

# Tobacco-Related Litigation in Canada

Smoking and Health Action Foundation/  
Non-Smokers' Rights Association

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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.<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. 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, except for Nova Scotia, 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4,5</sup> 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.<sup>6</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>7</sup> (This does not include the social costs, such as the impact on a family of losing a parent prematurely to a preventable tobacco-caused death.) Shifting some of those costs to manufacturers through litigation would force an increase in prices. Higher prices have been proven to deter youth from starting to smoke 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 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 behavior.<sup>8</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 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 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](#)
- [Provincial Tobacco Liability Litigation](#)
- [Individual Tobacco Liability Litigation](#)
- [Class Action Litigation](#)
- [Industry versus Government Litigation](#)
- [Inter-Tobacco Industry Litigation](#)

## Litigation Related to Contraband

Case	Background	Status
<p>Comprehensive agreement between Imperial Tobacco Limited of Canada and Her Majesty the Queen in Right of Canada and the Provinces.</p> <p style="text-align: center;">AND</p> <p>Comprehensive agreement between Rothmans, Benson &amp; Hedges, Inc. and Rothmans Inc. and Her Majesty the Queen in Right of Canada and the Provinces.</p>	<p>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 &amp; 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.</p> <p>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 <i>Excise Act</i> and its amendments and the ministerial regulations” between 1989 and 1994.”</p>	<p>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.<sup>9</sup></p> <p>As for Rothmans, Benson &amp; 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.<sup>10</sup></p>
<p>Comprehensive agreement between JTI-MacDonald Corporation and Her Majesty the Queen in Right of Canada and the Provinces.</p>	<p>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.</p> <p>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 <i>Excise Act</i>”, while Northern Brands International Inc., a company related to RJR, pleaded guilty to a conspiracy offence under the Criminal Code.</p>	<p>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.<sup>11</sup></p> <p>The following two cases were also dropped against the manufacturers and some of its former executives:</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 style="text-align: center;">AND</p> <p><i>Her Majesty the Queen v. JTI-Macdonald Corp.</i></p>

		<i>(formerly RJR-Macdonald Inc.), Dale Sisel, Jaap Uittenbogaard, Edward Lang, Pierre Brunelle, Paul Neumann, Roland Kostantos and Peter MacGregor</i>
<p><i>The Ontario Flue-Cured Tobacco Growers' Marketing Board, et al. v. Rothmans, Benson &amp; Hedges Inc.</i></p> <p>AND</p> <p><i>The Ontario Flue-Cured Tobacco Growers' Marketing Board, et al. v. Imperial Tobacco Canada Ltd.</i></p> <p>AND</p> <p><i>The Ontario Flue-Cured Tobacco Growers' Marketing Board, et al. v. JTI-Macdonald Corp.</i></p>	<p>These class action lawsuits filed against Rothmans, Benson &amp; 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.</p> <p>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.</p> <p>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.</p>	<p>According to the law firm (Sutts, Strosberg LLP) representing the Ontario Flue-Cured Tobacco Growers' Marketing Board:</p> <p>"The class actions are still in the preliminary stages. The court will eventually set a timetable for the conduct of the actions, but that has not occurred yet." <sup>12</sup></p> <p>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. <sup>13</sup> This position was rejected by the Ontario Superior Court of Justice in January 2013. <sup>14</sup></p>
<p><i>Weninger Farms Ltd., Stanley Kosciak and Linda Kosciak v. Attorney General of Canada</i></p>	<p>According to the latest statement of claim dated January 2012, Weninger Farms, Stanley Kosciak and Linda Kosciak have filed in the Ontario Superior Court of Justice a class action lawsuit on behalf of "all those farm owners and/or operators who owned, leased or share grew tobacco quota allocated by the Ontario Flue-Cured Tobacco Marketing Board between 2001 and 2008" against the federal and Ontario governments because they "were negligent in carrying out their duties under the <i>Excise Act</i>, the <i>Excise Act, 2001</i>, the <i>Excise Tax Act</i>, the <i>Retail Sales Tax Act</i> and the <i>Tobacco Tax Act</i> when they knew or ought to have known that failure to enforce the provisions of the said Acts would lead to an increase in the sale of contraband tobacco products."</p> <p>The federal and Ontario governments "knew that their failure to carry out the duties imposed by the said Acts would increase the sales of</p>	<p>The National Post reported in August 2012 that the Ontario Superior Court of Justice dismissed the case because there is no reasonable cause of action against the federal and Ontario governments. <sup>16</sup> The judge ruled that even if governments wanted to avoid angering First Nations by not taking action against the illicit trade, "it was a decision made for economic, social and political reasons, and cannot be challenged legally." <sup>17</sup> No decision has been made yet to appeal the ruling.</p>

