Taking global leadership in banning menthol and other flavours in tobacco: Canada's experience

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ABSTRACT

Measures to ban or restrict menthol and other flavours in tobacco products are under consideration or newly implemented in an increasing number of jurisdictions across the world. As one of the world leaders, Canada's experience in successfully developing and implementing such measures can be instructive for other jurisdictions. This paper explores the history of how Canada was able to implement tobacco flavour bans including menthol, examines some of the challenges and presents lessons learnt for other jurisdictions. The crucial motivation for these bans emerged from surveillance data showing high rates of flavoured tobacco use by youth, including menthol cigarette smoking, that was publicised by non-governmental organisations. Further data showed that early legislation in 2009 contained loopholes (cigar size exemptions and menthol exemptions) that limited the benefits of the legislation. Leadership by the provinces created an environment in which the federal ban on menthol ingredients in 2017 was a clear and obvious step to ensure implementation across the country. The Canadian measures have been successful at reducing the use of flavoured tobacco including menthol cigarettes and facilitating smoking cessation. Lessons learnt include the downsides of exemptions, the lack of a contraband issue (despite an existing supply in Canada), the benefits of availability of youth flavour prevalence data and the success of subnational regulations to advance national regulation.

INTRODUCTION

Flavoured tobacco products are associated with youth initiation of tobacco use^{1–4} and inhibition of cessation.⁴ An increasing number of jurisdictions worldwide are restricting or banning flavours in tobacco products, including menthol.⁵ International guidelines under Articles 9 and 10 of the WHO Framework Convention on Tobacco Control (FCTC) include provisions on the regulation of flavours in tobacco products and were adopted in 2010.⁶

In Canada, national and provincial laws have been implemented to restrict flavoured tobacco products primarily to reduce initiation and use of tobacco products. Canada was an early adopter of such legislation, including banning menthol products.⁷ Published youth survey results revealed that a large percentage of youth users of tobacco consumed flavoured tobacco products.^{8,9}

Canada's experience regarding flavoured tobacco measures is part of a broader, comprehensive policy context within the country to reduce tobacco use that has strengthened over time and that

now includes taxation, smoke-free places, advertising and promotion restrictions including retail display bans, graphic warnings on packages, sales bans from some specified locations, sales restrictions to minors, reporting requirements, government healthcare cost recovery lawsuits and, more recently, plain packaging, bans on slim and long cigarettes and e-cigarette regulation, along with programming initiatives.

THE EMERGENCE OF WIDESPREAD FLAVOURED LITTLE CIGARS AND LEGISLATIVE ACTION

There were prior calls in Canada to ban menthol cigarettes at least as early as 1996¹⁰ and all flavoured tobacco products at least as early as 2006.^{11–12} Calls for action increased in 2006–2008, especially to ban flavoured little cigars in response to their growing availability and elevated use among youth.^{13–19} Sales of little cigars, which had minimal market presence a decade earlier, increased nationally from 53 million in 2001 to 469 million in 2008, with most of the increased due to flavoured products (figure 1).¹³ Surveys found substantial youth use of little cigars.^{15–20–21}

In 2008, Conservative Party leader and Prime Minister Stephen Harper pledged 'to ban the use of flavour and additives in all tobacco products that would appeal to children'.²² The same year saw the introduction of private member's bills to ban flavoured tobacco federally²³ most flavoured cigarillos in Nova Scotia²⁴ and flavoured little cigars except menthol (and regulatory authority to ban flavours in other tobacco products) in Ontario. The Ontario bill (which came into force on 1 July 2010) defined little cigars as those weighing 1.4 g or less or with a filter.²⁵

