Key Product Liability Cases – Bi-Annual Update: June 2026

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In the first half of 2026, Canadian courts rendered a number of important product liability decisions.

The cases reinforce the need for proper pleadings and evidentiary standards:

1. In *Hartman v. Canada (Attorney General)*, 2026 ONCA 270, (vaccine negligence claim) pleadings were struck in part because the court refused to be bound by inferences not backed by evidence.

2. In *Listovets v. AstraZeneca Canada Inc.*, 2026 ONSC 220, the court confirmed that evidence of association between a drug and a disease, without more, is not sufficient evidence of general causation.

3. In *Dembrowski v. Bayer Inc.*, 2026 SKKB 63, evidence that the plaintiffs' claim had significant risk with respect to warning adequacy justified a more modest settlement amount.

While the above decisions provide some hope to defendants, *Strathdee v. Johnson & Johnson Inc.*, 2026 ONSC 1186 confirms that defendants may continue to face parallel proceedings. If a proposed class proceeding is commenced in a second jurisdiction with a pleading that has broader scope than the claim in an existing proposed class action, that broader scope may be sufficient for a court to allow the second, overlapping proceeding to continue.

Court of Appeal Rejects Vaccine Negligence Claim at the Pleadings Stage: *Hartman v. Canada (Attorney General)*, 2026 ONCA 270

The Court of Appeal for Ontario confirmed in *Hartman v Canada*[1] that the government of Canada ("**Canada**") does not owe a private law duty of care to plaintiffs who suffered harm after using products for which Canada granted regulatory approval. The decision is a useful reminder that, while pleadings must be read generously, courts are not required to accept bald conclusions that are unsupported by material facts.

Background

The appellant's 17-year-old son died 33 days after receiving a COVID-19 vaccine. The appellant sued Canada, alleging that the federal government was negligent, recklessly indifferent, or willfully blind in approving, regulating, and publicly promoting the vaccine.[2] The appellant pleaded a variety of clinical data that he alleged showed that the vaccine was unsafe and minimally effective. He further pleaded that Canada knew of this data, and therefore knew that the vaccine was unsafe or minimally effective.

Canada moved under Rule 21.01(1)(b) of the Ontario *Rules of Civil Procedure* to strike the appellant's claim on the basis that it disclosed no reasonable cause of action. At first instance, the motion judge struck the claim after concluding that it was bound to fail. The appellant appealed.

Outcome on Appeal

In a unanimous decision, the Court of Appeal for Ontario upheld the motion judge's decision, and found that Canada owed no duty to the deceased.[3]

The Court rejected the appellant's allegations that the government knew the vaccine was unsafe or minimally effective.

The Court did not consider itself bound to accept the inferences the appellant had drawn from the alleged clinical data. Instead, the Court examined the clinical data pleaded and concluded that, on its face, it indicated that vaccinated participants had a significantly lower risk of contracting COVID-19 and experienced much less severe outcomes than unvaccinated participants.[4]

The inferences the appellant drew from the data were the sort of "conclusory allegations" that, according to well-established case law, cannot substitute for material facts.[5] While pleadings must be read generously, courts are not required to accept bald conclusions unsupported by the material facts.

The Court dismissed the appeal and refused to grant leave to amend the pleadings.

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[1] *Hartman v. Canada (Attorney General)*, 2026 ONCA 270 [*Hartman*].

[2] The claim and appeal also concerned allegations of misfeasance in public office not explored here.

[3] *Hartman*, at para. 2.

[4] *Hartman,* at para. 62.

[5] *Hartman,* at para. 28.

Key Takeaway

1. On a motion to strike, a court is not necessarily required to accept pleaded inferences from data in the same way it is required to accept the truth of pleaded material facts.

Ontario Court Confirms that Association Alone is not Evidence of General Causation: *Listovets v. AstraZeneca Canada Inc.*, 2026 ONSC 220

In *Listovets v. AstraZeneca Canada Inc.*, the Ontario Superior Court of Justice confirmed that mere association between a drug and a disease, without more, is not sufficient evidence of general causation. An update to a product monograph to acknowledge an association is not proof of general causation either.

