



# **A quarter century later: Canada's tobacco lawsuits**


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Cynthia Callard  
Physicians for a Smoke-Free Canada  
March 2025



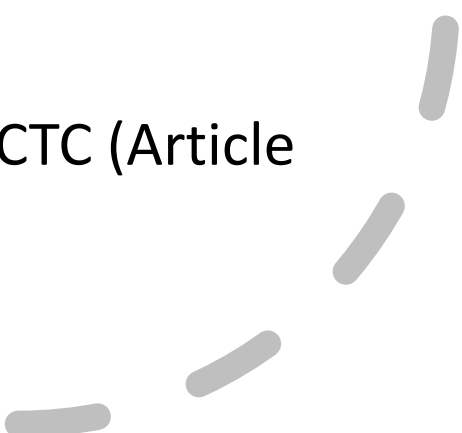
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# Outline

1. Canadian tobacco lawsuits since 1998
  2. The impact of insolvency protection (CCAA) & the “Plan of Compromise”
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- In the bottom right corner, there are several short, curved grey lines of varying lengths, arranged in a roughly circular pattern.

A large orange circle on the left side of the slide, partially cut off by the edge.

## For decades, tobacco control advocates have supported tobacco litigation

- Encouraged governments to file suits
  - Assisted governments and other legal teams in developing their cases
  - Promoted tobacco litigation as a way to:
    - Seek justice against wrongdoings
    - Provide compensation to smokers
    - Provide compensation to taxpayer
    - Expose industry behaviour (through publicity of trials)
    - Set higher standards for tobacco (and other manufacturers)
    - Protect future generations
  - Included liability as a measure in the FCTC (Article 19).
- 
- Four short, curved grey lines in the bottom right corner of the slide.

**More tobacco lawsuits filed in Canada than in any other country outside USA.**

- All 10 provinces sued to recover costs of treating tobacco-caused disease
  - Health-care delivery responsibility of provincial governments (federal government has not claimed)
  - Claims originally in excess of CAD 500 billion for damages dating from mid 20<sup>th</sup> century
- 3 Class action suits authorized:
  - 2 Quebec claims related to addiction and lung cancer, COPD and certain cancers (Blais and Létourneau)
  - 1 B.C. claim related to “light” cigarettes (Knight)
  - Also several “copy-cat” lawsuits filed in each province
  - (Also suit filed by farmers regarding contract breach)

# Canadian Tobacco Litigation Timeline

## Class Actions



May 2003 Knights 'light'  
cigarette class action filed

Feb 2005  
Quebec class actions  
authorized; Knight  
action certified.

Feb 2004: Caputo  
disallowed

Aug 2012  
JY Blais dies

Mar 2012  
Hearings begin

Dec 2014  
Hearings end

Nov 2016  
Appeal Hearing

May 27 2015: Quebec  
Superior Court Ruling

Mar 1, 2019  
Quebec Court of  
Appeal Decision

**STOP**

March 2019  
Insolvency protection  
granted and all  
litigation stayed.

## Provincial Cost-recovery



BC filed  
November 1998

2001: BC revises law and  
re-submits lawsuit.

2000: BC tobacco litigation  
law struck down



2008: New  
Brunswick files suit



2011: Newfoundland  
Labrador files suit



2009: Ontario  
files suit



2012: Prince Edward Island,  
Saskatchewan, Alberta, Manitoba,  
Quebec file suit



January 1995:  
Caputo filed

1995 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019

## Quebec: Conditions for tobacco class action uniquely in place.

- Civil law culture
- Contingency fees permitted
- Class actions well-established, authorization easier
- Fonds d'aide provides financial support to class actions in public interest
- 2009 Tobacco-related Damages and Health Care Costs Recovery Act
  - permits statistical (epidemiological) proof
  - removes time limits on claims
- Law firms willing to take the risk





## One of the biggest Canadian trials in history looked at 5 decades of tobacco industry behaviour

- Quebec claims tried together in Quebec Superior Court by Justice Brian Riordan.
  - 33 months:
    - March 2, 2012 to December 11, 2014
  - 250+ days of hearings
    - 72 witnesses
    - 42,000 exhibits
  - 30+ interlocutory appeals



**6 judges  
unanimously  
agreed:**

**smokers were  
harmed because  
tobacco companies  
broke the law.**

**Quebec Superior Court**  
May 27, 2015  
2015 QCCS 2382

**Victory #1**



Brian Riordan

**Victory #2**

**Quebec Court of Appeal**  
March 1, 2019  
2019 QCCA 358



Marie-France Bich



Étienne Parent



Nicholas Kasirer



Allan Hilton



Yves-Marie  
Morissette



The companies  
broke 4 Quebec  
laws.

