

# Tobacco-Related Litigation in Canada

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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 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>1</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 B.C.'s *Tobacco Damages and Health Care Costs Recovery Act* to be constitutional. All

nine other provinces 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 for treatment of tobacco-related illness. However, only B.C., New Brunswick and Ontario 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 “tips the playing field steeply against the industry” in a way that greatly reduces the proof required by the provinces to win.<sup>2</sup>

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.<sup>3</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>4</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 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.
6. Could bankrupt the industry, if there were a sufficient number of cases and/or awards/settlements were large enough.<sup>5</sup>

### **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.<sup>6</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 unethical and illegal practices 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, may motivate the industry to alter its behaviour.<sup>7</sup> The industry could change 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.

#### **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 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 behaviour 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](#)
- [Tobacco Product Liability Litigation](#)
- [Individual Product Liability Litigation](#)
- [Class Action Lawsuits](#)
- [Industry Suits Against Governments](#)

## Litigation Related to Contraband

Case	Background	Current Status
<p><i>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</i></p>	<p>The Crown alleges that the companies (JTI-Macdonald Corp., formerly known as RJR-Macdonald, Inc. and several of its subsidiaries) along with eight former and current employees (Edward Lang, Dale Sisel, Jaap Uittenbogaard, Pierre Brunelle, Paul Neumann, Roland Kostantos, Stanley Smith, Peter MacGregor) conspired to defraud the governments of Canada, Ontario and Quebec of \$1.2 billion in tax revenue between 1991 and 1996. The Defendants allegedly evaded our country's high tobacco taxes by supplying the Canadian black market with Canadian-brand cigarettes that were destined for the foreign marketplace, not fully taxed and therefore not legal for sale here. The RCMP says the firms provided the cigarettes to wholesalers "knowing that these products were being smuggled back into Canada and onto the commercial market."</p>	<p>Judge David Fairgrieve of the Ontario Superior Court of Justice has reserved his judgement following a reconsideration hearing in May 2008 regarding which defendants are to stand trial. In October 2008, <i>The Montreal Gazette</i> 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 Rothmans and Imperial in 2008.</p>
<p><i>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</i></p>	<p>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. However, in 2005, in the <i>Companies' Creditors Arrangement Act</i> proceeding (described below), the Attorney General amended and increased the amount of its claim from \$1.5 billion to \$4.3 billion.</p>	<p>In January 2009, the Court ordered that the deadline for setting the action to trial is January 31, 2011.</p>

## Litigation Related to Contraband

Case	Background	Current Status
Quebec Department of Revenue Actions	<p>In August 2004, the Quebec government obtained a court judgment ordering JTI-Macdonald Corp. (JTI-MC) to pay nearly \$1.4 billion (in penalties and interest) immediately, the largest assessment for unpaid taxes in the province's history. Under Section 13 of the Quebec <i>Department of Revenue Act</i>, 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 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.</p> <p>On Aug. 17, 2004, JTI-MC announced that it had filed for protection under the <i>Companies' Creditors Arrangement Act</i> (CCAA). The protection remains in place to this day and presently prevents Quebec from collecting what it is owed.</p> <p>In addition to the claims by the Attorney General of Canada and the province of Quebec, six provinces have filed claims (British Columbia, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island). In total, the provinces and the Attorney General claim that JTI-MC owes them about \$10 billion. 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.</p>	<p>In October 2008, <i>The Montreal Gazette</i> 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.</p>

## Litigation Related to Contraband

Case	Background	Current Status
<p><i>The Ontario Flue-Cured Tobacco Growers' Marketing Board, et al. v. Rothmans, Benson &amp; Hedges Inc.</i></p>	<p>This class action lawsuit filed against Rothmans, Benson &amp; Hedges (RBH) alleges that the company 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 company 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 RBH and was designed to force governments to lower tobacco taxes. In July 2008, Rothmans admitted guilt and paid criminal fines related to the 1990s smuggling crisis. The company also entered into civil settlements with the federal and various provincial governments. Given RBH's admission of guilt the tobacco farmers have a good chance at success in this somewhat related action.</p>	<p>In February 2010, Philip Morris International, which now owns RBH, said it has been served with a Statement of Claim but there was no deadline to respond.<sup>8</sup></p>

