarettes). As an example, Manitoba's possession limit is 5 units, with a unit being 200 cigarettes, or 50 cigars, or 200 grams of any other type of tobacco product.
- Prohibiting the sale or purchase of more than a specified quantity at any one time, or per day. One or more provinces have done this. At example might be to prohibit more than 2 cartons (400 cigarettes) from being sold/purchased at any one time.
- Establishing a maximum daily or weekly tax-exempt purchase limit on-reserves, such as one carton. Saskatchewan has a limit on purchasing of 200 units of tax-exempt tobacco products per week, and a limit on possessing 800 units of tax exempt tobacco products. A unit includes 1 cigarette, 1 cigar, 1 tobacco stick,¹³² or 1 gram of other tobacco products.
- Requiring importing consumers to pay tobacco taxes to the government, but setting allowable quantity exemptions. For example, Saskatchewan allows importing consumers to bring in tax-free 200 cigarettes, 200 tobacco sticks, 200 grams of tobacco and 50 cigars provided that the products are marked for sale in another province, or the products are an allowable tax-exempt importation when entering Canada.
- Cross appointing health inspectors to be inspectors under tobacco tax legislation. This is useful, for example, so that health inspectors can seize illegal product immediately without having to call and wait for a tobacco tax inspector (who might even be in a different city).

¹³² A "tobacco stick" is a pre-formed roll of tobacco to be inserted into a cigarette tube (typically a filtered cigarette tube). It is understood that such products are no longer sold in Canada.

- Requiring a provincial government identification card to be presented to be able to purchase tax-exempt products on reserve.
- Requiring record keeping for on-reserve retailers selling tax-exempt tobacco products. Saskatchewan and some other provinces have done this.
- Providing for the ability to suspend a driver's licence when a motor vehicle was used as part of a contraband offence. Several provinces have done this.
- Providing that seized contraband is forfeited to the government. Several provinces have done this.

The *Criminal Code*, pursuant to 2014 amendments,¹³³ makes it an offence to be in possession of more than 10,000 cigarettes (50 cartons), 50 kg of other tobacco products, or 50 kg of raw leaf tobacco, except in accordance with specific provisions of the federal *Excise Act, 2001*.

Cessation-Specific Initiatives

Toll-free quitline

There is a toll-free quitline service accessible in all provinces and territories. A national toll-free quitline number has appeared as part of the exterior health warning on the front/back of cigarette and little cigar packages since 2012, and links callers to the toll-free quitline service in each province and territory. The number on the English warning is 1-866-366-3667. The number on the French warning is 1 866 JARRETE (1 866 527-7383).

Cessation websites

A web address has appeared as part of health warnings on cigarette and little cigar packages since 2012. The web address is

English	gosmokefree.gc.ca/quit
French	vivezsansfumee.gc.ca/abandon

There is a cessation website in each province/territory. The website at the web address on the package provides links to the websites for each of the 13 provinces/territories.

Previously, between 2001 and 2012, a web address was included as part of the interior message for packages of cigarettes and some other tobacco products. The web address was:

English	www.infotobacco.com
French	www.infotabac.com

¹³³ *Tackling Contraband Tobacco Act*, SC 2014, c. 23, enacting *Criminal Code*, RSC 1985, c. C-46, s. 121.1.

This web address still appears on interior package messages for some tobacco products, such as for roll-your-own tobacco. This web address still works, re-directing the person to the current website that has links to provincial websites.

Nicotine replacement products

Pursuant to federal regulations under the *Food and Drugs Act*,¹³⁴ nicotine replacement products have been authorized to be sold on a non-prescription basis as follows:

- 1992 – 2mg nicotine gum
- 1997 – 4mg nicotine gum
- 1998 – nicotine patch
- 2003 – nicotine inhaler
- 2006 – nicotine lozenge

A nicotine mouth spray is also now on the Canadian market on a non-prescription basis.

Drug plan coverage for Zyban/Champix and government subsidies for NRT

Champix (varenicline) is covered by drug plans in all provinces/territories except NS. Zyban (bupropion) for smoking cessation is covered by drug plans in all provinces/territories except MB, and NS.

Provincial drug plans are typically available for only a portion of the population, such as seniors, those on social assistance, and those with disabilities. The Yukon program for Zyban/Champix is for seniors and those receiving palliative care.¹³⁵

- **BC**,¹³⁶ **NWT**¹³⁷ and **NU**¹³⁸ have programs making Zyban, Champix and NRT available to the full population.
- **QC** has a program making Zyban, Champix and NRT available for the full population on a prescription basis.¹³⁹
- **NL** – the Newfoundland and Labrador program for Zyban/Champix is for eligible low income individuals. The Newfoundland and Labrador Smoking Cessation Program for Individuals with Low Income provides adults aged 18 years and older, registered under the Newfoundland and

¹³⁴ Previously *Food and Drug Regulations*, CRC c. 870, Schedule F, Part I (the regulatory structure has since been modified).

¹³⁵ Yukon Drug Formulary, accessed Sept. 4, 2017 <http://apps.gov.yk.ca/drugs>

¹³⁶ BC Ministry of Health, “BC Smoking Cessation Program” accessed August 13, 2017. <http://www2.gov.bc.ca/gov/content/health/health-drug-coverage/pharmacare-for-bc-residents/what-we-cover/drug-coverage/bc-smoking-cessation-program>

¹³⁷ Government of the Northwest Territories, “Information on NWT Health Coverage of Tobacco Quit Aids” revised July 2017.

¹³⁸ Nunavut Department of Health, “Extended Health Benefits (EHB)” accessed Sept. 9, 2017.

<http://www.gov.nu.ca/health/information/extended-health-benefits-ehb>

Nunavut Government, “Quit Aid Coverage” accessed Sept. 9, 2017.

<http://www.nuquits.gov.nu.ca/quit-tools/quit-aid-coverage>

¹³⁹ Régie de l’assurance maladie du Québec, “Prescription Drugs Covered” accessed August 13, 2017.

<http://www.ramq.gouv.qc.ca/en/citizens/prescription-drug-insurance/Pages/prescription-drugs-covered.aspx>

Labrador Prescription Drug Program Access, Foundation (Income Support), or 65+ Plans, with access to Champix or Zyban or alternatively with special authorization, the nicotine patch.¹⁴⁰

- **YT** has a program making NRT available for individuals enrolled in the QuitPath program.
- **PEI** – any resident registered in the Smoking Cessation Program can have the first \$75 per year covered for NRT/Zyban/Champix.¹⁴¹
- **NB** – has a program making NRT available through the New Brunswick Drug Plans (New Brunswick Prescription Drug Program and New Brunswick Drug Plan) for individuals enrolled in Plans ADEFGV.¹⁴²
- **AB** – the drug plan for individuals on social assistance (Alberta Human Services Drug Benefit Supplement) will also cover NRT for up to \$500 lifetime.

• Note that when NRT is part of plans, it may be that not all NRT products are covered. As well, there may be limits to the quantity of NRT and/or the duration of coverage (eg number of weeks).

• **Federal** – Health Canada, through the Non-Insured Health Benefit Plan, covers the cost of Zyban/Champix/NRT for status First Nations people (whether living on-reserve or off-reserve), as well as for Inuit who are beneficiaries of the Nunavut Land Claim Agreement or the Inuvialuit Final Agreement.¹⁴³ This would apply to most Inuit living in Nunavut and the Northwest Territories, and would also apply to eligible beneficiaries if living elsewhere in Canada.¹⁴⁴

Some summaries of drug plan coverage have been completed, and may have periodic updates or web links to monitor information developments.¹⁴⁵

NRT – exemption from provincial sales tax

- **BC**¹⁴⁶ and **MB**¹⁴⁷ exempt nicotine replacement products from the provincial sales tax (PST).

¹⁴⁰ Department of Health and Social Services, “The Newfoundland and Labrador Smoking Cessation Program for Individuals with Low Income” accessed August 13, 2017.

http://www.health.gov.nl.ca/health/wellnesshealthyliving/cessation_prog.html

¹⁴¹ Health PEI, “Quit Smoking Drug Program” accessed August 13, 2017.

<http://www.healthpei.ca/index.php3?number=1026302&lang=E>

¹⁴² New Brunswick Department of Health, “Smoking Cessation Therapies”.

<http://www2.gnb.ca/content/gnb/en/departments/health/MedicarePrescriptionDrugPlan/NBDrugPlan/ForHealthCareProfessionals/SmokingCessationTherapies.html>

¹⁴³ Health Canada, “About the Non-Insured Health Benefits (NIHB) Program” accessed August 13, 2017.

<https://www.canada.ca/en/health-canada/services/non-insured-health-benefits-first-nations-inuit/administration/about-non-insured-health-benefits-nihb-program.html>

¹⁴⁴ Health Canada, “Your Health Benefits—A Guide for Inuit to Access Non-Insured Health Benefits” March 2014.

https://www.canada.ca/content/dam/hc-sc/migration/hc-sc/fniah-spnia/alt_formats/pdf/pubs/nihb-ssna/yhb-vss-inuit/yhb-vss-inuit-eng.pdf

¹⁴⁵ Canadian Partnership Against Cancer, “Cessation Aids and Coverage in Canada” April 2017.

https://content.cancerview.ca/download/cv/prevention_and_screening/tobacco_cessation/documents/smoking_cessation_coverage_infographic_enpdf?attachment=0

Johnson & Johnson Inc., “helpthemquit.ca, Cost and Coverage” accessed August 13, 2017.

<https://www.helpthemquit.ca/treatment-barriers-smoking-cessation-treatment-costs-coverage>

¹⁴⁶ *Provincial Sales Tax Exemption and Refund Regulation*, BC Reg 97/2013, Part 2, s. 3(2)(b) (under the *Provincial Sales Tax Act*, SBC 2012, c. 35). For the period 1998 to 2013, see *Social Service Tax Act Regulations*, BC Reg 84/58, s. 3.35, enacted by BC Reg 284/98, adopted under the *Social Service Tax Act*, RSBC 1996, c. 431 (in force until April 1, 2013).

¹⁴⁷ *The Retail Sales Tax Act*, CCSM c. R130, s. 3(1)(e.2).

- **ON** exempts nicotine replacement products from the provincial portion of the harmonized sales tax (HST).¹⁴⁸

There is no provincial/territorial sales tax in AB, YT, NWT, NU.

The applicable provincial sales tax rates (or provincial portion of HST) are BC (7%), SK (6%), MB (8%), ON (8%), QC (9.975%), NB (10%), NS (10%), PEI (9%), NL (10%). Federally, the GST is 5%. NRT is subject to the 5% GST, and the 5% federal portion of HST.

NRT – sales outside of pharmacies

In all provinces/territories except Quebec, NRT products may be sold outside of pharmacies such as in convenience stores, grocery stores and gas stations. In Quebec, NRT products may only be sold in pharmacies.¹⁴⁹

NRT – label indication for use as long as needed

The label on nicotine replacement products does not have an indicated use that is as long as is needed. (The UK has adopted this approach.) For example, in Canada, the insert in a package of nicotine gum (purchased August 2017) states “Do not use for more than six months without consulting a doctor”. The insert also states:

Chew one piece of gum slowly and intermittently for 30 minutes using a chew and park technique (see below). Discard gum after 30 minutes out of the reach of children.

