

# Tobacco-Related Litigation in Canada

A report prepared by the  
Smoking and Health Action Foundation/  
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## Introduction

Holding the tobacco industry accountable for its illegal activities, whether through criminal charges or civil suits, serves a number of public health objectives:

- Litigation acts as a deterrent to prevent misconduct in the future;
- Litigation affords victims, including governments, the opportunity to recover financial losses caused by misconduct or to seek damages as compensation for physical harm suffered;
- Litigation can protect public health strategies (e.g. tobacco taxation) from being undermined;
- Damages, awards or settlements passed on to consumers, in the form of higher prices for tobacco products, reduce tobacco consumption and prevalence;
- Litigation forces internal industry documents into the public domain, giving governments, the media and researchers a window into the workings of the industry. Increased knowledge of industry behaviour leads to the development of better public policy.<sup>1</sup>

Civil actions against the tobacco industry are relatively new in Canada, although litigation by tobacco companies to oppose tobacco control statutes dates back to 1988 (i.e. tobacco industry challenge to the *Tobacco Products Control Act*<sup>2</sup>).

Apart from civil suits, the *Criminal Code* and other legislation offer options for holding the tobacco industry criminally accountable for its behaviour. However, to date, charging tobacco companies with criminal offences has not been used as a means of changing corporate behaviour and furthering public health objectives. One exception is the criminal charges laid in 2003 by the Royal Canadian Mounted Police related to the tobacco smuggling fraud of the early 1990s.<sup>3</sup>

In Canada litigation against tobacco companies should be encouraged and monitored, as it has been proven to be effective in promoting public health objectives.

## ***Canada Is Playing a Leadership Role***

Canada is one of the riskiest countries in the world for cigarette manufacturers, in terms of their future financial viability. In September 2005, in a unanimous decision, the Supreme Court of Canada found British Columbia's *Tobacco Damages and Health Care Costs Recovery Act* to be constitutional. Six other provinces (Newfoundland and Labrador, Nova Scotia, Manitoba, New Brunswick, Saskatchewan and Ontario) have since passed, or are in the process of passing, similar enabling legislation that gives them the right to sue tobacco companies to recover health care costs. However, only B.C. and New Brunswick have launched lawsuits against tobacco companies using this type of legislation.

The litigation-enabling legislation that these provinces have passed is so strong that some legal analysts suggest that it “stacks the deck” in favour of the provinces in a way that almost guarantees the provinces a successful outcome at trial. It has been estimated that tens, possibly hundreds, of billions of dollars are at stake. If these lawsuits are eventually successful (it will take years before they actually get to trial), Canada will have Big Tobacco in a very financially precarious position. If the tobacco companies are found guilty and are forced by the courts to pay out significant damages, the potential exists essentially to bankrupt the companies, due to the large sums of money involved.

# **The Importance of Litigation Against the Tobacco Industry**

Litigation against those perceived of wrongdoing is an important element of a just society. Throughout its history, the tobacco industry has had a sordid track record. It is an industry that has lied about the risks of its products, lied about addiction, lied about its manipulation of nicotine, lied about its marketing to kids, and lied about the risks of second-hand smoke.<sup>4</sup> The two largest tobacco companies in Canada recently admitted involvement in a tobacco smuggling scheme which defrauded the federal and provincial governments of billions of dollars in taxes.<sup>5</sup> The third largest company in Canada and its executives face criminal charges related to contraband. Critics of litigating against tobacco companies say it is too expensive and rarely achieves the desired results. However, litigation against the industry serves the public interest for a number of reasons and should be pursued, whether in civil or criminal courts, in order to achieve justice and compensation for industry wrongdoing.

## ***The Social Benefits of Tobacco Products Liability Suits***

The tobacco product marketplace is riddled with significant anomalies. One of the most obvious is that the profit margin on cigarettes is much larger than on most other consumer products. However, the use of tobacco products leads to massive third party costs. The costs are borne by taxpayers through their governments, which fund the health care system, and by society at large, due to the lost productivity of citizens who become sick or die prematurely due to tobacco-related diseases. This externalization of costs is perhaps the tobacco industry's greatest coup. Litigation provides governments and individuals with an opportunity to seek compensation for these injustices.

Tobacco products liability suits offer at least six potential social benefits:

1. Increase the cost of tobacco products.
2. Draw public attention to industry practices and the dangers of smoking.
3. Could motivate industry change.
4. Unearth incriminating internal documents through discovery.
5. Provide funding (from verdicts) that could be used to reimburse health-care costs.
6. Could bankrupt the industry, if there were a sufficient number of cases and/or awards/settlements were large enough.<sup>6</sup>

### **1. Increase the Cost of Tobacco Products**

Smoking costs third parties over \$17 billion in health care costs and lost productivity each year in Canada.<sup>7</sup> (This does not include the social costs, such as the impact on a family of losing a parent prematurely to a preventable tobacco-caused death.) Shifting some of those costs to manufacturers through litigation would force an increase in prices. Higher prices have been proven to deter youth from starting to smoke.

## **2. Draw Public Attention to Industry Practices and the Dangers of Smoking**

Informing the public about the tobacco industry's misbehaviour can motivate people to quit using its products. Channelling teen and young adult rebellion against the industry has also been proven to reduce youth uptake. Putting a human face to the harmful effects of smoking increases public understanding of the dangers of tobacco use and makes it harder for smokers to remain in denial about the risks to their own health.

## **3. Motivate Industry Change**

Fear of large punitive damage awards, such as the 2002 *Bullock* case in California, in which a jury awarded \$28 billion to the plaintiff,<sup>8</sup> may motivate the industry to alter its behaviour. The industry could change its behaviour in various ways, for example, by engaging in less deceptive marketing, by ending its outrageous claims that second-hand smoke isn't harmful, or by making its lobbying practices more transparent. Concern about product liability awards is frequently cited by manufacturers of other products as reasons for providing graphic package warnings, altering product designs, or even withdrawing particularly dangerous products from the market. In contrast, 'voluntary' changes by the tobacco industry to date have been modest and mostly cosmetic, but movement is noticeable.

## **4. Make Public Tobacco Company Documents**

Studies of industry misbehaviour within and outside Canada based on internal tobacco company documents have assisted tobacco control efforts around the world. Internal documents have been instrumental in persuading juries to focus on the industry's misdeeds. The availability of documents on-line and in depositories that shed light on tobacco company practices has helped make the industry a political pariah. The end result is better public policy, including more effective legislation and regulation to control the tobacco industry and protect the public from their products.

## **5. Reimburse Health-Care Costs**

Funds obtained through litigation, whether through a court award or settlement, can be used to reimburse individuals and health care plans for injuries and expenses caused by tobacco products. Some states in the U.S. use some of the funds they receive from Medicaid reimbursement cases and the 1998 "Master Settlement Agreement" to fund tobacco control programs.

## **6. Force the Industry to Face the Potential of Bankruptcy**

With large punitive damage verdicts on the rise, there is a possibility that a flood of such cases could bankrupt the industry. The threat of bankruptcy could force the companies to change their behaviour or make their products much less toxic and deadly.

# A Summary of Tobacco-Related Litigation in Canada

## *Litigation Related to Contraband*

### **Imperial and Rothmans Admit Guilt in 1990s Cigarette Smuggling Crimes**

July 31, 2008 – The federal and provincial governments announced that they had reached plea agreements with Canada's two largest tobacco companies, Imperial Tobacco Canada Ltd. (ITL) and Rothmans, Benson & Hedges (RBH) related to their involvement in tobacco smuggling in the late 1980s and early 1990s.

In the 1980s and early 1990s, tax increases led to high cigarette prices, which were successful in driving down smoking rates. While this downward trend pleased public health professionals, it inflicted serious damage on the tobacco companies' bottom lines. As a result, it was alleged that Canada's largest tobacco companies (Imperial, Rothmans and JTI-Macdonald) exported cigarettes duty-free to the U.S. They then worked together with wholesalers and smugglers to smuggle the cigarettes back into Canada, where they were sold tax-free on the black market.

Faced with a smuggling crisis and bad press coverage, the federal and provincial governments caved in and rolled back tobacco taxes. The impact on public health was devastating. A mortality impact assessment done for Health Canada and obtained under the federal *Access to Information Act* predicted that 45,000 future tobacco-caused deaths would occur just from the increase in adolescent smoking in the five years following the tax rollback (from 1994 to 1999).

