

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Plaintiff

- and -

**ROTHMANS INC., ROTHMANS, BENSON & HEDGES INC., CARRERAS  
ROTHMANS LIMITED, ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC.,  
PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP.,  
R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO  
INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED,  
BRITISH AMERICAN TOBACCO P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH  
AMERICAN TOBACCO (INVESTMENTS) LIMITED, and CANADIAN TOBACCO  
MANUFACTURERS' COUNCIL**

Defendants

**STATEMENT OF DEFENCE OF CANADIAN TOBACCO  
MANUFACTURERS' COUNCIL**

1. In this Statement of Defence, the Fresh as Amended Statement of Claim is referred to as the "Statement of Claim" for ease of reference.
2. The Canadian Tobacco Manufacturers' Council (the "CTMC") admits:
  - (a) with respect to paragraphs 2, 3, and 4 of the Statement of Claim, that this action is brought pursuant to the provisions of the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, S.O. 2009 c. 13 (the "Act"), but the CTMC denies the other allegations in paragraphs 2, 3, and 4 of the Statement of Claim;
  - (b) with respect to paragraphs 5 and 6 of the Statement of Claim, only that these paragraphs state the definitions referred to therein;
  - (c) with respect to the first sentence of paragraph 21 of the Statement of Claim, only that it is a corporation incorporated pursuant to the laws of Canada. It has a registered office in Gatineau, Quebec. CTMC denies the balance of the allegations contained therein. In particular, the CTMC has not, at any time, been the "trade association of the Canadian tobacco industry". At all material times, its members have included only certain Canadian tobacco manufacturers. 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"). The remaining defendants have never been members of the CTMC.

3. The CTMC denies, or where applicable does not admit, the remaining allegations in the Statement of Claim, unless expressly admitted herein. In particular, the CTMC denies all of the allegations of wrongdoing and breaches of duties and obligations made against it (including, without limitation, those of conspiracy, misrepresentation and other "tobacco related wrongs" as defined in the Act) that are alleged against the CTMC. Contrary to the allegations in the Statement of Claim, the CTMC met and complied with all common law, equitable and statutory duties that, in the circumstances, existed at various places and times.

4. The CTMC further denies that any persons in Ontario started or continued to smoke, or that any persons in Ontario were exposed to tobacco products, as a result of any tobacco related wrongs committed by the CTMC, as alleged by the plaintiff or at all, which commission is in any event denied. Nor did, or will, any persons in Ontario suffer any "tobacco related disease" (as defined in the Act) or an increased risk of tobacco related disease as a result of such tobacco related wrongs, the commission of which is denied.

5. With respect to and in response to all of the legal and factual allegations made against all defendants generally, the CTMC adopts the responses and other pleadings set out in the statements of defence of its Members.

6. The CTMC denies the allegations contained in paragraph 22 of the Statement of Claim.

7. The CTMC denies the allegations in paragraphs 91 and 92 of the Statement of Claim and says that it did not make any misrepresentations as alleged or at all. The CTMC further denies the allegations in paragraph 73 of the Statement of Claim and says that it did not suppress scientific or medical information as alleged or at all.

8. The CTMC denies the allegations contained in paragraph 110 of the Statement of Claim. Further, with respect to paragraph 110(c) of the Statement of Claim, the CTMC says that 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 the Canadian tobacco manufacturers at the 1963 National Conference on Smoking and Health. The Ad Hoc Committee continued to function until 1971. In February 1971 an unincorporated

association also named the "CTMC" replaced the Ad Hoc Committee. The defendant CTMC was incorporated in 1982. The CTMC has been inactive in all material respects since June 2001.

9. The CTMC cannot be liable in respect of any conduct prior to 1982 or following June 2001.

10. The CTMC denies the allegations made in paragraphs 110 through 116 of the Statement of Claim and denies that it provided a means or method for any conspiracy, concert of action or common design or that it agreed to, adopted or participated in any conspiracy, concert of action or common design, as alleged or at all.

11. The 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). The CTMC denies that it misrepresented or disseminated false information regarding the risks of addiction and disease from smoking or the cause of disease, or engaged in any wrongful conduct, as alleged in paragraphs 112 and 114 of the Statement of Claim, or at all. The CTMC complied reasonably with the standards, directives, recommendations, suggestions and advice of governments and thereby discharged its duties in dealing with insured persons in Ontario and others and, in all of the circumstances, committed no tobacco related wrongs as alleged in the Statement of Claim or at all.

12. The CTMC's Members compete and have competed vigorously against each other for market share in the Canadian market, but the CTMC states that they did work together in relation to certain dealings with the Federal Government and the plaintiff. The Federal Government and the plaintiff, in turn, worked closely with the CTMC's Members (sometimes through the Ad Hoc Committee and the unincorporated association and, after it was incorporated, through the CTMC). The Federal Government and the plaintiff gave advice and directions and made various representations and requests to all or some of the CTMC Members on smoking and health issues and/or with regard to the design (including the tobacco to be used), 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 the CTMC and its Members reasonably relied.