The Prime Minister's commitment eventually led to the adoption of Bill C-32 in 2009.²⁶ This federal legislation banned flavours in cigarettes, little cigars and blunt wraps, with the exception of menthol flavoured products, and required little cigars to be sold in minimum packages of 20. As in the Ontario legislation, Bill C-32 defined little cigars as any cigar weighing 1.4 g or less or with a filter. Advocacy efforts for the flavour ban to include menthol cigarettes and flavoured smokeless tobacco were unsuccessful,²⁷ with the government stating that menthol cigarettes were not 'attractive' to youth and sales had been declining.^{28–29} However, health advocacy was effective in countering tobacco industry opposition to Bill C-32.²⁷ One effective advocacy approach was to show little cigars—in a wide variety of flavours and colourful packaging—to elected representatives

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Figure 1 Sales of cigars, including little cigars, Canada, 2001–2019. Data provided by Health Canada, based on data reported by tobacco companies pursuant to federal *Tobacco Reporting Regulations*.

and the media, who were often surprised to learn that such products were available for sale. Bill C-32 prohibited any level of tobacco flavouring (except menthol) at the ingredient level, not just as characterising flavours. This prompted strong opposition from Philip Morris International (PMI)^{13 30} which claimed this would violate the World Trade Organization's Technical Barriers to Trade Agreement and prevent US-style cigarettes (accounting for less than 1% of market share) from being sold in Canada.³¹ PMI threatened to close its Quebec factory unless US-style cigarettes were exempt.³¹ But after the legislation was adopted, the company sold an assumingly reformulated version of cigarettes such as 'Rooftop' (the Canadian version of Marlboro).³¹

Bill C-32 came into force on 5 July 2010, and also banned other specified additives in cigarettes, little cigars and blunt wraps, including vitamins, caffeine, taurine, essential fatty acids, probiotics, sugars and sweeteners, and mineral nutrients. Coloured cigarette paper was banned, with exceptions for an imitation cork filter overwrap, and for the use of colouring agents used to whiten paper or the filter. Additives for the functioning of the cigarette, such as additives in paper affecting the burn rate, were still permitted. The Canadian legislation would have an important influence on the content of the FCTC Article 9 and 10 guidelines adopted in November 2010, with Canada providing a legislative precedent with the world's strongest flavoured tobacco legislation at the time, although with menthol exempted.⁶

Figure 2 Smoking of cigars, including little cigars, in Canada, 2006–2007 to 2018–2019. Source of data is Canadian Student Tobacco, Alcohol and Drugs Survey (CSTADS).

Impact of the ban on flavoured little cigars and industry response

An evaluation of the ban on flavours (other than menthol) in flavoured little cigars in mid-2010 using wholesale sales data found an immediate effect with the halting of a sales trend that had been increasing followed by a significant sales decline³² (figure 1). Prevalence of cigar use by high school students also started to decline (figure 2).

The tobacco industry quickly adapted to the wording of the law. Many cigar products that had previously weighed less than 1.4 g were reissued to weigh slightly more than 1.4 g but were otherwise unchanged (figure 3). This impaired the intended effectiveness of the attempt to ban flavoured little cigars. At the time the legislation was adopted it had not been anticipated that many little cigars would be quickly modified to be more than 1.4 g, with little international experience on this at that time.

KEY SURVEY DATA BECOME AVAILABLE

In 2013 and 2014, key survey data were requested and obtained to provide evidence as to how important menthol and flavours were to youth use, and to help persuade governments that further action was necessary. In January 2013, the Propel Centre for Population Health Impact (Propel) at the University of Waterloo, at the request of Action on Smoking and Health (Canada), analysed Alberta data from a national student survey for the 2010–2011 school year. The survey revealed that in Alberta 64% of youth tobacco users (grades 6–12) were using flavoured tobacco products,³³ and 26% of youth tobacco users were smoking menthol cigarettes.³⁴ These results were cited by health organisations to support a bill on tobacco flavours before the Alberta legislature that would ultimately ban menthol products. Subsequently, a Propel report released on 7 October 2013 looking at national data from the same survey (school year 2010–2011) found that of Canadian high school students who were current tobacco users, 52% used flavoured tobacco products and of those who were current smokers, 32% smoked menthol.^{9 35} These results were observed despite federal and Ontario flavour restrictions for little cigars in force in July 2010 prior to the survey. On 10 September 2014, Propel released a further report looking at the same national student survey but this time from the 2012–2013 school year, finding that among Canadian high school students, 50% of current tobacco users used flavoured tobacco, and 29% of current smokers smoked menthol.⁸ High school students who smoked menthol also smoked more cigarettes per week and were more likely to say that they intended to continue smoking.³⁶

