BRITISH
COLUMBIA

VIA EMAIL

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April 5, 2024

Bridgitte Anderson and co-signers
President and CEO
Greater Vancouver Board of Trade
c/o email: lfernandes@boardoftrade.com; banderson@boardoftrade.com

Dear Bridgitte Anderson and co-signers:

Thank you for your letter of March 28, 2024, setting out your concerns with our government's proposed *Public Health Accountability and Cost Recovery Act* (the Act). I am responding on behalf of Premier David Eby.

Businesses and your members are a critical part of our economy and our communities here in British Columbia. Businesses support good jobs for people and so many of the good things that make our communities strong and livable places to build a good life. The overwhelming majority of businesses who operate in British Columbia do so within the law and with the best interests of British Columbians at heart – this legislation is not about them. The type of specific corporate wrongdoing that this legislation is intended to address hurts all of us – it hurts people and it can cast a cloud over other law-abiding businesses.

From the outset, I want to be clear – businesses who are operating within rules and regulations set out for them by government do not need to be concerned. The Act is about businesses who have **knowingly** engaged in **wrongful** behaviour: marketing a product they knew to be potentially unsafe as safe; deliberately designing products that are addictive in order to maximize profits; knowingly downplaying the risks associated with use of a product; or purposefully marketing a product to youth which youth are not legally permitted to consume. It is not enough to sell a product that involves some risks – a company would have to do something like knowingly marketing it as safe when they knew that wasn't the case. Companies often become aware of the harm their product is causing in advance of the public; if they are not forthright and instead hide or manipulate this information in an effort to profit, this could qualify as a tort or breach captured by the proposed Act.

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Ministry of Attorney General

Mailing Address:
PO Box 9044 Stn Prov Govt
Email: AG.Minister@gov.bc.ca
Victoria BC V8W 9E2
website: www.gov.bc.ca/ag

Telephone: 250-387-1866
Facsimile: 250-387-6411

It is important to note right at the outset of any discussion on this proposed Act that it only applies to a person (or company) that has committed a wrong. A defendant must have knowingly committed a tort or breach which exposed people in British Columbia to the risk of disease, injury or illness, and the breach must have resulted in government incurring costs. Under the legislation, government would be required to (i) prove the breach in court, (ii) prove that it was committed knowingly, (iii) prove that the use or exposure can cause or contribute to disease, injury or illness, and (iv) prove that the product was offered for distribution, sale or use to British Columbia citizens. Claims under this Act follow the process of a civil lawsuit and as in any civil lawsuit, defendants are able to bring a full answer and defence to any allegations.

The legislation may very well create a less favourable environment for those knowingly engaging in wrongdoing, however; it remains focused on ensuring that those who knowingly cause harm are held accountable for the costs expended by government providing health care services to its citizens as a consequence of that wrongdoing. A long held and fundamental tenet of our common law system is that the wrongdoer pays. It should not fall to people in British Columbia to pay increased taxes as a result of corporate wrongdoing.

The focus of the proposed legislation is holding corporate actors accountable for knowingly wrongful conduct which causes harm and ultimately results in the government suffering a loss — similar circumstances to those where companies might already face exposure to class-action or other types of lawsuits today.

Corporations operating in our province are already aware that wrongful conduct puts them at risk of a healthcare recovery claim by the government. Both the *Negligence Act* and the *Class Proceedings Act* are examples of existing legislative tools available to government to claim against corporations for wrongful conduct. Further, in 2008, the Province of British Columbia passed the *Health Care Costs Recovery Act* (the HCCRA). The HCCRA has been an extremely functional tool for the Province to collect the costs of taxpayer-funded health care from wrongdoers when negligence leads to illness, injury or death. Through the current HCCRA, the Province pursues the recovery of health care costs resulting from wrongful acts of individuals and corporations. Almost all personal injury actions involving a British Columbia resident, aside from motor vehicle claims, include a provincial subrogated claim.

The Province has ongoing or has previously advanced health care costs claims against thousands of British Columbia and Canadian corporations for wrongful conduct, including claims centred on negligent design and the marketing of faulty medical devices, wrongful prescribing of drugs, systemic harassment and sexual abuse, and negligence in the ordinary day-to-day operations of

their businesses. The proposed legislation allows for the recovery of a broader range of costs attributable to a particular wrongdoing compared to the recovery of strictly health care costs under the HCCRA. For example, it might allow for the recovery of the cost of educational programs about the harms of using these products and to discourage their use. It further provides a more efficient and consolidated way for government to recover the costs it incurs as a result of wrongdoing. It allows claims to proceed more efficiently in the courts where they otherwise could not while still maintaining the basic principles of civil litigation. To be clear, a defendant will of course still be able to learn the case against them and bring a full answer and defence.

The introduction of the *Tobacco Damages and Health Care Costs Recovery Act* and the *Opioid Damages and Health Care Costs Recovery Act* serves as further examples to corporations that the government will respond with direct action and custom legislation when conduct is reprehensible. Over a number of decades and under different governments, the government has demonstrated that it is our practice to use these tools responsibly where there is a strong case to be made that a corporation knowing engaged in behavior that harmed people. This proposed legislation is a continuation of that tradition.

As for any organization, suing for damages in court is an action that would only ever be in the public interest for the Province to undertake as a last resort, where other attempts at prevention work or constructive engagement with businesses have failed. The government continues to seek to build and maintain strong relationships with all sectors of the business community so that we can work together to help keep British Columbians safe and healthy.

I hope this information has been helpful in providing some reassurance about what this legislation is, and is not. My staff or I continue to be happy to meet with you to continue the conversation at any point.

Sincerely,

Niki Sharma, KC
Attorney General

pc: The Honourable David Eby, KC
All BC MLA's
Bridgitte Anderson
Greg Wilson

Jeff Guignard
Ken Beattie
Ingrid Jarrett
Tyler Dyck
Trent Leggett
Pat Bell
Kurt Niquidet
Mark von Schellwitz
Miles Prodan
Jairo Yunis
Gary Sands
Ian Tostenson
Denise Mullen
Walt Judas
Dennis Prouse
Krista Scaldwell
Ryan Greer
Fiona Famulak
Meagan Hatch
Linda Delli Santi
Greg Moffatt