

COURT FILE NUMBER      **1201-07314**

COURT                      COURT OF QUEEN'S BENCH OF ALBERTA

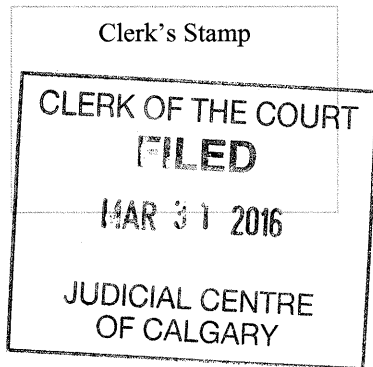
JUDICIAL CENTRE        CALGARY

PLAINTIFF                **HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA**

DEFENDANTS             **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 R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.**

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**Introduction**

1. R.J. Reynolds Tobacco International, Inc. ("RJRTI") admits that this action is brought pursuant to the provisions of the *Crown's Right of Recovery Act* SA 2009 c C-35 (the "Act").

2. RJRTI further admits that the Province of Alberta (the “Province”) does not bring this action on the basis of a subrogated claim but brings this action in its own right.
3. RJRTI adopts the definitions contained in the *Act*.
4. The *Act* creates a civil cause of action for the Province. However, except to the extent expressly provided for in the *Act*, the *Act* does not alter the substantive, evidentiary, or procedural laws of Alberta. Further, the *Act* does not alter the substantive, evidentiary, or procedural laws of Canada.
5. RJRTI admits that it is a company incorporated pursuant to the laws of the State of Delaware but says that its registered office address is 327 Hillsborough Street, Raleigh, North Carolina 27603, in the United States of America.
6. Except as otherwise expressly admitted herein, RJRTI denies the balance of the allegations in the Statement of Claim and puts the Plaintiff to the strict proof thereof. Without limiting the generality of the foregoing, RJRTI specifically denies that it has breached any common law, equitable or statutory duty or obligation owed to persons in Alberta as alleged in the Statement of Claim. RJRTI denies that any such alleged breach of duty or obligation caused any population of persons to smoke cigarettes or other tobacco products, or to continue to smoke cigarettes or other tobacco products, or to be exposed to tobacco smoke.
7. Without limiting the generality of paragraph 6, RJRTI specifically denies the allegations made in paragraph 4 of the Statement of Claim of:
  - a) improper design and manufacture;

- b) misrepresentation;
  - c) deceit;
  - d) failure to warn of risks;
  - e) failure to and refusal to research and reveal the hazards connected with tobacco products;
  - f) deceptive marketing practices;
  - g) unfair trading practices;
  - h) unlawful promotion of tobacco products to youth or adolescents;
  - i) providing false denials;
  - j) concoction and perpetuation of fallacious controversies; and
  - k) all other alleged breaches of common law, equitable or statutory duties and obligations owed to persons in Alberta.
8. RJRTI further denies that it is liable for any of the alleged tobacco-related wrongs of any other Defendant, including for any alleged wrongs committed by any alleged predecessors, parents, affiliates, or related companies on the basis of joint and several liability (pursuant to section 44 of the *Act* or otherwise), vicarious liability, agency, conspiracy, or acting in concert.
9. RJRTI specifically denies that it acted in a manner that wrongfully caused any person in Alberta to be exposed and/or continue to be exposed to tobacco products.

10. RJRTI has no knowledge of the allegations contained in paragraphs 10 - 19, 22, 23 25-33, 36 – 43, 113-120, and 126-130 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
11. RJRTI admits paragraph 20 of the Statement of Claim.

