
Action on Smoking & Health (ASH Canada)
Coalition québécoise pour le contrôle du tabac
Physicians for a Smoke-Free Canada

Tobacco Litigation: Industry requests a twelfth stay

5 years of litigation stays have allowed Big Tobacco to maintain business as usual, including recruiting new addicts.

Edmonton, Montreal, Ottawa, March 25, 2024 – ASH Canada, Physicians for a Smoke-Free Canada and the Quebec Coalition for Tobacco Control are condemning the insolvency process that has allowed the tobacco industry to continue “to operate its business in the normal course” for five years while it avoids compensating its Quebec victims. “Nine years after their victory in a Quebec court and five years since the industry filed for bankruptcy, Quebec tobacco victims still haven’t seen a single penny,” laments **Flory Doucas, Co-Director and Spokesperson for the Coalition**.

On Monday, March 25, **Imperial Tobacco, Rothmans, Benson & Hedges** et **JTI-Macdonald** will ask **Ontario’s Chief Justice** for a twelfth extension of the initial 2019 order that suspended all litigation aimed at the manufacturers and which set up a secretive negotiating process among the provinces, the **Quebec class actions** and others plaintiffs under the **Companies’ Creditors Arrangement Act (CCAA)**. (The hearing will be [broadcast here](#) as of 9h00.) Since the first stay, more than 700 victims registered in two Quebec class actions have died.

All provinces have acquiesced to this process

“Instead of compensating victims in a timely manner and forcing the companies to change their behaviour, the provinces are allowing this protracted process to maintain Big Tobacco’s ‘business-as-usual’. The result is more damage to the health of Canadians, the recruitment of new nicotine addicts and the generation of additional healthcare costs,” explains **Ms. Doucas**.

Provinces sit idle as companies spend on product innovation and promotion

The **CCAA** process has not only blocked payments to Quebec victims, it has also allowed the companies to spend money opposing measures aimed at reducing [smoking](#) and [vaping among young people](#), to introduce [new nicotine products](#) to the Canadian market, and to pay for advertising that [minimizes the risks of vaping](#), [favourably presents its new products](#) and attempts to [whitewash its image](#).

Indeed, the motions filed by the three manufacturers show they’ve been able to pursue profits at the expense of the health and well-being of Canadians. For example, **Imperial Tobacco** introduced “**Zonnic**” nicotine pouches in October 2023 that to date have generated net revenues of \$4.5 million across Canada and that Quebec pharmacists [say](#) are being purchased by young people. Meanwhile, **Rothmans, Benson & Hedges** began [distributing “VEEV”](#) vaping products in October 2021, a disposable version in July 2022, and a new heated tobacco product (“**IQOS ILUMA**”) in November 2023. These are among the many new products introduced by the companies since March 2019, including **Imperial Tobacco’s** range of disposable e-cigarettes, [new flavours](#) and nicotine strengths.

A court process that protects the “normal” business operations of Big Tobacco

The motions filed for Monday’s hearing show the extent to which the **CCAA** process is advantageous for tobacco manufacturers (see appendix for complete excerpts). In fact, **Imperial Tobacco** [concedes](#) that, *“overall, there has*

been negligible disruption of the Applicants' business operations" and that it is precisely in their interest to be engaged in a *"process with the overriding objective of preserving the value of their business."* For its part, **Rothmans, Benson & Hedges** writes that *"a global settlement that addresses all pending and potential Tobacco Claims is the best outcome for the parties"* and that it *"RBH will continue to operate its business in the normal course."* (Incidentally, the company is seeking an exemption to allow lawsuits involving its employees to proceed, while all other legal action against it remains suspended). Finally, **JTI-Macdonald** adds that the company favours the CCAA process in order to "maintain the status quo of its operations" and *"preserve going concern value"*, and that a further stay will enable it "to continue to operate in the ordinary course" of business.

"These secret negotiations among provincial governments and tobacco companies have now dragged on for more than five years. By giving explicit permission for the companies to operate their 'business as usual', these governments have been complicit in the recruitment of another generation of nicotine addicts. Indeed, there are [more nicotine users in Canada](#) today than there were when these insolvency proceedings began in March 2019," underscores **Cynthia Callard, Executive Director of Physicians for a Smoke-Free Canada**. *"How is it our governments are engaged in a process that prioritizes the financial health of cigarette manufacturers at the expense of the health and well-being of the public and the right to justice of victims?"*

