

Roadblocks to laws for healthy eating and activity

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Previously published at www.cmaj.ca

Modern environments promote overeating and sedentary behaviour, and the resulting epidemic of chronic disease is a major public health challenge of the early 21st century. Governments and experts around the world are sounding the alarm about the medical, economic and social costs of escalating rates of obesity, diabetes, cardiovascular disease and cancer, and are demanding concerted action, including legislative measures, to promote healthier nutrition and physical activity. A recent report from the World Cancer Research Fund and the American Institute for Cancer Research asserts: “The increase in consumption of sugary drinks and of convenient processed and ‘fast food,’ the decline in physical activity, and the consequent rapid rise in overweight and obesity ... now amounts to a global public health emergency that requires government intervention. ... Specifically, government intervention needs to take the form of appropriate legal and fiscal measures designed to make healthy choices more affordable, accessible, and acceptable.”¹

Health reports from Canada and other countries are uniform in their calls for coordinated and comprehensive measures — including legal measures — to promote healthier diets and physical activity (Table 1).²⁻¹¹ Many jurisdictions in the United States regulate food and physical activity standards in schools, and 20 states require measurements of body mass index or other weight-related screening of schoolchildren.¹² Thirty states have implemented taxes on soft drinks and foods of low nutritional value, and a growing number of states and local governments require that chain restaurants post nutritional information on menus. The province of Quebec and Sweden and Norway have restricted advertising to children for many years, and the telecommunications regulator in the United Kingdom now restricts food advertising aimed at children.

Despite the recommendations in Canadian government reports and legal precedents elsewhere, governments in Canada have taken little legislative action to promote healthy eating and physical activity (Table 2). Legal measures are sparse, with little consistency across the country. Three factors might explain this reticence: concern about legislative authority, ideological opposition to government regulation and questions about the impact of legislation.

Debate about law-making authority may stall legislative initiatives. After the Parliamentary Standing Committee on Health produced its report on childhood obesity, Bloc Québécois

Key points

- Modern environments promote overeating and sedentary behaviour and have created an epidemic of chronic disease.
- Legal measures are one policy tool that can be used to promote healthier eating and more physical activity.
- In Canada, jurisdictional wrangling, the threat of legal challenges, ideological opposition and questions about effectiveness may stall adoption of novel legislation.
- Ongoing evaluation of legislative measures can provide evidence-based guidance on how to proceed.

members criticized the committee for “extending the study to areas that are outside the federal government’s jurisdiction.”¹² When a private member’s bill in Ontario proposed to regulate trans fatty acid content and disclosure of nutritional information on restaurant menus, the provincial premier responded by stating that the federal government should take the lead.¹³

Potential roadblocks

Lack of authority is not a significant bar to action, however, because both federal and provincial governments have constitutional powers to enact health-related laws.¹⁴ This shared jurisdiction allows government to act in complementary ways, but it could be a source of delay while one level of government waits for another to act. The legislative initiatives described in Table 2 could serve as models for more consistent adoption across the country. Taxation and spending powers can be used by both levels of government: they could offer tax credits for physical activity but tax food and beverages that are high in calories and low in nutritional value. Advertising can be restricted through federal authority over broadcast media and provincial authority over business regulation and consumer protection. With constitutional authority over education, the provinces can use school legislation to impose mandatory requirements for nutrition and

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CMAJ 2010. DOI:10.1503/cmaj.091403

physical activity. Provincial public health statutes also confer power to protect and promote health; notably, British Columbia's new Public Health Act includes the power to regulate factors implicated in chronic disease.¹⁵ Under its criminal law jurisdiction, the federal government can prohibit or regulate health hazards and impose labelling requirements or advertising restrictions that discourage the consumption of hazardous products.

Governments may be concerned about legal challenges from the food industry. The most likely claim against adver-

tising restrictions or labelling legislation would be infringement of freedom of expression, but such laws are defensible if they target a serious health or social problem in a reasonable way. The Supreme Court of Canada upheld Quebec's ban on advertising directed at children under age 13¹⁶ and federal tobacco legislation, including advertising restrictions and labelling requirements,¹⁷ as justifiable restrictions on commercial speech.