A NEW WAVE OF LEGISLATION

The Propel reports, which included provincial breakdowns, generated extensive media coverage and were game changing in the Canadian context and helped to inspire a coordinated, sustained advocacy campaign from health organisations,^{7 37–49} and supported a new wave of legislation. Advocacy by health organisations, working in coalitions and collaboratively across organisations was pivotal to the adoption of further flavour legislation at provincial and national levels.

The provinces of Alberta and Nova Scotia were the first to implement comprehensive flavour bans in 2015. On 13 November 2014, through proclamation of legislation approved in December 2013,⁵⁰ Alberta became the first province to adopt a comprehensive flavour ban across most tobacco products, though menthol was initially exempt. Nova Scotia became the first jurisdiction in the world to implement a ban on menthol

Figure 3 Flavoured tobacco products and related products sold in Canada. (A, B, C, D) Packages of flavoured little cigars prior to any flavoured tobacco legislation. Note the 'Twinkle' brand with four little stars. (E, F) Flavoured little cigars sold individually, 2013, after 2010 ban of flavoured little cigars weighing less than 1.4 g. (G) Cigarettes with two flavour capsules. (H) Cigars purchased in 2016 showing 'Wine/Vin' sticker covering previous fruit flavoured label following federal and Ontario ban on cigars weighing less than 6 g with an exemption for wine, rum, port and whisky flavours. (I, J) Smokeless tobacco before 2015 Alberta ban on characterising flavours. (K, L) Smokeless tobacco after 2015 Alberta ban on characterising flavours. (M) Bull's-eye 'cigarillos' before 2010 Ontario and federal ban on flavoured little cigars weighing less than 1.4 g, and bull's-eye 'cigars' afterwards, with each cigar weighing more than 1.4 g. (N, O, P) Cigars weighing more than 6 g in chocolate and grape flavours following ban on most flavoured cigars weighing less than 6 g. (Q) Camel North Aqua Filter sold at least for a period after Ontario menthol ban in 2017. (R) Cigarette package purchased in 2016 in Ontario identifying a brand as a non-menthol alternative prior to 1 January 2017 Ontario menthol cigarette ban. (S, T) Flavour cards purchased in Ontario.

