



Canadian  
Cancer  
Society

B R E A T H E  
the lung association



July 21, 2021

Hon. Christine Elliott  
Deputy Premier and Minister of Health  
Ministry of Health  
5th Floor—777 Bay St.  
Toronto, Ontario M7A 2J3  
by email: [christine.elliott@ontario.ca](mailto:christine.elliott@ontario.ca)

Hon. Peter Bethlenfalvy  
Minister of Finance  
Frost Building South  
7th Floor  
7 Queen's Park Crescent  
Toronto, Ontario M7A 1Y7  
by email: [Minister.fin@ontario.ca](mailto:Minister.fin@ontario.ca)

Hon. Doug Downey  
Attorney General of Ontario  
Ministry of the Attorney General  
11<sup>th</sup> Floor—720 Bay St.  
Toronto, ON M7A 2S9  
by email: [attorneygeneral@ontario.ca](mailto:attorneygeneral@ontario.ca)

## OPEN LETTER

Dear Ministers Elliott, Bethlenfalvy and Downey,

We are writing on behalf of the Canadian Cancer Society, Heart & Stroke, Canadian Lung Association, Lung Health Foundation and Ontario Tobacco Research Unit regarding the ongoing settlement negotiations between provincial governments and tobacco companies over the tobacco medicare cost recovery lawsuits.

We again urge the Ontario Government to make public health measures the top priority in the tobacco settlement negotiations. Enclosed please find the February 24, 2020, letter from our organizations outlining specific measures that should be included in an agreement. These measures continue to be valid and essential to be pursued in the negotiations.

Provinces have a historic opportunity to ensure that any settlement includes significant measures to reduce tobacco use – as previously outlined – including measures to reform tobacco industry behaviour, and including a requirement that at least 10% of the proceeds from any arrangement be allocated to an independent fund to carry out tobacco control initiatives.

Tobacco use remains the leading preventable cause of disease and death in Canada, killing almost 48,000 Canadians each year. Significant measures must be implemented to achieve the objective of under 5% tobacco use by 2035. The settlement negotiations provide the opportunity to obtain such measures.

There is very strong public support for settlement measures to reduce tobacco use. A national Ipsos poll conducted in January-February 2021 found that 88% of Canadians, including 87% of Ontario residents, support “a requirement that a significant proportion of the funds from the lawsuit be used for initiatives to reduce smoking among both adults and youth.”<sup>1</sup> These poll results are enclosed. The full question was “All provinces are pursuing lawsuits against tobacco companies to recover the costs of smoking to the health care system. If your provincial government is awarded a cash settlement, to what extent would you support or oppose a requirement that a significant proportion of the funds from the lawsuit be used for initiatives to reduce smoking among both adults and youth?”

In the U.S., the 1998 *Master Settlement Agreement* between state governments and tobacco companies contained payments by tobacco companies to state governments that were in effect disguised tobacco tax increases. These payments have been made not only by the major tobacco companies that were defendants in the lawsuits, but also by all other tobacco companies, including companies that had not even been sued, and including companies that did not even exist and that were only established in the future.

In the U.S. political culture, tobacco tax increases and indeed any tax increases have been very difficult to achieve. Thus there was a policy rationale to obtain a disguised tobacco tax increase in the 1998 U.S. settlement. But in Canada all provinces increase tobacco taxes over time. In general, the only impediment to the amount of tobacco tax increases by provinces is a perceived contraband concern. As a result, in Canada, it would not make sense for a settlement to include a disguised ongoing tobacco tax increase, given that provinces can simply increase tobacco taxes at any time. (Going forward, regular provincial tobacco tax increases would be even more likely than normal as governments will have to deal with COVID-related deficits and debts.)

The need to avoid a disguised tobacco tax increase is especially the case given that 8 of 10 provinces have contingency fee agreements with law firms, including U.S. law firms, whereby the law firms obtain a percentage of settlement proceeds. The percentages can be substantial, with the contingency fees having been publicly indicated at 18% for New Brunswick and 30% for Newfoundland and Labrador. This means that 8 provinces could actually be worse off financially – instead of receiving 100% of the revenue in perpetuity from future tobacco tax increases, provinces would have to give 18%-30% of such revenue to contingency fee law firms where disguised tobacco tax increases are involved. (Ontario and Quebec are using in-house lawyers and are the two provinces that do not have contingency fee agreements.)

