Tobacco-Related Litigation in Canada

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. These objectives include acting as a deterrent to prevent industry misconduct in the future and affording victims, including governments, the opportunity to recover financial losses caused by misconduct.

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*).

In addition to civil suits, the *Criminal Code* and other legislation offer options for holding the tobacco industry criminally accountable for its behavior. However, to date, charging tobacco companies with criminal offences has not been used as a means of changing corporate behavior 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, charges that have been dropped following the settlements with the major tobacco companies in 2008 and 2010.[1]

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 B.C.'s *Tobacco Damages and Health Care Costs Recovery Act* to be constitutional. Such legislation not only confirms the province's right to recover the health care costs for treatment of tobacco-related illness but also establishes special rules for engaging in legal proceedings against the tobacco companies. All the other provinces have since passed similar legislation and have filed their claim in court.

The impact of such legislation is viewed by some financial analysts as tipping the playing field steeply against the industry because it greatly reduces the proof required by the provinces to win.[2] On the other hand, considering the very litigious nature of the tobacco industry, it could also be viewed as leveling the playing field.

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 or are settled), 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.

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.[3]

Furthermore, all three major tobacco companies in Canada admitted involvement in a tobacco smuggling scheme which defrauded the federal and provincial governments of billions of dollars in taxes in the 1990s.[4] 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 Product Liability Suits

The tobacco market 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 product 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. Make public revealing internal industry documents through discovery;
5. Provide funding (from verdicts) that could be used to reimburse health-care costs or to support tobacco control programs;
6. Could bankrupt the industry, if there were a sufficient number of cases and/or awards/settlements that were large enough.[5]

1. Increase the Cost of Tobacco Products

Smoking costs third parties in Canada over $17 billion in health care costs and lost productivity each year.[6] (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 and to compel current smokers to reduce their consumption or quit.

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

Informing the public about the tobacco industry's unethical and illegal practices can motivate people to quit using its products. Channeling 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 damage awards, such as the 2015 Blais/CQTS and Létourneau cases in Quebec in which the judge awarded $15 billion to the plaintiffs, may motivate the industry to alter its behavior.[7] The industry could change in various ways, for example, by engaging in less deceptive marketing 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, the tobacco industry engaged mostly over the years in 'voluntary'

changes that were condemned as being mostly cosmetic and as a public relation strategy to defeat or weaken government policies.

4. Make Public Tobacco Company Documents

Studies of industry misbehavior 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 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 its 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. As well, 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 behavior or make their products much less toxic and deadly.

This report provides information on the different types of tobacco-related litigation in Canada, including:

Litigation Related to Contraband

Case	Background	Status
Comprehensive agreement between Imperial Tobacco Limited of Canada and Her Majesty the Queen in Right of Canada and the Provinces. AND Comprehensive agreement between Rothmans, Benson & Hedges, Inc. and Rothmans Inc. and Her Majesty the Queen in Right of Canada and the Provinces.	According to a Canada Revenue Agency press release published on July 31, 2008, "the federal and all provincial governments have entered into civil settlement agreements with Imperial Tobacco Canada Ltd. and Rothmans, Benson & Hedges to resolve all potential civil claims they may have in relation to the two companies' roles in the movement of contraband tobacco in the early 1990s.[8] In addition to the civil settlement, the two companies each pleaded guilty in court to a single count of "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" between 1989 and 1994."	As part of the agreement, Imperial Tobacco Limited of Canada paid a $200 million criminal fine and will pay a further $400 million in civil penalties over the next 15 years. The company has to comply as well with measures to prevent contraband.[9] As for Rothmans, Benson & Hedges, the company paid a $100 million criminal fine and will pay a further $450 million in civil penalties over the next 10 years. The company has to comply as well with measures to prevent contraband.[10]
Comprehensive agreement between JTI-MacDonald Corporation and Her Majesty the Queen in Right of Canada and the Provinces.	According to a Canada Revenue Agency press release published on April 13, 2010, "the federal, provincial and territorial governments entered into civil settlement agreements with tobacco manufacturers JTI-Macdonald Corp. (JTI-MC) and R.J. Reynolds Tobacco Company (RJR) to resolve potential civil claims related to the movement of contraband tobacco in the early 1990s.[11] In addition to the civil settlements, JTI-MC pleaded guilty in the Ontario Court of Justice to a single count of "aiding persons to be in possession of tobacco not packaged in accordance with the *Excise Act*", while Northern Brands International Inc., a company related to RJR, pleaded guilty to a conspiracy offence under the Criminal Code.	As part of the agreement, JTI-Macdonald and its affiliate Northern Brands International paid a criminal fine of $150 million and $75 million respectively. As for R.J. Reynolds, it was charged with $325 million in civil penalties. JTI-Macdonald has to comply as well with measures to prevent contraband.[12, 13] The following two cases were also dropped against the manufacturers and some of its former executives: *The Attorney General Of Canada v. R.J. Reynolds Tobacco Holdings, Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Co., Northern Brands International, Inc., Japan Tobacco Inc., JT International SA, JTI-Macdonald TM Corp., et al* AND *Her Majesty the Queen v. JTI-Macdonald Corp. (formerly RJR-Macdonald Inc.), Dale Sisel, Jaap Uittenbogaard, Edward Lang, Pierre Brunelle, Paul Neumann, Roland Kostantos and Peter MacGregor*