Background

In 2003, the plaintiff was prescribed Symbicort for his chronic obstructive pulmonary disease (COPD). Symbicort is a prescription inhaler that manages inflammation in the airway and relaxes the muscles around the airway to make breathing easier. In 2016, the plaintiff was diagnosed with EGPA, a rare lung disease, and in 2018 he commenced a claim against AstraZeneca Canada Inc. ("**AstraZeneca**") for its alleged failure to warn that Symbicort could cause eosinophilic granulomatosis with polyangiitis ("**EGPA**").

In 2003, the product monograph for Symbicort did not mention the risk of EGPA, a rare lung disease. But, in 2015, AstraZeneca added to the monograph that Symbicort had been associated with EGPA.

The plaintiff alleged that AstraZeneca had known that Symbicort could cause EGPA in 2002 but had covered it up until 2015. In 2025, the parties agreed to proceed to summary judgment on the sole issue of "whether Symbicort can cause the development of EGPA in its ordinary use" (general causation).[6]

AstraZeneca relied on the expert evidence of Dr. Parameswaran Nair, the AstraZeneca Chair in Respiratory Diseases. Dr. Nair's uncontradicted evidence was that "[t]here is no scientific evidence, either known to me, in my research, or a study of the literature, that assigns causality. It's simply an association."[7] The plaintiff led no expert evidence.

Outcome

The Court dismissed the plaintiff's claim. It held that AstraZeneca was not liable for failing to warn of EGPA. To recover damages, the plaintiff had to prove that Symbicort can cause EGPA.[8] The evidence showed only an association, not causation, and a mere association between a drug and a disease does not establish causation.[9]

The Court concluded that AstraZeneca's 2015 update to the product monograph was not proof of causation. AstraZeneca had updated the product monograph with language proposed by Health Canada, in order to maintain consistency with other "similar" product monographs. AstraZeneca agreed to insert the language as a

[6] *Listovets*, at para. 29.
[7] *Listovets*, at para. 34, emphasis in original.
[8] *Listovets*, at para. 42.
[9] *Listovets*, at para. 42.

"regulatory imposition"[10] rather than because it believed that Symbicort causes EGPA. In any case, the language did not suggest that Symbicort causes EGPA.

Key Takeaways

1. An association between a drug and a disease may give rise to a duty to warn,; however, without evidence of general causation, there can be no recovery in negligence.

2. A product monograph update to acknowledge an association with an outcome is not proof of general causation.

Ontario Court Denies Motion to Stay an Overlapping, Multi-Jurisdictional Class Proceeding: *Strathdee v. Johnson & Johnson Inc.*, 2026 ONSC 1186

The Ontario Superior Court declined to stay an Ontario baby-powder class action as an abuse of process despite overlapping certified proceedings in British Columbia and authorized proceedings in Québec, holding that the Ontario action remains the preferable procedure under the *Class Proceedings Act, 1992*. The Court emphasized that there is no "first-to-certify" rule in Ontario and that access to justice for a broader Ontario class outweighs concerns about duplication.

Background

The plaintiffs allege that Johnson & Johnson marketed talc-based baby powder for perineal use without adequate warnings, despite an increased risk of ovarian cancer. Parallel class proceedings exist in British Columbia and Québec, and numerous individual actions have also been commenced across Canada.

In earlier reasons released in June 2025, the Ontario Superior Court had already found that the criteria under ss. 5(1)(a)–(c) and (e) of the *CPA* were satisfied, and dismissed a stay motion based on delay. What remained to be determined was whether the Ontario action should be stayed as an abuse of process due to duplication and whether it was the preferable procedure under s. 5(1)(d).

Outcome

The Court dismissed the defendants' motion to stay and held that the Ontario proceeding is the preferable procedure for resolving the certified common issues.

The defendants argued that permitting the Ontario action to proceed alongside the B.C. and Québec proceedings would offend comity, risk inconsistent findings, and waste judicial resources. The Court rejected this submission, reiterating that "[t]here is no presumption in favour of issuing a stay of a duplicative or overlapping class proceeding," and that abuse of process is a flexible doctrine grounded in fairness and the repute of the administration of justice.[11]

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[10] *Listovets*, at para. 39.