In addition to these legal concerns, ideological opposition to the so-called "nanny state" (whereby governments assume

Table 1: Summary of recommendations from reports for legislation on obesity (part 1 of 2)

Report	Food labelling	Food advertising	Food content	Pricing and economic incentives	Food and physical activity in school and child care
Canada, Standing Committee on Health ²	Legislate labels on front of prepackaged foods	Assess effectiveness of regulation and self-regulation; explore ways to regulate Internet advertising	Establish regulations to limit trans fatty acid content while not increasing saturated fat content		Facilitate healthy food and physical activity standards and programs, and provide them in First Nations schools under federal jurisdiction
British Columbia, Select Standing Committee on Health ³	Develop (in cooperation with industry) "warning labels" for foods high in fat, sugar and sodium	"Enhance" self-regulation of advertising to children under 12 years of age	Negotiate voluntary reductions in fat, sugar and sodium content	Remove sales tax exemption for candies and confectionary, soft drinks, and foods not recommended under food guidelines for schools; investigate new "junk food taxes"	Order removal from vending machines and food outlets of products not recommended in food guidelines for schools; prohibit sales of these foods by outlets in government properties
Ontario, Chief Medical Officer of Health ⁴	Extend requirement for nutrition labels to fresh meat, poultry and fish; require large chain restaurants to disclose basic nutrition facts	Explore options to control food advertising that targets children	Phase out trans fatty acids from processed foods	Investigate impact of decreasing food prices, especially for communities where healthy foods are expensive	Ensure healthy food and physical activity in daycare settings, and that schools and school boards have guidelines on food
New Brunswick, Select Committee on Wellness ⁵		Address the impact of marketing that promotes unhealthy behaviours		Investigate policies to make healthy foods more affordable	Make physical education mandatory for all grades and for graduation
United States, Institute of Medicine Committee on Prevention of Obesity in Children and Youth ⁶	Prominently display energy content on nutrition facts labels; exercise more flexibility in allowing nutrition and health claims relevant to obesity	Authorize and provide resources to Federal Trade Commission to monitor compliance with advertising practices			Develop and implement standards for foods in schools and policies restricting advertising in schools; ensure minimum physical activity during school day; assess, and share with parents, students' weight and body mass index

a paternalistic role) may dissuade governments from adopting potentially controversial laws. The Lalonde report, so influential in advancing a “social determinants of health model” three decades ago, squarely stated the point: “The ultimate philosophical issue ... is whether, and to what extent, government can get into the business of modifying human behaviour, even if it does so to improve health.”¹⁸ This debate persists today. A member of Ontario’s legislature expressed classic opposition to public health intervention in his criticism of the proposed law to disclose trans fatty acid content and

nutritional value on menus: “I believe in legislation, generally speaking, that protects me from you and you from me. I don’t like legislation that purports to protect me from myself, and that’s what this kind of legislation is.”¹⁹

Those who accept a government role for regulation may nonetheless question the efficacy of legal measures in influencing healthier behaviour. A member of Alberta’s Legislative Assembly criticized a proposed tax credit for physical activity in that province: “... we’re kidding ourselves if we think a small monetary reward will incent Albertans to

Table 1: Summary of recommendations from reports for legislation on obesity (part 2 of 2)