Table 1 Historical overview of flavoured tobacco restrictions in Canada

Jurisdiction	Menthol cigarette ban implemented	Flavoured tobacco ban implemented	Tobacco product categories exempt from flavour ban
Nova Scotia	31 May 2015	31 May 2015	Cigars, pipe tobacco and waterpipe tobacco with rum, wine, whisky or port flavours, though for cigars each unit must weigh at least 5 g and cost at least \$C4.00.
Alberta	30 September 2015	1 June 2015, menthol exempt. 30 September 2015, menthol banned.	1 June 2015: pipe tobacco; waterpipe tobacco; cigars weighing more than 5 g and costing more than \$4 per unit. 30 September 2015: menthol exemption removed, though menthol still allowed in product categories exempted as of 1 June 2015.
New Brunswick	1 January 2016	1 January 2016	No product category exempt.
Quebec	26 August 2016	26 August 2016	No product category exempt.
Ontario	1 January 2017	1 July 2010, little cigars only, menthol exempt. 1 January 2016, tobacco products generally, menthol products and clove cigarettes exempt. 1 January 2017, menthol products and clove cigarettes.	1 July 2010: all tobacco products exempt other than cigars weighing less than 1.4 g, excluding mouthpiece or tip, and any tobacco product with a filter (no menthol products banned). 1 January 2016: pipe tobacco; clove cigarettes; menthol tobacco products; cigars weighing 6 g or more excluding the weight of any mouthpiece or tip; cigars that weigh more than 1.4 g but less than 6 g having a wine, port, whisky or rum flavour (none of the cigar exemptions apply if the cigar has tipping paper, or does not have a wrapper fitted in spiral form). 1 January 2017: previous menthol tobacco product and clove cigarette exemption removed.
Prince Edward Island	1 May 2017	1 May 2017	No product category exempt.
Newfoundland and Labrador	1 July 2017	1 July 2017	Cigars and pipe tobacco with rum, wine, whisky or port flavours, though for cigars each unit must weigh at least 5 g and cost at least \$C4.00.
National (federal)	2 October 2017	5 July 2010 for cigarettes, little cigars and blunt wraps (menthol exempt). 1 December 2015, most cigars (menthol exempt). 2 October 2017, menthol ban in cigarettes, most cigars and blunt wraps. 19 November 2018, menthol and cloves ban in all tobacco products.	5 July 2010: applies only to cigarettes, blunt wraps and little cigars, with little cigars defined as cigars with a cigarette filter or weighing no more than 1.4 g, excluding mouthpiece or tip (no menthol products banned). 1 December 2015: flavour ban extended to more cigars, with the following exemptions: <ul style="list-style-type: none"> ▶ Menthol. ▶ A cigar where all of the following apply: weighs more than 1.4 g but not more than 6 g, excluding the weight of any mouthpiece or tip; has a wrapper fitted in spiral form, no tipping paper and no filter; has a flavour of port, wine, rum or whisky. ▶ A cigar where all of the following apply: weighs more than 6 g, excluding the weight of any mouthpiece or tip; has a wrapper fitted in spiral form, has no tipping paper and no filter. 2 October 2017: exemption allowing menthol in cigarettes, applicable cigars and blunt wraps removed.
Yukon Territory	5 March 2020	5 March 2020	No product category exempt.
Northwest Territories	31 March 2020	31 March 2020	<ul style="list-style-type: none"> ▶ A cigar where all of the following apply: weighs more than 1.4 g but not more than 6 g, excluding the weight of any mouthpiece or tip; has a wrapper fitted in spiral form, no tipping paper and no filter; has a flavour of port, wine, rum or whisky, and no other non-tobacco distinguishing aroma or flavour. ▶ A cigar where all of the following apply: weighs more than 6 g, excluding the weight of any mouthpiece or tip; has a wrapper fitted in spiral form, has no tipping paper; and does not contain menthol, or cloves.
Manitoba		Legislation adopted on 12 June 2014, but never proclaimed into effect.	Pipe tobacco; waterpipe tobacco; snuff; chewing tobacco; menthol products.

Information obtained from Canadian Cancer Society (Canadian Cancer Society. Overview Summary of Federal/Provincial/Territorial Tobacco Control Legislation in Canada. October 2017. http://support.cancer.ca/documents/Legislative_Overview-Tobacco_Control-F-P-T-2017-final.pdf) and updated. Implementation dates refer to dates at retail level. Nunavut Territory adopted legislation on 8 June 2021, which includes a ban on flavoured tobacco with no product category exemption, but the legislation has not yet been proclaimed into effect. Saskatchewan adopted legislation on 20 May 2010 to ban flavoured little cigars and establish regulatory authority over flavours in other tobacco products, but this was never proclaimed into effect and was repealed on 1 February 2020. New Brunswick adopted legislation on 19 June 2009 to ban flavoured tobacco products unless exempted by regulation, but this has never been proclaimed into effect. (In Canada, legislation can have a specific implementation date, or there can be a date to be determined later, proclaimed, by the government.) British Columbia has not adopted restrictions on flavoured tobacco.

cigarettes, which took effect on 31 May 2015, with a bill that included a comprehensive flavour ban and that had received first reading on 17 April 2015, and that was adopted on 28 April 2015.^{24 51} Alberta adopted a regulatory amendment on 29 May 2015 to revoke the menthol exemption in its regulation, which took effect on 30 September 2015.⁵²