[11] *Strathdee v. Johnson & Johnson Inc.*, 2026 ONSC 1186 [*Strathdee*], at para. 10.

While acknowledging that "a multiplicity of proceedings can harm the administration of justice," the Court emphasized that overlap alone is not determinative.[12] Stays are more likely where proceedings are "carbon copy" actions.[13] Here, the Ontario and B.C. proceedings were not identical, and differed materially in class definition, causes of action, and available remedies. For example, Ontario's class was broader in scope, capturing additional causes of action, a longer class period, and consumers who had not been diagnosed with ovarian cancer. These differences weighed against a finding of abuse of process.

In analyzing preferability under s. 5(1)(d) of the *CPA*, the Court reiterated that the analysis asks whether a class proceeding is a "fair, efficient and manageable" method of advancing the claims, and whether it is preferable to reasonably available alternatives.[14]

The defendants submitted that the existence of the certified B.C. action meant the Ontario proceeding was not preferable, effectively urging the Court to defer to the certified B.C. action. The Court rejected this approach, holding that adopting it would amount to a "first to be certified" rule, which was inconsistent with the jurisprudence.[15]

The Court also rejected the argument that individual actions provided a preferable alternative. Hundreds of individual claims would require each plaintiff to bear the heavy cost of expert-driven product liability litigation, undermining judicial economy and access to justice. As the Court observed, judicial economy "is not served by hundreds of similar or identical claims," particularly where behaviour modification is a key objective of the proceeding.[16]

The Court declined to stay or carve out overlapping classes at certification, but underscored that overlapping proceedings must be actively managed. Counsel were cautioned that they would need to cooperate, communicate, and access case management to mitigate duplication, confusion, and the risk of double recovery.

Key Takeaways

1. There is no presumption that overlapping or duplicative class actions must be stayed - Broader class definitions and remedies may justify allowing parallel proceedings to continue.

2. Canadian courts will not follow a "first to certify" rule in multijurisdictional class proceedings.

3. The preferability analysis turns on context, including differences in class scope, causes of action, and access to justice.

[12] *Strathdee,* at para. 10.
[13] *Strathdee,* at para. 10.
[14] *Strathdee,* at para. 34.
[15] *Strathdee,* at para. 53.
[16] *Strathdee,* at para. 45.

Court Approves Settlement in Pharmaceutical Product Liability Multi-Jurisdictional Class Proceeding: *Dembrowski v. Bayer Inc.*, 2026 SKKB 63

The Court in *Dembrowski v. Bayer Inc.* confirmed that "it is not appropriate for the Court to rubber stamp settlements."[17] The Court must consider whether the proposed settlement is fair and reasonable. In approving the settlement, the Court emphasized the significant litigation risks the plaintiffs faced, particularly on key common issues relating to comparative risk and warning adequacy.

After more than 15 years of litigation, the Saskatchewan Court of King's Bench approved a settlement resolving a product liability class action relating to the sale of oral contraceptives Yasmin and YAZ. The Court also approved class counsel's fees, finding them fair in light of the complexity, duration, and risk of the litigation.

Background

Yasmin and YAZ are oral contraceptives sold in Canada. In 2009, the plaintiffs commenced a class action in Saskatchewan alleging that Bayer Inc., the manufacturer of Yasmin and YAZ was negligent in the marketing, distribution, and/or sale of the contraceptives. The plaintiffs sought damages for those who had developed blood clots and gallbladder disease after ingesting Yasmin or YAZ. The claim included derivative claims on behalf of family members under applicable statutes.

In October 2018, the proceeding was certified as a multi-jurisdictional class-action (Ontario, Saskatchewan and Quebec) with two common issues. Negotiations and settlement offers were exchanged until the Settlement Agreement was reached on July 30, 2025.

The Settlement Agreement provided for a settlement fund of approximately $9 million. $8.1 million was allocated to compensate class members, as well as administration expenses and class counsel fees; about $900,000 was allocated for provincial health insurers to be divided among the applicable jurisdictions; and $6,000 was allocated for the Ontario and Saskatchewan plaintiff honoraria, collectively.

