



NHIS GLOBAL FORUM **2025**

Holding the Tobacco Industry Accountable: Lessons from Canada's Landmark Class Action

Mtre Philippe H. Trudel

Trudel Johnston & Lespérance



GENERAL INFORMATION

The Canadian tobacco market is dominated by **three**
Big Tobacco subsidiaries

Imperial Tobacco Canada is fully-owned by **British American Tobacco**

Rothmans, Benson & Hedges is fully-owned by **Philip Morris International**

JTI-Macdonald is fully-owned by **Japan Tobacco**



GENERAL INFORMATION

- Class action procedure is available in Canada
- Certification (authorization) by a judge is a prerequisite in order to progress as a class action. Plaintiff:
 - 1) must demonstrate that there are **common questions** that will advance the claims of all class members
 - 2) must show **apparent right** supporting their claims
 - 3) must prove the **existence of the class**
 - 4) must demonstrate that they are a **good representative** for the class

THE QUEBEC CLASS ACTIONS

The Létourneau class action

The Létourneau file was undertaken on behalf of Quebec smokers who became addicted to the nicotine in the Tobacco Companies' cigarettes.

The CQTS/Blais class action

The CQTS/Blais file was launched by the Conseil Québécois sur le tabac et la santé ("CQTS") on behalf of Quebec smokers who developed lung cancer, throat cancer, or emphysema from smoking the Tobacco Companies' cigarettes.

THE BEGINNING

Although class actions have existed in Quebec since 1978, in the late 1990s they were only beginning to come into their own as a powerful tool for corporate and government accountability, and for access to justice.

On its face, the case didn't actually seem that hard: the tobacco industry was manufacturing the most dangerous and arguably useless consumer product in history. They knew that it was addictive, they knew it was deadly, and they had lied about these facts for decades.

We figured that a case like that ought to be winnable...

BUT....

THE BEGINNING

We knew we had to deal with the infamous litigation strategy consistently deployed by Big Tobacco:

“From the beginning, the cigarette companies decided that **they would defend every claim, no matter what the cost**, through trial and any possible appeals.

This no-compromise strategy warrants special consideration. In the first place, it is unique in the annals of tort litigation. As a general proposition, personal injury lawyers estimate that more than 90 percent of accident claims result in settlement. (...) By contrast, over a period exceeding thirty-five years, **the tobacco industry never offered to settle a single case.** (...)

As a tobacco industry lawyer would put it (...) the industry's hardball tactics made the litigation "extremely burdensome and expensive for plaintiffs' lawyers (...) To paraphrase Gen. [George] Patton, the way we won these cases was not by spending all of Reynolds' money, but **by making [the enemy] spend all his.**"

Robert L. Rabin, A Sociolegal History of the Tobacco Tort Litigation, Stanford Law Review, vol. 44, No. 4 (Apr. 1992)

STRATEGIC & TACTICAL CONSIDERATIONS

We understood from the very beginning that the **question of causation**, coupled with **the narrative of “personal choice”** — no matter how scientifically flawed — was a “linchpin of defence strategy” and a **major threat to the success of the class actions**.

Indeed, as we learned repeatedly, this strategy was not only meant to exhaust our resources — it was also meant to **entangle and maximize the complexity of individual issues**: from how much each claimant knew about the risks of smoking, to the other health and environmental risks they accepted or were exposed to, the brands of cigarettes they smoked, whether and how often they had tried to quit, the advertisements and warnings they had seen, their individualized medical history, their risk profile, and their subjective attitudes towards smoking.

STRATEGIC & TACTICAL CHOICES

Collective causality and collective recovery are key:

- Only moral and punitive damages
- No testimonies from class members
- Epidemiology

Article 19 of the World Health Organization Framework Convention on Tobacco Control (WHO-FCTC). Adopted in 2003.

1. Each Party shall:

1. **take measures to promote the establishment of a national framework for liability**, including civil, criminal, and administrative liability, to hold the tobacco industry accountable for its actions, and to provide redress for the harm caused by tobacco consumption, particularly in relation to the health of individuals.

2. Each Party shall encourage the development of laws and regulations to provide for:

1. **civil liability for damages caused by the tobacco industry**, including the harms caused by tobacco products and exposure to tobacco smoke.
2. **the protection of individuals' and public health from tobacco harm** through regulatory mechanisms that can hold tobacco manufacturers and related entities accountable for health damages caused by tobacco products.

3. Each Party may, as part of their national legal system, apply civil liability in areas like tobacco product labeling, advertising, promotion, sponsorship, and others that could cause harm to public health.