	<p>contraband tobacco products in Ontario and across Canada, thereby reducing the demand for tobacco grown and marketed by the Plaintiffs and other members of the class and further knew that the reduced demand for tobacco grown and marketed in accordance with the regulatory scheme established by the Defendants would cause substantial damage to the Plaintiffs and other members of the class.”<sup>15</sup></p>	
<p><i>The Montana First Nation and Chief Carolyn Buffalo and Rainbow Tobacco G.P. v. The Alberta Liquor and Gaming Commission</i></p>	<p>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.<sup>18</sup> 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 <i>Tobacco Tax Act</i> 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.<sup>19</sup></p> <p>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 <i>Tobacco Tax Act</i> 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.<sup>20</sup></p>	<p>Chief Carolyn Buffalo and the three other accused were scheduled to appear in provincial court in Wetaskiwin, Alta., on June 23<sup>rd</sup>, 2011.<sup>21</sup> Their court appearances have since been pushed back to late 2013 or early 2014.</p> <p>As for the Rainbow Tobacco Company claim, the AGLC has since filed its statement of defense. No trial date has yet been set.</p>
<p>Imperial Tobacco Canada Ltd. v. tobacco manufacturers and retailers on First Nations reserves</p>	<p>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 <i>Her Majesty The Queen In Right Of Ontario v. Rothmans Inc., Rothmans, Benson &amp; Hedges Inc., Carreras Rothmans Limited, Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc., et al.</i> 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.<sup>22</sup></p>	<p>There hasn't been any recent announcement or development related to the case.</p>



## Provincial Tobacco Liability Litigation

Case	Background	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, 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 Ryeseckks P.L.C.</i></p>	<p>The B.C. legislature adopted the initial version of the <i>Tobacco Damages and Health Care Costs Recovery Act</i> in 1997. The second version of the <i>Act</i> was introduced in 2000.<sup>23</sup> The province filed its statement of claim on January 24, 2001.<sup>24</sup></p> <p>The <i>Tobacco Damages and Health Care Costs Recovery Act</i> “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.”<sup>25</sup> The same principals apply for the other provincial acts.</p> <p>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.</p>	<p>In February 2000, the Supreme Court of British Columbia ruled that the first version of the <i>Tobacco Damages and Health Care Costs Recovery Act</i> was unconstitutional because of its extra-territorial reach.<sup>26</sup></p> <p>In September 2005, the Supreme Court of Canada upheld the constitutionality of the second version of the <i>Tobacco Damages and Health Care Costs Recovery Act</i>.<sup>27</sup></p> <p>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.<sup>28</sup></p> <p>The case is at the pre-trial discovery stage.<sup>29</sup></p> <p>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).<sup>30</sup></p>
<p><i>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</i></p>	<p>The <i>Crown’s Right of Recovery Act</i> received Royal Assent in Alberta in November 2009 and was proclaimed on May 31, 2012.<sup>31</sup> The government of Alberta filed its Statement of Claim on June 8, 2012.<sup>32</sup> The province is seeking \$10 billion from the manufacturers.</p>	<p>For the moment, the companies have only been served with the statement of claim.<sup>33</sup></p>