Repeat dose with a new piece of gum when the urge is felt to smoke again. Most people require 10 pieces per day at first. Do not exceed 20 pieces per day at first. Do not exceed 20 pieces a day. Gradually reduce the number of pieces of gum chewed each day until using 1-2 pieces a day and then stop. This may be accomplished in 2 or 3 months or may take up to 6 months. Consult your doctor if you are finding it difficult to reduce your intake of nicotine gums or after using the product for 6 months.

Pharmacist ability to prescribe Zyban/Champix

Pharmacists can prescribe smoking cessation medications (Zyban/Champix) in 7 provinces: AB, MB, ON, NB, NS, PEI, NL, but not in BC, SK, QC, YT, NWT, NU.¹⁵⁰ There are two medications for smoking cessation (Zyban and Champix) that are sold by prescription in Canada.

¹⁴⁸ *Retail Sales Tax Act*, RSO 1990, c. R.31, s. 7(1)(72).

¹⁴⁹ *Regulation respecting the terms and conditions for the sale of medications*, CQLR c. P-10, r. 12 (under the *Pharmacy Act*, CQLR c. P-10).

¹⁵⁰ Canadian Pharmacists Association, “Pharmacists’ Scope of Practice in Canada” December 2016.

https://www.pharmacists.ca/cpha-ca/assets/File/cpha-on-the-issues/ScopeofPracticeinCanada_DEC2016.pdf

As examples of regulations, see:

MB: *Pharmaceutical Regulation*, Man Reg 185/2013, Schedule 3 (under the *Pharmaceutical Act*, SM 1991-92, c 28).

PEI: *Practice of Pharmacists and Pharmacy Technicians Regulations*, PEI Reg EC532/14, s. 16, Schedule A(v) (under *Regulated Health Professions Act*, RSPEI 1988, c. R-10.1).

NL: *Authorization to Prescribe Regulations*, NLR 73/15, s. 11, Sch. (under the *Pharmacy Act*, 2012, SNL 2012, c. P-12.2).

See also

Canadian Partnership Against Cancer, “Cessation Aids and Coverage in Canada” April 2017

In Quebec, pharmacists can prescribe NRT, but not Zyban and Champix.¹⁵¹ Although NRT can be sold in Quebec (and across Canada) on a non-prescription basis, in Quebec a prescription is necessary if the purchaser wants to have the costs covered through the government program.

Nurse/dentist ability to prescribe Zyban/Champix

The ability of nurses and dentists to prescribe Zyban/Champix has not been documented.

In at least some provinces, nurses previously were expressly given the ability to prescribe the nicotine patch, which was previously sold by prescription.¹⁵²

Physician billing codes and fees

Information regarding provincial/territorial billing fees for smoking cessation is found in Appendix 6, based on a November 2016 review. Ontario and Quebec have specific billing codes for smoking cessation. In ON, the fee is \$15.40 for an initial discussion for a patient regarding smoking cessation and \$33.45 for a smoking cessation follow-up visit. In QC, the fee is \$35.40 for medical support for smoking cessation in the office (there are also other fees for different circumstances). NS has a code for lifestyle counselling, PEI has a code for health promotion counselling, and Saskatchewan has a code for physician counselling, all of which could include smoking cessation. Several other provinces have codes that might provide a fee for physician counselling, but this is less clear/direct.

Pharmacist billing fees

• **SK** – In Saskatchewan, pharmacists can bill \$2/minute to a maximum of \$300 per patient per year.¹⁵³

https://content.cancerview.ca/download/cv/prevention_and_screening/tobacco_cessation/documents/smoking_cessation_coverage_infographic_enpdf?attachment=0

Canadian Partnership Against Cancer, “Leading Practices in Clinical Smoking Cessation” April 2017.

https://content.cancerview.ca/download/cv/prevention_and_screening/tobacco_cessation/documents/smoking_cessation_clinical_program_scan_enpdf?attachment=0

¹⁵¹ *Regulation Respecting the Prescription of a Medication by a Pharmacist*, CQLR c. P-10, r. 18.2 (under both *Pharmacy Act*, CQLR c. P-10 and *Professional Code*, CQLR c. C-26), s. 1, Sch. I.

¹⁵² For example, see:

NL: *Nurse Practitioner Regulations*, NLR 65/98, Sch. C (under *Registered Nurses Act*, RSNL 1990, c. R-9), as repealed by *Nurse Practitioner Regulations, 2009*, NLR 68/09, s. 7. The *Registered Nurses Act, 2008*, SNL 2008, c. R-9.1, s. 37(3)(c), provides that the nurse practitioner standards committee appointed by the Association of Registered Nurses of Newfoundland and Labrador shall establish standards “designating the drugs that a nurse practitioner may prescribe and the circumstances under which the drugs may be prescribed”. The Association of Registered Nurses of Newfoundland and Labrador *Standards for Nurse Practitioner Practice in Newfoundland & Labrador*, 2013, Standard 7, p.8, provides that a nurse practitioner, “within the NP’s stream of practice, scope of practice and competence”[...] “7.1 Prescribes pharmacological and non-pharmacological therapies in accordance with federal and provincial legislation, standards, best practices and organizational policy.” Thus a nurse practitioner with the competence to do so could prescribe Champix or Zyban.

https://www.arnnl.ca/sites/default/files/documents/Standards_for_NP_Practice_NL.pdf

NWT: *Nurse Practitioner Prescription Regulations*, NWT Reg 053-2004 (under *Pharmacy Act*, RSNWT 1988, c. P-6) (regulation now repealed). Conditions may have applied to the ability to prescribe.

¹⁵³ Pharmacist billing under the Drug Plan and Extended Benefits Branch (DPEBB); Partnership to Assist with Cessation of Tobacco (PACT), PAS Policy Administered by Drug Plan and Extended Benefits Branch, June 3, 2009, updated October 1, 2013. For more information:

<http://www.makeapact.ca/>

- **ON** – In Ontario, under the Pharmacy Smoking Cessation Program (which only applies for Ontario Drug Benefit Recipients), the fee is \$40 for the First Consultation (once per year), \$15 for the Primary Follow-up counselling sessions 1-3 (three times per year = \$45 total), and \$10 for the Secondary Follow-Up counselling sessions 4-7 (four times per year = \$40 total).¹⁵⁴

Government policies in other provinces/territories have not been documented for pharmacist billing fees regarding smoking cessation. It is not known if there are provinces/territories other than Saskatchewan and Ontario that have implemented this.

Minimum cessation standards needed for hospital accreditation

There is no province/territory that requires hospitals to meet a minimum standard for smoking cessation to order to obtain/maintain hospital accreditation.

Reporting

The federal *Tobacco Reporting Regulations*,¹⁵⁵ adopted in 2000, have required that manufacturers report information to Health Canada on sales volumes; promotional activities including marketing expenditures and reasonable facsimiles of advertisements/promotions; manufacturing procedures; ingredients (including additives), constituents and emissions; and research activities. Pursuant to proposed amendments to the regulations,¹⁵⁶ companies would be required to provide digital images of their packages (including inside the package) for most tobacco products; as well, digital images (instead of reasonable facsimiles) will be required for advertisements/promotions.

Federal regulations require that tobacco product additives/ingredients are to be reported to Health Canada on a brand-by-brand basis including, in the case of cigarettes, whether or not the additive/ingredient is found in the tobacco, filter, or paper part of the cigarette. Federal regulations also require toxic emission yields in tobacco smoke (both mainstream and sidestream) to be reported. Federal regulations also require the reporting of a series of harmful constituents in the product itself (that is, in the product prior to the product being used).

Through regulations in place between 1998 and 2007, BC previously required that reporting of cigarette additives and ingredients on a brand-by-basis, as well as toxic emission yields in tobacco smoke.¹⁵⁷

Federal regulations require reporting sales volumes by number of packages sold and total sales value in dollars, which allows calculation of unit price.

<https://www.skpharmacists.ca/pharmacists/funded-services/provincial/professional-services>

¹⁵⁴ Ontario Ministry of Health and Long-Term Care, "Pharmacy Smoking Cessation Program"

<http://www.health.gov.on.ca/en/pro/programs/drugs/smoking/>

¹⁵⁵ *Tobacco Reporting Regulations*, SOR/2000-273.

¹⁵⁶ *Regulations Amending the Tobacco Reporting Regulations*, draft, published in the *Canada Gazette, Part I*, May 27, 2017. <http://gazette.gc.ca/rp-pr/p1/2017/2017-05-27/html/reg4-eng.php>

¹⁵⁷ *Tobacco Testing and Disclosure Regulation*, BC Reg 282/98, repealed by BC Reg 393/2007.

- **AB** – there is regulatory authority “respecting the reporting by retailers of their activities that are governed by this Act” (*TSRA*, s. 9(1)(e.3)). No regulations have been adopted.
- **QC** – The *TCA* (s. 24, third paragraph) requires that advertising published in newspapers and magazines be forwarded to the government on dissemination. Although the *TCA* (ss. 30, 31) authorizes regulations to require reports respecting sales volumes, tobacco products, marketing expenditures, or other information if required for public health, no regulations have been adopted.
- **ON** – Legislation provides that a person who “sells or distributes tobacco for subsequent sale at retail shall submit reports to the Minister in accordance with the regulations” (*SFOA*, s. 8). No such regulations have been adopted.

Public disclosure, additives/ingredients

- **Federal** – Health Canada has publicly released some reported information, such as aggregate sales data (nationally and by province),¹⁵⁸ and aggregate cigarette pricing data. Health Canada has not publicly released reported additive/ingredient information, but has released some information regarding toxic emissions in cigarette smoke.

Pending amendments to the federal *Tobacco Act* (Bill S-5) contain regulatory authority for Health Canada to publicly release reported information. At present in the *Tobacco Act*, there is nothing that prevents Health Canada from publicly releasing reported information.

- **BC** – Pursuant to regulations in force between 1998 and 2007, the additives and ingredients in cigarettes (whether in the filter, paper or tobacco part of the cigarette) and roll-your-own tobacco were published on the website of the B.C. Ministry of Health, with information provided on a brand-by-brand basis, subject to limited exceptions.¹⁵⁹ B.C. was the first jurisdiction in the world to do so. BC no longer has this information on its website.
- **BC** has specific regulatory authority respecting public disclosure (*TVPCA*, s. 11(1)(h.2)).
- **ON** and **QC** have legislative provisions regarding reporting, but do not have any specific provisions regarding public disclosure, but also do not have any legislative provisions stating that the reported information cannot be publicly disclosed.