The Ontario Flue-Cured Tobacco Growers' Marketing Board, et al. v. Rothmans, Benson & Hedges Inc. AND *The Ontario Flue-Cured Tobacco Growers' Marketing Board, et al. v. Imperial Tobacco Canada Ltd.* AND *The Ontario Flue-Cured Tobacco Growers' Marketing Board, et al. v. JTI-Macdonald Corp.*	These class action lawsuits filed against Rothmans, Benson & Hedges (RBH) (2009-11-05), Imperial Tobacco Canada Ltd. (ITC) (2009-12-02) and JTI-Macdonald Corp. (2010-04-23) allege that the companies breached contracts with Ontario tobacco farmers related to the purchase of flue-cured tobacco from 1986 to 1996. Plaintiffs allege that the contracts obligated the tobacco companies to disclose the quantity of tobacco included in cigarettes to be sold for duty-free and export purposes. This tobacco was purchased at a lower price per pound than tobacco for cigarettes to be sold in Canada. Millions of cigarettes ostensibly intended for the duty-free and export markets were then sold illegally in Canada. This cigarette smuggling was orchestrated by all three companies and was designed to force governments to lower tobacco taxes. In July 2008 and April 2010, the three manufacturers admitted guilt and paid criminal fines related to the 1990s smuggling crisis. The companies also entered into civil settlements with the federal and various provincial governments. Given their admission of guilt, the tobacco farmers have a good chance at success in this somewhat related action.	Because of this court action, ITC has notified the Ontario government that it wants to or is withholding periodic payments related to the settlement reached after Imperial admitted guilt to involvement in smuggling in the 1990s. ITC claims that any money that might be due to the growers in their action should be taken from the payments to Ontario and put in trust.[14] Following a motion by the Ontario government, this position was rejected by the Ontario Superior Court of Justice in January 2013.[15] This decision was appealed unsuccessfully by both ITC and RBH to the Ontario Court of Appeal in July 2013.[16] All three tobacco companies submitted their statement of defence on May 3, 2013. They claim that the class actions were not commenced within the time periods prescribed by the *Limitations Act*.[17] On June 30, 2014, the Ontario Superior Court of Justice dismissed a motion from the companies calling for a summary judgment on this issue.[18] Motions filed by the companies to seek permission to appeal this decision were scheduled to be heard in January 2015.[19]
The Montana First Nation and Chief Carolyn Buffalo and Rainbow Tobacco G.P. v. The Alberta Liquor and Gaming Commission	In January 2011, about 75,000 cartons of cigarettes were seized on the Montana Cree First Nation Territory by the Alberta Gaming and Liquor Commission (AGLC) and the RCMP because the cigarette packages were not marked for legal sale in the province.[20] The cigarettes were manufactured and shipped by the Rainbow Tobacco Company located in Kahnawake, Quebec. The AGLC charged Chief Carolyn Buffalo and three other individuals under the *Tobacco Tax Act* with storing tobacco products not marked for legal sale in Alberta, for possessing more than 1,000 cigarettes and not being licensed to import tobacco into the province for resale.[21] In response, Chief Carolyn Buffalo, the Montana First Nation and the Rainbow Tobacco Company filed on February 18, 2011 a statement of claim in the Court of Queen's Bench of Alberta which states that "the AGLC and the Provincial Government of Alberta lacked jurisdiction to enter onto an Indian Reserve and enforce the provincial *Tobacco Tax Act* on Full Status Indians. The AGLC did not have the right to seize the cigarettes and does not have the right to continue to detain the cigarettes". The Montana First Nation has since withdrawn from the lawsuit.[22]	According to a CBC news story, "Late last year [2014], the trial was adjourned after the defence questioned the motivation of a former co-accused who was expected to testify against Buffalo. It was suggested a deal may have been made in return for his testimony. The charges against Buffalo and former band councillor Leonard Standing-On-The Road were stayed on January 28, 2015."[23] As for the Rainbow Tobacco Company, its owner, Robbie Dickson, was "found not guilty of importing millions of cigarettes without a license for resale to a central Alberta reserve." However, he "was convicted in provincial court of two other charges under the Tobacco Tax Act for possessing tobacco not marked for tax sale and for having more than 1,000 cigarettes. Whether he will be sentenced on those two charges will depend on the results of a constitutional challenge that Dickson has filed and which is to begin in February,"

		2016.[24]
Imperial Tobacco Canada Ltd. v. tobacco manufacturers and retailers on First Nations reserves	In June 2011, Imperial Tobacco Canada Ltd. announced that it was taking legal action against tobacco manufacturers on First Nations reserves on two fronts. First, in collaboration with Rothmans Inc. and Philip Morris USA, the company filed a court action to add native tobacco manufacturers as third-party defendants in the Ontario tobacco damages and health care costs recovery lawsuit (see *Her Majesty The Queen In Right Of Ontario v. Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., et al.* below). Second, Imperial Tobacco Canada Ltd launched a $1.5-billion lawsuit against contraband tobacco manufacturers and retailers on First Nations reserves for allegedly producing and selling products that resemble Imperial products.[25]	There hasn't been any recent announcement or development related to the case.

