

SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

BETWEEN:

ATTORNEY GENERAL OF CANADA

**APPELLANT /
RESPONDENT ON CROSS-APPEAL**
(Third Party)

- and -

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

RESPONDENT
(Respondent)

- and -

**IMPERIAL TOBACCO CANADA LIMITED, ROTHMANS,
BENSON & HEDGES INC., ROTHMANS INC., JTI-MACDONALD CORP.,
R.J. REYNOLDS TOBACCO COMPANY AND R.J. REYNOLDS
TOBACCO INTERNATIONAL INC., B.A.T. INDUSTRIES P.L.C.,
BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED,
CARRERAS ROTHMANS LIMITED**

**RESPONDENTS /
APPELLANTS ON CROSS-APPEAL**
(Appellants)

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APPELLANT'S FACTUM

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AND BETWEEN:

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**APPELLANT /
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(Third Party)**

- and -

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

**RESPONDENT
(Respondent)**

- and -

PHILIP MORRIS USA INC.

**RESPONDENT /
APPELLANT ON CROSS-APPEAL
(Appellant)**

- and -

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(Third Party)**

- and -

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

**RESPONDENT
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- and -

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APPELLANT ON CROSS-APPEAL
(Appellant)**

- and -

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APPELLANT'S FACTUM

PART I – STATEMENT OF FACTS

A. Overview

1. At issue in this appeal is whether a third party claim by tobacco manufacturers seeking contribution and indemnity from the federal Crown in respect of billions of dollars in possible liability for provincial health care costs should be struck out on the basis that no duty of care in negligence arises. The province's claim against tobacco manufacturers is founded on novel legislation enacted approximately forty years after Canada commenced its response to the public health risk posed by tobacco products. Over that time, through a variety of initiatives involving moral suasion, voluntary compliance, and proposed and actual regulation and legislation, Canada has sought to discharge statutory mandates to protect Canadians from the serious health hazards posed by tobacco products and smoking. Tobacco manufacturers complied to varying degrees with such initiatives, often in the face of proposed regulation.

2. It is plain and obvious that, in crafting a response to the health risk posed by tobacco products, Canada's action did not give rise to a private law duty of care in negligence, requiring it to be mindful of the economic interests of tobacco manufacturers. The majority of the Court of Appeal erred in conducting a curtailed assessment of that alleged duty under the *Cooper/Anns* test. An assessment of both stages of that test, proximity and "Stage II" policy considerations, was required because this case does not involve allegations of negligent misrepresentation falling within a recognized category as the majority held, but attacks government actions taken to address the health risks of a commercial product in the context of an escalating level of regulation. That is a novel situation which gives rise to unique policy concerns.

3. No proximity should be found to exist in the relationship between Canada and tobacco manufacturers in this context. The creation of a private law duty of care toward manufacturers would conflict with, and undermine, public law duties in respect of the protection of public health. Such duties were not intended by Parliament to be directed toward the protection of the economic interests of tobacco manufacturers. Furthermore, tobacco manufacturers could not have reasonably expected that federal officials, in the course of taking actions to counteract the health risks of tobacco products produced and marketed by such companies, were acting as their advisors or protecting their economic interests.

4. In any case, Canada could not have reasonably foreseen, decades in advance, that British Columbia would pass legislation making it possible to recover the costs of providing health care for tobacco related diseases from manufacturers.

5. "Stage II" policy concerns for the creation of liability for economic loss to tobacco manufacturers should also negate any *prima facie* duty of care which might be found to exist. The adoption of health care cost recovery legislation by most other provinces makes it clear that the creation of such a duty may lead to indeterminate liability, potentially on a scale of hundreds of billions of dollars, in respect of the economic losses from a boundless group of individuals harmed by tobacco products over which Canada has no control. A duty of care to manufacturers in these circumstances would also give rise to similar duties on the part of regulators and standard-setting organizations in respect of other consumer and commercial products.

6. Overall, the creation of such a duty would open the door to the passing of responsibility for the health care costs arising from tobacco-related disease back to taxpayers, contrary to the intention of the provincial legislature. The federal statutory schemes in question mandate federal departments to protect public health, not to indemnify tobacco manufacturers for their statutory liabilities. No duty of care between Canada and tobacco manufacturers should be recognized in light of these considerations.

B. Statement of Facts

7. This appeal arises out of the Judgment of the B.C. Court of Appeal dated December 8, 2009. The three-judge majority allowed in part an appeal from an order striking out the third party notices against Her Majesty the Queen in Right of Canada ("Canada"). The two dissenting judges would have upheld the motions judge and struck out the third party notices in their entirety. The decision was released in conjunction with *Knight v. Imperial Tobacco Canada Limited* ("*Knight*"),¹ which will be heard together with the present matter.

Cost Recovery Legislation and Litigation

8. The main action in this proceeding was brought by the Province of British Columbia against 14 tobacco manufacturers in 2001, pursuant to the *Tobacco Damages and Health Care*

¹ 2009 BCCA 541, Appellant's Record ("A.R."), Vol. I, p. 80.

*Costs Recovery Act*² (the “*Costs Recovery Act*”). It seeks the recovery of “the total expenditure by the government for health care benefits provided for insured persons resulting from tobacco related disease or the risk of tobacco related disease”.³

9. The *Costs Recovery Act* created a “direct and distinct action” against a manufacturer by government. It is not a subrogated claim.⁴ This Court held that this cause of action is focused on compensating government, not remediating breaches of duty:

...the driving force of the Act's cause of action is compensation for the government of British Columbia's health care costs, not remediation of tobacco manufacturers' breach of duty. While the Act makes the existence of a breach of duty one of several necessary conditions to a manufacturer's liability to the government, it is not the mischief at which the cause of action created by the Act is aimed. The Act leaves breaches of duty to be remedied by the law that gives rise to that duty.⁵

10. The Province's claim alleges seven breaches of duty, five in tort (principally, negligent design of tobacco products; failure to warn of the risks of smoking; and deceit and misrepresentation in respect of the properties of cigarettes), and two breaches of statute (the provincial *Trade Practices Act* and the federal *Competition Act*).⁶ The claim also alleges conspiracy by manufacturers with respect to the breaches of duty and other conduct.⁷ British Columbia's claim neither alleges breaches of duty by, nor seeks any remedies against, Canada. British Columbia's position before the Court of Appeal was that the Province, in enacting the *Costs Recovery Act*, did not intend to affect Canada.⁸

11. In 2007, nine of the defendant tobacco manufacturers issued third party notices against Canada.⁹ These notices seek damages or contribution and indemnity for any liability of manufacturers to British Columbia, founded on three alleged bases:

² *Tobacco Damages and Health Care Costs Recovery Act*, S.B.C. 2000, c. 30, **Appellants' Joint Book of Authorities (“A.B.A.”), Vol. V, Tab 76.**

³ Amended Statement of Claim British Columbia, June 1, 2009, para. 1, **A.R., Vol. II, p. 8.**

⁴ *Costs Recovery Act*, *supra*, ss. 2(1), 2(2), **A.B.A., Vol. V, Tab 76, p. 65.**

⁵ *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, at para. 40, **A.B.A., Vol. I, Tab 8, pp. 119-120.**

⁶ Amended Statement of Claim, *supra*, at paras. 47-90, **A.R., Vol. II, pp. 18-34.**

⁷ Amended Statement of Claim, at paras. 159-194, **A.R., Vol. II, pp. 50-58.**

⁸ *British Columbia v. Imperial Tobacco Ltd.*, 2009 BCCA 540, at para. 8, **A.R., Vol. I, p. 42.**

⁹ Imperial Tobacco Canada Limited; Rothmans, Benson & Hedges Inc.; Rothmans Inc.; JTI-MacDonald Corp.; B.A.T. Industries p.l.c.; British American Tobacco (Investments) Limited; Carreras Rothmans Limited, R.J. Reynolds Tobacco Company; R.J. Reynolds Tobacco International, Inc.

- (a) Canada is itself a “manufacturer” within the meaning of the *Costs Recovery Act* given its alleged actions to develop less hazardous tobacco strains;
- (b) Canada is liable in tort to tobacco manufacturers and consumers; and
- (c) Canada is liable to manufacturers based on the concept of legal or equitable indemnity.

12. Canada brought a motion to strike the third party notices. Madam Justice Wedge struck them out in their entirety.¹⁰ The tobacco manufacturers appealed to the B.C. Court of Appeal. All five judges who heard the appeal agreed with the motions judge that the claims against Canada based on the *Costs Recovery Act* itself and equitable indemnity should be struck out. They also agreed that, in view of the statutory nature of the main claim, there could be no third party claim based upon a duty of care in negligence to consumers. The Court was, however, divided on the claims founded on alleged duties of care between Canada and manufacturers.

13. Tysoe J.A., for the majority (adopting reasons given in the related *Knight* appeal in this respect¹¹), dealt with the alleged duties in tort between Canada and manufacturers in three distinct areas covered in the pleadings: Canada's alleged involvement in research and development of tobacco strains (which he termed “negligent design”); Canada's alleged conduct towards manufacturers in respect of failure to warn of the hazardous nature of cigarettes; and Canada's alleged negligent misrepresentations to manufacturers in the form of “advice, requests or direction”. Of these, Tysoe J.A. concluded that only the negligent misrepresentation allegations stated a reasonable cause of action. With respect to the claims of negligent design, he held that any *prima facie* duty between Canada and manufacturers was negated by policy considerations relating to indeterminate liability. With respect to the allegations of failure to warn, Tysoe J.A. agreed with the minority that such allegations related to regulatory and policy-related conduct.

14. Hall J.A. (Lowry J.A. concurring) in dissent, on the other hand, agreed with the motions judge and would have struck out the claims in their entirety, including the allegations of negligent misrepresentation. Hall J.A. concluded that such claims were novel, and that the harm to the tobacco manufacturers in the form of liability under *Costs Recovery* legislation was not foreseeable.¹² He also held that no proximity arose because “it would be fundamentally

¹⁰ *British Columbia v. Imperial Tobacco Canada Ltd.*, 2008 BCSC 419, **A.R.**, Vol. I, p. 3.

¹¹ *British Columbia v. Imperial Tobacco Canada Ltd.*, *supra*, at para. 87, **A.R.**, Vol. I, p. 78.

¹² *Ibid.*, paras. 41, 47, **A.R.**, Vol. I, pp. 59-60, 61.

inconsistent with the relationship between the parties, namely Canada as regulator and the appellant companies in the industry, to find that a duty of care should be found to exist between Canada and the appellants.”¹³

15. As a result of the foregoing, the surviving claim for negligent misrepresentation is the focus of this appeal.

Other Provincial Costs Recovery Legislation and Litigation

16. Legislation similar to the B.C. *Costs Recovery Act* has been passed or tabled in every other Canadian province and in one territory.¹⁴ New Brunswick¹⁵ and Ontario¹⁶ have also commenced proceedings against tobacco manufacturers under their respective legislation. In New Brunswick, tobacco manufacturers have already third partied Canada.¹⁷ Ontario's claim is for 50 billion dollars.

The Policy, Legislative and Regulatory Context

17. The sale and manufacture of tobacco has been subject to increasing federal regulation and legislative action over the last several decades. The federal government's actions have been directed towards addressing the public health effects of tobacco products sold and marketed by tobacco manufacturers.

18. The Department of Health was first created in 1919.¹⁸ The Minister and Department were given authority over matters “relating to the promotion or preservation of the health of the people of Canada”. This included measures “for preserving and improving the public health”, research and the distribution of information.¹⁹ That general mandate has remained unchanged over time, as the

¹³ *Ibid.*, para. 48, **A.R., Vol. I, p. 62.**

¹⁴ *Crown's Right of Recovery Act*, S.A. 2009, C-35, **A.B.A., Vol. IV, Tab 65**; *The Tobacco Damages and Health Care Costs Recovery Act*, S.S. 2007, c. T-14.2, **Vol. V, Tab 84**; *The Tobacco Damages and Health Care Costs Recovery Act*, S.M. 2006, c. 18, **Tab 77**; *Tobacco Damages and Health Care Costs Recovery Act*, S.O. 2009, c. 13, **Tab 81**; *Tobacco-Related Damages and Health Care Costs Recovery Act*, R.S.Q., c. R-2.2.0.0.1, **Tab 88**; *Tobacco Damages and Health Care Costs Recovery Act*, S.N.B. 2006, c. T-7.5, **Tab 78**; *Tobacco Damages and Health-Care Costs Recovery Act*, S.N.S. 2005, c. 46, **Tab 80**; *Tobacco Damages and Health Care Costs Recovery Act*, S.N.L. 2001, c. T-4.2, **Tab 79**; *Tobacco Damages and Health Care Costs Recovery Act*, 2009 S.O., c. 22 (awaiting proclamation); *Tobacco Damages and Health Care Costs Recovery Act*, Bill 37, Second Reading: June 10, 2010, Nunavut, **Tab 82.**

¹⁵ Court of Queen's Bench of New Brunswick, Court File No.: F/C/88/08, **A.R., Vol. IV, p. 90.**

¹⁶ Ontario Superior Court of Justice, Court File No.: CV-09-387984, **A.R., Vol. IV, p. 44.**

¹⁷ See, e.g., Imperial Tobacco Limited's Amended Third Party Claim, New Brunswick Court of Queen's Bench Case No. F/C/88/08, **A.R., Vol. IV, p. 130.**

¹⁸ *An Act respecting the Department of Health*, 9 & 10 George V, c. 24 (1919), **A.B.A., Vol. IV, Tab 58 (infra, pp. 41-44)**

¹⁹ *Ibid.*, ss. 4(a), (b), (h), **A.B.A., Vol. IV, Tab 58, p. 5 (infra, p. 43).**

roles and responsibilities of the Department have been enlarged.²⁰ At the material times, Health Canada was governed by the statutory duties and responsibilities in such departmental legislation.²¹ The legislation creates no statutory duties toward tobacco manufacturers.

19. In the late 1960s, proposed legislation was introduced in Parliament to require that cigarettes manufactured or sold in Canada not exceed certain prescribed limits of tar and nicotine.²² The third party notices allege that, from approximately 1971, tobacco manufacturers, consistent with the “advice, request or direction” of Canada’s officials (such “advice, requests and direction” to manufacturers to change their conduct allegedly constituting negligent misrepresentation, in addition to actions described below), voluntarily complied with limits or targets for tar and nicotine established by Canada’s officials and in draft legislation.²³

20. In 1968, the Minister of Health indicated his intention to introduce legislation to require health warnings on cigarette packages. Bill C-248, introduced in June, 1971, would have required such warnings.²⁴ The Bill would also have eliminated cigarette advertising effective 1 January 1972, would have created authority to set maximum limits for nicotine and other constituents, and would have required disclosure of tar and nicotine yields on cigarette packages. In September 1971, the Canadian Tobacco Manufacturers Council, in response to negotiations with and requests by Canada’s officials, agreed that its members would place a health warning on cigarette packaging. This warning was expanded at the request of Canada’s officials in 1975.²⁵

21. In 1975, cigarette manufacturers “agreed to publish tar and nicotine yields on all cigarette packages and on advertising”.²⁶ The third party notices allege that the foregoing actions were taken following threatened regulatory or legislative action by Canada.²⁷

²⁰ See e.g., *Department of National Health and Welfare Act*, R.S.C. (1952), c. 74, **A.B.A., Vol. V, Tab 71**; *Department of National Health and Welfare Act*, R.S.C. (1970), c. N-9, **Tab 72**; *Department of Health Act*, S.C. 1996, c. 8, **A.B.A., Vol. V, Tab 70** (*infra*, pp. 51-54).

²¹ E.g. Third Party Notice of Imperial Tobacco, para. 5, **A.R., Vol. II, p. 66**; Third Party Notice of Rothmans, Benson & Hedges Inc., para. 5, **A.R., Vol. II, p. 120**; Third Party Notice of JTI-MacDonald Corp., para. 6, **A.R., Vol. III, p. 6**.

²² Bill C-147, 1st Sess., 28th Parl., 1968; Bill C-163, 1st Sess., 28th Parl., 1968-69; Bill C-248, 3rd Sess., 28th Parl., 1970-71; Bill C-46, 3rd Sess., 28th Parl., 1970-72; Bill C-125, 4th Sess., 28th Parl., 1972.

²³ For example, Third Party Notice of Imperial Tobacco Canada Limited, paras. 84-104, **A.R., Vol. II, pp. 87-92**.

²⁴ Third Party Notice of Imperial Tobacco Canada Limited, paras. 55-57, **A.R., Vol. II, pp. 79-80**.

²⁵ *Ibid.*, paras. 58-60, **A.R., Vol. II, pp. 80-81**.

²⁶ *Ibid.*, para. 83, **A.R., Vol. II, pp. 86-87**.

²⁷ *Ibid.*, paras. 94-95, **A.R., Vol. II, p. 89**; e.g. *An Act Respecting the Promotion and Sale of Cigarettes*, Bill C-248, 3rd Sess., 28th Parl., 1970-71, **A.B.A., Vol. IV, Tab 63**.

22. The Department of Agriculture and Agri-food Canada ("AAFC") was originally established as the Department of Agriculture in 1868.²⁸ Under the current *Department of Agriculture and Agri-Food Act*,²⁹ AAFC is responsible for all matters relating to agriculture and related research, including the operation of experimental farm stations.³⁰ Neither the *Department of Agriculture and Agri-food Act*, nor its predecessor legislation³¹ provided for any duties directed at tobacco manufacturers.

23. Pursuant to section 9 of the *Experimental Farm Stations Act*,³² the Minister of Agriculture was given authority to initiate research at experimental farm stations into such matters as the relative value of breeds of livestock and the merits of varieties of wheat, vegetables and other plants. Pursuant to section 8 of that Act, the Delhi Research Station was established. The purpose of the research undertaken by the Delhi Research Station included improving the quality of Canadian tobacco varieties.³³

24. The actions of Health Canada and Agriculture Canada to address the health risk of tobacco products featured a policy decision to reduce the toxic constituents in tobacco smoke. Commencing in the early 1970's, Agriculture Canada commenced research into the ingredients of tobacco and tobacco smoke as part of a "National Programme" coordinated by Health Canada in response to the health risks posed by tobacco products.³⁴ Other components of the Programme included proposed regulatory legislation and moral suasion of industry directed toward the reduction of tar and nicotine in cigarettes, the publication of information on the deliveries of such toxic constituents on cigarette packaging and elsewhere, and the development of standard testing methods to measure such deliveries.³⁵ Health Canada and Agriculture Canada from the early 1970's to the 1980's also gave effect to this Programme, in conjunction with the Universities of Waterloo and Guelph, through research, and the development and licencing of tobacco strains.³⁶

²⁸ *An Act for the Organization of the Department of Agriculture*, 13 Vict., c. 53, (1868), **A.B.A., Vol. IV, Tab 57** (*infra*, pp. 39-40).

²⁹ R.S.C. (1985), c. A-9, as am, **A.B.A., Vol. IV, Tab 68** (*infra*, pp. 45-50).

³⁰ *Ibid.*, s. 4, **A.B.A., Vol. IV, Tab 68, pp. 239-240** (*infra*, pp. 47-48).

³¹ See e.g. *Department of Agriculture Act*, R.S.C. (1906), c. 67, **A.B.A., Vol. IV, Tab 66**; *Department of Agriculture Act*, R.S.C. (1970), c. A-10, **Tab 67**; *Department of Agriculture and Agri-Food Act*, R.S.C. (1985), c. A-9, **Tab 68** (*infra*, pp. 45-50); *Department of Agriculture and Agri-Food Act*, S.C. 1994, c. 38, **Tab 69**.

³² R.S.C. (1970), c. E-14; R.S.C. (1985), c. E-16, **A.B.A., Vol. V, Tab 74**.

³³ Imperial Third Party Notice, para. 110, **A.R., Vol. II, p. 93**.

³⁴ E.g., Third Party Notice of Imperial Tobacco Canada Limited, para. 42, **A.R., Vol. II, p. 76**.

³⁵ *Ibid.*, para. 72, **A.R., Vol. II, p. 84**.

³⁶ E.g., Third Party Notice of Imperial Tobacco Canada Limited, paras. 111-127, **A.R., Vol. II, pp. 93-96**.

25. In 1988, Parliament passed the *Tobacco Products Control Act*, which provided specific authority to regulate the marketing of tobacco products.³⁷ The *Tobacco Products Control Regulations* were made pursuant to that *Act* effective January 1, 1989.³⁸ Tobacco manufacturers were required under this regulatory regime to report certain information to the Federal Government and to display on cigarette packages the emissions of tar, nicotine, carbon monoxide and other smoke constituent yields as measured by specified test methods.

26. Following a constitutional challenge by tobacco manufacturers to the *Tobacco Products Control Act*, this Court struck down the legislation, while confirming that “government is clearly justified in requiring the appellants to place warnings on tobacco packaging”.³⁹ In 1997, Parliament passed the *Tobacco Act*,⁴⁰ which expanded the authority in the predecessor legislation. In 2000, the *Tobacco Products Information Regulations* were made pursuant to that *Act*. Sections 8 and 9 of those *Regulations* specified the test methods and packaging display requirements for toxic emissions and expanded the requirements of the earlier *Tobacco Products Control Regulations* by, for example, requiring that additional toxic emissions be listed.⁴¹

PART II – QUESTIONS IN ISSUE

27. The central issue in this appeal is whether the claims alleging negligent misrepresentation in the third party notices should have also been struck out, because it is plain and obvious that no duty of care arises between Canada and tobacco manufacturers on the facts as pleaded.

28. No duty of care arises in these circumstances because:

- (a) tobacco manufacturers' liability to the plaintiff under the *Costs Recovery Act* was not foreseeable by Canada;
- (b) no proximity arises between Canada and tobacco manufacturers given the relationship between those parties; and
- (c) any *prima facie* duty of care should be negated by policy concerns.

³⁷ *Tobacco Products Control Act*, S.C. 1988, c. 20, ss. 9, 17, **A.B.A., Vol. V, Tab 85, pp. 168-169, 173-174 (infra, pp. 93-94, 98-99).**

³⁸ *Tobacco Products Control Regulations*, SOR/89-21, December 22, 1988, s. 11(1), **A.B.A., Vol. V, Tab 86, pp. 179-180.**

³⁹ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, at para. 173, **A.B.A., Vol. II, Tab 41, p. 226.**

⁴⁰ *Tobacco Act*, S.C. 1997, c. 13, s. 4, **A.B.A., Vol. V, Tab 75, p. 33 (infra, p. 69).**

⁴¹ *Tobacco Products Information Regulations*, SOR/2000-272, ss. 8, 9, **A.B.A., Vol. V, Tab 87, pp. 200-201.**

PART III – ARGUMENT

A. The Test for Striking Pleadings

29. The Court of Appeal in *Knight*,⁴² as well as the motions judge in this case,⁴³ correctly set out the test applicable to motions to strike pleadings pursuant to Rule 19(24)(a) of the *B.C. Supreme Court Rules*. As stated by this Court in *Hunt v. Carey Canada Inc.*,⁴⁴ the test is, taking the facts in the claim as proven, whether it is “plain and obvious” that the claim discloses no cause of action.

30. The question of whether or not a duty of care may be demonstrated by a pleading raises an issue of law. As the Court of Appeal held, “the courts will not decline to strike out a pleading simply because the question of law has not been previously decided”.⁴⁵ This is particularly true where, as here, novel duties of care are alleged. This Court and other appellate courts have, in numerous instances, struck out pleadings where it is held that the facts alleged do not give rise to a duty of care.⁴⁶

B. The Duty of Care Assessment Framework

31. The framework for the assessment of whether or not a duty of care in negligence arises, which originated in the House of Lords’ *Anns* decision,⁴⁷ was refined in 2001 by this Court in *Cooper v. Hobart*. It was summarized in *Hill* as follows:

The test for determining whether a person owes a duty of care involves two questions: (1) does the relationship between the plaintiff and the defendant disclose sufficient foreseeability and proximity to establish a *prima facie* duty of care; and (2) if so, are there any residual policy considerations which ought to negative or limit that duty of care.⁴⁸

⁴² *Knight, supra*, at paras. 20-22, **A.R., Vol. I, pp. 88-89.**

⁴³ *British Columbia v. Imperial Tobacco Canada Ltd.*, *supra*, at paras. 27-30, **A.R., Vol. I, pp. 13-14.**

⁴⁴ [1990] 2 S.C.R. 959, at p. 980, **A.B.A., Vol. II, Tab 26, p. 76.**

⁴⁵ *Knight, supra*, at para. 22, **A.R., Vol. I, p. 89.**

⁴⁶ E.g., *Cooper v. Hobart*, 2001 SCC 79, **A.B.A., Vol. I, Tab 10**; *Edwards v. Law Society of Upper Canada*, 2001 SCC 80, **Tab 14**; *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38, **Vol. II, Tab 46.**

⁴⁷ *Anns v. Merton London Borough Council*, [1978] A.C. 728 (UK H.L.(E.)), at pp. 751-752, per Lord Wilberforce, **A.B.A., Vol. I, Tab 3, pp. 43-44.**

⁴⁸ *Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board*, 2007 SCC 41, at para. 20, **A.B.A., Vol. II, Tab 21, p. 16.**

32. There are several reasons why the third party claims require close scrutiny under both stages of this framework. First, the claims in question are in respect of pure economic loss, an area of circumscribed recovery. Second, they relate to words, not deeds, and are examined under a particular framework designed to contain the undue extension of duties of care for negligent misrepresentation. Third, and most importantly, they relate to actions of a public authority. This gives rise to unique issues in respect of the interplay between private and public law duties.

33. With respect to the issue of economic loss, in *Martel Building Ltd. v. Canada*, this Court noted that, “as a result of the common law’s historical treatment of economic loss, the threshold question of whether or not to recognize a duty of care receives added scrutiny;” and “[t]he circumstances in which such damages have been awarded to date are few.”⁴⁹ The Court identified the reasons for this as follows:

First, economic interests are viewed as less compelling of protection than bodily security or proprietary interests. Second, an unbridled recognition of economic loss raises the spectre of indeterminate liability. Third, economic losses often arise in a commercial context, where they are often an inherent business risk best guarded against by the party on whom they fall through such means as insurance. Finally, allowing the recovery of economic loss through tort has been seen to encourage a multiplicity of inappropriate lawsuits. ...⁵⁰

34. Negligent misrepresentation is alleged in this case. In first recognizing the potential for such a cause of action, Pearce L.J. cautioned in *Hedley Byrne* that “[n]egligence in word creates problems different from those of negligence in act. Words are more volatile than deeds. They travel fast and far afield. ... How far they are relied on unchecked ... must in many cases be a matter of doubt and difficulty.”⁵¹ Given such considerations, both a proximity assessment and “Stage II” enquiry are raised in cases where negligent misrepresentation is alleged.⁵²

35. Lastly, whether to impose private law duties on statutory public authorities gives rise to unique considerations. As noted by Professor Feldthusen, in such cases “[t]he duty analysis is inextricably linked to the mandatory obligations and discretionary powers found in the enabling

⁴⁹ 2000 SCC 60, at paras. 35, 37, **A.B.A., Vol. II, Tab 36, pp. 166-167.**

⁵⁰ *Ibid.*, para. 37.