Class counsel (Ontario, Saskatchewan and Quebec) collectively sought legal fees of 30% of the $8.1 million that was allocated for compensation of the claims. With the addition of GST, PST, and $250,000 of disbursements, the total requested for class counsel's legal work and expenses was about $1 million.

Outcome

The Court approved the proposed settlement, finding that it was fair, reasonable, and in the best interests of the class as a whole. The settlement had already been approved in Ontario, with reasons indexed at *Schwoob v. Bayer Inc.,* 2025 ONSC 6607, and the Court echoed those reasons.

The presence of significant litigation risks at both the common and individual issues stage factored into the settlement approval. Both the Ontario and Saskatchewan courts concluded that there were "significant hurdles for the class and a real risk that a court adjudicating the matter could find in favour of the defendant."[18] The Court quoted the Ontario reasons at length, highlighting how a key common issue would have been "whether Yasmin and

[17] *Dembrowski v. Bayer Inc.*, 2026 SKKB 63 [*Dembrowski*], at para. 17.

[18] *Dembrowski*, at para. 18.

YAZ carry an increased sign of….gallbladder disease, compared to other available oral contraceptives, and whether that risk is significant enough that it would to have been warned of or would have changed class members' behaviour."[19]

The Court reviewed objections to the settlement, identifying how the objections "assume[d] proof of both general and specific causation and impl[ied] that injury, by itself, warrants compensation."[20] The Court acknowledged that "no amount of compensation will compensate Settlement Class Members for their injuries, related emotional trauma and expenses," but settlement is a "compromise" reflecting the risks, delay and expense of continued of litigation.[21] On the whole, the Court concluded that it was in the best interests of the class members to approve the settlement and bring this lengthy proceeding to its close.

On the compensation for class counsel, the Court concluded that the fees and disbursements sought were fair and reasonable. The legal fees requested, totalling approximately $758,000 after taxes, were "significantly less than the time docketed by Class Counsel."[22] Class counsel had "assumed significant risk" and "[t]he litigation has been lengthy and uncertain."[23]

Key Takeaways

1. Courts will defer to experienced class counsel where settlements are negotiated at arm's length and supported by a strong evidentiary record.

2. Significant scientific uncertainty that contributes to a plaintiffs' challenge in proving causation can be a decisive factor for a Court assessing class action risk; as a defendant, raising these issues can contribute to making a settlement more reasonable.

3. Settlement approval focuses on reasonableness and access to justice, not on whether compensation mirrors potential trial outcomes.

4. Significant class counsel fees will often be approved where counsel has assumed meaningful risk in complex, long-running proceedings.

[19] *Dembrowski,* at para. 20, quoting *Schwoob v Bayer Inc.,* 2025 ONSC 6607 [*Schwoob*], at para. 43.
[20] *Dembrowski,* at para. 26, citing *Schwoob,* at para. 50.
[21] *Dembrowski,* at para. 28, citing *Schwoob,* at para. 52.
[22] *Dembrowski,* at para. 33.
[23] *Dembrowski,* at para. 35.

For more information, please contact one of the contributors noted below or another member of our Product Liability and Mass Torts Group.

BYRON SHAW | bdshaw@mccarthy.ca | 416-601-8256

Byron is a Toronto litigation partner with extensive expertise in product liability, including a particular focus on litigation relating to pharmaceutical products and devices and consumer products and services. He has acted on some of the highest profile and complex product liability matters—often following recalls, market withdrawals and other regulatory action in Canada, the U.S. and other jurisdictions. Byron regularly acts as litigation counsel in product liability class actions and mass tort inventory litigation in all courts across the country.

DOROTHY CHARACH | dcharach@mccarthy.ca | 416-601-7710

Dorothy is a partner in our Litigation and Dispute Resolution Group in Toronto and Co-leader of our Health Industry Group. She maintains a broad practice with an emphasis on product liability, class actions, commercial litigation and dispute resolution, professional negligence, and defamation. Dorothy has appeared before numerous courts and tribunals, including the Ontario Court of Appeal, the Divisional Court of Ontario, the Ontario Superior Court, the Ontario Court of Justice, and the Health Professions Appeal and Review Board.