The tobacco companies and their international parent companies must be held responsible. We urge you to carefully review the public health measures outlined in our February 24, 2020, letter and to instruct your lawyers to pursue these measures as the priority in the settlement negotiations. The result of any settlement cannot be “business as usual” for tobacco companies. In the U.S., state governments demanded and obtained public health measures in the 1998 Master Settlement Agreement. If U.S. states can obtain public health measures in a 1998 settlement, then Canadian provinces can do far better in a settlement in 2021.

Our respective organizations would oppose any settlement and any liability releases against tobacco companies and related parties, or purported releases of future claims against the

companies, unless there are significant public health measures included in the settlement proportional to the health damage these companies have inflicted and will continue to inflict on Canadians.

We would be pleased to provide more information. Please do not hesitate to contact Stephen Piazza at [Stephen.piazza@cancer.ca](mailto:Stephen.piazza@cancer.ca)/647-233-6793 or Liz Scanlon at [liz.scanlon@heartandstroke.ca](mailto:liz.scanlon@heartandstroke.ca) / 647-943-3229.

Yours truly,



Kelly Masotti  
Vice President, Advocacy  
Canadian Cancer Society



Avril Goffredo  
Executive Vice President,  
Ontario & Nunavut  
Heart & Stroke



Peter Glazier  
Executive Vice President,  
Lung Health Foundation



Terry Dean  
President and CEO  
Canadian Lung Association



Robert Schwartz  
Executive Director  
Ontario Tobacco Research Unit

cc. The Hon. Doug Ford, Premier  
Helen Angus, Deputy Minister of Health  
Greg Orencsak, Deputy Minister of Finance  
David Corbett, Deputy Attorney General  
Dr. Kieran Moore, Chief Medical Officer of Health  
All MPPs

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<sup>1</sup> For the national Ipsos opinion poll, the poll had a sample size of 2000, online, and was conducted Jan. 29 – Feb. 1, 2021, for the Canadian Cancer Society, margin of error +/- 2.5%, 19 times out of 20.



Canadian  
Cancer  
Society



Heart  
&Stroke™

February 24, 2020

The Hon. Christine Elliott  
Deputy Premier and Minister of Health  
777 Bay St, 5<sup>th</sup> Floor  
Toronto, ON M7A 2J3  
[christine.elliott@cancer.ca](mailto:christine.elliott@cancer.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 Ontario 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 Ontario 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 Stephen Piazza at [stephen.piazza@cancer.ca](mailto:stephen.piazza@cancer.ca) or 416-323-7126, or Liz Scanlon at [liz.scanlon@heartandstroke.ca](mailto:liz.scanlon@heartandstroke.ca) or 647-943-3229.

Yours truly,



Jeff Cornett  
Executive Director, Ontario  
Canadian Cancer Society



Avril Goffredo  
Executive Vice President,  
Ontario and Nunavut  
Heart & Stroke

encl.

cc. The Hon. Doug Ford, Premier of Ontario  
The Hon. Douglas Downey, Attorney General of Ontario

## **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 1950's. 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.

**Ipsos national survey conducted January 29 – February 1, 2021**

**Online survey, sample size 2000, margin of error +/- 2.5%, 19 times out of 20**

**Survey conducted for the Canadian Cancer Society**

11. All provinces are pursuing lawsuits against tobacco companies to recover the costs of smoking to the health care system. If your provincial government is awarded a cash settlement, to what extent would you support or oppose a requirement that a significant proportion of the funds from the lawsuit be used for initiatives to reduce smoking among both adults and youth?