Report	Food labelling	Food advertising	Food content	Pricing and economic incentives	Food and physical activity in school and child care
United Kingdom, Cross-Government Obesity Unit ⁷	Adopt labelling system following evaluation	Review advertising codes and restrictions on advertising to children; review impact of best practice principles for websites	Work with industry to reduce saturated fat and added sugar content and decrease portion sizes		Ensure schools have guidelines on school food; cooking to be part of compulsory curriculum
Australia, Preventative Health Taskforce ⁸	Include retailers and restaurants in national system of food labelling	Limit television advertising of foods high in calories, low in nutrition to children	Regulate trans fatty acid, saturated fat, sodium and sugar content	Consider food pricing strategies (e.g., taxing unhealthy foods); promote active forms of commuting and recreation through subsidies and taxation	Support school initiatives on healthy eating and physical activity; ensure that school policies and environments help students to maintain healthy weights, healthy diets and physical activity
New Zealand, Health Committee ⁹	Develop (and regulate if necessary) “traffic light” or similar labelling	Extend current restriction on advertising during children’s television programs; restrict or set targets for regulating marketing of unhealthy food and drink to children	Set targets for reformulation of foods high in calories		Remove unhealthy food and beverage products from schools (majority); include promotion of healthy eating and physical activity in performance evaluations for schools and early childhood centres
Commission of the European Communities ¹⁰	Harmonize regulation of health claims; consider amending food labelling regulation	Consider measures to restrict advertising if self-regulation fails to give satisfactory results			
World Health Organization ¹¹	Consider requiring nutritional information; disallow misleading health claims	Work with consumer groups and private sector to develop approaches to deal with marketing to children, sponsorship, promotion and advertising	Consider measures to encourage reductions in sodium, hydrogenated oil and sugar content	Consider using taxation, subsidies or direct pricing to encourage healthy eating and physical activity; take healthy nutrition into account in agricultural policy	Adopt policies to support healthy diets at school and limit availability of products high in sodium, sugar and fat

Table 2: Summary of Canadian legislative initiatives for healthy eating and physical activity (part 1 of 2)

Jurisdiction	Legislative initiatives
Federal	
Information disclosure	Food and Drugs Act and Regulations require a nutrition facts table on most prepackaged foods that provides information about calorie content and certain nutrients, including fats, sugars and sodium
Advertising	Bill C-324, An Act to Amend the Competition Act and the Food and Drugs Act, a private member's bill, would prohibit commercial food advertising aimed at children younger than 13
Food content	Bill C-251, An Act to Amend the Food and Drugs Act, a private member's bill, would restrict trans fatty acid content in oils and fats intended for human consumption
Physical activity	Children's Fitness Tax Credit provides a tax credit (up to \$500) for eligible fitness expenses paid by parents to register a child in a prescribed program of physical activity
Alberta	
Physical activity	Bill 206, Alberta Personal Income Tax (Physical Activity Credit) Amendment Act, passed a fitness tax credit (up to \$500) in November 2008, but it has not been implemented (not funded in the April 2009 budget)
British Columbia	
Food service establishments	Proposed restrictions of trans fatty acid content in prepared foods in food service establishments, including restaurants and schools, are to be implemented by regulation under the new Public Health Act, which authorizes regulation of conditions, things or activities that constitute a "health impediment"
Public health plans	New Public Health Act, effective Mar. 31, 2009, authorizes the Minister of Health to order public bodies to establish plans to "identify, prevent and mitigate the adverse effects of health impediments," which include factors that cause chronic disease or whose cumulative effects adversely affect health
Manitoba	
Food in schools	Bill 2, Public Schools Amendment Act (Trans Fat and Nutrition), although not yet in force, requires that each school establish a written policy about food and nutrition and report on progress in implementing the policy in the annual school plan; it also restricts artificial trans fatty acid content in foods provided by or sold in schools
	Healthy Child Manitoba Act guides "the development, implementation and evaluation of the Healthy Child Manitoba strategy," a prevention and early intervention strategy to promote healthy eating and physical activity; it also addresses such topics as parenting skills, daycare programs, fetal alcohol spectrum disorder and healthy school environments

change their lives in such a drastic way. A comprehensive approach is needed if a tax incentive is going to ultimately produce results."²⁰