They were  
ordered to pay  
\$13+ billion in  
compensation to  
100,000 injured  
Quebec smokers.

- **failure to inform the public health authorities** or the public directly about the health effects of smoking;
- **Knowingly making false and incomplete public statements** about the risks and dangers of smoking;
- **false or misleading representations**, as manufacturers or advertisers, to consumers by giving the general impression that smoking was not harmful to health.
- **lobbying to keep knowingly incomplete and insufficient warnings** placed on cigarette packages;
- **collusion among themselves and other tobacco manufacturers** in order to impede the public from learning of health-related information about smoking;
- **unlawful interference with the right to life**, security and integrity of the Quebec Victims;
- **failure, as manufacturers or advertisers, to mention an important fact** in representations made to consumers; and
- **false or misleading representations**, as manufacturers or advertisers, to consumers by giving the general impression that smoking was not harmful to health.

## What was expected to happen next...

**Before Appeal Court ruling released, it had been expected that who ever lost that decision would appeal to the Supreme Court.**

- SCC has final authority on Canadian cases
- There is no automatic right of appeal, the SCC decides which cases it will review.
- Strength of Appeal Court ruling made it more likely that SCC would not hear the case or would not reverse the decision.





# What happened instead....

## Companies filed for insolvency protection in Ontario courts

- The *Companies' Creditors Arrangement Act (CCAA)* a federal law designed to prevent bankruptcy
- Suspends all claims to allow companies to make an arrangement with their creditors
- All lawsuits against tobacco companies suspended from 2019 to now.

## Provincial governments agreed to CCAA process

- Prevented finalizing Quebec case, and paying smokers
- Court order explicitly permits “business as usual” during protection