4. Each Party shall seek to ensure that their legal systems can address the health damage from tobacco use and tobacco exposure, in a manner that supports individuals in obtaining remedies for harm caused by tobacco products.

5. Each Party shall cooperate internationally to further the enforcement of these principles, share best practices, and assist each other in improving national tobacco-related liabilities.

Article 19 of the World Health Organization Framework Convention on Tobacco Control (WHO-FCTC).

- Quebec Legislation was adopted in 2009 to facilitate Provincial Health Costs recovery and other Tobacco Claims.

TOBACCO-RELATED DAMAGES AND HEALTH CARE COSTS RECOVERY ACT (chapter R-2.2.0.0.1)

15. In an action brought on a collective basis, proof of causation between alleged facts, in particular between the defendant's wrong or failure and the health care costs whose recovery is being sought, or between exposure to a tobacco product and the disease suffered by, or the general deterioration of health of, the recipients of that health care, may be established on the sole basis of statistical information or information derived from epidemiological, sociological or any other relevant studies, including information derived from a sampling.

The same applies to proof of the health care costs whose recovery is being sought in such an action.

24. The provisions of section 15 that relate to the establishment of causation between alleged facts and to proof of health care costs are applicable to actions brought on an individual basis.

Article 19 of the World Health Organization Framework Convention on Tobacco Control (WHO-FCTC). Adopted in 2003.

The Act confirms that
epidemiological evidence is admissible to establish causality: this was the approach we adopted since the inception of the case.

The Act also stipulates that
no limitation period applies to cases that have already been filed.

Article 19 of the World Health Organization Framework Convention on Tobacco Control (WHO-FCTC).

We were **happy and unhappy** at the same time:

HAPPY: Our approach on causality was **confirmed by law** and limitation period defense was now off the table.

NOT HAPPY: A **constitutionnal attack** on the Cost Recovery law could stall our case.

HAPPY ENDING:

Tobacco companies **failed in their attempt** to stay our proceedings and the constitutionality of the law was quickly affirmed.

CHRONOLOGY OF QUEBEC CLASS ACTIONS

September and november 1998

Blais and Létourneau class actions are launched.

February 2005

both cases were **authorized**
after an unprecedented **14-day** certification hearing.

March 12, 2012
The trial finally began

It took **85 case management conferences** to get the case to trial, at which point the Quebec Class Actions had already resulted in **49 judgments** of the Quebec Superior Court and **17 judgments** of the Quebec Court of Appeal on interlocutory matters.

The complexity of the questions of fact and evidence was extraordinary, involving the disclosure and review of **hundreds of thousands of documents** (representing many millions of pages of materials) and the filing of over **two dozen expert reports** by the parties in highly specialized and complex areas, including addiction, oncology, pneumology, epidemiology, pathology, toxicology, chemistry, psychiatry, history, marketing, public opinion, political economics and econometrics.

The trial spanned **253 judicial days** over the course of almost three years, resulting in over **60,000 pages** of trial transcripts.

MAY 2015 : JUDGEMENT ON THE MERITS

Justice Brian Riordan rendered judgement in May 2015 in favour of our clients in a landmark decision over **1250 paragraphs long**, ordering the Tobacco Companies to pay in excess of **\$13.5 billion** to the benefit of class members.

This overwhelming legal victory in Quebec Class Actions constitutes an **important and effective punishment and deterrent** on both a specific and societal basis.

It is proof that no defendant, no matter how rich and powerful, can escape accountability for the grave harms caused by its egregious misconduct.

Excepts from the Judgement

- Justice Riordan described the behavior modification and deterrence objective, as well as the financial burden assumed to reach this objective, as follows in his 2015 trial judgment:

[1037] (...) If the Companies are allowed to walk away unscathed now, what would be the message to other industries that today or tomorrow find themselves in a similar moral conflict?

[1038] The Companies' actions and attitudes over the Class Period were, in fact, "particularly reprehensible" and must be denounced and punished in the sternest of fashions. To do so will be to favour prevention and deterrence both on a specific and on a general societal level.

[1200] Besides the simple, common-sense notion that it is high time that the Companies started to pay for their sins, it is also high time that the Plaintiffs, and their lawyers, receive some relief from the gargantuan financial burden of bringing them to justice after so many years.

MARCH 1, 2019: APPEAL COURT DECISION

The Superior Court Judgment was upheld in all significant respects by the Quebec Court of Appeal on March 1, 2019.

