

Tobacco Lawsuits in Canada: Update and Overview

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CAC Knowledge Exchange Webinar

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Types of cases

- provincial medicare cost recovery cases
- contraband
- other class actions
- Quebec class actions

U.S. cost recovery settlements

- US\$245.5 billion over 25 years;
- document disclosure (40+ million pages);
- marketing restrictions
- American Legacy Foundation

U.S. federal Department of Justice
RICO case

Tobacco companies held responsible
under the *Racketeer-Influenced and
Corrupt Organizations Act* (RICO)

Major Threat

- Canada – largest litigation risk after US

How do medicare lawsuits reduce tobacco use?

1. Public education through media coverage
2. Secret documents become public – inform policies and programs
3. Damage awards, legal fees increase price

How do medicare lawsuits reduce tobacco use?

4. Deters wrongful industry behaviour
5. New curbs on industry behaviour
6. Funding for initiatives to reduce tobacco use

Overview – cost recovery

- 12 of 13 provinces/territoires adopted legislation to facilitate a lawsuit (exception: Yukon)
- 9 provinces have filed lawsuits
- N.S., Nunavut intend to file
- No trial dates

Supreme Court of Canada

- 2005 - Unanimously (9:0) upheld B.C. *Tobacco Damages and Health Care Costs Recovery Act* as constitutional



Lawsuits filed (9)

- 2001 – British Columbia
- 2008 – New Brunswick
- 2009 – Ontario
- 2011 – Newfoundland & Labrador
- 2012 – Alberta, Saskatchewan, Manitoba,
Quebec, PEI



Ontario Attorney General Chris Bentley, March 4, 2009, announcing introduction of legislation



Alberta Health Minister Fred Horne and Premier Alison Redford announce lawsuit, May 30, 2012



**Saskatchewan Justice Minister Gordon Wyant,
May 31, 2012**



**Manitoba Justice Minister Andrew Swan,
May 31, 2012**



Quebec Justice Minister Jean-Marc Fournier (left) and Health Minister Yves Bolduc, June 8, 2012

Claims

- Ontario – \$50 billion
- Quebec – \$60 billion
- Past medicare costs; projected future costs
- BC – about \$10 billion (media statement)

Industry wrongdoing

Serious allegations

1. Advertising to underage youth
2. Advertising to women
3. Deceptive advertising, including for “light” and “mild” cigarettes
4. Failing to warn adequately on packages
5. Public relations campaigns denying health effects

Industry wrongdoing

6. Concealing internal research on addiction, health effects
7. Destroying internal documents
8. Conspiracy among companies
9. Continually countering government efforts to reduce tobacco use

Federal government as third party defendant

- Supreme Court of Canada (2011) unanimously (9:0) dismissed attempt by tobacco industry to name federal government as third party defendant
- Industry had argued that if industry loses, federal government should reimburse industry for damages payable



Attempts by foreign parent companies to be removed as defendants consistently dismissed

eg British American Tobacco, R.J. Reynolds, Philip Morris International – dismissed:

- BC (2006)
- New Brunswick (2011)
- Ontario Court of Appeal (2013), permission to appeal to Supreme Court of Canada denied (2013)
- Quebec Superior Court (2013), permission to appeal to Quebec Court of Appeal denied (2013)
- Saskatchewan Court of Queen’s Bench (2013)

Foreign Parent Company Defendants

- Important because of their wrongful behaviour, documents, and ability to pay large damage awards

Other issues

- Failed industry attempt to block contingency fees (NB)
- Failed industry attempt to name tobacco manufacturers on First Nations reserves as third party defendants (NB)
- Quebec – claim that provincial cost recovery legislation unconstitutional dismissed (2014)

BC historic leadership

- Drove process forward for years
- Led way on key preliminary issues
- Did enormous heavy lifting for other provinces

Legal representation

- BC, SK, MB, NB, NS, PEI – same consortium of firms representing all provinces
- Alberta, consortium of firms
- Newfoundland and Labrador, consortium of firms
- Ontario (Ministry of Attorney General)
- Quebec (Ministry of Justice)

“lights” class action – B.C.

- *Knight v. Imperial Tobacco Canada*, British Columbia Supreme Court, certified
- Imperial Tobacco attempt to name federal government as third party defendant unanimously dismissed by Supreme Court of Canada (2011)
- No trial date

Other broad product liability class actions

None of these proposed class actions yet certified:

- BC (2): *McDermid, Bourassa*, filed 2010
- Alberta : *Dorion*, filed 2009
- Saskatchewan: *Adams*, filed 2009
- Manitoba: *Kunta*, filed 2009
- Nova Scotia: *Semple*, filed 2009
- Ontario, *Jacklin*, filed 2012

Note: Ontario: *Caputo* class action not certified, 2004

Contraband Settlements

- vast shipments in 1990s to US that returned to Canada as contraband
- C\$600 million, Imperial Tobacco (2008) (BAT affiliate)
- C\$550 million, RBH (2008) (PMI affiliate)
- C\$550 million, JTI/RJR (2010)

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- C\$1.7 billion in fines (\$525 million) and civil settlements paid over years, but less on present value
 - Each company convicted on a guilty plea
 - Two JTI executives previously convicted
 - Criticism of settlements

WHAT WERE THEY SMOKING?

