

TOBACCO CLASS ACTIONS
LITIGATION AGAINST IMPERIAL TOBACCO CANADA LTD.,
ROTHMANS, BENSON & HEDGES INC.,
AND JTI-MACDONALD CORP.

**EXECUTIVE SUMMARY OF THE MOTION
FOR APPROVAL OF THE QUEBEC CLASS COUNSEL FEE
PREPARED BY QUEBEC CLASS COUNSEL
FOR CLASS MEMBERS AND THE PRESS**

For more information, please consult the [dedicated web page](#) regarding the Motion for Approval of the Quebec Class Counsel Fee at recourstabac.com.

A. Background

Quebec Class Counsel have represented class members in two interrelated class actions in Quebec against Imperial Tobacco Canada Ltd., Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp. (the “Tobacco Companies”) since 1998. The first class action was taken on behalf of Quebec smokers who became addicted to the nicotine contained in the Tobacco Companies’ cigarettes (“*Létourneau*”). The second class action 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 (“*CQTS/Blais*”).

These two class actions proceeded jointly and were heard together in a single trial that lasted over 250 days, resulting in a landmark judgment by the Superior Court of Quebec in 2015. The Superior Court’s decision was then upheld by a unanimous five-member Quebec Court of Appeal panel in 2019, awarding class members billions of dollars in compensation. Facing the consequences of that judgment, the Tobacco Companies sought protection under the *Companies’ Creditors Arrangement Act* (“CCAA”). That decision triggered six years of confidential mediation involving all of the Tobacco Companies’ creditors — including Quebec Class Counsel on behalf of the class members — as well as representatives of other victims and every provincial and territorial government in Canada.

On December 12, 2024, the creditors voted in favour of three Plans of Compromise and Arrangement proposed by the Court-Appointed Mediator and Monitors (the “Plans”) allowing the possibility of a global resolution of all claims against the Tobacco Companies. A hearing will take place on January 29, 30 and 31, 2025 before the Ontario Superior Court of Justice (Commercial List) in Toronto (the “CCAA Court”) to determine whether to approve the Plans.

If the Plans are approved, the Tobacco Companies will pay \$32.5 billion to their creditors. This amount includes \$4.119 billion to directly compensate class members (as well as their heirs, and, if applicable, the heirs of their heirs). It also includes a \$131 million contribution to a \$1 billion public interest foundation in settlement of claims of members of the *Létourneau* class action. The Plans also provide for billions of dollars in compensation to provincial and territorial governments across Canada and for certain Canadian smokers who are not included in the *CQTS/Blais* Class Action.

Counsel acting on behalf of plaintiffs in class actions must obtain prior court approval for their fees and disbursements before receiving payment. The Plans stipulate that the CCAA Court will be called upon to approve the Quebec Class Counsel's legal fees (the "Quebec Class Counsel Fee") at the end of the hearing.

This document provides important context and explanations regarding the Quebec Class Counsel Fee.

B. Overview of the Quebec Class Counsel Fee

The *CQTS/Blais* and *Létourneau* class actions are widely regarded as unprecedented in Canadian legal history. They have been the longest, 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 collective basis.

In accordance with the fee agreement entered into with CQTS in 1998 and 2017, Quebec Class Counsel are seeking the approval of a Class Counsel Fee equivalent to 22% of the direct compensation of \$4.119 billion allocated to *CQTS/Blais* class members (a total of \$906,180,000) plus applicable taxes, an amount which is inclusive of all fees, costs, and disbursements. The CQTS supports the Quebec Class Counsel's motion for fee approval and consents, on behalf of the class members, that its fee agreement concluded with the lawyers in the *CQTS/Blais* Class Action be approved by the CCAA Court.

The Class Counsel Fee will compensate all of the law firms who comprise Quebec Class Counsel, including former iterations of these firms that have merged over the years; namely, Trudel, Johnston & Lespérance (which resulted from the merger of Trudel & Johnston and Lauzon Bélanger Lespérance — the latter, formerly Lauzon Bélanger), Kugler Kandestin LLP, De Grandpré Chait and Fishman Flanz Meland Paquin.

