



Canadian
Cancer
Society



B R E A T H E
the lung association

July 9, 2021

The Hon. Ernie Hudson
Minister of Health and Wellness
4th Floor North, Shaw Building
105 Rochford Street
Charlottetown, PE C1A 7N8
email: ehudsonminister@gov.pe.ca

The Hon. Darlene Compton
Minister of Finance
2nd Floor South, Shaw Building
95 Rochford Street
P.O. Box 2000
Charlottetown, PE, C1A 7N8
email: dcomptonminister@gov.pe.ca

The Hon. Bloyce Thompson
Minister of Justice and Attorney General
4th Floor South, Shaw Building
95 Rochford Street
PO Box 2000
Charlottetown, PE C1A 7N8
email: MinisterJPS@gov.pe.ca

OPEN LETTER

Dear Ministers Hudson, Compton and Thompson:

We are writing once more on behalf of the Canadian Cancer Society, Heart & Stroke and the PEI Lung Association regarding the ongoing settlement negotiations between provincial governments and tobacco companies over the tobacco medicare cost recovery lawsuits.

We again urge the Prince Edward Island Government to make public health measures the top priority in the tobacco settlement negotiations. Enclosed please find the March 11, 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 88% of Atlantic Canada 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.”¹ 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 March 11, 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 Kelly Wilson Cull at kelly.cull@cancer.ca or 902-403-0369.

Yours truly,



Kelly Masotti
Vice President, Advocacy
Canadian Cancer Society



Donna Hastings
Senior Vice President,
Nova Scotia, PEI, and
Newfoundland and Labrador
Heart & Stroke



Robert MacDonald
President & CEO
PEI Lung Association

Enclosures

cc. The Hon. Dennis King, Premier
Mr. Mark Spidel, Deputy Minister of Health
Ms. Denise Lewis Fleming, Deputy Minister of Finance
Mr. Jonah Clements, Deputy Minister of Justice and Deputy Attorney General
Dr. Heather Morrison, Chief Public Health Officer
Members of the Legislative Assembly

¹ 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
Société canadienne du cancer



B R E A T H E
the lung association

March 11, 2020

Hon. James Aylward
Minister of Health and Wellness
Department of Health and Wellness
4th Floor North, Shaw Building
105 Rochford Street
Charlottetown, PE C1A 7N8

Dear Minister Aylward:

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 Prince Edward Island 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 Prince Edward Island 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 Kelly Cull at kelly.cull@ns.cancer.ca or 902-403-0369.

Yours truly,



Jane Parsons
Regional Executive Director
Canadian Cancer Society – Atlantic



Mary Ann Butt
Senior Vice President, NS,
PEI, and NL
Heart & Stroke



Robert MacDonald
President & CEO
The Lung Association, PEI



Jayna Stokes
Provincial Lead
Canadian Cancer Society - PEI

Enclosure

cc. Hon. Dennis King, Premier of Prince Edward Island
cc. Hon. Bloyce Thompson, Minister of Justice & Public Safety

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 |
| Base: All Respondents (unwtd) | 2000 | 240 | 201 | 197 | 702 | 460 | 200 | 490 | 340 | 523 | 407 | 512 | 1488 |
| Base: All Respondents (wtd) | 2000 | 268 | 226 | 124 | 770 | 478 | 134 | 588 | 343 | 484 | 336 | 469 | 1531 |
| 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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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 | 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 |
| Base: All Respondents (unwtd) | 2000 | 967 | 1033 | 541 | 768 | 691 | 91 | 366 | 911 | 632 | 176 | 605 | 541 | 678 |
| Base: All Respondents (wtd) | 2000 | 978 | 1022 | 562 | 692 | 746 | 292 | 552 | 670 | 486 | 218 | 558 | 496 | 727 |
| 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% |
| | | | | | | | | | | | | | | |

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

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