

Canadian Association of Physicians for the Environment • Canadian Cancer Society
Canadian Centre for Ethics in Sport • Canadian Chiropractic Association
Canadian Council for Tobacco Control • Canadian Dental Association
Canadian Institute of Child Health • Canadian Lung Association
Canadian Nurses Association • Heart and Stroke Foundation of Canada
Non-Smokers' Rights Association • Physicians for a Smoke-Free Canada
Spirit of Sport Foundation • Action on Smoking and Health – Alberta
Alliance pour la lutte au tabagisme • Association pour la santé publique du Québec
Clean Air Coalition of B.C. • Coalition québécoise pour le contrôle du tabac
Conseil québécois sur le tabac et la santé • Fédération québécoise du sport étudiant
Newfoundland and Labrador Alliance for Control of Tobacco
Newfoundland and Labrador Medical Association
Ontario Campaign for Action on Tobacco • Ottawa Public Health
Smoke-Free Nova Scotia • Unité québécoise de recherche sur le tabac
The United Church of Canada

January 15, 2003

The Honourable Martin Cauchon
Minister of Justice and
Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Dear Minister:

Re: Holding the tobacco industry accountable for its role in tobacco contraband

We, the undersigned, are writing to express our grave concern about your government's delay in filing a lawsuit in Canada to hold the tobacco industry accountable for its promotion of and contribution to tobacco contraband. There is ample evidence that the industry was heavily involved in the facilitation of cigarette smuggling that led to the tobacco tax rollbacks in 1994. As you are aware, this illegal activity led to two massive negative impacts on Canada. First, governments were defrauded of at least \$5 billion in tobacco tax revenues. Second, the increase in smoking, beyond what would otherwise have existed due to the availability of contraband and the "deep discount" cigarettes that followed the tobacco tax rollbacks, especially among adolescents, will lead inevitably to substantial increases in tobacco-caused illness and death.

This activity may have been the largest and most destructive corporate misconduct in the history of Canadian business or public health. That this industry would be allowed to escape responsibility for its actions should be unthinkable for any Minister of Justice or Attorney General. It is essential that the industry be held accountable for such behaviour in order to deter the manufacturers from undermining Canada's fiscal and health policy with a repeat of this activity in the future, in addition to recovering the immense tobacco-related losses incurred by the government. Revenues from tobacco taxes serve in part to compensate for the billions of dollars in health care costs caused by this industry's products.

About ten weeks ago, the United States Supreme Court declined to hear Canada's appeal in its lawsuit against RJR-Macdonald Inc. (now JTI-Macdonald Corp.) and related U.S. companies under the U.S. *Racketeer Influenced and Corrupt Organizations Act* (RICO). Canada had alleged that the illegal conduct, which utilized a pattern of activity common to organized crime, included conspiracy to defraud the government out of billions of dollars in tax revenue. While there were differences of opinion with respect to pursuing those involved in American courts, we nevertheless commend the federal government for its initial attempt to hold tobacco interests responsible for extremely irresponsible behaviour.

While the RICO suit was unsuccessful, we believe the presence of this litigation acted as a deterrent to the manufacturers resuming their actions of the early 1990s. In fact, this suit has been an effective anti-contraband initiative which created significant benefits from both public health and public revenue perspectives.

However, the setback that occurred as a result of the U.S. RICO decision in no way diminishes the magnitude of the corporate malfeasance or the necessity to now seek justice in a Canadian court. After all, a split U.S. appellate court dismissed Canada's claim based on the so-called "revenue rule" technicality, not on the merits of the government's case. We, therefore, cannot understand your delay in re-filing this claim in a Canadian court.

Minister, we are growing impatient. The criminal and civil misbehaviour was widespread and brazen. Even at the time of the tobacco tax rollbacks, Prime Minister Jean Chrétien expressed his displeasure in the House of Commons:

"The fact is we do not want tobacco manufacturers to receive any benefit from the difficult decision we have made today. The fact is that the Canadian manufacturers have benefited directly from this illegal trade. They have known perfectly well that their tobacco exports to the United States have been re-entering Canada illegally. I believe they have not acted responsibly."