The comprehensive settlement agreements include four elements:

1. The companies entered guilty pleas.  
The companies signed an Agreed Statement of Facts with the Crown and pled guilty to a single count of violating section 240(1)(a) of the federal *Excise Act*: “aiding persons to sell or be in possession of tobacco products manufactured in Canada that were not packaged and were not stamped in conformity with the Excise Act and its amendments and the Ministerial regulations.”
2. The companies have to pay criminal fines to the federal government.  
The criminal fines are \$200 million for ITL and \$100 million for RBH.
3. The companies entered into civil settlements to resolve all potential civil claims.  
Under the civil settlements, ITL will pay a percentage of annual net sales revenue going forward for 15 years up to a maximum of \$350 million. RBH will pay \$400 million over a 10-year period. The companies were also required to pay \$50 million each before the end of 2008 to help fund the federal government's Contraband Tobacco Enforcement Strategy.



4. The companies agreed to a compliance protocol to help control the contraband market. The companies will establish internal compliance programs, including a “Know Your Customer” program to enhance accountability for the distribution of tobacco throughout the supply chain.

In total, the two companies will pay \$1.15 billion in fines and civil settlements to the federal government and 10 provinces, with the payments based on percentages agreed upon by all the governments. Ontario and Quebec will take the largest portions, because they were most impacted by the smuggling in the 1990s.<sup>9</sup>

The binding Settlement Agreements were negotiated by the Canada Revenue Agency,<sup>10</sup> and are similar to the 2004 agreement reached by the European Union with Philip Morris International, although in that case there was no admittance of guilt.<sup>11 12</sup> In this Canadian case, both ITL and RBH pled guilty in court to a criminal offense, a violation of the federal *Excise Act*.

### **RCMP Criminal Charges Against JTI-Macdonald**

**February 28, 2003** – After a four and a half year criminal investigation, the RCMP charged four tobacco companies with six counts of fraud and one count of conspiracy to commit fraud and to possess proceeds of crime. The defendants include: JTI-Macdonald, Corp. formerly known as RJR-Macdonald, Inc. and several of its subsidiaries, including R.J. Reynolds Tobacco Co., (Delaware), USA; R.J. Reynolds Tobacco International, Inc., (Delaware), USA; Northern Brands International, Inc., (Delaware).

Eight former and current employees were also charged:

- Edward Lang of Naples, Florida (former member of the Board of Directors of RJR-Macdonald, Inc. and former Senior Vice President of Manufacturing for R.J. Reynolds Tobacco Co.),
- Dale Sisel of Gillette, Wyoming (former President and Chief Executive Officer for R.J. Reynolds Tobacco International, Inc.),
- Jaap Uittenbogaard of Jupiter, Florida (former Chief Financial Officer and Vice President of Finance for R.J. Reynolds Tobacco International, Inc. and former Director of Northern Brands International, Inc.),
- Pierre Brunelle of Geneva, Switzerland and the Province of Quebec (former President and Chief Executive Officer of RJR-Macdonald, Inc. and former member of the Board of Directors of RJR- Macdonald, Inc.),
- Paul Neumann of Geneva, Switzerland (former Vice President of Finance for RJR-Macdonald, Inc. and current employee of Japan Tobacco International, Geneva),
- Roland Kostantos of Geneva, Switzerland (former Chief Financial Officer for R.J. Reynolds Tobacco International, Inc. and former Vice President of Finance, Chief Financial Officer, and Vice President of Finance and Administration for RJR-Macdonald, Inc.),

- Stanley Smith of British Columbia (former Vice President of Sales for Canada for RJR- Macdonald, Inc.), and
- Peter MacGregor of Atlanta, Georgia (former Manager of Finance and Administration for Northern Brands).<sup>13</sup>

The Crown alleges that the companies and the individuals conspired to defraud the governments of Canada, Ontario and Quebec of \$1.2 billion in tax revenue between 1991 and 1996. The companies are alleged to have supplied the Canadian black market with Canadian-brand tobacco products manufactured in Canada and Puerto Rico. The RCMP now claims the firms provided the cigarettes to wholesalers “knowing that these products were being smuggled back into Canada and on to the commercial market.”<sup>14</sup>

In January 2006 Stanley Smith reached a deal with the Crown that will likely see him testify against the company and its executives. Smith, a former executive of RJR-Macdonald, and Les Thompson, a former sales representative, have each filed breach of contract lawsuits against the company. The company has essentially abandoned them both, suggesting that they were rogue employees, acting on their own accord.

A preliminary inquiry into the criminal charges laid by the RCMP against JTI-Macdonald took place in a Toronto court throughout 2005 and into February 2006. In May 2007 a judge ruled there was enough evidence against JTI-Macdonald and its former president Edward Lang to bring the case to trial. However, Judge David Fairgrieve of the Ontario Superior Court of Justice cited “insufficient evidence” when he threw out charges against the other six accused. In November 2007 the Crown asked for a judicial review of that decision. Lang and JTI-Macdonald also asked for a review. Arguments were heard in December 2007. Also in December 2007, JTI-Macdonald Corp. abandoned its effort to have the order committing it to trial quashed.

On February 19, 2008, Ontario Superior Court Justice Ian Nordheimer reinstated the fraud and conspiracy charges against the other six accused—Dale Sisel, Jaap Uittenbogaard, Pierre Brunelle, Paul Neumann, Roland Kostantos and Peter MacGregor. The judge refused Mr. Lang’s request to quash the order committing him to trial.

**(New!)** As a result of Justice Nordheimer’s decision, a reconsideration hearing was held before Justice Fairgrieve in May 2008. Fairgrieve has reserved his judgment and the Crown is waiting to hear back from him. In October 2008, *The Montreal Gazette* reported that the provinces and the federal government are trying to negotiate a settlement with JTI-Macdonald, similar to the settlement that was reached with RBH and Imperial Tobacco Canada.<sup>15</sup>

### **Attorney General of Canada Civil Lawsuit**

**August 13, 2003** – The Attorney General of Canada filed suit in the Ontario Superior Court of Justice against JTI-Macdonald and related entities and R.J. Reynolds Tobacco Company and related entities (in total 13 companies) for \$1.5 billion to recover tax losses caused by what it called a “massive conspiracy” to smuggle cigarettes. The government is

seeking to compel the defendants to surrender profits from their actions and to pay damages.<sup>16</sup> However, in 2005, in the *Companies' Creditors Arrangement Act* proceeding (described below), the Attorney General amended and increased the amount of its claim from \$1.5 billion to \$4.3 billion.

An agreement was reached by the parties involved to stay all proceedings in the case. The stay ends if notice is given by one of the parties that it wishes to do so. In January 2007, the court ordered that the case be scheduled for trial no later than December 31, 2008, subject to further order of the court.

**(New!)** “On January 15, 2009, the Court ordered that the deadline for setting the action for trial is January 31, 2011.”<sup>17</sup>

### **Quebec Department of Revenue Actions**

**August 11, 2004** – The Quebec government obtained a court judgment ordering JTI-Macdonald Corp. (JTI-MC) of Toronto to pay nearly \$1.4 billion immediately, the largest assessment for unpaid taxes in the province's history. Under Section 13 of the Quebec *Department of Revenue Act*, Quebec Revenue Minister Lawrence Bergman issued a certificate attesting that the company owed tax money related to smuggling allegations. The certificate was filed Aug. 11 in Quebec Superior Court, triggering an immediately enforceable court judgment in favour of the Department. The certificate covers the period of Jan. 1, 1990 to Dec. 31, 1998.

The government says JTI-MC owes almost \$1.4 billion in unpaid taxes, penalties and interest. The order was accompanied by an order to JTI-MC's customers (retailers who sell cigarettes) to remit to the government any accounts payable to JTI. On Aug. 17, 2004, JTI-MC announced that it had filed for protection under the *Companies' Creditors Arrangement Act* (CCAA).<sup>18</sup> JTI-MC said the action was necessary after the Quebec Ministry of Revenue served an order Aug. 11 demanding immediate payment of \$1.36 billion.

“This order was accompanied by cash seizures from its customers resulting in an immediate deprivation to JTI-MC of about 40 per cent of its Canada-wide revenues,” the company stated in a press release.<sup>19</sup> “In the absence of CCAA protection the effect of these seizures would have unavoidably led to the bankruptcy of JTI-Macdonald.”