The Quebec Court of Appeal decision upholding the trial judgment is the **definitive statement on the law in Quebec** on numerous complex and controversial issues relating to the conditions for the liability of manufacturers and their duty to inform, the apportionment of liability among solidary debtors (joint and several tortfeasers), principles of causation and collective recovery, issues relating to the Consumer Protection Act and the Quebec Charter of Human Rights and Freedoms and the availability and quantum of punitive damages, among others.

MARCH 1, 2019 : APPEAL COURT DECISION

No appeal judgment in Canadian legal history has ever awarded such a significant amount.

FUN FACT I:

The table of contents for materials submitted to the Court of Appeal alone is **1,168 pages long**.

FUN FACT II:

The appeal record itself totals **267,000 pages** across **688 volumes**.

SO FAR SO GOOD

- The CQTS/Blais and Létourneau files are widely regarded as **unprecedented in Canadian legal history**. They have been the longest running, most complex, and most intensely contested class actions to ever succeed in Canada.
- They are also the **only class** proceedings in the world where compensation will be **awarded to victims of tobacco related diseases** on a class-wide basis.
- Our approach on collective causality coupled with the favourable reception by the Courts of the Tobacco-Related Damages and Health Care Costs Recove Act **inflicted a fatal blow to the traditional defense of tobacco companies**



THE END OF THE STORY?



NOT YET

COMPANIES' CREDITORS ARRANGEMENT ACT

A few days after the Court of Appeal judgement, the Tobacco Companies filed in Ontario for Court protection under the Companies' Creditor Arrangement Act (« CCAA »)

Even Big Bad Unpopular Companies can benefit from this legislation...

- The Act provides insolvent companies **protection against their creditors** (stay of proceedings)
- The Act gives time to develop a **plan of arrangement with creditors**
- Opportunity **to resolve all claims and get a global release;**

BUT

- **Monitoring of their activities;**
- **No dividend to Parents.**

COMPANIES' CREDITORS ARRANGEMENT ACT

The CCAA proceedings brought all the creditors of the Tobacco Companies to the table — including every provincial and territorial government in Canada — with unproven claims in excess of \$1 trillion CAD. This stage of the litigation included nearly six years of intensive confidential mediation by the former Chief Justice of Ontario and court proceedings, described by the CCAA Court as among the most complex insolvency cases in Canadian history.

A COMPLETELY NEW BALL GAME

All important creditors sit at the table even if they don't have a liquidated claim. Provinces valued their claim at

1 trillion Canadian dollars **\$1,000,000,000,000 CAD**

1 quadrillion South Korean won (1,000,000,000,000,000 KRW)

VS

Our judgment valued at fifteen billion Canadian dollars or

15 trillion South Korean won (15,000,000,000,000 KRW)

WHAT'S IN THE PLANS

FINANCIAL COMPENSATION

- **\$32.5B paid by the three Canadian tobacco companies.**
Tobacco victims are paid in priority on the accumulated cash (approx. \$13B as of today)
- **\$4.119B is set aside for Blais Class Members.**
It is projected that claimants will receive the capital granted to them by the Riordan judgement : e.g. \$100,000 CAD
- **\$2.521B is set aside for other Canadian victims**
(diagnosed with the same tobacco-related diseases as in the Blais Class Action between March 8, 2015 and March 8, 2019)
- **\$1.0B goes to a Cy-près Fund, of which \$131 million is contributed by the Létourneau class action**
(for victims who do not qualify for monetary compensation)
- **\$24.725B will be paid to Provinces from the available cash and the balance will be paid from their future profits:**
 - 85% of net profits for the first 5 years
 - 80% of net profits for years 6 to 10
 - 75% of net profits for years 11 to 15 and
 - 70% thereafter until 100% of the debt is paid

ALL CREDITORS VOTED IN FAVOR OF THE PLANS IN DECEMBER 2024

WHAT'S IN THE PLANS

THE CY-PRÈS

- The Cy-près Foundation's purpose is to fund research, programs and initiatives focused on improving outcomes in Tobacco-related Diseases. The Cy-près Foundation will indirectly benefit users of Tobacco Products and their affected family members or estates who are not directly compensated.
- The Cy-près Foundation will fund research, programs and initiatives regarding tobacco-related cancers, Emphysema/COPD and other illnesses and conditions which are reasonably and rationally connected to tobacco-related harms. The research, programs and initiatives that are funded by the Cy-près Foundation will achieve earlier diagnosis, better treatment, and improved outcomes for persons suffering from these diseases.