Provincial Tobacco Liability Litigation

Case	Background	Status
Her Majesty The Queen In Right Of British Columbia v. Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., Rothmans Inc., JTI-Macdonald Corp., Canadian Tobacco Manufacturers' Council, B.A.T. Industries P.L.C., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Philip Morris Incorporated, Philip Morris International, Inc., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International, Inc., Rothmans International Research Division and Ryesekks P.L.C.	The B.C. legislature adopted the initial version of the *Tobacco Damages and Health Care Costs Recovery Act* in 1997. The second version of the *Act* was introduced in 2000.[26] The province filed its statement of claim on January 24, 2001.[27] The *Tobacco Damages and Health Care Costs Recovery Act* "allows the government to "recover the cost of health care benefits for particular individuals or on an aggregate basis." The government can also "recover damages for the health effects caused by the products of the tobacco companies prior to the enactment of the legislation." Furthermore, the onus of proof is reversed once a breach of duty is proven. Indeed, "it falls on a defendant manufacturer to show that its breach of duty did not give rise to exposure, or that exposure resulting from its breach of duty did not give rise to the disease in respect of which the government claims for its expenditures."[28] The same principals apply for the other provincial acts. B.C.'s lawsuit, and similarly the other provincial lawsuits, allege that domestic tobacco manufacturers and their parent companies engaged in an elaborate conspiracy to create doubt in the public mind about the dangers of smoking; failed to warn consumers of the dangers of smoking despite their own knowledge that cigarettes were dangerous; marketed 'light' cigarettes to reassure smokers when they knew these cigarettes were just as hazardous as 'regular' ones' and targeted children in their advertising and marketing.	In February 2000, the Supreme Court of British Columbia ruled that the first version of the *Tobacco Damages and Health Care Costs Recovery Act* was unconstitutional because of its extra-territorial reach.[29] In September 2005, the Supreme Court of Canada upheld the constitutionality of the second version of the *Tobacco Damages and Health Care Costs Recovery Act.*[30] In July 2011, the Supreme Court of Canada rejected the tobacco companies' attempt to enjoin the federal government as a third party in the case. It ruled that the federal government cannot be held liable for damages related to smoking.[31] Since the costs were attributed to the companies in this case, they filed a motion with the Supreme Court of British Columbia "for the production of additional documents and particulars that are submitted to be relevant and probative to the determination" of these costs. Only a part of the motion was granted in July 2015.[32] In 2013, following a move on behalf of the law firms Bennett Jones LLP and Siskinds LLP to retain as local council the law firm Camp Fiorante Matthews Mogerman, the tobacco companies applied to disqualify the firm because one of its partners was involved in the defense of the action until about eight years ago. The motion was rejected by the British Columbia Supreme Court.[33] In May 2015, the Supreme Court of British Columbia granted Philip Morris International access to "anonymized individual-level data from provincial databases." However, the court rejected motions from PMI "to recover certain Statistics Canada survey data that the Province says it has returned to Statistics

		Canada for reasons unrelated to this action" and to declare inadmissible in this action any expert or other evidence based on this data unless it is produced.[34] The case is at the pre-trial discovery stage.[35] B.C. is part of a six province coalition suing the industry that is represented by the law firms Bennett Jones LLP and Siskinds LLP (B.C., Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan).[36]
Her Majesty in Right of Alberta v. Altria Group, Inc.; B.A.T. Industries P.L.C.; British American Tobacco (Investments) Limited; British American Tobacco P.L.C.; Canadian Tobacco Manufacturers Council; Carreras Rothmans Limited; Imperial Tobacco Canada Limited; JTI-MacDonald Corp.; Philip Morris International, Inc.; Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.; Rothmans Benson & Hedges Inc.; and Rothmans Inc.	The *Crown's Right of Recovery Act* received Royal Assent in Alberta in November 2009 and was proclaimed on May 31, 2012.[37] The government of Alberta filed its Statement of Claim on June 8, 2012.[38] The province is seeking $10 billion from the manufacturers.	In June 2015, the Court of Queen's Bench of Alberta rejected in large part requests from the manufacturers to obtain a long list of particulars about the province's Statement of Claim because they alleged that it didn't provide sufficient information.[39] According to Philip Morris International, defendants filed their defenses in March 2016.[40]
The Government of Saskatchewan v. Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco P.L.C., B.A.T. Industries P.L.C., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco manufacturers' Council.	Tobacco-related health care costs are estimated at $145 million annually in Saskatchewan.[41] The province's *Tobacco Damages and Health Care Costs Recovery Act* received Royal Assent in April 2007.[42] The *Act* was proclaimed on World No Tobacco Day in 2012.[43] The province filed its statement of claim a few days later on June 8, 2012 (It was amended on October 5th, 2012).	The international parent tobacco companies filed a motion to be exempted from the case. This motion was rejected by the Queen's bench for Saskatchewan on October 1st, 2013.[44] According to Philip Morris International, "Defendants filed their defenses in February 2015, and discovery is scheduled to begin in 2017."[45] Saskatchewan is part of the six province coalition suing the industry that is represented by the law firms Bennett Jones LLP and Siskinds LLP (B.C., Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan).[46]
Her Majesty the Queen in Right of the Province of Manitoba v. Rothmans, Benson & Hedges Inc., Rothmans Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco	The *Manitoba Tobacco Damages and Health Care Costs Recovery Act* received Royal Assent in June 2006.[47] Like Saskatchewan, the *Act* was proclaimed on World No Tobacco Day in 2012. The province filed its statement of claim a few hours later.[48]	In a June 2013 ruling, the Court of Queen's Bench of Manitoba rejected a motion from tobacco companies to delay filing their statements of defense because they filed motions on two fronts: 1. The companies are seeking "an order for further and better particulars of the allegations contained