Various Measures

Endorsed goal of under 5% by 2035

On Feb. 22, 2017, federal Minister of Health Jane Philpott announced the federal government goal of achieving a prevalence of under 5% tobacco use by 2035.¹⁶⁰ This was announced with the launch

¹⁵⁸ Health Canada, “Federal and Provincial/Territorial Tobacco Sales Data 2015” accessed Sept. 9, 2017 (provides sales data for 2001-2015).

http://healthycanadians.gc.ca/publications/healthy-living-vie-saine/wholesale-sales-2015-tobacco-tabac-ventes-en-gros/index-eng.php?_ga=2.108727946.926377688.1504967768-47378864.1504967768

¹⁵⁹ *Tobacco Testing and Disclosure Regulation*, BC Reg 282/98, repealed by BC Reg 393/2007.

¹⁶⁰ Health Canada, “Government of Canada Launches Public Consultation on the Future of Tobacco Control in Canada. Aggressive target to drive down tobacco use in Canada to less than 5% by 2035” February 22, 2017 (news release). <http://www.newswire.ca/news-releases/government-of-canada-launches-public-consultation-on-the-future-of-tobacco-control-in-canada-614530513.html>

of public consultations for a new Federal Tobacco Control Strategy, with the current strategy expiring in March 2018.

No province/territory has yet endorsed this objective. Some provinces/territories have their own previously established targets.

Government annual/regular report required

- **Fed** – Pursuant to Bill S-5, the federal government will have to table a report in both the House of Commons and Senate within 4 years of Royal Assent of Bill S-5, and every two years thereafter, based on a review of the provisions and operations of the federal Act (s. 60.1, to be enacted by Bill S-5).
- **QC** – In Quebec, the Health Minister must prepare a report to the Government on the implementation of the Act. The report is to be done every 5 years, with the next report due by Nov. 26, 2020. The report must be tabled in the National Assembly and examined by the competent committee of the National Assembly (*TCA*, s. 77).
- **NU** – In Nunavut, the Chief Medical Officer of Health must prepare an annual report on the operation of the *TCA* and submit the report to the Health Minister, who in turn must table the report with the Legislative Assembly (*TCA*, s. 23).

Manufacturer price controls

In Canada, manufacturers are able to increase tobacco product prices without obtaining government permission. In some countries, such as Japan, product price increases have needed government approval.

Cigarette flammability standard

In adopting the federal *Cigarette Ignition Propensity Regulations*,¹⁶¹ which came into force on Oct. 1, 2005 at the manufacturer/importer level, Canada became the first country to adopt a standard to reduce the risk of cigarette-caused fires. Canada became the second jurisdiction in the world to do so, after the state of New York.

Ban on confectionary resembling a tobacco product

- **YT** – Yukon prohibits the sale or supply of a candy pipe, cigar or cigarette, or “any other confection or edible product designed to resemble a pipe or tobacco product” (*SFPR*, s. 11).
- **NU** – Nunavut prohibits the sale or supply of “any product, including confectionary, designed to appear as a cigarette, cigar or pipe, or as a tobacco product” (*TCA*, s. 4).
- **NS** – A provision is included in legislation, but has not been proclaimed into force, to prohibit “any product, including a confectionery, designed to appear as a cigarette or other form of tobacco or as a tobacco product” (*TAA*, s. 8).

¹⁶¹ *Cigarette Ignition Propensity Regulations*, SOR/2005-178 (under *Tobacco Act*), since replaced by the *Cigarette Ignition Propensity (Consumer Products) Regulations*, SOR/2016-103 (under *Canada Consumer Product Safety Act*).

Health warning signs at point of purchase (POP)

- **BC**,¹⁶² **NB**,¹⁶³ **NS**,¹⁶⁴ and **PEI**,¹⁶⁵ **NL**,¹⁶⁶ have repealed previous requirements for health warning signs to be displayed at point of sale. These warning signs had initially been required prior to retail display bans being in place. The warning sign requirements were repealed on the basis that they undermined the “out-of-sight, out-of-mind” aspects of retail display bans.
- **SK** – the health warning message is included as a small part of the sales to minors sign.
- **NS** provides an optional health warning for inclusion in price signs at retail (*TAR*, ss. 3D(2)(g), 3D(3), Sch. A, Sign 4).
- **PEI** regulations regarding sales to minors signs require the Smokers’ Helpline number on sales to minors signs, but there is no separate health warning sign required, as was previously the case (*TESDSAAR*, s. 5, Sch. A, B, C).

Ratification of the WHO Framework Convention on Tobacco Control

Canada ratified the FCTC on November 26, 2004, and was the 38th country to become a Party to the FCTC. Although not procedurally necessary, all provinces and territories endorsed the federal government’s ratification of the FCTC on behalf of Canada.¹⁶⁷

- **QC** – In 2006, Quebec adopted a decree that the Quebec Government would be bound by the FCTC.¹⁶⁸

18A movie rating if smoking depicted

Provincial film boards rate movies into different classification categories, such as

- G – Suitable for all
- PG – Parental guidance advised
- 14A – Persons younger than 14 must be accompanied by an adult
- 18A – Persons younger than 18 must be accompanied by an adult
- R – Restricted to persons 18 and older
- A – (Adult), restricted to persons 18 and older

Provincial film authorities include: Consumer Protection BC, Alberta Film Classification, Saskatchewan Film Classification Board, Manitoba Film Classification Board, Ontario Film Authority, Régie du cinéma du Québec, and Film Classification Section, Nova Scotia Government

¹⁶² Through adoption of BC Reg 149/2016, amending *Tobacco Control Regulation* (renamed *Tobacco and Vapour Products Control Regulation*), with effect from Sept. 1, 2016.

¹⁶³ *New Brunswick Regulation 2015-31*, amending New Brunswick Regulation 94-57, with effect from July 1, 2015.

¹⁶⁴ *Amendment to the Regulations Respecting Tobacco Access made by the Governor in Council under Section 13 of Chapter 14 of the Acts of 1993, the Tobacco Access Act*, NS Reg, 227/2015, with effect from May 31, 2015.

¹⁶⁵ Through adoption of the *Tobacco and Electronic Smoking Device Sales and Access Act Regulations*, EC538/15, repealing *Tobacco Sales and Access Act and Regulations*, EC414/05, with effect from Oct. 1, 2015.

¹⁶⁶ Newfoundland and Labrador did so in association with implementation of the retail display ban on Jan. 1, 2010.

¹⁶⁷ Health Canada, “Canada ratifies the Framework Convention on Tobacco Control, the world’s first public health treaty” December 2, 2004 (news release).

¹⁶⁸ *Décret 70-2006 concernant la déclaration du Québec de se lier à la Convention-cadre pour la lutte antitabac*, (2006) 138 *Gazette officielle du Québec, Partie 2*, p. 1288 (8 mars 2006).

(responsible for NB, NS, PEI). BC provides film classification services for Saskatchewan¹⁶⁹ and for the Yukon.¹⁷⁰ Alberta film ratings are used by NWT and Nunavut.¹⁷¹

A provincial film board could establish a policy that if a film depicts smoking, then the film could be rated 18A (adult accompaniment), subject to a few specific exceptions (ie. necessary to show smoking of a real historical person, or the presentation of tobacco reflects the dangers/consequences of tobacco use). No such policy has yet been adopted by any provincial film authority.

In Ontario, the Ontario Film Authority provides a “tobacco use” content advisory in its online film database,¹⁷² at least for films since a certain date when this was implemented. However, this does not affect movie classification. A search for a sample movie that depicts smoking (“Atomic Blonde” 2017), found that the online databases of the film authorities in Alberta¹⁷³ and Manitoba¹⁷⁴ (but not BC, QC or Maritimes) also provided a “tobacco use” content advisory for this film. The information provided in BC, QC and Maritimes is more related to film classification.

Ban on government subsidies for films depicting tobacco use

No provincial/territorial government nor the federal government has been known to have a policy of refusing to subsidize films depicting tobacco use.

Death certificates – indication as to whether tobacco contributed

• **NWT** – medical certificate of death prepared by health care professional (doctor, nurse) or coroner must indicate whether “tobacco use was a contributing factor in death”.¹⁷⁵

Injunctions

BC and NWT – there is a legislative provision specifically authorizing the government to seek an injunction in court to order someone non-compliant with legislation to be compliant.

In some provinces/territories, legislation authorizes inspectors to issue a compliance order to someone not in compliance with legislation. Failure to comply with the order is itself an offence.¹⁷⁶

Divestment

In Alberta, pursuant to the *Alberta Cancer Prevention Legacy Act*,¹⁷⁷ funds of the Alberta Cancer Prevention Legacy Fund may not be invested in securities of a tobacco company. No other

¹⁶⁹ Consumer Protection BC, “Saskatchewan Agreement” accessed August 17, 2017.

<https://www.consumerprotectionbc.ca/consumers-film-and-video-homepage/saskatchewan-agreement>

¹⁷⁰ Motion Picture Association – Canada, “Theatrical Classification” accessed August 17, 2017.

<http://www.mpa-canada.org/theatrical-classification/#1>

¹⁷¹ Saskatchewan Financial and Consumer Authority, “Classification Categories and Advisories” accessed August 17, 2017. <http://www.fcaa.gov.sk.ca/CPD-FCB-Classification-Categories-Advisories>

¹⁷² Ontario Film Authority, <http://www.ofrb.gov.on.ca/ofrb/start.do>

¹⁷³ Alberta Film Classification, “Find a movie rating” accessed August 17, 2017.

<https://www.alberta.ca/search-movie-ratings.aspx>

¹⁷⁴ Manitoba Film Classification Board, “Search for Classification” accessed August 17, 2017.

http://prdp1.chts.gov.mb.ca/FCB/Catalog.nsf/InternetWebSearch_New?OpenForm

¹⁷⁵ *Vital Statistics Regulations*, NWT Reg 086-2012, Sch. A, Part 5, Item 4.

¹⁷⁶ For example, see NB *SFPA*, ss. 11, 12(2); NS *SFPA*, ss. 13, 14; NL *SFEA*, ss. 8, 10; YT *SFPA*, ss. 11.1, 12; PEI *SFPA* ss. 16, 19.

legislation/policies are known to exist curbing tobacco investments by governments, government pension plans, the Canada Pension Plan or the Quebec Pension Plan.

Ban growing of tobacco

No province or territory, nor the federal government, has banned the growing of tobacco generally. Nor is any province/territory known to have prohibited grow-at-home tobacco to prevent tobacco tax evasion/avoidance.

In at least ON,¹⁷⁸ QC¹⁷⁹ and NS,¹⁸⁰ a permit is required to grow tobacco, though in ON this does not apply to tobacco grown for personal use subject to specified limits. Thus in QC and NS, a person could not grow tobacco at home without a permit.

Ban manufacturing (but not sales) of tobacco

No province/territory has banned tobacco manufacturing. However, tobacco manufacturing facilities are only known to exist in Ontario and Quebec.

Look-back provision

In 1997, in a proposed US litigation settlement, there was a provision that would have required the tobacco industry to make financial payments if a targeted reduction in youth smoking was not achieved by a specified future date (this is an example of a look-back provision). However, to be implemented the proposed settlement would have required legislation to be adopted by Congress, and this did not occur.

A look-back provision could also apply to adult prevalence, not just youth prevalence, and/or to total tobacco sales volumes. No government in Canada has adopted a look-back provision.

¹⁷⁷ SA 2006, c. A-14.2.

