

**A Brief Regarding Bill C-59, the *Fall Economic
Statement Implementation Act, 2023*:**

**A Submission to the Standing Senate Committee
on National Finance**



**Canadian
Cancer
Society**

March 20, 2024

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Summary of Recommendations

This brief provides comments and recommendations regarding the tobacco control provisions in Bill C-59, the *Fall Economic Statement Implementation Act, 2023*.

The Canadian Cancer Society recommends:

Cost recovery fee

1. That clauses 217-218 (in Division 4 of Part 5) be adopted, clauses that would amend the *Tobacco and Vaping Products Act* to require a cost recovery fee from tobacco and vaping product companies to reimburse the annual cost of the government's federal tobacco control strategy.
2. That the cost recovery fee provisions be strengthened through an amendment to provide that companies must pay the fee first as a condition of being able to sell products; in other words, tobacco products and/or vaping products, as the case may be, shall not be sold by the company unless and until the fee is paid.

Vaping product tax

3. That clauses 145-167 (in Part 4) be adopted, clauses that would strengthen administration and enforcement of the federal vaping product tax, and that would provide for a minimum age of 18 for the importation of vaping products.

List of Appendices

1. Canadian Cancer Society, “Government, political party and parliamentary/legislative committee statements at federal and provincial levels supporting a tobacco manufacturer cost recovery fee” March 2024.
2. Canadian Cancer Society, “Information Regarding Disposable E-Cigarettes Sold in Canada, Number of Puffs and Prices” March 2024.

Introduction

Tobacco products remain the leading preventable cause of disease and death in Canada, killing 46,000 Canadians each year, including 30% of all cancer deaths. Smoking causes not just lung cancer, but at least 16 different types of cancer. For a person who contracts cancer, whether or not the person smokes can have a tremendous impact on the likelihood of surviving cancer. Smoking causes heart disease, stroke, emphysema and many other health effects.

Smoking during pregnancy is harmful to the fetus. Secondhand smoke is harmful to people who do not smoke, including causing lung cancer and heart disease. Nicotine is highly addictive. The overwhelming majority of people who smoke began as underage teenagers or pre-teens.

While progress has been made at reducing smoking prevalence, an enormous amount of work remains to be done to achieve the target of under 5% tobacco use by 2035. There are still 3.8 million Canadians who smoke, representing 12% of the population aged 12+,¹ and even more if other types of tobacco use are included.

Youth vaping has increased considerably, leading to overall increases in youth nicotine addiction. Among high school students in grades 10-12 in Canada, the rate of vaping of in the 2021-22 school year was 24%, up from 9% in the 2014-15 school year.² Moreover, the number of Canadians who vape but who have never smoked is increasing significantly, totaling 730,000 Canadians in 2022.³

Annual cost recovery fee

Recommendation 1: That clauses 217-218 (in Division 4 of Part 5) be adopted, clauses that would amend the *Tobacco and Vaping Products Act* to require a cost recovery fee from tobacco and vaping product companies to reimburse the annual cost of the government's federal tobacco control strategy.

The Canadian Cancer Society strongly supports the cost recovery fee provisions in Bill C-59 to be applied to tobacco companies and vaping product companies. It should be noted that the tobacco industry is in fact a major player in vaping product sales in Canada.

The tobacco and vaping industry should be required to pay an annual fee to recover the \$66 million annual cost of the federal government's tobacco control strategy. The measure was

¹ Canadian Community Health Survey, 2022.

https://www150.statcan.gc.ca/t1/tb11/en/tv.action?pid=1310009601&request_locale=en

² Canadian Student Tobacco, Alcohol and Drug Survey (CSTADS), 2014-15 and 2021-22.

<https://www.canada.ca/en/health-canada/services/canadian-student-tobacco-alcohol-drugs-survey.html>

³ Canadian Tobacco and Nicotine Survey, 2022.

included in the Liberal, Conservative and NDP 2021 election platforms. Companies would pay a fee based on market share. The fee would generate \$66 million in incremental annual revenue for the federal government that could be used for government priorities.