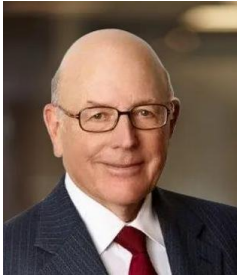
## Ontario Court appointed a mediator

- Top secret negotiations underway from 2019 to 2024





Justice McEwen

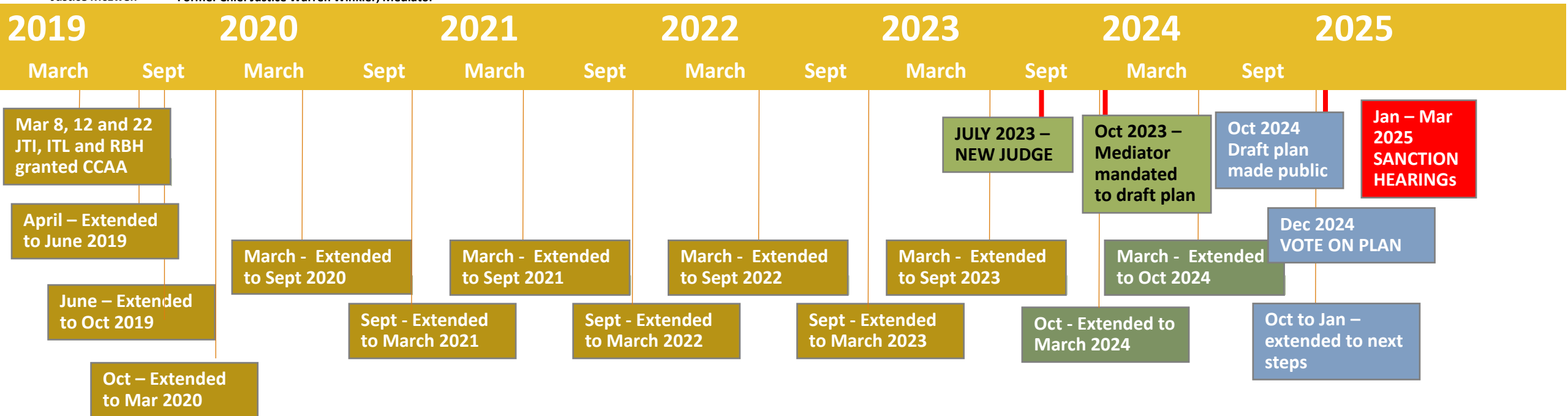


Former Chief Justice Warren Winkler, Mediator



Chief Justice Morawetz

**March 6, 2025  
APPROVED**



# The CCAA Timeline



# The Plans:

1,300-ish pages

\* 134 pages of terms

\* 24 Schedules

3 near-identical plans  
for each company

Court File No.: CV-19-616077-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
RSC 1985, c C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED  
AND IMPERIAL TOBACCO COMPANY LIMITED**

APPLICANTS

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**THIRD AMENDED AND RESTATED  
COURT-APPOINTED MEDIATOR'S AND MONITOR'S  
CCAA PLAN OF COMPROMISE AND ARRANGEMENT**

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PURSUANT TO THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*

concerning, affecting and involving

**IMPERIAL TOBACCO CANADA LIMITED AND  
IMPERIAL TOBACCO COMPANY LIMITED**

FEBRUARY 27, 2025

# The CCAA “Plan of Compromise”

## **D. PURPOSE AND EFFECT OF CCAA PLANS**

[28] If sanctioned, the CCAA Plans will:

- (a) Fully and finally settle, irrevocably compromise and release all Tobacco Claims;
- (b) Bring finality to and resolve all Pending Litigation in Canada against the Tobacco Companies, members of their Tobacco Company Groups and the Canadian Tobacco Manufacturers' Council;
- (c) Effect the distribution of the Global Settlement Amount of \$32.5 billion to the Claimants;
- (d) Effect the restructuring of the businesses of Imperial and RBH by transferring their respective Alternative Products Business to a Newco; and
- (e) Permit Imperial, RBH and JTIM to exit their CCAA Proceedings and continue to carry on business in Canada.