Two provinces implemented menthol bans in 2016 (New Brunswick and Quebec), while Prince Edward Island, and Newfoundland and Labrador followed in 2017 (table 1). Ontario banned most flavours on 1 January 2016, and menthol on 1 January 2017.⁵³ While Ontario had not been the first province to implement a menthol ban, on 24 November 2014 Ontario was the first province to publicly commit to ban menthol, making a public announcement and introducing legislation to do so.^{54 55} This government commitment influenced and supported other

provinces that subsequently banned menthol in addition to the actions of early adopters including Alberta and Nova Scotia.

On 5 June 2015, the federal government adopted an amendment to ban most flavoured cigars weighing more than 1.4 g but less than 6 g, though cigars in wine, rum, port and whisky flavours were exempt provided the wrapper was fitted in spiral form, there was no tipping paper and no filter.⁵⁶ This change (a similar change was made in Ontario) would deal with most of the flavoured cigars that had circumvented the previous ban on flavoured little cigars of 1.4 g or less. However, the exemption of some alcohol flavours among cigars of 1.4–6 g meant that these loopholes were not completely closed³² (figure 3). Unlike in some other jurisdictions,^{57–59} no concept flavours were found on the Canadian market for tobacco products beyond ‘Green’ labelled products.

Table 2 Applicability of flavoured product measures nationally and by province/territory, 1 July 2021

	National (federal)	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Quebec	New Brunswick	Nova Scotia	Prince Edward Island	Newfoundland and Labrador	Yukon Territory	Northwest Territories	Nunavut Territory
Population ('000, as of 1 January 2021)	38 049	5153	4436	1179	1381	14 755	8576	782	979	160	520	42	45	39
Has legislation on flavours	X	a	X	a	R(P)	X	X	X	X	X	X	X	X	X(P)
Legislation applies to menthol	X		X			X	X	X	X	X	X	X	X	X(P)
Applies to all tobacco products							X	X		X		X		X(P)
Cigarettes	X		X			X	X	X	X	X	X	X	X	X(P)
Roll-your-own tobacco			X			X	X	X	X	X	X	X	X	X(P)
Blunt wraps	X		X			X	X	X	X	X	X	X	X	X(P)
Cigars	R		R			R	X	X	R	X	R	X	R	X(P)
Traditional pipe tobacco							X	X	R	X	R	X	X	X(P)
Waterpipe tobacco						X	X	X	R	X	X	X	X	X(P)
Smokeless tobacco			X			X	X	X	X	X	X	X	X	X(P)
Kreteks (clove cigarettes)	X		X			X	X	X	X	X	X	X	X	X(P)
Bidis			X			X	X	X	X	X	X	X	X	X(P)
Heated tobacco products			X			X	X	X	X	X	X	X	X	X(P)
Flavour cards (sold separately, to insert in packages)							a							X(P)
Flavours sold separately for adding to tobacco products							a							
Herbal non-tobacco shisha/waterpipe products							X							X(P)
Cigarette papers when sold separately	X						X		X	X	X	X		a(P)
Cigarette tubes when sold separately	X						X			X	X	X		a(P)
Cigarette filters when sold separately	X						X		X	X	X	X		a(P)
Cigarette holders							X			X	X			a(P)
Pipes							X			X	X			a(P)
Bans all flavours, not just characterising flavours	X							X				X		
Bans characterising flavours			X			X	X		X	X	X	X	X	X(P)
Bans packaging, indicating product is flavoured	X		X			X	X	X	X	X	X	X	X	X(P)
Regulatory authority to restrict/further restrict flavours	a	a	a	a	a(R(P)	a	a	a(P)	a	a	a	a		a(P)
E-cigarettes														
Bans characterising flavours other than tobacco flavour								X	X	X				X(P)

Continued

Table 2 Continued

	National (federal)	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Quebec	New Brunswick	Nova Scotia	Prince Edward Island	Newfoundland and Labrador	Yukon Territory	Northwest Territories	Nunavut Territory
Regulatory authority to restrict flavours in e-cigarettes	a	a	a(P)	a(P)		a	a		a	a		a	a	a(P)
	Fed	BC	AB	SK	MB	ON	QC	NB	NS	PEI	NL	YT	NWT	NU

a, regulatory authority; (P), legislation not yet proclaimed into effect; R, restricted; X, prohibited.