13. The CTMC denies the allegations made in paragraph 113 of the Statement of Claim.

14. The CTMC denies the allegations made in paragraphs 91, 92, 100, 103 and 110 through 116 of the Statement of Claim and denies that the CTMC was itself a member of or ever acted in furtherance of any conspiracy, concert of action, or common design, as alleged or at all. Among other things, the CTMC denies that it disseminated false or misleading information, made any false or misleading submissions to or otherwise misled governments, promoted tobacco products, suppressed research regarding the risks of smoking or misrepresented the risks of exposure to tobacco products or the cause of disease, 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 Ontario, regarding the risks of exposure to tobacco products, which research was published.

15. Further, the CTMC states that, given the amount of information available and publicly disseminated, the plaintiff and persons in Ontario 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. The CTMC relies on and adopts the pleadings in the statements of defence of its Members in this regard.

16. The CTMC states that at times it funded legitimate research conducted by highly regarded scientists at the request of its Members, including research participated in and recommended by the plaintiff. The CTMC did not take directions from any of the defendants other than its Members (in this regard or with respect to any other matters, including issues relating to smoking and health generally). Nor did it take directions from or act as the agent for any other entity, such as:

- (a) The International Committee on Smoking Issues;
- (b) The International Tobacco Information Centre, Inc.; and
- (c) The Tobacco Documentation Centre.

The CTMC relies on and adopts the pleadings in the statements of defence of its Members in this regard.

17. The CTMC denies that the plaintiff has suffered any damages as a result of any "tobacco related wrong" (as defined in the Act) committed by the CTMC and puts the plaintiff to the strict proof thereof in respect of the "cost of health care benefits" (as defined in the Act) incurred or to be incurred as claimed by the plaintiff.

18. The CTMC states that to the extent, if any, that the plaintiff has incurred or will incur costs of health care benefits arising from the consumption of or exposure to tobacco products by insured persons in Ontario, which is denied, those costs are a result of the plaintiff's own acts and omissions for the reasons pleaded herein and in the statements of defence of its Members. The plaintiff has:

- (a) regulated the promotion and sale of tobacco products,
- (b) promoted and participated in the sale of tobacco grown in Ontario;
- (c) participated in the development and approved the registration of tobacco strains with increased levels of nicotine in the plant (and marginally higher levels of nicotine in the smoke), which strains were grown by farmers in Ontario; and
- (d) benefited from the sale of those products in the form of significant revenues accruing from taxation and licensing fees imposed on manufacturers, growers, exporters, distributors and/or consumers of tobacco.

19. The CTMC also states that to the extent that they exist, the existence of which is denied, the plaintiff voluntarily assumed the risks of increased "cost of health care benefits" by virtue of its taxation and regulation of the legal sale of tobacco in Ontario. The CTMC states that to the extent that they exist, the existence of which is denied, the plaintiff has failed to mitigate or reduce any increased "cost of health care benefits" stemming from or related to the use of or exposure to tobacco products by insured persons in Ontario, despite its power to do so as the authority controlling regulation of the distribution and sale of tobacco.

20. The plaintiff undertook a course of conduct consisting of legislative and regulatory actions, representations and voluntary actions which the plaintiff intended, knew, or ought to have known, would lead the 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 the CTMC and its Members reasonably relied. The CTMC relies on and adopts the pleadings in the statements of defence of its Members in this regard.

21. The CTMC further states that to the extent, if any, that the plaintiff has incurred or will incur costs of health care benefits arising from the consumption of or exposure to tobacco products by insured persons in Ontario, 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. The CTMC relies on and adopts the pleadings in the statements of defence of its Members in this regard.

22. The CTMC states that if the plaintiff incurred any costs of health care benefits as alleged or at all, which is denied, then such costs were caused or contributed to, in whole or in part, by the plaintiff's own acts or omissions as pleaded herein and in the statements of defence of its Members. The CTMC pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1 and the Act.

23. The CTMC pleads the provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24 both in respect of the plaintiff's claim and in respect of the cost of health care benefits of those insured persons on which the plaintiff's claim is alleged to be based and calculated.

24. The CTMC states that the plaintiff is barred at law and in equity from advancing the claims made in the Statement of Claim against CTMC on the basis of the pleadings herein and as pleaded in the statements of defence of its Members.

25. For all the foregoing reasons, CTMC denies that it is liable for the costs of any health care benefits and denies that it is jointly and severally liable for the costs of any health care benefits (as alleged in paragraph 150 of the Statement of Claim) and denies that the plaintiff is entitled to the relief sought in paragraphs 1 of the Statement of Claim.

26. CTMC submits that the plaintiff's claim should be dismissed as against it, with costs payable to CTMC on the substantial indemnity scale.

April 29, 2016

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**HER MAJESTY THE QUEEN**

– Plaintiff –

v.

**CANADIAN TOBACCO MANUFACTURERS' COUNCIL ET AL**

– Defendants –

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(PROCEEDING COMMENCED AT TORONTO)

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CANADIAN TOBACCO MANUFACTURERS'  
COUNCIL**

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