In November 2004, JTI-MC filed a motion in the Quebec Superior Court, District of Montreal, seeking a declaratory judgment to set aside, annul and declare inoperative the tax assessment and all ancillary enforcement measures and to require the Quebec Minister of Revenue to reimburse JTI-MC for funds unduly appropriated, along with interest and other relief.<sup>20</sup>

### Six other provinces follow suit

In addition to the claims by the Attorney General of Canada and the province of Quebec, six provinces have filed claims.<sup>21</sup> In total, the provinces and the Attorney General claim that JTI-Macdonald Corp. owes them about \$10 billion, as summarized below:<sup>22</sup>

Canada	\$4,300,000,000
British Columbia	450,000,000
Manitoba	23,000,000
Ontario	1,550,000,000
Quebec	1,360,000,000
New Brunswick	1,495,522,667
Nova Scotia	326,109,000
Prince Edward Island	<u>75,000,000</u>
TOTAL (provinces only)	\$5,279,631,667
TOTAL (federal govt & provinces)	\$9,579,631,667

In the CCAA proceedings, the Canadian government and some of the provincial governments have argued that they can make the same tax and related claims against the R.J. Reynolds Tobacco Company, whose parent company, Reynolds American Inc., was also the parent of RJR-Macdonald at the time its employees and executives were allegedly orchestrating the tobacco smuggling. In a 2007 report to the U.S. Securities and Exchange Commission, Reynolds American indicated that, “To date, none of those provincial governments have filed and served RJR or any of its affiliates with a formal Statement of Claim like the Canadian federal government did in August and September 2003.”

Due to JTI-MC’s successful application for court protection (under the CCAA), it could be a number of years before this case works its way through the courts, and perhaps longer before Canada and the provinces are successful in recouping some or all of the claimed \$10 billion in foregone taxes and other damages arising from the cigarette smuggling and tax evasion crisis of the mid-1990s.

**(New!)** In October 2008, *The Montreal Gazette* reported that the Quebec government is in court trying to reverse transactions of Japan Tobacco Inc. (JTI). Following its purchase of RJR-Macdonald from Reynolds American Inc. in 1999, JTI transferred ownership of JTI-Macdonald offshore. The Quebec government claims the transactions that transferred ownership overseas were designed to dodge government claims against the company.<sup>23</sup>

## **Tobacco Product Liability Litigation in Canada**

***“In our opinion, the situation in British Columbia is the most risky of any litigation situation for the industry outside the U.S. It will set a precedent, one way or the other, for the rest of Canada, and potentially further afield.”***<sup>24</sup>

- “The Simple Guide to Litigation – June 2004,”  
By Smith Barney (a division of Citigroup Global Markets Inc.)

### **British Columbia**

A legal analysis by Physicians for a Smoke-Free Canada noted: “As one of the most progressive anti-tobacco governments in the country, British Columbia was the first province to sue the tobacco companies.”<sup>25</sup> B.C.'s lawsuit names Imperial Tobacco Canada, Rothmans, Benson & Hedges, JTI-Macdonald, the Canadian Tobacco Manufacturers' Council and several foreign companies (including BAT, Philip Morris and R.J. Reynolds). It alleges tobacco manufacturers failed to warn consumers of the dangers of smoking, marketed light cigarettes as safe, and targeted children in their advertising and marketing. The government seeks to recover \$10 billion in health care costs from tobacco companies.

B.C. filed its suit under the *Tobacco Damages Recovery Act* of 1998. Before litigation could begin, the tobacco companies challenged the constitutionality of the Act, stating that the attempt to lump together its corporate parents with their Canadian subsidiaries was impermissibly extra-territorial. The Supreme Court of British Columbia, in finding for the manufacturers, stated that the "enterprise liability" feature of the 1998 Act was impermissibly extra-territorial in its effect. As a consequence, the B.C. Government's lawsuit, which was entirely dependent on the legislation, was dismissed. However, the Court upheld the power of the Legislature to enact all of the other essential features of the 1998 Act.

In the spring 2000 session of the B.C. legislature, a new Act, the *Tobacco Damages and Health Care Costs Recovery Act*, was passed.<sup>26</sup> The enterprise liability provisions were removed but the central features of the 1998 Act were retained. On January 24, 2001, the government used the 2000 Act to again file against the tobacco companies. The manufacturers countered by filing a constitutional challenge to the validity of the new Act on virtually the same grounds as were raised in the first challenge.<sup>27</sup>

In June, 2003, the B.C. Supreme Court found that the 2000 Act was unconstitutional because it had another impermissible extra-territorial effect. This conclusion was based on the view that the government's claim could not include the cost of treating B.C. residents who had smoked in whole or in part outside the province. But on May 10, 2004, the B.C. Court of Appeal unanimously upheld the constitutionality of the new Act. The decision gave the province the green light to proceed with the lawsuit. However, once again, the tobacco companies appealed. The Supreme Court of Canada heard the appeal in June 2005. Eight provinces (Newfoundland and Labrador, Nova Scotia, New

Brunswick, Ontario, Quebec, Manitoba, Saskatchewan and Alberta) intervened to support B.C.'s legislation. In September 2005, in a unanimous decision, the Supreme Court found the B.C. Act to be constitutional.

The 2005 Supreme Court decision did not mark the end of the efforts by the international tobacco companies to get out of the lawsuit. On February 1, 2006, the companies tried again to have the lawsuit dismissed, arguing the Act was constitutionally inapplicable. In another unanimous judgment, the B.C. Court of Appeal held that the foreign manufacturers must stand trial.<sup>28</sup> The foreign companies then appealed that decision to the Supreme Court of Canada, who ruled against hearing the appeal. As a result, the following companies were denied exclusion from the lawsuit: BAT Industries Plc and its subsidiary British American Tobacco (Investments) Ltd.; Reynolds American Inc.'s R.J. Reynolds Tobacco Co., as well as R.J. Reynolds Tobacco International, Inc; Altria Group Inc.'s Philip Morris International Inc. and Philip Morris Inc.; Carreras Rothmans Ltd.; and Ryesekks Plc.<sup>29</sup> British Columbia could see a tremendous financial increase in any damages the tobacco companies are eventually made to pay due to the decision by the Supreme Court of Canada to include the foreign parent companies in the lawsuit.

David Laundry, a spokesperson for the Canadian Tobacco Manufacturers' Council, said that if the government is eventually successful in suing the companies, the Canadian companies won't be able to afford to pay the billions of dollars being sought.<sup>30</sup> Citigroup, one of the world's largest banks, says the B.C. suit, if successful, has the chance to bankrupt BAT's Canadian business (Imperial Tobacco).<sup>31</sup> But former B.C. Health Services Minister Colin Hansen said he feels little sympathy for tobacco companies or for their claims of lack of money, stating that he'd "like to see them go out of business."<sup>32</sup> The case was watched closely by other provinces, and there are now six provinces (Newfoundland and Labrador, Nova Scotia, Manitoba, New Brunswick, Saskatchewan, and Ontario) that have passed or are in the process of passing virtually identical health care costs recovery legislation.

**(New!)** A September 2011 date has been set for the trial to begin.<sup>33</sup> The tobacco companies tried to enjoin the federal government with a Third Party Notice—claiming the government should also be liable in the case—but the court ruled against the companies. However, Imperial has appealed this decision and that appeal was consolidated with a similar appeal in the Knight case (see below) and is scheduled to be heard during the week of June 1, 2009.<sup>34</sup> Trying to blame other entities for their wrongdoing has long been a strategy used by tobacco companies. This most recent attempt has thus far been not successful.

## **New Brunswick**

Virtually identical to B.C.'s legislation, New Brunswick's version of the *Tobacco Damages and Health-care Costs Recovery Act*<sup>35</sup> received Royal Assent on June 22, 2006. In December 2006, the New Brunswick Attorney General issued a call for proposals for a law firm or consortium of law firms to represent the province in its suit against the tobacco industry.<sup>36</sup>

On March 13, 2008, New Brunswick officially filed its lawsuit against the tobacco companies, becoming only the second province in Canada to do so. The government has retained a consortium of Canadian and American lawyers and law firms on a contingency fee basis, meaning the province will not pay any legal fees up front. If the lawsuit is eventually successful, the consortium will cover its costs and fees by taking a percentage (12%-22%) of the amounts received by the province as a result of the litigation.<sup>37 38</sup>

Health Minister Michael Murphy explained the government's rationale for filing the lawsuit: "While we continue our efforts to keep people from smoking and helping those who do to quit, we will also work to ensure that tobacco companies are made liable for the damage to the health of New Brunswickers, and the financial burden put on taxpayers for health-care costs. That is something this government is committed to."<sup>39</sup>

Attorney General T.J. Burke added: "Tobacco companies must be held accountable, and we intend to be at the forefront of doing just that. With proclamation of the legislation, we are now moving ahead aggressively with the lawsuit."<sup>40</sup>

### **Newfoundland and Labrador**

On May 24, 2001 the Newfoundland and Labrador government passed the *Tobacco Health Care Costs Recovery Act*,<sup>41</sup> which permits the government to sue tobacco companies for the cost of treating smoking-related illnesses, estimated to be \$360 million a year. It was anticipated that tobacco manufacturers would challenge the legislation, as they had challenged similar legislation in B.C., and for this reason, the government referred the constitutionality of the Act to the Supreme Court of Newfoundland and Labrador (Court of Appeal) in October 2002.<sup>42</sup> British Columbia and Saskatchewan intervened in support of the Newfoundland and Labrador legislation. Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp. intervened to oppose the validity of the legislation. However, the reference case will not be heard because the issue was resolved by the Supreme Court of Canada when it ruled in favour of the B.C. legislation.