The Canadian Cancer Society has long urged that a cost recovery fee be adopted. A cost recovery fee has been included in:

- The November 21, 2023, federal Fall Economic Statement;
- The March 28, 2023, federal budget, committing to develop the tobacco cost recovery framework using existing Health Canada departmental resources;
- The December 16, 2021, mandate letter from the Prime Minister to the Associate Minister of Health;
- The Liberal, Conservative and NDP platforms for the 2021 federal election;
- The Conservative platform for the 2019 federal election;
- The recommendations in the February, 2021, pre-budget report of the Standing Committee on Finance;
- The Conservative dissenting report to the February, 2021, report of the Standing Committee on Finance; and
- NDP motion M-39 introduced in the House of Commons by health critic Don Davies on December 1, 2021, and previously through motion M-54 introduced on November 12, 2020.

Appendix 1 outlines in more detail the government, political party and parliamentary/legislative committee statements in support of a cost recovery fee, at both federal and provincial levels in Canada.

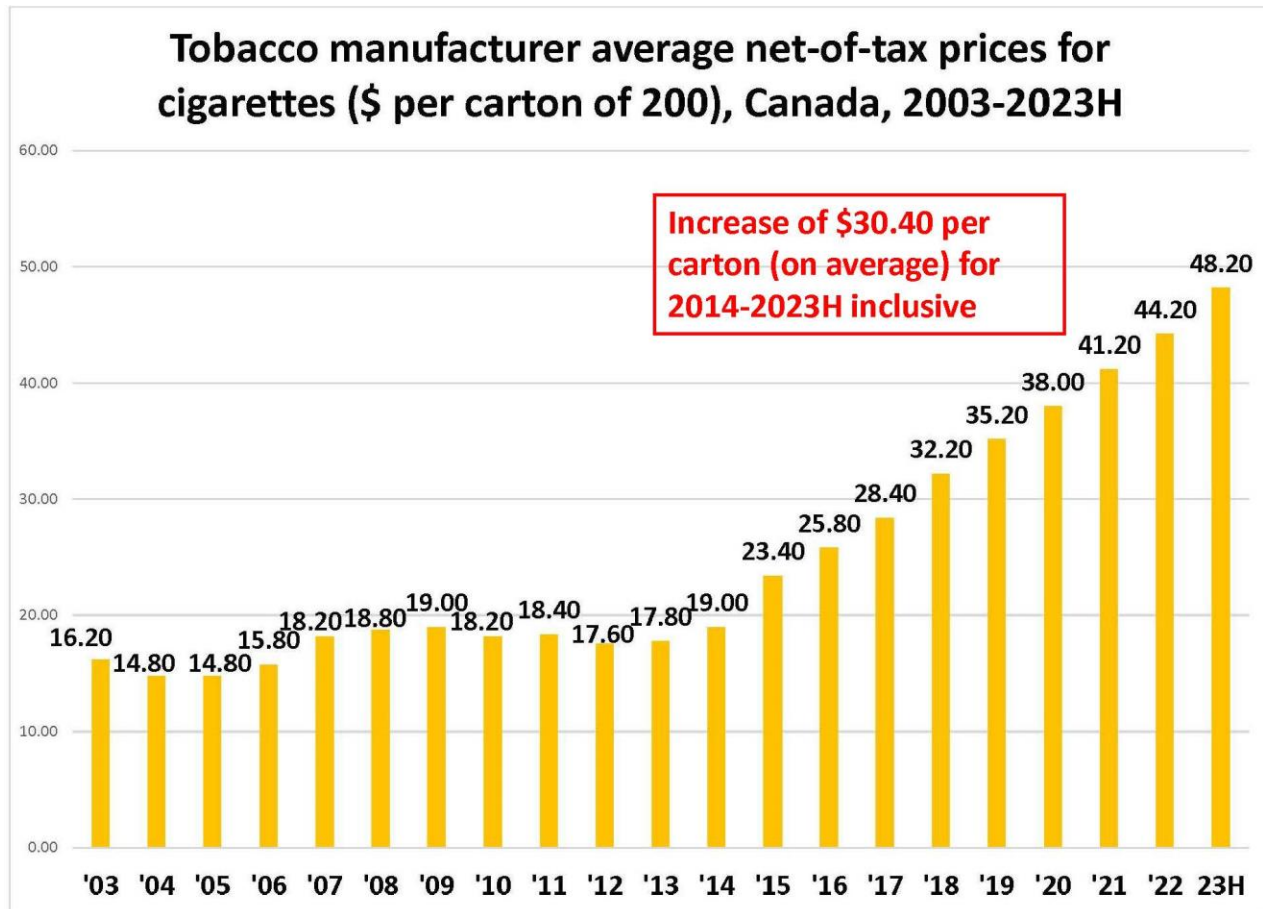
In the U.S., an annual tobacco cost recovery fee has been in place nationally since 2009 to recover the tobacco control budget of the U.S. Food and Drug Administration (FDA), now US\$712 million annually (C\$963 million). In the US, the fee recovers from tobacco manufacturers the cost of all of the FDA's tobacco control initiatives, whether related to tobacco products or to e-cigarettes. If the US Government can implement a cost recovery fee, then so can the Canadian Government.

