From: Jenny Byford
Sent: March 3, 2020 12:27 PM
To: Minister, HLTH HLTH:EX
Cc: OfficeofthePremier, Office PREM:EX ; Minister, AG AG:EX ; Mary Stambulic ; 'Christopher Lam'
Subject: Medicare Recovery - Tobacco Settlement Negotiations

The Honourable Adrian Dix, Minister of Health
Copy to:
The Honourable John Horgan, Premier of British Columbia
The Honourable David Eby, Attorney General

Dear Minister:

The Canadian Cancer Society, Heart & Stroke, and BC Lung Association submit the attached letter regarding the provincial government's ongoing tobacco lawsuit settlement negotiations. We feel it is essential that a settlement contains measures to significantly reduce tobacco use and protect the public. Through this letter, we present our recommendations.

All three organizations are available to support with consultation, witness, or providing additional information to support the health of British Columbians. The respective organization contacts are cc'd here as well as listed in the letter.

Sincerely,

Jenny Byford
Advocacy Lead, BC and Yukon
Canadian Cancer Society
Email Jenny.byford@cancer.ca
Tel 250-420-1784  Office 250-592-2244 ext 232
1537 Hillside Avenue, Suite 101
Victoria, British Columbia  V8T 2C1

Connect with us online / Contactez-nous en ligne
Cancer.ca | Facebook | Twitter | Instagram | YouTube

**See attachment 1**

Canadian Cancer Society

BREATHE
the lung association

March 3, 2020

The Hon. Adrian Dix
Minister of Health
Province of British Columbia
PO BOX 9050
STN PROV GOVT
Victoria, BC
HLTH.Minister@gov.bc.ca

Dear Minister:

We are writing on behalf of our respective organizations regarding the ongoing tobacco lawsuit settlement negotiations. We urge you to place the highest priority on ensuring that any settlement contains effective measures to significantly reduce tobacco use and protect the public.

All 10 provinces have filed medicare cost recovery lawsuits, collectively seeking more than $500 billion in damages from the tobacco industry. In addition to compensation that provinces will receive for health care costs, it is essential that any settlement contains measures to significantly reduce tobacco use, and prevent tobacco companies from engaging in future behaviour that is harmful to public health.

In the United States, medicare cost recovery lawsuit settlements between state governments and tobacco companies contained a series of public health measures to reduce tobacco use. These measures were incorporated into settlements several decades ago in a different context. Canadian provinces can learn from this experience. If tobacco settlements with U.S. states can contain tobacco control measures, Canadian provinces can do even better.

Tobacco is the leading preventable cause of disease and death in British Columbia and in Canada. Tobacco causes suffering and devastation on a massive scale, killing 45,000 Canadians every year. A settlement must contain effective measures, whose ultimate goal is to reduce tobacco use.

At least 10% of the proceeds from any arrangement should be allocated to an independent fund to carry out tobacco control initiatives. The settlement should also ban tobacco promotional spending; prohibit tobacco industry lobbying or legal challenges against tobacco control measures; require public disclosure of more than 8 million pages of internal tobacco company documents; and establish mechanisms on the tobacco industry that are in the interests of public health, among other measures. Attached is a more detailed list of measures that should, at a minimum, form the core of any settlement.

In addition to our organizations, other health organizations are also urging that any settlement contain effective public health measures. There is overwhelming support for public health to be prioritized in settlement negotiations, and for any settlement to significantly advance the objective of under 5% tobacco use by 2035.

The Government of British Columbia has a historic opportunity to demonstrate leadership and to ensure that a settlement maximizes public health protection. The tobacco industry cannot be allowed to continue its wrongful behaviour in the future. Because settlement negotiations are taking place now, we strongly urge you and your government to give this issue your immediate, highest attention.

For further enquiries or information, please do not hesitate to contact Jenny Byford at jenny.byford@cancer.ca or 250-420-1784; Mary Stambulic at mary.stambulic@heartandstroke.ca or 250-410-8201; or Christopher Lam at lam@bc.lung.ca or 604-731-5864.