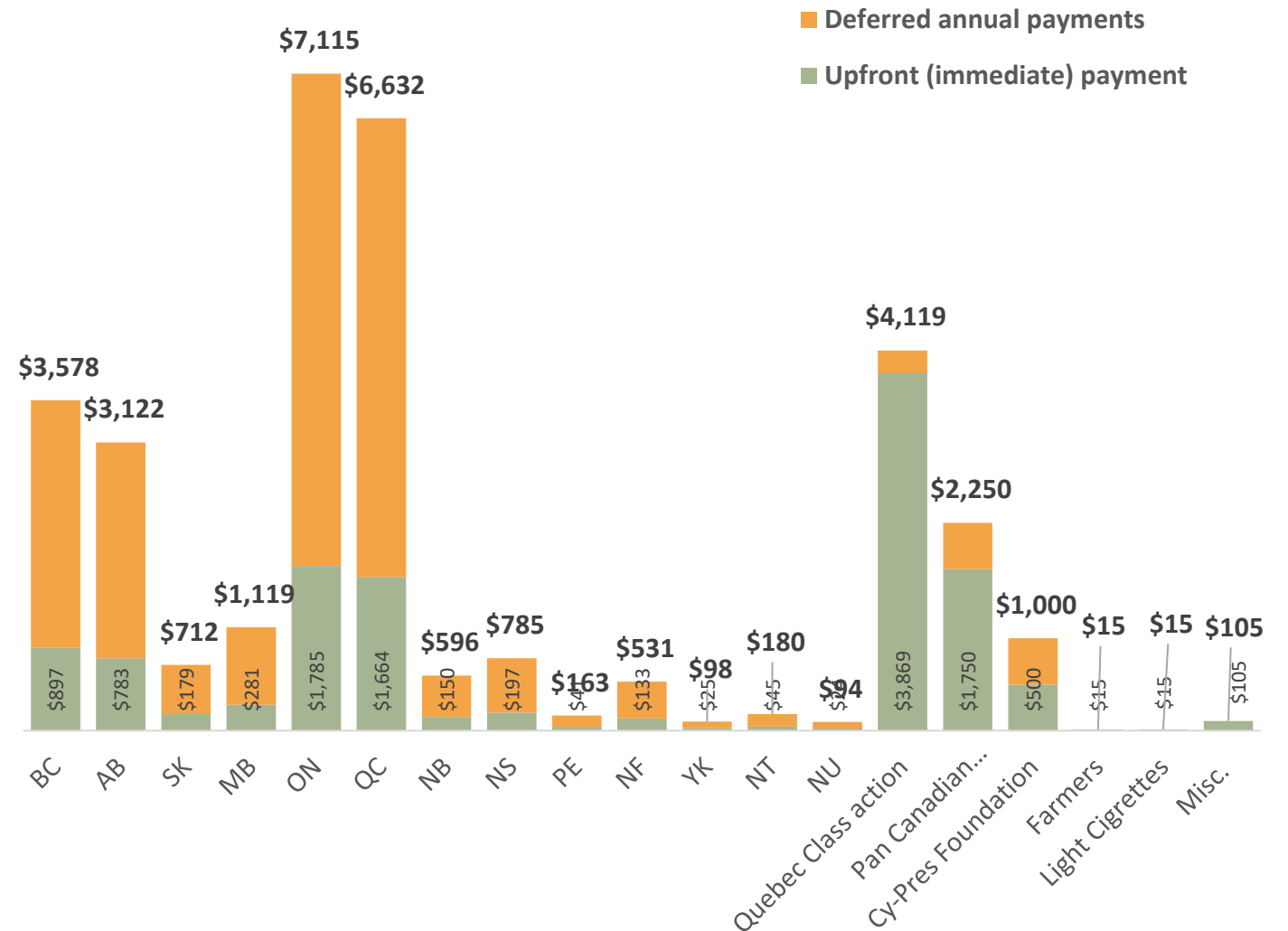
Chief Justice Morawetz. Sanction Order, 6 March 2025

<http://cfcanada.fticonsulting.com/ImperialTobacco/docs/FINAL-Tobacco-ONSC%201358-A.pdf>

## Tobacco industry payments to governments and individuals (\$millions)

### \$32.5 billion:

- \* \$6.3 billion to smokers
  - \* \$1 billion for foundation
  - \* \$24.725 billion to provincial governments
  - \* \$135 million in other payments
- 
- \* \$13-ish billion paid immediately (from savings during CCAA)
  - \* \$20-ish billion to be paid in annual installments calculated as 85% of net revenue on tobacco sales (falling by 5% every 5 years to 70%)
  - \* completion expected to take 20 or more years



Compensation  
is a fraction of  
damage ..

3.4 cents on the  
dollar

Claimant	Value of Claim for voting purposes (\$)	Compensation to be awarded (\$)	Compensation as % claim
<b>Natural persons</b>			
• Quebec Class Action Claimants	\$13,706,891,279	\$4,119,000,000	30.1%
• Pan-Canadian Claimants	\$5,041,088,110	\$2,521,000,000	50.0%
• Knight Class Action Plaintiffs	\$484,000,000	\$15,000,000	3.1%
• Tobacco Producers	\$29,043,876	\$15,000,000	51.6%
• Cy-Pres Foundation		\$1,000,000,000	
<b>Governments</b>			
• Canada	\$333,535,110		
• British Columbia	\$136,681,344,490	\$3,578,000,000	2.6%
• Alberta	\$119,266,303,168	\$3,122,100,000	2.6%
• Saskatchewan	\$27,189,868,453	\$711,800,000	2.6%
• Manitoba	\$42,741,373,788	\$1,118,900,000	2.6%
• Ontario	\$271,795,731,959	\$7,114,900,000	2.6%
• Quebec	\$253,365,332,712	\$6,632,400,000	2.6%
• New Brunswick	\$22,778,964,723	\$596,300,000	2.6%
• Nova Scotia	\$29,979,033,060	\$784,800,000	2.6%
• Prince Edward Island	\$6,238,547,995	\$163,300,000	2.6%
• Newfoundland and Labrador	\$20,279,767,449	\$530,900,000	2.6%
• Yukon	\$3,752,573,987	\$98,200,000	2.6%
• Northwest Territories	\$6,865,708,611	\$179,700,000	2.6%
• Nunavut	\$3,584,449,605	\$93,800,000	2.6%
<b>Provincial total</b>	<b>\$944,519,000,000</b>	<b>\$24,725,000,000</b>	<b>2.6%</b>
<b>Administrative and Contingency</b>			
• Miscellaneous Claims fund		\$25,000,000	
• CCAA Plan Administration Reserve		\$75,000,000	
• PCC Compensation Plan Reserve		\$5,000,000	
<b>Total</b>	<b>\$964,113,558,375</b>	<b>\$32,500,000,000</b>	<b>3.4%</b>