In Canada, a cost recovery fee on the cannabis industry has been in place since 2018 to recover the cost of federal government cannabis initiatives. This cannabis experience demonstrates the viability of a cost recovery fee for both tobacco and vaping product companies.

A fee is a means of accountability for the tobacco and vaping product industry. The tobacco industry should be held to account based on the principle of polluter pays. The tobacco industry has caused the tobacco epidemic and should reimburse Health Canada's cost of responding to the tobacco epidemic. Moreover, the vaping industry is seeing significant financial benefits from a huge number of underage youth who began using vaping products, many of whom are now adults, and many of whom may now be addicted to nicotine for life.

As illustrated in the graph, over the nine and a half years 2014 to the first half of 2023 inclusive, the tobacco industry has made massive windfall net-of-tax price increases (on average) of \$30.40 per carton of 200 cigarettes. These price increases have resulted in more than \$2 billion more per

year in additional revenue for the tobacco industry on top of an already huge revenue base. In this context, the tobacco industry can easily afford to pay \$66 million per year.



Tobacco companies sometimes raise the issue of contraband. On this issue, tobacco companies have no credibility. First, each of the three major tobacco companies in Canada (Imperial Tobacco Canada Ltd.; Rothmans, Benson & Hedges Inc.; and JTI-Macdonald Corp.) have been convicted of tobacco contraband. The three companies collectively have been required to pay fines and civil amounts totalling \$1.7 billion.

Second, the tobacco manufacturers own massive net-of-tax price increases of \$30.40 per carton (on average) during the period of 2014 to the first half of 2023 are far in excess of inflation. The companies have increased their own net-of-tax prices during this period by 180%, compared with cumulative inflation during the same period of just 28%.

Recommendation 2: That the cost recovery fee provisions be strengthened through an amendment to provide that companies must pay the fee first as a condition of being able to

sell products; in other words, tobacco products and/or vaping products, as the case may be, shall not be sold by the company unless and until the fee is paid.

The existing provisions in Bill C-59 are insufficient to ensure that tobacco and vaping companies pay the fee up front, without having the need for the government to be chasing after the companies for payment. For example, the new section 46.1 (that would be enacted by clause 218) would provide for a maximum fine of only \$50,000 for a company that does not pay the required fee. This is an incredibly small amount with the risk that fines would be treated as merely the cost of doing business.

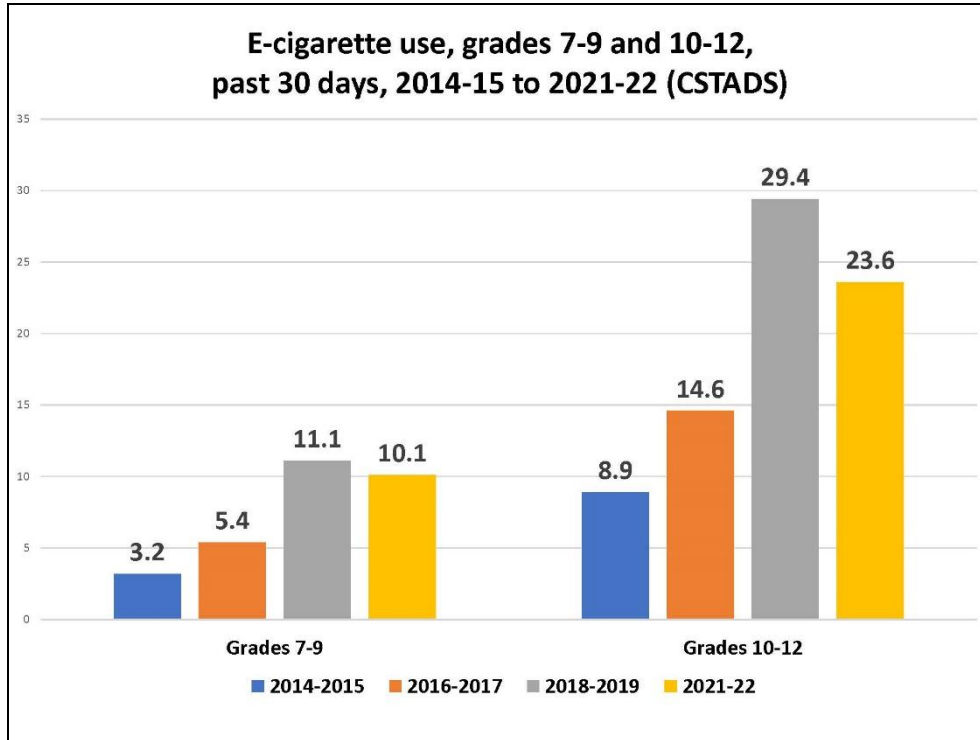
An amendment is necessary to specify precisely that a company shall not sell products unless the required fee has first been paid.

