



## NEWS RELEASE

### Tobacco Litigation: Ruling on 10<sup>th</sup> stay to come by Friday

**Four years after winning their class action lawsuits against Big Tobacco, Quebec victims are faced with provincial governments preventing them from seeing a single cent in their lifetime**

**Montreal, March 29, 2023** — Yesterday an **Ontario court** heard the three biggest **Canadian** tobacco companies reapply for another stay under the **Companies' Creditors Arrangement Act (CCAA)**, which would be the tenth such renewal since the original **March 8, 2019** order allowing them to attempt to settle all major litigation (and related penalties) that they are facing across the country in a single manoeuvre, while pursuing business as usual. **Justice McEwen**, who presided yesterday's hearing, said he would issue his decision by Friday.

The stay requested by **Imperial Tobacco** and the other manufacturers would extend the mediation for another six month until September 29, 2023. Meanwhile, **lawyers representing Quebec class-action victims** asked the court to limit the extension to three months (until June 30, 2023) arguing that a shorter period would act as a “catalyst” and would maintain the “momentum”. Back in **September 2022**, they had raised the fact that no less than 670 of the registered victims suffering from lung cancer, throat cancer or emphysema had died in the three and a half years since the start of the mediation process. At yesterday's hearing, their lawyer **Bruce Johnston** added that the death toll continues to rise.

According to **Flory Doucas, spokesperson of the Quebec Coalition for Tobacco Control (CQCT)**: *“The plight of sick and dying smokers has not diminished with their victory before Quebec's highest court four years ago. The same tobacco companies that were found guilty of hiding for decades the truth about the harmfulness of their products - to the detriment of countless victims - are now carrying on with their business as if nothing has changed.”*

Indeed, having obtained the protection conferred by the **CCAA**, the tobacco companies are carrying on with their business as usual. Service agreements ([para 112](#)) with entities belonging to their respective parent companies, ultimately enriching the multinationals, and allow for funds to be diverted away from creditors instead of being deposited into the compensation fund associated with the **CCAA** process. The fund which amounted to just over **\$7.5 billion** in March 2022, received \$684 (**\$309.9 million/ITC + \$222.4 million/RBH + \$151.5 million/JTI**) by Sept. 2022 and another \$610 million since then (**\$199 million/ITC + \$321.1 million/RBH + \$89.5 million/JTI**), bringing the total to some \$9 billion – a small fraction of the over \$500 billion claimed by all parties including \$15 billion that the **Quebec Court of Appeal** ordered the tobacco companies in 2019 to pay to the victims of the **Quebec** class actions.

Stay after stay, **Quebec** tobacco victims who have won their case after a 20-year battle have seen another four years go by without any financial compensation. *“Justice delayed is justice denied”*, reminded **Bruce Johnston**. As detailed in its [motion to the court](#), his law firm reports that following each stay, especially the one from last spring, people registered in the class actions express their extreme frustration with the delays as well as their loss of confidence and their feeling of powerlessness within the **CCAA** process. These include the late **Émile Rioux** who wrote to them a few weeks before receiving medical assistance in dying.

Here are some excerpts:

*« February 18, 2023 email (translated from the original French): Just to clarify the subject and the reality, yes tobacco killed me and this after several years of cessation, since autumn 2022 pneumonia without end, water in the lungs at the same time and recently I asked for medical assistance in dying which will take place at the beginning of March at the Laval hospital. The family is aware and all my children as well as my wife respect*

*my choice and I will stop suffering. I am enjoying these last moments with my family and friends and I feel at peace with myself. Yes tobacco killed me. Thank you for your understanding and especially for your collaboration to the members..."*

*"November 24, 2022 email (translated from the original French): Really it is disappointing every time we receive information regarding this class action. [...] How is it possible that nothing is happening in this file. My mother who died recently, will unfortunately never be able to know the end of this action. Let's hope that us her kids will one day be able to see the end of it."*

*"September 27, 2022 email (translated from the original French): This is really a farce, pure cynicism, arrogance, contempt... Who are the person or persons responsible for this delay. Are the dice played out in advance? These killer companies, supposedly bankrupt, are now happily vaping and don't give a damn about their victims... It's really infuriating."*

"From a justice perspective, this is an incredibly sad state of affairs," says the **CQCT spokesperson**. With the exceptions of **Quebec** and **Ontario**, all other eight provincial governments have chosen to be represented by a consortium of lawyers on a contingency fee basis - which precludes structural outcomes that would force tobacco companies to change their harmful behaviour. Moreover, the process puts tobacco victims who have a judgment in hand after two decades in court on the same footing as all other creditors, including the provinces whose health care cost recovery lawsuits were barely underway.

"What's most shocking right now is that nine out of ten provincial governments haven't objected to the consecutive stays sought by the tobacco companies. Is it because they prefer to see the pot grow by some \$650 million every six months?" asks **Ms. Doucas**. "Quebec was the only province that showed some solidarity with the victims, by asking the Court to reject industry's request and instead limit the next stay to three months."

### **What about game-changing measures?**

"All indications point to provinces and other parties are not seeking to use the process and the limited funds at hand to address the tobacco epidemic or nicotine addiction. Indeed, there's no indication that the provinces are working together to impose binding measures on the industry in order to change its harmful business model. For example, provinces could be asking for measures that would force manufacturers to phase-out cigarette sales under predetermined, court-monitored targets. Should the provinces decide to use the settlement process primarily for financial outcomes, not only would the victims lose out, but this would set the path for creating future victims. Big Tobacco chose the CCAA path for a reason: they are undoubtedly banking on the provinces' short-sighted motivation for a simplistic and superficial payout based on future revenues, even if this is achieved by the industry's recruitment of future nicotine addicts," explains **Ms. Doucas**.

In fact, since the March 2019 order, the industry has continued to addict new customers to its products, including electronic cigarettes, as one class member complained: "These killer companies, supposedly bankrupt, are now happily vaping and don't give a damn about their victims... It's really infuriating." In a recent **BAT presentation** (published in February 2023), **Imperial Tobacco's** parent company points out that **Canada** is now among its five largest markets for vaping products, and that its **VUSE** brand accounts for 92% of the **Canadian** market for closed devices (slide 55), those **most used by youth** and growing in popularity.

"How is it that provincial governments tolerate the creation of new markets by Canada's three largest tobacco manufacturers – as well as the **collateral damage** that comes with this - when these same manufacturers are facing insolvency before an array of creditors, including the victims of their own products? This is not in the public's interest," concludes the **CQCT spokesperson**.

