

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

ATTORNEY GENERAL OF QUEBEC

Plaintiff

N°: 500-17-072363-123

- v. -

IMPERIAL TOBACCO CANADA LTD.

-and-

B.A.T. INDUSTRIES P.L.C.

-and-

**BRITISH AMERICAN TOBACCO
(INVESTMENTS) LIMITED**

-and-

CARRERAS ROTHMANS LIMITED

-and-

ROTHMANS, BENSON & HEDGES INC.

-and-

PHILIP MORRIS USA INC.

-and-

PHILIP MORRIS INTERNATIONAL INC.

-and-

JTI-MACDONALD CORP.

-and-

R.J. REYNOLDS TOBACCO COMPANY

-and-

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

-and-

**CANADIAN TOBACCO
MANUFACTURERS' COUNCIL**

Defendants

**PLEA OF DEFENDANT THE CANADIAN TOBACCO
MANUFACTURERS' COUNCIL**

**IN SUPPORT OF ITS PLEA, DEFENDANT CANADIAN TOBACCO
MANUFACTURERS' COUNCIL RESPECTFULLY STATES AS FOLLOWS:**

1. The Defendant Canadian Tobacco Manufacturers' Council's ("**CTMC**") Plea is made without any admission as to the relevance of the allegations made by the Attorney General of Quebec (the "Plaintiff") in its *Requête introductive d'instance amendée* (the "**Introductory Motion**"), nor can any reference herein to the Plaintiff's exhibits be construed as an admission as

- to the authenticity and admissibility of the said exhibits, nor can it be interpreted as a waiver of the CTMC's right to invoke the privileged nature of any of the said exhibits;
2. The CTMC denies the allegations contained in paragraphs 1 to 5 of the Introductory Motion and denies that the Plaintiff is entitled to the relief claimed therein;
 3. With respect to the allegations contained in paragraph 6 of the Introductory Motion, the CTMC refers to the *Tobacco-related Damages and Health Care Costs Recovery Act*, R.S.Q., c. R-2.2.0.0.1 (the "Act") and denies all that is not in conformity therewith;
 4. The CTMC ignores the allegations contained in paragraph 7 of the Introductory Motion, but adds that the constitutional validity of the Act is currently being challenged;
 5. With respect to the allegations contained in paragraphs 8 to 10 of the Introductory Motion, the CTMC states that tobacco and tobacco smoke contain thousands of constituents, some of which have been identified as human carcinogens, respiratory system irritants and toxic constituents at certain doses, and some of which have been found only in tobacco smoke;
 6. With respect to the allegations contained in paragraphs 11 to 17 of the Introductory Motion, the CTMC admits that smoking can be harmful and can cause or contribute to certain diseases in some people (such as those referenced in paragraph 13 of the Introductory Motion), but states that the balance of the allegations contained in these paragraphs are opinion or scientific conclusions and not facts which the CTMC need admit or deny;
 7. With respect to the allegations contained in paragraphs 18 and 19 of the Introductory Motion, the CTMC refers to the Supreme Court of Canada decisions referenced therein and denies all that is not in conformity with same, adding that the statements referenced were made in the context of a case involving the constitutionality of statutes banning advertising;
 8. With respect to the allegations contained in paragraph 20 of the Introductory Motion, the CTMC states that these are opinions or scientific conclusions which must be addressed by expert evidence;
 9. With respect to the allegations contained in paragraph 21 of the Introductory Motion, the CTMC refers to paragraph 6 above, and ignores the allegations pertaining to the co-Defendants;
 10. The CTMC denies the allegations contained in paragraphs 22 to 23 of the Introductory Motion;

11. With respect to the allegations contained in paragraph 24 of the Introductory Motion, the CTMC denies that any smokers are unable to quit and denies that nicotine is “powerfully addictive”;
12. With respect to the allegations contained in paragraph 25 of the Introductory Motion, the CTMC states that it has no website and ignores the balance of the allegations concerning co-Defendants;
13. With respect to the allegations contained in paragraphs 26 to 28 of the Introductory Motion, the CTMC admits the existence of Exhibits PG-12 to PG-15;
14. The CTMC ignores the allegations contained in paragraphs 31 to 36 of the Introductory Motion, and states that these allegations are irrelevant to these proceedings;
15. With respect to the allegations contained in paragraph 37 of the Introductory Motion, the CTMC refers to Exhibit PG-17 and denies anything that is not in conformity therewith;
16. The CTMC admits the allegations contained at paragraphs 38 and 39 of the Introductory Motion, adding that in advance of the 1963 National Conference on Tobacco and Health, Imperial Tobacco Company of Canada Limited, Macdonald Tobacco Inc., Rothmans of Pall Mall Canada Limited, and Benson & Hedges (Canada) Limited formed the “Ad Hoc Committee of the Canadian Tobacco Industry” (the “**Ad Hoc Committee**”) in response to Minister LaMarsh’s specific request that Canadian tobacco manufacturers present a joint response on all major tobacco issues. The CTMC further adds that the Ad Hoc Committee was replaced by the “Canadian Tobacco Manufacturers’ Council” in 1971, a committee without a legal personality distinct from that of its members (the “Unincorporated Council”). It is only in 1982 that the CTMC was incorporated. As such, the CTMC cannot be held liable for, or in respect of, any act or omission prior to that date;
17. The CTMC denies as drafted the allegations in paragraph 40 of the Motion;
18. With respect to the allegations contained in paragraph 41 of the Introductory Motion, the CTMC admits that a first voluntary advertising code was adopted in 1964, adding however that same was not adopted by the CTMC but rather by the tobacco manufacturers who were then members of the Ad Hoc Committee. A copy of this 1964 voluntary code is communicated as **Exhibit CTMC-1**. The other voluntary advertising codes, adopted either by the members of the Unincorporated Council or the CTMC after its incorporation, are communicated in support of the present Plea as **Exhibits CTMC-2 through CTMC-10**;
19. With respect to the allegations contained in paragraph 42 of the Introductory Motion, the CTMC admits that “Tabac et Santé” (Exhibit PG-20) was