### **Nova Scotia**

On December 8, 2005, Nova Scotia's Bill 222, the *Tobacco Damages and Health-care Costs Recovery Act*,<sup>43</sup> received Royal Assent. It is virtually identical to B.C.'s legislation.

### **Manitoba**

The *Tobacco Damages and Health Care Costs Recovery Act*<sup>44</sup> received first reading on March 16, 2006 and Royal Assent on June 14, 2006. It, too, is virtually identical to B.C.'s legislation.

## Saskatchewan

With tobacco-related health care costs estimated at \$145 million annually, Saskatchewan *The Tobacco Damages and Health Care Costs Recovery Act*<sup>45</sup> on November 21, 2006. The Act received Royal Assent on April 26, 2007.

## Ontario

In December 1999, the Ontario government passed the *Ministry of Health and Long-Term Care Statute Law Amendment Act, 1999*. The Act created an independent cause of action for Ontario, which it could use on its own behalf to take action against a person or company to recover costs related to paying for Medicare as a result of negligence (or wrongful act or omission) by that person or company.<sup>46</sup>

Ontario's legislation is far less detailed and comprehensive than the B.C.-style legislation. From 2006 through early 2009, public health advocates in Ontario worked to encourage the government to pass legislation similar to B.C.'s.<sup>47</sup>

**(New!)** Ontario's Attorney General Chris Bentley announced on March 4, 2009, that Ontario was following B.C.'s lead to recover tobacco health costs.<sup>48</sup> Bentley introduced *Bill 155, Tobacco Damages and Health Care Costs Recovery Act* in the Legislative Assembly of Ontario.<sup>49</sup> In a press release, the government said the legislation would "allow the government to sue tobacco companies for alleged wrongdoing to recover past and ongoing health care costs borne by Ontario taxpayers due to tobacco-related illness." David Caplan, Minister of Health and Long-Term Care, said that since tobacco-related health care costs total \$1.6 billion annually in Ontario, the costs affect all of the province's residents: "This legislation, if passed, would provide our government with an avenue to address a costly drain on the health care system we all depend on."<sup>50</sup> Bill 155 was being debated in the Legislative Assembly and had not yet passed Second Reading; however, it appeared to have all party support.

## Quebec

In June 2001, the Quebec government established a special committee to examine the feasibility of a health care cost recovery lawsuit against the industry and possible legal approaches and to provide recommendations.<sup>51</sup> The outcome of the committee's work has not been made public.



## **Class Action Lawsuits**

### **Sparkes**

On July 20, 2004, a Newfoundland law firm filed a class action lawsuit against tobacco giant Imperial Tobacco, claiming the Montreal-based company deceived its customers in its marketing of 'light' and 'mild' cigarettes.<sup>52</sup> “It's on behalf of all those people who, in the belief that light cigarettes were a more healthful alternative, smoked light cigarettes anywhere in the last 30 years or so,” said Ches Crosbie, the plaintiff's lawyer.<sup>53</sup>

Crosbie filed the lawsuit in Newfoundland Supreme Court on behalf of Victor Sparkes of Conception Bay South, Newfoundland. Sparkes, a former smoker, said he hasn't developed any obvious illnesses as a result of smoking for 15 years. He said he smoked light cigarettes because he believed they could delay the onset of smoking-related illnesses.

The lawsuit, which is similar to one filed in 2003 in British Columbia, isn't seeking compensation for people who suffered health problems due to smoking. Instead, the suit is based on Newfoundland's *Trade Practices Act*, a statute enacted in the 1970s as part of pro-consumer reforms. “We're saying it was a deceptive trade practice and forbidden by the act,” said Crosbie. The suit will seek the refund of money made from the sales of 'light' and 'mild' cigarettes since their introduction in the 1970s. Crosbie said hundreds of millions of dollars are at stake.<sup>54</sup>

Seeking reimbursement for money spent on defective products is a tactic used successfully in *Susan Miles, et al. v. Philip Morris, Inc.*,<sup>55</sup> a landmark American consumer fraud class action case, filed in 2000. Philip Morris was initially ordered to pay \$10.1 billion—\$7.1 billion in compensatory damages to the class and another \$3 billion in punitive damages to the State of Illinois—after selling defective and fraudulent products i.e. 'light' cigarettes, which smokers purchased because they thought they were healthier than regular cigarettes. The Illinois Supreme Court decertified the class action in 2005. The fact it was overturned in the U.S. does not prevent courts in a different jurisdiction, such as Canada, from awarding large sums of money related to wrongs committed by companies here.

As it also did in the Knight class action (see below), Imperial Tobacco Canada filed a Third Party Notice against the federal government in the Sparkes action. Imperial argues that the federal government played a role in the 'light' and 'mild' consumer fraud by encouraging consumers to consider choosing brands of cigarettes with lower deliveries of tar and nicotine and by encouraging the tobacco industry to develop and promote these products.

**(New!)** On Dec. 29, 2008, in the Supreme Court of Newfoundland and Labrador, Justice James P. Adams dismissed the class action lawsuit, on the grounds that the plaintiff had not established cause. In February 2009, the plaintiff's lawyers sought leave to appeal the decision to the Newfoundland Court of Appeal, but a decision had not yet been made.

## **Létourneau and Conseil québécois**

In Quebec, after six years of preliminary motions, the hearing on the certification of two class action suits (*Létourneau* and *Conseil québécois*) finally took place in November 2004, in Quebec Superior Court in Montreal. During the two-week hearing, the tribunal was charged with deciding whether it is possible to sue Canada's three main tobacco companies. A decision was rendered February 21, 2005 by Justice Pierre Jasmin, who certified the two cases to proceed as class actions. Pursuant to the rules of procedure in Quebec, the tobacco companies cannot appeal the judgment respecting certification.

The two class actions will be argued at the same time, but they remain two separate class actions. Lawyers for Cécilia Létourneau and the Conseil québécois cannot agree with the tobacco company lawyers on when the trial should begin. The plaintiffs would have liked the trial to begin in 2007, while the tobacco companies are trying to postpone it to at least 2009. In its preliminary announcement to shareholders reporting on year-end results for 2007, British American Tobacco said: "This litigation is expected to take several years to proceed to trial."<sup>56</sup> When the class actions eventually do make it to trial, they will be heard in Quebec Superior Court in Montreal. The judge who will hear the cases was to have been Carole Julien, but that has now changed to Brian Riordan.

**(New!)** Discovery is ongoing, but no trial date has been set.

**Cécilia Létourneau v. JTI-Macdonald Corp., Imperial Tobacco Canada Ltd. and Rothmans, Benson & Hedges Inc.**<sup>57</sup>: Christine Fortin and Joseph Mandelan, both of Montreal, along with Cécilia Létourneau of Rimouski, say cigarette manufacturers have known for decades that their products are harmful and addictive. In 1998 lawyers from the law firm Trudel & Johnson representing the three smokers asked the Quebec Superior Court to hear the suit against Imperial Tobacco Ltd., Rothmans, Benson & Hedges Inc. and RJR Macdonald Inc. (now JTI-Macdonald). The claim was filed on behalf of all Quebecers who, at the time of service of the motion (September 10, 1999), were addicted to the nicotine in cigarettes manufactured by the respondents and who remain addicted; and the legal heirs of persons included in the group at the time of service of the motion but who later died without first quitting smoking.<sup>58</sup> The claim seeks \$5,000 for each person included in the group plus compensation for specific damages,<sup>59</sup> for a total of \$17.8 billion.<sup>60</sup>

**Conseil québécois sur le tabac et la santé and Jean-Yves Blais v. JTI-Macdonald Corp., Imperial Tobacco Canada Ltd. and Rothmans, Benson & Hedges Inc.:** The class action suit launched by the Quebec Council on Tobacco and Health is seeking compensation for victims of cancers of the lung, larynx and throat and for emphysema sufferers, as well as for the legal heirs of deceased persons in the group. The class action suit is seeking \$5 billion in damages.<sup>61</sup>

## **Ragoonanan Estate v. Imperial Tobacco Canada Ltd.**

This class action deals specifically with fire-safe cigarettes. After a house fire caused by a smouldering cigarette killed three young people on January 18, 1998, relatives of the

victims brought an action against Imperial Tobacco Canada, Rothmans, Benson & Hedges, and JTI-Macdonald.<sup>62</sup> The three children who died were aged 4, 15 and 16 years.