⁵¹ *Hedley Byrne & Co. Ltd. v. Heller*, [1964] A.C. 465 (UK H.L.(E.)), at p. 534, **A.B.A., Vol. I, Tab 19, p. 281.**

⁵² *Hercules Management Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165, at paras. 21-22, 30, 36, **A.B.A., Vol. II, Tab 20, pp. 3-4, 7, 10.**

legislation. ... These cases involve more than the balancing of a defendant's private interests against those of a plaintiff, as does a typical private negligence case."⁵³

C. Tobacco Manufacturers' Liability under the *Costs Recovery Act* was not Foreseeable

36. The third party claims by tobacco manufacturers against Canada fail to pass the first requirement for a duty of care to exist, foreseeability. The statutory claim brought by the plaintiff was unprecedented. It was not reasonably foreseeable by Canada that a provincial government might create a wholly new type of civil obligation to reimburse costs incurred by a provincial health care scheme in respect of defined tobacco related wrongs, with unlimited retroactive and prospective reach. As Hall J.A. stated for the minority:

This is certainly new and innovative legislation. It purports to give the British Columbia government a claim against tobacco companies for conduct that was perceived until the enactment of this legislation to be legal and not susceptible to economic claims of the sort advanced by British Columbia in this action. The legislation effected a dramatic change in that it sought to make companies like the appellants liable for damages based on a new statutory cause of action. This legislation represents a wholly new departure by a provincial government suing to recover from manufacturers of tobacco products costs incurred by government for health care.⁵⁴

37. In his majority reasons, Tysoe J.A. held that it is only harm in a general sense that must be foreseen. He held that it is not necessary that the harm to a tobacco manufacturer as a result of the passage of the specific legislation here be foreseen, nor even that the prospect of its liability to the province be foreseen, so long as a general harm to smokers could be. This proposition goes well beyond the test as articulated in *Hughes v. Lord Advocate*⁵⁵, and *The Queen v. Côté*⁵⁶, which hold that the harm which must be foreseen must be that experienced by the individual or entity seeking recovery as a result of the actions of the party against whom it claims. In this case, what is asserted is a claim for pure economic loss in respect of a liability – non-subrogated health care costs – which was not, before such statutory cause of action was created, recoverable. Simply foreseeing a general harm to smokers would not satisfy the test for foreseeability in this case.

⁵³ Bruce Feldthusen, *Economic Negligence – The Recovery of Pure Economic Loss*, 5th ed. (Toronto: Thomson Carswell, 2008), at p. 277, **A.B.A., Vol. III, Tab 53, p. 206.**

⁵⁴ *British Columbia v. Imperial Tobacco Canada Ltd.*, *supra*, at para. 38, **A.R., Vol. I, p. 58.**

⁵⁵ [1963] A.C. 837 (UK H.L.(Sc.)), at p. 853, **A.B.A., Vol. II, Tab 24, p. 55.**

⁵⁶ [1976] 1 S.C.R. 595, **A.B.A., Vol. II, Tab 39.**

38. While “[t]raditional negligence law analysis ... designat[es] foreseeability of the plaintiff as a victim of any type of injury as a duty question, and foreseeability of the type of injury itself as one of remoteness,”⁵⁷ the foreseeability inquiry at the duty stage is generally connected to the harm that was suffered as an alleged result of a specific act or omission. Thus, in *Cooper*, this Court asked whether “the harm that occurred [was] the reasonably foreseeable consequence of the defendant’s act?”⁵⁸

39. In *Hughes v. Lord Advocate*, Lord Morris stated that what must be foreseen is the “type or kind of occurrence which in fact happened”, not “the precise concatenation of circumstances which led up to the accident”.⁵⁹ Similarly, this Court held in *The Queen v. Côté* that it is the class or character of injury which must, in a general way, be foreseen. Here, the claim in question is neither brought by smokers for the harm caused to them (which claim Tysoe, J.A. found could be foreseen), nor is it a subrogated claim on their behalf. It is a wholly different, direct statutory cause of action for the recovery of past and future health care costs, not damages for personal injury suffered by smokers. The claim by the Province is not of the same class or character as a claim by smokers against a manufacturer.

40. While subrogated statutory claims were in existence prior to the *Costs Recovery Act*, such claims are qualitatively different from the “direct and distinct action” against a manufacturer by government.⁶⁰ As the class or character of the claim presented could not have been reasonably foreseen, no duty of care arises between Canada and manufacturers in the circumstances.

D. No Proximity Between Canada and Tobacco Manufacturers

41. Since *Donoghue v. Stevenson*, proximity has played a central role in the determination of whether a duty of care in negligence arises in a particular relationship between a plaintiff and a defendant. As noted by this Court in *Hercules Management Ltd.*, proximity identifies relationships “of such a nature that the defendant may be said to be under an obligation to be mindful of the plaintiff’s legitimate interests in conducting his or her affairs.”⁶¹ In *Cooper*, the Court went further, in stating that, “[t]he proximity analysis ... focuses on factors arising from the *relationship*

⁵⁷ Lewis N. Klar, *Tort Law*, 4th ed. (Toronto: Thomson Carswell, 2008), at p. 177, **A.B.A., Vol. III, Tab 55, p. 224.**

⁵⁸ *Cooper*, *supra*, at para. 30, **A.B.A., Vol. I, Tab 10, p. 134.**

⁵⁹ *Hughes v. Lord Advocate*, *supra*, at p. 853, **A.B.A., Vol. II, Tab 24, p. 55.**

⁶⁰ *Costs Recovery Act*, *supra*, s. 2, **A.B.A., Vol. V, Tab 76, pp. 65-66.**

⁶¹ *Hercules Management Ltd.*, *supra*, at para. 24, **A.B.A., Vol. II, Tab 20, pp. 4-5.**

between the plaintiff and the defendant. These factors include questions of policy, in the broad sense of that word.”⁶²

42. In this case, the majority of the Court of Appeal by-passed this analysis by treating the alleged conduct as though it simply fell within “one of the recognized categories of proximity”: negligent misrepresentation.⁶³ Given the novelty of the claim, a consideration of proximity should have occurred. Such consideration reveals that no duty of care arises in the circumstances. The majority also failed to assess the critical question of whether a “special relationship” arises. No such relationship arises between Canada and tobacco manufacturers on the pleadings.

(a) The Alleged Duty is Novel

43. This Court noted in *Childs* in respect of the use of categories to establish proximity:

The reference to categories simply captures the basic notion of precedent: where a case is like another case where a duty has been recognized, one may usually infer that sufficient proximity is present... On the other hand, if a case does not clearly fall within *a relationship previously recognized* as giving rise to a duty of care, it is necessary to carefully consider whether proximity is established.⁶⁴

44. Thus, the question is whether, as the italicized words indicate, the *relationship* raised in the pleading is one which the courts have previously recognized as involving sufficient proximity to create a duty of care. The mere fact that negligent misrepresentation is alleged does not bring this case within a recognized relationship. As Hall J.A. held in dissent, the alleged duty between Canada and a regulated manufacturer is novel:

I do not agree that the relationship between Canada and the appellants in this case is sufficiently analogous to cases in which a duty of care for such claims has been recognized. In my view, the private law tort claim advanced by the appellants that Canada should be found liable to the defendants based on its role in developing tobacco strains and providing directions to the companies concerning warnings to consumers, are novel claims.⁶⁵

45. The relationship alleged in this case does not fall within a recognized category. The third party notices allege representations by a public authority operating pursuant to a statutory scheme,

⁶² *Cooper, supra*, at para. 30 (emphasis in original), **A.B.A., Vol. I, Tab 10, p. 134.**

⁶³ *Knight, supra*, at paras. 45, 66, **A.R., Vol. I, pp. 98, 105.**

⁶⁴ *Childs v. Desormeaux*, [2006] 1 S.C.R. 643, at para. 15 (emphasis added), **A.B.A., Vol. I, Tab 9, p. 124.**

⁶⁵ *B.C. v. Imperial Tobacco, supra*, at para. 41, **A.R., Vol. I, pp. 59-60**; see also Hall J.A. in *Knight, supra*, at para. 105, **A.R., Vol. I, p. 120.**

in the form of regulations, proposed regulation and other less intrusive measures designed to influence the nature of the products and information offered by the manufacturer to consumers. As the dissent recognized, there is no precedent to guide the Court's evaluation in this context.

(b) No Proximity Arises Under the Statutory Scheme

46. A consideration of the governing statutory scheme is central to the question of whether or not proximity occurs between a plaintiff and a statutory public authority. As Wilson J. put it in *Kamloops*, "...economic loss will only be recoverable if, as a matter of statutory interpretation, it is the type of loss the statute intended to guard against".⁶⁶ In *Syl Apps Secure Treatment Centre v. B.D.*, the Court held per Abella J:

When the relationship occurs in the context of the statutory scheme, the governing statute is a relevant context for assessing the sufficiency of the proximity between the parties (*Cooper*, at para. 43; *Edwards*, at para. 9). As this Court said in *Edwards*: "Factors giving rise to proximity must be grounded in the governing statute when there is one" (para. 9).⁶⁷

47. Appellate courts since *Cooper* and *Edwards* have adopted this approach, under which a private law duty will not arise unless grounded in the applicable statute. For example, in *Eliopoulos*, the Ontario Court of Appeal considered whether Ontario had a duty "to prevent conditions which may put the health of Ontarians at risk" in respect of the West Nile Virus. The Court held that the Ontario *Health Protection and Promotion Act* created only a duty to act "in the general public interest" which "does not give rise to a private law duty sufficient to ground an action in negligence."⁶⁸ In *Klein*, the Ontario Divisional Court held that "...any duties imposed by the legislation with respect to the regulation of medical devices by Health Canada are duties owed to the public at large and not to private individuals."⁶⁹ In *Swift Current (City) v. Saskatchewan Power Corp.*, the Saskatchewan Court of Appeal held in striking out a claim against the Power Corporation and the Government of Saskatchewan, "[t]he duty owed by both entities is to the public as a whole and thus the duty is not a private duty."⁷⁰

⁶⁶ *Kamloops v. Nielsen*, [1984] 2 S.C.R. 2, at p. 35, **A.B.A., Vol. II, Tab 30, p. 117.**

⁶⁷ *Syl Apps*, *supra*, at para. 27, **A.B.A., Vol. II, Tab 46, p. 258.**

⁶⁸ *Eliopoulos v. Ontario (Minister of Health & Long Term Care)* (2006), 276 D.L.R. (4th) 411, at para. 17, **A.B.A., Vol. I, Tab 15, pp. 190-191.**

⁶⁹ *Klein v. American Medical Systems Inc.* (2006), 278 D.L.R. (4th) 722 (ON S.C.), at para. 31, **A.B.A., Vol. II, Tab 32, p. 136.**

⁷⁰ 2007 SKCA 27, at para. 63, **A.B.A., Vol. II, Tab 45, p. 254.**

48. The relevant legislation governing Health Canada's officials here, the *Department of Health Act*, and the tobacco-specific legislation, are directed toward protection of the health interests of the general public and provide no indication of a duty to tobacco manufacturers. The authority of the Minister of Health, for example, is focused on "the promotion and preservation of the health of the people of Canada", "the promotion and preservation of the physical, mental and social well-being of the people of Canada", "the protection of the people of Canada against risks to health and the spreading of diseases", and "investigation and research into public health, including monitoring of diseases".⁷¹ As noted above, this focus on the health of the general public has been present since the first legislation of 1919.

49. The *Tobacco Act*⁷² and its predecessor legislation⁷³ are similarly directed toward addressing broad public health concerns. For example, the purpose clause of the *Tobacco Act* provides:

4. The purpose of this Act is to provide a legislative response to a *national public health problem* of substantial and pressing concern and, in particular,

(a) *to protect the health of Canadians in the light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;*

(b) *to protect young persons and others from inducements to use tobacco products and the consequent dependence on them;*

(c) *to protect the health of young persons by restricting access to tobacco products; and*

(d) *to enhance public awareness of the health hazards of using tobacco products."*

4. La présente loi a pour objet de s'attaquer, sur le plan législatif, à *un problème qui, dans le domaine de la santé publique, est grave et d'envergure nationale* et, plus particulièrement :

a) *de protéger la santé des Canadiennes et des Canadiens compte tenu des preuves établissant, de façon indiscutable, un lien entre l'usage du tabac et de nombreuses maladies débilitantes ou mortelles;*

b) *de préserver notamment les jeunes des incitations à l'usage du tabac et du tabagisme qui peut en résulter;*

c) *de protéger la santé des jeunes par la limitation de l'accès au tabac;*

d) *de mieux sensibiliser la population aux dangers que l'usage du tabac présente pour la santé.*⁷⁴

⁷¹ *Department of Health Act*, S.C. 1996, c. 8, s. 4(1), (2), A.B.A., Vol. V, Tab 70, pp. 3-4 (*infra*, pp. 53-54); see also *Department of National Health and Welfare Act*, 1970, c. N-9, A.B.A., Vol. V, Tab 72, and R.S.C. (1985), c. N-10, s. 4, A.B.A., Vol. V, Tab 73, p. 20 (*infra*, p. 56).

⁷² S.C. 1997, c. 13, s. 4, A.B.A., Vol. V, Tab 75, p. 33 (*infra*, p. 69).

⁷³ *Tobacco Products Control Act*, S.C. 1988, c. 20, s. 3, A.B.A., Vol. V, Tab 85, p. 164 (*infra*, p. 89).

⁷⁴ S.C. 1997, c.13, s. 4 (emphasis added), A.B.A., Vol. V, Tab 75, p. 33 (*infra*, p. 69).

50. The *Tobacco Act* places obligations,⁷⁵ restrictions⁷⁶ and prohibitions⁷⁷ on tobacco manufacturers directed toward protecting the health of the general public, or broad constituencies within the public, such as young persons. The legislation specifically indicates that it is not intended to affect other legal obligations of tobacco manufacturers to warn consumers of the health hazards and effects of tobacco products.⁷⁸ No intention to protect or promote the economic or commercial interests of tobacco manufacturers, or be mindful of their interests, can be gleaned from this legislation. To the contrary, the clear intention is to protect the general public from the deleterious health effects of the tobacco products marketed and sold by such companies, through the creation of various regulatory powers and authorities, which by their very nature may be inconsistent with tobacco companies' commercial interests.

51. The *Department of Agriculture and Agri-Food Act* similarly does not contain any indication of duties directed at the protection of the economic interests of tobacco manufacturers. The legislation creates general authority of the Minister over matters relating to agriculture, agricultural products and research:

4. The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to

(a) agriculture;

(b) products derived from agriculture; and

(c) research related to agriculture and products derived from agriculture including the operation of experimental farm stations.

4. Les pouvoirs et fonctions du ministre s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux et liés :

a) à l'agriculture;

b) aux produits dérivés de l'agriculture;

c) à la recherche dans ces domaines, notamment à l'exploitation de stations agronomiques.⁷⁹

52. The foregoing legislative schemes thus involve only responsibilities to the general public and do not support the creation of a private law duty in favour of tobacco manufacturers.

⁷⁵ E.g., *supra*, s. 6, **A.B.A., Vol. V, Tab 75, p. 34** (*infra*, p. 70), requiring the provision of prescribed information by manufacturers.

⁷⁶ E.g., *supra*, s. 5, **p. 34** (*infra*, p. 70), requiring manufacture according to prescribed standards.

⁷⁷ E.g., *supra*, ss. 18-29, **pp. 38-42** (*infra*, **pp. 74-78**), prohibiting certain types of marketing and promotion by manufacturers and others.

⁷⁸ *Supra*, s. 16, **p. 38** (*infra*, **p. 74**); see also *Tobacco Products Control Act*, *supra*, s. 9(3), **A.B.A., Vol. V, Tab 85, p. 169** (*infra*, **p. 94**).

⁷⁹ *Department of Agriculture and Agri-Food Act*, R.S.C. (1985), c. A-9, **A.B.A., Vol. IV, Tab 68** (*infra*, **pp. 45-50**). See predecessor legislation cited at para. 27, *supra*.

(c) Conflict With Statutory Duties

53. The potential for conflicting private and public law duties is a policy concern that this Court has considered at the proximity stage of the duty of care analysis in several cases.⁸⁰ The nature of this concern was recently summarized in *Fullowka*:

The fact that an alleged duty of care is found to conflict with an overarching statutory or public duty may provide a policy reason for refusing to find proximity. Both *Cooper* and *Edwards* are examples. In *Cooper*, a duty to individual investors on the part of the Registrar of Mortgage Brokers potentially conflicted with the Registrar's overarching public duty; in *Edwards*, the proposed private law duty to the victim of a dishonest lawyer potentially conflicted with the Law Society's obligation to exercise its discretion to meet a myriad of objectives.⁸¹

54. While the impact of a private law duty of care on the operation of the applicable statutory scheme is most commonly raised at the proximity stage, it can also form part of “Stage II” considerations. In *Cooper*, for example, the Court considered as part of its “Stage II” assessment the impact of imposing a duty toward investors on the Registrar’s obligation to balance public and private interests in deciding whether to suspend a mortgage broker. It was held that “[s]uch a duty would undermine these obligations, imposed by the Legislature on the Registrar.”⁸²

55. Here, the creation of a duty of care between Canada and tobacco manufacturers would undermine Canada’s ability to create and implement policies to protect public health. As held by the motions judge in *Knight*, and concurred in by Hall J.A. in dissent in the Court of Appeal in that case, “...imposing a duty of care on Canada towards tobacco manufacturers would be highly inconsistent with the duty to protect the interests of the public at large ... it would conflict with measures designed to discourage and curtail smoking as deleterious to health.”⁸³ As noted above, tobacco manufacturers’ commercial interests will often conflict with regulatory measures taken to protect public health, such as those authorized by the *Tobacco Acts*, which may prohibit or restrict

⁸⁰ *Syl Apps, supra*, at paras. 49, 56, 59, **A.B.A., Vol. II, Tab 46, pp. 263, 265, 266**; *Hill, supra*, at para. 43, **A.B.A., Vol. II, Tab 21, pp. 21-22**; *Cooper, supra*, at para. 44, **A.B.A., Vol. I, Tab 10, p. 138**.

⁸¹ *Fullowka*, 2010 SCC 5, at para. 39, **A.B.A., Vol. I, Tab 18, p. 207**.

⁸² *Cooper, supra*, at para. 52, **A.B.A., Vol. I, Tab 10, p. 139**. The Court noted at para. 27, **p. 133**, in respect of the consideration of policy factors, “it may not matter, so far as a particular case is concerned, at which ‘stage’ it occurs. The underlying question is whether a duty of care should be imposed, taking into account all relevant factors disclosed by the circumstances.”

⁸³ *Knight v. Imperial Tobacco, supra*, at para. 108, **A.R., Vol. I, pp. 121-122**.

tobacco marketing or advertising, or impose obligations on manufacturers to provide information to the regulator or to consumers.

56. Furthermore, under such legislation as the *Department of Health Act*, officials are given broad statutory discretion. Such discretion is necessary to permit a balancing of numerous interests, including those of smokers and non-smokers, young persons, anti-tobacco organizations, tobacco industry employees, agricultural interests and the tobacco manufacturers themselves, in the determination of the appropriate measures to protect public health.⁸⁴ A private law duty of care toward tobacco manufacturers would, in the language of this Court in *Cooper*, "...undermine ... obligations imposed by the Legislature..." with respect to the ability of the regulator to fairly balance the disparate interests in play.⁸⁵ As Hall J.A. put it in dissent:

...it would be fundamentally inconsistent with the relationship between the parties, namely Canada as regulator and the appellant companies in the industry, to find that a duty of care should be found to exist between Canada and the appellants.⁸⁶

57. The majority in the Court of Appeal agreed that the presence of conflicting duties was a basis for not finding a duty of care, but focused on allegations relating to the development of tobacco strains as creating proximity:

The chambers judge believed that imposing a duty of care on Canada in favour of ITCAN would be highly inconsistent with its duty to protect the interests of the public. *I do not disagree with her view as it relates to the regulation of the tobacco industry by Canada but, as I expressed above, the allegations against Canada appear to go beyond its role as a regulator.* It does not necessarily seem inconsistent to its duty to protect the interests of the public to require Canada to take reasonable care in providing accurate information about the strains of tobacco developed by it.⁸⁷

58. The foregoing reasoning reflects two errors by the majority. First, it focuses on allegations of the development of tobacco strains as though they were the only allegations in the pleadings. To the contrary, they make up only a portion of the third party notice allegations relating to Canada's responses to tobacco-related health risk.⁸⁸ Second, the alleged development of tobacco strains was

⁸⁴ See e.g., the types of considerations canvassed by Laforest J. (dissenting in the result, but not on this point) in *RJR-MacDonald*, *supra*, in particular at paras. 69-70, **A.B.A., Vol. II, Tab 41, pp. 217-219.**

⁸⁵ *Cooper*, *supra*, at para. 52, **A.B.A., Vol. I, Tab 10, p. 139.**

⁸⁶ *B.C. v. Imperial Tobacco Canada Limited*, *supra*, at para. 48, **A.R., Vol. I, p. 62.**

⁸⁷ *Knight*, *supra*, at para. 88, **A.R., Vol. I, p. 113** (emphasis added).

⁸⁸ E.g. Imperial's Third Party Notice, paras. 9, 38(d), 42, 88, 91, 110-131, 175(g), 178(i), **A.R., Vol. II, pp. 67-68, 75, 76, 88, 89, 93-97, 109, 110.**

part and parcel of the response to the public health risk posed by tobacco, and the policy decision to reduce tar and nicotine in cigarettes. Hall J.A. held in dissent in *Knight* with respect to these activities, "...in my view the government engaged in such activities as a regulator of the tobacco industry seeking to protect the health interests of the Canadian public."⁸⁹ In conducting research on tobacco strains and interacting with the tobacco industry on their use, officials were acting pursuant to their general statutory authority, which required a balancing of various interests. The imposition of a private law duty of care in respect of such conduct would hamper the legislatively mandated discretion to adopt a range of policy responses to similar public health problems. As Hall J.A. held in dissent:

Canada had a large number of interests and concerns to address regarding the tobacco industry. It was concerned with the appellants, with the tobacco growers, and perhaps most importantly, with consumers of tobacco products. It had a responsibility as government to regulate the sale of tobacco products to ensure that increasing health concerns were properly addressed. The relationship between Canada and the appellant companies was one of regulator and regulated.⁹⁰

59. In *Fallowka* this Court, citing *Hill*, noted that in order to reject a duty of care on the basis of conflicting duties, "the conflict must be between the duty proposed and an overarching public duty and it must pose a real potential for negative policy consequences."⁹¹ Both conditions are satisfied here. The proposed duty toward tobacco manufacturers would undermine legislative schemes directed toward protecting public health. The negative policy consequences are significant, given that measures to address tobacco-related disease are involved. The protection of the public health against emerging health risks would be compromised if statutory discretion had to be exercised in a fashion which requires government to be mindful of the economic interests of tobacco manufacturers, as a private law duty of care owed to such companies would demand. Public authorities must be able to further the public interest through research and regulatory measures which may affect or constrain the actions of industry, without fear of liability to such companies.

60. The impact of conflicting private and public law duties in the relationship between a statutory public authority and the economic interests of a regulated party are illustrated by the recent decision of the Ontario Court of Appeal in *River Valley Poultry*. The Court held that the

⁸⁹ *Knight, supra*, at para. 100, A.R., Vol. I, p. 118.

⁹⁰ *B.C. v. Imperial Tobacco, supra*, at para. 49, A.R., Vol. I, p. 62.

⁹¹ *Fallowka, supra*, at para. 73, A.B.A., Vol. I, Tab 18, p. 210.

Canadian Food Inspection Agency did not owe a duty of care to an egg producer given that “conflict may arise if CFIA inspectors have to worry about the economic interests of individual farmers as well as their obligation to the public to protect human and animal health.”⁹²

61. Conflict between private law duties of care and statutory powers has been recognized in Commonwealth jurisprudence as a fundamental concern and a basis for refusing to extend such duties.⁹³ The House of Lords recently held in *Jain v. Trent Strategic Health Authority* per Scott L.J.:

...where action is taken by a state authority under statutory powers designed for the benefit or protection of a particular class of persons, the tortious duty of care will not be held to be owed by the state authority to others whose interests may be adversely affected by an exercise of statutory power. The reason is that the imposition of such a duty would or might inhibit the exercise of the statutory powers and be potentially adverse to the interests of the class of persons the powers were designed to benefit or protect, thereby putting at risk the achievement of their statutory purposes.⁹⁴

62. Here, the relevant statutory schemes are directed toward protecting public health. A private law duty owed to tobacco manufacturers would inhibit the exercise of statutory powers and discretion, and put at risk the achievement of that purpose.

(d) No Proximity – A “Special Relationship” is Not Present

63. This Court in *Hercules Management Ltd.* held that when negligent misrepresentation is alleged, the requirement of proximity can only be satisfied by a “special relationship”. Such a relationship arises where, “(a) the defendant ought reasonably to foresee that the plaintiff will rely on his or her representations; and (b) reliance by the plaintiff would, in the particular circumstances of the case, be reasonable”.⁹⁵ The Court noted:

In negligent misrepresentation actions ... the plaintiff's claim stems from his or her detrimental reliance on the defendant's (negligent) statement, and it is abundantly

⁹² *River Valley Poultry Farm Ltd. v. Canada (Attorney General)*, 2009 ONCA 326, at para. 86, leave to appeal denied [2009] S.C.C.A. No. 259, **A.B.A., Vol. II, Tab 40, p. 195**.

⁹³ See: *X v. Bedfordshire C.C.*, [1995] 2 A.C. 633 (UK H.L.(Sc.)), at p. 739, **A.B.A., Vol. III, Tab 52, p. 169**; *Attorney General v. Prince and Gardner*, [1998] 1 NZLR 262 (NZ C.A.), at pp. 276-277, **Vol. I, Tab 5, pp. 89-91**; *Sullivan v. Moody*; *Thompson v. Cannon*, [2001] HCA 59 (AU H.C.), at paras. 55, 62, **Vol. II, Tab 44, pp. 245-247**.

⁹⁴ *Jain v. Trent Strategic Health Authority*, [2009] 1 A.C. 853 (UK H.L.(E.)), at para. 28, **A.B.A., Vol. II, Tab 27, pp. 89-90**; see also para. 36, **p. 92**.