As is standard in class actions, Quebec Class Counsel have pursued these cases on a contingency fee basis. This means that their remuneration has always been conditional on their ability to obtain compensation for class members, and is fixed as a percentage of the total amount ultimately recovered on their behalf. Since 1998, they have never received any fees for their work.

The percentage sought by Quebec Class Counsel is well below the rates generally approved by the courts. Class action fee agreements in Quebec typically entitle class counsel to fees ranging from 20% to 33.33% of any amount recovered for the benefit of the class, plus taxes and disbursements. While it is common for this percentage to increase depending on the duration of the litigation or the stage at which recovery is ultimately obtained, the percentage used to establish the Quebec Class Counsel Fee is near the low end of this range.

As mentioned, the Quebec Class Counsel Fee is all-inclusive of legal fees and disbursements. It includes all legal fees to compensate the lawyers and their teams for the work carried out over the course of the litigation's history, which spans over 26 years, as well as the work that remains to be done by them over the next several years to implement the Plans and ensure the distribution of compensation to class members.

It also includes all disbursements incurred and to be incurred in the future by Quebec Class Counsel in connection with the class actions, the CCAA proceedings and the claims and distribution process yet to begin. In this regard, Quebec Class Counsel have assumed tens of millions of dollars of costs and disbursements throughout the history of the litigation and in respect of past and future services of Proactio, a division of Raymond Chabot Administrateur Provisoire Inc. ("Proactio"), the firm retained by Quebec Class Counsel to facilitate the claims process and to assist in the distribution of compensation to class members.

Class members will not be required to pay any amount in order to obtain assistance from Quebec Class Counsel and Proactio in filing claims for compensation under the Quebec Class Action Administration Plan or to seek guidance in that regard.

C. Factors Considered When Approving Class Counsel Fees

In determining whether fees and disbursements sought by class counsel are fair and reasonable, courts both in Quebec and elsewhere in Canada consider a number of factors. In addition to the fee agreement between the representative plaintiff and class counsel, these factors include the risks assumed by class counsel at the outset and throughout the case, the results obtained for the benefit of class members and for the public interest, and the time and effort devoted by class counsel to the pursuit of the litigation.

In accordance with the timeline adopted by the CCAA Court, the Motion Record for the approval of the Quebec Class Counsel Fee will be filed on January 13, 2025. Once filed, it will immediately be made available on **recourstabac.com**. It will contain extensive evidence detailing the rationale for the amount sought, including affidavits from senior lawyers from the four law firms involved in the litigation over the course of the last 26 years as well as extensive documentation regarding:

- a. The terms of the agreement between Quebec Class Counsel and the representative plaintiff, the CQTS;
- b. The risks assumed, challenges faced, and opportunity costs borne by Quebec Class Counsel over the course of the litigation;
- c. The nature, complexity, and extent of the work carried out by Quebec Class Counsel and their teams throughout the history of the class actions;
- d. The results obtained for class members, both in terms of direct financial compensation for class members, their families and heirs, and in terms of the larger social impact and public interest of the litigation;
- e. The complete list of disbursements and other costs related to the litigation to be paid out of the Quebec Class Counsel Fee;
- f. The complete list of costs, as well as anticipated future costs, related to the claims administration process to be carried out by Proactio.

A summary of these themes is provided for Class members' review below. Class members who have questions regarding the Quebec Class Counsel Fee are encouraged to review the Motion Record once it becomes available and to contact Quebec Class Counsel directly to discuss any concerns they may have (coordinates are provided at the end of this summary). A number of the key points which will be covered in the Motion are set out below. Class members also have a right to raise an objection to the requested Quebec Class Counsel Fee by completing the form available at **recourstabac.com**.

D. The Nature, Complexity, and Extent of Quebec Class Counsel's Work

The class actions piloted by Quebec Class Counsel span nearly three decades, and are among the most complex and challenging civil litigation matters in Canadian history. Many experienced attorneys have dedicated the majority of their careers to these files and to the interests of class members.