¹⁷⁸ *Tobacco Tax Act*, RSO 1990, c. T.10, s. 2.2. The personal use exemption is found *Raw Leaf Tobacco*, O Reg 247/14, s. 3.

¹⁷⁹ *Règlement sur les permis et les renseignements des producteurs de tabac*, RLRQ c M-35.1, r. 282, s. 1 (under *An Act Respecting the Marketing of Agricultural, Food and Fish Products*, CQLR c. M-35.1).

¹⁸⁰ *Flue-Cured Tobacco Growers' Marketing Board Regulations*, NS Reg 91/85, s. 2.02 (under the *Natural Products Act*, RSNS 1989, c. 308).

Appendix 1

Tobacco Tax Increases, 2004-2017

October 31, 2017

Below is a listing of tobacco tax increases since December 2003 for 200 cigarettes and for 200 roll-your-own cigarettes (100g), with the effective date of the increase:

		<u>Cigs</u>	<u>r-y-o</u>	
Dec. 20, 2003	B.C.	\$3.80	\$1.90	
Mar. 17, 2004	N.S.	\$5.00	\$2.26	
Mar. 31, 2004	N&L	\$2.00	\$5.00	
Mar. 31, 2004	PEI	\$5.00	\$2.26	
Apr. 1, 2004	Sask	\$3.00	\$1.50	
Apr. 20, 2004	Man	\$4.00	\$2.00	
May 19, 2004	Ont.	\$2.50	\$1.25	
Jan. 19, 2005	Ont.	\$1.25	\$0.625	
Mar. 22, 2005	N&L	\$2.00	\$5.00	
Feb. 1, 2006	Ont.	\$1.25	\$0.625	
Mar. 31, 2006	N&L	\$1.00	\$2.50	
July 1, 2006	Federal	\$0.56	\$0.19	(adjustment for GST decrease from 7% to 6%)
Oct. 28, 2006	Sask	\$1.60	\$0.80	(adjustment for PST decrease from 7% to 5%)
Dec. 15, 2006	Nun	\$10.80	\$5.40	
Mar. 24, 2007	NS	\$2.00	\$1.00	
Apr. 20, 2007	Alta.	\$5.00	\$2.50	
Jan. 1, 2008	Federal	\$0.59	\$0.195	(adjustment for GST decrease from 6% to 5%)
Apr. 24, 2008	PEI	\$5.00	\$2.01	
July 1, 2008	Yuk	\$15.60	\$16.32	
Feb. 18, 2009	BC	\$1.20	\$0.60	
Mar. 26, 2009	Man	\$2.00	\$1.00	
Apr. 1, 2009	NWT	\$11.60	\$2.80	
Apr. 8, 2009	Alta	\$3.00	\$11.50	
Jun. 23, 2009	NS	\$10.00	\$5.00	
Mar. 24, 2010	Man.	\$4.00	\$2.00	
Mar. 25, 2010	Sask.	\$5.40	\$2.70	
Mar. 30, 2010	N&L	\$2.00	\$2.00	
Apr. 1, 2010	NWT	\$1.20	(\$0.60)	(note: decrease in NWT ryo tax rate)
July 1, 2010	Ont	~\$5.00	~\$2.00	(not a change to tobacco tax, but implementation of the 8% provincial portion of Harmonized Sales Tax (HST)).
July 1, 2010	BC	~\$6.00	~\$2.40	(not a change to tobacco tax, but implementation of the 7% provincial portion of Harmonized Sales Tax (HST)).
July 1, 2010	NS	~\$1.54	~\$0.69	(not a change to tobacco tax, but increase in provincial portion of HST from 8% to 10%)

Jan. 1, 2011	Que	\$0.60	\$0.30	(increase to coincide with QST increase from 7.5% to 8.5%, given that QST does not apply to tobacco products)
Mar. 23, 2011	NB	\$10.50	\$5.25	
Apr. 1, 2011	NWT	\$2.40	\$3.00	
Apr. 7, 2011	PEI	\$5.90	\$6.58	
Apr. 13, 2011	Man	\$4.00	\$2.00	
Jan. 1, 2012	Que	\$0.60	\$0.30	(increase to coincide with QST increase from 8.5% to 9.5%, given that QST does not apply to tobacco products)
Feb. 23, 2012	Nun	\$8.00	\$6.00	
Apr. 18, 2012	Man	\$5.00	\$2.50	
Nov. 21, 2012	Que	\$4.00	\$2.00	
Mar. 21, 2013	Sask	\$8.00	\$4.00	
Mar. 22, 2013	Federal	--	\$4.84	
Mar. 27, 2013	N&L	\$3.00	--	
Mar. 27, 2013	NB	\$4.00	\$5.26	
Apr. 1, 2013	PEI	~\$7.50	~\$2.83	not a tobacco tax but implementation of the 9% provincial portion of Harmonized Sales Tax (HST))
Apr. 1, 2013	PEI	(\$5.80)	(\$3.60)	decrease to adjust for implementation of 9% provincial component of HST
Apr. 1, 2013	BC	\$5.60	\$2.80	to adjust for elimination of HST, which had 7% provincial component (about \$6.00 per carton in HST, depending on price of brand)
Apr. 5, 2013	NS	\$4.00	\$2.00	
Apr. 17, 2013	Man	\$8.00	\$4.00	
July 1, 2013	NWT	-	\$1.20	
July 1, 2013	Man	~\$0.98	~\$0.44	not a tobacco tax increase, but increase in PST from 7% to 8%
Oct. 1, 2013	BC	\$2.00	\$1.00	
Feb. 1, 2014	NWT	-	\$6.60	
Feb. 12, 2014	Fed	\$4.03	\$5.04	
Mar. 28, 2014	N&L	\$6.00	\$6.00	
Apr. 1, 2014	BC	\$3.20	\$1.60	
May 2, 2014	Ont	\$3.25	\$1.625	
June 5, 2014	Que	\$4.00	\$2.00	
Mar. 27, 2015	Alta	\$5.00	\$3.75	
Apr. 10, 2015	NS	\$4.00	\$2.00	
May 1, 2015	Man	\$1.00	\$0.50	
June 20, 2015	PEI	\$5.00	\$4.00	
Oct. 28, 2015	Alta	\$5.00	\$3.75	
Feb. 3, 2016	NB	\$6.52	\$3.26	
Feb. 26, 2016	ON	\$3.00	\$1.50	
Apr. 15, 2016	NL	\$2.00	\$2.00	
Apr. 20, 2016	NS	\$4.00	\$2.00	
July 1, 2016	NB	\$1.77	\$0.80	(not a tobacco tax increase, but increase in provincial

July 1, 2016	NL	\$1.85	\$1.15	portion of HST from 8% to 10%) (not a tobacco tax increase, but increase in provincial portion of HST from 8% to 10%)
Feb. 1, 2017	NB	\$6.52	\$3.26	
Mar. 15, 2017	Nun	\$10.00	\$20.00	
Mar. 23, 2017	Sask	\$4.00	\$2.00	
Mar. 23, 2017	Sask	~\$0.98	~\$0.45	(not a tobacco tax increase, but increase in PST from 5% to 6%)
Mar. 23, 2017	Fed	\$0.53	\$0.33	
Apr. 1, 2017	NWT	\$3.60	\$0.60	
Apr. 28, 2017	Ont	\$2.00	\$1.00	
July 1, 2017	Yuk	\$8.00	\$4.00	
Date pending	BC	\$1.60	\$0.80	
Apr. 1, 2018	Yuk	\$10.00	\$5.00	
2018	Ont	\$4.00	\$2.00	(date in 2018 to be specified)
2019	Ont	\$4.00	\$2.00	(date in 2019 to be specified)
Jan. 1, 2019	Yuk			annual inflationary increase
Dec 1, 2019	Fed			federal inflationary increase to be determined based on change to Consumer Price Index from Sept. 30, 2013 to Sept 30, 2019.

Appendix 2

Duty-free Tobacco Sales and Import Allowances: International Overview

Canadian Cancer Society,
October 15, 2014

International Rankings of Lowest Duty-Free Import Allowances for Cigarettes

The following ranks countries/territories with the lowest duty-free import allowances for cigarettes when travellers enter the country/territory:

0	Barbados	40	Lithuania ¹
0	Singapore	40	Poland ¹
0	Sri Lanka	40	Romania ²
19	Hong Kong	40	Austria (at border with Samnauntal part of
20	Palau		Switzerland only)
40	Bulgaria ¹	40	Slovak Republic ¹
40	Estonia	50	Australia
40	Greece ¹	50	New Zealand (effective November 1, 2014)
40	Hungary ¹	80	Guatemala
40	Latvia ¹	100	India

Bans on Duty-Free Tobacco Product Sales

The following countries have banned duty-free tobacco sales to departing travellers:

- Nepal (2008)
- Philippines (2013)³

The following outlines where substantial measures have been taken to restrict duty-free tobacco sales, even though there is not a complete ban on duty-free tobacco sales:

- **European Union:** the EU in 1999 banned duty free sales to individuals travelling within the EU (now consisting of 27 Member States)
- **Bulgaria:** in 2008, Bulgaria went beyond the EU position by banning duty free sales at land borders with non-EU countries (Serbia, Macedonia, Turkey) (duty-free sales are still allowed at international airports in Bulgaria)
- **Canada:** since 2001, Canada has imposed a federal tobacco tax for sales in "duty free" stores, but not provincial tobacco tax.

Notes

1. Applies to travellers by land or sea, but not by air.
2. Applies to travellers by land, sea and air.
3. Philippines applies the tobacco excise tax to tobacco products sold in duty-free stores.

Appendix 3

First Nations that have implemented the First Nations Goods and Services Tax (FNGST)

Note: The information in this Appendix is copied from the federal Department of Finance website, August 10, 2017.¹⁸¹ The FNGST applies a sales tax rate equal to the federal GST (5%) to the same goods and services that the GST applies to.

The following chart provides a list of First Nations, the lands affected, and the effective date that the FNGST was implemented.