Q What were the sweetheart settlements negotiated by the federal and provincial governments over the largest corporate frauds in Canadian history, settlements that ignored public health, cost Canadians billions and gave executives behind the fraud get-out-of-jail-free cards?

A The Big Tobacco smuggling settlements of 2008 and 2010, settlements governments tried to bury and hoped you would miss. Here's why they knew these deals with the tobacco industry would not withstand serious scrutiny.

And why, in light of current provincial health care cost recovery lawsuits, understanding these settlements is so important today ...

Non-Smokers' Rights Association, released 2014
http://www.nsra-adnf.ca/cms/file/files/What_Were_They_Smoking-FINAL_Aug_26_2013.pdf

Tobacco farmer class actions

- Ontario Superior Court, ongoing
- Against 3 major tobacco companies for not paying tobacco farmers enough for leaf tobacco supposedly for export, but really sold in Canada as contraband
- Industry attempt to have case dismissed early failed

Quebec class actions

- (1) *Létourneau*; (2) *Blais and Conseil québécois sur le tabac et la santé*
- Filed in 1998
- Trial began March 12, 2012, Quebec Superior Court
- Seek about \$20 billion
- Evidence beneficial for provincial governments
- Blog: <http://tobaccotrial.blogspot.ca/>
- Documents: <https://tobacco.asp.visard.ca/Main.htm>



Jean-Yves Blais



Cécilia Létourneau



**Mario Bujold,
CQTS**



Lawyers for the plaintiffs, Quebec class actions



Eye on the Trials

An Information Service on Tobacco Litigation

CONTACT US

Questions? Comments?
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PAGES

- [Home](#)
- [Blais/Létourneau: Witness List](#)
- [Blais/Létourneau: Rulings](#)
- [Blais-Létourneau: Procedural documents](#)
- [Canadian Litigation Timeline](#)
- [Blais-Létourneau: Exhibits](#)

THURSDAY, 11 DECEMBER 2014

Day 253: "Every party has an ending."

At 11:17 this morning, the trial of the combined Blais-Létourneau tobacco class actions came to an end.

Although the 90 minute hearing that lead to this end did not give much of a sense of occasion, it did capture the not-always-tasteful flavour of the last 33 months of trial. There was eloquence. There was eye-rolling. There was anger. There was laughter. And not all of it from in front of the bar!

Money comes first.

The first issue discussed was the earnings of the companies.

EN FRANÇAIS, SVP!

Lumière sur les
procès du tabac

THE PLAINTIFF'S WEB-SITE

[Conseil québécois
sur le tabac et la
santé](#)

[Instructions on
using the
database of trial
documents](#)



Lumière sur les procès du tabac

Service d'information sur les procès du tabac

ARCHIVES

▼ 2014 (63)

▼ décembre (3)

253e jour - 11 décembre 2014 - Le juge Brian Riord...

252e jour - 8 décembre 2014 - Les avocats des reco...

Une avocate de l'industrie du tabac prend l'ascens...

▶ novembre (5)

▶ octobre (7)

VENDREDI 12 DÉCEMBRE 2014

253e jour - 11 décembre 2014 - Le juge Brian Riordan se retire pour réfléchir et écrire son jugement final

Le rideau est tombé jeudi sur un très long procès, intenté contre les trois principaux cigarettiers du marché canadien par deux groupes de Québécois qui sont dépendants du tabac ou souffrent d'emphysème ou d'un cancer au poumon, au larynx, à l'hypopharynx ou à l'oropharynx, et qui reprochent à l'industrie son comportement trompeur et irresponsable.

Le procès était instruit depuis le début, en mars 2012, par le juge L. Brian Riordan de la Cour supérieure du Québec. Lequel a

IN ENGLISH, PLEASE!

Eye on the Trials

DOSSIER DE LA PREUVE

- pièces enregistrées au dossier

TOUS LES DOCUMENTS RELATIFS AU PROCÈS

- les auditions

Quebec class actions

- trial ended Dec. 11, 2014
- judgment expected in 2015
- massive case
- 253 trial days over 33 months
- more than 30,000 documents
- many appeals on preliminary issues

CAMPAIGN FOR JUSTICE ON TOBACCO FRAUD

CAMPAGNE POUR OBTENIR JUSTICE FACE À LA FRAUDE DU TABAC

TO BE RELEASED BY CNW/Telbec, JUNE 17, 2014

NEWS RELEASE, EMBARGOED UNTIL TUESDAY JUNE 17, 2014

HEALTH AND LEGAL EXPERTS PRESS THE PROVINCES TO MAKE HEALTH OBJECTIVES NECESSARY OUTCOMES OF MASSIVE LAWSUITS AGAINST BIG TOBACCO

Toronto – More than 130 prominent Canadians, including the heads of health agencies and professions, deans of public health schools and professors of law, released a letter today that urges provincial and territorial governments to make public health remedies essential objectives of their health care cost recovery lawsuits against the tobacco industry.

Needed outcome includes

- Holding industry legally accountable;
- Disclosure of internal documents
- Funding for tobacco control
(eg American Legacy Foundation)
- Reforming the industry

Lawsuits huge, crucial

- Medicare lawsuits need to get to trial
- Historic potential game-changer to reform the industry and reduce tobacco use
- We must influence the outcome of these lawsuits to ensure in the best interests of public health
- Quebec class actions trial judgment – next big step

Thank you