Yours truly,

Jonathan Oldman
Interim Executive Director
Canadian Cancer Society
BC and Yukon

Diego Marchese
Executive Vice President,
Western Canada
Heart & Stroke

Christopher Lam
President & CEO
BC Lung Association

encl.

cc: The Hon. John Horgan, Premier, Province of British Columbia
The Hon. David Eby, Attorney General, Province of British Columbia

## Tobacco Settlement Measures

A non-exhaustive list of measures to be included in a settlement between provincial governments and tobacco companies should include at least the following:

- Substantial, sustained, long-term funding for tobacco control.

- Funds to be operated by an independent foundation, which would receive 10% of all distributions pursuant or related to the arrangement.

- Ban on all tobacco promotional spending, and support for legislation to ban promotional spending for vaping products.

- Ban on direct or indirect lobbying against government tax, legislative, regulatory, programme or other measure regarding tobacco products, vaping products or other nicotine-containing products.

- Ban on funding lobby groups (e.g. convenience store associations, contraband front groups).

- Ban on legal challenges to tobacco control measures, or direct or indirect support for such legal challenges.

- Public disclosure in electronic form, at industry expense, of all documents provided on pre-trial discovery by tobacco companies, including 8 million documents provided to the Ontario Government, and public disclosure of all additional research, including market research, and data in electronic form, going back to the 1950s. In the U.S., more than 40 million pages of previously secret industry documents were made publicly accessible as a result of tobacco settlements.

- Independent review of all tobacco industry documents for which privilege has been claimed, and public disclosure of all documents for which privilege has been improperly claimed, at industry expense.

- A new structure on the industry such that tobacco companies cannot repeat behaviour to expand, or to forestall the decline of, the market for tobacco or nicotine-containing products. In the U.S., the company Purdue, which has marketed opioids, now operates as a trust as a result of lawsuits against it.

- Targets for reduction in tobacco use over time, with the tobacco companies required to make financial payments if targets are not achieved. In the U.S., in the 1996 Proposed Settlement that was agreed to by tobacco companies (but in the end did not receive congressional approval), there was a “look back” provision such that if targets to reduce youth smoking were not achieved, the companies would make additional financial payments.

From: Coalition québécoise pour le contrôle du tabac [coalition@cqct.qc.ca]
Sent: September 8, 2020 2:12 PM
To: Minister, HLTH HLTH:EX ; Minister, AG AG:EX
Cc: OfficeofthePremier, Office PREM:EX
Subject: Letter re tobacco CCAA settlement talks

Dear Sir or Madam,

Please see the attached letter addressed to the Minister of Health and the Minister of Justice / Attorney General.

On behalf of the Quebec Coalition for Tobacco Control and Physicians for a Smoke Free Canada

_____

Coalition québécoise pour le contrôle du tabac
420-1001 de Maisonneuve West
Montreal, QC, H3A 3C8
Téléphone : (514) 598-5533
Cellulaire: (514) 602-2508
Télécopieur : (514) 598-5283
coalition@cqct.qc.ca
http://cqct.qc.ca/
@CoalitionTabac

**See attachment 2**

**Physicians for a Smoke-Free Canada**
**Quebec Coalition for Tobacco Control**
C/O 134 Caroline Avenue, Ottawa, Ontario, K1Y OS9, tel: 613-297-3590

September 8th, 2020 *[Sent by email only]*

Adrian Dix, Minister of Health
David Eby, Attorney General
**Government of British Columbia**

Tyler Shandro, Minister of Health
Kaycee Madu, Minister of Justice and Solicitor General **Government of Alberta**

James Reiter, Minister of Health
Don Morgan, Minister of Justice and Attorney General
**Government of Saskatchewan**

Cameron Friesen, Minister of Health, Seniors and Active Living
Cliff Cullen, Minister of Justice and Attorney General
**Government of Manitoba**