First Nations that have implemented the FNGST

First Nation	Lands	Effective Date
<u>Champagne and Aishihik First Nations</u> (Yukon)	Settlement lands of the Champagne and Aishihik First Nations under the Champagne and Aishihik First Nations Final Agreement and the <i>Yukon First Nations Land Claims Settlement Act</i> , S.C. 1994, c.34.	July 1, 2004
<u>First Nation of Nacho Nyak Dun</u> (Yukon)	Settlement lands of the First Nation of Nacho Nyak Dun under the First Nation of Nacho Nyak Dun Final Agreement and the <i>Yukon First Nations Land Claims Settlement Act</i> , S.C. 1994, c.34.	July 1, 2004
<u>Little Salmon/Carmacks First Nation</u> (Yukon)	Settlement lands of the Little Salmon/Carmacks First Nation under the Little Salmon/Carmacks First Nation Final Agreement and the <i>Yukon First Nations Land Claims Settlement Act</i> , S.C. 1994, c.34.	July 1, 2004
<u>Selkirk First Nation</u> (Yukon)	Settlement lands of the Selkirk First Nation under the Selkirk First Nation Final Agreement and the <i>Yukon First Nations Land Claims Settlement Act</i> , S.C. 1994, c.34.	July 1, 2004
<u>Ta'an Kwäch'än Council</u> (Yukon)	Settlement lands of the Ta'an Kwäch'än Council under the Ta'an Kwäch'än Final Agreement and the <i>Yukon First Nations Land Claims Settlement Act</i> , S.C. 1994, c.34.	July 1, 2004
<u>Teslin Tlingit Council</u> (Yukon)	Settlement lands of the Teslin Tlingit Council under the Teslin Tlingit Final Agreement and the <i>Yukon First Nations Land Claims Settlement Act</i> , S.C. 1994, c.34.	July 1, 2004
<u>Tr'ondëk Hwëch'in First Nation</u> (Yukon)	Settlement lands of the Tr'ondëk Hwëch'in First Nation under the Tr'ondëk Hwëch'in First Nation Final Agreement and the <i>Yukon First Nations Land</i>	July 1, 2004

¹⁸¹ <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/gst-hst-indigenous-peoples/first-nations-goods-services-tax.html>

First Nations that have implemented the FNGST

First Nation	Lands	Effective Date
	<i>Claims Settlement Act</i> , S.C. 1994, c.34.	
<u>Vuntut Gwitchin First Nation</u> (Yukon)	Settlement lands of the Vuntut Gwitchin First Nation under the Vuntut Gwitchin First Nation Final Agreement and the <i>Yukon First Nations Land Claims Settlement Act</i> , S.C. 1994, c.34.	July 1, 2004
<u>Kluane First Nation</u> (Yukon)	Settlement lands of the Kluane First Nation under the Kluane First Nation Final Agreement and the <i>Yukon First Nations Land Claims Settlement Act</i> , S.C. 1994, c.34.	January 1, 2005
<u>Tlicho</u> (Northwest Territories)	Tlicho lands and Tlicho community, within the meaning assigned by the Land Claims and Self-Government Agreement among Tlicho, the Government of the Northwest Territories, and the Government of Canada, signed on August 25, 2003 and approved, given effect and declared valid by the <i>Tlicho Land Claims and Self-Government Act</i> , as that Agreement is amended from time to time. Behchokö (Rae-Edzo), Whati (Lac la Martre), Gamèti (Rae Lakes), Wekweètì (Snare Lake).	December 5, 2005
<u>Tsawout First Nation</u> (British Columbia)	Reserve of the Tsawout First Nation.	October 1, 2006
<u>Kwanlin Dun First Nation</u> (Yukon)	Settlement Land of the Kwanlin Dun First Nation under the Kwanlin Dun First Nation Final Agreement and the <i>Yukon First Nations Land Claims Settlement Act</i> , S.C. 1994, c.34.	August 20, 2007
<u>Inuit</u> , within the meaning assigned by the Agreement, as defined in the <i>Labrador Inuit Land Claims Agreement Act</i> , S.C. 2005, c.27 (Newfoundland and Labrador)	Labrador Inuit Lands and Inuit Communities, within the meaning assigned by the Agreement, as defined in the <i>Labrador Inuit Land Claims Agreement Act</i> , S.C. 2005, c.27. These lands include Rigolet, Nain, Hopedale, Makkik, and Postville.	August 20, 2007
<u>Carcross/Tagish First Nation</u> (Yukon)	Settlement lands of the Carcross/Tagish First Nation under the Carcross/Tagish First Nation Final Agreement and the <i>Yukon First Nations Land Claims Settlement Act</i> , S.C. 1994, c.34.	December 17, 2007
<u>Akisqnuq First Nation</u> (British Columbia)	Reserves of Columbia Lake, other than the reserve designated as St. Mary's No. 1A.	January 1, 2008
<u>Lower Kootenay Indian Band</u> (British Columbia)	Reserves of Lower Kootenay, other than the reserve designated as St. Mary's No. 1A.	January 1, 2008
<u>Shuswap First Nation</u> (British Columbia)	Reserve of Shuswap First Nation.	January 1, 2008
<u>St. Mary's Indian Band</u> (British Columbia)	Reserves of St. Mary's, other than the reserve designated as St. Mary's No. 1A.	January 1, 2008

First Nations that have implemented the FNGST

First Nation	Lands	Effective Date
<u>Tobacco Plains Indian Band</u> (British Columbia)	Reserves of Tobacco Plains, other than the reserve designated as St. Mary's No. 1A.	January 1, 2008
<u>Nisga'a Nation</u> (British Columbia)	Nisga'a Lands, within the meaning assigned by the Nisga'a Final Agreement, as defined in the <i>Nisga'a Final Agreement Act</i> , S.C. 2000, c.7. These lands include New Aiyansh, Gitwinksihlkw, Laxgalts'ap and Gingolx.	July 30, 2008
<u>Tseil-Waututh Nation</u> (Burrard)(British Columbia)	Reserve of Tseil-Waututh Nation (Burrard).	November 27, 2008
<u>Whitecap Dakota First Nation</u> (Saskatchewan)	Reserve of Whitecap Dakota First Nation.	January 2, 2009
<u>Buffalo Point First Nation</u> (Manitoba)	Reserves of the Buffalo Point First Nation that are not shared with other bands.	October 3, 2011
<u>Songhees First Nation</u> (British Columbia)	Reserves of the Songhees First Nation.	December 29, 2011
<u>Nekaneet First Nation</u> (Saskatchewan)	Reserves of the Nekaneet First Nation that are not shared with other bands. These lands include the urban reserves in Swift Current and Regina.	October 10, 2012
<u>Matsqui First Nation</u> (British Columbia)	Reserves of the Matsqui First Nation that are not shared with other bands.	May 21, 2013
<u>Kwaw-kwaw-Apilt First Nation</u> (British Columbia)	Reserves of the Kwaw-kwaw-Apilt First Nation that are not shared with other bands.	July 31, 2015
<u>Kahkewistahaw First Nation</u> (Saskatchewan)	Reserves of the Kahkewistahaw First Nation that are not shared with other bands. These lands include the urban reserve in Yorkton on which the Painted Hand Casino is located.	December 11, 2015
<u>Déline First Nation</u> (Northwest Territories)	Déline Lands and all lands within the Community of Deline, within the meaning assigned by the Déline Final Self-Government Agreement, as defined in the <i>Déline Final Self-Government Agreement Act</i> , S.C. 2015 c.24.	September 1, 2016
<u>Tsawwassen First Nation</u> (British Columbia)	Tsawwassen Lands within the meaning assigned by the Agreement, as defined in the <i>Tsawwassen First Nation Final Agreement Act</i> , S.C. 2008, c. 32	May 1, 2017

Appendix 4

First Nations that have implemented the First Nations Sales Tax (FNST)

Note: The information in this Appendix is copied from the federal Department of Finance website, September 3, 2017. This website includes links to the agreements to implement the FNST (which applies a sales tax rate equal to the federal GST (5%) to tobacco, alcohol and gasoline sales).¹⁸²

First Nation	Date agreement in effect
Adams Lake Band (B.C.)	April 11, 2001
Chemanius First Nation (B.C.)	Aug. 14, 2000
Cowichan Tribes (B.C.)	Apr. 9, 2002
Kamloops Indian Band (B.C.)	Aug. 6, 1998
Little Shuswap Lake Indian Band (B.C.)	May 1, 2006
Slammon First Nation (B.C.)	Aug. 23, 1999
Tzeachten First Nation (B.C.)	June 5, 2001
Westbank First Nation (B.C.)	Aug. 25, 1999

¹⁸² <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/gst-hst-businesses/gst-hst-indigenous-peoples/first-nations-goods-services-tax.html>

Appendix 5

Tobacco Retailer Licence Fee Summary

Canadian Cancer Society
May 2017

The following lists the annual licence fee per tobacco retailer for municipalities and provinces.

Ontario

Ottawa	\$877
Hamilton	\$698
Markham	\$375
Richmond Hill	\$297
Kingston	\$267
Brampton	\$221
Mississauga	\$216
Vaughan	\$212
Windsor	\$191
Greater Sudbury	\$150
Burlington	\$145
Chatham-Kent	\$145
North Bay	\$50
Cornwall	\$40

Alberta

Lloydminster, AB/SK	\$1100 (if flavoured tobacco sold)
Lloydminster, AB/SK	\$750 (if flavoured tobacco not sold)
St. Albert	\$714
Edmonton	\$469
Hinton	\$160
Calgary	\$141

Provinces

New Brunswick	\$50
Nova Scotia	\$42

The following 11 provinces/territories have a requirement for tobacco retailers to have provincially/territorially required tobacco retailer licence/registration: BC, MB, ON, QC, NB, NS, PEI, NL, YT, NWT, NU. However, of these, only 2 require a licence fee: NB and NS. The following 2 provinces do not have a provincially required tobacco retailer licence: AB, SK. Ontario will require a licence for all tobacco retailers effective July 1, 2018, and currently requires a tobacco retailer licence (but with no fee) for any new tobacco retailers since July 1, 2010.

On March 19, 2015, the Quebec Taxation Review Committee recommended that Quebec implement a tobacco retailer licensing requirement with an annual fee of \$250.

Some municipalities/provinces have a higher initial application fee, as compared with the subsequent ongoing annual fee.

Appendix 6

Summary of Billing Codes for Smoking Cessation Interventions by Physicians and Pharmacists

Canadian Cancer Society
November 2016

There are differences in provincial/territorial physician billing codes for smoking cessation across the country. Ontario and Quebec have specific billing codes for smoking cessation. Nova Scotia has a code for lifestyle counselling, PEI has a code for health promotion counselling, and Saskatchewan has a code for physician counselling, all of which could include smoking cessation. Several other provinces have codes that may or may not provide a fee for physician counselling, but this is less clear/direct. The following provides an overview of billing codes for smoking cessation interventions in each province/territory.

