



Canadian  
Cancer  
Society



B R E A T H E  
the lung association

## Backgrounder – Tobacco Settlement Negotiations

May 2022

### **Tobacco settlement negotiations under way**

All 10 provincial governments are currently in negotiations with the tobacco industry to settle health care cost recovery lawsuits against tobacco companies. Provincial lawsuits are seeking more than \$500 billion in damages from tobacco companies, collectively representing the largest lawsuits in Canadian history. Named as defendants are Imperial Tobacco Canada Ltd., Rothmans Benson & Hedges Inc., JTI-Macdonald, as well as foreign parent companies such as British American Tobacco and Philip Morris International.

The negotiations are historic and of fundamental public importance, and provide a one-time opportunity to reform tobacco industry behaviour and to reduce tobacco use. However, the negotiations are taking place in secret, with no participation by health organizations.

### **Settlement must include significant measures to reduce tobacco use**

In any settlement, it is essential that there be not just financial compensation to governments, but also public health measures to reduce tobacco use, including measures to prevent tobacco companies from engaging in future behaviour that is harmful to public health.

Public health measures should include substantial, long-term funding for tobacco control. At least 10% of the proceeds from any settlement should be allocated to an independent fund to carry out tobacco control initiatives to reduce tobacco use.

Additional measures in a settlement should include:

- ending all tobacco promotion;
- requiring public disclosure of all secret internal company documents;
- restricting industry lobbying, including funding of lobby groups, and restricting the filing of legal challenges to tobacco control laws;
- establishing a new structure on the industry to control its future behaviour; for example US opioid company Purdue was mandated to operate as a trust as a result of lawsuits;
- requiring tobacco companies to make substantial extra payments if targets to reduce tobacco use in Canada are not achieved.

Tobacco is the leading preventable cause of disease and death in Canada. Tobacco causes suffering, disease and death on a massive scale, killing almost 48,000 Canadians every year.

### **Strong support by Canadians**

A national Ipsos poll conducted in February 2022 found that 86% of Canadians supported “a requirement that a significant proportion of the funds from the lawsuit be used for initiatives to reduce smoking among both adults and youth” (sample size 2,000, online, conducted February 2-7, 2022, for the Canadian Cancer Society, margin of error +/- 2.5%, 19 times out of 20). 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?”

### **The U.S. experience**

Medicare cost recovery lawsuits in Canada were originally inspired by the U.S. experience. In the U.S., medicare cost recovery lawsuits by state governments resulted in settlements in 1997/1998 with not only financial compensation, but also public disclosure of more than 40 million pages of previously secret tobacco industry documents; restrictions on lobbying; new marketing restrictions; and the establishment of an independent foundation to reduce smoking that continues to this day (the foundation is now called the Truth Initiative). If tobacco settlements with U.S. states in 1998 can contain tobacco control measures, Canadian provinces in 2022 can do much, much better.

### **Bankruptcy protection proceedings**

On March 1, 2019, the Quebec Court of Appeal awarded \$13.5 billion in damages to a private class action of individuals in Quebec who had suffered lung cancer, throat cancer and emphysema. This case (*Quebec Council on Tobacco and Health/Blais*) was not led by the Quebec government but rather a separate case on behalf of a group of individuals. The defendants in the class action were the three major tobacco companies in Canada: Imperial Tobacco; Rothmans, Benson & Hedges; and JTI-Macdonald. After the judgement, the tobacco companies filed for creditor protection (bankruptcy protection) in Ontario Superior Court. This creditor protection was granted in March 2019, and had the effect of suspending all lawsuits against tobacco companies from proceeding further while negotiations for a potential settlement are under way. At a Court hearing on March 22, 2022, the Ontario Superior Court further extended the stay (suspension) period until September 30, 2022.

### **Wrongful behaviour of tobacco companies**

In Canada, the tobacco industry has advertised to underage youth, marketed to women with images of slimness and fashion, concealed internal research through a decades-long cover-up, failed to warn consumers adequately, used public relations campaigns to deny the health effects of smoking, disseminated misleading advertising, deceived the public about the real nature of so-called “light” and “mild” cigarettes, destroyed internal documents, and aggressively and systematically opposed the implementation of tobacco control measures through lobbying, loopholes, lawsuits and other strategies. Just as an environmental polluter should pay for the costs of clean-up, so should the tobacco industry pay for cleaning up the tobacco epidemic. After a settlement, it cannot be “business as usual”. The tobacco companies should not have the ability to continue to carry on wrongful behaviour.

### **For more information**

For more information, visit [www.StopBigTobacco.ca](http://www.StopBigTobacco.ca)