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Monitoring and Evaluating Ontario's New Tobacco Policy Measures: Flavoured Tobacco Prohibition

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Introduction

On November 7, 2014, the Ontario government announced amendments to the *Smoke Free Ontario Act* (SFOA). The regulatory amendments came into effect January 1, 2015. On May 28, 2015, the *Making Healthier Choices Act* (including legislative amendments to the SFOA and enactment of the *Electronic Cigarette Act*) received royal assent to protect youth from the dangers of commercial tobacco¹ and the potential harms of e-cigarettes.

For a description of Ontario's new tobacco and e-cigarette policy measures see OTRU's September 2016 newsletter.¹

In 2016/2017, the Ontario Tobacco Research Unit, in collaboration with key stakeholders, including public health units (PHUs) and non-governmental organizations (NGOs), assessed the implementation and impact of new tobacco and e-cigarette policy measures being implemented in Ontario. In this report, we provide an overview of key findings from 2016/2017 monitoring and evaluation activities, focusing on implementation of the flavoured tobacco ban that came into effect January 1, 2016. This report does not focus on the clove cigarette or menthol tobacco ban, which came into effect January 1, 2017.

Key Findings about implementation of the SFOA outdoor smoking regulations and the e-cigarette youth access stipulation are described elsewhere.^{2,3}

Sale of Flavoured Tobacco

As of January 1, 2016, the sale of flavoured tobacco is prohibited in Ontario.

Products exempted from the prohibition include wine, port, whiskey and rum flavoured cigars between 1.4 and 6 grams, all flavoured cigars over 6 grams and flavoured pipe tobacco.

¹ In this document, tobacco refers to commercial tobacco products (e.g. cigarettes, waterpipe, cigars). It does not mean Sacred Tobacco used for Indigenous cultural or spiritual purposes.

Methods

Monitoring and evaluation activities began in April 2016 and aimed to understand compliance with and enforcement of new policy measures; facilitators and challenges to implementation; perceived policy impacts; and any unintended consequences or emerging issues resulting from the new measures. Activities that focused on the flavoured tobacco ban included:

- An online survey of 83 Tobacco Enforcement Officers (TEOs)
- An online survey of 35 Tobacco Enforcement/Public Health Managers
- 13 semi-structured, Key Informant interviews: TEOs (n=7), Managers (n=5), NGO representative (n=1)
- Analysis of the Tobacco Inspection System (TIS) data

Survey data were collected in November/December 2016 and interviews were conducted between October and December 2016.

Findings

Compliance

As documented in the Tobacco Inspection System, 95% of 9,925 tobacco vendors that were inspected in 2016 did not have flavoured tobacco on the store shelves.

The majority of TEO (72%) and Manager (74%) survey respondents noted that increased vendor compliance was an enforcement success. The majority (85%) of TEO and Manager Respondents also identified increased policy awareness among vendors as an enforcement success.

About half of the Key Informants felt that compliance with the ban was strong, noting that most instances of non-compliance occurred in the beginning stages of implementation. Challenges were reportedly resolved within the first few months, once enforcement activities began and tobacco enforcement units received more information and guidance from the Ministry of Health and Long-Term Care (e.g. factsheets for retailers, decision tree). Factors that were important for achieving high compliance included:

- Stopping the supply of flavoured tobacco at the manufacturer and wholesaler level
- Proactive retailer education
- Consistency in enforcement practice
- Provincial teamwork (facilitated by the Protection Enforcement Task Force)
- Ministry support

“... from the manufacturer to the wholesaler they successfully ceased it from the wholesaler to the retailer...the supply was cut short and it worked at every level from the top down and from the ground up. People got behind it and I think there was just extraordinary compliance throughout the province.” —Manager

“I think we came out of the gate very strong. When I say 'we' our tobacco enforcement counterparts across the province and the Ministry kind of really tabled the issue. Hey, we found this product and then with the Ministry engaging Health Canada and the manufacturers to kind of resolve those issues.” —Manager

Product Modification

While compliance with the legislation was high, survey respondents and Key Informants encountered numerous challenges (Table 1). The main challenge included the modification of tobacco products by manufacturers in response to legislation. The most common modification that survey respondents and Key Informants noted was re-labeling packages so products fall under the flavoured tobacco exemptions (wine, whiskey, port).

“One of the cigar manufacturers had a bunch of flavours that they just then stuck labels over top of to make them look compliant. So a berry flavoured cigar that would not be legal became wine. A sweet aroma cigar became whiskey because whiskey, rum, wine, and port were exempted right” —Manager



“So what I'm seeing is that I can change something to 'Vintage Port' when it's actually 'grape'. I can go with 'ruby wine' and it's maybe 'strawberry' so because it's got the component of whiskey and wine and rum, that sort of thing it didn't say that I can't add to it right, and it says that it is supposed to smell like wine. Well, there's strawberry wine right, and port; well port is maybe more of a grape flavour.” —TEO

Table 1: Challenges to Implementing the Flavoured Tobacco Ban as Identified by Online Survey Respondents

| Challenge | TEO Respondents (n=78) | Management Respondents (n=30) |
|--|------------------------|-------------------------------|
| Re-labelling of flavoured tobacco products to fall under the flavour exemptions (e.g. grape products relabeled as port) | 73% | 70% |
| New tobacco products that attempt to fall under flavour exemptions (e.g. ice wine or cognac) | 68% | 53% |
| New tobacco products that are not marked as flavoured tobacco, but appear to be flavoured tobacco (e.g. red, green, fresh) | 67% | 53% |
| New tobacco products introduced to market (e.g. capsules/convertibles, flavour cards) | 63% | 53% |
| Lack of public awareness | 37% | 23% |
| Lack of tobacco vendor awareness | 19% | 37% |
| Adequate staffing to proactively enforce | 15% | 20% |
| No challenges | 15% | 20% |
| Adequate staffing to address complaints | 8% | 7% |



Other ways in which manufacturers adapted their products included the use of colours to connote flavour and labelling products to advertise that flavoured cigars meet the 6 gram weight requirement, when it was unclear if they actually did.