PHYSICIAN BILLING CODES

Province	Item	Billing code(s)	2016 Fee
British Columbia ¹⁸³	Personal health risk assessment by GP	G14066 with diagnostic code: 786	\$50.00
Alberta ¹⁸⁴	No specific billing codes	O3.03A	\$25.09
	GP General office visit	03.04A	\$40.14
	Development, documentation and admin of a comprehensive annual care plan for a patient with complex needs	0819	\$47.00
Saskatchewan ¹⁸⁵	Physician counselling	35B, 40B, 41B	\$43.20/day, \$37.50/15 min, \$37.50/next 15 min
Manitoba ¹⁸⁶	Regional Basic Visit – Regional or Subsequent Visit	8509	\$25.55*
Ontario ¹⁸⁷	Initial discussion with patient re: smoking	E079	\$15.40

¹⁸³ MSC Payment Schedule Index, June 1, 2016. Tobacco included Jan, 2011 when Personal health risk assessment fee (G14066) replaced Cardiovascular risk assessment fee (G14034)

¹⁸⁴ Alberta Health Care Insurance Plan: Schedule of Medical Benefits. Generated September 2016

¹⁸⁵ Payment Schedule for Saskatchewan Physicians, effective March 2008, last revised October 2016

¹⁸⁶ Manitoba Physician's Manual, April 1, 2016

	cessation		
	Smoking cessation follow-up visit	K039	\$33.45
Quebec ¹⁸⁸	Medical support for smoking cessation in the office / Soutien médical à l'abandon du tabagisme en cabinet	15161	\$35.40
	Medical support for quitting smoking in CLSC, UMF-CH or UMF-CLSC (\$ 26.60 additional) / Soutien médical à l'abandon du tabagisme en CLSC, en UMF-CH ou en UMF-CLSC (26,60\$ additionnel)		\$62.00
New Brunswick ¹⁸⁹	Office visit	Service code 1 Units Gen 30	\$44.08
Nova Scotia ¹⁹⁰	Psychiatric Health Service Codes: Lifestyle counselling	PSYC 08.49C	\$30.73
Prince Edward Island ¹⁹¹	Health Promotion Counselling (per 15 minutes)	2505	\$42.50
Newfoundland ¹⁹²	General practice: office partial assessment	121	\$32.20
Yukon ¹⁹³	Miscellaneous: Prolonged visit for counselling a medically complex condition	120	\$98.90
Northwest Territories ¹⁹⁴	Office Visit	GP: 022	\$43.93
Nunavut	Not found – see explanatory notes		Not found

¹⁸⁷ Ontario schedule of benefits. Physician Services under the Health Insurance Act. Most recently amended May 2015.

¹⁸⁸ Manuel des médecins omnipraticiens (no 100). Régie de l'Assurance maladie du Québec. 27 mai 2016

¹⁸⁹ New Brunswick Physicians' Manual, April 4, 2016

¹⁹⁰ Nova Scotia Medical Services Insurance Physician's Manual, 2014

¹⁹¹ Master Agreement Between the Medical Society of Prince Edward Island and the Government of Prince Edward Island (April 1, 2010-March 31, 2015)

¹⁹² Newfoundland Labrador Medical Payment Schedule, June 1, 2013

¹⁹³ Payment schedule for Yukon, effective April 1, 2016

¹⁹⁴ Insured Services Tariff, effective April 1, 2015

PHARMACIST BILLING CODES

Province	Item	Billing code(s)	Fee
Saskatchewan	Pharmacist billing under the Drug Plan and Extended Benefits Branch (DPEBB) ¹⁹⁵		\$2.00 per minute
Ontario	Pharmacist billing under Pharmacy Smoking Cessation Program ¹⁹⁶		\$40 1 st consult \$10-15 follow-ups

Whether pharmacist billing codes may exist in some other provinces/territories has not been fully documented.

¹⁹⁵ Pharmacist: PACT – Partnership to Assist with Cessation of Tobacco, PAS Policy Administered by Drug Plan and Extended Benefits Branch, June 3, 2009, Updated October 1, 2013. For more information:

<http://www.makeapact.ca/>

<https://www.skpharmacists.ca/pharmacists/funded-services/provincial/professional-services>

¹⁹⁶ Ontario Ministry of Health and Long-Term Care, “Pharmacy Smoking Cessation Program”

<http://www.health.gov.on.ca/en/pro/programs/drugs/smoking/>

In Ontario, under the Pharmacy Smoking Cessation Program (which only applies for Ontario Drug Benefit Recipients), the fee is \$40 for the First Consultation (once per year), \$15 for the Primary Follow-up counselling sessions 1-3 (three times per year = \$45 total), and \$10 for the Secondary Follow-Up counselling sessions 4-7 (four times per year = \$40 total).

Physician Billing Codes – Explanatory Notes

British Columbia

Personal health risk assessment by GP:

Requires face-to-face. Smokers indicated as a designated target population. Payable to 100 patients/year/physician maximum.

<http://www2.gov.bc.ca/assets/gov/health/practitioner-pro/medical-services-plan/msc-payment-schedule-june-2016.pdf>

Alberta

Code 03.03A

Limited assessment of patient's condition requiring hx related to presenting problems, examination, records, advice. *tobacco cessation not specified

GP general office visit:

Comprehensive assessment of a patient's condition requiring complete hx, physical exam, record and advice. *tobacco cessation not specified

Development, documentation and admin of a comprehensive annual care plan for a patient with complex needs:

Direct contact with an individual for psychiatric treatment, psych reassessment, patient education and/or counselling, per 15 min

<http://www.health.alberta.ca/documents/SOMB-Medical-Procedures-2016-10.pdf>

Saskatchewan

Physician counselling:

Includes educational dialogue re: hx review, counselling, educational dialogue, intervention, prevention, health promotion, early detection of health problems, etc.

<http://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/resources-for-health-care-businesses-and-career-development/physician-career-resources#physician-payment-schedules-newsletters-and-bulletins>

Pharmacist billing under the Drug Plan and Extended Benefits Branch (DPEBB):

\$2/minute to max of \$300/patient/year.

*Notes - PACT billing policy updated Oct 2013. Requires membership to view.

<https://www.skpharmacists.ca/pharmacists/funded-services/provincial/professional-services>.

Manitoba

Rendered to a patient of a GP who consults the physician for a condition - usually relatively minor. Problem focused assessment. Generally <10 min.

*Tobacco cessation not specified

<http://www.gov.mb.ca/health/documents/physmanual.pdf>

*billing code pulled from 2010 data. Assumption is that it is correct.

Ontario

Initial discussion with patient re: smoking cessation:

Limited to max 1 service/patient/year. Must be rendered in conjunction with specific other services.

Smoking cessation follow-up visit:

Within 12 months following E079. Max 2/year

http://www.health.gov.on.ca/en/pro/programs/ohip/sob/physserv/sob_master11062015.pdf

*Notes - 1997 Sullivan and Kothari reference 4 billing codes in Ontario. None of these codes appear in the Ontario schedule of benefits.

Quebec

Medical support for smoking cessation in the office / Soutien médical à l'abandon du tabagisme en cabinet:

Can only be billed once per year

Medical support for quitting smoking in CLSC, UMF-CH or UMF-CLSC (\$ 26.60 additional) / Soutien médical à l'abandon du tabagisme en CLSC, en UMF-CH ou en UMF-CLSC (26,60\$ additionnel):

Can only be billed once per year

http://www.ramq.gouv.qc.ca/SiteCollectionDocuments/professionnels/manuels/100-facturation-omnipraticiens/000_complet_acte_omni.pdf

New Brunswick

Office Visit:

Tobacco cessation not specified

http://www2.gnb.ca/content/dam/gnb/Departments/h-s/pdf/en/Physicians/new_brunswick_physicians_manual.pdf

<http://www.nbms.nb.ca/patient-information/how-are-doctors-paid/>

*Notes - smoking cessation required to be addressed annually for physicians to claim Diabetes incentive.

"Office Visit" 1.2.2: a. ii. Subsequent visits (code 1)

Nova Scotia

Psychiatric Health Service Codes: Lifestyle counseling:

12.7 units per 15 minutes at \$2.42 per unit (MSU); maximum time allowable is 30 minutes per visit up to a maximum of 2 hours/year/patient/physician

<http://www.medavie.bluecross.ca/static/MSI/PhysicianManual.pdf>

*Notes - smoking cessation required to be addressed annually for physicians to claim Diabetes and/or IHD incentive.

The Medical Services Unit (MSU) specifies the unit value of all services other than anaesthetic services. April 1, 2014-March 31, 2015, the MSU for the MSI is \$2.42.

Prince Edward Island

Health Promotion Counselling:

Providing advice, encouragement and direction for healthcare topics ... smoking cessation. Payable in blocks of 15 minutes. Max 45 min.

http://bradtrivers.com/wp-content/uploads/2016/01/doh_masteragree.pdf

Newfoundland and Labrador

General practice: office partial assessment:

Partial Assessment: hx, enquiry, partial examination. Condition does not warrant general assessment

http://www.health.gov.nl.ca/health/mcp/providers/Full_MCP_Payment_Schedule-03_13_14.pdf

Yukon

Miscellaneous: Prolonged visit for counselling a medically complex condition:

Minimum time per visit - 20 minutes. Up to 3 visits/year for counselling related to smoking cessation

<http://apps.gov.yk.ca/physicianresources/f?p=271:9000:0:SEARCH:NO:RP::&cs=32C1E5CE1A1CDACC46D3664DC319559A1>

Northwest Territories

Office Visit:

First visit not requiring general assessment, and subsequent office visits other than a simple follow up visit

<http://www.hss.gov.nt.ca/sites/www.hss.gov.nt.ca/files/resources/insured-services-tariff.pdf>

*Notes - The code is GP-002: first visit not requiring general assessment, and subsequent office visits other than a simple follow up visit: \$43.93. Scheduled to be updated April 1, 2017

Nunavut

Doctor Services Covered by Nunavut Health Care Plan:

- Diagnosis and treatment of illness and injury
- Surgery, including anaesthetic services and surgical assistance, where necessary
- Obstetrical care, including prenatal and postnatal care
- Eye examinations, treatment and operations provided by an ophthalmologist

Limitations and restrictions may apply.

<http://gov.nu.ca/health/information/nunavut-health-care-plan>

Appendix 7

Listing of Principal Federal/Provincial/Territorial Tobacco Control Laws in Canada

October 31, 2017

This document lists principal tobacco control laws, including tobacco tax laws, currently in force. Laws that have been repealed are not included. For the laws below, several have been strengthened through amendments since they were originally adopted, but specific citations to these amendments are not listed. Some laws may have been originally enacted earlier than would be indicated by the current citation. There are other laws than those listed here, such as laws banning smoking at gasoline pumps, to prevent forest fires, etc. Many municipalities have bylaws to restrict smoking, or (in AB and ON) to licence tobacco retailers. Municipal bylaws may be stronger than provincial/territorial laws.

Note: Tobacco tax laws are listed separately in a later section in this Appendix.

International Treaties

WHO Framework Convention on Tobacco Control, 2302 UNTS 229.

Protocol to Eliminate Illicit Trade in Tobacco Products, approved Nov. 12, 2012, not yet in force.

Canada

Tobacco Act, SC 1997, c. 13 (RSC c. T-11.5) to be renamed *Tobacco and Vaping Products Act* by Bill S-5).

Tobacco Products Information Regulations, SOR/2000-272.

Tobacco Reporting Regulations, SOR/2000-273.

Tobacco (Access) Regulations, SOR/99-93.

Tobacco (Seizure and Restoration) Regulations, SOR/99-94.

Tobacco Products Labelling Regulations (Cigarettes and Little Cigars), SOR/2011-177.

Promotion of Tobacco Products and Accessories Regulations (Prohibited Terms), SOR/2011-178.

Non-smokers' Health Act, RSC 1985 (4th Supp.), c. 15, formerly SC 1988, c. 21.

Non-smokers' Health Regulations, SOR/90-21.

Ontario Hydro Nuclear Facilities Exclusion Regulations (Use of Tobacco), SOR/98-182.

Point Lepreau, New Brunswick Nuclear Facility Exclusion Regulations (Parts I, II and III of the Canada Labour Code and the Non-Smokers' Health Act), SOR/2008-76.

Saskatchewan Uranium Mines and Mills Exclusion Regulations, SOR/2001-115.