On 30 April 2016, the federal government published a notice of a proposal to ban menthol cigarettes,⁶⁰ with a draft amendment published on 5 November 2016,⁵⁶ the amendment adopted on 24 March 2017,⁵⁶ and with the measure coming into force on 2 October 2017. A national ban on menthol and cloves at any level in all tobacco products would later be adopted to take effect on 19 November 2018.

Ethiopia (21 September 2015) was the second jurisdiction worldwide after Nova Scotia to implement a menthol cigarette ban, followed closely by Alberta on 30 September 2015. From a national perspective, Canada would be fourth, with Senegal and Uganda preceding Canada earlier in 2017 banning menthol cigarettes.⁶¹ Canada was the first country to implement a ban on flavours including menthol at the ingredient level (vs characterising flavours) in cigarettes.

Several other jurisdictions preceded Canada in the formal development of menthol bans but not implementation. In 2012, Brazil adopted a ban on flavours including menthol in all tobacco products at the ingredient level; however, legal challenges have meant that this measure has still not yet been implemented.⁶² In the European Union (EU), a new draft Directive by the European Commission was published in December 2012⁶³ and was adopted in final form in 2014.⁶⁴ This Directive included an obligation for the 28 EU countries to ban characterising flavours, including menthol, in cigarettes and roll-your-own tobacco, effective 20 May 2020. In 2013, the US Food and Drug Administration (FDA) announced an intention to ban menthol and consulted on an advance notice of proposed rule making,^{65 66} but a rule was not adopted; in 2018 and 2021, the FDA again announced an intention to ban menthol.^{67–69} In 2013, the FDA also released its preliminary scientific evaluation finding that menthol in cigarettes is likely associated with increased smoking initiation and increased addiction.⁵ In Turkey, on 11 March 2015, a ban on menthol at the ingredient level was adopted, but implementation was delayed until 20 May 2020, to match the EU.⁷⁰ In other international developments, the FCTC guidelines for Articles 9 and 10 were adopted in 2010 stating that Parties should restrict or prohibit flavours in tobacco products and that ‘masking tobacco smoke harshness with flavours contributes to promoting and sustaining tobacco use’, with menthol specifically cited as being such a flavour.⁶ In 2016, the WHO Study Group on Tobacco Product Regulation recommended banning menthol in cigarettes, and consideration to ban menthol in all tobacco products.⁷¹

These international developments had little impact on federal and provincial action in Canada regarding flavours. The primary drivers in Canada were initially the proliferation of flavoured little cigars and subsequently the availability of data showing a very high prevalence of youth use of flavoured tobacco including menthol cigarettes. A further driver was action by some provinces which in turn influenced more provinces, and action by multiple provinces collectively influencing strengthened federal action.

INDUSTRY REACTION TO MENTHOL CIGARETTE BANS

An early evaluation of the implementation of the first provinces to ban menthol, Alberta and Nova Scotia, revealed that direct compliance with the ban was high, and high compliance was later seen across the country.^{72 73} Menthol-flavoured cigarettes were effectively removed from the consumer market and were not found through attempts to purchase at tobacco outlets. However, one of three major companies had developed a system of ‘menthol-like’ product labelling used in Alberta in which