It is true that, as lessons in tobacco control show, a "portfolio of policies" is needed to combat chronic diseases stemming from unhealthy modern environments.²¹ However, a comprehensive approach must be built piece by piece, and it would be a mistake to allow skepticism about the impact of single legislative or policy interventions to preclude any action at all. Massive shifts have occurred in the conditions in which people live, work and play, and it will be difficult to isolate and assess the role of the law in countering the unhealthy impact of these shifts. Yet, evidence about environments and behaviour can help identify defensible legislative interventions. For example, the amount of food consumed outside the home suggests that requiring information disclosure in food service establishments is a potential policy option. Evidence from areas such as behavioural eco-

nomics can provide some insight on how consumers might react to higher prices for snack foods with low nutritional value or tax credits for physical activity. It is important to assess the results of specific legislative measures; researchers are already making concerted efforts to study the impact of laws on public health.²² Early evaluations of novel approaches in the US and elsewhere can help identify strengths and weaknesses, and promising interventions can be adapted to Canada's social and cultural context.

With ongoing assessment, legislation can be adjusted over time to ensure that the objectives of public health are promoted. The personal and social harm associated with the increasing burden of chronic disease is a matter of urgent public concern. In an area so complex and controversial, not everyone will agree on the best way forward; however, the use of legal measures to promote healthier nutrition and physical activity, especially among children, deserves more attention and action from Canadian legislators.

Table 2: Summary of Canadian legislative initiatives for healthy eating and physical activity (part 2 of 2)

Jurisdiction	Legislative initiatives
New Brunswick	
Physical activity in schools	Healthy Students Act, proposed in 2005 (Bill 33) and 2006 (Bill 44), would have required a healthy students advisory committee to promote physical activity in schools and ensure that students receive 150 minutes per week of physical education
Nova Scotia	
Physical activity	Financial Measures Act, effective Jan. 1, 2009, provides a healthy living tax credit of up to \$500 for sports or recreational activities; previous private member's bill (Bill 106, Income Tax Act Amendment) proposed a tax credit for recreational and physical activities, specifically for people aged 65 and older
Physical activity in schools	Bill 115, An Act to Amend the Education Act, a private member's bill, would require at least 30 minutes of physical activity each school day; previous private member's bill in 2006 (Bill 90, Student Fitness Act) sought to create a provincial healthy students advisory committee that would require 150 minutes of physical education per week
Ontario	
Advertising	Bill 53 (2008), An Act to Amend the Consumer Protection Act, 2002 would prohibit "commercial advertising for food or drink that is directed at persons under 13 years of age"
Food in schools	Bill 8, Healthy Food for Healthy Schools Act, 2008 amends Education Act to establish policies and guidelines for school nutrition standards and for food and beverages available in schools; it also regulates trans fatty acid content of food in schools
Food service establishments	Bill 156, Healthy Decisions for Healthy Eating Act, 2009 would require food service establishments (fast food) with total gross annual revenues of more than \$5 million to disclose certain nutritional information for foods and beverages; it would also limit trans fatty acid content
Public health standards	Provincial Public Health Standards, issued under the Health Protection and Promotion Act, are "guidelines for the provision of mandatory health programs and services;" the standards impose obligations on boards of health to monitor and promote healthy eating, physical activity and other health-related behaviours; the boards work with schools, workplaces, municipalities and community partners in comprehensive health promotion programs and services
Quebec	
Advertising	Since 1980, Consumer Protection Act has prohibited commercial advertising directed at children younger than age 13
Financial measures	An Act to Establish the Fund for the Promotion of a Healthy Lifestyle, enacted in 2007, establishes a fund for programs that promote healthy eating and physical activity; part of the funding (\$20 million/yr) is through revenue collected under the Tobacco Tax Act

This article has been peer reviewed.

Competing interests: None declared.

Contributors: Both authors contributed to the conception of and research for the article. Nola Ries prepared the first draft of this article. Barbara von Tigerstrom conducted the research and analysis for information summarized in Table 1, and Nola Ries did so for Table 2. Both authors contributed equally to the revision of the article and approved the final version submitted for publication.

Funding: The authors acknowledge funding from the Canadian Institutes of Health Research, grant MOP81162. Nola Ries also receives funding from the Alberta Cancer Prevention Legacy Fund, Alberta Health Services.

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