Hugh J.A. Fleming, Minister of Health
Andrea Anderson-Mason, Minister of Justice and Office of the Attorney General
**Government of New Brunswick**

Randy Delorey, Minister of Health and Wellness
Mark Furey, Attorney General and Minister of Justice
**Government of Nova Scotia**

James Aylward, Minister of Health and Wellness
Bloyce Thompson, Minister of Justice and Public Safety
**Government of Prince Edward Island**

John Haggie, Minister of Health and Community Services
Steve Crocker, Minister of Justice and Public Safety
**Government of Newfoundland and Labrador**

**Re: Financial costs of not including the binding smoking prevalence reduction target as part of the CCAA settlement of the tobacco healthcare cost recovery litigation.**

Honourable Ministers,

As a result of tobacco industry-led tactics, lawyers on behalf of your province are currently engaged in secret talks under the Companies' Creditor Arrangements Act (CCAA). Tobacco companies hope to reach a settlement of all claims against them by the provinces and others, including a Quebec court ruling awarding victims some $13 billion. The provinces' healthcare cost recovery claims and others total well over $500 billion. Since the purpose of the CCAA is to do all that is possible to keep companies that are in bankruptcy protection *viable*, as the tobacco companies currently are, it follows that the amounts claimed will never be realized. CCAA negotiations, under present circumstances, may either result in a one-time payment that would likely be too small to be meaningful, or a somewhat larger payment made in instalments over several years, of which your province could expect only a small share. In either case, payments would represent pennies on the dollars claimed, and ultimately have perverse consequences on public health and future healthcare costs.

We are concerned that a critical and historical opportunity is being missed to use these negotiations to achieve the important public health goal of reducing tobacco supply and demand - and related

death, disease, and future health care costs. Getting a few billion dollars from tobacco companies will do nothing to change the current practices of tobacco companies. They will continue to sell and promote their products and lobby and litigate to weaken or bloc effective anti-tobacco measures, and tobacco consumption will continue its too-slow rate of decline.

Worse, this would have the effect of future smokers, through higher prices, paying for wrongs done to smokers in the past. Moreover, should settlement payment be scheduled over several years, governments would acquire a financial interest in seeing tobacco sales remain high so that settlement payments could continue to be made. More lives would be lost prematurely, affecting productivity. The healthcare system would continue to be overburdened by conditions resulting from the use of tobacco industry products, affecting government spending as well as the care of all your citizens.

Yet there is a way, through these settlement talks, that lives could be saved and billions of dollars in future tobacco-related costs could be avoided.

The attached report, commissioned by Physicians for a Smoke-Free Canada and la Coalition Québécoise pour le contrôle du tabac and prepared by H. Krueger and Associates*, shows that $48.3 billion in smoking-related costs from 2019 to 2035 in Ontario and Quebec could be avoided if smoking prevalence were reduced to 5% by 2035. Furthermore, these savings would come with 1.6 million fewer smokers in just those two provinces.

While no estimates were prepared for other provinces, it is reasonable to expect that the costs avoided and the reduction in number of smokers would be proportionately similar in all provinces. Such an achievement would not only free up hospital beds and services, but also spare hundreds of families in your province the pain, distress and impacts of having a loved-one go through the agonizing state of many debilitating and fatal tobacco-related illnesses.

We urge you, in collaboration with your colleagues in other provinces, to insist that, as part of any tobacco healthcare cost recovery settlement, companies be required to implement a court-supervised strategy to progressively reduce demand and supply of tobacco and recreational nicotine products so as to reach less than 5% prevalence by 2035, the official target of federal strategy tabled in 2018. The court should also require the companies meet annual milestones for tobacco use reduction. Failure to meet interim targets would carry significant and dissuasive court-imposed penalties.

As we have all come to realize through this pandemic, provincial governments and all our communities stand to benefit the most in both the short- and long-term from a settlement that aligns financial interests with those of public health. By working together, provinces can determine the direction that the settlement talks take.