some brand names were changed to imply menthol flavouring. For instance, the brand 'Number 7 Menthol' was replaced with 'Number 7 Green' presumably to avoid losing menthol-smoking customers. Later evaluations of brand replacements in Ontario found that the system of menthol replacement brands was complex and involved all three major companies.⁷⁴ Retailers were provided with lists and tools to provide appropriate recommendations for the 'menthol replacement' products that were likely aimed at sustaining customers who preferred menthol cigarettes. Some brands even had 'Menthol Replacement' or 'Non Menthol Alternative' indicated on the packaging itself (figure 3). Green and blue package colourings for some brands were also used to imply the continued use of menthol flavours.⁷⁴ There has been no indication that the 'menthol replacement' products actually contained any menthol, nor is there any indication that the 'menthol replacement' products had any sustained undermining of bans on menthol cigarettes. Some consumers did try to switch to these products but reported that the replacements were largely found to be 'gross' or 'too strong'/'too weak'.⁷⁵ An intended national ban on menthol in cigarettes at the ingredient level announced 11 months after implementation of the first provincial ban on characterising flavours including menthol, and the lack of experience internationally in responding to menthol characterising flavour bans, may have contributed to manufacturers not including menthol at levels not said to be characterising. Such levels of menthol would later be seen in the EU.^{76 77} Tobacco companies are required to report all additives to Health Canada on a brand-by-brand basis, but this information is not publicly available. Other attempts to circumvent the menthol ban included the sale of flavour cards, which allow smokers to add menthol and other flavours directly to a tobacco product (figure 3).⁷⁸ While the sustained use of flavour cards in Canada after the national menthol ban was minimal, efforts to advertise and promote flavour cards were much more prominent in the UK during the implementation of the 2020 EU ban on menthol cigarettes⁷⁹ and could be a more important factor in future menthol bans.

Menthol flavour capsules

Interestingly, in June 2015, despite menthol being banned in Alberta and Nova Scotia, the tobacco industry began selling cigarettes with menthol flavour capsules in the Canadian market for the first time in provinces where menthol was not banned. Menthol capsule cigarettes were even sold in Ontario in the transition period between adoption and implementation of the menthol ban. During the pre-implementation period of the national menthol ban, these cigarettes, with the novelty of being able to add flavour at the discretion of the user, became extremely popular in provinces without menthol cigarette bans in place. Based on Health Canada sales data, menthol's cigarette market share in Canada was 4.7% in 2014, 4.5% in 2015 and 5.4% in 2016.⁸⁰ But in the provinces and territories without menthol bans, sales of menthol cigarettes increased from 6.2% of the total cigarette sales in 2015 to 11.8% in 2016 after the introduction of the flavour capsules in 2015.⁸⁰

IMPACT OF MENTHOL BANS

At 1 year postban, a longitudinal pre-post survey in Ontario found that 24% of daily menthol smokers reported making a quit attempt since the ban compared with 20% of occasional menthol smokers and 14% of non-menthol smokers.⁸¹ Further analysis found that those who had used other flavoured tobacco products after the ban were less likely to be successful in quitting

than those who did not. The effect of the ban was still evident 2 years after the ban, where prior daily menthol smokers were twice as likely to have quit for 6 months or more compared with non-menthol smokers.⁸² These quit rates were consistent with changes seen in sales data.^{73 83} An evaluation found that the effect of the menthol bans was consistent across the country with prior daily menthol smokers more likely to quit smoking after the implementation of the menthol ban in their province.⁸⁴ The same study also revealed that former menthol smokers did not switch to other remaining flavoured tobacco products, to e-cigarettes or to contraband menthol cigarettes to any significant degree.⁸⁴ Data on illicit cigarette seizures in Nova Scotia from 2007–2008 to 2017–2018 showed that the number of seized illicit cigarettes declined significantly over the period, with no statistically significant difference in the number of cigarettes seized before and after the menthol ban.⁸⁵

Because manufacturers were required to report ingredients to Health Canada, enforcement that occurred between the manufacturers and the federal government was consistent with high compliance with federal legislation for cigarettes and little cigars, obviating the need for much additional enforcement mechanisms for cigarettes and little cigars at the provincial level. A ban on depicting on packaging that the product is flavoured (eg, 'cherry', or 'menthol' or an image) did assist with enforcement, allowing products to be immediately seized by enforcement officers without testing. However, there were no national flavour bans for smokeless tobacco, and some provinces with characterising flavour bans reported challenges with enforcement of smokeless tobacco products, though not labelled as flavoured, that may have contained flavour ingredients.⁸⁶