⁹⁵ *Hercules Management Ltd.*, *supra*, at para. 24, **A.B.A., Vol. II, Tab 20, pp. 4-5**.

clear that reliance on the statement or representation of another will not, in all circumstances, be reasonable. The assumption that always inheres in physical damage cases concerning the reasonableness of the plaintiff's expectations cannot, therefore, be said to inhere in reliance cases. In order to ensure that the same factors are taken into account in determining the existence of a duty of care in both instances, then, the reasonableness of the plaintiff's reliance must be considered in negligent misrepresentation actions.⁹⁶

64. Tysoe J.A. for the majority concluded that the requirements of negligent misrepresentation might be made out in the pleadings in respect of the alleged duties between Canada and manufacturers,⁹⁷ but provided no analysis of the existence of a "special relationship", such as whether or not reliance by Imperial on any representations made by Canada could be considered reasonable in the circumstances. Tysoe J.A. described the relationship between those parties as being that "between the designer of a product and the manufacturer who uses the product in goods sold to the public."⁹⁸ This characterization disregards the fact that Canada was not a commercial product supplier, and was taking steps pursuant to statutory authority relating to "the protection of the people of Canada against risks to health and the spreading of public diseases"⁹⁹ such as regulation, proposed regulation and mitigation measures directed toward risks created by products distributed by tobacco manufacturers.

65. In contrast, the dissent properly recognized Canada's role. Hall J.A. held:

The present case is more analogous to the type of situation disclosed in *Granite Power Corp. v. Ontario* ... In that case the plaintiff power company alleged it had suffered economic harm because of actions taken by government officials. Although a portion of the action alleging misfeasance in a public office was allowed to proceed, the Ontario Court of Appeal held there was insufficient proximity between the plaintiff and government to support a *prima facie* duty of care. Moldaver J.A. said this at para. 24:

Manifestly, under the legislative scheme, the Minister did not owe a duty of care exclusively to Granite. On the contrary, he owed a duty of care to the public as a whole, of which Granite was but one constituent. ...¹⁰⁰

66. Hall J.A. concluded that "it could never have been the perception of the appellants that Canada was taking responsibility for their interests."¹⁰¹ This is clearly correct. In view of the

⁹⁶ *Ibid.*, at para 26, A.B.A., Vol. II, Tab 20, p. 5.

⁹⁷ *Knight, supra*, at para. 66, A.R., Vol. I, p. 105.

⁹⁸ *Knight, supra*, at para. 67, A.R., Vol. I, p. 106.

⁹⁹ *Department of Health Act, supra*, s. 4(2), A.B.A., Vol. V, Tab 70, p. 4 (*infra*, p. 54).

¹⁰⁰ *B.C. v. Imperial Tobacco, supra*, at para. 51, A.R., Vol. I, p. 63.

¹⁰¹ *Ibid.*

repeated proposals of regulatory action, legal challenges by manufacturers and legislative action as alleged in the third party notices, manufacturers could not have reasonably been looking to Canada as an advisor in the *Hedley Byrne* sense of that term. To the contrary, from the perspective of the tobacco manufacturers, government was an adversary.

67. In *Hercules Management Ltd.*, La Forest J. for the Court noted the following “five general indicia of reasonable reliance” as identified by Professor Feldthusen:

- (1) The defendant had a direct or indirect financial interest in the transaction in respect of which the representation was made.
- (2) The defendant was a professional or someone who possessed special skill, judgment, or knowledge.
- (3) The advice or information was provided in the course of the defendant's business.
- (4) The information or advice was given deliberately, and not on a social occasion.
- (5) The information or advice was given in response to a specific enquiry or request.

While these *indicia* should not be understood to be a strict “test” of reasonableness, they do help to distinguish those situations where reliance on a statement is reasonable from those where it is not.¹⁰²

68. Canada is not alleged here to have had a commercial motivation in any “advice, requests or direction” given to tobacco manufacturers. Canada's officials are not alleged to have been operating as professional advisors or to have made representations in the course of operating a business. The representations are not alleged to have been made in response to any specific enquiry or request. While the “advice, requests or direction” of Canada's officials is alleged to have been deliberate, such actions were part of a series of policy responses intended to alter the behaviour of both consumers and manufacturers and to protect public health. Canada was not acting in an advisory capacity to tobacco manufacturers.

69. Direct regulation was not used or required during much of the early part of the period; instead, as Tysoe J.A. characterized it, Canada employed “the persuasive approach to regulation in the tobacco industry prior to 1988 (for a discussion of this approach, see I. Ayres and

¹⁰² *Hercules Management Ltd.*, *supra*, at para. 43, A.B.A., Vol. II, Tab 20, p. 13.

J. Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford: Oxford University Press, 1992) at 21-27)".¹⁰³ A persuasion/regulation approach does not give rise to the kind of business or professional advisory relationship that may ground reasonable reliance. As Hall J.A. noted, manufacturers could not have believed Canada's actions were directed at furthering their economic interests. This is illustrated by the fact that manufacturers are alleged to have resisted many of the proposed changes in their conduct, at least until regulatory action was proposed, or legislation and regulations were actually implemented.¹⁰⁴

70. For the foregoing reasons, it is plain and obvious that the essential requirement in negligent misrepresentation allegations of a "special relationship" is not made out in the pleadings.

E. "Stage II" Policy Considerations

71. The Court held in *Cooper* that "Stage II" policy considerations "... are not concerned with the relationship between the parties, but with the effect of recognizing a duty of care on other legal obligations, the legal system and society more generally."¹⁰⁵ More recently, in *Hill*, it was noted that "A *prima facie* duty of care will be negated only when the conflict, considered together with other relevant policy considerations, gives rise to a real potential for negative policy consequences. This reflects the view that a duty of care in tort law should not be denied on speculative grounds."¹⁰⁶

72. In this case, the following policy concerns arise from the recognition of a *prima facie* duty of care:

- (a) the potential creation of indeterminate liability to an indeterminate class;
- (b) permitting recovery in tort in relation to policy actions;
- (c) the creation of an unintended insurance scheme; and
- (d) transferring responsibility from the manufacturer, who is best positioned to address liability for economic loss.

¹⁰³ *Knight, supra*, at para. 14, **A.R., Vol. I, p. 87**. See also Neil Gunningham & Darren Sinclair, "Integrative Regulation: A Principle-Based Approach to Environmental Policy" (1999) 24 *Law and Social Inquiry* 853, at pp. 859, 863-864, **A.B.A., Vol. III, Tab 56, pp. 233, 237-238**.

¹⁰⁴ E.g, Amended Statement of Claim, paras. 57, 166, **A.R., Vol. II, pp. 20-21, 52**.

¹⁰⁵ *Cooper, supra*, at para. 37, **A.B.A., Vol. I, Tab 10, p. 136**.

¹⁰⁶ *Hill, supra*, at para. 43, **A.B.A., Vol. II, Tab 21, pp. 21-22**.

(a) Indeterminate Liability

73. Tysoe J.A for the majority of the Court of Appeal adopted his reasoning in *Knight* in which he held that policy concerns for indeterminate liability negated any *prima facie* duty between Canada and Imperial in respect of allegations relating to Canada's development of tobacco strains, or "negligent design". Such allegations were viewed as giving rise to the potential for relational economic loss, and not falling within any of the exceptions to the exclusionary rule.¹⁰⁷ Tysoe J.A., however, held that this logic did not apply to the other allegations in the claim with respect to negligent misrepresentations.¹⁰⁸

74. The majority failed to refer to, or apply, key considerations which have been recognized by this Court and other appellate courts in respect of the question of indeterminate liability: the inability of a statutory authority to control the number of potential claimants and hence the scale and scope of liability, and the impact of the extension of a duty of care on a statutory authority's other responsibilities. Both considerations provide a basis to negate any *prima facie* duty of care found to exist, as described below.

Indeterminate Liability from Lack of Control Over the Number of Claims

75. As noted in *Martel Building Ltd. v. Canada*, "[t]he scope of indeterminate liability remains a significant concern underlying any analysis of whether to extend the sphere of recovery for economic loss."¹⁰⁹ The concern was expressed by Cardozo C.J. in *Ultramares Corp. v. Touche*¹¹⁰ as the possibility that the defendant might be exposed to "liability in an indeterminate amount for an indeterminate time to an indeterminate class".¹¹¹ In *Design Services*, Rothstein J. for the Court made reference to the test from *Ultramares* as follows:

I agree that in the case of pure economic loss, there is a greater risk of indeterminate liability than in cases of physical injury or property damage. Therefore, in cases of pure economic loss, to paraphrase Cardozo C.J., care must be taken to find that a duty is recognized only in cases where the class of plaintiffs, the time and the amounts are determinate.¹¹²

¹⁰⁷ *Knight, supra*, at para. 83, A.R., Vol. I, p. 111.

¹⁰⁸ *Ibid.*, at para. 87, A.R., Vol. I, pp. 112-113.

¹⁰⁹ *Ibid.*, at para. 57, A.R., Vol. I, pp. 65-66.

¹¹⁰ 174 N.E. 441 (NY C.A. 1931), at p. 1145, A.B.A., Vol. III, Tab 47, p. 7.

¹¹¹ See e.g.: *Hercules Management Ltd., supra*, at para. 31, A.B.A., Vol. II, Tab 20, p. 7; *Design Services Ltd. v. Canada*, 2008 SCC 22, at para. 60, A.B.A., Vol. I, Tab 11, p. 149.

¹¹² *Ibid.*, at para 62, p. 149.

76. Indeterminate liability concerns can arise where a defendant lacks control over the number of parties who may make potential claims against it. Regulatory authorities may be in this position. In *Cooper*, this Court rejected the extension of a duty of care on the part of the Registrar of Mortgage Brokers in respect of economic losses realized by investors, finding, “[t]he Act itself imposes no limit and the Registrar has no means of controlling the number of investors or the amount of money invested in the mortgage brokerage system.”¹¹³

77. This consideration also arose in *Holtslag v. Alberta*, where the Alberta Court of Appeal held that no duty of care arose between the Alberta Director of Building Standards and users of untreated pine shakes approved by the Director as compliant with the relevant Building Code. The Court held “the Director would have no means of controlling the number of homeowners who used the various approved products in their residences; thus, potential liability would be virtually indeterminate as would potential litigation costs. The taxpayers of Alberta would indeed be placed in the position of insurer for all persons suffering losses as a result of the lifespan of products under the *Building Code*.”¹¹⁴

78. This policy concern applies squarely to Health Canada and Agriculture Canada in the case at bar. The departments had no control over the number of cigarettes offered for sale by the tobacco industry, or the number of smokers who might suffer tobacco related disease and hence require treatment under the provincial health care scheme. Hall J.A., in dissent in *Knight*, analysed this factor, and concluded:

Canada had and has no control over the quantity of cigarettes sold by ITCAN and other vendors of tobacco products. Indeterminate liability is an obvious concern if Canada is to be required to indemnify participants in the industry such as ITCAN against claims in actions by consumers. Canada is a regulator of the tobacco industry, not an insurer.¹¹⁵

79. Hall J.A. went on to refer to the Ontario Court of Appeal's judgment in *Hughes v. Sunbeam Corp. (Canada) Ltd.*, a class action brought by purchasers of smoke alarms against the manufacturer, as well as Underwriters Laboratories of Canada (“ULC”), an independent product

¹¹³ *Cooper, supra*, at para. 54, **A.B.A., Vol. I, Tab 10, p. 140**.

¹¹⁴ 2006 ABCA 51, at para. 44, leave to appeal denied, [2006] S.C.C.A. No. 142, **A.B.A., Vol. II, Tab 23, p. 37**.

¹¹⁵ *Knight, supra*, at para. 103, **A.R., Vol. I, p. 119**.

testing and certification company. ULC, as in this case, had no control over the number of products sold or the extent of claims. Laskin J.A. held in that case that concerns for indeterminate liability negated any *prima facie* duty of care toward the plaintiff owed by ULC.¹¹⁶

80. Here, the claim is for the tobacco-related health care costs which have been incurred or may be incurred in the future by B.C., and which are not otherwise limited in any way. It is not, for example, limited to the recovery of health care costs of those who purchased any particular type of tobacco product. The within claim has no temporal limitation and includes all past and reasonably foreseeable future health care costs. It may encompass the health care costs of persons, including non-smokers subject to second-hand smoke, who acquired disease which was “caused or contributed to by exposure to a tobacco product”.¹¹⁷ Ontario and New Brunswick have also asserted identical claims against the industry. In the latter action, manufacturers have already third partied Canada.

81. Faced with the potential for indeterminate liability, this Court has recognized the need for some test or boundary to contain it. For example, in *Winnipeg Condominium*, the requirements that a defective building “constitute a real and substantial danger to the inhabitants” and that recovery be limited to costs of repair were deemed sufficient to avert “any danger of indeterminacy in damages” for economic loss in an action by a subsequent purchaser against the builder, architect and sub-contractor.¹¹⁸ Such limitations on recovery are not present here. Their absence is a significant policy concern and basis for negating any *prima facie* duty found to exist between Canada and tobacco manufacturers.

Indeterminate Liability Concerns from Impacts on Other Legal Obligations

82. In *Cooper*, the Court held that “Stage II” policy considerations include “the effect of recognizing a duty of care on other legal obligations”.¹¹⁹ Such considerations have formed the basis for the rejection of a duty of care in several appellate-level decisions. In *Holtslag*, the Alberta

¹¹⁶ (2002), 219 D.L.R. (4th) 467 (Ont. C.A.), at paras. 48-50, leave to appeal denied, [2003] 1 S.C.R. xi, **A.B.A., Vol. II, Tab 25, p. 68.**

¹¹⁷ *Costs Recovery Act*, *supra*, s. 1(1), definition of “tobacco related disease”, **A.B.A., Vol. V, Tab 76, p. 63.**

¹¹⁸ *Winnipeg Condominium Corporation v. Bird Construction Co. Ltd.*, [1995] 1 S.C.R. 85, at para. 49, **A.B.A., Vol. III, Tab 50, p. 46.**

¹¹⁹ *Cooper*, *supra*, at para. 37, **A.B.A., Vol. I, Tab 10, p. 136.**

Court of Appeal noted that policy concerns for indeterminate liability included the impact of extending a duty of care to cover other responsibilities of the statutory authority.¹²⁰

83. The concern for extension of liability here also goes beyond the instant case. It is magnified in this case because what is claimed here is economic loss. The recognition of a duty of care would lead to the expansion of potential tort liability of Health Canada, Agriculture Canada, and other statutory authorities charged with addressing the public health or safety issues arising from the production of consumer and commercial products by regulated manufacturers.¹²¹

84. The extension of liability to Canada for its involvement in various research reports and other activities could also lead to the extension of liability to non-profit or academic institutions, such as Universities alleged to be involved in the same research activities as the federal Crown.¹²²

85. The indeterminate nature of such liability is not an issue which reasonably requires the provision of evidence at trial for its determination. Its nature is apparent on the face of the pleadings and should properly be resolved at a preliminary stage.

(b) Policy Decisions

86. The third party notices attack as negligent conduct, “advice and direction” by Canada that took the form of regulations made under the *Tobacco Products Control Act* and *Tobacco Act*.¹²³ The majority erroneously held that evidence was required to determine whether such allegations are policy-related and should be struck out.

¹²⁰ *Holtslag v. Alberta*, *supra*, at para. 43, **A.B.A., Vol. II, Tab 23, p. 37**.

¹²¹ The following are examples of cases in which a duty of care between a public authority and a regulated party has been rejected by the courts: Pesticide regulation by Agriculture Canada under the *Pest Control Products Act*, R.S.C. (1985), c. P-10; *Kuczerpa v. Canada* (1991), 48 F.T.R. 274, *aff'd* (1993), 63 D.T.R. 74 (F.C.A.), **A.B.A., Vol. II, Tab 35**; Regulation by Canadian Food Inspection Agency under the *Health of Animals Act*, S.C. 1990, c. 21, re: salmonella in hatching eggs; *River Valley Poultry Farm Ltd. v. Canada (Attorney General)*, *supra*, **A.B.A., Vol. II, Tab 40**; Issuance of a notice of compliance (“NOC”) by Health Canada under the *Food and Drug Regulations*, C.R.C., c. 870; permitting sale: *Wuttunee v. Merck Frosst Canada*, 2007 SKQB 29, at para. 88, **A.B.A., Vol. III, Tab 51, p. 62**.

¹²² E.g. Univ of Waterloo: Third Party Notice of Imperial Tobacco, paras. 111, 120, **A.R., Vol. II, pp. 93, 95**; and Third Party Notice of JTI-Macdonald Corp., paras. 92, 125, 133-134, **A.R., Vol. III, pp. 28, 36, 38**, para. 31(b) (B.A.T. Industries), **A.R., Vol. III, p. 164**; Univ of Guelph: Third Party Notice of Imperial Tobacco, para. 121, **A.R., Vol. II, p. 95**; and Third Party Notice of JTI-Macdonald Corp., para. 135, **A.R., Vol. III, p. 38**.

¹²³ See, e.g., Third Party Notice of Imperial Tobacco Canada Limited, subparas. 178 (e), (f), **A.R., Vol. II, p. 110**; *Tobacco Products Control Regulations*, SOR/89-21, December 27, 1988, s. 11(1), **A.B.A., Vol. V, Tab 86, p. 179**; *Tobacco Products Information Regulations*, SOR/2000-272, ss. 8, 9, **A.B.A., Vol. V, Tab 87, pp. 200-201**.

87. In considering whether the claims challenge policy decisions and thus cannot lead to tort liability, Tysoe J.A. for the majority relied on the Ontario Court of Appeal's decision in *Sauer v. Canada (Attorney General)*¹²⁴ for the proposition that "evidence is required to determine which of the actions and statements of Canada in this case were policy decisions and which were operational decisions", and that the Court should be circumspect in determining such an issue "without the benefit of a full evidentiary foundation."¹²⁵ However, further evidence is not necessary to determine that a claim which attacks legislative decisions as reflected in regulations is not actionable.

88. In *Sauer*, a class proceeding for economic loss, the plaintiff alleged that Canada had been negligent in its design and promulgation of a 1990 regulation governing the production of cattle feed, and in failing to impose a regulation banning certain ingredients from cattle feed before 1997. Although the claim squarely attacked legislative decisions (as to the choice of provisions to be enshrined in regulations), the Court of Appeal refused to strike it out in that respect. To the extent the case can be read (as Tysoe J.A. did) to support the proposition that further evidence of the policy-related nature of a legislative decision is always needed, it is respectfully submitted that *Sauer* was wrongly decided. The plaintiff in *Sauer* directly attacked decisions reflected in regulatory action which cannot be subject to tort liability based upon the authority of this Court in *Welbridge Holdings*.¹²⁶

89. In *Kimpton v. B.C.*, the B.C. Court of Appeal correctly applied *Welbridge Holdings* in striking out a claim directed, *inter alia*, at the B.C. Building Code ("BCBC"), finding:

In my view the chambers judge correctly found the creation and establishment of the BCBC to be an act of lawmaking. See *Welbridge Holdings Ltd. v. Metropolitan Corporation of Greater Winnipeg*, [1971] S.C.R. 957. Immunity from the application of tort law flows from that fact. As the chambers judge noted at paragraph 63 of his reasons for judgment, "[t]o the extent a government negligently governs, the voting public may impose a political consequence at an election."¹²⁷

90. The rationale for this sphere of immunity is the reluctance of the courts, based on both democratic values and concerns for judicial competence, to intervene and weigh the kinds of

¹²⁴ 2007 ONCA 454, leave to appeal denied, [2007] S.C.C.A. No. 454, **A.B.A., Vol. II, Tab 42**.

¹²⁵ *Knight, supra*, Tysoe J.A., para. 52, **A.R., Vol. I, pp. 100-101**.

¹²⁶ See, in particular, *Sauer, supra*, at para. 63, **A.B.A., Vol. II, Tab 42, p. 231**; *Welbridge Holdings Ltd. v. Greater Winnipeg*, [1971] S.C.R. 957, **A.B.A., Vol. III, Tab 48**.

¹²⁷ *Kimpton v. Canada (Attorney General)*, 2004 BCCA 72, at para. 6, **A.B.A., Vol. II, Tab 31, p. 129**.

considerations involved in the legislative and regulatory process. Cory J. in *Just* cited the following passage of Becker J. in *Blessing v. U.S.* which explains this rationale:

Statutes, regulations, and discretionary functions ... are, as a rule, manifestations of policy judgments made by the political branches. In our tripartite governmental structure, the courts generally have no substantive part to play in such decisions. ... Tort law simply furnishes an inadequate crucible for testing the merits of social, political or economic decisions.¹²⁸

91. The majority's erroneous reliance on *Sauer* affected its assessment of such specific regulatory actions, as well as Canada's other conduct. The dissent in *Knight* correctly recognized that Canada's conduct reflected "a policy decision taken at the Ministerial level with a view to diminish the health risks of consumers of tobacco products."¹²⁹ Hall J.A. observed that while Canada "arguably could have undertaken other or more efficacious interventions ...these largely political and social decisions based on broad health concerns"¹³⁰ do not give rise to liability in tort.

92. The Chambers Judge and minority in the Court of Appeal in *Knight* correctly found that Canada's alleged conduct which did not directly take the form of regulations "reflects the policy of Canada to lower tar and nicotine in cigarettes and to require tar and nicotine information for itself and for publication". Hall J.A. held:

Any initiatives it took to develop less hazardous strains of tobacco, or to publish the tar and nicotine yields of different cigarette brands were directed to this end. While the development of new strains of tobacco involved Agriculture Canada, in my view the government engaged in such activities as a regulator of the tobacco industry seeking to protect the health interests of the Canadian public. Policy considerations underlaid all of these various activities undertaken by departments of the federal government.¹³¹

93. The third party notices refer to various "programmes", the development of which unfolded over a period of years. While the pleadings characterize these as operational activities, these programmes were articulations of Canada's broader tobacco policies. They were directed at educating the public on the risks of smoking, discouraging both adults and youths from smoking,

¹²⁸ *Just v. British Columbia*, [1989] 2 S.C.R. 1228, at p. 1240, **A.B.A., Vol. II, Tab 29, p. 108**. See also *Entreprises Sibeca Inc. v. Frelighsburg (Municipality)*, 2004 SCC 61, at paras. 23-24, **A.B.A., Vol. I, Tab 16, p. 199**.

¹²⁹ Reasons of Hall J.A. in *Knight, supra*, at para. 99, **A.R., Vol. I, p. 117**.

¹³⁰ *Ibid.*, at para 99, **A.R., Vol. I, p. 117**.

¹³¹ *Ibid.*, at para. 100, **A.R., Vol. I, p. 118**.

and encouraging the public, for health reasons, to smoke “low delivery” or “mild” and “light” cigarettes if they could not abstain from smoking altogether.

94. The policies alleged in the third party notices have taken different forms – regulations, proposed legislation and regulations, and “broad public announcements” on smoking practices and the qualities of tobacco strains developed by Canada. The courts have held that the “passage or non-passage of” legislation is equally insulated from liability as falling under the rubric of policy.¹³² The form may have differed, but the underlying policy thrust remained the same. At bottom, the third party notices allege the timing and content of Health Canada’s policy in respect of tobacco could have been different or better. Such allegations are not actionable in tort.

95. Policy decisions captured in proposed regulations or legislation are as much in the nature of policy as the legislation or regulations as finally enacted. Neither should give rise to tort liability. Regulatory action is more likely to be efficient and effective if government may employ a panoply of measures involving different levels of intervention:

... the achievement of regulatory objectives is more likely when agencies display both a hierarchy of sanctions and a hierarchy of regulatory strategies of varying degrees of interventionism. ... Regulators will do best by indicating a willingness to escalate intervention up ... or to deregulate down ... in response to the industry’s performance in securing regulatory objectives.¹³³

96. The officials specifically identified in the third party notices are Ministers, Deputy Ministers and high-level Crown servants whose tobacco-related responsibilities at the material times lay in the development and articulation of policies and not in the operational sphere.¹³⁴ They were involved in “policy, planning or governing” and not “administering, operations or servicing”.

97. Canada’s alleged actions were undertaken as part of a broader policy and regulatory approach, supported by legislative authority and backed, where necessary, by specific legislative and regulatory action. Such actions were aimed at mitigating the health impact on the public of a product created, promoted and profited from by the tobacco industry. Canada’s policy and

¹³² *Kimpton v. Canada (Attorney General)*, 2002 BCSC 1645, at paras. 56-57, **A.B.A., Vol. II, Tab 31, pp. 122-123**, citing *Birch Builders Ltd. v. Esquimalt* (1992), 90 D.L.R. (4th) 665 (BC C.A.), at p. 671.

¹³³ Ian Ayres & John Braithwaite, *Responsive Regulation – Transcending the Deregulation Debate* (New York: Oxford University Press, 1992), at pp. 5-6, **A.B.A., Vol. III, Tab 54, pp. 211-212**.

¹³⁴ See, e.g., Imperial’s Third Party Notice, paras. 27, 30, 55, 81, 89, 91-94, 97, 100, 102-104, 118, 119, **A.R., Vol. II, pp. 72, 73, 79-80, 86, 89, 90, 91-92, 94-95**.

regulatory role clearly distinguishes this case from those involving commercial vendors of components of manufactured goods relied upon by the tobacco industry.

(c) A Duty of Care to Manufacturers Would Create an Unintended Insurance Scheme

98. Canada's response to the health problems posed by tobacco products included the mandating of departments to pursue research, information dissemination and the development of regulatory responses to the health risk created. There is no indication of legislative intent to assume responsibility for liability for economic losses connected in some fashion to the use of such products. This Court in *Cooper* cited this concern as a rationale for not imposing a duty of care on the Registrar of Mortgage Brokers:

.... we must consider the impact of a duty of care on the taxpayers, who did not agree to assume the risk of private loss to persons in the situation of the investors. To impose a duty of care in these circumstances would be to effectively create an insurance scheme for investors at great cost to the taxpaying public. There is no indication that the Legislature intended that result.¹³⁵

99. As Hall J.A. for the dissent recognized that this factor is operative here:

Canada is a regulator of the tobacco industry, not an insurer. In *Eliopoulos v. Ontario (Minister of Health & Long-Term Care)* (2006), 82 O.R. (3d) 321, 276 D.L.R. (4th) 411 (C.A.), leave to appeal to S.C.C. dismissed [2006] S.C.C.A. No. 514, the Ontario Court of Appeal observed at para. 33 that "Public health authorities should be left to decide where to focus their attention and resources without the fear or threat of lawsuits." This comment seems apposite to me in the context of the present litigation.¹³⁶

100. Hall J.A. also relied upon *Hughes v. Sunbeam Corp. (Canada) Ltd.*, where it was held by the Ontario Court of Appeal that one of the policy reasons for not imposing a duty of care on ULC in its role as an independent product tester of smoke alarms was that "imposing a duty of care on ULC would effectively create an insurance scheme for dissatisfied purchasers, a scheme for which the purchasers have paid nothing".¹³⁷ The Ontario Divisional Court in *Klein* similarly held that a duty of care imposed on Health Canada in its regulation of medical devices would "create an insurance scheme ... funded by taxpayers, which ... was not the intention of Parliament."¹³⁸

¹³⁵ *Cooper, supra*, at para. 55, A.B.A., Vol. I, Tab 10, p. 140.

¹³⁶ *Knight, supra*, at para. 103, A.R., Vol. I, p. 119.

¹³⁷ *Knight, supra*, per Hall J.A., at para. 104, A.R., Vol. I, pp. 119-120, citing *Hughes* (ON C.A.), *supra*, at para. 48, A.B.A., Vol. II, Tab 25, p. 68.

