SUPREME COURT OF CANADA

Case in Brief: *British Columbia v. Philip Morris International, Inc.*

2018 SCC 36 | Judgment of July 13, 2018 | On appeal from the Court of Appeal for British Columbia

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BC does not have to give a tobacco company databases of health care information about individual BC residents as part of a lawsuit, the Supreme Court has said.

In 2000, the province of British Columbia passed the *Tobacco Damages and Health Care Costs Recovery Act*. This let it sue tobacco companies for health-care costs related to tobacco use, and the Supreme Court found it constitutional in 2005. In 2001, BC sued Philip Morris International and other tobacco companies. Philip Morris makes and sells Marlboro cigarettes, among other brands.

BC sued "on an aggregate basis," meaning on behalf of a group of insured persons, rather than for any individual. To prove that tobacco caused health care problems and how much those problems cost, it said it would rely on several databases. The databases held individual health-care information for BC residents between 1991 and 2011, such as costs of medical care, prescription drug use, and status of health coverage.

Anyone being sued has a right to see the evidence the other party is relying on. This allows a defendant to challenge the evidence, and is part of a fair trial. Philip Morris asked for the databases. However, the Act said that if BC sued on behalf of a population ("on an aggregate basis"), it could not share information about individuals insured by its health plan. As a compromise, BC said that the tobacco companies could look at individual-level information at a Statistics Canada Research Data Centre, under strict controls. While other tobacco companies agreed, Philip Morris did not think this was enough to make the trial fair. It asked the court to order BC to give it the databases directly, with names and other identifying information removed. It also asked for individuals to be linked across databases, to make it easier to analyze the data.

The trial judge ordered BC to share the databases, after removing identifying information. He said that the databases were not the kind of health care records the Act was meant to cover. The Court of Appeal agreed. It said that BC should not be able to rely on evidence while denying Philip Morris access to it. It also said there was no real threat to personal privacy.

Justice Russell Brown, writing for a unanimous Supreme Court, disagreed with the lower courts and ruled for BC. He said the databases did contain information about individuals, so could not be shared. Compiling individual health-care information into databases did not change the *kind* of information it was. Besides, the Act said even documents *relating to* individual health care benefits could not be shared. The lower courts did not consider this. Justice Brown said the lower courts were wrong to focus on how relevant the databases were to the lawsuit, rather than on the kind of information the Act said could not be shared. He also pointed out that information about "particular" insured persons did not mean information about "identifiable" insured persons under the Act. That meant that removing identifying information would not solve the problem. Justice Brown said that it was too early in the process to talk about trial fairness, because the Act protected it in other ways. Also, the Supreme Court had already found the Act constitutional, meaning it considered it would not lead to unfair trials. He noted that BC would have to share the databases with Philip Morris if an expert witness relied on them in court. Philip Morris could also ask for a "statistically meaningful sample," with identifying information removed, under a different part of the Act.

In a similar case in 2016, the New Brunswick Court of Appeal said that New Brunswick did not have to share similar databases with tobacco companies. (The Act passed by New Brunswick is mostly the same as BC's.) This decision ensures a similar provision is applied the same way in both provinces.

For more information (case no. 37524):

- Reasons for judgment
- Case information

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- Webcast of hearing

Breakdown of the decision:

- Unanimous: Brown J. (Abella, Moldaver, Karakatsanis, Gascon, Rowe and Martin JJ. in agreement)

Lower court rulings:

- Court of Appeal for British Columbia (appeal judgment)
- Supreme Court of British Columbia (trial judgment)

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