WHAT'S IN THE PLANS

Non-Monetary Gains for our Class Members

- The Quebec Class Action Administration Plan allows compensation to be paid to heirs of heirs (successions of successions), not considered explicitly in the judgement.
- The fact that the protocol governing the claims process has been negotiated and drafted in the context of the CCAA Proceedings also protects against the risk that the Tobacco Companies would attempt to impose contested and lengthy “mini-trials” upon class members in the context of the processing of their claims. The Plans explicitly provide for a non-adversarial process in which each class member will have access to assistance at no additional cost to them. The result is a streamlined approach that will ensure meaningful access to justice for every eligible claimant, without overloading the judicial system.

CRITICS

- Some anti-tobacco groups voiced harsh criticisms in the media
- The Canadian Cancer Society (CCS) and the The Heart and Stroke Foundation (HSF), which both had standing to make representations at the approval stage, opposed the approval of the plans

GROUNDNS FOR OPPOSITION

The Plans should **implement measures to restrict promotion**.

Releases granted to tobacco cics are **too broad**.

The Plans should require **public disclosure of internal Tobacco Companies' documents** provided in provincial lawsuits.

The **purpose of the Cy-près is too narrow**, as it provides for research and initiatives focused on improving outcomes in tobacco-related diseases but not prevention, smoking cessation, and public awareness.

The tobacco companies are allowed to **keep all revenues from their alternative products** (vaping).

JUDGEMENT APPROVING THE PLANS

March 6, 2025

[168] The mandate of the Cy-pres Foundation may not be perfect from the standpoint of HSF and CCS, but that does not entitle HSF and CCS to substitute their proposed solutions and proposed language from that which is set out in the Cy-pres Foundation. (...) The position of HSF that the CCAA Plans should be rejected if their suggestions are not incorporated is, quite simply, something this court should not and cannot accept.

[169] The concerns of HSF and CCS have been considered by the Monitors and the Mediator. A \$1 billion Cy-pres Foundation is being created. The establishment of the Cy-pres Foundation satisfies me that the CCAA Plans have taken into account the interests of social stakeholders and the public at large.

JUDGEMENT APPROVING THE PLANS

March 6, 2025

[170] The mandate of the Cy-pres Foundation is both reasonable and appropriate in the circumstances and it is approved.

[171] The Claimants, who will be receiving meaningful compensation as a result of the sanctioning of the CCAA Plans, have waited long enough. Litigation was commenced in 1998. Judgment was obtained in 2015 and confirmed on appellate review in 2019. The CCAA Proceedings were commenced in 2019 and are before this court today to be sanctioned. Thousands of Claimants have sadly passed away during this period. The QCAPs and the PCCs have waited long enough to receive compensation. The wait, for many, has been intolerable.

That wait ends today.

QUEBEC CLASS ACTIONS MET SECTION 19 OBJECTIVES

By exposing the reprehensible conduct of the Tobacco Companies through a full adversarial trial process and by obtaining judgments condemning this conduct in the harshest possible terms, Quebec Class Counsel have achieved **a great societal benefit**, in addition to the **undeniable monetary success achieved**. For the thousands of Quebec victims who tragically are no longer alive to see the benefits of this litigation, this constitutes a part of their legacy and posthumous justice being served in their names.

It is also undeniable that without the success achieved in Quebec, the **enormous recoveries that both Governments and other victims across Canada** will now be receiving under the CCAA Plans would not have been possible.

QUEBEC CLASS ACTIONS MET SECTION 19 OBJECTIVES

The decades-long payments from most of the profits of tobacco product sales to provincial governments **will negatively affect the tobacco companies' incentives to increase their sales.**

On the other hand, the transfer of the tobacco companies profits to provincial governments is an **opportunity to invest more in tobacco control and prevention.**

Governments are now in a **much better position** to achieve their objectives.

QUEBEC CLASS ACTIONS MET SECTION 19 OBJECTIVES

The outcome of the litigation has **profound moral and social significance** to class members, their families and heirs, and to the broader public in Quebec and Canada. Beyond the precedent-setting amounts awarded, the judgments of the Superior Court and the Court of Appeal expose the tobacco industry's decades of deceit in the name of profit.

That these files could be brought to trial and won constitutes an immense achievement for our justice system, for our legal institutions, and for respect for the rule of law in Canada, demonstrating that **no industry is too large or powerful to be held accountable by our courts.**

It also demonstrates **that legislation designed to facilitate legal actions aimed at holding mass tortfeasors accountable may be effective.**

THE END
(for now)