Cigarette Ignition Propensity (Consumer Products) Regulations, SOR/2016-103, (under *Canada Consumer Product Safety Act*).

Canadian Aviation Regulations, SOR/96-433, s. 602.06 (under *Aeronautics Act*, RSC 1985, c.A-2).

Contravention Regulations, SOR/96-313, Schedule VII (Non-smokers' Health Act), Schedule XIV (Tobacco Act) (under *Contraventions Act*, SC 1992, c. 47).

British Columbia

Tobacco Damages and Health Care Costs Recovery Act, SBC 2000, c. 30.

Tobacco and Vapour Products Control Act, RSBC 1996, c. 451.

Tobacco and Vapour Products Control Regulation, BC Reg 232/2007.

Rules for Administrative Hearings under the Tobacco Control Act, Dec. 9, 2013

(Rules may be amended by the Administrator under the *Tobacco Control Act*).

Occupational Health and Safety Regulation, BC Reg, 296/97, ss. 4.81-4.83 (under the *Workers Compensation Act*, RSBC 1996, c. 492).

Motor Vehicle Act, RSBC 1996, c. 318, s. 231.1.

Provincial Sales Tax Exemption and Refund Regulation, BC Reg 97/2013, Part 2, s. 3(2)(b) (under the *Provincial Sales Tax Act*, SBC 2012, c. 35).

Violation Ticket Administration and Fines Regulation, BC Reg 89/97 (under the *Offence Act*, RSBC 1996, c. 338).

Municipalities Enabling and Validating Act (No. 2), SBC 1990, c. 61, s. 40.

Drug Plans Regulation, BC Reg 73/2015 (under *Pharmaceutical Services Act*, SBC 2012, c. 22), s. 39.1.

Alberta

Tobacco and Smoking Reduction Act, SA 2005, c. T-3.8.

Tobacco Reduction Amendment Act, 2013, SA 2013, c. 24 (unproclaimed in part).

Tobacco and Smoking Reduction Regulation, Alta Reg 240/2007.

Crown's Right of Recovery Act, SA 2009, c. C-35.

Crown's Right of Recovery (Ministerial) Regulation, Alta Reg 88/2012.

Crown's Right of Recovery Regulation, Alta Reg 87/2012.

Crown's Right or Recovery (President of Treasury Board and Minister of Finance) Regulation, Alta Reg 89/2012.

Alberta Cancer Prevention Legacy Act, SA 2006, c. A-14.2, s. 3.

Procedures Regulation, Alta Reg 63/2017 (under *Provincial Offences Procedure Act*, RSA 2000, c. P-34).

Saskatchewan

The Tobacco Control Act, SS 2001, c. T-14.1.

The Tobacco Control Amendment Act, 2010, SS 2010, c. 34 (unproclaimed in part).

The Tobacco Control Regulations, RRS c. T-14.1, Reg 1.

The Occupational Health and Safety Regulations, 1996, RRS c. O-1.1, Reg 1, s. 77, (under *The Occupational Health and Safety Act, 1993*, SS 1993, c. O-1.1).

The Tobacco Damages and Health Care Costs Recovery Act, SS 2007, c. T-14.2.
The Residential Tenancies Regulations, 2007, RRS c. R-22.0001 Reg. 1, s.18(1)(l).
The Summary Offences Procedure Regulations, 1991, RRS c. S-63.1 Reg 2 (under *The Summary Offences Procedure Act*, 1990, SS 1990-91, c. S-63.1).

Manitoba

The Non-Smokers Health Protection and Vapour Products Act, SM 1989-90, c. 41, CCSM c. N92, (previously C.C.S.M. c. S125).
The Non-Smokers Health Protection Amendment Act (Prohibitions on Flavoured Tobacco and Other Amendments), SM 2014, c. 18 (not yet proclaimed).
The Cannabis Harm Prevention Act (Various Acts Amended), SM 2017, c. 22, ss. 18-23 (not yet proclaimed).
Non-Smokers Health Protection and Vapour Products Regulation, Man Reg 174/2004.
Documentation for Verifying Age Regulation, Man Reg 170/2002.
The Tobacco Damages and Health Care Costs Recovery Act, SM 2006, c. 18, CCSM c. T70.
The Highway Traffic Act, CCSM c. H60, s.186.1.
Park Activities Regulation, Man Reg 141/96, s. 14.1 (under *The Provincial Parks Act*, CCSM c. P20).
The Retail Sales Tax Act, CCSM c. R130, s. 3(1)(e.2).
Pharmaceutical Regulation, Man Reg 185/2013, Schedule 3 (under the *Pharmaceutical Act*, SM 1991-92, c. 28).
Offence Notices Regulation, Man Reg 210/2003 (under *The Summary Convictions Act*, CCSM c. S230).

Ontario

Smoke-Free Ontario Act SO 1994, c. 10.
General, O Reg 48/06.
Electronic Cigarettes Act, 2015, SO 2015, c. 7, Schedule 3 (most sections not yet proclaimed).
General, O Reg 337/15 (many sections not yet in effect).
 Note: Bill 174, the *Cannabis, Smoke-Free Ontario and Road Safety Statute Law Amendment Act, 2017*, first reading Nov. 1, 2017, will repeal the *Smoke-Free Ontario Act* and the *Electronic Cigarettes Act, 2015*, replacing them with the *Smoke-Free Ontario Act, 2017*.
Tobacco Damages and Health Care Costs Recovery Act, 2009, SO 2009, c. 13.
Ministry of Health and Long-Term Care Statute Law Amendment Act, 1999, SO 1999, c. 10, which among other provisions enacts *Health Insurance Act*, RSO 1990, c. H.6, ss. 36.0.1 and 45(1)(x.1), *Long-Term Care Act, 1994*, SO 1994, c. 26 (later renamed *Home Care and Community Services Act*), ss. 59.1 and 68(1)43.1.
Retail Sales Tax Act, RSO 1990, c. R.31, s. 7(1)72.
General, O Reg 202/94, s. 35 (under *Pharmacy Act, 1991*, SO 1991, c. 36).

Proceedings Commenced by Certificate of Offence, RRO 1990, Reg 950 (under *Provincial Offences Act*, RSO 1990, c. P.33).

Quebec

Tobacco Control Act, CQLR, c. L-6.2 (previously c. T-0.01, and SQ 1998, c. 33).

Regulation under the Tobacco Control Act, CQLR, c. L-6.2, r. 1.

Regulation respecting the warning attributed to the Minister of Health and Social Services concerning the harmful effects of tobacco on health, CQLR, c. L-6.2, r. 2.

Décret 70-2006 concernant la déclaration du Québec de se lier à la Convention-cadre pour la lutte antitabac, (2006) 138 *Gazette officielle du Québec*, Partie 2, p. 1288 (8 mars 2006).

Tobacco-related Damages and Health Care Costs Recovery Act, CQLR, c. 2.2.0.0.1 (previously SQ 2009, c. 34).

Regulation Respecting the Prescription of a Medication by a Pharmacist, CQLR c P-10, r. 18.2, s. 1, Sch. I. (under both *Pharmacy Act*, CQLR c P-10 and *Professional Code*, CQLR c C-26).

Code of Penal Procedure, CQLR c-25.1, articles 144-149 [ticketing].

New Brunswick

Smoke-free Places Act, RSNB 2011, c. 222.

General Regulation – Smoke-free Places Act, NB Reg. 2004-99.

Tobacco and Electronic Cigarette Sales Act, SNB 1993, c. T-6.1.

An Act to Amend the Tobacco Sales Act, SNB 2009, c. 17 (unproclaimed).

General Regulation – Tobacco and Electronic Cigarette Sales Act, NB Reg 94-57.

Tobacco Damages and Health Care Costs Recovery Act, SNB 2006, c. T-7.5.

General Regulation, NB Reg 91-50 (under *Provincial Offences Procedures Act*, SNB 1987, c. P-22.1).

Nova Scotia

Smoke-free Places Act, SNS 2002, c. 12.

Smoke-free Places Regulations, NS Reg 144/2002.

Tobacco Access Act, SNS 1993, c. 14.

Tobacco Access Regulations, NS Reg 9/96.

Tobacco Damages and Health-care Costs Recovery Act, SNS 2005, c. 46.

Summary Offence Tickets Regulations, NS Reg 281/2011 (under *Summary Proceedings Act*, RSNS 1989, c. 450).

Prince Edward Island

Smoke-free Places Act, RSPEI 1988, c. S-4.2 (initially SPEI 2002, c. 25).

General Regulations, EC279/03.

Tobacco and Electronic Smoking Device Sales and Access Act, RSPEI 1988, c. T-3.1 (initially SPEI 1991, c. 44).

Tobacco and Electronic Smoking Device Sales and Access Act Regulations, EC538/15.

Tobacco Damages and Health Care Costs Recovery Act, RSPEI 1988, c. T-3.002 (initially SPEI 2009, c. 22).

Ticket Regulations, PEI Reg EC58/08 (under *Summary Proceedings Act*, RSPEI 1988, c S-9).

Drug Cost Assistance Program Regulations, PEI Reg EC367/14, ss. 27-29 (under *Drug Cost Assistance Act*, RSPEI 1988, c. D-14.1).

Practice of Pharmacists and Pharmacy Technicians Regulations, PEI Reg EC532/14, s. 16, Schedule A(v) (under *Regulated Health Professions Act*, RSPEI 1988, c. R-10.1).

Newfoundland and Labrador

Smoke-free Environment Act, 2005, SNL 2005, c. S-16.2.

Smoke-free Environment Regulations, 2005, NLR 54/05.

Tobacco and Vapour Products Control Act, SNL 1993, c. T-4.1.

Tobacco and Vapour Product Regulations, NLR 55/17.

Tobacco Health Care Costs Recovery Act, SNL 2001, c. T-4.2.

Provincial Offences Ticket Regulations, 1999, NLR 78/99 (under *Provincial Offences Act*, SNL 1995, c. P-31.1).

Authorization to Prescribe Regulations, NLR 73/15, s. 11, Sch. (under *Pharmacy Act*, 2012, SNL 2012, c. P-12.2).

Yukon Territory

Smoke-free Places Act, SY 2008, c. 8.

Smoke-free Places Regulation, 2009, YOIC 2009/99.

Tobacco Products Sales Regulation, YOIC 2010/27.

Summary Convictions Regulation, YOIC 2016/105 (under *Summary Convictions Act*, RSY 2002, c. 210).

Northwest Territories

Tobacco Control Act, SNWT 2006, c. 9.

Tobacco Control Regulations, NWT Reg 101-2006.

Tobacco Damages and Health Care Costs Recovery Act, SNWT 2011, c. 33.

Occupational Health and Safety Regulations, NWT Reg 039-2015, s. 81, under *Safety Act*, RSNWT 1988, c. S-1.

Environmental Tobacco Smoke Worksite Regulations, NWT Reg 083-2003 (under *Mine Health and Safety Act*, SNWT 1994, c. 25).

Vital Statistics Regulations, NWT Reg 086-2012, Sch. A, Part 5, Item 4 (under *Vital Statistics Act*, SNWT 2011, c. 34).