### **RJRTI's Corporate History**

12. RJRTI was incorporated in the State of Delaware in the United States of America in 1976. RJRTI is, and since its incorporation has been, a subsidiary of R.J. Reynolds Tobacco Holdings, Inc. (formerly named R.J. Reynolds Industries, Inc. and RJR Nabisco, Inc.).
13. Since 1999, RJRTI has been an inactive shell corporation that is wholly-owned by R.J. Reynolds Tobacco Holdings, Inc., without assets or employees.
14. Macdonald Tobacco Inc. ("MTI") and RJR-Macdonald Inc. ("RJRMI") were legal entities separate and apart from RJRTI. JTI-Macdonald Corp. ("JTIM") is a legal entity separate and apart from RJRTI. At no time has RJRTI held shares in MTI, RJRMI or JTIM.

### **Alleged Tobacco-Related Wrongs**

15. RJRTI has not:
  - a) designed, manufactured, distributed or sold cigarettes or other tobacco products in Alberta;
  - b) advertised, marketed or promoted cigarettes or other tobacco products in Alberta;

- c) made statements or representations to persons in Alberta, including youth or adolescents, concerning smoking and health, addiction and/or any other risk or benefit allegedly associated with smoking or tobacco smoke;
  - d) interacted with the Government of Canada or the Government of Alberta; or
  - e) held shares in any corporation engaged in the activities listed in subparagraphs a) through d).
16. RJRTI therefore denies that it can be held liable for the tobacco-related wrongs alleged in paragraphs 51 - 75 of the Statement of Claim.
17. RJRTI denies that it breached any statutory duty under the *Fair Trading Act*, *Unfair Trade Practices Act*, *Competition Act* or any of their predecessor statutes.
18. RJRTI denies that it conducted research into the design of cigarettes or other tobacco products sold in Alberta, or breached any alleged duty to persons in Alberta to research any harmful effects of exposure to tobacco products.

### **The Alleged Conspiracy**

19. RJRTI denies the existence of any conspiracy, concert of action or common design as alleged in the Statement of Claim. RJRTI specifically denies each and every allegation set forth in paragraphs 76 – 112, 121 – 125, and 131 - 136 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
20. RJRTI further denies that it participated in, or was a member of, or a party to any conspiracy, concert of action or common design as alleged in the Statement of Claim and

puts the Plaintiff to the strict proof thereof. RJRTI specifically denies that it has ever been a member of the Canadian Tobacco Manufacturers Council.

21. Further, RJRTI states that any allegation in the Statement of Claim or related particulars concerning statements made to the House of Commons Standing Committee on Health, Welfare, and Social Affairs, or federal legislative committees, as alleged in paragraph 104(f) of the Statement of Claim, are protected by parliamentary privilege.
22. RJRTI further denies that it engaged in any unlawful act or conduct as alleged in the Statement of Claim in furtherance of any alleged conspiracy, concert of action or common design and puts the Plaintiff to the strict proof thereof.
23. In response to the allegations at paragraphs 77 – 80 and 121 - 125 of the Statement of Claim, RJRTI specifically denies that it directed and coordinated the smoking and health policies of JTIM, MTI or RJRMI through the means and methods alleged in those paragraphs of the Statement of Claim. RJRTI further specifically denies that it unlawfully participated in the removal and destruction of smoking and health materials or unlawfully destroyed research relating to the biological activity of cigarettes as alleged in paragraph 103 of the Statement of Claim.
24. RJRTI admits that its representatives met and otherwise communicated with representatives of cigarette manufacturers from time to time, including in the context of meetings of trade associations. Such meetings and communications (as the case may be) have been commonplace across many manufacturing sectors for many years, were legitimate and appropriate, and did not constitute a conspiracy, concert of action or common design or result in the commission of any unlawful acts or conduct. RJRTI

denies that it communicated with any cigarette manufacturer or trade association, or with MTI or RJRMI, for any unlawful purpose, or employing any unlawful means, or with the intent of injuring any person in Alberta. RJRTI further denies that any unlawful acts were committed in Alberta as a result of any communication between RJRTI and any other person.