- published in 1964 by the Department of National Health and Welfare of Canada;
20. With respect to the allegations contained in paragraph 43 of the Introductory Motion, the CTMC refers to Exhibit PG-21 and denies anything that is not in conformity therewith;
 21. With respect to the allegations contained in paragraph 44 of the Introductory Motion, the CTMC reiterates that it was only created in 1982 and that these allegations relate to the Ad Hoc Committee. Furthermore, the CTMC states that Plaintiff's purported reliance on Exhibits PG-22 and PG-23 is improper as all statements made in the context of proceedings before Parliament or parliamentary committees by participants to such proceedings are protected by parliamentary privilege and cannot be used against their speaker. Exhibits PG-22 or PG-23 are therefore inadmissible and as such, Plaintiff can in no way rely on them;
 22. With respect to the allegations contained in paragraphs 45 and 46 of the Introductory Motion, the CTMC refers to the Isabelle Committee's conclusions and recommendations as contained in Exhibit PG-24, and denies all that is not in conformity therein;
 23. With respect to the allegations contained in paragraph 47 of the Introductory Motion, the CTMC refers to Exhibits PG-25 and PG-26 and denies anything that is not in conformity therewith;
 24. With respect to the allegations contained in paragraphs 48 and 49 of the Introductory Motion, the CTMC admits that the *Cigarette Advertising Code of the Canadian Council of Tobacco Manufacturers Counsel* was amended as of January 1st, 1972 and refers to the content of the said code, Exhibit CTMC-2;
 25. The CTMC denies as drafted the allegations at paragraph 50 of the Introductory Motion and instead refers to Rule 2 of the *Cigarette Advertising Code of the Canadian Council of Tobacco Manufacturers Counsel* as revised in May 1972, Exhibit CTMC-3;
 26. The CTMC denies as drafted the allegations contained in paragraph 51 of the Introductory Motion;
 27. With respect to the allegations contained in paragraph 52 of the Introductory Motion, the CTMC admits that the *Cigarette and Cigarette Tobacco Advertising and Promotion Code and Regulations of the Canadian Manufacturers Council* was amended in 1975 to provide the said warning, as appears from Exhibits CTMC-4 and CTMC-5, but denies that the warning was revised on the Canadian manufacturers' "own initiative", as alleged;

28. The CTMC denies the allegations contained in paragraph 53 of the Introductory Motion;
29. With respect to the allegations contained in paragraph 54 of the Introductory Motion, the CTMC admits that the U.S. Surgeon General in its 1979 report (Exhibit PG-29) articulated various risks associated with smoking during pregnancy;
30. With respect to the allegations contained in paragraph 55 of the Introductory Motion, the CTMC reiterates that statements and presentations in Parliament or any parliamentary committee are protected by parliamentary privilege and denies the admissibility of PG-30 and PG-31 and any reference to the content thereof;
31. With respect to the allegations contained in paragraph 56 of the Introductory Motion, the CTMC refers to Exhibit PG-32 and denies anything that is not in conformity therewith;
32. With respect to the allegations contained in paragraphs 57 and 58 of the Introductory Motion, the CTMC refers to the *Tobacco Products Control Act* (S.C. 1988, c. 20) (the “**TPCA**”) and denies anything not in conformity therewith;
33. The CTMC admits the allegations contained in paragraph 59 of the Introductory Motion, adding that the Plaintiff took the position before both the Court of Appeal and the Supreme Court of Canada in the challenge to the TPCA that the TPCA was unconstitutional;
34. The CTMC admits the allegations contained in paragraph 60 of the Introductory Motion;
35. The CTMC ignores the allegations contained in paragraph 61 of the Introductory Motion and adds that the allegations contained therein are irrelevant to these proceedings;
36. The CTMC admits the allegations contained in paragraph 62 of the Introductory Motion;
37. With respect to paragraph 63 of the Introductory Motion, the CTMC refers to the *Tobacco Act (Bill C-71)*, S.C. 1997, c. 13 (the “**Tobacco Act**”) and denies anything that is not in conformity therewith;
38. The CTMC admits the allegations contained in paragraph 64 of the Motion;
39. The CTMC ignores the allegations contained in paragraph 65 of the Introductory Motion, stating that the allegations contained therein are irrelevant to these proceedings;

40. With respect to paragraph 66 of the Introductory Motion, the CTMC refers to the *Tobacco Products Information Regulations* (SOR/2000-272) and denies anything that is not in conformity therewith;
41. The CTMC ignores the allegations contained in paragraph 67 of the Introductory Motion, which in any event are both improper and irrelevant;
42. The CTMC ignores the allegations contained in paragraph 68 of the Motion, which pertain to co-Defendants and further states that it has never been a manufacturer of tobacco products;
43. With respect to the allegations at paragraph 69 of the Introductory Motion, the CTMC refers to the relevant conclusion of the judgment in *Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 S.C.R. 610;
44. With respect to the allegations contained in paragraph 70 of the Introductory Motion, the CTMC reiterates that the constitutional validity of the Act is currently being challenged and further adds that the present action is ill-founded;
45. The CTMC ignores the allegations contained in paragraphs 71 to 75 of the Introductory Motion, and adds that allegations involving litigation that has occurred in the United States (the “**US**”) are irrelevant;
46. With respect to the paragraphs 76 to 79 of the Introductory Motion, the CTMC takes note of the Plaintiff’s intention to produce the documents originating from such sources but adds that Plaintiff’s intention in this regard is not a substitute for its obligation to introduce exhibits in a manner that accords with the applicable rules of evidence. Moreover, the CTMC adds that the fact that a document originates from one of these sources is not an indication of the document’s authenticity and cannot be taken to mean that Plaintiff is authorized to rely on these documents for the proof of their contents;
47. With respect to paragraph 80 of the Introductory Motion, the CTMC states that Plaintiff’s attempt to shift onto the Defendants the burden of legally introducing evidence of its own claim in such a way cannot be countenanced, especially given Plaintiff’s failure to properly identify the documents to which it refers. As such, the CTMC puts Plaintiff to the strict proof of the documents on which it intends to rely;
48. The CTMC ignores the allegations contained in paragraphs 81 to 150 of the Introductory Motion, which pertain to co-Defendants;
49. With respect to the allegations contained in paragraph 151, 152 and 153 of the Introductory Motion, the CTMC reiterates that the Ad Hoc Committee was formed in 1963, that the Unincorporated Council was formed in 1971, but that the CTMC was only incorporated in 1982;