¹³⁸ *Klein, supra*, at para. 37, A.B.A., Vol. II, Tab 32, p. 137.

101. Policy concerns for the creation of an unintended insurance regime are heightened here, given that the *Costs Recovery Act* reflects a policy choice by British Columbia to create a novel legal regime designed to shift the burden of health care costs from taxpayers to the industry responsible for those costs. That policy choice should not be frustrated by allowing the tobacco industry to pass those costs back to taxpayers through another level of government.

(d) The Manufacturer is Best Positioned to Address Liability for Economic Loss

102. The public health risk associated with tobacco products is not one that was created by Canada or that arises from the use of a public facility provided by Canada. The proper defendant is the manufacturer, who controls production, profits from the commercial transactions which place cigarettes on the market, and bears responsibility for warning the consumer in respect of the associated health risks. As the Ontario Court of Appeal held in *Hughes*, cited by Hall J.A. in dissent "... manufacturers are better positioned to ensure the supply of safe products and provide a more efficient target for redress if their products prove to be unsafe."¹³⁹

103. Given its control over the commercial interface with the consumer, the manufacturer is also best positioned to address economic losses through contractual means, such as through the law of warranty.¹⁴⁰ In contrast, government lacks this opportunity for limiting liability. The comparative ability of these parties to allocate risk by contract presents a further policy rationale for the manufacturer bearing the burden of economic losses that may arise.¹⁴¹

Stage II Policy Considerations – Conclusion

104. For the foregoing reasons, if the Court finds that a *prima facie* duty of care arises between Canada and tobacco manufacturers, such duty ought nonetheless to be negated by policy considerations.

¹³⁹ *Knight, supra*, at para. 104, **A.R., Vol. I, pp. 119-120**, citing *Hughes* (ON C.A.), *supra*, at para. 49, **A.B.A., Vol. II, Tab 25, p. 68**.

¹⁴⁰ C.f. *East River S.S. Corp. v. Transamerica*, 476 U.S. 858 (US S.C. 1986), at pp. 872-874, **A.B.A., Vol. I, Tab 13, pp. 169-171**.

¹⁴¹ See, e.g., *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210, at para. 50, **A.B.A., Vol. I, Tab 7, p. 107**, and *Design Services, supra*, at paras. 54-56, **A.B.A., Vol. I, Tab 11, p. 148**.

PART IV – COSTS

105. The appellant seeks its costs of this appeal and in the courts below.

PART V – ORDER SOUGHT

106. The appellant seeks an order striking out the third party notices in their entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Ottawa,
this 27th day of October, 2010.

Paul Vickery
Department of Justice Canada
Of Counsel for the Appellant

PART VI – ALPHABETICAL TABLE OF AUTHORITIES

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PART VII

STATUTES AND REGULATIONS

1868. *Department of Agriculture organized.* Cap. 53. 147

C A P. L I I I.

An Act for the Organization of the Department of
Agriculture.

[Assented to 22nd May, 1868.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows: Preamble.

1. There shall be a Department, called "The Department of Agriculture," over which the Minister of Agriculture, for the time being, appointed by Commission under the Great Seal, shall preside; and the said Minister shall have the management and direction of the Department and shall hold office during pleasure. Department of Agriculture; Minister of Agriculture.

2. The Governor may appoint a Deputy of the Minister of Agriculture, and such other officers and clerks as may be required for the proper conduct of the business of the Department, all of whom shall hold office during pleasure. Deputy Minister and staff.

3. It shall be the duty of the said Deputy, and he shall have authority (subject always to the Minister) to oversee and direct the other officers and servants of the Department; he shall have the general control of the business of the Department, and such other powers and duties as may be assigned to him by the Governor in Council, and in the absence of the Minister and during such absence, may suspend from his duties any officer or servant of the Department who refuses or neglects to obey his directions as such Deputy. Powers and duties of Deputy.

May suspend officers.

4. The duties and powers of the Minister of Agriculture, shall extend to the execution of laws enacted by the Parliament of Canada, and of orders of the Governor in Council, relating to the subjects enumerated in the following section, as well as to the direction of all public bodies, officers and servants employed in the execution of such laws and orders. Duties and powers of Minister.

5. The following subjects shall be under the control and direction of the Department of Agriculture, viz: Subjects under control of Department.

1. Agriculture;
2. Immigration and Emigration;
3. Public Health and Quarantine;
4. The Marine and Emigrant Hospital at Quebec;
5. Arts and manufactures;

An Act for the Organization of the Department of Agriculture, 31 Vict., c. 53 (1868)

148 **Cap. 53, 54. *Dept. of Agriculture organized.* 31 VICT**

6. The Census, Statistics and the Registration of Statistics ;
7. Patents of Invention ;
8. Copyright ;
9. Industrial Designs and Trade Marks.

Governor in
Council may
vary duties
and powers.

6. The Governor in Council may at any time assign any other duty or power to the Minister of Agriculture, and may also assign any of the duties or powers hereinbefore enumerated to any other Member of the Privy Council of Canada.

Annual Report
to be laid be-
fore Parlia-
ment.

7. The Minister of Agriculture shall make and submit to the Governor an annual report of the proceedings of his Department, to be laid before both Houses of Parliament within twenty-one days from the commencement of each session.

Act of Canada
25 V. c. 7, &c.,
repealed.

8. The Act of the Legislature of the late Province of Canada, passed in the twenty-fifth year of Her Majesty's Reign, chapter seven, is hereby repealed,—and all laws or parts of laws inconsistent with this Act, in so far as they are inconsistent herewith, are also repealed.

An Act Respecting the Department of Health (U.K.), 9 & 10 George V, c. 24 (1919)

ACTS
OF THE
PARLIAMENT OF THE UNITED KINGDOM
GREAT BRITAIN AND IRELAND
PASSED IN THE SESSION HELD IN
EIGHTH AND NINTH YEARS OF THE REIGN
OF HIS MAJESTY
KING GEORGE V.



OTTAWA
PRINTED BY JOSEPH de LABROQUERIE TACHÉ
LAW PRINTER (FOR CANADA) TO THE KING'S MOST EXCELLENT MAJESTY
ANNO DOMINI 1919



9-10 GEORGE V.

CHAP. 24.

An Act respecting the Department of Health.

[Assented to 6th June, 1919.]

WHEREAS it is expedient, for the preservation of the health and the promotion of the social welfare of the people of Canada, that a Department of Health be established in the Dominion: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Department of Health Act*. Short title.

2. There shall be a Department of the Government of Canada which shall be called "The Department of Health," over which a Minister of the Crown to be named by the Governor in Council shall preside. Department.

3. (1) The Governor in Council may appoint an officer, who shall be called "the Deputy Minister of Health," who shall be the deputy head of the Department and who shall hold office during pleasure. Deputy Minister.

(2) Such other officers, clerks and employees as are necessary for the proper conduct of the business of the Department may be appointed in accordance with the provisions of *The Civil Service Act, 1918*, and of any Acts in amendment thereof, all of whom shall hold office during pleasure. Staff.

(3) The Governor in Council may, subject to the provisions of *The Civil Service Act, 1918*, or any amendment thereto, transfer to the Department of Health any officer, clerk or employee now in the employ of His Majesty or of either or both Houses of Parliament, and subsection two of section seventeen of the said Act shall not apply to such transfers, and the money voted by Parliament for the financial year ending the thirty-first day of March, one thousand nine hundred and twenty, applicable to the payment of the salary or the increase of salary of any such officer, Transfer of officers to Department of Health.

Age limit.

officer, clerk or employee so transferred shall be available for the payment of his salary or increase of salary or the salary of any person appointed in his place in case of his death, retirement or dismissal while serving in the Department of Health, in the same manner and to the same extent as if such officer, clerk or employee had not been so transferred.

Duties and
powers of
Minister.

1. The duties and powers of the Minister administering the Department of Health shall extend to and include all matters and questions relating to the promotion or preservation of the health of the people of Canada over which the Parliament of Canada has jurisdiction; and, without restricting the generality of the foregoing, particularly the following matters and subjects:—

- (a) Co-operation with the provincial, territorial, and other health authorities with a view to the co-ordination of the efforts proposed or made for preserving and improving the public health, the conservation of child life and the promotion of child welfare;
- (b) The establishment and maintenance of a national laboratory for public health and research work;
- (c) The inspection and medical care of immigrants and seamen, and the administration of Marine Hospitals;
- (d) The supervision, as regards the public health, of railways, boats, ships and all methods of transportation;
- (e) The supervision of Federal public buildings and offices with a view to conserving and promoting the health of the Civil Servants and other Government employees therein;
- (f) The enforcement of any rules or regulations made by the International Joint Commission, promulgated pursuant to the treaty between the United States of America and His Majesty relating to boundary waters and questions arising between the United States of America and Canada, so far as the same relate to public health;
- (g) The administration of the statutes mentioned in the Schedule to this Act, and of Acts amending the same, and also of all orders and regulations passed or made under any of the said Acts; and all the duties and powers of any Minister of the Crown under either of the said Acts or any of the said orders or regulations, are hereby transferred to and conferred upon the Minister of Health;
- (h) Subject to the provisions of *The Statistics Act*, the collection, publication and distribution of information relating to the public health, improved sanitation and the social and industrial conditions affecting the health and lives of the people;

1919. *Health Department,* Chap. **24.** 3

(i) Such other matters relating to health as may be referred to the Department by the Governor in Council.

5. The Governor in Council shall have power to make Regulations, such regulations as may be necessary to give effect to and carry out the objects of this Act, and to impose penalties for any violation of such regulations.

6. There shall be a Dominion Council of Health consisting of the Deputy Minister of Health, who shall be chairman, the chief executive officer of the Provincial Department or Board of Health of each Province, and such other persons, not to exceed five in number, as may be appointed by the Governor in Council, who shall hold office for three years. The Dominion Council shall meet at such times and places as the Minister may direct, and shall be charged with such duties and powers in respect to this Act as the Governor in Council may prescribe.

7. Nothing in this Act or in any regulation made thereunder shall authorize the Minister or any officer of the Department to exercise any jurisdiction or control over any Provincial or Municipal Board of Health or other health authority operating under the laws of any province.

8. The Minister shall annually lay before Parliament, within fifteen days after the meeting thereof, a report and statement of the transactions and affairs of the Department during the year then next preceding.

SCHEDULE.

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CANADA

CONSOLIDATION

CODIFICATION

Department of
Agriculture and Agri-
Food Act

Loi sur le ministère de
l'Agriculture et de
l'Agroalimentaire

CHAPTER A-9

CHAPITRE A-9

Current to October 6, 2010

À jour au 6 octobre 2010

OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit:

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications
comme élément
de preuve

Inconsistencies
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité
— lois

Department of Agriculture and Agri-Food Act, R.S.C. (1985), c. A-9



CHAPTER A-9

CHAPITRE A-9

An Act respecting the Department of
Agriculture and Agri-Food

Loi concernant le ministère de l'Agriculture et
de l'Agroalimentaire

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Department of Agriculture and Agri-Food Act*.

R.S., 1985, c. A-9, s. 1; 1994, c. 38, s. 2.

1. *Loi sur le ministère de l'Agriculture et de l'Agroalimentaire*.

L.R. (1985), ch. A-9, art. 1; 1994, ch. 38, art. 2.

Titre abrégé

ESTABLISHMENT OF THE DEPARTMENT

MISE EN PLACE

Department
established

2. (1) There is hereby established a department of the Government of Canada called the Department of Agriculture and Agri-Food over which the Minister of Agriculture and Agri-Food appointed by commission under the Great Seal shall preside.

2. (1) Est constitué le ministère de l'Agriculture et de l'Agroalimentaire, placé sous l'autorité du ministre de l'Agriculture et de l'Agroalimentaire. Celui-ci est nommé par commission sous le grand sceau.

Constitution du
ministère

Minister

(2) The Minister holds office during pleasure and has the management and direction of the Department.

R.S., 1985, c. A-9, s. 2; 1994, c. 38, s. 3.

(2) Le ministre occupe sa charge à titre amovible; il assure la direction et la gestion du ministère.

L.R. (1985), ch. A-9, art. 2; 1994, ch. 38, art. 3.

Ministre

Deputy head

3. The Governor in Council may appoint an officer called the Deputy Minister of Agriculture and Agri-Food to hold office during pleasure and to be the deputy head of the Department.

R.S., 1985, c. A-9, s. 3; 1994, c. 38, s. 4.

3. Le gouverneur en conseil peut nommer, à titre amovible, un sous-ministre de l'Agriculture et de l'Agroalimentaire; celui-ci est l'administrateur général du ministère.

L.R. (1985), ch. A-9, art. 3; 1994, ch. 38, art. 4.

Administrateur
général

POWERS, DUTIES AND FUNCTIONS OF
THE MINISTER

POUVOIRS ET FONCTIONS DU MINISTRE

Powers, duties
and functions of
Minister

4. The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to

- (a) agriculture;
- (b) products derived from agriculture; and
- (c) research related to agriculture and products derived from agriculture including the operation of experimental farm stations.

4. Les pouvoirs et fonctions du ministre s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux et liés :

- a) à l'agriculture;
- b) aux produits dérivés de l'agriculture;
- c) à la recherche dans ces domaines, notamment à l'exploitation de stations agronomiques.

Attributions

Department of Agriculture and Agri-Food Act, R.S.C. (1985), c. A-9

Agriculture and Agri-Food, Department of — October 6, 2010

	(d) [Repealed, 1989, c. 27, s. 20] R.S., 1985, c. A-9, s. 4; 1989, c. 27, s. 20; 1994, c. 38, s. 5.	d) [Abrogé, 1989, ch. 27, art. 20] L.R. (1985), ch. A-9, art. 4; 1989, ch. 27, art. 20; 1994, ch. 38, art. 5.	
Other powers or duties of the Minister	5. The Governor in Council may assign any other power or duty to the Minister. R.S., c. A-10, s. 5.	5. Le gouverneur en conseil peut attribuer au ministre d'autres pouvoirs ou fonctions. S.R., ch. A-10, art. 5.	Autres attributions
Inspection services	5.01 The Minister may designate any person as an inspector for the purpose of providing the inspection services that the Minister considers necessary for the enforcement of any Act in respect of which the Minister has any powers, duties or functions. 1994, c. 38, s. 6.	5.01 Le ministre peut désigner des inspecteurs pour fournir les services d'inspection qu'il estime nécessaires à l'application de toute loi lui conférant des attributions. 1994, ch. 38, art. 6.	Services d'inspection
Regulations	5.1 The Governor in Council may make such regulations as the Governor in Council deems necessary for implementing in any manner Article 708 of the Agreement, as defined in section 2 of the <i>Canada-United States Free Trade Agreement Implementation Act</i> , including, without limiting the generality of the foregoing, regulations exempting, for that purpose, subject to such terms and conditions as the Governor in Council deems appropriate, from the application of any provision of any Act or regulation, any person or class of persons or any good, animal or thing or class of goods, animals or things imported into Canada from the United States as defined in section 2 of that Act. 1988, c. 65, s. 46.	5.1 Le gouverneur en conseil peut prendre les règlements qu'il estime nécessaires à la mise en œuvre de l'article 708 de l'Accord au sens de l'article 2 de la <i>Loi de mise en œuvre de l'Accord de libre-échange Canada — États-Unis</i> , y compris des règlements soustrayant, sous réserve des conditions qu'il estime indiquées, à l'application de tout ou partie d'une loi ou d'un règlement toute personne ou tout groupe de personnes, ou encore toute marchandise, tout animal ou tout objet ou toute catégorie de marchandises, d'animaux ou d'objets importés au Canada en provenance des États-Unis au sens de l'article 2 de cette loi. 1988, ch. 65, art. 46.	Règlements
	6. [Repealed, 1994, c. 38, s. 7]	6. [Abrogé, 1994, ch. 38, art. 7]	

Department of Agriculture and Agri-Food Act, R.S.C. (1985), c. A-9

Agriculture et Agroalimentaire (ministère) — 6 octobre 2010

RELATED PROVISIONS

DISPOSITIONS CONNEXES

	— 1989, c. 27, s. 13		— 1989, ch. 27, art. 13	
Transfer of powers, duties and functions	13. Wherever under any Act, order, rule or regulation, or any contract, lease, licence or other document, any power, duty or function is vested in or exercisable by the Minister of Agriculture, the Deputy Minister of Agriculture or any officer of the Department of Agriculture, in relation to forestry or forest resources, the power, duty or function is vested in and shall be exercised by the Minister of Forestry, the Deputy Minister of Forestry or the appropriate officer of the Department of Forestry, as the case may be, unless the Governor in Council by order designates another Minister, Deputy Minister or officer of the public service of Canada to exercise that power, duty or function.		13. Les attributions conférées, dans les domaines des ressources forestières et de la foresterie et relevant du ministère des Forêts, en vertu d'une loi, d'un règlement, d'un décret, d'un arrêté, d'une ordonnance ou d'une règle, ou au titre d'un contrat, bail, permis ou autre document, au ministre ou au sous-ministre de l'Agriculture, ou à un fonctionnaire de ce ministère, sont transférées, selon le cas, au ministre, au sous-ministre ou au fonctionnaire compétent du ministère des Forêts, sauf décret du gouverneur en conseil chargeant de ces attributions un autre ministre, sous-ministre ou fonctionnaire de l'administration publique fédérale.	Transfert d'attributions
	— 1994, c. 38, s. 8		— 1994, ch. 38, art. 8	
Positions	8. (1) Nothing in this Act shall be construed as affecting the status of an employee who, immediately before the coming into force of this Act, occupied a position in the Department of Agriculture, except that the employee shall, on the coming into force of this Act, occupy that position in the Department of Agriculture and Agri-Food under the authority of the Deputy Minister of Agriculture and Agri-Food.		8. (1) La présente loi ne change rien à la situation des fonctionnaires qui, à la date d'entrée en vigueur de la présente loi, occupaient un poste au ministère de l'Agriculture, à la différence près qu'à compter de cette date, ils l'occupent au ministère de l'Agriculture et de l'Agroalimentaire, sous l'autorité du sous-ministre de l'Agriculture et de l'Agroalimentaire.	Postes
Definition of "employee"	(2) In this section, "employee" has the same meaning as in subsection 2(1) of the <i>Public Service Employment Act</i> .		(2) Au présent article, « fonctionnaire » s'entend au sens du paragraphe 2(1) de la <i>Loi sur l'emploi dans la fonction publique</i> .	Définition de « fonctionnaire »
	— 1994, c. 38, s. 9		— 1994, ch. 38, art. 9	
Appropriations	9. Any amount appropriated, for the fiscal year in which this Act comes into force, by an appropriation Act based on the Estimates for that year for defraying the charges and expenses of the public service of Canada within the Department of Agriculture and that, on the day on which this Act comes into force, is unexpended is deemed, on that day, to be an amount appropriated for defraying the charges and expenses of the Department of Agriculture and Agri-Food.		9. Les sommes affectées — et non engagées —, pour l'exercice en cours lors de l'entrée en vigueur de la présente loi, par toute loi de crédits consécutive aux prévisions budgétaires de cet exercice à la prise en charge des dépenses et frais d'administration publique du ministère de l'Agriculture sont réputées avoir été, à l'entrée en vigueur de la présente loi, affectées aux dépenses du ministère de l'Agriculture et de l'Agroalimentaire.	Crédits consécutifs aux prévisions budgétaires
	— 1994, c. 38, s. 10		— 1994, ch. 38, art. 10	
Transfer of powers, duties and functions	10. Wherever under any Act, order, rule or regulation, or any contract, lease, licence or other document, any power, duty or function is vested in or exercisable by (a) the Minister of Agriculture, (b) the Deputy Minister of Agriculture, or (c) any officer of the Department of Agriculture, the power, duty or function is vested in and shall be exercised by (d) the Minister of Agriculture and Agri-Food, (e) the Deputy Minister of Agriculture and Agri-Food, or		10. Les attributions conférées, en vertu d'une loi ou de ses textes d'application ou au titre d'un contrat, bail, permis ou autre document, au ministre ou au sous-ministre de l'Agriculture, ou à un fonctionnaire de ce ministère, sont exercées, selon le cas, par le ministre ou le sous-ministre de l'Agriculture et de l'Agroalimentaire, ou par le fonctionnaire compétent de ce ministère, sauf décret du gouverneur en conseil chargeant de ces attributions un autre ministre ou sous-ministre, ou un fonctionnaire d'un autre ministère ou secteur de l'administration publique fédérale.	Attributions

Department of Agriculture and Agri-Food Act, R.S.C. (1985), c. A-9

Agriculture and Agri-Food, Department of — October 6, 2010

(f) the appropriate officer of the Department of
Agriculture and Agri-Food,

as the case may be, unless the Governor in Council
by order designates another Minister, Deputy Minister
or officer of the public service of Canada to exercise
that power, duty or function.



CANADA

CONSOLIDATION

CODIFICATION

Department of Health Act Loi sur le ministère de la Santé

S.C. 1996, c. 8

L.C. 1996, ch. 8

Current to October 6, 2010

À jour au 6 octobre 2010

OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit:

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications
comme élément
de preuve

Inconsistencies
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité
— lois

Department of Health Act, S.C. 1996, c. 8, ss.1-4



1996, c. 8

1996, ch. 8

An Act to establish the Department of Health
and to amend and repeal certain Acts

Loi constituant le ministère de la Santé et
modifiant ou abrogeant certaines lois

[Assented to 29th May 1996]

[Sanctionnée le 29 mai 1996]

Her Majesty, by and with the advice and
consent of the Senate and House of Commons
of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consente-
ment du Sénat et de la Chambre des communes
du Canada, édicte :

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Department
of Health Act*.

1. *Loi sur le ministère de la Santé.*

Titre abrégé

ESTABLISHMENT OF THE DEPARTMENT

MISE EN PLACE

Department
established

2. (1) There is hereby established a depart-
ment of the Government of Canada, called the
Department of Health, over which the Minister
of Health, appointed by commission under the
Great Seal, shall preside.

2. (1) Est constitué le ministère de la Santé,
placé sous l'autorité du ministre de la Santé.
Celui-ci est nommé par commission sous le
grand sceau.

Constitution du
ministère

Minister

(2) The Minister holds office during plea-
sure and has the management and direction of
the Department.

(2) Le ministre occupe sa charge à titre amo-
vable; il assure la direction et la gestion du mi-
nistère.

Ministre

DEPUTY HEAD

ADMINISTRATEUR GÉNÉRAL

Deputy head

3. The Governor in Council may appoint an
officer, called the Deputy Minister of Health, to
hold office during pleasure and to be the deputy
head of the Department.

3. Le gouverneur en conseil peut nommer, à
titre amovible, un sous-ministre de la Santé; ce-
lui-ci est l'administrateur général du ministère.

Administrateur
général

POWERS, DUTIES AND FUNCTIONS OF
THE MINISTER

POUVOIRS ET FONCTIONS DU MINISTRE

Powers, duties
and functions

4. (1) The powers, duties and functions of
the Minister extend to and include all matters
over which Parliament has jurisdiction relating
to the promotion and preservation of the health
of the people of Canada not by law assigned to
any other department, board or agency of the
Government of Canada.

4. (1) Les pouvoirs et fonctions du ministre
s'étendent d'une façon générale à tous les do-
maines de compétence du Parlement liés à la
promotion et au maintien de la santé de la po-
pulation ne ressortissant pas de droit à d'autres
ministères ou organismes fédéraux.

Attributions

Department of Health Act, S.C. 1996, c. 8, ss.1-4

Department of Health — October 6, 2010

Particulars	Attributions
<p>(2) Without restricting the generality of subsection (1), the Minister's powers, duties and functions relating to health include the following matters:</p> <p>(a) the administration of such Acts of Parliament and of orders or regulations of the Government of Canada as are not by law assigned to any other department of the Government of Canada or any minister of that Government relating in any way to the health of the people of Canada;</p> <p>(a.1) the promotion and preservation of the physical, mental and social well-being of the people of Canada;</p> <p>(b) the protection of the people of Canada against risks to health and the spreading of diseases;</p> <p>(c) investigation and research into public health, including the monitoring of diseases;</p> <p>(d) the establishment and control of safety standards and safety information requirements for consumer products and of safety information requirements for products intended for use in the workplace;</p> <p>(e) the protection of public health on railways, ships, aircraft and all other methods of transportation, and their ancillary services;</p> <p>(f) the promotion and preservation of the health of the public servants and other employees of the Government of Canada;</p> <p>(g) the enforcement of any rules or regulations made by the International Joint Commission, promulgated pursuant to the treaty between the United States of America and His Majesty, King Edward VII, relating to boundary waters and questions arising between the United States and Canada, in so far as they relate to public health;</p> <p>(h) subject to the <i>Statistics Act</i>, the collection, analysis, interpretation, publication and distribution of information relating to public health; and</p> <p>(i) cooperation with provincial authorities with a view to the coordination of efforts made or proposed for preserving and improving public health.</p>	<p>(2) Les attributions du ministre en matière de santé comprennent notamment :</p> <p>a) l'exécution des lois et décrets ou règlements fédéraux ne ressortissant pas de droit à d'autres ministères fédéraux ou à l'un de leurs titulaires, et touchant de quelque manière que ce soit à la santé de la population;</p> <p>a.1) la promotion et le maintien du bien-être physique, mental et social de la population;</p> <p>b) la protection de la population contre la propagation de la maladie et les risques pour la santé;</p> <p>c) les enquêtes et les recherches sur la santé publique, y compris le contrôle suivi des maladies;</p> <p>d) l'établissement et le contrôle des normes de sécurité des produits de consommation ainsi que de l'information relative à la sécurité dont ceux-ci et les produits destinés à l'usage en milieu de travail doivent être accompagnés;</p> <p>e) la protection de la santé publique, tant à bord des trains, navires, aéronefs et autres moyens de transport que dans leurs services auxiliaires;</p> <p>f) la promotion et le maintien de la santé des fonctionnaires et autres agents de l'État;</p> <p>g) l'application, dans la mesure où ils touchent la santé publique, des règles ou règlements pris par la Commission mixte internationale et promulgués aux termes du traité signé entre les États-Unis et Sa Majesté le roi Édouard VII au sujet des eaux limitrophes et des questions d'intérêt commun pour le Canada et les États-Unis;</p> <p>h) sous réserve de la <i>Loi sur la statistique</i>, la collecte, l'analyse, l'interprétation, la publication et la diffusion de l'information sur la santé publique;</p> <p>i) la coopération avec les autorités provinciales en vue de coordonner les efforts visant à maintenir et à améliorer la santé publique.</p>

Department of National Health and Welfare Act, R.S.C. (1985), c. N-10

**DEPARTMENT OF NATIONAL HEALTH AND WELFARE ACT
(REPEALED JULY 12, 1996)**

R.S.C. 1985, Chap. N-10

Amended 1994, c. 31, s. 19; in force June 23, 1994

Repealed 1996, c. 11, s. 105; brought into force July 12, 1996 by SI/96-70, Can. Gaz., Part II, July 24, 1996

An Act respecting the Department of National Health and Welfare

SHORT TITLE -- s. 1

Short title -- s. 1

1. This Act may be cited as the Department of National Health and Welfare Act (Repealed July 12, 1996). R.S., c. N-9, s. 1.