# WORLD FIRST: Collective damages to injured smokers

If there are more  
claimants than funding,  
payments will be reduced  
on a pro-rata basis.

Money left over after 12  
months (QCAP) or 24  
months (PCC) will be  
given to the provinces.

	Quebec Class Action	Pan Canadian Claims
# people	99,958	186,003
Smoking history	12 pack years between January 1950 and November 1998	
Diagnosed	Before March 12, 2012	March 8, 2015 to March 8, 2019
Resident	Quebec	Canada
Alive on:	November 20, 1998	March 8, 2019
Started smoking	> 1976 / ≤ 1976	> 1976 / ≤ 1976
Lung Cancer	\$80,000 / \$100,000	\$48,000 / \$60,000
Throat Cancer	\$80,000 / \$100,000	\$48,000 / \$60,000
COPD Grade III-IV	\$24,000 / \$30,000	\$14,400 / \$18,000
Registration:	<a href="http://recourstabac.com">recourstabac.com</a>	<a href="http://tobaccoclaimscanada.ca">tobaccoclaimscanada.ca</a>

# The financial reality:

The companies caused more harm than they can afford to pay for.

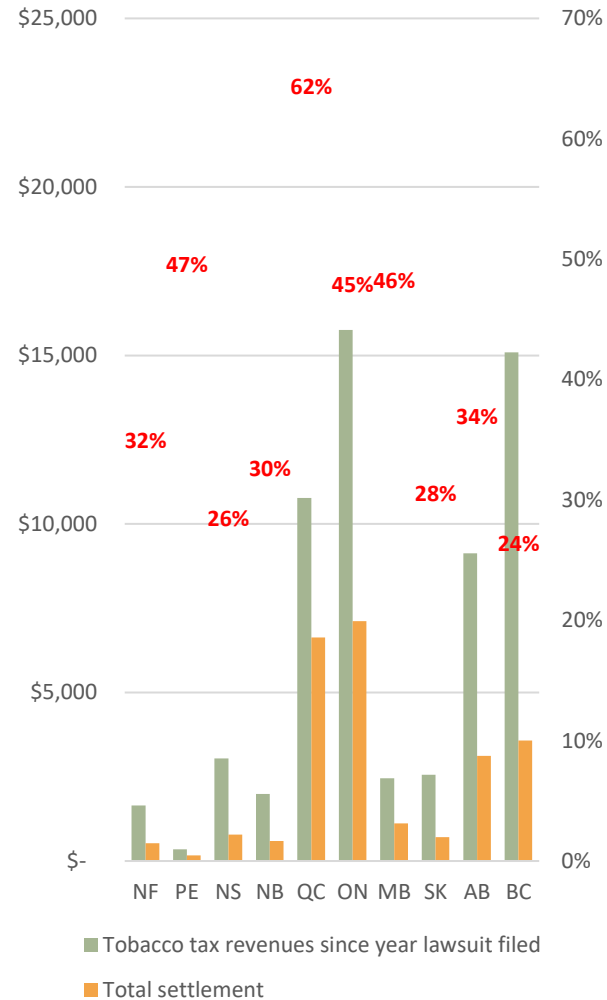
- **The claims and costs to government are big**
  - \$13+ billion Quebec judgment
  - \$500+ billion provincial claims (initially)
  - \$900 billion as calculated by CCAA consultant
- **The assets are small**
  - 2015: court ordered security of \$ 885 million
  - 2019: CCAA stops revenues to owners, money reserved now worth \$13 billion (ish)
- **The Canadian earnings are (relatively) small**
  - Annual earnings in Canada are about \$2 billion a year
- **The multinational owners' 2024 profits are about \$45 billion per year.**
  - BAT: £2,736m in 2024 (CAD 5 billion)
  - PMI: US \$24 billion in 2024 (CAD 34 billion)
  - JTI: JPY 697 billion in 2024 (CAD 6.7 billion)

