

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

PLAINTIFF

AND:

**IMPERIAL TOBACCO LIMITED, IMPASCO LIMITED, BRITISH AMERICAN TOBACCO (INVESTMENTS) LTD.,
B.A.T INDUSTRIES p.l.c., BRITISH AMERICAN TOBACCO p.l.c., BROWN & WILLIAMSON TOBACCO
CORPORATION, AMERICAN TOBACCO COMPANY, BAT #1, #2, #3, #4, #5, #6, #7, #8, #9, #10,
ROTHMANS, BENSON & HEDGES INC., ROTHMANS INC., ROTHMANS INTERNATIONAL LIMITED, ROTHMANS
INTERNATIONAL p.l.c., ROTHMANS INTERNATIONAL N.V., ROTHMANS #1, #2, #3, #4, #5, #6, #7, #8,
#9, #10, PHILIP MORRIS INTERNATIONAL, INC., PHILIP MORRIS #1, #2, #3, #4, #5, #6, #7, #8,
#9, #10, R.J.R-MACDONALD INC., R.J. REYNOLDS TOBACCO COMPANY, R.J.R NABISCO INC., R.J.
REYNOLDS TOBACCO INTERNATIONAL, INC., R.J.R #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, LIGGETT
GROUP, INC., CANADIAN TOBACCO MANUFACTURERS' COUNCIL, THE COUNCIL FOR TOBACCO RESEARCH -
U.S.A., INCO., THE TOBACCO INSTITUTE, INC.**

DEFENDANTS

OUTLINE OF POSITION

**Application Challenging Service *Ex Juris* by
British American Tobacco (Investments)
Limited, B.A.T Industries p.l.c. and British
American Tobacco p.l.c.**

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(Investments) Limited, B.A.T
Industries p.l.c., British
American Tobacco p.l.c.**

Introduction

1. The Defendants British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. apply under Rule 13 to set aside the *ex juris* service of the Writ of Summons and Statement of Claim.

2. By agreement, these applications challenging service *ex juris* will proceed in two stages. The issue for determination at this, the first stage, is the constitutional validity of the *Tobacco Damages and Health Care Costs Recovery Act, S.B.C. 1997, c.41 ("Act")*, pursuant to which the Plaintiff brings this action.

3. British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. subscribe to the position advanced by the Plaintiffs in Action Nos. C985777, C985779, and C985781: the Act is of no force or effect pursuant to s.52 of the *Constitution Act, 1982* on the grounds specified in the Outlines attached to the Notices of Motion, namely:

- (i) the Act is an unconstitutional interference with judicial independence;
- (ii) the Act purports to have extra-territorial effect contrary to the limits of provincial legislative competence under the *Constitution Act, 1867*; and

(iii) if the action authorized by the Act in section 13 is to be construed as based on a new wrong that gives rise to penal liability, it is inconsistent with the Constitution and of no force or effect to the extent it is to be construed as authorizing the recovery of such a penalty for acts committed before the Act making such acts a wrong that gave rise to penal liability, came into force.

4. The submissions made by the Plaintiffs in those actions will not be repeated here.

Service Ex Juris

5. British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. are persons outside British Columbia within the meaning of Rule 13. Each was incorporated pursuant to the laws of England and Wales and each maintains its registered office in London, England.

6. The Plaintiff in this action served each of British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. in London on or about 23 April 1999. An application by each challenging service ex juris followed. None has entered an Appearance to this action.

The Act's Extra-Territorial Purpose and Effect

7. The Act's evident focus is extra-territorial, as it purports to provide a basis, otherwise absent, to implead foreigners.

8. The allegations in the Statement of Claim against British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. depend upon, and betray, the Act's extra-territorial purpose and effect:

- a. paragraph 27: each is alleged to be a manufacturer in law by reason of the definition of manufacturer found in s.1(1) of the Act, without regard for whether, and indeed in the absence of a plea that, any one actually manufactures cigarettes sold in British Columbia; and
- b. paragraph 40: by reason of s.17.1(1) of the Act, each in law is alleged to be one company with such other Defendants as Imasco Limited, Imperial Tobacco Limited and Brown & Williamson Tobacco Corporation, without regard for the separate legal existence of each or whether any has a presence in British Columbia.

9. Legislation with such extra-territorial purpose and effect is beyond the competence of the provincial legislature. The Act, it is submitted, is thus of no force or effect.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 13, 1999
DATE

"Richard R. Sugden, Q.C."
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British American Tobacco (Investments)
Limited, B.A.T Industries p.l.c.,
British American Tobacco p.l.c.