



COURT FILE NUMBER **1201-07314**

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE **CALGARY**

PLAINTIFF(S) **HER MAJESTY IN RIGHT OF ALBERTA**

DEFENDANT(S) **ALTRIA GROUP, INC.; B.A.T. INDUSTRIES P.L.C.; BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED; BRITISH AMERICAN TOBACCO P.L.C.; CANADIAN TOBACCO MANUFACTURERS COUNCIL; CARRERAS ROTHMANS LIMITED; IMPERIAL TOBACCO CANADA LIMITED; JTI-MACDONALD CORP.; PHILIP MORRIS INTERNATIONAL, INC.; PHILIP MORRIS USA, INC.; R.J. REYNOLDS TOBACCO COMPANY; R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.; ROTHMANS BENSON & HEDGES INC.; and ROTHMANS INC.**

DOCUMENT **STATEMENT OF DEFENCE OF THE DEFENDANT, CANADIAN TOBACCO MANUFACTURERS' COUNCIL**

PARTY FILING THIS DOCUMENT **Kuhn LLP, Solicitors for the Defendant, Canadian Tobacco Manufacturers' Council**

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Note: State below only facts and not evidence (Rule 13.6)

Statement of Facts Relied On:

1. Except as expressly admitted herein, the Defendant Canadian Tobacco Manufacturers' Council ("CTMC") denies, or where applicable does not admit, each and every allegation set forth in the Statement of Claim (the "Claim").
2. In specific response to paragraphs 14 and 47 of the Claim, CTMC admits only that it is a corporation incorporated pursuant to the laws of Canada and has a registered office in Gatineau, Quebec, but denies the other allegations in those paragraphs of the Claim.
3. CTMC admits:
 - a. With respect to paragraph 1 of the Claim, that this action is brought pursuant to the provisions of the *Crown's Right of Recovery Act* (the "Act");
 - b. With respect to paragraph 2 of the Claim, only that this paragraph states the definitions referred to therein; and
 - c. With respect to paragraphs 47 and 48 of the Claim, only that CTMC's members have included only certain Canadian tobacco manufacturers and that, at present, its members are the three Canadian tobacco manufacturers who are defendants in this action: Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc. and JTI-MacDonald Corp. (together, the "Members").

CTMC denies the other allegations in those paragraphs of the Claim and specifically says that the remaining defendants have never been members of CTMC.

4. In response to the whole of the Claim and in specific response to paragraphs 14, 47, 48 and 104 of the Claim, CTMC says that:
 - a. In 1963, an *ad hoc* committee (the "*Ad Hoc* Committee") of some Canadian tobacco manufacturers was created at the request of the Federal Government to present the points of view of those Canadian tobacco manufacturers at the 1963 National Conference on Smoking and Health;
 - b. The *Ad Hoc* Committee continued to function until 1971;
 - c. In February of 1971, an unincorporated association also named the "CTMC" replaced the *Ad Hoc* Committee;
 - d. The Defendant, CTMC, was incorporated in 1982; and
 - e. CTMC has been inactive in all material respects since June of 2001.
5. CTMC cannot be liable in respect of any conduct prior to 1982 or following June of 2001.

6. CTMC denies all of the allegations of wrongdoing and breaches of duties and obligations made against it including, without limitation, those of conspiracy, misrepresentation, deceit, failure to warn, and all other “Breaches of Duty” (as defined in the Claim) and “tobacco-related wrong” (as defined in the Act) that are alleged against CTMC. Contrary to the allegations in the Claim, CTMC met and complied with all common law, equitable and statutory duties that, in the circumstances, existed at various places and times.
7. CMTC further denies that any persons in Alberta started or continued to smoke, or that any persons were exposed to Tobacco Products, as a result of any tobacco-related wrongs or Breaches of Duty committed by CTMC, as alleged by the Crown or at all (which commission is in any event denied).
8. CTMC further denies that any persons in Alberta have suffered or will suffer any “Tobacco Related Diseases” (as defined in the Act or the Claim) or an increased risk of Tobacco Related Disease, as a result of any tobacco-related wrong or Breaches of Duty (the commission of which is denied).
9. With respect to and in response to all of the legal and factual allegations made against all Defendants generally, CTMC adopts the responses and other pleadings set out in the Statements of Defence of its Members.
10. CTMC denies the allegations contained in paragraph 49 of the Claim.
11. CTMC denies all of the allegations of misrepresentations and deceit in the Claim, including without limitation those contained in paragraphs 52 and 53 thereof.
12. CTMC denies all of the allegations of suppression of scientific or medical data and allegations of destruction of documents in the Claim, including without limitation those contained in paragraphs 76, 103, 108, 109 and 111.
13. CTMC denies the allegations made in paragraphs 104 through 108 of the Claim and denies that it provided a means or method for any conspiracy, concert of action or common design or that it agreed, adopted or participated in any conspiracy, concert of action or common design, as alleged or at all.
14. CTMC acknowledges that it met and discussed with governments matters of interest to its Members and at times served as a conduit for the passage of information between its Members and governments (including the directions, mandates and requirements of governments to its Members). However, CTMC denies that it ever misrepresented the risks of smoking or Exposure to Tobacco Products or with respect to any cause of Tobacco-Related Disease or any illness, disease or death. The CTMC complied reasonably with the standards, directives, recommendations, suggestions and advice of governments and thereby discharged its duties in dealing with governments, insured persons (as defined in the Act) and others and, in all of the circumstances, committed no tobacco-related wrongs or Breaches of Duty as alleged in the Claim or at all.
15. CTMC’s Members compete and have competed vigorously against each other for market share in the Canadian market, but CTMC states that they did work together in relation to

certain dealings with the Federal Government. The Federal Government, in turn, worked closely with CTMC's Members (sometimes through the *Ad Hoc* Committee and the unincorporated association and, after it was incorporated, through the CTMC). The Federal Government gave advice and directions and made various representations and requests to all or some of the CTMC Members on smoking and health issues and with regard to the design, manufacture, and promotion of their products, and in particular with respect to restrictions on the advertising and promotion of Tobacco Products and the development and promotion of lower tar products, upon which CTMC and its Members reasonably relied.