The claim alleges that the injuries, death and property loss suffered in the fire could have been avoided or reduced if the defendants' cigarettes had been fire-safe. The claims against RBH and JTI-Macdonald were dismissed, as they had no immediate connection to the fire at issue (the cigarette was made by Imperial Tobacco). The plaintiffs are attempting to have the suit certified as a class action; which would include relatives of victims of other cigarette-caused fires. The claims in the case include a breach of the company's duty to produce a safe product and of their duty to warn of hazards of their products.<sup>63</sup> The class was denied certification on October 31, 2005 by Ontario Superior Court Judge Maurice Cullity.<sup>64</sup>

**(New!)** The decision denying certification was appealed by the plaintiffs to the Divisional Court, and was heard in January 2008.<sup>65</sup> On April 30, 2008 the Divisional Court released its Reasons for Judgment dismissing the plaintiffs' appeal. The plaintiffs are awaiting a decision by the Divisional Court on costs and are considering seeking leave to appeal.

### **Caputo et al v. Imperial Tobacco et al**

On January 13, 1995, Canada's first proposed class action on behalf of nicotine-dependent and otherwise injured smokers, *Caputo et al v. Imperial Tobacco et al*,<sup>66</sup> was filed. The lawsuit proposed to benefit millions of Ontario smokers and their families. The allegations were similar to those being levelled at the defendants' parent and affiliate companies in other jurisdictions—negligence, misrepresentation, conspiracy, deception, suppression of research, and product liability. However, in February 2004, the motion to have the action certified was not accepted by the court. Superior Court Justice Warren Winkler ruled that the suit was too broad and did not meet the requirements for certification.<sup>67</sup>

There was an outstanding cost motion brought by the defendants, wherein the defendants were seeking \$1.2 million from the plaintiffs' solicitors. On March 8, 2005, Justice Winkler ruled that the defendants were not entitled to any costs related to the nine years of litigation as it involved public interest and health. The court also dismissed the defendants' motion to recover costs against the plaintiffs' lawyers, holding that:

[a]ccess to justice and other laudable goals of the CPA [*Class Proceedings Act*] will only [be] served as long as there are counsel willing to take risks in order to advance the cause of plaintiffs of modest means or modest claims.... The "chilling effect" of inordinate or improperly founded costs awards against the plaintiffs or their counsel will likely have the effect of rendering the goals underlying the CPA [including defendant behaviour modification] unachievable.<sup>68</sup>

**(New!)** The action has since been discontinued by the plaintiffs.

## **Knight v. Imperial Tobacco**

On May 8, 2003, Vancouver law firm Klein Lyons filed a class action suit in the Supreme Court of British Columbia on behalf of smokers of 'light' and 'mild' cigarettes in B.C. The Statement of Claim alleges that Imperial Tobacco Canada, which manufactures du Maurier, Player's and Matinée brand cigarettes, knowingly deceived smokers into believing 'light' and 'mild' cigarettes were less harmful than regular cigarettes.<sup>69</sup> BC resident Kenneth Knight, who smoked a pack and a half of cigarettes for 17 years, is not seeking compensation for personal injuries sustained through tobacco use. Rather, he is asking the court for a permanent injunction to stop Imperial Tobacco from marketing or selling 'light' or 'mild' cigarettes. Knight is also seeking a refund for all the money he and any other members of the class paid to purchase the allegedly misrepresented cigarettes. The law firm estimates that compensation and damages could run into the hundreds of millions of dollars. The B.C. advocacy group Airspace Action on Smoking and Health is encouraging smokers and former smokers to join in the class action suit.

On April 30, 2004, Imperial Tobacco Canada filed its Statement of Defence and also filed a Third Party Notice against the Attorney General of Canada. The Third Party Notice seeks to force the federal government to participate in the case and to reimburse Imperial any amount that the defendant is ordered to pay.<sup>70</sup>

A certification hearing for the proposed class action was heard in October 2004. Lawyers representing Kenneth Knight, Imperial Tobacco Canada and Health Canada all presented. On February 8, 2005, the B.C. Supreme Court certified the class action. Both the Government of Canada and Imperial Tobacco appealed the decision to certify the class. The appeal was heard before a panel of judges at the B.C. Court of Appeal in February 2006. On May 11, 2006, the Court upheld the class action certification, but the judgment narrowed the scope of the class action somewhat. Originally the Class Period approved was from July 5, 1974 until the opt-out date set by the Court.<sup>71</sup> The new judgment effectively reduced the Class Period to 1997 (from 1974) until trial, reducing by 23 years the period from which potential claimants could be drawn.<sup>72</sup> This significantly reduces the potential damages payable should any of the defendants be found guilty.

In addition to its opposition to class certification, the federal government tried to be removed as a third party. Health Canada's chances of being removed were increased by the decision of the B.C. Court of Appeal to limit the Class Period from 1997 until trial. The federal *Tobacco Act* has been in place that entire time and it is harder to sue the government when it is acting under a single statute. Furthermore, the Act includes the provision that its labelling regulations do “not affect any obligation of a manufacturer or retailer at law or under an Act of Parliament or of a provincial legislature to warn consumers of the health hazards and health effects arising from the use of tobacco products or from their emissions.”<sup>73</sup>

In July 2007 the federal government's motion to strike out the Third Party Notice issued against them by Imperial was granted.<sup>74</sup> However, it is under appeal by Imperial.<sup>75</sup>

**(New!)** In January 2009, both sides were scheduled to appear in the Court of Appeal to address Imperial's attempt to have the federal government named as a third party in the case, but both the defendant and the government requested more time and agreed to move that appearance back to June 1, 2009.

## ***Individual Product Liability Cases***

### **Spasic**

On May 1, 1997, *Spasic v. Imperial Tobacco et al*<sup>76</sup> was filed against Imperial Tobacco and Rothmans, Benson & Hedges for millions of dollar in damages. A second suit, *Spasic Estate v. B.A.T. Industries p.l.c.*<sup>77</sup>, was brought against British American Tobacco and its Montreal subsidiary, Imperial Tobacco Canada, in September 1997 after new evidence was revealed about the relationship between the companies. Mirjana Spasic died of smoking-related lung cancer in February 1998, but her estate continues to pursue both lawsuits.<sup>78</sup>

The suits claim the defendant tobacco companies were negligent and deceitful in their manufacture and distribution of cigarettes and conspired together to deceive the public about the dangers of cigarettes. In addition to these arguments that are traditionally used against tobacco companies, the suits also claim intentional spoliation of evidence—a claim that the tobacco companies had destroyed evidence of their tortious actions.<sup>79</sup>

The defendants have managed to drag out the proceedings for years, but a trial date is finally in sight. The *Spasic v. Imperial* case has been transferred to Toronto from the small community of Milton, Ontario. The case continues to inch closer to trial at the Superior Court of Justice in Toronto.

The plaintiff brought a motion which was heard October 25, 2006 to compel the defendants to serve sworn affidavits of documents and to approve a confidentiality order. The Court granted the order sought by the plaintiff and the defendants have provided lists of documents disclosing relevant evidence.

**(New!)** The action is continuing with various pre-trial matters being addressed related to document production.

## ***Industry Suits Against Governments***

### **Quebec Bar Owners v. Le Procureur Général du Québec**

On September 23, 2005, bar owners Peter Sergakis (Placements Sergakis and Complexe Sky) and Voula Demopoulos (Les Billards Scratch) filed a motion before Quebec Superior Court opposing numerous sections of the province's new *Tobacco Act* (introduced in June 2005), suggesting that elements of the legislation were too restrictive and violated individual freedoms. They were represented by lawyer Julius Grey, who specializes in constitutional law.

On December 1, 2005, the Attorney General of Quebec filed a motion of inadmissibility in an attempt to invalidate the bar owners' motion without trial. On April 10, 2006, Justice Pierre Sénécal of the Superior Court of Quebec dismissed the Attorney General's motion. On May 3, 2006, the Attorney General filed a motion before the Court of Appeal of Quebec in an attempt to reverse Justice Sénécal's decision. On May 9, 2006, Justice André Brassard of the Court of Appeal dismissed the motion.