## Tobacco Product Liability Litigation

Case	Background	Current Status
<p><i>Her Majesty The Queen In Right Of British Columbia v. Imperial Tobacco Canada Limited, Rothmans, Benson &amp; Hedges Inc., Rothmans Inc., JTI-Macdonald Corp., Canadian Tobacco Manufacturers' Council, et al</i></p>	<p>B.C.'s health care cost recovery lawsuit names Imperial Tobacco Canada, Rothmans, Benson &amp; Hedges, JTI-Macdonald, the Canadian Tobacco Manufacturers' Council and several foreign companies (including British American Tobacco, Philip Morris and R.J. Reynolds). It alleges 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.</p> <p>The government seeks to recover \$10 billion in health care costs from these tobacco companies. The parent companies unsuccessfully argued all the way to the Supreme Court of Canada that they should not be included in the lawsuit. Citigroup, one of the world's largest banks prior to the sub-prime mortgage meltdown in 2008, said the B.C. suit, if successful, has the chance to bankrupt Imperial. B.C. is likely to achieve victory at trial because the <i>Tobacco Damages and Health Care Costs Recovery Act</i>, the legislation which enabled the lawsuit, provides "for suing in reverse onus, that is, the tobacco industry [will] have to prove that users [of its products] were not harmed. As well, it allows the use of aggregate studies showing harm in populations, without having to prove harm to specific individuals, also increasing the likelihood of success."<sup>9</sup></p>	<p>A September 2011 target date has been set for the trial to begin. The tobacco companies have tried to enjoin the federal government with a Third Party Notice—claiming the government should also be liable in the case. The court initially ruled against the companies. However, Imperial appealed this decision and that appeal was consolidated with a similar appeal in the Knight case (see page 16). In December 2009, the B.C. Court of Appeal, by a narrow 3-2 majority with a strong dissent, allowed the tobacco industry appeals, but only in part. In February 2010, the federal government announced it is seeking leave to appeal the decision to the Supreme Court of Canada.</p>

## Tobacco Product Liability Litigation

Case	Background	Current Status
<p><i>Her Majesty The Queen In Right Of The Province Of New Brunswick v. Rothmans, Benson &amp; 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</i></p>	<p>Virtually identical to B.C.'s enabling legislation, New Brunswick's version of the <i>Tobacco Damages and Health-care Costs Recovery Act</i> received Royal Assent on June 22, 2006. In March 2008 New Brunswick 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 awarded to the province.</p>	<p>The tobacco companies named in the lawsuit have mounted various legal challenges related to the contingency fee agreement. One of their legal arguments remains to be decided upon by a panel of three justices of the New Brunswick Court of Appeal, but all others have been dismissed. Preliminary motions related to the case are pending, as is a motion filed by several of the UK-based companies challenging the province's jurisdiction in the matter. The motion related to jurisdiction is scheduled to be heard in June 2010.</p>
<p>Newfoundland and Labrador</p>	<p>In May 2001 the Newfoundland and Labrador government passed the <i>Tobacco Health Care Costs Recovery Act</i>, which permits the government to sue tobacco companies for the cost of treating smoking-related illnesses, estimated to be \$360 million a year.<sup>10</sup> 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>11</sup> British Columbia and Saskatchewan intervened in support of the Newfoundland and Labrador legislation. Imperial, Rothmans 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.</p>	<p>The government of Newfoundland and Labrador has not yet filed its lawsuit, despite having passed enabling legislation in 2001.</p>

## Tobacco Product Liability Litigation

Case	Background	Current Status
Nova Scotia	In December 2005 Nova Scotia's <i>Tobacco Damages and Health-care Costs Recovery Act</i> received Royal Assent. <sup>12</sup> It is virtually identical to B.C.'s legislation.	Nova Scotia has not yet filed its lawsuit.
Manitoba	The <i>Tobacco Damages and Health Care Costs Recovery Act</i> received Royal Assent in June 2006. <sup>13</sup> It, too, is virtually identical to B.C.'s legislation.	Manitoba has not yet filed its lawsuit. However, in its November 2009 Speech from the Throne, the government said that it would proceed with the lawsuit in 2010.
Saskatchewan	Tobacco-related health care costs are estimated at \$145 million annually in Saskatchewan. The province's <i>Tobacco Damages and Health Care Costs Recovery Act</i> received Royal Assent in April 2007. <sup>14</sup>	Saskatchewan has not yet filed its lawsuit.
<i>Her Majesty The Queen In Right Of Ontario v. Rothmans, Benson &amp; Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited, Canadian Tobacco Manufacturers' Council, et al</i>	Ontario passed the <i>Tobacco Damages and Health Care Costs Recovery Act</i> in May 2009. <sup>15</sup> In September 2009 Ontario filed its lawsuit against the tobacco companies, becoming the third province in Canada to do so. <sup>16</sup> Ontario is seeking \$50 billion in damages for past and ongoing health care costs linked to treating tobacco-related illness.	On January 29, 2010, the United Kingdom-based defendants (parents of the Canadian tobacco companies) served notices of motion and supporting evidence challenging jurisdiction. <sup>17</sup>
Quebec	Quebec passed its <i>Tobacco-related Damages and Health Care Costs Recovery Act</i> in June 2009.	Quebec has not yet filed its lawsuit.
Alberta	The <i>Crown's Right of Recovery Act</i> received Royal Assent in Alberta in November 2009. The legislation is similar to B.C.'s <i>Tobacco Damages and Health Care Costs Recovery Act</i> .	Alberta's <i>Act</i> becomes law upon proclamation, which has not yet occurred; the province has not filed its lawsuit.
PEI	Royal Assent was given to PEI's <i>Tobacco Damages and Health Care Costs Recovery Act</i> in December 2009. PEI became the tenth province in the country to adopt enabling legislation allowing them to sue tobacco companies to recover health care costs.	PEI has not yet filed its lawsuit.