Vaping Product Tax Administration and Enforcement

Recommendation 3: That clauses 145-167 (in Part 4) be adopted, clauses that would strengthen administration and enforcement of the federal vaping product tax, and that would provide for a minimum age of 18 for the importation of vaping products.

The federal vaping product tax helps to counter youth vaping. The Bill C-59 provisions to strengthen administration and enforcement of this tax deserve support.

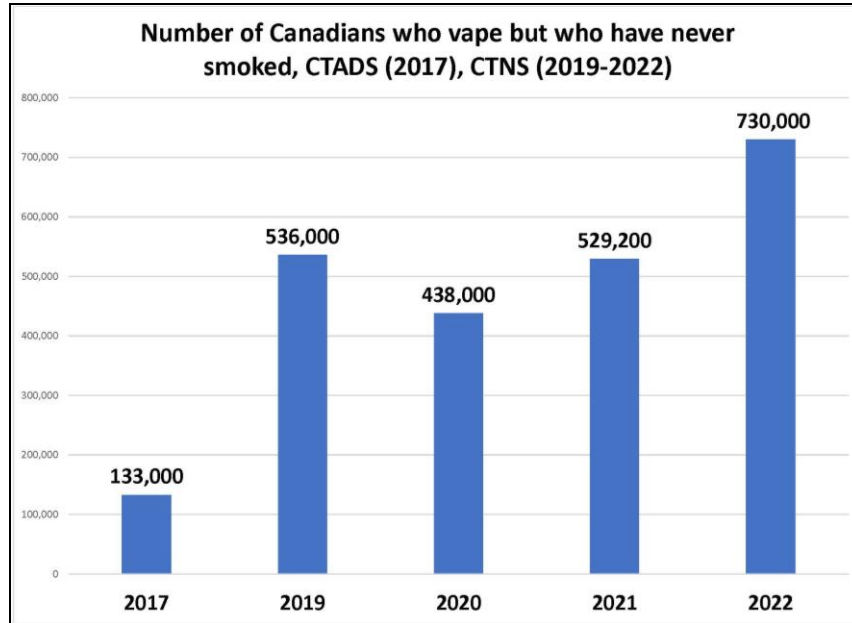
Youth vaping rates remain frustratingly and unacceptably high, as outlined by the following data trends from the Canadian Student Tobacco, Alcohol and Drugs Survey (CSTADS):



For the CSTADS survey for the 2021-22 school year, it should be noted that this did overlap with COVID, which may have had the effect of suppressing youth vaping rates somewhat (youth were at home more and thus more around their parents; also youth may have had fewer opportunities to obtain e-cigarettes from stores and from friends). Further, the 2021-22 school year was prior to Imperial Tobacco Canada Ltd. and Rothmans, Benson & Hedges starting to sell disposable e-cigarettes in the second half of 2022.

As of 2022, and as is illustrated in the graph that follows, there are 730,000 Canadians who vape but who have never smoked, a number that has been increasing significantly.⁴ A lot of this would be driven the onset of e-cigarette use among youth and young adults, and who may continue to use e-cigarettes as they become older. Unless substantial action is taken, the number of Canadians who vape but who have never smoked would be projected to further increase significantly in the years and decades ahead. (There had been a slowdown in growth during the COVID years, but that slowdown now appears over.)