16. CTMC denies the allegations made in paragraphs 106 through 108 of the Claim.
17. CTMC denies the allegations made in paragraphs 76 through 112, 117, 120, 125 and 130 of the Claim and denies that CTMC was itself, or ever acted in furtherance of any conspiracy or concert of action as alleged or at all. Among other things, CTMC denies that it disseminated false or misleading information, made any false or misleading submissions to or otherwise misled governments, promoted cigarettes, suppressed research regarding the risks of smoking or misrepresented the risks of Exposure to Tobacco Products or the cause of disease as alleged in paragraph 108 of the Claim, or at all. To the contrary, the CTMC commissioned research at the request of its Members, including research that added to the already overwhelming knowledge in the public domain, including that of "insured persons" (as defined in the Act) in Alberta, regarding the risks of Exposure to Tobacco Products, which research was published.
18. Further, CTMC says that, given the amount of information available and disseminated, the Federal Government, the Crown and insured persons were aware at all material times of the risks of (and literature regarding) Exposure to Tobacco Products and the fact that cigarette smoking can be difficult to quit. CTMC relies on and adopts the pleadings in the Statements of Defence of its Members in this regard.
19. As pleaded in paragraph 17 herein, the CTMC states that at times it commissioned research at the request of its Members. The allegations pertaining to CTMC at paragraphs 117, 120, 125 and 130 of the Claim are otherwise denied. CTMC has no knowledge as to the role played by any company outside of its Members with respect to that research or with respect to any other matters, including issues relating to smoking and health generally (as is alleged in paragraphs 117, 120, 125 and 130 of the Claim). CTMC relies on and adopts the pleadings in the Statements of Defence of its Members with respect to these paragraphs of the Claim.

Any matters that defeat the claim of the plaintiff(s):

20. CTMC denies that the Crown has suffered any damages as a result of any alleged Breaches of Duty or "tobacco-related wrong" (as defined in the Act) committed by the CTMC (the commission of which is denied) and puts the Crown to the strict proof thereof in respect of the "cost of Health Services" (as defined in the Act) incurred or to be incurred as claimed by the Crown.

21. CTMC says that to the extent, if any, that the Crown has or will incur costs of Health Services arising from the consumption of or Exposure to Tobacco Products, which is denied, those costs are a result of the Crown's own acts and omissions for the reasons pleaded herein and in the Statements of Defence of its Members. The Crown has regulated the promotion and sale of Tobacco Products, and has benefited from the sale of those products in the form of significant revenues accruing from taxation and licensing fees imposed on manufacturers, distributors and consumers of tobacco. CTMC also states that the Crown voluntarily assumed the risks of increased costs of Health Services by virtue of its taxation and regulation of the legal sale of tobacco in Alberta. The Crown has failed to mitigate or reduce any increased costs of Health Services stemming from or related to the use of or Exposure to Tobacco Products, despite its power to do so as the authority controlling regulation of the distribution and sale of tobacco.
22. The Crown undertook a course of conduct consisting of legislative and regulatory actions, representations and voluntary actions which the Crown intended, knew, or ought to have known, would lead CTMC to believe that its conduct was not in breach of any provincial statute or regulation and that its conduct was not actionable, on which course of conduct CTMC and its Members reasonably relied. CTMC relies on and adopts the pleadings in the Statements of Defence of its Members in this regard.
23. The CTMC further says to the extent, if any, that the Crown has or will incur costs of Health Services arising from the consumption of or Exposure to Tobacco Products, which is denied, those costs are a result of the conduct of individual insured persons who voluntarily decided to commence or continue to smoke despite the widespread and continuing dissemination of information and warnings regarding the risks associated with the consumption of Tobacco Products and their awareness of such risks. CTMC relies on and adopts the pleadings in the Statements of Defence of its Members in this regard.
24. CTMC says that if the Crown incurred any cost of Health Services as alleged or at all, then such costs were caused or contributed to, in whole or in part, by the Crown's own acts or omissions as pleaded herein and in the Statements of Defence of its Members. CTMC pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.A. 2000, c. C-27 and the Act.
25. At various times in the Claim and in related particulars, the Crown alleges that there were statements, presentations or representations made to a committee of the House of Commons or to Parliamentary legislative committees. Any such statements made in the context of Parliamentary proceedings are subject to and are protected by a common law and statutory Parliamentary privilege. CTMC relies on and adopts the pleadings in the Statements of Defence of its Members in this regard.
26. CTMC pleads the provisions of the *Limitations Act*, R.S.A. 2000, c. L-12 both in respect of the Crown's claim and in respect of the costs of Health Services of those persons on which the Crown's claim is alleged to be based and calculated.

27. CTMC says that the Crown is barred at law and in equity from advancing the claims made in the Claim against CTMC on the basis of the pleadings herein and as pleaded in the Statements of Defence of its Members.

28. For all the foregoing reasons, CTMC denies that it is liable for the costs of any Health Services and denies that it is jointly and severally liable for the costs of any Health Services (as alleged in paragraph 144 of the Claim) and denies that the Crown is entitled to the relief sought in paragraph 144 of the Claim.

Remedy sought:

29. CTMC seeks the following remedies:

- a. Judgment dismissing the claims of the Crown;
- b. Costs, on a solicitor and own client basis; and
- c. Such further and other relief as may be deemed appropriate by this Honourable Court.