International Inc., Imperial Tobacco Canada Limited, British American Tobacco P.L.C., B.A.T. Industries P.L.C., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco manufacturers' Council.		in certain identified paragraphs of the plaintiff's amended statement of claim. In the alternative, the defendants seek an order that the allegations of deceit, misrepresentation and conspiracy in the claim be struck on the grounds that they fail to disclose a reasonable cause of action." 2. The international parent tobacco companies want the action against them dismissed on the ground that the court has no jurisdiction over the subject matter of the action.[49, 50] In July 2014, the Court of Queen's Bench of Manitoba ruled that "the defendants' motions for further particulars are dismissed. The defendants' motions to strike paragraphs of the amended statement of claim are similarly dismissed."[51] "Defendants filed their statements of defense in September 2014. Discovery is scheduled to begin in 2017."[52] Manitoba is part of the six province coalition suing the industry that is represented by the law firms Bennett Jones LLP and Siskinds LLP (B.C., Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan).[53]
Her Majesty The Queen In Right Of Ontario v. Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Imperial Tobacco Canada Limited, British American Tobacco P.L.C., B.A.T. Industries P.L.C., British American Tobacco Limited, and Canadian Tobacco Manufacturers' Council.	Ontario passed the *Tobacco Damages and Health Care Costs Recovery Act* in May 2009.[54] In September 2009, Ontario filed its lawsuit against the tobacco companies, becoming the third province in Canada to do so.[55] Ontario is seeking $50 billion in damages for past and ongoing health care costs linked to treating tobacco-related illness.[56]	In June 2011, Imperial Tobacco Canada (ITC) Ltd., Rothmans Inc. and Philip Morris USA announced a court action to add native tobacco manufacturers as third-party defendants in the Ontario lawsuit.[57] There hasn't been any recent development on this issue. In January 2012, the Ontario Superior Court ruled that foreign tobacco companies must remain as defendants in the case.[58] Companies were also ordered to pay the province's costs of opposing the initiative.[59] In May 2013, the companies failed to get both decisions overturned by the Court of Appeal for Ontario.[60] A further appeal to the Supreme Court of Canada was rejected in December 2013.[61] Prior to the jurisdictional issue for the foreign companies, motions were filed by the domestic

		companies to strike Ontario's claim (Foreign companies also filed similar motions after the jurisdictional issue was resolved). These motions were withdrawn after Ontario filed an amended claim in March 2014, except for an issue of costs and another of parliamentary privilege. The court rejected the cost issue but struck the contested sections related to the parliamentary privilege issue. [62, 63] In January 2016, the Ontario Superior Court of Justice rejected in large part requests from the manufacturers to obtain a long list of particulars about the province's Statement of Claim because they alleged that it didn't provide sufficient information.[64] "Defendants are scheduled to file their defenses in April 2016."[65]
Procureur général du Québec c. Imperial Tobacco Canada Limitée, B.A.T. Industries P.L.C., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, Rothmans, Benson &Hedges Inc., Philip Morris USA Inc., Philip Morris International Inc., JTI-MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Conseil canadien des fabricants des produits du tabac.	Quebec passed its *Tobacco-related Damages and Health Care Costs Recovery Act* in June 2009.[66] Because the Act included a limitation period (19 June, 2012), the Quebec government filed its statement of claim on 8 June, 2012.[67] The government is claiming $60 billion in costs and damages from the manufacturers.	The tobacco industry filed a constitutional challenge of the *Act* in August 2009.[68] Unfortunately, the Quebec Attorney General failed in 2010 to block the industry's challenge and the issue is headed to the courts.[69] On the other hand, the tobacco industry failed to convince the Quebec Superior Court to suspend the case as long as the constitutional challenge was not resolved.[70] In March 2014, the Quebec Superior Court finally came down with its ruling upholding the constitutionality of the *Act*.[71] It was also ruled constitutional by the Quebec Court of Appeal in September 2015.[72] In July 2013, the Quebec Superior Court rejected a motion from foreign tobacco companies to be exempted from the case.[73] In October 2013, the Quebec Court of Appeal denied the tobacco companies permission to appeal on this issue.[74] In February 2014, the tobacco manufacturers were unsuccessful in convincing the Quebec Superior Court from rejecting some allegations and pieces of evidence referred to in Quebec's Statement of Claim, except for the health effects of second hand smoke.[75] In a separate ruling, the Court did not agree with the

		industry's position that the government's allegations were too vague and imprecise. It turned down as well the vast majority of the industry's demand for documents and more detailed information.[76] "Defendants filed their defenses in December 2014 and July 2015. Pre-trial discovery is ongoing."[77]
Her Majesty The Queen In Right Of The Province Of New Brunswick v. Rothmans, Benson & Hedges Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., Imperial Tobacco Canada Limited, British American Tobacco p.l.c., B.A.T. Industries p.l.c., British American Tobacco (Investments) Limited, Canadian Tobacco Manufacturers' Council, et al	New Brunswick's version of the *Tobacco Damages and Health-care Costs Recovery Act* received Royal Assent on June 22, 2006.[78] The province filed its lawsuit against the manufacturers two years later, becoming only the second province in Canada to do so.[79] The government did announce that it was retaining a consortium of law firms, including Bennett Jones LLP and Siskinds LLP, on a contingency fee basis.[80]	Following a challenge by the tobacco companies, the New Brunswick Court of Appeal upheld the validity of the contingency fee agreement, a decision that the Supreme Court of Canada refused to review.[81] In February 2012, the New Brunswick Court of Queen's Bench also rejected the tobacco industry's attempt to include the federal government as a third party in the case.[82] In July 2012, the New Brunswick Court of Queen's Bench dismissed motions brought forward by the tobacco companies to strike the vast majority of the government's claims against them. The companies were not able to obtain as well "an order compelling the Province to provide further and better responses to their respective Demand for Particulars". The ruling also required the manufacturers to file their statements of defense.[83, 84] The case is still at the pre-trial discovery stage.[85] New Brunswick is part of the six province coalition suing the industry that is represented by the law firms Bennett Jones LLP and Siskinds LLP (B.C., Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan).[86]
Her Majesty The Queen In Right Of The Province Of Nova Scotia v. Rothmans, Benson & Hedges Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., J.T.I. MacDonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco P.L.C., B.A.T. Industries	Nova Scotia's *Tobacco Damages and Health-care Costs Recovery Act* received Royal Assent in December 2005.[87] The province finally filed its statement of claim on January 2nd, 2015.[88]	Nova Scotia announced in 2011 that it had begun the process of holding the industry accountable for its wrongdoings.[89] "Defendants filed their defenses in July 2015. Discovery is scheduled to begin in 2017."[90] Nova Scotia is part of the six province coalition suing