⁴ Canadian Tobacco, Alcohol and Drugs Survey, 2017; Canadian Tobacco and Nicotine Survey, 2019-2022.



Regarding high levels of youth vaping, a comprehensive strategy involving taxation, legislation and programming is necessary in response.

As outlined in more detail in Appendix 2, the emergence of disposable e-cigarettes in the Canadian market has reduced the cost of vaping and has made vaping even more affordable for youth. These low-cost disposable e-cigarettes undermine the potential impact of e-cigarette taxation to reduce youth vaping as well as other statutory and regulatory measures regarding e-cigarettes. Imperial Tobacco Canada Ltd. and Rothmans, Benson & Hedges began selling disposable e-cigarettes in Canada in the second half of 2022.

One of the provisions in Bill C-59 is to establish a minimum age of 18 to import e-cigarettes. This would fill a gap, as at present there is no minimum age for a person to import e-cigarettes into Canada, though there is a minimum age of 18 for tobacco products. For alcohol, the minimum age of importation is based on the minimum age for alcohol of the province/territory of entry, which is either 18 or 19. At a subsequent point a similar approach should be taken for both tobacco products and e-cigarettes to have the minimum age of importation based on the minimum age of the province/territory of entry (which at present is 18, 19 or 21).



Canadian Cancer Society
Société canadienne du cancer

Appendix 1

Government, political party and parliamentary/legislative committee statements at federal and provincial levels supporting a tobacco manufacturer cost recovery fee

Canadian Cancer Society
March 2024

This document compiles statements of governments, political parties, and parliamentary/legislative committees at federal and provincial levels in Canada outlining support for a tobacco manufacturer cost recovery fee.

Federal Fall Economic Statement, 2023

Federal government’s Fall Economic Statement, November 21, 2023:

“Developing a Tobacco Cost Recovery Framework

In FES 2023, the government proposes to amend the *Tobacco and Vaping Products Act* to enable the fixing of fees, levies or charges, and related compliance and enforcement tools to implement a tobacco cost recovery framework.” (p.106)

Implemented through Bill C-59, *Fall Economic Statement Implementation Act, 2023* (sections 217-218), first reading November 30, 2023.

Federal Budget, 2023

Federal government’s Budget 2023, March 28, 2023:

“Developing a Tobacco Cost Recovery Framework”

“Funding for HC to develop a cost recovery framework that would require tobacco manufacturers to contribute to the cost of federal public health investments in tobacco control.” An amount of \$7 million in funds over 3 years was allocated from existing departmental resources. (p.194)

Ministerial Mandate Letter, 2021

Prime Minister’s mandate letter to Associate Minister of Health Dr. Carolyn Bennett, December 16, 2021:

“Require tobacco manufacturers to pay for the cost of federal public health investments in tobacco control.”

2021 Federal Election Platforms, 2021

Liberal Party election platform, 2021:

“Move forward with a national tax on vaping products and require tobacco manufacturers to pay for the cost of federal public health investments in tobacco control.” (p.73)

“Tobacco manufacturers' recovery fee” with \$17 million in revenue for fiscal year 2021-22 and \$66 million in revenue for each of 2022-23, 2023-24, 2024-25 and 2025-26. (p.75)

Conservative Party election platform, 2021:

“Tobacco Recovery Fee” with \$17 million in revenue for fiscal year 2021-22 and \$66 million in revenue for each of 2022-23, 2023-24, 2024-25 and 2025-26. (p.7 of the costing located towards end of platform; p.85 of pdf)

NDP election platform, 2021:

“Tobacco Recovery Fee” with \$17 million in revenue for fiscal year 2021-22 and \$66 million in revenue for each of 2022-23, 2023-24, 2024-25, and 2025-26. (NDP costing of platform, p.6)

House of Commons Standing Committee on Finance, 2021

House of Commons Standing Committee on Finance, Pre-Budget Report, February 2021:

“Recommendation 119

Implement an annual cost recovery fee on the tobacco industry to recover the cost of the federal government's tobacco control strategy.”

Conservative Party Dissenting Report to the Standing Committee on Finance Pre-Budget Report, February 2021:

“Conservatives' Recommendations [...]