The unprecedented procedural and judicial history of the litigation in these class actions speaks for itself. The class actions were initiated in 1998. The authorization judgment allowing the files to proceed by way of class action was rendered over six years later, in 2005 — and only after a battery of preliminary debates, extensive and demanding examinations of the class representatives, and an unprecedented 14-day hearing.

It took seven more years of intensely contested litigation to get the case to trial, at which point the class actions had already resulted in no less than 49 judgments of the Quebec Superior Court and no less than 17 judgments of the Court of Appeal of Quebec on interlocutory matters.

The litigation was also subject to the most intensive and demanding case management in the history of Quebec civil procedure, resulting in no less than 80 pre-trial case conferences (most of which lasted a day or more) over the course of a 14-year period by different judges who were effectively assigned to the class actions on a full-time basis for a number of years.

The litigation raised countless unsolved, high-risk and precedent-setting legal questions at every stage of proceedings and in all areas of law, many of which posed an existential threat to the future of the litigation.

It also raised some of the most complicated questions of fact and evidence imaginable, involving countless pre-trial examinations, the disclosure and review of hundreds of thousands of documents (representing many millions of pages of materials) prior to trial, and the production of over two dozen expert reports by the parties in highly specialized and complex areas, including from experts in the study of addiction, oncology, pneumology, epidemiology, pathology, toxicology, chemistry, psychiatry, history, marketing, public opinion, political economics and econometrics.

The litigation culminated in one of the longest civil trials in Canadian history, spanning 253 judicial days over the course of almost three years, involving the filing of thousands of exhibits at trial (the admissibility of many of which was forcefully contested by the Tobacco Companies), as well as the examination and cross-examination of 50 ordinary witnesses and 26 experts, resulting in over 60,000 pages of trial transcripts.

During the trial itself, the Tobacco Companies repeatedly forced interlocutory debates to the Court of Appeal, resulting in more than 23 additional Court of Appeal judgments rendered between the beginning and the end of the trial.

In 2015, 17 years after the class actions were first initiated, the Quebec Superior Court found in favour of the representative plaintiffs in a landmark decision over 1250 paragraphs long, ordering the Tobacco Companies to pay up to \$13.4 billion dollars for the benefit of the class members.

The trial judgment is easily among the most important trial decisions in the history of class proceedings in Canada, meticulously addressing extremely challenging questions of fact and breaking new ground in many areas of law.

Given the enormity of the stakes and issues involved, the inevitable appeal to the Court of Appeal of Quebec took place before an exceptionally constituted panel of 5 justices at a hearing lasting 6 days. The Joint Schedules filed by the parties before the Court of Appeal spanned 688 volumes. In 2019, 21 years after the class actions were first initiated, that Court of Appeal panel rendered a unanimous, 1285-paragraph long decision,

upholding the trial judgment in almost every respect and condemning the Tobacco Companies to pay up to 13.4 billion dollars in damages.

The Court of Appeal's decision is the definitive statement of the law in Quebec on numerous complex and controversial issues in the areas of civil liability, civil procedure, human rights law, and consumer protection, among others. No appeal judgment in Canadian legal history has ever awarded such a significant amount.

Almost immediately following the release of the Quebec Court of Appeal's decision, the Tobacco Companies sought protection under the CCAA rather than attempting to appeal the judgment before the Supreme Court. These applications were filed before the Superior Court of Justice in Toronto, despite the fact that the class actions had proceeded exclusively in Quebec for over two decades.

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 aggregating in excess of \$1 trillion. This new stage of the litigation involved over six years of intensive court proceedings and mediation in what the CCAA Court has described as among the most complex insolvency cases in Canadian history. Quebec Class Counsel reinforced their team by engaging top tier specialized insolvency lawyers whose fees form part of the Class Counsel Fee.