P.L.C., British American Tobacco (Investments) Limited, Carreras Rothmans Limited, and Canadian Tobacco Manufacturers Council.		the industry that is represented by the law firms Bennett Jones LLP and Siskinds LLP (B.C., Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan).[91]
Her Majesty the Queen in Right of the Province of Prince Edward Island v. Rothmans, Benson &Hedges Inc., Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., J.T.I. MacDonald Corp., R. J. Reynolds Tobacco Company, R. J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco P.L.C., B.A.T. Industries P.L.C., British Tobacco (Investments) Limited, Carreras Rothmans and Canadian Tobacco Manufacturers' Council.	Royal Assent was given to P.E.I.'s *Tobacco Damages and Health Care Costs Recovery Act* in December 2009.[92] The *Act* was proclaimed on June 12, 2012.[93] The province filed its statement of claim on September 10, 2012.[94]	In January 2013, British American Tobacco and Carreras Rothmans Ltd. filed motions in P.E.I. Supreme Court to dismiss the case because "they don't reside in P.E.I. and they don't carry on business in the province."[95] "Defendants filed their defenses in February 2015. Discovery is scheduled to begin in 2017."[96] P.E.I. is part of the six province coalition suing the industry that is represented by the law firms Bennett Jones LLP and Siskinds LLP (B.C., Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan).[97]
Attorney General Of Newfoundland And Labrador v. Rothmans Inc., Rothmans, Benson & Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, In., JTI-Macdonald Corp., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., Imperial Tobacco Canada Limited, British American Tobacco P.L.C., B.A.T. Industries P.L.C., British America Tobacco (Investments) Limited, and Canadian Tobacco Manufacturers' Council.	Newfoundland and Labrador passed its *Tobacco-related Damages and Health Care Costs Recovery Act* in May 2001.[98] The government announced the proclamation of its *Act* and the filing of its statement of claim on February 8, 2011. [99, 100]	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.[101] However, the reference case was not heard because the issue was resolved by the Supreme Court of Canada when it ruled in favor of the B.C. legislation. In December 2013, the Supreme Court of Newfoundland and Labrador established the legal framework to hear the foreign tobacco manufacturers' arguments to be excluded from the case because they claim the province does not have jurisdictional authority.[102] In December 2015, the Supreme Court of Newfoundland and Labrador rejected in large part requests from the manufacturers to obtain a long list of particulars about the province's Statement of Claim because they alleged that it didn't provide sufficient information."[103]

		The case is still going through preliminary motions.[104]
Northwest Territories	The Northwest Territories adopted its *Tobacco Damages and Health Care Cost Recovery Act* in August 2011.[105] The *Act* has not been proclaimed yet.	For the moment, there is no news on the status of the territory's lawsuit.
Nunavut	Nunavut adopted its *Tobacco Damages and Health Care Cost Recovery Act* in November 2010.[106] The *Act* has not been proclaimed yet.	In August 2011, Nunavut Justice Minister Keith Peterson said that, although every province has launched or plans to launch similar lawsuits, Nunavut's actions will "take some time" as officials begin the research stage of the process.[107]