<p><i>International, Inc.; Philip Morris USA, Inc.; R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.; Rothmans Benson &amp; Hedges Inc.; and Rothmans Inc.</i></p>		
<p>Saskatchewan</p>	<p>Tobacco-related health care costs are estimated at \$145 million annually in Saskatchewan.<sup>34</sup> The province's <i>Tobacco Damages and Health Care Costs Recovery Act</i> received Royal Assent in April 2007.<sup>35</sup> The <i>Act</i> was proclaimed on World No Tobacco Day in 2012.<sup>36</sup> The province filed its statement of claim a few days later on June 8, 2012.</p>	<p>The parties are preparing for preliminary motions.<sup>37</sup></p> <p>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).<sup>38</sup></p>
<p>Manitoba</p>	<p>The <i>Manitoba Tobacco Damages and Health Care Costs Recovery Act</i> received Royal Assent in June 2006.<sup>39</sup> Like Saskatchewan, the <i>Act</i> was proclaimed on World No Tobacco Day in 2012. The province filed its statement of claim a few hours later.<sup>40</sup></p>	<p>The parties are preparing for preliminary motions.<sup>41</sup></p> <p>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).<sup>42</sup></p>
<p><i>Her Majesty The Queen In Right Of Ontario v. Rothmans Inc., Rothmans, Benson &amp; 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.</i></p>	<p>Ontario passed the <i>Tobacco Damages and Health Care Costs Recovery Act</i> in May 2009.<sup>43</sup> In September 2009, Ontario filed its lawsuit against the tobacco companies, becoming the third province in Canada to do so.<sup>44</sup> Ontario is seeking \$50 billion in damages for past and ongoing health care costs linked to treating tobacco-related illness.<sup>45</sup></p>	<p>In January 2012, the Ontario Superior Court ruled that foreign tobacco companies must remain as defendants in the case.<sup>46</sup> Companies were also ordered to pay the province's costs of opposing the initiative.<sup>47</sup> The companies are appealing both decisions.<sup>48</sup></p> <p>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.<sup>49</sup> There hasn't been any recent development on this issue.</p>

		The parties are preparing for preliminary motions. <sup>50</sup>
<i>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 &amp; 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.</i>	Quebec passed its <i>Tobacco-related Damages and Health Care Costs Recovery Act</i> in June 2009. <sup>51</sup> Because the Act included a limitation period (19 June, 2012), the Quebec government filed its statement of claim on 8 June, 2012. <sup>52</sup> The government is claiming \$60 billion in costs and damages from the manufacturers.	<p>The tobacco industry filed a constitutional challenge of the <i>Act</i> in August 2009.<sup>53</sup> Unfortunately, the Quebec Attorney General failed in 2010 to block the industry’s challenge and the issue is headed to the courts.<sup>54</sup></p> <p>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.<sup>55</sup></p> <p>The parties are preparing for preliminary motions.<sup>56</sup></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>	New Brunswick’s version of the <i>Tobacco Damages and Health-care Costs Recovery Act</i> received Royal Assent on June 22, 2006. <sup>57</sup> The province filed its lawsuit against the manufacturers two years later, becoming only the second province in Canada to do so. <sup>58</sup> 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. <sup>59</sup>	<p>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.<sup>60</sup></p> <p>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.<sup>61</sup></p> <p>In August 2012, tobacco manufacturers were compelled to file their statements of defense which argue that the lawsuit should be thrown out because, among other things, “New Brunswickers who smoked chose to do so, despite news coverage, awareness campaigns and warning labels identifying the risks.”<sup>62</sup></p>