50. The CTMC denies the allegations contained in paragraphs 154 and 155 of the Introductory Motion;
51. The CTMC ignores the allegations contained in paragraph 156 of the Introductory Motion, which pertain to co-Defendants, adding that the CTMC has never marketed or sold tobacco products, whether in Quebec or elsewhere;
52. The CTMC need not admit or deny the allegations contained in paragraphs 157 to 217 of the Introductory Motion, as confirmed by this Court in its judgment dated February 28, 2014 on the Defendants' respective motions for particulars;
53. With respect to the allegations contained in paragraphs 218 through 221 of the Introductory Motion, the CTMC states that it did not conduct product research, never owned laboratories or equipment, and that the only research it funded was research conducted independently by renowned scientists and organizations and further denies the allegations regarding the reason for its creation contained in paragraph 221 of the Introductory Motion;
54. The CTMC denies the allegations at paragraph 222 of the Introductory Motion;
55. The CTMC ignores the allegations contained in paragraphs 223 to 296 of the Introductory Motion, which pertain to certain of its co-Defendants;
56. The CTMC ignores the allegations contained in paragraphs 297 and 298 of the Introductory Motion and reiterates that it was not in existence before 1982;
57. The CTMC ignores the allegations contained in paragraphs 299 to 307 of the Introductory Motion, which pertain to certain of its co-Defendants;
58. The CTMC denies the allegations in paragraphs 308 to 310 of the Introductory Motion, adding that the CTMC reiterates that it was only created in 1982. Further, the CTMC reiterates that statements and presentations before parliamentary committees are protected by parliamentary privilege and that as such, Exhibit PG-22 and any reference to the content thereof are inadmissible;
59. The CTMC ignores the allegations contained in paragraph 311 of the Introductory Motion, which pertain to certain of its co-Defendants;
60. With respect to allegations contained in paragraph 312, the CTMC refers to Bill C-248 and denies anything not in conformity therewith;

61. With respect to the allegations contained in paragraph 313 of the Introductory Motion, the CTMC refers to the *Cigarette Advertising Code of the Canadian Tobacco Manufacturers' Council* amended as of January 1st, 1972 (Exhibit CTMC-2), adding however that same was not adopted by the CTMC which did not exist as a legal entity at that time, but rather by the companies whose names appear thereon;
62. The CTMC ignores the allegations contained in paragraph 314 of the Introductory Motion;
63. With respect to the allegations contained in paragraph 315 of the Introductory Motion, the CTMC refers to the *Cigarette Advertising Code of the Canadian Tobacco Manufacturers' Council*, revised as of May, 1972 (Exhibit CTMC-3), adding that same was adopted by the companies whose names appear thereon and not the CTMC which did not exist as a legal entity at that time, and denies as drafted the balance of paragraph 315;
64. The CTMC ignores the allegations contained in paragraphs 316 to 317 of the Introductory Motion, which pertain to certain of its co-Defendants;
65. The CTMC denies the allegations contained in paragraph 318 of the Introductory Motion, reiterating that it was only created in 1982 and stating that at no time did it act in a manner so as to improperly prevent, delay, or minimize the effectiveness of health warnings;
66. The CTMC ignores the allegations contained in paragraphs 319 to 322 of the Introductory Motion, which pertain to certain of its co-Defendants;
67. The CTMC denies the allegations contained in paragraph 323 of the Introductory Motion;
68. The CTMC ignores the allegations contained in paragraphs 324 to 332 of the Introductory Motion, which pertain to certain of its co-Defendants;
69. With respect to the allegations contained in paragraphs 333 and 334 of the Introductory Motion, the CTMC reiterates that statements and presentations in the Parliament or any parliamentary committee are protected by parliamentary privilege, and denies the admissibility of Exhibits PG-22, PG-220, PG-221 and PG-222;
70. With respect to the allegations contained in paragraph 335 of the Introductory Motion, the CTMC admits that the statements referenced therein appear in Exhibit PG-223 and reiterates that it was created only in 1982;
71. With respect to the allegations contained in paragraph 336 of the Introductory Motion, the CTMC reiterates that statements and presentations in Parliament or any parliamentary committee are protected by