Quebec Class Counsel participated fully and in good faith in the complex CCAA mediation, from the outset adopting a consistent and reasonable negotiating position that allowed room for an eventual settlement to emerge. In addition to the many CCAA Court hearings at which they played a prominent role, they actively participated in hundreds of mediation sessions over the course of the CCAA proceedings, including as members of the select committees formed by the mediator and the monitors to assist them in the negotiation and drafting of the Plans, the terms of which are complicated and novel. Due to Quebec Class Counsel's efforts, commitment and steadfast focus, we are now at the brink of an unprecedented (and often considered unattainable) global resolution of all tobacco litigation, and other tobacco-related claims, in Canada.

E. The Risks, Challenges, and Opportunity Costs Assumed by Class Counsel

The litigation was an extremely high-risk endeavour from the very beginning. At the time the class actions were filed in 1998, there had never been any smoker, anywhere in the world, who had received a single penny from a tobacco company for the harms caused by their products. Though there had been many attempts by victims to hold the tobacco industry to account — mostly in the United States — not one of them had been successful. The aggressive scorched-earth litigation tactics of the tobacco industry had become notorious internationally and Quebec Class Counsel knew that the risks they were assuming were unparalleled.

They also knew that the tobacco industry had never offered to settle a single lawsuit brought against it by a smoker anywhere in the world. Most class actions settle out of court prior to trial, and this possibility is factored into how both courts and class counsel evaluate risk. However, the Tobacco Companies' global litigation strategy meant that settlement was never an option. Indeed, as expected, no settlement discussion ever took place between the parties before the CCAA proceedings began in 2019.

Despite their knowledge of the difficult road ahead, Quebec Class Counsel believed that the time had come to hold the industry accountable for the harms caused by their products, and believed that the Quebec justice system would be capable of responding to the huge challenges imposed by the litigation.

As anticipated, the class actions were contested in every manner imaginable and to the fullest extent possible at each stage of the litigation from 1998 onward. The Tobacco Companies made full use of their virtually unlimited financial resources to make the proceedings as difficult, expensive, complicated and lengthy as possible.

Quebec Class Counsel knew from the outset that the first line of defense of the tobacco industry was to exhaust plaintiffs' resources. They also knew that a large majority of the lawsuits brought against them had never made it to trial. As a result, it was always a very real possibility that Quebec Class Counsel would simply run out of the funds required to continue the litigation. They came very close several times.

At every stage, the Tobacco Companies were represented by some of the most accomplished and respected lawyers in the country. They could also bring firepower and other resources to the fray that Quebec Class Counsel could never hope to match.

Unlike their opposing counsel, who were paid throughout the litigation and regardless of the outcome, Quebec Class Counsel were required to dedicate themselves to the litigation — on a full-time basis for years at a time — with no guarantee that they would ever receive payment as a result of their work, even in the event of a complete victory on the merits.

Indeed, the complex multinational corporate structure of the Tobacco Companies, their expected recourse to insolvency proceedings, the systematic transfer of their profits to their parent corporations, and efforts by one of the companies to render itself creditor-proof meant that recovery of any substantial amount was always uncertain. This factor is one of the reasons these files cannot be fairly compared to class actions involving government defendants, whose ability to pay is always ultimately secured by taxpayers.

The extreme risk inherent in this kind of file also meant that no traditional source of financing was available. The limited financing available through the Fonds d'aide aux actions collectives was rapidly exhausted. In certain cases, Quebec Class Counsel were forced to rely on a patchwork combination of revenue generated from other files, regular

bank financing, high-interest loans, personal debts, debts secured against personal assets, litigation financing, deferred payment agreements and contingency-based deals with everyone from suppliers and advisers of all kinds. The Fonds d'aide aux actions collectives has also recently taken the position that it will not normally indemnify representatives for adverse costs, meaning that Quebec Class Counsel could have been personally responsible for tens of millions of dollars more if they had lost at trial.

Despite these resource constraints, Quebec Class Counsel carried out well over 175,000 hours of legal work since the inception of the files, representing the time of over 100 legal professionals spanning 26 years. Although large, the number of hours actually docketed does not tell the whole story. Rather, at every stage of the proceedings, they worked under intense pressure, forced into maximal efficiency knowing that the merit of their strategic decisions and the quality of their work would be tested in court again and again.

