

Canadian Class Action Trial (*Létourneau & Blais*)

Background

The *Létourneau* and *CQTS/Blais* cases were filed in 1998 and certified as class actions in 2005. The *Létourneau* class seeks compensatory and punitive damages for each member of the class deemed addicted to smoking. The *CQTS/Blais* class seeks compensatory and punitive damages for each member of the class who allegedly suffers from certain smoking-related diseases. The defendants in both cases are the Canadian tobacco companies—Imperial Tobacco Canada Ltd. (ITL), JTI-MacDonald Corp. (JTI) and Rothmans, Benson & Hedges Inc. (RBH). Philip Morris International (PMI) is not a defendant in the cases.

The cases were consolidated for trial in Montreal before the Québec Superior Court. Trial proceedings began on March 12, 2012, and ended on December 11, 2014.

Trial Court Decision

On May 27, 2015, the trial court issued a decision in favor of both classes. The trial court found that Defendants violated the Civil Code of Québec, the Québec Charter of Human Rights and Freedoms, and the Québec Consumer Protection Act by failing to warn adequately of the dangers of smoking. The trial court also found that Defendants conspired to prevent consumers from learning the dangers of smoking. The trial court further held that these civil faults were a cause of the class members' diseases. The trial court rejected other grounds of fault advanced by the class, holding that: (i) the evidence was insufficient to show that Defendants marketed to youth, (ii) Defendants' advertising did not convey false information about the characteristics of cigarettes, and (iii) Defendants did not commit a fault by using the descriptors light or mild for cigarettes with a lower tar delivery.

The trial court estimated the size of the *Létourneau* class (addiction) to be 918,000 members and the size of the *CQTS/Blais* class (disease) to be 99,957 members.

The total damages awarded to both classes was approximately CAD 15.6 billion (approximately \$11.9 billion). The trial court also ordered Defendants to deposit a portion of the damages, approximately 1.1 billion CAD (approximately \$850 million), into trust within 60 days for distribution to class members during the appeal.

Appeal of Provisional Payment

In June 2015, RBH filed its inscription in appeal of the trial court's judgment with the Court of Appeal of Québec and a motion to cancel the trial court's order for payment into a trust within 60 days notwithstanding appeal. In July 2015, the Court of Appeal granted the motion to cancel and overturned the trial court's ruling that Defendants make payments into a trust within 60 days.

Security Order

In August 2015, Plaintiffs filed a motion with the Court of Appeal seeking an order that Defendants place irrevocable letters of credit totaling CAD 5 billion (approximately \$3.8 billion) into trust, to secure the judgments in both cases. Plaintiffs subsequently withdrew their motion for security against JTI and proceeded only against RBH and ITL. In October 2015, the Court of Appeal granted the motion and ordered RBH to furnish security totaling CAD 226 million (approximately \$172million). Such security may take the form of cash into a court trust or letters of credit, in six equal consecutive quarterly installments of approximately CAD 37.6 million (approximately \$28.6 million) beginning in December 2015 through March 2017. The Court of Appeal ordered ITL to furnish security totaling CAD 758 million (approximately \$576 million) in seven equal consecutive quarterly installments of approximately CAD 108 million (approximately \$82 million) beginning in December 2015 through June 2017.

Appeal on the Merits

Written briefings on the merits appeal have been filed before the Court of Appeal. The Court of Appeal held a hearing for the merits appeal on November 21-November 25 and November 30. The parties await the Court of Appeal's judgment.

RBH's Position

RBH believes the findings of liability and damages were incorrect and should ultimately be set aside on any one of many grounds, including the following:

- (i) holding that Defendants violated Québec law by failing to warn class members of the risks of smoking even after the court found that class members knew, or should have known, of the risks;
- (ii) finding that plaintiffs were not required to prove that Defendants' alleged misconduct caused injury to each class member in direct contravention of binding precedent;
- (iii) creating a factual presumption, without any evidence from class members or otherwise, that Defendants' alleged misconduct caused all smoking by all class members;

- (iv) holding that the addiction class members' claims for punitive damages were not time-barred even though the case was filed more than three years after a prominent addiction warning appeared on all packages;
- (v) relying on epidemiological evidence to prove medical causation in the disease class that did not meet recognized scientific standards, and;
- (vi) awarding punitive damages to punish Defendants without proper consideration as to whether punitive damages were necessary to deter future misconduct.

Supreme Court

Parties may also file an application to appeal from the Court of Appeal to the Supreme Court of Canada. The Supreme Court of Canada has discretion to hear appeals in civil cases. It applies a "public importance" test in selecting cases for appeal; it is anticipated that any appeal accepted by the Supreme Court of Canada would take at least two years from the time the initial application is filed.

Health Care Cost Recovery Actions

In cases unrelated to the Québec class actions, ten provinces have each brought claims based upon provincial legislation authorizing the Province to file a direct action against cigarette manufacturers to recover the health care costs it has incurred, and will incur, resulting from a "tobacco related wrong." Unlike the Québec class actions, international tobacco companies, including Philip Morris International Inc., British American Tobacco p.l.c., and R.J. Reynolds International Inc., are Defendants in the health care cost recovery cases along with the Canadian domestic tobacco companies. These cases are all in their pretrial stages, and a trial date is scheduled in one of the cases: November 4, 2019 in the case brought by the province of New Brunswick.