SAMUEL LEPAGE | slepage@mccarthy.ca | 514-397-4238

Samuel Lepage is a partner in the firm's Litigation and Dispute Resolution Group in Montréal. He has extensive experience in class actions, including in the area of product liability. Samuel often defends manufacturers' liability class actions related to pharmaceutical and consumer products. He regularly acts for significant clients in class actions involving *Consumer Protection Act* claims. Samuel has appeared before the Supreme Court of Canada, the Quebec Court of Appeal and all Quebec trial courts.

LYNDSEY DELAMONT | ldelamont@mccarthy.ca | 403-260-3647

Lyndsey is a partner in our Litigation Group in Calgary. Her practice is focused on representing companies in complex arbitral or litigation proceedings, primarily in the energy and construction industries, as well as in the agribusiness, retail and consumer products sectors. Lyndsey is an experienced advocate who understands her clients' businesses and the importance of finding strategic solutions to challenging commercial problems.

PATRICK WILLIAMS | pwilliams@mccarthy.ca | 604-643-7940

Patrick is a partner in our Litigation and Dispute Resolution Group in Vancouver focused on complex commercial litigation, including arbitrations, class actions, and regulatory proceedings. With an emphasis on product liability claims and contract disputes, Patrick represents clients in diverse industries, including the consumer product, energy, mining, real estate, technology, and transportation sectors. He has appeared in the Supreme Court of Canada, all levels of court in British Columbia, the Federal Court of Appeal, the Federal Court, domestic and international commercial arbitrations, and before administrative tribunals.

NOAM URI | nuri@mccarthy.ca | 416-601-7950

Noam is a partner in our Litigation and Dispute Resolution Group in Toronto. She maintains a general litigation practice acting for clients on a variety of proceedings including commercial cases, class actions, regulatory proceedings, and medical malpractice. She is also a contributing author to the sixth edition of Defending Class Actions in Canada, published by LexisNexis.

VALÉRIE LORD | vlord@mccarthy.ca | 416-601-7792

Valérie is an associate in our Litigation and Dispute Resolution Group in Toronto. She regularly represents clients in complex class action and mass tort litigation across Canada, including proceedings involving consumer products, pharmaceuticals, medical devices, data & privacy, and competition law.

GREG RINGKAMP | gringkamp@mccarthy.ca | 604-643-7996

Greg is an associate in our Litigation and Dispute Resolution Group, focusing primarily on product liability. Graduating from the University of Toronto's Faculty of Law, he received distinction standing and the Samuel and Clara Shime Award for Achievement in Law and Medicine. Prior to law school, Greg was a research ethics officer at the Montreal Neurological Institute, where he worked on experimental drug trials.

About McCarthy Tétrault's Product Liability and Mass Torts Group

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mccarthy tétrault

VANCOUVER

Suite 2400, 745 Thurlow Street
Vancouver BC V6E 0C5
Tel: 604-643-7100
Fax: 604-643-7900

QUÉBEC CITY

500, Grande Allée Est, 9e étage
Québec QC G1R 2J7
Tel: 418-521-3000
Fax: 418-521-3099

CALGARY

Suite 4000, 421 7th Avenue SW
Calgary AB T2P 4K9
Tel: 403-260-3500
Fax: 403-260-3501

NEW YORK

55 West 46th Street, Suite 2804
New York NY 10036
UNITED STATES
Tel: 646-940-8970
Fax: 646-940-8972

TORONTO

Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6
Tel: 416-362-1812
Fax: 416-868-0673

LONDON

1 Angel Court, 18th Floor
London EC2R 7HJ
UNITED KINGDOM
Tel: +44 (0)20 7786 5700
Fax: +44 (0)20 7786 5702

MONTRÉAL

Suite MZ400
1000 De La Gauchetière Street West
Montréal QC H3B 0A2
Tel: 514-397-4100
Fax: 514-875-6246