Innovative public health response to an event on the fringe of regulatory changes

Karalyn Dueck¹ · Reed Morrison² · Kathie Brown³ · Deepika Lobo⁴ · Lawrence C. Loh^{1,3}

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Abstract

Setting During a period of regulatory uncertainty, a local public health unit in Ontario was notified of an exhibition for electronic nicotine delivery systems (ENDS) and novel tobacco delivery products (NTDs), specifically e-cigarettes and waterpipes, which have seen increasing use particularly among youth. Relevant statutes creating regulatory uncertainty included a new provincial Electronic Cigarettes Act (ECA) with certain sections awaiting proclamation, and a local waterpipe bylaw awaiting approval, which would have prohibited the use of these products in public spaces if they entered into force ahead of the exhibition date. Public health staff had concerns the event would normalize use of ENDS/NTDs, particularly among youth, and also planned to enforce already proclaimed ECA sections, as well as the existing Smoke-Free Ontario Act (SFOA) with regulations applicable to use of tobacco shisha in waterpipes.

Intervention Public health staff contacted event organizers and proprietors to communicate obligations under the SFOA and ECA, as well as share hypothetical implications from pending regulatory changes, including risk of charges for regulatory non-compliance if regulations came into force ahead of the planned event.

Outcomes Following discussion with health unit staff and legal consultation, the exhibition was cancelled.

Implications By directly communicating regulatory uncertainty, a public health unit was able to achieve local health goals. In this situation, public health advised exhibition proprietors of potential event disruption implicated by forthcoming regulatory changes. Subsequent cancellation of the event prevented potential adverse health impacts for at-risk groups. A similar communications approach could be used to achieve public health goals during a period of regulatory uncertainty.

Résumé

Lieu Au cours d'une période d'incertitude réglementaire, un bureau de santé publique local de l'Ontario a été avisé de la tenue d'une exposition sur les dispositifs électroniques d'apport de nicotine (DÉAN) et les nouveaux produits d'administration de tabac (NPAT), en particulier les cigarettes électroniques et les pipes à eau, dont l'usage se répand, surtout chez les jeunes. Les lois ayant suscité l'incertitude réglementaire étaient la nouvelle *Loi sur les cigarettes électroniques* (LCÉ) de l'Ontario, dont certains articles étaient en attente de proclamation, et un arrêté municipal en attente d'approbation sur les pipes à eau; les deux auraient interdit l'utilisation de ces produits dans les lieux publics s'ils étaient entrés en vigueur avant la date de l'exposition. Les responsables de la santé publique craignaient que l'exposition ne normalise l'utilisation des DÉAN/NPAT, surtout chez les jeunes, et prévoyaient aussi appliquer les articles déjà proclamés de la LCÉ, ainsi que les règlements d'application de la *Loi favorisant un Ontario sans fumée* (LFOSF) sur l'utilisation de tabac à chicha dans les pipes à eau.

✉ Lawrence C. Loh
lawrence.loh@peelregion.ca

¹ Dalla Lana School of Public Health, University of Toronto, Toronto, Canada

² Northern Ontario School of Medicine, Sudbury, Canada

³ Region of Peel Public Health, 7120 Hurontario Street, RPO 667 Streetsville, Mississauga, ON L5W 1N4, Canada

⁴ McMaster University, Hamilton, Canada

Intervention Les responsables de la santé publique ont communiqué avec les organisateurs et les propriétaires de l'exposition pour leur faire part de leurs obligations en vertu de la LFOSF et de la LCE, ainsi que des conséquences hypothétiques des modifications réglementaires attendues, dont le risque que des accusations d'infractions réglementaires soient déposées si la réglementation entrait en vigueur avant la date prévue de l'exposition.

Résultats À la suite de l'entretien avec le personnel du bureau de santé et de consultations juridiques, les propriétaires ont annulé l'exposition.

Implications En informant directement les intéressés de l'incertitude réglementaire, un bureau de santé publique a réussi à atteindre les objectifs de santé locaux. Dans cette situation, la santé publique a avisé les propriétaires de l'exposition d'une perturbation possible de l'activité en raison des modifications réglementaires attendues. L'annulation ultérieure de l'exposition a évité d'éventuels effets défavorables sur la santé de groupes vulnérables. Une démarche de communication semblable peut donc être employée pour atteindre des objectifs de santé publique en période d'incertitude réglementaire.

Keywords Hookah smoking · Waterpipe smoking · Electronic cigarettes · Vaping · Policy · Legislation

Mots-clés Tabagisme (narguilé) · Tabagisme (pipe à eau) · Cigarettes électroniques · Vapotage · Politique (principe) · Législation

Introduction

Electronic cigarettes (e-cigarettes), an electronic nicotine delivery system (ENDS), are increasingly popular in Canada, with approximately a third of young adults and a tenth of adults reporting ever using one (Statistics Canada, Health Canada 2017). Evidence of harm is inconclusive around e-cigarettes, specifically their use as a smoking cessation tool (Malas et al. 2016; Khoudigian et al. 2016; Kalkhoran and Glantz 2016; Rahman et al. 2015; Hartmann-Boyce et al. 2016; Orellana-Barrios et al. 2016), risk presented by passive exposure to emissions (Hess et al. 2016; Fernández et al. 2015; Durmowicz et al. 2016; Ballbè et al. 2014; Czogala et al. 2014; Farsalinos et al. 2015), and whether use leads to smoking tobacco cigarettes (Barrington-Trimis et al. 2016; Cardenas et al. 2016; Friedman 2015; Doran et al. 2017; Smoke-Free Ontario Scientific Advisory Committee, Ontario Agency for Health Protection and Promotion (Public Health Ontario) 2017).

