

CAMPAIGN FOR JUSTICE ON TOBACCO FRAUD

CAMPAGNE POUR OBTENIR JUSTICE FACE À LA FRAUDE DU TABAC

April 11, 2023

By Express Post and Email

andrea.seale@cancer.ca

Ms. Andrea Seale
President and Chief Executive Officer
Canadian Cancer Society
575 West 10th Ave
Vancouver, BC V5Z 4C3

Dear Andrea:

Re: Motion by the Heart and Stroke Foundation of Canada to intervene in the *Companies' Creditor Arrangement Act* mediation between the provinces, Quebec Class Action creditors, and tobacco manufacturers related to the recovery of health care costs caused by the industry's wrongful behaviour.

On March 7, 2023, I wrote to you about the above subject and, to ensure that you received the letter quickly, I sent it both by courier and email. Because I was making decisions related to the Heart Foundation/Tyr LLP motion of September 2022 going before the bankruptcy court on April 14, there was an obvious urgency and time sensitivity involved. Then, on March 31, 2023 Heart/Tyr LLP filed a second motion on the Heart attempted intervention.

My letter was courteous, in fact friendly, as would befit a communication between organizations who have been intimately involved together in precedent-setting tobacco control campaigns.

The questions presented to you in that letter were warranted and presented in substance and tone as would take place in any professional business communication. Yet more than a month later, I and we have received no reply, in fact not even so much as the courtesy of an acknowledgement.

Unless there is a surprising explanation, one might reasonably conclude that your silence borders on disrespect. And, given the subject involved, your silence was provocative. More important, the silence is suggestive of an attempt to hide what answers to the questions might reveal.

This writer both through the Campaign for Justice on Tobacco Fraud, and earlier, the Non-Smokers' Rights Association, has had a longstanding interest in the health care cost recovery litigation process and the four years of mediation taking place under the *Companies' Creditor Arrangement Act*. In fact, I know of few in the not-for-profit sector who have invested more time, effort or resources into efforts to hold the industry accountable for its negligence and fraud.

To be specific, this writer and the NSRA that I headed led the effort to press the federal government to sue the industry for its involvement in the smuggling fraud. Had we met, I might have briefed you on the advocacy behind this statement*. Later, the NSRA and the CJTF were out front in the campaign to persuade the provinces to file suit over health care cost recovery. In this process, the CJTF worked cooperatively with the Cancer Society to achieve this common goal.

While we were pressing governments to hold the industry to account, the Heart and Stroke Foundation (Heart) was tantamount to being invisible in the advocacy for the lawsuits in question or for pressure to create an arms-length-from-government trust to fund tobacco control measures. Now with the scent of money in the wind Heart, through its legal counsel Tyr LLP, through the motions in question, is attempting to establish itself as a deserved beneficiary of the proceeds of such a Fund or as leader in any body established to disperse those funds.

In contrast to Heart, the CCS has supported litigation strategy efforts and has worked with both the NSRA and the CJTF. To my surprise then, the CCS collaborated in secret with Heart before its motions were filed in September 2022 while being careful to keep this writer and the CJTF and other interest groups in the dark and out of the picture.

In its request to intervene in the mediation discussions at the eleventh hour, after four years of talks and four years after the same court denied the Cancer Society the right to be involved in the mediation, Heart now wants in. This is a display of remarkable fund-raising brass. And CCS plans to support the Heart motions in the Ontario Superior Court on April 14.

The CJTF is strongly opposed to the Heart motions and, through its collaboration with Heart, to the Heart/CCS goals in the suspected funding and Fund control machinations. Clearly Heart, Cancer and, we suspect, the Canadian Lung Association's lack of transparency suggests strongly that you are engaged in a strategy which, if discussed openly with previous allies and other interested parties, would attract opposition.

Knowing how various manoeuvres are carried out, and in the absence of transparency, those outside the game plan would be unwise not to suspect that the advocates for the motions are also engaged in secret talks with the provinces about the nature and size of the Fund, who would control the Fund and what outcome from the mediation would generate lavish praise for the provinces from beneficiary supporters of the motion.

*In the absence of such a briefing, I have enclosed a report that I authored, *What Were They Smoking?*. The report lays out some of the foundation for that campaign. This report was included in the letter sent by courier.

For a variety of reasons, some explained in our letters to provincial attorneys general and health ministers, we hold that Heart does not deserve to be charged with the responsibility to act in any capacity as the “representative counsel” for addicted smokers (Future Tobacco Harm Stakeholders) who remain in the market after any settlement.

And in the wake of this attempt to intervene in the mediation at the midnight hour, and enveloped in total silence and a lack of transparency, the action of the Cancer Heart Lung triumvirate has all of the machinations of an attempt to position those involved to control or to be significantly influential in any body that may be set up to direct the envisioned tobacco control Fund.

On the issue of transparency, the HSF says via its legal counsel’s March 31 motion “It is preferable that the FTH Stakeholders’ interests are addressed now [in the secrecy of the mediation process] rather than in any potential future public opposition to a Proposed Plan.”

Why would the creation of such a Fund for a decision involving, as the HSF motion concedes, “millions” of addicted smokers, half of whom will die of a tobacco disease if they continue to smoke, not be in the public interest and in the public domain for scrutiny?

Why, if the actions of Heart, Cancer and Lung are in the best interests of those “millions” of smokers whose lives are at stake, would it not be in the interests of those addicted to be informed about who Heart and CCS are proposing to represent their interests?

Why if as the two Heart motions admit “despite the harm to their health, most if not all of the FTH Stakeholders will not be able to stop purchasing tobacco products...’locked into a cycle of addiction’...” and half of those “millions” will die from a tobacco disease, why does the HSF and implicitly the CCS, not utter a word about harm reduction and relevant risks between combustion and non-combustion products?

If HSF, Cancer and Heart have a convincing case and can defend their actions related to the attempted intervention, where would the “opposition” come from which Heart legal counsel is attempting to hide in its latest motion?

And finally, with regard to the identities of the three person advisory committee proposed for the set-up and operation of the Fund plan that HSF/Tyr is careful to have kept secret in the seven months since HSF said it was working on their identities, is there any possibility that the three people would be one nominee for each of the Cancer/Heart/Lung organizations, giving the triumvirate the inside on the set-up and control of the envisioned multi-million dollar Fund? Just asking.

In language of the street, unless persuaded otherwise, what is going on behind your closed doors has all the earmarks of a cash grab.

The Cancer Society has every right to engage in secret talks with anyone and to take whatever actions it desires. And we have every right to oppose.

Your lack of transparency and determination to hide your actions from scrutiny by other parties has created an adversarial environment. While this adversary is small this writer is comfortable working in such an environment when opposition is warranted.

Yours sincerely,

Garfield Mahood, OC
President

P.S. The page and a half *Globe and Mail* advertisement that I wrote and the CJTF funded entirely as part of our campaign to secure a public health trust can be seen at http://justiceontobaccofraud.ca/downloads/en/Globe%20ad%20scan%20PUB_CJTF_ad_Open_Letter_8_97x20_IMP.pdf

Note that Heart and CCS did not endorse the ad despite overwhelming support elsewhere.