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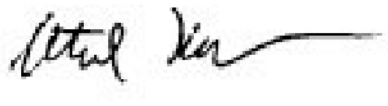
* Commissioned by Physicians for a Smoke-Free Canada and the Coalition québécoise pour le contrôle du tabac (Quebec Coalition for Tobacco Control), the report was produced by H. Krueger & Associates Inc., a firm based in the Greater Vancouver area. Dr Hans Krueger is an epidemiologist, health economist and adjunct professor at the UBC School of Population and Public Health. His firm has provided counselling, modelling, and other services to federal and provincial agencies, as well as NGO's from across the country.

We urge you to work with your colleagues in other provinces to steer the talks in a direction that will help protect the health and health care of all Canadians. As elected or government officials, you should involve yourself in this process and voice the concerns and best interests of all your citizens. Please seek to use these talks to oblige tobacco companies to reduce supply and demand for their products so that tobacco and recreational nicotine use prevalence actually reaches 5% or less by 2035.

Yours sincerely,



Dr. Atul Kapur
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Mme Flory Doucas
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fdoucas@cqct.qc.ca


CC: Provicial Premiers
Provincial chief medical officers

Att.: Summary points
Krueger Report

s.22

Jan. 14, 2020

Mr. John Horgan, Premier
Province of British Columbia
PO Box 9041, Stn. ProvGovt
Victoria, BC
V8W 9E1

Dear Mr. Premier:

**RE: BC Government Legal Action**
**Against Canadian Tobacco Companies**

Many years ago back in approximately 1998 the NDP government in BC took Canadian tobacco companies to court to recover tobacco-related health care costs. I have been waiting ever since to learn the results of this important court case. Having heard nothing for over 15 years I became concerned that the Liberal Government in BC had withdrawn the legal action or with a wink wink let officials with the BC Supreme Court know this was not a high priority to the Liberal Government and could be placed on a back shelf somewhere. As a result in 2014 I wrote the attached letter to my MLA, Stephanie Cadieux, requesting clarification of the situation. Ms. Cadieux responded shortly thereafter by stating, *"Please be assured that BC remains committed to this action and is continuing with trial preparation."* I have attached a copy of my letter to Ms. Cadieux and her reply back in 2014.

That is now 6 years ago and yet I have heard nothing about the BC case which I thought was the first initiated in Canada. I have attached two news items which appears to indicate that other provinces have jumped ahead in the queue. I therefor request your assurance that the NDP Government in BC is actively pursuing this very important matter. Is this a topic that your government would like public support to reignite the issue? I am certainly willing to bring this to the attention of the press and public to ensure this matter is not forgotten or delayed in the Supreme Court any further.

We citizens of BC pay some of the highest taxes in Canada and yet the waiting times for surgeries and other health care services are far too long. A huge financial settlement with the tobacco industry could do a great deal to alleviate these and other serious problems with health care in BC. I do appreciate Mr. Dix, Minister of Health, is doing his best to resolve several serious and long-term problems. However, I'm sure a huge infusion of funds into the BC provincial coffers from the tobacco industry would do a great deal to help overcome our current problems with surgery backlogs, mental health issues and the terrible drug addiction situation in BC. It would also be a nice feather in the cap of the NDP Government considering that it was your predecessors who started the ball rolling not the Liberal Government.

Your attention and initiative in this very important matter in the near future will be most appreciated. I look forward to hearing from you at your convenience.

Your truly,

s.22

Encl. 3

In 2016, three major tobacco firms appealed a landmark $15-billion Quebec Superior Court ruling they lost the year before. Now they have lost that appeal.

(Pawel Dwulit/Canadian Press)

Quebec's Court of Appeal has upheld a Quebec Superior Court ruling in two class-action lawsuits against tobacco companies awarding billions of dollars in damages to 100,000 people.

In the 422-page ruling, the court said that the Superior Court's decision was correct, except for some small technicalities.

The adjustment in damages amounts to about $2 million of the approximate $15 billion the companies were ordered to pay, the prosecution said Friday.