## Individual Product Liability Litigation

Case	Background	Current Status
<p><i>Spasic v. Imperial Tobacco, et al</i></p>	<p>On May 1, 1997, <i>Spasic v. Imperial Tobacco et al</i> was filed against Imperial Tobacco and Rothmans, Benson &amp; Hedges for millions of dollar in damages.<sup>18</sup> A second suit, <i>Spasic Estate v. B.A.T. Industries p.l.c.</i>, 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.<sup>19</sup> Mirjana Spasic died of smoking-related lung cancer in February 1998, but her estate continues to pursue both lawsuits.<sup>20</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 destroyed evidence of their tortious actions.<sup>21</sup></p> <p>The defendants have managed to drag out the proceedings for more than a decade, but a trial date is finally in sight. The <i>Spasic v. Imperial</i> 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, leading the defendants to provide lists of documents disclosing relevant evidence.</p>	<p>The action is active and proceeding at the preliminary stage with various pre-trial matters being addressed related to document production.</p>

## Individual Product Liability Litigation

Case	Background	Current Status
<p><i>Peter Stright v. Imperial Tobacco Company Limited</i></p>	<p>Lower Sackville, Nova Scotia resident Peter Stright started smoking cigarettes in 1975, when he was 11 years old. He became addicted to nicotine and later in life developed Buerger's Disease. Stright's September 2002 Statement of Claim alleges that his nicotine addiction and Buerger's Disease were caused by the negligent and/or intentional acts of Imperial Tobacco Limited:</p> <p style="padding-left: 40px;">"The Defendant designed, manufactured and distributed tobacco products that are inherently defective and dangerous when used as intended, that is ignited and inhaled into the body."</p> <p>It is further claimed that Imperial Tobacco knew or ought to have known that their products were dangerous and that the company should have warned its customers "of the dangerous and defective nature of its tobacco products."<sup>22</sup></p> <p>The case had previously been in abeyance since 2005.</p>	<p>In March 2010, British American Tobacco told its shareholders that "The parties have been summoned to appear before the court where it is anticipated that the plaintiff will advance its case to avoid the claim being quashed."<sup>23</sup></p>

## Class Action Lawsuits

Case	Background	Current Status
<p><i>Victor Todd Sparkes v. Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</i></p>	<p>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>24</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>25</sup> Crosbie filed the lawsuit in Newfoundland Supreme Court on behalf of Victor Sparkes and others. 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 <i>Trade Practices Act</i>, 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>26</sup></p> <p>In December 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.</p>	<p>In a decision handed down by the Newfoundland Court of Appeal on March 22, 2009, the bid to certify the class action was rejected. The appeal court ruled that in order for Newfoundland consumers to seek protection under the <i>Trade Practices Act</i>, the consumers must have a direct relationship, what lawyers call privity, with the manufacturers. This privity requirement does not exist in other provinces.</p>
<p>Létourneau and Conseil québécois</p>	<p>In Quebec, after six years of preliminary motions, the hearing on the certification of two class action suits (<i>Létourneau and Conseil québécois</i>) 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</p>	

