

An open letter to Provincial and Territorial Premiers ARE PROVINCES COMMITTED TO JUSTICE IN THEIR TEN LANDMARK LAWSUITS AGAINST THE “RUTHLESS” AND “IMMORAL” BEHAVIOUR OF THE TOBACCO INDUSTRY?

Dear Premiers:

Canada’s tobacco manufacturers, operating with full knowledge that their products were addictive and deadly, caused millions to be hooked on cigarettes. Their predatory behaviour caused or contributed to the premature deaths of over one million Canadians over the last six decades. This mortality was accompanied by suffering, families torn apart, and huge health care costs.

If current smoking trends continue, cigarettes will cause the premature deaths of another two million Canadians in this century. Unlike flu, polio and SARS epidemics, the tobacco epidemic has its roots in unparalleled unethical and allegedly illegal corporate conduct.

For good reason, provinces are suing tobacco companies and their international parents to recover the health care costs to smokers caused by alleged industry fraud.

Premiers, your Attorneys General allege that the industry lied over five decades about the risks of cancer, heart and lung disease, addiction, ‘light’ cigarettes, second-hand smoke and marketing to children. Claims filed to date exceed \$120 billion. If the provinces’ allegations are proven in court, the conduct involved would constitute the largest and most destructive fraud in the history of Canadian business or public health.

Justice Brian Riordan of the Quebec Superior Court examined the industry’s misbehavior in the Blais/Létourneau class action trial on behalf of the industry’s Quebec victims. He awarded the plaintiffs \$15 billion in damages and called the wrongful behaviour “ruthless”, “beyond irresponsible” and “immoral”.

Your lawsuits are critical to public health

The purpose of your litigation is to recover monies lost through the alleged fraud. It should also deter future ruthless, immoral conduct by Big Tobacco and others. British Columbia, the first province to litigate, filed suit in 2001, over 17 years ago. The lawsuits of other provinces have also been in court for years. The snail’s pace of these lawsuits raises serious concerns¹. We believe that the manufacturers’ goal may be to delay this litigation until the provinces and territories, the media and the public grow weary or lose interest.

Considering the damage to health caused by the industry, health remedies should be the over-riding public interest in this litigation.

Unfortunately, we are concerned that some governments may view these lawsuits as a “cash grab” while ignoring the potential of litigation to produce significant positive health outcomes. If a financial cost is the only punishment experienced by the manufacturers, court awards or settlement costs will simply become an expense of doing business.

Trials of Big Tobacco in American states produced important health initiatives and large settlements. In Canada, health gains like industry document disclosure (a public health treasure), like court enforced reductions in teen smoking and changed corporate behaviour² will almost certainly not result unless these companies are taken to trial. We are concerned that to avoid trials the provinces may resort to out-of-court financial settlements without any positive health outcomes.

“Sweetheart” settlements harm public health

In the absence of trials, we fear that settlement talks without a focus on health could produce a repetition of the 2008 and 2010 “sweetheart” provincial / federal settlements with tobacco manufacturers over smuggling. Canadian governments had claims against Big Tobacco of over \$10 billion, arguably well over \$20 billion. Yet, in out-of-court settlements, Ottawa and the provinces settled for \$1.15 billion, pennies on the dollar, and, worse, failed to produce any measures to address the tobacco epidemic. More shocking, tobacco executives, charged criminally, had their charges stayed and avoided jail time.

In the USA, state Attorneys General educated the public about the alleged predatory behaviour that led to their health care cost recovery litigation. After all, public awareness of the industry’s “ruthless” behaviour gives smokers another reason to stop smoking and increases public support for the litigation. Unfortunately, in Canada, Attorneys General have been largely silent. Not surprising then, a national poll found that less than one percent of Canadians are aware that Big Tobacco is being sued for fraud.

Premiers, what will you do to prevent the industry from creating further stalls in the litigation process? Will you take the manufacturers to trial? Will you make public health outcomes goals of your litigation?

1. André Picard, *The Globe and Mail*, July 13, 2018. 2. Performance guarantees like “look back provisions” proposed by US Senator John McCain and others and approved by US manufacturers during settlement negotiations with the industry would have forced Big Tobacco to reduce tobacco use among youth or incur financial penalties for non-compliance. When further restrictions were proposed, lobbying by the manufacturers helped kill the bill.

Signatories: CAMPAIGN FOR JUSTICE ON TOBACCO FRAUD, CANADIAN PUBLIC HEALTH ASSOCIATION, CANADIAN LUNG ASSOCIATION, ACTION ON SMOKING AND HEALTH – ALBERTA, COALITION QUÉBÉCOISE POUR LE CONTRÔLE DU TABAC, CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ, MANITOBA TOBACCO REDUCTION ALLIANCE, NON-SMOKERS’ RIGHTS ASSOCIATION, ONTARIO CAMPAIGN FOR ACTION ON TOBACCO

**CAMPAIGN FOR JUSTICE ON TOBACCO FRAUD
CAMPAGNE POUR OBTENIR JUSTICE FACE À LA FRAUDE DU TABAC**

Box 83513, 87 Avenue Road, Toronto, Ontario M5R 3T6 | www.justiceontobaccofraud.ca

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