Class Action Litigation

Case	Background	Status
Cécilia Létourneau v. Imperial Tobacco Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp. AND *Conseil québécois sur le tabac et la santé and Jean-Yves Blais v. Imperial Tobacco Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.*	In 1998, a first class action lawsuit was launched on behalf of Cécilia Létourneau and all Quebecers addicted to nicotine in cigarettes manufactured by the three major Canadian tobacco companies. The claim seeks $10,000 for each person included in the group plus compensation for specific damages, for a total of $17.8 billion.[108] A few months later, a second class action was filed against the Canadian tobacco manufacturers by the Quebec Council on Tobacco and Health on behalf of victims of lung, larynx and throat cancers and for emphysema sufferers. The class action suit is seeking $10 billion in damages.[109] According to both claims, tobacco manufacturers failed to warn consumers about the health effects of their products. They also implemented a policy to publicly deny any such effects. As well, they deliberately manipulated their products to maintain addiction and they were very much involved in generating scientific controversy and spreading disinformation. It is important to note that the federal government was named in this case as a Defendant in Warranty. The tobacco industry argued that if the tobacco companies lose, then the companies will seek to recover damages from the federal government.	Both class actions were certified by the Quebec Superior Court in 2005.[110] It was decided in a previous ruling that both class actions would proceed concurrently. The trial fulfilled its promises in terms of fascinating testimonies and the release of previously confidential tobacco industry documents. A key development in the case was the ruling handed down in November 2012 by the Quebec Court of Appeal which released the federal government as a third party.[111] In May 2013, the trial judge also rejected an attempt by the tobacco manufacturers to have the whole case thrown out on the basis of lack of proof, especially proof of causality.[112] The trial finally ended on December 11, 2014 after 253 days of hearing. The plaintiffs and the defendants called a total of 76 witnesses to the bar and submitted more than 8 000 documents as evidence (this excludes press clippings submitted by defendants).[113] The judge handed down his ruling on May 27, 2015. The manufacturers were found guilty of committing "four separate faults, including under the general duty not to cause injury to another person, under the duty of a manufacturer to inform its customers of the risks and dangers of its products, under the Quebec Charter of Human Rights and Freedoms and under the Quebec Consumer Protection Act." The court awarded a total of $15 billion in damages to victims.[114] The Quebec Superior Court ruling also included an initial aggregate deposit of $1 billion to be paid by the manufacturers notwithstanding appeals. However, this decision was overturned by the Quebec Court of Appeal in July 2015.[115] The plaintiffs responded with a motion which led to another Quebec Court of Appeal ruling in October

		2015 that ordered Imperial Tobacco Canada and Rothmans, Benson and Hedges to furnish security in the amount of $984 million while awaiting the end of the appeal process.[116] All three defendants filed a motion to appeal judge Riordan's ruling before the June 26th, 2015 deadline.[117] A day by day written account of the trial is available at the excellent blog "Eye on the Trials" that was set up by the Quebec Public Health Association.[118]
Kenneth Knight v. Imperial Tobacco Canada Ltd.	In May 2003, 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 knowingly deceived smokers into believing 'light' and 'mild' cigarettes were less harmful than regular cigarettes.[119] B.C. resident Kenneth Knight, who smoked a pack and a half of cigarettes for 17 years, is not seeking compensation for personal injuries. Rather, he is asking the court for a permanent injunction to stop Imperial 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. In 2004, Imperial filed its Statement of Defense and also filed a Third Party Notice against the Attorney General of Canada. The notice seeks to force the federal government to participate in the case and to reimburse any amount that Imperial is ordered to pay.[120, 121]	In February 2005, the B.C. Supreme Court of Justice agreed to certify the class action lawsuit.[122] The decision was confirmed by the B.C. Court of Appeal in May 2006.[123] On the Third Party Notice issue, in July 2007, the B.C. Supreme Court of Justice ruled in favor of removing the federal government from the case.[124] The ruling was appealed and consolidated with a similar appeal in the British Columbia's tobacco damage and health care costs recovery case (see page 7). In December 2009, the B.C. Court of Appeal, by a narrow 3-2 majority with a strong dissent, sided with the tobacco industry, but only in part.[125] This decision was, in turn, appealed by the federal government to the Supreme Court of Canada. In July 2011, it was finally decided that the federal government cannot be held liable for damages.[126] The case is still active. However, it remains at the pre-trial phase.
Kunta v. Canadian Tobacco Manufacturers' Council, et al.	Deborah Kunta alleges that her chronic obstructive pulmonary disease (COPD), severe asthma and lung disease were caused by smoking cigarettes. She has named 15 Canadian and international tobacco manufacturers in her lawsuit, as well as the Canadian Tobacco Manufacturers' Council.	According to Philip Morris International, "in September 2009, plaintiff's counsel informed defendants that he did not anticipate taking any action in this case while he pursues the class action filed in Saskatchewan."[129] (See Adams)

	Philip Morris International reported that: "She is seeking compensatory and unspecified punitive damages on behalf of a proposed class comprised of smokers, their estates, dependents and family members, as well as restitution of profits, and reimbursement of government health care costs allegedly caused by tobacco products." The class action was filed in June 2009 in Winnipeg, Manitoba.[127] It is our understanding that the law firm Merchant Law Group LLP is representing the plaintiffs not only for this lawsuit but for the next five lawsuits as well.[128]	
Dorion v. Canadian Tobacco Manufacturers' Council, et al.	This class action is similar to the previous one and was filed as well in June 2009 but in the province of Alberta.	Philip Morris International noted that "no activity in this case is anticipated while plaintiff's counsel pursues the class action filed in Saskatchewan."[130] (See Adams)
Semple v. Canadian Tobacco Manufacturers' Council, et al.	This class action is similar to the previous two and was also filed in June 2009 but in the province of Nova Scotia.	Philip Morris International noted that "no activity in this case is anticipated while plaintiff's counsel pursues the class action filed in Saskatchewan."[131] (See Adams)
McDermid v. Imperial Tobacco Canada Limited, et al.	This class action was filed on June 25, 2010 in the Supreme Court of British Columbia, against Imperial Tobacco Canada, Philip Morris International (PMI) and other tobacco industry manufacturers. PMI reported that: "The plaintiff, an individual smoker, alleges his own addiction to tobacco products and heart disease resulting from the use of tobacco products. He is seeking compensatory and unspecified punitive damages on behalf of a proposed class comprised of all smokers who were alive on June 12, 2007, and who suffered from heart disease allegedly caused by smoking, their estates, dependents and family members, plus disgorgement of revenues earned by the defendants from January 1, 1954 to the date the claim was filed."[132]	In its 2014 SEC Annual Report, Philip Morris International stated that "defendants have filed jurisdictional challenges on the grounds that this action should not proceed during the pendency of the Saskatchewan class action". [133] (See Adams) According to British American Tobacco's 2014 Annual Report, it seems as well that "a number of the UK Companies were released from the action."[134]
Bourassa v. Imperial Tobacco Canada Limited, et al.	This class action was also filed on June 25, 2010 in the Supreme Court of British Columbia, against Imperial Tobacco Canada, Philip Morris International (PMI), and other tobacco industry manufacturers. PMI reported that: "The plaintiff, the heir to a deceased smoker, alleges that the decedent was addicted to tobacco products and suffered from emphysema resulting from the use of tobacco products. She is seeking compensatory and unspecified punitive damages on behalf of a proposed class comprised of all smokers who were alive on June 12, 2007, and who suffered from chronic respiratory diseases allegedly caused by smoking, their estates, dependents and family members, plus disgorgement of revenues earned by the defendants from January 1, 1954 to the date the claim was filed."[135]	In its 2014 SEC Annual Report, Philip Morris International stated that "defendants have filed jurisdictional challenges on the grounds that this action should not proceed during the pendency of the Saskatchewan class action". [136] (See Adams) "In December 2014, the plaintiff filed an amended statement of claim."[137]