Quebec's *Tobacco Act* came into force on May 31, 2006, prohibiting smoking in bars and restaurants. Less than two months later, on July 25, lawyer Julius Grey filed an injunction motion to stay the prohibition until the Superior Court rendered its decision regarding the validity of the *Tobacco Act*. On November 20, 2006, Justice Hélène Le Bel dismissed Grey's motion for an injunction.

A trial date for the bar owners' constitutional challenge of the *Tobacco Act* was scheduled for May 2009.

**(New!)** On March 31, 2009, press releases issued by both the Quebec Ministry of Health and Social Services and the Quebec Coalition for Tobacco Control announced the fact that Sergakis had abandoned his constitutional challenge.<sup>80 81</sup>

### **Grand River Enterprises v. Her Majesty The Queen in Right of Canada**

On July 14, 2008, Grand River Enterprises (GRE), the largest First Nations-owned and -operated cigarette manufacturer in Canada, and four of its shareholders, filed a lawsuit in the Ontario Superior Court of Justice against the Government of Canada. The statement of claim alleges that the government has failed to enforce laws and prevent contraband tobacco on First Nations reserves.

GRE is seeking \$1.5 billion in damages, an amount equal to all federal tobacco taxes paid by the company since 1997. GRE also seeks damages for the losses in market share and sales it has suffered as a result of the growth in the contraband market. At times the contraband market has included counterfeit versions of two of its most popular brands, which are even available for sale on the Six Nations reserve where the company is located.

The federal government is essentially being sued for failing to enforce federal tobacco tax laws on reserves.

The statement of claim against the federal government notes that GRE has filed a separate case in the Tax Court of Canada, which challenges the ability of the federal government to apply tobacco taxes to GRE. By law, federal tobacco taxes apply under all circumstances, including to on-reserve manufacturers, but in complete contradiction of its other suit, GRE is contesting this law.

It appears as though the company and its shareholders are using these seemingly contradictory legal arguments as a strategy to ensure success, one way or the other.



## References

- <sup>1</sup> Collishaw N. "From Montreal to Minnesota: Following the Trail of Imperial Tobacco's Documents." Physicians for a Smoke-Free Canada. September 1999. p. 2. [www.smoke-free.ca/pdf\\_1/MONTMINNov1.pdf](http://www.smoke-free.ca/pdf_1/MONTMINNov1.pdf). Accessed 28 March 2008.
- <sup>2</sup> *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. <http://scc.lexum.umontreal.ca/en/1995/1995rcs3-199/1995rcs3-199.html>. Accessed 28 March 2008.
- <sup>3</sup> Royal Canadian Mounted Police. "RCMP Lays Criminal Charges Against Canadian Tobacco Company." Press Release. 28 February 2003.
- <sup>4</sup> United States District Court For the District of Columbia. United States of America et al, v. Philip Morris USA Inc., et al. Final Opinion: August 17, 2006. Civil Action No. 99-2496 (GK). [www.usdoj.gov/civil/cases/tobacco2/amended%20opinion.pdf](http://www.usdoj.gov/civil/cases/tobacco2/amended%20opinion.pdf). Accessed March 2009.
- <sup>5</sup> Canada Revenue Agency. "Federal and provincial governments enter into civil settlement agreements with two tobacco companies." Press Release. 31 July 2008. [www.cra-arc.gc.ca/nwsrm/rlss/2008/m07/nr080731b-eng.html](http://www.cra-arc.gc.ca/nwsrm/rlss/2008/m07/nr080731b-eng.html). Accessed February 2009.
- <sup>6</sup> Tobacco Control Resource Centre, Inc. "Types and Uses of Tobacco Litigation." PowerPoint Presentation. Slides 27-33. <http://tc.bmjournals.com/content/vol11/issue3/images/data/DC1/TCRC.zip>. Accessed 28 March 2008.
- <sup>7</sup> Rehm et al. "The Costs of Substance Abuse in Canada 2002." Canadian Centre on Substance Abuse. March 2006. [www.ccsa.ca/NR/rdonlyres/18F3415E-2CAC-4D21-86E2-CEE549EC47A9/0/ccsa0113322006.pdf](http://www.ccsa.ca/NR/rdonlyres/18F3415E-2CAC-4D21-86E2-CEE549EC47A9/0/ccsa0113322006.pdf). Accessed 28 March 2008.
- <sup>8</sup> \*Note: A judge later reduced the award to \$28 million. "Tobacco Lawsuit Award Slashed." CBSNEWS.com. 19 December 2002. [www.cbsnews.com/stories/2002/10/04/national/main524400.shtml](http://www.cbsnews.com/stories/2002/10/04/national/main524400.shtml). Accessed 28 March 2008.
- <sup>9</sup> For more information, see: Canada Revenue Agency. "Federal and provincial governments enter into civil settlement agreements with two tobacco companies." Press Release. 31 July 2008. [www.cra-arc.gc.ca/nwsrm/rlss/2008/m07/nr080731b-eng.html](http://www.cra-arc.gc.ca/nwsrm/rlss/2008/m07/nr080731b-eng.html). Accessed February 2009.
- <sup>10</sup> Canada Revenue Agency. "Comprehensive settlement agreements between federal and provincial governments and Imperial Tobacco Canada Ltd. and Rothmans, Benson and Hedges, Inc." 31 July 2008. <http://www.cra-arc.gc.ca/gncy/tbcc/menu-eng.html>. Accessed February 2009.
- <sup>11</sup> The European Commission. "The European Commission and Philip Morris International Sign 12-year Agreement to Combat Contraband and Counterfeit Cigarettes." Press Release. 9 July 2004. <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/882&format=HTML&aged=1&language=EN&guiLanguage=fr>. Accessed February 2009.
- <sup>12</sup> The European Commission. "Anti-Contraband and Anti-Counterfeit Agreement and General Release." 9 July 2004. [http://ec.europa.eu/anti\\_fraud/budget/agreement.pdf](http://ec.europa.eu/anti_fraud/budget/agreement.pdf). Accessed February 2009.
- <sup>13</sup> Royal Canadian Mounted Police. "RCMP Lays Criminal Charges Against Canadian Tobacco Company." Press Release. 28 February 2003.
- <sup>14</sup> Ibid.
- <sup>15</sup> *The Gazette*. "Settlement too easy on big tobacco, group says." 8 October 2008. [www2.canada.com/montrealgazette/news/story.html?id=1691403e-4be0-4e39-8d39-ce2953d2f10e](http://www2.canada.com/montrealgazette/news/story.html?id=1691403e-4be0-4e39-8d39-ce2953d2f10e). Accessed February 2009.
- <sup>16</sup> Department of Justice Canada. "Government of Canada Announces Legal Action Against Tobacco Companies." Press Release. 13 August 2003. [www.justice.gc.ca/en/news/nr/2003/doc\\_30962.html](http://www.justice.gc.ca/en/news/nr/2003/doc_30962.html). Accessed 28 March 2008.