ESTABLISHMENT OF THE DEPARTMENT -- ss. 2 to 3

Department established -- s. 2(1)

2. (1) There is hereby established a department of the Government of Canada called the Department of National Health and Welfare over which the Minister of National Health and Welfare appointed by commission under the Great Seal shall preside.

Minister -- s. 2(2)

(2) The Minister holds office during pleasure and has the management and direction of the Department.

R.S., c. N-9, s. 3.

Deputy heads -- s. 3

3. The Governor in Council may appoint an officer, or two officers, called the Deputy Minister, or Deputy Ministers, of National Health and Welfare, to hold office during pleasure and to be the deputy head, or deputy heads, of the Department. R.S., c. N-9, s. 4.

POWERS, DUTIES AND FUNCTIONS OF THE MINISTER -- s. 4

Powers, duties and functions of Minister -- s. 4(1)

4. (1) The powers, duties and functions of the Minister extend to and include all matters relating to the promotion or preservation of the health, social security and social welfare of the people of Canada over which Parliament has jurisdiction.

Idem -- s. 4(2)

(2) Without restricting the generality of subsection (1), the Minister's powers, duties and functions concern in particular the following matters:

- (a) the administration of such Acts of Parliament and of orders or regulations of the Government of Canada as are not by law assigned to any other department of the Government of Canada or any minister thereof relating in any way to the health, social security and welfare of the people of Canada;
- (b) investigation and research into public health and welfare;
- (c) the inspection and medical care of seamen and the administration of marine hospitals and such other hospitals of the Government of Canada as may be committed to its administration by order of the Governor in Council;
- (d) the supervision, as regards the public health, of railways, boats, ships, aircraft and all other methods of transportation, and their ancillary services;
- (e) the promotion and conservation of the health of the public servants and other Government employees;
- (f) the enforcement of any rules or regulations made by the International Joint Commission, promulgated pursuant to the treaty between the United States of America and His Majesty, King Edward VII, relating to boundary waters and questions arising between the United States and Canada, so far as they relate to public health;
- (g) subject to the Statistics Act, the collection, publication and distribution of information relating to the public health, improved sanitation and social and industrial conditions affecting the health and lives of the people; and
- (h) cooperation with provincial authorities with a view to the coordination of efforts made or proposed for preserving and improving the public health and providing for the social security and welfare of the people of Canada.

BOARDS, COMMITTEES AND COUNCILS -- s. 5

Boards, committees and councils -- s. 5

5. The Governor in Council may establish such boards, committees and councils as he deems necessary to assist and advise the Minister and to cooperate with provincial authorities for the purposes of this Act. R.S., c. N-9, s. 6.

NATIONAL COUNCIL OF WELFARE -- ss. 6 to 10

National Council of Welfare -- s. 6

6. There is hereby established a council called the National Council of Welfare consisting of a chairman and not more than twenty other members to be appointed by the Governor in Council to hold office during pleasure for such term, not exceeding three years, as will ensure as far as possible the expiration in any one year of the terms of appointment of fewer than half of the members so appointed. R.S., c. N-9, s. 8.

Eligibility for re-appointment -- s. 7

7. A retiring member of the National Council of Welfare is eligible for re-appointment to the Council. R.S., c. N-9, s. 8.

Remuneration and expenses -- s. 8

8. Each member of the National Council of Welfare shall be paid such remuneration as may be approved by the Governor in Council and is entitled to be paid reasonable travel and other expenses incurred by him while absent from his ordinary place of residence in the course of his duties under this Act. R.S., c. N-9, s. 9.

Duties and powers -- s. 9

9. It is the function of the National Council of Welfare to advise the Minister in respect of such matters relating to welfare as the Minister may refer to the Council for its consideration or the Council considers appropriate. R.S., c. N-9, s. 10.

Meetings -- s. 10

10. The National Council of Welfare shall meet at such times and places as the Minister may direct. R.S., c. N-9, s. 10.

PROVINCIAL JURISDICTION -- s. 11

Provincial or municipal boards not affected -- s. 11

11. Nothing in this Act or in any regulations made hereunder authorizes the Minister or any officer or employee of the Department to exercise any jurisdiction or control over any provincial or municipal board of health or other health authority operating under the laws of any province. R.S., c. N-9, s. 11.

REGULATIONS AND PUNISHMENT -- s. 12

Regulations and punishment -- s. 12

12. The Governor in Council may make regulations to give effect to and carry out the objects of this Act and may impose punishment for contravention of any such regulation by way of fine not exceeding two hundred dollars or imprisonment for a term not exceeding three months enforceable on summary conviction. R.S., c. N-9, s. 12.

ANNUAL REPORT -- s. 13

Annual report -- s. 13

13. The Minister shall submit annually a report to Parliament in such form as may be prescribed by the Governor in Council. R.S., c. N-9, s. 13.



CANADA

CONSOLIDATION

CODIFICATION

Experimental Farm Stations Act

Loi sur les stations agronomiques

CHAPTER E-16

CHAPITRE E-16

Current to October 6, 2010

À jour au 6 octobre 2010

Experimental Farm Stations Act, R.S.C. 1985, c. E-16

OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications
comme élément
de preuve

Inconsistencies
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité
— lois

Experimental Farm Stations Act, R.S.C. 1985, c. E-16



CHAPTER E-16

CHAPITRE E-16

An Act respecting experimental farm stations

Loi concernant les stations agronomiques

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Experimental Farm Stations Act*.

R.S., c. E-14, s. 1.

1. *Loi sur les stations agronomiques*.

S.R., ch. E-14, art. 1.

Titre abrégé

INTERPRETATION

DÉFINITIONS

Definitions

2. In this Act,

"farm station"
« station »

"farm station" means an experimental farm station established under this Act;

"Minister"
« ministre »

"Minister" means the Minister of Agriculture and Agri-Food.

R.S., 1985, c. E-16, s. 2; 1994, c. 38, s. 25.

2. Les définitions qui suivent s'appliquent à la présente loi.

« ministre » Le ministre de l'Agriculture et de l'Agroalimentaire.

« station » Station agronomique établie en vertu de la présente loi.

L.R. (1985), ch. E-16, art. 2; 1994, ch. 38, art. 25.

Définitions

« ministre »
"Minister"

« station »
"farm station"

ESTABLISHMENT OF FARM STATIONS

ÉTABLISSEMENT

Principal and
regional farm
stations

3. (1) The Governor in Council may establish a farm station for

(a) the Provinces of Ontario and Quebec jointly, which shall be the principal or central farm station;

(b) the Provinces of Nova Scotia, New Brunswick and Prince Edward Island jointly;

(c) the Province of British Columbia;

(d) the Province of Manitoba;

(e) the Provinces of Saskatchewan and Alberta and the Northwest Territories and Nunavut jointly; and

(f) the Province of Newfoundland.

3. (1) Le gouverneur en conseil peut établir une station :

a) commune pour les provinces d'Ontario et de Québec, laquelle constitue la station principale ou centrale;

b) commune pour les provinces de la Nouvelle-Écosse, du Nouveau-Brunswick et de l'Île-du-Prince-Édouard;

c) pour la province de la Colombie-Britannique;

d) pour la province du Manitoba;

e) commune pour les provinces de la Saskatchewan et d'Alberta, ainsi que pour les Territoires du Nord-Ouest et le territoire du Nunavut;

f) pour la province de Terre-Neuve.

Établissement de
stations

Control of farm
stations

(2) Farm stations shall be under the direction and control of the Minister, subject to such

(2) Sous réserve des règlements pris par le gouverneur en conseil, le ministre a toute autorité sur les stations.

L.R. (1985), ch. E-16, art. 3; 1993, ch. 28, art. 78.

Direction des
stations

Experimental Farm Stations Act, R.S.C. 1985, c. E-16

Experimental Farm Stations — October 6, 2010

	regulations as are made by the Governor in Council.	
	R.S., 1985, c. E-16, s. 3; 1993, c. 28, s. 78	
Land for farm stations	<p>4. The Governor in Council may, for the purpose of establishing farm stations,</p> <p>(a) acquire an extent of land in the vicinity of the seat of Government, for the central farm station, and an extent of land in any one of the Provinces of Nova Scotia, New Brunswick or Prince Edward Island, and an extent of land in the Province of British Columbia, for the farm stations mentioned in paragraphs 3(1)(b) and (c);</p> <p>(b) set apart in the Province of Manitoba, and in any one of the Provinces of Saskatchewan and Alberta and the Northwest Territories and Nunavut, such tracts of unoccupied available public lands, being the property of Canada, as are necessary for the farm stations mentioned in paragraphs 3(1)(d) and (e); and</p> <p>(c) acquire such other areas of land as may be necessary for the establishment of such other farm stations, or for additions to existing farm stations, as may be considered advisable and in the public interest.</p> <p>R.S., 1985, c. E-16, s. 4; 1993, c. 28, s. 78.</p>	<p>4. Le gouverneur en conseil peut, en vue de l'établissement de stations :</p> <p>a) acquérir un terrain pour la station centrale, dans les environs du siège du gouvernement, un pour la station visée à l'alinéa 3(1)b), dans l'une des provinces qui y sont nommées, et un pour la station visée à l'alinéa 3(1)c), dans la province de la Colombie-Britannique;</p> <p>b) constituer en réserves foncières, respectivement dans la province du Manitoba et dans l'une des provinces nommées à l'alinéa 3(1)e) — ou les Territoires du Nord-Ouest ou le territoire du Nunavut —, les terres domaniales inoccupées et sans affectation qui sont nécessaires pour les stations visées aux alinéas 3(1)d) et e);</p> <p>c) acquérir, s'il le juge souhaitable et dans l'intérêt public, tous autres terrains nécessaires à l'établissement d'autres stations ou à l'agrandissement de stations existantes.</p> <p>L.R. (1985), ch. E-16, art. 4; 1993, ch. 28, art. 78.</p> <p>Acquisition de terrains</p>
Land for tree planting and timber	<p>5. The Governor in Council may set apart, for the purpose of tree planting and timber growing, tracts of land in each of</p> <p>(a) that portion of the Province of British Columbia known as the Railway Belt,</p> <p>(b) the Province of Manitoba,</p> <p>(c) the Province of Saskatchewan,</p> <p>(d) the Province of Alberta,</p> <p>(e) the Northwest Territories, and</p> <p>(f) Nunavut,</p> <p>not exceeding ten sections in any of the areas listed in paragraphs (a) to (e).</p> <p>R.S., 1985, c. E-16, s. 5; 1993, c. 28, s. 78.</p>	<p>5. Le gouverneur en conseil peut également constituer en réserves foncières, en vue de la plantation d'arbres et d'opérations sylvicoles, des étendues de terre d'au plus dix sections dans :</p> <p>a) la partie de la province de la Colombie-Britannique désignée sous le nom de Zone de chemin de fer;</p> <p>b) la province du Manitoba;</p> <p>c) la province de la Saskatchewan;</p> <p>d) la province d'Alberta;</p> <p>e) les Territoires du Nord-Ouest;</p> <p>f) le territoire du Nunavut.</p> <p>L.R. (1985), ch. E-16, art. 5; 1993, ch. 28, art. 78.</p> <p>Terrain pour plantation d'arbres et opérations sylvicoles</p>
Expropriation Act to apply	<p>6. For the purpose of the acquiring of lands for the purposes of this Act, all the powers respecting the acquiring and taking possession of land conferred by the <i>Expropriation Act</i> are hereby conferred on the Minister, and all the provisions of that Act respecting the compensa-</p>	<p>6. Pour l'acquisition des terres nécessaires à l'application de la présente loi, le ministre dispose des pouvoirs conférés par la <i>Loi sur l'expropriation</i> relativement à l'acquisition et à la prise de possession de biens-fonds; les dispositions de cette loi relatives à l'indemnité à verser</p> <p>Application de la Loi sur l'expropriation</p>

Experimental Farm Stations Act, R.S.C. 1985, c. E-16

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	tion to be awarded for lands acquired thereunder apply to lands acquired under this Act. R.S., c. E-14, s. 6.	pour les biens-fonds acquis sous son régime s'appliquent aux terres acquises au titre de la présente loi. S.R., ch. E-14, art. 6; S.R., ch. 16(1 ^{re} suppl.), art. 43.	
	STAFF	PERSONNEL	
Director and employees	7. (1) A director and such other officers, clerks and employees as are necessary for each farm station may be appointed in the manner authorized by law to hold office during pleasure.	7. (1) Le personnel — directeur, agents et personnel de soutien — nécessaire pour chaque station est nommé à titre amovible et conformément à la loi.	Nomination
Salaries	(2) The salaries of the director and other officers, clerks and employees of each farm station shall be fixed according to the scale therefor provided by law. R.S., c. E-14, s. 7	(2) Le personnel reçoit la rémunération fixée selon l'échelle des salaires prévue à la loi. S.R., ch. E-14, art. 7.	Rémunération
	DUTIES OF OFFICERS	FONCTIONS DES AGENTS	
Duties of officers	8. Such officers of each farm station as are charged with the duty by the Minister shall (a) conduct research and verify experiments designed to test the relative value, for all purposes, of different breeds of stock and their adaptability to the varying climatic or other conditions that prevail in the various provinces and in the Northwest Territories and Nunavut; (b) study the economic questions involved in the production of butter and cheese; (c) test the merits, hardiness and adaptability of new or untried varieties of wheat or other cereals, and of field crops, grasses and forage-plants, fruits, vegetables, plants and trees, and distribute among persons engaged in farming, gardening or fruit growing, on such conditions as are prescribed by the Minister, samples of the surplus of such products as are considered to be specially worthy of introduction; (d) analyse fertilizers, whether natural or artificial, and conduct experiments with those fertilizers, in order to test their comparative value as applied to crops of different kinds; (e) study the composition and digestibility of foods for domestic animals; (f) conduct experiments in the planting of trees for timber and for shelter;	8. Les agents des stations s'acquittent des tâches que leur assigne le ministre, parmi les suivantes: a) faire des recherches et vérifier des expériences visant à établir la valeur relative, à tous égards, des différentes races d'animaux et leur adaptabilité aux conditions variées, notamment climatiques, des diverses provinces, des Territoires du Nord-Ouest et du territoire du Nunavut; b) étudier les questions économiques liées à la production de beurre et de fromage; c) vérifier la valeur, la rusticité et l'adaptabilité de variétés nouvelles ou non encore expérimentées de blé ou d'autres céréales, ainsi que des grandes cultures, des graminées et plantes fourragères, des fruits, des légumes, des plantes et des arbres, et distribuer aux agriculteurs, horticulteurs et arboriculteurs, aux conditions fixées par le ministre, des échantillons des produits en excédent qui sont jugés particulièrement dignes de vulgarisation; d) analyser des engrais, naturels ou artificiels, et faire des expériences afin de comparer leur valeur relative en fonction de diverses cultures; e) étudier la composition et la digestibilité des aliments destinés aux animaux domestiques;	Tâches des agents

Experimental Farm Stations Act, R.S.C. 1985, c. E-16

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(g) study the diseases to which cultivated plants and trees are subject and the ravages of destructive insects, and ascertain and test the most useful preventives and remedies to be used in each case;

(h) study the diseases to which domestic animals are subject;

(i) ascertain the vitality and purity of agricultural seeds; and

(j) conduct any other experiments and research bearing on the agricultural industry of Canada that are approved by the Minister.

R.S., 1985, c. E-16, s. 8; 1993, c. 28, s. 78.

f) effectuer des expériences de plantation d'arbres en vue de la production de bois d'œuvre ou d'ouvrages de protection;

g) étudier les maladies auxquelles sont exposés les plantes et les arbres cultivés, examiner les ravages causés par les insectes destructeurs, déterminer les moyens préventifs et remèdes les plus utiles à employer dans chaque cas et les vérifier;

h) étudier les maladies frappant les animaux domestiques;

i) vérifier la vitalité et la pureté des semences agricoles;

j) faire, avec l'accord du ministre, toutes autres expériences portant sur l'agriculture canadienne.

L.R. (1985), ch. E-16, art. 8; 1993, ch. 28, art. 78.

Quarterly
reports

9. The officer in charge of each farm station, or such other officer at each farm station as the Minister designates, shall, for the purpose of making the results of the work done thereat immediately useful, prepare and transmit through the director of that farm station to the Minister, for publication, at least once in every three months, a bulletin or progress report.

R.S., c. E-14, s. 10.

9. Afin d'assurer la vulgarisation immédiate des résultats des travaux qui s'y effectuent, le responsable de chaque station, ou tout autre agent d'une station désigné par le ministre, prépare, pour publication, et transmet au ministre, par l'intermédiaire du directeur, un bulletin ou rapport sur l'état des travaux au moins une fois par trimestre.

S.R., ch. E-14, art. 10.

Rapports
trimestriels

Annual report

10. The officer in charge of each farm station shall prepare and transmit through the director of that farm station to the Minister, on or before December 31 in each year, a full and detailed report of the work accomplished and of the revenue and expenditure at that farm station, which report shall be laid before both Houses of Parliament within the first twenty-one days of the next session.

R.S., c. E-14, s. 12.

10. Au plus tard le 31 décembre, le responsable de la station établit et transmet au ministre, par l'intermédiaire du directeur, un rapport annuel détaillé des travaux réalisés, ainsi que des recettes et dépenses de la station, pour dépôt devant les deux chambres du Parlement dans les vingt et un premiers jours de la session suivante.

S.R., ch. E-14, art. 12.

Rapport annuel

Tobacco Act, S.C. 1997, c. 13, ss. 1-33



CANADA

CONSOLIDATION

CODIFICATION

Tobacco Act

Loi sur le tabac

S.C. 1997, c. 13

L.C. 1997, ch. 13

Current to October 6, 2010

À jour au 6 octobre 2010

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OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications
comme élément
de preuve

Inconsistencies
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité
— lois



1997, c. 13

1997, ch. 13

An Act to regulate the manufacture, sale, labelling and promotion of tobacco products, to make consequential amendments to another Act and to repeal certain Acts

Loi réglementant la fabrication, la vente, l'étiquetage et la promotion des produits du tabac, modifiant une autre loi en conséquence et abrogeant certaines lois

[Assented to 25th April 1997]

[Sanctionnée le 25 avril 1997]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

SHORT TITLE

TITRE ABRÉGÉ

Short title 1. This Act may be cited as the *Tobacco Act*.

1. *Loi sur le tabac*.

Titre abrégé

INTERPRETATION

DÉFINITIONS

Definitions 2. The definitions in this section apply in this Act.

2. Les définitions qui suivent s'appliquent à la présente loi.

Définitions

"accessory"
« accessoire » "accessory" means a product that may be used in the consumption of a tobacco product, including a pipe, cigarette holder, cigar clip, lighter and matches.

« accessoire » Produit qui peut être utilisé pour la consommation d'un produit du tabac, notamment une pipe, un fume-cigarettes, un coupe-cigare, des allumettes ou un briquet.

« accessoire »
"accessory"

"additive"
« additif » "additive" means an ingredient other than tobacco leaves.

« additif » Ingrédient autre que les feuilles de tabac.

« additif »
"additive"

"analyst"
« analyste » "analyst" means a person designated as an analyst under subsection 34(1).

« analyste » Personne désignée à titre d'analyste aux termes du paragraphe 34(1).

« analyste »
"analyst"

"blunt wrap"
« feuille d'enveloppe » "blunt wrap" means a sheet, including one that is rolled, that is composed of natural or reconstituted tobacco and that is ready to be filled.

« détaillant » Personne qui exploite une entreprise consistant en tout ou en partie dans la vente de produits du tabac au consommateur.

« détaillant »
"retailer"

"brand element"
« élément de marque » "brand element" includes a brand name, trademark, trade-name, distinguishing guise, logo, graphic arrangement, design or slogan that is reasonably associated with, or that evokes, a product, a service or a brand of product or service, but does not include a colour.

« élément de marque » Sont compris dans les éléments de marque un nom commercial, une marque de commerce, un logo, un signe distinctif, un dessin ou un slogan qu'il est raisonnablement possible d'associer à un produit, à un service ou à une marque d'un produit ou d'un service ou qui les évoque, à l'exception d'une couleur.

« élément de marque »
"brand element"

"emission"
« émission » "emission" means a substance that is produced when a tobacco product is used.

"entity" « entité »	"entity" includes a corporation, firm, partnership, association, society, trust or other organization, whether incorporated or not.	« emballage » [Abrogée, 2009, ch. 27, art. 2] « émission » Substance qui est produite quand un produit du tabac est utilisé.	« émission » "emission"
"furnish" « fournir »	"furnish" means to sell, lend, assign, give or send, with or without consideration, or to barter or deposit with another person for the performance of a service.	« entité » Personne morale, firme, société de personnes, fiducie, association ou autre organisation, dotée ou non de la personnalité morale.	« entité » "entity"
"ingredient" « ingrédient »	"ingredient" means tobacco leaves and any substance used in the manufacture of a tobacco product or its components, including any substance used in the manufacture of that substance.	« fabricant » Est assimilée au fabricant de produits du tabac toute entité qui a des liens avec lui, notamment qui le contrôle ou qui est contrôlée par lui ou qui est contrôlée par la même entité que celle qui le contrôle.	« fabricant » "manufacturer"
"inspector" « inspecteur »	"inspector" means a person designated as an inspector under subsection 34(1).	« fabriquer » Est assimilé à l'acte de fabriquer le produit du tabac le fait de le distribuer, de l'importer, de l'emballer ou de l'étiqueter pour le vendre au Canada.	« fabriquer » "manufacture"
"little cigar" « petit cigare »	"little cigar" means a roll or tubular construction that (a) is intended for smoking; (b) contains a filler composed of natural or reconstituted tobacco; (c) has a wrapper, or a binder and a wrapper, composed of natural or reconstituted tobacco; and (d) has a cigarette filter or weighs no more than 1.4 g, excluding the weight of any mouthpiece or tip. It includes any tobacco product that is prescribed to be a little cigar.	« feuille d'enveloppe » Feuille, y compris une feuille roulée, prête à être remplie et composée notamment de tabac naturel ou reconstitué. « fournir » Vendre, prêter, céder, donner ou expédier à un autre, à titre gratuit ou onéreux, ou échanger contre un produit ou un service. « ingrédient » S'entend des feuilles de tabac et de toute substance utilisée dans la fabrication d'un produit du tabac ou de ses composants et vise notamment les substances utilisées dans la fabrication d'une telle substance.	« feuille d'enveloppe » "blunt wrap"
"manufacture" « fabriquer »	"manufacture", in respect of tobacco products, includes the packaging, labelling, distributing and importing of tobacco products for sale in Canada.	« inspecteur » Personne désignée à titre d'inspecteur aux termes du paragraphe 34(1). « jeune » Personne âgée de moins de dix-huit ans.	« inspecteur » "inspector"
"manufacturer" « fabricant »	"manufacturer", in respect of tobacco products, includes any entity that is associated with a manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer.	« ministre » Le ministre de la Santé.	« ministre » "Minister"
"Minister" « ministre »	"Minister" means the Minister of Health.	« petit cigare » Rouleau ou article de forme tubulaire qui remplit les conditions suivantes : a) il est destiné à être fumé; b) il comporte une tripe composée notamment de tabac naturel ou reconstitué; c) il comporte soit une sous-cape et une cape, soit une cape qui sont composées notamment de tabac naturel ou reconstitué; d) il comporte un bout-filtre de cigarette ou pèse au plus 1,4 gramme, sans le poids des embouts.	« petit cigare » "little cigar"
"prescribed" Version anglaise seulement	"prescribed" means prescribed by regulation.		
"retailer" « détaillant »	"retailer" means a person who is engaged in a business that includes the sale of a tobacco product to consumers.		
"sell" « vendre »	"sell" includes offer for sale and expose for sale.	La présente définition vise aussi les produits du tabac que les règlements désignent comme des petits cigares.	