- parliamentary privilege. As such, the CTMC contests the admissibility of PG-30;
72. The CTMC ignores the allegations contained in paragraph 337 of the Introductory Motion, which pertain to certain of its co-Defendants;
 73. With respect to the allegations contained in paragraph 338 of the Introductory Motion, the CTMC denies that R.R. Parker was the chair of the CTMC and states that the statements referenced therein appear in Exhibit PG-225;
 74. The CTMC ignores the allegations contained in paragraphs 339 to 423 of the Introductory Motion, which pertain to certain of its co-Defendants, adding that the allegations contained in paragraphs 405 and 408, as well as Exhibits PG-244, PG-257, PG-259, PG-260, PG-263 and PG-306 are inadmissible and protected by parliamentary privilege;
 75. With respect to the allegations contained in paragraph 424 of the Introductory Motion, the CTMC admits that Rothmans of Pall Mall was a member of the CTMC at the time of its incorporation in 1982, but denies the rest of the paragraph;
 76. The CTMC ignores the allegations contained in paragraphs 425 to 487 of the Introductory Motion, which pertain to certain of its co-Defendants, adding that the allegations contained in paragraph 484 and Exhibit PG-263 are inadmissible and protected by parliamentary privilege;
 77. The CTMC takes note of paragraph 488 of the Introductory Motion, without more;
 78. With respect to the allegations contained in paragraphs 489 to 491 of the Introductory Motion, the CTMC admits that nicotine is a naturally occurring alkaloid in tobacco leaves and it affects the central and peripheral nervous system. The CTMC further states that nicotine is a factor in why many smokers smoke (among other reasons), and that some smokers can be classified as addicted, as that term is commonly defined today;
 79. The CTMC denies the allegations contained in paragraph 492 of the Introductory Motion;
 80. The CTMC ignores the allegations contained in paragraphs 493 through 517 of the Introductory Motion, which pertain to certain of its co-Defendants;
 81. With respect to the allegations contained in paragraph 518 of the Introductory Motion, the CTMC admits that the US Surgeon General in its 1964 report concluded that smoking is a habit and not an addiction, but denies that this conclusion was based on incomplete information;

82. The CTMC ignores the allegations contained in paragraphs 519 to 589 of the Introductory Motion, which pertain to certain of its co-Defendants;
83. The CTMC denies the allegations contained in paragraph 590 of the Introductory Motion;
84. With respect to the allegations contained in paragraph 591 of the Introductory Motion, the CTMC reiterates that statements and presentations to a parliamentary committee are protected by parliamentary privilege and Exhibit PG-23 is therefore inadmissible. The CTMC adds that the brief in question was not filed by the CTMC, which did not then exist, but by the Ad Hoc Committee;
85. The CTMC denies the allegations contained in paragraphs 592 to 596 of the Introductory Motion and reiterates, with respect to Exhibits PG-22 and PG-571, that statements and presentations to a parliamentary committee are protected by parliamentary privilege. Further, Exhibit PG-727, pp. 109-120 (also filed as Exhibit PG-575), is inadmissible and protected by solicitor-client privilege;
86. With respect to the allegations contained in paragraph 597, the CTMC admits that the statements referenced therein appear in Exhibit PG-578;
87. The CTMC ignores the allegations contained in paragraph 598 of the Introductory Motion and further states that allegations regarding the activities of the Tobacco Institute in the US are irrelevant to these proceedings;
88. With respect to the allegations contained in paragraph 599 of the Introductory Motion regarding the CTMC's actions, it refers to Exhibit PG-581 and denies anything that is not consistent therewith and further states that a portion of paragraph PG-581 is inadmissible as being protected by solicitor-client privilege, as was previously determined by the court;
89. The CTMC denies as drafted the allegations contained in paragraph 600 of the Introductory Motion, adding that Exhibit PG-582 (pages 1-3), which speaks for itself, is a draft document. As for the conclusions contained in the Royal Society of Canada's report, the CTMC refers to Exhibit PG-33 as well as to a letter from Health Minister Perrin Beatty to the CTMC dated March 19, 1990 (Exhibit PG-582, p. 4), which itself underlines that defining addiction has long proven to be difficult and that expert opinion has differed on this issue;
90. The CTMC denies the allegations contained in paragraph 601 of the Introductory Motion;
91. With respect to the allegations contained in paragraph 602 of the Introductory Motion, the CTMC admits that Exhibit PG-587 was authored by

- Professor Dollard Cormier, PhD, Head of the Research Laboratory on Alcohol and Drug Abuse, Department of Psychology, Université de Montréal and was submitted to the Canadian government on behalf of the Smokers' Freedom Society;
92. With respect to the allegations contained in paragraph 603 of the Introductory Motion, the CTMC refers to Exhibit PG-588 and denies anything that is not consistent therewith;
 93. The CTMC denies the allegations contained in paragraphs 604 and 605 of the Introductory Motion;
 94. The CTMC ignores the allegations contained in paragraphs 606 and 607 of the Introductory Motion, adding that the statements referenced therein are irrelevant to these proceedings;
 95. With respect to the allegations contained in paragraph 608 to 611 of the Introductory Motion, CTCM reiterates that statements and presentations in Parliament or any parliamentary committee are protected by parliamentary privilege. As such, the CTMC contests the admissibility of PG-257, PG-263, PG-592 and PG-593 and all reference to the contents thereof;
 96. The CTMC denies as drafted the allegations contained in paragraphs 612 and 613 of the Introductory Motion. The CTMC adds that smoking can be described as an addiction or dependency in some smokers, as these terms are generally defined today. Further, it states that while smoking can be difficult to quit, this was known to persons in Quebec at all material times;
 97. The CTMC denies the allegations contained in paragraphs 614 and 615 of the Introductory Motion;
 98. With respect to paragraphs 616 and 617 of the Introductory Motion, the CTMC takes note of the references used by Plaintiff, without more;
 99. The CTMC ignores the allegations contained in paragraphs 618 to 626 of the Introductory Motion, adding that the CTMC has never been a manufacturer of tobacco products and reiterating that it did not exist before 1982;
 100. The CTMC denies the allegations contained in paragraph 627 of the Introductory Motion and reiterates that statements and presentations in Parliament or any parliamentary committee are protected by parliamentary privilege. As such, the CTMC contests the admissibility of PG-23 and of all references to the contents thereof;
 101. With respect to the allegations contained in paragraph 628 of the Introductory Motion, the CTMC refers to Exhibit PG-24 and denies all that is not in conformity therewith;