Summary Conviction Procedures Regulations, NWT Reg 014-92 (under *Summary Conviction Procedures Act*, RSNWT 1988, c. S-15).

Nunavut

Tobacco Control Act, SNu 2003, c. 13.

Tobacco Control Regulations, Nu Reg 011-2007.

Tobacco Damages and Health Care Costs Recovery Act, SNu 2010, c. 31.

Occupational Health and Safety Regulations, Nu Reg 003-2016, s. 81 (under the *Safety Act*, RSNWT (Nu) 1988, c. S-1).

Summary Conviction Procedures Regulations, NWT Reg (Nu) 014-92 (under *Summary Conviction Procedures Act*, RSNWT (Nu) 1988, c. S-15).

Legislation awaiting proclamation

Below is a list of federal, provincial and territorial legislation that has received Royal Assent, but has not been proclaimed into effect. For some of these, some but not all parts of an Act have been proclaimed into effect. The listing below should not be considered exhaustive.

Federal

Cracking Down on Tobacco Marketing Aimed at Youth Act, SC 2009, c. 27, ss. 7, 16. (Bill S-5, ss. 73, 74, would repeal these unproclaimed sections). (manufacturer may not sell tobacco unless all required information regarding composition and ingredients is submitted to Health Canada pursuant to tobacco reporting regulations; note: a similar provision is included in Bill S-5).

Economic Action Plan 2014 Act, No. 1, SC 2014, c. 20, s. 366(1) replaces “trade-mark” with “trademark” in other Acts.

Bill S-5, pending, *An Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts*: As of Royal Assent, the following sections will be unproclaimed: 10, 11(5), 14(2), 15(2) and (3), 17, 19(1), 19(3), 54, 58, 59. The following sections will be unproclaimed and may only be proclaimed to come effect 180 days after Royal Assent: 7(2), 8, 11(2), 25, 28, 31, 39, 44(6) and 57.

Alberta

Tobacco Reduction Amendment Act, 2013, SA 2013, c. 24. The following sections have not been proclaimed (dealing with smoking of tobacco-like products, such as herbal non-tobacco water pipe smoking): 3(c), 3(d), 3(e), 4(a), 6, 7, 8(a), 9, 11(b), 19 (b), 19(c), 19(d) to the extent that it enacts section 9(1)(e.4) of the *Tobacco Reduction Act*, 19(e), 19(f) to the extent that it enacts section 9(1)(g.2) of the *Tobacco Reduction Act*, 20, 22. (*Tobacco Reduction Act* is now the *Tobacco and Smoking Reduction Act*.) The unproclaimed sections can be seen here:

http://www.qp.alberta.ca/1266.cfm?page=2013ch24_unpr.cfm&leg_type=Acts&isbncln=9780779783007&display=html.

Saskatchewan

The Tobacco Control Amendment Act, 2010, SS 2010, c. 34. The following portions are not yet proclaimed, clause 3(c); section 5; that portion that adds subsection 6(7); section 15; those portions of clause 17(b) that add clauses 30(c.11),(c.12) and (c.14). Most of these deal with the ability to ban flavoured tobacco.

Manitoba

The Non-Smokers Health Protection Amendment Act (Prohibitions on Flavoured Tobacco and Other Amendments), SM 2014, c. 18.

The Cannabis Harm Prevention Act (Various Acts Amended), SM 2017, c. 22, ss. 18-23.

Quebec

An Act respecting mainly the implementation of certain provisions of the Budget Speech of 26 March 2015, SQ 2016, c 7, ss. 59, 60, amending Tobacco Control Act, ss. 2, 17(6) (technical amendment).

Ontario

Electronic Cigarettes Act, 2015, SO 2015, c. 7, Schedule 3. Sections 1, 2, 6, 9, 10 (4), (5), 13-14, 15 (1) (a)-(f), (h), 15 (2) and 16 proclaimed to come into force on January 1, 2016. Sections 3-5, 7, 8, 10 (1)-(3), (6)-(8), 11, 12, 15 (1) (g) and 18 come into force on proclamation.

New Brunswick

An Act to Amend the Tobacco Sales Act, SNB 2009, c. 17 (banning flavoured tobacco products; requiring minimum package size of 20 for cigarillos). Note that different flavoured tobacco legislation was adopted in 2015 and is now in force.

Nova Scotia

Tobacco Access Act, SNS 1993, c. 14, s. 8 (ban on confectionery resembling a tobacco product).

Insured Health Services Act, SNS 2012, c. 44, s. 92 (amending Tobacco Damages and Health-care Costs Recovery Act, s. 2(1)(d)(i)).

Northwest Territories

Tobacco Damages and Health Care Costs Recovery Act, SNWT 2011, c.33.

Nunavut

Tobacco Damages and Health Care Costs Recovery Act, SNu 2010, c. 31.

Tobacco Tax Laws

Federal

Excise Act, 2001, SC 2002, c. 22.

Regulations Respecting Excise Licences and Registrations, SOR/2003-115.

Regulations Respecting the Possession of Tobacco Products That Are Not Stamped, SOR/2003-203.

Regulations Relieving Special Duty on Certain Tobacco Products, SOR/2003-202.

Stamping and Marking of Tobacco Products Regulations, SOR/2003-288.

Regulations Respecting Prescribed Brands of Manufactured Tobacco and Prescribed Cigarettes, SOR/2011-7.

Criminal Code, RSC 1985, c. C-46, s. 121.1.

First Nations Goods and Services Tax Act, SC 2003, c. 15, s. 67.

Budget Implementation Act, 1997, SC 1997, c. 26, Part II.

Duty Free Shop Regulations, SOR/86-1072 (under *Customs Act*, RSC 1985, c. 1 (2nd Supp)).

Ships' Stores Regulations, SOR/96-40 (under both *Customs Tariff*, SC 1997, c. 36, and *Excise Tax Act*, RSC 1985, c. E-5).

Contraband settlements (court enforceable)

- *Imperial Tobacco Canada Limited and Her Majesty the Queen in Right of Canada and the Provinces Listed on the Signature Pages Attached Hereto*, Comprehensive Agreement, July 31, 2008 (all 10 provinces signed).
- *Rothmans, Benson & Hedges Inc. and Rothmans Inc. and Her Majesty the Queen in Right of Canada and the Provinces Listed on the Signature Pages Attached Hereto*, Comprehensive Agreement, July 31, 2008 (all 10 provinces signed).
- *JTI-Macdonald Corp. and Her Majesty the Queen in Right of Canada and the Provinces and Territories Listed on the Signature Pages Attached Hereto*, Comprehensive Agreement, April 13, 2010 (all 13 provinces and territories signed).
- *R.J. Reynolds Tobacco Company and Her Majesty the Queen in Right of Canada and The Provinces and Territories Listed on the Signature Pages Attached Hereto*, Comprehensive Agreement, April 13, 2010.
- Agreement between Canada and all 10 provinces, *Agreement Respecting Certain Funds Received from ITCL and RBH*, July 31, 2008.
- Agreement between Canada and all 13 provinces and territories, *Agreement Respecting Certain Funds Received from JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, Northern Brands International Inc., or on their behalf*, April 13, 2010.

British Columbia

Tobacco Tax Act, RSBC 1996, c. 452.

Tobacco Tax Act Regulation, BC Reg 66/2002.

Consular Tax Exemption Regulation, BC Reg 127/2008.

Interest Rate Under Various Statutes Regulation, BC Reg 386/92.

Alberta

Tobacco Tax Act, RSA 2000, c. T-4.

Tobacco Tax Regulation, Alta Reg 273/1983.

Tobacco Tax (Ministerial) Regulation, Alta Reg 90/2008.

Saskatchewan

The Tobacco Tax Act, 1998, SS 1998, c. T-15.001.

The Tobacco Tax Regulations, 1998, c. T-15.001, Reg 1.

The Revenue and Financial Services Act, SS 1983, c. R-22.01.

The Revenue Collection Administration Regulations, RRS c R-22.01 Reg 2.

Manitoba

The Tobacco Tax Act, CCSM c. T80.

Tobacco Tax Regulation, Man Reg 77/88 R.

Sale of Marked Tobacco on Indian Reserves Regulation, Man Reg 63/2006.

The Tax Administration and Miscellaneous Taxes Act, CCSM c. T2.

Tax Administration Regulation, Man Reg 189/2006.

Ontario

Tobacco Tax Act, RSO, c. T.10.

General, RRO 1990, Reg 1034.

Raw Leaf Tobacco, O Reg 247/14.

Raw Leaf Tobacco - Baling, Packaging, Labelling and Transporting, O Reg 271/16.

Refunds, R.R.O. 1990, Reg 1035.

Returns and Refunds, R.R.O. 1990, Reg 1033.

Sale of Unmarked Cigarettes on Indian Reserves, O Reg 649/93.

Tobacco Tax Rates, O Reg 5/05.

Cigarette Filter Components, draft regulation published Sept. 27, 2017.

Quebec

Tobacco Tax Act, CQLR c. I-2.

Regulation respecting the application of the Tobacco Tax Act, CQLR c. I-2, r. 1 (previously RRQ, c. I-2, r. 1).

Tax Administration Act, RSQ c. A-6.002.

Regulation respecting fiscal administration, CQLR c. A-6.002, r. 1.

Regulation respecting fiscal privileges granted to members of a diplomatic mission, consular post or office of a political division of a foreign State, to the members of their families and to that office, CQLR c. A-6.002, r. 5.

Regulation respecting tax exemptions granted to certain international non-governmental organizations and to certain employees of such organizations and to members of their families, CQLR c. A-6.002, r. 4.

Regulation respecting tax exemptions granted to certain international governmental organizations and to certain of their employees and members of their families, CQLR c. A-6.002, r. 3.

New Brunswick

Tobacco Tax Act, RSNB 1973, c. T-7.

General Regulation – Tobacco Tax Act, NB Reg 84-250.

Revenue Administration Act, SNB 1983, c. R-10.22.

General Regulation, NB Reg 84-247.

Nova Scotia

Revenue Act, SNS 1995-1996, c.17, Part III.

Revenue Act Regulations, NS Reg 63/96.

Prince Edward Island

Tobacco Tax Act, RSPEI 1988, c. T-3.11 (initially SPEI 2007, c. 19).

General Regulations, PEI Reg EC147/08.

Revenue Administration Act, RSPEI 1988, c. R-13.2.

General Regulations, PEI Reg EC390/91.

Newfoundland and Labrador

Revenue Administration Act, SNL 2009, c. R-15.01.

Revenue Administration Regulations, NLR 73/11.

Labrador Border Zones Rebate Regulations, NLR 48/15.

Yukon Territory

Tobacco Tax Act, RSY 2002, c. 219.

Tobacco Tax Regulations, YCO 1974/331.

Northwest Territories

Tobacco Tax Act, RSNWT 1988, c. T-5.

Tobacco Tax Regulations, RRNWT 1990, c. T-14.

Nunavut

Tobacco Tax Act, RSNWT (Nu) 1988, c. T-5.

Tobacco Tax Regulations, RRNWT (Nu) 1990, c. T-14.