25. In the normal course of business, RJRTI and MTI, and later RJRMI, legitimately exchanged information relevant to MTI and/or RJRMI's operations in Canada. However, such exchange of information does not render the acts of MTI or RJRMI the acts of RJRTI, nor does such exchange of information mean that the actions or inactions of MTI or RJRMI were controlled or directed by RJRTI.
26. RJRTI participated in meetings, including the Winston-Salem Smoking Issues Coordinator Meetings and the "Hounds Ears" and "Sawgrass" conferences. RJRTI nominated smoking issue designees. The designee for Canada was an executive of MTI and later RJRMI. These meetings, the nomination of a smoking issue designee, and the exchange of information more generally, were means by which to discuss issues common to companies with some connection to RJRTI, including smoking and health issues. The communications did not constitute directives or orders and, in any event, did not encourage the commission of unlawful acts.
27. No communication between RJRTI and any other person, or any other act or omission of RJRTI, reduced or adversely affected the awareness of persons in Alberta regarding the risks associated with smoking.

28. RJRTI specifically denies that it participated in, was a member of, or a party to any conspiracy, concert of action or common design to prevent the Province or persons in Alberta or other jurisdictions from acquiring knowledge of the potential risks of the use of tobacco products and/or to commit tobacco-related wrongs, and puts the Plaintiff to the strict proof thereof.

### **Alleged Joint and Several Liability**

29. RJRTI denies that it is jointly and severally liable with any or all of the other Defendants, or with any of the Defendants alleged to constitute the “RJR Group”, for the cost of health services pursuant to section 44 of the *Act* as alleged in paragraphs 121 – 125 of the Statement of Claim, and puts the Plaintiff to the strict proof thereof.
30. RJRTI denies that there is any basis to find joint or vicarious liability, agency, conspiracy, acting in concert or common design as between it and any other person for any alleged tobacco-related wrongs as alleged in paragraphs 131 and 132 of the Statement of Claim.

### **The Crown’s Cost of Health Services**

31. RJRTI denies all allegations of wrongdoing contained in paragraphs 137 - 143 of the Statement of Claim.
32. RJRTI repeats its denial that it breached any common law, equitable or statutory duty or obligation owed by it to persons in the Province, which led such persons to start or continue using tobacco products.



33. Under the *Act*, the Province can only recover the cost of health services caused or contributed to by a tobacco-related wrong, which breach resulted in exposure to tobacco products by a specific and relevant population of insured persons in Alberta and which exposure actually caused or contributed to disease in such persons. RJRTI puts the Province to the strict proof of its claim for the cost of health services.
34. RJRTI denies that any population of insured persons in Alberta who were exposed to tobacco products were exposed to tobacco products because of any breach of any common law, equitable or statutory duty or obligation owed by RJRTI to insured persons in Alberta, which breach is expressly denied. RJRTI denies that the Province is entitled to recover the cost of health services resulting from exposure to tobacco products for any population of insured persons in Alberta.
35. The Province is not entitled to claim for or recover the total cost of health services for a disease which can be caused by exposure to tobacco products. All of the diseases associated with exposure to tobacco products occur in non-smokers as well as smokers. Not every case of such a disease results from exposure to tobacco products. The Province must prove, in relation to each disease, the cost of health services that was actually caused or contributed to by exposure to tobacco products.
36. The cost of health services to be determined on an aggregate basis under section 43(3)(a) of the *Act* includes only the cost of health services provided after the date of the breach, which breach is expressly denied, resulting from exposure to tobacco products. Without limiting the generality of the foregoing, the cost of health services to be determined on an aggregate basis:

- a) must not include the cost of any health services incurred before the date of the breach, which breach is expressly denied;
  - b) must be determined in relation to the specific and relevant population of insured persons in Alberta, determined at the time of the breach, to whom the duty or obligation was owed and in relation to whom the duty or obligation was breached;
  - c) must be limited to the specific and relevant population of insured persons in Alberta during the period of the breach;
  - d) must not include the cost of health services for any non-tobacco-related disease; and
  - e) must be determined separately in relation to each type of tobacco product included in the Plaintiff's claim.
37. The Province is not entitled to recover, on an aggregate basis for any population of insured persons in Alberta, the cost of health services that it would have incurred in any event. RJRTI denies that the Province has incurred any cost of health services as a result of insured persons being exposed to tobacco products in excess of any cost that the Province would have incurred in any event.
38. Further, the Province is not entitled to recover, on an aggregate basis for any population of insured persons in Alberta, the cost of health services that were not incurred by the Province, but were incurred, in whole or in part, by the Federal Government by means of transfer payments, funding arrangements, and grants and shared cost programs. The

Province is not entitled to recover the cost of health services which the Province has not actually incurred itself.