LEGAL CHALLENGES

There have been no legal impediments in Canada to the implementation of flavoured tobacco legislation. While Imperial Tobacco Canada and JTI-Macdonald each filed separate constitutional challenges against menthol bans in at least four provinces—Nova Scotia, New Brunswick, Quebec and Alberta—these claims did not advance beyond filing.⁸⁶ In Canada, there was no credible legal claim on which a ban on menthol cigarettes could be invalidated before the courts. The Nova Scotia legal challenge was filed 3 days prior to the legislation coming into effect on 31 May 2015, suggesting there may have been a public relations factor behind the filing to deter Nova Scotia and other provinces.

CURRENT GAPS IN REGULATION

National and provincial laws vary across the country and several gaps remain. Flavoured smokeless tobacco, pipe and waterpipe (shisha) tobacco and some cigars can be sold in some provinces but not others (table 2).⁸⁷ National legislation only applies to cigarettes, most cigars and blunt wraps, though menthol and cloves are banned nationally in all tobacco products. Quebec, New Brunswick, Prince Edward Island and Yukon have banned flavours in all tobacco product categories without exemptions.

Electronic cigarettes

While many provinces have included regulatory authority over flavours in e-cigarettes or e-liquids, there are limited restrictions on vaping flavours across Canada. As of mid-2021, three provinces—New Brunswick, Nova Scotia, Prince Edward Island—have comprehensive bans on flavoured vaping products with the sole exception of 'tobacco' flavours.⁸⁸

CONCLUSION

Several Canadian provinces were world leaders in implementing bans on menthol cigarettes and other flavoured tobacco products beginning in 2015. By July 2017, seven provinces had implemented bans on the sale of all or most flavoured tobacco products, including menthol cigarettes. The federal government eventually implemented a national ban on menthol cigarettes in October 2017 and prohibited menthol additives in all tobacco products sold in Canada in November 2018.

Canada's flavour bans contributed to overall declines in cigarette sales and increased successful quit attempts among menthol smokers without any significant product switching to contraband flavoured tobacco.

Canada's experience with banning tobacco flavours began with the implementation of partial flavour bans that consistently exempted menthol flavourings. The partial bans had some impact on flavoured product sales and consumption including reducing the sale of flavoured cigar sales and reducing youth consumption of these products. However, Canada's partial flavour bans failed to address significant rates of youth menthol tobacco use that were detected in subsequent national surveys. The development of more comprehensive flavour restrictions that included menthol tobacco had a more substantial impact in reducing flavoured tobacco sales in Canada.

Lessons learnt

A number of lessons can be drawn from the Canadian experience that can be transferred to other jurisdictions. While the situation in Canada has many unique characteristics based on a history of tobacco control and tobacco use, there are some elements that can be applicable broadly based on this experience:

- It is possible to ban flavours in tobacco products, including menthol. Flavour bans are relatively simple and easy to implement compared with some other areas of product regulation that are more complex. Flavoured tobacco bans should be applied comprehensively to all tobacco products, and to accessories such as cigarette paper and other products that can be used to add flavours to tobacco. Exceptions create loopholes and weaken overall impact.
- Bans on flavoured tobacco, including menthol cigarettes, were implemented with no credible indication of an increase in contraband sales volumes, despite the pre-existing substantial availability of contraband products in the two largest population provinces.
- Having publicly available survey results of youth use of flavoured products, and product sales data trends, can be very effective at influencing public and government opinion. Flavour use should be included in monitoring surveys such as the Global Youth Tobacco Survey.
- Legislation by subnational governments can influence other subnational governments and ultimately the national government. In Canada, provincial legislation made up for policy shortcomings in the initial national legislation in effect in 2010, and later paved the way for strengthening national amendments.

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