Ensuring an outcome that's in the public's interest

Notwithstanding the outrageous delays incurred under this process, **Les Hagen, Executive Director of ASH-Canada** insists that *"the provinces should use the historic power imbalance conferred on them by the threat of insolvency for the tobacco giants to demand groundbreaking concessions that will prevent the recruitment of new victims. No settlement agreement should ever be based on the need to entrap future addicts to pay monetary penalties to governments. All provinces have hidden behind an alleged confidentiality obligation to avoid stating their plans for the future of the tobacco industry in Canada. Under this shroud, it is difficult to believe the current process will serve the public interest.*

"The current mediation process is not mandatory and there is no reason to sustain this deadly industry. Given the value of their respective claims, Quebec and Ontario could jointly suspend the CCAA proceedings should the mediators propose a settlement that is not in the public's interest. In the absence of an agreement that minimizes further damage, the infrastructure and trademarks of the bankrupt tobacco companies could be transferred to a new entity that will prioritize health over profits. For example, a suitable government agency or nonprofit organization could be mandated to shrink the tobacco and recreational nicotine markets," concludes **Mr. Hagen**.

An [economic analysis](#) by **H. Krueger and Associates Inc.** shows that the savings to the healthcare system resulting from a significant contraction in the tobacco market would far exceed any realistic compensation amounts for the provinces. According to this study, **Quebec** and **Ontario** would generate health savings of \$22.2 billion and \$26.1 billion respectively, if smoking prevalence fell to less than 5% by 2035. Such a reduction would represent 641,000 fewer smokers in **Quebec**, and 990,000 fewer smokers in **Ontario**.

Information :

- Cynthia Callard (613-600-5794)
- Flory Doucas (514-515-6780)
- Les Hagen (780-919-5546)

APPENDIX : MOTION EXCERPTS [Our underlines]:

Excerpts from Imperial Tobacco's motion :

« .. 9. The requested extension of the Stay Period is necessary and appropriate in the circumstances to allow for the continued operation of the Applicants' business while they work towards developing a consensual plan of compromise or arrangement for the resolution of the Tobacco Claims (as defined in the Initial Order);

...6. Although the Applicants dispute both the legal and factual foundation of the claims asserted in the Tobacco Litigation, as well as the corresponding quantification of damages, they ultimately determined that it is in the best interests of the Applicants' stakeholders to engage in a restructuring process with the overriding objective of preserving the value of their business and resolving all Tobacco Claims (as defined in the Initial Order) in an orderly process under Court supervision.

...13. ... • Upon obtaining a Health Canada license, beginning October 9, 2023, Zonnice nicotine pouches were launched as a nicotine replacement therapy product in traditional retail stores, pharmacies and online, as permitted by local legislation. In fiscal year 2023, ITCAN reported \$4.5 million Net Turnover for Zonnice;

...14. Overall, there has been negligible disruption of the Applicants' business operations. The stay of proceedings has therefore achieved its objective of providing operational stability and fostering an environment that encourages stakeholder discussions. »

Excerpts from Rothmans, Benson & Hedges Inc's motion :

« ...9. A global settlement that addresses all pending and potential Tobacco Claims is the best outcome for the parties. It will end years of litigation, maximize recoveries for the claimants and minimize delay and costs for the parties.

...18. RBH will continue to operate its business in the normal course and in accordance with the Initial Order for the benefit of its stakeholders.

...5. ... RBH also distributes smoke-free alternatives to cigarettes, developed and produced by the PMI Group ("Reduced Risk Products").

...58. RBH started the distribution of a vape product, VEEV, in October 2021, and a disposable vape product under the same brand family in July 2022 through its distributors and retailers. At present, VEEV is available in all Provinces and is also sold on the ecommerce platform, with the exception of Quebec and Nova Scotia.

...59. In November 2023, RBH launched a new heated tobacco product, IQOS ILUMA, which offers advanced features and innovative technology targets to elevate the overall consumer experience of adult nicotine users. At present, IQOS ILUMA is available in all Provinces.

...9. The relief related to employee grievances will allow employees to seek a determination on day-to-day operational matters without RBH or the employees having to seek leave from the Court each time a grievance is commenced. »

Excerpts from JTI-MacDonald Corp's motion :

“...8. The Applicant sought the protections afforded under the CCAA in order to: (i) maintain the status quo of its operations, (ii) preserve going concern value, and (iii) provide the Applicant with a period of stability within which to attempt to find a global resolution to all of the Tobacco Claims being asserted against it and provide the Applicant with a fresh start. But for the QCA Judgment and other contingent claims asserted in the Pending Litigation, the Applicant is a profitable and viable corporation.

...16. Extending the Stay Period is required to enable the Applicant to continue to operate in the ordinary course while participating in the mediation process and continuing discussions to seek a global resolution of the Tobacco Claims.”