

**LYALL MCKERCHER HANNA  
MEMO**

**DATE:** June 20, 1988  
**FROM:** Nick Kambas  
**RE:** Roger Perron v R.J. MacDonald Inc.

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A news conference was held on the 20th of June, 1988, in conjunction with the commencement of the above-noted action. Speaking at the news conference were the following individuals:

1. David Stuart, President of the British Columbia Trial Lawyers Association;
2. David Sweeney (phonetic), Staff Legal Counsel for Non-Smokers' Health Organization of Canada;
3. Fred Bask (phonetic), Chairman of the Tobacco and Related Illness Committee of the British Columbia Medical Association; and
4. Russell Stanton, counsel for the Plaintiff, Roger Perron.

Mr. Sweeney stated that the purpose of this action would be to switch the blame for tobacco-related diseases from the victims to the tobacco industry.

Mr. Sweeney sees this particular case as part of an international trend for the recovery of damages arising from tobacco-related diseases.

Mr. Sweeney stated that the Belkin re: Ortho Pharmaceutical's case (Ontario Court of Appeal) creates a greater common law onus

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upon the tobacco industry to give specific warning respecting the consequences of the consumption of tobacco products.

Dr. Bask stated that the Plaintiff suffered from Buerger's Disease, which is a disease usually affecting young males. Buerger's Disease is an arterial disease in which the blood vessels in the feet and hands are inflamed. Dr. Bask stated that such disease occurs only in smokers and if smoking is not a major cause of the disease, then it is certainly a major aggravating factor. This disease, according to Dr. Bask, has been known to be smoking-related since 1908 when Dr. Buerger first completed his research on the subject.

Dr. Bask said that the industry has been promoting the consumption of tobacco products in the face of specific knowledge respecting health consequences. Dr. Bask stated that it was the opinion of the British Columbia Medical Association, and indeed, the major reason for their participation in the news conference, that all those people who have been injured by smoking have a right to claim for damages. According to Dr. Bask, it was the opinion of the British Columbia Medical Association that doctors in the Province were precluded from practising preventative medicine with respect to the effects of cigarette smoking because of the promotion of the product by the industry in the face of the medical information respecting its consequences. Dr. Bask concluded by saying that nobody advocated the inhaling of the germ-causing tuberculosis when the medical profession was attempting to educate the public on the prevention of that particular disease.

Mr. Stanton stated that his involvement in this case began approximately a year ago when the Plaintiff asked him what his chances of success would be if he took on the tobacco industry. Initially, Mr. Stanton advised the Plaintiff that the chances of success would be slim given the size of the industry. He changed his mind when he read the Ortho Pharmaceutical's decision and

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when he realized that the particular disease affecting this particular Plaintiff is one that could, in his opinion, be easily related to cigarette smoking. Furthermore, Mr. Stanton stated that he was encouraged by a number of American lawyers who had been involved in cases against the industry in the United States and who advised him that one of the major problems was attempting to tie in the illness affecting their clients to cigarette smoking.

Mr. Sweeneyard stated that the issue of the duty to warn and the extent of such duty upon the tobacco industry would be the critical issue in this law suit. From his perspective, the Ortho Pharmaceutical's case is quite clear in establishing that where specific effects of a product are known, then the manufacturer must warn the public of such specific effects and that a general warning of a health hazard is clearly insufficient.

Mr. Sweeneyard went on to say that the major defence used by the tobacco industry in the United States was the argument of pre-emption respecting the regulations imposed by Congress in regard to health hazard warnings to be placed by the tobacco industry on their product.

Since in Canada there were no legislative requirements to place warnings on a product and since the warning labels in Canada were purely voluntary, then the pre-emption argument will not apply and the common law standard of a duty to warn would be decisive.

Mr. Sweeneyard stated that his organization will assist in the prosecution of the case by supplying information, research and their expertise respecting their involvement with the tobacco industry.

Mr. Sweeneyard concluded his remarks by saying that since the decision in New Jersey, a number of lawyers and potential Plaintiffs have appeared requesting information regarding possible claims against the tobacco industry.

Mr. Stanton concluded by saying that there were many areas of potential liability on the part of the tobacco industry one of which was the potential liability of the industry in regard to cigarette-related fires.

When asked why his client did not stop smoking after having lost the first limb, Mr. Stanton stated that his client was addicted to nicotine and, therefore, could not stop smoking. Mr. Stanton went on to say that there are various studies which indicate that nicotine is more addictive than heroine and, therefore, nobody can blame his client for being unable to quit smoking after having lost the first limb.