		<p>The case is at the pre-trial discovery stage.<sup>63</sup></p> <p>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).<sup>64</sup></p>
Nova Scotia	Nova Scotia's <i>Tobacco Damages and Health-care Costs Recovery Act</i> received Royal Assent in December 2005. <sup>65</sup>	<p>Although Nova Scotia announced in 2011 that it had begun the process of holding the industry accountable for its wrongdoings, the province has still not filed its statement of claim.<sup>66</sup></p> <p>Nova Scotia 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).<sup>67</sup></p>
<i>Her Majesty the Queen in Right of the Province of Prince Edward Island v. Rothmans, Benson &amp; 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.</i>	Royal Assent was given to P.E.I.'s <i>Tobacco Damages and Health Care Costs Recovery Act</i> in December 2009. <sup>68</sup> The <i>Act</i> was proclaimed on June 12, 2012. <sup>69</sup> The province filed its statement of claim on September 10, 2012. <sup>70</sup>	<p>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."<sup>71</sup></p> <p>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).<sup>72</sup></p>

<p><i>Attorney General Of Newfoundland And Labrador v. Rothmans Inc., Rothmans, Benson &amp; 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.</i></p>	<p>Newfoundland and Labrador passed its <i>Tobacco-related Damages and Health Care Costs Recovery Act</i> in May 2001.<sup>73</sup> The government announced the proclamation of its <i>Act</i> and the filing of its statement of claim on February 8, 2011.<sup>74, 75</sup></p>	<p>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 <i>Act</i> to the Supreme Court of Newfoundland and Labrador (Court of Appeal) in October 2002.<sup>76</sup> 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.</p> <p>The parties are preparing for preliminary motions.<sup>77</sup></p>
<p>Northwest Territories</p>	<p>The Northwest Territories adopted its <i>Tobacco Damages and Health Care Cost Recovery Act</i> in August 2011.<sup>78</sup> The <i>Act</i> has not been proclaimed yet.</p>	<p>For the moment, there is no news on the status of the territory's lawsuit.</p>
<p>Nunavut</p>	<p>Nunavut adopted its <i>Tobacco Damages and Health Care Cost Recovery Act</i> in November 2010.<sup>79</sup> The <i>Act</i> has not been proclaimed yet.</p>	<p>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.<sup>80</sup></p>

## Individual Tobacco Liability Litigation

Case	Background	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. “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. Mirjana Spasic died of smoking-related lung cancer in February 1998, but her estate continues to pursue both lawsuits.”<sup>81</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 tortuous actions.<sup>82</sup></p> <p>The defendants have managed to drag out the proceedings for more than a decade. The <i>Spasic v. Imperial Tobacco et al.</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>According to the law firm Sommers and Roth which is representing the Spasic Estate, the case is still at the discovery phase.</p>
<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>“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</p>	<p>In March 2010, British American Tobacco told its shareholders that “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>84</sup></p> <p>According to the plaintiff’s attorney, the case is still at the discovery phase.</p>

	<p>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>83</sup></p> <p>The case had previously been in abeyance since 2005.</p>	
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## Class Action Litigation

Case	Background	Status
<p><i>Cécilia Létourneau v. Imperial Tobacco Ltd., Rothmans, Benson &amp; Hedges Inc. and JTI-Macdonald Corp.</i></p> <p style="text-align: center;">AND</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>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.<sup>85</sup></p> <p>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.<sup>86</sup></p> <p>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.</p> <p>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.</p>	<p>In 2005, the Quebec Superior Court not only certified both class actions but ruled as well that they would proceed concurrently.<sup>87</sup></p> <p>The trial officially started in March 2012 and it has taken more than a year for the plaintiffs to present their case to Quebec Superior Court judge Brian Riordan. It is expected to take as long if not longer for the tobacco manufacturers to present their defense. The case can be followed on a daily basis through the excellent blog “Eye on the Trials” that was set up by the Quebec Public Health Association.<sup>88</sup> There is also a website which gives access to all the trial exhibits, transcripts and interim rulings.<sup>89</sup></p> <p>The trial has already fulfilled its promises in terms of fascinating testimonies and the release of previously confidential tobacco industry documents.</p> <p>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.<sup>90</sup></p>
<p><i>Jasmine Ragoonanan and Phillip Ragoonanan, by their estate representative, Davina Ragoonanan, and Ranuka Baboolal, by her estate representative, Vashiti 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>91</sup></p> <p>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</p>	<p>In October 2005, a first attempt to certify the class action lawsuit was denied by the Ontario Superior Court of Justice.<sup>93</sup></p> <p>The ruling was appealed to the Divisional Court which rejected as well the certification of the class action lawsuit in April 2008.<sup>94</sup></p> <p>In August 2009, a further appeal was dismissed, “thus ending the litigation.”<sup>95</sup></p>