## References Continued

- <sup>17</sup> Reynolds American Inc. “Form 10-K.” 23 February 2009. Notes to Consolidated Financial Statements. p. 123. <http://files.shareholder.com/downloads/RAI/628142574x0xS950144-09-1505/1275283/filing.pdf>. Accessed March 2009.
- <sup>18</sup> Companies' Creditors Arrangement Act. <http://laws.justice.gc.ca/en/c-36/35512.html>. Accessed 28 March 2008.
- <sup>19</sup> JTI-Macdonald Corp. “JTI-Macdonald Corp. Granted Court Protection to Continue Business - Following a \$1.36 billion claim by Revenue Quebec.” Press Release. 24 August 2004. [www.jti.co.jp/JTI\\_E/Release/04/20040824.html](http://www.jti.co.jp/JTI_E/Release/04/20040824.html). Accessed 28 March 2008.
- <sup>20</sup> Reynolds American Inc. “Form 10-K.” 27 February 2007. Notes to Consolidated Financial Statements. EX-99.1, Miscellaneous Exhibit. p. 55. [www.secinfo.com/dsVsf.u1Jq.t.htm](http://www.secinfo.com/dsVsf.u1Jq.t.htm). Accessed 28 March 2008.
- <sup>21</sup> Only two parties have actually initiated civil litigation against JTI-Macdonald—(Attorney General of Canada and Quebec Ministry of Revenue. The other provinces have filed claims in the claims process, but have not yet technically filed suit.
- <sup>22</sup> Eighth Report of the Monitor, In the matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended and in the matter of JTI-Macdonald Corp., Ontario Superior Court of Justice. Court File No. 04 CL 5530. 12 July 2005. [www.blcCanada.com/jti/documents/Eighth%20Report\\_final\\_Jul12-05.pdf](http://www.blcCanada.com/jti/documents/Eighth%20Report_final_Jul12-05.pdf). Accessed 28 March 2008.
- <sup>23</sup> *The Gazette*. “Settlement too easy on big tobacco, group says.” 8 October 2008. [www2.canada.com/montrealgazette/news/story.html?id=1691403e-4be0-4e39-8d39-ce2953d2f10e](http://www2.canada.com/montrealgazette/news/story.html?id=1691403e-4be0-4e39-8d39-ce2953d2f10e). Accessed February 2009.
- <sup>24</sup> Smith Barney (a division of Citigroup Global Markets Inc.). “The Simple Guide to Litigation – June 2004.”
- <sup>25</sup> Meldrum H. “Big Tobacco Big Responsibilities: The Basic Principles of Civil and Criminal Liability for Canadian Corporations.” Prepared for Physicians for a Smoke-Free Canada. 2002. p. 43.
- <sup>26</sup> Government of British Columbia. *Tobacco Damages and Health Care Costs Recovery Act, S.B.C. 2000*. Received Royal Assent on July 6, 2000. [www.qp.gov.bc.ca/statreg/stat/T/00030\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/T/00030_01.htm). Accessed 28 March 2008.
- <sup>27</sup> Ibid.
- <sup>28</sup> *British Columbia v. Imperial Tobacco Canada Ltd.*, 2006 BCCA 398. Court File No. CA033179-CA033188. 15 September 2006. [www.courts.gov.bc.ca/jdb-txt/ca/06/03/2006bccca0398.htm](http://www.courts.gov.bc.ca/jdb-txt/ca/06/03/2006bccca0398.htm). Accessed 28 March 2008.
- <sup>29</sup> Randall P. “Canada refuses foreign tobacco appeal on lawsuit.” Reuters. 5 April 2007. [www.reuters.com/article/consumerproducts-SP/idUSN0541508920070405](http://www.reuters.com/article/consumerproducts-SP/idUSN0541508920070405). Accessed 26 March 2008.
- <sup>30</sup> Meissner D. “B.C. plans \$10-billion tobacco lawsuit after appeal court upholds law.” Canadian Press. 20 May 2004. [www.medbroadcast.com/health\\_news\\_details.asp?news\\_id=4117&news\\_channel\\_id=1004](http://www.medbroadcast.com/health_news_details.asp?news_id=4117&news_channel_id=1004). Accessed 28 March 2008.
- <sup>31</sup> Spielman A, Schaeufele N. “Canadian Court WILL Hear Appeal on Critical Case.” A report by Smith Barney (a division of Citigroup Global Markets Inc.). 16 December 2004.
- <sup>32</sup> Meissner D. “B.C. plans \$10-billion tobacco lawsuit after appeal court upholds law.” Canadian Press. 20 May 2004. [www.medbroadcast.com/health\\_news\\_details.asp?news\\_id=4117&news\\_channel\\_id=1004](http://www.medbroadcast.com/health_news_details.asp?news_id=4117&news_channel_id=1004). Accessed 28 March 2008.

## References Continued

- <sup>33</sup> British American Tobacco. "Annual Report 2008." p. 171. March 2009. [www.bat.com/group/sites/uk\\_3mnfen.nsf/vwPagesWebLive/DO52AK34/\\$FILE/medMD7QMM9J.pdf?openement](http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO52AK34/$FILE/medMD7QMM9J.pdf?openement). Accessed 31 March 2009.
- <sup>34</sup> Ibid.
- <sup>35</sup> New Brunswick. *Tobacco Damages and Health-care Costs Recovery Act*. [www.gnb.ca/legis/bill/pdf/55/3/Bill-05.pdf](http://www.gnb.ca/legis/bill/pdf/55/3/Bill-05.pdf). Accessed 28 March 2008.
- <sup>36</sup> Bissett K. Canadian Press. "N.B. pushes ahead with tobacco suit." *The Brantford Expositor*. 22 December 2006. p. A11.
- <sup>37</sup> Government of New Brunswick. "Lawyers retained for tobacco lawsuit." Press Release. 12 September 2007. [www.gnb.ca/cnb/news/jus/2007e1138ju.htm](http://www.gnb.ca/cnb/news/jus/2007e1138ju.htm). Accessed 17 March 2008.
- <sup>38</sup> Government of New Brunswick. "Province files lawsuit against the tobacco industry." Press Release. 8 March 2008. <http://www.gnb.ca/cnb/news/he/2008e0305he.htm>. Accessed 17 March 2008.
- <sup>39</sup> Ibid.
- <sup>40</sup> Ibid.
- <sup>41</sup> Government of Newfoundland and Labrador. *Tobacco Health Care Costs Recovery Act*. Received Royal Assent on May 24, 2001. <http://assembly.nl.ca/Legislation/sr/statutes/t04-2.htm>. Accessed 28 March 2008.
- <sup>42</sup> Government of Newfoundland and Labrador. "Government announces next steps with tobacco litigation." Department of Justice. Press Release. 18 October 2002. [www.gov.nl.ca/releases/2002/just/1018n01.htm](http://www.gov.nl.ca/releases/2002/just/1018n01.htm). Accessed 28 March 2008.
- <sup>43</sup> Nova Scotia. *Tobacco Damages and Health-care Costs Recovery Act*. [www.gov.ns.ca/legislature/legc/bills/59th\\_1st/3rd\\_read/b222.htm](http://www.gov.ns.ca/legislature/legc/bills/59th_1st/3rd_read/b222.htm). Accessed 28 March 2008.
- <sup>44</sup> Government of Manitoba. *Tobacco Damages and Health Care Costs Recovery Act* <http://web2.gov.mb.ca/laws/statutes/2006/c01806e.php>. Accessed 28 March 2008.
- <sup>45</sup> Government of Saskatchewan. *The Tobacco Damages and Health Care Cost Recovery Act*. <http://www.publications.gov.sk.ca/details.cfm?p=23236>. Accessed 28 March 2008.
- <sup>46</sup> Explanatory Note, Legislation Assembly of Ontario website. Accessed 28 March 2006. [No longer available online.]
- <sup>47</sup> Non-Smokers' Rights Association. "More than 100 public health officials and Medical Officers of Health urge Ontario to sue Big Tobacco." Press Release. 19 June 2006. [www.nsra-adnf.ca/cms/index.cfm?group\\_id=1444](http://www.nsra-adnf.ca/cms/index.cfm?group_id=1444). Accessed 17 March 2008.
- <sup>48</sup> Ministry of the Attorney General. "Working To Recover Tobacco Health Costs." 4 March 2009. Press Release. [www.news.ontario.ca/mag/en/2009/03/working-to-recover-tobacco-health-costs.html](http://www.news.ontario.ca/mag/en/2009/03/working-to-recover-tobacco-health-costs.html). Accessed March 2009.
- <sup>49</sup> Legislative Assembly of Ontario. *Bill 155, Tobacco Damages and Health Care Costs Recovery Act, 2009*. 4 March 2009. [www.ontla.on.ca/bills/bills-files/39\\_Parliament/Session1/b155.pdf](http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session1/b155.pdf). Accessed March 2009.
- <sup>50</sup> Ministry of the Attorney General. "Working To Recover Tobacco Health Costs." 4 March 2009. Press Release. [www.news.ontario.ca/mag/en/2009/03/working-to-recover-tobacco-health-costs.html](http://www.news.ontario.ca/mag/en/2009/03/working-to-recover-tobacco-health-costs.html). Accessed March 2009.
- <sup>51</sup> Norwegian Agency for Health and Social Welfare, Department for Tobacco Control. "Tobacco Litigation Worldwide." Section 3.1, "Background on Tobacco Liability Lawsuits in Canada." Section 3.1 authored by: Rob Cunningham, Canadian Cancer Society. 16 October 2001. p. 40.

## References Continued

[http://shdir.no/vp/multimedia/archive/00001/IS-1004\\_1701a.pdf](http://shdir.no/vp/multimedia/archive/00001/IS-1004_1701a.pdf). Accessed 28 March 2008.

