

# The Quebec Class Action Trial

## Canada's Three Tobacco Companies Ordered To Pay More than 15 Billion to Quebec Victims

On May 27, 2015, Judge Brian Riordan of the Quebec Superior Court released his judgment in favour of two Quebec class actions against Canada's three main tobacco companies. The case combined two class action lawsuits representing ill and addicted Quebec victims against the Canadian tobacco manufacturers: *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.* The trial ended in December 2014 after 253 days of hearings during which 76 experts and witnesses took the stand and more than 8,000 documents were filed as evidence.

The victims were seeking over \$20 billion in damages from the companies. **The judge ordered the companies to pay 15.5 billion in moral and punitive damages to almost 100,000 Quebec smokers and ex-smokers who developed emphysema, lung cancer or throat cancer.** The court ordered an initial aggregate deposit of \$1.3 billion divided among the defendants in accordance with their share of liability, to be paid within 60 days, notwithstanding the filing of any appeal.

The victims were smokers who started smoking in the 50s, 60s and 70s, a time when the risks of smoking were not known to the public, cigarette warnings were non-existent or insufficient and tobacco ads were everywhere. But the risks had been known to the tobacco industry since the 1950s. **"These companies colluded among themselves in order to impede the public from learning of health-related information about smoking, a collusion that continued for many decades thereafter"**, wrote Justice Riordan in his ruling.

Commenting further on the behaviour of the companies, Justice Riordan said **"By choosing not to inform either the public health authorities or the public directly of what they knew, the Companies chose profits over the health of their customers. Whatever else can be said about that choice, it is clear that it represents a fault of the most egregious nature and one that must be considered in the context of punitive damages."**



Justice Brian Riordan

***"Over the nearly fifty years of the Class Period, and in the seventeen years since, the Companies earned billions of dollars at the expense of the lungs, the throats and the general well-being of their customers. If the Companies are allowed to walk away unscathed now, what would be the message to other industries that today or tomorrow find themselves in a similar moral conflict?"***

### **Tobacco companies found guilty of committing four separate faults:**

1. Their *Civil Code* general duty not to cause injury to another;
2. The manufacturers' duty under the *Civil Code* to inform their clients of the risks and dangers of their products;
3. The rights to life, personal security, personal inviolability and dignity protected by *the Quebec Charter of Human Rights and Freedoms*;
4. The manufacturers' obligation not to hide the truth from or mislead their clients concerning their products under the *Quebec Consumer Protection Act*

### **Tobacco Industry Reaction to Trial Judgement**

The tobacco companies appealed the overall ruling to the Quebec Court of Appeal, and also filed motions to cancel the provisional execution of the judgment (\$1.13 billion to be paid within 60 days). The industry argued in part that they would be unable to pay because they did not have the money. However, on July 16, 2015, Philip Morris International, parent company of Rothmans, Benson & Hedges, issued a news release to accompany its quarterly results, indicating not only that it can pay, but how it will pay. The \$246 million initial payment will be treated as an expense that will lower profits by US\$0.09 per share.

In July 2015, the provisional execution was overturned by the Quebec Court of Appeal because, among other reasons, it would be "hard to recover payments from those who have received them if the companies win on appeal." In October 2015, following a motion from the plaintiffs seeking an order that the tobacco companies provide security pending the outcome of the appeal, the Quebec Court of Appeal ordered Imperial Tobacco Canada and Rothmans, Benson & Hedges to provide security in the amount of \$984 million, payable in quarterly instalments. This ensures that almost \$1 billion will be immediately available should the victims win on appeal. The appeal before the Quebec Court of Appeal will be heard November 2016. The case will most likely be appealed right up to the Supreme Court of Canada.

### **Implications of the Ruling:**

- Sets clearer standards on manufacturers' duty to warn - a duty not to lie; a duty to provide instructions on how to minimize risk; a higher duty for those whose products are ingested or consumed in the human body; a duty for specific warnings when the ordinary use of a product presents a danger and a duty independent of whether or not the warnings will alter consumer behaviour
- Increases public awareness of (and confirms what the health community has been saying for decades) the misbehaviour of the tobacco industry
- Will eventually provide financial compensation to victims
- Made public secret internal tobacco industry documents through the discovery process
- Guilty verdict justifies the legal actions by provincial governments to recover the health care costs related to tobacco-related diseases; evidence from the trial beneficial for these lawsuits
- Ruling contains conclusions which, if sustained by higher courts, may be significant for marketing of tobacco and other harmful products.