56. Implement an annual cost recovery fee on the tobacco industry to recover the cost of the federal government's tobacco control strategy.”

House of Commons Motions

NDP motion M-54 introduced in the House of Commons, December 1, 2021, by health critic Don Davies:

“**M-39** — That, in the opinion of the House, the government should adopt a requirement for tobacco companies to pay an annual fee in order to recover the annual costs of the federal government's tobacco control strategy, with allocation of the fee to each company being based on market share.”

NDP motion M-54 introduced in the House of Commons, November 12, 2020, by health critic Don Davies:

“M-54 — That, in the opinion of the House, the government should adopt a requirement for tobacco companies to pay an annual fee in order to recover the annual costs of the federal government’s tobacco control strategy, with allocation of the fee to each company being based on market share.”

Federal election platforms and commitments, 2019

Conservative Party platform for the 2019 federal election:

“Make Tobacco Companies Pay for Anti-tobacco Campaigns

A new Conservative government will charge an annual cost recovery fee to the tobacco industry (proportional to the revenues of each company) to provide full reimbursement for the annual cost of the federal tobacco control strategy.” (p.100)

NDP response to Canadian Cancer Society election questionnaire during 2019 federal election campaign, October 2019:

“The NDP has led the fight for strong tobacco legislation for decades, including for imposing a levy on tobacco companies to help recover the costs of the government having to enforce a tobacco reduction strategy.” (p.2)

Bloc Québécois letter to Canadian Cancer Society during 2019 federal election campaign, responding to Canadian Cancer Society election questionnaire, October 10, 2019

“We are completely in agreement with your proposal to require the tobacco giants to pay for the entirety of the federal tobacco control strategy. They are responsible for the public health problems related to their product.” (p.1) [translation]

British Columbia

British Columbia Legislative Assembly Select Standing Committee on Finance and Government Services, Report on the Budget 2023 Consultation, August 2022

“RECOMMENDATIONS

The Committee recommends to the Legislative Assembly that the provincial government:
(p.57)

[...]

108. Explore the viability of implementing an annual fee on the tobacco industry to recover the cost of the Ministry of Health’s provincial tobacco control strategy.” (p.58)

Ontario

Ontario NDP 2022 provincial election platform

“COMMITMENT

Make Tobacco companies pay for all Smoke-Free Ontario programming:

Companies that have profited for decades from the sale of cigarettes will cover the cost of providing Smoke-Free Ontario programs, as recommended by the Canadian Cancer Society.” (p.89)

“Tobacco Cost Recovery” with \$44 million in revenue for fiscal years 2022-23, 2023-24, and 2024-25 (NDP costing of platform, p.9).

Ontario Liberal 2022 provincial election platform

“We’ll also charge a fee to the tobacco industry, making back the \$44 million spent on efforts to prevent or get people to quit smoking under Smoke Free Ontario.” (p.35)

“Smoke-Free Ontario Recovery Fee on tobacco industry” with \$44 million in revenue for fiscal years 2022-23, 2023-24, 2024-25 and 2025-26 (Liberal costing of platform, p.3).

Quebec

Parti Québécois official opposition amendment proposed to Bill 44, *An Act to bolster tobacco control*, during proceedings of the Committee on Health and Social Services, Quebec National Assembly, November 17, 2015 (the proposed amendment was not adopted). The amendment was proposed by then Parti Québécois health critic (and later leader) Jean-François Lisée.

“Chapter VI.1. Permit.

31.1. Any manufacturer or importer of tobacco products wishing to sell his products in Québec must first obtain a permit from the Ministry of Health and Social Services for the sale of tobacco, as prescribed by regulation.

The Minister requires a contribution from the manufacturer or importer in exchange for the issuance of such a permit to ensure that the sum of these contributions equals the government's expenditures in relation to its program of protection against second-hand smoke and tobacco reduction.

A period of twelve months following (insert the date of the assent to the bill) is granted to the manufacturer to obtain his permit.

The Government may determine by regulation the obligations, deadlines and fees applicable to such permits.” [translation]

Appendix 2

**Information Regarding Disposable E-Cigarettes Sold
in Canada, Number of Puffs and Prices**



Canadian Cancer Society
Société canadienne du cancer

March 2024

Summary

This document provides illustrative examples of disposable e-cigarettes, the increasing number of puffs per device, and the decreasing cost per puff. With the changes in the products available for sale in Canada, and the decreasing cost per puff, the result is that the cost per week or per month is decreasing, making vaping even more affordable for youth. These developments have undermined the intended impact of the federal e-cigarette tax to reduce youth vaping.