102. The CTMC ignores the allegations contained in paragraphs 629 to 650 of the Introductory Motion, which pertain to certain of its co-Defendants. The CTMC reiterates that it has never been a manufacturer of tobacco products and that it did not exist before 1982;
103. The CTMC denies the allegations contained in paragraph 651 of the Introductory Motion;
104. The CTMC ignores the allegations contained in paragraphs 652 to 656 of the Introductory Motion, which pertain to certain of its co-Defendants. The CTMC reiterates that it has never been a manufacturer of tobacco products and that it did not exist before 1982;
105. The CTMC denies the allegations contained in paragraphs 657 and 658 of the Introductory Motion;
106. The CTMC admits the allegations contained in paragraphs 659 and 660 of the Introductory Motion and refers to the various editions of the voluntary advertising codes, Exhibits CTMC-1 through CTMC-10;
107. The CTMC ignores the allegations contained in paragraph 661 of the Introductory Motion, which pertain to certain of its co-Defendants. The CTMC reiterates that it has never been a manufacturer of tobacco products;
108. With respect to paragraph 662 of the Introductory Motion, the CTMC states that the position of its member companies is and was that their marketing approach was directed to adults, adding that Exhibit PG-727, pp. 109-120 is inadmissible and protected by solicitor-client privilege;
109. The CTMC ignores the allegations contained in paragraphs 663 to 688 of the Introductory Motion, which pertain to certain of its co-Defendants. The CTMC reiterates that it has never been a manufacturer of tobacco products;
110. With respect to the allegations contained in paragraphs 689 to 691 of the Introductory Motion, the CTMC refers to the judgments of the Superior Court and the Supreme Court of Canada referenced therein and denies all that is not in conformity therewith;
111. The CTMC denies the allegations contained in paragraphs 692 to 696 of the Introductory Motion;
112. The CTMC ignores the allegations contained in paragraphs 697 to 723 of the Introductory Motion, which pertain to certain of its co-Defendants and adds that these allegations pertaining to the US tobacco industry are not relevant to these proceedings;
113. The CTMC denies as drafted the allegations contained in paragraph 724 of the Introductory Motion, reiterating that the committee formed in 1963 was

- the Ad Hoc Committee created at the request of the federal government to present the point of view of the Canadian tobacco manufacturers at the 1963 National Conference on Smoking and Health;
114. The CTMC denies as drafted the allegations contained in paragraph 725 of the Introductory Motion, and reiterates that it was only created as a distinct legal entity in 1982;
 115. With respect to the allegations contained in paragraph 726 of the Introductory Motion, the CTMC admits that the elements mentioned at subparagraphs (a) to (d) are among the objects mentioned in its 1982 Application for Incorporation and reiterates that it was not in existence prior to 1982;
 116. The CTMC denies the allegations contained in paragraphs 727 through 731 of the Introductory Motion;
 117. With respect to the allegations contained in paragraph 732 of the Introductory Motion, the CTMC reiterates that it was not in existence in 1969 and that, in any event, the testimony and the materials presented before parliamentary committees are protected by parliamentary privilege and are inadmissible in the present proceedings, as are preparatory documents prepared in view thereof. The CTMC therefore explicitly objects to the admissibility of PG-23, PG-932, PG-933 and PG-935;
 118. The CTMC denies the allegations contained in paragraph 733 of the Introductory Motion, stating that it was not in existence in 1969;
 119. The CTMC denies the allegations contained in paragraph 734 of the Introductory Motion adding that PG-941 is inadmissible and protected by parliamentary privilege;
 120. The CTMC denies the allegations contained in paragraph 735 and 736 of the Introductory Motion, and further reiterates, with respect to Plaintiff's reliance on testimony and materials presented before parliamentary committees, that same are protected by parliamentary privilege and inadmissible;
 121. The CTMC denies the allegations contained in paragraph 737 of the Introductory Motion with respect to the CTMC, and ignores the allegations with respect to co-Defendants;
 122. The CTMC ignores the allegations contained in paragraphs 738 to 741 of the Introductory Motion, which pertain to unrelated entities;
 123. The CTMC denies the allegations contained in paragraphs 742 to 745 of the Introductory Motion (adding that the issue of second hand smoke

- referenced in paragraph 743 of the Introductory Motion is irrelevant to these proceedings);
124. With respect to the allegations contained in paragraphs 746 through 756 of the Introductory Motion, the CTMC ignores the allegations with respect to co-Defendants and other unrelated entities, reiterating that it was created only in 1982, and further denies that it was involved in Operation Berkshire or any international or Canadian conspiracy;
 125. The CTMC denies the allegations contained in paragraphs 757 to 762 of the Introductory Motion;
 126. The CTMC ignores the allegations contained in paragraphs 763 and 764 of the Introductory Motion, stating that it was not dictated to or guided by any alleged policies of ICOSI or INFOTAB;
 127. The CTMC denies the allegations contained in paragraph 765 of the Introductory Motion;
 128. The CTMC denies as drafted the allegations contained in paragraphs 766 to 771 of the Introductory Motion;
 129. The CTMC denies the allegations contained in paragraph 772 of the Introductory Motion and refers to Exhibit PG-995, which speaks for itself;
 130. The CTMC ignores the allegations contained in paragraph 773 to 774 of the Introductory Motion, which pertain to actions taken by other entities;
 131. The CTMC denies the allegations contained in paragraphs 775 and 776 of the Introductory Motion, to the extent they relate to the CTMC, and ignores the allegations as they may relate to co-Defendants;
 132. The CTMC denies the allegations contained in paragraphs 777 to 779 of the Introductory Motion;
 133. The CTMC ignores the allegations contained in paragraphs 780 to 945 of the Introductory Motion, which pertain to certain of its co-Defendants, adding with respect to paragraphs 875 and 876 of the Introductory Motion that the CTMC did not exist in 1963 or 1969;
 134. With respect to the allegations contained in paragraphs 946 to 949 of the Introductory Motion, the CTMC takes note of the nature of the costs sought to be recovered by Plaintiff, adding that it is in no way liable for any of these costs, and further reiterates that the constitutional validity of the Act is currently being challenged;