# On average, compensation is comparable to:

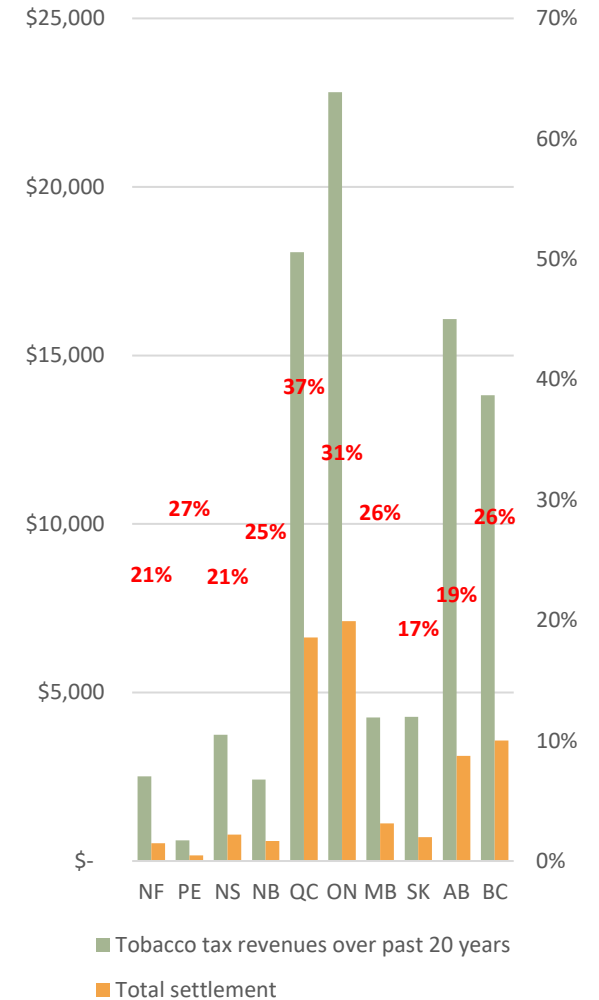
- \* having raised tax revenues by 39% since suits filed
- \* having raised tax revenues by 27% over past 20 years

- \* upfront payment double tobacco tax revenues in 2023-24.

Total settlement compared with tobacco tax revenues since year of filing lawsuit (\$ millions)



Total settlement compared with tobacco tax revenues over past 20 years (\$ millions)



# NOT INCLUDED in the compromise plan:

measure to reduce  
tobacco use

## ALL NGO REQUESTS AND SUGGESTIONS WERE REJECTED

### REQUEST

### RESPONSE

10% of settlement revenues to an independent fund to reduce tobacco use (1)(2)

X

Ending all remaining tobacco promotion (1)(2)

X

Requiring companies to make additional payments if targets to reduce tobacco use are not achieved (1)

X

Public disclosure of internal documents (1)(2)

X

End to interference with health policies (lobbying, PR, disinformation campaigns, etc) (2)

X

Reject settlement that perpetuates the tobacco industry (2)

X

Phase-out of combustible cigarettes, followed by phase out of non-licensed nicotine products (2)

X

Refuse to resolve lawsuits through CCAA court (2)

X

1. Canadian Cancer Society, Lung Association, Heart & Stroke. Open letter to provincial premiers. May 29, 2023. <https://www.heartandstroke.ca/-/media/pdf-files/what-we-do/news/open-letter-to-premiers-tobacco-settlement-negotiations-2023-05-29.pdf>