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"tobacco product" « produit du tabac »	"tobacco product" means a product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves. It includes cigarette papers, tubes and filters but does not include any food, drug or device that contains nicotine to which the <i>Food and Drugs Act</i> applies.	« produit du tabac » Produit fabriqué à partir du tabac, y compris des feuilles et des extraits de celles-ci; y sont assimilés les tubes, papiers et filtres à cigarette. Sont toutefois exclus de la présente définition les aliments, drogues et instruments contenant de la nicotine régis par la <i>Loi sur les aliments et drogues</i> .	« produit du tabac » "tobacco product"
"young person" « jeune »	"young person" means a person under eighteen years of age. 1997, c. 13, s. 2; 2009, c. 27, s. 2.	« vendre » Est assimilé à l'acte de vendre le fait de mettre en vente ou d'exposer pour la vente. 1997, ch. 13, art. 2; 2009, ch. 27, art. 2.	« vendre » "sell"
GOVERNOR IN COUNCIL'S POWERS		POUVOIRS DU GOUVERNEUR EN CONSEIL	
Regulations — little cigar	2.1 (1) The Governor in Council may make regulations prescribing any tobacco product to be a little cigar for the purpose of the definition "little cigar".	2.1 (1) Le gouverneur en conseil peut, par règlement, désigner tout produit du tabac comme petit cigare pour l'application de la définition de ce terme.	Règlements — petit cigare
Order in council — little cigar	(2) The Governor in Council may, by order, amend the definition "little cigar" by replacing the weight set out in that definition by a weight that is not less than 1.4 g. 2009, c. 27, s. 3.	(2) Le gouverneur en conseil peut, par décret, remplacer le poids qui figure à la définition de «petit cigare» par un poids égal ou supérieur à 1,4 gramme. 2009, ch. 27, art. 3.	Décret — petit cigare
HER MAJESTY		SA MAJESTÉ	
Binding on Her Majesty	3. This Act is binding on Her Majesty in right of Canada or a province.	3. La présente loi lie Sa Majesté du chef du Canada ou d'une province.	Obligation de Sa Majesté
PURPOSE		OBJET	
Purpose of Act	4. The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular, (a) to protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases; (b) to protect young persons and others from inducements to use tobacco products and the consequent dependence on them; (c) to protect the health of young persons by restricting access to tobacco products; and (d) to enhance public awareness of the health hazards of using tobacco products.	4. La présente loi a pour objet de s'attaquer, sur le plan législatif, à un problème qui, dans le domaine de la santé publique, est grave et d'envergure nationale et, plus particulièrement : (a) de protéger la santé des Canadiennes et des Canadiens compte tenu des preuves établissant, de façon indiscutable, un lien entre l'usage du tabac et de nombreuses maladies débilitantes ou mortelles; (b) de préserver notamment les jeunes des incitations à l'usage du tabac et du tabagisme qui peut en résulter; . (c) de protéger la santé des jeunes par la limitation de l'accès au tabac; (d) de mieux sensibiliser la population aux dangers que l'usage du tabac présente pour la santé.	Santé publique

PART I TOBACCO PRODUCTS		PARTIE I PRODUITS DU TABAC	
Product standards	5. No person shall manufacture a tobacco product that does not conform with the standards established by the regulations.	5. Il est interdit de fabriquer un produit du tabac qui n'est pas conforme aux normes établies par règlement.	Normes réglementaires
Prohibition — manufacture	5.1 (1) No person shall use an additive set out in column 1 of the schedule in the manufacture of a tobacco product set out in column 2.	5.1 (1) Il est interdit d'utiliser un additif visé à la colonne 1 de l'annexe dans la fabrication d'un produit du tabac visé à la colonne 2.	Fabrication interdite
Exception — trade-mark or marking	(2) Subsection (1) does not prohibit the use of a colouring agent to depict a trade-mark on a tobacco product or to display a marking required under this or any other Act of Parliament or of the legislature of a province or for any other prescribed purpose. 2009, c. 27, s. 4.	(2) Le paragraphe (1) n'a pas pour effet d'interdire l'utilisation d'un agent colorant pour représenter une marque de commerce sur un produit du tabac, pour faire figurer sur un tel produit une inscription exigée sous le régime de la présente loi ou d'une autre loi fédérale ou provinciale ou pour tout autre motif prévu par règlement. 2009, ch. 27, art. 4.	Exception — marque de commerce ou inscription
Prohibition — sale	5.2 (1) No person shall sell a tobacco product set out in column 2 of the schedule that contains an additive set out in column 1.	5.2 (1) Il est interdit de vendre un produit du tabac visé à la colonne 2 de l'annexe qui contient un additif visé à la colonne 1.	Vente interdite
Exception	(2) Subsection (1) does not prohibit the sale of a tobacco product by reason only that the product contains a colouring agent used for a purpose referred to in subsection 5.1(2). 2009, c. 27, s. 5.	(2) Le paragraphe (1) n'a pas pour effet d'interdire la vente d'un produit du tabac du seul fait qu'il contient un agent colorant pour l'un des motifs visés au paragraphe 5.1(2). 2009, ch. 27, art. 5.	Exception
Information required from manufacturer	6. (1) Every manufacturer shall submit to the Minister, in the prescribed manner and within the prescribed time, information that is required by the regulations about tobacco products, their emissions and any research and development related to tobacco products and their emissions, whether the tobacco products are for sale or not.	6. (1) Le fabricant est tenu de transmettre au ministre, dans les délais et selon les modalités réglementaires, les renseignements exigés par les règlements en ce qui touche les produits du tabac, en vente ou non, leurs émissions et la recherche et le développement liés à ces produits et à ces émissions.	Fabricant — renseignements
Requests for supplementary information	(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information. 1997, c. 13, s. 6; 2009, c. 27, s. 6.	(2) Le ministre peut, sous réserve des règlements, demander des renseignements supplémentaires portant sur les mêmes sujets. Le fabricant est tenu de les lui transmettre. 1997, ch. 13, art. 6; 2009, ch. 27, art. 6.	Demandes de renseignements supplémentaires
Regulations	7. The Governor in Council may make regulations (a) establishing standards for tobacco products, including prescribing the amounts of substances that may be contained in the product or its emissions; (b) respecting test methods, including methods to assess conformity with the standards;	7. Le gouverneur en conseil peut prendre des règlements: a) établissant des normes applicables aux produits du tabac, notamment pour régir les quantités des substances que peuvent contenir les produits et leurs émissions; b) concernant les méthodes d'essai, notamment en ce qui touche la conformité des produits du tabac aux normes;	Règlements

(c) prescribing information that manufacturers must submit to the Minister about tobacco products and their emissions, including sales data and information on market research, product composition, ingredients, health effects, hazardous properties and brand elements;

(c.1) prescribing information that manufacturers must submit to the Minister about research and development related to tobacco products and their emissions, including information on market research, product composition, ingredients, health effects, hazardous properties and brand elements;

(c.2) respecting requests for supplementary information under subsection 6(2);

(c.3) respecting the prohibition under section 6.1, including providing for the suspension of the manufacture or sale of a tobacco product;

(d) prescribing the means, including electronic means, by which the information referred to in paragraphs (c) to (c.2) may be submitted to the Minister;

(d.1) prescribing anything that by this Part is to be prescribed; and

(e) generally for carrying out the purposes of this Part.

1997, c. 13, s. 7; 2009, c. 27, s. 8.

c) prévoyant les renseignements que le fabricant doit transmettre au ministre relativement aux produits du tabac et à leurs émissions, notamment des données sur la vente et des renseignements sur les études de marché et sur la composition, les ingrédients, les effets sur la santé, les propriétés dangereuses et les éléments de marque de ces produits;

c.1) prévoyant les renseignements que le fabricant doit transmettre au ministre relativement à la recherche et au développement liés aux produits du tabac et à leurs émissions, notamment des renseignements sur les études de marché et sur la composition, les ingrédients, les effets sur la santé, les propriétés dangereuses et les éléments de marque de ces produits;

c.2) concernant les demandes de renseignements supplémentaires visées au paragraphe 6(2);

c.3) concernant l'interdiction prévue à l'article 6.1, notamment en ce qui concerne la suspension de la fabrication et de la vente du produit du tabac en cause;

d) prévoyant les modalités de transmission des renseignements visés aux alinéas c) à c.2), notamment sous forme électronique;

d.1) prévoyant toute autre mesure réglementaire prévue par la présente partie;

e) prévoyant toute autre mesure nécessaire à l'application de la présente partie.

1997, ch. 13, art. 7; 2009, ch. 27, art. 8.

Amendment of schedule 7.1 (1) The Governor in Council may, by order, amend the schedule by adding, amending or deleting

(a) the name or description of an additive or tobacco product; or

(b) a reference to all tobacco products, with or without exceptions.

Description (2) An additive or tobacco product may be described by reference to a document produced by a body or person other than the Minister, either as the document exists on a particular date or as it is amended from time to time.

2009, c. 27, s. 9.

7.1 (1) Le gouverneur en conseil peut, par décret, modifier l'annexe par adjonction, modification ou suppression:

a) du nom ou de la description d'un additif ou d'un produit du tabac;

b) d'une mention générale visant tous les produits du tabac, avec ou sans exception.

(2) L'additif ou le produit du tabac peut être décrit par renvoi à un document produit par un organisme ou une personne autre que le ministre, soit dans sa version à une date donnée, soit avec ses modifications successives.

2009, ch. 27, art. 9.

Modification de l'annexe

Description

PART II ACCESS		PARTIE II ACCÈS	
Furnishing tobacco products	8. (1) No person shall furnish a tobacco product to a young person in a public place or in a place to which the public reasonably has access.	8. (1) Il est interdit, dans des lieux publics ou dans des lieux où le public a normalement accès, de fournir des produits du tabac à un jeune.	Fourniture de tabac aux jeunes
Defence	(2) A person shall not be found to have contravened subsection (1) if it is established that the person attempted to verify that the person was at least eighteen years of age by asking for and being shown documentation prescribed for the purposes of verifying age, and believed on reasonable grounds that the documentation was authentic.	(2) Une personne ne peut être reconnue coupable d'une infraction au paragraphe (1) s'il est établi qu'elle a tenté de vérifier si la personne avait au moins dix-huit ans en demandant et examinant une pièce d'identité conforme aux règlements et qu'elle avait des motifs raisonnables de croire que la pièce était authentique.	Moyen de défense
Signs	9. Every retailer shall post, at retail, in the prescribed place and manner, signs in the prescribed form and with the prescribed content, that inform the public that the sale or giving of a tobacco product to a young person is prohibited by law, or that contain a prescribed health message, unless that retailer is exempted by the regulations from the requirement to post the signs.	9. Sous réserve des exceptions prévues par règlement, le détaillant doit placer dans son établissement les affiches réglementaires, aux endroits prévus par règlement, ou comportant un message réglementaire relatif à la santé et précisant l'interdiction de la fourniture de produits du tabac aux jeunes.	Affiche
Minimum number of products in package	10. (1) No person shall import for sale in Canada, package, distribute or sell cigarettes, little cigars or blunt wraps except in a package that contains at least 20 cigarettes, little cigars or blunt wraps or, if a higher number is prescribed, at least the prescribed number.	10. (1) Il est interdit d'importer pour la vente au Canada, d'emballer, de distribuer ou de vendre des cigarettes, des petits cigares ou des feuilles d'enveloppe, sauf dans un emballage en contenant au moins vingt ou, si un nombre supérieur est prévu par règlement, au moins ce nombre.	Nombre minimal de produits par emballage
Other tobacco products	(2) No person shall import for sale in Canada, package, distribute or sell a tobacco product — other than cigarettes, little cigars or blunt wraps — that is prescribed for the purposes of this subsection, except in a package that contains at least the prescribed portions, number or quantity of the tobacco product. 1997, c. 13, s. 10; 2009, c. 27, s. 10.	(2) S'agissant d'un autre produit du tabac qui est visé par règlement d'application du présent paragraphe, il est interdit de l'importer pour le vendre au Canada, de l'emballer, de le distribuer ou de le vendre, sauf dans un emballage en contenant au moins les portions, le nombre ou la quantité réglementaires. 1997, ch. 13, art. 10; 2009, ch. 27, art. 10.	Autres produits du tabac
Self-service display	11. No person, unless exempted by the regulations, shall sell a tobacco product by means of a display that permits a person to handle the tobacco product before paying for it.	11. Il est interdit, sous réserve des exceptions prévues par règlement, de vendre des produits du tabac en les exposant de façon que les personnes puissent les prendre avant de les payer.	Libre-service
Dispensing device	12. No person shall furnish or permit the furnishing of a tobacco product by means of a device that dispenses tobacco products except where the device is in (a) a place to which the public does not reasonably have access; or	12. Il est interdit de fournir ou de laisser fournir des produits du tabac au moyen d'un appareil distributeur sauf si celui-ci : a) se trouve dans un lieu où le public n'a pas normalement accès;	Appareils distributeurs

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	(b) a bar, tavern or beverage room and has a prescribed security mechanism.	b) se trouve dans un bar, une taverne ou un établissement semblable et est muni d'un mécanisme de sécurité réglementaire.	
Deliver or mail	13. (1) No person shall, for consideration, cause a tobacco product to be delivered from one province to another or to be sent by mail unless the delivery or mailing is between manufacturers or retailers or the person is otherwise exempted by the regulations.	13. (1) Il est interdit de faire livrer, à titre onéreux, un produit du tabac d'une province à l'autre ou de le faire envoyer, à titre onéreux, par la poste, sauf entre des fabricants et des détaillants et sous réserve de toute autre exception prévue par règlement.	Livraison et envoi
Advertising an offer	(2) No person shall advertise an offer to deliver a tobacco product from one province to another or to mail a tobacco product.	(2) Il est interdit d'annoncer une offre de livraison d'un produit du tabac d'une province à l'autre ou d'envoi d'un produit du tabac par la poste.	Publication d'une offre
Regulations	14. The Governor in Council may make regulations (a) prescribing the documentation that may be used to verify the age of a person for the purposes of subsection 8(2); (b) exempting persons from the application of sections 9, 11 and 13; (c) prescribing signs that are required by section 9 to be posted, including their form, size, content, number and placement; (d) prescribing tobacco products for the purposes of subsection 10(2); (e) respecting exemptions from the application of section 12; (f) prescribing anything that by this Part is to be prescribed; and (g) generally for carrying out the purposes of this Part.	14. Le gouverneur en conseil peut, par règlement : a) préciser les documents qui peuvent servir à prouver l'âge d'une personne dans le cadre du paragraphe 8(2); b) préciser les personnes qui peuvent être exemptées de l'application des articles 9, 11 et 13; c) prévoir la forme, la taille et le contenu des affiches prévues à l'article 9, leur nombre et les endroits où elles doivent être placées; d) préciser les produits du tabac auxquels s'applique le paragraphe 10(2); e) régir les exemptions de l'application de l'article 12; f) prendre toute autre mesure d'ordre réglementaire prévue par la présente partie; g) prendre, de façon générale, les mesures nécessaires à l'application de la présente partie.	Règlements
<div>PART III LABELLING</div>			
Information required on packages	15. (1) No manufacturer or retailer shall sell a tobacco product unless the package containing it displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions, and about the health hazards and health effects arising from the use of the product or from its emissions.	15. (1) Il est interdit au fabricant et au détaillant de vendre un produit du tabac à moins que ne figure sur l'emballage, en la forme et selon les modalités réglementaires, l'information — exigée par les règlements — sur le produit et ses émissions ainsi que sur les dangers pour la santé et les effets sur celle-ci liés à l'usage du produit et à ses émissions.	Information — emballage
Information required on leaflet	(2) If required by the regulations, every manufacturer or retailer shall provide, in the prescribed form and manner, a leaflet that dis-	(2) Si les règlements l'exigent, le fabricant ou le détaillant est tenu de remettre, en la forme et selon les modalités réglementaires, un pros-	Information — prospectus

	plays the information required by the regulations about a tobacco product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.	pectus comportant l'information exigée par les règlements sur le produit et ses émissions ainsi que sur les dangers pour la santé et les effets sur celle-ci liés à l'usage du produit et à ses émissions.	
Attribution	(3) The information referred to in subsections (1) and (2) may be attributed to a prescribed person or body if the attribution is made in the prescribed manner.	(3) L'information visée aux paragraphes (1) et (2) peut être attribuée à un organe ou une personne désignés par règlement si l'attribution est faite selon les modalités réglementaires.	Attribution
Existing obligations saved	16. This Part does not affect any obligation of a manufacturer or retailer at law or under an Act of Parliament or of a provincial legislature to warn consumers of the health hazards and health effects arising from the use of tobacco products or from their emissions.	16. La présente partie n'a pas pour effet de libérer le fabricant ou le détaillant de toute obligation — qu'il peut avoir, au titre de toute règle de droit, notamment aux termes d'une loi fédérale ou provinciale — d'avertir les consommateurs des dangers pour la santé et des effets sur celle-ci liés à l'usage du produit et à ses émissions.	Maintien d'obligations existantes
Regulations	17. The Governor in Council may make regulations (a) respecting the information that must appear on packages and in leaflets about tobacco products and their emissions and the health hazards and health effects arising from the use of the products and from their emissions; (b) prescribing anything that by this Part is to be prescribed; and (c) generally for carrying out the purposes of this Part.	17. Le gouverneur en conseil peut, par règlement: a) régir l'information sur les produits du tabac et leurs émissions, et sur les dangers pour la santé et les effets sur celle-ci liés à l'usage du produit et à ses émissions qui doit figurer sur l'emballage ou que doit comporter le prospectus; b) prendre toute autre mesure d'ordre réglementaire prévue par la présente partie; c) prendre, de façon générale, les mesures nécessaires à l'application de la présente partie.	Règlements
PART IV PROMOTION		PARTIE IV PROMOTION	
Definition of "promotion"	18. (1) In this Part, "promotion" means a representation about a product or service by any means, whether directly or indirectly, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behaviours about the product or service.	18. (1) Dans la présente partie, «promotion» s'entend de la présentation, par tout moyen, d'un produit ou d'un service — y compris la communication de renseignements sur son prix ou sa distribution —, directement ou indirectement, susceptible d'influencer et de créer des attitudes, croyances ou comportements au sujet de ce produit ou service.	Définition de « promotion »
Application	(2) This Part does not apply to (a) a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts a tobacco product or tobacco product-related brand element, whatever the mode or form of its expression, if no consideration is given directly or indirectly for that	(2) La présente partie ne s'applique pas : a) aux œuvres littéraires, dramatiques, musicales, cinématographiques, artistiques, scientifiques ou éducatives — quels qu'en soient le mode ou la forme d'expression — sur ou dans lesquelles figure un produit du tabac ou un élément de marque d'un produit du tabac, sauf si un fabricant ou un détaillant a donné	Application

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	use or depiction in the work, production or performance;	une contrepartie, directement ou indirectement, pour la représentation du produit ou de l'élément de marque dans ces œuvres;	
	(b) a report, commentary or opinion in respect of a tobacco product or a brand of tobacco product if no consideration is given by a manufacturer or retailer, directly or indirectly, for the reference to the tobacco product or brand in that report, commentary or opinion; or	b) aux comptes rendus, commentaires et opinions portant sur un produit du tabac ou une marque d'un produit du tabac et relativement à ce produit ou à cette marque, sauf si un fabricant ou un détaillant a donné une contrepartie, directement ou indirectement, pour la mention du produit ou de la marque;	
	(c) a promotion by a tobacco grower or a manufacturer that is directed at tobacco growers, manufacturers, persons who distribute tobacco products or retailers but not, either directly or indirectly, at consumers.	c) aux promotions faites par un tabaculteur ou un fabricant auprès des tabaculteurs, des fabricants, des personnes qui distribuent des produits du tabac ou des détaillants, mais non directement ou indirectement auprès des consommateurs.	
Prohibition	19. No person shall promote a tobacco product or a tobacco product-related brand element except as authorized by this Act or the regulations.	19. Il est interdit de faire la promotion d'un produit du tabac ou d'un élément de marque d'un produit du tabac, sauf dans la mesure où elle est autorisée par la présente loi ou ses règlements.	Interdiction
False promotion	20. No person shall promote a tobacco product by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects or health hazards of the tobacco product or its emissions.	20. Il est interdit de faire la promotion d'un produit du tabac, y compris sur l'emballage de celui-ci, d'une manière fautive ou trompeuse ou susceptible de créer une fautive impression sur les caractéristiques, les effets sur la santé ou les dangers pour celle-ci du produit ou de ses émissions.	Promotion trompeuse
Testimonials or endorsements	21. (1) No person shall promote a tobacco product by means of a testimonial or an endorsement, however displayed or communicated.	21. (1) Il est interdit de faire la promotion d'un produit du tabac, y compris sur l'emballage de celui-ci, au moyen d'attestations ou de témoignages, quelle que soit la façon dont ils sont exposés ou communiqués.	Attestations et témoignages
Depiction of person	(2) For the purposes of subsection (1), the depiction of a person, character or animal, whether real or fictional, is considered to be a testimonial for, or an endorsement of, the product.	(2) Pour l'application du paragraphe (1), la représentation d'une personne, d'un personnage ou d'un animal, réel ou fictif, est considérée comme une attestation ou un témoignage.	Représentation
Exception	(3) This section does not apply to a trademark that appeared on a tobacco product for sale in Canada on December 2, 1996.	(3) Le présent article ne s'applique pas aux marques de commerce qui figurent sur un produit du tabac en vente au Canada le 2 décembre 1996.	Exception
Advertising	22. (1) Subject to this section, no person shall promote a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element of one or that evokes a tobacco product or a brand element.	22. (1) Il est interdit, sous réserve des autres dispositions du présent article, de faire la promotion d'un produit du tabac par des annonces qui représentent tout ou partie d'un produit du tabac, de l'emballage de celui-ci ou d'un élément de marque d'un produit du tabac, ou qui	Publicité

Tobacco Act, S.C. 1997, c. 13, ss. 1-33

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		évoquent le produit du tabac ou un élément de marque d'un produit du tabac.	
Exception	(2) Subject to the regulations, a person may advertise a tobacco product by means of information advertising or brand-preference advertising that is in (a) a publication that is provided by mail and addressed to an adult who is identified by name; or (b) [Repealed, 2009, c. 27, s. 11] (c) signs in a place where young persons are not permitted by law.	(2) Il est possible, sous réserve des règlements, de faire la publicité — publicité informative ou préférentielle — d'un produit du tabac : a) dans les publications qui sont expédiées par le courrier et qui sont adressées à un adulte désigné par son nom; b) [Abrogé, 2009, ch. 27, art. 11] c) sur des affiches placées dans des endroits dont l'accès est interdit aux jeunes par la loi.	Exception
Lifestyle advertising	(3) Subsection (2) does not apply to lifestyle advertising or advertising that could be construed on reasonable grounds to be appealing to young persons.	(3) Le paragraphe (2) ne s'applique pas à la publicité de style de vie ou à la publicité dont il existe des motifs raisonnables de croire qu'elle pourrait être attrayante pour les jeunes.	Publicité de style de vie
Definitions	(4) The definitions in this subsection apply in this section.	(4) Les définitions qui suivent s'appliquent au présent article.	Définitions
"brand-preference advertising" « publicité préférentielle »	"brand-preference advertising" means advertising that promotes a tobacco product by means of its brand characteristics.	« publicité de style de vie » Publicité qui associe un produit avec une façon de vivre, tels le prestige, les loisirs, l'enthousiasme, la vitalité, le risque ou l'audace ou qui évoque une émotion ou une image, positive ou négative, au sujet d'une telle façon de vivre.	« publicité de style de vie » "lifestyle advertising"
"information advertising" « publicité informative »	"information advertising" means advertising that provides factual information to the consumer about (a) a product and its characteristics; or (b) the availability or price of a product or brand of product.	« publicité informative » Publicité qui donne au consommateur des renseignements factuels et qui porte : a) sur un produit ou ses caractéristiques; b) sur la possibilité de se procurer un produit ou une marque d'un produit ou sur le prix du produit ou de la marque.	« publicité informative » "information advertising"
"lifestyle advertising" « publicité de style de vie »	"lifestyle advertising" means advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring. 1997, c. 13, s. 22; 2009, c. 27, s. 11.	« publicité préférentielle » Publicité qui fait la promotion d'un produit du tabac en se fondant sur les caractéristiques de sa marque. 1997, ch. 13, art. 22; 2009, ch. 27, art. 11.	« publicité préférentielle » "brand-preference advertising"
Packaging	23. No person shall package a tobacco product in a manner that is contrary to this Act or the regulations.	23. Il est interdit d'emballer un produit du tabac d'une manière non conforme à la présente loi et aux règlements.	Emballage
Prohibited additives — packaging	23.1 (1) No person shall package a tobacco product set out in column 2 of the schedule in a manner that suggests, including through illustrations, that it contains an additive set out in column 1.	23.1 (1) Il est interdit d'emballer un produit du tabac visé à la colonne 2 de l'annexe d'une manière qui donne à penser, notamment en raison d'illustrations, qu'il contient un additif visé à la colonne 1.	Emballage — additifs interdits
Prohibition — sale	(2) No person shall sell a tobacco product set out in column 2 of the schedule that is packaged in a manner prohibited by subsection (1). 2009, c. 27, s. 12.	(2) Il est interdit de vendre un produit du tabac visé à la colonne 2 de l'annexe s'il est ainsi emballé. 2009, ch. 27, art. 12.	Vente interdite

Prohibition — sponsorship promotion	<p>24. No person may display a tobacco product-related brand element or the name of a tobacco manufacturer in a promotion that is used, directly or indirectly, in the sponsorship of a person, entity, event, activity or permanent facility.</p> <p>1997, c. 13, s. 24; 1998, c. 38, s. 1.</p>	<p>24. Il est interdit d'utiliser, directement ou indirectement, un élément de marque d'un produit du tabac ou le nom d'un fabricant sur le matériel relatif à la promotion d'une personne, d'une entité, d'une manifestation, d'une activité ou d'installations permanentes.</p> <p>1997, ch. 13, art. 24; 1998, ch. 38, art. 1.</p>	Interdiction — promotion de commandite
Prohibition — name of facility	<p>25. No person may display a tobacco product-related brand element or the name of a tobacco manufacturer on a permanent facility, as part of the name of the facility or otherwise, if the tobacco product-related brand element or name is thereby associated with a sports or cultural event or activity.</p> <p>1997, c. 13, s. 25; 1998, c. 38, s. 2.</p>	<p>25. Il est interdit d'utiliser un élément de marque d'un produit du tabac ou le nom d'un fabricant sur des installations permanentes, notamment dans la dénomination de celles-ci, si l'élément ou le nom est de ce fait associé à une manifestation ou activité sportive ou culturelle.</p> <p>1997, ch. 13, art. 25; 1998, ch. 38, art. 2.</p>	Interdiction — élément ou nom figurant dans la dénomination
Accessories	<p>26. (1) Subject to the regulations, a manufacturer or retailer may sell an accessory that displays a tobacco product-related brand element.</p>	<p>26. (1) Sous réserve des règlements, le fabricant ou le détaillant peut vendre, à titre onéreux, un accessoire sur lequel figure un élément de marque d'un produit du tabac.</p>	Accessoires
Promotion	<p>(2) No person shall promote an accessory that displays a tobacco product-related brand element except in the prescribed manner and form and in a publication or place described in paragraphs 22(2)(a) and (c).</p> <p>1997, c. 13, s. 26; 2009, c. 27, s. 13.</p>	<p>(2) Il est interdit de faire la promotion d'accessoires sur lesquels figure un élément de marque d'un produit du tabac sauf selon les modalités réglementaires et dans les publications ou les endroits mentionnés aux alinéas 22(2)a) et c).</p> <p>1997, ch. 13, art. 26; 2009, ch. 27, art. 13.</p>	Promotion
Non-tobacco product displaying tobacco brand element	<p>27. No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or is used with a service, if the non-tobacco product or service</p> <p>(a) is associated with young persons or could be construed on reasonable grounds to be appealing to young persons; or</p> <p>(b) is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.</p>	<p>27. Il est interdit de fournir ou de promouvoir un produit du tabac si l'un de ses éléments de marque figure sur des articles autres que des produits du tabac — à l'exception des accessoires — ou est utilisé pour des services et que ces articles ou ces services :</p> <p>a) soit sont associés aux jeunes ou dont il existe des motifs raisonnables de croire qu'ils pourraient être attrayants pour les jeunes;</p> <p>b) soit sont associés avec une façon de vivre, tels le prestige, les loisirs, l'enthousiasme, la vitalité, le risque ou l'audace.</p>	Articles associés aux jeunes ou à un style de vie
Exception — tobacco product	<p>28. (1) Subject to the regulations, a person may sell a tobacco product, or advertise a tobacco product in accordance with section 22, if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or used with a service, if the non-tobacco product or service does not fall within the criteria described in paragraphs 27(a) and (b).</p>	<p>28. (1) Sous réserve des règlements, il est possible de vendre un produit du tabac ou d'en faire la publicité conformément à l'article 22 dans les cas où l'un de ses éléments de marque figure sur des articles autres que des produits du tabac — à l'exception des accessoires — ou est utilisé pour des services qui ne sont pas visés par les alinéas 27a) ou b).</p>	Autres articles
Exception — non-tobacco product	<p>(2) Subject to the regulations, a person may promote a non-tobacco product, other than an</p>	<p>(2) Sous réserve des règlements, il est possible de promouvoir des articles autres que des</p>	Promotion