135. With respect to the allegations contained in paragraphs 950 to 953 of the Introductory Motion, the CTMC refers to the relevant statutory provisions and denies anything not in conformity therewith;
136. With respect to the allegations contained at paragraphs 954 to 962 of the Introductory Motion, the CTMC takes note of the costs that Plaintiff claims to have taken into account in the calculation of its claim, adding that it is in no way liable for any of these costs, and has no knowledge of the remainder of the said paragraphs;
137. With respect to the allegations contained in paragraphs 963 to 975 of the Introductory Motion, the CTMC refers to the *Health Insurance Act* (R.S.Q., c. A-29) and the *Act respecting prescription drug insurance* (R.S.Q., c. A-29.01) and denies anything not in conformity therewith;
138. The CTMC need not admit nor deny the allegations contained in paragraphs 976 to 993 of the Introductory Motion, which is argument or is based on expert evaluations in support of Plaintiff's calculations, adding however that the CTMC denies that the Plaintiff's claim is well founded;

AND FOR FURTHER PLEA, DEFENDANT CTMC RESPECTFULLY SUBMITS THE FOLLOWING:

THE CTMC

139. The CTMC is a non-profit organization incorporated in 1982 pursuant to the laws of Canada and has a registered office in Gatineau, Quebec;
140. Contrary to Plaintiff's allegations, the CTMC has not, at any time, been the "trade association of the Canadian tobacco industry" and, at all material times, only certain Canadian tobacco manufacturers have been members thereof (the manufacturers who were members of the CTMC at any given time will hereinafter be referred to generally as the "**Members**");
141. At present, the CTMC's 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. The remaining defendants have never been members of the CTMC;

HISTORICAL BACKGROUND

142. In 1963, the Ad Hoc Committee was created, at the request of the federal government, to present the points of view of the industry on the issues discussed at the 1963 National Conference on Smoking and Health. It did not have a legal personality distinct from that of its members;
143. The Ad Hoc Committee continued to function until 1971;

144. In February 1971, the Ad Hoc Committee was replaced by an unincorporated association named the "Canadian Tobacco Manufacturers' Council", referred to in the present Plea as the Unincorporated Council. The Unincorporated Council had no legal personality distinct from that of its Members;
145. Although it bears the same name, the CTMC is not the continuation of the Unincorporated Council nor is it the continuation of the Ad Hoc Committee. As such, the CTMC cannot be liable in respect of any conduct of the Ad Hoc Committee or Unincorporated Council, or in respect of any fact which occurred prior to its incorporation in 1982;
146. Since June 2001, the CTMC has been inactive in all respects in relation to issues material to these proceedings. As such, the CTMC cannot be liable in respect of any relevant fact which occurred after June 2001;
147. The CTMC denies all of the allegations of wrongdoing and breaches of duties and obligations that are alleged against it in the Introductory Motion. Contrary to the allegations contained therein, the CTMC met and complied with all legal and statutory duties, that, in the circumstances, existed at various places and times;
148. The CTMC further denies that any persons in Quebec started to or continued to smoke, or that any persons in Quebec 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. Nor did, or will, any persons in Quebec suffer any "tobacco related disease" (as defined in the Act) or an increased risk of tobacco-related disease or increased health care costs as a result of such tobacco-related wrongs (the commission of which is denied);
149. With respect to and in response to all of the legal and factual allegations made against all defendants generally, the CTMC refers to the responses set out in the Pleas of its Members;

ROLE OF THE CTMC

150. The primary role of the CTMC during its period of activity, from 1982 to 2001, was to engage in a cooperative dialogue with the federal government on issues of smoking and health and provide a forum in which Members could discuss and share information on issues of mutual interest;
151. Although the CTMC's Members compete and have competed vigorously against each other for market share in the Canadian market, they did work together in relation to certain aspects of the tobacco industry. The Members, at times, did so through the Ad Hoc Committee and the Unincorporated

- Council, and the CTMC's Members did so through the CTMC after its incorporation;
152. When it was active, the CTMC represented its Members on matters of common interest of a non-competitive nature, including cooperation with government and others on the issues of smoking and health, taxation, the definition of product standards and the exchange of statistical information;
 153. The CTMC acknowledges that it met with and discussed with government 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 ever misrepresented the risks of smoking or cause of disease, or engaged in any inappropriate actions at all;
 154. The CTMC complied reasonably with the standards, directives, recommendations, suggestions and advice of governments and thereby discharged its duties in dealing with persons in Quebec and, in all the circumstances, committed no tobacco-related wrongs as alleged in the Introductory Motion or at all;
 155. Despite Plaintiff's numerous allegations to the contrary, the activities of the CTMC did not provide a means or method for any conspiracy, improper concert of action or common design on the part of it or its Members, and the CTMC did not agree to, adopt or participate in any conspiracy, improper concert of action or common design;