2. Physicians for a Smoke-Free Canada. Quebec Coalition for Tobacco Control. Letter to Health Ministers and Attorneys General. February 2020. [https://www.smoke-free.ca/litigation/MAIL\\_20\\_02\\_28\\_NonMonetary\\_Outcome\\_TobaccoLitigation.pdf](https://www.smoke-free.ca/litigation/MAIL_20_02_28_NonMonetary_Outcome_TobaccoLitigation.pdf)



# WHO WON? WHO LOST?

## The outcome:

- Provincial treasuries enriched by the \$6 billion this year and then by \$1 billion per year
  - Provinces become de facto majority shareholders of Canadian business
  - No new tobacco control investments or measures have been announced
- Cigarette trade continues with government endorsement for 20-ish years
  - Companies obliged to maintain current business practices
  - Provincial governments on the hook to treat smokers whose purchases fund payments
- New funding for research aimed at improving disease outcomes
  - Operating with some independence from government
- Vaping, pouches and other new products unaffected.
  - The behaviour denounced by the Quebec courts in 2015 is being repeated with e-cigarettes and heated cigarettes (and other harmful products)

**Private interest**

**vs / ≠**

**Public interest**

**vs / ≠**

**Public Health Interest**

# How did we get to an outcome with no public health measures?

The Tobacco Control system (government and NGO) failed to plan for health-oriented outcome.

- Provincial governments did not:
  - set health objectives for the resolution of the suits
  - consult with the public or health agencies about litigation objectives
  - have concerns about using CCAA or secret talks with companies
- Provincial legislators did not:
  - monitor developments
  - provide guidance to legal representatives
- Media did not:
  - assign reporters to meaningfully cover the trial or the post-trial developments
- Federal government did not:
  - protect the national public health interest in these proceedings
  - work to ensure FCTC Article 5.3 transparency provisions were respected.
- Larger health community did not:
  - pay much attention to developments or advocate for health outcomes until after CCAA
- Generally
  - no preparation for the impact of a CCAA-mediated resolution

# In hindsight, how could we have done better?

## Management of lawsuits:

- Establish health objectives from the beginning and use them to guide decisions.
- Place health ministries (not finance ministries) in charge of case management.
- Protect against industry interference (eg transparency of process)
- Avoid 'contingency' fee arrangements that prioritize financial outcomes
- Have a 'game plan' to counter industry tactics
- Support for litigation should only be when it serves health outcomes.
- Litigation should protect national and international citizens further injury, such as payments made from future or distant sales.





# Eye on the Trials

An Information Service on Tobacco Litigation

## PAGES

- Home
- Blais/Létourneau: Witness List
- Blais/Létourneau: Rulings
- Blais-Létourneau: Exhibits
- Blais-Létourneau: Procedural documents
- Canadian Litigation Timeline

## SEARCH THIS BLOG

## BLOG ARCHIVE

- ▼ 2020 (5)
  - ▼ September (2)
    - Another six months.....
    - Zoom hearing to extend creditor protection now sch...
  - February (3)
- 2019 (40)
- 2018 (3)

TUESDAY, 29 SEPTEMBER 2020

### Another six months.....

This morning the Ontario Superior Court quickly extended protection under the Companies Creditors Arrangement Act (CCAA) for Canada's three large tobacco companies for another six months. As it now stands, the companies have until at least March 31, 2021 before anyone can take any legal action against them.

As a COVID-precaution, the hearing was a virtual one. Instead of an aging court room where acoustics made the exchanges inaudible in the public galleries, today's proceedings were hosted by ZOOM, where the public phone-line crackle made exchanges mostly inaudible.

### Reading the tea leaves

In advance of the hearing, there were two signs that the extension would be agreed to quickly.

The first was a court order issued two weeks ago September 15 - hours before the companies had requests for an extension -- Justice McEwen, an experienced hand to the mediation payments process. The timing of the appointment and Mr. Justice McEwen's adjudicating settlement payments is noteworthy in the context of the litigation involving almost 100,000 injured smokers in the process.

EN FRANÇAIS

Lumière sur  
procès de

THE  
WE

# Thank you.

You can follow events at  
**tobaccotrial.blogspot.ca**

contact: [ccallard@smoke-free.ca](mailto:ccallard@smoke-free.ca)