Adams v. Canadian Tobacco Manufacturers' Council, et al.	Thelma Adams suffers from chronic obstructive pulmonary disease (COPD) caused by her smoking. The Regina, Saskatchewan resident "is seeking compensatory and unspecified punitive damages on behalf of a proposed class of all smokers who have smoked a minimum of 25,000 cigarettes and have allegedly suffered, or suffer, from COPD, emphysema, heart disease, or cancer as well as restitution of profits." The class action was filed in July 2009. [138]	The case is going through preliminary motions.[139] According to British American Tobacco's 2014 Annual Report, it seems that the BAT and Carreras Rothmans have been released from the action.[140]
Suzanne Jacklin v. Canadian Tobacco Manufacturers' Council et al.	This class action lawsuit was filed in Ontario in June 2012. The plaintiff "is seeking compensatory and unspecified punitive damages on behalf of a proposed class comprised of all smokers who have smoked a minimum of 25,000 cigarettes and have allegedly suffered, or suffer, from COPD, heart disease, or cancer, as well as restitution of profits."[141]	In its 2016 SEC Annual Report, Philip Morris International reported that the "Plaintiff's counsel have indicated that they do not intend to take any action in this case in the near future."[142]

Industry versus Government Litigation

Case	Background	Status
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 loss of market share and sales it has suffered as a result of the growth in the contraband market. Ironically the contraband market has at times included counterfeit versions of two of GRE's 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 GRE is contesting this law. Essentially, it is arguing that the Excise Tax should apply to everyone, or it should apply to no one.	The Attorney General of Canada has filed a Notice of Intent to defend itself against the lawsuit being heard in Ontario Superior Court. According to a case law update released in May 2010 by the law firm WeirFoulds LLP, "the Attorney General moved for a temporary stay of the plaintiffs' proceeding pending determination of the plaintiff GRE's appeals at the Tax Court of Canada…. The motions judge agreed with the Attorney General that the action should be temporarily stayed until final determination of the tax appeals…".[143, 144] On December 19, 2011, the Tax Court of Canada finally rejected GRE appeals to be exempted from paying federal excise tax because it claims it sells its products only to Indians on Indian reserves.[145] A further appeal to the Federal Court of Appeal was dismissed in September 2012.[146] Finally, in March 2013, the Supreme Court of Canada put an end to the issue by denying GRE a last attempt to appeal the Tax Court of Canada ruling.[147] With the tax issue finally cleared, the legal proceedings regarding GRE's lawsuit against the Government of Canada resumed. In the latest development, the Attorney General of Canada was granted permission to appeal an earlier decision by the Ontario Superior Court of Justice "dismissing its motion to strike the claims for misfeasance, negligence and breach of fiduciary duty in respect of the second branch only of the plaintiffs' claim (GRE), namely the contraband, or failure to enforce, issue."[148]

JTI-MacDonald Corp. v. Attorney General of Canada AND *Imperial Tobacco Canada Limited v. Attorney General of Canada*	In September 2011, the federal Tobacco Products Labelling Regulations came into force. The regulations make it mandatory for tobacco companies to print illustrated health warnings covering 75% of the main surfaces of cigarette and little cigar packages.[149]  In April 2012, JTI-MacDonald and Imperial Tobacco Canada Limited filed statements of claim in the Ontario Superior Court of Justice to challenge the constitutionality of the regulations.[150, 151, 152] The tobacco companies claim that "The impugned measure of expanding health warnings to 75% is not rationally connected to a goal of reducing tobacco consumption."	In November 2012, the Attorney General of Canada asked the Ontario Superior Court of Justice to toss out the companies' constitutional challenge of the new health warnings. According to the federal government's statement of defense, "any violation of freedom of expression over a requirement to include larger warnings on the surface of cigarette packages is justified."[153, 154, 155] The ruling is pending on the federal government's motion to dismiss the challenge.
Imperial Tobacco Canada Limited v. Her Majesty The Queen In Right Of The Province Of Nova Scotia	In April 2015, the Nova Scotia legislature adopted "An Act to Amend Chapter 14 of the Acts of 1993, the Tobacco Access Act" to ban the sale of most flavored tobacco products in the province, including menthol. The Act came into force on May 31, 2015.[156]	A few days before the flavor ban came into effect, Imperial Tobacco Canada filed a legal challenge against the menthol ban claiming that "the Government of Nova Scotia has stepped beyond its legislative authority."[157]
L'Association québécoise des vapoteries c. le Procureur général du Québec	On November 26, 2015, the Quebec National Assembly adopted Bill 44: An Act to bolster tobacco control which submits electronic cigarettes to the same regulatory framework than tobacco products, with a few exceptions such as the use of flavors in e-liquids or displays in specialty vape shops.[158]	On February 25, 2016, the Association québécoise des vapoteries filed a legal challenge against the Government of Quebec because it claims that the Act infringes its members' freedom of expression right to communicate any relevant information to its customers about the health benefits of its products compared to regular cigarettes.[159] Although this is a case not involving a tobacco manufacturer, it will be interesting to see what will be the outcome.
Imperial Tobacco Canada Limited and JTI-MacDonald Corp. v. Attorney General of Quebec	On November 26, 2015, the Quebec National Assembly adopted Bill 44: An Act to bolster tobacco control which includes, amongst other measures, a ban on flavored tobacco products, a minimum size for health warnings on tobacco packages and a ban on tobacco industry	On February 26, 2016, Imperial Tobacco Canada and JTI-MacDonald have both decided to initiate legal proceedings against the Government of Quebec to challenge the constitutionality of the