In Ontario, the 2015 Electronic Cigarettes Act (ECA) aims to regulate e-cigarettes in a way similar to tobacco (Electronic Cigarettes Act 2015a). On January 1, 2016, some ECA sections came into effect, prohibiting sales to youth under age 19 years, retail sales without required signage, and customer-accessible e-cigarette vending machines (Electronic Cigarettes Act 2015b). Other sections of the law were not yet proclaimed, including restrictions on where e-cigarettes could be used or sold (Electronic Cigarettes Act 2015c). This precluded enforcement of those sections and created a period of policy uncertainty around potential date of implementation.

Use of waterpipes as a novel tobacco delivery system (NTD) has grown in parallel with e-cigarette use, with 3% of Canadian young adults using one in the past 30 days

(Statistics Canada, Health Canada 2017) despite demonstrated harm to users and passive bystanders (Ghai and Brown 2015). The health unit described in this report was also implementing a local waterpipe bylaw during the same period of regulatory uncertainty. This bylaw intended to prohibit waterpipe use in public places in line with areas prohibited by the Smoke-Free Ontario Act (SFOA).

Setting

During this period of regulatory uncertainty, an ENDS/NTDs exhibition, including e-cigarettes and waterpipes, came to the attention of local public health staff via advertisements and social media. Use of ENDS/NTDs in the health unit catchment area reflected provincial rates and growing trends, particularly related to waterpipe use. Public health staff had several concerns, foremost that the event would normalize use of ENDS/NTDs, largely among youth.

The event was planned for a large capacity venue with over 1000 attendees and vendors expected. Date of approval of regulatory changes prohibiting public use of e-cigarettes and waterpipes was unknown, but assessed by public health to possibly occur prior to the exhibition date. In addition, the health unit intended to enforce existing regulations under the SFOA, applicable to tobacco shisha used in waterpipes, at the event. Enforcement of the SFOA would include no smoking in enclosed public places or workplaces, no flavoured tobacco shisha, and no sales to youth under age 19 years, with associated repercussions for non-compliance, including a range of fines. Enforcement also planned for already proclaimed sections of the ECA would include no sales to youth, signage requirements, and no sale of products in vending machines.

Intervention

Public health staff approached event organizers and proprietors to explain their obligations under the SFOA and already proclaimed sections of the ECA. Event proprietors responded first and agreed to meet. Health unit staff, which included an Associate Medical Officer of Health, supervisory staff, Tobacco Enforcement Officers, and legal counsel met to prepare key messages. Factual, clear communication, both written and verbal, outlined pending regulatory obligations and identified hypothetical implications, specifically the risk of charges for regulatory non-compliance if laws came into force ahead of the planned event. Communicating these facts aimed to allow event proprietors to conduct their own risk assessment regarding potential regulatory changes.

Using the planned communication approach, public health staff reviewed potential requirements from proposed ECA sections and the pending waterpipe bylaw that would restrict use of ENDS/NTDs to off-site locations rather than patios or in the venue. When asked if proprietors would be legally responsible under SFOA and ECA legislation as they relate to use of ENDS/NTDs in public spaces, public health staff obtained legal counsel and affirmed that any of the proprietors, event organizers, and vendors could potentially be charged for non-compliance.

Public health staff indicated they would also be fully enforcing the event under the SFOA and existing ECA, as well as under proposed and pending legislation parameters for e-cigarettes and waterpipes, if implemented. It was also suggested that exposure of venue staff to smoke from ENDS/NTDs might contravene the Occupational Health and Safety Act.

Outcomes

Shortly after aforementioned discussion and legal consultation, event proprietors advised the health unit in follow-up that the contract for the planned exhibition had been cancelled. Despite multiple attempts, no contact was ever made with organizers of the event. It was unclear whether the cancellation was driven by potential concerns around operator liability arising from pending legislation changes. Of note, despite notifications to neighbouring health units, the event organizers did eventually succeed in holding the event at a venue in a neighbouring jurisdiction.

Implications

This approach is innovative in its simplicity. Public health staff highlighted regulatory changes to proprietors, as opposed to event organizers, and communicated uncertainty and

inability to speculate when disruptive aspects of pending legislation were expected in force. Proprietors conducted their own risk assessment of impact and probability of potentially germane regulatory changes affecting the venue, vendors, and event attendees. This assessment may have played a role in subsequent cancellation of the event, with proprietors possibly acting in a precautionary manner to manage reputational risk. This allowed the health unit to achieve its goals of protecting vulnerable populations and preventing normalization of ENDS/NTDs use in the community.

Communicating uncertainty to stakeholders as an incentive to reconsider events with potentially negative health implications can take several forms. In this situation, the primary argument framed uncertainty in terms of the potential impacts of pending legislation. Other potential arguments highlighting uncertainty that could be deployed alone or together include plans to enforce existing legislation, potential considerations around occupational health and safety of venue employees, or reputational risk associated with proceeding.

Finally, employing this intervention with other venues and communicating strategy with surrounding jurisdictions is essential to ensuring the success of this approach by ensuring that events are not simply moved, as occurred in this case. All told, however, the approach described here is simple and effective and should be considered for similar events with potential public health impacts occurring during a period of relevant regulatory uncertainty.

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Compliance with ethical standards

Conflict of interest The authors declare that they have no conflict of interest.

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