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**Action on Smoking & Health (ASH Canada)**  
**Coalition québécoise pour le contrôle du tabac**  
**Physicians for a Smoke-Free Canada**

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November 14, 2024

Hon. Mark Holland, MP, PC  
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Hon. Ya'ara Saks, MP, PC  
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## **REQUEST THAT THE FEDERAL GOVERNMENT VOTE AGAINST THE TOBACCO SETTLEMENT PLAN**

### **Dear Minister Holland and Minister Saks:**

We are writing today to request that you take action to ensure that the Government of Canada casts its vote against the proposed settlement plan between Imperial Tobacco and its creditors (“the Plan”<sup>1</sup>).

A meeting to allow Imperial Tobacco’s creditors to vote on the Plan will be held on December 12th, 2024.<sup>2</sup> Because Imperial Tobacco identifies a debt to the Government of Canada of \$333,535,110, the Government of Canada will be entitled to cast one vote at that time.<sup>3</sup>

We see no reasons why Canada should vote in support of this proposal and we identify many reasons that you should oppose it.

### **THE PLAN IS BAD FOR PUBLIC HEALTH**

**The Plan contains no measures to support the reduction of tobacco use or to improve public health.** To the contrary, the Plan is designed to maintain revenues from tobacco sales in order to finance ongoing payments to provinces. It provides for the provinces to receive a percentage of the net revenues from tobacco sales (exclusive of excise and sales taxes) until \$20 billion has been received, and forecasts that the companies’ revenues will be maintained at over \$1 billion per year. Instead of helping to accelerate declines in commercial tobacco use, this Plan aims to perpetuate it for the foreseeable future.

**The Plan does nothing to acknowledge, address or correct the harmful and wrongful actions of the tobacco industry.** Quebec courts ruled that Canada’s three largest cigarette manufacturers acted illegally throughout the decades that were the subject of one of Canada’s longest civil tort trials. The companies were found guilty of failing to ensure that consumers were provided with information about the risks associated with their products, of misleading consumers by attacking the health information provided by others, of misleading consumers through their advertising and of violating the rights of Quebecers to life and personal security.<sup>4 5</sup>

As Ministers responsible for protecting Canadians from the harms cause by this industry's products, you will be aware that these wrongful behaviours did not end in 1998, and that there are strong echoes of their past behaviour in their current marketing of novel nicotine products.

**Instead of ensuring that the industry's harmful actions do not continue, the Plan ensures that they will.** It contains a set of covenants and undertakings by the companies, including a commitment that the "operational practices" they have established for selling tobacco will be maintained. The apparent goal of this covenant is to ensure that tobacco revenues and the payments that are based on them will remain high.

Vaping products, heated tobacco and nicotine pouches are carved out of the agreement. While there is no covenant or other undertaking which will require the industry to maintain the sales of these products, there are no measures included in it to modify corporate behaviour and to ensure that consumers of these products are provided with adequate information and are protected from misleading business practices.

## **THE PLAN IS UNJUST TO SMOKERS**

The Plan would compensate a relatively small number of injured Canadian smokers: those whose lung cancers, throat cancers and emphysema were diagnosed in specific short timeframes.

Your departmental officials estimate that a million Canadians have died from tobacco use since the provincial lawsuits were first filed and that 48,000 more Canadians are killed by this industry's products every year. This Plan proposes to extinguish the rights of almost all of these victims to compensation, including those having developed other smoking related cancers and cardiovascular morbidities.

In exchange for receiving a release from this past and current liability, the companies have agreed to fund research aimed of improving the treatment outcomes for smokers who become sick. No measures are included to prevent addiction and harms to new consumers or to help smokers quit or to support the traditional pillars of tobacco control. The Plan does nothing to improve the health of Canadians.

Moreover, the Plan is designed to be financed by the continued tobacco purchases of addicted smokers. Future payments to provinces depend on the continuation of financial and physical harm caused by tobacco addiction.

The compensation for injured smokers that is provided for in this plan is long overdue. There is enough money set aside to satisfy those claims immediately without imposing conditions that will injure other smokers.

## **THE PLAN HARMS CANADIAN TAXPAYERS**

As Ministers responsible for health, your primary concern will not be with the financial impact of this proposal on the federal government, but on this score too there is reason for the federal government to oppose the Plan.

Because compensation payments are likely to be considered expenses for income tax purposes, the initial settlement payments will result in a loss of corporate income tax to the federal government. We estimate that this loss will be in excess of \$1.8 billion in the short run, with a total loss of \$5 billion over the 20 years.

The Plan will also impact the health care costs to which the federal government provides support through transfer payments to the provinces. By sustaining sales of conventional tobacco and doing nothing to curb the marketing of alternative nicotine products, the Plan will also sustain the illnesses and treatment costs caused by this industry. The analysis of the expert hired to quantify the tobacco related costs predicts that the diseases caused by this industry will continue to consume one-fifth of hospitalization costs, and that the smoking-attributable fraction of these costs will vastly exceed the value of the settlement payments.

## CANADA HAS A DUTY TO PROTECT PUBLIC HEALTH FROM TOBACCO INDUSTRY INTERFERENCE

We remind you of the importance of Article 5.3 of the Framework Convention on Tobacco Control and the need to protect public health measures from tobacco industry interference.

This Plan has emerged after more than five years of secret negotiations between sub-national governments and the tobacco industry. The many ways in which this Plan favours the interests of the companies and interferes with the goals of reducing tobacco use suggests that the protection called for in the FCTC was not adequately provided.

The absence of clear national guidelines on Article 5.3 hindered the terms of engagement between tobacco companies and Canadian governments and likely the proposed plan itself. The FCTC is legally binding on participating governments including subnational jurisdictions.

We urge you to communicate the importance of voting against this Plan to your colleague, the Minister of Justice and Attorney General. How the federal government votes on this proposal will send an important signal to those responsible for consumer protection and public health.

*[Signatures removed for publication]*

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- 1 The proposed plan was developed by the monitors and mediator in the CCAA proceedings involving Canada's three major tobacco companies. A copy of the plan is contained in the following linked document: [In the matter of the Companies' Creditors Arrangement Act, RSC 1985, C-36, as amended and in the matter of a plan of compromise or arrangement of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited. Motion for Claims Procedure Order and Meeting Order returnable October 31, 2024. October 17, 2024.](#)
  - 2 [In the matter of the Companies' Creditors Arrangement Act, RSC 1985, C-36, as amended and in the matter of a plan of compromise or arrangement of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited. Meeting Order. October 31, 2024](#)
  - 3 [In the matter of the Companies' Creditors Arrangement Act, RSC 1985, C-36, as amended and in the matter of a plan of compromise or arrangement of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited. Claims Procedure Order. October 31, 2024](#)
  - 4 [Létourneau c. JTI-MacDonald Corp. 2015 QCCS 2382](#)
  - 5 [Imperial Tobacco Canada Ltée c. Conseil québécois sur le tabac et la santé. 2019 QCCA 358](#)