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	accessory, that displays a tobacco product-related brand element, or a service that uses a tobacco product-related brand element, to which section 27 does not apply.	produits du tabac — à l'exception des accessoires — portant un élément de marque d'un produit du tabac ou des services utilisant un tel élément qui ne sont pas visés à l'article 27.	
Sales promotions	<p>29. No manufacturer or retailer shall</p> <p>(a) offer or provide any consideration, direct or indirect, for the purchase of a tobacco product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, lottery or contest;</p> <p>(b) furnish a tobacco product without monetary consideration or in consideration of the purchase of a product or service or the performance of a service; or</p> <p>(c) furnish an accessory that bears a tobacco product-related brand element without monetary consideration or in consideration of the purchase of a product or service or the performance of a service.</p>	<p>29. Il est interdit au fabricant et au détaillant :</p> <p>a) d'offrir ou de donner, directement ou indirectement, une contrepartie pour l'achat d'un produit du tabac, notamment un cadeau à l'acheteur ou à un tiers, une prime, un rabais ou le droit de participer à un tirage, à une loterie ou à un concours;</p> <p>b) de fournir un produit du tabac à titre gratuit ou en contrepartie de l'achat d'un produit ou d'un service ou de la prestation d'un service;</p> <p>c) de fournir un accessoire sur lequel figure un élément de marque d'un produit du tabac à titre gratuit ou en contrepartie de l'achat d'un produit ou d'un service ou de la prestation d'un service.</p>	Promotion des ventes
Retail display of tobacco products	<p>30. (1) Subject to the regulations, any person may display, at retail, a tobacco product or an accessory that displays a tobacco product-related brand element.</p>	<p>30. (1) Sous réserve des règlements, il est possible, dans un établissement de vente au détail, d'exposer des produits du tabac et des accessoires portant un élément de marque d'un produit du tabac.</p>	Autorisation
Signs	<p>(2) A retailer of tobacco products may post, in accordance with the regulations, signs at retail that indicate the availability of tobacco products and their price.</p>	<p>(2) Il est possible pour un détaillant, sous réserve des règlements, de signaler dans son établissement que des produits du tabac y sont vendus et d'indiquer leurs prix.</p>	Affiches
Communication media	<p>31. (1) No person shall, on behalf of another person, with or without consideration, publish, broadcast or otherwise disseminate any promotion that is prohibited by this Part.</p>	<p>31. (1) Il est interdit, à titre gratuit ou onéreux et pour le compte d'une autre personne, de diffuser, notamment par la presse ou la radio-télévision, toute promotion interdite par la présente partie.</p>	Médias
Exception	<p>(2) Subsection (1) does not apply to the distribution for sale of an imported publication or the retransmission of radio or television broadcasts that originate outside Canada.</p>	<p>(2) Le paragraphe (1) ne s'applique pas à la distribution en vue de la vente de publications importées au Canada ou à la retransmission d'émissions de radio ou de télévision de l'étranger.</p>	Exception
Foreign media	<p>(3) No person in Canada shall, by means of a publication that is published outside Canada, a broadcast that originates outside Canada or any communication other than a publication or broadcast that originates outside Canada, promote any product the promotion of which is regulated under this Part, or disseminate promotional material that contains a tobacco prod-</p>	<p>(3) Il est interdit à toute personne se trouvant au Canada de faire la promotion, dans une publication ou une émission provenant de l'étranger ou dans une communication, autre qu'une publication ou une émission, provenant de l'étranger, d'un produit à la promotion duquel s'applique la présente partie ou de diffuser du matériel relatif à une promotion contenant un élément de marque d'un produit du tabac</p>	Usage des médias étrangers

Tabac — 6 octobre 2010

Report to Minister	<p>uct-related brand element in a way that is contrary to this Part.</p> <p>32. Every manufacturer shall provide the Minister, in the prescribed manner and within the prescribed time, with the prescribed information about any promotion under this Part.</p>	<p>d'une manière non conforme à la présente partie.</p> <p>32. Le fabricant est tenu de transmettre au ministre les renseignements exigés par les règlements, dans les délais et selon les modalités réglementaires, sur les promotions visées par la présente partie.</p>	Renseignements
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Regulations	<p style="text-align: center;">REGULATIONS</p> <p>33. The Governor in Council may make regulations</p> <p>(a) respecting the promotion of tobacco products and tobacco product-related brand elements and the packaging of tobacco products, including the form, manner and conditions of the promotion and packaging, and the promotion of services and non-tobacco products for the purposes of section 28;</p> <p>(b) respecting the advertisement of tobacco products for the purposes of subsection 22(2);</p> <p>(c) and (d) [Repealed, 1998, c. 38, s. 3]</p> <p>(e) respecting, for the purposes of subsection 26(1), the manner in which a tobacco product-related brand element may appear on an accessory;</p> <p>(f) respecting the display of tobacco products and accessories at retail;</p> <p>(g) respecting signs that a retailer may post under subsection 30(2), including the placement of the signs and their number, size and content;</p> <p>(h) requiring manufacturers to disclose the particulars of their tobacco product-related brand elements and promotional activities;</p> <p>(i) prescribing anything that by this Part is to be prescribed; and</p> <p>(j) generally for carrying out the purposes of this Part.</p> <p>1997, c. 13, s. 33; 1998, c. 38, s. 3</p>	<p style="text-align: center;">RÈGLEMENTS</p> <p>33. Le gouverneur en conseil peut, par règlement:</p> <p>a) régir l'emballage et la promotion des produits du tabac et l'utilisation des éléments de marque de ces produits, y compris les modalités et les conditions applicables à l'emballage et à la promotion, et la promotion des articles et services visés à l'article 28;</p> <p>b) régir la publicité des produits du tabac pour l'application du paragraphe 22(2);</p> <p>c) et d) [Abrogés, 1998, ch. 38, art. 3]</p> <p>e) régir, pour l'application du paragraphe 26(1), la manière dont un élément de marque d'un produit du tabac peut figurer sur les accessoires;</p> <p>f) régir l'exposition des produits du tabac et des accessoires dans les établissements de vente au détail;</p> <p>g) régir, pour l'application du paragraphe 30(2), les affiches que le détaillant peut placer, y compris leur contenu, leur taille, leur nombre et les endroits où elles peuvent être placées;</p> <p>h) exiger d'un fabricant qu'il fournisse les détails de ses éléments de marque et de ses activités de promotion;</p> <p>i) prendre toute autre mesure d'ordre réglementaire prévue par la présente partie;</p> <p>j) prendre, de façon générale, les mesures nécessaires à l'application de la présente partie.</p> <p>1997, ch. 13, art. 33; 1998, ch. 38, art. 3</p>	Règlements
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Designation of inspectors and analysts	<p style="text-align: center;">PART V ENFORCEMENT INSPECTION</p> <p>34. (1) The Minister may designate any person or class of persons as an inspector or ana-</p>	<p style="text-align: center;">PARTIE V CONTRÔLE D'APPLICATION INSPECTION</p> <p>34. (1) Pour le contrôle d'application de la présente loi, le ministre peut désigner des per-</p>	Inspecteurs et analystes
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This Act is Current to October 6, 2010

TOBACCO DAMAGES AND HEALTH CARE COSTS RECOVERY ACT

[SBC 2000] CHAPTER 30

Assented to July 6, 2000

Contents

- 1 Definitions and interpretation
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Definitions and interpretation

- 1 (1) In this Act:

"cost of health care benefits" means the sum of

- (a) the present value of the total expenditure by the government for health care benefits provided for insured persons resulting from tobacco related disease or the risk of tobacco related disease, and
- (b) the present value of the estimated total expenditure by the government for health care benefits that could reasonably be expected will be provided for those insured persons resulting from tobacco related disease or the risk of tobacco related disease;

"disease" includes general deterioration of health;

"exposure" means any contact with, or ingestion, inhalation or assimilation of, a tobacco product, including any smoke or other by-product of the use, consumption or combustion of a tobacco product;

"health care benefits" means

- (a) benefits as defined under the *Hospital Insurance Act*,
- (b) benefits as defined under the *Medicare Protection Act*,
- (c) payments made by the government under the *Continuing Care Act*, and
- (d) other expenditures, made directly or through one or more agents or other intermediate bodies, by the government for programs, services, benefits or similar matters associated with disease;

"insured person" means

- (a) a person, including a deceased person, for whom health care benefits have been provided, or
- (b) a person for whom health care benefits could reasonably be expected will be provided;

"joint venture" means an association of 2 or more persons, if

- (a) the relationship among the persons does not constitute a corporation, a partnership or a trust, and
- (b) the persons each have an undivided interest in assets of the association;

"manufacture" includes, for a tobacco product, the production, assembly or packaging of the tobacco product;

"manufacturer" means a person who manufactures or has manufactured a tobacco product and includes a person who currently or in the past

- (a) causes, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of a tobacco product,
- (b) for any fiscal year of the person, derives at least 10% of revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products by that person or by other persons,

(c) engages in, or causes, directly or indirectly, other persons to engage in the promotion of a tobacco product, or

(d) is a trade association primarily engaged in

(i) the advancement of the interests of manufacturers,

(ii) the promotion of a tobacco product, or

(iii) causing, directly or indirectly, other persons to engage in the promotion of a tobacco product;

"person" includes a trust, joint venture or trade association;

"promote" or **"promotion"** includes, for a tobacco product, the marketing, distribution or sale of the tobacco product and research with respect to the tobacco product;

"tobacco product" means tobacco and any product that includes tobacco;

"tobacco related disease" means disease caused or contributed to by exposure to a tobacco product;

"tobacco related wrong" means,

(a) a tort committed in British Columbia by a manufacturer which causes or contributes to tobacco related disease, or

(b) in an action under section 2 (1), a breach of a common law, equitable or statutory duty or obligation owed by a manufacturer to persons in British Columbia who have been exposed or might become exposed to a tobacco product;

"type of tobacco product" means one or a combination of the following tobacco products:

(a) cigarettes;

(b) loose tobacco intended for incorporation into cigarettes;

(c) cigars;

(d) cigarillos;

(e) pipe tobacco;

(f) chewing tobacco;

(g) nasal snuff;

(h) oral snuff;

(i) a prescribed form of tobacco.

(2) The definition of "manufacturer" in subsection (1) does not include

- (a) an individual,
- (b) a person who
 - (i) is a manufacturer only because they are a wholesaler or retailer of tobacco products, and
 - (ii) is not related to
 - (A) a person who manufactures a tobacco product, or
 - (B) a person described in paragraph (a) of the definition of "manufacturer", or
- (c) a person who
 - (i) is a manufacturer only because paragraph (b) or (c) of the definition of "manufacturer" applies to the person, and
 - (ii) is not related to
 - (A) a person who manufactures a tobacco product, or
 - (B) a person described in paragraphs (a) or (d) of the definition of "manufacturer".

(3) For the purposes of subsection (2), a person is related to another person if, directly or indirectly, the person is

- (a) an affiliate, as defined in section 1 of the *Business Corporations Act*, of the other person, or
- (b) an affiliate of the other person or an affiliate of an affiliate of the other person.

(4) For the purposes of subsection (3) (b), a person is deemed to be an affiliate of another person if the person

- (a) is a corporation and the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, owns a beneficial interest in shares of the corporation
 - (i) carrying at least 50% of the votes for the election of directors of the corporation and the votes carried by the shares are sufficient, if exercised, to elect a director of the corporation, or
 - (ii) having a fair market value, including a premium for control if applicable, of at least 50% of the fair market value of all the issued and outstanding shares of the corporation, or

(b) is a partnership, trust or joint venture and the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has an ownership interest in the assets of that person that entitles the other person or group to receive at least 50% of the profits or at least 50% of the assets on dissolution, winding up or termination of the partnership, trust or joint venture.

(5) For the purposes of subsection (3) (b), a person is deemed to be an affiliate of another person if the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has any direct or indirect influence that, if exercised, would result in control in fact of that person except if the other person deals at arm's length with that person and derives influence solely as a lender.

(6) For the purposes of determining the market share of a defendant for a type of tobacco product sold in British Columbia, the court must calculate the defendant's market share for the type of tobacco product by the following formula:

$$dms = \frac{dm}{MM} \times 100\%$$

where

dms = the defendant's market share for the type of tobacco product from the date of the earliest tobacco related wrong committed by that defendant to the date of trial;

dm = the quantity of the type of tobacco product manufactured or promoted by the defendant that is sold within British Columbia from the date of the earliest tobacco related wrong committed by that defendant to the date of trial;

MM = the quantity of the type of tobacco product manufactured or promoted by all manufacturers that is sold within British Columbia from the date of the earliest tobacco related wrong committed by the defendant to the date of trial.

Direct action by government

2 (1) The government has a direct and distinct action against a manufacturer to recover the cost of health care benefits caused or contributed to by a tobacco related wrong.

(2) An action under subsection (1) is brought by the government in its own right and not on the basis of a subrogated claim.

(3) In an action under subsection (1), the government may recover the cost of health care benefits whether or not there has been any recovery by other persons who have suffered damage caused or contributed to by the tobacco related wrong committed by the defendant.

(4) In an action under subsection (1), the government may recover the cost of health care benefits

(a) for particular individual insured persons, or

(b) on an aggregate basis, for a population of insured persons as a result of exposure to a type of tobacco product.

(5) If the government seeks in an action under subsection (1) to recover the cost of health care benefits on an aggregate basis,

(a) it is not necessary

(i) to identify particular individual insured persons,

(ii) to prove the cause of tobacco related disease in any particular individual insured person, or

(iii) to prove the cost of health care benefits for any particular individual insured person,

(b) the health care records and documents of particular individual insured persons or the documents relating to the provision of health care benefits for particular individual insured persons are not compellable except as provided under a rule of law, practice or procedure that requires the production of documents relied on by an expert witness,

(c) a person is not compellable to answer questions with respect to the health of, or the provision of health care benefits for, particular individual insured persons,

(d) despite paragraphs (b) and (c), on application by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in paragraph (b) and the order must include directions concerning the nature, level of detail and type of information to be disclosed, and

(e) if an order is made under paragraph (d), the identity of particular individual insured persons must not be disclosed and all identifiers that disclose or may be used to trace the names or identities of any particular individual insured persons must be deleted from any documents before the documents are disclosed.

Recovery of cost of health care benefits on aggregate basis

- 3 (1) In an action under section 2 (1) for the recovery of the cost of health care benefits on an aggregate basis, subsection (2) applies if the government proves, on a balance of probabilities, that, in respect of a type of tobacco product,
 - (a) the defendant breached a common law, equitable or statutory duty or obligation owed to persons in British Columbia who have been exposed or might become exposed to the type of tobacco product,
 - (b) exposure to the type of tobacco product can cause or contribute to disease, and
 - (c) during all or part of the period of the breach referred to in paragraph (a), the type of tobacco product, manufactured or promoted by the defendant, was offered for sale in British Columbia.
- (2) Subject to subsections (1) and (4), the court must presume that
 - (a) the population of insured persons who were exposed to the type of tobacco product, manufactured or promoted by the defendant, would not have been exposed to the product but for the breach referred to in subsection (1) (a), and
 - (b) the exposure described in paragraph (a) caused or contributed to disease or the risk of disease in a portion of the population described in paragraph (a).
- (3) If the presumptions under subsection (2) (a) and (b) apply,
 - (a) the court must determine on an aggregate basis the cost of health care benefits provided after the date of the breach referred to in subsection (1) (a) resulting from exposure to the type of tobacco product, and
 - (b) each defendant to which the presumptions apply is liable for the proportion of the aggregate cost referred to in paragraph (a) equal to its market share in the type of tobacco product.
- (4) The amount of a defendant's liability assessed under subsection (3) (b) may be reduced, or the proportions of liability assessed under subsection (3) (b) readjusted amongst the defendants, to the extent that a defendant proves, on a balance of probabilities, that the breach referred to in subsection (1) (a) did not cause or contribute to the exposure referred to in subsection (2) (a) or to the disease or risk of disease referred to in subsection (2) (b).

Joint and several liability in an action under section 2 (1)

- 4 (1) Two or more defendants in an action under section 2 (1) are jointly and severally liable for the cost of health care benefits if
- (a) those defendants jointly breached a duty or obligation described in the definition of "tobacco related wrong" in section 1 (1), and
 - (b) as a consequence of the breach described in paragraph (a), at least one of those defendants is held liable in the action under section 2 (1) for the cost of those health care benefits.
- (2) For purposes of an action under section 2 (1), 2 or more manufacturers, whether or not they are defendants in the action, are deemed to have jointly breached a duty or obligation described in the definition of "tobacco related wrong" in section 1 (1) if
- (a) one or more of those manufacturers are held to have breached the duty or obligation, and
 - (b) at common law, in equity or under an enactment those manufacturers would be held
 - (i) to have conspired or acted in concert with respect to the breach,
 - (ii) to have acted in a principal and agent relationship with each other with respect to the breach, or
 - (iii) to be jointly or vicariously liable for the breach if damages would have been awarded to a person who suffered as a consequence of the breach.

Population based evidence to establish causation and quantify damages or cost

- 5 Statistical information and information derived from epidemiological, sociological and other relevant studies, including information derived from sampling, is admissible as evidence for the purposes of establishing causation and quantifying damages or the cost of health care benefits respecting a tobacco related wrong in an action brought
- (a) by or on behalf of a person in the person's own name or as a member of a class of persons under the *Class Proceedings Act*, or
 - (b) by the government under section 2 (1).

Limitation periods

35-36-37 ELIZABETH II

35-36-37 ELIZABETH II

CHAPTER 20

CHAPITRE 20

An Act to prohibit the advertising and promotion and respecting the labelling and monitoring of tobacco products

Loi interdisant la publicité en faveur des produits du tabac, réglementant leur étiquetage et prévoyant certaines mesures de contrôle

[Assented to 28th June, 1988]

[Sanctionnée le 28 juin 1988]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Tobacco Products Control Act*.

1. *Loi réglementant les produits du tabac*.

Titre abrégé

INTERPRETATION

DÉFINITIONS

Definitions

2. (1) In this Act,

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

Définitions

"analyst"
«analyste»

"analyst" means a person designated as a tobacco product analyst pursuant to section 11;

«analyste» Personne désignée à titre d'analyste des produits du tabac aux termes de l'article 11.

«analyste»
«analyst»

"distributor"
«négociant»

"distributor" means a person engaged in the business of selling tobacco products otherwise than at retail only, and includes a manufacturer or importer thereof;

«détaillant» Quiconque vend des produits du tabac au détail.

«détaillant»
«retailer»

"inspector"
«inspecteur»

"inspector" means a person designated as a tobacco product inspector pursuant to section 11;

«emballage» Contenant — paquet, cartouche, enveloppe ou autre — dans lequel les produits du tabac sont généralement vendus au détail.

«emballage»
«package»

"manufacturer"
«fabricant»

"manufacturer" includes any corporation that is associated with a manufacturer;

«fabricant» Sont assimilées au fabricant les personnes morales qui ont des liens avec lui.

«fabricant»
«manufacturer»

"Minister"
«ministre»

"Minister" means the Minister of National Health and Welfare;

«inspecteur» Personne désignée à titre d'inspecteur des produits du tabac aux termes de l'article 11.

«inspecteur»
«inspector»

"package"
«emballage»

"package" means any pack, carton, wrapping or other container in which tobacco products are customarily sold at retail;

«marque» Toute marque de commerce, qu'elle ait été déposée ou non ou qu'elle

«marque»
«trade...»

Tobacco Products Control Act, S.C. 1988, c. 20, ss. 1-17

2	C. 20	<i>Tobacco Products Control</i>	35-36-37 ELIZ. II
"prescribed" <i>Version anglaise seulement</i>	"prescribed" means prescribed by regulations made under this Act;	soit enregistrable ou non en vertu de la <i>Loi sur les marques de commerce</i> , et toute variante susceptible de l'évoquer.	
"retailer" <i>«détaillant»</i>	"retailer" means a person engaged in any business that includes the sale of tobacco products at retail;	«ministre» Le ministre de la Santé nationale et du Bien-être social.	«ministre» "Minister"
"tobacco product" <i>«produit du tabac»</i>	"tobacco product" means any product manufactured from tobacco and intended for use by smoking, inhalation or mastication, and includes nasal and oral snuff;	«négociant» Personne faisant profession de vendre des produits du tabac, à l'exception de celle qui ne vend qu'au détail. Le fabricant et l'importateur sont dans tous les cas visés par la présente définition.	«négociant» "distributor"
"trade mark" <i>«marque»</i>	"trade mark" includes any trade mark whether or not it is registered or registrable as such under the <i>Trade Marks Act</i> , and any recognizable variation thereof.	«produit du tabac» Produit fabriqué à partir du tabac et destiné à être fumé ou consommé — par mastication ou inhalation —, ou prisé par le nez ou par la bouche.	«produit du tabac» "tobacco product"
Associated corporations	(2) For the purposes of this section, two corporations are associated with each other if one is controlled by the other or if both are controlled by the same person.	(2) Pour l'application du présent article, deux personnes morales ont des liens entre elles si l'une est contrôlée par l'autre ou si l'une et l'autre sont contrôlées par la même personne.	Personnes morales liées
PURPOSE		OBJET	
Purpose of Act	3. The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular, (a) to protect the health of Canadians in the light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases; (b) to protect young persons and others, to the extent that is reasonable in a free and democratic society, from inducements to use tobacco products and consequent dependence on them; and (c) to enhance public awareness of the hazards of tobacco use by ensuring the effective communication of pertinent information to consumers of tobacco products.	3. La présente loi a pour objet de s'attacher, sur le plan législatif, à un problème qui, dans le domaine de la santé publique, est grave, urgent et d'envergure nationale et, plus particulièrement : a) de protéger la santé des Canadiennes et des Canadiens compte tenu des preuves établissant de façon indiscutable un lien entre l'usage du tabac et de nombreuses maladies débilitantes ou mortelles; b) de préserver notamment les jeunes, autant que faire se peut dans une société libre et démocratique, des incitations à la consommation du tabac et du tabagisme qui peut en résulter; c) de mieux sensibiliser les Canadiennes et les Canadiens aux méfaits du tabac par la diffusion efficace de l'information utile aux consommateurs de celui-ci.	Santé publique
ADVERTISING		PUBLICITÉ	
Advertisers	4. (1) No person shall advertise any tobacco product offered for sale in Canada.	4. (1) La publicité en faveur des produits du tabac mis en vente au Canada est interdite.	Produits du tabac
Communications media	(2) No person shall, for consideration, publish, broadcast or otherwise disseminate,	(2) Il est interdit, à titre onéreux et pour le compte d'une autre personne, de diffuser,	Médias

Tobacco Products Control Act, S.C. 1988, c. 20, ss. 1-17

1988	<i>Produits du tabac</i>	ch. 20	3
	on behalf of another person, an advertisement for any tobacco product offered for sale in Canada.	notamment par la presse ou la radio-télévision, la publicité en faveur d'un produit du tabac mis en vente au Canada.	
Exception	(3) For greater certainty, subsection (2) does not apply in respect of the distribution for sale of publications imported into Canada or the retransmission of radio or television broadcasts originating outside Canada.	(3) Il est entendu que le paragraphe (2) ne s'applique pas à la distribution en vue de la vente de publications importées au Canada ou à la retransmission d'émissions de radio ou de télévision de l'étranger.	Exception
Foreign media	(4) No person in Canada shall advertise a tobacco product by means of a publication published outside Canada or a radio or television broadcast originating outside Canada primarily for the purpose of promoting the sale in Canada of a tobacco product.	(4) Il est interdit à toute personne se trouvant au Canada de faire de la publicité en faveur d'un produit du tabac dans une publication étrangère ou une émission radiodiffusée de l'étranger dans le but, principalement, de promouvoir la vente d'un produit du tabac au Canada.	Usage des médias étrangers
Transitional: signs	(5) Notwithstanding subsections (1) and (2), the manufacturer or importer of a tobacco product may advertise the product by means of signs at any time before January 1, 1991, if (a) the amount, determined in accordance with the regulations, expended by the manufacturer or importer on the preparation in 1989 of materials for use in signs and on the presentation of signs in that year does not exceed two thirds of the expenses of the manufacturer or importer, determined in accordance with the regulations, incurred during its last financial year ending before January 1, 1988 for such preparation and presentation; (b) the amount, determined in accordance with the regulations, expended by the manufacturer or importer on such preparation and presentation in 1990 does not exceed one third of the expenses of the manufacturer or importer, so determined, incurred therefor during the financial year referred to in paragraph (a); and (c) a health warning is provided in accordance with the regulations on any sign put in place after the coming into force of this Act.	(5) Malgré les paragraphes (1) et (2) le fabricant ou l'importateur d'un produit du tabac peut, jusqu'au 1 ^{er} janvier 1991, exclusivement, faire de la publicité en faveur du produit par des affiches à condition que : a) le montant qu'il dépense pour la préparation, en 1989, de la publicité relative à ces affiches et pour la présentation de ces affiches au public au cours de la même année ne dépasse pas les deux tiers des dépenses engagées pour la préparation et la présentation d'affiches au cours de son dernier exercice clos avant le 1 ^{er} janvier 1988; b) le montant qu'il dépense pour la préparation et la présentation d'affiches en 1990 ne dépasse pas le tiers des dépenses engagées au cours de l'exercice visé à l'alinéa a); c) les affiches installées après l'entrée en vigueur de la présente loi comportent une mise en garde réglementaire. Les montants et dépenses visés au présent paragraphe se calculent conformément aux règlements.	Affiches
Definition of "sign"	(6) In subsection (5), "sign" does not include (a) a sign displayed at the place of business of a retailer; or (b) a representation described in paragraph 6(1)(a) or (b).	(6) Pour l'application du paragraphe (5), «affiche» ne vise pas : a) les supports publicitaires se trouvant à l'intérieur ou aux abords de l'établissement d'un détaillant;	Définition d'«affiche»

Retail displays

5. (1) Notwithstanding section 4, a retailer may

- (a) expose tobacco products for sale at the retailer's place of business;
- (b) post in that place, in the prescribed form, manner and quantity, signs that indicate, otherwise than by their brand names or trade marks, the tobacco products offered for sale and their prices;
- (c) where the retailer's name or trade name contains any word or expression signifying that tobacco products are sold by the retailer, employ that name or trade name, otherwise than in association with a tobacco product, for the purpose of advertising the retailer's business, except by means of a radio or television transmission; and
- (d) display at the retailer's place of business, at any time before January 1, 1993, an advertisement or portion thereof
 - (i) that was displayed in that place before January 25, 1988, or
 - (ii) that the retailer is obliged to display under the terms of a contract entered into before January 25, 1988, other than a term allowing for the extension or renewal of the contract after that day.

Vending machines

(2) Notwithstanding section 4, a person who operates a vending machine that dispenses tobacco products may identify or depict those products and their prices on the exterior of the vending machine in the prescribed form and manner.

Permitted sponsorships

6. (1) Notwithstanding section 4 and subsection 8(1) but subject to subsection (2) of this section, the full name of a manufacturer or importer of tobacco products and, where required by the terms of a contract entered into before January 25, 1988, the brand name of a tobacco product, may be used, otherwise than in association with a tobacco product, in a representation to the public

(a) that promotes a cultural or sporting activity or event; or

b) les mentions visées aux alinéas 6(1)a) ou b).