	their products. <sup>92</sup>	
<i>John Smith v. Imperial Tobacco Canada Ltd. (aka Kenneth Knight v. Imperial Tobacco Canada Ltd.)</i>	<p>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.<sup>96</sup></p> <p>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.</p> <p>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 any amount that Imperial is ordered to pay.<sup>97, 98</sup></p>	<p>In February 2005, the B.C. Supreme Court of Justice agreed to certify the class action lawsuit.<sup>99</sup> The decision was confirmed by the B.C. Court of Appeal in May 2006.<sup>100</sup></p> <p>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.<sup>101</sup></p> <p>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.<sup>102</sup></p> <p>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.<sup>103</sup></p> <p>The case is still at the pre-trial phase.</p>
<i>Victor Todd Sparkes v. Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</i>	<p>In July 2004, Ches Crosbie, a Newfoundland law firm, filed a class action lawsuit against Imperial Tobacco, claiming the Montreal-based company deceived its customers in its marketing of 'light' and 'mild' cigarettes.</p> <p>According to the statement of claim, the lawsuit wasn't seeking compensation for people who suffered health problems due to smoking 'light' and 'mild' cigarettes. Based on Newfoundland's <i>Trade Practices Act</i>, the suit was seeking instead a refund for all the revenues and profits made by the company for the sales of 'light' and 'mild' cigarettes since their introduction in the 1970s.<sup>104</sup></p>	<p>In December 2008, the Supreme Court of Newfoundland and Labrador declined to certify the action under the <i>Class Action Act</i> on the basis that the plaintiff failed to establish that he had a cause of action pursuant to the <i>Trade Practices Act</i>.<sup>105</sup></p> <p>In March 2010, the Newfoundland Court of Appeal refused as well to certify the class action. 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</p>

		<p>requirement does not exist in other provinces.<sup>106</sup></p> <p>A few months after the initial ruling, the <i>Trade Practices Act</i> was replaced by the <i>Consumer Protection and Business Practices Act</i>. The government of Newfoundland and Labrador Government stated that it took such action “to strengthen and streamline legislation that prohibits unfair and unconscionable business transactions and provide remedies for wronged consumers”.<sup>107</sup></p>
<i>Kunta v. Canadian Tobacco Manufacturers' Council, et al.</i>	<p>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.</p> <p>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.<sup>108</sup></p> <p>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.<sup>109</sup></p>	<p>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.”<sup>110</sup> (See Adams)</p>
<i>Dorion v. Canadian Tobacco Manufacturers' Council, et al.</i>	<p>This class action is similar to the previous one and was filed as well in June 2009 but in the province of Alberta.</p>	<p>Philip Morris International noted that “no activity in this case is anticipated while plaintiff’s counsel pursues the class action filed in Saskatchewan.”<sup>111</sup> (See Adams)</p>
<i>Semple v. Canadian Tobacco Manufacturers' Council, et al.</i>	<p>This class action is similar to the previous two and was also filed in June 2009 but in the province of Nova Scotia.</p>	<p>Philip Morris International noted that “no activity in this case is anticipated while plaintiff’s counsel pursues the class action filed in Saskatchewan.”<sup>112</sup> (See Adams)</p>
<i>McDermid v. Imperial Tobacco Canada Limited, et al.</i>	<p>This class action was filed on June 25, 2010 in the Supreme Court of British Columbia, against Imperial Tobacco Canada, Philip Morris</p>	<p>In its 2013 SEC Annual Report, Philip Morris International stated that “defendants have filed</p>