	loyalty programs for retailers. These measures will come into force either on August 26 or November 26, 2016.[160]	menthol ban, the minimum size for health warnings and the new restrictions on tobacco advertising targeting retailers (article 28 of the Act to bolster tobacco control). The manufacturers claim that these measures infringe on their freedom of expression right guaranteed under both the Quebec and Canadian Charters of Rights and Freedom.[161]

Other Tobacco Industry Litigation

Case	Background	Status
Kansa General International Insurance Company Ltd. (Winding up of)	Kansa General International is an insurance company that has filed for bankruptcy in December 1994. In March 1995, the Quebec Superior Court issued a winding-up order against the company. Ferdinand Alfieri, a certified public accountant, has been named as the liquidator of the company. According to a ruling from the Quebec Court of Appeal, "[Imperial Tobacco Canada and Rothmans, Benson & Hedges] are beneficiaries of liability insurance policies issued by Kansa General International Insurance Company Ltd. (hereinafter "Kansa") between 1983 and 1986, covering legal fees and damages that it may be ordered to pay as the result of lawsuits."[162] In 2007, both companies submitted claims to the liquidator to cover the costs of lawyers' fees and defense expenditures covered by the insurance policies. In return, the liquidator asked both companies to submit all relevant documents and invoices to support their claim. This request triggered an intensive debate regarding the extent of the information that the companies are willing to provide to the liquidator because of attorney-client privileges.[163]	The courts have ruled that the relevant documents and invoices would remain confidential but that the companies tacitly waived any attorney-client privilege when they submitted their claims. In the latest development, the Quebec Court of Appeal ordered both companies to provide non-redacted copies of the documents to the court which will review them, in camera, without the presence of lawyers, and determine which ones will be handed over to the liquidator.[164]
Receiver Reliance Insurance Company	According to the Ontario Superior Court of Justice, "Reliance Insurance Company is a property and casualty insurer incorporated in Pennsylvania. It carried on business in Canada through a branch, Reliance Canada. In 2001, Reliance Insurance Company was put into supervision status in Pennsylvania and subsequently into liquidation. The Pennsylvania Commissioner of Insurance was appointed liquidator of Reliance Insurance Company. On October 4, 2001, the Superintendent of Financial Institutions in Canada took control of the assets of Reliance Canada pursuant to the Insurance Companies Act ("*ICA*") under which Reliance Canada is regulated. On application by the Attorney General (Canada), it was ordered on December 3, 2001 that Reliance Canada be wound-up under the *Winding-Up and Restructuring Act* ("*WURA"*). KPMG Inc. was appointed the liquidator of Reliance Canada. The Liquidator has brought motions to approve settlement agreements with Rothmans, Benson & Hedges Inc. ("RBH"), a holder of 12 excess liability policies issued by Reliance Canada ("RBH Policies") and with Imperial Tobacco Company Limited ("ITCAN"), a holder of 11 excess liability policies issued by Reliance Canada ("ITCAN Policies").	On December 2nd, 2015, the Ontario Superior Court of Justice ruled that "the Crowns are not at this stage bound by the *WURA* and are not bound by the terms of any release made by the Liquidator with RBH and ITCAN." The case raised several issues that the judge felt could only be resolved by holding further hearings. He noted that "Whether it is reasonable to provide for a release in favour of RBH and ITCAN at the expense of the claims by the Crowns and the Quebec Class Action Representatives would depend in part on the strength of their claims against Reliance Canada, which in turn would depend on whether the policies responded to the claims against RBH and ITCAN."

	… The Quebec Class Action Representatives and the seven provincial Crowns [British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan] oppose the proposed settlements by reason of the fact that the settlements contain a condition requiring court approval of releases being provided that would release any claims that third parties, including these opposing parties, would have against Reliance Canada or its reinsurers. They all assert that they have rights directly against Reliance Canada by reason of various statutory provisions. The Provinces also assert that they are not subject to the *WURA* and that if they are, there is no basis for the Court to grant releases from their actions."[165]	The motions to approve the settlement agreements between Reliance Canada and Imperial Tobacco Canada and Rothmans, Benson & Hedges were finally dismissed.[166]

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