For example, in August 2023, Vuse products from Imperial Tobacco Canada Ltd were being sold at \$10.99 for 500 puffs, \$18.99 for 1,500 puffs, and \$29.99 for 5,000 puffs. The cost breaks down to 2.2 cents per puff for the 500 puff product, 1.3 cents per puff for the 1,500 puff product, 0.6 cents per puff for the 5,000 puff product. In March 2024, a Vuse 8,000 puff product was now available for \$29.99, or just 0.37 cents per puff. By March 2024, other companies were selling 10,000 and 12,000 puff products at just 0.3 cents per puff.

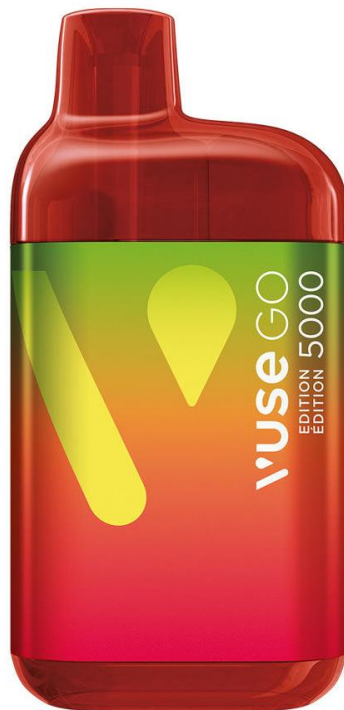
The cost per puff (and thus cost per week/month) of the Vuse 8,000 puff product is thus only 19% of the initial Vuse 500 puff product. The cost per puff of the 10,000 and 12,000 puff products from other brands is only 14% of the cost of the initial Vuse 500 puff product. The lower cost of these products greatly increases affordability for youth.



Vuse Go 500



Vuse Go 1500



Vuse Go 5000



Photo taken in a convenience store in Ontario on August 17, 2023. One of the signs promotes disposable e-cigarettes at \$10.99 for 500 puffs, \$18.99 for 1,500 puffs, \$29.99 for 5,000 puffs. The store employee confirmed that this sign referred to Vuse disposable e-cigarettes for sale in the store (Vuse is a brand marketed by Imperial Tobacco Canada Ltd.). The cost breaks down to 2.2 cents per puff for the 500 puff product, 1.3 cents per puff for the 1,500 puff product, 0.6 cents per puff for the 5,000 puff product. The cost per puff (and thus cost per week/month) of the 5000 puff product is thus only 27% of the 500 puff product, greatly increasing affordability for youth.



Oxbar X Mint 8000, \$28.99 (0.36 cents/puff)



Beast Modz Bangin' Blood Orange 8000, \$29.99 (0.37 cents/puff)



Flip Bar Mango Pineapple Ice 9000, \$24.99 (0.28 cents/puff)

Source: Vape 360, Ontario, Jan. 25, 2024



Elf Bar Grape Ice 10,000 \$29.99 cents/puff)



Stith Pineapple Strawberry Kiwi Ice 10,000, \$29.99 (0.3

Source: Vape 360, Ontario, Jan. 25, 2024



Disposable e-cigarettes purchased in Ontario, March 11, 2024:

- Vuse Spearmint Ice 8,000 puffs and Vuse Grape Ice 8,000 puffs, \$29.99 each (0.37 cents/puff)
- Stlth Titan Strawnanna Ice 10,000 puffs, \$29.99 (0.3 cents/puff)
- Vice Boost Hawaiian Blue 9,000 puffs, \$29.99 (0.33 cents/puff)
- Drip'n by Envi Evo Snazzy S Storm 10,000 puffs and Drip'n by Envi Evo Pink Lemon Ice 10,000 puffs, \$29.99 each (0.3 cents/puff)
- Lost Mary (Powered by Elf Bar) Blueberry Razz 10,000 puffs, \$29.99 (0.3 cents/puff)
- Spin Watermelon Ice, 12,000 puffs, \$34.99 (0.3 cents per puff)

Note that all prices in this document are from Ontario and are before H.S.T.