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The prosecution estimates the damages the companies will eventually pay out to the smokers will amount to over $17 billion. Interest on the damages continues to accrue as the case moves through the court system.

s.22

January 9, 2014

Stephanie Cadieux, MLA
Surrey-Cloverdale
101- 5658 176th Street
Surrey, B.C
V3S 4C6

Dear Ms. Cadieux:

**RE: Legal Action Against Tobacco Companies**

Some16 years ago back in 1998 the B.C. Government initiated precedent setting legal action against the tobacco corporations operating in Canada. The current Ministry of Health website indicates the following:

"In 1998, British Columbia became the first jurisdiction in Canada and the Commonwealth to launch a lawsuit for the recovery of those tobacco-related health care costs that were incurred by the government of BC as a result of the past, wrongful conduct of the tobacco industry, including the deceptive promotion of their product.

The lawsuit asserts tobacco manufacturers:

- Marketed "light" cigarettes as safer when they knew they were not.
- Targeted children in their advertising and marketing.
- Conspired to suppress research on the risks of smoking.
- Conspired to invalidate the public warnings on the risks of smoking.
- Are responsible for health care costs associated with smoking.

The action was authorized by the *Tobacco Damages and Health Care Costs Recovery Act* (1998). The defendant manufacturers successfully challenged the constitutionality of the *Tobacco Damages and Health Care Costs Recovery Act* (1998) at the British Columbia Supreme Court.

In response, British Columbia introduced new legislation, the *Tobacco Damages and Health Care Costs Recovery Act* (2000), to deal with the Supreme Court's concerns. On January 24, 2001, the Province re-launched its action against the tobacco industry.

In September 2005, the Supreme Court of Canada unanimously upheld the Province's right to sue the tobacco industry and concluded the *Tobacco Damages and Health Care Costs Recovery Act* (2000) is constitutional."

Recently I read the attached article in our local newspaper. If BC was the *"first jurisdiction in Canada"* to initiate such a lawsuit I don't understand why the Supreme Court of Canada has ruled on the Ontario Government legal action before ruling on the BC legal action initiated 16 years ago. One distinct fear I have is that the BC Liberal Government has withdrawn or in some way limited or delayed the prosecution of this action by our solicitors in the Supreme Court of Canada.

I would be extremely concerned should that have taken place and look forward to hearing from you that our legal action is still being pursued vigorously before the Supreme Court of Canada.

This recent decision of the court is excellent and should assist the BC Government's position if in fact it is still being pursued. I look forward to receiving detailed clarification from you in the near future.

Yours truly,

s.22

Encl. 1

# SUPREME COURT WON'T HEAR BIG TOBACCO APPEAL

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**Province of British Columbia**

**Stephanie Cadieux,** M.L.A.
(Surrey-Cloverdale)

Legislative Assembly

February 18, 2014

Dear s.22

Thank you for taking the time to contact me with your concerns regarding legal action against tobacco companies.

The Government of BC is continuing its legal action against the three Canadian tobacco manufacturers and related foreign companies.

In March 2012, BC announced it had joined forces with five other provinces in retaining common counsel to prosecute these claims in a coordinated and efficient manner. All provinces (except Nova Scotia) have now launched litigation to recover health care costs. The foreign companies responded to these lawsuits by claiming that the Canadian provincial courts lack the jurisdiction to determine such claims against the foreign companies. These jurisdictional challenges have been rejected in BC (2007), New Brunswick (2010), and now in Ontario (2013).

The article you attached is referring to the foreign challenge in Ontario and the Supreme Court of Canada's decision to refuse to hear the jurisdictional challenge in that matter. In 2007 the Supreme Court of Canada made the same decision relating to the jurisdictional challenge brought forward in BC.

Please be assured that BC remains committed to this action, and is continuing with trial preparation.
Sincerely,

S Cadieux

MLA Stephanie Cadieux
Surrey-Cloverdale

e-mail: stephanie.cadieux.mla@leg.bc.ca
website: www.stephaniecadieuxmla.bc.ca

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