	<p>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 separate class actions.</p> <p>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 have successfully postponed it up until now. In an announcement to shareholders in 2008, British American Tobacco said: "This litigation is expected to take several years to proceed to trial."<sup>27</sup> When the class actions eventually do make it to trial, they will be heard in Quebec Superior Court in Montreal. Judge Brian Riordan will hear the case.</p>	
<p><i>Cécilia Létourneau v. Imperial Tobacco Ltd., Rothmans, Benson &amp; Hedges Inc. and JTI-Macdonald Corp.</i></p>	<p>Christine Fortin and Joseph Mandelan, both of Montreal, along with Cécilia Létourneau of Rimouski, say cigarette manufacturers knew for decades that their products were harmful and addictive. In 1998 lawyers from the law firm Trudel &amp; Johnson representing the three smokers asked the Quebec Superior Court to hear the suit against Imperial Tobacco Ltd., Rothmans, Benson &amp; 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 on behalf of 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>28</sup> The claim seeks \$5,000 for each person included in the group plus compensation for specific damages, for a total of \$17.8 billion.<sup>29 30</sup></p>	<p>In February 2010 Philip Morris International, which owns RBH, indicated that "The court has set September 2010 as the target trial date."<sup>31</sup></p>
<p><i>Conseil québécois sur le tabac et la santé and Jean-Yves Blais v. Imperial Tobacco Ltd., Rothmans, Benson &amp; Hedges Inc. and JTI-Macdonald Corp.</i></p>	<p>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.</p>	<p>In February 2010 Philip Morris International, which owns RBH, indicated that "The court has set September 2010 as the target trial date."<sup>32</sup></p>

## Class Action Lawsuits

<p><i>Jasmine Ragoonanan and Phillip Ragoonanan, by their estate representative, Davina Ragoonanan, and Ranuka Baboolal, by her estate representative, Vashti Baboolal v. Imperial Tobacco Limited, Rothmans, Benson &amp; Hedges Inc., and JTI-Macdonald Inc.</i></p>	<p>This class action dealt specifically with fire-safe cigarettes. After a house fire caused by a smouldering cigarette killed three children in January 1998, relatives of the victims brought an action against Imperial Tobacco Canada.<sup>33</sup> The claim alleged 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 plaintiffs attempted to have the suit certified as a class action, which would have included relatives of victims of other cigarette-caused fires. The claims in the case included a breach of the company's duty to produce a safe product and of their duty to warn of hazards of their products.<sup>34</sup> The class was denied certification in October 2005 by Ontario Superior Court Judge Maurice Cullity.<sup>35</sup> The decision denying certification was appealed by the plaintiffs to the Divisional Court, and was heard in January 2008.<sup>36</sup> On April 30, 2008 the Divisional Court released its Reasons for Judgment dismissing the plaintiffs' appeal. The plaintiffs then launched an additional appeal.</p>	<p>On August 26, 2009 a further appeal was dismissed, "thus ending the litigation."<sup>37</sup></p>
<p><i>John Smith v. Imperial Tobacco Canada Ltd. (aka Kenneth Knight v. Imperial Tobacco Canada Ltd.)</i></p>	<p>On May 8, 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.<sup>38</sup> 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 Defence 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 Imperial any amount that the defendant is ordered to pay.<sup>39</sup></p>	<p>On December 8, 2009, the B.C. Court of Appeal handed down its decision related to Imperial's attempt to enjoin the federal government. BAT reported that: "The court held that it was not plain and obvious that firstly, the Federal Government did not owe a duty of care to tobacco manufacturers when it implemented its tobacco control strategy and secondly, that it was not plain and obvious that the Federal Government did not owe a duty of care to the members of the class."<sup>40</sup> On February 8, 2010, the federal government sought leave to appeal to the Supreme Court of Canada.</p>

## Class Action Lawsuits

Kunta	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. 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." <sup>41</sup> The class action was filed on June 12, 2009.	The class has not yet been certified.
Adams	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 suffered, or suffer, from COPD, emphysema, heart disease, or cancer as well as restitution of profits." <sup>42</sup> The action has been brought against the Canadian Tobacco Manufacturers' Council, Imperial Tobacco Canada, RBH and affiliated companies. The class action was filed on July 10, 2009.	The UK-based companies (parents of the Canadian tobacco companies) named in the lawsuit have served motions challenging jurisdiction. Those motions were due to be heard on March 11 at 12, 2010, but were adjourned until May 3. <sup>43</sup> The class has not yet been certified.
Semple	This class action is similar to the previous two and was filed on June 18, 2009.	The class has not yet been certified.
Dorion	This class action is similar to the previous three and was filed on June 15, 2009.	The class has not yet been certified.

## Industry Suits Against Governments

Case	Background	Current Status
<p><i>Grand River Enterprises v. Her Majesty the Queen in Right of Canada</i></p>	<p>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.</p> <p>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.</p> <p>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.</p>	<p>The Attorney General of Canada has filed a Notice of Intent to defend itself against the lawsuit being heard in Ontario Superior Court. Various preliminary matters are being discussed and the case is proceeding slowly.</p>

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