“So there's been some kind of games like that going on when you're trying to reduce the appeal of tobacco products to youth but they know what a purple pack means. It's not reducing it right. It's still there. They still know that red means cherry right so that's been a little bit frustrating.” —TEO

“There’s actually a product on the market now that puts a sticker on it that says 6 grams compliant... so the challenge in reviewing a product is you just can't open it and weigh it on site because moisture and humidity affect it

right so it might have been 6 grams at manufacturer but maybe it's some old stock and it's maybe a little shriveled up.... I know my staff have weighed some and go, 'but it's not 6 grams' and I'm like 'Well, is that because it's all shriveled up?' But most of them are and so that's the confusing part.” —Manager

Further, an unexpected issue with retailers that sell flavoured shisha with tobacco occurred in one region. In this region, enforcement staff encountered some resistance from distributors who were not aware that the ban applied to flavoured shisha with tobacco. This resulted in some shisha brands rebranding their products.

According to Key Informants, staying on top of how the industry is modifying their products is a constant, resource intensive process for enforcement staff.

Key Informants thus suggested various ways to make circumvention more difficult for manufacturers. This included having more “concise” and “tightened” legislative language and more clarity about the intent of the legislation. For example, one Key Informant suggested focusing legislation on removing flavours from tobacco completely. Similar suggestions from the TEO survey included: “Don't allow tobacco companies to just re-label flavoured tobacco so it falls in the new categories” and “Ban all flavours in everything...Forget the weight, size, and the flip flopping back and forth”.

Other Key Informants suggested that the Ministry play a greater enforcement role at the manufacturer level. Having enforcement officers continuously assess products to see if they meet regulatory requirements was considered inefficient and might result in inconsistent enforcement practices. Further, some felt that there is not much more enforcement officers can do at the retailer level, when the retailers are often simply selling what manufacturers supply.

“...there needed to be greater attention paid to dealing directly with the manufacturer so perhaps at the federal level or the provincial working with the manufacturers saying you know it's not okay to have these products contain these flavours that are making tobacco not taste like tobacco. As opposed to us having to go store-to-store dealing with the retailers who for the most part are basically just doing what they're told by the retailers or by the large companies themselves and their reps.” —Manager

Knowledge and Education

Key Informants and survey respondents highlighted various other implementation challenges. This included a lack of knowledge, education and resources to prepare enforcement staff for implementation of the flavoured tobacco ban. Key Informants highlighted the importance of having education and resources to support implementation of the ban well in advance. In particular, having Ministry tools and factsheets available prior to implementation would help to alleviate concern about appearing ill-informed in front of retailers, who sometimes had more updated information about the flavoured tobacco ban than the enforcement staff.

“We need materials in advance. We need the training and the materials in advance like more than a month or two ahead of what's happening. They [retailers] get all this conflicting information from reps and wholesalers...So we need more advanced notice for training and materials and signage. It needs to be quicker, on the ball what's coming out.” —TEO

One Key Informant suggested keeping enforcement staff informed about the outcomes of Ministry and manufacturer meetings so they could stay up-to-date and understand why certain products are legal and others are not. As noted by this Key Informant, professionalism is compromised when an enforcement officer is informed by a retailer that the Ministry had approved the sale of a product that they noted was illegal.

Key Informants also noted the need for a compendium of products to help enforcement staff understand which products are legal and which are illegal.

“I think really what you need is a fulsome picture of all of the products that are governed by this prohibition, who manufactures them. So a large compendium of these products and that's incredibly challenging because manufacturers are very nimble and they adapt but you need at least a baseline so that people can move from that point forward. In the absence of that, you're left with trying to do surveillance and discovery and all of that kind of stuff and when you discover products that you feel are you know appropriate for this prohibition and then learn after the fact that the Ministry has had a conversation with the manufacturer and deemed them to be compliant, you kind of scratch your head.” —Manager

Resources

Key Informants and survey respondents described encountering capacity issues in 2015 and 2016, especially in light of legislative changes. Two Key Informants noted that tobacco control work had been affected locally because human resources were diverted to support implementing the *Electronic Cigarette Act*. Realistic resources, beyond one-time funding, to support tobacco enforcement units were suggested in light of increased workloads due to current and future legislative changes.

Summary

Monitoring and evaluation activities suggest good compliance with the flavoured tobacco ban's first year of implementation. Perceived implementation successes included increased vendor awareness and improved vendor compliance over time. Addressing the supply of flavoured tobacco at the manufacturer/wholesaler level, proactive retailer education, consistency in enforcement practice, provincial teamwork and Ministry support facilitated compliance. A lack of knowledge, education and resources to prepare enforcement staff for implementation of the ban was a challenge that created confusion and frustration, especially in the early stages of implementation. Evaluation participants also expressed frustration with how the manufacturers have modified their products in response to legislation, in particular re-labelling packaging to fall under the exempted products (e.g. re-label grape to port).

Creating a compendium of products of flavoured tobacco products that are legal for the Ontario context and timelier updating of the enforcement community about the outcomes of Ministry meetings with manufacturers were suggestions for improving enforcement activities. Addressing issues around intent and clarity of legislation were also noted.

References

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