Industry Self-Regulation: the Voluntary Codes

156. Beginning in 1964, Canadian tobacco manufacturers - through the Ad Hoc Committee and the Unincorporated CTMC until 1982 - co-operated with government departments in establishing a world-leading regime of voluntary regulation before legislation was enacted in 1989 (the "Voluntary Codes");
157. The CTMC cooperated with the sitting Minister of Health and Welfare to introduce the 1984 Voluntary Code (Exhibit CTMC-7), including the modification of certain labelling and advertising practices which were negotiated subsequent to the January 1, 1984 coming into force of the new code;
158. The enactment of legislation in 1989 ended this era of cooperation on Voluntary Codes but, on December 19, 1995, following the Supreme Court decision striking down the advertising restrictions in the *Tobacco Products Control Act*, S.C. 1988, c. 20 (the "**TPCA**"), the CTMC announced a self-imposed, independently-enforced *Tobacco Industry Voluntary Packaging and Advertising Code* and corresponding regulations (Exhibit CTMC-8);

159. In the year that followed, the CTMC announced amendments and new guidelines to the *Tobacco Industry Voluntary Packaging and Advertising Code* (Exhibits CTMC-9 and CTMC-10);
160. These industry initiatives ended with the introduction of new legislation, specifically the coming into force of the *Tobacco Act*, S.C. 1997, c. 13;

CTMC and Smoking and Health Research

161. As part of its mandate, the CTMC commissioned research at the request of its Members, including research that added to the already overwhelming knowledge in the public domain regarding the risks of exposure to tobacco products, which research was published;
162. Despite Plaintiff's allegations and insinuations to the contrary, the research funded by the CTMC was not performed in furtherance of any conspiracy, was not a vehicle to promote cigarettes or disseminate false or misleading information, and did not misrepresent the risks of exposure to tobacco products or the cause of disease nor was the research funded by the CTMC used to mislead governments or suppress research regarding the risks of smoking;

Liaising with the Federal Government and Health Authorities

163. The CTMC acted as a liaison between its Members and governments;
164. In doing so, the CTMC met and exchanged with governments, both federal and provincial, on 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);
165. Through the CTMC, the federal government gave advice and directions and made various representations and requests to CTMC Members on smoking and health issues, as well as with regard to the design, manufacture and promotion of their products, 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;
166. The CTMC engaged with the federal government on a number of issues, but at no time did it act in any manner that prevented or minimized the effectiveness of health warnings, as alleged in the Introductory Motion;
167. Any engagement with the federal government on the part of the CTMC, (including testimony before various committees of the House of Commons and Senate), did not result in any prevention or minimization or improper delay of the effectiveness of health warnings (which health warnings were

determined by the federal government) and in this regard it is important to reiterate that the content of statements, presentations or submissions before such committees or before Parliament are subject to parliamentary privilege;

168. As such, Plaintiff's reliance on statements made by the CTMC and its representatives in the context of committees of the House of Commons and Senate in the present proceedings is wholly improper and the allegations and exhibits relating thereto are inadmissible. Indeed, the use of such statements for the purposes of imposing liability on the CTMC is an affront to the doctrine of parliamentary privilege and its underlying judicial and constitutional principles, notably constitutionally protected freedom of speech and the importance, in a free and democratic society, that people be allowed to voice their points of view to legislators, or respond to legislators' questions, without fear that doing so could engage their liability;

THE CTMC AND THE PUBLIC

169. The CTMC rarely communicated directly with the public at all;
170. The CTMC did periodically issue press releases on discrete issues but these releases generally pertained to updates of the Voluntary Codes, the release of new warnings on cigarette packs, the CTMC's positions in respect of proposed legislation, youth smoking initiatives, manufacturing issues or administrative matters regarding the CTMC's formation or functioning;
171. Indeed, given the specific contexts in which such press releases were issued, it is unlikely that they were ever seen or heard by the general public and did not mislead in any way the population of Quebec;

Conferences and Publications

172. Plaintiff alleges the CTMC was involved in promoting an agenda of misrepresentation to the public of Quebec, including voicing an opposition to effective health warnings, through participation in industry conferences and the creation of publications destined for members of the industry;
173. The CTMC participated in conferences organized by industry, for industry, and any statements made in the context of those conferences were destined exclusively for members of the industry and not members of the public. Similarly, in no way did the CTMC's limited publications distributed to members of the industry in any way carry out the illicit goals attributed to them by Plaintiff;

The Smokers' Freedom Society

174. With respect to the Smokers' Freedom Society (the "SFS"), the CTMC states that it and its members supported the organization's creation both conceptually and financially;
175. While the CTMC was obviously aware of its activities, the SFS was at all material times an entity distinct from the CTMC;
176. The fact of encouraging or financially supporting the activities of such an organization does not constitute a fault, as defined by the Act or otherwise;

THE CTMC AND INTERNATIONAL ORGANIZATIONS

177. Plaintiff's allegations seek to equate the positions and activities of ICOSI and INFOTAB with the mandates and actions of the CTMC;
178. This attempt by Plaintiff to equate the CTMC with these organizations is unfounded. The CTMC did not take direction from such organizations, nor can it be held responsible for the conduct of those organizations or their members;

AWARENESS OF RISKS BY THE PUBLIC AND THE FEDERAL AND THE GOVERNMENT OF QUEBEC

179. Given the amount of information available and disseminated, persons in Quebec, the federal government, the government of Quebec and the public health community have been aware at all material times of the health risks of exposure to tobacco products and the fact that cigarette smoking can be difficult to quit;
180. The Canadian government became a world leader in matters involving tobacco control on issues relating to disclosure of smoke constituents, education, warnings and other matters, including the development and promotion of less hazardous cigarettes;
181. In 1972, the federal government determined that it was appropriate to have health warnings on tobacco products and thereafter directed the content, size and placement of the warnings on packages and advertisements;
182. The warnings placed on tobacco products by manufacturers, in reliance on and at the request and direction of the federal government, and later by legislation, reiterated knowledge that at all material times had been in the public domain, *i.e.* that there was a "danger to health" associated with smoking and, among other things, starting in 1994, that smoking was addictive;