<sup>52</sup> *Victor Todd Sparkes v. Imperial Tobacco Canada Limited*. Amended Statement of Claim. 29 November 2004. [www.chescrosbie.com/files/light%20cigaretts/lc\\_amended\\_statement\\_of\\_claim.pdf](http://www.chescrosbie.com/files/light%20cigaretts/lc_amended_statement_of_claim.pdf). Accessed 28 March 2008.

<sup>53</sup> Canadian Press. "Class-action lawsuit filed against Imperial Tobacco." 20 July 2004. [www.tobacco.org/articles/lawsuit/sparkes/](http://www.tobacco.org/articles/lawsuit/sparkes/). Accessed 28 March 2008.

<sup>54</sup> Canadian Press. "Lawsuit filed in Nfld. against tobacco company." 20 July 2004. [www.ctv.ca/servlet/ArticleNews/story/CTVNews/1090359397268\\_11](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1090359397268_11). Accessed 28 March 2008.

<sup>55</sup> *Susan Miles, et al. v. Philip Morris, Inc.* [http://tobacco.neu.edu/litigation/cases/supportdocs/miles\\_decision.htm](http://tobacco.neu.edu/litigation/cases/supportdocs/miles_decision.htm). Accessed 28 March 2008.

<sup>56</sup> British American Tobacco. "Preliminary Announcement – Year Ended 31 December 2007." 28 February 2008. p. 35. [www.bat.com/group/sites/uk\\_3mnfen.nsf/vwPagesWebLive/DO7C8SXJ/\\$FILE/medMD7C8UNP.pdf?op=element](http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO7C8SXJ/$FILE/medMD7C8UNP.pdf?op=element). Accessed 12 March 2008.

<sup>57</sup> *Cécilia Létourneau v. JTI-Macdonald Corp., Imperial Tobacco Canada Ltée and Rothmans, Benson & Hedges Inc.* Court File No. 500-06-000076-983.

<sup>58</sup> Quebec Superior Court. Notice to Members. *Cécilia Létourneau v. JTI-Macdonald Corp., Imperial Tobacco Canada Ltée and Rothmans, Benson & Hedges Inc.*, Court File No. 500-06-000076-983. 21 February 2004. [www.trudeljohnston.com/en/tabac/notice\\_to\\_members.pdf](http://www.trudeljohnston.com/en/tabac/notice_to_members.pdf). Accessed 28 March 2008.

<sup>59</sup> Canadian Press. "Three plan \$11.5-billion lawsuit against tobacco firms." 11 September 1998. <http://lists.essential.org/1998/intl-tobacco/msg00145.html>. Accessed 28 March 2008.

<sup>60</sup> Rothmans Inc. "Renewal Annual Information Form: For the period ended March 31, 2006." p. 20.

<sup>61</sup> Ibid.

<sup>62</sup> *Ragoonanan v. Imperial Tobacco et al.* (2000) Superior Court of Justice, Ontario. No. 4597. [www.canlii.org/en/on/onsc/doc/2005/2005canlii5861/2005canlii5861.pdf](http://www.canlii.org/en/on/onsc/doc/2005/2005canlii5861/2005canlii5861.pdf). Accessed 28 March 2008.

<sup>63</sup> Meldrum H. "Big Tobacco Big Responsibilities: The Basic Principles of Civil and Criminal Liability for Canadian Corporations." Prepared for Physicians for a Smoke-Free Canada. 2002. p. 43.

<sup>64</sup> Imperial Tobacco Canada. "Another Tobacco Class Action Denied Certification." Press Release. 31 October 2005.

<sup>65</sup> British American Tobacco. "Preliminary Announcement – Year Ended 31 December 2007." 28 February 2008. p. 35. [www.bat.com/group/sites/uk\\_3mnfen.nsf/vwPagesWebLive/DO7C8SXJ/\\$FILE/medMD7C8UNP.pdf?op=element](http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO7C8SXJ/$FILE/medMD7C8UNP.pdf?op=element). Accessed 10 March 2008.

<sup>66</sup> *Caputo v. Imperial Tobacco et al* [1995]. Amended Statement of Claim. <http://sommersandroth.com/cases-caputo-soc-amend.htm>. Accessed 28 March 2008.

<sup>67</sup> Brautigam T. "Class action lawsuit against cigarette companies thrown out of court." Canadian Press. 5 February 2004. <http://lists.essential.org/pipermail/intl-tobacco/2004q1/001031.html>. Accessed 28 March 2008.

<sup>68</sup> Sommers & Roth. "Tobacco Litigation." [www.sommersandroth.com/tobacco-litigation.htm](http://www.sommersandroth.com/tobacco-litigation.htm). Accessed 22 March 2007.

<sup>69</sup> *Knight v. Imperial Tobacco*. Class Action Statement of Claim. 8 May 2003. [www.kleinlyons.com/class/light\\_cigs/sofc.pdf](http://www.kleinlyons.com/class/light_cigs/sofc.pdf). Accessed 28 March 2008.

<sup>70</sup> Imperial Tobacco Canada. "Interim Financial Statements, Second Quarter Report." 30 June 2004.

## References Continued

- <sup>71</sup> Note: July 5, 1974, being the proclamation into force of the *Trade Practice Act*, R.S.B.C. 1996, C. 457.
- <sup>72</sup> Court of Appeal for British Columbia. *Knight v. Imperial Tobacco Canada Limited*, 2006 BCCA 235. 11 May 2006. [www.courts.gov.bc.ca/jdb-txt/ca/06/02/2006bccca0235.htm](http://www.courts.gov.bc.ca/jdb-txt/ca/06/02/2006bccca0235.htm). Accessed 28 March 2008.
- <sup>73</sup> *Tobacco Act*. Section 16. <http://laws.justice.gc.ca/en/showtdm/cs/T-11.5>. Accessed 28 March 2008.
- <sup>74</sup> *Knight v. Imperial Tobacco Canada Limited*. Supreme Court of British Columbia, Docket: L031300. Registry: Vancouver. 3 July 2007. “Decision of Madam Justice Satanove dismissing third party claim by Imperial Tobacco Canada Ltd. against the Federal Government.” [www.kleinlyons.com/class/light\\_cigs/cdocs.php](http://www.kleinlyons.com/class/light_cigs/cdocs.php). Accessed 10 March 2008.
- <sup>75</sup> British American Tobacco. “Preliminary Announcement – Year Ended 31 December 2007.” Press Release. 28 February 2008. [www.bat.com/group/sites/uk\\_3mnfen.nsf/vwPagesWebLive/DO7C8SXJ/\\$FILE/medMD7C8UNP.pdf?op=element](http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO7C8SXJ/$FILE/medMD7C8UNP.pdf?op=element). Accessed 10 March 2008.
- <sup>76</sup> *Spasic v. Imperial Tobacco et al.* Amended Statement of Claim. Ontario Court (General Division), Court File No: C17773/97. 1 May 1997. [www.sommersandroth.com/cases-spasic-soc-amend.htm](http://www.sommersandroth.com/cases-spasic-soc-amend.htm). Accessed 10 March 2008.
- <sup>77</sup> *Spasic Estate v. B.A.T. Industries p.l.c.* Statement of Claim. [www.sommersandroth.com/cases-spasic-bat-soc.htm](http://www.sommersandroth.com/cases-spasic-bat-soc.htm). Accessed 28 March 2008.
- <sup>78</sup> Sibbald B. “Will litigation become part of public health arsenal in Canada's war on smoking?” *Canadian Medical Association Journal*. 30 May 2000; 162 (11). [www.cmaj.ca/cgi/content/full/162/11/1608](http://www.cmaj.ca/cgi/content/full/162/11/1608). Accessed 28 March 2008.
- <sup>79</sup> Meldrum H. “Big Tobacco Big Responsibilities: The Basic Principles of Civil and Criminal Liability for Canadian Corporations.” Prepared for Physicians for a Smoke-Free Canada. 2002. p. 44.
- <sup>80</sup> Quebec Ministry of Health and Social Services. “Desistement d’un groupe de demandeurs qui contestaient la constitutionnalité de la Loi sur le tabac.” Press Release. 31 March 2009. <http://communiqués.gouv.qc.ca/gouvqc/communiqués/GPOF/Mars2009/31/c6075.html>. Accessed March 2009.
- <sup>81</sup> Coalition québécoise pour le contrôle du tabac. “Peter Sergakis retire sa requête pour invalider la Loi sur le tabac.” Press Release. 31 March 2009. [http://cqct.qc.ca/Communiqués\\_docs/2009/PRSS\\_09\\_03\\_31\\_RetraitSergakis.htm](http://cqct.qc.ca/Communiqués_docs/2009/PRSS_09_03_31_RetraitSergakis.htm). Accessed March 2009.