5. (1) Malgré l'article 4, le détaillant peut :

- a) exposer des produits du tabac pour la vente dans son établissement;
- b) signaler dans ce lieu, par des affiches réglementaires quant à leur forme, leur teneur et leur quantité, les produits du tabac qui y sont vendus ainsi que leur prix, sans toutefois mentionner leur nom ou leur marque;
- c) faire usage, ailleurs qu'à la radio-télévision, de sa dénomination ou de sa raison sociale à des fins publicitaires — même quand l'un de ses éléments indique qu'il vend des produits du tabac — sans toutefois y associer un produit du tabac;
- d) jusqu'au 1^{er} janvier 1993, exclusivement, conserver, à l'intérieur ou aux abords de son établissement, les supports publicitaires — ou parties de ceux-ci :
 - (i) soit dont il avait déjà fait usage avant le 25 janvier 1988,
 - (ii) soit dont il est tenu de faire usage conformément aux stipulations d'un contrat conclu avant le 25 janvier 1988, à l'exclusion de toute stipulation autorisant le renouvellement ou la prorogation du contrat après cette date.

Commerce au détail

(2) Malgré l'article 4, l'exploitant d'un distributeur automatique de produits du tabac peut les représenter ou les nommer et en indiquer les prix sur celui-ci selon les modalités réglementaires.

Distributeurs automatiques

PROMOTION

PROMOTION

6. (1) Sous réserve du paragraphe (2), il est possible, malgré l'article 4 et le paragraphe 8(1), d'utiliser le nom intégral du fabricant ou de l'importateur d'un produit du tabac et, dans les cas où l'exige un contrat conclu avant le 25 janvier 1988, le nom du produit, sans toutefois y associer un produit du tabac, dans toute mention au public :

a) qui vise à promouvoir une activité ou une manifestation culturelles ou sportives;

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	(b) that acknowledges financial or other contributions made by the manufacturer or importer of the tobacco product toward such an activity or event.	b) qui fait état des concours financiers ou autres apportés par le fabricant ou l'importateur à la réalisation de cette activité ou manifestation.	
Monetary limits	(2) Where, in any calendar year, a manufacturer or importer of tobacco products makes financial or other contributions toward cultural or sporting activities or events in respect of which brand names of those products are used, the value of such contributions, determined in accordance with the regulations, shall not exceed the value, so determined, of the contributions made by the manufacturer or importer toward cultural or sporting activities and events in 1987.	(2) La valeur, calculée conformément aux règlements, des concours financiers ou autres apportés par le fabricant ou l'importateur de produits du tabac à la réalisation d'activités ou manifestations culturelles ou sportives dans le cadre desquelles est mentionné le nom des produits ne peut dépasser, pour une année civile donnée, la valeur, ainsi calculée, des concours qu'il a apportés en 1987 à la réalisation de telles activités ou manifestations.	Restriction quant aux dépenses
Free distribution	7. (1) No distributor shall distribute tobacco products in the absence of consideration therefor, or furnish tobacco products to any person for the purpose of their subsequent distribution without consideration.	7. (1) Il est interdit aux négociants de distribuer des produits du tabac à titre gratuit ou d'en fournir à cette fin.	Distribution à titre gratuit
Rewards and contests	(2) No person shall offer any gift or cash rebate or the right to participate in any contest, lottery or game to the purchaser of a tobacco product in consideration of the purchase thereof, or to any person in consideration of the furnishing of evidence of such a purchase.	(2) Il est interdit d'offrir un cadeau ou une remise, ou la possibilité de participer à un concours, une loterie ou un jeu, en contrepartie de l'achat d'un produit du tabac ou de la production d'une preuve d'achat de celui-ci.	Remises ou cadeaux
Trade marks on non-tobacco goods and in advertising	8. (1) No manufacturer or importer of tobacco products who is entitled to use any trade mark in association with those products, and no person acting with the concurrence or acquiescence of such a manufacturer or importer, shall (a) apply the trade mark, in any form in which it appears on packages of the product that are sold in Canada, to any article other than a tobacco product or a package or container in which a tobacco product is sold or shipped, or (b) use the trade mark in any such form for the purpose of advertising any article other than a tobacco product or any service, activity or event, notwithstanding that the manufacturer or importer is, but for this Act, entitled to use the trade mark in association with that article, service, activity or event.	8. (1) Il est interdit aux fabricants et aux importateurs de produits du tabac : a) d'apposer des marques qu'ils sont habilités à utiliser à l'égard de ces produits sur des articles, autres que les produits du tabac et les emballages servant à vendre ou expédier ceux-ci, sous une forme reprenant celle qui figure sur les emballages de ces produits alors vendus au Canada; b) de faire usage de ces marques et sous cette forme dans toute publicité en faveur d'autres articles que les produits du tabac ou de services, manifestations ou activités. La présente interdiction s'applique même si les fabricants ou les importateurs sont par ailleurs habilités à utiliser ces marques à l'égard de ces autres articles ou de ces services, manifestations ou activités et vise également quiconque agit avec le consentement, exprès ou tacite, de ces fabricants ou ces importateurs.	Interdictions quant à l'usage des marques

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6	C. 20	<i>Tobacco Products Control</i>	35-36-37 ELIZ. I
Sale of non-tobacco goods	(2) No person shall distribute, sell, offer for sale or expose for sale any article, other than a tobacco product or a package or container in which a tobacco product is sold or shipped, that bears a trade mark of a tobacco product in any form in which it appears on packages of the tobacco product that are sold in Canada.	(2) Il est interdit de distribuer, de vendre, de mettre en vente ou d'exposer en vue de la vente des articles, autres que les produits du tabac et les emballages servant à vendre ou expédier ceux-ci, s'ils portent la marque d'un produit du tabac sous une forme reprenant celle qui figure sur les emballages de ce produit vendus au Canada.	Produits autres que le tabac
Defence	(3) Subsections (1) and (2) do not apply in respect of a trade mark if in 1986 tobacco products and other articles bearing that trade mark were sold at retail in Canada and the retail value of those other articles estimated in accordance with the regulations was greater than one-quarter of the retail value of those tobacco products so estimated.	(3) Les paragraphes (1) et (2) ne s'appliquent pas si, en 1986 et au Canada, la valeur estimative, calculée conformément aux règlements, des ventes au détail d'articles autres que les produits du tabac portant la marque en question était supérieure au quart de celle, ainsi calculée, des produits du tabac portant également cette marque.	Non-application
Existing and ordered goods	(4) Subsection (2) does not apply in respect of the distribution or sale before January 1, 1993 of an article manufactured before April 30, 1987, or ordered before that date from the manufacturer or supplier of the article otherwise than by the placing of a standing order that requires confirmation or is subject to cancellation after that date.	(4) Le paragraphe (2) ne s'applique pas à la vente ou à la distribution, avant le 1 ^{er} janvier 1993, d'articles fabriqués avant le 30 avril 1987 ou commandés à leur fabricant ou fournisseur avant cette date, sauf s'il s'agit d'une commande permanente qui doit être confirmée ou peut prendre fin après cette date.	Exception : articles existants ou commandés
LABELLING		ÉTIQUETAGE	
Health warning	9. (1) No distributor shall sell or offer for sale a tobacco product unless (a) the package containing the product displays, in accordance with the regulations, messages pertaining to the health effects of the product and a list of toxic constituents of the product and, where applicable, of the smoke produced from its combustion indicating the quantities of those constituents present therein; and (b) if and as required by the regulations, a leaflet furnishing information relative to the health effects of the product has been placed inside the package containing the product.	9. (1) Il est interdit aux négociants de vendre ou mettre en vente un produit du tabac qui ne comporte pas, sur ou dans l'emballage respectivement, les éléments suivants : a) les messages soulignant, conformément aux règlements, les effets du produit sur la santé, ainsi que la liste et la quantité des substances toxiques, que celui-ci contient et, le cas échéant, qui sont dégagées par sa combustion; b) s'il y a lieu, le prospectus réglementaire contenant l'information sur les effets du produit sur la santé.	Messages relatifs à la santé
Extraneous information	(2) No distributor shall sell or offer for sale a tobacco product if the package in which it is contained displays any writing other than the name, brand name and any trade marks of the tobacco product, the messages and list referred to in subsection (1), the label required by the <i>Consumer Packaging and Labelling Act</i> and the stamp and	(2) Les seules autres mentions que peut comporter l'emballage d'un produit du tabac sont la désignation, le nom et toute marque de celui-ci, ainsi que les indications exigées par la <i>Loi sur l'emballage et l'étiquetage des produits de consommation</i> et le timbre et les renseignements prévus aux articles 203 et 204 de la <i>Loi sur l'accise</i> .	Information superflue

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information required by sections 203 and 204 of the *Excise Act*.

Existing rights saved

(3) This section does not affect any obligation of a distributor, at common law or under any Act of Parliament or of a provincial legislature, to warn purchasers of tobacco products of the health effects of those products.

(3) Le présent article n'a pas pour effet de libérer le négociant de toute obligation qu'il aurait, aux termes d'une loi fédérale ou provinciale ou en *common law*, d'avertir les acheteurs de produits du tabac des effets de ceux-ci sur la santé.

Maintien d'obligations existantes

REPORTING

RAPPORTS

Constituents

10. (1) Subject to any regulations made under paragraph 17(h), every manufacturer or importer of tobacco products of a class prescribed for the purposes of this subsection shall provide to the Minister, in the prescribed form and manner and at the prescribed intervals, reports identifying the constituents of those products and, where applicable, of the smoke produced from their combustion and indicating the quantities of those constituents present therein.

10. (1) Sous réserve des règlements d'application de l'alinéa 17h), les fabricants et les importateurs des produits du tabac d'une catégorie précisée par règlement pour l'application du présent paragraphe sont tenus de transmettre au ministre, selon les modalités et aux intervalles réglementaires, des rapports mentionnant les substances qu'ils contiennent et, le cas échéant, qui sont dégagées par leur combustion, ainsi que la quantité de celles-ci.

Substances

Product volume

(2) Every manufacturer or importer of tobacco products of a class prescribed for the purposes of this subsection shall provide to the Minister, in the prescribed form and manner and at the prescribed intervals, reports indicating the quantity of those tobacco products manufactured or imported by that manufacturer or importer and the quantity thereof sold by that manufacturer or importer.

(2) Les fabricants et les importateurs des produits du tabac d'une catégorie précisée par règlement pour l'application du présent paragraphe sont tenus de transmettre au ministre, selon les modalités et aux intervalles réglementaires, des rapports indiquant la quantité des produits du tabac qu'ils ont fabriqués, ou importés, et vendus.

Volume des ventes

Information re sponsorships

(3) Every manufacturer of tobacco products shall, within the prescribed period following the end of each calendar year, provide the Minister with the prescribed information for the determination of the monetary value of support referred to in subsection 6(2) that was provided by the manufacturer in that year.

(3) Les fabricants de produits du tabac sont tenus de transmettre au ministre, dans le délai réglementaire suivant la fin de chaque année civile, les renseignements précisés par règlement et relatifs au calcul de la valeur des concours visés au paragraphe 6(2) qu'ils ont apportés pendant l'année.

Parrainage

Information re signs

(4) Every manufacturer or importer of tobacco products shall

(a) within the prescribed period following the coming into force of this Act, provide the Minister with the prescribed information for the determination of the expenses of the manufacturer or importer referred to in paragraph 4(5)(a); and

(b) within the prescribed period following the years 1989 and 1990, provide the Min-

(4) Les fabricants et les importateurs de produits du tabac sont tenus de transmettre au ministre :

a) dans le délai réglementaire suivant l'entrée en vigueur de la présente loi, les renseignements précisés par règlement et relatifs au calcul des dépenses visées à l'alinéa 4(5)a);

b) dans le délai réglementaire suivant les années 1989 et 1990, les renseignements

Supports publicitaire extérieurs

ister with the prescribed information for the determination of the amounts referred to in paragraphs 4(5)(a) and (b), respectively, that were expended by the manufacturer or importer.

précisés par règlement et relatifs au calcul des montants, visés aux alinéas 4(5)a) et b) respectivement, qu'ils ont dépensés.

ENFORCEMENT

CONTRÔLE D'APPLICATION

Inspectors and analysts

11. (1) The Minister may designate as a tobacco product inspector or as a tobacco product analyst any person who, in the opinion of the Minister, is qualified to be so designated.

11. (1) Le ministre peut désigner à titre d'inspecteur des produits du tabac ou d'analyste des produits du tabac toute personne qu'il estime qualifiée.

Inspecteurs et analystes

Production of certificate

(2) The Minister shall furnish every inspector with a certificate of the inspector's designation as such and, on entering any place described in subsection 12(1) or 13(1), an inspector shall, on demand, produce the certificate to the person in charge thereof.

(2) Le ministre remet à chaque inspecteur un certificat attestant sa qualité, que celui-ci présente, sur demande, au responsable du lieu visé aux paragraphes 12(1) ou 13(1).

Production du certificat

Search

12. (1) An inspector with a warrant issued under subsection (2) may at any reasonable time enter and search any place in which the inspector believes on reasonable grounds there is any thing by means of or in relation to which any provision of this Act has been contravened, and may seize and detain any such thing.

12. (1) L'inspecteur muni du mandat visé au paragraphe (2) peut, à toute heure convenable, perquisitionner dans un lieu lorsqu'il a des motifs raisonnables de croire qu'il s'y trouve un objet qui a servi ou a donné lieu à la perpétration d'une infraction à la présente loi, et peut saisir et détenir l'objet.

Perquisition

Authority to issue warrant

(2) Where on *ex parte* application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is in any place referred to in subsection (1)

(2) S'il est convaincu d'après une dénonciation sous serment qu'il y a des motifs raisonnables de croire à la présence dans un lieu d'un objet ayant servi ou donné lieu à la perpétration d'une infraction à la présente loi ou dont il a des motifs raisonnables de croire qu'il servira à prouver une telle infraction, le juge de paix peut, sur demande *ex parte*, délivrer sous son seing un mandat autorisant l'inspecteur qui y est nommé à perquisitionner dans ce lieu et à saisir et détenir l'objet, sous réserve des conditions fixées dans ce mandat.

Délivrance du mandat

(a) any thing by means of or in relation to which any provision of this Act has been contravened, or

(b) any thing that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence under this Act,

the justice of the peace may issue a warrant under his hand authorizing the inspector named therein to enter and search that place and to seize and detain the thing, subject to any conditions that are specified therein.

(3) L'inspecteur ne peut recourir à la force dans l'exécution du mandat que si celui-ci en autorise expressément l'usage et que si lui-même est accompagné d'un agent de la paix.

Usage de la force

Use of force

(3) In executing a warrant issued under subsection (2), the inspector named therein shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

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Inspection

13. (1) An inspector may at any reasonable time enter any place other than a private dwelling place in which the inspector believes on reasonable grounds that there is any equipment or material used to determine, for the purposes of subsection 10(1), the quantities of constituents of tobacco products or of the smoke produced from them, or that there are records or data relating to the reports required by section 10, and may

- (a) examine any such equipment or material or any tobacco product found in that place;
- (b) open and examine any receptacle or package found therein that the inspector has reason to believe contains any such material or any tobacco product;
- (c) take samples of any such material or any tobacco product; and
- (d) examine any books, records, documents or electronic data that on reasonable grounds the inspector believes contain any information relevant to the enforcement of this Act, and make copies thereof or extracts therefrom.

Seizure

(2) Whenever an inspector, in the course of an inspection under subsection (1), believes on reasonable grounds that any provision of this Act has been contravened, the inspector may seize and detain any thing in relation to which or by means of which the inspector believes on reasonable grounds that the contravention occurred.

Assistance to inspectors

14. (1) The owner or person in charge of a place entered by an inspector pursuant to section 12 or 13 and every person found therein shall give the inspector all reasonable assistance to enable the inspector to carry out the inspector's duties and functions under this Act and shall furnish the inspector with such information with respect to the administration of this Act as the inspector reasonably requires.

Obstruction of inspectors

(2) No person shall obstruct or hinder an inspector in carrying out duties or functions under this Act.

13. (1) L'inspecteur peut, à toute heure convenable, procéder à la visite de tout lieu, à l'exception d'une maison d'habitation, où, à son avis, se trouvent des équipements ou du matériel destinés, dans le cadre du paragraphe 10(1), à mesurer la quantité des substances contenues dans les produits du tabac ou dégagées par leur combustion, ou des registres ou données destinés à l'établissement des rapports visés à l'article 10. À cet effet, il peut :

- a) examiner ces équipements et ce matériel et tout produit du tabac se trouvant dans ce lieu;
- b) ouvrir et examiner tout contenant ou emballage se trouvant dans ce lieu et qui, à son avis, contient ce matériel ou un produit du tabac;
- c) prélever des échantillons de ce matériel ou d'un produit du tabac;
- d) examiner les livres, dossiers ou documents, ou des données traitées électroniquement, qui, à son avis, contiennent des renseignements utiles à l'application de la présente loi et en faire des reproductions totales ou partielles.

L'avis de l'inspecteur doit dans tous les cas être fondé sur des motifs raisonnables.

(2) L'inspecteur peut, dans le cadre de la visite, saisir et détenir tout objet, s'il a des motifs raisonnables de croire qu'il a servi ou donné lieu à la violation d'une disposition de la présente loi.

14. (1) Le propriétaire ou le responsable du lieu visité au titre des articles 12 ou 13, ainsi que quiconque s'y trouve, sont tenus de prêter à l'inspecteur toute l'assistance possible dans l'exercice de ses fonctions et de lui donner les renseignements qu'il peut valablement exiger quant à l'application de la présente loi.

(2) Il est interdit de gêner ou d'entraver l'action de l'inspecteur qui agit dans l'exercice de ses fonctions.

Visites

Saisie

Assistance à l'inspecteur

Entrave

Tobacco Products Control Act, S.C. 1988, c. 20, ss. 1-17

10	C. 20	<i>Tobacco Products Control</i>	35-36-37 ELIZ. II
Analysis	15. (1) An inspector may submit to an analyst for analysis or examination any thing seized under section 12 or 13.	15. (1) L'inspecteur peut soumettre à l'analyste, pour analyse ou examen, tout objet saisi au titre des articles 12 ou 13.	Analyses
Certificate	(2) An analyst may, after making an analysis or examination, issue a certificate setting forth the results of the analysis or examination.	(2) L'analyste peut donner les résultats de son analyse ou examen dans un certificat.	Certificat
Certificate of analyst	(3) Subject to subsections (4) and (5), in any prosecution for an offence under subsection 9(1) or 10(1), a certificate of an analyst stating that the analyst has analysed or examined any thing submitted to the analyst and stating the results of the analysis or examination is admissible in evidence and in the absence of evidence to the contrary is proof of the statements contained in the certificate without proof of the signature or official character of the person appearing to have signed the certificate.	(3) Sous réserve des paragraphes (4) et (5), le certificat censé signé par l'analyste, où il est déclaré que celui-ci a analysé ou examiné tel objet et où sont donnés ses résultats, est admissible en preuve dans les poursuites engagées pour infraction aux paragraphes 9(1) ou 10(1), sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire; sauf preuve contraire, le certificat fait foi de son contenu.	Certificat de l'analyste
Attendance of analyst	(4) The party against whom a certificate of an analyst is produced pursuant to subsection (3) may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.	(4) La partie contre laquelle est produit le certificat peut, avec l'autorisation du tribunal, exiger la présence de l'analyste pour contre-interrogatoire.	Présence de l'analyste
Notice	(5) No certificate shall be received in evidence pursuant to subsection (3) unless the party intending to produce it has, before the trial, given to the party against whom it is intended to be produced reasonable notice of such an intention together with a copy of the certificate.	(5) Le certificat n'est recevable en preuve que si la partie qui entend le produire donne de son intention à la partie qu'elle vise un préavis suffisant, accompagné d'une copie du certificat.	Préavis
Detention of things seized	16. (1) Any thing seized pursuant to section 12 or 13 shall not be detained after the expiration of ninety days after the day of seizure unless before that time proceedings have been instituted in respect of the contravention, in which case it may be detained until the proceedings are finally concluded.	16. (1) La rétention des objets saisis prend fin à l'expiration d'un délai de quatre-vingt-dix jours à compter de la date de saisie. Toutefois, en cas de poursuite intentée en l'espèce, elle peut se prolonger jusqu'à l'issue définitive de l'affaire.	Rétention
Disposition with consent of owner	(2) Where the Minister has custody of any thing referred to in subsection (1), the Minister may with the written consent of the owner dispose of it as the Minister sees fit.	(2) Le ministre peut, avec le consentement écrit de leur propriétaire, disposer comme il l'entend des objets saisis dont il a la garde.	Sort des objets saisis : cas de consentement
Where consent deemed given	(3) Where the Minister, by registered letter or by a demand served personally, requests the owner of a thing referred to in subsection (2) to repossess it and the owner fails to do so within thirty days after receipt of the request, the owner shall be thereupon	(3) Le propriétaire est réputé avoir donné le consentement prévu au paragraphe (2) s'il omet de reprendre possession de l'objet dans les trente jours de la réception d'une demande du ministre à cet effet signifiée par courrier recommandé ou à personne.	Présomption de consentement

deemed to have given the consent mentioned in subsection (2).

Order for
forfeiture

(4) A judge of a superior, county or district court of the province in which any thing was seized under this Act may, on the application of an inspector and on such notice to such persons as the judge directs, order that the thing and anything else of a similar nature found therewith be forfeited to Her Majesty to be disposed of as the Minister directs, if the judge finds, after making such inquiry as the judge considers necessary, that the thing is one by means of or in relation to which any of the provisions of this Act were contravened.

(4) Le juge d'une cour supérieure, d'une cour de comté ou d'une cour de district de la province où l'objet a été saisi en application de la présente loi peut, à la demande de l'inspecteur, ordonner que soient confisqués au profit de Sa Majesté l'objet et les objets de nature comparable trouvés avec celui-ci et qu'il en soit disposé conformément aux instructions du ministre. Cette ordonnance est subordonnée à la transmission du préavis prescrit par le juge aux personnes qu'il désigne et à la constatation par ce dernier, à l'issue de l'enquête qu'il estime nécessaire, du fait que l'objet a servi ou a donné lieu à une infraction à la présente loi.

Ordonnance de
confiscation

REGULATIONS

Regulations

17. The Governor in Council may make regulations

- (a) exempting a tobacco product from the application of sections 4 and 7 where, in the opinion of the Governor in Council, that product is likely to be used as a substitute for other tobacco products and poses less risk to the health of users than those other products;
- (b) respecting the determination of the amounts and expenses referred to in paragraphs 4(5)(a) and (b);
- (c) prescribing, in respect of any tobacco product, the content, position, configuration, size and prominence of the health warnings referred to in paragraph 4(5)(c);
- (d) respecting the determination of the value of contributions referred to in section 6;
- (e) respecting the manner of estimating the retail value of tobacco products and other articles sold in 1986 for the purposes of subsection 8(3);
- (f) prescribing, in respect of any tobacco product, the content, position, configuration, size and prominence of the messages and list of toxic constituents referred to in paragraph 9(1)(a);
- (g) requiring leaflets furnishing information referred to in paragraph 9(1)(b) to be placed inside packages of a tobacco prod-

RÈGLEMENTS

Règlements

17. Le gouverneur en conseil peut, par règlement :

- a) exempter de l'application des articles 4 et 7 tout produit du tabac qui, à son avis, sera probablement utilisé comme substitut aux autres produits du tabac et fait courir moins de risque à la santé des consommateurs que ces autres produits;
- b) prévoir le mode de calcul des montants visés aux alinéas 4(5)a) et b);
- c) fixer, pour tout produit du tabac, la teneur, la présentation, l'emplacement, les dimensions et la mise en évidence des mises en garde prévues à l'alinéa 4(5)c);
- d) prévoir le mode de calcul de la valeur des concours visés à l'article 6;
- e) prévoir, pour l'application du paragraphe 8(3), le mode de calcul de la valeur estimative des ventes au détail des produits du tabac et des autres articles vendus en 1986;
- f) fixer, pour tout produit du tabac, la teneur, la présentation, l'emplacement, les dimensions et la mise en évidence des mentions — messages et liste des substances toxiques — visées à l'alinéa 9(1)a);
- g) exiger la présence, à l'intérieur de l'emballage d'un produit du tabac, du prospectus visé à l'alinéa 9(1)b) et préciser la forme de celui-ci, sa teneur ainsi que son emplacement;

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12	C. 20	<i>Tobacco Products Control</i>	35-36-37 ELIZ. II
		<p>uct and prescribing their content, form and manner of placement in those packages;</p> <p>(h) exempting from the application of subsection 10(1) persons whose sales of tobacco products of any class constitute less than a prescribed proportion of the total sales of tobacco products of that class;</p> <p>(i) requiring manufacturers and importers of tobacco products to maintain such records as the Governor in Council considers necessary for the enforcement of sections 9 and 10; and</p> <p>(j) prescribing anything that by this Act is to be prescribed.</p>	<p>h) soustraire à l'application du paragraphe 10(1) les personnes dont les ventes de produits du tabac représentent moins de telle proportion de l'ensemble des ventes;</p> <p>i) obliger les fabricants et les importateurs de produits du tabac à tenir les dossiers qu'il estime nécessaires à l'application des articles 9 et 10;</p> <p>j) prendre toute autre mesure d'ordre réglementaire prévue par la présente loi.</p>
		<p>OFFENCES AND PUNISHMENTS</p>	<p>INFRACTIONS ET PEINES</p>
Offence and punishment	<p>18. (1) Every person who contravenes section 4, 7, 8, 9 or 10</p> <p>(a) is guilty of an offence punishable on summary conviction and is liable</p> <p>(i) for a first offence under any of those sections, to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months, or to both, and</p> <p>(ii) where the person has previously been convicted of an offence under any of those sections, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months, or to both; or</p> <p>(b) is guilty of an indictable offence and is liable</p> <p>(i) for a first offence under any of those sections, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year, or to both, and</p> <p>(ii) where the person has previously been convicted of an offence under any of those sections, to a fine not exceeding three hundred thousand dollars or to imprisonment for two years, or to both.</p>	<p>18. (1) Quiconque contrevient aux articles 4, 7, 8, 9 ou 10 :</p> <p>a) soit commet une infraction punissable sur déclaration de culpabilité par procédure sommaire et encourt :</p> <p>(i) pour une première infraction, une amende maximale de deux mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines,</p> <p>(ii) s'il a déjà été déclaré coupable de n'importe laquelle des infractions prévues à ces articles, une amende maximale de cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines;</p> <p>b) soit commet un acte criminel et encourt :</p> <p>(i) pour une première infraction, une amende maximale de cent mille dollars et un emprisonnement maximal d'un an, ou l'une de ces peines,</p> <p>(ii) s'il a déjà été déclaré coupable de n'importe laquelle des infractions prévues à ces articles, une amende maximale de trois cent mille dollars et un emprisonnement maximal de deux ans, ou l'une de ces peines.</p>	<p>Contravention aux articles 4, 7, 8, 9 ou 10</p>
Idem	<p>(2) Every person who contravenes subsection 6(2) is guilty of an offence punishable on summary conviction and is liable</p>	<p>(2) Quiconque contrevient au paragraphe 6(2) commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire :</p>	<p>Contravention à l'article 6</p>