39. Further, taking into account sections 43(2) and 43(4) of the *Act*, the cost of health services assessed against any Defendant under section 43(3) of the *Act* based upon that Defendant's market share in cigarettes and other tobacco products must be eliminated or reduced to the extent, *inter alia*, that persons, events, factors or circumstances, other than the Defendant's breach, caused or contributed to the smoking or exposure or to the disease or risk of disease in the population of insured persons. Without limiting the generality of the foregoing, the cost of health services must be eliminated or reduced based upon:

- a) The awareness of insured persons in the population during and after the period of the breach of the potential health risks of exposure to tobacco products;
- b) The conscious and voluntary decisions by insured persons in Alberta to start using tobacco products and/or to continue using tobacco products notwithstanding the awareness of the potential health risks associated with use of tobacco products;
- c) The actions and conduct of other persons and entities, including without limitation, the Federal Government and the Province, which may have influenced insured persons in Alberta to start smoking and/or to continue smoking during and after the period of the breach; and

- d) All other events, factors or circumstances which influenced insured persons in the population to start smoking and/or to continue smoking during and after the period of the breach.
40. The Province has agreed to and accepted the manufacture, distribution, promotion and sale of cigarettes and tobacco products in Alberta. The Province's acts and conduct in imposing taxes on the sale of cigarettes and tobacco products influenced the views and behaviour of insured persons in Alberta. The tax revenue received by the Province from the sale of cigarettes and other tobacco products in Alberta has exceeded the cost of health services resulting from smoking cigarettes and other tobacco products. The Province has not incurred the cost of any health services resulting from smoking cigarettes and other tobacco products, since such costs have been fully paid from taxes on the sale of cigarettes and other tobacco products in Alberta.
41. If the Plaintiff has incurred the cost of health services as alleged or at all, which is denied, then the cause of the Plaintiff incurring such costs is a requirement of the statutes providing for health care services in Alberta, namely the *Alberta Health Care Insurance Act* RSA 2000 c A-20 and predecessor statutes and regulations.
42. Further, the acts and omissions of the Federal Government and the Province influenced the views and behaviour of insured persons in Alberta and had a significant effect on, among other things, the manner in which the manufacturers conducted their business, and the contents and properties of the cigarettes and other tobacco products that they manufactured, distributed and promoted in Alberta. The Plaintiff is not entitled to recover from RJRTI the cost of health services resulting from such actions and conduct by the

Federal Government and/or the Province or from compliance by the manufacturers with their advice, recommendations or directions.

43. RJRTI says that the Plaintiff is precluded, by common law and equitable principles, from recovering the cost of health services arising out of the consumption of cigarettes and other tobacco products in the Province of Alberta when the Plaintiff permitted (and benefited from) the sale of cigarettes and other tobacco products – with knowledge of the potential health risks.
44. RJRTI pleads and relies upon the provisions of the *Contributory Negligence Act*, RSA 2000 c. C-27 and the *Limitations Act*, RSA 2000 c L-12.

### **Mitigation**

45. RJRTI says in further answer to the whole of the Statement of Claim, the Plaintiff has mitigated the cost of health services as aforesaid, and the cost of health services has therefore been eliminated or reduced. In the alternative, the Plaintiff has failed to mitigate such costs.

### **Remedy Sought**

46. RJRTI denies that the Plaintiff is entitled to the relief claimed and says that the Statement of Claim should be dismissed with costs.