	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.” <sup>113</sup>	jurisdictional challenges on the grounds that this action should not proceed during the pendency of the Saskatchewan class action”. <sup>114</sup> (See Adams)
<i>Bourassa v. Imperial Tobacco Canada Limited, et al.</i>	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.” <sup>115</sup>	In its 2013 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”. <sup>116</sup> (See Adams)
<i>Adams v. Canadian Tobacco Manufacturers' Council, et al.</i>	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. <sup>117</sup>	The parties are preparing for preliminary motions. <sup>118</sup>
<i>Suzanne Jacklin v. Canadian Tobacco Manufacturers' Council et al.</i>	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.” <sup>119</sup>	In its 2013 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.” <sup>120</sup>

## Industry versus Government Litigation

Case	Background	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.</p> <p>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...”<sup>121, 122</sup></p> <p>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.<sup>123</sup></p> <p>A further appeal to the Federal Court of Appeal was dismissed in September 2012.<sup>124</sup> 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.<sup>125</sup></p>
<p><i>Her Majesty the Queen v. Mader's Tobacco Store Limited and Robert George N. Gee</i></p>	<p>Robert Gee, the owner of Mader's Tobacco retail store in Kentville, Nova Scotia was charged in July 2009 for violating the provincial <i>Tobacco Access Act</i> by refusing to remove tobacco products from a wall display behind his store counter. In response, Robert Gee launched a Charter of Rights and Freedom challenge of the provincial legislation.<sup>126</sup></p>	<p>The first phase of the case was heard before the Provincial Court of Nova Scotia on January 21 and July 6, 2010. Not surprisingly, the judge ruled on August 18, 2010 that the tobacco display ban did infringe section 2 (b) of the Charter.<sup>127</sup></p> <p>After being delayed three times, the second</p>

		<p>phase of the trial was finally heard in December 2012. The ruling is pending.<sup>128, 129</sup></p>
<p><i>JTI-MacDonald Corp. v. Attorney General of Canada</i></p> <p style="text-align: center;">AND</p> <p><i>Imperial Tobacco Canada Limited v. Attorney General of Canada</i></p>	<p>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.<sup>130</sup></p>  <p>Soon afterwards, in April 2012 to be more precise, 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.<sup>131</sup> 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.”</p>	<p>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.”<sup>132</sup> The ruling is pending on the federal government’s motion to dismiss the challenge.</p>

## Inter-Tobacco Industry Litigation

Case	Background	Status
<p><i>Philip Morris Products S.A. and Rothmans, Benson &amp; Hedges Inc. v. Marlboro Canada Limited and Imperial Tobacco Canada Limited.</i></p>	<p>In 2006, Rothmans, Benson &amp; Hedges (RBH) launched a new brand of cigarettes called ROOFTOP (see illustration below) with trademarks similar to MARLBORO cigarettes, a brand which is owned in Canada by Imperial Tobacco Limited (ITL). ITL complained to RBH that the new ROOFTOP brand infringed its trade-mark registration for MARLBORO. RBH responded by filing a Statement of Claim seeking a “declaration that the sale of ROOFTOP cigarettes in Canada does not contravene any rights of the Defendants [ITL] in its MARLBORO registration.”<sup>133</sup></p> <div data-bbox="905 685 1180 1110" data-label="Image"> </div>	<p>In November 2010, the Federal Court of Canada ruled that RBH’s “use of the ROOFTOP Design Trade-mark in association with cigarettes does not infringe any rights the Defendants [ITL] may have under the <i>Trade-marks Act</i>.”<sup>134</sup></p> <p>In June 2012, the Federal Court of Appeal found that “there is a likelihood of confusion between the sources of the products under review if both MARLBORO and PM no-name package are used in Canada.” Thus the Court concluded that RBH’s no-name ROOFTOP package does infringe ITL’s rights related to the registered trade-mark MARLBORO pursuant to section 20 of the <i>Trade-marks Act</i>.<sup>135</sup></p> <p>In March 2013, the Supreme Court of Canada denied RBH’s request to appeal.<sup>136</sup></p>

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