	Total	REGION						HOUSEHOLD INCOME				HOUSEHOLD COMPOSITION	
		BC	AB	SK/MB	Ontario	Quebec	Atlantic	<\$40K	\$40K - <\$60K	\$60K - <\$100K	\$100K+	Kids	No Kids
		A	B	C	D	E	F	G	H	I	J	K	L
<b>Base: All Respondents (unwtd)</b>	<b>2000</b>	<b>240</b>	<b>201</b>	<b>197</b>	<b>702</b>	<b>460</b>	<b>200</b>	<b>490</b>	<b>340</b>	<b>523</b>	<b>407</b>	<b>512</b>	<b>1488</b>
<b>Base: All Respondents (wtd)</b>	<b>2000</b>	<b>268</b>	<b>226</b>	<b>124</b>	<b>770</b>	<b>478</b>	<b>134</b>	<b>588</b>	<b>343</b>	<b>484</b>	<b>336</b>	<b>469</b>	<b>1531</b>
Top 2 Box (Net)	1762 88%	237 88%	199 88%	111 89%	668 87%	429 90%	117 88%	499 85%	312 91%	429 89%	309 92%	394 84%	1367 89%
Strongly support	935 47%	158 59%	97 43%	54 44%	343 45%	217 45%	66 49%	261 44%	165 48%	221 46%	181 54%	206 44%	728 48%
			BCDE						G		G		K
Somewhat support	827 41%	79 30%	102 45%	57 46%	325 42%	212 44%	52 39%	238 41%	147 43%	208 43%	128 38%	188 40%	639 42%
			A	A	A	A							
Bottom 2 Box (Net)	238 12%	31 12%	27 12%	13 11%	102 13%	49 10%	17 12%	88 15%	31 9%	55 11%	27 8%	75 16%	164 11%
								HJ				L	
Somewhat oppose	154 8%	19 7%	17 7%	9 7%	68 9%	33 7%	9 7%	53 9%	22 6%	39 8%	19 6%	49 10%	105 7%
												L	
Strongly oppose	84 4%	12 5%	10 4%	4 3%	35 4%	16 3%	7 5%	35 6%	9 3%	16 3%	7 2%	25 5%	58 4%
								J					
Sigma	2000	268	226	124	770	478	134	588	343	484	336	469	1531
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Statistics:

Overlap formulae used

- Column Proportions:

Columns Tested (5%): A/B/C/D/E/F/G/H/I/J,K/L

Minimum Base: 30 (\*\*), Small Base: 100 (\*)

- Column Means:

Columns Tested (5%): A/B/C/D/E/F/G/H/I/J,K/L

Minimum Base: 30 (\*\*), Small Base: 100 (\*)

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	Total	Gender		AGE			EDUCATION				AGE GROUP			
		Male	Female	18-34	35-54	55+	<HS	HS	Post Sec	Univ Grad	Gen Z	Millennial	Gen X	Boomer
		A	B	C	D	E	F	G	H	I	J	K	L	M
<b>Base: All Respondents (unwtd)</b>	<b>2000</b>	<b>967</b>	<b>1033</b>	<b>541</b>	<b>768</b>	<b>691</b>	<b>91</b>	<b>366</b>	<b>911</b>	<b>632</b>	<b>176</b>	<b>605</b>	<b>541</b>	<b>678</b>
<b>Base: All Respondents (wtd)</b>	<b>2000</b>	<b>978</b>	<b>1022</b>	<b>562</b>	<b>692</b>	<b>746</b>	<b>292</b>	<b>552</b>	<b>670</b>	<b>486</b>	<b>218</b>	<b>558</b>	<b>496</b>	<b>727</b>
Top 2 Box (Net)	1762	827	934	465	610	687	237	485	596	443	178	471	441	671
	88%	85%	91%	83%	88%	92%	81%	88%	89%	91%	82%	84%	89%	92%
			A		C	CD	*		F	F			J	JK
Strongly support	935	421	514	226	309	400	99	254	333	249	76	232	231	395
	47%	43%	50%	40%	45%	54%	34%	46%	50%	51%	35%	42%	47%	54%
			A			CD	*	F	F	F			J	JKL
Somewhat support	827	406	421	239	301	287	139	232	263	194	102	239	210	276
	41%	42%	41%	43%	43%	39%	48%	42%	39%	40%	47%	43%	42%	38%
							*							
Bottom 2 Box (Net)	238	151	88	97	82	59	55	67	74	43	40	87	55	56
	12%	15%	9%	17%	12%	8%	19%	12%	11%	9%	18%	16%	11%	8%
		B		DE	E		HI*				LM	M		
Somewhat oppose	154	91	64	64	51	40	22	54	51	27	20	61	36	37
	8%	9%	6%	11%	7%	5%	7%	10%	8%	6%	9%	11%	7%	5%
		B		DE			*	I				M		
Strongly oppose	84	60	24	33	32	19	33	13	23	16	20	26	19	19
	4%	6%	2%	6%	5%	2%	11%	2%	3%	3%	9%	5%	4%	3%
		B		E			GHI*				LM			
Sigma	2000	978	1022	562	692	746	292	552	670	486	218	558	496	727
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Statistics:

Overlap formulae used

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Columns Tested (5%): A/B,C/D/E,F/G/H/I,J/K/L/M

Minimum Base: 30 (\*\*), Small Base: 100 (\*)

- Column Means:

Columns Tested (5%): A/B,C/D/E,F/G/H/I,J/K/L/M

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