The hours docketed also do not include the large majority of the tens of thousands of hours devoted by students, paralegals, researchers, administrative support staff and others who worked tirelessly in these files at great personal cost over the years.

Quebec Class Counsel were also in constant communication by phone, mail and email with thousands of class members and their families, whose inquiries required enormous administrative time on limited internal resources. The high stakes of the litigation meant that these conversations were often stressful and emotional for class members and counsel alike.

In this sense, the responsibility taken on by Quebec Class Counsel has often transcended the normal solicitor-client relationship — the deadly effects of the Tobacco Companies' products coupled with the length of the litigation has meant that in addition to representing their interests before the courts, Quebec Class Counsel have also accompanied many Class members and their families through uncertainty, grief and profound loss. These conversations have never been more challenging than over the last six years, during which Quebec Class Counsel were prevented from sharing even basic information with their members as a result of the highly confidential nature of the CCAA mediation.

F. The Results Obtained for Class members and the Broader Public Interest

The results obtained by Quebec Class Counsel are unprecedented. As mentioned, when Quebec Class Counsel began acting in these cases, no individual victim had ever prevailed against a tobacco company, anywhere in the world. As a result of their efforts, tens of thousands of class members will now share billions of dollars in compensation. Nowhere else in the world have victims of the tobacco industry received direct compensation on a collective basis.

Beyond the results for Quebec class members — which represent a \$4.25 billion share of the global amount of the Plans — Quebec Class Counsel's success in holding the

Tobacco Companies accountable, which triggered the CCAA proceedings, will also result in a total of \$28.25 billion being paid to provincial and territorial governments and to other victims across Canada. In respect of the other Canadian victims, tens of thousands of Pan-Canadian Claimants will receive significant amounts totaling \$2.5 billion as a result of the success achieved by Quebec Class Counsel.

Additionally, the Plans benefit smokers who are not directly compensated through either the Quebec Class Action Administration Plan or the Pan-Canadian Claimants' Compensation Plan by creating a \$1 billion public interest foundation that funds research focused on improving outcomes in tobacco-related diseases. A \$131 million contribution to that foundation operates as settlement of the claims of members of the *Létourneau* class action, serving the same functions of vindication, deterrence and sanction achieved by the Court of Appeal's award of punitive damages in that file.

The amounts secured for class members are objectively significant, fair and reasonable both in the aggregate and for each individual member of the class. For many class members, the compensation they will receive as a result of the present litigation will represent the largest sum they will receive in their lifetime.

The Quebec Class Action Administration Plan also allows compensation to be granted to heirs of heirs (successions of successions), something that could not have been possible other than as part of the Plans, and that helps to mitigate the tragic consequences of the extraordinary delay in these files. In the case of many deceased class members, the compensation they will receive will make up a large part or the entirety of the succession received by their heirs.

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 — still real following the Court of Appeal's judgment in 2019 — that the Tobacco Companies would attempt to create an adversarial process (or "mini trials") in the context of individual victims' claims. Instead, the Plans explicitly provide for a non-adversarial claims process, and confirm that each class member will have access to assistance at no additional cost to them. The result is a streamlined process that will ensure meaningful access to justice for every eligible claimant without overloading the judicial system.

Finally, 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 Quebec courts' judgments tell the truth about what the tobacco industry did to class members and their families in the name of profit. The fact that these files could be brought to trial and won constitutes an enormous success for the justice system, for our legal institutions, and for respect for the rule of law in Canada, demonstrating that there is no company too large or powerful to be held accountable by our courts.

QUESTIONS?

Any member that has questions or concerns about the Quebec Class Counsel Fee is encouraged to contact the lawyers for the class directly, at no cost, by writing an email to info@tjl.quebec with the word “TABAC” in the subject line.

For all other questions, contact Proactio:

By email: tabac@proactio.ca

By phone: [438 384-7230](tel:438-384-7230)

Toll free: [1 888 880-1844](tel:1-888-880-1844)

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