183. The actions of, and information provided by the federal government, the government of Quebec and the public health community have reinforced the awareness of people in Quebec with respect to cigarette smoking and its potential risks;
184. At no time did the CTMC issue wrongful denials of the health risks or the addictive nature of smoking, nor did it trivialize the issue;
185. Further, and in any event, if any of the limited statements or publications of the CTMC were ever heard or read by persons in Quebec (which statements or publications were in no way negligent), such statements or publication cannot be said to have materially influenced the decisions to start smoking or continue to smoke;
186. At all material times, the government of Quebec has dictated from where tobacco products can be sold and, more recently, where they cannot be displayed or used;
187. As a result of the taxes imposed by the government of Quebec and the federal government, the price of tobacco products legally sold in Quebec is largely determined by governments. Indeed, the government of Quebec 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;
188. At all times relevant herein, the government of Quebec has agreed to and condoned (as it continues to do) the design, manufacture, marketing, distribution and sale of tobacco;
189. Further, the government of Quebec and the federal government had and undertook the obligation of informing children and adolescents within Quebec of the risks associated with the consumption of tobacco products;
190. Indeed, the federal government and government of Quebec alone have the obligation to enforce all relevant statutes and regulations pertaining to the sale of tobacco products to under-aged smokers, as defined from time to time by statutes or regulations, and failed to do so;
191. If there was any conspiracy, concerted action or a common policy or design as alleged in the Introductory Motion, which is denied, then Plaintiff has no claim in respect thereof because the government of Quebec agreed to and adopted the design of what it alleges is a conspiracy or concerted action and became a party thereto, and in doing so carried out acts in Quebec alleged to be unlawful in furtherance thereof;

TOBACCO-RELATED HEALTH CARE COSTS CLAIMED

192. In light of the foregoing, the government of Quebec has not suffered any damages as a result of any alleged fault committed by the CTMC (the commission of which is denied), and the CTMC puts Plaintiff to the strict proof thereof;
193. Further, it cannot be stated that any persons in Quebec started or continued to smoke, or that any persons were exposed to tobacco products, as a result of any fault committed by the CTMC, as alleged by Plaintiff or at all (which commission is denied). Nor did, or will, any persons in Quebec suffer any "tobacco-related disease" or an increased risk of tobacco-related disease as a result of such alleged fault. Further, health care costs were not increased as a result of any fault of the CTMC, as alleged or at all;
194. The government of Quebec has further failed to mitigate or reduce any increased costs of health care benefits 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 in Quebec;
195. For all the foregoing reasons, the CTMC is not liable for the costs of any health care benefits and Plaintiff's claim against it is ill-founded in fact and law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

DISMISS Plaintiff's *Requête introductive d'instance amendée*;

THE WHOLE with costs.

Montréal, December 18, 2014

LCM attorneys inc.

LCM Attorneys Inc.

Attorneys for the Defendant

CANADIAN TOBACCO MANUFACTURERS'
COUNCIL

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

ATTORNEY GENERAL OF QUEBEC

Plaintiff

N^o: 500-17-072363-123

- v. -

IMPERIAL TOBACCO CANADA LTD.

-and-

B.A.T. INDUSTRIES P.L.C.

-and-

BRITISH AMERICAN TOBACCO
(INVESTMENTS) LIMITED

-and-

CARRERAS ROTHMANS LIMITED

-and-

ROTHMANS, BENSON & HEDGES INC.

-and-

PHILIP MORRIS USA INC.

-and-

PHILIP MORRIS INTERNATIONAL INC.

-and-

JTI-MACDONALD CORP.

-and-

R.J. REYNOLDS TOBACCO COMPANY

-and-

R.J. REYNOLDS TOBACCO
INTERNATIONAL, INC.

-and-

CANADIAN TOBACCO
MANUFACTURERS' COUNCIL

Defendants

LIST OF EXHIBITS

(In support of the *Plea of Defendant the
Canadian Tobacco Manufacturers' Council*)

CTMC-1 *Cigarette Advertising Code of Canadian Tobacco Manufacturers,
June 16, 1964*

CTMC-2 *Cigarette Advertising Code of the Canadian Tobacco Manufacturers
Council, effective January 1, 1972, dated September 15, 1971*

- CTMC-3** *Cigarette Advertising Code of the Canadian Tobacco Manufacturers Council, effective January 1, 1972, revised May, 1972*
- CTMC-4** *Cigarette & Cigarette Tobacco Advertising and Promotion Code of the Canadian Tobacco Manufacturers Council, effective January 1, 1975*
- CTMC-5** *Cigarette & Cigarette Tobacco Advertising and Promotion Code of the Canadian Tobacco Manufacturers Council, effective October 15, 1975*
- CTMC-6** *Cigarette & Cigarette Tobacco Advertising and Promotion Code of the Canadian Tobacco Manufacturers' Council, effective January 1st, 1976*
- CTMC-7** *Cigarette & Cigarette Tobacco Advertising and Promotion Code of the Canadian Tobacco Manufacturers' Council, as amended January 1st, 1984*
- CTMC-8** *Tobacco Industry Voluntary Packaging and Advertising Code of the Canadian Tobacco Manufacturers' Council, December 19, 1995*
- CTMC-9** *Tobacco Industry Voluntary Packaging and Advertising Code of the Canadian Tobacco Manufacturers' Council, effective June 10, 1996*
- CTMC-10** *Amendments to the Tobacco Industry Voluntary Packaging and Advertising Code, dated November 1, 1996*

Montréal, December 18, 2014

LCM attorneys inc.

LCM Attorneys Inc.

Attorneys for the Defendant

CANADIAN TOBACCO MANUFACTURERS'
COUNCIL