Yet, almost a decade later, those responsible have not been held to account. The basic facts are well known. In the early 1990s, Canadian tobacco companies shipped cigarettes across the border knowing full well that they would be smuggled right back into Canada. As William Marsden pointed out in *The Gazette*, in investigative journalism that won him a national newspaper award:

"But an investigation by *The Gazette* ... shows that RJR-Macdonald carried out a campaign to funnel billions of cigarettes through a handful of traders and flood the marketplace with the black-market tobacco. . .

Each of Canada's big three tobacco companies – RJR-Macdonald, Rothmans Benson & Hedges Inc., and Imperial Tobacco – organized their own corporate structures or signed special contracts to service this black market."

In the words of the Hon. André Denis of the Quebec Superior Court in his December 13, 2002 decision in *JTI-Macdonald v. Canada*: "The industry was a willing accomplice of black-market cigarette smugglers." The manufacturers were brazen about it. Indeed, a 1993 cigarette company document shows Imperial Tobacco's current chairman, Don Brown, asking his British head office not to charge Imperial a royalty on these export sales as he knew they would be coming right back into Canada as contraband. Canadian manufacturers were actually predicating their business plans on the promotion and facilitation of smuggling.

Minister, at the time of the U.S. Supreme Court decision, you said that the government was considering filing a similar action in Canada. Earlier, you were quoted in the press saying that the lawsuit directed at tobacco manufacturers was clear:

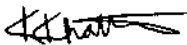
"When we're fighting for principle as a government, we're fighting for the people of Canada and we're fighting for justice as well."

We agree. Canadian cigarette companies unjustly enriched themselves through their complicity in smuggling. They robbed every taxpayer. They duped the government. And they caused an upsurge in smoking that will increase human suffering and health care costs for decades.

Now the tobacco manufacturers stand poised to get away with it all. Without perseverance and aggressive action by the Minister of Justice and Attorney General, they will. Whatever the cause of the delay to date, this action must be refiled quickly in a Canadian court. The necessary legal background work was largely done for the RICO case. Evidence also exists to include other Canadian manufacturers as defendants. All of those involved must be held accountable. Further delays play into the industry's inevitable argument that limitation periods have passed.

Minister, the health community has been patient. We, like you, want this to be done right. But we are resolute: we want it done. Broader issues of public policy demand it. The need for justice demands it. Public health demands it. We urge you to refile, quickly.

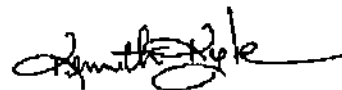
Sincerely,



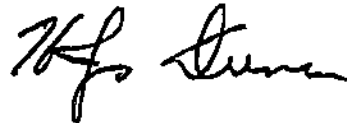
Kapil Khatter, MD
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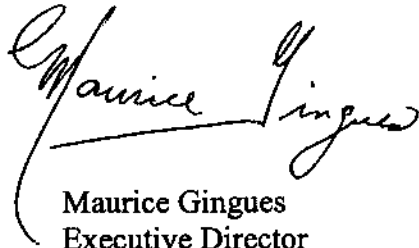
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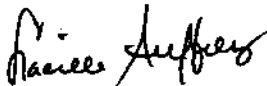
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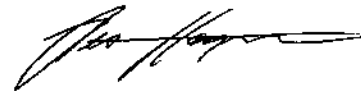
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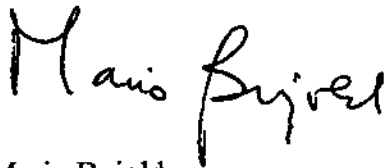
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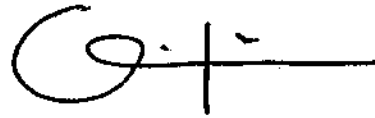
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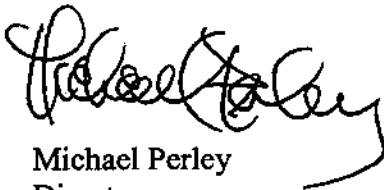
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Justice, Global and Ecumenical Relations Unit
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- c.c. **The Right Honourable Jean Chrétien, P.C., M.P., Prime Minister**
 The Honourable John Manley, P.C., M.P., Deputy Prime Minister, Minister of Finance
 The Honourable A. Anne McLellan, P.C., M.P., Minister of Health
 The Honourable Elinor Caplan, P.C., M.P., Minister of National Revenue
 The Honourable Allan Rock, P.C., M.P., Ministry of Industry

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